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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

VICKY MALDONADO AND JUSTIN CARTER, individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

APPLE INC., APPLECARE SERVICE COMPANY, INC., AND APPLE CSC, INC.,

Defendants.

No. 3:16-cv-04067-WHO

Related Case:
English v. Apple Inc. et al.
Case No. 3:14-cv-01619-WHO

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Judge: Hon. William H. Orrick
Courtroom: 2, 17th Floor
Complaint Filed: July 20, 2016

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on October 20, 2021, at 2:00 p.m. or as soon thereafter as the matter may be heard by the Honorable Judge William H. Orrick of the United States District Court for the Northern District of California, San Francisco Division, located at 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiffs will and hereby do move the Court under Federal Rule of Civil Procedure 23 for an order:

(1) Preliminarily approving the proposed class action settlement with Defendants Apple Inc., AppleCare Service Company, Inc., and Apple CSC, Inc. ("Apple"); and

(2) Approving the manner and form of notice and proposed plan of allocation to Class members.

This Motion is based on this Notice of Motion and unopposed Motion for Preliminary Approval of Class Action Settlement with Apple and Dissemination of Class Notice, the following memorandum of points and authorities, the accompanying settlement agreement, and the pleadings and papers on file in this action.

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I. INTRODUCTION

Plaintiffs have reached a settlement with the Defendants Apple Inc., AppleCare Service Company, Inc., and Apple CSC, Inc. ("Apple") for $95 million. Decl. of Steve Berman in Support of Plaintiffs' Mot. for Prelim. Approval of Class Action Settlement ("Berman Decl.") ¶ 3 & Ex. A ("Settlement Agreement").

This settlement is the product of arm's length negotiations among experienced counsel well-versed in the facts and law relevant to this case and bears no obvious defects. The settlement constitutes an outstanding result for the Class. The total settlement fund constitutes approximately 13% to 25% of estimated damages according to Plaintiffs' experts[1]—a significant recovery by any measure and well within the range of possible approval. Berman Decl. ¶¶ 12–13.

Accordingly, Plaintiffs respectfully request an order: (1) preliminarily approving the proposed class action settlement with Apple; and (2) approving the manner and form of notice and proposed plan of allocation to Class members.

II. PROCEDURAL HISTORY

Apple is a manufacturer and retailer of iPhones and iPads ("devices"). Apple sells a two-year extended warranty called AppleCare or AppleCare+ ("AppleCare"). AppleCare provides that when a device is defective (or needs to be replaced for accidental damage), Apple will "exchange the [device] with a replacement product that is new or equivalent to new in performance and reliability." ECF No. 155 at 2. Replacement devices provided under AppleCare can be either new or remanufactured. *Id.* Remanufactured replacement devices are devices built with a mix of used and new parts. *Id.* at 2–3. The used parts are primarily sourced from devices returned to Apple. *Id.* at 2.

Plaintiffs are purchasers of AppleCare who were given remanufactured replacement devices. *Id.* at 5–6. They represent a class of individuals who similarly purchased AppleCare and received remanufactured replacement devices. *Id.* at 27. Plaintiffs filed an Amended Complaint on

[1] Apple maintains that Plaintiffs are not entitled to any damages and its experts would have testified that no damages were appropriate.

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November 4, 2016, alleging that Apple breached its AppleCare contracts with Plaintiffs and the class by giving them remanufactured devices that were not "equivalent to new in performance and reliability." ECF No. 45 ¶¶ 130–39. Plaintiffs also allege causes of action for violations of the Song-Beverly Act, Magnusson-Moss, and California's Unfair Claims Practices Act. *Id.* ¶¶ 140–70, 194–201.[2] Apple denied all allegations in the Amended Complaint. ECF Nos. 69–70.

A. Class Certification and Summary Judgment

Before class certification, the parties engaged in significant discovery. Both parties issued interrogatories and document requests. Berman Decl. ¶ 6. Apple deposed both named Plaintiffs and Plaintiffs deposed three Apple Rule 30(b)(6) designees. *Id.* ¶ 5. Plaintiffs then moved for class certification on February 25, 2019. ECF No. 102. Plaintiffs presented evidence that they argued showed remanufactured devices are not equivalent to new in performance and reliability at the moment of delivery. *Id.* at 5–10. Plaintiffs' reliability and electrical engineering expert, Dr. Michael Pecht, opined that remanufactured devices can never be equivalent to new in reliability because they contain used parts. ECF No. 103-20 at 13. Dr. Pecht explained that reliability is performance over time. *Id.* at 10. According to Dr. Pecht, electronic parts and products wear out over time—an electronic part begins to degrade once it is manufactured. *Id.* at 10–11. Dr. Pecht opined that load or stress conditions, such as operational wear and tear, thermal changes, humidity, dust, and shock (e.g., dropping), will cause degradation. *Id.* According to Dr. Pecht, these load conditions can cause damage to parts and components, which may not be seen by the naked eye or by normal functional or performance testing, but they will reduce the life span of the product. *Id.*

Plaintiffs presented a second expert, Dr. Robert Bardwell, a statistician who reviewed Apple's grouped return data. ECF No. 103-23. He opined that he had determined in the first thirteen weeks that remanufactured replacement iPhones are 2.3 times more likely to fail than new replacement iPhones and remanufactured iPad replacements are 1.7 times more likely to fail than new iPhone replacements. *Id.* at 4. He opined that his results were statistically significant at an

[2] Defendants filed a motion to dismiss on December 19, 2016. ECF No. 50. The Court dismissed Plaintiffs' CLRA claim, False Advertising Claim, and the fraudulent prong of their UCL claim. ECF No. 64 at 9–11.

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extreme level. *Id.* at 9. Dr. Bardwell stated he could do a more robust analysis with Apple's full return data. *Id.*at 16–17.

Plaintiffs also offered Dr. Lance Kaufman, an economist, as their damages expert. ECF No. 103-25. Dr. Kaufman stated he would measure the benefit of the bargain by calculating the difference between what was promised, a new device, and what was received, a remanufactured device. *Id.* at 6–7, 9. Apple sells certified refurbished devices, which are the same remanufactured replacement devices. ECF No. 102 at 4. Dr. Kaufman stated that he would calculate the difference between the price of a new device and the price of a certified refurbished device, on the date of replacement. ECF No. 103-25 at 6–7, 9.

In response, Apple argued (among other things) that the class was overly broad because it included devices that were never returned or experienced an issue with their replacement, remanufactured devices were equivalent because they undergo the same performance and reliability testing as new devices, and Plaintiffs improperly relied on return data, which do not equate to failures. ECF No. 113 at 8–20. Apple also argued (among other things) that damages should measure the diminished value of AppleCare—the amount Plaintiffs overpaid for AppleCare. *Id.* at 20–21. Apple identified three experts to rebut Plaintiffs' experts. ECF Nos. 113-18, 113-20, 113-22. All six experts were deposed during the course of class certification briefing. Berman Decl. ¶ 7.

At the same time, Apple moved for summary judgment on Plaintiffs' individual claims. ECF No. 111. Apple argued (among other things) that "equivalent to new" did not mean new and Plaintiffs could not show that their reported issues were caused by used parts. *Id.* at 8, 11. Apple also argued Plaintiffs' devices met the same quality standards as new devices and return rates could not be used as a substitute for Plaintiffs' own device failures. *Id.* at 12–13. Plaintiffs opposed summary judgment, citing much of the same evidence and arguments on liability in their Motion for Class Certification. ECF No. 130.

On September 16, 2019, this Court denied Apple's summary judgment motion and granted class certification. ECF No. 155. The Court found both commonality and predominance because "plaintiffs' injury occurred when they filed a claim under AC/AC+ and received a device that was

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not 'equivalent to new in performance and reliability' because of load conditions or shorter lifespan. This injury occurred regardless of whether an individual experienced a problem with the device." *Id.* at 19 (citing *Nguyen v. Nissan N. Am., Inc.*, 932 F.3d 811, 819 (9th Cir. 2019)). The Court found a jury could credit the testimony of Drs. Pecht and Bardwell and determine Plaintiffs and the class's devices were not equivalent to new in performance and reliability. *Id.* at 10–11, 16–17. The Court held: "If a fact finder credits plaintiffs' theory, then all individuals who received a remanufactured replacement device were injured." *Id.* The Court also found the class was sufficiently numerous, Plaintiffs were typical, having purchased AppleCare and received remanufactured replacements, Plaintiffs were adequate class representatives, and Hagens Berman had extensive experience litigating consumer class actions. Last, the Court found that Plaintiffs' proposed damages met the requirements of *Comcast Corp. v. Behrend*, 569 U.S. 27, 34 (2013), because it was tethered to their theory of liability. *Id.* at 23.

The Court certified the following Class: "All individuals who purchased AppleCare or AppleCare+, either directly or through the iPhone Upgrade Program, on or after July 20, 2012, and received a remanufactured replacement Device." *Id.* at 27. It also appointed Plaintiffs Maldonado and Carter as Class Representatives and appointed Hagens Berman as Class Counsel. ECF No. 155 at 27.

B. Fact and Expert Discovery

After certification, the parties completed fact discovery. In total, Plaintiffs issued and Apple answered 25 interrogatories, 92 requests for production, and 159 requests for admission. Berman Decl. ¶ 6. Apple issued and Plaintiff Carter responded to 12 interrogatories, 19 requests for production, and 8 requests for admission. *Id.* Apple issued and Plaintiff Maldonado responded to 13 interrogatories and 20 requests for production. *Id.* Apple produced and Plaintiffs reviewed over 30,000 documents, consisting of approximately 230,000 pages. *Id.* ¶ 8. Plaintiffs deposed two additional Rule 30(b)(6) designees and three fact witnesses. *Id.* ¶ 5. Apple deposed one additional fact witness. *Id.*

The parties engaged in complete expert discovery. Plaintiffs identified five experts on the merits and an additional rebuttal expert. *Id.* ¶ 9. Plaintiffs again identified Drs. Pecht, Bardwell,

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and Kaufman. *Id.* Dr. Pecht's opinions remained unchanged. *Id.* ¶ 10. Dr. Bardwell, with Apple's full return data, opined that he was able to determine that remanufactured replacement iPhones are 3.2 times more likely to fail than new replacement iPhones and remanufactured replacement iPads are 7 times more likely to fail than new iPad replacements, and these higher failure rates are statistically significant at an extreme level. *Id.* ¶ 11. He also opined that he determined that over four years, remanufactured iPhones have 23.4 fewer weeks of life than new iPhones and remanufactured iPads have 18.5 fewer weeks than a new iPad. *Id.*

Dr. Kaufman opined that he measured the retail price difference between new and remanufactured devices, calculating damages of $754,893,730. *Id.* ¶ 12. Plaintiffs also retained damage experts Stephen Gaskin and Colin Weir. *Id.* ¶ 13. Mr. Gaskin, with the input of Mr. Weir, conducted a conjoint survey to assess the differences in value between new and remanufactured devices. *Id.* Mr. Gaskin opined that his survey showed a 15.7% difference in value for iPhones and 14.1% difference in value for iPads. Using these numbers, Mr. Weir calculated damages of $386,106,741. *Id.* Drs. Pecht and Bardwell also issued rebuttal reports and Plaintiffs identified Dr. Abhijit Dasgupta, a reliability engineer, as a rebuttal expert to the testing performed by one of Apple's experts. *Id.* ¶ 14.

Apple identified three merits experts and seven rebuttal experts. *Id.* ¶ 15. Apple did not use any of the three experts it identified for class certification, but instead identified ten new experts in total. *Id.* Apple's merits experts included a reliability engineer, a survey expert, and an environmental expert. *Id.* Apple identified seven rebuttal experts to rebut each of Plaintiffs' experts, including two engineers, a statistician, two survey experts, and two damages experts. *Id.* Apple's experts opined that damages were inappropriate. *Id.* Plaintiffs deposed nine of Apple's ten experts and Apple deposed all six of Plaintiffs' experts. *Id.* ¶ 16.

C. *Daubert* Motions and Confirmation of Certification

After expert discovery was complete, Apple filed *Daubert* motions to exclude all five of Plaintiffs' merits experts, and Plaintiffs filed *Daubert* motions to exclude two of Apple's rebuttal experts in full and two in part. ECF Nos. 240–243, 247–250. Apple also filed a Motion to Decertify the Class. ECF No. 239. In that motion to decertify, Apple argued that Plaintiffs failed to prove all

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Class members were injured, because (among other things) they failed to conduct empirical testing showing "whether load conditions caused any actual specific effects on class devices," Plaintiffs could not distinguish between benign and harmful effect of load without testing, and return rates did not show that all remanufactured devices were inferior. *Id.* at 17–21. Apple also argued that a significant portion of the Class was not harmed because 87% of Class members did not return their remanufactured devices, 6.1% of Class members had a used part combination with statistically significantly lower return rates, survey evidence proved that Class members prefer remanufactured devices, and some Class members eventually received a new device when they returned a defective remanufactured device. *Id.* at 22–24. Last, Apple argued that the Class could not pursue UCL and Song-Beverly Claims on a nationwide basis. *Id.* at 24–25.

In response, Plaintiffs argued there was no change in circumstances requiring decertification. ECF No. 273 at 2–10. Plaintiffs countered that their evidence on the effect of load conditions on remanufactured devices remained unchanged, that any load conditions reduce the reliability of the device as a matter of physics, and testing was not required to prove the load theory. *Id.*at 12–14. Plaintiffs argued that Apple had presented no evidence that there were remanufactured devices within the Class with benign loads that would defeat certification. *Id.* at 15. Plaintiffs also argued that their reliance on return data remained the same, but a jury could still rely on load theory for those devices and there was no evidence that Class members preferred used parts. *Id.* at 18–23. Last, Plaintiffs argued that the California law claims were encompassed in the choice-of-law clause in the AppleCare contracts. *Id.* at 25.

This Court denied Apple's decertification motion, denied all of Apple's *Daubert* motions, granted two of Plaintiffs' *Daubert* motions, denied two of Plaintiffs' *Daubert* motions, and found all the remaining expert testimony for both parties were "fit for trial." ECF No. 304 at 1–2, 5. Following the Court's rulings on the *Daubert* motions, Apple still had rebuttal experts to counter each of Plaintiffs' experts. Berman Decl. ¶ 17. The Court determined that many of the issues raised by Apple were "for the merits," that Plaintiffs' theory of liability had an "important weakness," and that it would "be left to a jury to determine whether the plaintiffs or Apple are correct about what

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the evidence actually proves." ECF No. 304 at 1, 7–8. After the Court issued its order, the parties began preparing for trial, which was set to begin on August 16, 2021. Berman Decl. ¶ 18.

D. Mediation

The parties engaged in two mediations before the Class was certified with retired Justice Edward A. Panelli, one on October 29, 2018, and one on March 13, 2019. *Id.* ¶ 19. Both mediations were unsuccessful. *Id.* On April 22, 2020, after the Class was certified, the parties engaged in a third mediation with Chief Magistrate Judge Joseph C. Spero. *Id.* ¶ 20. That mediation was also unsuccessful. *Id.* After the Court issued its order denying Apple's decertification motion, Judge Spero ordered the parties to engage in another settlement session. *Id.* ¶ 21. On June 30, 2021, the parties held a mediation with retired Judge Rebecca Westerfield. *Id.* After a full day of mediation, the parties agreed to the settle the case for an all-in common fund of $95 million. *Id.* The parties executed a Memorandum of Understanding that same day. *Id.*

III. SUMMARY OF SETTLEMENT TERMS

A. The Certified Class

The settlement encompasses the Certified Class, which the court defined as:

> All individuals who purchased AppleCare or AppleCare+, either directly or through the iPhone Upgrade Program, on or after July 20, 2012, and received a remanufactured replacement Device.

"Class Member" means any person or entity that falls within the definition of the "Certified Class" and who did not previously elect to be excluded, or any Class Member receiving notice for the first time, who does not timely and validly elect to be excluded from the Certified Class. The Class period cutoff date is September 30, 2021, the execution date of the Settlement Agreement. Berman Decl. Ex. A ¶¶ 6, 14.

