

1 JOSEPH W. COTCHETT, SBN 36324
jcotchett@cpmlegal.com
2 MARK C. MOLUMPHY, SBN 168009
mmolumphy@cpmlegal.com
3 COTCHETT, PITRE & McCARTHY LLP
840 Malcolm Road, Suite 200
4 Burlingame, CA 94010
Telephone: 650.697.6000
5 Facsimile: 650.697.0577

6 LAURENCE D. KING, SBN 206243
lking@kaplanfox.com
7 FREDERIC FOX, SBN (pro hac vice)
ffox@kaplanfox.com
8 DONALD R. HALL (pro hac vice)
dhall@kaplanfox.com
9 KAPLAN FOX & KILSHEIMER LLP
1999 Harrison Street, Suite 1560
10 Oakland, CA 94612
Telephone: 415.772.4700
11 Facsimile: 415.772.4707

THEODORE J. BOUTROUS, JR., SBN 132099
tboutrous@gibsondunn.com
RICHARD J. DOREN, SBN 124666
rdoren@gibsondunn.com
CHRISTOPHER CHORBA, SBN 216692
cchorba@gibsondunn.com
DIANA M. FEINSTEIN, SBN 302626
dfeinstein@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: 213.229.7000
Facsimile: 213.229.7520

WESLEY SZE, SBN 306715
wsze@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1881 Page Mill Road
Palo Alto, CA 94304
Telephone: 650.849.5300
Facsimile: 650.849.5333

12 *Interim Co-Lead Counsel for Plaintiffs*

Attorneys for Defendant Apple Inc.

13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN JOSE DIVISION**

17 IN RE: APPLE INC. DEVICE
18 PERFORMANCE LITIGATION

Case No. 5:18-md-2827-EJD

PUTATIVE CLASS ACTION

19
20 This Document Relates to:

21 ALL ACTIONS

22 **JOINT NOTICE OF [AMENDED
23 PROPOSED] ORDER GRANTING FINAL
24 APPROVAL OF CLASS ACTION
25 SETTLEMENT AND [AMENDED
26 PROPOSED] JUDGMENT**

27 Judge: Hon. Edward J. Davila
28 Courtroom: 4, Fifth Floor
Date: December 4, 2020
Time: 10:00 a.m.

1 **TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that Plaintiffs and Apple Inc., by and through their undersigned
 3 counsel, hereby provide the Court with an [Amended Proposed] Order Granting Final Approval of
 4 Class Action Settlement (originally filed at Dkt. 416-5) and an [Amended Proposed] Judgment
 5 (originally filed at Dkt. 416-6), which are attached as **Exhibit A** and **Exhibit B**, respectively. A redline
 6 of the revisions to the proposed orders is attached as **Exhibit C**.

7 Pursuant to the Stipulation of Settlement, the Parties agreed that “the Settlement shall terminate
 8 the MDL Action.” (Dkt. 416 ¶ 10.1.) “MDL Action” includes all actions that were consolidated into
 9 the MDL, including the action captioned *Corporación Nacional de Consumidores y Usuarios de Chile*
 10 *v. Apple Inc.*, No. 3:18-cv-2527 (N.D. Cal.). (*Id.* ¶ 1.1.2 & App’x A.) However, because the plaintiff
 11 in that action, Corporación Nacional de Consumidores y Usuarios de Chile (“Conadecus”), is a non-
 12 U.S. entity that did not execute the Settlement Agreement, Conadecus is not a Named Plaintiff (as
 13 defined in paragraph 1.20 of the Settlement Agreement) and the releases set forth in the Settlement
 14 Agreement do not apply to Conadecus. Nevertheless, when Conadecus did not sign the Settlement
 15 Agreement, the parties expressly agreed that “the Settlement shall terminate the MDL Action.” (Dkt.
 16 416 ¶ 10.1.) The parties therefore submit the attached amended proposed orders, which contain minor
 17 revisions to clarify that the Settlement Agreement does not release Conadecus’s claims, if any, against
 18 Apple.

19 Co-lead Plaintiffs’ Counsel, counsel for Conadecus, and counsel for Apple are conferring
 20 regarding the effect of the termination of the MDL Action on Conadecus’s individual action, including
 21 regarding Conadecus’s claim that it is entitled to protected discovery materials that were produced in
 22 the MDL Action. Apple and Conadecus expressly reserve all rights, and the amendments to the
 23 proposed orders are intended to clarify that the final approval of the MDL settlement and final judgment
 24 will not release Conadecus’s claims, if any, against Apple, but that the MDL Action will be terminated.
 25 Counsel for Conadecus and counsel for Apple intend to file a joint status report in the Conadecus
 26 individual action within thirty (30) days of entry of the Court’s final approval of the MDL settlement
 27 and final judgment. Apple reserves all rights to move to dismiss Conadecus’s individual action on all
 28 available grounds, including but not limited to lack of Article III standing, forum non-conveniens,

1 comity, and failure to state a claim, and to object to its counsel based on alleged conflict of interest.
2 (*See, e.g.*, Dkt. 522 at 23.) Conadecus reserves all rights to oppose any motions to dismiss or objections
3 to its counsel.

