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**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 10/30/2020 4:48 PM
Reviewed By: R. Walker
Case #17CV312251
Envelope: 5214848**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

LATANYA SIMMONS and KEVIN TOBIN, individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

APPLE, INC.,

Defendant.

Case No. 17CV312251

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

DATE: January 21, 2021
TIME: 1:30 p.m.
JUDGE: Hon. Brian C. Walsh
DEPT: 1

Action filed: June 26, 2017
Trial date: None Set

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

PLEASE TAKE NOTICE that on January 21, 2021, at 9:00 a.m., or as soon thereafter as counsel may be heard by the above-captioned Court, located at 191 North First Street, San Jose, California 95113, Department 1, Plaintiffs Latanya Simmons and Kevin Tobin will and hereby do move for an order:

1. Awarding attorneys' fees and expenses in the amount of $3,217,500; and
2. Awarding service awards to the Plaintiffs in the amount of $1,000 each.

The requested award of attorneys' fees and expenses, representing thirty-three percent of the Settlement Fund, is consistent with attorneys' fee awards in California Courts for settlements of this caliber. Additionally, Class Counsel's requested award is reasonable based on a lodestar cross-check because Class Counsel achieved an outstanding outcome for the Class with skill and efficiency. Under both the percentage of the benefit and lodestar cross-check methods for examining fee awards, Class Counsel's fees are well within the range of reasonableness. Further, the monetary payments for Class Members from the common fund established by the Settlement in this case could not have been achieved without Plaintiffs' courageous decision to bring this lawsuit and involvement in the litigation. Thus, the requested Service Awards of $1,000.00 each for the Class Representatives are appropriate.

A copy of the [Proposed] Order Granting Attorneys' Fees, Expenses, and Service Awards is being filed concurrently with this Motion.

This Motion is based on this Notice of Motion and Motion; the Memorandum of Points and Authorities filed herewith; the concurrently filed Declaration of Hassan A. Zavareei along with its exhibits; the concurrently filed Declaration of Adam A. Edwards along with its exhibit; the concurrently filed Declaration of Sharon S. Almonrode along with its exhibits; the concurrently filed Declaration of Latanya Simmons; the concurrently filed Declaration of Kevin Tobin; the papers and pleadings on file with the Court; and upon such other evidence, information, or material as may be presented to the Court.

///

Dated: October 30, 2020

Respectfully submitted,

/s/ Hassan A. Zavareei

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PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is Tycko and Zavareei, LLP, 1970 Broadway, Suite 1070, Oakland CA, 94612.

On October 30, 2020, I served true copies of the following documents:

- PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS
- PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS
- DECLARATION OF HASSAN A. ZAVAREEI IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARD
- DECLARATION OF SHARON S. ALMONRODE IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS
- DECLARATION OF ADAM A. EDWARDS IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARD
- DECLARATION OF LATANYA SIMMONS IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, COSTS, SERVICE AWARDS, AND NOTICE AND ADMINISTRATION EXPENSES
- DECLARATION OF KEVIN TOBIN IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, COSTS, SERVICE AWARDS, AND NOTICE AND ADMINISTRATION EXPENSES
- [PROPOSED] ORDER GRANTING ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS AND FORM EFS-020

On the interested parties as follows:

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[X] BY ELECTRONIC SERVICE: I caused the documents to be E-served by electronically mailing a true and correct copy through the electronic mail system "One Legal".

Executed this October 30, 2020

/s/ Collin Hoover
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I. INTRODUCTION

Plaintiffs Latanya Simmons and Kevin Tobin and Class Counsel brought this class action case against Apple Inc., alleging that its popular Powerbeats 2 headphones were deceptively marketed and were defective. *See* Class Action Complaint ("Compl.") ¶¶ 1-8, 45-56. Class Counsel successfully litigated this Class Action here and in the Northern District of California, resulting in a Settlement that establishes a $9.75 million non-reversionary common fund for the benefit of the Class. *See* Settlement Agreement ("SA"), Declaration of Hassan A. Zavareei in Support of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards ("Zavareei Decl.") Ex. 2. This significant benefit to the Class could not have been achieved absent Class Counsel's time, effort, and skill. And by litigating this case on a purely contingency basis, Class Counsel undertook significant risk to obtain relief for the Class—expending time and resources that they have yet to recover.

Class Counsel now seek $3,217,500.00 in attorneys' fees and expenses. This amounts to thirty-three percent of the Settlement Fund, which is consistent with attorneys' fee awards in California Courts for settlements of this caliber. Additionally, Class Counsel's requested award is reasonable based on a lodestar cross-check (which produces a modest 1.59 multiplier) because Class Counsel achieved an outstanding outcome for the Class with skill and efficiency. Under both the percentage of the benefit and lodestar cross-check methods for examining fee awards, Class Counsel's fees are well within the range of reasonableness.

The monetary payments for Class Members from the common fund established by the Settlement in this case could not have been achieved without Plaintiffs' decision to bring this lawsuit to protect consumers like them who purchased expensive Powerbeats 2 headphones that were not as advertised. Thus, the requested Service Awards of $1,000.00 each for the Class Representatives are appropriate considering their investment of time and energy in the litigation. The amounts sought in this motion are equal to the amounts disclosed to the Class in the Notices and should be approved.

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II. BACKGROUND

A. Procedural History

Plaintiffs filed this class action on June 26, 2017 (the "State Action").[1] Plaintiffs sought to represent a California class and asserted various contract, tort and consumer protection causes of action. *See* Compl. ¶¶ 14-21, 57-123. *See also* Zavareei Decl. ¶¶ 4-8. On September 12, 2017, Plaintiffs Lydia Zepeda (California), Sophia Ivy (Florida), Kelly Okorocha (Louisiana), and Jennifer Ziehnski (Pennsylvania) (collectively, the "Federal Plaintiffs") filed a Class Action Complaint in the U.S. District Court for the Northern District of California, Case No. 3:17-CV-05277-RS (the "Federal Action"). Zavareei Decl. ¶ 10. The Federal Plaintiffs brought similar claims based on the same facts asserted in the State Action and sought a nationwide class and state subclasses. The parties in both the State and Federal Actions are represented by the same counsel and the Complaints in both actions were brought based on Class Counsel's thorough pre-suit investigation and research into the applicable law.

On October 6, 2017, the parties stipulated to stay the State Action. On December 1, 2017, Apple filed a Motion to Dismiss all of Plaintiffs' claims in federal court. *Id.* ¶ 12. The Federal Plaintiffs then filed an Amended Complaint adding plaintiffs from Texas and Illinois, as well as claims under the laws of those states. *Id.* ¶ 13. On January 24, 2018, Apple filed a motion to dismiss the federal Amended Complaint. Class Counsel drafted and filed an opposition, and Apple filed a reply. *Id.* ¶ 14. The court granted the motion in part and denied it in part in an order dated May 16, 2018. *Id.* ¶ 17. The Federal Plaintiffs filed a Second Amended Complaint on June 5, 2018 to which Apple filed an Answer. *Id.* Discovery commenced and Class Counsel prepared and served discovery. *Id.* ¶ 18. In addition, Class Counsel hired an independent expert to analyze the Powerbeats headphones and assess the headphones' ability to live up to Apple's advertising. *Id.* ¶¶ 25-26. Class Counsel provided the expert with exemplars of used and new Powerbeats for testing and analysis. The expert disassembled the exemplars, analyzed their internal components, and provided Class Counsel with his findings. *Id.*

[1] The complete procedural history of the litigation and the content of the settlement are documented and cited in Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class Action Settlement filed on March 13, 2020. A brief summary is offered here for the convenience of the Court.

¶ 25. Plaintiffs' expert also developed methodologies and planned additional to testing to assess the veracity of Apple's claims. *Id.* Shortly thereafter, the Parties agreed to stay discovery while they explored a resolution of both Actions. *Id.* ¶ 20.

B. History of Settlement Negotiations

The Settlement Agreement resulted from over a year of difficult negotiations that included two mediations before Jill Sperber, a well-respected mediator from the firm of Judicate West. Zavareei Decl. ¶¶ 20-24, 27-31. The parties first met for mediation on October 23, 2018. *Id.* ¶¶ 20-22. Prior to the mediation, Apple provided Class Counsel with confidential informal discovery regarding the number of Powerbeats sold, a description of Apple's water testing, and information about improvements Apple had made to the Powerbeats headphones. *Id.* ¶ 21. Although the parties did not reach agreement at that first mediation, they agreed to a second mediation. The parties met for a second mediation with Ms. Sperber on March 21, 2019. *Id.* ¶¶ 27-29. Beforehand, Apple provided Class Counsel with additional confidential sales data, more information about testing of the products (including a summary of testing results), and more details about changes and improvements to the Powerbeats headphones. *Id.* ¶ 27. Class Counsel also consulted with their expert regarding his analysis of Powerbeats and his findings. *Id.* ¶ 25. At the second mediation, again, the parties did not reach an agreement, but they agreed to continue the discussions. *Id.* ¶¶ 28-29. The parties negotiated for the next several months until they reached the agreement memorialized in the Settlement Agreement, with the Ms. Sperber's continued assistance and involvement. *Id.* ¶¶ 30-34. The parties did not make any agreement on fees and Apple has reserved the right to object to any fee petition. *See* SA § 2.1.4.

C. Settlement Benefits to Class Members

The Settlement Agreement that Plaintiffs and Class Counsel achieved in this case creates a $9.75 million Gross Settlement Amount that will provide payments, settlement administration costs, and attorneys' fees and costs to benefit the Class.[2] After payment of costs of administration and any fees,

[2] The cost of notice administration, which protect Class Members' rights, as well as attorneys' fees and costs spent bringing the action, are also benefits to the Class. *See, e.g., Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 975. Accordingly, the whole Settlement Fund, as opposed to just the net amount, benefits the Settlement Class.

expenses, and service awards authorized by the Court, the monetary awards to Authorized Claimants shall be awarded according to a simple points system.[3] The total aggregate benefit available to the class is $9.75 million. To reduce the costs of administration, Class Counsel received proposals from four claims administrators and selected one with due regard to cost. Should any funds remain after the settlement is administered, then subject to the Court's approval, those funds will be donated to the Consumer Federation of America, a Charitable *cy pres* recipient that advocates for consumers.

III. ARGUMENT

A. The attorneys' fees and costs requested are reasonable.

Class Counsel now seek a total of $3,217,500.00 in attorneys' fees and out-of-pocket expenses incurred in prosecuting this action. The attorneys' fees requested will compensate Class Counsel for work already performed (including the briefing of this Motion), in addition to all of the remaining work to be completed in connection with the Settlement, which includes but is not limited to: (1) insuring that such Settlement is fairly administered and implemented, (2) preparing for and subsequently attending the final fairness hearing, (3) responding to objections to the settlement, and (4) obtaining dismissal of the actions after the parties' obligations under the Settlement are fulfilled.

Awarding fees based on a percentage of a fund for the benefit of class members has long been established in California. "California has long recognized, as an exception to the general American rule that parties bear the costs of their own attorneys, the propriety of awarding an attorney fee to a party who has recovered or preserved a monetary fund for the benefit of himself or herself and others." *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 488; *see also Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("[A] litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."). Whether to

[3] Thus far, the Settlement Administrator has received approximately 63,470 claims. If each claim is entitled to one Point under the Settlement Agreement, then as of this filing, the Points Multiplier would be approximately $94, meaning that an Authorized Claimant without Proof of Purchase or a record of having received a warranty repair would receive approximately $94, while class members with a valid Proof of Purchase or record would receive $188 or more. That number is likely to decrease because Class Members have until November 20, 2020 to file Claims, and more additional claims may be filed. In the Motion for Preliminary Approval of Class Action Settlement, Class Counsel estimated that the Points Multiplier would be approximately $38.

calculate an attorneys' fee using the percentage of the recovery or the lodestar multiplier approach is a choice within the court's discretion, although courts have generally favored the percentage method in common fund cases. *See generally Laffitte*, 1 Cal.5th at 489-97; *see also id.* at 503 (listing the "recognized advantages of the percentage method"). However calculated, the goal is to award "a reasonable fee to compensate counsel for their efforts." *Id.* at 504. Here, the requested attorneys' fees and costs are reasonable under both the percentage of the fund and lodestar methods and are in accordance with the laws in this jurisdiction awarding and approving attorneys' fees and costs in similar cases. Accordingly, Class Counsel's application should be granted.[4]

1. Class Counsel's requested fee is reasonable under the percentage of the benefit method.

The requested award of thirty-three percent of the Settlement Fund fairly and reasonably compensates Class Counsel for their investment of significant resources in this case with the risk of no recovery. It is also consistent with fees awarded by California courts in common fund class actions.

"[W]hen class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." *Id.* at 503. Stated otherwise, where litigation creates a "substantial benefit" for a class and where funds are available for payment of attorneys' fees for such benefits, Class Counsel is entitled to fees for creating that benefit. *Serrano v. Unruh* (1982) 32 Cal.3d 621, 627-32. There are numerous "recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation." *Laffitte*, 1 Cal.5th at 503. In short, "the percentage of the fund method more accurately reflects the results achieved." *Id.* at 489 (citing *Rawlings v. Prudential-Bache*

[4] To the extent the Court considers the expenses separate from the fee application, Class Counsel submits that the $88,248.00 in reimbursable expenses are also reasonable. Descriptions of these expenses are set forth in Class Counsel's declarations. *See* Zavareei Decl. ¶¶ 75-76; Declaration of Adam A. Edwards in Support of Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Award ("Edwards Decl.") ¶¶ 36-37; Declaration of Sharon S. Almonrode in Support of Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Award ("Almonrode Decl.") ¶¶ 25-26 & Ex. C.

Props., Inc. (6th Cir. 1993) 9 F.3d 513, 516).

Although California courts have not established a "benchmark" percentage of the fund, "California courts routinely award attorneys' fees of one-third of the common fund." *See Beaver v. Tarsadia Hotels* (S.D. Cal., Sept. 28, 2017) No. 11-CV-01842-GPC-KSC, 2017 WL 4310707, at *9. In that regard, the Court of Appeal has observed that "[e]mpirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n. 11; *see also Halcomb v. Autism Response Team Inc.* (Cal. Super. July 18, 2018) No. BC604363, 2018 WL 4278937, at *6 ("1/3 of…gross settlement amount…is average") (Nelson, J.). Here, the requested thirty-three percent of the Settlement Fund is an appropriate award of attorneys' fees and expenses and is in line with other awards in California courts.[5] Accordingly, Class Counsel's requested award of 1/3 of the common fund established by the Settlement in this case is reasonable and Class Counsel respectfully submits that it should be approved.

The propriety of the requested fee can be gleaned by considering several factors under California law, including the risks and potential value of the litigation; the contingent nature of the representation; the skill shown by counsel; the novelty and difficulty of the issues presented; and the hours worked and asserted hourly rates. *See Laffitte*, 1 Cal.5th at 504. Here, each of these factors is met and justifies the award of $3,217,500.

[5] *See*, *e.g.*, *Ayala v. Cherry Creek Mortg. Co., Inc.* (Cal. Super. Nov. 4, 2019) 2019 WL 8269063, at *3 (approving 1/3 of the common fund as attorneys' fees); *Cubillas v. Dav-El Los Angeles* (Cal. Super. June 14, 2018) 2018 WL 3760657, at *3-4 (awarding $1.12 million as attorneys' fees, or 40% of the common fund); *Larson v. John Hancock Life Ins. Co. (U.S.A.)* (Cal. Super. May 08, 2018) 2018 WL 8016973, at *6; (awarding $17.925 million as attorneys' fees; 30% of the common fund and a 2.3 lodestar multiplier); *Ha v. Google Inc.* (Cal. Super. Feb. 07, 2018) 2018 WL 1052448, at *2 (awarding attorneys' fees equaling 1/3 of the common fund); *Hernandez v. Gold Point Transp, Inc.* (Cal. Super. Sep. 08, 2017) 2017 WL 9751227, at *3-5 (where settlement recovered "3.8 to 4.6% of the total estimated damages," awarding 1/3 of the common fund as attorneys' fees); *In re FireEye, Inc. Securities Litigation* (Cal. Super. Aug. 07, 2017) 2017 WL 3536993, at *5 (awarding $3,416,667.00, 1/3 of the common fund, as attorneys' fees); *Murphy v. CVS Caremark Corp.* (Cal. Super. Feb. 28, 2017) 2017 WL 4176566, at *3, *5 (approving attorneys' fees equaling 30% of the common fund where the total settlement was $12.75 million and the "[p]laintiffs could [have] theoretically recover[ed] hundreds of millions of dollars").

a. The benefit to the class is substantial in light of the risks and value of the litigation.

First, the benefit to the class is substantial in light of the risks and value of the litigation. The Settlement Agreement provides for a $9.75 million Gross Settlement Amount that will provide payments, settlement administration costs, and attorneys' fees and costs to benefit the Class. SA §1.23. These benefits are substantial given the risks of continued litigation and the value of the case.

If this case were to proceed to trial, the maximum damages available to the Class would be some fraction of the cost of a new Powerbeats 2 headphones set ($189), itself a high estimate given that many Class members purchased Powerbeats 2 headphones at discounted prices. Damages would have been based on a price premium analysis reflecting some percentage of the purchase price. But Plaintiffs faced significant risks to their claims stemming from the difficulty of proving price-premium damages across the Class based on the representations at issue. Not every set of headphones manifested the defect alleged, and the expert discovery necessary to litigate this case would have been expensive. Plaintiffs also would have had to overcome the significant challenges associated with certification of a nationwide class in a contested class certification motion. Plaintiffs could have received unfavorable rulings at summary judgment or class certification. It is possible that after extensive and costly expert discovery, a jury could have found that the price premium related to Plaintiffs' claims was nominal. Or, a jury could have delivered a verdict for Apple, or an appellate court could have found in favor of Apple. Each step of the way this challenging litigation presented significant risk of no recovery, and thus, the value created in the Settlement is significant.

b. Class Counsel took on substantial risk by litigating this matter on a fully contingent basis.

Second, the fact that Class Counsel took this case on a contingency fee basis also weighs in favor of the fee award sought. At all times, this case carried a very real possibility of an unsuccessful outcome and Class Counsel receiving no fees of any kind. At the time the Complaint was filed, there were no obvious indications that a settlement would be reached or that the litigation would be successful. And the possibility of non-recovery (or of a very low recovery) was substantial and real. Nevertheless, Class Counsel pursued this litigation doggedly, and has already expended considerable resources knowing full well that they may never be reimbursed for this significant work.

c. Class Counsel demonstrated great skill in litigating the complex and novel issues presented in this case.

Third, Class Counsel demonstrated great skill in litigating the complex issues presented here, which involved aspects of products liability cases as well as false advertising and consumer fraud. To understand the complex factual underpinnings of this product defect action, Class Counsel had to make an early investment to retain an expert to examine Powerbeats 2 and ascertain the defects in Powerbeats 2's intricate internal structure, and to work to understand the software updates that Apple administered to attempt to improve the headphones. This litigation also presented complex legal questions, including, for example, issues related to Apple's warranty program, as well as the materiality of Apple's statements made in variable purchasing settings. To make matters more complicated, the inclusion of plaintiffs from states across the country in the federal action meant that Class Counsel had to research the variations in consumer protection and warranty laws in several states.

Class Counsel's skill and ability in litigating the novel and difficult issues in this litigation are reflected in the substantial benefit afforded to the Class in the Settlement. The Settlement is superior to other electronic device settlements, which tend to be claims-made settlements with no guaranteed common fund, and which require the defendant to pay only the amount of claims actually submitted by class members and provide fewer benefits. *E.g.*, *Shin v. Plantronics, Inc.* (N.D. Cal. Aug. 13, 2019) No. 5:18-cv-05626, 2019 WL 8368832 (preliminarily approving claims-made settlement providing $50 and $25 payments in similar headphones case alleging misrepresentations about waterproof qualities and battery life); *Horvath v. LG Elecs. Mobilecomm USA, Inc.* (S.D. Cal. Nov. 5, 2013) No. 3:11-cv-1576-H (RBB), 2013 WL 12307877 (preliminarily approving claims-made settlement providing payments of $19 for alleged mobile phone defect); *In re Sony SXRD Rear Projection Television Class Action Litig,* (S.D.N.Y. May 1, 2008) No. 06 Civ. 5173(RPP), 2008 WL 1956267 (approving settlement providing for extension of warranty and reimbursement for out-of-pocket expenses incurred repairing defective televisions). Thus, the novelty and difficulty of the questions presented, and the great skill shown by Class Counsel in litigating them, warrant the fee and expense award sought.

d. The hours worked and hourly rates sought are reasonable.

Finally, Class Counsel's asserted hourly rates and hours worked achieving these remarkable

results are reasonable. Class Counsel requests hourly rates between $206 for paralegals and $914 for partners with over two decades' experience. These rates are based on the Adjusted Laffey Matrix, the market rates for attorneys and staff in the Washington, D.C. area, where Tycko & Zavareei LLP is based. Class Counsel spent a total of 2,856.45 hours litigating this complex matter to incur a total lodestar of $1,964,637.40. In light of the risk, complexity, and results achieved, these rates and hours are reasonable.

2. Class Counsel's requested fee is reasonable under the lodestar cross-check.

While not required, "trial courts have discretion to conduct a lodestar cross-check on a percentage fee." *Laffitte*, 1 Cal.5th at 506. Under this approach, an initial "lodestar" is calculated by multiplying the reasonable hours expended in the action by a reasonable hourly rate for each attorney. *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26-27. "[T]rial courts conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys." *Laffitte*, 1 Cal.5th at 505 (quoting 5 Newberg on Class Actions § 15:86). Thus, the Court may properly perform a lodestar cross-check based on information about lodestar provided in Class Counsel's declarations. *See id.* (noting that the trial court had "exercised its discretion" by "performing the cross-check using counsel declarations summarizing overall time spent"); *accord Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 ("California case law permits fee awards in the absence of detailed time sheets.").

Here, a lodestar cross-check confirms that the requested award is reasonable. Class Counsel have logged a combined total of 2,856.45 hours in billable time, resulting in a lodestar of $1,964,637.40. Zavareei Decl. ¶ 77. Class Counsel also anticipates incurring approximately 100 additional hours to investigate and respond to objections, respond to Class Member inquiries, and brief any objector appeals. *Id.* ¶ 57. Moreover, instead of seeking a separate cost award, Class Counsel does not seek any amount beyond the $3,217,500, which represents 33% of the common fund. Thus, after deducting the $88,248.00 in costs incurred by Class Counsel, the fee award will be $3,129,252. *Id.* ¶ 77. This results in a lodestar multiplier of 1.59. *Id.* a¶ 77. The lodestar cross-check supports the requested fee because the time Class Counsel spent on this case was reasonable, Class Counsel's rates

are reasonable, and the relevant factors support application of a modest 1.59 multiplier. *See, e.g.*, *Wershba*, 91 Cal.App.4th at 229 ("Multipliers can range from 2 to 4 or even higher").

a. The time spent on this litigation is reasonable.

The hours Class Counsel spent on this litigation are reasonable. Class Counsel have logged a combined total of 2,856.45 hours in billable time. The hours billed are reasonable because they represent time spent on tasks that were essential to the litigation and settlement. *See, e.g., Goos v. National Ass'n of Realtors* (D.C. Cir. 1995) 68 F.3d 1380, 1386-87 (stating that "litigation is not an exact science" and that "[t]he key question is whether the work was reasonably done in pursuit of the ultimate result"). In determining the reasonableness of hours spent, the Court should not engage in a *post hoc* critique of strategic decisions that Class Counsel may have made in good faith during the course of the case. *See Roberts v. Marshalls of CA*, LLC (N.D. Cal. Jan. 23, 2018) No. 13-cv-04731-MEJ, 2018 WL 510286, at * 15 ("[T]rial courts need not, and indeed should not, become green-eyeshade accountants. . . . [T]rial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time." (quoting *Fox v. Vice* (2011) 563 U.S. 826, 838)). Here, Class Counsel performed substantial work in the litigation of this matter—work that was reasonably done in pursuit of the result in this case. *See supra* Part II.A-B; *see also* Zavareei Decl. ¶¶ 4-49, 57. Class Counsel also anticipates incurring approximately 100 additional hours to investigate and respond to objections, respond to Class Member inquiries, and brief any objector appeals. *Id.* ¶ 57. The 2,856.45 hours spent on this litigation were necessary and reasonable.

b. Class' Counsel's rates are reasonable.

As attested to in Class Counsel's declarations, Class Counsel's rates are the prevailing rates in the appropriate legal markets and should be approved. *See* Zavareei Decl. ¶¶ 58-60; Edwards Decl. ¶¶ 33-35; Almonrode Decl. ¶¶ 20-23. The rates charged by Class Counsel have been deemed reasonable in connection with the approval of fee applications in other matters. *See* Zavareei Decl. ¶ 59. Evidence that other courts have approved similar rates is sufficient evidence to demonstrate that the hourly rates sought are reasonable. *See, e.g.*, *Wershba*, 91 Cal.App.4th at 255 (finding hourly rates reasonable where "California cases have approved of similar rates"). Here, Class Counsel seek rates that have been

approved in other similar cases in state and federal courts in California and elsewhere.

To be conservative, Class Counsel calculated their lodestar using the LSI Laffey Matrix, which provides market rates for attorneys and staff in the Washington, D.C. area. The Laffey Matrix rates "likely fall below reasonable billing rates in the Bay Area based on the locality pay differential between this geographic location and the Washington-Baltimore area." *Carlotti v. Asus Comps. Int'l* (N.D. Cal. June 22, 2020) No. 18-cv-03369-DMR, 2020 WL 3414653, at *5; *see also, e.g.*, *Brinker v. Normandin's* (N.D. Cal. Feb. 23, 2017) No. 14-cv-03007-EJD, 2017 WL 713554, at *2 (noting that Laffey Matrix rates should be adjusted upward by 9% to reflect prevailing rates in the San Francisco area); *Syers Props. III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 702 (affirming award of fees based on the "Laffey Matrix as adjusted for the San Francisco-San Jose-Oakland region"). Thus, the Laffey Matrix are an appropriate and conservative benchmark for determining reasonable hourly rates.[6]

c. It is appropriate for a positive multiplier to be applied to the lodestar.

Once the Court calculates the initial lodestar amount based on reasonable hours multiplied by reasonable rates, the Court may increase or decrease the amount to generate an overall-all reasonable fee under the circumstances. The modest lodestar multiplier here of 1.59 is within a reasonable range, since California courts generally approve higher multipliers between 2 and 4. *E.g.*, *Wershba*, 91 Cal.App.4th at 229 ("Multipliers can range from 2 to 4 or even higher"); *Laffitte*, 1 Cal.5th at 487 (approving fees where multiplier was "2.03 to 2.13"); *see also Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (affirming that multiplier of 2.52 was "fair and reasonable"); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (upholding multiplier of 3.65). Factors generally considered in determining whether to apply a multiplier include, for example, the amount at controversy and the results obtained, the requisite legal skill necessary, whether counsel took on the risk of a contingency fee, and the novelty and complexity of the questions presented in the action.

[6] Class Counsel's current rates are also appropriate given the deferred and contingent nature of counsel's compensation. *See, e.g.*, *Missouri v. Jenkins* (1989) 491 U.S. 274, 284 ("Clearly, compensation received several years after the services were rendered . . . is not equivalent to the dollar amount received reasonably promptly as the legal services are performed, as would normally be the case with private billings."). Using current rates, rather than historical rates, will fairly compensate counsel for the significant risk of nonpayment taken on in connection with this matter.

Here, these factors are present and support the very modest multiplier sought. *See, e.g.*, *Laffitte*, 1 Cal.5th at 487.

In short, whether evaluated as a percentage of the common fund or as a reflection of Class Counsel's lodestar, the fee and expense award sought in this case is reasonable.

B. The Class Representatives' requested service awards are justified.

The Class Representatives, Latanya Simmons and Kevin Tobin, have played a valuable role in bringing this litigation to a successful conclusion. As explained in their declarations,[7] the Plaintiffs contributed to obtaining significant relief for the Class. The Settlement's allowance for Service Awards of up to $1,000.00 reflects their initiative in pursuing this Action and the time they have invested.

Service awards for class representatives "are fairly typical in class action cases." *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958; *see also Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726, *as modified on denial of reh'g* (Mar. 9, 2004) (affirming an order for "service payments to the five named plaintiffs compensating them for their efforts in bringing suit"). Such awards are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and to recognize their willingness to act as private attorneys general. *Rodriguez,* 563 F.3d at 958-59. "The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." *Cellphone Termination Fee Cases* (2010) 186 Cal. App. 4th 1380, 1394-95 (internal punctuation and citations omitted). Plaintiffs thus ask the Court to approve

[7] *See* Declarations of Latanya Simmons ("Simmons Decl.") and Kevin Tobin ("Tobin Decl.") filed concurrently herewith.

the proposed incentive awards.

The two Class Representatives devoted significant time and effort to successfully prosecuting the case that has been pending for over three years, including providing information necessary for the complaint, reading and reviewing the complaint, discussing their duties with Class Counsel, conferring with Class Counsel to stay informed on the litigation progress, discussing the Settlement with Class Counsel, and assisting with the preparation of declarations. *See* Simmons Decl, ¶¶ 3-7; Tobin Decl. ¶¶ 3-7. In addition, the Class Representatives brought this case for the benefit of the Class, despite their concern that the possibility that being a Class Representative could bring them unwanted, negative attention. See Simmons Decl. ¶ 4; Tobin Decl. ¶ 4.

The Service Awards of $1,000.00 for each Class Representative ($2,000.00 total, .0205 % of the Settlement Fund) are in line with those regularly approved in class action settlements and are appropriate given the Class Representatives' important role. Courts routinely grant service awards in similar amounts or higher. *E.g., Cellphone Termination Fee Cases*, *supra*, 186 Cal.App.4th at p. 1395 (finding no abuse of discretion in a $10,000 award); *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 (finding a $5,000.00 award reasonable); *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal., Apr. 22, 2010) 2010 WL 1687832, at *17, n. 8 ("Numerous Courts in the Ninth Circuit and elsewhere have approved Enhancement Awards of $20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class").

C. Mr. Helfand's Objection to Plaintiffs' requested awards should be overruled.

To date, the parties have received only a single objection. *See* Zavareei Decl. ¶ 80, Ex 3. The objection came from a serial objector, Steven Helfand, who has objected to three settlements in cases brought by Tycko & Zavareei LLP and Greg Coleman Law in the month of October, 2020, alone. Mr. Helfand is a disbarred former attorney who lost his license to practice law in this State after he allegedly committed multiple acts of moral turpitude, including misleading several courts, and misappropriating $15,000 from a client (a class settlement objector), among other intentional wrongful acts. *See* Notice of Disciplinary Charges ¶¶ 3, 4-5, 23, *In the Matter of Steven Franklyn Helfand, No. 2066667, et al.* No. 17-O-00411 (State Bar Ct., Los Angeles), Zavareei Decl. Ex. 4. Multiple courts have

described Mr. Helfand as a "professional objector" or a "serial objector," a fact that detracts significantly from his credibility. *See, e.g.*, *Brown v. Hain Celestial Grp., Inc.* (N.D. Cal. Feb. 17, 2016) No. 3:11-CV-03082-LB, 2016 WL 631880, at *10 (describing Mr. Helfand as a "professional objector"); *Chambers v. Whirlpool Corp.* (C.D. Cal. 2016) 214 F. Supp. 3d 877, 890 (stating that Mr. Helfand is a "serial objector"). Mr. Helfand is one of a group of such serial objectors "who are well-known for routinely filing meritless objections to class action settlements for the improper purpose of extracting a fee rather than to benefit the Class." *Chambers*, 214 F. Supp. 3d at 890. To extract these fees Mr. Helfand files objections that are "meritless, filled with boilerplate language and unsubstantiated, conclusory statements." *See* Final Settlement Order and Judgment, *Gay v, Tom's of Maine, Inc.* (S.D. Fla. Mar. 11, 2016) No. 0:14-cv-60604-KMM, Dkt. 43 (describing Mr. Helfand's objection).

Mr. Helfand's objection to the settlement in this case is similarly meritless and "filled with boilerplate language and unsubstantiated, conclusory statements." *See id.* Because Mr. Helfand's objection relies on boilerplate language, his objections are off-base and reflect a poor understanding of the Settlement. For example, he asserts that Apple "agreed to pay the attorneys fees," Objection ("Obj.") ¶ 1, but Apple has not agreed to any attorneys' fee amount and reserves the right to oppose this petition. *See* SA § 2.1.4. Mr. Helfand also incorrectly states that Class Counsel will "receive their money before the Effective Dates." Obj. ¶ 12. This, too, is false. In fact, Class Counsel will receive any fees awarded by the Court "within ten (10) calendar days of receipt by the Settlement Administrator of the full Gross Settlement Amount," *id.* § 2.1.4, which Apple is not required to pay to the Settlement Administrator until "[o]n or before ten (10) busines days after the Effective Date," *id.* § 2.1.1.

Mr. Helfand asserts, twice, that the attorneys' fees are "inflated," Obj. ¶¶ 5, 10, but does no analysis of the reasonableness of Class Counsel's requested fee to support his conclusory statement. In other words, Mr. Helfand's objection that Class Counsel's requested fee is "inflated" and that "no multiplier is justified" provides no assistance to the Court in evaluating the reasonableness of Class Counsel's fee. Mr. Helfand presents no meaningful challenge based on the lodestar method and no challenge at all to the percentage-of-the-benefit method and his objection to Class Counsel's requested fee should be rejected as a result. *See e.g.*, *Russell v. EF Int'l Language Schs., Inc.* (Ct. App. 2nd Div. Oct.

27, 2016) No. B263612, 2016 WL 6304628, at *9 (rejecting objection to the attorneys' fee award that represented one third of the settlement amount where appellant only focused on the lodestar method and failed to challenge the percentage-of-the-benefit method); *Roos v. Honeywell Internat., Inc.* (2015) 241 Cal. App. 4th 1472, 1494–95 (holding that objectors "did not sustain their burden by simply complaining that the amount requested was excessive"), *disapproved on other grounds by Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal. 5th 260.

Mr. Helfand's objection is also unsubstantiated. He did not provide any proof of purchase "or alternative information sufficient to show" that he is a member of the Class. *Id.* § 2.2.2(e).

Moreover, the fact that Mr. Helfand emailed his objection to Class Counsel, rather than "deliver[ing] the objection to the Settlement Administrator" as required by the Settlement Agreement suggests that, as in other cases, Mr. Helfand's objection here reflects "the improper purpose of extracting a fee" rather than an effort to benefit the Class. *See Chambers*, 214 F. Supp. 3d at 890. Mr. Helfand's objection lacks substance. Because Mr. Helfand has not established that he is a member of the Class, as is required to lodge an objection, Class Counsel intend to take his deposition to determine what evidence he has—if any—establishing that he has standing to object. Class Counsel will provide the Court with a full accounting of Mr. Helfand's objections, together with any other objections that are timely received, on January 14, 2021, pursuant to the Court's Order granting preliminary approval and the corresponding dates set forth in the Settlement Agreement. *See* SA § 6.2.6.

IV. CONCLUSION

Through tenacity, skill, and hard-fought litigation, Class Counsel and Plaintiffs obtained a significant settlement to benefit the Class despite significant litigation risk and the very real prospect of nonpayment. The award of attorneys' fees and expenses sought, along with the modest Service Awards requested, are reasonable and well within the range of awards approved by California courts. Accordingly, Plaintiffs and Class Counsel respectfully request that the Court grant this motion and award fees and expenses in the amount of $3,217,500.00, and Service Awards of $1,000.00 per plaintiff.