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B. The Settlement Consideration and Release of Claims, Anticipated Class Recovery, and Potential Class Recovery

The settlement releases all Defendants from all claims based on the facts alleged in the complaint, as previously certified by this Court in exchange for a common fund of $95,000,000.[3] Those claims include breach of contract and violations of the Song-Beverly Act, the Magnusson-Moss Act, and the UCL. In making this settlement, Class Counsel considered the risks of going to trial, including the possibility that a trial could result in a smaller or zero recovery for the Class, the time and resources that would be expended by both parties and the Court, and the possibility of delay caused by any appeal if Plaintiffs did prevail.

If Plaintiffs had prevailed on their breach of contract claim, the total settlement fund amount represents approximately 13% to 25% of estimated damages according to Plaintiffs' experts.[4] Plaintiffs are not entitled to additional damages under their other claims, but Plaintiff argued that they could have sought a civil penalty under the Song-Beverly Act of up to two times the amount of damages subject to a showing of willfulness on Apple's part. Plaintiffs assert that the award of such a penalty would have been at the discretion of the jury.

It is anticipated that the Certified Class will recover a total amount of between $63,434,000 and $68,184,000, once administrative costs, incentive awards, and attorneys' fees[5] and costs have been deducted, as shown below. While recovery at trial could have been higher, it also could have been much lower or zero. Also, Class Counsel would have sought administrative costs, incentive awards, and attorneys' fees and costs out of any trial recovery. And those incentive awards and attorneys' fees and costs would have increased significantly because of the additional time, effort, and costs that would be expended at trial.

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[3] Attached as Exhibit B to the Berman Declaration is a chart showing past comparable settlements of Class Counsel, as required by Northern District's Procedural Guidance for Class Action Settlements.

[4] Plaintiffs' experts measured damages ranging from $386,106,741 to $754,893,730. Apple claimed that Plaintiffs were not injured and were not entitled to any damages.

[5] These estimates are based on an attorneys' fees request of between 25–30% of the Settlement Fund.

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C. Attorneys' Fees and Costs, Incentive Awards, and Administration Costs

Class Counsel will request that the costs of notice and distribution, attorneys' fees and costs, and service awards for the two Class Representatives be taken out of the settlement fund.

The estimated costs of notice and distribution are $1,663,688. Declaration of Cameron Azari ("Azari Decl.") ¶ 17. The costs of administration will be taken out of the settlement fund.

Through September 24, 2021, Plaintiffs have advanced costs of $1,374,835.64, which includes $1,128,798.78 in expert fees. Berman Decl. ¶ 22. Plaintiffs have also expended approximately $6,823,841.80 in attorneys' fees in this litigation, which is based on 11,775.9 hours expended. *Id.* Plaintiffs will assuredly expend significant additional attorney resources between now and the final approval hearing (and likely thereafter for class member support).

While the benchmark for fees in the Ninth Circuit is 25%, when awarding fees under a common fund, courts generally start with the 25% benchmark and adjust upward or downward depending on:

(1) The extent to which class counsel achieved exceptional results for the class;
(2) Whether the case was risky for class counsel;
(3) Whether counsel's performance generated benefits beyond the cash fund;
(4) The market rate for the particular field of law (in some circumstances);
(5) The burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work); and
(6) Whether the case was handled on a contingency basis.

In re Wells Fargo & Co. S'holder Derivative Litig., 445 F. Supp. 3d 508, 519 (N.D. Cal. 2020), aff'd, 845 F. App'x 563 (9th Cir. 2021) (quoting *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954–55 (9th Cir. 2015)). Class Counsel's work and success in this case merits an upward adjustment of up to 30% and Class Counsel believe that any lodestar cross-check will support Plaintiffs' requested adjustment. Despite taking over the case in a precarious posture, Class Counsel's skill and effort produced an extraordinary result against an aggressive, top-tier defense. Accordingly, Plaintiffs intend to request attorneys' fees between 25-30% of the total settlement fund of $95 million, as well as their costs. Class Counsel will more fully support their request, including detailing the relevant circumstances of the *Wells Fargo* factors, in their motion for

attorneys' fees. Apple reserves its rights to oppose any request for attorneys' fees and costs that exceeds 25% of the settlement fund.

For service awards, Class Counsel will also seek an award of $15,000 for the Class Representative Vicky Maldonado, and $12,500 for Class Representative Justin Carter, totaling $27,500, out of the settlement fund.[6] In determining whether a service award is fair, courts look at "(1) the amount of time and effort spent by the class representatives on the litigation; (2) the degree to which the class representatives' efforts benefitted the class; (3) the personal difficulties encountered by the class representatives; (4) the duration of the litigation; (5) the personal benefit, or lack thereof, enjoyed by the class representatives as a result of the litigation; and (6) the risk to the class representative in commencing suit, both financial and otherwise." *Villalpando v. Exel Direct Inc.*, No. 3:12-CV-04137-JCS, 2016 WL 7785852, at *1 (N.D. Cal. Dec. 9, 2016) (approving a service award of $15,000). Both Class Representatives have been actively involved in this litigation and without their willingness to come forward and prosecute the action, the Class Members would have received nothing for their injuries. Class Representatives assisted Class Counsel in investigating and prosecuting this action, responded to detailed interrogatories, searched for and produced documents responsive to document requests on multiple occasions, answered requests for admission, and traveled to San Francisco and sat for depositions. Berman Decl. ¶ 23. Class Representatives also persisted with this litigation for almost five years, with Ms. Maldonado acting longer, since the inception of the lawsuit, justifying a slightly higher award. Given their efforts, awards of $15,000 and $12,500, respectively, are reasonable.

D. Notice and Implementation of Settlement

Plaintiffs have attached hereto proposed Settlement Class Notices and propose the following plan for the dissemination of those Notices. Azari Decl. ¶ 4. Plaintiffs propose using the same notice method after the Class was certified and propose using the same notice administrator, Epiq Class Action & Claims Solutions, Inc. ("Epiq") along with Epiq's Notice business unit,

[6] Apple reserves its rights to oppose any incentive awards that exceed $7,500 per class representative.

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Hilsoft Notifications ("Hilsoft"). When the Court certified the Class, Class Counsel sent a request for proposal to five reputable notice and claims administrators requesting proposed notice plans and costs estimates. Each of the five potential notice administrators proposed a notice program relying on direct email notice to reach the Class Members. After this competitive bidding process, Class Counsel—following discussion with Defendants and the approval of the Court—selected Epiq and worked with them to prepare the notice and dissemination plan. Because Class Counsel already went through the bidding process and Epiq has already proven capable of disseminating notice to the Class, a second bidding process is not necessary. Other than the Class Notice in this case, Class Counsel has worked with Epiq nine times over the last two years.

Apple will provide to Epiq the names, addresses, and email addresses for all members of the Certified Class, in substantially the same form and using substantially the same methods as it did as part of the Class Notice program. Using that data, Epiq will again direct notice by email. The proposed form of Email Notice is Attachment 1 to the Azari Declaration. For all Certified Class members for whom a facially valid email address does not exist, but a physical address does, a standard 4" by 6" Postcard Notice will be mailed. The proposed form of Postcard Notice is Attachment 3 to the Azari Declaration. Based on the prior Class Notice, Epiq anticipates that 90% of the Certified Class can be noticed by email or by US mail. Azari Decl. ¶ 19. Additional details on the notice plan are set forth in Section IV(D) below.

The settlement website shall also include an Application for Inclusion in the Class that may be submitted by individuals who believe themselves to be members of the Certified Class, but who have not received email or mail notice. Epic will work with Apple to attempt to determine whether those individuals are members of the Certified Class, and Apple will coordinate with Epic in those verification efforts in accordance with its obligations as set out in the Settlement Agreement. Berman Decl. Ex. A ¶ 56.

Notice is also required under the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.* Apple will provide the required notice under that statute no later than ten days after the filing of this Motion. The cost of notice will be paid out of the settlement fund, which Epiq estimates will cost $3,515, which amount is included in the estimated costs of administration above.

E. Plan of Distribution

Plaintiffs propose using direct payments to distribute funds to the Certified Class, with the Settlement fund being divided equally among the Class members based on the number of remanufactured replacement devices they received. Each Class member will receive an equal amount per remanufactured replacement device that is within the scope of the Certified Class. Along with the Class contact data, Apple will provide data sufficient to identify the number of remanufactured replacement devices within the scope of the Certified Class it issued to each Class member.

The parties engaged in private dispute resolution on how to allocate the Settlement funds with retired Judge Daniel Weinstein. The proposed distribution reflects that the most equitable way of diving the fund is to treat the claims equally, and that such a distribution "corresponds to the liability theory and the predominate class claims asserted." This proposed allocation takes into account both parties' proposed arguments and theories regarding damages, accepts that all Class members were alleging the same harm, and recognizes that the recovery for each Class member will be relatively low regardless of how damages are allocated. Given these considerations, Plaintiffs adopt Judge Weinstein's recommendations as fair, adequate, and reasonable.

After the Settlement receives Final Approval, an email will be sent to Class members. The email will provide Class members with the option to select to receive their payment as a Digital Visa/MasterCard or as an ACH deposit into their bank account, as described in the Settlement Agreement. Berman Decl. Ex. A ¶ 49. Class Members can also elect to receive checks, as described in the Settlement Agreement. *Id.*

If there are unclaimed funds, the parties agree to meet and confer on whether to do a second distribution to the Class or to distribute those funds to a *cy pres* recipient. The parties also agree to meet and confer on the identity of the *cy pres* recipient. If the parties cannot agree on either or both issues, they have agreed to submit their dispute to private dispute resolution. Any proposed subsequent distribution, either to the Class or to a *cy pres* recipient, will then be submitted to the Court for approval. The Parties agreed in the Settlement Agreement that there will be no reversion of unclaimed funds to Apple. *Id.* ¶ 51.

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IV. ARGUMENT

A. The Standards and Procedure for Preliminary Approval of Class Settlement

Federal Rule of Civil Procedure 23(e) requires judicial approval of any compromise or settlement of class action claims. "Preliminary approval is not a dispositive assessment of the fairness of the proposed settlement, but rather determines whether it falls within the 'range of reasonableness.'" *In re Lidoderm Antitrust Litig.*, No. 14-MD-02521-WHO, 2018 WL 11293766, at *2 (N.D. Cal. May 3, 2018) (citation omitted). Preliminary approval "establishes an 'initial presumption' of fairness, such that notice may be given to the class and the class may have a 'full and fair opportunity to consider the proposed [settlement] and develop a response.'" *Id.* (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)); *see also* Manual for Complex Litigation (Fourth) § 21.631 (2015).

Preliminary approval of a settlement and notice to the proposed class is appropriate if: "(1) the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls with[in] the range of possible approval."[7] *The Civil Rights Educ. & Enf't Ctr. v. RLJ Lodging Tr.*, No. 15-CV-0224-YGR, 2016 WL 314400, at *11 (N.D. Cal. Jan. 25, 2016); *see also Tableware*, 484 F. Supp. 2d at 1079 (same). "[T]he decision to approve or reject a settlement is committed to the sound discretion of the trial judge because he is exposed to the litigants and their strategies, positions, and proof." *In re LinkedIn User Priv. Litig.*, 309 F.R.D. 573, 582 (N.D. Cal. 2015) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.1998)). This settlement meets all of the requirements for preliminary approval.

1. The settlement with Apple was the result of arm's-length negotiations.

Weighing in favor of preliminary approval, the settlement arises out of informed, arm's-length negotiations among counsel for the parties. The parties reached agreement on the eve of trial, after conducting all fact and expert discovery, after the Court heard and decided all

[7] Certain changes to Rule 23 went into effect on December 1, 2018. These changes codify what is already the standard in the Ninth Circuit, and as shown in the text, that standard is met.

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dispositive and expert motions, after the Class had been certified, and after multiple mediations. *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution."). It is also significant that the settlements were negotiated by experienced counsel with extensive experience and success in large consumer class actions. Berman Decl. ¶ 24; *see In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *9 (C.D. Cal. June 10, 2005) ("The recommendation of experienced counsel carries significant weight in the court's determination of the reasonableness of the settlement." (citation omitted)); *Noll v. eBay*, Inc., 309 F.R.D. 593, 608 (N.D. Cal. 2015) (counsel's belief that settlement "is in the best interests of the class," given the substantial expense and uncertainty of a trial on the merits, weighs in favor of approval). Class Counsel has worked on this case for more than four years and understands the risks and upside to this type of litigation generally, as well as in this case specifically. Class Counsel is aware of the risks and additional expense of a lengthy trial. Similarly during this litigation, Apple has engaged experienced law firms and understands the risks and expense of such a trial. Counsel's judgment that this settlement is fair and reasonable is entitled to significant weight. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) ("'Great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation.") (citation omitted); *accord Bellows v. NCO Fin. Sys. Inc.*, No. 3:07-cv-01413-W-AJB, 2008 WL 5458986, at *6-7 (S.D. Cal. Dec. 10, 2008). The settlement was also reached after the Class had been certified and withstood decertification, which ameliorates concerns that the settlement was collusive. *In re Ferrero Litig.*, 583 F. App'x 665, 668 (9th Cir. 2014). This settlement is entitled to a presumption of fairness.

2. The settlement has no obvious deficiencies.

There are no obvious deficiencies in the proposed settlement. In its opinion in *In re Bluetooth Headset Prods. Liability Litig.*, the Ninth Circuit pointed to three factors as troubling signs of a potential disregard for the class's interests during the course of negotiation: (1) when class "counsel receive a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply rewarded;" (2) "when the parties negotiate a

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'clear sailing' arrangement that provides for the payment of attorneys' fees separate and apart from class funds;" and (3) when the parties arrange for fees not awarded to class counsel to revert to the defendants rather than the class. 654 F.3d 935, 947 (9th Cir. 2011). The court in *In re Bluetooth* offered these more strict criteria when a settlement occurs *before* certification. *Id.* at 946–47; *see also Allen v. Bedolla*, 787 F.3d 1218, 1224 (9th Cir. 2015) ("That [*In re Bluetooth*] procedural burden is more strict when a settlement is negotiated absent class certification.").

While Plaintiffs do not have to meet this stricter standard because the settlement occurred post certification, none of these potential deficiencies exist here. The proposed settlement creates a common fund, with no possibility of reversion. The funds will be used to cover costs and fees and compensate the Class based on a *pro rata* formula as outlined above. There is no "clear sailing" arrangement that provides payment of fees separate and apart from the common fund and no "kicker" provision like the one in *Bluetooth*, which would allow money to revert back to Apple. *See In re Bluetooth*, 654 F.3d at 947. The proposed Class Notices inform Class Members that Class Counsel will request attorneys' fees up to 30% of the total settlement fund and reimbursement of certain costs Class Counsel has advanced to date.[8] The absence of the *In re Bluetooth* warning signs here is further indication of the settlement's fairness. *See In re Zynga Sec. Litig.*, No. 12-cv-04007-JSC, 2015 WL 6471171, at *9 (N.D. Cal. Oct. 27, 2015).

3. The settlement does not provide preferential treatment for segments of the Class or the Class Representatives.

The third factor in granting preliminarily approval is whether the settlement gives preferential treatment to class representatives or segments of the class. *Rollins v. Dignity Health*, 336 F.R.D. 456, 461 (N.D. Cal. 2020) (quoting *In re Tableware*, 484 F. Supp. 2d at 1079). This factor also favors approving this settlement.

[8] While the requested attorneys' fees may exceed the Ninth Circuit benchmark of 25% (using the "percentage-of-recovery" method accepted in this circuit), there is good reason to exceed that benchmark here as shown above. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *In re Wells Fargo & Co. S'holder Derivative Litig.*, 445 F. Supp. 3d at 519.

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a. All Class Members will recover a *pro rata* share of the settlement.

The settlement will be distributed equally to each Class Member based on the number of remanufactured replacement devices they received. Specifically, Class Members will recover their *pro rata* share of Settlement Fund, based on the number of remanufactured devices within the scope of the Certified Class they received. As explained above, because the proposed plan of distribution compensates Class Members based on a *pro rata* share of the Settlement Fund, it satisfies the "fair, reasonable and adequate" standard that applies to approval of class settlements. *Gaudin v. Saxon Mortg. Servs., Inc.*, No. 11-CV-01663-JST, 2015 WL 7454183, at *8 (N.D. Cal. Nov. 23, 2015) ("Such a plan 'fairly treats class members by awarding a pro rata share' to the class members based on the extent of their injuries.") (citation omitted); *Noll v. eBay, Inc.*, 309 F.R.D. 593, 601, 607 (N.D. Cal. 2015) (approving pro-rata distribution as fair and reasonable).

b. The requested service awards for the Class Representatives reflects their efforts on behalf of the Class.