4 Dated: November 20, 2020

COTCHETT, PITRE & McCARTHY LLP

5 By: /s/ Joseph W. Cotchett
6 Joseph W. Cotchett

7 Dated: November 20, 2020

KAPLAN FOX & KILSHEIMER LLP

8 By: /s/ Laurence D. King
9 Laurence D. King

10 *Co-Lead Counsel for Plaintiffs*

11 Dated: November 20, 2020

GIBSON, DUNN & CRUTCHER LLP

12 By: /s/ Christopher Chorba
13 Christopher Chorba

14 *Attorneys for Defendant*
15 *Apple Inc.*

16 * * *

17 **ECF ATTESTATION**

18 I, Laurence D. King, hereby attest that the concurrence in the filing of this document has been
19 obtained from the above signatories.

20 Dated: November 20, 2020

 /s/ Laurence D. King
21 Laurence D. King

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EXHIBIT A

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SAN JOSE DIVISION

IN RE: APPLE INC. DEVICE
PERFORMANCE LITIGATION

Case No. 5:18-md-02827-EJD

CLASS ACTION

This Document Relates To:

ALL ACTIONS.

**[AMENDED PROPOSED] ORDER
GRANTING FINAL APPROVAL OF CLASS
ACTION SETTLEMENT; AWARDING
ATTORNEYS' FEES, EXPENSES, AND
NAMED PLAINTIFF SERVICE AWARDS;
AND ENTERING FINAL JUDGMENT**

1 **WHEREAS**, the Court held a Final Hearing to consider approval of this class action settlement
2 on _____, 2020. The Court has considered the Settlement Agreement (Dkt. 416), the
3 record in the MDL Action, and the Parties’ arguments and authorities.

4 **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED AS FOLLOWS:**

5 1. For purposes of this Order, the Court adopts the terms and definitions set forth in the
6 Settlement Agreement.

7 2. The Court has jurisdiction over the subject matter of the MDL Action, the Named
8 Plaintiffs, the Settlement Class Members, and Defendant Apple Inc.

9 3. The Court finds that the Class Notice constituted the best notice practicable under the
10 circumstances to all Settlement Class Members and fully complied with the requirements of Federal
11 Rule of Civil Procedure 23 and due process

12 4. The Court finds that, for purposes of the Settlement only, all prerequisites for
13 maintenance of a class action set forth in Federal Rules of Civil Procedure 23(a) and (b)(3) are satisfied.
14 The Court certifies the following Settlement Class for purposes of Settlement only:

15 *All former or current U.S. owners of iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and SE*
16 *devices running iOS 10.2.1 or later (for iPhone 6, 6 Plus, 6s, 6s Plus, and SE devices)*
17 *or iOS 11.2 or later (for iPhone 7 and 7 Plus devices), and who ran these iOS versions*
before December 21, 2017.

18 For purposes of this definition, “U.S. owners” shall include all individuals who owned, purchased,
19 leased, or otherwise received an eligible device, and individuals who otherwise used an eligible device
20 for personal, work, or any other purposes. An individual qualifies as a “U.S. owner” if his or her device
21 was shipped to the United States, its territories, and/or its possessions. The Settlement Class shall not
22 include iPhone owners who are domiciled outside of the United States, its territories, and/or its
23 possessions. Additionally, excluded from the Settlement Class are (a) directors, officers, and employees
24 of Apple or its subsidiaries and affiliated companies, as well as Apple’s legal representatives, heirs,
25 successors, or assigns, (b) the Court, the Court staff, as well as any appellate court to which this matter
26 is ever assigned and its staff, (c) any of the individuals identified in paragraph 1.36 of the Settlement
27 Agreement, as well as their legal representatives, heirs, successors, or assigns, (d) Defense Counsel, as
28 well as their immediate family members, legal representatives, heirs, successors, or assigns, and (e)

1 any other individuals whose claims already have been adjudicated to a final judgment. Also excluded
2 from the Settlement Class are those individuals who timely and validly request exclusion.

3 5. Pursuant to Federal Rule of Civil Procedure 23(e), the Court hereby grants final
4 approval of the Settlement and finds that the Settlement is fair, reasonable, and adequate and in the best
5 interests of the Settlement Class Members based on the following factors, among other things:

6 a) There is no fraud or collusion underlying this Settlement, and it was reached as a result
7 of extensive arm's-length negotiations, occurring over the course of several months and
8 several mediation sessions with a respected mediator, warranting a presumption in favor
9 of approval. *See, e.g., Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th
10 Cir. 1982); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir.
11 2011) (presence of a neutral mediator is a factor weighing in favor of a finding of
12 noncollusiveness).

13 b) The complexity, expense, and likely duration of the litigation favor settlement—which
14 provides meaningful benefits on a much shorter time frame than otherwise possible—
15 on behalf of the Settlement Class Members. *See, e.g., Lane v. Facebook, Inc.*, 696 F.3d
16 811, 820 (9th Cir. 2012) (affirming the district court's approval of a settlement where
17 class counsel "reasonably concluded that the immediate benefits represented by the
18 Settlement outweighed the possibility—perhaps remote—of obtaining a better result at
19 trial"); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (the Ninth
20 Circuit has a "strong judicial policy that favors settlements, particularly where complex
21 class action litigation is concerned"). Based on the stage of the proceedings and the
22 amount of investigation and discovery completed, the Parties have developed a
23 sufficient factual record to evaluate their chances of success at trial and the proposed
24 Settlement.

25 c) The support of Class Counsel and the Named Plaintiffs, who have participated in this
26 litigation and evaluated the proposed Settlement, also favor final approval. *See Class*
27 *Plaintiffs*, 955 F.2d at 1294; *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal.
28 1979).

