

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is made and effective as of August 12, 2024 (the “Settlement Date”), by and between (a) Apple Inc., a California corporation with offices at 1 Apple Park Way, Cupertino, California 95014, (“Apple”); and (b) Plaintiffs Chris Smith, Cheryl Smith, Karen Smithson, Frank Ortega, Alberto Cornea, Michelle Rogers, Deborah Class, Amber Jones, Alexis Keiser, Lorn Saelee, Thomas Pear, and Tannaisha Smallwood (“Plaintiffs” or “Named Plaintiffs” or “Class Representatives”), individually and as representatives of the Settlement Class as defined below, (collectively, the “Parties”) in accordance with the terms and conditions set forth below.

### DEFINITIONS

As used herein, the following terms have the meanings set forth below:

1. “Apple Counsel” shall mean Apple’s counsel of record in this Lawsuit.
2. “Attorneys’ Fees and Expense Payment” shall mean the amount of attorneys’ fees and reimbursement of costs and expenses awarded to Class Counsel by the Court from the Settlement Fund.
3. “Class Representatives” or “Plaintiffs” or “Named Plaintiffs” means Chris Smith, Cheryl Smith, Karen Smithson, Frank Ortega, Alberto Cornea, Michelle Rogers, Deborah Class, Amber Jones, Alexis Keiser, Lorn Saelee, Thomas Pear, and Tannaisha Smallwood.
4. “Class Payment” shall mean the share of the Net Settlement Fund provided to each Settlement Class Member pursuant to the Plan of Allocation described herein.
5. “Covered Issue(s)” shall mean issues reported to Apple regarding the Covered Watches reflected in Apple’s records as having reported symptoms potentially associated with battery swell.
6. “Covered Watch” or “Covered Watches” means First Generation, Series 1, Series 2, or Series 3 Apple Watch.
7. “Covered Device” shall mean a Covered Watch unit for which Covered Issues are reflected in Apple’s records.
8. “Effective Date” shall mean the first day after which all of the following events and conditions of this Settlement Agreement have occurred or have been met: (a) the Court has entered a Final Approval Order approving the Settlement, and (b) the Court has entered judgment that has become final (“Final”) in that the time for appeal or writ of certiorari has expired or, if an appeal or writ of certiorari is taken and the Settlement is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the Final Judgment is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, the Final Judgment shall not become Final. In the event of an appeal or other effort to obtain review, the Parties may agree jointly in writing to deem the Effective Date to have occurred; however, there is no obligation to agree to advance the Effective Date. Any

order or proceeding relating to the application for an Attorneys' Fee and Expense Payment and Service Awards, the pendency of any such application, or any appeal from any such order, shall not operate to terminate or cancel this Settlement Agreement, or affect or delay the finality of any judgment approving the settlement.

9. "Final Approval Hearing" means the hearing at or after which the Court will determine whether to finally approve the Settlement. The Final Approval Hearing must occur at least 35 days after the Objection and Exclusion deadline, on such date as set by the Court.

10. "Final Approval Order" means the final order to be submitted to the Court in connection with the Final Approval Hearing.

11. "Final Judgment" means the judgment finally approving the Settlement and dismissing with prejudice the claims of the Settlement Class Members.

12. "Full Class Notice" shall mean the notice that will be posted on the Settlement website and mailed to any member of the Settlement Class who requests a hard copy, substantially in the form attached hereto as Exhibit A.

13. "Lawsuit" shall mean the litigation first filed on December 9, 2021, styled *Smith et al. v. Apple Inc.*, Case No. 4:21-cv-09527 (N.D. Cal.).

14. "Net Settlement Fund" means the Settlement Fund, reduced by the sum of the following amounts: (1) the costs of notice and the costs of administering the settlement, as set forth in Section F below; and (2) any Attorneys' Fees and Expense Payment to Class Counsel awarded by the Court, and any Service Award to the Class Representatives awarded by the Court, as set forth in Section G below, and any taxes owed by the Gross Settlement Fund (but not any taxes owed by any individual Settlement Class Counsel, Plaintiffs, or Settlement Class Members).

15. "Notice" shall mean the email and postcard notices to be distributed to members of the Settlement Class in connection with the Settlement, substantially in the form attached hereto as Exhibits B and C, and as set forth in Section F below, as well as the Full Class Notice substantially in the form attached hereto as Exhibit A, available on the Settlement website and in hard copy upon request.

16. "Notice Date" shall mean the date set forth in the Preliminary Approval Order for commencing the transmission of Email and Postcard Notice. The Notice Date must occur no later than 30 days after Apple transmits the Settlement Class member list to the Settlement Administrator, or on such date as set by the Court.

17. "Objection and Exclusion Deadline" shall mean the date by which a Settlement Class Member must submit an Objection to this Agreement to the Court or an Opt-Out Form to the Settlement Administrator. The Objection and Exclusion Deadline shall be 60 days after the Notice Date.

18. "Plaintiffs' Counsel" or "Class Counsel" shall mean Steven L. Nicholas and Lucy E. Tufts of Cunningham Bounds, LLC; Michael F. Ram and Marie N. Appel of Morgan & Morgan Complex Litigation Group; and Benjamin H. Kilborn, Jr. of Kilborn Law, LLC.