Class Counsel will request service awards for the Class Representatives, Vicky Maldonado and Justin Carter, in the amount of $15,000 and $12,500 respectively, for their roles in representing the Class. The Ninth Circuit recognizes service awards "that are intended to compensate class representatives for work undertaken on behalf of a class 'are fairly typical in class action cases.'" *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (citation omitted). Class Counsel will submit this request simultaneously with their motion for attorneys' fees—and in advance of the deadline for objections—so members of the Certified Class that wish to understand the basis for this request will have an opportunity to review Class Counsel's motion and supporting materials. Their efforts, outlined above, make such an award reasonable.

4. The settlement with Apple easily falls within the range of possible approval.

The Court must also decide whether the settlement falls within the range of possible approval. *Zepeda v. Paypal, Inc.*, No. C 10-1668 SBA, 2015 WL 6746913, at *4 (N.D. Cal. Nov. 5, 2015); *Tableware*, 484 F. Supp. 2d at 1079. In making this determination, courts evaluate settlements to ensure they are "fair, reasonable, and adequate" and "not the product of fraud or overreaching by, or collusion between, the negotiating parties." *In re NVIDIA Corp. Derivative*

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Litig., No. C-06-06110-SBA(JCS), 2008 WL 5382544, at *2 (N.D. Cal. Dec. 22, 2008) (quoting *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir.1982)).

As shown above, the settlement provides the Certified Class with $95 million, which represents 13–25% of the possible recovery, accepting Plaintiffs' measure of damages. "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 322 (N.D. Cal. 2018) (quoting *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir.1998)); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW EMC, 2010 WL 1687832, at *11 (N.D. Cal. Apr. 22, 2010) ("[C]ourts have recognized that even where—unlike here—the total settlement fund is small, it may not be unreasonable in light of the perils plaintiffs face in obtaining a meaningful recovery on their claims.") (cleaned up)). "Estimates of what constitutes a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Anthem, Inc. Data Breach*, 327 F.R.D. at 322 (citations omitted). Even applying Plaintiffs' measure of damages, 13–25% of the total damages easily fall within the range of possible approval. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000), as amended (June 19, 2000) (approving settlement that was one-sixth, or 16%, of the potential recovery); *In re Apple Inc. Device Performance Litig.*, No. 5:18-MD-02827-EJD, 2021 WL 1022867, at *14 (N.D. Cal. Mar. 17, 2021) (approving settlement that represented 7% of the possible recovery).

Given the very real risks of continued litigation, $95 million represents a fair, reasonable, and adequate settlement. Defendants have vigorously denied that remanufactured devices are inferior, and proving liability here would require a lengthy trial, with competing and conflicting expert testimony. Apple intended on arguing at trial that even if Plaintiffs prevailed, they were not entitled to any damages, meaning Plaintiffs could have prevailed on liability and not recovered any damages. And even if Plaintiffs prevailed and were awarded damages, recovery could be delayed by years if there was an appeal.

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B. The Class Was Previously Certified Under Rule 23

This Court already certified the Class under Rule 23 and Plaintiffs are not seeking to change or alter the Certified Class. As part of that certification, Hagens Berman was appointed as Class counsel and Plaintiffs Vicky Maldonado and Justin Carter were appointed as Class Representatives.

C. The Proposed Class Notice and Plan for Dissemination Comply with Rule 23(e)

Rule 23(e)(1) requires that a court approving a class action settlement must "direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). In addition, for a Rule 23(b)(3) class, the court must "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). A class action settlement notice "is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (citations omitted); *see also* Fed. R. Civ. P. 23(c)(2)(B) (describing specific information to be included in the notice).

The proposed notice plan is supported by an experienced notice and claims administrator—Epiq—that has worked cooperatively with counsel to develop the proposed plan of notice. Azari Decl. ¶¶ 2–3, 18–21. The proposed Notice forms provide all of the information required by Rule 23(c)(2)(B) to the Certified Class, in language that is plain and easy to understand. Plaintiffs have followed, as closely as possible, the language for settlements recommended by this District's Procedural Guidance for Class Action Settlements. *See* Procedural Guidance for Class Action Settlements, U.S. District Court for the Northern District of California, http://www.cand.uscourts.gov/ClassActionSettlementGuidance (last updated Dec. 5, 2018). With this motion Plaintiffs provide proposed forms for the Email Notice, Postcard Notice, and Long Form Notice. Azari Decl. Attachments 1–3.

Settlement Notice will include an Email Notice to be sent to all potential Certified Class members for whom a facially valid email address is available. The Email Notice will be created using an embedded html text format. This format will provide text that is easy to read without graphics,

tables, images and other elements that would increase the likelihood that the message could be blocked by Internet Service Providers (ISPs) and/or SPAM filters. The emails will be sent using a server known to the major email providers as one not used to send bulk "SPAM" or "junk" email blasts. Also, the emails will be sent in small groups so as to not be erroneously flagged as a bulk junk email blast. Each Email Notice will be transmitted with a unique message identifier. If the receiving email server cannot deliver the message, a "bounce code" should be returned along with the unique message identifier. For any Email Notice for which a bounce code is received indicating that the message is undeliverable, at least two additional attempts will be made to deliver the Notice by email. *Id.* ¶ 7.

The Email Notice will include the website address of the case website. By accessing the website, recipients will be able to easily access a Long Form Notice, the Amended Complaint and important court documents, the Settlement Agreement, and answers to frequently asked questions. *Id.* ¶ 8.

For all Class members for whom a facially valid email address does not exist, but a physical address does, a standard 4" by 6" Postcard Notice will be mailed. *Id.* ¶ 9. The Postcard Notice will be sent via USPS first class mail. *Id.* Before mailing, all mailing addresses will be checked against the National Change of Address ("NCOA") database maintained by the USPS. *Id.* Any addresses returned by the NCOA database as invalid will be updated through a third-party address search service. *Id.* In addition, the addresses will be certified via the Coding Accuracy Support System ("CASS") to ensure the quality of the zip code and verified through Delivery Point Validation ("DPV") to verify the accuracy of the addresses. *Id.* This address updating process is standard for the industry and for most promotional mailings that occur today. *Id.*

Postcard Notices returned as undeliverable will be re-mailed to any new address available through USPS information, for example, to the address provided by USPS on returned pieces for which the automatic forwarding order has expired, or to other addresses that may be found using a third-party lookup service that uses public lookup information. *Id.* ¶ 10. Upon successfully locating such addresses, Postcard Notices will be promptly re-mailed. *Id.*

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The proposed Email and Postcard Notices both feature a prominent headline and are identified as a Notice from the District Court. Important information about the lawsuit and settlement, including Plaintiffs' claims, the definition of the Certified Class, the amount of the Settlement, and the right to request exclusion is summarized. *Id.* ¶ 11. The Email Notice includes embedded links directly to the Long Form Notice at the case website. *Id.* These design elements alert recipients and readers that the Notice is an important document authorized by a court and that the content may affect them, thereby supplying reasons to read the Notice and visit the Case Website for additional information. *Id.* Finally, a full Long Form Notice will be mailed via USPS first class mail to all persons who requested one via the toll-free telephone number. *Id.*

To assist potential Class members in understanding the information concerning the lawsuit and their rights, Epiq will use a dedicated and case-specific website with the URL www.replacementdevicelawsuit.com, the same website that was used to disseminate information in connection with Class Notice. *Id.* ¶ 12. Class Members will be able to obtain detailed information about the case and review key documents, including the Complaint, the Long Form Notice (available in both English and Spanish), important court documents, the Settlement Agreement, and answers to frequently asked questions. *Id.* The case website will also include information on how Certified Class members who did not previously receive notice can request exclusion from the Certified Class.[9] *Id.* The case website address will be displayed prominently on all notice documents. *Id.* A toll-free telephone number will also be established to allow Certified Class members to call for additional information, listen to answers to FAQs, and request that a Notice be mailed to them. *Id.* ¶ 13. The toll-free telephone number will be prominently displayed in the Notice documents as well. *Id.* Finally, a post office box for correspondence about the case will also be established and maintained, allowing Certified Class members to contact the Notice Administrator by mail with any specific requests or questions, including requests for exclusion. *Id.* ¶ 14.

[9] Notice was previously sent to the Certified Class, giving the opportunity to opt out. Certified Class members who were not within the scope of the previous notice program—because they received their remanufactured replacement device after Class contact data was provided to Epiq—will now be given an opportunity to opt out.

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Based on the prior notice to the certified class, Epiq estimates that individual, direct notice is expected to reach over 90% of the identified Certified Class. *Id.* ¶ 19. This follows the reach and frequency recommended by the Federal Judicial Center's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide, which considers a 70-95% reach among class members to be reasonable. *Id.* Epiq also opines the Notice Plan described above provides for the best notice practicable under the circumstances, conforms to all aspects of the Rule 23, and comports with the guidance for effective notice set out in the Manual for Complex Litigation, Fourth edition. *Id.* ¶ 20.

Finally, Class Counsel proposes that the deadline for Certified Class Members who were not previously within the scope of the Court-approved notice program to request exclusion from the Class be set at 60 days following the start of the direct Notice Campaign ("Notice Start Date"), which Epiq opines affords sufficient time to provide full and proper notice to Class Members before the opt-out deadline (*id.* ¶ 21), and which also follows the recommendations of the Federal Judicial Center's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide.

These notice provisions meet the requirements of Rule 23. They will allow the Certified Class a full and fair opportunity to review and respond to the proposed settlement.

D. Proposed Schedule for Dissemination of Notice and Final Approval

Plaintiffs propose the following schedule for the dissemination of class notice and final approval:

Event	Proposed Deadline
Notice campaign to begin, including website, mailing, and digital notice	(30 days following Epiq's receipt of final and approved Class member contact data)
Last day for motion for attorneys' fees, costs, expenses, and service awards	(35 days before objection deadline)
Last day for objections	(60 days from notice)
Last day for requests for exclusion from the Class (for Class members who were not within the scope of the prior Class Notice program)	(60 days from Notice Start Date)

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Last day for motion in support of final approval of settlements	(14 days after objection deadline)
Fairness Hearing	(38 days from motion for final approval), unless otherwise ordered by the Court.

V. CONCLUSION

The Settlement provides $95 million for the Certified Class. This Settlement was reached after intense negotiations that followed several years of hard-fought litigation and easily falls within the range of possible approval. Respectfully, Plaintiffs request that this Court enter an order: (1) preliminarily approving the proposed class action settlement with Apple; and (2) approving the manner and form of notice and proposed plan of allocation to Class members.

DATED: October 1, 2021

HAGENS BERMAN SOBOL SHAPIRO LLP
Steve W. Berman (*pro hac vice*)
Robert B. Carey (*pro hac vice*)
Michella A. Kras (*pro hac vice*)
Renee F. Kennedy (*pro hac vice*)

By: */s/ Steve W. Berman*
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

VICKY MALDONADO AND JUSTIN CARTER, individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

APPLE INC., APPLECARE SERVICE COMPANY, INC., AND APPLE CSC, INC.,

Defendants.

No. 3:16-cv-04067-WHO

Related Case:
English v. Apple Inc. et al.
Case No. 3:14-cv-01619-WHO

DECLARATION OF STEVE W. BERMAN IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Judge: Hon. William H. Orrick
Courtroom: 2, 17th Floor
Complaint Filed: July 20, 2016

I, Steve W. Berman, hereby declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of Washington, and I have been admitted *pro hac vice* in this Court. I am the managing partner of Hagens Berman Sobol Shapiro LLP and have appeared in this case as one of the counsel of record for Plaintiffs in the above-entitled action. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. I submit this declaration on behalf of Plaintiffs in support of their Motion for Preliminary Approval of Class Action Settlement.

3. Attached as Exhibit A is a true and correct copy of the Executed Settlement Agreement, settling this matter for $95 million.

4. Attached as Exhibit B are charts showing past comparable settlements of Class Counsel, as required by Northern District's Procedural Guidance for Class Action Settlements. The charts are for three cases in which Hagens Berman Sobol Shapiro LLP was co-counsel for plaintiffs in class actions: *Edwards v. National Milk Producers Federation* ("*In re Milk IPP Antitrust Case*"), No. 11-cv-04766-JSW (N.D. Cal.); *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation* ("*In re DRAM IPP Antitrust Case*"), No. 02-md-01486-PJH (N.D. Cal.); *In re MyFord Touch Litigation*, No. 3:13-cv-03072-EMC (N.D. Cal.); and *Pecover et al. v. Electronic Arts, Inc.* ("*Electronic Arts IPP Antitrust Case*"), No. 08-cv-2820-CW (N.D. Cal.).

5. Before the Class was certified, Apple deposed both named Plaintiffs and Plaintiffs deposed three Apple Rule 30(b)(6) designees. After the Class was certified, Plaintiffs deposed two additional Rule 30(b)(6) designees and three fact witnesses. Apple deposed one additional fact witness.

6. Both parties issued discovery before and after class certification. Plaintiffs issued and Apple answered 25 interrogatories, 92 requests for production, and 159 requests for admission.

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Apple issued and Plaintiff Carter responded to 12 interrogatories, 19 requests for production, and 8 requests for admission. Apple also issued and Plaintiff Maldonado responded to 13 interrogatories and 20 requests for production.

7. All six certification experts—three for Plaintiffs and three for Apple—were deposed during the course of class certification briefing.

8. Apple produced and Plaintiffs reviewed over 30,000 documents, consisting of approximately 230,000 pages.

9. Plaintiffs identified five experts on the merits and an additional rebuttal expert. Plaintiffs again identified Drs. Pecht, Bardwell, and Kaufman as experts.

10. Dr. Pecht's opinions remained unchanged.

11. Dr. Bardwell, with Apple's full return data, opined that he was able to determine that remanufactured replacement iPhones are 3.2 times more likely to fail than new replacement iPhones and remanufactured replacement iPads are 7 times more likely to fail than new iPad replacements, and these higher failure rates are statistically significant at an extreme level. He also opined that he determined that over four years, remanufactured iPhones have 23.4 fewer weeks of life than new iPhones and remanufactured iPads have 18.5 fewer weeks than a new iPad.

12. Dr. Kaufman opined that he measured the retail price difference between new and remanufactured devices, calculating damages of $754,893,730.

13. Plaintiffs also retained damage experts Stephen Gaskin and Colin Weir. Mr. Gaskin, with the input of Mr. Weir, conducted a conjoint survey to assess the differences in value between new and remanufactured devices. Mr. Gaskin opined that his survey showed a 15.7% difference in value for iPhones and 14.1% difference in value for iPads. Using these numbers, Mr. Weir calculated damages of $386,106,741.

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14. Drs. Pecht and Bardwell also issued rebuttal reports and Plaintiffs identified Dr. Abhijit Dasgupta, a reliability engineer, as a rebuttal expert to the testing performed by one of Apple's experts.

15. Apple identified three new merits experts and seven new rebuttal experts. Apple's merits experts included a reliability engineer, a survey expert, and an environmental expert. Apple identified seven rebuttal experts to rebut each of Plaintiffs' experts, including two engineers, a statistician, two survey experts, and two damages experts. Apple's experts opined that damages were inappropriate.

16. Plaintiffs deposed nine of Apple's ten experts and Apple deposed all six of Plaintiffs' experts.

17. Following the Court's rulings on the Daubert motions, Apple still had rebuttal experts to counter each of Plaintiffs' experts.

18. After the Court issued its order, the parties began preparing for trial, which was set to begin on August 16, 2021.

19. The parties engaged in two mediations before the Class was certified with retired Justice Edward A. Panelli, one on October 29, 2018, and one on March 13, 2019. Both were unsuccessful.

20. On April 22, 2020, the parties engaged in a third mediation with Chief Magistrate Judge Joseph C. Spero. That mediation was unsuccessful.