1 d) The Settlement provides meaningful relief to the Class, including cash relief, and
2 certainly falls within the range of possible recoveries by the Settlement Class Members.

3 6. As of the Effective Date, the Settlement Class Members and their respective heirs,
4 executors, administrators, representatives, agents, partners, successors, and assigns shall have fully,
5 finally, and forever released, relinquished, and discharged any and all past, present, and future claims,
6 actions, demands, causes of action, suits, debts, obligations, damages, rights and liabilities, that were
7 brought, could have been brought, or are related to the same facts underlying the claims asserted in the
8 Actions regarding the iPhone devices at issue, known or unknown, recognized now or hereafter,
9 existing or preexisting, expected or unexpected, pursuant to any theory of recovery (including, but not
10 limited to, those based in contract or tort, common law or equity, federal, state, territorial, or local law,
11 statute, ordinance, or regulation), against the Released Parties, for any type of relief that can be released
12 as a matter of law, including, without limitation, claims for monetary relief, damages (whether
13 compensatory, consequential, punitive, exemplary, liquidated, and/or statutory), costs, penalties,
14 interest, attorneys' fees, litigation costs, restitution, or equitable relief. Accordingly, the Settlement
15 shall terminate the MDL Action. Notwithstanding the foregoing, the release shall not include any
16 claims relating to the continued enforcement of the Settlement or the Protective Orders.

17 7. As of the Effective Date, the Named Plaintiffs (including the non-U.S. Named
18 Plaintiffs) and their respective heirs, executors, administrators, representatives, agents, partners,
19 successors, and assigns shall have fully, finally, and forever released, relinquished, and discharged any
20 and all past, present, and future claims, actions, demands, causes of action, suits, debts, obligations,
21 damages, rights and liabilities, that were brought, could have been brought, or are related to the same
22 facts underlying the claims asserted in the Actions regarding the iPhone devices at issue, known or
23 unknown, recognized now or hereafter, existing or preexisting, expected or unexpected, pursuant to
24 any theory of recovery (including, but not limited to, those based in contract or tort, common law or
25 equity, federal, state, territorial, or local law, statute, ordinance, or regulation), against the Released
26 Parties, for any type of relief that can be released as a matter of law, including, without limitation,
27 claims for monetary relief, damages (whether compensatory, consequential, punitive, exemplary,
28 liquidated, and/or statutory), costs, penalties, interest, attorneys' fees, litigation costs, restitution, or

1 equitable relief. Class Counsel and non-U.S. Named Plaintiffs hereby represent and warrant that the
2 non-U.S. Named Plaintiffs have the capacity to execute such a release under the applicable laws of
3 their respective jurisdictions. Notwithstanding the foregoing, the release shall not include any claims
4 relating to the continued enforcement of the Settlement or the Protective Orders.

5 8. As of the Effective Date, Apple shall have fully, finally, and forever released,
6 relinquished, and discharged all claims of abuse of process, malicious prosecution, violations of Federal
7 Rule of Civil Procedure 11, and any other claims arising out of the initiation or prosecution of the MDL
8 Action that are known to Apple as of the Effective Date, against the Named Plaintiffs, Class Counsel,
9 and Plaintiffs' Executive Committee and Plaintiffs' Steering Committee pursuant to the Order
10 Consolidating Related Actions and Appointing Interim Co-Lead Plaintiffs' Counsel and Executive and
11 Steering Committees (Dkt. 100). Notwithstanding the foregoing, this release shall not include any
12 future claims relating to the continued enforcement of the Settlement, the Protective Orders, and all
13 orders construing the Stipulated Protective Order, including but not limited to Dkt. 350. This release
14 does not constitute a general release.

15 9. As of the Effective Date, the Settlement Class Members and the Named Plaintiffs shall
16 have fully, finally, and forever released, relinquished, and discharged all claims of abuse of process,
17 malicious prosecution, violations of Federal Rule of Civil Procedure 11, and any other claims arising
18 out of the defense of the MDL Action that are known to the Settlement Class Members and/or the
19 Named Plaintiffs as of the Effective Date, against Apple's attorneys, legal representatives, and
20 advisors, including Defense Counsel. Notwithstanding the foregoing, this release shall not include any
21 future claims relating to the continued enforcement of the Settlement, the Protective Orders, and all
22 orders construing the Stipulated Protective Order, including but not limited to Dkt. 350. This release
23 does not constitute a general release.

24 10. The individuals identified in Exhibit A hereto timely and validly requested exclusion
25 from the Settlement Class. These individuals shall not share in the monetary benefits of the Settlement,
26 and this Order does not affect their legal rights to pursue any claims they may have against Apple.

27 11. The Court finds that an award of attorneys' fees and expenses in the total amount of
28 \$ _____ to Class Counsel is fair and reasonable and therefore approves such award. Class

1 Counsel shall distribute the awarded attorneys' fees and expenses among Plaintiffs' Counsel as
2 Plaintiffs' Interim Co-Lead Counsel appointed by the Court (Dkt. 100) shall determine in their sole
3 discretion based on each attorney's contributions to the prosecution and settlement of these Actions.
4 No other counsel will be entitled to an independent award of attorneys' fees or expenses.

5 12. The Court finds that the payment of Named Plaintiff Service Awards is fair and
6 reasonable and therefore approves such payment as follows: _____.