Dated: October 30, 2020

Respectfully submitted,

/s/ Hassan A. Zavareei

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FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
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BRANCH NAME: DTS (Downtown Superior Courthouse)

Envelope: 5214848

PLAINTIFF/PETITIONER: LaTanya Simmons and Kevin Tobin
DEFENDANT/RESPONDENT: Apple, Inc.
OTHER:

CASE NUMBER: 17CV312251

JUDICIAL OFFICER: Hon. Brian C. Walsh

DEPT: 1

PROPOSED ORDER (COVER SHEET)

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
   Plaintiffs LaTanya Simmons and Kevin Tobin

2. Title of the proposed order:
   [PROPOSED] ORDER GRANTING ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

3. The proceeding to which the proposed order relates is:
   a. Description of proceeding: Final Fairness Hearing
   b. Date and time: January 21, 2021, 1:30 p.m.
   c. Place: Superior Court of California, County of Santa Clara, 191 North First Street, San Jose, CA 95113
      DTS (Downtown Superior Courthouse) Department 1
      (Whereas no personal appearances are permitted at this time, any appearances will be made thru Court Call)

4. The proposed order was served on the other parties in the case.

Hassan A. Zavareei
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Form Adopted for Mandatory Use
Judicial Council of California
EFS-020 [Rev. February 1, 2017]

PROPOSED ORDER (COVER SHEET)
(Electronic Filing)

Cal. Rules of Court,
rules 2.252, 3.1312
www courts.ca.gov

CASE NAME:	CASE NUMBER:
Plaintiffs LaTanya Simmons and Kevin Tobin v. Apple, Inc.	17CV312251

PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER

1. I am at least 18 years old and **not a party to this action.**

   a. My residence or business address is *(specify):*
   1828 L Street NW, Suite 1000 Washington, D.C. 20036

   b. My electronic service address is *(specify):* hzavareei@tzlegal.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

   a. On *(name of person served) (If the person served is an attorney, the party or parties represented should also be stated.):*

   b. To *(electronic service address of person served):*

   c. On *(date):*

[x] Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

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

Date: 10/30/2020

Hassan A. Zavareei
(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

LATANYA SIMMONS and KEVIN TOBIN, individually and on behalf of themselves and all others similarly situated, Plaintiffs, v. APPLE INC., Defendant.	CASE NO. 17-CV-312251 **CLASS ACTION** **[PROPOSED] ORDER GRANTING ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

On [date], this Court heard Plaintiffs Latanya Simmons's and Kevin Tobin's ("Plaintiffs") Motion for Attorneys' Fees, Expenses, and Service Awards. This Court reviewed the motion, including the Declarations of Class Counsel as well as Plaintiffs' Declarations. Based on this review and the findings below, the Court finds good cause to GRANT the motion.

I. Fees and Expenses

"California has long recognized, as an exception to the general American rule that parties bear the costs of their own attorneys, the propriety of awarding an attorney fee to a party who has

recovered or preserved a monetary fund for the benefit of himself or herself and others." *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 488; *see also Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("[A] litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."). Whether to calculate an attorneys' fee using the percentage of the recovery or the lodestar multiplier approach is a choice within the court's discretion, although courts have recognized the benefits associated with the percentage-of-the-fund method. *See generally Laffitte*, 1 Cal.5th at 489-97; *see also id.* at 503 (listing the "recognized advantages of the percentage method"). However calculated, the goal is to award "a reasonable fee to compensate counsel for their efforts." *Id.* at 504.

Here, Class Counsel requests a fee and expense award of $3,217,500, or 33% of the common fund established by the Settlement Agreement. Thirty-three percent of a common fund is average. *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n. 11. "California courts routinely award attorneys' fees of one-third of the common fund."). In that regard, the Court of Appeal has observed that "[e]mpirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Id.* Thus, the $3,217,500 fee and expense request represents a reasonable percentage of the total funds paid by Defendant.

Class Counsel has also provided information about lodestar and expenses. Based on Class Counsel's hours spent in furtherance of the litigation and reasonable hourly rates, Class Counsel's cumulative lodestar is $1,964,637.40 and unreimbursed expenses are $88,248.00. The requested fee award represents a multiplier of 1.59. This modest multiplier is well within the range of reasonableness in California, in light of the amount in controversy and results obtained, skill of Class Counsel, the contingent nature of the fee, and the novelty and complexity of the issues. *See, e.g.*, *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 229 ("Multipliers can range from 2 to 4 or even higher"); *see also Lafitte*, 1 Cal.5th at 487 (describing factors relevant to multiplier analysis).

Further, the Notice expressly advised Class Members of the fee request. And, Class Counsel's fee sharing agreement was disclosed to the Named Plaintiffs who provided written approval. Accordingly, the Court awards $3,217,500 in reasonable attorneys' fees and expenses.

II. Service Awards to Class Representatives

Service awards for class representatives "are fairly typical in class action cases." *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958; *see also Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726, *as modified on denial of reh'g* (Mar. 9, 2004) (affirming an order for "service payments to the five named plaintiffs compensating them for their efforts in bringing suit"). Such awards are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and to recognize their willingness to act as private attorneys general. *Rodriguez*, 563 F.3d at 958-59.

Here, each of the Plaintiffs submitted a declaration describing their efforts acting as a class representative in this matter, including reviewing the Complaint, discussing their duties with Class Counsel, remaining informed of the litigation, reviewing the Settlement Agreement, and preparing their Declarations. They also explained that they pursued claims for the benefit of the Class despite the risk that bringing a lawsuit against Apple, Inc. could invite unwanted, negative attention.

The Service Awards of $1,000.00 for each Class Representative ($2,000.00 total, .0205 % of the Settlement Fund) are in line with those regularly approved in class action settlements and are appropriate given the Class Representatives' important role. Courts routinely grant service awards in similar amounts or higher. *E.g., Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1395 (finding no abuse of discretion in a $10,000 award). In light of their efforts in this case, as well as the benefits obtained on behalf of the Class, the Court awards a service award of $1,000 each to Kevin Tobin and Latanya Simmons.

III. Conclusion

The Court hereby overrules any objections to Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards. Class Counsel is awarded $3,217,500 in attorneys' fees and expenses, and Plaintiffs are each awarded $1,000 as a Service Award.

DATED:_____

_____
JUDGE OF THE SUPERIOR COURT

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

LATANYA SIMMONS and KEVIN TOBIN, individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

APPLE, INC.,

Defendant.

Case No. 17CV312251

DECLARATION OF HASSAN A. ZAVAREEI IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

DATE: January 21, 2021
TIME: 1:30 p.m.
JUDGE: Hon. Brian C. Walsh
DEPT: 1

Action filed: June 26, 2017
Trial date: None Set

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Attorneys for Plaintiffs

I, Hassan A. Zavareei, declare as follows:

1. I am a founding partner of the law firm of Tycko & Zavareei LLP ("Tycko & Zavareei" or "TZ") and lead counsel for Plaintiffs in the above-captioned case. I am a member of the California Bar and I am licensed to practice law before this Court. I have knowledge of the matters set forth herein based on my personal knowledge and my review of the records of my law firm and could and would testify competently to them if called upon to do so.

2. I actively participated in this action, including negotiation of the Settlement, and I am fully familiar with the proceedings being resolved. I make this Declaration in support of Plaintiffs' motion for attorneys' fees and costs and for the Class Representatives' Service Awards ("Motion"). Given my role in this litigation, I have personal knowledge of the legal services rendered by the attorneys requesting fees and expenses. This declaration summarizes the work performed by Tycko & Zavareei in this litigation that led to the benefits provided to the Class under the Agreement.

3. The hours accounted for in this declaration relate both to this matter and a related federal action, *Morgan et al. v. Apple Inc.*, Case No. 3:17-cv-05277-RS (N.D. Cal.), that included overlapping claims based on the same facts, and in which the plaintiffs were represented by Class Counsel. The settlement in this matter also resolved the claims in the federal *Morgan* matter, and the work performed in the federal action inured to the benefit of the Class and directly led to the Settlement Agreement.

History of the Litigation

4. Prior to and during this litigation, TZ conducted an investigation relating to reports that Powerbeats headphones were not waterproof and did not have a long battery life, contrary to advertisements and representations made by Apple. TZ collected consumer reviews of Powerbeats headphones on Apple, Inc.'s website, as well as reviews posted on the websites of other vendors, including Amazon and Target. TZ also analyzed reviews of the Powerbeats headphones by media outlets that focus on the technology industry, and publicly available Securities and Exchange Commission filings by Apple. Throughout the litigation, TZ has continued to monitor, research, and review such materials. TZ attorneys also investigated representations about Powerbeats in brick-and-

mortar stores, including Best Buy, Costco, and T-Mobile, and visited stores in Union City to research representations regarding Powerbeats. We also extensively researched comparable products that would be relevant to a damages analysis.

5. TZ was contacted by dozens of consumers who had purchased Powerbeats headphones and had complaints. In June of 2017, and throughout the litigation, TZ interviewed dozens of consumers regarding their experiences with the Powerbeats headphones, and reviewed documents provided by those consumers. TZ also interviewed the Class Representatives and reviewed documents that they provided.

6. TZ drafted the operative Complaint in this case, a process that required significant research and work. TZ researched the applicable causes of action under California law and discussed the draft complaint with the plaintiffs. TZ also researched the law of states other than California to evaluate whether claims could be brought on behalf of plaintiffs outside California. Before filing, TZ reviewed and familiarized ourselves with the rules for complex litigation in this Court.

7. TZ also drafted and sent a notice letter required under the Consumer Legal Remedies Act, and prepared venue affidavits for signature by the Class Representatives that the CLRA requires. TZ coordinated with the Class Representatives so that they could sign the venue affidavits.

8. Staff at TZ handled the filing of the complaint, and once it was filed, coordinated service upon Apple.

9. TZ attorneys met and conferred with opposing counsel in August of 2017 to discuss the case and forthcoming discovery requests.

10. TZ attorneys also took the lead in researching and drafting the federal complaint. Again, we interviewed numerous consumers who had complaints about their Powerbeats headphones, and researched applicable causes of action under California law, as well as the laws of other states, and federal law. TZ attorneys interviewed the named plaintiffs in the federal action and reviewed their documents. TZ attorneys also researched and drafted CLRA venue declarations and a CLRA letter. We filed the federal complaint, *Morgan et al. v. Apple Inc.*, Case No. 3:17-cv-05277-RS (N.D. Cal.) on September 12, 2017.

11. In October of 2017, the parties agreed to stay this action in favor of the overlapping federal action and TZ drafted a stipulation to stay.

12. With the state court case stayed, Apple filed a motion to dismiss in the federal case. TZ attorneys analyzed the motion to determine whether to amend or oppose. We researched the issues raised by the MTD, including privity, and analyzed the cases cited by Apple. We also researched other products liability cases involving Apple products and analyzed their applicability to these cases.

13. After analyzing the motion, our team determined that we would file an amended complaint. TZ took the lead on drafting the amended complaint, including researching additional factual issues and causes of action, and tailoring the existing allegations to respond to the motion to dismiss. We also interviewed several new clients, reviewed their documents, and added allegations relating to their experiences.

14. Once the First Amended Complaint was on file, Apple again filed a motion to dismiss. TZ attorneys reviewed and analyzed the motion, researched the applicable law, and analyzed Apple's cases. TZ attorneys drafted sections of the motion to dismiss including sections addressing the CLRA, actionable statements by Apple, and breach of express warranty. TZ attorneys also researched pre-suit notice requirements in Florida, Illinois, Pennsylvania, and Texas. Once co-counsel provided the sections they had drafted, TZ attorneys combined the sections and reviewed and edited the brief as a whole. After the motion was fully briefed, TZ attorneys prepared a notice of supplemental authority to bring later-issued relevant authority to the court's attention.

15. Attorneys at my firm took the laboring oar on drafting the parties' joint scheduling report, which is required to address numerous issues under the Standing Order for All Judges in the Northern District of California. We also prepared and filed a stipulation regarding Alternative Dispute Resolution.

16. In April of 2018, I traveled to San Francisco for the hearing on Apple's motion to dismiss. I prepared extensively for the hearing, by reviewing the briefing, reviewing the relevant case law, and prepping my arguments. I analyzed the arguments in the reply brief and prepared my rebuttals. I also participated in a moot argument. And I argued the motion and responded to the

Court's questions.

17. Due to Class Counsel's capable and thorough briefing in opposition to the motion to dismiss the First Amended Complaint, the Northern District of California denied in large part Apple's motion to dismiss. TZ attorneys reviewed the court's order and analyzed what additional amendments should be made to the First Amended Complaint. TZ attorneys again were responsible for initially drafting the Second Amended Complaint and obtaining client approval to file. Class Counsel carefully analyzed the court's order to identify all of the necessary revisions, leading to a 75-page Second Amended Complaint.

18. TZ also drafted requests for production and interrogatories to serve upon Apple. The discovery was based in part on extensive research on technical issues that would play a role in the litigation. After Class Counsel had the chance to review and edit the discovery, TZ staff served it upon Apple.

19. We also reviewed and edited the draft protective order and protocol for the production of electronically stored information that Apple circulated.

20. The parties began discussing early mediation and settlement in July of 2018. We researched mediators and, after conferring with opposing counsel, decided to hire Jill Sperber with Judicate West. We agreed to stay discovery while exploring resolution of the litigations.

21. My firm prepared the first draft of the mediation brief. We extensively researched the applicable law, building upon arguments in the motion to dismiss briefing and incorporating the court's order denying the motion to dismiss in part. In addition to a mediation statement, we prepared a draft term sheet and participated in a pre-mediation call with Ms. Sperber. We also reviewed informal discovery provided by Apple regarding regarding the number of Powerbeats sold, a description of Apple's water testing, and information about improvements Apple had made to the Powerbeats headphones.

22. On or about October 23, 2018, I traveled to San Francisco and participated in a full-day mediation before Ms. Sperber. Although the parties did not reach agreement at that first mediation, Apple agreed to provide further informal discovery in advance of a second mediation.

23. TZ drafted a list of informal discovery requests and prepared a letter regarding the informal exchange of information.

24. When Apple provided a response letter, attorneys at TZ reviewed and analyzed the information provided and considered what additional information was still outstanding. Attorneys at TZ prepared a second letter identifying the deficiencies in Apple's response.

25. We also identified and worked with an expert. Beginning in July of 2017, and continuing for the following several months, attorneys at TZ researched and identified potential experts and the type of testing that would be capable of proving the plaintiffs' claims. We interviewed several experts, and a TZ attorney prepared a memorandum regarding their qualifications, before settling on one who was extremely qualified. We provided the expert with exemplars of both used and new Powerbeats headphones for testing and analysis. He dissembled the exemplars, reviewed their components, and provided us with his findings, and planned additional testing and methodologies for assessing the veracity of Apple's claims.

26. In addition to a technical expert, we also researched damages experts and battery experts, and interviewed several potential damages experts via telephone.

27. Prior to the second mediation, Apple provided us with information regarding the size of the class and number of units sold (nationwide as well as by state), as well as number of replacements provided through the warranty program. According to the information provided, thousands of Powerbeats 2 units were sold. Apple also provided a description of the external and proprietary water testing performed on Powerbeats headphones; information about battery life; a summary of testing results; descriptions of updates to firmware; and information about structural changes made to the headphones to reduce the possibility of water and sweat ingress.

28. I traveled to and attended a second all-day mediation with Ms. Sperber on March 21, 2019.

29. Though we did not reach an agreement, we did agree to continue communicating about possible settlement.

30. Over the next several months, Class Counsel continued to negotiate settlement by

communicating through Ms. Sperber. During that time, TZ attorneys prepared and worked on several Case Management Conference statements advising the court of the status of negotiations, and conferred with opposing counsel regarding the same.

31. After months of arms-length discussions and negotiation, we reached the agreement ultimately memorialized in the Settlement Agreement, which covers purchases of Powerbeats 2 headphones.

32. TZ drafted a Memorandum of Understanding, which other Class Counsel edited. TZ attorneys also prepared a draft settlement agreement, and after Apple also provided a draft, edited Apple's draft.

33. Class Counsel extensively revised and negotiated the terms of the settlement agreement, including the points system for awarding cash benefits and the scope of the release.

34. We did not discuss attorneys' fees and costs, or any potential Service Awards, until we had first agreed on material terms, including the definition of the Class, the Notice Plan, the benefits to the class, and the scope of the released claims.

35. Class Counsel also solicited bids from several settlement administrators, and TZ attorneys reviewed and analyzed their proposals, creating a detailed memorandum comparing the different offerings. Class Counsel extensively discussed the different options and solicited revised bids from multiple competitors.

36. TZ attorney Annick M. Persinger prepared for and appeared at a Case Management Conference on January 16, 2020 before the Northern District of California and advised the federal court of the case status.

37. The parties agreed to seek approval of the settlement through the first-filed state court case. TZ attorneys drafted a stipulation to lift the stay in this action.

38. Class Counsel then prepared the motion for preliminary approval. TZ attorneys drafted several sections of the motion and were responsible for compiling the sections prepared by Class Counsel into one brief. TZ attorneys then edited the motion. TZ attorneys also worked on obtaining a declaration from the Settlement Administrator regarding the proposed plan of notice, and prepared the

supporting Declaration of Hassan A. Zavareei and related exhibits. TZ attorneys and staff handled the filing of the motion for preliminary approval.

39. Meanwhile, TZ attorneys corresponded regularly with the Settlement Administrator and Apple's counsel regarding the proposed notice plan.

40. TZ attorneys coordinated with counsel for Apple regarding the preparation and filing of a stipulation of dismissal in the federal case.

41. Prior to the hearing on the Motion for Preliminary Approval, TZ attorneys prepared for the hearing by reviewing the applicable case law and standards. We also scheduled a court reporter.

42. After the Court issued a tentative ruling granting preliminary approval of the settlement, Class Counsel analyzed and discussed the ruling, along with the local rules and requirements regarding appearances.

43. Class Counsel then immediately began working with the Settlement Administrator and Apple's counsel to ensure that notice was timely provided to the Class. TZ attorneys extensively reviewed the final drafts of the Notices (the Email Notice, Longform Notice, Postcard Notice, and Publication Notice) as well as the Settlement Website, and tested the Claim Form and Opt-Out Form on the Settlement Website.

44. Notice was provided to the class early on August 27, 2020 (Email Notice and Publication Notice) and August 28, 2020 (Postcard Notice) (a full week ahead of the September 4, 2020 deadline).

45. After Class Counsel received an objection to the settlement from a professional objector, Steven F. Helfand, on October 11, 2020, Class Counsel discussed the objector, researched his background, and reached out to him to discuss his concerns. I spoke with Mr. Helfand on several occasions and secured his agreement to sit for a deposition. TZ attorneys and staff prepared the notice of deposition and document requests.

46. TZ also drafted sections of the instant motion for fees, costs, and service awards.

47. To accomplish the work described above, TZ regularly drafted other court filings such as proposed orders, stipulations, and declarations.

48. TZ's staff also performed administrative tasks such as filing notices of appearance, preparing tables of authorities, calendaring court dates based on court orders, applicable rules, and the Settlement Agreement, ordering deposition and hearing transcripts, and preparing and shipping Powerbeats headphones to the expert.

49. TZ also regularly communicated with the Class Representatives and the plaintiffs in the federal action to keep them apprised about the case and seek information from them.

The Risks Borne by TZ

50. From the outset, Class Counsel anticipated spending hundreds of hours litigating these claims with no guarantee of success, knew that prosecution of this case would require that other work be foregone, understood that there was substantial uncertainty regarding the applicable legal and factual issues, and continued to prosecute the litigation in the face of substantial opposition. The risks were especially significant given that this case was novel and complex in that it concerned both product defects and misleading advertising.

51. In accepting this case, TZ bore considerable risk. TZ took this case on a fully contingent basis, meaning that we were not paid for any of our time, and that we paid all costs and out-of-pocket expenses without any reimbursement to date. From the outset, TZ recognized that it would be contributing a substantial amount of time and advancing significant costs in prosecuting this class action, with no guarantee of compensation or recovery, in the hopes of prevailing against a well-funded defense.

52. Apple was represented by a highly-skilled and well-resourced litigation firm, so there was an increased risk that Plaintiffs would receive a defense verdict after a prolonged trial.

Lodestar and Expenses for TZ

53. Tycko & Zavareei LLP was founded in 2002 and has established a long and successful record of litigating complex cases. With offices in Washington, D.C., Oakland, CA, and Los Angeles, CA, our lawyers routinely handle large and complex matters throughout the country. Our lawyers have achieved remarkable results through trials and settlements in landmark cases of great public interest. Our settlements have netted our clients hundreds of millions of dollars in monetary relief, and changes

in practices by banks and other businesses that have real impacts on the day to day lives of our clients.

54. A copy of the Tycko & Zavareei firm resume, reflecting that it is a well-established, successful law firm, is attached as **Exhibit 1.**

55. Under my supervision, paralegal Collin Hoover created a spreadsheet with all of our hourly time entries.

56. The total number of hours of work performed and TZ's 2020 rates are shown in the table below:

Name	Title	Graduation Year	Hours Worked	Rate (Adjusted Laffey)	Lodestar
A. Abate	Legal Assistant	N/A	5.0	$206	$1,030
C. Noh	Legal Assistant	N/A	44.2	$206	$9,105.20
C. Hoover	Paralegal	N/A	49.6	$206	$10,217.60
N. Laporte	Paralegal	N/A	19.8	$206	$4,078.80
N. Porzenheim	Paralegal	N/A	1.2	$206	$247.2
K. Taylor	Fellow	2016	240.8	$465	$111,972
K. Aizpuru	Associate	2014	145.0	$465	$67,425
S. Gold	Associate	2015	46.1	$465	$21,436.50
T. Koshy	Associate	2010	23.5	$672	$15,792
A. Silver	Associate	2012	1.0	$672	$672
A. Persinger	Partner	2010	369.9	$759	$301,247.1
D. Lawler	Of Counsel	1997	139.0	$914	$127,046
H. Zavareei	Partner	1995	346.1	$914	$316,335.4
		Total Hours	1,431.2	**Total Lodestar**	$986,604.2

57. The 1,431.2 hours billed represent time spent on tasks essential to the litigation and settlement. We also anticipate spending additional hours investigating and responding to objections, responding to Class Member inquiries, preparing and filing a motion for final approval, and briefing objector appeals, if any.

58. TZ's 2020 rates are set forth as delineated by the Adjusted Laffey Matrix, which is the most commonly-used fee matrix for determining fees in complex cases in the D.C. Circuit. The Adjusted Laffey Matrix provides the standard hourly rates for attorneys practicing in Washington, D.C., where lead counsel Tycko & Zavareei LLP is based. These rates are reasonable and fall well within the rate that courts in California have approved. *See, e.g.*, *Stathakos v. Columbia Sportswear Co.*

(N.D. Cal. Apr. 9, 2018) No. 15-CV-04543-YGR, 2018 WL 1710075, at *6 ("[S]everal courts in this district have approved hourly rates equal to or greater than the rates at issue here in similar cases."); *Kumar v. Salov N. Am. Corp.* (N.D. Cal. July 7, 2017) No. 14-CV-2411-YGR, 2017 WL 2902898, at *7 (finding Class Counsel's rates were "reasonable and commensurate with those charged by attorneys with similar experience in the market").

59. Numerous courts have approved Adjusted Laffey Matrix rates for my firm. *See, e.g.*, *Customs Fraud Investigations, LLC v. Victaulic Co.*, No. 13-2983, 2019 WL 4280494, at *8 (approving TZ's hourly rates as "reasonable"); *Stathakos v. Columbia Sportswear Co.* (N.D. Cal. Apr. 9, 2018) No. 15-CV-04543-YGR, 2018 WL 1710075, at *6 ("[S]everal courts in this district have approved hourly rates equal to or greater than the rates at issue here in similar cases."); *Meta v. Target Corp., et al.* (N.D. Ohio Aug. 7, 2018) No. 14-cv-0832, Dkt. 179; *Kumar v. Salov N. Am. Corp.* (N.D. Cal. July 7, 2017) No. 14-CV-2411-YGR, 2017 WL 2902898, at *7 (finding Class Counsel's rates were "reasonable and commensurate with those charged by attorneys with similar experience in the market"); *In re Think Finance LLC* (Bankr. N.D. Tex.) No. 17-bk-33964; *Brown v. Transurban USA, Inc.* (E.D. Va. Sept. 29, 2016) 318 F.R.D. 560, 575-76 (finding Class Counsel's rates "within the range of reasonable rates"); *Small v. BOKF, N.A.* (D. Colo.) No. 1:13-cv-01125-REB-MJW; *Soule v. Hilton Worldwide, Inc.* (D. Haw. Aug. 25, 2015) No. CV 13-00652 ACK-RLP, 2015 WL 12827769, at *1 (approving requested rates given "the performance of Plaintiff's attorneys"). Courts regularly approve these rates in recognition of Class Counsel's "skill and diligence," along with the excellent results that Class Counsel obtain for their clients and the classes they represent. *E.g.*, *Kumar*, 2017 WL 2902898, at *7; *see also Farrell v. Bank of America, N.A.* (S.D. Cal. 2018) 327 F.R.D. 422, 432 (noting that TZ obtained a "remarkable" result for the class "through tenacity and great skill").

60. These rates are reasonable for TZ attorneys, who are highly qualified.

61. I am a 1995 graduate of Boalt Hall Law School at the University of California, Berkeley in 1995. I graduated from Berkeley Law as a member of the Order of the Coif. I received my Bachelor of Arts degree from Duke University in 1990, *cum laude*. Over the past twenty years, I have gained substantial experience handling complex civil litigation and class action litigation. I have taken several

cases to trial, including jury trials that have lasted several months. I have argued appeals in both the D.C. Circuit and the Fifth Circuit. I am a member in good standing of the District of Columbia, Maryland, and California bars.

62. After law school, I worked as a litigation associate at Gibson, Dunn & Crutcher in Washington, D.C. In 2002, I formed Tycko & Zavareei LLP with Jonathan K. Tycko. Mr. Tycko was my colleague at Gibson, Dunn & Crutcher and a graduate of Columbia Law School. In addition to my work at Tycko & Zavareei, I have also testified before the Judicial Committee of the U.S. House of Representatives and the Civil Rules Advisory Committee. I am on the Board of Public Justice, P.C., and I served as an editor of Duke Law Review's Guidance on New Rule 23 Class Action Settlement provisions.

63. Tycko & Zavareei has been appointed class counsel in numerous complex class actions in state and federal courts, including consolidated class actions. For example, Tycko & Zavareei served as lead counsel and appointed settlement class counsel in a TCPA text messages case, *Vergara v. Uber Technologies, Inc.*, No. 1:15-cv-06942 (N.D. Ill), achieving a $20 million common fund, as well as prospective relief for a class of persons who had received unsolicited text messages from Uber.

64. As co-lead counsel in *Farrell v. Bank of America*, I led a team that secured a class action settlement valued at $66.6 million along with injunctive relief—a result that the court described as a "remarkable" accomplishment achieved through "tenacity and great skill." 327 F.R.D. 422, 432 (S.D. Cal. 2018) (over $1 billion in practice changes).

65. A few other examples of Tycko & Zavareei's appointment as class counsel, settlement class counsel, or other leadership positions in complex litigation include: *Lloyd v. Navy Federal Credit Union*, No. 17-cv-1280 (S.D. Cal.) (co-lead counsel, obtaining $24.5 million common fund settlement on behalf of a class of NFCU customers harmed by the credit union's overdraft fee practices); *Roberts v. Capital One Financial Corporation*, No. 16-cv-04841 (S.D.N.Y.) (co-lead counsel, obtaining $17 million settlement on behalf of Capital One customers forced to pay excessive overdraft fees); *In re: TD Bank Overdraft Fee Litigation*, No. 6:15-mn-02613-BHH (D.S.C.) (member of Plaintiff's Executive Committee in MDL proceedings, obtaining $79 million settlement); *Bodnar v. Bank of America, N.A.*, No. 5:14-

cv03224-EGS (E.D. Pa.) (lead counsel, obtaining $27.5 million class settlement and significant injunctive relief); *In Re: Higher One Account Marketing and Sales Practices Litigation*, No. 3:12-md-02407 (D. Conn.) (lead counsel in MDL proceedings, obtaining $15 million common fund settlement with significant changes to business practices for illegal debit card fees); *In re Fifth Third Early Access Cash Advance Litigation*, No. 1:12-cv-00851 (S.D. Ohio) (co-lead counsel in consolidated proceedings concerning payday lending); *Jones v. United Bank and United Bankshares, Inc.*, No. 11-C-50 (Cir. Ct. of Jackson Cty., W. Va.) (settlement class counsel, obtaining $3.3 million settlement); *Duval v. Citizens Financial Group, Inc.*, No. 1:10-cv-21080 (S.D. Fla.) (co-class counsel, obtaining $137.5 million common fund settlement); *In re: American Psychological Association Assessment Fee Litigation*, 1:10-cv-01780 (D.D.C.) (co-lead counsel, obtaining $9 million common fund settlement); *Trombley v. National City Bank*, 1:10-cv-00232-JDB (D.D.C.) (settlement class counsel, obtaining $12 million settlement); *Hawthorne v. Umpqua Bank*, No. 3:11-cv-06700-JST (N.D. Cal.) (settlement class counsel, securing $2.9 million settlement); *Hawkins v. First Tennessee Bank, N.A.*, No. CT-0040851-11 (Cir. Ct. Shelby Cty. Tenn.) (co-lead counsel, obtaining class settlement of $16.75 million on behalf of customers harmed by First Tennessee's predatory overdraft fees); *Lodley v. Bank of Hawaii*, No. 11-1-0337-02 (Cir. Ct. of 1st Cir., Haw.) (settlement class counsel, obtaining $9 million settlement)*; Mathena v. Webster Bank*, No. 3:10-cv-01448 (D. Conn.) (settlement class counsel, obtaining $2.8 million settlement, equivalent to 58 to 115 percent of possible recovery at trial); *Casto v. City National Bank, N.A.*, 10 Civ. 01089 (Cir. Ct. Kanawha Cty., W. Va.) (settlement class counsel, obtaining $5.5 million settlement); and *Molina v. Intrust Bank, N.A.*, No. 10-cv-3686 (18th Judicial Dist., Dist. Ct. Sedgwick County, Kan.) (settlement class counsel, obtaining $2.75 million settlement).

66. My partner, Annick M. Persinger, also worked on this case. Ms. Persinger graduated *magna cum laude* from the University of California Hastings College of the Law in 2010. Since then, she has practiced complex litigation in California. After law school, she worked as a research attorney for the Hon. E. Munter in complex litigation at San Francisco Superior Court. She has been managing partner of Tycko & Zavareei's California offices since 2018. Prior to joining Tycko & Zavareei, she worked as a litigation associate for Bursor & Fisher, P.A., which, like Tycko & Zavareei, specializes in

consumer class action litigation and has been named class counsel countless times in state and district courts in California and nationwide. She has also been recognized as a Super Lawyers Rising Star. Ms. Persinger is a member of the California bar.

67. David Lawler, of counsel at my firm, also worked on this case. Mr. Lawler received his law degree from Creighton University School of Law in 1997. He is a 1989 graduate of the University of California, Berkeley. Mr. Lawler has over two decades of commercial litigation experience, including expertise in eDiscovery and complex case management. Since joining Tycko & Zavareei in 2012, he has represented consumers in numerous practice areas, including false advertising, products liability, and unfair and deceptive trade practices. Mr. Lawler is a member of the District of Columbia bar.

68. An associate at my firm, Katherine M. Aizpuru, also worked on this case. Ms. Aizpuru graduated *cum laude* from Harvard Law School in 2014. After law school, she completed clerkships on the District of Columbia Court of Appeals and the United States District Court for the District of Maryland. She also practiced as a litigation associate in the Washington, D.C. office of Morgan, Lewis & Bockius LLP. Since joining Tycko & Zavareei in 2017, she has handled complex civil litigation, including numerous class actions. She was named a SuperLawyers Rising Star for the Washington, D.C. region in 2020. Ms. Aizpuru is licensed to practice law in Massachusetts, New York, and the District of Columbia.

69. Andrew Silver, a former associate at my firm, also worked on this case. Mr. Silver graduated *magna cum laude* and a member of the Order of the Coif from Boston College Law School, where he served as Articles Editor of the Boston College International and Comparative Law Review. At Tycko & Zavareei, Mr. Silver worked on numerous complex class actions. He is licensed to practice law in Massachusetts and the District of Columbia.

70. Sophia Gold, a former associate at my firm, also worked on this case. Ms. Goren Gold is a third-generation Plaintiffs' lawyer. A *summa cum laude* graduate of Wake Forest University and the University of California, Berkeley, School of Law in 2015, Ms. Goren Gold is now a partner at Kaliel PLLC, a plaintiffs' firm focused on complex consumer class actions. She is a member of the California bar.

71. Tanya Koshy, a former associate at my firm, also worked on this case. Ms. Koshy graduated from University of California, Berkeley School of Law in 2010. Prior to joining the firm, Ms. Koshy was a staff attorney at the Ninth Circuit Court of Appeals. Ms. Koshy is a member of the California, Massachusetts, and New York state bars.

72. Kyra Taylor, a former fellow at my firm, also worked on this case. Ms. Taylor is a 2016 graduate of the University of California, Berkeley School of Law. During her fellowship, Ms. Taylor litigated cases in multiple practice areas, including consumer protection, false advertising, and unfair and deceptive trade practices. She is now a staff attorney at the National Consumer Law Center. Ms. Taylor is a member of the California bar.

73. Paralegal Collin Hoover, and legal assistants Audrey Abate, Chloe Hyunji Noh, Nathan Laporte, and Nicole Porzenheim also worked on this case.

74. It is my understanding that attorneys at my former firm, Gibson Dunn & Crutcher, are currently billing at hourly rates in excess of $1,000 per hour for law school graduates from 1995. I believe that my firm's hourly rates are at or below market for attorneys with similar qualifications and experience.

75. Expenses are accounted for and billed separately and are not duplicated in my firm's professional billing rate. TZ has not received reimbursement for expenses incurred in connection with this litigation. As of October 29, 2020, my firm had incurred a total of $60,850.58 in unreimbursed actual third-party expenses in connection with the prosecution of these cases. A summary of expenses incurred is set forth in the following chart:

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Cost	Amount
Postage	$4.27
Conference calls	$19.20
PACER and document-retrieval fees	$52.70
Transcripts	185.4
Document hosting	$300
Photocopies	$492.30
Fedex and courtesy copies	$878.66
Westlaw fees	$949.95
Powerbeats exemplars	$1,651.80
Pro hac vice fees	$2,834
Filing, CourtCall, and other court-related fees	$3,679.69
Litigation Fund	$5,000
Travel expenses	$8,490.31
Mediation	$16,000
Expert fees	$20,312.30
Total	**$60,850.58**

76. The actual expenses incurred in prosecuting these cases are reflected on the computerized accounting records of my firm prepared by bookkeeping staff, based on receipts and check records, and accurately reflect all expenses incurred.

77. Based on my review of my colleagues' lodestar and cost information, as of October 30, 2020, Class Counsel collectively incurred $88,248.00 in unreimbursed costs. As of October 30 2020, Class Counsel collectively worked 2,856.45 hours on these cases for a total lodestar, at current billing rates, of $1,966,850.60. After expenses, this amounts to a lodestar multiplier of 1.59.

78. The Class Representatives have given written approval to Class Counsel's fee-splitting arrangement.

79. A true and correct copy of the Settlement Agreement is attached as **Exhibit 2.**

80. A true and correct copy of the Objection that Steven F. Helfand emailed to me is attached as **Exhibit 3.** This is the only Objection to the Settlement received so far, to my knowledge.

81. In a span of one week this month, Mr. Helfand objected to 3 settlements in cases brought by my firm (including two cases where we are co-counsel with Greg Coleman Law).