21. After the Court issued its order denying Apple's decertification motion, Judge Spero ordered the parties to engage in another settlement session. On June 30, 2021, the parties held a mediation with retired Judge Rebecca Westerfield. After a full day of mediation, the parties agreed to settle the case for an all-in common fund of $95 million. The parties executed a Memorandum of Understanding that same day.

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22. Through September 24, 2021, Plaintiffs have advanced costs of $1,374,835.64, which includes $1,128,798.78 in expert fees. Plaintiffs have expended approximately $6,823,841.80 in attorneys' fees in this litigation, which is based on 11,775.9 hours expended.

23. Class Representatives assisted Class Counsel in investigating and prosecuting this action, responded to detailed interrogatories, searched for and produced documents responsive to document requests on multiple occasions, answered requests for admission, and traveled to San Francisco and sat for depositions.

24. The settlements were negotiated by experienced counsel with extensive experience and success in large consumer class actions.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of October 2021 in Seattle, Washington.

/s/ Steve W. Berman
Steve W. Berman

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EXHIBIT A

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

VICKY MALDONADO AND JUSTIN CARTER, individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

APPLE INC., APPLECARE SERVICE COMPANY, INC., AND APPLE CSC, INC.,

Defendants.

No. 3:16-cv-04067-WHO

SETTLEMENT AGREEMENT

Judge: Hon. William H. Orrick
Courtroom: 2, 17th Floor
Complaint Filed: July 20, 2016

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This Settlement Agreement ("Settlement Agreement") is made and entered into this 30th day of September, 2021, between Defendants Apple, Inc., AppleCare Service Company, Inc., and Apple CSC, Inc. ("Defendants") and Plaintiffs Vicky Maldonado and Justin Carter, who have filed suit as the representative of a class of similarly situated AppleCare purchasers ("Plaintiffs"), as more specifically defined below, in the class action *Maldonado et al. v. Apple, Inc. et al*, 3:16-cv-04067-WHO, currently pending before the Honorable William H. Orrick in the United States District Court for the Northern District of California ("the Action"). Plaintiffs enter into this Settlement Agreement both individually and on behalf of the class (the "Class" defined below). This Settlement Agreement is intended by Plaintiffs and Defendants (together, the "Parties" or "Settling Parties") to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

WHEREAS, Plaintiffs are prosecuting the Action on their own behalf and on behalf of the Class against Defendants;

WHEREAS, Plaintiffs allege that Defendants breached their AppleCare/AppleCare+ contracts by providing certain replacement iPhones and iPads that were not "equivalent to new in performance and reliability" and that Defendants violated the Song-Beverly Act, the Magnusson-Moss Warranty Act, and California's Unfair Competition Law when providing those replacement iPhones and iPads;

WHEREAS, Defendants have denied and continue to deny each and all of Plaintiffs' claims and allegations of wrongdoing; have not conceded or admitted any liability, or that they violated or breached any law, regulation, or duty owed to the Plaintiffs; have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged in the Action; and further deny the allegations that Plaintiffs or any member of the Class has been harmed by any conduct by Defendants, whether alleged in the Action or otherwise;

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WHEREAS, the Parties completed fact and expert discovery, including an extensive fact and expert deposition process, and litigated Apple's motions to dismiss and for summary judgment, and engaged in mediation;

WHEREAS, Plaintiffs and Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by Defendants, or of the truth of any of the claims or allegations alleged in the Action;

WHEREAS, Class Counsel and the Class Representatives have examined and considered the benefits to be obtained under this Settlement, the risks associated with the continued prosecution of this complex and potentially time-consuming litigation, and the likelihood of not achieving ultimate success on the merits, and have concluded that the Settlement is fair, adequate, reasonable and in the best interests of the Class;

WHEREAS, the Parties desire to settle the Action in its entirety as to all Parties, with respect to all potential claims arising out of the facts that were or could have been alleged in this Action. The Parties intend this Agreement to bind Apple, Plaintiffs (both as the Class Representatives and individually), and all members of the Class as defined herein;

WHEREAS, arm's-length settlement negotiations have taken place between counsel for Plaintiffs and Defendants, and this Settlement Agreement, which embodies all of the terms and conditions of the settlement between Defendants and Plaintiffs, both individually and on behalf of the Class, has been reached as a result of the parties' negotiations (subject to the approval of the Court) as provided herein and is intended to supersede any prior agreements between the Settling Parties;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Settling Parties, by and through their undersigned attorneys of record, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, that the Action be finally and fully settled, compromised, and dismissed on the merits with prejudice as to Defendants, as defined below, and except as hereinafter provided, without costs as

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to Plaintiffs, the Class, or Defendants, upon and subject to the approval of the Court, following notice to the Class, on the following terms and conditions:

A. Definitions.

The following terms as used in this Settlement Agreement, shall have the following meanings:

1. "Action" means the instant class action captioned *Maldonado et al. v. Apple, Inc. et al*, 3:16-cv-04067-WHO, pending in the United States District Court for the Northern District of California.

2. "Affiliates" means entities controlling, controlled by or under common control with a Releasee or Releasor.

3. "Class" means: All persons in the United States who purchased AppleCare or AppleCare+, either directly or through the iPhone Upgrade Program, on or after July 20, 2012, and received a remanufactured replacement iPhone or iPad during the Class Period (as set out in the Court's January 14, 2021 Order on Class Definition, ECF No. 237).

4. "Class Counsel" shall refer to the law firm of Hagens Berman Sobol Shapiro, LLP.

5. "Class Member" means any person or entity that falls within the definition of the "Class," excluding any person who properly and timely excluded themselves from the Class on or before May 3, 2021, as provided for in the Court's order approving dissemination of class notice (ECF No. 217), excluding any person who was not within the scope of the prior litigation class notice program and who properly and timely submits a valid request for exclusion (as set forth in this Agreement) by the Deadline to Request Exclusion, and excluding Class Counsel; any employees of Class Counsel; any officers, directors, or employees of Defendants or Defendants' Counsel; and the judge presiding over this case (as well as members of his immediate family and staff). The devices issued to Class Members rendering them eligible for inclusion in the Class are "Class Devices."

6. "Class Period" means the period from and including July 20, 2012 through the Execution Date.

7. "Class Representatives" refer to Vicky Maldonado and Justin Carter.

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8. "Court" or "District Court" means the United States District Court for the Northern District of California.

9. "Defendants" means Apple Inc., AppleCare Service Company, Inc., and Apple CSC Inc., and all of their respective past and present, direct and indirect parents, members, subsidiaries, and Affiliates, and their respective past and present officers, directors, employees, managers, members, partners, agents, attorneys and legal representatives, assigns, servants, and representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

10. "Defendants' Counsel" or "Apple Counsel" shall refer to Paul, Weiss, Rifkind, Wharton & Garrison LLP and other counsel of record for Defendants who have appeared in the Action.

11. "Document" is synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.

12. "Effective Date" means the first day after which all of the following events and conditions of this Settlement Agreement have been met or have occurred: (a) the Court has entered a Judgment (as defined below) approving the settlement, and (b) the Judgment has become final in that the time for appeal or writ has expired or, if an appeal or writ is taken and the Settlement is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the Judgment is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, the Judgment shall not be deemed final for purposes of the meaning of the term Effective Date as used in this Settlement Agreement. In the event of an appeal or other effort to obtain review, the Parties may agree jointly in writing to deem the Effective Date to have occurred; however, there is no obligation to agree to advance the Effective Date before the Judgment has become final as set out in the preceding sentences of this paragraph.

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13. "Email Notice" shall mean the Summary Notice of Class Action Settlement to be emailed to Class Members in connection with the Settlement, which shall take a form to be agreed by both Parties in substantial conformance with the sum and substance of the other notices contemplated by this Agreement, and as set forth below.

14. "Execution Date" means September 30, 2021.

15. "Final Judgment" means a final order approving the Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and dismissing the Action and all claims therein against Defendants with prejudice as to all Class Members.

16. "Long-form Notice" means the long-form Notice of Class Action Settlement, in substantially the same form of attached hereto as Exhibit 1 and to be agreed to by the Parties (including as to its final form), which will be available to Class Members on the Settlement Website or from the Settlement Administrator.

17. "Net Settlement Fund" means the Settlement Fund, reduced by the sum of the following amounts: (1) the costs of notice and the costs of administering the settlement, as set forth below; (2) any attorneys' fees and expenses to Class Counsel, and any incentive award to the Class Representatives, as set forth below.

18. "Notice Date" shall mean the date set forth in the Preliminary Approval Order for commencing the transmission of the Notice.

19. "Postcard Notice" means the Notice of Class Action Settlement in substantially the same form of the postcard attached hereto as Exhibit 2 and to be agreed to by the Parties (including as to its final form), to be mailed to Class Members for whom Apple has a mailing address or for whom a mailing address is located by the Settlement Administrator through a reverse directory search, but for whom Apple has no valid email address in the data it provides to the Settlement Administrator pursuant to the terms of this Settlement Agreement.

20. "Released Claims" means those claims released pursuant to of the terms below in this Settlement Agreement.

21. "Releasees" or "Released Parties" means Apple Inc., AppleCare Service Company, Inc., and Apple CSC Inc. and all of their respective past and present directors, officers, employees,

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agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, affiliates, parents, subsidiaries, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, related companies, and divisions, and each of their predecessors, successors, heirs, and assigns.

22. "Releasors" shall refer to the plaintiff Class Representative and the Class Members, and to their respective past and present parents, members, subsidiaries, Affiliates, officers, directors, employees, agents, attorneys, servants, and representatives (and the parents', members', subsidiaries', and Affiliates' past and present officers, directors, employees, agents, attorneys, servants, and representatives), and all of their respective predecessors, successors, heirs, executors, administrators, and assigns.

23. "Settlement Administrator" means Epiq Class Action & Claims Solutions, Inc. ("Epiq"), along with Epiq's Notice business unit, Hilsoft Notifications ("Hilsoft").

24. "Settlement Agreement" means this Settlement Agreement.

25. "Settlement Amount" means the sum of Ninety-Five Million ($95,000,000.00) U.S. Dollars as set forth below.

26. "Settlement Fund" means the Settlement Amount ($95,000,000.00), as set forth in Paragraphs 45-46 below.

27. "Settling Parties" means, collectively, Plaintiffs (on behalf of themselves and the Class) and the Defendants.

B. Confidentiality.

28. Plaintiff and Class Counsel agree that until publication of this Settlement Agreement by submission to the Court as part of the Motion for Preliminary Approval, the terms of this Settlement Agreement and all associated documents, including the negotiations leading to the execution of the Settlement Agreement and all submissions and arguments and orders related to the proceedings before the Hon. Daniel Weinstein (Ret.) related to allocation, and the Settlement Agreement itself shall not be disclosed by Plaintiffs and their attorneys without the advance written consent of Apple. Upon publication of the Settlement Agreement by submission to the Court, the nondisclosure obligations set forth in this paragraph will no longer apply to the as-filed Settlement

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Agreement or the terms thereof. However, such obligations will continue to apply to all other materials and information covered by this paragraph.

29. The Parties will continue to comply with the Stipulated Protective Order in this Action, ECF No. 68, including with respect to the requirements of Paragraph 17, which govern the return or destruction of any material produced, submitted, or filed under seal under the Protective Order, and the certification that all Protected Material was returned or destroyed.

30. It is expressly understood that the foregoing provisions of this Confidentiality section set forth a substantial and material provision of the Agreement and an intentional breach of these provisions will support a cause of action for breach of contract and will entitle the aggrieved parties to recover damages flowing from such breach, as proven.

C. Approval of This Settlement Agreement and Dismissal of Claims Against Defendants.

31. ***Preliminary Approval***. The Parties agree to recommend approval of the Settlement Agreement to the Court as fair and reasonable and to undertake their best efforts to obtain such approval. "Best efforts" means that the Parties may not oppose any application for appellate review by one of the Parties in the event the Court denies Preliminary or Final Approval. The Parties therefore agree that Plaintiffs shall submit this Agreement, together with its exhibits, to the Court and shall apply in a motion for entry of an order preliminarily approving the settlement, providing for notice to the Class, and other related matters in the form attached as Exhibit 3 hereto (the "Preliminary Approval Motion and Order"). Apple shall have no obligation to file any written statement in support of any motion for Preliminary or Final Approval of the Settlement Agreement, unless the Court requests that Apple provide its position.

32. Class Counsel shall draft the motion ("Motion for Preliminary Approval") and provide that draft to Defendants' Counsel prior to execution of this Settlement Agreement. The Motion for Preliminary Approval shall be written in a neutral manner that does not contain inflammatory language about the Parties or their perceived conduct in the Action. The Parties will agree on the form and substance of the Motion for Preliminary Approval, and accompanying documents (including, for example, the Long-form Notice) prior to execution of this Settlement Agreement.

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33. Nothing in the foregoing paragraphs shall in any way prohibit Apple from opposing a request for attorneys' fees and expenses that exceeds 25% of the Settlement Fund, unless specifically provided otherwise elsewhere in this Agreement.

34. The Motion for Preliminary Approval shall include a proposed form of, method for, and date of dissemination of notice. The text of the foregoing shall be agreed upon by Plaintiffs and Defendants before submission of the Motion for Preliminary Approval. Individual notice of the settlement shall be as provided in the Motion for Preliminary Approval and as approved by the Court, with all expenses paid from the Settlement Fund, as provided in and subject to the terms of the provisions herein. To the extent that any changes to the form of the Proposed Order and Final Judgment, as outlined herein, are required by the Court, the Parties will negotiate consistent with the terms of this Settlement Agreement and agree upon the form of Proposed Order and Final Judgment prior to the filing of the motion for final approval. The Motion for Preliminary Approval shall recite and ask the Court to find that the mailing or emailing of the notice of settlement to all Class Members who can be identified upon reasonable effort constitutes valid, due, and sufficient notice to the Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23. In accordance with the terms of this Agreement, Defendants and their counsel shall have no responsibility for, interest in, financial obligation for, or liability whatsoever with respect to investment, distribution, or administration of the Settlement Fund, nor shall Defendants or their counsel have any responsibility for, financial obligation for, or liability whatsoever with respect to any plan of distribution or allocation of the Settlement Fund.

35. Upon filing of the Motion for Preliminary Approval, Apple shall provide timely notice of such motion as required by the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq*. The costs to Apple of providing such notice shall be paid from the Settlement Fund, and to the extent such costs are incurred prior to deposit of the Settlement Amount into the Settlement Fund, such costs shall be deducted from the Settlement Amount as set forth herein before the Settlement Amount is paid into the Settlement Fund. For avoidance of doubt, Apple's total financial

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obligation, including the payment of any costs incurred pursuant to providing notice under the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.*, shall not exceed the Settlement Amount.

36. ***Final Approval and Judgment***. In accordance with the schedule set in the Preliminary Approval Order and such that the final approval hearing shall not be scheduled in a way that is inconsistent with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.*, Class Counsel shall draft the motion requesting final approval of the Settlement (the "Motion for Final Approval"), the entry of a final approval order substantially in the form attached as Exhibit 4 hereto (the "Final Approval Order"), and entry of final judgment, which shall take a form to be agreed by both Parties in substantial conformance with terms of this Agreement (the "Final Judgment"), and provide that draft to Defense Counsel at least fifteen business days before filing such motion with the Court.

37. Notwithstanding the foregoing, Apple may oppose the Motion for Final Approval to the extent that the Parties do not agree on its terms. Nothing in the foregoing paragraphs shall in any way prohibit Apple from opposing a request for attorneys' fees and expenses, unless specifically provided otherwise elsewhere in this Agreement.

