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Interim Co-Lead Counsel for Plaintiffs

**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

**PLAINTIFFS' REPLY IN FURTHER
 SUPPORT OF MOTION FOR
 PRELIMINARY APPROVAL OF
 PROPOSED SETTLEMENT**

This Document Relates to:

ALL ACTIONS

Judge: Hon. Edward J. Davila
 Courtroom: 4, 5th Floor
 Date: May 15, 2020
 Time: 10:00 a.m.

1 Named Plaintiffs¹ respectfully submit this brief reply in further support of their Motion for
2 Preliminary Approval of Settlement, filed February 28, 2020 (the “Motion”) [Dkt. 415].

3 After two years of hard-fought litigation, and the intensive involvement of a highly
4 respected mediator, the Parties reached an agreement to settle the Action. The proposed
5 Settlement—which would resolve the federal and related California state court proceedings—
6 provides for a non-reversionary Minimum Class Settlement Amount of \$310 million, with a
7 Maximum Class Settlement Amount of \$500 million, in cash, for the benefit of the proposed
8 Settlement Class, comprised of all former or current U.S. iPhone² owners.³ For release of their
9 claims, Settlement Class Members will receive \$25.00 for each iPhone owned, which amount may
10 increase or decrease depending on the number and aggregate value of Approved Claims, notice
11 expenses, and amounts of any Attorneys’ Fees and Expenses or Named Plaintiff Service Awards.
12 On February 28, Named Plaintiffs moved for preliminary approval of the proposed Settlement. The
13 proposed Settlement has been widely reported in the media.⁴ To date, there has been no opposition
14 to the Motion. Therefore, Named Plaintiffs respectfully submit that the Court should preliminarily
15 approve the proposed Settlement.

16 Defendant Apple Inc. supports preliminary approval. *See* Def. Apple Inc.’s Stmt. in Support
17 of Mot. for Prelim. App. of Proposed Settlement, filed March 13, 2020 [Dkt. 417], at 3. The Parties
18 agree that the proposed Settlement provides substantial monetary compensation to Settlement Class
19 Members and is otherwise fair, reasonable and adequate. Indeed, the proposed Settlement “was the
20 product of extensive, arms-length negotiations facilitated by an experienced mediator over several
21

22 ¹ All capitalized words are defined in the Stipulation of Settlement, dated February 28, 2020
23 (“Stipulation” or “Settlement”) [Dkt. 416], unless otherwise noted.

24 ² “iPhone” means Apple iPhone 6, 6 Plus, 7, 7 Plus, and SE devices. Stip. § 1.16.

25 ³ The Settlement also encompasses the California JCCP Action, captioned *In re Apple OS Cases*,
26 JCCP No. 4976 (Cal. Super. Ct., S.F. Cty.). There will not be a classwide settlement for non-U.S.
27 Named Plaintiffs, who will be releasing their individual claims only. Because non-U.S. iPhone
28 owners’ claims will not be released, they may pursue their own claims outside the Settlement.

⁴ In addition, Class Counsel have received inquiries from numerous putative Settlement Class
Members regarding the proposed Settlement, including Michael Branden, who wrote directly to the
Court [Dkt 418]. Class Counsel are responding to Mr. Branden and all other putative Settlement
Class Members who have contacted counsel.

1 months and mediation sessions.” *Id.* For these reasons, preliminary approval and the dissemination
2 of notice of the proposed Settlement are warranted.

3 As set forth in their opening brief, Class Counsel intend to seek no more than 30% of the
4 Minimum Class Settlement Amount, plus out-of-pocket expenses.⁵ To update the Court, as of
5 February 29, 2020, Class Counsel and Court-appointed committee members have devoted
6 approximately 58,000 hours to litigating this Action since appointment, for a lodestar of
7 approximately \$30.78 million.⁶ *See* Jt. Reply Decl. of Joseph W. Cotchett and Laurence D. King
8 in Further Support of Mot. for Prelim. App. of Proposed Settlement, dated Mar. 20, 2020, ¶ 4. As
9 of February 29, 2020, JCCP Counsel in the JCCP Action have devoted approximately 11,540 hours
10 to litigating the JCCP Action, for a lodestar of \$4.95 million. *Id.* ¶ 5.⁷

11 For the reasons stated herein and in their Motion, Named Plaintiffs respectfully request that
12 the Court grant preliminary approval of the Settlement, approve the form and dissemination of
13 notice, and schedule the Final Hearing.