7 13. The MDL Action, including all actions consolidated into the MDL Action and all claims
8 asserted in the actions, are settled and dismissed on the merits with prejudice (with the exception of the
9 claims asserted in *Corporación Nacional de Consumidores y Usuarios De Chile v. Apple, Inc.*, Case
10 No. 5:18-cv-02527-EJD, which are not settled or dismissed with prejudice).

11 14. Consummation of the Settlement shall proceed as described in the Settlement
12 Agreement, and the Court reserves jurisdiction over the subject matter and each Party to the Settlement
13 with respect to the interpretation and implementation of the Settlement for all purposes, including
14 enforcement of any of the terms thereof at the instance of any Party and resolution of any disputes that
15 may arise relating to the implementation of the Settlement or this Order.

16 15. Without affecting the finality of this Order in any way, the Court shall retain jurisdiction
17 over this Action, the Named Plaintiffs, the Settlement Class Members, and Apple to enforce the terms
18 of the Settlement, the Court's order preliminarily certifying the class (Dkt. 429), and this Order. In the
19 event that any applications for relief are made, such applications shall be made to the Court. To avoid
20 doubt, the Final Judgment applies to and is binding upon the Parties, the Settlement Class Members,
21 and their respective heirs, successors, and assigns.

22 16. The Settlement and this Order are not admissions of liability or fault by Apple or the
23 Released Parties, or a finding of the validity of any claims in the Actions or of any wrongdoing or
24 violation of law by Apple or the Released Parties. To the extent permitted by law, neither this Order,
25 nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall
26 be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative
27 action or proceeding to establish any liability of, or admission by, the Released Parties.
28 Notwithstanding the foregoing, nothing in this Order shall be interpreted to prohibit the use of this

1 Order in a proceeding to consummate or enforce the Settlement or this Order, or to defend against the
2 assertion of released claims in any other proceeding, or as otherwise required by law.

3 **IT IS SO ORDERED.**

4
5 Dated: _____, 202__

6 _____
7 Hon. Edward J. Davila
8 United States District Court
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EXHIBIT B

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE: APPLE INC. DEVICE
PERFORMANCE LITIGATION

Case No. 5:18-md-02827-EJD

CLASS ACTION

This Document Relates To:

ALL ACTIONS.

[AMENDED PROPOSED] JUDGMENT

1 On _____, the Court signed and entered its Order Granting Final Approval of
2 Class Action Settlement and Awarding Attorneys' Fees, Expenses, and Named Plaintiff Service
3 Awards (Dkt. ___) (the "Final Approval Order") in the above-captioned matter as to the following class
4 of persons:

5 *All former or current U.S. owners of iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and SE*
6 *devices running iOS 10.2.1 or later (for iPhone 6, 6 Plus, 6s, 6s Plus, and SE devices)*
7 *or iOS 11.2 or later (for iPhone 7 and 7 Plus devices), and who ran these iOS versions*
8 *before December 21, 2017.*

9 **JUDGMENT IS HEREBY ENTERED**, pursuant to Federal Rule of Civil Procedure 58, as to the
10 specified class of persons (excluding the individuals who validly and timely requested exclusion from
11 the Settlement Class, as identified in Exhibit ___ to the Final Approval Order), the Named Plaintiffs,
12 and Defendant Apple Inc. on the terms and conditions of the Settlement Agreement approved by the
13 Court's Final Approval Order.

14 1. For purposes of this Order, the Court adopts the terms and definitions set forth in the
15 Settlement Agreement.

16 2. Payments to Settlement Class Members under the Settlement Agreement shall be made
17 as outlined in the Final Approval Order and Settlement Agreement.

18 3. As of the Effective Date, the Settlement Class Members and their respective heirs,
19 executors, administrators, representatives, agents, partners, successors, and assigns shall have fully,
20 finally, and forever released, relinquished, and discharged any and all past, present, and future claims,
21 actions, demands, causes of action, suits, debts, obligations, damages, rights and liabilities, that were
22 brought, could have been brought, or are related to the same facts underlying the claims asserted in the
23 Actions regarding the iPhone devices at issue, known or unknown, recognized now or hereafter,
24 existing or preexisting, expected or unexpected, pursuant to any theory of recovery (including, but not
25 limited to, those based in contract or tort, common law or equity, federal, state, territorial, or local law,
26 statute, ordinance, or regulation), against the Released Parties, for any type of relief that can be released
27 as a matter of law, including, without limitation, claims for monetary relief, damages (whether
28 compensatory, consequential, punitive, exemplary, liquidated, and/or statutory), costs, penalties,
interest, attorneys' fees, litigation costs, restitution, or equitable relief. Accordingly, the Settlement

1 shall terminate the MDL Action. Notwithstanding the foregoing, the release shall not include any
2 claims relating to the continued enforcement of the Settlement or the Protective Orders.