38. In the event that the Settlement Agreement is not approved, or in the event its approval is conditioned on any modifications that are not acceptable to all parties, then, following the exhaustion of any appellate review, (a) this Settlement Agreement shall be null and void and of no force and effect, (b) any payments of the Settlement Fund and any and all interest earned thereon, less monies expended toward settlement administration, shall be returned to Apple within ten (10) business days from the date the Settlement Agreement becomes null and void, and (c) any release shall be of no force or effect. In such event, Plaintiffs shall have an obligation to negotiate with Apple in good faith regarding a revised settlement agreement that resolves this action on terms as close as possible to those set out in this agreement that the Parties reasonably anticipate will be approved by the Court. At Apple's request, Plaintiffs shall be required to participate in one or more full-day mediations to carry out those negotiations in good faith in an effort to reach such a revised settlement agreement. In the event that the Parties are unable to agree on a revised settlement agreement, the case will proceed as if no settlement has been attempted, and the Settling

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Parties shall be returned to their respective procedural postures so that the Parties may take such litigation steps that they otherwise would have been able to take absent the pendency of this Settlement Agreement. However, any order reversing, vacating, or modifying on appeal (1) any amount of the fees and expenses awarded by the Court to Plaintiffs' Counsel, or (2) any determination by the Court to award less than the amount requested in attorneys' fees and expenses or service awards to Named Plaintiffs, shall not give rise to any right of termination or otherwise serve as a basis for termination of this Settlement Agreement.

D. Release, Discharge, and Covenant Not to Sue.

39. As of the Effective Date, each member of the Class releases and forever discharges and covenants not to sue, and is permanently enjoined from suing, Apple, its past or present parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, employees, agents, attorneys, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers and assigns of each of the foregoing) from all claims, whether federal or state, known or unknown, asserted or unasserted, regardless of legal theory, arising from or related to the facts underlying the Action before the end of the Class Period ("Released Claims").

40. Each member of the Class expressly agrees that, upon the Effective Date, he, she, or it waives and forever releases any and all provisions, rights and benefits conferred by Section 1542 of the California Civil Code and any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Section 1542 of the California Civil Code reads:

> A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

41. The Parties are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters underlying the Lawsuit. In furtherance of the Parties' intent, the release of the Released Claims shall remain in

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full and complete effect notwithstanding discovery or existence of any additional or different claims or facts.

42. The amount of the Class Payment pursuant to this Agreement shall be deemed final and conclusive against all Class Members, who shall be bound by all of the terms of this Agreement and the Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein.

43. All proceedings with respect to the administration and Class Payments to Class Members under this Settlement Agreement and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the amount of such Class Payment, shall not in any event delay or affect the finality of the Judgment.

44. No Person shall have any claim of any kind against the Parties or their counsel or the Settlement Administrator with respect to the matters set forth herein to the extent the Settlement Administrator performs in accordance with the terms of this Agreement and orders of the Court, or based on determinations or distributions made substantially in accordance with this Settlement Agreement, the Final Approval Order, the Judgment, or further order(s) of the Court.

E. Consideration for Settlement and Class Payments.

45. ***Settlement Fund***. Apple's total financial commitment under this Settlement Agreement shall be $95,000,000.00 (the "Settlement Amount"). Within 15 calendar days after the Effective Date of this Settlement Agreement, the Settlement Amount, less any administrative or notice costs that Apple already paid under this Settlement Agreement, shall be paid into an account established by the Settlement Administrator for the Settlement Fund.

46. The Settlement Administrator shall agree to hold the Settlement Fund in an interest-bearing account and to administer the Settlement Fund, subject to the continuing jurisdiction of the Court and from the earliest possible date, as a qualified settlement fund as defined in Treasury Regulation § 1.468B-1 *et seq.* Any taxes owed by the Settlement Fund shall be paid by the Settlement Administrator out of the Settlement Fund. The interest earned in the aforementioned account shall be added to the Settlement Fund.

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47. ***Disposition of the Settlement Fund.*** The Settlement Fund shall be applied as follows:

a. to pay the costs of notice and the costs of administering the settlement, as set forth below;

b. after entry of the Final Judgment (as defined herein), to pay any approved attorneys' fees and expenses to Class Counsel, and any incentive award to the Class Representatives, as set forth below;

c. after the Effective Date, to distribute the Net Settlement Fund to Class Members as set forth below.

48. ***Allocation of Settlement***. The Settlement Proceeds shall be distributed on a *pro rata* basis to all Class Members based on the number of Class Devices they received, with an equal dollar amount credited for each Class Device that falls within the scope of the Class. Distribution shall be made in accordance with the payment process set forth below. The allocation of the fund was arrived upon after the conclusion of a confidential, binding dispute-resolution process, as agreed by the Parties.

49. ***Payment Process.*** Within 90 calendar days of the Effective Date or such other later date as may be ordered by the Court, the Settlement Administrator, subject to such supervision and direction of the Court and the Parties as may be necessary or as circumstances may require, shall distribute the Class Payments to Class Members. To the extent valid email information is available, the Class Administrator shall send an email to Class Members, which shall take a form to be agreed upon by both Parties, using the Class Members' email address as contained in Apple's company records (as provided to the Settlement Administrator by Apple in accordance with the requirements of this Settlement Agreement) or set forth on the Class Member's approved Application for Inclusion in the Class. The email will provide Class members with the option to select to receive their payment via electronic ACH deposit or a digital payment in the form of a digital MasterCard or Visa card ("digital payment option"). Class Members can also elect to receive a physical check, so long as Apple's company records or the approved Application for Inclusion contain a valid first and last name for the Class Member sufficient to allow the issuance of their selected payment. The

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Class Payments shall state that the electronic ACH deposit or digital payment option or check must be cashed or redeemed within 90 days of the date such Class Payments are transmitted or else the payments shall become void. The distribution of the notice shall substantially conform to the class notice plan previously approved by the Court (ECF No. 217; ECF No. 210), which has already been used to provide Class Members with notice of this action and the opportunity to submit a written request for exclusion from the class. Except as explained in the following Paragraph, consistent with the dissemination of class notice under the class notice plan approved by the Court (ECF No. 217; ECF No. 210), the Settlement Administrator shall not have any obligation to conduct further outreach to Class Members based on email addresses or physical mailing addresses being undeliverable or otherwise invalid, and Apple shall not have any duty to furnish additional information based on undeliverability.

50. If neither Apple's company records nor the Application for Inclusion contain a valid first and last name that are sufficient to allow the issuance of either an electronic ACH deposit or a check and the digital payment option has not been utilized, the Settlement Administrator shall to the extent economically feasible communicate with such Class Members in an effort to obtain a valid first and last name that is sufficient to allow the issuance of an electronic ACH deposit or a check. Further, to the extent economically feasible, the Settlement Administrator shall follow up and communicate with Class Members who have not cashed their Class Payments after 60 days of the checks being transmitted.

51. Following distribution of the Settlement Fund as set forth above, if payments to Class Members remain uncashed or unclaimed after 90 days (or such other later date if the Court so orders), the funds attributable to those individuals shall be used to pay any unanticipated additional costs of settlement administration as set forth below. If necessary, the Parties shall thereafter confer on the distribution of any remaining unclaimed funds with resolution subject to Court approval. If the Parties cannot reach a resolution, they shall brief the matter of what to do with any remaining unclaimed funds for a decision by the Hon. Daniel Weinstein (who shall arbitrate any such dispute). If Judge Weinstein is unavailable to hear the arbitration, the parties shall mutually agree

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on an alternative arbitrator. The arbitrator's decision shall be binding on the Parties, subject to the approval of the Court. Under no circumstances shall any uncashed funds revert to Defendants.

52. In the event that a determination is made pursuant to the preceding paragraph to pay unclaimed funds to a *cy pres* recipient, the Parties agree to confer in good faith to attempt to identify a *cy pres* recipient or recipients, whose work is closely related to the issues raised by this Action and/or furthers the objectives of this Settlement Agreement. If the Parties cannot reach a resolution, they shall brief the matter of who the *cy pres* recipient shall be for the arbitrator's decision, subject to the Court's approval, in accordance with the terms of the preceding paragraph.

53. ***Payment of Expenses***. The Parties agree that the costs associated with notice to the Class and the costs of administration of the Settlement Fund shall come solely from the Settlement Fund. The notice and administration expenses are not recoverable if this settlement does not become final, but only to the extent such funds are actually expended for notice and administration costs. Other than their obligation to pay the Settlement Amount into the Settlement Fund, Defendants shall not be liable for any costs of providing notice to the Class nor any other costs of administration of the Settlement Fund.

F. Settlement Administration

54. Apple will provide to the Settlement Administrator (but not to Class Counsel) the names, addresses, and email addresses of the Class Members. Apple will also provide data sufficient to identify the number of replacement Devices for each Class Member (if more than one) for all Class Members with respect to whom it has records. The Settlement Administrator shall administer the notice program described herein and pursuant to the Preliminary Approval Order.

55. The Parties agree upon and will request the Court's approval of the following forms and methods of notice to the Class:

a. The Settlement Administrator shall establish and maintain a settlement website, www.replacementdevicelawsuit.com (the "Settlement Website"). The Settlement Website will include the operative complaint and answer to that complaint, this Agreement, the Long-Form Notice, the Preliminary Approval Order, a set of Frequently Asked Questions, information on how to object, information on how to request exclusion (for Class Members who were not within the scope of the prior litigation class notice program) and contact information for Class Counsel and the Settlement Administrator.

b. The Settlement Administrator shall set up a toll-free telephone number (the "Toll-Free Number") through which Class Members can access settlement information and case documents.

c. The Settlement Administrator shall email to each Class Member for whom Apple has an email address a copy of the Email Notice, which shall take a form to be agreed upon by both Parties. The Email Notice shall inform Class Members of the fact of the settlement and that settlement information is available on the Settlement Website or by calling the Toll-Free Number.

d. For Class Members for whom the above Email Notice is returned as undeliverable and for Class Members for whom there is not a valid email address on file, the Settlement Administrator shall mail to each Class Member for whom a mailing address can be located the Postcard Notice substantially in the form attached hereto as Exhibit 2, informing Class Members of the fact of the settlement and that settlement information is available on the Settlement Website or by calling the Toll-Free Number. All Postcard Notices returned by the U.S. Postal Service with a forwarding address will be re-mailed to the new address.

56. The Settlement Website shall include an Application for Inclusion in the Class that may be submitted by individuals who believe themselves to be Class Members but who have not received email or mail notice. The deadline to submit an Application for Inclusion in the Class shall be 60 days after Notice Date and shall be clearly stated on the Settlement Website. Individuals submitting the form ("Applicants") shall provide their name, address, email address, and serial number of the iPhone(s) or iPad(s) for which they believe they are entitled to a Class Payment and shall state under penalty of perjury that they believe they meet the Class criteria. The Settlement Administrator shall use its best efforts in consultation with Apple to confirm whether the Applicant is a Class Member. If the Applicant is confirmed to be a Class Member, they shall be added to the Class and shall be entitled to a Class Payment. The decision of the Settlement Administrator shall be final as to the determination of the Claimant's recovery, if any, for any Class Device. The Settlement Administrator shall make best efforts to confirm or reject all Applications for Inclusion in the Class within 90 days of the Notice Date. The Settlement Administrator has agreed to perform all settlement administration duties required by the Settlement Agreement at a cost not to exceed $1,644,838. The Settlement Administrator shall withdraw that amount from the Settlement Fund to cover all costs and expenses related to the settlement administration functions to be performed by the Settlement Administrator, including the notice

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program and claims administration process. In the event that unanticipated costs and expenses arise in connection with the notice program and/or claims administration process, such that they exceed the capped amount set forth above, then the amount in excess of the capped amount shall be paid for exclusively out of the Settlement Fund, including by way of any funds represented by uncashed checks.

57. The Email Notice, Postcard Notice, and the Long-Form Notice shall provide information on the procedure by which Class Members may object to the Settlement.

G. Objections

58. ***Objections.*** Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, and/or any attorneys' fees or expenses to Class Counsel, or any incentive award(s) to the Class Representatives, must comply with the following requirements.

59. ***Content of Objections.*** All objections and supporting papers must be in writing and must:

a. Clearly identify the case name and number, *Maldonado et al. v. Apple Inc., et al.*, Case No. 3:16-cv-04067-WHO;

b. Include the full name, address, telephone number, and email address of the person objecting (the "Objector");

c. Include the full name, address, telephone number, and email address of the Objector's counsel (if the Objector is represented by counsel);

d. State whether the objection applies only to the Objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection; and

e. Be verified by an accompanying declaration submitted under penalty of perjury or a sworn affidavit.

60. ***Submission of Objections***. Any objections from Class Members regarding the proposed Settlement Agreement must be submitted in writing to the Court and to Counsel for the Parties. If a Class Member does not submit a timely written objection, the Class Member will not be able to participate in the Final Fairness Hearing (as defined below).

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61. ***Deadline for Objections***. Objections must be submitted by the "Objection and Exclusion Deadline," which is 60 days after the Notice Date.

a. If submitted through ECF, objections must be submitted by the Objection and Exclusion Deadline no later than 11:59 p.m. Pacific Time.

b. If submitted by postal mail, objections must be postmarked by the Objection and Exclusion Deadline. The date of the postmark on the envelope containing the written statement objecting to the Settlement shall be the exclusive means used to determine whether an objection and/or intention to appear has been timely submitted. In the event a postmark is illegible or unavailable, the date of mailing shall be deemed to be three days prior to the date that the Court scans the objection into the electronic case docket.

c. Class Members who fail to submit timely written objections in the manner specified above shall be deemed to have waived any objections and shall be forever barred from making any objection to the Agreement and the proposed Settlement by appearing at the Final Fairness Hearing, appeal, collateral attack, or otherwise.

62. ***Attendance at Final Fairness Hearing.*** Any Objector who timely submits an objection has the option to appear and request to be heard at the Final Fairness Hearing, either in person or through the Objector's counsel. Any Objector wishing to appear and be heard at the Final Fairness Hearing must include a Notice of Intention to Appear in the body of the Objector's objection. Objectors who fail to submit or include this Notice of Intention to Appear may not speak at the Final Fairness Hearing without permission of the Court.

63. ***Objectors' Attorneys' Fees and Costs***. If an Objector makes an objection through an attorney, the Objector shall be solely responsible for the Objector's attorneys' fees and costs.

64. ***No Solicitation of Settlement Objections***. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement or encourage an appeal from the Court's Final Approval Order.

H. Exclusions

65. ***Requests for Exclusion.*** The Notice shall advise Class Members who were not within the scope of the prior litigation class notice program of their right to exclude themselves from the Settlement. Class Members who were within the scope of the prior litigation class notice program were given the opportunity to exclude themselves from the Class and cannot request

exclusion from the Settlement . This Settlement Agreement will not bind Class Members who exclude themselves from the Settlement or who previously excluded themselves from the Class.

66. ***How to Request Exclusion.*** To request to be excluded from the Settlement, Class Members who were not within the scope of the prior litigation class notice program must timely submit a written Request for Exclusion. The Request for Exclusion must be sent by postal mail to the Settlement Administrator.

67. ***Deadline to Request Exclusion.*** To be excluded from the Settlement, the completed Exclusion Form must be received by the Objection and Exclusion Deadline, which is 60 days after the Notice Date. The Class Member must pay for Postage.

68. ***Effect of Exclusion.*** Any person or entity validly and timely requests exclusion from the Settlement, or who previously submitted a valid request for exclusion, shall not be a Class Member; shall not be bound by the Settlement Agreement; shall not be eligible to apply for any benefit under the terms of the Settlement Agreement; and shall not be entitled to submit an Objection to the Settlement.

69. ***Exclusion List.*** No later than 14 days after the Objection and Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Apple Counsel with the exclusion forms submitted by all persons and entities who timely and validly excluded themselves from the Settlement.

I. Class Counsel's Attorneys' Fees and Reimbursement of Expenses, and Service Award for Class Representatives

70. Class Counsel may apply for a reasonable award of attorney's fees and expenses (the "Fee and Expense Award"). Apple reserves the right to object to and oppose Class Counsel's request(s) for attorneys' fees and expenses to the extent that the Fee and Expense award would exceed 25% of the total Settlement Fund.

71. Provided the Court approves the requested award, the Settlement Administrator shall wire the amount of the approved Fee and Expense Award from the Settlement Fund to an account specified by Class Counsel within 30 calendar days of the Effective Date.

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72. Class Counsel may also apply for an incentive award of no more than $15,000 for Vicky Maldonado and $12,500 for Justin Carter to compensate each Class Representative for his or her role in the Action (the "Incentive Award"), to be drawn exclusively from the Settlement Fund. Apple reserves the right to oppose any request for an incentive award over $7,500 per named plaintiff, and nothing in this Settlement Agreement shall be construed as in any way prohibiting Apple from submitting such an objection. For tax purposes, the Incentive Award will be treated as 100% non-wage claim payment. The Settlement Administrator shall issue an IRS Form 1099-MISC for the Incentive Award payment to the Class Representatives. Provided the Court approves the requested awards, the Settlement Administrator shall wire the Incentive Awards to accounts specified by Class Counsel within fourteen (14) days of the Effective Date.