19. “Preliminary Approval Order” means the order preliminarily approving the settlement and providing for notice to the Settlement Class, the proposed form of which is attached hereto as Exhibit D.

20. “Response Deadline” shall mean the date by which a Settlement Class Member must select their payment method. The Response Deadline shall be 90 days after the Notice Date.

21. “Settlement” or “Settlement Agreement” shall mean this agreement and the settlement and release described herein.

22. “Settlement Administrator” shall mean Angeion, an independent settlement administrator, subject to the approval of the Court.

23. “Service Award” means the award sought by each Class Representative—and subsequently approved by the Court—in consideration for their service during the course of the Lawsuit.

24. “Settlement Class” shall mean all natural persons who reside in the United States, who own or owned any model First Generation, Series 1, Series 2 or Series 3 Apple Watch for personal and/or household use, and who are reflected in Apple’s records as having reported Covered Issues in the United States. The Settlement Class excludes Apple; any entity in which Apple has a controlling interest; Apple’s directors, officers, and employees; Apple’s legal representatives, successors, and assigns. Also excluded from the Settlement Class are all judicial officers assigned to this case as well as their staff and immediate families. The Class Period shall be April 24, 2015, to February 6, 2024.

25. “Settlement Class Member” means every member of the Settlement Class who does not validly and timely request exclusion from the Settlement Class.

26. “Settlement Date” shall mean the date that this Settlement Agreement becomes fully executed.

27. “Settlement Fund” means a non-reversionary cash fund in the amount of \$20,000,000.00 to be paid by Apple into an account established by the Settlement Administrator in accordance with the terms of this Settlement Agreement.

## RECITALS

This Agreement is made for the following purposes and with reference to the following facts:

WHEREAS, a putative class action complaint was filed against Apple on December 9, 2021, in *Smith et al. v. Apple Inc.*, Case No. 4:21-cv-09527 (N.D. Cal.), asserting claims for fraud by omission, breach of implied warranty, and violations of California consumer protection statutes, the Song-Beverly Consumer Warranty Act, and the Magnuson-Moss Warranty Act, which Apple moved to dismiss; a First Amended Complaint was filed on March 28, 2022, dropping one subclass and adding certain Named Plaintiffs, subclasses, and claims under various state consumer protection statutes, which Apple moved to dismiss. The Court granted-in-part and denied-in-part

Apple's Motion to Dismiss the First Amended Complaint on February 17, 2023 (ECF No. 80). A Second Amended Complaint was filed on March 17, 2023, adding and removing certain Named Plaintiffs, claims, and subclasses, which Apple moved to dismiss. Plaintiffs filed a motion for leave to further amend their complaint on August 21, 2023, which the Court granted (ECF No. 134); a Third Amended Complaint was filed on October 31, 2023;

WHEREAS, Plaintiffs sought to represent a nationwide class of "All natural persons who purchased, other than for resale, any model First Generation, Series 1, Series 2, Series 3, Series 4, Series 5, Series 6, or Series SE Apple Watch ("Class Watches" or "Watches") and who made such purchase in the United States (including the District of Columbia) for personal, consumer, and/or household use" or, in the alternative, an internet subclass and six subclasses of persons in Alabama, California, New York, Ohio, Texas, Florida who purchased, other than for resale, a Class Watch;

WHEREAS, the Parties have investigated the facts and analyzed the relevant legal issues regarding the claims and defenses asserted in this Lawsuit, including through significant motion practice and extensive discovery;

WHEREAS, no litigation class has been certified in the Lawsuit;

WHEREAS, the parties conducted a mediation with Randall Wulff in November 2023 and continued to negotiate with the mediator's assistance during the months thereafter;

WHEREAS, Plaintiffs are represented by Steven L. Nicholas and Lucy E. Tufts of Cunningham Bounds, LLC; Michael F. Ram and Marie N. Appel of Morgan & Morgan Complex Litigation Group; and Benjamin H. Kilborn, Jr. of Kilborn Law, LLC;

WHEREAS, Apple has at all times denied and continues to deny any and all alleged wrongdoing and liability, specifically denies each of Plaintiffs' contentions and claims, and continues to deny that Plaintiffs' claims and allegations would be suitable for class action status. This Agreement shall not be construed in any fashion as an admission of liability or wrongdoing by Apple;

WHEREAS, to avoid further costs of litigation, and without admitting liability, Apple and Plaintiffs, individually and as representatives of the Settlement Class as defined below, (collectively, the "Parties") now wish to settle the Lawsuit in its entirety as to the Plaintiffs, the Settlement Class Members, and Apple with respect to all claims arising out of or relating to the claims made in this Lawsuit. The Parties intend this Agreement to bind Plaintiffs (both as the Class Representatives and individually), Apple, Class Counsel, and Settlement Class Members.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

## **TERMS**

### **A. Confidentiality**

1. The Parties, Class Counsel, and Apple Counsel agree that until publication of this Settlement Agreement by submission to the Court, the terms of this Settlement Agreement and all associated documents and communications, including the negotiations leading to the execution of the Settlement Agreement and all submissions and arguments related to the mediation proceedings, shall not be disclosed by the Parties, Class Counsel, and Apple Counsel other than as necessary to finalize the Settlement and Notice. Upon publication of the Settlement Agreement by submission to the Court, the nondisclosure obligations set forth in this paragraph will no longer apply to the four corners of the as-filed Settlement Agreement itself, but such obligations will continue to apply to all other materials and information covered by this paragraph, including but not limited to any negotiations leading to the execution of this Settlement Agreement or related to the mediation.