82. Attached as **Exhibit 4** is a true and correct copy of the Notice of Disciplinary Charges

in *In the Matter of Steven Franklyn Helfand, No. 2066667, et al.*, No. 17-O-00411 (State Bar Ct., Los Angeles).

83. Attached as **Exhibit 5** is a true and correct copy of the Petition for Disbarment After Default for Failure to File Timely Response in *In the Matter of Steven Franklyn Helfand, No. 2066667, et al.*, No. 17-O-00411 (State Bar Ct., Los Angeles).

84. Attached as **Exhibit 6** is a true and correct copy of the Order Entering Default and Order Enrolling Inactive in *In the Matter of Steven Franklyn Helfand, No. 2066667, et al.*, No. 17-O-00411 (State Bar Ct., Los Angeles).

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

Executed at Washington, D.C. this 30th day of October, 2020.

Hassan A. Zavareei, Esq.

EXHIBIT 1

TYCKO & ZAVAREEI LLP

Firm Resume

Jonathan Tycko and Hassan Zavareei founded Tycko & Zavareei LLP in 2002 when they left a large national firm to form a private public interest law firm. Since then, a wide range of clients have trusted the firm with their most difficult problems. Those clients include individuals fighting for their rights, tenants' associations battling to preserve decent and affordable housing, consumers seeking redress for unfair business practices, whistleblowers exposing fraud and corruption, and non-profit entities and businesses facing difficult litigation.

The firm's practice focuses on complex litigation, with a particular emphasis on consumer and other types of class actions, and *qui tam* and False Claims Act litigation. In its class action practice, the firm represent consumers who have been victims of corporate wrongdoing. The firm's attorneys bring a unique perspective to such litigation because many of them trained at major national defense firms where they obtained experience representing corporate defendants in such cases. This unique perspective enables the firm to anticipate and successfully counter the strategies commonly employed by corporate counsel defending class action litigation. Tycko & Zavareei's attorneys have successfully obtained class certification, been appointed class counsel, and obtained approval of class action settlements with common funds totaling over $500 million.

Tycko & Zavareei's sixteen attorneys graduated from some of the nation's finest law schools, including Yale Law School, Harvard Law School, Columbia Law School, and the University of Michigan Law School. They have served in prestigious clerkships for federal and state trial and appellate judges and have worked for low-income clients through competitive public interest fellowships. The firm's diversity makes it a leader amongst its peers, and the firm actively and successfully recruits attorneys who are women, people of color, and LGBTQ. To support its mission of litigating in the public interest, Tycko & Zavareei offers a unique public interest fellowship for recent law graduates. Tycko & Zavareei's attorneys practice in state and federal courts across the nation.

Tycko and Zavareei LLP's Representative Cases

***Vergara v. Uber Technologies, Inc.*, No. 1:15-cv-06972 (N.D. Ill.).** Tycko and Zavareei served as Co-Lead Counsel in this case under the Telephone Consumer Protection Act, in which he obtained a class settlement of $20 million.

***In re Fifth Third Early Access Cash Advance Litigation*, No. 1:12-cv-00851 (S.D. Ohio).** Tycko and Zavareei was appointed Co-Lead Counsel in these consolidated payday lending cases, which are in discovery after a successful appeal before the Sixth Circuit.

***Farrell v. Bank of America, N.A.*, No. 16-cv-000492 (S.D. Cal.).** As Co-Lead Counsel, Tycko and Zavareei obtained a settlement valued at $66.6 million plus injunctive relief valued at $1.2 billion.

***In re TD Bank, N.A. Debit Card Overdraft Fee Litigation*, No. 15-mn-02613 (D.S.C.).** Tycko and Zavareei serves on the Plaintiffs Executive Committee in this case challenging TD Bank's overdraft fee practices. Tycko and Zavareei assisted in obtaining a $70 million class settlement.

***In re Higher One Account Marketing & Sales Practices Litigation*, No. 12-md-02407 (D. Conn.).** As Lead Counsel, Tycko and Zavareei helped secure a $15 million common fund settlement with significant changes to business practices for illegal debit card fees.

***Duval v. Citizens Financial Group, Inc.*, No. 10-cv-21080 (S.D. Fla.).** Tycko and Zavareei was appointed Class Counsel and obtained a common fund settlement of $137.5 million.

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***In re American Psychological Association Assessment Fee Litigation*, No. 10-cv-01780 (D.D.C.).** Tycko and Zavareei served as Co-Lead Counsel in this case challenging the APA's deceptive fee practices, and achieved a $9.02 million common fund settlement for the class.

***Lloyd v. Navy Federal Credit Union*, No. 17-cv-1280 (S.D. Cal.).** As Co-Lead Counsel, Tycko and Zavareei helped secure a $24.5 million common fund settlement on behalf of a class of NFCU customers harmed by the credit union's overdraft fee practices.

***Morgan v. Apple, Inc.*, No. 17-cv-5277 (N.D. Cal.), *Simmons v. Apple Inc.*, No. 17CV312251 (Sup. Ct. Ca., Santa Clara Cty.).** Tycko and Zavareei is currently serving as Lead Counsel in this class action challenging Apple's deceptive marketing of Powerbeats headphones and secured a $9.75 million settlement for the class, which is pending preliminary approval. for the class

***Wallace v. Wells Fargo Bank, N.A.*, No. 17CV31775 (Sup. Ct. Ca., Santa Clara Cty.).** Tycko and Zavareei serve as Co-Lead Counsel in this case against Wells Fargo's overdraft fee practices. Tycko and Zavareei's team defeated a motion to compel arbitration and Wells Fargo has appealed.

***Roberts v. Capital One Financial Corporation*, No. 16-cv-04841 (S.D.N.Y.).** As Co-Lead Counsel, Tycko and Zavareei helped secure a $17 million settlement on behalf of Capital One customers forced to pay excessive overdraft fees.

***Hawkins v. First Tennessee Bank, N.A.*, No. CT-0040851-11 (Cir. Ct. Shelby Cty. Tenn.).** As Co-Lead Counsel, Tycko and Zavareei helped obtain a class settlement of $16.75 million on behalf of bank customers harmed by First Tennessee's predatory overdraft fees.

***Mascaro v. TD Bank, N.A.*, No. 10-cv-21117 (S.D. Fla.).** Tycko and Zavareei was appointed Class Counsel and was instrumental in obtaining a $62 million common fund on behalf of the class.

***Trombley v. National City Bank*, No. 10-cv-00232 (D.D.C.).** Tycko and Zavareei served as Lead Counsel and obtained a $12 million common fund settlement on behalf of a class of consumers.

***Taulava v. Bank of Hawaii*, No. 11-1-0337-02 (Cir. Ct. of 1st Cir., Haw.).** As Co-Lead Counsel, Tycko and Zavareei obtained a $9 million common fund for a class of customers who were harmed by Bank of Hawaii's overdraft fee practices.

***Bodnar v. Bank of America, N.A.*, No. 14-cv-3224 (E.D. Pa.).** Tycko and Zavareei served as lead Counsel and obtained a $27.5 million class settlement and significant injunctive relief.

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TYCKO & ZAVAREEI LLP

Hassan A. Zavareei

Partner

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Mr. Zavareei has devoted the last eighteen years to recovering hundreds of millions of dollars on behalf of consumers and workers. He has served in leadership roles in dozens of class action cases and has been appointed Class Counsel on behalf of numerous litigation and settlement classes. An accomplished and experienced attorney, Mr. Zavareei has litigated in state and federal courts across the nation in a wide range of practice areas; tried several cases to verdict; and successfully argued numerous appeals, including in the D.C. Circuit, the Fourth Circuit, and the Fifth Circuit.

After graduating from UC Berkeley School of Law, Mr. Zavareei joined the Washington, D.C. office of Gibson, Dunn & Crutcher LLP. There, he managed the defense of a nationwide class action brought against a major insurance carrier, along with other complex civil matters. In 2002, Mr. Zavareei founded Tycko & Zavareei LLP with his partner Jonathan Tycko.

Mr. Zavareei has served as lead counsel or co-counsel in dozens of class actions involving deceptive business practices, defective products, and/or privacy. He has been appointed to leadership roles in multiple cases. As Lead Counsel in an MDL against a financial services company that provided predatory debit cards to college students, Mr. Zavareei spearheaded a fifteen-million-dollar recovery for class members. He is currently serving as Co-Lead Counsel in consolidated proceedings against Fifth Third Bank, and on the Plaintiffs' Executive Committee in MDL litigation against TD Bank. As Co-Lead Counsel in *Farrell v. Bank of America*, a case challenging Bank of America's punitive overdraft fees, Mr. Zavareei secured a class settlement valued at $66.6 million in cash and debt relief, together with injunctive relief forcing the bank to change a practice that will save millions of low-income consumers approximately $1.2 billion in overdraft fees. In his Order granting final approval, Judge Lorenz of the U.S. District Court for the Southern District of California described the outcome as a "remarkable" accomplishment achieved through "tenacity and great skill."

Education

UC Berkeley School of Law, 1995
Order of the Coif

Duke University, 1990
cum laude

Bar Admissions

California
District of Columbia
Maryland
Supreme Court of the United States

Memberships

Public Justice, Board Member

American Association for Justice

Awards

Washington Lawyers Committee, *Outstanding Achievement Award*

Super Lawyer

Lawdragon 500

Presentations & Publications

Witness Before the Subcommittee on the Constitution and Civil Justice, 115th Congress

Witness Before the Civil Rules Advisory Committee, 2018, 2019

Editor, Duke Law School Center for Judicial Studies, Guidance on New Rule 23 Class Action Settlement Provisions

TYCKO & ZAVAREEI LLP

Annick M. Persinger

Partner

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Annick M. Persinger leads Tycko & Zavareei's California office as California's Managing Partner. While at Tycko & Zavareei, Ms. Persinger has dedicated her practice to utilizing California's prohibitions against unfair competition and false advertising to advocate for consumers. Ms. Persinger has taken on financial institutions, companies that take advantage of consumers with deceptive advertising, tech companies that disregard user privacy, companies that sell defective products, and mortgage loan servicers. Ms. Persinger also represents whistleblowers who expose their employer's fraudulent practices.

Ms. Persinger graduated magna cum laude as a member of the Order of the Coif from the University of California, Hastings College of the Law in 2010. While in law school, Ms. Persinger served as a member of Hastings Women's Law Journal, and authored two published articles. In 2008, Ms. Persinger received an award for Best Oral Argument in the first year moot court competition. In 2007, Ms. Persinger graduated cum laude from the University of California, San Diego with a B.A. in Sociology, and minors in Law & Society and Psychology.

Following law school, Ms. Persinger worked as a legal research attorney for Judge John E. Munter in Complex Litigation at the San Francisco Superior Court.

Ms. Persinger served as an elected board member of the Bay Area Lawyers for Individual Freedom (BALIF) from 2017 to 2019, and as Co-Chair of BALIF from 2018 to 2019. During her term on the BALIF Board of Directors, Ms. Persinger advocated for LGBTQI community members with intersectional identities, and promoted anti-racism and anti-genderism. Ms. Persinger now serves as a Steering Committee member for the Cambridge Forum on Plaintiffs' Food Fraud Litigation.

Education

University of California Hastings College of Law, 2010 *Magna Cum Laude,* Order of the Coif

University of California San Diego, 2007 *Cum Laude*

Bar Admissions

California

Memberships

American Association for Justice

Plaintiffs' Food Fraud Litigation, 2020 Steering Committee Member

Public Justice

Awards

Super Lawyer, Rising Star 2020

UC Hastings, *Best Oral Argument* 2008

TYCKO & ZAVAREEI LLP

David W. Lawler

Of Counsel

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Mr. Lawler joined Tycko & Zavareei LLP in January 2012. He has over twenty years of commercial litigation experience, including an expertise in eDiscovery and complex case management. At the firm Mr. Lawler has represented consumers in a numerous practice areas, including product liability, false labeling, deceptive and unfair trade practices, and antitrust class actions litigation.

Before joining Tycko & Zavareei LLP, Mr. Lawler was an associate in the litigation departments at McKenna & Cuneo LLP and Swidler Berlin Shereff Friedman LLP.

Among Mr. Lawler's career achievements include the co-drafting of appellate briefs which resulted in rare reversal and entry of judgment in favor of client, US Court of Appeals for the Fourth Circuit.

Mr. Lawler is a member of the District of Columbia Bar, as well as numerous federal courts.

Education

Creighton University School of Law, 1997

University of California, Berkeley School of Law, 1989

Bar Admissions

District of Columbia

Memberships

American Association for Justice
Public Justice

Representative Cases

In re Generic Pharmaceuticals Pricing Antitrust Litigation, MDL No. 2724 (E.D. Penn.) (complex price-fixing action)

Morgan v. Apple, Inc., Case No. 4:17-cv-5277(N.D. Cal.) (multimillion-dollar case alleging defects in high-end Powerbeats headphone)

In re Automotive Parts Antitrust Litigation, Master File No. 12-md-02311 (E.D. Mich.) (described by the Department of Justice as the largest antitrust case in history, recovering over $1.2 billion for classes)

TYCKO & ZAVAREEI LLP

Katherine M. Aizpuru

Associate

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Katherine M. Aizpuru is a fearless advocate for consumers and whistleblowers, pursuing high-stakes litigation in state and federal courts across the country. Ms. Aizpuru has represented classes of consumers against mortgage loan servicers that take advantage of elderly borrowers and homeowners in financial distress; financial institutions that assess improper and illegal fees against their customers; tech companies that violate user privacy; companies that sell defective products; and other corporations that use unfair and deceptive conduct to take advantage of the public. Ms. Aizpuru has also represented whistleblowers exposing fraudulent practices in the healthcare industry. She is committed to fierce advocacy on behalf of her clients and the public.

Prior to joining Tycko & Zavareei in 2017, Ms. Aizpuru clerked for the Honorable Theodore D. Chuang on the United States District Court for the District of Maryland and the Honorable Catharine F. Easterly on the District of Columbia Court of Appeals. She practiced law in the litigation group of a large international law firm, where she was recognized for her pro bono work.

Ms. Aizpuru graduated cum laude from Harvard Law School in 2014. While in law school, Ms. Aizpuru held positions on the Executive Board of the Harvard Journal of Law & Gender and the Board of Law Students for Reproductive Justice. Ms. Aizpuru earned her Bachelor of Arts with High Honors from Swarthmore College in 2010, with a major in Political Science and minor in Chinese Language & Literature. She is a member of Phi Beta Kappa.

Education

Harvard Law School, 2014,
cum laude

Swarthmore College, 2010,
high honors

Bar Admissions

District of Columbia
Massachusetts
New York

Memberships

American Association for Justice
Public Justice
Taxpayers Against Fraud

Awards

Super Lawyer, Rising Star 2020

EXHIBIT 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

LATANYA SIMMONS and KEVIN TOBIN, individually and on behalf of themselves and all others similarly situated, Plaintiffs, v. APPLE INC., Defendant.	Case No. 17-CV-312251

SETTLEMENT AGREEMENT AND RELEASE

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EXHIBITS

[PROPOSED] PRELIMINARY APPROVAL AND PROVISIONAL CLASS CERTIFICATION ORDER ..... **EXHIBIT 1**

DETAILED NOTICE ..... **EXHIBIT 2**

EMAIL NOTICE ..... **EXHIBIT 3**

POSTCARD NOTICE ..... **EXHIBIT 4**

PUBLICATION NOTICE ..... **EXHIBIT 5**

CLAIM FORM ..... **EXHIBIT 6**

OPT-OUT FORM ..... **EXHIBIT 7**

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT ..... **EXHIBIT 8**

PREAMBLE

This Settlement Agreement and Release is entered into by and between plaintiffs Latanya Simmons and Kevin Tobin, on behalf of themselves and the members of the members of the Class as defined herein, on the one hand, and defendant Apple Inc. ("Defendant" or "Apple"), on the other (referred to collectively as "the Parties").

RECITALS

A. On June 26, 2017, Plaintiffs Latanya Simmons and Kevin Tobin filed a class action complaint against Apple in the Superior Court of the State of California in and for the County of Santa Clara, Case No. 17CV312251 (the "Action"). The complaint in the Action alleges that Apple falsely advertised that the Powerbeats 2 earphones ("Powerbeats") were "sweat & water resistant" and "built to endure," when in reality, the earphones contain a design defect that causes them to stop retaining a charge after a short amount of time. The causes of action asserted in the complaint are for breach of express warranty, violation of the Song-Beverly Act (Cal. Civ. Code §§ 1790 *et seq.*)/breach of implied warranty of merchantability, violation of the Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*), violation of the California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 *et seq.*), unjust enrichment, common law fraud, and negligence.

B. Apple denies the allegations asserted in the Action. Specifically, Apple denies any wrongdoing or liability. Nevertheless, given the risks, uncertainties, burden, and expense of continued litigation, Apple has agreed to settle the Action on the terms set forth in this Settlement Agreement, subject to Court approval.

C. Class Counsel have fully analyzed and evaluated the merits of all Parties' contentions and this Settlement as it impacts all Parties, including the individual members of the Class. After taking into account the substantial risks of continued litigation, and the likelihood that the Action, if not settled now, will be protracted and expensive, Class Counsel are satisfied

that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the Action is in the best interests of the Class.

D. The Parties agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of federal or state statute, rule or regulation, or principle of common law or equity, or of any liability or wrongdoing whatsoever, or of the truth of any of the claims asserted in the Action, or of the infirmity of the defenses that have been or could be raised by Apple.

E. The Settlement contemplated by this Settlement Agreement resulted from good faith, arm's length settlement negotiations and is subject to preliminary approval and final approval by the Court, as set forth herein. This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, as defined herein, upon the Court's approval of the terms and conditions of the Settlement Agreement.

AGREEMENT

1. DEFINED TERMS

In addition to the definitions included in the Distribution Plan (Section 3) of the Agreement, the following shall be defined terms for purposes of this Settlement Agreement. Some of the definitions in this section use terms that are defined later in the section. All defined terms are in bold-face font and listed in alphabetical order:

1.1 "Action" means the putative class action lawsuit entitled *Simmons et al. v. Apple, Inc.*, Case No. 17CV312251, pending in the Superior Court of the State of California in and for the County of Santa Clara.

1.2 "Administration Expenses" means any and all fees, costs, and charges incurred, charged, or invoiced by the Settlement Administrator relating to the administration of the Settlement, including the costs of notice to Class Members.

1.3 "**Authorized Claimant**" means any Class Member who timely submits a complete and sufficient Claim Form according to the terms of this Settlement Agreement and does not validly request exclusion from the Class.

1.4 "**Claim**" means the act of submitting a Claim Form to the Settlement Administrator.

1.5 **"Claim Form"** means a paper or online claim form in substantially the same form as **EXHIBIT 6.** The Claim Form shall state that no Proof of Purchase is necessary to submit a claim. Only one Claim Form may be submitted per household.

1.6 "**Claimant**" means any Class Member who submits a Claim Form for a cash settlement under this Settlement Agreement.

1.7 **"Class"** or **"Class Members"** means, for the purposes of settlement only, all persons residing in the United States who purchased new Powerbeats 2 earphones for primarily personal, family, or household purposes, and not for resale, before the date the Court enters the Preliminary Approval Order. Excluded from the Class are employees, officers, and directors of Apple, members of the immediate families of the officers and directors of Apple, and their legal representatives, heirs, successors, or assigns, and any entity in which they have a controlling interest. Also excluded from the Class are the Court, and the Court's staff, as well as their heirs, successors, or assigns. Upon entry of the Final Approval Order and Judgment, persons who would otherwise be Class Members but who submitted a timely and valid request for exclusion, will also be excluded from the Class.

1.8 **"Class Counsel"** or **"Plaintiffs' Counsel"** means the law firms of Tycko & Zavareei LLP (including lead counsel Hassan Zavareei, who is a member of the California Bar); The Miller Law Firm, P.C.; and Greg Coleman Law.

1.9 "Class Member List" means a list of persons who, according to a reasonable search of Apple's business records, fall within the definition of the Class. The Class Member List shall include: the names of all persons who, according to a reasonable search of Apple's business records, fall within the definition of the Class; their last known mailing address; and their last known email address. This list is not exclusive and there are Class Members who are not on this list.

1.10 "Class Notice" means the Email Notice, the Postcard Notice, Publication Notice, and the Detailed Notice.

1.11 "Class Representatives" or **"Plaintiffs"** means Latanya Simmons and Kevin Tobin.

1.12 "Court" means the Superior Court of the State of California in and for the County of Santa Clara.

1.13 "Cy Pres Recipient" means the Consumer Federation of America.

1.14 "Defense Counsel" means Cooley LLP.

1.15 "Detailed Notice" means the notice to be posted on the Settlement Website and mailed or emailed to Class Members upon request that discloses the terms of this Settlement Agreement, substantially in the form attached hereto as **EXHIBIT 2.**

1.16 "Distribution Plan" is the plan, set forth in Section 3, for distributing the Net Settlement Amount to Class Members.

1.17 "Effective Date" means two (2) court days after the latest of the following events occurs: (a) sixty-one (61) calendar days after notice of entry of the Final Approval Order and Judgment has been served on Defendant, if no timely motions for reconsideration and/or no appeals or other efforts to obtain review have been filed; or (b) in the event that an appeal or other

effort to obtain review has been initiated, the date sixty-one (61) calendar days after such appeal or other review has been finally concluded in favor of the Final Approval Order and Judgment and the Final Approval Order and Judgment is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing en banc, petitions for certiorari, or otherwise. If the Final Approval Order and Judgment is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, the Effective Date shall not occur.

1.18 "Email Notice" means the notice to be emailed to Class Members by the Settlement Administrator, substantially in the form attached hereto as **EXHIBIT 3.**

1.19 "Fee and Expense Award" means such funds as may be approved and awarded by the Court to Class Counsel for the attorneys' fees and costs incurred in connection with the Action and Settlement.

1.20 "Fee Application" means Class Counsel's application for the Fee and Expense Award.

1.21 "Final Approval Hearing" or "**Fairness Hearing**" mean the hearing at or after which the Court will determine whether to finally approve the Settlement.

1.22 "Final Approval Order and Judgment" means the proposed final order and judgment to be submitted to and entered by the Court in connection with the Final Approval Hearing, the proposed form of which is attached hereto as **EXHIBIT 8.**

1.23 "Gross Settlement Amount" means nine million, seven hundred and fifty thousand dollars ($9,750,000) which shall be used to make payments to the Class Members, any Fee and Expense Award, any Service Awards, and Administration Expenses. No interest shall be due on the Gross Settlement Amount. In no event shall Apple be required to pay more than $9,750,000.

1.24 "Net Settlement Amount" means the Gross Settlement Amount, minus any Fee and Expense Award, any Service Awards, all Administration Expenses, and any taxes owed by the Gross Settlement Amount (but not any taxes owed by any individual Class Counsel, Plaintiffs or Class Members).

1.25 "Notice Plan" means the procedure for providing notice to the Class, including by Postcard Notice, Email Notice and Publication Notice.

1.26 "Opt-Out Form" means a paper or online form which Class Members may request exclusion from the Class, in substantially the same form as **EXHIBIT 7.**

1.27 "Publication Notice" means the procedure for providing notice to the Class who do not receive notice via Postcard Notice or Email Notice, the proposed form of which is attached hereto as **EXHIBIT 5.**

1.28 "Parties" means Latanya Simmons, Kevin Tobin, and Apple.

1.29 "Point Multiplier" is defined by mathematical formula in the Distribution Plan (Section 3).

1.30 "Postcard Notice" means the notice to be mailed to Class Members by the Settlement Administrator, substantially in the form of **EXHIBIT 4.**

1.31 "Preliminary Approval Hearing" means the hearing at or after which the Court will determine whether to preliminarily approve the Settlement and authorize the Class Notice.

1.32 "Preliminary Approval Order" and **"Preliminary Approval and Provisional Certification Order"** mean the order to be submitted to and entered by the Court in connection with the Preliminary Approval Hearing, the proposed form of which is attached hereto as **EXHIBIT 1.**

1.33 "Proof of Purchase" means one of the following submitted by a Class Member along with his or her Claim Form: (a) an itemized retail sales receipt evidencing the Class Member's purchase of new Powerbeats 2 earphones; (b) a record of the Class Member's online purchase of new Powerbeats 2 earphones; or (c) any other Proof of Purchase that counsel for the Parties agree is sufficient.[1]

1.34 "Released Claims" means any actions, causes of action (in law, equity, or administratively), suits, debts, liens, or claims, known or unknown, suspected or unsuspected, fixed or contingent, which they may have or clam to have, that directly or indirectly arise out of, relate to, or derive in any way from Powerbeats 2 earphones.

1.35 "**Released Parties**" means Apple and each of its past and present parents, subsidiaries, affiliates, officers, directors, employees, attorneys, shareholders, agents, assigns, and third party suppliers and vendors.

1.36 "**Releasing Parties**" means the Class Representatives and each Class Member, and each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf.

1.37 "Response Deadline" means one hundred and five (105) calendar days after entry of the Preliminary Approval Order.

1.38 "Service Award" means such funds as may be awarded by the Court to the Plaintiffs in recognition of their time and effort expended in pursuing the Action and in fulfilling their obligations and responsibilities as the Class Representatives.

[1] A given Proof of Purchase can only be used in support of one Claim.

1.39 "Service Award Application" means Class Counsel's application for a Service Award for each of the Class Representatives.

1.40 "Settlement," "Settlement Agreement," and "Agreement" means the settlement of the Action by the Parties and the terms thereof contemplated by this Settlement Agreement.

1.41 "Settlement Administrator" means the third-party administrator chosen to administer the Settlement and to provide notice of the Settlement to the Class. The Settlement Administrator will be chosen by Class Counsel, with due regard to cost, from among four providers who submitted competing bids.

1.42 "Settlement Share" is defined by mathematical formula in the Distribution Plan (Section 3). The checks or electronic payments sent to Authorized Claimants shall be in the amount of that Authorized Claimant's Settlement Share.

1.43 "Settlement Website" means an internet website to be established and maintained by the Settlement Administrator solely for the purpose of this Settlement.

1.44 "Total Points Claimed" is defined by mathematical formula in the Distribution Plan (Section 3).

1.45 "Valid Claim" means a Claim determined by the Settlement Administrator as a complete, sufficient and timely Claim submitted by the Response Deadline.

2. SETTLEMENT CONSIDERATION (BENEFITS AND RELEASE OF CLAIMS)

2.1 Monetary Payments.

2.1.1 Payment of the Gross Settlement Amount. On or before twenty-one (21) calendar days after entry of the Preliminary Approval Order, Apple shall pay the estimated Administration Expenses to the Settlement Administrator. On or before ten (10) business days after the Effective Date, Apple shall provide the remainder of the Gross Settlement Amount to the

Settlement Administrator that was not already provided to the Settlement Administrator pursuant to preceding sentence. Apple shall not have the obligation to segregate the funds comprising the Gross Settlement Amount from its other assets, and if Apple retains and/or exercises authority or control over Gross Settlement Amount after entry of the Preliminary Approval Order, it shall do so in conformity with its obligations under this Agreement, applicable state and federal law, and Court order(s).

2.1.2 Class Member Benefits. Class Members shall be eligible to receive monetary benefits from the Net Settlement Amount in accordance with the Distribution Plan provided in Section 3.

2.1.3 Service Awards. On or before twenty-one (21) days prior to the Response Deadline, Class Counsel may apply to the Court for a Service Award from the Gross Settlement Amount for each Class Representative not to exceed one thousand dollars ($1,000.00) per Class Representative, in recognition of their service to the Class, in addition to any other relief to which they are entitled as Class Members. Apple shall not oppose such application. If the Court approves Service Awards for the Class Representatives, the Settlement Administrator shall pay the Court-approved Service Awards from the Gross Settlement Amount to the respective Plaintiffs within thirty (30) calendar days of the Effective Date according to the procedures set forth herein. However, the Settlement Administrator shall have no obligation to forward funds for Service Awards for a Class Representative until it has received a signed Form W-9 for the Class Representative. The Settlement Administrator shall mail a check made out to each Plaintiff in the amount approved by the Court to the Plaintiffs care of Hassan A. Zavareei, 1828 L Street NW, Suite 1000, Washington, D.C. 20036. This Settlement is not conditioned upon the Court awarding the amounts sought by the Class Representatives as a Service Award. If the amounts awarded by

the Court are less than what was sought by the Class Representatives, the remaining provisions of this Settlement Agreement shall be binding and effective.

2.1.4 Class Counsel's Attorneys' Fees and Costs. On or before twenty-one (21) days prior to the Response Deadline, Class Counsel may apply to the Court for a Fee and Expense Award from the Gross Settlement Amount. Apple may respond to the Fee Application as it deems appropriate. If the Fee Application is approved, any Fee and Expense Award shall be payable within ten (10) calendar days of receipt by the Settlement Administrator of the full Gross Settlement Amount. However, the Settlement Administrator shall have no obligation to pay forward the Fee and Expense Award until it receives the Form W-9 (or Form W-9s, if applicable) and payment instructions from Tycko & Zavareei LLP. The Settlement Administrator shall make such payment directly to Tycko & Zavareei LLP. Tycko & Zavareei LLP shall be solely responsible for paying any monies due to any and all other counsel for any Plaintiffs, out of the Fee and Expense Award. Apple shall not be liable for any claims ensuing from distribution of attorneys' fees and costs. Class Counsel and Class Representatives expressly disclaim any right to recover attorneys' fees and costs in the Action in excess of the amount awarded by the Court from any person or entity. Class Counsel and Class Representatives also agree that the amounts of such attorneys' fees and costs awarded shall compensate them for all legal work in the Action up to and including the Effective Date, as well as for all legal work and costs that may be incurred in the Action after the Effective Date. This Settlement is not conditioned upon the Court awarding the amounts sought by Class Counsel as a Fee and Expense Award. If the amounts awarded by the Court are less than what was sought by Class Counsel, the remaining provisions of this Settlement Agreement shall be binding and effective.

2.1.5 Administrator Expenses. All costs and expenses of the Settlement Administrator, including but not limited to costs of notice and all costs of the Settlement Administrator in processing Claims, objections and exclusion requests, and distributing the Gross Settlement Amount, shall be paid from the Gross Settlement Amount. Apple shall have no separate responsibility for paying such costs.

2.1.6 No Additional Amounts Due. In no event shall Apple be required to pay more than nine million, seven hundred and fifty thousand dollars ($9,750,000) under this Agreement.

2.2 Releases.

2.2.1 Class Representatives and the Class Members Provide the Following Releases: Upon the Effective Date, and in consideration of the promises and covenants set forth in this Settlement Agreement, the Releasing Parties will be deemed to have completely released and forever discharged the Released Parties from the Released Claims.

2.2.2 Unknown Claims. With respect to the Released Claims, Plaintiffs and the Class Members shall be deemed to have, and by operation of the Settlement Agreement shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code (to the extent applicable, or any other similar provision under federal, state, or local law to the extent any such provision is applicable), which reads:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Thus, subject to and in accordance with this Agreement, even if the Plaintiffs and/or Class Members may discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, Plaintiffs and each Class Member, upon entry of the Final Approval Order and Judgment, shall be deemed to have, and by operation of the Final Approval Order and Judgement shall have, fully, finally, and forever settled and released all of the Released Claims. This is true whether such claims are known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including but not limited to conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discover or existence of such additional or different facts.

2.2.3 Plaintiffs' General Release. In addition to the release contained in paragraphs 2.2.1 and 2.2.2, Plaintiffs on behalf of each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf, release and forever discharge the Released Parties from any actions, causes of action (in law, equity, or administratively), suits, debts, liens, or claims, known or unknown, suspected or unsuspected, fixed or contingent, which they may have or claim to have that arise before entry of the Final Approval Order and Judgement.

With respect to the release in this paragraph 2.2.3, Plaintiffs, on behalf of each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf,

shall be deemed to have, and by operation of the Settlement Agreement shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code (to the extent applicable, or any other similar provision under federal, state, or local law to the extent any such provision is applicable), which reads:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Each Plaintiff expressly waives and relinquishes, to the fullest extent permitted by law all rights and benefits under Section 1542 of the California Civil Code, and any law or legal principle of similar effect in any jurisdiction, whether federal or state, with respect to the release and/or discharge granted in this Agreement. Each Plaintiff fully understands that the facts upon which this Agreement is executed may hereafter be other than or different from the facts now believed by Plaintiffs and/or Plaintiffs' Counsel to be true and expressly accepts and assumes the risk of such possible difference in facts and agrees that this Agreement shall remain effective notwithstanding any such difference in facts.

2.2.4 Covenant Not to Sue. Class Representatives agree and covenant, and each Class Member will be deemed to have agreed and covenanted, not to sue any of the Released Parties with respect to any of the claims released in this Agreement, and agree to be forever barred from doing so in any court of law or equity, arbitration proceeding, or any other forum.

3. DISTRIBUTION PLAN

3.1 Payments From Gross Settlement Amount. The Gross Settlement Amount shall be used to pay, in the following order: (i) all Administration Expenses, (ii) any taxes

owed by the Gross Settlement Amount (but not any taxes owed by any individual Class Counsel, Plaintiffs or Class Members), (iii) any Fee and Expense Award as approved by the Court, (iv) any Service Awards to the Class Representatives as approved by the Court, and (v) Valid Claims of Authorized Claimants.

3.2 Authorized Claimant Settlement Award Calculations. The awards to Authorized Claimants shall be calculated and apportioned as follows:

3.2.1 The "Total Points Claimed" shall be calculated by the Settlement Administrator by adding the total number of "points" from Valid Claims submitted by Authorized Claimants. "Points" are available pursuant to the following formula:

(a) Each Authorized Claimant for whom Apple has no record of performing a warranty repair or replacement on a Powerbeats 2 and who submits a timely and valid Claim Form without a Proof of Purchase is eligible for one point.

(b) Each Authorized Claimant who submits a timely and valid Claim Form, and either (a) submits at least one valid Proof of Purchase in support of his or her Claim Form or (b) is identified in Apple's records as having received a warranty repair or replacement on a Powerbeats 2, shall be eligible for two points per Proof of Purchase or record of warranty repair or replacement, whichever is greater.[2]

3.2.2 The "Point Multiplier" shall be calculated by dividing the Net Settlement Amount by Total Points Claimed.

3.2.3 The Settlement Share of each Authorized Claimant shall be calculated by the number of valid points the Authorized Claimant claimed multiplied by the Point Multiplier.

[2] Records of two or more warranty repairs or replacements will only be eligible for additional points if they are "successive," meaning that the second, or later, warranty repair or replacement must be on the device that was previously repaired or was provided to the customer as a replacement unit.

However, the maximum amount an Authorized Claimant may receive for a Settlement Share is one hundred and eighty nine dollars ($189) multiplied by the number of valid Proofs of Purchase submitted with a timely and valid Claim Form. The maximum amount an Authorized Claimant may receive for a Settlement Share if he or she does not submit any Proof of Purchase is one hundred and eighty nine dollars ($189).

3.3 Payment of Net Settlement Amount.

3.3.1 Distribution of Authorized Claimant Awards. The Claim Form shall allow Claimants to elect between receiving an award by check or electronically (in an electronic payment format recommended by the Settlement Administrator such as Automated Clearing House ("ACH," a/k/a direct deposit), PayPal, Venmo, Square Cash, or Google Wallet, and agreed-upon by the Parties). For those Authorized Claimants who requested an award by check, their Settlement Share shall be mailed as a check by the Settlement Administrator within thirty (30) calendar days following the Effective Date. To those Authorized Claimants who requested the award to be transmitted by electronic means, a transfer reflecting their Settlement Shares shall be transmitted to the Authorized Claimants within thirty (30) calendar days after the Effective Date.