73. The procedure for, and the allowance or disallowance by the Court of, the application by Class Counsel for a Fee and Expense Award are not part of this Settlement Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement Agreement. Any order or proceeding relating to the application for a Fee and Expense Award, the pendency of any such application, or any appeal from any such order, shall not operate to terminate or cancel this Settlement Agreement, or affect or delay the finality of the judgment approving the settlement.

74. Neither Defendants nor any other Releasee under this Settlement Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Class Counsel of any Fee and Expense Award in the Action other than by virtue of the obligation to pay the Settlement Amount into the Settlement Fund.

75. Neither Defendants nor any other Releasee under this Settlement Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among Class Counsel, and/or any other person who may assert some claim thereto, of any Fee and Expense Award that the Court may make or approve in the Action.

76. Neither Defendants nor any other Releasee under this Settlement Agreement shall be liable for any additional fees or expenses of the Plaintiffs or any Class Member in connection with the Action. Class Counsel agree that they will not seek any additional fees or costs from

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Apple in connection with the Action or the settlement of the Action. Apple expressly agrees that it will not seek to recover its court costs, attorneys' fees, or expenses once the Court enters an order dismissing the Action and the Effective Date has passed.

J. Cooperation

77. The Parties agree to prepare and execute all documents, to seek Court approvals, to defend Court approvals, and to do all things reasonably necessary to complete the settlement described in this Agreement.

K. Rescission if This Settlement Agreement Is Not Approved or Final Judgment Is Not Entered

78. If the Court refuses to approve this Settlement Agreement or any part hereof, or if such approval is materially modified or set aside on appeal, or if the Court does not enter the Final Judgment provided for in this Settlement Agreement, or if the Court enters the Final Judgment and appellate review is sought, and on such review, such Final Judgment is not affirmed in its entirety, then either Party has the option to rescind this Settlement Agreement in its entirety, provided, however, that both Parties shall have the obligation to negotiate in good faith in an effort to reach a revised settlement agreement in the event that either Party exercises the right to rescind described in this paragraph. Written notice of the exercise of any such right to rescind shall be made according to the terms of this Settlement Agreement. A modification or reversal on appeal of any amount of attorneys' fees and expenses shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such Final Judgment.

79. In the event that this Settlement Agreement does not become final, then this Settlement Agreement shall be of no force or effect and any and all parts of the Settlement Fund caused to be deposited in the Settlement Fund (including interest earned thereon) shall be returned forthwith to Defendants less only disbursements made in accordance with the terms of this Settlement Agreement, and all other obligations pursuant to this Settlement Agreement shall cease immediately. Defendants and Plaintiffs expressly reserve all of their rights and defenses if this Settlement Agreement does not become final.

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80. This Settlement Agreement shall be construed and interpreted to effectuate the intent of the Parties, which is to provide, through this Settlement Agreement, for a complete resolution of the relevant claims with respect to all Parties to this Settlement Agreement.

L. Miscellaneous

81. Plaintiffs expressly warrant that, in entering into the Settlement, they have relied solely upon their own knowledge and investigation, and not upon any promise, representation, warranty, or other statement by Defendants not expressly contained in this Agreement.

82. This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand the provisions of this Agreement and have relied on the advice and representation of legal counsel of their own choosing. Each of the Parties has cooperated in the drafting and preparation of this Agreement and has been advised by counsel regarding the terms, effects, and consequences of this Agreement. Accordingly, in any construction to be made of this Agreement, this Agreement shall not be construed as having been drafted solely by any one or more of the Parties.

83. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs, Class Members, and Defendants. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Plaintiffs, or Class Counsel shall be binding upon all Class Members and Releasors. Each and every Releasee (other than the Defendants that are parties hereto) is a third-party beneficiary of this Settlement Agreement and is authorized to enforce the Settlement Agreement's terms applicable to that Releasee.

84. ***Integrated Agreement***. This Agreement, including all exhibits, constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any of the Parties hereto, except as provided for herein.

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85. ***Modification and Amendment.*** This Settlement Agreement may not be modified or amended except in a written instrument executed by the Parties' counsel and approved by the Court.

86. ***Consent to Jurisdiction***. The United States District Court for the Northern District of California shall retain jurisdiction over the implementation, enforcement, and performance of this Settlement Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement that is not resolved by negotiation and agreement by Plaintiffs and Defendants. Any and all disputes arising from or related to the Settlement or this Agreement must be brought the by Parties, Class Counsel, Apple Counsel, and/or each member of the Class exclusively in the Court. The Parties, Class Counsel, Apple Counsel, and each member of the Class hereby irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to the Settlement or this Agreement.

87. ***Choice of Law***. All terms of this Agreement shall be governed and interpreted according to the substantive laws of the State of California without regard to its choice of law or conflict of laws principles.

88. ***Notices***.

a. All Notices to Class Counsel provided for herein shall be sent by email to: chriso@hbsslaw.com, with a hard copy sent by overnight mail to Steve W. Berman, HAGENS BERMAN SOBOL SHAPIRO LLP, 1301 Second Avenue, Suite 2000, Seattle, WA 98101.

b. All Notices to Apple provided for herein shall be sent by email to scott_murray@apple.com with a copy to kdunn@paulweiss.com and wisaacson@paulweiss.com, with a hard copy sent by overnight mail to Apple Inc., 1 Apple Park Way, MS:169-2NYJ, Cupertino, California 95014, Attn: Chief Litigation Counsel and Karen Dunn, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 2001 K St NW, Washington, DC 20006.

c. The notice recipients and addresses designated above may be changed by written notice pursuant to this Section.

d. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections or other submissions or filings received as a result of the Class Notice.

89. ***Authorization to Enter Settlement Agreement***. Each of the undersigned attorneys represents and warrants that he or she is fully authorized to conduct settlement negotiations and to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of his or her respective clients, subject to Court approval.

90. ***Headings***. The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement.

91. ***Gender and Plurals***. As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

92. ***Survival of Warranties and Representations***. The warranties and representations of this Agreement are deemed to survive the date of execution hereof.

93. ***Execution in Counterparts***. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts.

94. ***Extensions of Time***. Unless otherwise ordered by the Court, the Parties may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement.

DATED: September 30, 2021

HAGENS BERMAN SOBOL SHAPIRO LLP
Steve W. Berman (*pro hac vice*)
Robert B. Carey (*pro hac vice*)
Michella A. Kras (*pro hac vice*)

By: */s/*

Steve W. Berman (*Pro Hac Vice*)
1301 Second Avenue, Suite 2000
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594

Attorneys for Plaintiffs

DATED: September 30, 2021

By: 

Katherine Adams
Senior Vice President and General Counsel

For Defendants

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EXHIBIT B

In re DRAM IPP Antitrust Case

All figures are best estimates based on public records

	% Total Settlement
Settlement $310.72 million	**100%**
Claims paid $188,872,426	**61%**
Class members sent notice 175.5 million*	
Actual claims 445,554 (0.25%)	
Opt-outs 5 (0.0%)	
Average recovery per claimant $423.90**	
Residual $2.3 million	**0.75%**
Cy pres distribution $0	
Reversion $0	
Attorney fees awarded $78.3 million	**25%**
Portion of distributed fund 41%	
Attorney Costs $11.8 million	**4%**
Administrative costs $1.047 million	**0.3%**

*No direct notice to class members; publication only.
**Median recovery not available.

In re Milk IPP Antitrust Case

All figures are best estimates based on public records

	% Total Settlement
Settlement $52 million	**100%**
Claims paid $35,316,020	**68%**
Class members sent notice 186.2 million*	
Actual claims 3,542,640 (1.9%)	
Opt-outs 1 (0.0%)	
Average recovery per claimant**	
Residual 0	
Cy pres distribution $0	
Reversion $0	
Attorney fees awarded $13 million	**25%**
Portion of distributed fund 37%	
Attorney Costs $2.4 million	**4.61%**
Administrative costs $1.5 million	**2.81%**

*No direct notice to class members; publication only.
**$7.51 for individuals and $210.28 for organizations.

In re MyFord Touch Litigation

All figures are best estimates based on public records

	% Total Settlement
Settlement $17,000,000	**100%**
Claims paid $17,000,000	**100%**
Class members sent notice 374,000	
Actual claims 14,573	
Unilateral Payments 309,199	
Lowest payment per Class Member:* $20	
Largest payment per Class Member: $1200	
Opt-outs: 170 (0.044%)	
Reversion $0	
Number of Free Software Updates 16,451	
Attorney fees awarded $10.2 million	
Attorney Costs $5.8 million	
Administrative costs paid directly by Ford	

*Median recovery not available.

Electronic Arts IPP Antitrust Case

All figures are best estimates based on public records

	% Total Settlement
Settlement $27 million	**100%**
Claims paid $11,592,317	**43%**
Class members sent notice 14.076 million	
Actual claims 143,775 (1.02%)	
Opt-outs 5 (0.0%)	
Average recovery per claimant $80.63*	
Residual $5.033 million	**18.64%**
Cy pres distribution $0	
Reversion $0	
Attorney fees awarded $7.3 million	**27%**
Portion of distributed fund 63%	
Attorney Costs $2 million	**7.4%**
Administrative costs $1.170 million	**0.3%**

*Median recovery not available.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VICKY MALDONADO AND JUSTIN CARTER, individually and on behalf of themselves and all others similarly situated, Plaintiffs, v. APPLE INC., APPLECARE SERVICE COMPANY, INC., AND APPLE CSC, INC., Defendants,	)	Case No. 3:16-cv-04067-WHO **DECLARATION OF CAMERON R. AZARI, ESQ. ON SETTLEMENT NOTICE PLAN**

I, Cameron Azari, declare as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a nationally recognized expert in the field of legal notice, and I have served as an expert in dozens of federal and state cases involving class action notice plans.

3. I am the Director of Legal Notice for Hilsoft Notifications ("Hilsoft"), a firm that specializes in designing, developing, analyzing and implementing, large-scale legal notification plans. Hilsoft is a business unit of Epiq Class Action & Claims Solutions, Inc. ("Epiq").

4. This declaration will describe the Settlement Notice Plan ("Notice Plan" or "Plan") and notices (the "Notice" or "Notices") here for Maldonado v. Apple Inc., et al., Case No. 3:16-cv-04067-WHO, in the United States District Court for the Northern District of California. I previously executed my *Declaration of Cameron R. Azari, Esq. on Notice Plan*, on June 1, 2020, in which I detailed the plan to give notice of the Court's certification of the Class in this matter.

That declaration also included a description of Hilsoft's class action notice experience and attached Hilsoft's curriculum vitae. I also provided my educational and professional experience relating to class actions and my ability to render opinions on overall adequacy of notice programs. The facts in this declaration are based on my personal knowledge, as well as information provided to me by my colleagues in the ordinary course of my business at Hilsoft and Epiq.

NOTICE PLAN

5. The Notice Plan is designed to provide notice to the following Class:

> Those who purchased AppleCare or AppleCare+, either directly or through the iPhone Upgrade Program, on or after July 20, 2012, and received a remanufactured replacement Device.

6. Rule 23 of the Federal Rules of Civil Procedure directs that the best notice practicable under the circumstances must include "individual notice to all members who can be identified through reasonable effort."[1] The proposed Notice Plan satisfies this requirement. The Notice Plan provides for individual notice (via email or postal mail) to all Class Members who are reasonably identifiable. Epiq already has the data to provide this notice from the class certification notice effort that was previously done.

Individual Notice

7. Class Notice will include an Email Notice to be sent to all potential Class Members for whom a facially valid email address is available. At the class certification stage, Epiq sent 3,710,005 initial Email Notices. This same list will be used to send Email Notice of the proposed Settlement. The Email Notice will be created using an embedded html text format. This format will provide text that is easy to read without graphics, tables, images and other elements that would

[1] FRCP 23(c)(2)(B).

increase the likelihood that the message could be blocked by Internet Service Providers (ISPs) and/or SPAM filters. The emails will be sent using a server known to the major emails providers as one not used to send bulk "SPAM" or "junk" email blasts. Also, the emails will be sent in small groups so as to not be erroneously flagged as a bulk junk email blast. Each Email Notice will be transmitted with a unique message identifier. If the receiving email server cannot deliver the message, a "bounce code" should be returned along with the unique message identifier. For any Email Notice for which a bounce code is received indicating that the message is undeliverable, at least two additional attempts will be made to deliver the Notice by email.

8. The Email Notice will include the website address www.replacementdevicelawsuit.com. By accessing the website, recipients will be able to easily access a Detailed Notice, the Settlement Agreement, Preliminary Approval Motion and Order, Amended Complaint and any other important court documents, and answers to frequently asked questions. The website will also include an Application Form for potential Class Members to fill out if they believe they are members of the Class and did not receive notice of the proposed Settlement. The proposed Email Notice is included as **Attachment 1**.

9. For all Class Members for whom a facially valid email address does not exist, but a physical address does, a standard 4" by 6" Postcard Notice will be mailed. The Postcard Notice will be sent via USPS first class mail. For the prior notice of Class Certification, Epiq mailed 78,350 Postcard Notices. For the proposed Settlement notice effort, Epiq will also mail a Postcard Notice to all Class Members for whom an Email Notice is ultimately undeliverable. Prior to mailing, all mailing addresses will be checked against the National Change of Address ("NCOA")

database maintained by the USPS.[2] Any addresses that are returned by the NCOA database as invalid will be updated through a third-party address search service. In addition, the addresses will be certified via the Coding Accuracy Support System ("CASS") to ensure the quality of the zip code, and verified through Delivery Point Validation ("DPV") to verify the accuracy of the addresses. This address updating process is standard for the industry and for the majority of promotional mailings that occur today.

10. Postcard Notices returned as undeliverable will be re-mailed to any new address available through USPS information, for example, to the address provided by USPS on returned pieces for which the automatic forwarding order has expired, or to better addresses that may be found using a third-party lookup service. Upon successfully locating better addresses, Postcard Notices will be promptly re-mailed. The proposed Postcard Notice is included as **Attachment 2**.

11. Additionally, a full Detailed Notice will be mailed via USPS first class mail to all persons who requested one via the toll-free telephone number. The proposed Detailed Notice is included as **Attachment 3**.

Case Website, Toll-free Telephone Number, and Postal Mailing Address

12. The www.replacementdevicelawsuit.com website will be updated to reflect the Settlement. Class Members will be able to obtain detailed information about the case and review key documents, including the Detailed Notice, the Settlement Agreement, Preliminary Approval Motion and Order, Amended Complaint and any other important court documents, and answers to frequently asked questions. The case website will also include information on how Class

[2] The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person's name and known address.

Members can request exclusion from the Class or object to the Settlement. Additionally, the website will include an Application Form that a visitor who may not have received notice of the Settlement can fill out to request to be included in the Settlement Class and potentially receive a payment (all identified Class Members will receive an automatic payment if the Settlement receives Final Approval). The case website address will be displayed prominently on all notice documents.

13. A toll-free telephone number will also be established to allow Class Members to call for additional information, listen to answers to FAQs, and request that a Notice be mailed to them. The toll-free telephone number will be prominently displayed in the Notice documents as well.

14. A post office box for correspondence about the case will also be established and maintained, allowing Class Members to contact the Settlement Administrator by mail with any specific requests or questions, including requests for exclusion.

PLAIN LANGUAGE NOTICE DESIGN

15. The proposed Detailed Notice contains all of the information necessary to allow Class Members to make informed decisions and includes all of the information required by Rule 23(c)(2)(B), describing the central elements of Plaintiffs' claims in plain, easily understood language. The proposed Detailed Notice states the class definition, a brief overview of the case, the option for any Class Member to opt-out and the procedure to do so, a statement that a judgment would be binding on Class members who do not opt-out, and the right of any member who does not opt-out to appear in the case through his or her own lawyer. The procedure for objecting to the Settlement is also explained, as well as the process for requesting an appearance at the Final Approval Hearing. Also, should additional information be needed, the proposed Detailed Notice

clearly designates and provides contact information for the Notice Administrator and Class Counsel.