2. Other than to a court in any case filing, the Parties, Class Counsel, and Apple Counsel agree not to initiate publicity regarding the Settlement or submit information about the Settlement to Jury Verdicts. Notwithstanding the foregoing, Class Counsel may list the Lawsuit and the terms of the Settlement on their law firm websites and publicity materials as a representative case along with a neutral and factual description of the subject matter of the Lawsuit. Any comments made by Class Counsel concerning the Settlement or the Lawsuit, including in response to inquiries from the press, shall be in neutral terms to communicate that the Lawsuit has been resolved between the Parties and shall not contain inflammatory language about the Parties or their perceived conduct in the Lawsuit.

3. The Parties will continue to comply with the Stipulated Protective Order in this Action, including with respect to the requirements of Paragraph 17 thereof, which govern the return or destruction of any material produced, submitted, or filed under seal under the Protective Order.

### **B. Consideration for Settlement and Class Payments**

1. Apple's total financial commitment under this Agreement shall be \$20,000,000.00. Within 60 days after an order granting preliminary approval of this Settlement, Apple shall transfer \$20,000,000.00 into an account established by the Settlement Administrator for the Settlement Fund. The Settlement Administrator shall agree to hold the Settlement Fund in an interest-bearing account and administer the Settlement Fund, subject to the continuing jurisdiction of the Court and from the earliest possible date, as a qualified settlement fund as defined in Treasury Regulation § 1.468B-1 *et seq.* The Settlement Administrator will thereafter manage distribution of the Settlement Fund. Any taxes owed by the Settlement Fund will be paid by the Settlement Administrator out of the Settlement Fund, and interest earned on the balance of the account will accrue to the Settlement Fund.

2. The Settlement Fund shall be applied as follows:

- a. To pay the costs of notice and the costs of administering the Settlement, as set forth in Section F below;

- b. to pay any approved Attorneys' Fees and Expense Payment to Class Counsel and any Service Award to the Class Representatives, as set forth in Section G below;
- c. to distribute the Net Settlement Fund to Settlement Class Members as set forth in Sections B.3 and B.4 below.

3. The Net Settlement Fund will be distributed according to the following Plan of Allocation. Settlement Class Members will be given the option of providing information to the Settlement Administrator to receive the Class Payment by physical check, electronic check, Automated Clearing House ("ACH," a/k/a direct deposit), or a virtual prepaid Visa or MasterCard. Settlement Class Members who have not selected a payment method by the Response Deadline and for whom valid, current payment information can be confirmed will receive a direct payment. The direct payment will be provided via electronic payment for Settlement Class Members for whom the Settlement Administrator has a valid, current email address, and by physical check for Settlement Class Members for whom the Settlement Administrator does not have sufficient information to make an electronic payment but has a valid, current mailing address.

4. Those Settlement Class Members who make a payment selection by the Response Deadline and those for whom valid, current payment information can be confirmed will receive either \$20 for each Covered Device or, if necessary, a pro rata portion of the Net Settlement Fund less than \$20. If, following the Response Deadline for Settlement Class Members to make a payment selection and provide payment information, it appears that the Net Settlement Fund minus the sum of all Class Payments will exceed \$50,000, then each Settlement Class Member who has made a payment selection by the Response Deadline and those for whom valid, current payment information can be confirmed will receive an equal, total payment of up to a maximum of \$50 for each Covered Device. There can be only one Class Payment per Covered Device. This allocation is subject to modification by agreement of the Parties without further notice to members of the Settlement Class, provided any such modification is approved by the Court.

5. For those Settlement Class Members who made a payment selection by the Response Deadline or who will receive a direct payment as described in Sections B.3 and B.4 above, a transfer reflecting their payment shall be transmitted to the Settlement Class Members within 60 calendar days after the Effective Date. Settlement Class Members who fail to select their payment method by the Response Deadline and for whom valid, current payment information cannot be confirmed will nonetheless be bound by the Agreement, including the releases set forth in Section H, unless they elect to exclude themselves through the procedure set forth in Section E.

6. To the extent economically feasible, the Settlement Administrator shall follow up and communicate with Settlement Class Members who have not selected a payment method within 60 days of the Notice Date.

7. To the extent economically feasible, the Settlement Administrator shall follow up and communicate with Settlement Class Members who have not cashed their checks or whose ACH transfer failed within 60 days of the payments being provided.



8. Following distribution of the Settlement Fund as set forth above, if ACH transfers to Settlement Class Members fail after 120 days or checks attributable to Settlement Class Members remain uncashed after 120 days after the Class Payment is distributed pursuant to Sections B.3 and B.4 above, the funds attributable to those individuals shall be used to pay any unanticipated additional costs of settlement administration as set forth in Section F.6 below. Under no circumstances will settlement funds revert to Apple.

