

1 JOSEPH W. COTCHETT (SBN 36324)
 jcotchett@cpmlegal.com
 2 MARK C. MOLUMPY (SBN 168009)
 mmolumphy@cpmlegal.com
 3 ELLE D. LEWIS (SBN 238329)
 elewis@cpmlegal.com
 4 BRIAN DANITZ (SBN 247403)
 bdanitz@cpmlegal.com
 5 **COTCHETT, PITRE & McCARTHY LLP**
 840 Malcolm Road, Suite 200
 6 Burlingame, CA 94010
 Telephone: 650.697.6000

7 LAURENCE D. KING (SBN 206243)
 lking@kaplanfox.com
 8 MARIO M. CHOI (SBN 243409)
 mchoi@kaplanfox.com
 9 **KAPLAN FOX & KILSHEIMER LLP**
 10 1999 Harrison Street, Suite 1560
 Oakland, CA 94612
 11 Telephone: 415.772.4700

12 FREDERIC S. FOX (*pro hac vice*)
 ffox@kaplanfox.com
 13 DONALD R. HALL (*pro hac vice*)
 dhall@kaplanfox.com
 14 DAVID A. STRAITE (*pro hac vice*)
 dstraite@kaplanfox.com
 15 MAIA C. KATS (*pro hac vice pending*)
 mkats@kaplanfox.com
 16 **KAPLAN FOX & KILSHEIMER LLP**
 850 Third Avenue
 17 New York, NY 10022
 Telephone: 212.687.1980

18 *Interim Co-Lead Counsel for Plaintiffs*

19 **UNITED STATES DISTRICT COURT**
 20 **NORTHERN DISTRICT OF CALIFORNIA**
 21 **SAN JOSE DIVISION**

22 IN RE: APPLE INC. DEVICE
 PERFORMANCE LITIGATION

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

23 **PLAINTIFFS' NOTICE OF MOTION**
AND MOTION FOR FINAL APPROVAL
OF PROPOSED SETTLEMENT;
 24 **MEMORANDUM OF POINTS AND**
AUTHORITIES IN SUPPORT THEREOF

25 This Document Relates to:

26 ALL ACTIONS

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

NOTICE OF MOTION

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 4, 2020, at 10:00 a.m., in Courtroom 4 of the United States District Court for the Northern District of California, Robert F. Peckham Federal Building & United States Courthouse, 280 South First Street, San Jose, California 95113, the Honorable Edward J. Davila, presiding, Named Plaintiffs¹ will and hereby do move for an Order:

- (i) Granting final certification of the Settlement Class under Federal Rules of Civil Procedure (“Rule”) 23(a) and 23(b)(3);
- (ii) Granting final approval of the proposed Settlement reached between Named Plaintiffs and Apple Inc., under Rule 23(e);
- (iii) Finding that notice has been conducted in accordance with the Court-approved notice plan and comports with due process and Rule 23; and
- (iv) Dismissing with prejudice Named Plaintiffs’ and Settlement Class Members’ claims against Defendant Apple Inc.

This motion is based upon this Motion, the Memorandum of Points and Authorities, the accompanying Joint Declaration of Joseph W. Cotchett and Laurence D. King in Support of Plaintiffs’ Motions for Final Approval and for Attorneys’ Fees, Expenses, and Service Awards (“Joint Declaration”), and the exhibits attached thereto, the Stipulation of Settlement and the exhibits attached thereto, the pleadings and records on file in this Action, and other such matters and argument as the Court may consider at the hearing of this motion.

STATEMENT OF ISSUES TO BE DECIDED

- 1. Whether the Court should grant final certification of the Settlement Class under Rules 23(a) and 23(b)(3);
- 2. Whether the Court should grant final approval of the Settlement;
- 3. Whether the plan of allocation is fair, reasonable, and adequate; and

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

1 4. Whether the Court should enter judgment of dismissal of Named Plaintiffs' and
2 Settlement Class Members' claims against Defendant Apple Inc.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After years of hard-fought and contentious litigation, the Parties have reached a Settlement to resolve the proposed Settlement Class’s claims against Defendant Apple Inc. (“Defendant” or “Apple”). The Settlement was reached only after extensive arm’s-length negotiations between experienced counsel, including several in-person mediation sessions and additional negotiations facilitated by a highly respected mediator, Judge Layn R. Phillips (Ret.) of Phillips ADR. The Settlement, based upon a “mediator’s proposal,” will result in a substantial payment by Apple, between \$310 million and \$500 million, for the benefit of Settlement Class Members.

During the course of the litigation, Named Plaintiffs, through co-lead counsel Cotchett, Pitre & McCarthy, LLP and Kaplan Fox & Kilsheimer LLP (“Class Counsel”), as well as other law firms appointed by the Court, among other things: (i) conducted a wide-ranging investigation into the Settlement Class’s claims; (ii) filed two comprehensive complaints; (iii) successfully opposed Defendant’s motions to dismiss as to certain theories of liability; (iv) engaged in a comprehensive discovery program, including 19 depositions, responses to thousands of discovery requests, the review of more than 7 million pages of documents, and extensive motion practice over a litany of discovery issues; and (v) consulted with expert consultants. As a result, Named Plaintiffs and Class Counsel had a thorough understanding of the relative strengths and weaknesses of the claims asserted at the time the Settlement was reached and continue to have such an understanding.

As demonstrated below, this is an excellent recovery for the Settlement Class considering the substantial risks at class certification and trial. Based on an informed evaluation of the facts and governing legal principles, and their recognition of the substantial risk and expense of continued litigation, Named Plaintiffs submit that the proposed Settlement is fair, reasonable, and adequate under Rule 23(e).

1 **II. PROCEDURAL HISTORY**

2 **A. Summary of Litigation²**

3 On December 20, 2017, Apple released a statement regarding a performance management
4 feature in its iOS 10.2.1 and iOS 11.2 software to prevent unexpected power-offs from occurring
5 in its devices. Between December 2017 and June 2018, the Federal Actions, consisting of 66
6 underlying class action complaints, were filed against Apple. Beginning on April 4, 2018, the
7 Federal Actions were consolidated in the Northern District of California by the U.S. Judicial Panel
8 on Multidistrict Litigation pursuant to 28 U.S.C. § 1407, into MDL proceedings captioned *In re*
9 *Apple Inc. Device Performance Litigation*, No. 18-md-2827-EJD [Dkt. 1].

10 After their appointment [Dkt. 99], and following extensive investigation into the claims,
11 Class Counsel filed a Consolidated Amended Complaint (“CAC”) on July 2, 2018 [Dkt. 145]. On
12 October 1, 2018, the Court granted in part and denied in part Apple’s motion to dismiss the CAC
13 [Dkt. 219], following briefing and oral argument by the parties. *See In re Apple Inc. Device Perf.*
14 *Litig.*, 347 F. Supp. 3d 434 (N.D. Cal. 2018).

15 On November 30, 2018, Class Counsel filed the operative Second Consolidated Amended
16 Complaint (“2CAC”) [Dkt. 244]. The 2CAC asserted claims for fraud, breach of contract, violation
17 of the consumer protection laws of various states, trespass to chattels, and violations of the
18 California Computer Data Access and Fraud Act, and the federal Computer Fraud Abuse Act
19 (“CFAA”). *Id.* On April 22, 2019, after a second round of motion to dismiss briefing and further
20 oral argument, the Court granted in part and denied in part Apple’s motion to dismiss the 2CAC
21 [Dkt. 331]. *See In re Apple Inc. Device Perf. Litig.*, 386 F. Supp. 3d 1155 (N.D. Cal. 2019). The
22 Court dismissed, with prejudice, claims that the iPhones were “defective,” claims based on certain
23 iPhone 5/5c/5s devices, and common law and statutory fraud claims (whether based on a theory of
24 affirmative misrepresentation or omission). *Id.* The Court also dismissed, without prejudice, claims
25 related to Named Plaintiffs’ theory that Apple had breached contractual obligations. *Id.* The Court
26 upheld the claims for trespass to chattels and claims under the CFAA. *Id.* After Named Plaintiffs

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28 ² A more detailed description of the procedural history is provided in the Joint Declaration.

1 decided not to amend the 2CAC, Defendant answered the 2CAC on July 31, 2019 [Dkt. 365].

2 The Parties engaged in intensive, detailed, and complex discovery in the Action. Class
3 Counsel served more than 170 document requests on Apple, in response to which Apple produced
4 more than **seven million** pages of documents. Apple served over 3,000 written discovery and
5 document requests to Named Plaintiffs, who produced more than 6,000 pages of documents.
6 Named Plaintiffs also litigated issues over the collection and production of the iPhones of Named
7 Plaintiffs. The Parties deposed 19 individuals, including 10 Apple witnesses and nine Named
8 Plaintiffs (Romeo Alba, Denise Bakke, Alisha Boykin, Steven Connolly, Alvin Davis, Loren
9 Haller, Charlene Lowery, Cynthia Stacy, and Trent Young). The Parties also litigated multiple
10 discovery disputes before the Honorable Rebecca Westerfield (Ret.) of JAMS as Special Discovery
11 Master, as well as before this Court. *See, e.g., In re Apple Inc. Device Perf. Litig.*, No. 5:18-md-
12 02827-EJD, 2019 WL 1993916 (N.D. Cal. May 6, 2019); *id.*, 2019 WL 3973752 (N.D. Cal.
13 Aug. 22, 2019).

14 **B. Settlement Negotiations and Mediation**

15 The Parties engaged in extensive, arms-length negotiations over the course of many months,
16 including several all-day, in-person mediation sessions and numerous additional discussions with
17 Judge Phillips, a former United States District Judge and highly respected mediator. After the third
18 in-person mediation with Judge Phillips on September 27, 2019, Judge Phillips made a mediator's
19 proposal to the Parties. The Parties accepted the proposal, with continued involvement by the
20 mediator throughout the process of negotiating a term sheet and long-form settlement agreement
21 along with detailed issues of resolution. *See Decl. of Layn Phillips*, dated Aug. 21, 2020, ¶ 9.

22 **C. Settlement Terms**

23 The Settlement is a comprehensive resolution of all claims in this Action and in the
24 California JCCP Action, captioned *In re Apple OS Cases*, JCCP No. 4976 (Cal. Super. Ct., S.F.
25 Cty.). The Settlement provides for a non-reversionary Minimum Class Settlement Amount of
26 \$310 million, with a Maximum Class Settlement Amount of \$500 million, in cash, for the benefit
27
28

1 of the proposed Settlement Class, comprised of all eligible former or current U.S. iPhone³ owners.⁴

2 For a release of their claims, Settlement Class Members will receive a \$25 cash payment
 3 for each iPhone owned, though the specific amount of that payment may increase or decrease
 4 depending on the amount of any Attorneys' Fees and Expenses, Named Plaintiff Service Awards,
 5 Notice expenses, and the aggregate value of Approved Claims. In particular, if payment of \$25.00
 6 for each iPhone device identified as Approved Claims, plus the payment of Attorneys' Fees and
 7 Expenses, Named Plaintiff Service Awards, and Notice and administration fees does not reach the
 8 Minimum Class Settlement Amount, the Residual will be allocated according to the Stipulation,
 9 including increasing payments to Settlement Class Members on a pro rata basis. Conversely, if the
 10 number of iPhone devices identified as Approved Claims, multiplied by \$25.00, exceeds the
 11 Maximum Class Settlement Amount of \$500 million, then the cash payment for each iPhone will
 12 be reduced on a pro rata basis in order to not exceed the Maximum Class Settlement Amount of
 13 \$500 million.

14 Under the Settlement, Named Plaintiffs may also seek Service Awards of \$3,500 for those
 15 who were deposed in the Action and \$1,500 for all others. Class Counsel may also seek an award
 16 of attorneys' fees and expenses and, in a separate motion filed herewith, have requested an award
 17 of 28.3% of the Minimum Class Settlement Amount, or \$87.73 million, as reasonable attorneys'
 18 fees, and \$995,244.93 for out-of-pocket expenses. The Settlement is not conditioned upon the
 19 Court's approval of the full (or any) amount of Service Awards or Attorneys' Fees and Expenses.

20 **D. Preliminary Approval**

21 On February 28, 2020, Named Plaintiffs filed their motion for preliminary approval of the
 22 Settlement [Dkt. 415]. The parties attended the preliminary approval hearing on May 15, 2020
 23 [Dkt. 426]. On May 27, 2020, the Court granted Plaintiffs' motion for preliminary approval,
 24

25 _____
 26 ³ "iPhone" means Apple iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and SE devices. Stip. § 1.16.

27 ⁴ There will not be a classwide settlement for non-U.S. Named Plaintiffs, who will be releasing
 28 their individual claims only to the extent they signed on to the Settlement (all but one did). Because
 non-U.S. iPhone owners' claims will not be released (other than the non-U.S. Named Plaintiffs),
 they may pursue their own claims outside the Settlement.

1 provisionally certified the nationwide settlement Class, and directed notice to be issued to Class
2 members pursuant to the Settlement and preliminary approval motion (the “Preliminary Approval
3 Order”) [Dkt. 429].

4 **E. Notice to the Class**

5 Notice was successfully disseminated to the Class by Court-approved Settlement
6 Administrator, Angeion Group (“Angeion”). Decl. of Settlement Administrator (“Angeion Decl.”)
7 ¶¶ 4-12. The Settlement Administrator completed distribution of the notices to the members of
8 Settlement Class, in compliance with the Preliminary Approval Order, including (1) direct email
9 and/or postcard notices, (2) a case-specific website, and (3) a case-specific toll-free number. *Id.*;
10 *see also* Stip. § 6.2. The multipart notice program was designed to, and did, provide the “best notice
11 that is practicable under the circumstances.” *See* Fed. R. Civ. P. 23(c)(2)(B).

12 The notice program succeeded. 90,119,272 class notices were emailed to potential Class
13 Members, with 2,611,071 returned undeliverable. Angeion Decl. ¶¶ 6-7. 5,617,563 postcard
14 notices were mailed to potential Settlement Class Members.⁵ *Id.* ¶¶ 11. In addition, as of
15 August 24, 2020, there have been over 10 million pages views on the case website, and 13,138 calls
16 to the toll-free information line, further demonstrating the success of the notice program. *Id.* ¶ 25.
17 There has been extensive media coverage of the Settlement, with information on how to submit a
18 claim, adding to the overall likelihood that Settlement Class Members were provided notice.