3.3.2 Address Verification. Prior to mailing checks under this Settlement, the Settlement Administrator shall attempt to update the last known addresses of Authorized Claimants through the National Change of Address database. No skip-tracing shall be done as to any checks that are returned by the postal service with no forwarding address. Authorized Claimants' checks returned with a forwarding address shall be re-mailed to the new address within seven (7) calendar days. The Settlement Administrator shall not mail checks to addresses from which Postcard Notices were returned undeliverable.

3.3.3 Deceased Authorized Claimant. If a Class Member is deceased and a death certificate is provided to the Settlement Administrator prior to the Effective Date, and a Valid Claim is submitted on behalf of the Class Member, the Settlement Administrator shall pay the applicable Settlement Share to the deceased Class Member's estate.

3.3.4 Uncashed Settlement Checks. Checks issued under this Settlement shall be negotiable for ninety (90) days after the date of issuance. Individual checks that have not been negotiated within ninety (90) calendar days after issuance, if any, shall be void.

3.3.5 Failed Electronic Transmission of Funds. Authorized Claimants who elect that their Settlement Share be transmitted to themselves via electronic means, but fail to provide sufficient or correct information to permit such transfer, shall, after a reasonable attempt to resolve any such payment issues, relinquish their right to payment pursuant to the Agreement

3.3.6 Cy Pres Distribution. Any remaining funds in the Gross Settlement Amount after the Settlement has been administered, including due to the effect of uncashed checks or unsuccessful electronic transmission of funds, will be distributed to the Cy Pres Recipient. In no event shall any such remaining funds be returned to Apple.

4. CLASS NOTIFICATION PROCEDURES

4.1 Provision of Information to the Settlement Administrator. As soon as practicable, but starting no later than fourteen (14) days of entry of the Preliminary Approval Order, Apple shall provide the Settlement Administrator the Class Member List in an electronic format. In preparing the Class Member List, Apple may rely on its reasonably available electronic records and is only obligated to provide the last known mailing address and email address as they presently exist in its business records.

4.2 Notice Plan.

4.2.1 Email Notice. As soon as practicable, but starting no later than thirty calendar (30) days of entry of the Preliminary Approval Order, the Settlement Administrator shall send the Email Notice to all Class Members for whom Apple has provided the Settlement Administrator with an email address. It will be conclusively presumed that the intended recipients received the Email Notice if the Settlement Administrator did not receive a hard-bounce-back message.

4.2.2 Postcard Notice. As soon as practicable, but starting no later than thirty calendar (30) days of entry of the Preliminary Approval Order, the Settlement Administrator shall send the Postcard Notice, by mail to all Class Members for whom Apple has not provided an email address and to all Class Members to whom the Settlement Administrator sent the Email Notice but for whom the Settlement Administrator receives an uncured hard-bounce-back message. Before mailing the Postcard Notice, the Settlement Administrator shall update the addresses provided by Apple with the National Change of Address database. If the Postcard Notice is returned as undeliverable, the Settlement Administrator shall perform a skip trace search and shall make one attempt to re-mail the Postcard Notice as soon as possible before the Response Deadline. It will be conclusively presumed that the intended recipients received the Postcard Notice if the mailed Postcard Notices have not been returned to the Settlement Administrator as undeliverable within fifteen (15) calendar days of mailing.

4.2.3 Publication Notice. As soon as practicable, but starting no later than thirty calendar (30) days of entry of the Preliminary Approval Order, the Settlement Administrator shall initiate distribution of the Publication Notice. The Publication Notice will be substantially similar to the sample notice contained in **Exhibit 5**.

4.3 Additional Information for the Class.

4.3.1 Settlement Website. Prior to the date on which the Settlement Administrator initiates the Class Notice, the Settlement Administrator shall also establish the Settlement Website, which shall contain:

(a) the Detailed Notice in downloadable PDF format;

(b) the Detailed Notice in HTML format with a clickable table of contents, described on the Settlement Website as answers to frequently asked questions;

(c) a contact information page that includes the address for the Settlement Administrator and addresses and telephone numbers for Class Counsel and Defense Counsel;

(d) the Settlement Agreement;

(e) the signed Preliminary Approval Order and publicly filed motion papers and declarations in support thereof;

(f) a downloadable and online version of the Claim Form and Opt-Out Form; and

(g) (when they become available) the publicly filed motion for final approval, Fee Application, Service Award Application, and any motions papers and declarations in support thereof.

The Settlement Website shall remain accessible until thirty (30) calendar days after the Settlement Administrator has completed its obligations under this Settlement Agreement.

4.3.2 Detailed Notice. The Settlement Administrator shall mail or email the Detailed Notice to any Class Member who requests a copy.

4.3.3 Toll Free Phone Number. Prior to the date on which the Settlement Administrator initiates the Class Notice, the Settlement Administrator shall establish a toll-free number to call to obtain recorded information about the Settlement and request a mailed or emailed version of the Detailed Notice.

5. CLAIMS SUBMISSION AND VALIDATION PROCESS

5.1 Claims Process.

5.1.1 One Claim Per Household. Every Class Member shall have the right to submit a Claim for payment from the Net Settlement Amount. A Claim shall be a Valid Claim only if submitted on the Claim Form pursuant to, and in compliance with, the procedures set forth herein. Class Members from the same household (i.e., the same address) may file only one (1) Claim.

5.1.2 Claim Form Requirements. On the Claim Form, the Class Member must certify the truth and accuracy of the following:

(a) The Class Member's name and mailing address;

(b) The Class Member's email address, if the Class Member elects to provide that information;

(c) That the Class Member purchased new Powerbeats 2 earphones as shown in the Proof of Purchase submitted with the Claim Form, or, in the alternative the approximate month and year of purchase, and the place of purchase; and

(d) That the claimed purchases were not made for purposes of resale.

A Claim Form not complying with all of the elements listed in this Section 5.1.2 is not a Valid Claim.

5.1.3 Claim Form Submission.

(a) Paper Submission. At the election of the Class Member, Claim Forms may be submitted in paper via first class mail or online at the Settlement Website. Claim Forms must be postmarked or submitted online no later than the Response Deadline, and Claim Forms submitted after that date will not be Valid Claims.

(b) Electronic Submission. For Claim Forms that are submitted online, the Class Member shall have the opportunity to: (i) upload Proof of Purchase image files (e.g., .jpg, .tif, .pdf); (ii) review, prior to submitting the Claim, a page that redisplays all information entered into the Claim Form and the names of image files uploaded; and (iii) print, immediately after the Claim Form has been submitted, a page showing the information entered, the names of the files uploaded, and the date and time the Claim Form was received. In addition, for Claim Forms that are submitted online, the Class Member shall be sent an email confirmation of the submitted Claim showing the information entered, the names of the image files uploaded, and the date and time the Claim Form was submitted.

(c) Claim Form Submission Deadline. Claim Forms must be submitted by the Response Deadline. If submitted electronically (through the Settlement Website), Claim Forms must be received on or before the Response Deadline by 11:59 p.m. PST. An untimely Claim is not a Valid Claim.

5.2 Claims Review Process.

5.2.1 Review of Claims. The Settlement Administrator shall review all submitted Claim Forms within a reasonable time for completeness, validity, accuracy, compliance with the Claim protocol and timeliness, and may contact any Claimant to request additional information and documentation to determine the validity of any Claim. The Settlement

Administrator shall follow its ordinary course of practice regarding approval of Claims, subject to all Parties' right to audit Claims and challenge the Settlement Administrator's decision. In addition, the Settlement Administrator must otherwise verify that: (1) the information set forth in a submitted Claim Form is accurate; and (2) the Claimant is a Class Member. To be considered an "Authorized Claimant" a Claimant must submit a valid, complete and timely Claim Form. Claim Forms that do not meet the submission requirements shall be rejected.

5.2.2 Deficient Claims. Prior to rejection of a Claim Form, the Settlement Administrator shall communicate with the Claimant in an effort to remedy curable deficiencies in the Claim Form submitted, except in instances where the Claim is untimely, clearly fraudulent (e.g., a Claim submitted by "John Doe"), or clearly uncurable (e.g., the Claim Form relates to something other than Powerbeats 2). Untimely and clearly fraudulent or uncurable Claims shall be rejected without cure attempt.

5.2.3 Manner of Communicating Deficiency. Within thirty (30) days after the Response Deadline, the Settlement Administrator shall email all Class Members whose Claims were denied to state the reason for the denial, at the email address (if any) provided by the Class Member on the Claim Form. If no email address is provided by the Class Member on the Claim Form, the Settlement Administrator shall not have an obligation to provide the Class Member with any notification of the reasons for denial of the Claim. The Settlement Administrator's determination of whether a Claim is a Valid Claim, if not disputed by the Parties, shall be final and not subject to further review.

5.2.4 Disputes about Deficiency. If the Parties and the Settlement Administrator cannot collectively agree how to resolve disputed Claims, then such disputes will be resolved by the Court.

5.3 Resolution of Disputes Over Claims. Any disputes regarding payments to Claimants, such as a dispute about a payment or the proper recipient of a payment, will be resolved in the following manner. Class Counsel and Defense Counsel will first meet and confer in good faith to attempt to resolve that dispute. In the event the dispute cannot be resolved informally between Class Counsel and Defense Counsel, the Court will resolve the dispute and such resolution shall be final and binding on the Claimant. In resolving such disputes, Apple's records shall be presumed to be accurate, and shall be final and binding, unless the information provided by the Claimant proves otherwise.

6. OBJECTIONS AND REQUESTS FOR EXCLUSION

6.1 Requests for Exclusion. As set forth below, Class Members shall have the right to opt out of the Class and this Settlement.

6.1.1 Notification on Right to Request Exclusion. The Detailed Notice, as well as the Email Notice and Postcard Notice, shall advise Class Members of their rights to forego the benefits of this Settlement and pursue an individual claim, in compliance with the requirements set forth in this Settlement Agreement. The Detailed Notice will also provide that any Class Member wishing to exclude themselves who fail to properly or timely file or serve the requested information and/or documents will be precluded from doing so.

6.1.2 Request for Exclusion Requirements. In the event a Class Member wishes to be excluded from the Settlement and not to be bound by this Settlement Agreement, that person must, prior to the Response Deadline, either complete the online Opt-Out Form or sign and mail a notice of intention to opt-out of the Settlement to the Settlement Administrator. The notice of intention to opt-out must:

(a) be postmarked on or before the Response Deadline;

(b) include the Class Member's name, address, and telephone number;

(c) be personally signed and dated by the Class Member; and

(d) contain a clear request that the individual would like to "opt out" or be excluded, by use of those or other words clearly indicating a desire not to participate in the Settlement. Any Class Member who timely and properly requests exclusion in compliance with these requirements will not be entitled to receive payment from the Net Settlement Amount and will not be bound by this Settlement Agreement or the Final Approval Order and Judgment.

6.1.3 Submission of Claim Form and Request for Exclusion. If a Class Member submits both a Claim Form and an exclusion request, the Claim Form shall take precedence and be considered valid and binding, and the exclusion request shall be deemed to have been sent by mistake and rejected.

6.2 Objections to the Settlement. As set forth below, any Class Member who has not submitted a timely request for exclusion may object to this Settlement Agreement, the Fee Application, and/or the Service Award Application.

6.2.1 Notification of Right to Object. The Detailed Notice, as well as the Email Notice and Postcard Notice, shall advise Class Members of their right to object to this Settlement Agreement, the Fee Application, and/or the Service Award Application. The Detailed Notice will also provide that any Class Members wishing to object who fail to properly do so will be precluded from objecting.

6.2.2 Objection Requirements. Any Class Member who has not submitted a timely request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement must sign and mail a letter to the Settlement Administrator, stating their intention to object to the Settlement. For a written objection to be considered, the written objection must:

(a) be postmarked on or before the Response Deadline;

(b) include the objecting Class Member's name, address, and telephone number;

(c) be personally signed and dated by the objecting Class Member;

(d) state each objection and the specific legal and factual bases for each; and

(e) include Proof of Purchase if available, or alternative information sufficient to show that the objector is a member of the Class.

6.2.3 Appearance at Final Approval Hearing. Any Class Member who has not submitted a timely request for exclusion may appear at the Final Approval Hearing either in person or through an attorney. However, if the Class Member intends to appear at the Fairness Hearing through counsel, the Class Member must have submitted a written objection pursuant to this paragraph that also identified the attorney(s) representing him or her who will appear at the Fairness Hearing and include the attorney(s) name, address, phone number, e-mail address, and the state bar(s) to which counsel is admitted. Also, if the Class Member intends to request the Court to allow him or her to call witnesses at the Fairness Hearing, such request must be made in a written brief, which must also contain a list of any such witnesses and a summary of each witness' expected testimony.

6.2.4 Failure to Object. Any Class Member who does not provide a timely written objection or who does not make a record of his or her objection at the Final Approval Hearing shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement, the Fee Application, the Fee and Expense Award, the Service Award Application, or the Service Awards.

6.2.5 Submission of Claim Form and Objection. A Class Member who objects to the Settlement may also submit a Claim Form on or before the Response Deadline, which shall be processed in the same manner as all other Claim Forms. A Class Member shall not be entitled to an extension of the Response Deadline merely because that Class Member has also submitted an objection.

6.2.6 Responding to Objections. The Class Representatives, Class Counsel, and/or Apple may file responses to any timely written objections no later than seven (7) days prior to the Final Approval Hearing.

7. COURT APPROVAL PROCEDURES

7.1 Provisional Class Certification and Preliminary Approval Order.

7.1.1 Class. Solely for the purposes of settlement and the proceedings contemplated herein, the Parties stipulate and agree that a class shall be certified in the Action in accordance with the definition of the "Class" set forth above, and Class Counsel shall be appointed as counsel for the Class. The certification of the Class shall be binding only with respect to the Settlement set forth in this Settlement Agreement.

7.1.2 Plaintiffs' Brief in Support of Preliminary Approval Order. The Class Representatives, through Class Counsel, shall file a motion for preliminary approval. The motion shall request entry of the Preliminary Approval Order for the purposes of, among other things:

(a) conditionally certifying the Class in the Action for settlement purposes only;

(b) appointing Plaintiffs as the Class Representatives;

(c) appointing Class Counsel as counsel for the Class;

(d) appointing the Settlement Administrator;

(e) scheduling a Final Approval Hearing;

(f) approving the Class Notice; and

(g) approving the objection and exclusion procedures for Class Members.

7.1.3 Apple's Brief in Support of Preliminary Approval Order. Apple and Defense Counsel shall not oppose the motion and may file a statement of non-opposition to the request for preliminary approval.

7.2 Motion for Final Approval.

7.2.1 Motion for Final Settlement Approval. Plaintiffs will submit for the Court's consideration, by the deadline set by the Court, the Final Approval and Judgment Order, which does all of the following:

(a) finds that the Court has personal and subject matter jurisdiction over the Action;

(b) certifies the Class for settlement purposes;

(c) approves the Settlement;

(d) finds that the notice to the Class given in the manner described herein constitutes the best notice practicable and in full compliance with requirements of California Rules of Court and due process of law;

(e) confirms that the Class Representatives and Class Members have released all Released Claims against the Released Parties;

(f) identifies those who have timely opted out of the Settlement;

(g) requires the Parties to report the amounts paid to Authorized Claimants; and

(h) retains the Court's jurisdiction relating to the administration, consummation, validity, enforcement, and interpretation of this Agreement, the Final Approval Order, any final order approving the Fee and Expense Award and Service Awards, and for any other necessary purpose.

7.2.2 Apple's Brief in Support of Final Approval Order and Judgment. Apple and Defense Counsel shall not oppose the motion and may file a statement of non-opposition to the request for entry of the Final Approval Order and Judgment.

7.3 Modifications Suggested by the Court. If the Court suggests any modifications to the Agreement or conditions entry of the Preliminary Approval Order, Final Approval Order and Judgment on modifications to the Agreement, the Parties shall, working in good faith and consistent with the Agreement, endeavor to cure any such deficiencies identified by the Court. However, the Parties shall not be obligated to make any additions or modifications to the Agreement that would affect the benefits provided to Class Members, or the cost to or burden on Apple, the content or extent of notices required to Class Members, or the scope of any of the releases contemplated in this Agreement. If the Court orders or proposes such additions or modifications, the Parties will each have the right to terminate the Settlement Agreement within twenty one (21) calendar days from the date of the Court's order or proposal, unless otherwise agreed by the Parties. If either Party elects to terminate the Settlement Agreement pursuant to this section, the Agreement will be deemed null and void *ab initio* and the provisions of Sections 9.2 - 9.4 will apply.

8. OBLIGATIONS OF THE SETTLEMENT ADMINISTRATOR

8.1 Notice and Settlement Administration Duties. As discussed in more detail elsewhere in the Agreement, the Settlement Administrator shall perform the duties, tasks, and

responsibilities associated with providing notice and administering the Settlement, including the following:

8.1.1 Preparing and disseminating notice to the Class;

8.1.2 Maintaining the Settlement Website;

8.1.3 Keeping track of requests for exclusion and objections to the Settlement, including maintaining the original envelope in which they were mailed (or an electronic copy thereof);

8.1.4 According to the timeline set forth in this Section 8, deliver to Class Counsel and Defense Counsel copies of any requests for exclusion, objections, or, upon request of Class Counsel and Defense Counsel, other written or electronic communications from the Class;

8.1.5 Resolving disputes during the administration process in the manner provided below;

8.1.6 Making distributions to Authorized Claimants;

8.1.7 Performing any tax reporting duties required by this Agreement and federal, state, or local law;

8.1.8 Maintaining adequate records of all its activities, including the dates of transmission of the Postcard and Email Notices, returned mail, and other communications and attempted written or electronic communications with the Class;

8.1.9 Confirming in writing its completion of the administration of the Settlement; and

8.1.10 Such other tasks as Class Counsel and Defense Counsel mutually agree.

8.2 Preserving Confidentiality of Customer Information. The Settlement Administrator, understands and agrees that it will be provided with certain personal identifying

information relating to Apple customers who are Class Members; accordingly, it agrees to keep this information secure, not to disclose or disseminate this information and such information will be used solely for the purpose of effectuating this Settlement Agreement.

8.3 Settlement Administrator Reporting.

8.3.1 Settlement Administrator Interim Reports. Starting one week after the deadline to start providing notice to the Class under Section 4, the Settlement Administrator shall provide weekly reports to Defense Counsel and Class Counsel concerning the Claim Forms received during the prior week and the amount claimed to date. The report shall also identify the number of valid requests for exclusions received *(see* Section 6.1, *supra)* and transmit any received objections *(see* Section 6.2, *supra)* to counsel.

8.3.2 Final Claims Accounting. No later than fourteen (14) calendar days before the filing date for Class Representative's motion in support of the Final Approval Order and Judgment, the Settlement Administrator will serve upon Class Counsel and Defense Counsel a report indicating, among other things, the number of timely and valid Claim Forms that were submitted and the Total Points Claimed associated with such forms.

8.3.3 Final Exclusion and Objection Accounting. Within five (5) Court days of the Response Deadline, unless otherwise agreed by the Parties, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a report containing the information regarding requests for exclusions and objections that is required under Section 6, and confirming which requests for exclusion and objections are timely and untimely. No later than fourteen (14) calendar days before the filing date for Class Representative's motion in support of the Final Approval Order and Judgment, the Settlement Administrator will serve upon Class Counsel and Defense

Counsel a declaration indicating, among other things, the total number of valid requests for exclusion and copies of any objections received.

8.4 Post Distribution Accounting. The Settlement Administrator shall provide the Parties with a reconciliation and accounting of the Gross Settlement Amount at each of the following times: (i) no later than ten (10) calendar days after the payments are made pursuant to paragraph 3.3.1, and (ii) no later than ten (10) calendar days after the expiration of the 90-day period for negotiating checks issued under this Settlement.

9. TERMINATION

9.1 Option to Declare Settlement Void. In the event that five hundred and one (501) or more Class Members are excluded from the Settlement pursuant to the procedures set forth in Section 6.1, Apple shall have the sole right to declare this Settlement Agreement void. Should Apple elect to void the Settlement Agreement on the basis of this provision, it must notify Class Counsel in writing of its intent to void the Settlement Agreement within five (5) business days of receiving written notice from the Settlement Administrator pursuant to paragraph 8.3.3 of the total number of exclusion requests from Class Members.

9.2 Contingencies. This Agreement shall be deemed terminated and cancelled, and shall have no further force and effect whatsoever, consistent with Section 9, if: (a) there is no Effective Date; (b) the Court fails to enter a Preliminary Approval Order substantially in the form attached as Exhibit 1; (c) the Court fails to enter Final Approval Order and Judgment substantially in the form attached as Exhibit 8; or (d) Apple elects to terminate pursuant to Section 9.1 above.

9.3 Decertification of the Class if Settlement Not Approved. If the Court does not enter the Final Approval Order and Judgment without material modification, subject to Section 9, or if the Final Approval Order and Judgment is reversed in whole or in part on appeal, or if the

Effective Date does not occur, certification of the Class will be vacated, and the Parties will be returned to their positions *status quo ante* as if the Settlement had not been entered into. In the event that Final Approval Order and Judgment or Effective Date is not achieved, (a) any court orders preliminarily or finally approving the certification of any Class contemplated by the Settlement and any other orders entered pursuant to the Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion; and (b) this Agreement will become null and void, and the fact of this Settlement, that Apple did not oppose the certification of any Class under the Settlement, that Class Representatives acknowledged any risks associated with the litigation, or that the Court approved the certification of a Class, shall not be used or cited thereafter by any person or entity, including but not limited to in any contested proceeding relating to the certification of any class or relating to enforcement of arbitration agreements and class-action waivers.

9.4 Effect of Termination. In the event that this Agreement is voided, terminated or cancelled, or fails to become effective for any reason whatsoever, then the Parties shall be deemed to have reverted to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and they shall proceed in all respects as if this Agreement, its exhibits, and any related agreements or orders, had never been executed or entered. Without limiting the foregoing of the other agreements between the Parties in this Agreement, but rather for clarity's sake, the Parties expressly agree that this Agreement, the settlement and mediation discussions leading to this Agreement, and any proceeding related to this Agreement (a) shall not be construed as a waiver, acknowledgment, or concession of risk by the Parties of any claim, defense, or argument, and the Parties' agreement to resolve the Action shall be inadmissible

pursuant to Evidence Code section 1152, and (b) shall not be used in any other proceeding for any purpose. No Party shall be deemed to have waived any claims, objections, rights, or defenses, or legal arguments or positions, including but not limited to claims or objections to class certification, or claims or defenses on the merits. Each Party reserves the right to prosecute or defend this Action in the event that this Settlement Agreement does not become final and binding.

10. MISCELLANEOUS.

10.1 No Admission of Liability. Neither this Agreement nor the Final Approval Order and Judgment to be entered pursuant to this Agreement is an admission or concession by any person or entity of any fault, omission, liability, or wrongdoing.

10.2 Termination of Discovery and Motion Practice. By signing this Settlement Agreement, the Parties agree not to serve any discovery or proceed with any motion after the date of execution of the Settlement Agreement, except for motions related to the approval of the Settlement, unless the Parties are ordered to do so by the Court or the Final Approval Order and Judgment is not entered and this Settlement Agreement becomes void.

10.3 Taxes and Tax Reporting. The Parties shall have no liability or responsibility for any taxes owed by Class Members as a result of amounts paid to such Class Members under this Agreement. The Parties hereto agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accounts to the extent reasonably necessary to carry out the provisions set forth in this section.

10.4 Date of Submission of Documents to Settlement Administrator. If submitted by postal mail, the date of the postmark on the envelope containing the Claim Form, request for exclusion or objection shall be the exclusive means used to determine whether a Claim Form has been timely submitted. In the event a postmark is illegible, the date of mailing shall be deemed to

be three (3) days prior to the date that the Settlement Administrator received a copy of the Claim Form, request for exclusion or objection.

10.5 No Claim Related to Distribution or Claims Processing. No person shall have any claim against Plaintiffs, Apple, Plaintiffs' Counsel, Defense Counsel, or the Settlement Administrator based on any determination of a Valid Claim, distributions, or awards made in accordance with this Settlement Agreement and the Exhibits thereto.

10.6 Best Efforts. The Class Representatives and Apple agree that the terms of the Agreement reflect a good-faith settlement of disputed claims. They consider the Settlement effected by this Settlement Agreement to be fair and reasonable and will use their best efforts to seek preliminary approval, and if granted, final approval of the Agreement by the Court, including in responding to any objectors, intervenors or other persons or entities seeking to preclude entry of the Final Approval Order and Judgment and, if the Settlement is granted final approval, to effectuate the Agreement's terms. Neither the Parties nor any person acting on their behalf shall seek to solicit or encourage anyone to object to the Settlement or appeal from any order of the Court that is consistent with the terms of this Settlement.

10.7 Each Party Is Represented by Counsel. Plaintiffs, on the one hand, and Apple, on the other, acknowledge to each other that each has been advised and is represented by legal counsel of his or her own choosing throughout the negotiations which preceded the execution of this Settlement Agreement, and that they have executed this Settlement Agreement after being so advised and without reliance upon any promise or representation of any person or persons acting for or on behalf of the other, except as expressly set forth in this Settlement Agreement. Plaintiffs, on the one hand, and Defendant, on the other, further acknowledge that they and their counsel have had an adequate opportunity to make whatever investigation or inquiry they may deem necessary

or desirable in connection with the subject matter of this Settlement Agreement prior to the execution of this Settlement Agreement. Plaintiffs have each read and approved the language of this Settlement Agreement, with the assistance of counsel. Apple has also read and approved the language of this Settlement Agreement, with the assistance of counsel. This Settlement Agreement is a product of negotiation and preparation by Plaintiffs on the one hand with their attorneys, and Defendant Apple and its attorneys on the other. Therefore, Plaintiffs and Apple each expressly waive the provisions of Civil Code section 1654 and acknowledge and agree that this Settlement Agreement should not be deemed prepared or drafted by one Party or the other and shall be construed accordingly.

10.8 Entire Agreement. This Settlement Agreement embodies the entire agreement and understanding between the Parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.

10.9 Construction and Interpretation. No course of prior dealing between the Parties, no usage of the trade, and no extrinsic evidence of any nature shall be used or be relevant to supplement, explain, or modify any term used herein. The Parties each represent and warrant to the other Party that they are not relying on any other Party for advice.

10.10 Counterpart Originals and Electronic Signatures. This Settlement Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement. It is further agreed that scanned and emailed and/or facsimile copies of executed signature pages may be assembled and that each and every one of the same shall be given the force and effect of an original signature. It is further agreed that electronic signatures (e.g., through DocuSign) shall be given the force and effect of an original signature.

10.11 Execution Date. This Settlement Agreement shall be deemed executed upon the last date of execution by all of the undersigned.

10.12 Modification Only in Writing. Neither this Settlement Agreement nor any provision hereof may be changed, waived, discharged, or terminated, save and except by an instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge, or termination is sought.

10.13 Headings. Captions, section headings, and numbers have been set forth in this Settlement Agreement for convenience only and are not to be used in construing this Settlement Agreement.

10.14 Time Periods. The time periods and dates described in this Agreement with respect to the giving of notices and hearings are subject to Court approval and modification by the Court or by written stipulation of Class Counsel and Defense Counsel.

10.15 Notices. Any communication, verification, or notice sent by any Party in connection with this Agreement shall be sent by email and overnight mail as follows:

<u>To Class Representatives:</u>

Hassan A. Zavareei
TYCKO & ZAVAREEI LLP
1828 L Street NW, Suite 1000
Washington, D.C. 20036
Telephone: (202) 973-0900
Facsimile: (202) 973-0950
Email: hzavareei@tzlegal.com

<u>To Apple:</u>

Michelle C. Doolin
COOLEY LLP
4401 Eastgate Mall
San Diego, CA 92121
Telephone: (858) 550-6000
Facsimile: (858) 550-6420
Email: mdoolin@cooley.com

10.16 Governing Law. This Agreement shall be governed and interpreted under California law, without regard to its choice of law principles.

10.17 Court Retains Jurisdiction After Entry of Final Approval Order. Without affecting the finality of the Final Approval Order and Judgment in any way, the Court shall retain jurisdiction over the administration, consummation, validity, enforcement, and interpretation of

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this Settlement Agreement, the Final Approval Order, and any final order approving the Fee and Expense Award and Service Awards.

IN WITNESS WHEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

Dated: 1/29/2020

DocuSigned by:
LaTanya Simmons
AAEB313798F5430...

Plaintiff Latanya Simmons

Dated: _____

_____

Plaintiff Kevin Tobin

Dated: _____

_____

Defendant Apple Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: _____

TYCKO & ZAVAREEI, LLP

By: _____
Hassan A. Zavareei
Annick M. Persinger

Dated: _____

THE MILLER LAW FIRM, P.C.

By: _____

Dated: _____

GREG COLEMAN LAW

By: _____

Attorneys for Plaintiffs

Dated: _____

COOLEY LLP

By: _____

Attorneys for Defendant Apple Inc.

this Settlement Agreement, the Final Approval Order, and any final order approving the Fee and Expense Award and Service Awards.

IN WITNESS WHEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

Dated: _____

_____

Plaintiff Latanya Simmons

Dated: 1/28/2020

DocuSigned by:
_____
D27867E8C0A5449...

Plaintiff Kevin Tobin

Dated: _____

_____

Defendant Apple Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: _____

TYCKO & ZAVAREEI, LLP

By: _____
Hassan A. Zavareei
Annick M. Persinger

Dated: _____

THE MILLER LAW FIRM, P.C.

By: _____

Dated: _____

GREG COLEMAN LAW

By: _____

Attorneys for Plaintiffs

Dated: _____

COOLEY LLP

By: _____

Attorneys for Defendant Apple Inc.

this Settlement Agreement, the Final Approval Order, and any final order approving the Fee and Expense Award and Service Awards.

IN WITNESS WHEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

Dated: _____

_____

Plaintiff Latanya Simmons

Dated: _____

_____

Plaintiff Kevin Tobin

Dated: Jan. 27, 2020

Noreen Krall

Noreen Krall, VP, Chief Litigation Counsel
Defendant Apple Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: _____

TYCKO & ZAVAREEI, LLP

By: _____
Hassan A. Zavareei
Annick M. Persinger

Dated: _____

THE MILLER LAW FIRM, P.C.

By: _____

Dated: _____

GREG COLEMAN LAW

By: _____

Attorneys for Plaintiffs

Dated: March 12, 2020

COOLEY LLP

By: Michelle C. Doolin

Attorneys for Defendant Apple Inc.

this Settlement Agreement, the Final Approval Order, and any final order approving the Fee and Expense Award and Service Awards.

IN WITNESS WHEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

Dated: _____ _____

Plaintiff Latanya Simmons

Dated: _____ _____

Plaintiff Kevin Tobin

Dated: _____ _____

Defendant Apple Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: February 19, 2020

TYCKO & ZAVAREEI, LLP

By: _____

Hassan A. Zavareei
Annick M. Persinger

Dated: _____

THE MILLER LAW FIRM, P.C.

By: _____

Dated: _____

GREG COLEMAN LAW

By: _____

Attorneys for Plaintiffs

Dated: _____

COOLEY LLP

By: _____

Attorneys for Defendant Apple Inc.

this Settlement Agreement, the Final Approval Order, and any final order approving the Fee and Expense Award and Service Awards.

IN WITNESS WHEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

Dated: _____

_____

Plaintiff Latanya Simmons

Dated: _____

_____

Plaintiff Kevin Tobin

Dated: _____

_____

Defendant Apple Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: _____

TYCKO & ZAVAREEI, LLP

By: _____
Hassan A. Zavareei
Annick M. Persinger

Dated: 2/19/2020

THE MILLER LAW FIRM, P.C.

By: _____
Marc L. Newman

Dated: _____

GREG COLEMAN LAW

By: _____

Attorneys for Plaintiffs

Dated: _____

COOLEY LLP

By: _____

Attorneys for Defendant Apple Inc.

this Settlement Agreement, the Final Approval Order, and any final order approving the Fee and Expense Award and Service Awards.

IN WITNESS WHEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

Dated: _____

_____

Plaintiff Latanya Simmons

Dated: _____

_____

Plaintiff Kevin Tobin

Dated: _____

_____

Defendant Apple Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: _____

TYCKO & ZAVAREEI, LLP

By: _____
Hassan A. Zavareei
Annick M. Persinger

Dated: _____

THE MILLER LAW FIRM, P.C.

By: _____

Dated: 2-20-2020

GREG COLEMAN LAW

By: _____

Attorneys for Plaintiffs

Dated: _____

COOLEY LLP

By: _____

Attorneys for Defendant Apple Inc.

EXHIBIT 1

[PROPOSED] PRELIMINARY APPROVAL AND PROVISIONAL CLASS CERTIFICATION ORDER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

LATANYA SIMMONS and KEVIN TOBIN, individually and on behalf of themselves and all others similarly situated, Plaintiffs, v. APPLE INC., Defendant.	CASE NO. 17-CV-312251 **CLASS ACTION** **[PROPOSED] PRELIMINARY APPROVAL AND PROVISIONAL CLASS CERTIFICATION ORDER**

On [date], this Court heard plaintiffs Latanya Simmons and Kevin Tobin ("Plaintiffs") unopposed motion for preliminary approval of class settlement and provisional class certification under California Rule of Court, Rule 3.769(c) and (d). This Court reviewed the motion, including the Settlement Agreement and Release ("Agreement" or "Settlement"). Based on this review and the findings below, the Court finds good cause to GRANT the motion.

/ / /

/ / /

FINDINGS:

A. Unless otherwise specified, defined terms in this Preliminary Approval and Provisional Class Certification Order have the same definition as the terms in the Agreement.

B. For settlement purposes only, the Class is so numerous that joinder of all Class Members is impracticable, Plaintiffs' claims are typical of the Class's claims, there are questions of law and fact common to the Class, which predominate over any questions affecting only individual Class Members, and Class certification is superior to other available methods for the fair and efficient adjudication of the controversy.

C. The Court finds that (a) the Detailed Notice, Email Notice, Postcard Notice and Publication Notice constitute the best notice practicable under the circumstances, (b) they constitute valid, due, and sufficient notice to all members of the Class, and (c) they comply fully with the requirements of California Code of Civil Procedure section 382, California Rules of Court, Rules 3.766 and 3.769, the California and United States Constitutions, and other applicable law.

D. The Agreement falls within the range of possible approval as fair, reasonable and adequate.

IT IS ORDERED THAT:

1. **Settlement Approval.** The Agreement, including the Detailed Notice, Email Notice, Postcard Notice, Publication Notice, Claim Form and Opt-Out Form attached to the Agreement as Exhibits 2-7, is preliminarily approved.

2. **Provisional Certification.** The Class is provisionally certified for settlement purposes only as a class of all persons residing in the United States who purchased new Powerbeats 2 earphones for primarily personal, family, or household purposes, and not for resale, before the date the Court enters this Order. Excluded from the Class are employees, officers, and directors of Apple, members of the immediate families of the officers and directors of Apple, and their legal representatives, heirs, successors, or assigns, and any entity in which they have a controlling interest. Also excluded from the Class are the Court, and the Court's staff, as well as their heirs, successors, or assigns. Upon entry of the Final Approval Order and Judgment, persons who would

otherwise be Class Members but submitted a timely and valid request for exclusion, will also be excluded from the Class.

3. **Appointment of Class Representative and Class Counsel.** Plaintiffs Latanya Simmons and Kevin Tobin are conditionally certified as the Class Representatives to implement the Parties' Settlement in accordance with the Agreement. Tycko & Zavareei LLP; The Miller Law Firm, P.C.; and Greg Coleman Law are conditionally appointed as Class Counsel for settlement purposes. Plaintiffs and Class Counsel must fairly and adequately protect the Class's interests.