9. In the event that unclaimed funds remain following the final distribution of the Settlement Fund as set forth above in Sections B.3, B.4, and B.8, the unclaimed funds shall be used to pay any unanticipated additional costs of settlement administration. Any remaining funds shall be paid to a *cy pres* recipient. Subject to Court approval, the Parties propose the Rose Foundation's Consumer Products Fund as the *cy pres* recipient, whose work is closely related to the issues raised by this Lawsuit and/or furthers the objectives of this Settlement Agreement. Under no circumstances will the settlement funds revert to Apple.

### **C. Obtaining Court Approval of the Agreement**

1. Settlement Class. Solely for the purposes of settlement and the proceedings contemplated herein, the Parties stipulate and agree that Plaintiffs will seek certification of the Settlement Class and appointment of Plaintiffs' counsel as Class Counsel, which Apple will not oppose. The certification of the Settlement Class shall be binding only with respect to the Settlement set forth in the Settlement Agreement.

2. Class Counsel will draft the motion requesting issuance of the Preliminary Approval Order and supporting papers and will provide those drafts to Apple Counsel of record in the Lawsuit at least ten (10) days before filing. The motion and any supporting papers shall be written in a neutral manner. Apple will not oppose the motion. Apple may, however, provide feedback concerning the drafts, and Class Counsel will meet and confer with Apple Counsel in good faith regarding Apple's feedback.

3. Upon filing of the motion requesting issuance of the Preliminary Approval Order, Apple will provide timely notice of such motion as required by the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.*

4. In accordance with the schedule set in the Preliminary Approval Order, Class Counsel will draft the motion requesting final approval of the Settlement, the Proposed Final Approval Order and the Proposed Final Judgment, and will provide those drafts and drafts of any other supporting papers to Apple Counsel at least ten (10) days prior to filing. The motion shall be written in a neutral manner. Apple may provide feedback concerning the motion, and Class Counsel will meet and confer with Apple Counsel in good faith regarding Apple's feedback.

5. In the event that the Settlement Agreement is not approved, or in the event its approval is conditioned on any modifications (including modifications to the proposed form and method of notice) that are not acceptable to Apple, then (a) this Settlement Agreement shall be null and void and of no force and effect, (b) any payments of the Settlement Fund and any and all interest earned thereon less monies expended toward Settlement administration, shall be returned to Apple within 10 business days from the date the Settlement Agreement becomes null and void,

and (c) any release shall be of no force or effect. In such event, the Lawsuit will revert to the status that existed before the Settlement Agreement's execution date, the Parties shall each be returned to their respective procedural postures so that the Parties may take such litigation steps that they otherwise would have been able to take absent the pendency of this Settlement, and neither the Settlement Agreement nor any facts concerning its negotiation, discussion, terms or documentation shall be admissible in evidence for any purpose in this Lawsuit or in any other litigation.

**D. Objections**

1. Any Settlement Class Member who has not submitted a timely written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, or to the requested attorneys' fees and expenses or service awards, must comply with the following requirements.

2. Procedural Requirements. Any objections from Settlement Class Members regarding the proposed Settlement Agreement must be submitted in writing to the Court. If a Settlement Class Member does not submit a timely written objection, the Settlement Class Member will not be able to participate in the Final Approval Hearing.

3. Deadline. Objections must be submitted by the Objection and Exclusion Deadline.

- a. If submitted through ECF, objections must be submitted on or before the Objection and Exclusion Deadline by 11:59 p.m. Pacific Time.
- b. If submitted by U.S. mail, Objections must be postmarked by the Objection and Exclusion Deadline. The date of the postmark on the envelope containing the written statement objecting to the Settlement will be the exclusive means used to determine whether an Objection and/or intention to appear has been timely submitted. In the event a postmark is illegible or unavailable, the date of mailing will be deemed to be three days prior to the date that the Court posts the objection on the electronic case docket.

4. Mandatory Content. All Objections must be in writing and must:

- a. Include the full name, address, telephone number, and email address of the objector and any counsel representing the objector;
- b. Clearly identify the case name and number: *Smith et al. v. Apple Inc.*, Case No. 4:21-cv-09527 (N.D. Cal.);
- c. Include information sufficient to verify that the objector is a Settlement Class Member;
- d. State whether the Objection applies only to the objector, to a specific subset of the class, or to the entire class;
- e. State the grounds for the Objection; and



f. Be personally signed and dated by the objector.

5. Settlement Class Members who fail to submit timely written Objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Agreement and the proposed Settlement by appearing at the Final Approval Hearing, or through appeal, collateral attack, or otherwise.

6. Any objector who timely submits an Objection has the option to appear and request to be heard at the Final Approval Hearing, either in person or through the objector's counsel. Any objector wishing to appear and be heard at the Final Approval Hearing must include a Notice of Intention to Appear in the body of the objector's Objection. If an objector makes an Objection through an attorney, the objector shall be solely responsible for the objector's attorneys' fees and expenses. Counsel for any objector seeking to appear at the Final Approval Hearing must enter a Notice of Appearance no later than 14 days before that hearing.

7. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit written Objections to the Settlement or encourage an appeal from the Court's Final Approval Order.

8. A Settlement Class Member who objects to the Settlement may also submit payment information, which shall be processed in the same manner as all other payment information.

9. 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.