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22 ⁵ The Settlement required the parties to use their best efforts to mail postcard notices to Settlement
23 Class Members who did not have a valid email address (*e.g.*, where the email notice resulted in a
24 hard bounce back). Stip. §§ 6.2.2, 6.2.4. After analyzing the mailing addresses in the class list,
25 Angeion identified a small number of invalid mailing addresses, including dozens (and hundreds)
26 of postcards that would have been sent to Apple’s headquarters, Apple retail stores, third-party
27 retailers of electronics, and other anomalous addresses that are not reasonably calculated to reach
28 the intended class member recipient. Angeion Decl. ¶ 9. Postcard notices were not sent to these
addresses, which are associated with approximately 0.15% of the overall class size. *Id.* ¶ 11. As
noted above, direct notice has been attempted for more than 99% of the class, easily fulfilling the
requirements of the Settlement. Additionally, the Parties are providing a second email notice to all
Settlement Class Members with valid email addresses and who have not already submitted claims,
opt-out requests, or other contacts to Angeion, the Court, and/or the Parties. *Id.* ¶¶ 13-15.

1 **F. Class Response**

2 The deadline to submit claims, opt outs, and any objections to the Settlement is October 6,
3 2020, which provides substantially more time for class members to respond to the settlement than
4 the Court’s recommended guideline of 35 days. As of August 24, 2020, 1,398,731 valid claims
5 have been submitted, and the Parties expect the number of claims submitted to increase through the
6 remainder of the claims period.⁶ Angeion Decl. ¶ 26. Conversely, only 22 objections to the
7 Settlement or requested award of attorneys’ fees and expenses have been filed with the Court—less
8 than 0.002% of the total responses submitted—and only 78 have requested to opt out of the
9 Settlement. *Id.* ¶ 28. In addition, Class Counsel has received hundreds of telephone calls, letters
10 and emails from Named Plaintiffs and other class members commenting favorably about the
11 settlement. *See* Joint Decl. ¶ 59; *id.*, Ex. 1.

12 **III. ARGUMENT**

13 **A. Legal Standards for Final Approval**

14 Final approval is a multi-step inquiry: first, the Court must certify the proposed settlement
15 class; second, it must determine that the settlement proposal is “fair, reasonable, and adequate;” and
16 third, it must assess whether notice has been provided in a manner consistent with Rule 23 and due
17 process. Fed. R. Civ. P. 23(e)(2); *Adoma v. Univ. of Phoenix Inc.*, 913 F. Supp. 2d 964, 972 (E.D.
18 Cal. 2012). These procedures safeguard class members’ due process rights and enable the Court to
19 fulfill its role as the guardian of class interests.⁷ The Settlement satisfies each of these requirements.

20 **B. The Court Should Certify the Settlement Class**

21 Class certification under Rule 23 is a two-step process. First, the plaintiff must demonstrate
22 that numerosity, commonality, typicality, and adequacy are met. Fed. R. Civ P. 23(a). “Class
23 certification is proper only if the trial court has concluded, after a ‘rigorous analysis,’ that
24 Rule 23(a) has been satisfied.” *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 542 (9th Cir.

25 _____
26 ⁶ Class member responses are provided as of August 25, 2020, pursuant to the Court’s Procedural
Guidance for Class Actions. Plaintiffs will provide an update on any later responses in their reply.

27 ⁷ *See* 4 Albert Conte & Herbert Newberg, NEWBERG ON CLASS ACTIONS §§ 11.22, *et seq.* (4th ed.
28 2002).

1 2013) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011)). A plaintiff must then
2 establish that one of the bases for certification in Rule 23(b) is met. Here, Named Plaintiffs must
3 demonstrate that “questions of law or fact common to Class Members predominate over any
4 questions affecting only individual members, and . . . [that] a class action is superior to other
5 available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

6 On May 27, 2020, the Court preliminarily approved the following Settlement Class
7 definition:

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

11 Preliminary Approval Order ¶ 2; Stip. § 1.32. The Court also clarified the categories of individual
12 excluded from the definition, such as directors, officers, and employees of Apples or its
13 subsidiaries. *Id.*

14 Nothing has occurred that would change the Court’s previous determination that Named
15 Plaintiffs have satisfied the requirements under Rule 23. First, pursuant to Rule 23(a)(1), there can
16 be no doubt that numerosity is satisfied as it is undisputed that the class consists of tens of millions
17 of iPhones. Pursuant to Rule 23(a)(2), there are questions of law or fact common to the class,
18 including whether the performance management feature that Apple introduced in iOS 10.2.1 and
19 iOS 11.2 to avoid unexpected power-offs affected the iPhones. Rule 23(a)(3) requires that “the
20 claims or defenses of the representative parties are typical of the claims or defenses of the class.”
21 Here, Named Plaintiffs are typical of the Settlement Class they seek to represent, and like other
22 Settlement Class Members, purchased Apple’s iPhones and were affected by the performance
23 management feature Apple introduced in iOS 10.2.1 and iOS 11.2. 2CAC ¶¶ 31-270. Finally,
24 under Rule 23(a)(4), Named Plaintiffs and their counsel do not have any conflicts of interest with
25 other Settlement Class Members and have demonstrated their commitment to prosecute the action
26 vigorously on behalf of the class.

1 The requirements under Rule 23(b) are also satisfied. Plaintiffs seek certification under
 2 Rule 23(b)(3), which provides that a class action can be maintained where: (1) the questions of law
 3 and fact common to members of the class predominate over any questions affecting only
 4 individuals; and (2) the class action mechanism is superior to the other available methods for the
 5 fair and efficient adjudication of the controversy. *Noll v. eBay*, 309 F.R.D. 593, 604 (N.D. Cal.
 6 2015). Here, every Named Plaintiff alleged that they, and all Settlement Class Members, were
 7 subjected to the performance management feature that slowed down their iPhone and otherwise
 8 caused harm. This common question can be resolved for all members of the proposed Settlement
 9 Class in a single adjudication. In addition, the class action mechanism is superior for resolving this
 10 matter given the very large size of the proposed class weighed against the expense and burden of
 11 individual actions.⁸ Because Named Plaintiffs satisfy the Rule 23 requirements, the Court should
 12 grant final certification of the Settlement Class.

13 **C. The Court Should Grant Final Approval of the Settlement**

14 Rule 23(e) requires the district court to determine whether a proposed settlement is “fair,
 15 reasonable, and adequate.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir.
 16 2015). To assess the fairness of a class settlement, Ninth Circuit courts consider a number of
 17 factors, including: (1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and
 18 likely duration of future litigation; (3) the risk of maintaining class action status throughout the
 19 trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of
 20 the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
 21 participant; and (8) the reaction of class members to the proposed settlement. *Id.* at 944 (quoting
 22 *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).

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 25 ⁸ “[I]n the context of settlement, the other requirements of Rule 23(b)(3) such as ‘the desirability or
 26 undesirability of concentrating the litigation of the claims in the particular forum’ and ‘the likely
 27 difficulties in managing a class action[,]’ see Fed. R. Civ. P. 23(b)(3)(C)-(D), ‘are rendered moot
 28 and are irrelevant.’” *Spann v. JC Penney Corp.*, 314 F.R.D. 312, 323 (C.D. Cal. 2016) (quoting
Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431, 444 (E.D. Cal. 2013); *Amchem Prods., Inc. v.*
Windsor, 521 U.S. 591, 620 (1997)).

1 This Court previously determined that the Settlement satisfies each of the requirements of
2 Rule 23(e)(2). See Preliminary Approval Order ¶¶ 2, 4. There is no reason to depart from the
3 Court’s preliminary conclusion that the proposed Settlement is fair, adequate, and reasonable.

4 **1. The Proposed Settlement Provides A Substantial Recovery, Taking**
5 **Into Account the Risks and Benefits of Continued Litigation**

6 The non-reversionary Minimum Class Settlement Amount of \$310 million (and Maximum
7 Class Settlement Amount of \$500 million) is substantial by any measure, and certainly falls within
8 the range of possible approval, taking into account the significant risks and uncertain benefits of
9 continued litigation. Indeed, based on a damages analysis by Named Plaintiffs’ consultant, if
10 Named Plaintiffs fully prevailed on every one of their remaining claims, damages would have
11 amounted to between \$18 and \$46 per iPhone. Thus, a \$25 per iPhone recovery is considerable by
12 any measure, amounting to between **54% and 137% of the maximum possible recovery per iPhone,**
13 and—subject to the final calculation of the overall claims rate and approved claims—the actual
14 amount of recovery per device is likely to be higher than \$25.

15 Of course, there is the real and substantial risk that Named Plaintiffs would not be able to
16 obtain any recovery at all. Because class certification had not been briefed, and no dispositive
17 motions had been made, the Court may ultimately have determined that either class certification is
18 unwarranted or find for Defendant at summary judgment. For example, Apple has argued
19 throughout the Action that even if a user downloaded iOS 10.2.1 software on his or her iPhone, it
20 does not automatically follow that that individual experienced any problems whatsoever. That is
21 because, according to Apple, whether a particular iPhone user was affected depends upon how that
22 person used the iPhone, including what “apps” were on the phone, etc. This position is reflected
23 by the requirement that Settlement Class Members submitting claims attest under penalty of perjury
24 that they experienced “diminished performance” on their eligible devices during the relevant period.
25 And given the above arguments concerning, among other things, the viability of a worldwide class,
26 although Named Plaintiffs firmly believe that their liability case is strong and that class certification
27 is warranted, it is far from certain whether the Court would ultimately certify a litigation class, deny
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1 Defendant’s motion for summary judgment, or find that Named Plaintiffs are entitled to any
2 damages. *See Vizcaino v. U.S. Dist. Ct. for W.D. Wash.*, 173 F.3d 713, 721 (9th Cir. 1999). Even
3 if Named Plaintiffs obtained class certification for trial and successfully opposed any motion for
4 summary judgment, and even if Named Plaintiffs successfully proved liability at trial, Named
5 Plaintiffs could still recover nothing because the existence and amount of damages that could be
6 recovered in this case are still uncertain. *Accord Pulaski & Middleman, LLC v. Google, Inc.*,
7 802 F.3d 979, 986 (9th Cir. 2015).

8 Compared with cases where courts have approved settlements with amounts lower than
9 potential damages, the Class Settlement Amounts here constitute a substantial percentage of
10 projected recoverable damages in this Action. *See, e.g., Linney v. Cellular Alaska P’ship*, 151 F.3d
11 1234, 1242 (9th Cir. 1998) (“The fact that a proposed settlement may only amount to a fraction of
12 the potential recovery does not, in and of itself, mean that the proposed settlement is grossly
13 inadequate and should be disapproved.”) (citation omitted); *Schaffer v. Litton Loan Serv., L.P.*,
14 No. CV 05-07673 MMM (JCx), 2012 WL 10274679, at *11 (C.D. Cal. Nov. 13, 2012) (“Estimates
15 of a fair settlement figure are tempered by factors such as losing at trial, the expense of litigating
16 the case, and the expected delay in recovery (often measured in years.)”); *Roe v. Frito-Lay, Inc.*,
17 No. 14-cv-00751-HSG, 2016 WL 4154850, at *7 (N.D. Cal. Aug. 5, 2016) (noting that “the risks
18 and costs associated with class litigation weigh strongly in favor of settlement” where “Plaintiff
19 would [have been] required to successfully move for class certification under Rule 23, survive
20 summary judgment, and receive a favorable verdict capable of withstanding a potential appeal”).

21 Given the disputes that would inevitably lie ahead, including class certification and
22 summary judgment, and given Defendant’s vigorous arguments as to the merits, it is not an
23 overstatement to say that Named Plaintiffs faced significant risk. And, even if Named Plaintiffs
24 successfully proved their case at trial, the amount of recovery, if any, could vary widely depending
25 on other factors, including the Court’s discretion. Importantly, even if anything were recovered, it
26 would take years to secure, as Apple would undoubtedly appeal any adverse judgment. In
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1 comparison, the Settlement provides a guaranteed and substantial cash payment of at least
2 \$310 million.

3 **2. The Stage of the Proceedings and the Discovery Completed Support**
4 **the Settlement**

5 In a class action setting, courts look for indications that the parties carefully investigated the
6 claims before reaching a resolution, including propounding and reviewing discovery. *In re*
7 *Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC),
8 2016 WL 6248426, at *14 (N.D. Cal. Oct. 25, 2016) (“[E]xtensive review of discovery materials
9 indicates [Plaintiffs have] sufficient information to make an informed decision about the
10 Settlement. As such, this factor favors approving the Settlement.”); *see also In re Portal Software*
11 *Sec. Litig.*, No. C-03-5138 VRW, 2007 WL 4171201, at *4 (N.D. Cal. Nov. 26, 2007).

12 Here, Class Counsel (and their co-counsel) engaged in extensive investigation, research,
13 and analysis of the Settlement Class’s claims, resulting in the Court upholding in part the CAC and
14 2CAC. Named Plaintiffs thereafter aggressively pursued discovery from Apple through multiple
15 requests for production of documents and interrogatories, intensive meet and confers, and discovery
16 motion practice before Judge Westerfield and this Court. Apple produced and Plaintiffs’ counsel
17 reviewed over seven million pages of fact-related material. Named Plaintiffs also deposed 10 Apple
18 witnesses, the presumptive limit under Rule 30(a). The witnesses included software and hardware
19 engineers who had detailed knowledge of the relevant issues. In addition, Named Plaintiffs
20 subpoenaed documents from several non-parties, such as cell phone carriers, engaged in multiple
21 discussions concerning the subpoenas with both the non-parties as well as with Apple, and obtained
22 documents in connection with the subpoenas. This discovery allowed Named Plaintiffs to
23 adequately evaluate the merits of their claims.

24 Moreover, the Parties engaged in three in-person mediations and received a reasonable
25 assessment of the strengths and weaknesses of their case and a mediator’s proposal. Considering
26 this, Class Counsel and the Named Plaintiffs had sufficient bases to make informed decisions about
27 the relative merits of the case and the fairness of the Settlement.

1 3. **The Proposed Settlement is the Product of a Mediator’s Proposal and**
2 **is Supported by Experienced Counsel**

3 Courts recognize that the opinion of experienced counsel supporting settlement after
4 vigorous arm’s-length negotiations is entitled to considerable weight. *See, e.g., Ellis v. Naval Air*
5 *Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff’d*, 661 F.2d 939 (9th Cir. 1981) (“the fact
6 that experienced counsel involved in the case approved the settlement after hard-fought negotiations
7 is entitled to considerable weight”); *Spann*, 314 F.R.D. at 323-24. Courts also recognize that
8 agreements based upon a mediator’s proposal demonstrate non-collusive conduct. *See, e.g.,*
9 *Ebarle v. Lifelock, Inc.*, No. 15-cv-00258-HSG, 2016 WL 234364, at *6 (N.D. Cal. Jan. 20, 2016)
10 (finding that acceptance of a mediator’s proposal following mediation sessions “strongly suggests
11 the absence of collusion or bad faith”); *Spann*, 314 F.R.D. at 324 (same).