16. The proposed Email and Postcard Notices both feature a prominent headline and are clearly identified as a Notice from the District Court. Important information about the Settlement, including Plaintiffs' claims, the definition of the Class and the right to request exclusion or file an objection is summarized, and all important dates are included. The Email Notice includes embedded links directly to the Detailed Notice at the case website. These design elements alert recipients and readers that the Notice is an important document authorized by a court and that the content may affect them, thereby supplying reasons to read the Notice and visit the Settlement Website for additional information.

Notice and Administration Expenses

17. The combined, approximate cost to provide notice and handle the settlement administration is currently estimated at $1,663,688. The actual total cost for providing settlement administration is dependent upon variables such as the number of calls to the toll-free line, the number of applications for inclusion Epiq may receive, the number of Class Members ultimately sent a payment, and the breakdown of digital payments and checks, etc. Additionally, if subsequent distributions are required by the Court (for example to re-distribute unclaimed/uncashed payments), there would be an additional cost for Epiq to provide that service. All costs are subject to the Service Contract under which Epiq will be retained as the administrator, and the terms and conditions of that agreement.

CONCLUSION

18. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by state and local rules and statutes,

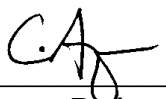
and by case law pertaining to the recognized notice standards under Rule 23. This framework directs that the notice plan be optimized to reach the class and that the notice or notice plan itself not limit knowledge of the availability of options—nor the ability to exercise those options—to class members in any way. All of these requirements will be met in this case.

19. The Notice Plan includes individual, direct emailed notice to all Class Members who can be identified with reasonable effort. Based on the deliverability of notice at the Class certification stage, we expect individual notice to reach over 90% of the identified Class. The case website will expand the reach of the notice further. In 2010, the Federal Judicial Center issued a Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide. This Guide states that, "the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%." Here, we have developed a Notice Plan that will readily achieve a reach at the higher end of that standard.

20. The Notice Plan described above provides for the best notice practicable under the circumstances of this case, conforms to all aspects of Rule 23 and Constitutional Due Process, and comports with the guidance for effective notice set out in the Manual for Complex Litigation, Fourth.

21. The Notice Plan schedule affords sufficient time to provide full and proper notice to Class Members before the opt-out and objection deadlines.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 1, 2021, at Beaverton, Oregon.



Cameron R. Azari

Attachment 1

EMAIL NOTICE

If you purchased AppleCare Protection Plan or AppleCare+ for an iPhone or iPad, either directly or through the iPhone Upgrade Program, on or after July 20, 2012, and received a remanufactured replacement iPhone or iPad, a class action settlement may affect your rights.

A Settlement has been reached in a consumer rights lawsuit filed on behalf of Plaintiffs with Defendants: Apple Inc., AppleCare Service Company, Inc. and Apple CSC, Inc. ("Apple"). This Court-ordered notice may affect your rights. Please review and follow the instructions carefully.

The United States District Court for the Northern District of California authorized this notice. Before any money is paid, the Court will hold a hearing to decide whether to approve the Settlement.

Who is Included? For settlement purposes, members of the Class include all individuals in the United States who, on or after July 20, 2012, (1) purchased AppleCare Protection Plan or AppleCare+ for an iPhone or iPad, either directly or through the iPhone Upgrade Program, and (2) received a remanufactured replacement device. If you are the recipient of this email notice, you may be a member of the Class.

What is the lawsuit about? The name of the lawsuit is *Maldonado v. Apple Inc., et al*., and it is pending in the United States District Court for the Northern District of California (Case No. 3:16-cv-04067-WHO).

Plaintiffs' claims arise out of two extended service plans offered by Apple Inc.: AppleCare+ and its predecessor AppleCare Protection Plan ("AppleCare"). The terms and conditions for AppleCare provide that when a customer seeks service for a covered iPhone or iPad due to a hardware defect or accidental damage, Apple Inc. will either repair the device or replace it with a device that is either "new or equivalent to new in performance and reliability." One of the types of replacements customers can receive is a remanufactured iPhone or iPad. Plaintiffs allege that remanufactured devices are not "equivalent to new in performance and reliability." Defendants deny the allegations in the lawsuit, and the Court has not decided whether Defendants did anything wrong.

Who represents the Class? The Court has appointed the law firm Hagens Berman Sobol Shapiro LLP to represent the Class ("Class Counsel"). If you are a member of the Class, Class Counsel is representing your interests in the lawsuit. You don't have to pay Class Counsel to participate. You may hire your own lawyer to appear in Court for you, but if you do, you have to pay for that lawyer.

What does the Settlement Provide? Under the terms of the Settlement Agreement, Defendants will pay a total of $95,000,000 to resolve all Settlement Class claims against them and their affiliates. No money will be distributed yet.

A portion of the Settlement Proceeds has been and will be used by the Claims Administrator for notice and administration costs. Additionally, Class Counsel will request that the Court award attorneys' fees and permit the reimbursement of certain litigation costs and expenses. The request will be filed at least fourteen days before the deadline to object to the settlement and posted on the website www.replacementdevicelawsuit.com. Class Counsel will seek attorneys' fees of no more than 30% of the Settlement Fund, and the total amount of costs sought will be no more than $1,500,000. Class Counsel will also request service awards of up to $15,000 for each of the two Class Representatives. All Settlement funds that remain after payment of the Court-ordered attorneys' fees, costs, and litigation expenses will be distributed on a *pro rata* basis at the conclusion of the lawsuit or as ordered by the Court.

What are your options? If you want to be included in the Class, you do not need to do anything, and you will be bound by the Settlement. If you are receiving notice for the first time (because you received a remanufactured replacement iPad or iPhone between October 1, 2019, and September 30, 2021) and do not want to participate in the Settlement or want to keep any right you may have to sue Defendants on your own over the claims in this lawsuit, you need to exclude yourself ("opt out"). If you exclude yourself, you cannot get money from this Settlement. Your request to opt out must be submitted by [MONTH, DAY,] 2021. If you want to object to the Settlement and ask the Court not to approve it, your objection must be submitted by [MONTH, DAY], 2021. If you previously received notice (because you received a remanufactured replacement iPhone or iPad between July 20, 2012, and September 30, 2019), your deadline to exclude yourself has expired and you are part of the Class. Go to www.replacementdevicelawsuit.com for more information on how to opt out or object.

Where to get more information? This notice is only a summary. For more information on this Settlement, please visit www.replacementdevicelawsuit.com or call (xxx) xxx-xxxx. Please do not contact Apple, Apple's attorneys, the Clerk of the Court, or the Court.

Attachment 2

POSTCARD NOTICE

If you purchased AppleCare Protection Plan or AppleCare+ for an iPhone or iPad, either directly or through the iPhone Upgrade Program, on or after July 20, 2012, and received a remanufactured replacement iPhone or iPad, a class action settlement may affect your rights.

A Settlement has been reached in a consumer rights lawsuit filed on behalf of Plaintiffs with Defendants: Apple Inc., AppleCare Service Company, Inc. and Apple CSC, Inc. ("Apple"). This Court-ordered notice may affect your rights. Please review and follow the instructions carefully.

The United States District Court for the Northern District of California authorized this notice. Before any money is paid, the Court will hold a hearing to decide whether to approve the Settlement.

Who is Included? Members of the Class include all individuals in the United States who, on or after July 20, 2012 and on or before September 30, 2021, (1) purchased AppleCare Protection Plan or AppleCare+ for an iPhone or iPad, either directly or through the iPhone Upgrade Program, and (2) received a remanufactured replacement device. If you are the recipient of this postcard notice, you may be a member of the Class.

What is the lawsuit about? The name of the lawsuit is *Maldonado v. Apple Inc., et al*., and it is pending in the United States District Court for the Northern District of California (Case No. 3:16-cv-04067-WHO).

Plaintiffs' claims arise out of two extended service plans offered by Apple Inc.: AppleCare+ and its predecessor AppleCare Protection Plan ("AppleCare"). The terms and conditions for AppleCare provide that when a customer seeks service for a covered iPhone or iPad due to a hardware defect or accidental damage, Apple Inc. will either repair the device or replace it with a device that is "new or equivalent to new in performance and reliability." One of the types of replacements customers can receive is a remanufactured iPhone or iPad. Plaintiffs allege that remanufactured devices are not "equivalent to new in performance and reliability." Defendants deny the allegations in the lawsuit, and the Court has not decided whether Defendants did anything wrong.

Who represents the Class? The Court has appointed the law firm Hagens Berman Sobol Shapiro LLP to represent the Class ("Class Counsel"). If you are a member of the Class, Class Counsel is representing your interests in the lawsuit. You don't have to pay Class Counsel to participate. You may hire your own lawyer to appear in Court for you, but if you do, you have to pay for that lawyer.

What does the Settlement Provide? Under the terms of the Settlement Agreement, Defendants will pay a total of $95,000,000 to resolve all Class claims against them and their affiliates. No money will be distributed yet.

A portion of the Settlement Proceeds has been and will be used by the Claims Administrator for notice and administration costs. Additionally, Class Counsel will request that the Court award attorneys' fees and permit the reimbursement of certain litigation costs and expenses. The request will be filed at least fourteen days before the deadline to object to the settlement and posted on the website www.replacementdevicelawsuit.com. Class Counsel will seek attorneys' fees of no more than 30% of the Settlement Fund, and the total amount of costs sought will be no more than $1,500,000. Class Counsel will also request service awards of up to $15,000 for each of the two Class Representatives. All Settlement funds that remain after payment of the Court-ordered attorneys' fees, costs, and litigation expenses will be distributed on a *pro rata* basis at the conclusion of the lawsuit or as ordered by the Court.

What are your options? If you want to be included in the Class, you do not need to do anything, and you will be bound by the Settlement. If you are receiving notice for the first time (because you received a remanufactured replacement iPad or iPhone between October 1, 2019 and September 30, 2021) and do not want to participate in the Settlement or want to keep any right you may have to sue Defendants on your own over the claims in this lawsuit, you need to exclude yourself ("opt out"). If you exclude yourself, you cannot get money from the Settlement. Your request to opt out must be received by [MONTH, DAY, 2021]. If you previously received notice (because you received a remanufactured replacement iPhone or iPad between July 20, 2012, and September 30, 2019), your deadline to exclude yourself has expired and you are part of the Class. If you want to object to the Settlement and ask the Court not to approve it, your objection must be submitted by [MONTH, DAY], 2021. Go to www.replacementdevicelawsuit.com for more information on how to opt out or object.

Where to get more information? This notice is only a summary. For more information on this Settlement, please visit www.replacementdevicelawsuit.com or call (xxx) xxx-xxxx. Please do not contact Apple, Apple's attorneys, the Clerk of the Court, or the Court.

Attachment 3

If you purchased AppleCare Protection Plan or AppleCare+ for an iPhone or iPad, either directly or through the iPhone Upgrade Program, on or after July 20, 2012, and received a remanufactured replacement iPhone or iPad, you could be included in a class action lawsuit settlement.

The United States District Court for the Northern District of California ordered this notice.
This is not an advertisement or solicitation from a lawyer.
You are not being sued.

- A lawsuit is pending in the United States District Court for the Northern District of California (the "Court") against Apple Inc., AppleCare Service Company, Inc., and Apple CSC Inc. (collectively, "Defendants"). Plaintiffs' claims arise out of two extended service plans offered by Apple Inc.: AppleCare+ and its predecessor AppleCare Protection Plan.

- The terms and conditions for AppleCare Protection Plan and AppleCare+ provide that when a customer seeks service for a covered iPhone or iPad due to a hardware defect or accidental damage, Apple Inc. will either repair the device or replace it with a device that is either "new or equivalent to new in performance and reliability."

- One of the types of replacements customers can receive under AppleCare Protection Plan and AppleCare+ is a remanufactured iPhone or iPad. Plaintiffs allege that remanufactured devices are not "equivalent to new in performance and reliability" and assert claims against Defendants for breach of contract, breach of warranty, and alleged violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200.

- On September 17, 2019, the Court certified a Class for purposes of litigating the merits of the case.

- Plaintiffs reached a Settlement with Defendants, and the parties have memorialized that Settlement in a Settlement Agreement dated September 30, 2021.

- Defendants deny any wrongdoing, and the Court did not decide whether Defendants did anything wrong. If the case had proceeded, Plaintiffs would have been required to prove their claims against Defendants at a trial.

- Your legal rights are affected whether you act or don't act. These rights and options — **and the deadlines to exercise them** — are explained in this notice. **Please read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
IF YOU ARE RECEIVING NOTICE FOR THE FIRST TIME, ASK TO BE EXCLUDED BY [INSERT DEADLINE]	**Get out of this Settlement. Get no benefits from it.** If you are receiving notice for the first time (because you received a remanufactured replacement iPad or iPhone between October 1, 2019 and September 30, 2021), you may request to be excluded from the Settlement. To do this, you must submit a timely and valid request for exclusion to remove yourself from the Settlement. If you ask to be excluded, you will not receive any money from the Settlement, but you will keep any right to sue Defendants separately about the claims in this lawsuit. This is the only option that allows you to retain your right to sue Defendants for claims that would otherwise be released by a judgment in the lawsuit, whether that judgment is favorable to the Class or not.

	If you received a remanufactured replacement iPhone or iPad between July 20, 2012, and September 30, 2019, the deadline to request exclusion has expired and you are part of the Class (unless you previously submitted a timely and valid request for exclusion).
OBJECT	If you are a Class member, you may write to the Court about why you don't like the Settlement with the Defendants. Objections must be received by _____, 2021.
ATTEND THE FAIRNESS HEARING	You may request to speak in Court about the fairness of the Settlement.
DO NOTHING	If you are a Class member and you do nothing regarding the Settlement, you will remain part of the Settlement and you may participate in any monetary distribution. The Settlement will resolve your claims against Defendants, and you will give up your rights to sue Defendants about the Released Claims (as defined in the Settlement Agreement). You will be bound by the judgment.

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BASIC INFORMATION ABOUT THE LAWSUIT

1. What is the lawsuit about?

The name of the lawsuit is *Maldonado v. Apple Inc., et al.*, and it is pending in the United States District Court for the Northern District of California (Case No. 3:16-cv-04067-WHO). Plaintiffs' claims arise out of two extended service plans offered by Apple Inc.: AppleCare+ and its predecessor AppleCare Protection Plan.

The terms and conditions for AppleCare Protection Plan and AppleCare+ provide that when a customer seeks service for a covered iPhone or iPad due to a hardware defect or accidental damage, Apple Inc. will either repair the device or replace it with a device that is either "new or equivalent to new in performance and reliability." One of the types of replacements customers can receive under AppleCare Protection Plan and AppleCare+ is a remanufactured iPhone or iPad. Plaintiffs allege that remanufactured devices are not "equivalent to new in performance and reliability" and assert claims against Defendants for breach of contract, alleged violations of the Magnusson-Moss Warranty Act and Song-Beverly Consumer Warranty Act, and alleged violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200.

You can read the operative Complaint at www.replacementdevicelawsuit.com.

2. **What is Defendants' response?**

Defendants deny that they did anything wrong. The Court has not found that Defendants engaged in any wrongdoing. Defendants' answer to the operative Complaint is at www.replacementdevicelawsuit.com.

3. **What is a class action and who is involved?**

In a class action lawsuit, one or more people called the "plaintiffs" sue on behalf of other people who have similar claims, called the "class members." In certifying a class, the court appoints the plaintiffs to serve as "class representatives." For the purposes of a class action lawsuit, one court will resolve the issues for all class members, except for those people who properly exclude themselves from the lawsuit, as described in Section 12 below.

4. **Why is there a Settlement?**

The Court did not decide in favor of Plaintiffs or Defendants. Plaintiffs believe they may have won at trial and possibly obtained a greater recovery. Defendants believe the Plaintiffs would not have won at a trial and that Plaintiffs would have recovered nothing against them. Litigation involves risks to both sides, and Plaintiffs and Defendants have agreed to the Settlement. The Settlement requires Defendants to pay money (as set forth in the Settlement Agreement). Plaintiffs and their attorneys believe the Settlement is in the best interests of all Class members.