4. **Appointment of Settlement Administrator.** _____ is hereby appointed at the Settlement Administrator for this case.

5. **Provision of Class Notice.** Defendant Apple Inc., through the Settlement Administrator, will notify Class Members of the Settlement in the manner specified under Section 4 of the Agreement.

6. **Claim Form.** Pursuant to Section 5 of the Agreement and subject to the occurrence of the Effective Date, to be qualified to receive payment under the Settlement, Class Members must complete a valid and timely Claim Form and deliver that Claim Form to the Settlement Administrator no later than one hundred and five (105) days after the entry of this Order.

7. **Objection to Settlement.** Class Members who have not submitted a timely written exclusion request pursuant to paragraph 9 below and who want to object to the Agreement may deliver a written objection to the Settlement Administrator, no later than one hundred and five (105) days after the entry of this Order. The delivery date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark. Written objections must (i) include the objecting Class Member's name, address, and telephone number; (ii) be personally signed and dated by the objecting Class Member; (iii) state each objection and the specific legal and factual bases for each; (iv) include Proof of Purchase if available, or alternative information sufficient to show that the objector is a member of the Class. The objection will not be valid if it only objects to the Action's appropriateness or merits. Any Class Member has the option to appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's

expense, to object to the Settlement Agreement. However, if the Class Member intends to appear at the Fairness Hearing through counsel, the Class Member must have submitted a written objection pursuant to this paragraph that also identified the attorney(s) representing him or her who will appear at the Fairness Hearing and include the attorney(s) name, address, phone number, e-mail address, and the state bar(s) to which counsel is admitted. Also, if the Class Member intends to request the Court to allow him or her to call witnesses at the Fairness Hearing, such request must be made in a written brief, which must also contain a list of any such witnesses and a summary of each witness' expected testimony.

8. **Failure to Object to Settlement.** Class Members who fail to object to the Agreement in the manner specified above will (a) be deemed to have waived any objections to the Agreement; (b) be foreclosed from objecting (whether by a subsequent objection, intervention, appeal, or any other process) to the Agreement; and (c) not be entitled to speak at the Fairness Hearing.

9. **Requesting Exclusion.** Class Members who want to be excluded from the Settlement must either complete the online Opt-Out Form or send a signed letter or postcard to the Settlement Administrator, no later than one hundred and five (105) days after the entry of this Order. The delivery date is deemed to be the date the request for exclusion is deposited in the U.S. Mail as evidenced by the postmark. The request for exclusion must (i) state the name and case number of the Action, (ii) include the Class Member's name, address, and telephone number; (iii) be personally signed and dated by the Class Member; and (iv) must contain a clear request that the individual would like to "opt out" or be excluded, by use of those or other words clearly indicating a desire not to participate in the Settlement.

10. **Termination.** If the Agreement terminates for any reason, the following will occur: (a) Class certification will be automatically vacated; (b) Plaintiffs will stop functioning as the Class Representatives and Class Counsel will stop functioning as class counsel; and (c) this Action will revert to its previous status in all respects as it existed immediately before the Parties executed the Agreement. This Order will not waive or otherwise impact the Parties' rights or arguments.

11. **No Admissions.** Nothing in this Order is, or may be construed as, an admission or concession on any point of fact or law by or against any Party.

12. **Stay of Dates and Deadlines.** All discovery and pretrial proceedings and deadlines, are stayed and suspended until further notice from the Court, except for such actions as are necessary to implement the Agreement and this Order.

13. **Fairness Hearing.** On _____ 2020, at _____ , this Court will hold a Fairness Hearing to determine whether the Agreement should be finally approved as fair, reasonable, and adequate. This Court may order the Fairness Hearing to be postponed, adjourned, or continued. If that occurs, the Parties will not be required to provide additional notice to Class Members.

DATED:_____

_____
JUDGE OF THE SUPERIOR COURT

EXHIBIT 2

DETAILED NOTICE

IF YOU PURCHASED POWERBEATS 2 EARPHONES NOT FOR RESALE, YOU SHOULD READ THIS NOTICE CAREFULLY BECAUSE IT WILL AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS.

A CALIFORNIA SUPERIOR COURT AUTHORIZED THIS NOTICE.
THIS IS NOT AN ADVERTISEMENT FROM A LAWYER. YOU ARE NOT BEING SUED.

- A settlement ("Settlement") has been proposed in the class action lawsuit *Simmons et al. v. Apple Inc.*, Case No. 17-cv-312251, pending in the Superior Court of the State of California, County of Santa Clara. You may be a Class Member in the proposed Settlement and may be entitled to participate in the proposed Settlement.

- The Superior Court of the State of California, County of Santa Clara, has ordered the issuance of this notice in this Action ("Notice"). Apple Inc. ("Apple") denies it did anything wrong and has defended itself throughout the lawsuit. The Court has not decided who is right. Both sides have agreed to settle the dispute to avoid burdensome and costly litigation.

- If the Court gives final approval to the Settlement, Apple will provide for each Class Member who properly and timely completes and submits a Claim Form a check. The value of a Class Member's award depends in part upon the number of persons who participate in the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
SUBMIT A CLAIM FORM	This is the only way to get an award under the Settlement. Visit the Settlement Website located at www.[xxxx].com to obtain a Claim Form.	Deadline: **[Month] [Day], [Year]**
EXCLUDE YOURSELF	If you exclude yourself from the Settlement, you will not receive an award under the Settlement. Excluding yourself is the only option that allows you to bring or maintain your own lawsuit against Apple regarding the allegations in the Action ever again.	Deadline: **[Month] [Day], [Year]**
OBJECT	You may write to the Court about why you object to (i.e., don't like) the Settlement and think it shouldn't be approved. Submitting an objection does not exclude you from the Settlement.	Deadline: **[Month] [Day], [Year]**
GO TO THE "FAIRNESS HEARING"	The Court will hold a "Fairness Hearing" to consider the Settlement, the request for attorneys' fees and costs of the lawyers who brought the Action, and the Representative Plaintiffs' request for Service Awards for bringing the Action.	Hearing Date: **[Month] [Day], [Year]**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
	You may, but are not required to, speak at the Fairness Hearing about any objection you have to the Settlement.	
DO NOTHING	You will not receive a Settlement award under the Settlement. You will also give up your right to object to the Settlement and you will not be able to be part of any other lawsuit about the legal claims in this case.	N/A

- These rights and options—**and the deadlines to exercise them**—are explained in more detail below.

- The Court in charge of this Action has preliminarily approved the Settlement and must decide whether to give final approval to the Settlement. The relief provided to Class Members will be provided only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement. ***Please be patient***.

WHAT THIS NOTICE CONTAINS

BACKGROUND INFORMATION ..... ##

1. Why did I get this notice?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a Settlement?
5. How do I know if I am part of the Settlement?
6. I'm still not sure if I am included.

THE PROPOSED SETTLEMENT..... ##

7. What relief does the Settlement provide to the Class Members?

HOW TO REQUEST AN AWARD UNDER THE SETTLEMENT – SUBMITTING A CLAIM FORM..... ##

8. How can I get a Settlement award?
9 When will I get a Settlement award?

THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE PLAINTIFFS..... ##

10. Do I have a lawyer in this case?
11. How will the lawyers be paid?

12. Will the Representative Plaintiffs receive any compensation for their efforts in bringing this Action?

DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS ..... ##

13. What am I giving up to obtain relief under the Settlement?

HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT ..... ##

14. How do I exclude myself from the Settlement?

HOW TO OBJECT TO THE SETTLEMENT ..... ##

15. How do I tell the Court that I disagree with the Settlement?

16. What is the difference between excluding myself and objecting to the Settlement?

FAIRNESS HEARING ..... ##

17. What is the Fairness Hearing?

18. When and where is the Fairness Hearing?

19. May I speak at the hearing?

ADDITIONAL INFORMATION ..... ##

20. How do I get more information?

21. What if my address or other information has changed or changes after I submit a Claim Form?

BACKGROUND INFORMATION

1. *Why did I get this notice?*

You received this Notice because a Settlement has been reached in this Action. If you are a member of the Class you may be eligible for the relief detailed below.

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement (which defines certain capitalized terms used in this Notice), see Section 20 below.

2. *What is this lawsuit about?*

Plaintiffs Latanya Simmons and Kevin Tobin (the "Representative Plaintiffs") filed a lawsuit against Apple on behalf of themselves and all others similarly situated. The lawsuit alleges that Powerbeats 2 contained a defect, causing them to stop working and fail to retain a charge after minimal usage. Plaintiffs claim that as a result of the defect Apple misrepresented the battery life of Powerbeats 2, that Powerbeats 2 earphones were sweat & water resistant, and that Apple did not properly repair or replace defective Powerbeats 2 within the one year limited warranty period.

Apple denies each and every one of the allegations of unlawful conduct, any wrongdoing, and any liability whatsoever, and no court or other entity has made any judgment or other determination of any liability. Apple further denies that any Class Member is entitled to any relief and, other than for settlement purposes, that this Action is appropriate for certification as a class action.

The issuance of this Notice is not an expression of the Court's opinion on the merits or the lack of merits of the Representative Plaintiffs' claims in the Action.

For information about how to learn about what has happened in the Action to date, please see Section 20 below.

3. *Why is this a class action?*

In a class action lawsuit, one or more people called "Representative Plaintiff(s)" (in this Action, Latanya Simmons and Kevin Tobin) sue on behalf of other people who allegedly have similar claims. For purposes of this proposed Settlement, one court will resolve the issues for all Class Members. The company sued in this case, Apple, is called the Defendant.

4. *Why is there a Settlement?*

The Representative Plaintiffs have made claims against Apple. Apple denies that it has done anything wrong or illegal and admits no liability. The Court has **not** decided that the Representative Plaintiffs or Apple should win this Action or any of the other pending actions. Instead, both sides agreed to a Settlement. That way, they avoid the cost of a trial, and the Class Members will receive relief now rather than years from now, if at all.

5. *How do I know if I am part of the Settlement?*

The Court has decided that everyone who fits this description is a Class Member for purposes of the proposed Settlement: All persons residing in the United States who purchased Powerbeats 2 earphones not for resale before [month] [day], 2020. Excluded from the Class are employees, officers and directors of Apple, members of the immediate families of the officers and directors of Apple, and their legal representatives, heirs, successors or assigns, and any entity in which they have a controlling interest. Also excluded from the Class are the Court, and the Court's staff, as well as their heirs, successors or assigns.

6. *I'm still not sure if I am included.*

If you are still not sure whether you are included, you can write the Settlement Administrator for free help. The email address of the Settlement Administrator is [xxxx]@[xxxx].com and the U.S. postal (mailing) address is [Address] [City], [State] [Zip Code].

THE PROPOSED SETTLEMENT

7. *What relief does the Settlement provide to the Class Members?*

If you are a Class Member, you are eligible to receive a share of the Settlement Amount, by timely and validly claiming, through submission of a Claim Form.

All Class Members who do not opt-out of the Class Settlement and submit a valid and timely Claim Form shall receive a cash settlement in the form of a check or electronic payment to be issued by the Settlement Administrator from the Net Settlement Amount. The Net Settlement Amount is the amount remaining from the total $9,750,000 (the "Gross Settlement Amount") to be funded by Apple, minus the attorneys' fees and costs to be paid to Class Counsel, the award to Representative Plaintiffs for bringing this Action, and the costs of the Settlement Administrator for providing notice to the Class of the Settlement and administering the Settlement (which are expected to total approximately _____). The actual amount of the cash settlement distributed to each Class Member will be determined by whether the Claimant provides the Settlement Administrator a Proof of Purchase, whether Apple has a record of the Class Member obtaining a warranty repair or replacement on a Powerbeats 2, and the number of qualifying Claims approved by the Settlement Administrator.

Each Class Member who submits a timely and valid Claim Form will receive a payment according to the number of points he/she is eligible to receive.

Every Claimant who submits a timely and valid Claim Form but does not submit a valid Proof of Purchase, and is not identified in Apple's records as having obtained a warranty replacement or repair on a Powerbeats 2, will receive one point. Each Class Member who submits a timely and valid Claim Form and either (1) submits at least one valid Proof of Purchase or (2) is identified in Apple's records as having obtained at least one warranty repair or replacement on a Powerbeats 2, will receive two points per Proof of Purchase or warranty repair or replacement, whichever is greater.[3]

The following chart contains examples of how points will be calculated in different scenarios:

Number of Proofs of Purchase or Records of Warranty Repairs or Replacements	Points
• No Proof of Purchase • No record of warranty repair or replacement	1 point
• No Proof of Purchase • Record of one warranty repair or replacement	2 points
• One valid Proof of Purchase • No record of warranty repair or replacement	2 points
• One valid Proof of Purchase	2 points

[3] Two or more records of warranty repairs or replacements will only be eligible for additional points if they are "successive," meaning that the second, or later, warranty repair or replacement must be on the device that was previously repaired or was provided to the customer as a replacement unit.

• Record of one warranty repair or replacement	
• Two valid Proofs of Purchase • No record of warranty repair or replacement	4 points
• One valid Proof of Purchase • Record of three successive warranty repairs or replacements	6 points

If the Court awards Plaintiffs' Counsel the full amount of attorneys' fees and costs that they seek, if there are _____ points claimed, each Authorized Claimant will receive approximately $_____ per point he or she claimed. If there are such ____ points claimed, each Authorized Claimant will receive approximately $_____ per point he or she claimed.

The most a Class Member can receive is $189, unless he or she submits multiple valid Proofs of Purchase; then the most that Class Member could receive would be $189 per Proof of Purchase.

Any remaining funds in the Gross Settlement Amount after the Settlement has been administered, including due to the effect of uncashed checks or unsuccessful electronic transmission of funds, will be distributed to the Consumer Federation of America. In no event shall any such remaining funds be returned to Apple.

For complete information on the formula used to calculate a Settlement award, please review Section 3 of Settlement Agreement.

HOW TO REQUEST AN AWARD UNDER THE SETTLEMENT – SUBMITTING A CLAIM FORM

8. *How can I get a Settlement Award?*

To qualify for a Settlement award, you must send in a Claim Form. A Claim Form is available by clicking HERE or on the Internet at the website www.[xxxx].com. A Claim Form is also enclosed with this Notice. The Claim Form may be submitted electronically or by postal mail. Read the instructions carefully, fill out the form, and postmark it by [Month] [Day], [Year] or submit it online on or before 11:59 p.m. (Pacific) on [Month] [Day], [Year].

9. *When will I get a Settlement award?*

As described in Sections 17 and 18, the Court will hold a hearing on [Month] [Day], [Year] at [time], to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. You can check on the progress of the case on the website dedicated to the Settlement at www.[xxxx].com. *Please be patient.*

THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE PLAINTIFFS

10. *Do I have a lawyer in this case?*

The Court has ordered that the law firms of Tycko & Zavareii LLP, The Miller Law Firm, P.C., and Greg Coleman Law ("Class Counsel") will represent the interests of all Class Members. You will not be separately charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. *How will the lawyers be paid?*

Class Counsel, and any other attorneys involved in bringing the Action and similar actions, will petition the Court to receive attorneys' fees and costs up to $_____ (total). The Court will make the final decision as to the amount to be paid to the attorneys for their fees and costs. You will not be required to separately pay any attorneys' fees or costs.

12. *Will the Representative Plaintiffs receive any compensation for their efforts in bringing this Action?*

The Representative Plaintiffs will request a service award of up to $1,000 (each) for their services as Class Representatives and their efforts in bringing the Action and related actions. The Court will make the final decision as to the amount to be paid to the Class Representatives.

DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS

13. *What am I giving up to obtain relief under the Settlement?*

If the Court approves the proposed Settlement, unless you exclude yourself from the Settlement, you will be releasing your claims against Apple. This generally means that you will not be able to file a lawsuit, continue prosecuting a lawsuit, or be part of any other lawsuit against Apple regarding the allegations in the Action. The Settlement Agreement, available on the Internet at the website www.[xxxx].com contains the full terms of the release.

HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT

14. *How do I exclude myself from the Settlement?*

You may exclude yourself from the Class and the Settlement. If you want to be excluded, either complete the form HERE or on the Internet at the website www.[xxxx].com. You may also send a letter or postcard to the Settlement Administrator that must (i) state the name and case number of the Action, (ii) include the Class Member's name, address, and telephone number; (iii) be personally signed and dated by the Class Member; and (iv) must contain a clear request that the individual would like to "opt out" or be excluded, by use of those or other words clearly indicating a desire not to participate in the Settlement. The letter or postcard must be postmarked no later than [Month] [Day], [Year] and sent to the Settlement Administrator at:

Simmons et al. v. Apple Settlement
c/o _____

[Address]
[City] [State], [Zip Code]

If you timely request exclusion from the Class, you will be excluded from the Class, you will not be bound by the judgment entered in the Action, and you will not be precluded from prosecuting any timely, individual claim against Apple based on the conduct complained of in the Action.

HOW TO OBJECT TO THE SETTLEMENT

15. *How do I tell the Court that I disagree with the Settlement?*

At the date, time, and location stated in Section 18 below, the Court will hold a Fairness Hearing to determine if the Settlement is fair, reasonable, and adequate, and to also consider the attorneys' who initiated the Action's request for an award of attorneys' fees and costs, and a Service Award to the Representative Plaintiffs.

If you wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, you may submit the objection no later than (*i.e.*, postmarked by) [Month] [Day], [Year] to the Settlement Administrator at:

Simmons et al. v. Apple Settlement
c/o _____
[Address]
[City] [State], [Zip Code]

Any written objections must (i) include the objecting Class Member's name, address, and telephone number; (ii) be personally signed and dated by the objecting Class Member; (iii) state each objection and the specific legal and factual bases for each; (iv) include Proof of Purchase if available, or alternative information sufficient to show that the objector is a member of the Class. The objection will not be valid if it only objects to the lawsuit's appropriateness or merits. You may, but need not, submit your objection through counsel of your choice. If you do make your objection through an attorney, you will be responsible for your personal attorney's fees and costs.

If you intend to appear at the Fairness Hearing through counsel, you must submit a written objection that identifies the attorney(s) representing you who will appear at the Fairness Hearing and include the attorney(s) name, address, phone number, e-mail address, and the state bar(s) to which counsel is admitted. Also, if you intend to request the Court to allow you to call witnesses at the Fairness Hearing, such request must be made in your written brief, which must also contain a list of any such witnesses and a summary of each witness' expected testimony.

16. *What is the difference between excluding myself and objecting to the Settlement?*

Objecting is simply telling the Court that you disagree with something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

FAIRNESS HEARING

17. *What is the Fairness Hearing?*

The Court has preliminarily approved the Settlement and will hold a hearing to decide whether to give final approval to the Settlement. The purpose of the Fairness Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Class; to consider the award of attorneys' fees and expenses to the attorneys who initiated the Action; and to consider the request for a Service Award to the Representative Plaintiffs.

18. *When and where is the Fairness Hearing?*

On [Month] [Day], [Year] at [time], a hearing will be held on the fairness of the proposed Settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement's fairness. The hearing will take place before the Honorable Judge Thomas E. Kuhnle, Downtown Superior Courthouse, 191 First Street, San Jose, California 95113, Department 11B, on _____, 2020, at ____am/pm. The hearing may be postponed to a different date or time or location without notice. Please check www.[xxxx].com for any updates about the Settlement generally or the Fairness Hearing specifically. If the date or time of the Fairness Hearing changes, an update to the Settlement website will be the only way you will be informed of the change.

19. *May I speak at the hearing?*

At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement. You may attend, but you do not have to. If you have requested exclusion from the Settlement, however, you may not speak at the Fairness Hearing.

ADDITIONAL INFORMATION

20. *How do I get more information?*

To see a copy of the Settlement Agreement, the Court's Preliminary Approval Order, the application for attorneys' fees and costs, and the operative complaint filed in the Action, please visit the Settlement Website located at: www.[xxxx].com. Alternatively, you may contact the Settlement Administrator at the email address [xxxx]@[xxxx].com or the U.S. postal (mailing) address: [Address] [City], [State], [Zip Code].

This description of this Action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file you should visit http://www.sccaseinfo.org/or the Clerk's office at 191 First Street, San Jose, California 95113. The Clerk will tell you how to obtain the file for inspection and copying at your own expense.

21. ***What if my address or other information has changed or changes after I submit a Claim Form?***

It is your responsibility to inform the Settlement Administrator of your updated information. You may do so at the address below:

Simmons et al. v. Apple Settlement
c/o _____
[Address]
[City] [State], [Zip Code]

****

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.

EXHIBIT 3

EMAIL NOTICE

To: [INSERT]
From: [INSERT]
Subject: Notice of Settlement of Lawsuit Regarding Powerbeats 2

LEGAL NOTICE
If you purchased new Powerbeats 2 earphones not for resale, you could be included in this class action settlement.

A proposed Settlement has been reached in the class action lawsuit filed against Apple Inc., resolving claims related to Powerbeats 2 earphones. The Superior Court of the State of California, Santa Clara County has authorized this notice. The Court will hold a hearing on [insert date] to consider whether to approve the Settlement so that benefits may be provided.

Please read this entire notice carefully, as your rights may be affected by the Settlement.

What is this case about? The name of the lawsuit is *Simmons et al. v. Apple Inc.*, Case No. 17-cv-312251, pending in the Superior Court of the State of California, County of Santa Clara. The lawsuit alleges that Powerbeats 2 contained a defect, causing them to stop working and fail to retain a charge after minimal usage. Plaintiffs claim that as a result of the defect Apple misrepresented the battery life of Powerbeats 2 and that Powerbeats 2 earphones were sweat & water resistant. Plaintiffs also claim that Apple did not properly repair or replace defective Powerbeats 2 within the one year limited warranty period. The Court has not decided in favor of either party. Instead, both sides have agreed to the Settlement. Apple denies all allegations and is entering into this Settlement to avoid burdensome and costly litigation. The Settlement is not an admission of wrongdoing.

Are you included in the Class? You are included in the Class if you purchased new Powerbeats 2 earphones, not for resale before [month] [day], 2020.

What can you get from the Settlement and how to claim payment? If the Court approves the Settlement, Apple will create a Settlement fund, from which Apple will pay a total of $9,750,000 to Class Members who purchased new Powerbeats 2 earphones, not for resale. This amount will be used to pay all Class Members who timely submit valid Claim Forms (cash settlements are limited to one per household), as well as pay Class Counsel's attorneys' fees and costs, provide a payment to the Class Representatives, and pay the cost of providing notice to the Class and administering the Settlement (which are expected to total approximately _____).

The actual amount of the cash settlement distributed to each Class Member will be determined by whether the Claimant provides the Settlement Administrator a Proof of Purchase, whether Apple has a record of the Class Member obtaining a warranty repair or replacement on a Powerbeats 2, and the number of qualifying Claims approved by the Settlement Administrator. To make a Claim from the fund click HERE and complete the Claim Form. You must do so by [INSERT].

What are your other options? If you do not want to participate in this Settlement, you need to exclude yourself ("opt out"). If you exclude yourself, you will not get any money from this Settlement, but you will keep your right to sue Apple on your own over the claims resolved by this

Settlement, if such a suit is timely. If you stay in the Class, you may object to any part of the Settlement either by mailing a written objection to the Settlement Administrator or appearing at the "Fairness Hearing". Your request to opt out or your written objection must be submitted by [INSERT]. Go to _____ for more information on how to opt out or object.

The Court will hold a Fairness Hearing on ____, 2020 before Judge Thomas E. Kuhnle, Downtown Superior Courthouse, 191 First Street, San Jose, California 95113, Department 11B, on _____, 2020, at ____am/pm. At the Fairness Hearing, to consider whether to approve the Settlement and a request by the lawyers representing all Class Members (Tycko & Zavareii LLP, The Miller Law Firm, P.C., and Greg Coleman Law) for $_____ in attorneys' fees and $_____ in costs, and for the Plaintiffs' request for $1,000 each for their services. You may ask to appear at the hearing, but you don't have to.

Where to get more information? This notice is only a summary. For more information on this lawsuit, please visit the Settlement Website at _____ or call the Settlement Administrator at [INSERT TOLL-FREE NUMBER].

EXHIBIT 4

POSTCARD NOTICE

A California Superior Court ordered this Notice. This is not an advertisement from a lawyer.

You are not being sued.

If you purchased new Powerbeats 2 earphones not for resale, you could be included in a class action settlement.

A proposed Settlement has been reached in the class action lawsuit filed against Apple Inc., resolving claims related to Powerbeats 2 earphones. The Superior Court of the State of California, Santa Clara County has authorized this notice. The Court will hold a hearing on [insert date] to consider whether to approve the Settlement so that benefits may be provided.

Please read this entire notice carefully, as your rights may be affected by the Settlement.

What is this case about? The name of the lawsuit is *Simmons et al. v. Apple Inc.*, Case No. 17-cv-312251, pending in the Superior Court of the State of California, County of Santa Clara. The lawsuit alleges that Powerbeats 2 contained a defect, causing them to stop working and fail to retain a charge after minimal usage. Plaintiffs claim that as a result of the defect Apple misrepresented the battery life of Powerbeats 2 and that Powerbeats 2 earphones were sweat & water resistant. Plaintiffs also claim that Apple did not properly repair or replace defective Powerbeats 2 within the one year limited warranty period. The Court has not decided in favor of either party. Instead, both sides have agreed to the Settlement. Apple denies all allegations and is entering into this Settlement to avoid burdensome and costly litigation. The Settlement is not an admission of wrongdoing.

Are you included in the Class? You are included in the Class if you purchased new Powerbeats 2 earphones, not for resale before [month] [day], 2020.

What can you get from the Settlement and how to claim payment? If the Court approves the Settlement, Apple will create a Settlement fund, from which Apple will pay a total of $9,750,000 to Class Members who purchased new Powerbeats 2 earphones, not for resale. This amount will be used to pay all Class Members who timely submit valid Claim Forms (cash settlements are limited to one per household), as well as pay Class Counsel's attorneys' fees and costs, provide a payment to the Class Representatives, and pay the cost of providing notice to the Class and administering the Settlement (which are expected to total approximately _____).

The actual amount of the cash settlement distributed to each Class Member will be determined by whether the Claimant provides the Settlement Administrator a Proof of Purchase, whether Apple has a record of the Class Member obtaining a warranty repair or replacement on a Powerbeats 2, and the number of qualifying Claims approved by the Settlement Administrator. To make a Claim from the fund visit ____ and complete the Claim Form. You must do so by [INSERT].

What are your other options? If you do not want to participate in this Settlement, you need to exclude yourself ("opt out"). If you exclude yourself, you will not get any money from this Settlement, but you will keep your right to sue Apple on your own over the claims resolved by this Settlement, if such a suit is timely. If you stay in the Class, you may object to any part of the Settlement either by mailing a written objection to the Settlement Administrator or appearing at

the "Fairness Hearing". Your request to opt out or your objection must be submitted by [INSERT]. Go to _____ for more information on how to opt out or object.

The Court will hold a Fairness Hearing on ____, 2020 Judge Thomas E. Kuhnle, Downtown Superior Courthouse, 191 First Street, San Jose, California 95113, Department 11B, on _____, 2020, at ____am/pm. At the Fairness Hearing, the Court will consider whether to approve the Settlement and a request by the lawyers representing all Class Members (Tycko & Zavareii LLP, The Miller Law Firm, P.C., and Greg Coleman Law) for $_____ in attorneys' fees and $_____ in costs, and for the Plaintiffs' request for $1,000 each for their services. You may ask to appear at the hearing, but you don't have to.

Where to get more information? This notice is only a summary. For more information on this lawsuit, please visit the Settlement Website at _____ or call the Settlement Administrator at [INSERT TOLL-FREE NUMBER.

EXHIBIT 5

PUBLICATION NOTICE

YOU MAY BE ELIGIBLE TO RECEIVE A PAYMENT FROM A CLASS ACTION SETTLEMENT INVOLVING POWERBEATS 2. YOUR RIGHTS MAY BE AFFECTED.

CLICK HERE FOR MORE INFORMATION.

YOU MAY BE ELIGIBLE TO RECEIVE A PAYMENT FROM A CLASS ACTION SETTLEMENT INVOLVING POWERBEATS 2. YOUR RIGHTS MAY BE AFFECTED.

CLICK HERE FOR MORE INFORMATION.

EXHIBIT 6

CLAIM FORM

CLAIM FORM

Simmons et al. v. Apple Inc., Case No. 17-cv-312251

Section I -Instructions

This Form must be received by the Settlement Administrator later than [Month] [Day], [Year].

This Claim Form may be submitted in one of two ways:

1. Electronically through the www.[xxx]com.
2. Mail to: *Simmons et al. v. Apple Inc.*, Case No. 17-cv-312251, c/o ___, [Address], [City] [State], [Zip Code].

To be effective as a claim under the proposed Settlement, this form must be completed, signed and sent, as outlined above, **no later than [Month] [Day] [Year].** If this Form is not postmarked or received by this date, you will remain a member of the Settlement Class, but will not receive any payment from the Settlement.

All submitted Claims may be reviewed for accuracy and truthfulness, including through reference to information possessed by Apple.

Section II - Class Member Information

Claimant Name (Required):

Claimant Identification Number (Optional):

** Your Claimant Identification Number was on the notice of the Settlement you received by email or by postal mail, if you received such notice.*

Current Contact Information

Street Address (Required):

City (Required): **State (Required):** **Zip Code (Required)**

Email (optional):

Preferred Phone Number (optional):

Your contact information will be used by the Settlement Administrator to contact you, if necessary, about your claim. Provision of your phone number is optional.

Section III – Confirmation of Class Membership

(Required) Please confirm each statement as being true by adding your initials where noted. For data entry boxes, please enter the relevant information.

1. I purchased new Powerbeats 2 earphones. Initials:_____.

2. The purchase was not made for purposes of resale. Initials:_____.

3. If you have Proof(s) of Purchase of the Powerbeats 2 earphones, please check the box indicating that you have Proof(s) of Purchase and provide the Proof(s) to the Settlement Administrator as instructed below. If you have a Proof(s) of Purchase for the Powerbeats 2 earphones, you may skip questions 4, 5 and 6. If you do not have any Proof of Purchase, you must answer questions 4, 5 and 6.

☐ I have a Proof or Proofs of Purchase. I have ___ [number] Proof(s) of Purchase.

☐ I do not have a Proof of Purchase.

4. The month and year of the purchase was as stated below:

Initials:_____.

5. The store where I purchased the Powerbeats 2 earphones was:

Initials:_____.

6. The city and state in which the store where I purchased the Powerbeats 2 earphones was located were:

Initials:_____.

Section V - Claiming Payment for a Warranty Repairs

Persons for whom Apple has a record of the Class Member obtaining a warranty repair or replacement on a Powerbeats 2 may be able to receive additional compensation. If you obtained obtaining a warranty repair or replacement on a Powerbeats 2 please confirm each statement as being true by adding your initials where noted. For data entry boxes, please enter the relevant

information. To complete this section, you must provide the Apple ID associated with the warranty repair or replacement.

1. I obtained a warranty repair or replacement on a Powerbeats 2. Initials:_____.

2. If you received two or more successive warranty repairs or replacements, please initial below. To be a successive warranty repair or replacement, the second, or later, warranty repair or replacement must be on the device that was previously repaired or was provided to the customer as a replacement unit.

Initials:_____.

3. The Apple ID associated with warranty repair or replacement(s) is/are:

Initials:_____.

Section VI - Instructions for Providing Proofs of Purchase to Settlement Administrator

You may submit a Proof of Purchase or Proofs of Purchase to the Settlement Administrator in one of three ways.

1. Electronically uploaded through the www.[xxx]com.
2. Via email to [xxx]@[xxx].com. Please include your Claimant Identification Number or copy of your Claim Form with the Proof or Proofs.
3. Mail to: *Simmons et al. v. Apple Inc.*, Case No. 17-cv-312251, c/o ___, [Address], [City] [State], [Zip Code]. Please include your Claimant Identification Number or copy of your Claim Form with the Proof or Proofs.

Section VII - Manner of Transmission of Funds

Payment will be by PayPal, Venmo, or direct deposit, unless you request a paper check. You acknowledge that if you do not choose direct deposit or PayPal, you may not receive payment as quickly and that the Settlement Administrator will not be responsible for Settlement checks that do not arrive by U.S. mail and may not reissue checks that are claimed as lost or stolen.

For PayPal

Please provide the email address associated with your PayPal account (if applicable):

For Venmo

Please provide the username associated with your Venmo account (if applicable):

For Direct Deposit:

Please provide your relevant routing and account number.

Routing (if applicable):

Account (if applicable):

If you do not elect PayPal or Direct Deposit check below:

☐ I wish to receive payment by check sent via U.S. mail.

If you select check, the check will be provided to the "current" contact information you provided in Section 1.

Section VIII – Additional Required Affirmations

By completing this Claim Form, you are attesting, under penalty of perjury of the laws of the State of California, that the content in this Claim Form is true and correct to the best of your abilities.

IF SUBMITTED ELECTRONICALLY:

☐ **I agree that, by submitting this Claim Form, I declare under the penalty of perjury of the laws of the State of California that the information in this Claim Form is true and correct to the best of my knowledge. I understand that my Claim Form may be subject to audit, verification, and Court review. Through the submission of this form, I also attest under the penalty of perjury that I have received notice of the class action Settlement in this case. Checking this box constitutes my electronic signature on the date of its submission.**

IF SUBMITTED BY U.S. MAIL:

I agree that, by submitting this Claim Form, I declare under the penalty of perjury of the laws of the State of California that the information in this Claim Form is true and correct to the best of my knowledge. I understand that my Claim Form may be subject to audit, verification, and Court review. Through the submission of this form, I also attest under the penalty of perjury that I have received notice of the class action Settlement in this case.

Dated:_____ Signature: _____

EXHIBIT 7
OPT-OUT FORM

OPT-OUT FORM

Simmons et al. v. Apple Inc., Case No. 17-cv-312251

Only use this Form if you want to request exclusion from (i.e., opt-out) of the proposed Class. For more information on the proposed Settlement, please review the Detailed Notice of the Settlement that is available at www.[xxx].com.

Section I -Instructions

This Form must be received by the Settlement Administrator later than [Month] [Day], [Year].

This Opt-Out Form may be submitted in one of two ways:

3. Electronically through the www.[xxx]com.
4. Mail to: *Simmons et al. v. Apple Inc.*, Case No. 17-cv-312251, c/o ___, [Address], [City] [State], [Zip Code].

To be effective as an opt-out from the proposed Settlement, this form must be completed, signed and sent, as outlined above, **no later than [Month] [Day] [Year].** If this form is not postmarked or received by this date, your will remain a member of the Class.

Opting out of the Class is not the same as objecting to the Settlement Agreement. If you request exclusion from the Class prior to **[Month] [Day] [Year]**, you will not be bound by the terms of the Settlement Agreement, and therefore cannot argue that the Settlement Agreement should not be approved. More information about objecting to the Settlement is available at www.[xxx].com.

Section II - Class Member Information

Claimant Name (Required):

Claimant Identification Number (Optional):

** Your Claimant Identification Number was on the notice of the Settlement you received by email or by postal mail, if you received such notice.*

Current Contact Information

Street Address (Required):

City (Required): **State (Required):** **Zip Code (Required)**

Email (optional):

Preferred Phone Number (optional):

Your contact information will be used by the Settlement Administrator to contact you, if necessary, about your request for exclusion. Provision of your phone number is optional.

Section III –Attestation, Opt-Out Request, Signature and Submit

Through the submission of this form, I attest under the penalty of perjury that I have received notice of the class action Settlement in this case and I am a member of the class of persons described in the notice. I further attest that I request exclusion from the Settlement Class in *Simmons et al. v. Apple Inc.*, Case No. 17-cv-312251. By signing below, I agree to the submission of this Opt-Out Form.