12 Here, the Parties actively and aggressively litigated the Action, and Class Counsel
13 conducted an extensive investigation into and prosecution of the alleged claims. Class Counsel also
14 engaged in a rigorous negotiation process with Defense Counsel, and fully considered and evaluated
15 the fairness of the Settlement to the Settlement Class. The Parties’ settlement negotiations were
16 protracted and hard-fought and included the determined assistance of an experienced mediator. At
17 Judge Phillips’ direction, the Parties submitted two rounds of comprehensive mediation statements.
18 After submitting their statements, counsel for all Parties attended in-person mediations before Judge
19 Phillips on January 7, 2019, August 28, 2019, and on September 27, 2019. The Parties gave
20 detailed and thoughtful presentations of their respective positions. And Judge Phillips gave the
21 Parties a reasonable assessment of the strengths and weaknesses of their case. It was only after
22 several months of intense discussions and a mediator’s proposal that the Parties were ultimately
23 able to reach an agreement. Several more months of further negotiations and the mediator’s
24 intervention were necessary before the Parties agreed on the final terms of a Memorandum of
25 Understanding, which ultimately culminated in the Settlement.

26 Additionally, throughout the Action and settlement negotiations, Apple has been vigorously
27 represented by Gibson, Dunn & Crutcher LLP and Covington & Burling LLP, their representation
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1 of Defendant being no less rigorous than Class Counsel’s representation of the Settlement Class.
 2 Because the Settlement is the product of serious, informed, and non-collusive negotiations among
 3 experienced counsel and the product of a mediator’s proposal, it deserves final approval. *See*
 4 *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09–00261 SBA (EMC), 2012 WL 5878390, at *6
 5 (N.D. Cal. Nov. 21, 2012) (noting that private mediation “tends to support the conclusion that the
 6 settlement process was not collusive”).

7 **D. The Proposed Plan of Allocation is Fair, Reasonable, and Adequate**

8 “Approval of a plan for the allocation of a class settlement fund is governed by the same
 9 legal standards that are applicable to approval of the settlement; the distribution plan must be ‘fair,
 10 reasonable and adequate.’” *In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d 1152, 1154 (N.D.
 11 Cal. 2001) (citations omitted). When allocating funds, “[i]t is reasonable to allocate the settlement
 12 funds to class members based on the extent of their injuries or the strength of their claims on the
 13 merits.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1045-46 (N.D. Cal. 2008) (citations
 14 omitted) (approving securities class action settlement allocation on a “per-share basis”); *Four in*
 15 *One Co. v. S.K. Foods, L.P.*, No. 2:08-CV-3017 KJM EFC, 2014 WL 4078232, at * 15 (E.D. Cal.
 16 Aug. 14, 2014) (approving “plan of allocation providing for a pro rata distribution of the net
 17 settlement fund based on verified claimants’ volume of qualifying purchases” as “fair, adequate,
 18 and reasonable”).

19 Here, U.S. owners will receive at least the \$310 million non-reversionary Minimum Class
 20 Settlement Amount.⁹ Claims will be computed using the method described in the Settlement. Stip.
 21 §§ 5.1-5.3; *see also id.*, Ex. A (Claim Form). Settlement Class Members who make a claim will
 22 receive cash, the actual amount received depending on the amount of any Attorneys’ Fees and
 23 Expenses, Named Plaintiff Service Awards, notice and administration expenses, and the number of
 24 Approved Claims. Each Settlement Class Member is eligible to obtain approximately \$25 per
 25 iPhone. *Id.* § 5.1. The actual amount may increase or decrease, depending on whether the aggregate

26 _____
 27 ⁹ With the exception of Corporacion Nacional de Consumidores y Usuarios de Chile, the claims of
 28 the non-U.S. Named Plaintiffs will be released in the Settlement. Other non-U.S. owners are not
 affected by the Settlement in any respect. *See* n.4, *supra*.

1 value of Approved Claims, minus various deductions, reaches the Minimum Class Settlement
2 Amount of \$310 million or the Maximum Class Settlement Amount of \$500 million.

3 If the aggregate cash payments to Settlement Class Members exceed the \$500 million
4 Maximum Class Settlement Amount, the actual cash payment for each iPhone identified in the
5 Approved Claims will be reduced pro rata to ensure that the aggregate cash payment does not
6 exceed \$500 million. *Id.* § 5.2. If the aggregate cash payment does not reach the non-reversionary
7 Minimum Class Settlement Amount, the Residual will be allocated according to the provisions of
8 the Settlement, including giving pro rata increases of the per-device payment. *Id.* §§ 5.3.1-5.3.2.
9 In no event would any of the Residual revert to Apple.

10 Courts have approved settlement terms and allocation plans in class actions similar to those
11 the Parties are entering into here. In *In re Haier Freezer Consumer Litigation*, No. 5:11-CV-02911-
12 EJD, 2013 WL 2237890, at *1 (N.D. Cal. May 21, 2013), the plaintiffs alleged that the defendant's
13 product allegedly had a defect and asserted claims under, among others, the state consumer
14 protection acts. This Court approved the proposed allocation plan whereby the defendant
15 guaranteed a minimum settlement amount but would contribute up to a maximum settlement
16 amount, basing actual payments "on the number and amount of authorized claims submitted." *Id.*
17 at *2. The defendant further agreed to pay for the costs and expenses for notice and for settlement
18 administration, and for reasonable attorneys' fees and expenses.

19 Similarly, in *Beck-Ellman v. Kaz USA, Inc.*, No. 3:10-CV-02134-H-DHB, 2013 WL
20 1748729, at *3 (S.D. Cal. Jan. 7, 2013), the court approved a settlement in which the plaintiffs
21 brought claims under California's consumer protection acts for misleading product information.
22 The defendants there, in addition to injunctive relief, guaranteed a minimum settlement amount for
23 class members who submitted valid and timely claims, up to a maximum settlement amount. *Id.* at
24 *2-3. The defendants also agreed to pay the costs of providing notice and for the administration of
25 the settlement, separate and apart from the settlement amount. *Id.* at *3.

26 Other cases where courts have approved similar minimum and maximum settlement amount
27 terms as in this Action include *Lewis v. Green Dot Corporation*, No. CV 16-3557 FMO (AGR_x),
28

1 2017 WL 4785978 (C.D. Cal. June 12, 2017); *McNeal v. RCM Technologies USA Inc.*, No. 2:16-
2 cv-05170-ODW(SSx), 2017 WL 1807595 (C.D. Cal. Mar. 16, 2017); *Lemus v. H & R Block*
3 *Enterprises LLC.*, No. C 09-3179 SI, 2012 WL 3638550 (N.D. Cal. Aug. 22, 2012); and *In re TD*
4 *Ameritrade Account Holder Litigation*, No. C 07-2852 SBA, 2011 WL 4079226 (N.D. Cal.
5 Sept. 13, 2011).

6 Class Counsel expect the claims rate to be substantial for consumer product class action
7 settlements of this size, given the direct notice provided to Settlement Class Members, the ongoing
8 traffic to the Settlement Website, and the substantial media coverage of the issues in the case.
9 Indeed, nearly 1.4 million claims have already been received with six weeks remaining in the claims
10 period and a second round of notice underway. Angeion Decl. ¶ 26.

11 **E. The Proposed Attorney Fee Award is Reasonable**

12 The terms of any proposed attorneys' fees award, including the timing of payment is a factor
13 requiring analysis under Rule 23(e)(2)(C). As set forth in Plaintiffs' Motion for Attorney Fees,
14 Expenses, and Service Awards, filed concurrently, Class Counsel seeks attorneys' fees up to 28.3%
15 of the Minimum Class Settlement Amount, or \$87.73 million, plus out-of-pocket expenses of
16 \$995,244.93. Named Plaintiffs incorporate by reference all arguments in the Motion for Attorneys'
17 Fees, Expenses, and Service Awards filed concurrently herewith.

18 **F. The Class Members' Positive Reaction Favors Final Approval**

19 The Court should consider the reaction of class members to the proposed settlement when
20 determining the Settlement's fairness. *Churchill Vill.*, 361 F.3d at 575. "It is established that the
21 absence of a large number of objections to a proposed class action settlement raises a strong
22 presumption that the terms of a proposed class action are favorable to the class members." *Nat'l*
23 *Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (collecting
24 cases); *see also In re Fleet/Norstar Sec. Litig.*, 935 F. Supp. 99, 107 (D.R.I. 1996).

25 While the notice program reached millions of Apple consumers, and almost 1.4 million class
26 members have already responded, as of August 24, 2020, only 78 requests for exclusion were
27 received and only 22 filed objections to the Settlement, an extraordinarily low number, representing
28

1 less than 0.002% of all responses and a miniscule portion of the class. Joint Decl. ¶ 57.

2 Additionally, many letters submitted to the Court concerned the requirements to submit a
3 claim, rather than the terms of the Settlement itself, such as having to provide information used to
4 verify ownership of an eligible device, like serial numbers, or attesting that they experienced slowed
5 performance.¹⁰ See, e.g., objections from Daniel Bleaken [Dkt. 432] and Eric Van Winkle
6 [Dkt. 438] (invoice or receipts); Mark Wilson [Dkt. 435] and Anne Barschall [Dkt. 444]
7 (performance attestation); Jane Kim [Dkt. 449], and Clifton Cannon [Dkt. 452] (serial number).
8 But the attestation requirement was an important part of the claims process, because not every
9 iPhone device at issue was arguably impacted by the iOS software updates. These letters do not
10 weigh against final approval or detract from the overall success of the notice and claim process,
11 which strongly support granting final approval. Moreover, the information required to submit a
12 claim ensures that the claimant is eligible to participate in the Settlement and that the information
13 provided is accurate. “[T]here is nothing unfair about requiring a claimant to meet the eligibility
14 requirements for a particular benefit.” *In re Equifax Inc. Customer Data Sec. Breach Litig.*,
15 No. 1:17-md-2800-TWT, 2020 WL 256132, at *30 (N.D. Ga. Mar. 17, 2020) (citing MANUAL FOR
16 COMPLEX LITIGATION (Fourth) § 21.66 (“Class members must usually file claims forms providing
17 details about their claims and other information needed to administer the settlement.”)). The claims
18 process also provided alternative methods to submit claims, as well as a search tool that individuals
19 could use to identify devices associated with their Apple ID that are eligible as part of the Settlement
20 Class. Individuals also had the option of mailing written claim forms for class members who no
21 longer can determine their serial numbers or locate ownership information, and thousands of class
22 members have successfully submitted such forms.

23 Edward and Darlene Door’s 55-page written objection [Dkt. 423] claims that Cotchett,
24 Pitre & McCarthy had a “conflict of interest” representing Apple customers in this Action while
25

26 ¹⁰ If a claim was not accepted by the Settlement Website, the cause may have been that the particular
27 iPhone device is not a part of the Settlement Class. As stated in the Settlement Class definition, the
28 Settlement only includes those devices that ran the applicable iOS update as of December 21, 2017
and does not include every device of the relevant iPhone models. This is made clear in the short-
form and long-form notices, on the Settlement Website, and on the paper and digital Claim Forms.

1 simultaneously representing Apple in an antitrust case, *In re Lithium Ion Antitrust Litigation*, Case
2 No. 4:13-md-02420 (YGR), where Cotchett, Pitre & McCarthy allegedly had unfair access to
3 Apple’s confidential files about its battery business. As a result of this alleged conflict, the Orrs
4 ask the Court to disqualify Cotchett, Pitre & McCarthy from this case. *Id.* However, these
5 assertions are false. Cotchett Pitre & McCarthy does not represent Apple and has never had access
6 to Apple’s confidential battery business files in the *Lithium Ion* case.

7 Erik Summers [Dkt. 433] objects that the settlement consideration is too low, asking the
8 Court to require further investigation into allegations of fraudulent conduct by Apple. However,
9 the Court previously dismissed claims in this Action premised on allegations of fraud, following
10 extensive investigation and discovery by Named Plaintiffs, and there is “no guarantee that the class
11 would receive a better deal” than the one reached in this Settlement. *See Hanlon v. Chrysler Corp.*,
12 150 F.3d 1011, 1027 (9th Cir. 1998). As the Ninth Circuit has explained:

13 Of course it is possible, as many of the objectors’ affidavits imply, that the settlement
14 could have been better. But this possibility does not mean the settlement presented
15 was not fair, reasonable or adequate. Settlement is the offspring of compromise; the
question we address is not whether the final product could be prettier, smarter or
snazzier, but whether it is fair, adequate and free from collusion.

16 *Id.* at 1027. Conversely, Marin MacKerel [Dkt. 441] objects that the settlement consideration is
17 too high, characterizes Apple’s actions as a “PR misstep,” and asks the Court to reduce Apple’s
18 payment as much as possible. Similarly, Frank Olozaga [Dkt. 448] asserts that because electronic
19 products normally slow down over time, there is no basis for a lawsuit or settlement with Apple.
20 J. Johnson [Dkt. 451] also objects that the settlement will “penalize” Apple for software that
21 improved the customer experience, asking the Court to dismiss the case instead. Finally, Chrisman
22 Lau [Dkt. 456] objected to the Settlement and called the Named Plaintiffs’ case against Apple
23 “unfounded” because any slowdowns to her device were acceptable. These objections all lack
24 support for their positions, either that the Settlement is too low or too high, and illustrate the
25 uncertainty of litigation and the inherent risks to the Settlement Class in how a trier-of-fact would
26 view the underlying conduct.

27 Evan Nayee [Dkt. 436] objects to the proposed distribution of \$25 per device and asks that
28

1 class members receive \$29 per device instead, the same reduced amount that Apple offered
2 customers to replace their batteries. However, the \$25 payment is a baseline amount that is
3 potentially subject to increase on a pro rata basis, depending on the claims rate. Moreover,
4 Mr. Nayee does not explain how Apple’s replacement price is relevant to damages in this case, nor
5 why \$29 is a more appropriate amount to distribute than \$25, which was based on Named Plaintiffs’
6 analysis of potential damages. Similarly, Dominique Morgan [Dkt. 457] objects to distribution of
7 \$25 per device and claims that that payment of \$1,500 to \$3,500 would be a more appropriate
8 amount for the seven devices she owns. Ms. Morgan provides no basis to support her higher claim.

9 Finally, Terrence O’Toole [Dkt. 437] claims that he was unable to determine the identity of
10 the Named Plaintiffs representing the proposed Class, nor the substance of the claims to permit him
11 to evaluate the proposed Class Settlement Amounts.¹¹ However, the Named Plaintiffs are all
12 included in the 2CAC, and the Settlement itself not only includes a list of all Named Plaintiffs but
13 nearly all of them personally signed the Settlement Agreement. Moreover, the Court-approved
14 notices contain substantial information about the case, including the claims and defenses, and the
15 Settlement Website has links to many key pleadings in the case, along with directions to access
16 other records from the Court’s PACER system. Mr. O’Toole’s objections are belied by the
17 substantial information made available to Settlement Class Members.