**E. Exclusions.**

1. Requests for Exclusion. The email and postcard Notices, as well as the Full Class Notice, will advise all members of the Settlement Class of their right to exclude themselves from the Settlement. This Settlement Agreement will not bind members of the Settlement Class who exclude themselves from the Settlement.

2. Requesting Process. To request to be excluded from the Settlement, members of the Settlement Class must timely submit a written request for exclusion. The request for exclusion may be sent either through a portal on the Settlement Website or by U.S. mail to the Settlement Administrator, which will be responsible for receiving and processing requests for exclusion. The request for exclusion must include the Settlement Class member's name, address, and telephone number, be personally signed and dated by the Settlement Class member; and 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.

3. Deadline. To be excluded from the Settlement, the request for exclusion must be postmarked or submitted through the portal by the Objection and Exclusion Deadline.

4. If a Settlement Class member submits both payment information and an exclusion request, the payment information submission shall take precedence and be considered valid and binding, and the exclusion shall be deemed to have been sent by mistake and rejected.

5. Effect of Exclusion. Any person who is a member of the Settlement Class and who validly and timely requests exclusion from the Settlement shall not be a Settlement Class Member; shall not be bound by the Agreement; shall not be eligible to apply for or receive any benefit under the terms of the Agreement; and shall not be entitled to submit an objection to the Settlement.

6. Exclusion List. No later than 14 days after the Objection and Exclusion Deadline, the Settlement Administrator will provide Class Counsel and Apple Counsel with the number of persons who have timely and validly excluded themselves from the Settlement. If the number of Settlement Class members who elect to exclude themselves from the Settlement Class exceeds the threshold agreed to by the Parties and confidentially submitted to the Court *in camera*, Apple, in its sole discretion, may elect to reject this Settlement, in which case the entire Agreement shall be null and void. Alternatively, Apple may elect to waive this condition and proceed with the Settlement. Any such waiver by Apple must be unambiguous and in writing.

**F. Notice and Settlement Administration**

1. Notice and Settlement administration will be performed by Angeion, subject to approval by the Court. The Settlement Administrator will be paid from the Settlement Fund.

2. The Settlement Administrator shall perform the duties, tasks, and responsibilities associated with providing notice and administering the Settlement, including the following: (a) preparing and disseminating notice to the Settlement Class substantially in the forms attached hereto as Exhibits A-C; (b) maintaining the Settlement website; (C) 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); (d) delivering to Apple Counsel and Class Counsel copies of any requests for exclusion, objections, or, upon request of Apple Counsel or Class Counsel, other written or electronic communications from the Settlement Class; (e) making distributions to Settlement Class Members; (f) performing any tax reporting duties required by this Agreement and federal, state, or local law; (g) maintaining adequate records of all its activities, including the dates of transmission of the postcard notice, Full Class Notice, and email notice, returned mail, and other communications and attempted written or electronic communications with the Settlement Class; (h) confirming in writing its completion of the administration of the Settlement; and (i) such other tasks as Apple Counsel and Class Counsel mutually agree.

3. Apple will provide to the Settlement Administrator (but not to Class Counsel) the names, last known mailing addresses, and email addresses for all members of the Settlement Class for whom it has records as soon as practicable but starting no later than thirty (30) days after entry of the Preliminary Approval Order. The Settlement Administrator will administer the notice described herein and in accordance with the Preliminary Approval Order. The Settlement Administrator will keep identities and contact information of members of the Settlement Class strictly confidential, using them only for purposes of administering this Settlement.

4. Notice will be provided via email only to members of the Settlement Class for whom Apple has an email address, and via direct mail postcard notice for members of the Settlement Class for whom Apple has a physical address, but not an email address, on record. As soon as practicable, but starting no later than thirty (30) calendar days after Apple provides the Settlement Administrator the Settlement Class list in an electronic format, the Settlement

Administrator shall send the email notice to all Settlement Class Members for whom Apple has provided the Settlement Administrator with an email address. As soon as practicable, but starting no later than thirty (30) calendar days after Apple provides the Settlement Administrator the Settlement Class list in an electronic format, the Settlement Administrator shall send the postcard notice by mail to all Settlement Class Members for whom Apple has not provided an email address. In the event that this notice reaches less than 90% of members of the Settlement Class, the Settlement Administrator will provide supplemental notice in the form of direct mail postcard notice to those members of the Settlement Class whose emails returned a hard bounce back and for whom a physical address can be located. Any such supplemental notice shall be completed no later than thirty (30) days prior to the Objection and Exclusion Deadline.