14 Respectfully submitted,

15 DATED: March 20, 2020

KAPLAN FOX & KILSHEIMER LLP

16 By: /s/ Laurence D. King
17 Laurence D. King

18 Laurence D. King (SBN 206423)
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21 ⁵ There was a discrepancy in Named Plaintiffs’ Motion papers regarding the maximum amount of
22 out-of-pocket expenses for which Class Counsel would seek recovery. Named Plaintiffs’
23 Memorandum of Points and Authorities in Support of the Motion indicated that the maximum
24 amount of expenses was \$1.5 million. *Id.* at 3, 20. However, the Joint Declaration of Joseph W.
Cotchett and Laurence D. King in Support of the Motion, filed therewith [Dkt. 415-2], set the
maximum amount at \$2 million, *id.* at ¶ 8, which is the correct amount that will be indicated in the
Class Notice.

25 ⁶ The time and lodestar excludes any time for work related to the Motion for Sanctions pursuant to
the Court’s June 14, 2019 Order re Motion for Sanctions [Dkt. 350].

26 ⁷ As is typical, Class Counsel anticipate incurring additional time as they, among other things,
27 respond to inquiries by Settlement Class Members, draft the Motion for Final Approval of
Settlement and the motion for attorneys’ fees, costs, and for incentive awards, reply to any
28 responses to the two motions, prepare for and attend the Final Hearing, and respond to any potential
appeals.

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DATED: March 20, 2020

COTCHETT, PITRE & MCCARTHY LLP

By: /s/ Joseph W. Cotchett
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Interim Co-Lead Counsel for Plaintiffs

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Laurence D. King, attest that concurrence in the filing of this document has been obtained from the other signatory. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of March 2020, at Oakland, California.

/s/ Laurence D. King

Laurence D. King

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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

**JOINT REPLY DECLARATION OF
 JOSEPH W. COTCHETT AND LAURENCE
 D. KING IN FURTHER SUPPORT OF
 MOTION FOR PRELIMINARY APPROVAL
 OF PROPOSED SETTLEMENT**

This Document Relates to:

ALL ACTIONS

Judge: Hon. Edward J. Davila
 Courtroom: 4, 5th Floor
 Date: May 15, 2020
 Time: 10:00 a.m.

1 We, Joseph W. Cotchett and Laurence D. King, declare and state as follows:

2 1. I, Joseph W. Cotchett, am a member of the bar of the State of California and a partner
3 at the law firm of Cotchett, Pitre & McCarthy LLP.

4 2. I, Laurence D. King, am a member of the bar of the State of California and a partner
5 at the law firm of Kaplan Fox & Kilsheimer LLP.

6 3. We are interim co-lead counsel for the Named Plaintiffs.¹ We have personal
7 knowledge of the facts stated below and with the proceedings in this case. If called as witnesses,
8 we would and could competently testify thereto to all facts within our personal knowledge.

9 4. As of February 29, 2020, the approximate lodestar for co-lead counsel and members
10 of the Court-appointed Executive and Steering Committees is approximately \$30.78 million,
11 having devoted approximately 58,000 hours to litigating this Action. These amounts include all
12 vetted time from the date of appointment through February 29, 2020. These figures do not include
13 any time for work related to the Motion for Sanctions, as per the Court’s June 14, 2019 Order re
14 Motion for Sanctions [Dkt. 350].

15 5. JCCP Counsel in the JCCP Action captioned *In re Apple OS Cases*, JCCP No 4976
16 (Cal. Super. Ct., S.F. Cty.), advised us that, as of February 29, 2020, they have devoted
17 approximately 11,540 hours litigating the JCCP Action, for a lodestar of \$4,951,076.

18 We declare under penalty of perjury that the foregoing is true and correct. Executed on
19 March 20, 2020.

20
21 In Oakland, California.

In Burlingame, California.

22 s/ Laurence D. King
23 Laurence D. King

s/ Joseph W. Cotchett
Joseph W. Cotchett

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28 ¹ All capitalized words are defined in the Stipulation of Settlement, dated February 28, 2020 [Dkt. 416], unless otherwise noted.

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I, Laurence D. King, attest that concurrence in the filing of this document has been obtained from the other signatory. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of March 2020, at Oakland, California.

/s/ Laurence D. King

Laurence D. King