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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.

**~~[PROPOSED]~~ ORDER CERTIFYING
SETTLEMENT CLASS; GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT; AND
APPROVING FORM AND CONTENT OF
CLASS NOTICE**

1 **WHEREAS**, the Named Plaintiffs and Defendant Apple Inc. entered into a Settlement
2 Agreement (Dkt. 416) on February 28, 2020, which, together with the exhibits and appendices thereto,
3 sets forth the terms and conditions for a proposed resolution of this litigation and for its dismissal with
4 prejudice;

5 **WHEREAS**, this Court has reviewed the Settlement entered into by the Parties, all exhibits
6 thereto, the record in this case, and the Parties' arguments;

7 **WHEREAS**, this Court preliminarily finds, for the purpose of settlement only, that the
8 Settlement Class meets all the prerequisites of Federal Rule of Civil Procedure 23 for class certification,
9 including numerosity, commonality, typicality, predominance of common issues, superiority, and that
10 the Named Plaintiffs and Class Counsel are adequate representatives of the Settlement Class;

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

12 1. All terms and definitions used herein have the same meanings as set forth in the
13 Settlement Agreement.

14 **Preliminary Certification of Settlement Class for Purpose of Settlement Only**

15 2. The Settlement is hereby preliminarily approved as fair, reasonable, and adequate such
16 that notice thereof should be given to members of the Settlement Class. Under Federal Rule of Civil
17 Procedure 23(b)(3), the Settlement Class, as set forth in paragraph 1.32 of the Settlement Agreement
18 and defined as follows, is preliminarily certified for the purpose of settlement only:

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

23 For purposes of this definition, "U.S. owners" shall include all individuals who owned, purchased,
24 leased, or otherwise received an eligible device, and individuals who otherwise used an eligible device
25 for personal, work, or any other purposes. An individual qualifies as a "U.S. owner" if his or her device
26 was shipped to the United States, its territories, and/or its possessions. The Settlement Class shall not
27 include iPhone owners who are domiciled outside of the United States, its territories, and/or its
28 possessions. Additionally, excluded from the Settlement Class are (a) directors, officers, and
employees of Apple or its subsidiaries and affiliated companies, as well as Apple's legal

1 representatives, heirs, successors, or assigns, (b) the Court, the Court staff, as well as any appellate
2 court to which this matter is ever assigned and its staff, (c) any of the individuals identified in paragraph
3 1.36 of the Settlement Agreement, as well as their legal representatives, heirs, successors, or assigns,
4 (d) Defense Counsel, as well as their immediate family members, legal representatives, heirs,
5 successors, or assigns, and (e) any other individuals whose claims already have been adjudicated to a
6 final judgment.

7 3. If the Settlement Agreement is not finally approved by this Court, or if such final
8 approval is reversed or materially modified on appeal by any court, this Order (including but not limited
9 to the certification of the class) shall be vacated, null and void, and of no force or effect, and Apple and
10 Plaintiffs shall be entitled to make any arguments for or against certification for litigation purposes.

11 4. Class Counsel and the Named Plaintiffs are appointed as adequate representatives of the
12 Settlement Class. Joseph W. Cotchett (of Cotchett, Pitre & McCarthy, LLP, 840 Malcolm Road, Suite
13 200, Burlingame, California 94010) and Laurence D. King (of Kaplan Fox & Kilsheimer LLP, 1999
14 Harrison Street, Suite 1560, Oakland, California 94612) are hereby appointed as Interim Co-Lead Class
15 Counsel to represent the proposed Settlement Class.

16 **Notice to the Settlement Class**

17 5. The Court approves the Claim Form, Class Notice, and Summary Notice, which are
18 attached to the Settlement Agreement as Exhibits A, B, and C, respectively, and finds that their
19 dissemination substantially in the manner and form set forth in the Settlement Agreement meets the
20 requirements of Federal Rule of Civil Procedure 23 and due process, constitutes the best notice
21 practicable under the circumstances, and is reasonably calculated, under the circumstances, to apprise
22 members of the Settlement Class of the pendency of the Actions, the effect of the proposed Settlement
23 (including the releases contained therein), the anticipated Motion for Attorneys' Fees and/or Expenses
24 and for Service Awards, and their rights to participate in, opt out of, or object to any aspect of the
25 proposed Settlement.