5. The Parties agree upon and will seek Court approval of the following forms and methods of notice to members of the Settlement Class:

- a. **Settlement Website.** The Settlement Administrator will establish and maintain a Settlement website with a mutually acceptable domain name. The Settlement website will be optimized for viewing on both mobile devices and personal computers. The Settlement website will include, without limitation, the Full Class Notice in downloadable PDF format, this Agreement, the operative Second Amended Consolidated Complaint and Apple's Answer thereto, the Preliminary Approval Order as entered and publicly filed motion papers and declarations in support thereof, Plaintiffs' motion for attorneys' fees and expenses, Plaintiffs' motion for final approval of class action settlement, a set of frequently asked questions, and information on how to object or request exclusion, as well as contact information for Class Counsel and the Settlement Administrator. The Settlement website will include a readily accessible means for members of the Settlement Class to electronically submit payment information. The Settlement Website will explain how Class Payment will be distributed. The Settlement Website shall remain accessible until thirty (30) calendar days after the Settlement Administrator has completed its obligations under this Settlement Agreement.
- b. **Toll-Free Number.** The Settlement Administrator will establish a toll-free telephone number (the "Toll-Free Number") where members of the Settlement Class can receive instructions for accessing Settlement information and case documents.
- c. **Email Notice.** The Settlement Administrator will email each member of the Settlement Class for whom Apple has an email address a copy of the email notice substantially in the form attached hereto as Exhibit B.
- d. **Postcard Notice.** For members of the Settlement Class for whom Apple has a physical address, but not email address, the Settlement Administrator will mail to each such member of the Settlement Class the postcard notice substantially in the form attached hereto as Exhibit C. Before mailing the postcard notice, the Settlement Administrator shall update the addresses

provided by Apple with the National Change of Address database. All postcard notices returned by the U.S. Postal Service with a forwarding address will be re-mailed to that address. In the event that the email and postcard notice described above reaches less than 90% of the Class, the Settlement Administrator will provide supplemental notice in the form of direct mail postcard notice to those members of the Settlement Class whose emails returned a hard bounce back and for whom a mailing address can be located. Any such supplemental notice shall be completed no later than thirty (30) days prior to the Objection and Exclusion Deadline.

- e. **Full Class Notice.** The Settlement Administrator shall mail or email the Full Class Notice to any Settlement Class member who requests a copy.

6. Based on information provided by the parties to date, the Settlement Administrator has agreed to perform all settlement notice and administration duties required by the Settlement Agreement at a cost not expected to exceed \$599,000. This amount shall cover all costs and expenses related to the settlement administration functions to be performed by the Settlement Administrator, including providing Postcard and Email Notice and the Settlement Website, and performing the other administration processes described in this Agreement. In the event that unanticipated costs and expenses arise in connection with the notice and/or administration process, such that they exceed the capped amount of \$599,000, the Settlement Administrator shall promptly raise the matter with Apple Counsel and Class Counsel as soon as practicable after becoming aware of the unanticipated costs and expenses. If both Apple Counsel and Class Counsel, acting in good faith, agree that unanticipated costs and expenses justify an increase to the amount payable to the Settlement Administrator in excess of the agreed-upon cap, then the amount in excess of the capped amount shall be paid for exclusively from the Settlement Fund by way of any funds represented by checks that remain uncashed after 120 days and ACH transfers that fail after 120 days, as contemplated under Sections B.8 and 9. Under no circumstances will Apple be responsible for any costs of Settlement administration in excess of its contribution to the Settlement Fund.

7. The Postcard Notice, Email Notice, and Settlement website shall provide information on the procedure by which members of the Settlement Class may request exclusion or submit an objection to the Settlement.

#### **G. Attorneys' Fees and Expenses and Service Awards**

1. Class Counsel will apply to the Court for a Service Award for lead Named Plaintiff Chris Smith of up to \$5,000 and for Service Awards for the remaining Named Plaintiffs of up to \$2,000 each. The Service Awards are not a measure of damages, but instead are solely an award for the Class Representatives' services, time and effort on behalf of the members of the Settlement Class. Apple reserves the right to object to or oppose Class Counsel's requests for Service Awards. Service awards approved by the Court shall be paid from the Settlement Fund. Class Counsel shall provide Form W-9s for the Named Plaintiffs receiving a Service Award, and for Class Counsel, within 5 days after the Effective Date. The Settlement Administrator shall distribute the Service Awards to accounts specified by Class Counsel no later than 15 days after the later of the Effective Date or the receipt of the Named Plaintiffs' Form W-9s. 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. The Parties have reached no agreement on the amount of attorneys' fees and expenses that Class Counsel will seek. While recognizing that the Settlement entitles Class Counsel to apply for reasonable fees and expenses, Apple reserves the right to object to or oppose Class Counsel's requests for attorneys' fees and expenses. The Settlement Administrator shall pay Class Counsel any Court-approved Attorneys' Fees and Expense Payment no later than 15 days after the later of the Effective Date or the receipt of Class Counsel's Form W-9s. Class Counsel's Motion for attorneys' fees and expenses shall be filed at least 35 days before the Objection and Exclusion Deadline and shall be posted on the Settlement Website within 3 days of it being filed.

3. In no event shall Apple have any liability to any Plaintiffs' Counsel, or any other counsel who have represented Named Plaintiffs at any time in this Lawsuit, regarding the allocation of the fee and expense payment among Plaintiffs' Counsel.

4. Apple shall not be liable for any additional fees or expenses of Named Plaintiffs or any members of the Settlement Class in connection with the Lawsuit. Class Counsel agree that they will not seek any additional fees or costs from Apple in connection with the Lawsuit or the Settlement of the Lawsuit beyond the approved Attorneys' Fees and Expense Payment. Apple expressly agrees that it will not seek to recover its Court costs, attorneys' fees, or expenses once the Court enters a Final Approval Order and Final Judgment.

5. This Settlement is not conditioned upon the Court awarding the amounts sought by Class Counsel as a fee and expense payment. 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.