18 **G. The Court-Approved Notice Program Satisfies Due Process and Adequately**
19 **Provided Notice to Class Members**

20 Before final approval of a class action settlement, the Court must find that class members
21 were notified in a reasonable manner. Fed. R. Civ. P. 23(e)(1). When a settlement class is certified
22 under Rule 23(b)(3), class members must receive “the best notice that is practicable under the
23 circumstances.” Fed. R. Civ. P. 23(b)(3). The notice program cannot “systematically leave any
24 group without notice.” *Officers for Just. v. Civil Serv. Comm’n of City & Cty. of San Francisco*,

25
26 _____
27 ¹¹ Mr. O’Toole also complains about the information provided for Class Counsel’s proposed award
28 of attorneys’ fees and expenses. Named Plaintiffs respond to Mr. O’Toole’s concerns, and other
objections related to attorneys’ fees and expenses, in their Motion for Attorneys’ Fees, Expenses,
and Service Awards, filed concurrently herewith.

1 688 F.2d 615, 624 (9th Cir. 1982). Settlement notice must describe “the terms of the settlement in
2 sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be
3 heard.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 826 (9th Cir. 2012). The notice plan must ultimately
4 comport with due process requirements. *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 963 (9th Cir.
5 2009). Here, the Court-approved notice plan implemented by the Parties and the Settlement
6 Administrator comports with due process and was the best practicable means under the
7 circumstances. *See generally* Angeion Decl. ¶¶ 6-25.

8 **1. The Approved Notice Plan Was Implemented**

9 The notice program proposed by Named Plaintiffs in their motion for preliminary approval
10 of the Settlement [Dkt. 415-416] and approved by the Court in the Preliminary Approval Order
11 [Dkt. 429] includes *direct* notice emailed and/or mailed to Class Members, and has been fully
12 implemented by Angeion Group, the Settlement Administrator. The Parties estimate that direct
13 notice has been sent to over 99% of the class.

14 As set forth in the Declaration submitted by the Court-approved Settlement Administrator,
15 Angeion Group, since the entry of the Preliminary Approval Order, Angeion has (i) emailed
16 90,119,272 copies of the notice to potential Settlement Class Members, (ii) mailed 5,617,563 copies
17 of the notice to potential Settlement Class Members, and (iii) created and managed the Settlement
18 Website, www.smartphoneperformancesettlement.com. *See* Angeion Decl. ¶¶ 6, 11. The
19 Settlement Website provides information to potential Settlement Class Members about the litigation
20 and the Settlement, contains links to important settlement documents, in both English and Spanish,
21 and allows Settlement Class Members to file claims electronically. Settlement Class Members are
22 also provided a toll-free line, available 24 hours a day, 7 days a week, dedicated to answering their
23 questions. To date, there have been almost 10.5 million page views of the Settlement Website and
24 13,138 calls to the toll-free line. *See id.* ¶¶ 24-25.

25 **2. The Notice Program Satisfies Due Process**

26 Under Rule 23(c)(2)(B), settlement notice must be “the best notice that is practicable under
27 the circumstances, including individual notice to all members who can be identified through
28

1 reasonable effort.” *See* Fed. R. Civ. P. 23(e)(1) (“The court must direct notice in a reasonable
2 manner to all class members who would be bound by the propos[ed settlement].”). Notice “must
3 generally describe[] the terms of the settlement in sufficient detail to alert those with adverse
4 viewpoints to investigate and to come forward and be heard.” *Lane*, 696 F.3d at 826 (citation
5 omitted).

6 Due process requires the best notice that is practicable under the circumstances. *See*
7 *Rodriguez*, 563 F.3d at 963. It does not require actual notice to each and every class member.
8 *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1128 (9th Cir. 2017) (“neither Rule 23 nor the Due
9 Process Clause requires actual notice to each individual class member”). Courts recognize that “it
10 might be *impossible* to identify some class members for purposes of actual notice.” *Mullins v.*
11 *Direct Digit., LLC*, 795 F.3d 654, 665 (7th Cir. 2015) (emphasis in original).

12 Here, the notices include all the information required under Rule 23(c)(2)(B): (1) the nature,
13 history, and status of the Action; (2) the definition of the Settlement Class and who is excluded
14 from it; (3) the reasons the Parties propose the Settlement; (4) the Minimum and Maximum Class
15 Settlement Amounts; (5) the estimated payment per individual; (6) the Settlement Class’s claims
16 and issues; (7) the Parties’ disagreement over damages and liability; (8) the amount of Service
17 Awards for Named Plaintiffs; (9) the plan for allocating the Settlement proceeds to the Settlement
18 Class; and (10) the date, time, and place of the Final Hearing. *See* Angeion Decl., Exs. A-E. The
19 Class Notice satisfies the requirements of Rule 23(h)(1), as it notifies Settlement Class Members
20 that Class Counsel will apply to the Court for attorneys’ fees and costs as a percentage of the
21 Minimum Class Settlement Amount and its impact on Settlement Class Members. *Id.* The Class
22 Notice complies with Rule 23(e)(5) in that it discusses the rights Settlement Class Members have
23 concerning the Settlement. *Id.* The Class Notice includes information on a Settlement Class
24 Member’s right to: (1) request exclusion and the manner for submitting such a request; (2) object
25 to the Settlement, or any aspect thereof, and the manner for filing and serving an objection; and
26 (3) participate in the Settlement and instructions on how to complete and submit a Claim Form to
27 the Settlement Administrator. *Id.* The Notice also provides contact information for Class Counsel,
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1 as well as the postal address for the Court. *Id.* The Notice further conveys all information necessary
2 for class members to make informed decisions relating to the Settlement, and all information called
3 for under the Northern District guidelines. *Id.*

4 The direct notice procedure and the information posted on the Settlement Website meet the
5 requirements under Rules 23(c)(2)(B) and 23(e)(1), and are consistent with the Northern District's
6 Procedural Guidance. Specifically, Apple provided the Settlement Administrator with the email
7 address of record on the Apple ID account of the members of the Settlement Class, as well as names,
8 mailing addresses, and relevant iPhone serial numbers. *Id.* ¶ 4. Emails of the Summary Notice
9 were sent by the Settlement Administrator to those whose email addresses were valid; otherwise,
10 the Settlement Administrator mailed a copy of the Summary Notice to that Settlement Class
11 Member. *Id.* ¶¶ 6, 11. A copy of the Class Notice, together with the Claim Form and various Court
12 orders and other filings, were posted and available for download on the Settlement Website. *Id.*
13 ¶ 17. The Settlement administrator successfully reached almost 90 million people via email and
14 over 5.6 million people via mail. As the Court found in its Preliminary Approval Order, this notice
15 plan was the best practicable notice. *Id.* ¶ 5.

16 The notice program implemented above satisfies due process. *See, e.g., Online DVD-*
17 *Rental*, 779 F.3d at 941, 946 (notice was first emailed to 35 million class members and then sent
18 via U.S. mail to over 9 million class members whose email addresses generated bounce-back
19 messages); *McCrary v. Elations Co.*, No. EDCV 13-0242 JGB (SPx), 2016 WL 769703, at *7 (C.D.
20 Cal. Feb. 25, 2016) (notice was sent via U.S. mail and email); *Briseno*, 844 F.3d at 1129 (“[N]otice
21 by publication . . . on a website . . . is sufficient to satisfy due process.”). Indeed, this Court has
22 previously approved similar notice programs whereby emails were the primary notice vehicle, *In*
23 *re Magsafe Apple Power Adapter Litig.*, No. 5:091-cv-01911-EJD, 2015 WL 428105, at *10 (N.D.
24 Cal. Jan. 30, 2015) (emails sent to over 5 million class members), and courts routinely find that
25 comparable notice procedures meet the requirements of due process and Rule 23. *See Williamson v.*
26 *McAfee, Inc.*, No. 5:14-cv-00158-EJD, 2016 WL 4524307, at *7-8 (N.D. Cal. Aug. 30, 2016);

1 *Russell v. Kohl's Dep't Stores, Inc.*, No. ED CV 15-1143 RGK (SPx), 2016 WL 6694958, at *5
2 (C.D. Cal. Apr. 11, 2016).

3 **IV. CONCLUSION**

4 For the reasons discussed herein, Named Plaintiffs respectfully request the that this Court:
5 (i) grant final certification of the Settlement Class under Rules 23(a) and 23(b)(3); (ii) grant final
6 approval of the proposed Settlement reached between Named Plaintiffs and Apple Inc., under
7 Rule 23(e); (iii) find that notice has been conducted in accordance with the Court-approved notice
8 plan and due process; and (iv) dismiss with prejudice Named Plaintiffs' and Settlement Class
9 Members' claims against Defendant.

10 Respectfully submitted.

11 **COTCHETT, PITRE & MCCARTHY, LLP**

12 DATED: August 26, 2020

/s/ Joseph W. Cotchett

Joseph W. Cotchett

14 Joseph W. Cotchett (SBN 36324)
15 Mark C. Molumphy (SBN 168009)
16 Brian Danitz (SBN 247403)
17 Elle D. Lewis (SBN 238329)
18 San Francisco Airport Office Center
19 840 Malcolm Road, Suite 200
20 Burlingame, CA 94010
21 Telephone: 650-697-6000
22 *jcotchett@cpmlegal.com*
23 *mmolumphy@cpmlegal.com*
24 *bdanitz@cpmlegal.com*
25 *elewis@cpmlegal.com*

KAPLAN FOX & KILSHEIMER LLP

21 DATED: August 26, 2020

/s/ Laurence D. King

Laurence D. King

23 Laurence D. King (SBN 206423)
24 Mario M. Choi (SBN 243409)
25 1999 Harrison Street, Suite 1560
26 Oakland, CA 94612
27 Telephone: 415-772-4700
28 *lking@kaplanfox.com*
mchoi@kaplanfox.com

KAPLAN FOX & KILSHEIMER LLP

Frederic S. Fox (*pro hac vice*)
Donald R. Hall (*pro hac vice*)

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David A. Straite (*pro hac vice*)
Maia C. Kats (*pro hac vice pending*)
850 Third Avenue
New York, NY 10022
Telephone: 212-687-1980
Facsimile: 212-687-7714
ffox@kaplanfox.com
dhall@kaplanfox.com
dstraite@kaplanfox.com
mkats@kaplanfox.com

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 26th day of August 2020, at Pleasanton, 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

**DECLARATION OF LAYN R. PHILLIPS
IN SUPPORT OF SETTLEMENT**

Judge: Hon. Edward J. Davila
Courtroom: 4, 5th Floor
Date: December 4, 2020
Time: 10:00 A.M.

THIS DOCUMENT RELATES TO:

ALL ACTIONS

1 I, Layn R. Phillips, pursuant to 28 U.S.C. § 1746, declare as follows:

2 1. I was selected by the parties to mediate the above-captioned action (the “Action”)
3 and did so as an independent mediator. The formal mediation process, followed by continued
4 negotiations with my assistance, ultimately resulted in the Settlement now before the Court for
5 final approval.

6 2. While the mediation process is confidential, the parties have authorized me to
7 inform the Court of the procedural and substantive matters set forth herein in support of final
8 approval of the Settlement.

9 3. My statements and those of the parties during the mediation process are subject to
10 a confidentiality agreement and Federal Rule of Evidence 408, and there is no intention on either
11 my part or the parties’ part to waive the agreement or the protections of Rule 408. I make this
12 Declaration based on personal knowledge and am competent to so testify.

13 4. I am a former United States Attorney and former United States District Judge. I
14 also sat by designation on the United States Court of Appeals for the Tenth Circuit in Denver,
15 Colorado. I resigned from the federal bench in 1991. From 1991 until 2014, I was a partner in
16 the Newport Beach office of Irell & Manella LLP, where my practice consisted of complex civil
17 litigation, internal investigations and alternative dispute resolution. I am now the founder and
18 lead mediator at Phillips ADR Enterprises, P.C., formed in November 2014.

19 5. For over 20 years, I have successfully mediated high-stakes civil disputes for
20 Fortune 500 companies nationwide. I have also mediated hundreds of disputes referred by private
21 parties and courts, and have been appointed a Special Master by various federal courts in complex
22 civil proceedings. I have also served as a Fellow in the American College of Trial Lawyers. In
23 addition, I have been nationally recognized as a mediator by the Center for Public Resources
24 Institute for Dispute Resolution (CPR), serving on CPR’s National Panel of Distinguished
25 Neutrals.

26 6. Prior to each in person mediation, the parties provided to me, and exchanged
27 amongst themselves, briefs discussing certain aspects of the factual and procedural background of
28

1 the Action, as well as certain of the key disputed factual and legal issues in the Action, along with
2 substantial factual and expert support.

3 7. It was apparent to me from the submissions and presentations made by the parties
4 before and during the mediation process that counsel for all parties had performed a thorough
5 examination of the facts underlying the Action and, with the aid of experts, analyzed it to
6 determine appropriate case valuations. Counsel for all parties were well informed on the current
7 law and provided legal research and analysis of the relevant law. It was also apparent to me that
8 considerable work was done by counsel for all parties to prepare the case for mediation.

9 8. The parties participated in three, all-day, formal mediation sessions before me in
10 Newport Beach, California. The first session occurred on January 7, 2019, the second occurred
11 six months later, on August 28, 2019, following argument on motions to dismiss, and the final
12 session occurred on September 27, 2019. In attendance at the mediations were attorneys from
13 Cotchett, Pitre & McCarthy and Kaplan Fox & Kilsheimer LLP, Co-Lead Counsel for Plaintiffs,
14 attorneys from Gibson, Dunn, & Crutcher, counsel for Apple, Inc. (“Apple”), and Apple’s in
15 house counsel. In the periods preceding and following each of these sessions, I also participated
16 in substantial phone and email communications with counsel for the parties.

17 9. After the third in-person mediation on September 27, 2019, I made a mediator’s
18 proposal to the parties. The parties later accepted the proposal, and I continued to be involved
19 through the process of negotiating a term sheet and long-form settlement agreement.

20 10. After presiding over the lengthy mediation process in this case, I am able to report
21 that the parties’ Settlement is the product of vigorous and independent advocacy and arm’s-length
22 negotiation conducted in good faith. There was no collusion between the parties.