3 4. As of the Effective Date, the Named Plaintiffs (including the non-U.S. Named
4 Plaintiffs) and their respective heirs, executors, administrators, representatives, agents, partners,
5 successors, and assigns shall have fully, finally, and forever released, relinquished, and discharged any
6 and all past, present, and future claims, actions, demands, causes of action, suits, debts, obligations,
7 damages, rights and liabilities, that were brought, could have been brought, or are related to the same
8 facts underlying the claims asserted in the Actions regarding the iPhone devices at issue, known or
9 unknown, recognized now or hereafter, existing or preexisting, expected or unexpected, pursuant to
10 any theory of recovery (including, but not limited to, those based in contract or tort, common law or
11 equity, federal, state, territorial, or local law, statute, ordinance, or regulation), against the Released
12 Parties, for any type of relief that can be released as a matter of law, including, without limitation,
13 claims for monetary relief, damages (whether compensatory, consequential, punitive, exemplary,
14 liquidated, and/or statutory), costs, penalties, interest, attorneys' fees, litigation costs, restitution, or
15 equitable relief. Class Counsel and non-U.S. Named Plaintiffs hereby represent and warrant that the
16 non-U.S. Named Plaintiffs have the capacity to execute such a release under the applicable laws of
17 their respective jurisdictions. Notwithstanding the foregoing, the release shall not include any claims
18 relating to the continued enforcement of the Settlement or the Protective Orders.

19 5. As of the Effective Date, Apple shall have fully, finally, and forever released,
20 relinquished, and discharged all claims of abuse of process, malicious prosecution, violations of Federal
21 Rule of Civil Procedure 11, and any other claims arising out of the initiation or prosecution of the MDL
22 Action that are known to Apple as of the Effective Date, against the Named Plaintiffs, Class Counsel,
23 and Plaintiffs' Executive Committee and Plaintiffs' Steering Committee pursuant to the Order
24 Consolidating Related Actions and Appointing Interim Co-Lead Plaintiffs' Counsel and Executive and
25 Steering Committees (Dkt. 100). Notwithstanding the foregoing, this release shall not include any
26 future claims relating to the continued enforcement of the Settlement, the Protective Orders, and all
27 orders construing the Stipulated Protective Order, including but not limited to Dkt. 350. This release
28 does not constitute a general release.

1 6. As of the Effective Date, the Settlement Class Members and the Named Plaintiffs shall
2 have fully, finally, and forever released, relinquished, and discharged all claims of abuse of process,
3 malicious prosecution, violations of Federal Rule of Civil Procedure 11, and any other claims arising
4 out of the defense of the MDL Action that are known to the Settlement Class Members and/or the
5 Named Plaintiffs as of the Effective Date, against Apple’s attorneys, legal representatives, and
6 advisors, including Defense Counsel. Notwithstanding the foregoing, this release shall not include any
7 future claims relating to the continued enforcement of the Settlement, the Protective Orders, and all
8 orders construing the Stipulated Protective Order, including but not limited to Dkt. 350. This release
9 does not constitute a general release.

10 7. The MDL Action, including all actions consolidated into the MDL Action and all claims
11 asserted in the actions, are settled and dismissed on the merits with prejudice (with the exception of the
12 claims asserted in *Corporación Nacional de Consumidores y Usuarios De Chile v. Apple, Inc.*, Case
13 No. 5:18-cv-02527-EJD, which are not settled or dismissed with prejudice).

14
15 **JUDGMENT APPROVED AS TO FORM:**

16
17 _____
18 Hon. Edward J. Davila
19 United States District Court

20 **JUDGMENT ENTERED:** _____, 202__

21 By: CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
22 OF CALIFORNIA
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EXHIBIT C

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE: APPLE INC. DEVICE
PERFORMANCE LITIGATION

Case No. 5:18-md-02827-EJD

CLASS ACTION

This Document Relates To:

ALL ACTIONS.

**[AMENDED PROPOSED] ORDER
GRANTING FINAL APPROVAL OF CLASS
ACTION SETTLEMENT; AWARDING
ATTORNEYS' FEES, EXPENSES, AND
NAMED PLAINTIFF SERVICE AWARDS;
AND ENTERING FINAL JUDGMENT**

1 **WHEREAS**, the Court held a Final Hearing to consider approval of this class action settlement
2 on _____, 2020. The Court has considered the Settlement Agreement (Dkt. 416), the
3 record in the MDL Action, and the Parties’ arguments and authorities.

4 **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED AS FOLLOWS:**

5 8. For purposes of this Order, the Court adopts the terms and definitions set forth in the
6 Settlement Agreement.

7 9. The Court has jurisdiction over the subject matter of the MDL Action, the Named
8 Plaintiffs, the Settlement Class Members, and Defendant Apple Inc.

9 10. The Court finds that the Class Notice constituted the best notice practicable under the
10 circumstances to all Settlement Class Members and fully complied with the requirements of Federal
11 Rule of Civil Procedure 23 and due process

12 11. The Court finds that, for purposes of the Settlement only, all prerequisites for
13 maintenance of a class action set forth in Federal Rules of Civil Procedure 23(a) and (b)(3) are satisfied.
14 The Court certifies the following Settlement Class for purposes of Settlement only:

15 *All former or current U.S. owners of iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and SE*
16 *devices running iOS 10.2.1 or later (for iPhone 6, 6 Plus, 6s, 6s Plus, and SE devices)*
17 *or iOS 11.2 or later (for iPhone 7 and 7 Plus devices), and who ran these iOS versions*
before December 21, 2017.