## **H. Releases**

1. Except as otherwise set forth herein or as to obligations created hereby, upon the Effective Date, Named Plaintiffs and the Settlement Class, on their own behalf and on behalf of their present and former principals, agents, servants, partners, joint venturers, employees, contractors, predecessors, assigns, heirs, spouses, beneficiaries, executors, administrators, representatives, insurers, underwriters, accountants, and lawyers (collectively, the "Releasing Parties"), separately and collectively, will release and discharge Apple and each of its present and former principals, agents, servants, partners, joint venturers, directors, officers, managers, employees, contractors, predecessors, successors, assigns, administrators, representatives, parents, shareholders, subsidiaries, affiliates, insurers, underwriters, accountants, and lawyers (collectively, the "Apple Released Parties"), separately and collectively, from any and all damages, suits, claims, debts, demands, assessments, obligations, liabilities, attorneys' fees, costs, expenses, rights of action and causes of action, of any kind or character whatsoever, whether based on contract (express, implied, or otherwise), statute, or any other theory of recovery, and whether for compensatory or punitive damages, and whether known or unknown, suspected or unsuspected, occurring before the Effective Date of the Settlement (the "Released Matters") arising out of or related to the claims made in this Lawsuit. This release will include claims relating to the Released

Matters of which the Releasing Parties are presently unaware or which the Releasing Parties do not presently suspect to exist which, if known to the Releasing Parties, would materially affect the Releasing Parties' release of the Apple Released Parties.

2. The Parties mutually and expressly acknowledge and agree that this Agreement fully and finally releases and fully resolves the claims released in Section H.1 above, including any claims that may not be known. Accordingly, the Parties expressly waive all of their rights under Civil Code § 1542, which provides that:

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.

3. The Parties also expressly waive all rights under any other statutes, legal decisions, or common law principles of similar effect to Civil Code § 1542, whether under the law of California or any other jurisdiction.

4. The Parties are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters underlying the Lawsuit. In furtherance of the Parties' intent, the release of the Released Matters shall remain in full and complete effect notwithstanding discovery or existence of any additional or different claims or facts.

5. The amount of the Class Payment pursuant to this Agreement will be deemed final and conclusive against all Settlement Class Members, who will be bound by all of the terms of this Agreement and the Settlement, including the terms of the judgment to be entered in the Lawsuit and the releases provided for herein.

6. No person shall have any claim of any kind against the Parties, their counsel, or the Settlement Administrator with respect to the matters set forth in Section F hereof, or based on determinations or distributions made substantially in accordance with this Agreement, the Final Approval Order, the Final Judgment, or further order(s) of the Court.

#### **I. Apple's Denial of Liability; Agreement As Defense In Future Proceedings**

1. This Agreement is made in compromise of any and all claims that Plaintiffs have or may have against Apple related in any way to the Lawsuit, including all claims, allegations, and products discussed therein. This Agreement shall not be construed in any fashion as an admission of liability or wrongdoing by Apple. Apple specifically denies having engaged in any wrongdoing whatsoever. Plaintiffs and their counsel further agree that this Agreement shall not be admissible in any court or other forum for any purpose other than the enforcement of its terms or if required for legal or accounting purposes.

2. To the extent permitted by law, neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as



evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding to establish any liability or admission by Apple, or to establish the truth of any of the claims or allegations alleged in the Lawsuit.

3. Neither the Agreement nor anything that the Parties said or did during the negotiation of the Agreement shall be construed or used in any manner as an admission of liability or evidence of any Party's fault, liability, or wrongdoing of any kind; nor as an admission of any lack of merit of the causes of action asserted in the Lawsuit.

4. To the extent permitted by law, the Agreement may be pleaded or invoked as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted for the Released Matters (as defined below).

## **J. Miscellaneous**

1. Extensions of Time. All time periods and dates described in this Agreement are subject to the Court's approval. Unless otherwise ordered by the Court, the Parties through their counsel may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement. These time periods and dates may be changed by the Court or the Parties' counsel's written consent without notice to the Settlement Class.

2. Entire Agreement. This Settlement Agreement contains the entire agreement between the Parties and constitutes the complete, final, and exclusive embodiment of their agreement with respect to the Lawsuit. This Settlement Agreement is executed without reliance on any promise, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Settlement Agreement.

3. Applicable Law and Jurisdiction. The laws of the State of California, without regard to its conflict or choice of law provisions, shall govern this Agreement. The Parties agree that any dispute relating to this Agreement shall be subject to the exclusive jurisdiction of the United States District Court for the Northern District of California. Each Party submits itself to the exclusive jurisdiction and venue of that court. If any such action is brought, the prevailing party shall be entitled to recover reasonable attorneys' fees.

4. Gender and Plurals. As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

5. Survival of Warranties and Representations. The warranties and representations of this Agreement are deemed to survive the date of execution hereof.

6. Cooperation of Parties. The Parties to this Agreement and their counsel agree to prepare and execute all documents, to seek Court approvals, to defend Court approvals, and to do all things reasonably necessary to complete the Settlement.

7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts.