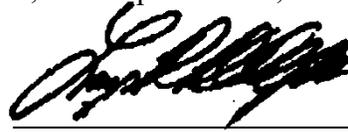
23 11. Throughout the mediation process, I developed a complete understanding of the
24 full range of the dispute, the respective positions of the parties, and the relative strengths and
25 weaknesses of those positions, as well as the risks, rewards and costs of continued litigation and
26 inevitable appeal.

27 12. Based on my knowledge of the issues in dispute, my review of the substantial
28 factual and legal materials presented before and during the mediation, the rigor of the parties’

1 negotiations, the relative strengths and weaknesses of the parties' positions, and the benefits
2 achieved by the Settlement, I believe the Settlement (a non-reversionary Minimum Class
3 Settlement Amount of \$310 million and Maximum Class Settlement Amount of \$500 million)
4 represents a well-reasoned and sound resolution of the highly uncertain litigation and that the
5 result is fair, adequate, reasonable and in the best interests of the Settlement Class. Therefore, I
6 respectfully endorse the final approval of the Settlement by the Court.

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

8 Executed this 21st day of August, 2020, at Newport Beach, California.

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LAYN R. PHILLIPS

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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

**DECLARATION OF SETTLEMENT
ADMINISTRATOR**

Judge: Hon. Edward J. Davila
Courtroom: 4, 5th Floor
Date: December 4, 2020
Time: 10:00 A.M.

THIS DOCUMENT RELATES TO:

ALL ACTIONS

1 **DECLARATION OF SETTLEMENT ADMINISTRATOR**

2 I, Denise L Earle, hereby declare the following pursuant to 28 U.S.C. §1746:

3 1. I am a Project Manager with Angeion Group (“Angeion”), located at 1650 Arch
4 Street, Suite 2210, Philadelphia, PA 19103. I am over 21 years of age and am not a party to this
5 action. I have personal knowledge of the facts set forth herein and, if called as a witness, could
6 and would testify competently thereto.

7 2. The purpose of this declaration is to provide the parties and the Court with a
8 summary and the results of the work performed by Angeion to effectuate notice pursuant to the
9 Court’s May 27, 2020 Order Certifying Settlement Class; Granting Preliminarily Approval of
10 Class Action Settlement; and Approving Form and Content of Class Notice (ECF No. 429)
11 (“Order”).

12 3. Angeion was appointed by the Court to serve as the Settlement Administrator to,
13 among other tasks, email the Notice; mail the Postcard Notice where applicable; receive and
14 process Claim Forms and respond to Class Member inquiries; establish and maintain a dedicated
15 Settlement website and toll-free telephone number; and perform other duties as specified in the
16 Settlement Agreement and Release (“Agreement”) that this Court preliminarily approved on
17 May 27, 2020.

18 **CLASS DATA**

19 4. On or about May 28, 2020 and also on June 5, 2020, Angeion received from
20 Defendant Apple Inc.’s electronic files. These data contained a total of 129,836,502 records
21 (“Class Data”) which included the following fields: name(s), email addresses, mailing addresses
22 and serial numbers for the members of the Settlement Class. The records in the provided Class
23 Data were extracted from Apple’s records in accordance with the Class definition and contained,
24 following a reasonable search and analysis, records associated in Apple’s databases with iPhone
25 6, 6 Plus, 6s, 6s Plus and SE devices shipped in the United States that ran iOS 10.2.1 or later
26 before December 21, 2017 and iPhone 7 and 7 Plus devices shipped in the United States that ran
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1 iOS 11.2 or later before December 21, 2017. The records contained approximately 129,729,753
2 records with an email address, and approximately 129,605,628 records with a U.S. postal address.

3 5. Angeion performed an extensive analysis of the Class Data records that contained
4 an email address and after conferring with the parties, performed email cleansing and
5 deduplicated the Class Data by email address. The email cleansing process removes extra spaces,
6 fixes common typographical errors in domain name and corrects insufficient domain suffixes (e.g.
7 gmail.com to gmail.com, gmail.co to gmail.com, yaho.com to yahoo.com, etc.). After the
8 cleansing process wherein the email addresses were standardized, the records were subjected to
9 a deduplication process which matched records based on the email address, so that Class Members
10 contained in the data multiple times would not receive the same notification multiple times. In
11 the event a Class Member had multiple email addresses, that Class Member was sent a notice to
12 each unique email address. After email cleansing and deduplication, 93,263,473 unique email
13 addresses remained. As outlined in the Agreement, email addresses containing domain names for
14 Apple and/or its counsel (i.e., @apple.com, @gibsondunn.com and @cov.com) were excluded
15 from the final Notice List. The remaining 93,260,445 unique email addresses were subjected to
16 an email validation process whereby each email address was compared to known bad email
17 addresses¹, and where the address was not designated as a known bad address, the email address
18 was further verified by contacting the Internet Service Provider (“ISP”) to determine if the email
19 address exists. As a result of this process, 3,141,173 unique email addresses were determined to
20 be invalid, thus an email notice was not sent to these records, but if those records had a valid U.S.
21 postal address associated with it, they were sent a Mailed Notice, as described infra.

22 **DIRECT NOTICE**

23 6. As a result of Angeion’s efforts, in accordance with the Order, beginning on July
24 6, 2020 (“Initial Notice Date”), Angeion caused 90,119,272 Email Notices to be disseminated to

25 _____
26 ¹ Angeion maintains a database of email addresses that were returned as permanently
27 undeliverable, commonly referred to as a hard bounce, from prior campaigns. Where an address
28 has been returned as a hard bounce within the last year, that email is designated as a known bad
email address.

1 Class Members for whom an email address was present and the email address was determined to
2 be valid based on the criteria described above. A true and correct copy of the Email Notice is
3 attached hereto as Exhibit A.

4 7. As of August 8, 2020, of the Email Notices sent, there were 2,611,071 Email
5 Notices that were returned undeliverable. Angeion marked 3,786,831 records in the database that
6 related to an undeliverable email address.

7 8. Angeion performed a final audit of email deliverability and identified 340,285
8 unique email addresses, which is 0.36% of the total unique email addresses in the Class Data
9 records, that did not contain a deliverability status, rather they contained a technical error
10 designation. For these records, Angeion re-deployed the Email Notice beginning on August 11,
11 2020 and completing on August 12, 2020. Whereas the deliverability status of these Email Notices
12 could not be determined prior to the noticing deadline, out of an abundance of caution, Angeion
13 marked these records to be sent a Mailed Notice where a U.S. postal address was present to ensure
14 each Class Member was noticed in accordance with the deadline set forth in the Order.

15 9. For the records marked as an “undeliverable email” in the database, Angeion
16 conducted a rigorous analysis and data cleansing in preparation for sending Mailed Notice by
17 postcard to these Class Members. The cleansing included, but was not limited to, redacting
18 offensive language in the name and address fields where applicable, inserting “Class Member”
19 where a name was not present on the record, removing special characters such as emojis, bar
20 symbols, non-Latin and other language characters, identifying and cleansing records of “invisible
21 elements” such as tabs, spaces before and after text within a field, carriage and new line returns,
22 and removing special characters such as @, “, #, etc. After cleansing the data, Angeion processed
23 the address information through a verification service that conforms the data to standard USPS
24 regulations and corrects or supplements addresses to be in compliance. Once the address data was
25 standardized, Angeion deduplicated the records so that only one Mailed Notice was sent to a Class
26 Member where the name and address were the same across multiple devices. This reduces the
27 potential for confusion by Class Members, who otherwise might have received multiple identical
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1 mailings. Angeion performed further analysis on the deduplicated list, whereby Apple Store
2 locations, distribution centers, retail store locations, and records where the mailing address was
3 incomplete or would be undeliverable, were removed from the mail file because these notices
4 were unlikely to reach the intended Class Member recipients.

5 10. After finalizing the mail file, we determined that certain mailing addresses
6 appeared in the mailing list more than 10 times (and in some cases more than 1,000 times), which
7 suggested that these mailing addresses were invalid, irregular, or otherwise unlikely to correspond
8 to the actual residence of the intended Class Member recipient. For example, these include single
9 family homes, local independent restaurants, and an RV resort that each appear to be associated
10 with hundreds—or even thousands—of devices. To ensure the efficient allocation of resources
11 and minimize confusion that could arise from the delivery of large numbers of notices to such
12 addresses, Angeion was directed to perform further review on these records to determine if the
13 addresses were residential or commercial, if the addresses were valid or invalid, and what business
14 name, if any, matched to the applicable addresses. There are approximately 199,153 records that
15 relate to approximately 2,154 unique addresses that are presently undergoing further analysis to
16 determine deliverability. These records represent approximately 0.15% of the overall total class
17 size.

18 11. After the detailed analysis that Angeion performed, in accordance with the Order,
19 on August 6, 2020, Angeion commenced sending Mailed Notice to the records identified for mail.
20 As of August 19, 2020, 5,617,563 Mailed Notices were sent, including the records that did not
21 contain an email address, but contained a U.S. postal address in the Class Data, as well as those
22 records where the email address was determined to be invalid or undeliverable as of August 8,
23 2020. A true and correct copy of the Mailed Notice is attached hereto as Exhibit B.

24 12. Through the direct notice program ordered by the Court, approximately 99% of
25 the Settlement Class were sent direct notice.
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SECOND NOTICE

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2 13. Pursuant to the parties' joint direction, a second round of notice will be distributed
3 to virtually all Class Members who have not objected, excluded, or filed a claim. As directed,
4 Angeion is currently in the process of disseminating a second notice to all Class Members who
5 have not yet taken an action based on the initial notice sent as described above.

6 14. Specifically, Angeion will cause a second postcard notice to be mailed to all Class
7 Members who originally received a postcard notice as described above. This includes all Class
8 Members that were sent a postcard notice due to having an incomplete, invalid, or missing email
9 address in the initial noticing campaign as well as any Class Member whose original email notice
10 was returned as undeliverable by the U.S. Postal Service. Excluded from the mailing are 46
11 records Angeion identified as filing an exclusion, objection, or who informed Angeion they did
12 not wish to receive further communications. A true and correct copy of the second postcard notice
13 is attached hereto as Exhibit C.

14 15. Angeion will also cause a second email notice to be disseminated to all Class
15 Members who were originally sent an email notice as described above that was not considered a
16 hard bounce. Angeion is currently in the process of removing from the email list those Class
17 Members that objected, excluded, filed a claim, or informed Angeion that they do not wish to
18 receive future communications. A true and correct copy of the second email notice is attached
19 hereto as Exhibit D.

20 16. This second round of notice, which was not required by this Court's Order, exceeds
21 customary noticing efforts employed in other similar matters.

CASE SPECIFIC WEBSITE AND TOLL-FREE PHONE NUMBER

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23 17. On or about July 6, 2020, Angeion established the following website devoted to
24 this Settlement: www.SmartphonePerformanceSettlement.com ("Settlement Website"). The
25 Settlement Website contains general information about the Settlement, including answers to
26 frequently asked questions, important dates and deadlines pertinent to this matter, and copies of
27 important documents. Visitors to the Settlement Website can download (1) a Class Notice, (2) a
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1 Claim Form, (3) the Consolidated Amended Complaint, (4) the Second Consolidated Amended
2 Complaint, (5) Defendant Apple Inc.'s Answer to Plaintiffs' Second Consolidated Amended
3 Complaint, (6) the Order, and (7) the Agreement. The Settlement Website also has a "Contact
4 Us" page whereby Class Members can submit questions regarding the Settlement to a dedicated
5 email address: Questions@SmartphonePerformanceSettlement.com. The Settlement Website
6 address was set forth in the Class Notice, Email Notice, Mailed Notice and Claim Form. A true
7 and correct copy of the Class Notice is attached hereto as Exhibit E.

8 18. On or about July 6, 2020, Angeion established an online claim filing portal
9 whereby Class Members can complete and submit their Claim Form via the Settlement Website.
10 Class Members can submit an online Claim by entering through one of two methods on the Submit
11 a Claim page of the Settlement Website. In addition, Class Members can instead choose to submit
12 a Claim by downloading a Claim Form (which is available in PDF format via the Settlement
13 Website) and mailing the completed Claim Form to the Administrator.

14 19. If a claimant has their serial number, they may enter it on the claim page. If the
15 serial number matches to the Class Data provided by Apple, based on the class definition, the
16 Class Member is automatically directed to the online Claim Form. If the serial number does not
17 match to the Class Data, a message is displayed advising the individual the serial number does
18 not match the records provided and recommends they double check their entry if they believe
19 they are a Class Member. The message also instructs the individual that they can attempt to locate
20 their device using the search tool.

21 20. The search tool is the second method by which an individual can verify whether
22 or not they qualify for benefits under the Settlement. A claimant may utilize the simple-to-use
23 search tool by providing the following data points: Apple ID, Device Type, First Name, Last
24 Name, Street Address, City, State and Zip Code. The search tool then performs a matching
25 process on the records in the Class Data. The search tool informs the claimant if the information
26 provided results in a single match, no match, or multiple matches within the Class Data.

1 21. If the search tool locates a match² to the Class Data using the entered criteria, the
2 claimant will automatically be transferred to the online Claim Form. The information contained
3 in the search tool, such as name and address are pre-populated in the online claim portal along
4 with the associated serial number (masked). The Class Member is then asked to complete and
5 submit the remainder of the Claim Form.

6 22. If the search returns multiple records, a message is displayed that advises the Class
7 Member that multiple records were matched³, and recommends they begin by filing their initial
8 claim which follows the same steps as set forth above, and alerts the Class Member that they will
9 have the opportunity to file further claims after their initial claim is submitted. Concurrently, with
10 their confirmation of claim filing for the initial claim, an email is automatically sent to the Class
11 Member that provides the Class Member with the login information and instructions as to how
12 they may submit their additional Claim(s).

13 23. If, after entering the required information in the search tool, no matches are
14 located, a message is displayed advising the claimant the search criteria did not locate a match,
15 and advises that they double check their entry for data input errors, as well as recommends that
16 the claimant attempt to search using alternate information such as previous addresses, name
17 variations, or other Apple IDs they were or are associated with. Importantly, the message also
18 instructs the claimant that a PDF of the Claim Form is available for download, which they can
19 mail to the Administrator along with any documentation that supports their eligibility as a Class
20 Member for a second level manual review.

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24 _____
25 ² The search tool initially searches based on the Apple ID and then does a soft or “like” match to
26 the remaining data whereby small variations in name and address will provide the Class Member
27 with a match.

28 ³ Multiple matches in this instance means that the information provided by the Class Member
returned more than one serial number for the specific device type searched that is associated to
the Class Member.