IF SUBMITTED ELECTRONICALLY:

☐ **Checking this box constitutes my electronic signature and election to opt out of the Settlement on behalf of myself.**

IF SUBMITTED BY EMAIL OR U.S. MAIL:

_____

Date (mm/dd/yyyy) Name/Signature

EXHIBIT 8

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

LATANYA SIMMONS and KEVIN TOBIN, individually and on behalf of themselves and all others similarly situated, Plaintiffs, v. APPLE INC., Defendant.	CASE NO. CASE NO. 17-CV-312251 **CLASS ACTION** **[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT**

On _____, 2020, this Court heard Latanya Simmons and Kevin Tobin ("Plaintiffs") unopposed motion for final approval of the class action settlement. This Court reviewed (a) the motion and the supporting papers, including, the Settlement Agreement and Release ("Agreement" or "Settlement"); (b) any objections filed with or presented to the Court; (c) Plaintiffs' and defendant Apple Inc.'s ("Defendant") (collectively, "the Parties") responses to any objections; and (d) counsels' arguments. Based on this review and the findings below, the Court found good cause to grant the motion.

FINDINGS:

1. Unless otherwise specified, defined terms in Agreement have the same definition as used in this Final Approval Order and Judgment.

2. The Court finds the Settlement was entered into in good faith, that it is fair, reasonable and adequate, and that it satisfies the standards and applicable requirements for final approval of this class action settlement under California law, including the provisions of California Code of Civil Procedure section 382 and California Rules of Court, Rule 3.769.

3. The Parties adequately performed their obligations under the Agreement.

4. Defendant Apple Inc. and the Settlement Administrator, provided notice to Class Members in compliance with Section 4 of the Agreement, California Code of Civil Procedure section 382, California Rules of Court, Rules 3.766 and 3.769, the California and United States Constitutions, and any other applicable law. The notice: (a) fully and accurately informed Class Members about the lawsuit and Settlement; (b) provided sufficient information so that Class Members were able to decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the proposed Settlement; (c) provided procedures for Class Members to file written objections to the proposed Settlement, to appear at the Fairness Hearing, and to state objections to the proposed Settlement; and (d) provided the time, date and place of the final Fairness Hearing.

5. An award of $_____ in attorneys' fees and costs to Class Counsel is fair and reasonable in light of the nature of this case, Class Counsel's experience and efforts in prosecuting this Action, and the benefits obtained for the Class.

6. An incentive award to Plaintiffs Latanya Simmons and Kevin Tobin in the amount of $_____ (each) is fair and reasonable in light of Plaintiffs' risks (including financial, professional, and emotional) in commencing this Action as the Class Representatives, the time and effort spent by Plaintiffs in litigating this Action as the Class Representatives, and Plaintiffs' public interest service.

/ / /

IT IS ORDERED THAT:

1. **Class Members**. For Settlement purposes, the Class Members are defined as:

> All persons residing in the United States who purchased new Powerbeats 2 earphones for primarily personal, family, or household purposes, and not for resale, before the date the Court entered the Preliminary Approval Order. Excluded from the Class are employees, officers, and directors of Apple, members of the immediate families of the officers and directors of Apple, and their legal representatives, heirs, successors, or assigns, and any entity in which they have a controlling interest. Also excluded from the Class are the Court, and the Court's staff, as well as their heirs, successors, or assigns.

2. **Binding Effect of Order**. This Order applies to all claims or causes of action settled under the Settlement Agreement, and binds all Class Members, including those who did not properly request exclusion under paragraph 9 of the Preliminary Approval and Provisional Class Certification Order. This Order does not bind persons who filed timely and valid requests for exclusion. Attached as Exhibit A is a list of persons who properly requested to be excluded from the Settlement.

3. **Release**. Plaintiff and all Class Members who did not properly request exclusion are (1) deemed to have released and discharged Apple Inc., from all claims arising out of or asserted in this Action and claims released under the Settlement Agreement. The full terms of the release described in this paragraph are set forth in paragraphs 2.2.1 – 2.2.3 of the Agreement.

4. **Class Relief**. The Settlement Administrator will issue a payment to each Authorized Claimant in accordance with paragraph 2.1.2 and Section 3 of the Settlement Agreement. Any unused funds in the Net Settlement Amount shall be paid to the Cy Pres Recipient in accordance with paragraph 3.3.6 of the Settlement Agreement.

5. **Attorneys' Fees and Costs**. Class Counsel is awarded $_____ total in fees ($_____) and costs ($_____) to be paid from the Gross Settlement Amount in accordance with the timelines set forth in the Settlement Agreement.

6. **Incentive Award**. Plaintiffs Latanya Simmons and Kevin Tobin are awarded $_____ (each) as an incentive award to be paid from the Gross Settlement Amount in accordance with the timelines set forth in the Settlement Agreement.

7. **Settlement Administrator Costs.** The Court approves the payment to [__] Administration, the Settlement Administrator, of a total amount not to exceed $_____, to be paid from the Gross Settlement Amount .

8. **Judgment.** The Court finds that there is no reason for delay and directs the Clerk to enter judgment in accordance with the terms of this Order as of the date of this Order.

9. **Court's Jurisdiction**. Pursuant to the Parties' request, California Code of Civil Procedure section 664.6, and California Rule of Court, Rule 3.769(h), the Court retains jurisdiction over this Action and the Parties until final performance of the Agreement.

10. **Compliance Hearing.** On _____, 2020, at _____ a.m., the Court will hold a compliance hearing so as to allow this Final Approval Order and Judgement to be amended and provided to the Judicial Council, pursuant to Code of Civil Procedure § 384.5. No later than five court days before the compliance hearing, the Parties shall submit a report to the Court specifying the total amount paid to Authorized Claimants and the amount of uncashed checks that will be paid to the approved Cy Pres Recipient, along with a proposed amended Final Approval Order and Judgement. No later than five court days after receipt of notice of entry of the amended Final Approval Order and Judgement, the Parties shall submit the amended this Final Approval Order and Judgement to the Judicial Council, pursuant to Code of Civil Procedure § 384.5, and shall file a proof of service with this Court confirming this.

DATED:_____

_____
JUDGE OF THE SUPERIOR COURT

EXHIBIT 3

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

CASE NO: 17-CV-312251

LATAYA SIMMONS and KEVINS TOBIN, et al.

v.

APPLE INC.

OBJECTION

Steven F. Helfand has reviewed the class notice. He is a member of this class action settlement. Nobody can or has credibly claimed otherwise. HELFAND requests 10 minutes to address the Court at the scheduled Zoom hearing. HELFAND has already filed a proof of claim in this matter.

1. This settlement is a farce. APPLE has only agreed to pay the attorneys fees, settlement administration costs and the incentive awards. All other payments, up to the maximum stated, are subjected to a convoluted claims process that makes no sense; likely because claims will be small. Class counsel must disclose the take-rate.
2. The notice is misleading and deceptive.
3. There was inadequate notice due to COVID-19.
4. Class members are releasing injuries for personal injury and this is not disclosed in the notice. The release is totally over-broad. See ***Molski v. Gleich***, 318 F.3d 937.
5. The attorneys fees are inflated.
6. Apple already knows that it already covers and has covered these claims under its warranty and Apple Care.

7. Apple is a responsible company that unquestionably meets all customer satisfaction obligations. In fact, Apple routinely replaces defective products in the first instance through its Genius Bar. HELFAND only uses Apple products, because of their high quality, ease of use and guaranteed customer satisfaction warranty. Apple always goes out of its ways to resolve problems for its customers, and replaces products that are defective quickly and responsibly. Apple products are far better than the "junk" produced by other providers. Everyone knows this.

8. Class counsel has not established that Apple has ever refused to repair any item pursuant to the warranty and as a matter of good corporate practice.

9. This case is being resolved for nuisance value; because Class counsel realizes the number of claims at issues are thin.

10. The attorneys fees are inflated.

11. No multiplier is justified.

12. The early fee payment provision, whereas counsel receive their money before the Effective Dates creates an irreconcilable conflict. Such early pay provisions are unseemly and results and them becoming debtors to the so-called class adversary, Apple. The Court should strike the early fee provision; and have the money paid into trust upon the Effective Date. If the class must wait, so must Class counsel. The early pay provision, especially in light of COVID-19 is astounding and violates due process and fundamental fairness. It creates a conflict and there are now questions as to adequacy of representation. The interest that accumulates in trust should revert to either Apple or the *cy pres*. Class counsel should not earn interest; just like the class does not earn any either.

13. The products were replaced voluntarily because the next generation devices are better. Apple always improves over the course of a product cycle. Everyone goes in knowing, full well they are getting cutting edge technologies that always exceed expectations. Class counsel are quibblers and this lawsuit has harmed the class by devaluing Apple's other products and causing repetitional harm to Apple, which directly operates as a negative benefit to the class.

14. Apple has not done anything wrong.

15. HELFAND would like to call the falling witnesses at the fairness hearing:

1. Class counsel;

2. The Settlement Administrator;

3. Any and all objectors, including myself;

4. Apple's PMK as to the number of repair requests ever claimed by class members during the class period; Apple's PMK as to its repair policy for the subject controversy; Apple's PMK as to its customer satisfaction levels;

5. Any expert witness designated by Class Counsel;

6. Latanya Simmons; and

7. Kevin Tobin.

This information is submitted under penalty of perjury pursuant to the laws of the United States of America, the State of Florida and the State of California. It is executed in Broward County, Florida.

October 10, 2020

Steven F. Helfand

EXHIBIT 4

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PUBLIC MATTER

STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL
MELANIE J. LAWRENCE, No. 230102
INTERIM CHIEF TRIAL COUNSEL
RIZAMARI C. SITTON, No. 138319
ASSISTANT CHIEF TRIAL COUNSEL
WILLIAM S. TODD, No. 259194
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845 South Figueroa Street
Los Angeles, California 90017-2515
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FILED

SEP 24 2018

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of: STEVEN FRANKLYN HELFAND, No. 206667, and JOSEPH DARRELL PALMER, No. 125147 Members of the State Bar.	Case Nos. 17-O-00411 and 17-O-00412 NOTICE OF DISCIPLINARY CHARGES

NOTICE - FAILURE TO RESPOND!

IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:

(1) YOUR DEFAULT WILL BE ENTERED;
(2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;
(3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE, AND;
(4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE. SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN ORDER RECOMMENDING YOUR DISBARMENT WITHOUT FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ., RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

The State Bar of California alleges:

JURISDICTION

1. Steven Franklyn Helfand ("Helfand") was admitted to the practice of law in the State of California on or about June 1, 2000, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

2. Joseph Darrell Palmer ("Palmer") was admitted to the practice of law in the State of California on or about December 15, 1986, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

COUNT ONE

Case No. 17-O-00411
Business and Professions Code section 6068, subdivision (d)
[Seeking to Mislead a Judge]

3. On or about June 30, 2016, the Objection Of Jeanelle Branch To Proposed Settlement And Notice Of Intent To Appear ("Objection") was filed on behalf of Jeanelle Branch ("Branch") with the Claims Administrator in *Cynthia E. Spann v. J.C. Penney Corporation, Inc.*, USDC Case No. 8:12-cv-00215-FMO-KES. The identifying information on the first page, the signature page, and the certificate of service bear the name and/or typed signature of Helfand as Branch's attorney of record; however, Helfand denies preparing the Objection, filing the Objection, or representing Branch at any time. Helfand claims that he first learned that the Objection had been filed using his identity upon receipt of the Reply Memorandum In Support Of Motion For Attorney's Fees filed and served by Class Counsel on or about July 29, 2016. Although Helfand denied preparing the Objection, filing the Objection or representing Branch to Branch, opposing counsel, and the State Bar, Helfand intentionally took no action to notify the United States District Court that he did not prepare the Objection, file the Objection, or represent Branch, and thereby sought to mislead the judge or judicial officer by an artifice or false statement of fact or law, in willful violation of Business and Professions Code section 6068, subdivision (d).

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COUNT TWO

Case No. 17-O-00411
Business and Professions Code section 6106
[Moral Turpitude – Dishonesty to the Court]

4. On or about June 30, 2016, the Objection Of Jeanelle Branch To Proposed Settlement And Notice Of Intent To Appear ("Objection") was filed on behalf of Jeanelle Branch ("Branch") with the Claims Administrator in *Cynthia E. Spann v. J.C. Penney Corporation, Inc.*, USDC Case No. 8:12-cv-00215-FMO-KES. The identifying information on the first page, the signature page, and the certificate of service bear the name and/or typed signature of Helfand as Branch's attorney of record; however, Helfand denies preparing the Objection, filing the Objection, or representing Branch at any time. Helfand claims that he first learned that the Objection had been filed using his identity upon receipt of the Reply Memorandum In Support Of Motion For Attorney's Fees filed and served by Class Counsel on or about July 29, 2016. Although Helfand denied preparing the Objection, filing the Objection, or representing Branch to Branch, opposing counsel, and the State Bar, Helfand intentionally or grossly negligently took no action to notify the United States District Court that he did not prepare the Objection, file the Objection, or represent Branch, and thereby sought to dishonestly mislead the judge or judicial officer.

5. Helfand thereby committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

6. A violation of section 6106 may result from intentional conduct or grossly negligent conduct. Helfand is charged with committing intentional misrepresentation. However, should the evidence at trial demonstrate that Helfand committed misrepresentation as a result of gross negligence, Helfand must still be found culpable of violating section 6106 because misrepresentation through gross negligence is a lesser included offense of intentional misrepresentation.

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COUNT THREE

Case No. 17-O-00411
Business and Professions Code section 6104
[Appearing for Party without Authority]

7. On or about October 7, 2016, Helfand corruptly or willfully, and without authority, appeared as attorney of record for a party, Jeanelle Branch ("Branch"), without her knowledge or authorization, by filing a Notice Of Appeal Of The Judgment And Order Re: Motion For Final Approval on behalf of Branch and two other parties in an action or proceeding, namely *Cynthia E. Spann v. J.C. Penney Corporation, Inc.*, USDC Case No. 8:12-cv-00215-FMO-KES, without Branch's knowledge or consent, in willful violation of Business and Professions Code section 6104.

COUNT FOUR

Case No. 17-O-00411
Rules of Professional Conduct, Rule 3-310(B)(1)
[Conflict – Relationship with a Party or Witness]

8. Beginning on or about October 7, 2016 and continuing thereafter, Helfand accepted and continued representation of multiple clients, Jeanelle Branch ("Branch"), W.R.E.,[1] and P.S.S., in joint representation, by filing a Notice Of Appeal Of The Judgment And Order Re: Motion For Final Approval ("Notice Of Appeal") on their behalf in an action or proceeding, namely *Cynthia E. Spann v. J.C. Penney Corporation, Inc.*, USDC Case No. 8:12-cv-00215-FMO-KES, negotiating settlement and dismissal of the Notice Of Appeal, dismissing the Notice Of Appeal, and disbursing the settlement proceeds from the settlement, without providing written disclosure to Branch that respondent has a legal, financial, and personal relationship with a party, namely W.R.E., and a legal and financial relationship with another party, namely P.S.S., in Branch's same matter, in willful violation of the Rules of Professional Conduct, rule 3-310(B)(1).

[1] The Office of Chief Trial Counsel ("OCTC") provides the clients' initials in lieu of the clients' full names to protect their privacy. OCTC will provide a key listing the clients' full names to respondent and this court.

COUNT FIVE

Case No. 17-O-00411
Rules of Professional Conduct, rule 3-310(C)(1)
[Potential Conflict – Representing Multiple Clients]

9. Beginning on or about October 7, 2016 and continuing thereafter, Helfand accepted and continued representation of multiple clients, Jeanelle Branch ("Branch"), W.R.E.,[2] and P.S.S., in joint representation by filing a Notice Of Appeal Of The Judgment And Order Re: Motion For Final Approval ("Notice Of Appeal") on their behalf in an action or proceeding, namely *Cynthia E. Spann v. J.C. Penney Corporation, Inc.*, USDC Case No. 8:12-cv-00215-FMO-KES, negotiating settlement and dismissal of the Notice Of Appeal, dismissing the Notice Of Appeal, and disbursing the settlement proceeds from the settlement. At the time he accepted and continued their joint representation, the interests of the clients potentially conflicted, but Helfand failed to inform the clients of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the clients and failed to obtain the written consent of each client, in willful violation of the Rules of Professional Conduct, rule 3-310(C)(1).

COUNT SIX

Case No. 17-O-00411
Business and Professions Code section 6106
[Moral Turpitude – Misrepresentation to Client]

10. On or about October 14, 2016, Helfand orally told Lonnie Tiran ("Tiran") that Class Counsel in *Cynthia E. Spann v. J.C. Penney Corporation, Inc.*, USDC Case No. 8:12-cv-00215-FMO-KES ("*Spann v. J.C. Penney*") was considering seeking sanctions against Tiran's spouse Jeanelle Branch ("Branch") because of the filing of the Objection Of Jeanelle Branch To Proposed Settlement And Notice Of Intent To Appear ("Objection"), but that Helfand's filing of a Notice Of Appeal Of The Judgment And Order Re: Motion For Final Approval ("Notice Of Appeal") on behalf of Branch and two other parties would protect Branch from those sanctions, when Helfand knew those statements were false. By making these statements, Helfand thereby

[2] OCTC provides the clients' initials in lieu of the clients' full names to protect their privacy. OCTC will provide a key listing the clients' full names to respondent and this court.

committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

11. Between on or about December 9, 2016 and on or about December 12, 2016, Helfand stated in writing to Tiran that:

(A) opposing counsel "reached its payment limit which equated to a lowly 12.5k for each appeal. They refused to pay and were threatening … sanctions against [Branch]" because the Objection that had been filed on her behalf (December 9, 2016 at 2:42 p.m.), when that was false;

(B) "[Tiran] indicated on behalf of [Branch], that [Helfand] should settle for whatever [Helfand] thought was the maximum was based on [Helfand's] sole discretion … and everyone reached consensus. It would then be subject to the disclosed split." (December 11, 2016 at 5:13 p.m.), which were false;

(C) Palmer "indicated to [Helfand that the] range [Palmer] provided to [Tiran] and [Branch] was 500 dollars but [Palmer] could have said up to 1,000. [Tiran] confirmed this range when we spoke and never claimed otherwise" (December 11, 2016 at 5:13 p.m.), which was false;

(D) Tiran told Helfand that distribution of the settlement proceeds to Palmer was to compensate Palmer for legal services he provided to Branch and/or Tiran prior to the effective date of Palmer's actual suspension from the practice of law and/or a purported business transaction, which was false;

(E) "in the abundance of caution, [Helfand] filed an appeal on [Branch's] behalf" which was misleading; and

(F) "The split was: [¶] Helfand group: 20,000 [¶] Branch: 12,500 [¶] [P.S.S.[3]]: 12,500 [¶] … So, that is/was the deal with the split agreed upon" (December 12, 2016 at 9:00 a.m.), which was false.

[3] OCTC provides the clients' initials in lieu of the clients' full names to protect their privacy. OCTC will provide a key listing the clients' full names to respondent and this court.

12. By making these false statements, Helfand thereby committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

13. A violation of section 6106 may result from intentional conduct or grossly negligent conduct. Helfand is charged with committing intentional misrepresentation. However, should the evidence at trial demonstrate that Helfand committed misrepresentation as a result of gross negligence, Helfand must still be found culpable of violating section 6106 because misrepresentation through gross negligence is a lesser included offense of intentional misrepresentation.

COUNT SEVEN

Case No. 17-O-00411
Business and Professions Code section 6106
[Moral Turpitude – Misrepresentation to Opposing Counsel]

14. On or about October 18, 2016, Helfand orally told attorney Matthew J. Zevin ("Zevin") that:

(A) Helfand knew Jeanelle Branch ("Branch") prior to on or about June 30, 2016, when the Objection Of Jeanelle Branch To Proposed Settlement And Notice Of Intent To Appear ("Objection") was filed on her behalf with the Claims Administrator in *Cynthia E. Spann v. J.C. Penney Corporation, Inc.*, USDC Case No. 8:12-cv-00215-FMO-KES ("*Spann v. J.C. Penney*"), but by her "maiden" name and therefore, did not recognize her name from the Objection, which was false;

(B) Helfand knew Branch's spouse prior to on or about June 30, 2016, which was false; and

(C) Branch prepared the Objection and put Helfand's name on it without Helfand's authority because Branch thought that she needed to have an attorney's name on it, which was false.

15. By making these false statements, Helfand thereby committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

16. Between on or about November 1, 2016 and on or about November 4, 2016, Helfand and Zevin negotiated the settlement of the appeal that Helfand filed on behalf of Branch and two other parties in *Spann v. J.C. Penney*, including but not limited to telling Zevin that the parties he represented would dismiss the appeal in exchange for the sum of $45,000, when Helfand knew that his agreements to settle and to dismiss the appeal were false and misleading because neither Branch nor her spouse authorized Helfand to settle or dismiss the appeal. Helfand thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

17. A violation of section 6106 may result from intentional conduct or grossly negligent conduct. Helfand is charged with committing intentional misrepresentation. However, should the evidence at trial demonstrate that Helfand committed misrepresentation as a result of gross negligence, Helfand must still be found culpable of violating section 6106 because misrepresentation through gross negligence is a lesser included offense of intentional misrepresentation.

COUNT EIGHT

Case No. 17-O-00411
Business and Professions Code section 6106
[Moral Turpitude – Misrepresentation to the Court and Opposing Counsel]

18. On or about November 4, 2016, Helfand filed with the court and served on opposing counsel an Unopposed Motion For Voluntary Dismissal of Appeal ("Motion For Dismissal") on behalf of Jeanelle Branch ("Branch") and two other parties in an action or proceeding, namely *Cynthia E. Spann v. J.C. Penney Corporation, Inc.*, USDC Case No. 8:12-cv-00215-FMO-KES, when Helfand knew that the Motion For Dismissal and the statement in the Motion For Dismissal that Branch "hereby move[s] the Court [f]or an order dismissing the above captioned

appeal" was false and misleading. Helfand thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

19. A violation of section 6106 may result from intentional conduct or grossly negligent conduct. Helfand is charged with committing intentional misrepresentation. However, should the evidence at trial demonstrate that Helfand committed misrepresentation as a result of gross negligence, Helfand must still be found culpable of violating section 6106 because misrepresentation through gross negligence is a lesser included offense of intentional misrepresentation.

COUNT NINE

Case No. 17-O-00411
Rules of Professional Conduct, rule 3-310(D)
[Conflict - Aggregate Settlement]

20. Between on or about November 1, 2016 and on or about November 4, 2016, Helfand represented two or more clients, namely, Jeanelle Branch, W.R.E.,[4] and P.S.S., in settlement discussions with opposing counsel, and entered into an aggregate settlement of the claims of the clients with opposing counsel in an action or proceeding, namely *Cynthia E. Spann v. J.C. Penney Corporation, Inc.*, USDC Case No. 8:12-cv-00215-FMO-KES, in the sum of $45,000, and did not inform all clients of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the clients and obtain the written consent of each client to the aggregate settlement, in willful violation of the Rules of Professional Conduct, rule 3-310(D).

COUNT TEN

Case No. 17-O-00411
Rules of Professional Conduct, rule 4-100(A)
[Failure to Maintain Client Funds in Trust Account]

21. On or about November 30, 2016, Helfand received on behalf of Helfand's clients, Jeanelle Branch ("Branch"), W.R.E.,[5] and P.S.S., a wire transfer in the sum of $45,000 to settle

[4] OCTC provides the clients' initials in lieu of the clients' full names to protect their privacy. OCTC will provide a key listing the clients' full names to respondent and this court.

[5] OCTC provides the clients' initials in lieu of the clients' full names to protect their privacy. OCTC will provide a key listing the clients' full names to respondent and this court.

the aggregate claims of the clients in an action or proceeding, namely *Cynthia E. Spann v. J.C. Penney Corporation, Inc.*, USDC Case No. 8:12-cv-00215-FMO-KES in his client trust account at Bank of America, xxxxxxxx9251,[6] on behalf of the clients. Of this sum, Branch was entitled to the approximate sum of $15,000. Helfand failed to maintain a balance of $15,000 on behalf of the client in his client trust account, in willful violation of Rules of Professional Conduct, rule 4-100(A).

COUNT ELEVEN

Case No. 17-O-00411
Business and Professions Code section 6106
[Moral Turpitude - Misappropriation]

22. On or about November 30, 2016, Helfand received on behalf of Helfand's clients, Jeanelle Branch ("Branch"), W.R.E.,[7] and P.S.S., a wire transfer in the sum of $45,000 to settle the aggregate claims of the clients in an action or proceeding, namely *Cynthia E. Spann v. J.C. Penney Corporation, Inc.*, USDC Case No. 8:12-cv-00215-FMO-KES in his client trust account at Bank of America, xxxxxxxx9251,[8] on behalf of the clients. Of that sum, Branch was entitled to the approximate sum of $15,000.

23. On or about November 30, 2016, Helfand willfully and intentionally misappropriated the approximate sum of $15,000 that Branch was entitled to receive. Helfand thereby committed an act involving moral turpitude, dishonesty or corruption, in willful violation of Business and Professions Code section 6106.

24. A violation of section 6106 may result from intentional conduct or grossly negligent conduct. Helfand is charged with committing an intentional misappropriation. However, should the evidence at trial demonstrate that Helfand misappropriated funds as a result of grossly negligent conduct, Helfand must still be found culpable of violating section 6106 because

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[6] OCTC redacted the account number to protect the account and account holder.

[7] OCTC provides the clients' initials in lieu of the clients' full names to protect their privacy. OCTC will provide a key listing the clients' full names to respondent and this court.

[8] OCTC redacted the account number to protect the account and account holder.

misappropriation through gross negligence is a lesser included offense of intentional misappropriation.

COUNT TWELVE

Case No. 17-O-00411
Business and Professions Code section 6106
[Moral Turpitude – Misrepresentation to the State Bar]

25. On or about April 24, 2017 and on or about April 9, 2018, Helfand sent letters to the State Bar that stated, in part, that:

(A) Helfand filed the Notice Of Appeal Of The Judgment And Order Re: Motion For Final Approval ("Notice Of Appeal") on behalf of Jeanelle Branch ("Branch") and two other parties in *Cynthia E. Spann v. J.C. Penney Corporation, Inc.*, USDC Case No. 8:12-cv-00215-FMO-KES ("*Spann v. J.C. Penney*") without authorization from Branch "out of the abundance of caution, as [Helfand] could not track her down in time prior to expiration of the appellate deadline (April 24, 2017 at p. 13)," which was false;

(B) Tiran authorized Helfand to settle, including but not limited to for "anything [Branch] could get, whatever the amount" (April 24, 2017 at p. 16.), which was false;

(C) Helfand and Tiran "extensively discussed how any distribution would be split" (April 24, 2017 at p. 16), which was false;

(D) "Tiran indicated and confirmed the agreement with Mr. Palmer was that he would receive a monetary range of $500-$1,000" (April 24, 2017 at p. 17), which was false;

(E) "[Helfand] asked Mr. Tiran to send me a copy of any written agreement with Mr. Palmer since a range of settlement as indicated made me uncomfortable as to how much of the proceeds should actually be directed to Branch. In spite of indicating he would do so, Tiran never conveyed the written retainer agreement" (April 24, 2017 at p. 17), which was false;

(F) "[Helfand] inquired as to the handling of any funds received and Mr. Tiran suggested that the funds be distributed to Mr. Palmer who would then distribute the

proceeds pursuant to their operative agreement. Mr. Tiran suggested that he owed Mr. Palmer some money for a boat generator and that the amount was considerable and that Tiran expected that Branch would only receive a modest some [sic] of the proceeds, if any at all. I told Mr. Tiran that those issues were not something that I would get involved with since I knew nothing about them, but that I would follow his express instruction that Mr. Palmer receive the funds payable to his trust account; with distribution then directed to Branch in accordance with their agreement." (April 24, 2017 at pp. 19-20), which was false;

(G) opposing counsel in *Spann v. J.C. Penney* threatened to file a "motion for sanctions against Branch" (April 24, 2017 at p. 24), which was false;

(H) "Mr. Tiran and his partner, Ms. Branch, were never my clients at any time, they put my name, perhaps with Darrell Palmer's assistance and/or connivance on a pleading" (April 9, 2018 at p. 2; see also April 9, 2018 at pp. 4 to 6), which was false;

(I) "[Helfand] included [Branch] on a joint appeal; something which is routinely done without creating any attorney client relationship and something actually suggested by the Federal Rules of Appellate Procedure, cases, and commentary" (April 9, 2018 at p. 9), which was false; and

(J) "[Helfand] had multiple communications with Mr. Tiran as to the status of negotiations with class counsel; ultimately culminating in the agreement and fee split, ... Everything was vetted and approved by everyone involved. The split as previously noted had $20,000 to [W.R.E.[9]] (for which I retained $10,000), $12,500 to [P.S.S.], and $12,500 to Palmer/Tiran/Branch pursuant to their express instructions" (April 9, 2018 at p. 11), which was false.

26. Helfand thereby committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

[9] OCTC provides the clients' initials in lieu of the clients' full names to protect their privacy. OCTC will provide a key listing the clients' full names to respondent and this court.

27. A violation of section 6106 may result from intentional conduct or grossly negligent conduct. Helfand is charged with committing intentional misrepresentation. However, should the evidence at trial demonstrate that Helfand committed misrepresentation as a result of gross negligence, Helfand must still be found culpable of violating section 6106 because misrepresentation through gross negligence is a lesser included offense of intentional misrepresentation.

COUNT THIRTEEN

Case No. 17-O-00412
Business and Professions Code section 6106
[Moral Turpitude - Dishonesty]

28. On or about November 30, 2016, Palmer received a wire transfer from Helfand for $12,500 from Helfand's settlement of the claims of Jeanelle Branch ("Branch") in an action or proceeding, namely *Cynthia E. Spann v. J.C. Penney Corporation, Inc.*, USDC Case No. 8:12-cv-00215-FMO-KES. Palmer did not have any right to receive or retain the $12,500 from Helfand concerning Branch.

29. On or about December 2, 2016, Palmer returned the sum of $1,000 via wire transfer to Helfand as requested by Helfand to send to Branch, which Helfand received and forwarded via Cashier's Check to Branch.

30. Palmer willfully and dishonestly retained the sum of $11,500 that Branch was entitled to receive by failing and refusing to return that sum to Helfand and/or Branch. Palmer thereby committed an act involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106.

31. A violation of section 6106 may result from intentional conduct or grossly negligent conduct. Palmer is charged with committing an intentional misappropriation. However, should the evidence at trial demonstrate that Palmer misappropriated funds as a result of grossly negligent conduct, Palmer must still be found culpable of violating section 6106 because misappropriation through gross negligence is a lesser included offense of intentional misappropriation.

COUNT FOURTEEN

Case No. 17-O-00412
Business and Professions Code section 6068, subdivision (j)
[Failure to Update Membership Address]

32. In or about October 2014, Palmer vacated Palmer's office at the address maintained on the official membership records of the State Bar and thereafter failed to comply with the requirements of Business and Professions Code, section 6002.1, by failing to notify the State Bar of the change in Palmer's address within 30 days, in willful violation of Business and Professions Code section 6068, subdivision (j).

COUNT FIFTEEN

Case No. 17-O-00412
Business and Professions Code section 6068, subdivision (i)
[Failure to Cooperate in State Bar Investigation]

33. Palmer failed to cooperate and participate in a disciplinary investigation pending against Palmer by failing to provide a substantive response to the State Bar's letters of April 3, 2017 and February 20, 2018, which Palmer received, that requested Palmer's response to the allegations of misconduct being investigated in case no. 17-O-00412, in willful violation of Business and Professions Code section 6068, section (i).

NOTICE - INACTIVE ENROLLMENT!

YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT.

NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS

///

INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: September 24, 2018

By: _____
Charles T. Calix
Senior Trial Counsel

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): **17-O-00411 and 17-O-00412**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

☐ **By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**

☒ **By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County
- of Los Angeles.

☐ **By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').

☐ **By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.

☐ **By Electronic Service: (CCP § 1010.6)**

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ *(for U.S. First-Class Mail)* in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*

☒ *(for Certified Mail)* in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,
Article No.: **9414 7266 9904 2111 0149 64** at Los Angeles, addressed to: *(see below)*
9414 7266 9904 2111 0149 71

☐ *(for Overnight Delivery)* together with a copy of this declaration, in an envelope, or package designated by UPS,
Tracking No.: addressed to: *(see below)*

Person Served	Business-Residential Address	Fax Number	Courtesy Copy to:
Steven F. Helfand	900 West Ave Apt 701 Miami Beach, FL 33139-5212	Electronic Address	
Joseph D. Palmer	Law Offices of Darrell Palmer 301 7th Street Nocona, TX 76255-2805		

☐ **via inter-office mail regularly processed and maintained by the State Bar of California addressed to:**

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: September 24, 2018

SIGNED: Laura Jett

LAURA JETT
Declarant

EXHIBIT 5

ORIGINAL

STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL
MELANIE J. LAWRENCE, No. 230102
INTERIM CHIEF TRIAL COUNSEL
MIA R. ELLIS, No. 228235
ASSISTANT CHIEF TRIAL COUNSEL
WILLIAM S. TODD, No. 259194
SUPERVISING ATTORNEY
CHARLES T. CALIX, No. 146853
SENIOR TRIAL COUNSEL
845 South Figueroa Street
Los Angeles, California 90017-2515
Telephone: (213) 765-1255

FILED
MAY 28 2019
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of:	Case No. 17-O-00411 - YDR
STEVEN FRANKLYN HELFAND, No. 206667,	PETITION FOR DISBARMENT AFTER DEFAULT FOR FAILURE TO FILE TIMELY RESPONSE; DECLARATION OF CHARLES T. CALIX
A Member of the State Bar	[Rules 5.85, Rules of Proc.]

The State Bar of California, Office of Chief Trial Counsel ("OCTC") hereby petitions the State Bar Court for an order recommending Steven Franklyn Helfand's ("Helfand") disbarment after default pursuant to rule 5.85, Rules of Procedure of the State Bar of California ("rule(s)"), based upon Helfand's failure to file a timely response to the Notice of Disciplinary Charges ("NDC") and failure to have the default set aside or vacated within the time period prescribed.

I. PROCEDURAL HISTORY

A. Proper Service Of The NDC On Helfand And Advisement Of The Effects Of Default.

On September 24, 2018, OCTC filed the NDC in case numbers 17-O-00411 and 17-O-00412 - YDR against Helfand and Joseph Darrell Palmer ("Palmer"). (OCTC respectfully

requests that this Court take judicial notice of the filing of the NDC pursuant to Evidence Code section 452, subdivision (d), i.e., the records of this court.)

On September 24, 2018, OCTC served Helfand with the NDC at 900 West Avenue, Apt. 701, Miami Beach, Florida 33139-5212, which is the latest official membership address shown on the official membership records of the State Bar of California as provided in Business and Professions Code section 6002.1, subdivision (c) ("official membership address"). (Declaration of Charles T. Calix ("Calix Dec.") at ¶. 4 and Exhibit 1. OCTC respectfully requests that this Court take judicial notice of the Declaration of Service by Certified Mail, Return Receipt Requested for the NDC pursuant to Evidence Code section 452, subdivision (d).)

B. Helfand Failed To File A Response To The NDC.

Pursuant to rule 5.43, Helfand was required to file and serve a response to the NDC within 20 days after service of the NDC plus 10 days for residing out-of-state, or on or before October 24, 2018. However, on October 23, 2018, OCTC and Helfand filed a Stipulation to Extend The Time For Filing Response, which extended the time for Helfand to file and serve his Response to the Notice of Disciplinary Charges ("Response") for an additional 15 days. (OCTC respectfully requests that this Court take judicial notice of the Stipulation pursuant to Evidence Code section 452, subdivision (d).) Consequently, Helfand's Response was due on or before November 8, 2018.