18 For purposes of this definition, “U.S. owners” shall include all individuals who owned, purchased,
19 leased, or otherwise received an eligible device, and individuals who otherwise used an eligible device
20 for personal, work, or any other purposes. An individual qualifies as a “U.S. owner” if his or her device
21 was shipped to the United States, its territories, and/or its possessions. The Settlement Class shall not
22 include iPhone owners who are domiciled outside of the United States, its territories, and/or its
23 possessions. Additionally, excluded from the Settlement Class are (a) directors, officers, and employees
24 of Apple or its subsidiaries and affiliated companies, as well as Apple’s legal representatives, heirs,
25 successors, or assigns, (b) the Court, the Court staff, as well as any appellate court to which this matter
26 is ever assigned and its staff, (c) any of the individuals identified in paragraph 1.36 of the Settlement
27 Agreement, as well as their legal representatives, heirs, successors, or assigns, (d) Defense Counsel, as
28 well as their immediate family members, legal representatives, heirs, successors, or assigns, and (e)

1 any other individuals whose claims already have been adjudicated to a final judgment. Also excluded
2 from the Settlement Class are those individuals who timely and validly request exclusion.

3 12. Pursuant to Federal Rule of Civil Procedure 23(e), the Court hereby grants final
4 approval of the Settlement and finds that the Settlement is fair, reasonable, and adequate and in the best
5 interests of the Settlement Class Members based on the following factors, among other things:

6 e) There is no fraud or collusion underlying this Settlement, and it was reached as a result
7 of extensive arm's-length negotiations, occurring over the course of several months and
8 several mediation sessions with a respected mediator, warranting a presumption in favor
9 of approval. *See, e.g., Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th
10 Cir. 1982); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir.
11 2011) (presence of a neutral mediator is a factor weighing in favor of a finding of
12 noncollusiveness).

13 f) The complexity, expense, and likely duration of the litigation favor settlement—which
14 provides meaningful benefits on a much shorter time frame than otherwise possible—
15 on behalf of the Settlement Class Members. *See, e.g., Lane v. Facebook, Inc.*, 696 F.3d
16 811, 820 (9th Cir. 2012) (affirming the district court's approval of a settlement where
17 class counsel "reasonably concluded that the immediate benefits represented by the
18 Settlement outweighed the possibility—perhaps remote—of obtaining a better result at
19 trial"); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (the Ninth
20 Circuit has a "strong judicial policy that favors settlements, particularly where complex
21 class action litigation is concerned"). Based on the stage of the proceedings and the
22 amount of investigation and discovery completed, the Parties have developed a
23 sufficient factual record to evaluate their chances of success at trial and the proposed
24 Settlement.

25 g) The support of Class Counsel and the Named Plaintiffs, who have participated in this
26 litigation and evaluated the proposed Settlement, also favor final approval. *See Class*
27 *Plaintiffs*, 955 F.2d at 1294; *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal.
28 1979).

1 h) The Settlement provides meaningful relief to the Class, including cash relief, and
2 certainly falls within the range of possible recoveries by the Settlement Class Members.

3 13. As of the Effective Date, the Settlement Class Members and their respective heirs,
4 executors, administrators, representatives, agents, partners, successors, and assigns shall have fully,
5 finally, and forever released, relinquished, and discharged any and all past, present, and future claims,
6 actions, demands, causes of action, suits, debts, obligations, damages, rights and liabilities, that were
7 brought, could have been brought, or are related to the same facts underlying the claims asserted in the
8 Actions regarding the iPhone devices at issue, known or unknown, recognized now or hereafter,
9 existing or preexisting, expected or unexpected, pursuant to any theory of recovery (including, but not
10 limited to, those based in contract or tort, common law or equity, federal, state, territorial, or local law,
11 statute, ordinance, or regulation), against the Released Parties, for any type of relief that can be released
12 as a matter of law, including, without limitation, claims for monetary relief, damages (whether
13 compensatory, consequential, punitive, exemplary, liquidated, and/or statutory), costs, penalties,
14 interest, attorneys' fees, litigation costs, restitution, or equitable relief. Accordingly, the Settlement
15 shall terminate the MDL Action. Notwithstanding the foregoing, the release shall not include any
16 claims relating to the continued enforcement of the Settlement or the Protective Orders.

17 14. As of the Effective Date, the Named Plaintiffs (including the non-U.S. Named
18 Plaintiffs) and their respective heirs, executors, administrators, representatives, agents, partners,
19 successors, and assigns shall have fully, finally, and forever released, relinquished, and discharged any
20 and all past, present, and future claims, actions, demands, causes of action, suits, debts, obligations,
21 damages, rights and liabilities, that were brought, could have been brought, or are related to the same
22 facts underlying the claims asserted in the Actions regarding the iPhone devices at issue, known or
23 unknown, recognized now or hereafter, existing or preexisting, expected or unexpected, pursuant to
24 any theory of recovery (including, but not limited to, those based in contract or tort, common law or
25 equity, federal, state, territorial, or local law, statute, ordinance, or regulation), against the Released
26 Parties, for any type of relief that can be released as a matter of law, including, without limitation,
27 claims for monetary relief, damages (whether compensatory, consequential, punitive, exemplary,
28 liquidated, and/or statutory), costs, penalties, interest, attorneys' fees, litigation costs, restitution, or

1 equitable relief. Class Counsel and non-U.S. Named Plaintiffs hereby represent and warrant that the
2 non-U.S. Named Plaintiffs have the capacity to execute such a release under the applicable laws of
3 their respective jurisdictions. Notwithstanding the foregoing, the release shall not include any claims
4 relating to the continued enforcement of the Settlement or the Protective Orders.