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OBJECTIONS TO THE SETTLEMENT

28. The deadline for Class Members to object to the Settlement, the requested award of Attorneys' Fees and Expenses, or Service Awards to Named Plaintiffs is October 6, 2020. As of August 24, 2020, Angeion has been made aware of a total of **22** potential objections filed with the Court.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on August 25, 2020



DENISE L EARLE

Exhibit A

LEGAL NOTICE

If you are or were a U.S. owner of an iPhone 6, 6 Plus, 6s, 6s Plus, and/or SE device that ran iOS 10.2.1 or later before December 21, 2017, and/or a U.S. owner of an iPhone 7 or 7 Plus device that ran iOS 11.2 or later before December 21, 2017, you could be entitled to benefits under a class action settlement.

WHAT'S THIS ABOUT?

In a consolidated class action lawsuit pending against Apple, Plaintiffs claimed that a performance management feature introduced for iPhone 6, 6 Plus, 6s, 6s Plus, and SE devices in iOS 10.2.1, and introduced for iPhone 7 and 7 Plus devices in iOS 11.2, diminished the performance of some of those devices. Apple denies all allegations and is entering into this settlement to avoid burdensome and costly litigation. The settlement is *not* an admission of wrongdoing by Apple.

Under the settlement, Apple will pay a minimum of \$310,000,000 and a maximum of \$500,000,000 depending on the number of claims submitted. If the settlement is approved by the Court, your rights may be affected. The United States District Court for the Northern District of California authorized this Legal Notice. The Court will have a Final Hearing to consider whether to approve the settlement so that the benefits may be paid. This summary provides basic information about the settlement.

WHO'S AFFECTED?

You are a member of the Settlement Class if you are or were (1) a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device (2) that ran iOS 10.2.1 or later or, in the case of iPhone 7 and 7 Plus devices, that ran iOS 11.2 or later before December 21, 2017. **You must meet both criteria to be a member of the Settlement Class.**

WHAT BENEFIT CAN YOU GET FROM THE SETTLEMENT?

Apple will provide a cash payment per eligible device to each Class Member who submits a timely and valid [Claim Form](#) including a serial number of an eligible device and a declaration under penalty of perjury stating that they are or were (1) a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device (2) that ran iOS 10.2.1 or later or, in the case of iPhone 7 and 7 Plus devices, that ran iOS 11.2 or later before December 21, 2017; and (3) they experienced diminished performance on the device(s).

A United States owner is someone who owned, purchased, leased, or otherwise received an eligible device, including for personal, work, or any other purposes, and whose eligible device was shipped to the United States, its territories, and/or its possessions. The Settlement Class does not include iPhone owners who are domiciled outside of the United States, its territories, and/or its possessions.

Amount of Cash Payment: Under the proposed settlement, Apple will provide a cash payment of approximately \$25 per eligible device. Please note that the actual cash payment per eligible device may be greater than or less than \$25, depending on the total number of approved claims and other factors. The total payments to be made by Apple under the proposed settlement are subject to a minimum and maximum as set forth above and in more detail in the Class Notice available at www.SmartphonePerformanceSettlement.com.

HOW DO YOU GET A PAYMENT?

An online Claim Form package contains everything you need and is available at www.SmartphonePerformanceSettlement.com. You may also submit a Claim Form by clicking this link.

WHAT ARE YOUR OPTIONS AND WHAT ARE THE DEADLINES?

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
OPTION	EXPLANATION	DEADLINE
SUBMIT A CLAIM FORM ONLINE OR IN THE MAIL	The only way to get a payment under the settlement.	October 6, 2020
EXCLUDE YOURSELF	Get no payment under the settlement. This is the only option that allows you to be a part of any other lawsuit against Apple about the claims and allegations in this case.	
OBJECT TO THE SETTLEMENT	Write to the Court about why you don't like the settlement and ask to speak at the Final Hearing.	
OBJECT TO ATTORNEYS' FEES AND/OR EXPENSES	Write to the Court about why you don't like the attorneys' fees and/or expenses that Class Counsel requests.	
GO TO A HEARING	Speak in Court about the fairness of the settlement.	December 4, 2020 at 10:00 a.m. PST
DO NOTHING	Get no payment under the settlement and give up your right to compensation for the claims and allegations in this case.	N/A

Please read the more detailed Class Notice, which is available at www.SmartphonePerformanceSettlement.com, and decide whether you want to make a Claim.

To claim a settlement benefit, your [Claim Form](#) must be **received on or before October 6, 2020**. **If your claim for a settlement benefit is not received by this deadline, you will lose your right to obtain this benefit.**

If you don't want to make a Claim and you don't want to be legally bound by the settlement, your request to be excluded must be received by **October 6, 2020**, or you won't be able to sue, or continue to sue, Apple about the claims and allegations in this case. If you request to be excluded, you will not be eligible to receive a payment from this settlement.

If you stay in the Settlement Class, you may object to the settlement. Objections to the settlement and/or to Class Counsel's request for Attorneys' Fees and Expenses must be received by **October 6, 2020**.

The more detailed Class Notice, available at www.SmartphonePerformanceSettlement.com, explains how to request exclusion from the Settlement Class or object to the settlement. The Court will hold a Final Hearing in this case (*In re Apple Inc. Device Performance Litigation*, Case No. 18-MD-2827-EJD) on **December 4, 2020 at 10:00 a.m. PST** to consider whether to approve (1) the settlement; (2) Class Counsel's request for Attorneys' Fees of up to 30% of the \$310,000,000 Floor, plus expenses of up to \$2 million; and (3) Named Plaintiff Service Awards of up to \$3,500 each (for those Named Plaintiff who were deposed) and \$1,500 (for all other Named Plaintiffs). The Final Hearing will take place at the United States District Court for the Northern District of California, San Jose Courthouse, Courtroom 4, 280 South 1st Street, San Jose, CA 95113. You may appear at the Final Hearing, but you don't need to. The date of the Final Hearing may change without further notice. You should check the settlement website or the Court's Public Access to Court Electronic Records (PACER) site, for a fee, at <https://ecf.cand.uscourts.gov> to confirm that the date has not been changed.

FOR MORE INFORMATION ABOUT THE SETTLEMENT

To obtain a [Class Notice](#), [Claim Form](#), copy of the [Settlement Agreement](#), copies of motions for settlement approval and attorneys' fees, expenses and service awards, and any other important documents in this case, go to www.SmartphonePerformanceSettlement.com, [send an email to: Questions@SmartphonePerformanceSettlement.com](mailto:Questions@SmartphonePerformanceSettlement.com), or call toll-free 1-833-649-0927. For more details, you also may write to the Claims Administrator at: *In re Apple Inc. Device Performance Litigation*, 1650 Arch Street, Suite 2230, Philadelphia, PA 19103 or Class Counsel at Cotchett, Pitre & McCarthy LLP, Attn: Mark C. Molumphy, 840 Malcolm Road, Suite 200, Burlingame, California 94010 and/or Kaplan Fox & Kilsheimer LLP, Attn: Laurence D. King, 1999 Harrison Street, Suite 1560, Oakland, CA 94612.

In addition, you can access the Court docket in this case, for a fee, through the Court's PACER site at <https://ecf.cand.uscourts.gov>. Subject to the Court's current operations in light of the COVID-19 pandemic, you can also visit the office of the Clerk of the Court for the United States District Court for the Northern District of California, San Jose Division, located at 280 South 1st Street, Second Floor, San Jose, California, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

BY ORDER OF THE U.S. DISTRICT COURT

Exhibit B

If you are or were a U.S. owner of an iPhone 6, 6 Plus, 6s, 6s Plus, and/or SE device that ran iOS 10.2.1 or later, and/or an iPhone 7 or 7 Plus device that ran iOS 11.2 or later, before December 21, 2017, you could be entitled to benefits under a class action settlement.

For more information on the proposed settlement, to file a claim or objection, or to exclude yourself, visit the settlement website or contact the Claims Administrator or Class Counsel.

Do not contact the Court for information about the settlement.

www.SmartphonePerformanceSettlement.com

In re Apple Inc. Device Performance Litigation
Claims Administrator
1650 Arch Street, Suite 2230
Philadelphia, PA 19103

PRESORTED
FIRST CLASS MAIL
US POSTAGE PAID
MAG

Electronic Service
Requested



NUMERIC EQUIVALENT

Postal Service: Please Do Not Mark Barcode

Claim ID: <<Claim ID>>
<<Name1>> <<Name2>>
<<Address1>>
<<Address2>>
<<City>>, <<St>> <<Zip>>
<<Country>>

PLEASE RETAIN THIS POSTCARD FOR YOUR RECORDS

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

In a consolidated class action lawsuit pending against Apple, Plaintiffs claimed that a performance management feature introduced for iPhone 6, 6 Plus, 6s, 6s Plus, and SE devices in iOS 10.2.1, and introduced for iPhone 7 and 7 Plus devices in iOS 11.2, diminished the performance of some of those devices. Apple denies all allegations and is entering into this settlement to avoid burdensome and costly litigation. The settlement is **not** an admission of wrongdoing by Apple. This notice summarizes your legal rights. You should visit the settlement website to obtain more complete information about the proposed settlement and your rights. You also may write to the Claims Administrator at the address on the reverse side, or call toll free 1-833-649-0927.

Am I a Class Member? You are a member of the Settlement Class if you are or were (1) a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device (2) that ran iOS 10.2.1 or later or, in the case of iPhone 7 and 7 Plus devices, that ran iOS 11.2 or later before December 21, 2017. **You must meet both criteria to be a member of the Settlement Class.** A United States owner is someone who owned, purchased, leased, or otherwise received an eligible device, including for personal, work, or any other purposes, and whose eligible device was shipped to the United States, its territories, and/or its possessions. The Settlement Class does not include iPhone owners who are domiciled outside of the United States, its territories, and/or its possessions. To claim a settlement benefit, you must submit a Claim Form on or before **October 6, 2020** at www.SmartphonePerformanceSettlement.com, or by mail at the address on the Claim Form, **received by October 6, 2020**.

What benefit can I get from the settlement? Under the settlement, Apple will pay a minimum of \$310,000,000 and a maximum of \$500,000,000, depending on the number of claims submitted. Apple will provide a cash payment of approximately \$25 per eligible device to each eligible Class Member who submits a timely and valid Claim Form including a serial number of an eligible device, and declares under penalty of perjury that they are or were the owner of an affected device and experienced diminished performance. Please note that the actual cash payment per eligible device may be greater than or less than \$25, depending on the total number of approved claims and other factors.

How can I exclude myself from the class? If you don't want to make a Claim and you don't want to be legally bound by the settlement, your request to be excluded must be **received by October 6, 2020**, or you will not be able to sue, or continue to sue, Apple about the claims and allegations in this case. Refer to the settlement website and the detailed Class Notice for information and instructions on how to exclude yourself.

How can I object? If you want to stay in the Settlement Class, but you want to object to the settlement and/or to Class Counsel's request for Attorneys' Fees and Expenses, your objection must be **received by October 6, 2020**. Refer to the settlement website and the detailed Class Notice for information and instructions on how to object. The Court will consider objections at a Final Hearing in this case (*In re Apple Inc. Device Performance Litigation*, Case No. 18-MD-2827-EJD) on **December 4, 2020 at 10:00 a.m. PST** at the United States District Court for the Northern District of California, San Jose Courthouse, Courtroom 4, 280 South 1st Street, San Jose, CA 95113, to consider whether to approve (1) the settlement; (2) Class Counsel's request for Attorneys' Fees of up to 30% of the \$310,000,000 Floor, plus expenses of up to \$2 million; and (3) Named Plaintiff Service Awards of up to \$3,500 each (for deposed Named Plaintiffs) and \$1,500 (for all other Named Plaintiffs). You may appear at the Final Hearing, but you don't need to. The date of the Final Hearing may change without further notice and may be confirmed on the Court's Public Access to Court Electronic Records (PACER) site, for a fee, at <https://ecf.cand.uscourts.gov>.

Where can I get more information? Please visit the settlement website at www.SmartphonePerformanceSettlement.com, or call toll free 1-833-649-0927 to obtain more complete information about the proposed settlement and your rights. You may also write to Class Counsel at: Cotchett, Pitre & McCarthy LLP, Attn: Mark C. Molumphy, 840 Malcolm Road, Suite 200, Burlingame, California 94010, and/or Kaplan Fox & Kilsheimer LLP, Attn: Laurence D. King, 1999 Harrison Street, Suite 1560, Oakland, CA 94612.

www.SmartphonePerformanceSettlement.com

Exhibit C

If you are or were a U.S. owner of an iPhone 6, 6 Plus, 6s, 6s Plus, and/or SE device that ran iOS 10.2.1 or later, and/or an iPhone 7 or 7 Plus device that ran iOS 11.2 or later, before December 21, 2017, you could be entitled to benefits under a class action settlement.

For more information on the proposed settlement, to file a claim or objection, or to exclude yourself, visit the settlement website or contact the Claims Administrator or Class Counsel.

Do not contact the Court for information about the settlement.

www.SmartphonePerformanceSettlement.com

In re Apple Inc. Device Performance Litigation
Claims Administrator
1650 Arch Street, Suite 2230
Philadelphia, PA 19103



NUMERIC EQUIVALENT

Postal Service: Please Do Not Mark Barcode

Claim ID: «Claim ID»
«Name1» «Name2»
«Address1»
«Address2»
«City», «St» «Zip»
«Country»

PRESORTED
FIRST CLASS MAIL
US POSTAGE PAID
MAG

Electronic Service
Requested

SECOND NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

The deadline to submit a claim form in the *In re Apple Inc. Device Performance Litigation* is October 6, 2020. If you previously submitted a claim form or have taken other action, such as objecting to or excluding yourself from the settlement, no further action is required at this time.

In a consolidated class action lawsuit pending against Apple, Plaintiffs claimed that a performance management feature introduced for iPhone 6, 6 Plus, 6s, 6s Plus, and SE devices in iOS 10.2.1, and introduced for iPhone 7 and 7 Plus devices in iOS 11.2, diminished the performance of some of those devices. Apple denies all allegations and is entering into this settlement to avoid burdensome and costly litigation. The settlement is *not* an admission of wrongdoing by Apple. This notice summarizes your legal rights. You should visit the settlement website to obtain more complete information about the proposed settlement and your rights. You also may write to the Claims Administrator at the address on the reverse side, or call toll free 1-833-649-0927.

Am I a Class Member? You are a member of the Settlement Class if you are or were (1) a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device (2) that ran iOS 10.2.1 or later or, in the case of iPhone 7 and 7 Plus devices, that ran iOS 11.2 or later before December 21, 2017. **You must meet both criteria to be a member of the Settlement Class.** A United States owner is someone who owned, purchased, leased, or otherwise received an eligible device, including for personal, work, or any other purposes, and whose eligible device was shipped to the United States, its territories, and/or its possessions. The Settlement Class does not include iPhone owners who are domiciled outside of the United States, its territories, and/or its possessions. To claim a settlement benefit, you must submit a Claim Form on or before **October 6, 2020** at www.SmartphonePerformanceSettlement.com, or by mail at the address on the Claim Form, **received by October 6, 2020**.