During the Initial Status Conference on October 26, 2018, the parties discussed the service of the NDC, and the extension to file and serve Helfand's Response until November 8, 2018 with this Court. (OCTC respectfully requests that this court take judicial notice of the discussions by the Court and counsel on October 26, 2018 pursuant to Evidence Code section 452, subdivision (d).) During the Initial Status Conference, Helfand acknowledged receipt of the NDC and his obligation to serve his Response by November 8, 2018. (*Id.*) To date, Helfand has failed to file or serve a response to the NDC as required by rule 5.43(A). (OCTC respectfully requests that this Court take judicial notice of Helfand's failure to file his Response pursuant to

Evidence Code section 452, subdivision (d).) Consequently, Helfand had actual notice of the NDC and disciplinary proceeding.

C. The Court Entered Helfand's Default For Failure To File A Timely Response.

On December 5, 2018, OCTC filed and served a Motion for Entry of Default ("Motion for Default") by certified mail, return receipt requested, in compliance with rule 5.25 for service of an initial pleading. As required by rule 5.80(A), OCTC's Motion for Default included the date of notice and date of service of the NDC, a statement that the member did not timely file a response under rule 5.43, and the advisement language required by rule 5.80(A)(3) in prominent type advising the member of the consequences of failing to reply to the motion for entry of default within 10 days of service. Specifically, the Motion for Default contained an express statement that entry of default would result in having the facts in the NDC deemed admitted, and failure to timely move to set aside the default will result in an order by the Court recommending disbarment without further hearing or proceeding.

OCTC's Motion for Default was accompanied by a declaration demonstrating that Helfand had ***actual*** notice of this disciplinary hearing by referencing Helfand's filing a stipulation to extend the time for him to file his response and appearing for the Initial Status Conference, which is an additional requirement of rule 5.80(B).

Helfand did not file a written response to the Motion for Default within 10 days of service of the motion. On January 15, 2019, the Court issued an order entering Helfand's default. This order included the language regarding the effects of default in prominent type required by rule 5.80(D).[1] The Court served the order on Helfand by mail in compliance with rule 5.25. The order entering default advised Helfand of the effects of entry of default, specifically, deeming the facts alleged in the NDC admitted, prohibiting participation unless the

[1] The order entering default advised Helfand of the effects of entry of default, specifically, deeming the facts alleged in the notice of disciplinary charges admitted, prohibiting participation unless the default is set aside, and if there is no timely motion to set aside, recommending disbarment without further hearing or proceeding. (Rule 5.80(D).)

default is set aside, and if there is no timely motion to set aside, recommending disbarment without further hearing or proceeding. As stated in the Order entering default, Helfand was enrolled on inactive status and the facts in the NDC were deemed admitted in accordance with rule 5.82, Rules of Procedure.

D. Helfand's Default has not been Set Aside or Vacated.

Rule 5.83 provides for stipulation by the parties to vacate default or a motion to vacate or set aside a default. A motion to vacate may be filed at any time that the Court has jurisdiction over the matter. A motion to set aside the default must be based on grounds of mistake, inadvertence, surprise or excusable neglect and filed within 90 days after service of the order entering default if default was ordered for failure to file an answer or 45 days if default was ordered for failure to appear at trial. Here, Helfand had 90 days from January 15, 2019 to file a motion to set aside the default.

To date, Helfand has not filed a motion to set aside or vacate the default. (OCTC respectfully requests that this Court take judicial notice of Helfand's failure to file a motion to set aside or vacate the default pursuant to Evidence Code section 452, subdivision (d).

II. THE REQUIREMENTS FOR A MANDATORY DISBARMENT RECOMMENDATION AFTER DEFAULT HAVE BEEN SATISFIED.

A. OCTC Has Completed The Record Required For A Petition For Disbarment After Default.

If the member fails to have the default set aside or vacated, under rule 5.85, OCTC must file a petition requesting the Court recommend disbarment, supported by one or more declarations addressing the factors set forth in subdivision (A) of the rule. Deputy trial counsel's declaration addresses the required factors as follows:

1. **Lack of contact by Helfand.** Helfand has failed to contact OCTC since OCTC filed its Motion for Default on or about December 5, 2018. (Calix Dec. at ¶. 5.)

2. **Pending disciplinary matters**. No investigations or disciplinary charges are pending. (Calix Dec. at ¶. 6.)

3. Prior disciplinary record. Helfand does not have a prior record of discipline. (Calix Dec. at ¶. 7.)

4. Payments by the Client Security Fund due to Helfand's conduct. CSF has not paid out claims resulting from Helfand's conduct. (Calix Dec. at ¶. 8.)

B. Having Satisfied The Requirements For A Mandatory Disbarment Recommendation, The Court Must Recommend That Helfand Be Disbarred.

If the member fails to file a response, as stated in rule 5.85, the Court must recommend the member's disbarment if the evidence shows the following:

(a) The notice of disciplinary charges was served on the member properly;

(b) The member had actual notice or reasonable diligence was used to notify the member of the proceedings prior to the entry of default;

(c) The default was properly entered; and

(d) The factual allegations deemed admitted in the notice of disciplinary charges support a finding that the member violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1).)

1. Reasonable Diligence to Notify Helfand.

Entry of default requires OCTC to establish proper service of the NDC and either Helfand's receipt of the notice or exercise of reasonable diligence to notify the member. (Rule 5.80(B)) In this matter, the Court's order entered Helfand's default based upon proof satisfactory to the Court that the NDC was served properly on Helfand and that Helfand actually received notice as demonstrated by his appearing for the Initial Status Conference on October 26, 2018. (OCTC respectfully requests that this Court take judicial notice of Helfand's appearance during the Initial Status Conference on October 26, 2018 pursuant to Evidence Code section 452, subdivision (d).) The evidentiary support for the Court's findings is included in the record in this matter.

2. Helfand's Default was Properly Entered.

The Court's order entering default was properly entered, included the required advisement of the effects of default, and served on Helfand in compliance with rule 5.25. The default order has not been vacated or set aside. This petition has not been filed earlier than 91 days of the date of service of the default order.

3. Culpability Warranting Discipline.

As reflected in the Court's order entering default filed January 15, 2019, the factual allegations in the NDC were deemed admitted. (Rule 5.82(2).) The NDC alleged 12 violations of the Rules of Professional Conduct ("RPC") or Business and Professions Code, which are cause for the imposition of discipline (Business and Professions Code section 6077), including violations of:

1) Business and Professions Code section 6068, subdivision (d) [Seeking to Mislead a Judge];

2) Business and Professions Code sections 6106 [Moral Turpitude – Dishonesty to the Court];

3) Business and Professions Code sections 6104 [Appearing for Party without Authority];

4) RPC 3-310(B)(1) [Conflict – Relationship with a Party or Witness];

5) RPC 3-310(C)(1) [Potential Conflict – Representing Multiple Clients];

6) Business and Professions Code sections 6106 [Moral Turpitude – Misrepresentation to Client];

7) Business and Professions Code sections 6106 [Moral Turpitude – Misrepresentation to Opposing Counsel];

8) Business and Professions Code sections 6106 [Moral Turpitude – Misrepresentation to the Court and Opposing Counsel];

9) RPC 3-310(D) [Conflict - Aggregate Settlement];

10) RPC 4-100(A) [Failure to Maintain Client Funds in Trust Account]

11) Business and Professions Code sections 6106 [Moral Turpitude - Misappropriation]; and

12) Business and Professions Code sections 6106 [Moral Turpitude – Misrepresentation to the State Bar],

The above constitute cause for the imposition of discipline.

When a member's default has been entered properly and not set aside or vacated within the time prescribed, the rules dispense with the analysis traditionally undertaken to determine the appropriate level of discipline. The evidentiary requirements of rule 5.85 (F)(1)(a) through (d) compelling a disbarment recommendation after default have been satisfied.

III. CONCLUSION

Having satisfied all the required elements for a disbarment recommendation after default required by rule 5.85, the Court must recommend Helfand's disbarment.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: May 28, 2019

By: _____
Charles T. Calix
Senior Trial Counsel

DECLARATION OF CHARLES T. CALIX

I, Charles T. Calix, declare:

1. All statements made herein are based on my personal knowledge, except for those stated to be under information and belief.

2. I am an attorney licensed to practice law in the State of California. I am employed as a Senior Trial Counsel in the Office of Chief Trial Counsel of the State Bar of California.

3. This matter was assigned to me for prosecution of disciplinary charges against Helfand.

4. Attached hereto as **Exhibit 1** is a true and correct copy of the official membership address screen concerning Helfand as maintained by the State Bar of California as of May 28, 2019.

5. I am informed and therefore believe that Helfand has not contacted OCTC since OCTC filed its Motion for Default on or about December 5, 2018.

6. I am informed and therefore believe that Helfand has no pending investigations or disciplinary charges.

7. I am informed and therefore believe that Helfand does not have a prior record of discipline.

8. I am informed and therefore believe that CSF has not made payments resulting from Helfand's conduct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 28th day of May, 2019 at Los Angeles, California.

Charles T. Calix

STATEBAR of CALIFORNIA

Location » CALIXC | Tuesday, May 28, 2019

Steven F. Helfand (206667)

Public Information

Remarks					
Member Number	206667				
Admit Date	6/1/2000	Status	Not Entitled	Status Effective	7/3/2018

Last/First/Middle	Helfand, Steven Franklyn
AKA	

Firm Name		Address Effective	4/4/2018
Address Line 1	900 West Ave	Mail Restriction	
Address Line 2	Apt 701	Mail Return Code	
City/State/Zip	Miami Beach FL 33139-5212		
Foreign Address			
Foreign Phone		Foreign Fax	
County/District	Non California		

Phone	(415) 596-5611	Phone Effective	4/4/2018
Fax	Not Available		
Email	s.helfand@icloud.com		

Birth Date	[redacted]	Birth Place	[redacted]

Undergraduate School	See Registration Card
Law School	Univ of Miami SOL, Coral Gables, FL

Private Information - For Internal Bar Use Only

Email	[redacted]		
Phone Number	[redacted]	Fax Number	

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): **17-O-00411-YDR**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

PETITION FOR DISBARMENT AFTER DEFAULT FOR FAILURE TO FILE TIMELY RESPONSE; DECLARATION OF CHARLES T. CALIX [Rules 5.85, Rules of Proc.]

☐ **By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**

☒ **By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County
- of Los Angeles.

☐ **By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').

☐ **By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.

☐ **By Electronic Service: (CCP § 1010.6)**

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ *(for U.S. First-Class Mail)* in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*

☒ *(for Certified Mail)* in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,
Article No.: 9414 7266 9904 2111 0150 91 at Los Angeles, addressed to: *(see below)*

☐ *(for Overnight Delivery)* together with a copy of this declaration, in an envelope, or package designated by UPS,
Tracking No.: addressed to: *(see below)*

Person Served	Business-Residential Address	Fax Number	Courtesy Copy to:
STEVEN FRANKLYN HELFAND	900 West Ave Apt 701 Miami Beach, FL 33139-5212	Electronic Address	

☐ **via inter-office mail regularly processed and maintained by the State Bar of California addressed to:**

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: May 28, 2019

SIGNED: Kim Wimbish
KIM WIMBISH
Declarant

EXHIBIT 6

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT 845 S. Figueroa St., Los Angeles, CA 90017	FOR CLERK'S USE ONLY: FILED JAN 15 2019 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In the Matter of: **STEVEN FRANKLYN HELFAND, Member No. 206667,** **JOSEPH DARRELL PALMER, Member No. 125147,** A Member of the State Bar.	**Case No(s). 17-O-00411 & 17-O-00412 (Consolidated)** **ORDER ENTERING DEFAULT AND ORDER ENROLLING INACTIVE (RULE 5.80 – FAILURE TO FILE TIMELY RESPONSE)**

ORDER ENTERING DEFAULT:

As respondent **STEVEN FRANKLYN HELFAND** (Respondent) and **JOSEPH DARRELL PALMER** (Respondent) failed to timely file a written response after service of the State Bar's motion for entry of default, Respondent's default is entered in this proceeding, effective upon the filing of this order. (Rules Proc. of State Bar, rule 5.80(D).) All previously scheduled court dates are vacated. The court takes judicial notice of Respondent's official membership records.

Respondent is notified that:

Because you did not timely file a response to the notice of disciplinary charges filed in this proceeding, the court has entered your default and deemed the facts alleged in the notice of disciplinary charges admitted. Except as ordered by the court, you may participate in these proceedings only if the court sets aside your default. If you fail to timely move to set aside your default, this court will enter an order recommending your disbarment without further hearing or proceeding. (See Rules Proc. of State Bar, rule 5.80 et seq.)

ORDER ENROLLING INACTIVE:

As the conditions of Business and Professions Code section 6007, subdivision (e)(1), are met, Respondent is enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (e). The inactive enrollment is effective three (3) days after service of this order. (Rules Proc. of State Bar, rule 5.250.)

IT IS SO ORDERED.

Dated: January 10, 2019

YVETTE D. ROLAND
Judge of the State Bar Court

kwiktag® 241 071 740

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on January 15, 2019, I deposited a true copy of the following document(s):

ORDER ENTERING DEFAULT AND ORDER ENROLLING INACTIVE (RULE 5.80 – FAILURE TO FILE TIMELY RESPONSE)

in a sealed envelope for collection and mailing on that date as follows:

☒ by certified mail, No. 7196 9008 9111 1007 3863, with return receipt requested, through the United States Postal Service at Los Angeles, California, addressed as follows:

STEVEN F. HELFAND
900 WEST AVE
APT 701
MIAMI BEACH, FL 33139 - 5212

☒ by certified mail, No. 7196 9008 9111 1007 3856, with return receipt requested, through the United States Postal Service at Los Angeles, California, addressed as follows:

JOSEPH D. PALMER
LAW OFFICES OF DARRELL PALMER
301 7TH ST
NOCONA, TX 76255 - 2805

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

CHARLES T. CALIX, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 15, 2019.

Mazie Yip
Court Specialist
State Bar Court

Hassan A. Zavareei (CA Bar No. 181547)
TYCKO & ZAVAREEI LLP
1828 L. Street, NW., Suite 1000
Washington, D.C. 20036
Tel: (202) 973-0900
Fax: (202) 973-0950
hzavareei@tzlegal.com

Annick M. Persinger (CA Bar No. 272996
TYCKO & ZAVAREEI LLP
10880 Wilshire Blvd., Suite 1101
Los Angeles, CA 90024
Tel: (510) 254-6808
Fax: (202) 973-0950
apersinger@tzlegal.com

Attorneys for Plaintiffs

[Additional counsel on next page]

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County of Santa Clara,
on 10/30/2020 4:48 PM
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Case #17CV312251
Envelope: 5214848**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

LATANYA SIMMONS and KEVIN TOBIN, individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

APPLE, INC.,

Defendant.

Case No. 17CV312251

DECLARATION OF KEVIN TOBIN IN SUPPORT OF MOTION FOR A TTORNEYS' FEES, COSTS, SERVICE AWARDS, AND NOTICE AND ADMINISTRATION EXPENSES

DATE: January 21, 2021
TIME: 1:30 p.m.
JUDGE: Hon. Brian C. Walsh
DEPT: 1

Action filed: June 26, 2017
Trial date: None Set

Sharon S. Almonrode (admitted *pro hac vice*)
Marc L. Newman (admitted *pro hac vice*)
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Attorneys for Plaintiffs

I, Kevin Tobin, declare as follows:

1. I am a citizen of the State of California.

2. I am named Plaintiff and a Class Representative in the above-captioned case and submit this declaration in support of the Plaintiffs' Motion for Attorneys' Fees, Costs, Service Awards, and Notice and Administration Expenses.

3. I discussed my duties in the case with Class Counsel, and I am aware of that it means to be a class representative. I have put the interests of the class members first when making all decisions in this case.

4. I volunteered to serve as class representative because I wanted to ensure that consumers who bought Powerbeats are treated fairly by Apple, Inc. I made a commitment to represent the class despite knowing that doing so would impose on my time, and despite the possibility that I might receive unwanted, negative attention from making public allegations against Apple, Inc.

5. I have discussed this case with my attorneys throughout the case on the phone and over email. I have made efforts through the case to make sure I was informed about what was going on in the case.

6. I read and approved the complaint before it was filed.

7. I discussed the terms of the proposed settlement and the settlement process with Class Counsel. I signed the Settlement Agreement and fully support the Settlement. I participated in the preparation of this declaration. As part of the Settlement, I agreed to a release of all claims against Apple, Inc. arising out of the facts pleaded in the operative complaint.

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

EXCUTED on OCT 27, 2020 at YUBA CITY, California
Date

KEVIN TOBIN

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Attorneys for Plaintiffs and the Class

[Additional counsel on next page]

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 10/30/2020 4:48 PM
Reviewed By: R. Walker
Case #17CV312251
Envelope: 5214848**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

LATANYA SIMMONS and KEVIN TOBIN, individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

APPLE, INC.,

Defendant.

Case No. 17CV312251

DECLARATION OF LATANYA SIMMONS IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, COSTS, SERVICE AWARDS, AND NOTICE AND ADMINISTRATION EXPENSES

DATE: January 21, 2021
TIME: 1:30 p.m.
JUDGE: Hon. Brian C. Walsh
DEPT: 1

Action filed: June 26, 2017
Trial date: None Set

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Attorneys for Plaintiffs

I, Latanya Simmons, declare as follows:

1. I am a citizen of the State of California.

2. I am named Plaintiff and a Class Representative in the above-captioned case and submit this declaration in support of the Plaintiffs' Motion for Attorneys' Fees, Costs, Service Awards, and Notice and Administration Expenses.

3. I discussed my duties in the case with Class Counsel, and I am aware of what it means to be a class representative. I have put the interests of the class members first when making all decisions in this case.

4. I volunteered to serve as class representative because I wanted to ensure that consumers who bought Powerbeats are treated fairly by Apple, Inc. I made a commitment to represent the class despite knowing that doing so would impose on my time, and despite the possibility that I might receive unwanted, negative attention from making public allegations against Apple, Inc.

5. I have discussed this case with my attorneys throughout the case on the phone and over email. I have made efforts through the case to make sure I was informed about what was going on in the case. My attorneys have kept me well informed.

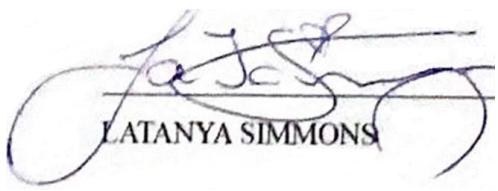
6. I read and approved the complaint before it was filed.

7. I discussed the terms of the proposed settlement and the settlement process with Class Counsel. I signed the Settlement Agreement and fully support the Settlement. I participated in the preparation of this declaration. As part of the Settlement, I agreed to a release of all claims against Apple, Inc. arising out of the facts pleaded in the operative complaint.

8. I have given written approval to the fee splitting arrangement between the Class Counsel.

9. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXCUTED on 10/28/20 (Date) at Sacramento, California



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Attorneys for Plaintiffs

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

LATANYA SIMMONS and KEVIN TOBIN, individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

APPLE, INC.,

Defendant.

Case No. 17CV312251

ECLARATION OF SHARON S. ALMONRODE IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

DATE: January 21, 2021
TIME: 1:30 p.m.
JUDGE: Hon. Brian C. Walsh
DEPT: 1

Action filed: June 26, 2017
Trial date: None Set

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Attorneys for Plaintiffs

I, Sharon S. Almonrode, declare and state as follows:

1. I am one of the counsel for the Plaintiffs in this case. I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Costs, Service Awards, and Notice and Administration Expenses.

2. The facts contained in this declaration are within my personal knowledge, and I could testify to those facts if called to do so under oath.

3. I am the Chair of The Miller Law Firm P.C.'s Class Action and Multi-District Litigation Department.

4. I am a graduate of the University of Detroit Mercy School of Law (J.D. December, 1981).

5. I was first admitted to practice law in 1982 in the State of Michigan (P33938). I have been admitted pro hac vice in this matter.

6. In 2010, I received the special distinction of Michigan Leader in the Law, awarded by *Michigan Lawyers' Weekly*. For the past ten years, I have also been named a Super Lawyer by the Super Lawyers Magazine. For the past eight years, I have been named one of the top 50 Women Super Lawyers in the State of Michigan (out of approximately 11,000 women practicing in the state). For the past seven years, I have also been named one of the top 100 Lawyers in Michigan (out of approximately 34,204 lawyers in the state). I was named one of the top five Consumer Lawyers in the State of Michigan for 2016. I was named among the most notable women lawyers in Michigan by *Crain's Detroit Business* for 2017. In 2019, I was admitted to the inaugural class of the Michigan Lawyers' Weekly Hall of Fame. I have earned Martindale-Hubbell's highest rating, AV®Preeminent™ 5/5.0 for legal ethics and ability.

7. I am also admitted to practice law in the State of New York, the U.S. District Court Eastern District of Michigan, U.S. District Court Western District of Michigan, U.S. Bankruptcy Court Eastern District of Michigan, U.S. Bankruptcy Court Western District of Michigan, U.S. District Court Northern District of Illinois, U.S. Court of Appeals 6th Circuit, the U.S. District Court for Southern District of New York, the U.S. District Court for the Eastern District of New York, the U.S. Court of Appeals 2nd Circuit, and the U.S. Supreme Court.

8. Over the past 25 plus years, I have gained substantial experience handling complex civil litigation and class action litigation.

9. The Miller Law Firm P.C. has acted as counsel for Plaintiffs in this litigation entirely on a contingent basis. A copy of the firm's resume is attached hereto as Exhibit A, detailing its decades-long experience in complex litigation, and describing its notable achievements on behalf of its clients. As part of Exhibit A, the individual bios of the attorneys who have worked on this matter are included.

10. I as Co-Class Counsel believe that the Settlement Agreement between the parties is fair and reasonable and in the best interests of the Settlement Class. Class Counsel's reasons for this belief are set forth in the Plaintiffs' Memorandum of Points and Authorities in Support of Moton for Attorneys' Fees, Expenses, and Service Awards, filed concurrently herewith, which I support.

11. There are no conflicts of interest between Plaintiffs and the Settlement Class.

12. Class Counsel conducted extensive investigation and the litigation was sufficiently advanced, including the exchange of discovery, to allow counsel to evaluate the merits of the case, and the value of potential recovery. The litigation has been pending for over three years.

13. Review of the information in Class Counsel's possession positioned Class Counsel to evaluate with confidence the strength and weakness of Plaintiffs' claims and the prospects for success at summary judgment, class certification and trial in this Court.

14. While Plaintiffs and Class Counsel hope that they ultimately would have proven the claims asserted against Apple, Inc., they recognize the substantial risks and uncertainties inherent in pursuing the action through class certification, summary judgment, trial, and appeals.

15. Protracted litigation carries inherent risks that would necessarily have delayed and endangered the Settlement Class' monetary recovery.

16. The costs and risks associated with litigating this case to verdict, not to mentioned through the inevitable appeals, would have been high, and the process would require many hours of the Court's time and resources.

17. As explained in Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class Action Settlement, the Settlement Agreement is the result of a year of

hard-fought, arm's length negotiation that included two mediations and multiple telephonic conferences before Jill Sperber, a well-respected mediator of Judicate West. Only after reaching resolution on the material terms of the Settlement did the Parties discuss attorneys' fees, service awards, and expenses.

18. The Settlement Agreement provides substantial monetary benefits directly to the Settlement Class, benefits that may not be available in the event of continued litigation.

19. The Settlement also provides for the payment of attorneys' fees, costs and expenses to Class Counsel. The amount of the requested fee was not addressed until agreement was reached as to relief for the Settlement Class. The compensation for the services Class Counsel rendered to the Class is wholly contingent. Any fees and reimbursement of expenses will be limited to the amount awarded by the Court.

20. The schedule attached as Exhibit B sets forth my firm's total hours and lodestar in this litigation, including work performed by my firm's attorneys and professional staff for the period from June 22, 2017 through October 30, 2020. Exhibit B was prepared from contemporaneous detailed time records regularly prepared and maintained by the firm utilizing timekeeping software to which all employees have access. In my opinion, the time spent by attorneys at the firm was reasonable and necessary.

21. The hourly rates shown for the attorneys at the firm are the rates delineated by the Adjusted Laffey Matrix (http:www.laffeymatrix.com/), which provides market rates for attorneys working in the Washington, D.C. area. *See, e.g. DL v. Dist. Of Columbia*, 924 F.3d 585 (D.C. Cir. 2019) (discussing the history and basis of the Laffey matrix). Because the firm's Co-counsel, Tycko & Zavareei typically set their billing rates to the rates provided in the Adjusted Laffey Matrix, the firm is using those same rates for consistency when calculating lodestar in this matter. Based on the Declaration by Hassan A. Zavareei, filed concurrently herewith, I understand that courts have awarded attorneys' fees consistent with the Adjusted Laffey Matrix to Tycko & Zavareei on cases litigated in California.

22. The total number of hours is based only on the hours reasonable expended to achieve an excellent result for the Settlement Case. Our firm coordinated our efforts in the litigation with our co-counsel to avoid duplication or unnecessary work. Because our firms are experienced in litigating

actions of this type, we were able to efficiently divide tasks based on expertise. The lodestar reflected in Exhibit B does not include all of the time to be devoted in preparing for and appearing at the final approval hearing or dealing with post-hearing matters.

23. The total number of hours expended in this litigation by my firm from June 22, 2017 through October 30, 2020 is 1050.40. The total lodestar for my firm from June 22, 2017 through October 30, 2020 is $734,993.20. The attached Exhibit B also includes a chart setting forth the names of the individuals in my firm who have worked on the matter, their position in the firm, and their year of admittance to the bar for the purposes of determining the appropriate rate under the Adjusted Laffey Matrix.

24. As detailed in Exhibit C, my firm has incurred a total of $12,587.54 in unreimbursed costs and expenses in this litigation during the period from June 22, 2017 through October 30, 2020. Expenses are accounted for and billed separately and are not duplicated in my firm's professional billing rate. My firm has not received reimbursement for expenses incurred in connection with this litigation. My firm advanced these costs and expenses with no assurance that such costs and expenses would be repaid.

25. The costs and expenses incurred in this action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and represent an accurate record of costs and expenses incurred. These expenses were necessary to prosecuting this litigation on behalf of the Settlement Class, and they are typical of expenses regularly awarded in class actions.

26. In my opinion, the time expended and expenses incurred in prosecuting this action were reasonable and necessary for the diligent litigation and fair resolution of this matter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own personal knowledge.

Executed on this 30th day of October, 2020 at Rochester, MI.

/s/ Sharon S. Almonrode
Sharon S. Almonrode

EXHIBIT A

THE MILLER LAW FIRM

A Professional Corporation

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THE MILLER LAW FIRM, P.C. | FIRM RESUME

The Miller Law Firm, P.C. (the "Firm") is one of the premier litigation law firms in the United States and Michigan's leading financial class action firm. A recognized leader in the area of complex commercial litigation, the Firm is ranked Tier 1 in Detroit by *U.S. News-Best Lawyers* "Best Law Firms" for commercial litigation. Since the Firm's founding in 1994, the Firm has developed a national reputation for successfully prosecuting securities fraud and consumer class actions on behalf of its clients. As Lead Counsel or Co-Lead Counsel appointed by judges throughout the United States in some of the country's largest and most complex cases, the Firm has achieved over $3 billion in settlements, recoveries and/or verdicts on behalf of injured class members.

Highlights of Results Obtained

2019 — Carl Palazzolo, et al. Fiat Chrysler Automobiles N.V., et al.
(United States District Court, Eastern District of Michigan)
(Case No. 16-cv-12803) (Co-Lead Counsel)

Result: $14,750,000

Zimmerman v. Diplomat Pharmacy, Inc., et al.
(United States District Court, Eastern District of Michigan)
(Case No. 2:16-cv-14005) (Liaison Counsel)

Result: $14,100,000

2018 — In re Freight Forwarders Antitrust Litigation
(United States District Court, Eastern District of New York)
(Case No. 08-cv-00042) (Counsel for Class Representative)

Result: $1 billion settlement amount

2017 — Foster v. L3 Communications, EO Tech
(United States District Court, Western District of Missouri)
(Case No. 15-cv-03519) (Co-Lead Counsel)

Result: $51 million (100% recovery)

2016 — In re Automotive Parts Antitrust Litigation
(United States District Court, Eastern District of Michigan)
(Case No. 12-md-02311) (Liaison Counsel)

Result: Over $1 billion in settlements

GM Securities Class Action/New York Teachers Retirement System v. General Motors Company
(United States District Court, Eastern District of Michigan)
(Case No. 4:14-cv-11191) (Local Counsel)

Result: $300 million settlement

ERISA Class Action/Davidson v. Henkel Corporation
(United Sates District Court, Eastern District of Michigan)
(Case No. 12-cv-14103) (Lead Counsel)

Result: $3.35 million settlement (100% Recovery for 41 member class)

Pat Cason-Merenda and Jeffrey A. Suhre v. VHS of Michigan, Inc., dba Detroit Medical Center (Antitrust)
(United States District Court, Eastern District of Michigan)
(Case No. 2:06-cv-15601) (Special Trial Counsel)

Result: $42 million settlement

2015 In re AIG 2008 Securities Litigation
(United States District Court, Southern District of New York)
(Case No. 08-cv-04772) (Co-Lead Counsel)

Result: $970.5 million settlement

City of Farmington Hills Employees Retirement System v. Wells Fargo Bank, N.A.
(United States District Court, District of Minnesota)
(Case No. 10-cv-04372) (Co-Lead Counsel)

Result: $62.5 million settlement approved

2014 In re Refrigerant Compressors Antitrust Litigation
(United States District Court, Eastern District of Michigan)
(Case No. 09-md-02042) (Interim Co-Lead)

Result: $30,000,000 settlement

2013 The Board of Trustees of the City of Birmingham Employees et. al. v. Comerica Bank et. al.
(United States District Court, Eastern District of Michigan)
(Case No. 2:09-13201) (Co-Lead Counsel)

Result: $11,000,000 settlement

In Re Caraco Pharmaceutical Laboratories, Ltd. Securities Litigation
(United States District Court, Eastern District of Michigan)
(Case No. 2:09-cv-12830) (Co-Lead Counsel for the Class)

Result: $2,975,000 settlement

General Retirement System of the City of Detroit and Police and Fire Retirement System of the City of Detroit vs. UBS Securities, LLC (Structured Investment Vehicle)
(United States District Court, Eastern District of Michigan)
(Case No. 2:10-cv-13920) (Lead Counsel)

Result: Confidential settlement

In Re TechTeam Global Inc. Shareholder Litigation
(Oakland County Circuit Court, State of Michigan)
(Case No. 10-114863-CB) (Liaison Counsel)

Result: $1,775,000 settlement

2010 Epstein, et al v. Heartland Industrial Partners, L.P., et al
(United States District Court, Eastern District of Michigan)
(Case No. 2:06-CV-13555) (Substantial role)

Result: $12,262,500 settlement

In Re Skilled Healthcare Group, Inc. Securities Litigation
(United States District Court, Central District of California)
(Case No. 09-5416) (Substantial role)

Result: $3,000,000 settlement

2009 In Re Proquest Company Securities Litigation
(United States District Court, Eastern District of Michigan)
(Case No. 4:06-CV-11579) (Substantial role; argued Motion to Dismiss)

Result: $20,000,000 settlement

In Re Collins & Aikman Corporation Securities Litigation
(United States District Court, Eastern District Michigan)
(Case No. 03-CV-71173) (Substantial role)

Result: $10,800,000 settlement

In re IT Group Securities Litigation
(United States District Court, Western District of Pennsylvania)
(Civil Action No. 03-288) (Co-Lead Counsel)

Result: $3,400,000 settlement

2008 In re Mercury Interactive Securities Litigation
(United States District Court, Northern District of California)
(Civil Action No. 03:05-CV-3395-JF) (Substantial role)

Result: $117,000,000 settlement

In Re General Motors Corporation Securities and Derivative Litigation
(United States District Court, Eastern District of Michigan)
(Master Case No. 06-MD-1749) (Co-Lead)

Status: Obtained major corporate governance reforms to address accounting deficiencies

2007 Wong v. T-Mobile USA, Inc.
(United States District Court, Eastern District of Michigan)
(Case No. 05-CV-73922) (Co-Lead)

Result: Settlement for 100% of damages.

In re CMS Energy Corporation Securities Litigation
(United States District Court, Eastern District Michigan)
(Master File No. 2:02 CV 72004) (Substantial role)

Result: $200,000,000 settlement

2005 In re Comerica Securities Fraud Litigation
(United States District Court, Eastern District of Michigan)
(Case No. 2:02-CV-60233) (Substantial role)

Result: $21,000,000, divided between related cases at $15,000,000 and $6,000,000

Street v. Siemens
(Philadelphia State Court)
(Case No. 03-885) (Co-Lead)

Result: $14,400,000, including 100% recovery for more than 1,000 workers wrongfully deprived of pay.

Redmer v. Tournament Players Club of Michigan
(Wayne County Circuit Court) (Case No. 02-224481-CK) (Co-Lead)

Result: $3,100,000 settlement

2004 Passucci v. Airtouch Communications, Inc.
(Wayne County Circuit Court) (Case No. 01-131048-CP) (Co-Lead)

Result: Estimated settlement valued between: $30,900,000 to $40,300,000.

Johnson v. National Western Life Insurance
(Oakland County Circuit Court)
(Case No. 01-032012-CP) (Substantial role)

Result: $10,700,000 settlement on behalf of nation-wide class of purchasers of annuities.

2003 Felts v. Starlight
(United States District Court, Eastern District Michigan)
(Case No. 01-71539) (Co-Lead)

Result: Starlight agrees to stop selling ephedrine as an ingredient in its weight loss dietary supplement product.

In re Lason Securities Litigation
(United States District Court, Eastern District Michigan)
(Case No. 99-CV-76079) (Co-Lead)

Result: $12,680,000 settlement

2001 Mario Gasperoni, et al v. Metabolife International, Inc.
(United States District Court, Eastern District Michigan)
(Case No. 00-71255) (Co-Lead)

Result: Nationwide settlement approved mandating changes in advertising and labeling on millions of bottles of dietary supplement, plus approximately $8,500,000 in benefits.

1999 Pop v. Art Van Furniture and Alexander Hamilton Insurance Company
(Wayne County Circuit Court) (Case No. 97-722003-CP) (Co-Lead)

Result: Changes in sales practices and $9,000,000 in merchandise.

Schroff v Bombardier
(United States District Court, Eastern District Michigan)
(Case No. 99-70327) (Co-Lead)

Result: Recall of more than 20,000 defective Seadoos throughout North America; repair of defect to reduce water ingestion problem; extended warranties; and approximately $4,000,000 in merchandise.

In re National Techteam Securities Litigation
(United States District Court, Eastern District Michigan)
(Master File No. 97-74587) (Substantial role)

Result: $11,000,000 settlement

In Re F&M Distributors, Inc., Securities Litigation
(United States District Court, Eastern District Michigan)
(Case No. 95-CV-71778-DT) (Minor role)

Result: $20,000,000 settlement

1998 In Re Michigan National Corporation Securities Litigation
(United States District Court, Eastern District Michigan)
(Case No 95 CV 70647 DT) (Substantial role)

Result: $13,300,000 settlement

1995 In re Intel Pentium Processor Litigation
(Superior Court, Santa Clara County, California)
(Master File No. 745729) (Substantial role)

Result: Intel agreed to replace millions of defective Pentium chips on demand without any cost to consumers.