5 15. As of the Effective Date, Apple shall have fully, finally, and forever released,
6 relinquished, and discharged all claims of abuse of process, malicious prosecution, violations of Federal
7 Rule of Civil Procedure 11, and any other claims arising out of the initiation or prosecution of the MDL
8 Action that are known to Apple as of the Effective Date, against the Named Plaintiffs, Class Counsel,
9 and Plaintiffs' Executive Committee and Plaintiffs' Steering Committee pursuant to the Order
10 Consolidating Related Actions and Appointing Interim Co-Lead Plaintiffs' Counsel and Executive and
11 Steering Committees (Dkt. 100). Notwithstanding the foregoing, this release shall not include any
12 future claims relating to the continued enforcement of the Settlement, the Protective Orders, and all
13 orders construing the Stipulated Protective Order, including but not limited to Dkt. 350. This release
14 does not constitute a general release.

15 16. As of the Effective Date, the Settlement Class Members and the Named Plaintiffs shall
16 have fully, finally, and forever released, relinquished, and discharged all claims of abuse of process,
17 malicious prosecution, violations of Federal Rule of Civil Procedure 11, and any other claims arising
18 out of the defense of the MDL Action that are known to the Settlement Class Members and/or the
19 Named Plaintiffs as of the Effective Date, against Apple's attorneys, legal representatives, and
20 advisors, including Defense Counsel. Notwithstanding the foregoing, this release shall not include any
21 future claims relating to the continued enforcement of the Settlement, the Protective Orders, and all
22 orders construing the Stipulated Protective Order, including but not limited to Dkt. 350. This release
23 does not constitute a general release.

24 17. The individuals identified in Exhibit A hereto timely and validly requested exclusion
25 from the Settlement Class. These individuals shall not share in the monetary benefits of the Settlement,
26 and this Order does not affect their legal rights to pursue any claims they may have against Apple.

27 18. The Court finds that an award of attorneys' fees and expenses in the total amount of
28 \$ _____ to Class Counsel is fair and reasonable and therefore approves such award. Class

1 Counsel shall distribute the awarded attorneys' fees and expenses among Plaintiffs' Counsel as
2 Plaintiffs' Interim Co-Lead Counsel appointed by the Court (Dkt. 100) shall determine in their sole
3 discretion based on each attorney's contributions to the prosecution and settlement of these Actions.
4 No other counsel will be entitled to an independent award of attorneys' fees or expenses.

5 19. The Court finds that the payment of Named Plaintiff Service Awards is fair and
6 reasonable and therefore approves such payment as follows: _____.

7 20. The MDL Action, including all actions consolidated into the MDL Action and all claims
8 asserted in the actions, are settled and dismissed on the merits with prejudice (with the exception of the
9 claims asserted in *Corporación Nacional de Consumidores y Usuarios De Chile v. Apple, Inc.*, Case
10 No. 5:18-cv-02527-EJD, which are not settled or dismissed with prejudice).

11 21. Consummation of the Settlement shall proceed as described in the Settlement
12 Agreement, and the Court reserves jurisdiction over the subject matter and each Party to the Settlement
13 with respect to the interpretation and implementation of the Settlement for all purposes, including
14 enforcement of any of the terms thereof at the instance of any Party and resolution of any disputes that
15 may arise relating to the implementation of the Settlement or this Order.

16 22. Without affecting the finality of this Order in any way, the Court shall retain jurisdiction
17 over this Action, the Named Plaintiffs, the Settlement Class Members, and Apple to enforce the terms
18 of the Settlement, the Court's order preliminarily certifying the class (Dkt. —429), and this Order. In
19 the event that any applications for relief are made, such applications shall be made to the Court. To
20 avoid doubt, the Final Judgment applies to and is binding upon the Parties, the Settlement Class
21 Members, and their respective heirs, successors, and assigns.

22 23. The Settlement and this Order are not admissions of liability or fault by Apple or the
23 Released Parties, or a finding of the validity of any claims in the Actions or of any wrongdoing or
24 violation of law by Apple or the Released Parties. To the extent permitted by law, neither this Order,
25 nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall
26 be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative
27 action or proceeding to establish any liability of, or admission by, the Released Parties.
28 Notwithstanding the foregoing, nothing in this Order shall be interpreted to prohibit the use of this

1 Order in a proceeding to consummate or enforce the Settlement or this Order, or to defend against the
2 assertion of released claims in any other proceeding, or as otherwise required by law.

3 **IT IS SO ORDERED.**

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6 Dated: _____, 202__

7 Hon. Edward J. Davila
8 United States District Court
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE: APPLE INC. DEVICE
PERFORMANCE LITIGATION

Case No. 5:18-md-02827-EJD

CLASS ACTION

This Document Relates To:

ALL ACTIONS.

[AMENDED PROPOSED] JUDGMENT

1 On _____, the Court signed and entered its Order Granting Final Approval of
2 Class Action Settlement and Awarding Attorneys' Fees, Expenses, and Named Plaintiff Service
3 Awards (Dkt. ___) (the "Final Approval Order") in the above-captioned matter as to the following class
4 of persons:

5 *All former or current U.S. owners of iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and SE*
6 *devices running iOS 10.2.1 or later (for iPhone 6, 6 Plus, 6s, 6s Plus, and SE devices)*
7 *or iOS 11.2 or later (for iPhone 7 and 7 Plus devices), and who ran these iOS versions*
8 *before December 21, 2017.*

9 **JUDGMENT IS HEREBY ENTERED**, pursuant to Federal Rule of Civil Procedure 58, as to the
10 specified class of persons (excluding the individuals who validly and timely requested exclusion from
11 the Settlement Class, as identified in Exhibit ___ to the Final Approval Order), the Named Plaintiffs,
12 and Defendant Apple Inc. on the terms and conditions of the Settlement Agreement approved by the
13 Court's Final Approval Order.