8. Severability. If any provision of this Settlement Agreement is declared by the Court to be invalid, void, or unenforceable, the remaining provisions of this Settlement Agreement will continue in full force and effect, unless the provision declared to be invalid, void, or unenforceable is material, at which point the Parties shall attempt to renegotiate the Settlement Agreement or, if that proves unavailing, either Party can terminate the Settlement Agreement without prejudice to any Party.

9. Warranties and Representations. Each person executing this Agreement in a representative capacity represents and warrants that he or she is empowered to do so. This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand the provisions of this Agreement and have relied on the advice and representation of legal counsel of their own choosing. Each of the Parties has cooperated in the drafting and preparation of this Agreement and has been advised by counsel regarding the terms, effects, and consequences of this Agreement. Accordingly, in any construction or interpretation to be made of this Agreement, this Agreement shall not be construed as having been drafted solely by any one or more of the Parties or their counsel. The Settlement Agreement has been, and must be construed to have been, drafted by all Parties and their counsel, so that any rule that construes ambiguities against the drafter will have no force or effect.

10. Communications. All communications required under this Agreement shall be in writing and shall be sent overnight and regular mail to the addressees listed below:

If to Apple:

Apple Inc.  
1 Apple Park Way, MS:60-1NYJ  
Cupertino, California 95014  
Attn: Chief Litigation Counsel

With copy to:

Erin M. Bosman  
**MORRISON FOERSTER**  
EBosman@mofo.com  
12531 High Bluff Drive Suite 100  
San Diego, California 92130  
Telephone: 858.720.5100  
Facsimile: 858.720.5125

If to Plaintiffs:

Steven L. Nicholas  
Lucy E. Tufts

**CUNNINGHAM BOUNDS, LLC**

sln@cunninghambounds.com  
let@cunninghambounds.com  
1601 Dauphin Street  
Mobile, AL 36604  
Telephone: (251) 471-6191  
Facsimile: (251) 479-1031

Michael F. Ram

Marie N. Appel

**MORGAN & MORGAN**

**COMPLEX LITIGATION GROUP**

mram@forthepeople.com  
mappel@forthepeople.com  
711 Van Ness Avenue, Suite 500  
San Francisco, CA 94102  
Telephone: (415) 358-6913  
Facsimile: (415) 358-6293

Benjamin H. Kilborn, Jr.


**KILBORN LAW, LLC**


benk@kilbornlaw.com  
P.O. Box 2164  
Fairhope, AL 36533  
Telephone: (251) 929-4620


11. Modification and Amendment. This Agreement may be amended or modified only by a written instrument signed by the Parties' counsel and approved by the Court.

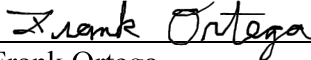
12. Any and all disputes arising out of or related to the Settlement or this Agreement must be brought by the Parties and/or each member of the Settlement Class exclusively in this Court. The Parties and each member of the Settlement Class hereby irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or related to the Settlement or this Agreement.

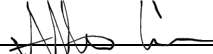
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each Party or its duly authorized representative as set forth below.

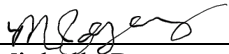
  
\_\_\_\_\_  
Chris Smith  
Plaintiff


  
\_\_\_\_\_  
Cheryl Smith  
Plaintiff

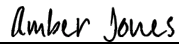
  
\_\_\_\_\_  
Karen Smithson  
Plaintiff

  
\_\_\_\_\_  
Frank Ortega  
Plaintiff

  
\_\_\_\_\_  
Alberto Cornea  
Plaintiff

  
\_\_\_\_\_  
Michelle Rogers  
Plaintiff

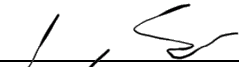
  
\_\_\_\_\_  
Deborah Class  
Plaintiff



Amber Jones  
Plaintiff



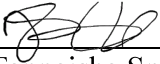
Alexis Keiser  
Plaintiff



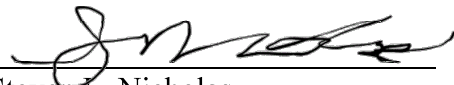
Loorn Saelee  
Plaintiff



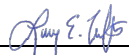
Thomas Pear  
Plaintiff




Tannaisha Smallwood  
Plaintiff

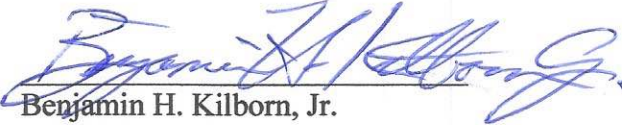


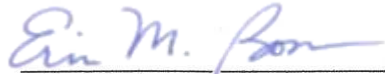
Steven L. Nicholas  
CUNNINGHAM BOUNDS, LLC  
For the Plaintiffs




Lucy E. Tufts  
CUNNINGHAM BOUNDS, LLC  
For the Plaintiffs

  
\_\_\_\_\_  
Michael F. Ram  
MORGAN & MORGAN  
COMPLEX LITIGATION GROUP  
For the Plaintiffs

  
\_\_\_\_\_  
Benjamin H. Kilborn, Jr.  
KILBORN LAW, LLC  
For the Plaintiffs

  
\_\_\_\_\_  
Erin M. Bosman  
MORRISON & FOERSTER LLP  
For the Defendant Apple Inc.

  
\_\_\_\_\_  
Heather Grenier  
Vice President, Apple Inc.