THE MILLER LAW FIRM

Selected Attorney Resumes

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A PROFESSIONAL CORPORATION

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E. POWELL MILLER, CEO

✉ EPM@millerlawpc.com

E. Powell Miller has been named one of the Top 10 lawyers in Michigan for ten consecutive years, from 2009-2019, by Super Lawyers Magazine, and in 2010, he was the sole recipient of the Best Lawyers - Lawyer of the Year in the category of Bet-The-Company Litigation – Detroit Area for 2010. He was also named Best Lawyers – Lawyer of the Year in the category of Bet-The-Company Litigation – Detroit Area for 2016, in the category of Securities Litigation in 2017, and in the category of Antitrust Litigation in 2019. Previously, he was recognized as one of the Top 100 lawyers in Michigan in 2006, 2007, and 2008, and he has been named as one of the Best Lawyers in America every year since 2005. Mr. Miller has earned Martindale-Hubbell's highest rating, AV® Preeminent™ 5/5.0 for legal ethics and ability a 10/10 from AVVO a public rating system and is ranked as only one of ten in Michigan in the top ten by Chairman USA.

Mr. Miller focuses his practice on all aspects of litigation. He has been retained by many Fortune 500 and other clients to represent them in litigation throughout the United States, including in Michigan, New York, New Jersey, Pennsylvania, Arkansas, Florida, Texas, Kentucky, Ohio, California, Colorado and Indiana.

Mr. Miller recently won a trial in a high profile, multi-million dollar lawsuit on behalf of a Fortune 100 automotive supplier. In fact, he has never lost a trial – with eleven consecutive victories, including verdicts in excess of $5 million, $10 million and $23 million. Mr. Miller has also obtained in excess of $1 billion in settlements over the last few years. These settlements are regularly among the top two or three in Michigan each year.

Mr. Miller currently serves on the Executive Committee for the Wayne State University Law School Board of Visitors and has served a Co-Chair of the American Bar Association Procedures Subcommittee on class actions and multi-district litigation. He lectures regularly on securities litigation at the University of Michigan School Of Law. He has also served as an Adjunct Professor at the University of Detroit Law School teaching trial practice. In addition, Mr. Miller regularly speaks at continuing legal education seminars on securities fraud class actions. Mr. Miller also serves as a Master member of The Oakland County Bar Association Inns of Court.

Mr. Miller graduated third in his class from Wayne State University Law School, magna cum laude, in 1986. He was named to the honor society, Order of the Coif, and he was an Editor of the Wayne Law Review. In 1986, Mr. Miller joined the Detroit law firm of Honigman Miller Schwartz and Cohn, where he was elected partner in 1990. In 1994, he formed his own firm.

Mr. Miller has been recognized as a top debater in the United States. He won first place at the Harvard University National Debate Tournament as a freshman at Georgetown University. He also represented Georgetown in a special international debating exhibition against the Oxford Debating Union of Great Britain.

Mr. Miller is a proud supporter of the Detroit Urban Debate League, a nonprofit that supports the creation of debate programs in under-served high schools; the University of Detroit Jesuit High School and Academy; The Joe Niekro Foundation, which is committed to aiding in the research and treatment of aneurysm patients and families; and Charlotte's Wings, a nonprofit that is dedicated to supporting ailing children in Southeast Michigan through donations of new books to the children and their families in hospital and hospice care.

Georgetown University, B.A., 1983

Wayne State University Law School, J.D., 1986

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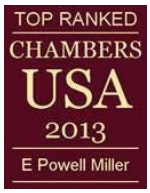

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950 WEST UNIVERSITY DR. SUITE 300
ROCHESTER, MI 48307
248-841-2200

MARC L. NEWMAN, PARTNER

✉ MLN@millerlawpc.com

Marc L. Newman was named as one of the Top 100 Attorneys in Michigan every year from 2008-2019 by Super Lawyers Magazine. In 2019, he was named as the Lawyer of the Year by Best Lawyers in the area of Securities Litigation for the Oakland County region. He has been named to America's Top 100 High Stakes Litigators® and to Best Lawyers in America, since 2013. Mr. Newman has earned Martindale-Hubbell's highest rating, AV® Preeminent™ 5/5.0 for legal ethics and ability.

Mr. Newman concentrates his practice on complex business litigation of all types, including contract cases, automotive supply chain disputes, securities fraud, shareholder and partnership disputes, and real estate litigation.

Marc has successfully tried numerous trials in both state and federal courts, and has litigated cases in courts throughout Michigan, New York, Delaware, Pennsylvania, Arkansas, Colorado, Georgia, and Tennessee. In negotiating settlements, Mr. Newman has obtained exceptional results, including several multi-million dollar settlements in favor of his clients. One of his trials was featured in the "Article of the Week" in 2006 in the Michigan Lawyers Weekly for his defense of a client for which he obtained the involuntary dismissal of the plaintiff's lawsuit and sanctions against the plaintiff in the amount of $750,000, by demonstrating that the plaintiff and a material witness conspired to commit perjury. His cases are routinely featured in the Michigan Lawyers Weekly among the top settlements in Michigan.

Mr. Newman graduated from the University of Michigan Law School in 1994. He is a 1991 graduate of Michigan State University's James Madison College.

Mr. Newman has co-authored several articles in the Michigan Bar Journal, including Still Keeping The Faith: The Duty of Good Faith, 76 Mich B.J. 1190 (Nov. 1997), dealing with various issues in contract law. He is a Fellow of the Oakland County Bar Foundation, and he regularly serves as a judge at the University of Michigan Law School Henry M. Campbell Moot Court Competition.

Michigan State University, B.A., 1991
(James Madison College)

University of Michigan Law School, J.D., 1994

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SHARON S. ALMONRODE, PARTNER

✉ SSA@millerlawpc.com

Sharon S. Almonrode is a partner at The Miller Law Firm, where she is also the Chair of the Firm's Class Action and Multi-District Litigation Department. She has a complex litigation practice with an emphasis on prosecuting large, high-risk, significant damage exposure cases on behalf of clients. Her practice includes ERISA and pension fund litigation, breach of fiduciary duty, consumer products and commercial litigation. She has represented commercial clients in products liability and patent and trademark related litigation. She has successfully represented clients in multi-million dollar cases, including the successful resolution of an actuarial claim for $110 million dollars.

Ms. Almonrode was appointed to the Plaintiffs' Steering Committee in ongoing litigation against Mylan Pharmaceuticals and other drug companies regarding their anti-competitive conduct in the sale of EpiPen epinephrine auto-injectors, resulting in a monopoly that has made them billions of dollars at the expense of consumers and third party payors. *See In Re: Epipen (Epinephrine Injection, UPS) Marketing, Sales Practices and Antitrust Litigation,* No. 17-md-02785 (D.Kan.). Ms. Almonrode also served as co-lead counsel in *In Re: Foster v. L3 Communications, EO Tech*, No. 15-cv-03519 (E.Mich.) which settled in excess of $51 million, as well as co-lead counsel in the ERISA class action *Davidson v. Henkel Corporation*, No. 12-cv-14103 (E.Mich.) which settled for $3.35 million, resulting in a 100% recovery for the class.

In 2010, she received the special distinction of Michigan Leader in the Law, awarded by *Michigan Lawyers' Weekly*. For the past nine years, Ms. Almonrode has been named a Super Lawyer. For the past seven years, she has been named one of the top 50 Women Super Lawyers in the State of Michigan (out of approximately 11,000 women practicing in the state). For the past six years, she has been named one of the top 100 Lawyers in Michigan (out of 34,204 lawyers in the state). She was named one of the top five Consumer Lawyers in the State of Michigan for 2016. Ms. Almonrode was named among the most notable women lawyers in Michigan by *Crain's Detroit Business* for 2017. Recently, she was admitted to the inaugural class of the Michigan Lawyers' Weekly Hall of Fame. She has earned Martindale-Hubbell's highest rating, AV®Preeminent™ 5/5.0 for legal ethics and ability.

Ms. Almonrode was admitted to practice in the State of Michigan in 1982. She is also admitted to practice in the U.S. District Court Eastern District of Michigan, U.S. District Court Western District of Michigan, U.S. Bankruptcy Court Eastern District of Michigan, U.S. Bankruptcy Court Western District of Michigan, U.S. District Court – Northern District of Illinois, U.S. Court of Appeals 6th Circuit, the State of New York, the U.S. District Court for Southern District of New York, the U.S. District Court for the Eastern District of New York, the U.S. Court of Appeals 2nd Circuit, and the U.S. Supreme Court.

Before joining The Miller Law Firm, P.C. in 2012, Ms. Almonrode was a Partner at Sullivan, Ward, Asher & Patton, P.C., and Supervisor-Salaried Personnel at General Motors Corp.

Ms. Almonrode's pro bono activities have included working with the Detroit Institute of Arts and the Detroit Film Theatre Board.

Oakland University, B.S., 1978

University of Detroit Mercy School of Law, J.D. 1981

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ANN L. MILLER, PARTNER

Ann L. Miller is a partner at The Miller Law Firm. Ms. Miller was recognized as being within the Top 50 Women Michigan Super Lawyers in 2019 and 2020 by the Super Lawyer Magazine. She has also been recognized as a Michigan Super Lawyer by Super Lawyer Magazine for the last seven consecutive years, 2013 through 2020. Ms. Miller graduated, magna cum laude, from Wayne State University Law School in 1989. Ms. Miller graduated fifth in her class and was named to the honor society, Order of the Coif. Ms. Miller received a Gold Key Award for maintaining a perfect 4.0 grade point average in the 1987-1988 academic years. She also earned American Jurisprudence Awards for attaining the highest grade in the following courses: Torts, Constitutional Law, and Conflicts of Law.

After law school, Ms. Miller worked as a pre-hearing attorney at the Michigan Court of Appeals and then as an attorney specializing in labor-employment law and employment discrimination. Ms. Miller has co-authored several articles that have appeared in the Michigan Bar Journal and other publications.

Ms. Miller concentrates her practice on all types of business and commercial litigation, including labor-employment law, employment discrimination and overtime and minimum wage issues under the Fair Labor Standards Act.

University of Michigan, BA, 1986

Wayne State University, JD, 1989

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MAHDE Y. ABDALLAH, ASSOCIATE

✉ MYA@millerlawpc.com

Mahde Abdallah litigates both complex commercial and class action cases. His practice concentrates on contract, automotive supply chain, real estate, product liability, and shareholder disputes for both plaintiffs and defendants. With Miller Law, Mr. Abdallah's successful results include obtaining a $4.8 million arbitration award against Jimmy Johns in a contract and franchisee dispute, including $1 million in attorneys' fees; dismissal of a nine-figure distribution contract suit against a Chinese automotive original equipment manufacturer; dismissal of a $3 million product liability claim against a broker of oil centrifuge parts; and a $2.4 million settlement on behalf of a local dentist and property developer for breach of contract and constitutional takings claims against a municipality.

Mr. Abdallah received his law degree from Wayne State University Law School in 2015, where he was an Arthur F. Lederle scholar and elected by the faculty to the Order of the Coif. While in law school, he served as a judicial intern with the Honorable Judge Linda V. Parker, U.S. District Court for the Eastern District of Michigan; assisted indigent clients with asylum, U-Visa, and temporary protected status applications as a student attorney with Wayne Law's Asylum and Immigration Law Clinic; and clerked for NORMA Group, a global market and technology leader in innovative joining-technology solutions. Mr. Abdallah received his B.A. with distinction from the University of Michigan-Dearborn, where he was elected Vice President of the Student Government.

Prior to the practice of law, Mr. Abdallah gained considerable real estate experience as a licensed realtor. He also served as a community liaison for the Michigan House of Representative's 10th District office.

Mr. Abdallah is admitted to practice law in the State of Michigan, U.S. District Court for the Eastern District of Michigan, and U.S. Court of Appeals for the Sixth Circuit.

University of Michigan-Dearborn, B.A., 2012, *with Distinction*

Wayne State University Law School, J.D., 2015, *Order of the Coif*

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DENNIS A. LIENHARDT, ASSOCIATE

✉ DAL@millerlawpc.com

Dennis A. Lienhardt is an Associate at The Miller Law Firm. He concentrates his practice on complex commercial and class action litigation.

Mr. Lienhardt received his law degree from Wayne State University Law School in 2016, where he received the Dean's scholarship, the Bruce A. Miller endowed scholarship, and the Jason L. Honigman scholarship. While in law school, he served as the Editor-in-Chief of the *Wayne Law* Review and had his Note, "The Electoral College: An Analysis of Reform Proposals Through the Lens of Past Presidential Elections," chosen for publication. Mr. Lienhardt also received special accolades for his oral advocacy skills in Moot Court, including being chosen to represent Wayne Law at the Tulane Sports Law Moot Court Invitational in New Orleans. He was a student attorney in the Criminal Appellate Practice Clinic and represented his classmates on the Student Board of Governors. He received the Bronze Key Certificate for academic achievement and the "Best Contract in First-Year Legal Writing" award. In an effort to gain experience before graduating law school, Mr. Lienhardt participated in multiple internships and clerkships with firms and institutions throughout Metro Detroit, including an internship in the Homicide Unit of the Wayne County Prosecutor's Office.

Mr. Lienhardt received a Bachelor of Arts degree in Political Science and Criminal Justice from the University of Michigan – Dearborn. During this time there, he was recognized as a "UM-Dearborn Difference Maker," a "UM-Dearborn Distinguished Student Leader," and was elected student body president. In addition to the responsibilities that came with serving as student body president, Mr. Lienhardt, in conjunction with the university administration, established the first ever "Student Judiciary" on campus to rule on violations of the student code of conduct.

Mr. Lienhardt was admitted to practice in the State of Michigan in 2016. He is also admitted to practice in the U.S. District Court for the Eastern District of Michigan and the Second Circuit Court of Appeals.

University of Michigan-Dearborn, B.A., 2013

Wayne State University Law School, J.D., 2016

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WILLIAM KALAS, ASSOCIATE

✉ WK@MillerLawPC.com

William Kalas is an associate at The Miller Law Firm. His practice currently focuses on complex commercial and class action litigation.

Mr. Kalas received his law degree from The University of Chicago in 2017. While in law school, he served as a judicial intern for the Honorable George Caram Steeh at the United States District Court for the Eastern District of Michigan. In addition, he was also a member of the Law School's Corporate Lab, where he had gained legal experience working with large commercial enterprises.

Mr. Kalas received his Bachelor of Arts degree in Philosophy from Oakland University in 2014, graduating *magna cum laude*. While at Oakland, he competed with the University's ethics debate team, qualifying for a national championship. He was also selected as an Oakland University Business Scholar.

Mr. Kalas was admitted to practice in the State of Michigan in 2017. He is also admitted to practice in the U.S. District Court for the Eastern District of Michigan and the U.S. District Court for the Western District of Michigan.

Oakland University. B.A., 2014

University of Chicago Law School, J.D., 2017

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RICK A. DECKER, ASSOCIATE & *e*DISCOVERY DIRECTOR

✉ RAD@millerlawpc.com

Rick A. Decker is an associate at The Miller Law Firm. He concentrates his practice in complex commercial litigation, automotive supplier issues, and class action litigation. Mr. Decker has been the firm's eDiscovery Director for 3 years and has extensive experience managing large-scale discovery projects; he regularly attends eDiscovery seminars and maintains up to date knowledge of changes in eDiscovery-related law, including frequent reference to Sedona Conference publications.

Before joining The Miller Law Firm, Mr. Decker was the managing member of a small general practice law firm where he provided representation in general civil litigation, small business development, and criminal law; he has been successful in bench and jury trials. Mr. Decker has experience at the trial court and appellate court level. He worked in chambers at the Michigan Court of Appeals and completed a two-year term as a judicial law clerk at the 52-3 District Court of Michigan. Prior to law school, Mr. Decker had a distinguished career in the U.S. Navy; his final military assignment was as Program Manager and Fleet Liaison at Strategic Systems Program, Flight Systems Detachment in Cape Canaveral, Florida. Mr. Decker is a member of the Veterans of Foreign Wars.

Mr. Decker received his Bachelor of Arts in Legal Studies from the University of Central Florida, graduating summa cum laude in 2004 and his J.D., graduating cum laude, from the Thomas M. Cooley Law School in 2007. Mr. Decker is a member of the Phi Kappa Phi honor society.

Mr. Decker is admitted to practice in Michigan and in the U.S. District Court for the Eastern District of Michigan.

University of Central Florida, B.A. summa cum laude, 2004

Thomas M. Cooley Law School, J.D., cum laude, 2007

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ERIC J. MINCH, ASSOCIATE

✉ EJM@MillerLawPC.com

Eric J. Minch is an associate at The Miller Law Firm. His practice currently focuses on complex commercial and class action litigation.

Eric received his undergraduate degree from Michigan State University and continued his education at the Michigan State University College of Law where he was awarded an academic based, full-tuition, scholarship. While in Law School, Eric was an Articles Editor on the Michigan State International Law Review and completed an intensive two-year litigation certification program. Additionally, Eric clerked for the Honorable Thomas P. Boyd in the 55th District Court and maintained a job as a law clerk at a small sized firm. Eric graduated from Law School in 2016, magna cum laude.

Prior to joining The Miller Law Firm, Eric worked in the Office of General Counsel for the Wayne County Third Judicial Circuit Court and eventually transitioned to a position, in the Business Court, as the Law Clerk to the Honorable Lita M. Popke's. In this role, Eric helped managed an active docket of over 500 civil cases. Additionally, Eric drafted Business Court opinions and orders on many issues of first impression. During his time at the Business Court, Eric viewed and assisted with all aspects of multiple jury trials.

Mr. Minch is admitted to practice law in the State of Michigan and U.S. District Court for the Eastern District of Michigan.

Michigan State University, B.A., 2013

Michigan State University College of Law, J.D., 2016

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DANIEL L. RAVITZ, ASSOCIATE

✉ DLR@miller.law

Daniel Ravitz is an associate at The Miller Law Firm. His practice currently focuses on complex commercial and class action litigation.

Mr. Ravitz received his law degree from Columbia Law School in 2016, where he was twice designated a James Kent Scholar for outstanding academic achievement. While in law school, he acted as Managing Editor of the *Human Rights Law Review*. He also served as a judicial extern for the Honorable Ronnie Abrams at the United States District Court for the Southern District of New York, as well as for the Honorable Vera M. Scanlon at the United States District Court for the Eastern District of New York. He also acted as a law clerk for the Federal Deposit Insurance Corporation and for the Manhattan Borough President, the Honorable Gale A. Brewer. Mr. Ravitz received his Bachelor of Arts degree from the Ford School of Public Policy at the University of Michigan in 2013, graduating with University Honors. Prior to joining the firm, Mr. Ravitz gained experience as an associate at Fensterstock & Partners LLP in New York, New York.

Mr. Ravitz is admitted to practice law in the States of Michigan and New York, and in the United States District Court for the Eastern District of Michigan.

University of Michigan, BA – 2013

Columbia Law School, JD – 2016

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DENIRRO D. LAZAR, ASSOCIATE

✉ DDL@miller.law

Denirro Lazar is an Associate at The Miller Law Firm. He focuses his practice on complex commercial litigation and class action litigation.

Mr. Lazar is a 2015 graduate of the University of Detroit Mercy School of Law. While in school, he served as an assistant prosecutor in the 68th District Court. He also participated in a clinic course at the University of Detroit Mercy School of Law, where he represented and advocated on behalf of actual litigants in the 52-4 District Court and the 38th District Court. Mr. Lazar received a Bachelor of Business Administration degree in Finance from Oakland University.

Mr. Lazar is admitted to practice law in the State of Michigan.

Oakland University, 2013

University of Detroit Mercy School of Law, J.D., 2015

*no longer with the Firm

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SHANNON C. KING, ASSOCIATE

✉ SCK@millerlawpc.com

Shannon C. King is an associate at The Miller Law Firm where her practice currently focuses on complex commercial, class action, and multidistrict litigation.

Ms. King received her J.D., *cum laude*, from Western Michigan University Cooley Law School in 2015. During her law school career, she made various contributions to programs geared toward underserved areas. In her first year, she served as the lead teaching assistant for the Council of Legal Education Opportunity ("CLEO") College Prelaw Summer Institute – a program that provides students from diverse racial, ethnic, and socioeconomic backgrounds with the training necessary to prepare them for law school. Ms. King also mentored inner-city, high-school students as a team leader for the Just the Beginning Foundation, a week-long program that offers free legal training to under-served youth from disadvantaged economic backgrounds.

Ms. King also competed nationally on the National Moot Court Team, advancing to the quarter finals in the 2013 ABA Law Student Division National Appellate Advocacy Competition. She was a board member of the Moot Court Board, Black Law Students Association, and Criminal Law Society. Additionally, Ms. King was the recipient of the 2013 D. Augustus Straker Bar Foundation A. Kay Standfield Spinks Law Student Scholarship, as well as the Women's Lawyers Association of Michigan Foundation Outstanding Woman Law Student Award in 2014.

Ms. King is also an alumnus of the Wolverine Bar Association Judicial Externship Program – a program administered by the Honorable Victoria A. Roberts. As an intern, Ms. King clerked for the Honorable Terrence G. Berg, United States District Judge for the United States District Court for the Eastern District of Michigan. Ms. King also spent several months interning with the Wayne County Prosecutor's Office in its child abuse unit.

As a student attorney for the Family Law Assistance Project, a collaboration between the law school and Lakeshore Legal Aid, Ms. King represented low-income residents of Oakland County in family-law and domestic-violence litigation in Oakland County Circuit Court.

Ms. King received her B.B.A., *cum laude*, from Walsh College in 2010 where she was a recipient of the Presidential Scholarship Award.

Ms. King is admitted to practice law in the State of Michigan.

Walsh College, B.B.A., 2010, *cum laude*

Western Michigan University Cooley Law School, J.D., 2015, *cum laude*

*no longer with the Firm

EXHIBIT B

Exhibit B
In Re: Apple, Inc.
Firm Name: The Miller Law Firm, P.C.

Name	Position	Total Hours	Adjusted Rate	Lodestar
Sharon S. Almonrode	Partner	292.30	$914.00	$267,162.20
Marc L. Newman	Partner	86.30	$914.00	$78,878.20
E. Powell Miller	Partner	78.30	$914.00	$71,566.20
Ann L. Miller	Partner	59.90	$914.00	$54,748.60
Denirro D. Lazar	Associate	56.90	$465.00	$26,458.50
William Kalas	Associate	39.60	$378.00	$14,968.80
Daniel L. Ravitz	Associate	22.30	$378.00	$8,429.40
Dennis A. Lienhardt	Associate	22.00	$465.00	$10,230.00
Eric J. Minch	Associate	19.90	$465.00	$9,253.50
Mahde Y Abdallah	Associate	117.50	$465.00	$54,637.50
Rick A. Deck	Associate	10.20	$759.00	$7,741.80
Shannon C. King	Associate	5.80	$465.00	$2,697.00
Kerlyne A. Pinkins	Counsel	61.40	$672.00	$41,260.80
Sydnee M. Rogers	Counsel	57.60	$378.00	$21,772.80
Miyone Williams	Counsel	31.60	$465.00	$14,694.00
Kristen Guralczyk	Counsel	22.00	$378.00	$8,316.00
Jack E. Tubbs	Counsel	3.70	$465.00	$1,720.50
Steve M. Zehnder	Counsel	53.70	$672.00	$36,086.40
Craig S. Dickinson	Counsel	9.40	$465.00	$4,371.00
		1050.40		**$734,993.20**

EXHIBIT C

Exhibit C

In Re: Apple, Inc.

Firm Name: The Miller Law Firm, P.C.

	TOTALS
Travel	$ 5,996.96
Electronic Research	$ 678.93
Printing	$ 272.65
Court Costs/Filing Fees	$ 639.00
Litgation Fund	$ 5,000.00
TOTAL EXPENSES	**$ 12,587.54**

Adam A. Edwards (admitted *pro hac vice*)
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F: 865-522-0049
adam@gregcolemanlaw.com

Hassan A. Zavareei (CA Bar No. 181547)
TYCKO & ZAVAREEI LLP
1828 L Street NW, Suite 1000
Washington, D.C. 20036
P: 202-973-0900
F: 202-973-0950
hzavareei@tzlegal.com

Attorneys for Plaintiffs and the Class

[Additional counsel on next page]

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Case #17CV312251
Envelope: 5214848**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

LATANYA SIMMONS and KEVIN TOBIN, individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

APPLE, INC.,

Defendant.

Case No. 17CV312251

DECLARATION OF ADAM A. EDWARDS IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

DATE: January 21, 2021
TIME: 1:30 p.m.
JUDGE: Hon. Brian C. Walsh
DEPT: 1

Action filed: June 26, 2017
Trial date: None Set

Greg F. Coleman (*pro hac vice* forthcoming)
GREG COLEMAN LAW
First Tennessee Plaza
800 S. Gay Street, Suite 1100
Knoxville, TN 37929
Tel: (865) 247-0080
greg@gregcolemanlaw.com

E. Powell Miller (*pro hac vice* forthcoming)
THE MILLER LAW FIRM, P.C.
950 West University Drive, Suite 300
Rochester, MI 48307
Tel: 248-841-2200
Fax: 248-652-2852
epm@millerlaw.com

Annick M. Persinger (CA Bar No. 272996)
TYCKO & ZAVAREEI LLP
10880 Wilshire Blvd., Suite 1101
Los Angeles, CA 90024
P: 510-254-6808
F: 202-973-0950
apersinger@tzlegal.com

I, Adam A. Edwards, declare as follows:

1. I am a senior attorney of the law firm of Greg Coleman Law PC ("Greg Coleman Law" or "GCL") and an attorney of record for Plaintiffs in the above-captioned case. I have been admitted to practice *pro hac vice* in this action. I have knowledge of the matters set forth herein based on my personal knowledge and my review of the records of my law firm and could and would testify competently to them if called upon to do so.

2. I actively participated in this action, including negotiation of the Settlement, and I am fully familiar with the proceedings being resolved. I make this Declaration in support of Plaintiffs' motion for attorneys' fees and costs and for the Class Representatives' Service Awards ("Motion"). Given my role in this litigation, I have personal knowledge of the legal services rendered by the attorneys requesting fees and expenses. This declaration summarizes the work performed by Greg Coleman Law in this litigation that led to the benefits provided to the Class under the Settlement Agreement.

3. The hours accounted for in this declaration relate both to this matter and a related federal action, *Morgan et al. v. Apple Inc.*, Case No. 3:17-cv-05277-RS (N.D. Cal.), that included overlapping claims based on the same facts, and in which the plaintiffs were represented by Class Counsel. The settlement in this matter also resolved the claims in the federal *Morgan* matter, and the work performed in the federal action inured to the benefit of the Class and directly led to the Settlement Agreement.

History of the Litigation

4. During this litigation, GCL has worked closely with other Class Counsel in drafting pleadings, briefings, and preparing for argument in this action and in the *Morgan* action. GCL also prepared for and attended the mediation in these actions, including negotiating settlement. Further, GCL reviewed the proposed settlement and helped prepare the motions for preliminary approval and for final approval.

5. In *Morgan*, Apple filed a motion to dismiss, and Plaintiffs amended their complaint. Apple then once again moved to dismiss. GCL worked closely with other Class Counsel to research

the arguments raised by Apple, researched the applicable law, and assisted with the drafting of the Plaintiffs' opposition. Following co-counsel's efforts to combine the various sections of Plaintiffs' draft opposition, GCL reviewed and revised the draft before the opposition was filed.

6. After the *Morgan* court denied in large part Apple's motion to dismiss, GCL assisted other Class Counsel in analyzing the court's order, researching applicable law, and drafting a Second Amended Complaint. Following its initial draft by co-counsel, GCL reviewed and revised the draft Second Amended Complaint before it was filed.

7. GCL also assisted in reviewing and revising draft discovery requests, including requests for production and interrogatories to be served upon Apple.

8. The parties began discussing early mediation and settlement in July of 2018. GCL assisted in researching mediators and, after conferring with opposing counsel, decided to hire Jill Sperber with Judicate West.

9. Following the initial draft of the mediation brief prepared by co-counsel, GCL assisted in reviewing and revising the draft mediation brief before it was sent to Ms. Sperber. GCL also reviewed informal discovery provided by Apple regarding the number of Powerbeats sold, a description of Apple's water testing, and information about improvements Apple had made to the Powerbeats headphones.

10. On or about October 23, 2018, GCL participated in a mediation before Ms. Sperber, along with other Class Counsel. Although the parties did not reach agreement at that first mediation, Apple agreed to provide further informal discovery in advance of a second mediation.

11. Prior to the second mediation, Apple provided Class Counsel with information regarding the size of the class and number of units sold (nationwide as well as by state), as well as the number of replacements provided through the warranty program. According to the information provided, thousands of Powerbeats 2 units were sold. Apple also provided a description of the external and proprietary water testing performed on Powerbeats headphones; information about battery life,a summary of testing results; descriptions of updates to firmware; and information about structural changes made to the headphones to reduce the possibility of water and sweat ingress.

12. Class Counsel traveled to and attended a second all-day mediation with Ms. Sperber on March 21, 2019.

13. Although the parties did not reach an agreement, the parties did agree to continue communicating about possible settlement.

14. Over the next several months, Class Counsel continued to negotiate settlement by communicating through Ms. Sperber.

15. After months of arms'-length discussions and negotiation, the parties reached the agreement ultimately memorialized in the Settlement Agreement, which covers purchases of Powerbeats 2 headphones.

16. Class Counsel initially drafted a Memorandum of Understanding, and GCL reviewed and revised it. Likewise, GCL helped prepare a draft settlement agreement along with other Class Counsel.

17. Class Counsel extensively revised and negotiated the terms of the settlement agreement, including the points system for awarding cash benefits and the scope of the release.

18. The parties did not discuss attorneys' fees and costs, or any potential Service Awards, until first agreeing on material terms, including the definition of the Class, the Notice Plan, the benefits to the Class, and the scope of the released claims.

19. Class Counsel also solicited bids from several settlement administrators. Class Counsel extensively discussed the different options and solicited revised bids from multiple competitors.

20. The parties agreed to seek approval of the settlement through the first-filed state court case.

21. Class Counsel then prepared the motion for preliminary approval. GCL drafted multiple sections of the motion. Following compilation of these draft sections, GCL helped Class Counsel to review and revise the draft motion.

22. After the Court issued a tentative ruling granting preliminary approval of the settlement, Class Counsel analyzed and discussed the ruling, along with the local rules and requirements regarding appearances.

23. Class Counsel then immediately began working with the Settlement Administrator and Apple's counsel to ensure that notice was timely provided to the Class. Class Counsel extensively reviewed the final drafts of the Notices (the Email Notice, Longform Notice, Postcard Notice, and Publication Notice) as well as the Settlement Website, and tested the Claim Form and Opt-Out Form on the Settlement Website.

24. Notice was provided to the Class early on August 27, 2020 (Email Notice and Publication Notice) and August 28, 2020 (Postcard Notice), a full week ahead of the September 4, 2020 deadline.

25. After Class Counsel received an objection to the settlement from a professional objector, Steven F. Helfand, on October 11, 2020, GCL discussed the objector, researched his background, and reached out to him to discuss his concerns. One of GCL's attorneys spoke with Mr. Helfand and secured his agreement to sit for a deposition. By agreement of Class Counsel, one of GCL's attorneys will take Mr. Helfand's deposition.

26. To accomplish the work described above, GCL regularly assisted in the drafting of various court filings.

27. GCL's staff also performed administrative tasks such as filing notices of appearance, preparing tables of authorities, calendaring court dates based on court orders, applicable rules, and the Settlement Agreement, and ordering deposition and hearing transcripts.

The Risks Borne by GCL

28. From the outset, Class Counsel anticipated spending hundreds of hours litigating these claims with no guarantee of success, knew that prosecution of this case would require that other work be foregone, understood that there was substantial uncertainty regarding the applicable legal and factual issues, and continued to prosecute the litigation in the face of substantial opposition. The risks were especially significant given that this case was novel and complex in that it concerned both product defects and misleading advertising.

29. In accepting this case, GCL and other Class Counsel bore considerable risk. GCL took this case on a fully contingent basis, meaning that we were not paid for any of our time, and that we

paid all costs and out-of-pocket expenses without any reimbursement to date. From the outset, GCL recognized that it would be contributing a substantial amount of time and advancing significant costs in prosecuting this class action, with no guarantee of compensation or recovery, in the hopes of prevailing against a well-funded defense.

30. Apple was represented by a highly-skilled and well-resourced litigation firm, so there was an increased risk that Plaintiffs would receive a defense verdict after a prolonged trial.

Lodestar and Expenses for GCL

31. Greg Coleman Law PC has established a long and successful record of litigating complex cases. Greg Coleman Law's main office is located in Knoxville, TN, but it employs attorneys who are located in California, Florida, North Carolina, and Pennsylvania. GCL attorneys are licensed to practice in federal courts across the nation, and in Tennessee, California, Florida, Georgia, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, and South Carolina state courts. GCL attorneys routinely handle large and complex matters throughout the country. Our attorneys have achieved remarkable results through trials and settlements in landmark cases of great public interest. Our settlements have netted our clients hundreds of millions of dollars in monetary relief, and changes in practices by banks and other businesses that have real impacts on the day-to-day lives of our clients.

32. A copy of the Greg Coleman Law firm resume is attached as **Exhibit 1.**

33. The total number of hours of work performed and GCL's 2020 rates are shown in the table below:

Name	Title	Graduation Year	Hours Worked	Rate (Adjusted Laffey)	Lodestar
D. Satterfield	Legal Assistant (former)	N/A	5.3	$200	$1,060.00
D. Holt	Chief Paralegal	N/A	16.2	$250	$4,050.00
Paralegal (other than D. Holt)	Paralegal	N/A	47.8	$200	$9,560.00
B. Lemly	Associate (former)	2016	5.2	$575	$2,990.00
W. Ladnier	Associate	2015	38.5	$600	$23,100.00
E. Smartt	Associate (former)	2012	54.8	$575	$31,510.00
G. Coleman	Managing Partner	1989	67.05	$900	$60,345.00
A. Edwards	Senior Attorney	2000	49.9	$800	$39,920.00
M. Silvey	Senior Attorney	1988	76.6	$800	$61,280.00

A. Straus	Senior Attorney	2009	4.5	$700	$3,150.00
L. White	Senior Attorney	2007	9	$675	$6,075.00
			374.85		**$243,040.00**

34. GCL's total hours worked, including by attorneys, paralegals, and staff, on these cases is 374.85. GCL's total lodestar is $243,040.00.

35. All attorneys at Greg Coleman Law have significant legal experience, including in complex consumer litigation, as reflected in the firm's resume, which is attached as Exhibit 1. GCL attorneys brought their years of experience to bear in working on these cases, including in briefing, negotiating settlement, and working with co-counsel to ensure class notice.

36. Greg Coleman Law's expenses are accounted for and billed separately and are not duplicated in the firm's professional billing rate. GCL has not received reimbursement for expenses incurred in connection with this litigation. As of October 28, 2020, GCL has incurred a total of $14,809.88 in unreimbursed actual third-party expenses in connection with the prosecution of these cases.

Expense	**Amount**
Postage	1.82
Research	154.96
Court Costs	1597
Travel and Accommodations	5750.05
Photocopies	47.89
Expert Fees	7239
Conference Calls	19.16
Total Expenses	**$14,809.88**

37. The actual expenses incurred in prosecuting these cases are reflected on the computerized accounting records of my firm prepared by bookkeeping staff, based on receipts and check records, and accurately reflect all expenses incurred.

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

Executed at Knoxville, Tennessee, this 29th day of October, 2020.

s/ Adam A. Edwards
Adam A. Edwards