What benefit can I get from the settlement? Under the settlement, Apple will pay a minimum of \$310,000,000 and a maximum of \$500,000,000, depending on the number of claims submitted. Apple will provide a cash payment of approximately \$25 per eligible device to each eligible Class Member who submits a timely and valid Claim Form including a serial number of an eligible device, and declares under penalty of perjury that they are or were the owner of an affected device and experienced diminished performance. Please note that the actual cash payment per eligible device may be greater than or less than \$25, depending on the total number of approved claims and other factors.

How can I exclude myself from the class? If you don't want to make a Claim and you don't want to be legally bound by the settlement, your request to be excluded must be **received by October 6, 2020**, or you will not be able to sue, or continue to sue, Apple about the claims and allegations in this case. Refer to the settlement website and the detailed Class Notice for information and instructions on how to exclude yourself.

How can I object? If you want to stay in the Settlement Class, but you want to object to the settlement and/or to Class Counsel's request for Attorneys' Fees and Expenses, your objection must be **received by October 6, 2020**. Refer to the settlement website and the detailed Class Notice for information and instructions on how to object. The Court will consider objections at a Final Hearing in this case (*In re Apple Inc. Device Performance Litigation*, Case No. 18-MD-2827-EJD) on **December 4, 2020 at 10:00 a.m. PST** at the United States District Court for the Northern District of California, San Jose Courthouse, Courtroom 4, 280 South 1st Street, San Jose, CA 95113, to consider whether to approve (1) the settlement; (2) Class Counsel's request for Attorneys' Fees of up to 30% of the \$310,000,000 Floor, plus expenses of up to \$2 million; and (3) Named Plaintiff Service Awards of up to \$3,500 each (for deposed Named Plaintiffs) and \$1,500 (for all other Named Plaintiffs). You may appear at the Final Hearing, but you don't need to. The date of the Final Hearing may change without further notice and may be confirmed on the Court's Public Access to Court Electronic Records (PACER) site, for a fee, at <https://ecf.cand.uscourts.gov>.

Where can I get more information? Please visit the settlement website at www.SmartphonePerformanceSettlement.com, or call toll free 1-833-649-0927 to obtain more complete information about the proposed settlement and your rights. You may also write to Class Counsel at: Cochet, Pitre & McCarthy LLP, Attn: Mark C. Molumph, 840 Malcolm Road, Suite 200, Burlingame, California 94010, and/or Kaplan Fox & Kilsheimer LLP, Attn: Laurence D. King, 1999 Harrison Street, Suite 1560, Oakland, CA 94612.

www.SmartphonePerformanceSettlement.com

Exhibit D

From: Claims Administrator <DoNotReply@SmartphonePerformanceSettlement.com>
Sent: Monday, August 24, 2020 11:30 AM
To:
Subject: [External] Second Class Action Notice: In re Apple Inc. Device Performance Litigation

[This is an External Email – Do Not Click Unsolicited Links or Attachments]

LEGAL NOTICE

The deadline to submit a claim form in the In re Apple Inc. Device Performance Litigation is October 6, 2020.

If you previously submitted a claim form or have taken other action, such as objecting to or excluding yourself from the settlement, no further action is required at this time.

If you are or were a U.S. owner of an iPhone 6, 6 Plus, 6s, 6s Plus, and/or SE device that ran iOS 10.2.1 or later before December 21, 2017, and/or a U.S. owner of an iPhone 7 or 7 Plus device that ran iOS 11.2 or later before December 21, 2017, you could be entitled to benefits under a class action settlement.

WHAT'S THIS ABOUT?

In a consolidated class action lawsuit pending against Apple, Plaintiffs claimed that a performance management feature introduced for iPhone 6, 6 Plus, 6s, 6s Plus, and SE devices in iOS 10.2.1, and introduced for iPhone 7 and 7 Plus devices in iOS 11.2, diminished the performance of some of those devices. Apple denies all allegations and is entering into this settlement to avoid burdensome and costly litigation. The settlement is **not** an admission of wrongdoing by Apple.

Under the settlement, Apple will pay a minimum of \$310,000,000 and a maximum of \$500,000,000 depending on the number of claims submitted. If the settlement is approved by the Court, your rights may be affected. The United States District Court for the Northern District of California authorized this Legal Notice. The Court will have a Final Hearing to consider whether to approve the settlement so that the benefits may be paid. This summary provides basic information about the settlement.

WHO'S AFFECTED?

You are a member of the Settlement Class if you are or were (1) a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device (2) that ran iOS 10.2.1 or later or, in the case of iPhone 7 and 7 Plus

devices, that ran iOS 11.2 or later before December 21, 2017. **You must meet both criteria to be a member of the Settlement Class.**

WHAT BENEFIT CAN YOU GET FROM THE SETTLEMENT?

Apple will provide a cash payment per eligible device to each Class Member who submits a timely and valid [Claim Form](#) including a serial number of an eligible device and a declaration under penalty of perjury stating that they are or were (1) a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device (2) that ran iOS 10.2.1 or later or, in the case of iPhone 7 and 7 Plus devices, that ran iOS 11.2 or later before December 21, 2017; and (3) they experienced diminished performance on the device(s).

A United States owner is someone who owned, purchased, leased, or otherwise received an eligible device, including for personal, work, or any other purposes, and whose eligible device was shipped to the United States, its territories, and/or its possessions. The Settlement Class does not include iPhone owners who are domiciled outside of the United States, its territories, and/or its possessions.

Amount of Cash Payment: Under the proposed settlement, Apple will provide a cash payment of approximately \$25 per eligible device. Please note that the actual cash payment per eligible device may be greater than or less than \$25, depending on the total number of approved claims and other factors. The total payments to be made by Apple under the proposed settlement are subject to a minimum and maximum as set forth above and in more detail in the Class Notice available at www.SmartphonePerformanceSettlement.com.

HOW DO YOU GET A PAYMENT?

An online Claim Form package contains everything you need and is available at www.SmartphonePerformanceSettlement.com. You may also submit a Claim Form by clicking this [link](#).

WHAT ARE YOUR OPTIONS AND WHAT ARE THE DEADLINES?

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
OPTION	EXPLANATION	DEADLINE
SUBMIT A CLAIM FORM ONLINE OR IN THE MAIL	The only way to get a payment under the settlement.	October 6, 2020
EXCLUDE YOURSELF	Get no payment under the settlement. This is the only option that allows you to be a part of any other lawsuit against Apple about the claims and allegations in this case.	
OBJECT TO THE SETTLEMENT	Write to the Court about why you don't like the settlement and ask to speak at the Final Hearing.	
OBJECT TO ATTORNEYS'	Write to the Court about why you don't like the attorneys' fees and/or expenses that Class Counsel requests.	

FEES AND/OR EXPENSES		
GO TO A HEARING	Speak in Court about the fairness of the settlement.	December 4, 2020 at 10:00 a.m. PST
DO NOTHING	Get no payment under the settlement and give up your right to compensation for the claims and allegations in this case.	N/A

Please read the more detailed Class Notice, which is available at www.SmartphonePerformanceSettlement.com, and decide whether you want to make a Claim.

To claim a settlement benefit, your [Claim Form](#) must be **received on or before October 6, 2020**. **If your claim for a settlement benefit is not received by this deadline, you will lose your right to obtain this benefit.**

If you don't want to make a Claim and you don't want to be legally bound by the settlement, your request to be excluded must be **received by October 6, 2020**, or you won't be able to sue, or continue to sue, Apple about the claims and allegations in this case. If you request to be excluded, you will not be eligible to receive a payment from this settlement.

If you stay in the Settlement Class, you may object to the settlement. Objections to the settlement and/or to Class Counsel's request for Attorneys' Fees and Expenses must be **received by October 6, 2020**.

The more detailed Class Notice, available at www.SmartphonePerformanceSettlement.com, explains how to request exclusion from the Settlement Class or object to the settlement. The Court will hold a Final Hearing in this case (*In re Apple Inc. Device Performance Litigation*, Case No. 18-MD-2827-EJD) on **December 4, 2020 at 10:00 a.m. PST** to consider whether to approve (1) the settlement; (2) Class Counsel's request for Attorneys' Fees of up to 30% of the \$310,000,000 Floor, plus expenses of up to \$2 million; and (3) Named Plaintiff Service Awards of up to \$3,500 each (for those Named Plaintiffs who were deposed) and \$1,500 (for all other Named Plaintiffs). The Final Hearing will take place at the United States District Court for the Northern District of California, San Jose Courthouse, Courtroom 4, 280 South 1st Street, San Jose, CA 95113. You may appear at the Final Hearing, but you don't need to. The date of the Final Hearing may change without further notice. You should check the settlement website or the Court's Public Access to Court Electronic Records (PACER) site, for a fee, at <https://ecf.cand.uscourts.gov> to confirm that the date has not been changed.

FOR MORE INFORMATION ABOUT THE SETTLEMENT

To obtain a [Class Notice](#), [Claim Form](#), copy of the [Settlement Agreement](#), copies of motions for settlement approval and attorneys' fees, expenses and service awards, and any other important documents in this case, go to www.SmartphonePerformanceSettlement.com, send an email to: Questions@SmartphonePerformanceSettlement.com, or call toll-free 1-833-649-0927. For more details, you also may write to the Claims Administrator at: *In re Apple Inc. Device Performance Litigation*, 1650 Arch Street, Suite 2230, Philadelphia, PA 19103 or Class Counsel at Cotchett, Pitre & McCarthy LLP, Attn: Mark C.

Molumphy, 840 Malcolm Road, Suite 200, Burlingame, California 94010 and/or Kaplan Fox & Kilsheimer LLP, Attn: Laurence D. King, 1999 Harrison Street, Suite 1560, Oakland, CA 94612.

In addition, you can access the Court docket in this case, for a fee, through the Court's PACER site at <https://ecf.cand.uscourts.gov>. Subject to the Court's current operations in light of the COVID-19 pandemic, you can also visit the office of the Clerk of the Court for the United States District Court for the Northern District of California, San Jose Division, located at 280 South 1st Street, Second Floor, San Jose, California, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

BY ORDER OF THE U.S. DISTRICT COURT

[Unsubscribe](#)



Exhibit E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

If you are or were a U.S. owner of an iPhone 6, 6 Plus, 6s, 6s Plus, and/or SE device that ran iOS 10.2.1 or later before December 21, 2017, and/or a U.S. owner of an iPhone 7 or 7 Plus device that ran iOS 11.2 or later before December 21, 2017, you could be entitled to benefits under a class action settlement.

The United States District Court for the Northern District of California authorized this notice. This is not a solicitation from a lawyer.

- Under the proposed settlement, Apple will make a minimum, non-reversionary payment of \$310,000,000 and a maximum payment of up to \$500,000,000; depending on the number of claims submitted.
- You may be entitled to settlement benefits if you are or were (1) a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device (2) that ran iOS 10.2.1 or later or, in the case of iPhone 7 and 7 Plus devices, that ran iOS 11.2 or later before December 21, 2017, and (3) you experienced diminished performance on your device(s). For more information, you can visit the settlement website at www.SmartphonePerformanceSettlement.com.
- Your legal rights are affected whether you act or don't act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
OPTION	EXPLANATION	DEADLINE
SUBMIT A CLAIM FORM ONLINE OR IN THE MAIL	The only way to get a payment under the settlement.	October 6, 2020
EXCLUDE YOURSELF	Get no payment under the settlement. This is the only option that allows you to be a part of any other lawsuit against Apple about the claims and allegations in this case.	
OBJECT TO THE SETTLEMENT	Write to the Court about why you don't like the settlement and ask to speak at the Final Hearing.	
OBJECT TO ATTORNEYS' FEES AND/OR EXPENSES	Write to the Court about why you don't like the attorneys' fees and/or expenses that Class Counsel requests.	
GO TO A HEARING	Speak in Court about the fairness of the settlement.	December 4, 2020 at 10:00 a.m. PST
DO NOTHING	Get no payment under the settlement and give up your right to compensation for the claims and allegations in this case.	N/A

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still must decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

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BASIC INFORMATION

1. Why did I get a notice?

You may be a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device that ran iOS 10.2.1 or later (or, in the case of iPhone 7 and 7 Plus devices, that ran iOS 11.2 or later) before December 21, 2017. For more information, you can visit the settlement website at www.SmartphonePerformanceSettlement.com.

The Court ordered this notice because you have a right to know about a proposed settlement of class action lawsuits against Apple relating to certain iOS software that allegedly diminished the performance of Apple devices, and about your options, before the Court decides whether to approve the settlement. If the Court approves the settlement and after any appeals are resolved, an administrator will make the payments that the settlement allows.

This notice explains the lawsuits, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Northern District of California, and the case is known as *In re Apple Inc. Device Performance Litigation*, Case No. 18-MD-2827-EJD. The people who sued are Plaintiffs, and the company they sued, Apple Inc., is the Defendant. The proposed settlement also resolves similar class actions filed in other federal districts of the United States, as well as a class action filed in the Superior Court for the State of California, County of San Francisco.

2. What is this lawsuit about?

In a consolidated class action lawsuit pending against Apple, Plaintiffs claimed that a performance management feature introduced for iPhone 6, 6 Plus, 6s, 6s Plus, and SE devices in iOS 10.2.1, and introduced for iPhone 7 and 7 Plus devices in iOS 11.2, diminished the performance of some of those devices. Apple denies all allegations and is entering into this settlement to avoid burdensome and costly litigation. The settlement is *not* an admission of wrongdoing by Apple.

3. Why is this a class action?

In a class action, one or more people, called Named Plaintiffs, sued on behalf of all people who purportedly have similar claims (called “Settlement Class Members”). Together, the Named Plaintiffs and the other members of the Settlement Class make up the “Settlement Class.” One court resolves the dispute for all members of the Settlement Class, except for those who exclude themselves from the Class. United States District Court Judge Edward J. Davila is in charge of this class action.

4. Why is there a settlement?

The Court did not decide the case in favor of Plaintiffs or Apple. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and settlement benefits go to the Settlement Class Members. The Named Plaintiffs and their attorneys (“Class Counsel”) think the settlement is in the best interests of the members of the Settlement Class.

WHO IS IN THE SETTLEMENT

To see if you are eligible for benefits, you first must determine whether you are a member of the Settlement Class.

5. What is an eligible device?

iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE devices that ran iOS 10.2.1 or later or iPhone 7 and 7 Plus devices that ran iOS 11.2 or later. Eligible members of the Settlement Class must meet the other requirements described in this notice.