26 6. By May 29, 2020, Apple shall, for the purpose of facilitating the distribution of the
27 Summary Notice, provide the Settlement Administrator with the names, email addresses, mailing
28 addresses, and serial numbers for the members of the Settlement Class.

Court
Clerk of the Court United States District Court Northern District of California San Jose Division 280 South 1st Street San Jose, CA 95113

12. Any putative member of the Settlement Class who seeks to be excluded from the Settlement Class must submit a request for exclusion, which must be received by the Claims Administrator by October 6, 2020:

Claims Administrator
<i>In re Apple Inc. Device Performance Litigation</i> ATTN: Claims Administrator 1650 Arch Street, Suite 2210 Philadelphia, PA 19103

Any member of the Settlement Class who does not file a valid and timely request for exclusion shall be bound by the final judgment dismissing the MDL Action on the merits with prejudice.

Final Approval Hearing

13. The Final Hearing shall be held by the Court on December 4, 2020, beginning at 10:00 a.m., to determine whether the requirements for certification of the Settlement Class have been met; whether the proposed settlement of the Actions on the terms set forth in the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class Members; whether Class Counsel’s motion or application for Attorneys’ Fees and Expenses and application for the Named Plaintiff Service Awards should be approved; and whether final judgment approving the Settlement and dismissing the Actions on the merits with prejudice against the Named Plaintiffs and all other Settlement Class Members should be entered. The Final Hearing may, without further notice to the Settlement Class Members (except those who have filed timely and valid objections and requested to speak at the Final Hearing), be continued or adjourned by order of the Court.

14. Objections by any Settlement Class Member to (a) the certification of the Settlement Class; (b) the Settlement; and/or (c) the entry of the Final Approval Order and Final Judgment, shall be considered by the Court at the Final Hearing only if such Settlement Class Member files with the Court a notice of his or her objections, submits documentary proof that he or she is a Settlement Class Member, and states the basis for such objections, as provided in paragraph 11.

1 15. By August 26, 2020, Class Counsel shall file all papers in support of the application for
2 the Final Approval Order and Final Judgment, any Motion for Attorneys' Fees and/or Expenses and/or
3 for Named Plaintiff Service Awards, and/or any response to any valid and timely objections with the
4 Court, and shall serve copies of such papers upon Defense Counsel and upon any objectors who have
5 complied with paragraphs 11 and 14 of this Order. All opposition papers shall be filed by October 6,
6 2020, and any reply papers shall be filed by November 20, 2020.

7 16. Objections by any Settlement Class Member to Class Counsel's request for Attorneys'
8 Fees and/or Expenses shall be considered by the Court at the Final Hearing only if such Settlement
9 Class Member files with the Court a notice of his or her objections, submits documentary proof that he
10 or she is a Settlement Class Member, and states the basis for such objections, as provided in paragraph
11 11, by October 6, 2020.

12 17. Class Counsel's motion or application for an award of Attorneys' Fees and Expenses,
13 and costs and for the Named Plaintiff Service Awards will be considered separately from the fairness,
14 reasonableness, and adequacy of the Settlement. Any appeal from any order relating solely to Class
15 Counsel's Motion for Attorneys' Fees and/or Expenses, and/or for Named Plaintiff Service Awards, or
16 any reversal or modification of any such order, shall not operate to terminate, vacate, or cancel the
17 Settlement.

18 18. Defense Counsel and Class Counsel are hereby authorized to utilize all reasonable
19 procedures in connection with the administration of the Settlement which are not materially
20 inconsistent with either this Order or the Settlement Agreement.

21
22 IT IS SO ORDERED.

23
24 Dated: May 27 , 2020



Hon. Edward J. Davila
United States District Court