14 24. For purposes of this Order, the Court adopts the terms and definitions set forth in the
15 Settlement Agreement.

16 25. Payments to Settlement Class Members under the Settlement Agreement shall be made
17 as outlined in the Final Approval Order and Settlement Agreement.

18 26. As of the Effective Date, the Settlement Class Members and their respective heirs,
19 executors, administrators, representatives, agents, partners, successors, and assigns shall have fully,
20 finally, and forever released, relinquished, and discharged any and all past, present, and future claims,
21 actions, demands, causes of action, suits, debts, obligations, damages, rights and liabilities, that were
22 brought, could have been brought, or are related to the same facts underlying the claims asserted in the
23 Actions regarding the iPhone devices at issue, known or unknown, recognized now or hereafter,
24 existing or preexisting, expected or unexpected, pursuant to any theory of recovery (including, but not
25 limited to, those based in contract or tort, common law or equity, federal, state, territorial, or local law,
26 statute, ordinance, or regulation), against the Released Parties, for any type of relief that can be released
27 as a matter of law, including, without limitation, claims for monetary relief, damages (whether
28 compensatory, consequential, punitive, exemplary, liquidated, and/or statutory), costs, penalties,
interest, attorneys' fees, litigation costs, restitution, or equitable relief. Accordingly, the Settlement

1 shall terminate the MDL Action. Notwithstanding the foregoing, the release shall not include any
2 claims relating to the continued enforcement of the Settlement or the Protective Orders.

3 27. As of the Effective Date, the Named Plaintiffs (including the non-U.S. Named
4 Plaintiffs) and their respective heirs, executors, administrators, representatives, agents, partners,
5 successors, and assigns shall have fully, finally, and forever released, relinquished, and discharged any
6 and all past, present, and future claims, actions, demands, causes of action, suits, debts, obligations,
7 damages, rights and liabilities, that were brought, could have been brought, or are related to the same
8 facts underlying the claims asserted in the Actions regarding the iPhone devices at issue, known or
9 unknown, recognized now or hereafter, existing or preexisting, expected or unexpected, pursuant to
10 any theory of recovery (including, but not limited to, those based in contract or tort, common law or
11 equity, federal, state, territorial, or local law, statute, ordinance, or regulation), against the Released
12 Parties, for any type of relief that can be released as a matter of law, including, without limitation,
13 claims for monetary relief, damages (whether compensatory, consequential, punitive, exemplary,
14 liquidated, and/or statutory), costs, penalties, interest, attorneys' fees, litigation costs, restitution, or
15 equitable relief. Class Counsel and non-U.S. Named Plaintiffs hereby represent and warrant that the
16 non-U.S. Named Plaintiffs have the capacity to execute such a release under the applicable laws of
17 their respective jurisdictions. Notwithstanding the foregoing, the release shall not include any claims
18 relating to the continued enforcement of the Settlement or the Protective Orders.

19 28. As of the Effective Date, Apple shall have fully, finally, and forever released,
20 relinquished, and discharged all claims of abuse of process, malicious prosecution, violations of Federal
21 Rule of Civil Procedure 11, and any other claims arising out of the initiation or prosecution of the MDL
22 Action that are known to Apple as of the Effective Date, against the Named Plaintiffs, Class Counsel,
23 and Plaintiffs' Executive Committee and Plaintiffs' Steering Committee pursuant to the Order
24 Consolidating Related Actions and Appointing Interim Co-Lead Plaintiffs' Counsel and Executive and
25 Steering Committees (Dkt. 100). Notwithstanding the foregoing, this release shall not include any
26 future claims relating to the continued enforcement of the Settlement, the Protective Orders, and all
27 orders construing the Stipulated Protective Order, including but not limited to Dkt. 350. This release
28 does not constitute a general release.

1 29. As of the Effective Date, the Settlement Class Members and the Named Plaintiffs shall
2 have fully, finally, and forever released, relinquished, and discharged all claims of abuse of process,
3 malicious prosecution, violations of Federal Rule of Civil Procedure 11, and any other claims arising
4 out of the defense of the MDL Action that are known to the Settlement Class Members and/or the
5 Named Plaintiffs as of the Effective Date, against Apple’s attorneys, legal representatives, and
6 advisors, including Defense Counsel. Notwithstanding the foregoing, this release shall not include any
7 future claims relating to the continued enforcement of the Settlement, the Protective Orders, and all
8 orders construing the Stipulated Protective Order, including but not limited to Dkt. 350. This release
9 does not constitute a general release.

10 30. The MDL Action, including all actions consolidated into the MDL Action and all claims
11 asserted in the actions, are settled and dismissed on the merits with prejudice (with the exception of the
12 claims asserted in *Corporación Nacional de Consumidores y Usuarios De Chile v. Apple, Inc., Case*
13 No. 5:18-cv-02527-EJD, which are not settled or dismissed with prejudice).

14
15 **JUDGMENT APPROVED AS TO FORM:**

16
17 _____
18 Hon. Edward J. Davila
19 United States District Court

20 **JUDGMENT ENTERED:** _____, 202__

21 By: CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
22 OF CALIFORNIA