WHO IS IN THE CLASS?

5. **Am I part of the Class?**

The Court has decided, unless you submit a valid and timely request to be excluded, you are a member of the Class if you purchased AppleCare or AppleCare+, either directly or through the iPhone Upgrade Program, on or after July 20, 2012, and received a remanufactured replacement Device on or before September 30, 2021.

6. **Are there exceptions to being included in the Class?**

Yes. The Class excludes Class Counsel, any employees of Class Counsel, any officers, directors, or employees of Defendants' or Defendants' counsel, and the judge presiding over this case (as well as members of his or her immediate family and staff). The Class also excludes anyone who submitted a valid and timely request to be excluded (see Section 12 below).

7. **I'm still not sure if I'm included. What do I do?**

If you are still not sure whether you are included in the Settlement, you can get free help by calling or writing to the lawyers in this case at the phone number or address listed in Section 16 below.

THE BENEFITS OF THE SETTLEMENT AGREEMENT WITH DEFENDANTS

8. **What does the Settlement provide?**

If the Settlement is approved, Apple will pay $95,000,000. This Settlement would resolve all Class members' claims against the Defendants for the Released Claims (as defined in the Settlement Agreement).

9. **What is the Settlement Fund being used for?**

No money will be distributed yet. A portion of the Settlement Proceeds has been and will be used by the Claims Administrator for notice and administration costs. Additionally, Class Counsel may request that the Court award attorneys' fees and permit the reimbursement of certain litigation costs and expenses. If such request is made at this time, it will be filed at least fourteen days before the objection deadline and posted on the website www.replacementdevicelawsuit.com at that time. Class Counsel will not seek more than 30% of the Settlement Fund as attorneys' fees, or $28.5 million. Class Counsel will request service award of between $12,500 and $15,000 each, on behalf of the two Class Representatives. All Settlement funds that remain after payment of the Court-ordered attorneys' fees, costs, and litigation expenses will be distributed to Class members on a *pro rata* basis based on the number of devices within the class for each class member, as ordered by the Court.

HOW DO YOU GET A PAYMENT

10. **How do I get a payment from the Settlement?**

If you a Class member and you stay in the Class, a payment will be sent to you automatically. You do not need to take any further action.

YOUR RIGHTS AND OPTIONS

If you were not within the scope of the prior notice program, you have to decide whether to stay in the Class or ask to be excluded on or before _____, 2021.

11. **How do I stay in the Class?**

You do not have to do anything to stay in the Class. By doing nothing, you will get your share of the Settlement as outline above. By staying in the Class give up your right to sue or continue to sue Defendants as part of any other lawsuit about the same legal claims in this lawsuit. By staying in the Class, you will also be legally bound by all of the orders the Court issues and the judgment the Court makes in this lawsuit.

12. **How do I exclude myself from the Class?**

If you did not previously receive notice (because you received a remanufactured replacement iPad or iPhone between October 1, 2019 and September 30, 2021) and you do not want to be a member of the Class, you can exclude yourself from (or "opt out" of) the Class by clicking www.replacementdevicelawsuit.com and following the prompts.

You can also opt out by sending a letter by mail to the Class Action Administrator. The exclusion letter must include:

a) Your full name, address, and email;

b) The name of this case: *Maldonado v. Apple Inc., et al.*, Case No. 3:16-cv-04067-WHO; and

c) A clear statement that you want to be excluded from the Class.

The exclusion letter must be signed and dated, and received no later than _____, 2021. You must mail your exclusion letter to:

Maldonado v. Apple Inc., et al., Case No. 3:16-cv-04067-WHO
c/o [insert administrator]
[insert street address]
[insert city, state ZIP]

If you previously received notice when the Class was certified (because you received a remanufactured replacement iPhone or iPad between July 20, 2012, and September 30, 2019), you were already given the opportunity to exclude yourself and that deadline has expired. If you fall within the Certified Class definition, you are part of the Class.

13. **What happens if I exclude myself from the Class?**

If you exclude yourself from the Class, you won't get any money or benefits from the Settlement Fund. By excluding yourself, however, you will retain any right you may have to sue Defendants about the same claims alleged in this lawsuit at your own expense.

OBJECTING TO THE SETTLEMENT

14. **How do I tell the Court that I don't like the Settlement?**

If you are a member of the Class and have not excluded yourself from the Settlement, you can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed settlement must be in writing saying that you object to the Settlement with Defendants and the reasons why you object to the Settlement. Be sure to include your full name, current mailing address, and email address. Your objection must be signed. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Vicky Maldonado, et al. v. Apple Inc., et al.*, Case No. 3:16-cv-04067-WHO) (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, with a copy mailed Class Counsel at the addresses listed below, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before _____, 2021.

Court:

Class Action Clerk,
United States District Court
for the Northern District of California
450 Golden Gate Avenue

Class Counsel:

Steve W. Berman
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, WA 98101

San Francisco, CA 94102

15. **What is the difference between excluding myself and objecting?**

Objecting is telling the Court that you do not like something about the Settlement. You can object only if you do not exclude yourself from the Class. Excluding yourself is telling the Court that you do not want to be part of the Class or the lawsuit. If you exclude yourself, you have no standing to object because the Settlement no longer affects you.

THE LAWYERS REPRESENTING YOU

16. **As a Class member, who represents me in this case?**

The Court has appointed Plaintiffs Justin Carter and Vicky Maldonado as Class Representative and the following lawyers to represent you and other Class members:

Steve W. Berman
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, WA 98101

These lawyers are called "Class Counsel." You may contact Class Counsel by writing to the address above, sending an email to applecare@hbsslaw.com, or calling (206) 623-7292.

17. **How will the lawyers be compensated? Will the Class Representatives receive any money?**

At the fairness hearing, or at a later date, Class Counsel will ask the Court for attorneys' fees based on their services in this litigation, not to exceed 30% of the Settlement Funds, may ask to be reimbursed for up to $1,500,000 in current and ongoing litigation expenses, and up to $15,000 in service awards for each of the plaintiffs serving as class representatives. Any payment to the attorneys will be subject to Court approval, and the Court may award less than the requested amount. The attorneys' fees, costs, and expenses that the Court orders, plus the costs to administer the Settlement, will come out of the Settlement Fund. When Class Counsel's motion for fees, costs, and litigation expenses is filed, a copy will be available at www.replacementdevicelawsuit.com. The motion will be posted on the website at least 14 days before the deadline for objecting, commenting on, or excluding yourself from the Settlement. You will have an opportunity to comment on this request.

18. **Should I get my own lawyer?**

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But if you want your own lawyer, you will have to pay that lawyer. If you hire your own lawyer, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you.

THE COURT'S FAIRNESS HEARING

19. **When and where will the Court decide on whether to approve the Settlement?**

The Court will hold a hearing to decide whether to approve the Settlement (the "Fairness Hearing"). You may attend and you may ask to speak, but you don't have to. The Court will hold a Fairness Hearing on _____, 2021, at _____ x.m., at the United States District Court for the Northern District of California, Courtroom 2 – Floor 17, 415 Golden Gate Avenue, San Francisco, CA 94102 (or on another date as may be posted on the Court's public website). At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. You may attend and you may ask to speak, if you make a request as instructed in Section 21, but you don't have to. The Court will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. Pursuant to any applicable orders relating to the COVID-19 emergency or otherwise, the Fairness Hearing may take place remotely, including via telephone or video conference. The Court may also move the Fairness Hearing to a later date without providing additional notice to the Class. Updates will be posted to the Settlement website regarding any changes to the hearing date or conduct of the Fairness Hearing.

20. **Do I have to come to the hearing?**

You do not need to attend the hearing. Class Counsel will answer any questions the Court may have. If you send an objection, you do not have to come to court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary. You or your own lawyer are welcome to come at your own expense.

21. **May I speak at the hearing?**

You may ask to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Vicky Maldonado, et al. v. Apple Inc., et al.*" Be sure to include your name, current mailing address, telephone number, and signature. Your Notice of Intention to Appear must be postmarked no later than _____, 2021, and it must be sent to the Clerk of the Court and Class Counsel. The address for the Clerk of the Court is: 415 Golden Gate Avenue, San Francisco, CA 94102. The address for Class Counsel is provided in Section 16. You cannot ask to speak at the hearing if you excluded yourself from the Class.

GETTING MORE INFORMATION

22. **How do I get more information?**

This notice summarizes the proposed Settlement. For the precise terms and conditions of the settlement, please see the Settlement Agreement available at www.replacementdevicelawsuit.com, by contacting Class Counsel listed above, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.cand.uscourts.gov, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, San Francisco Courthouse, Courtroom 2 - 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

Steve W. Berman (*pro hac vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
Email: steve@hbsslaw.com

Robert B. Carey (*pro hac vice*)
Michella A. Kras (*pro hac vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
11 West Jefferson, Suite 1000
Phoenix, AZ 85003
Telephone: (602) 840-5900
Facsimile: (602) 840-3012
Email: rob@hbsslaw.com
Email: michellak@hbsslaw.com

Attorneys for Plaintiffs

[Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

VICKY MALDONADO AND JUSTIN CARTER, individually and on behalf of themselves and all others similarly situated, Plaintiffs, v. APPLE INC., APPLECARE SERVICE COMPANY, INC., AND APPLE CSC, INC., Defendants.	No. 3:16-cv-04067-WHO Related Case: *English v. Apple Inc. et al.* Case No. 3:14-cv-01619-WHO [PROPOSED] PRELIMINARY APPROVAL ORDER Judge: Hon. William H. Orrick Courtroom: 2, 17th Floor Complaint Filed: July 20, 2016

HAGENS BERMAN
1301 SECOND AVENUE, SUITE 2000 • SEATTLE, WA 98101
(206) 623-7292 • FAX (206) 623-0594

This matter comes before the Court on Plaintiffs' Motion for Preliminary Approval of Class Action Settlement with Defendants and Dissemination of Class Notice ("Motion").

WHEREAS Vicky Maldonado and Justin Carter ("Plaintiffs"), on behalf of themselves and of the previously certified class ("Certified Class"), and Defendants Apple Inc., AppleCare Service Company, Inc., and Apple CSC, Inc. ("Apple") have agreed, subject to Court approval following notice to the Class and a hearing, to settle the above-captioned matter ("Lawsuit") upon the terms set forth in the Parties' Settlement Agreement;

WHEREAS, this Court has reviewed and considered the Settlement Agreement entered into among the parties, together with all exhibits thereto, the record in this case, and the briefs and arguments of counsel;

WHEREAS, Plaintiffs have applied for an order granting preliminary approval of the Settlement Agreement;

WHEREAS, this Court preliminarily finds, for purposes of settlement only, that the action meets all the prerequisites of Rule 23 of the Federal Rules of Civil Procedure;

WHEREAS, all defined terms contained herein shall have the same meanings as set forth in the Settlement Agreement;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court does hereby preliminarily approve the Parties' Settlement Agreement and the settlement set forth therein, subject to further consideration of a hearing (the "Fairness Hearing").

2. The Fairness Hearing shall be held before this Court on _____, at _____ p.m., at the United States District Court, located in Courtroom 2- 17th Floor, at 450 Golden Gate Avenue, San Francisco, CA 94102 (a date no sooner than 90 days following completion of the notice being issued pursuant to 28 U.S.C. § 1711 *et seq.*), to determine whether to approve certification of the class for settlement purposes; whether the proposed settlement of the Lawsuit on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate to the Certified Class and should be approved by the Court; whether a final judgment

HAGENS BERMAN
1301 SECOND AVENUE, SUITE 2000 • SEATTLE, WA 98101
(206) 623-7292 • FAX (206) 623-0594

should be entered herein; whether the proposed plan of distribution should be approved; to determine the amount of fees and expenses that should be awarded to Class Counsel; and to determine the amount of the incentive awards that should be provided to the Class Representatives. The Court may adjourn the Fairness Hearing without further notice to the members of the Certified Class.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court previously certified the Certified Class as follows:

> All individuals who purchased AppleCare or AppleCare+, either directly or through the iPhone Upgrade Program, on or after July 20, 2012, and received a remanufactured replacement Device.

4. The Class period cutoff date is September 30, 2021, the execution date of Settlement Agreement.

5. The Court previously designated Plaintiffs Maldonado and Carter as Class Representatives for the Certified Class.

6. The Court previously designated Hagens Berman Sobol Shapiro LLP as Class Counsel for the Certified Class.

7. The Court approves the form and content the proposed notice forms, including the Email Notice, Postcard Notice, and Long Form Notice, Attachments 1–3 to the Declaration of Cameron Azari. The Court further finds that the proposed plan of notice, and the proposed contents of these notices, meet the requirements of Rule 23 and due process, and are the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

8. The Court appoints the firm of Epiq Class Action & Claims Solutions, Inc., along with Epiq's Notice business unit, Hilsoft Notifications, as the Settlement Administrator. Plaintiffs and their designees, including the Settlement Administrator, are authorized to expend funds from the escrow accounts to pay taxes, tax expenses, notice, and administration costs as set forth in the Settlement Agreement. The Court appoints the Settlement Administrator to supervise and

administer the notice procedure, as well as distribution of the settlement funds, as more fully set forth below:

a. No later than _____, the Settlement Administrator shall cause the full version of the Settlement Agreement and the Preliminary Approval Order to be published on a public website;

b. Beginning no later than 30 days following Epiq's receipt of final and approved Class member contact data (the "Notice Date"), the Settlement Administrator shall begin issuing direct notice by email to all Certified Class members for whom there is a valid email address, substantially in the form attached as Attachment 1 to the Declaration of Cameron Azari and direct notice by first class U.S. mail to all Certified Class members for whom there are no email addresses, but whose mailing addresses can be identified with reasonable effort, substantially in the form attached as Attachment 2 to the Declaration of Cameron Azari;

9. All members of the Certified Class shall be bound by all determinations and judgments in the Lawsuit concerning the settlement, whether favorable or unfavorable to the Certified Class.

10. Class Counsel shall file their motion for attorneys' fees, costs, and service awards for Class Representatives, and all supporting documentation and papers, by _____, or thirty-five days before the deadline for exclusions and objections.

11. Any person who desires to request exclusion from the Certified Class who was not previously given the opportunity to request exclusion shall do so within 60 days of the Notice Date. To be excluded from the Settlement, the completed exclusion form must be received no later than 60 days after the Notice Date. All persons who either: (a) previously submitted valid and timely requests for exclusion or, (b) who were not previously given the opportunity to request exclusion and submit valid and timely requests for exclusion, shall have no rights under the Settlement Agreement, shall not share in the distribution of the settlement funds, and shall not be bound by the final judgment relating to the defendants entered in the litigation.

12. Any member of the Certified Class may enter an appearance in the litigation, at his or her own expense, individually or through counsel of his or her own choice. If the member does not enter an appearance, he or she will be represented by Class Counsel.

13. Any member of the Certified Class may appear and show cause, if he or she has any reason, why the proposed settlement should or should not be approved as fair, reasonable, and adequate; why a judgment should or should not be entered thereon; why the plan of distribution should or should not be approved; why attorneys' fees and expenses should or should not be awarded to Class Counsel; or why the incentive awards should or should not be awarded to Class Representatives. All written objections and supporting papers must (a) clearly identify the case name and number (*Maldonado, et al. v. Apple Inc., et al.*, No. 3:16-cv-04067-WHO), (b) be submitted to the Court either by mailing to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California, with a copy to Class Counsel and (c) be filed or postmarked on or before _____.

14. All papers in support of the settlement and responses by Class Counsel regarding objections and exclusions shall be filed and served by _____.

15. All reasonable expenses incurred in identifying and notifying members of the Certified Class, as well as administering the Settlement Fund, shall be paid for as set forth in the Settlement Agreement.

16. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Plaintiffs or Apple of the truth or falsity of any of the allegations in the Lawsuit, or of any liability, fault or wrongdoing of any kind.

17. All members of the Certified Class are temporarily barred and enjoined from instituting or continuing the prosecution of any action asserting the claims released in the proposed settlement, until the Court enters final judgment with respect to the fairness, reasonableness, and adequacy of the settlement.

IT IS SO ORDERED.

DATED: _____

_____
HONORABLE WILLIAM H. ORRICK
UNITED STATES DISTRICT JUDGE