6. How do I know if I am part of the settlement?

You are a member of the Settlement Class if you are or were (1) a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device (2) that ran iOS 10.2.1 or later or, in the case of iPhone 7 and 7 Plus devices, that ran iOS 11.2 or later before December 21, 2017. **You must meet both criteria to be a member of the Settlement Class.**

A United States owner is someone who owned, purchased, leased, or otherwise received an eligible device, including for personal, work, or any other purposes, and whose eligible device was shipped to the United States, its territories, and/or its possessions. The Settlement Class does not include iPhone owners who are domiciled outside of the United States, its territories, and/or its possessions.

7. Are there exceptions to being included?

The Settlement Class *excludes* Apple; any entity in which Apple has a controlling interest; Apple's directors, officers, and employees; Apple's legal representatives, successors, and assigns; members of the Court; all persons who submit valid requests to be excluded from the settlement; and certain other individuals whose claims have already been adjudicated.

8. I'm still not sure if I am included.

If you are still not sure whether you are a member of the Settlement Class, you can visit the Settlement Website at www.SmartphonePerformanceSettlement.com.

THE SETTLEMENT BENEFITS—WHAT YOU GET

9. What does the settlement provide?

Apple will provide a cash payment per eligible device (calculated as set forth below) to each Settlement Class Member who submits a timely and valid Claim Form including a serial number of an eligible device and a declaration under penalty of perjury stating that they are or were (1) a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device (2) that ran iOS 10.2.1 or later or, in the case of iPhone 7 and 7 Plus devices, that ran iOS 11.2 or later before December 21, 2017, and (3) they experienced diminished performance on the device(s).

Amount of Cash Payment: The cash payment per eligible device depends on the actual number of approved claims and other factors, including the award of attorneys' fees and

expenses and Named Plaintiff service awards. Under the proposed settlement, Apple shall pay a minimum of \$310,000,000 (the “Floor”) and a maximum of \$500,000,000 (the “Ceiling”). Under no circumstances shall any of the Floor revert to Apple.

Apple will provide a cash payment of approximately \$25 per eligible device, provided that Apple will not pay more than \$500 million in aggregate to the Settlement Class Members. If the total value of approved claims submitted exceeds the \$500 million Ceiling, the value of each approved claim (per eligible device) will be reduced on a pro rata basis. Additionally, under the proposed settlement, if the total value of approved claims submitted by Settlement Class Members does not exceed the \$310 million Floor, the value of each approved claim (per eligible device) may be increased on a pro rata basis, up to a maximum of \$500 per device. For more details, please refer to the Settlement Agreement available at www.SmartphonePerformanceSettlement.com.

10. What are the requirements to receive a settlement benefit?

To receive a settlement benefit, you must complete a valid Claim Form that includes, among other things, your name, mailing address, and an eligible iPhone serial number. You also must declare under penalty of perjury that: (1) you are or were a United States owner of an iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and/or SE device (2) that ran iOS 10.2.1 or later or, in the case of iPhone 7 and 7 Plus devices, that ran iOS 11.2 or later before December 21, 2017, and (3) you experienced diminished performance on your device(s). If you have multiple eligible devices, you must submit a separate Claim Form for each device.

If you satisfy these requirements, you will receive a cash payment for each valid Claim Form you submit, based on the calculation explained above.

HOW YOU GET A SETTLEMENT BENEFIT—SUBMITTING A CLAIM FORM

11. How can I get a settlement benefit?

To qualify for a settlement benefit, you must submit a valid Claim Form. The online Claim Form, including instructions on how to make a Claim, can be accessed at www.SmartphonePerformanceSettlement.com. If you wish to receive this cash payment electronically by ACH, please be sure to have your routing and bank account number available when completing the online Claim Form.

You can also download a Claim Form to mail in by clicking [here](#), or you may request a Claim Form by emailing the Claims Administrator at: Questions@SmartphonePerformanceSettlement.com or by calling toll-free 1-833-649-0927.

You must read the instructions carefully, fill out the Claim Form as directed in the instructions, and sign the Claim Form. You must (a) submit the Claim electronically at www.SmartphonePerformanceSettlement.com or (b) mail it to: *In re Apple Inc. Device Performance Litigation*, ATTN: Claims Administrator, 1650 Arch Street, Suite 2230, Philadelphia, PA 19103. The Claim Form must be **received by October 6, 2020**. **If your Claim Form is not received by the deadline, your Claim will be rejected, and you will be deemed to have waived all rights to receive any cash benefit under this settlement.**

Please carefully follow all instructions on the Claim Form.

12. When would I get my settlement benefit?

The Court will hold a Final Hearing on **December 4, 2020 at 10:00 a.m. PST**, to decide whether to approve the settlement. The date of the Final Hearing may change without further notice. You should check the Court's Public Access to Court Electronic Records (PACER) site at <https://ecf.cand.uscourts.gov>, for a fee, to confirm that the date has not been changed. The Final Hearing will take place at the San Jose Courthouse, Courtroom 4, 280 South 1st Street, San Jose, CA 95113. If Judge Davila approves the settlement, there may be appeals. The appeal process can take time, perhaps more than a year. If there is no appeal, your settlement benefit will be processed promptly. Please be patient.

13. What am I giving up to get a settlement benefit?

Unless you submit a valid request to be excluded from the Settlement Class, you will be a Settlement Class Member. If you remain a Settlement Class Member, you will be eligible for a settlement benefit but you can't sue, continue to sue, or be part of any other lawsuit against Apple about the claims and allegations in this case. It also means that all of the Court's orders will apply to you and legally bind you.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this settlement, but you want to keep the right to sue, or continue to sue, Apple on your own about the claims and allegations in this case, then you must take steps to get out of the Settlement Class. This is what it means to request to be excluded from or "opt out" of the Settlement Class.

14. How do I get out of the settlement?

To request to be excluded from the settlement, you must send a letter saying that you want to be excluded from the Settlement Class in *In re Apple Inc. Device Performance Litigation*, Case No. 18-MD-2827-EJD. You must include your name, mailing address, telephone number, eligible Class iPhone serial number and your signature. Your exclusion request must be **received by** no later than **October 6, 2020** to:

In re Apple Inc. Device Performance Litigation
ATTN: Opt Out
PO Box 60257
Philadelphia, PA 19102

If you are excluded, you will not receive any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Apple in the future about the claims and allegations in this case.

15. If I don't request exclusion, can I sue Apple for the same thing later?

No. Unless you request to be excluded, you give up the right to sue Apple for the claims that this settlement resolves.

16. If I request exclusion, can I get a settlement benefit?

No. If you request to be excluded, you may not submit a Claim Form to ask for any benefit. But you will not lose any right you may have to sue, continue to sue, or be part of a different lawsuit against Apple about the claims and allegations in this case.

THE LAWYERS REPRESENTING YOU

17. Do I have a lawyer in this case?

The Settlement Class is represented by Joseph W. Cotchett of Cotchett, Pitre & McCarthy, LLP and Laurence D. King of Kaplan Fox & Kilsheimer LLP, who have been appointed by the Court as Class Counsel for the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

18. How will the lawyers be paid?

Court-appointed Class Counsel, which have been prosecuting this litigation since its inception in 2017, have not received any payment of attorneys' fees for their representation of the Settlement Class and have advanced all expenses necessarily incurred in order to prosecute the Action. Class Counsel will ask the Court for attorneys' fees in the amount not to exceed 30% of the \$310,00,000 Floor. Class Counsel will also apply for reimbursement of expenses paid on behalf of the Class in an amount not to exceed \$2 million and Service Awards to Named Plaintiffs of up to \$3,500 each (for those Named Plaintiffs who were deposed) and \$1,500 (for all other Named Plaintiffs). A copy of Class Counsel's Motion for Attorneys' Fees and Expenses and for Named Plaintiff Service Awards will be available at www.SmartphonePerformanceSettlement.com on or around August 26, 2020.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

19. How do I tell the Court that I don't like the settlement?

If you're a Settlement Class Member, you can object to the settlement if you don't agree with a part of it and give reasons you think the Court should not approve it. You can also object to the requested award of Attorneys' Fees and Expenses or Service Awards to the Named Plaintiffs. The Court will consider your views. To object, you must send a letter stating that you object to the settlement in *In re Apple Inc. Device Performance Litigation*, Case No. 18-MD-2827-EJD. You must include the case name and number, your name, mailing address, telephone number, your signature, a detailed statement of your specific objections, and proof of membership in the Class, as well as any documents that you want the Court to consider. The letter and any supporting documents must be delivered to and **received by** the Court by **October 6, 2020** at the following address, or filed in person at any location of the United States District Court for the Northern District of California:

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

20. What’s the difference between objecting and requesting exclusion?

If you object, you are telling the Court that you disagree with something in the settlement. You can object only if you *stay in* the Settlement Class. If you object but the Court still approves the settlement, you will be bound by the settlement and can receive the benefits it provides.

If you request exclusion, you are telling the Court that you don’t want to be part of the Settlement Class. You would then have no basis to object, because the settlement would no longer affect you.

THE COURT’S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend, and you may ask to speak, but you don’t have to.

21. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Hearing at **10:00 a.m. PST on December 4, 2020**, at the United States District Court for the Northern District of California, San Jose Division, Courtroom 4 (5th Floor) located at 280 South 1st Street, San Jose, California 95113. At the Final Hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Davila will listen to Settlement Class Members who have asked to speak at the hearing. The Court will also consider how much money to award Class Counsel and the amount of the Named Plaintiff Service Awards. After the Final Hearing, the Court will decide whether to approve the settlement and will rule on Class Counsel’s Motion for Attorneys’ Fees and/or Expenses, and for Named Plaintiff Service Awards.

We do not know how long these decisions will take. The date of the Final Hearing can change without further notice. Please check www.SmartphonePerformanceSettlement.com for further updates.

22. Do I need to come to the Final Hearing?

No. Class Counsel will answer questions about the settlement that Judge Davila may have. But you are welcome to come at your own expense. If you send an objection, you don’t need to come to the Final Hearing to talk about it. As long as your written objection was received on time, the Court will consider it. You may also pay your own lawyer to attend, but it’s not necessary.

23. May I speak at the Final Hearing?

You may ask the Court for permission to speak at the Final Hearing. To do so, you must send a letter stating that you intend to appear and speak at the Final Hearing in *In re: Apple Inc. Device Performance Litigation*, Case No. 18-MD-2827-EJD. You must include the case name and number, your name, mailing address, telephone number, and your signature. Your letter must be **received by** the Clerk of the Court, at the address above, by **October 6, 2020**. You cannot speak at the Final Hearing if you requested to be excluded from the Settlement Class.

IF YOU DO NOTHING

24. What happens if I do nothing at all?

If you do nothing, you will be a Settlement Class Member. You will not receive a benefit from the settlement unless you file a valid Claim Form on time. If you submit a valid Claim Form on time, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Apple about the claims and allegations in this case.

GETTING MORE INFORMATION

25. Are there more details about the settlement?

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. Copies of the Settlement Agreement and the pleadings and other documents relating to the case, including motions for approval of the Settlement and awards of Attorneys' Fees and Expenses and Service Awards, are on file at the United States District Court for the Northern District of California, San Jose Division. The Settlement Agreement and other important documents are also available on the Settlement Website at www.SmartphonePerformanceSettlement.com.

In addition, you can access the Court docket in this case, for a fee, through the Court's PACER system at <https://ecf.cand.uscourts.gov>. Subject to the Court's current operations in light of the COVID-19 pandemic, you can also visit the office of the Clerk of the Court for the United States District Court for the Northern District of California, San Jose Division, located at 280 South 1st Street, Second Floor, San Jose, California, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

26. How do I get more information?

You can visit the Settlement Website at www.SmartphonePerformanceSettlement.com, where you will find answers to common questions about the Settlement, a Claim Form, and other information.

Questions may not be directed to the Court.

Date: May 27, 2020

Exhibit F

In re Apple Inc. Device Performance Litigation
Requests for Exclusion

1	JAN-MICHAEL	JAROCHOVIC
2	S K	CLIFTON
3	OTTO W	CLIFTON JR
4	BRENDEN	ESPANOLA
5	S L	EKERN
6	MARK	DALY
7	MARIA THERESA	HOWARD
8	MICHAEL	DILLARD
9	TORI	HAMPTON
10	SUZ-ANN	OLOFSON
11	NICK	BIGGS
12	SCOTT	VLASI
13	TROY	ST JOHN
14	JUTTA	WAIT
15	BRUCE	ROSSIGNOL
16	TYNAN	WAIT
17	PAUL A	MORTON
18	LYNN	STARNER
19	CYNTHIA	HENRY
20	JOSH	HANDELMAN
21	DEBRA A	JEFFERIES
22	BARBARA J	DASH
23	AKINYEMI	AFFRICA
24	COLETTA	HARDISON
25	REBECCA	KAY
26	TIMOTHY	RILEY
27	JAY J H	JOHNSON
28	CHRISTOPHER	GRAVES
29	JI	MIN
30	ANDREW	WALL
31	CYNDA	DEIBEL
32	KENNETH	MORRISON
33	AAMIR	GHANI
34	JULIE M	APPELHANS
35	DONNA M	MONFORTE
36	WENDY MARIE	APORTA
37	SHIRLEY	BRAYMAN
38	TOHRU	WATANABE
39	PHONG SI	LE
40	SUSAN	PECK
41	RICHARD L	BOYER
42	CHRIS	CHAN
43	TERRIS L	HANSEN

44	HOI THI	DANIEL
45	ROGER F	CLAXTON
46	LORRAINE	ZBUCHALSKI
47	JOYCE K	WILSON
48	CRISTIAN	QUINTANILLA
49	ERIC A	WELTER
50	RICHARD-ANDREW	TAYLOR
51	ERIN E	PLATTETER
52	BONNIE	KUNCL
53	JOZEF	HATALA
54	LESLIE	MARTIN
55	SICHENG	PAN
56	MELVIN	BELSKY
57	KAREN	BELSKY
58	NORMAN	AMICK
59	GORDON	TAM
60	BRETT	BANEY
61	MOIRA A	MCKENNA
62	JAMES	MURRAY
63	JOHN	DALLAS
64	BRYAN P	AUZA
65	JUDITH C	JAKSIK
66	NICK	LA CARA
67	GRETCHEN	LIPARI
68	ALIREZA	ZAEEMZADEH
69	DAVID	AUST
70	CAROL L	HEALEY
71	KNIANGELES	ANDERSON
72	JAMES	CAVE
73	KATHY	DANEL
74	EDWARD	DANEL
75	CHELSEA	DANEL
76	AHMED	IBRAHIM
77	LOUIS	GREENBERG
78	GEORGE	CHEUK