

1 Steve W. Berman (*pro hac vice*)  
HAGENS BERMAN SOBOL SHAPIRO LLP  
2 1301 Second Avenue, Suite 2000  
Seattle, WA 98101  
3 Telephone: (206) 623-7292  
Facsimile: (206) 623-0594  
4 Email: steve@hbsslaw.com

5 Robert B. Carey (*pro hac vice*)  
Michella A. Kras (*pro hac vice*)  
6 HAGENS BERMAN SOBOL SHAPIRO LLP  
11 West Jefferson, Suite 1000  
7 Phoenix, AZ 85003  
Telephone: (602) 840-5900  
8 Facsimile: (602) 840-3012  
Email: rob@hbsslaw.com  
9 Email: michellak@hbsslaw.com

10 *Attorneys for Plaintiffs*

11 [Additional Counsel on Signature Page]

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 VICKY MALDONADO AND JUSTIN CARTER,  
16 individually and on behalf of themselves and all  
17 others similarly situated,

18 Plaintiffs,

19 v.

20 APPLE INC., APPECARE SERVICE  
21 COMPANY, INC., AND APPLE CSC, INC.,

22 Defendants.  
23  
24  
25  
26  
27  
28

No. 3:16-cv-04067-WHO

Related Case:  
*English v. Apple Inc. et al.*  
Case No. 3:14-cv-01619-WHO

PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT

Judge: Hon. William H. Orrick  
Courtroom: 2, 17th Floor  
Complaint Filed: July 20, 2016

**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that on October 20, 2021, at 2:00 p.m. or as soon thereafter as the matter may be heard by the Honorable Judge William H. Orrick of the United States District Court for the Northern District of California, San Francisco Division, located at 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiffs will and hereby do move the Court under Federal Rule of Civil Procedure 23 for an order:

- (1) Preliminarily approving the proposed class action settlement with Defendants Apple Inc., AppleCare Service Company, Inc., and Apple CSC, Inc. (“Apple”); and
- (2) Approving the manner and form of notice and proposed plan of allocation to Class members.

This Motion is based on this Notice of Motion and unopposed Motion for Preliminary Approval of Class Action Settlement with Apple and Dissemination of Class Notice, the following memorandum of points and authorities, the accompanying settlement agreement, and the pleadings and papers on file in this action.

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## I. INTRODUCTION

Plaintiffs have reached a settlement with the Defendants Apple Inc., AppleCare Service Company, Inc., and Apple CSC, Inc. (“Apple”) for \$95 million. Decl. of Steve Berman in Support of Plaintiffs’ Mot. for Prelim. Approval of Class Action Settlement (“Berman Decl.”) ¶ 3 & Ex. A (“Settlement Agreement”).

This settlement is the product of arm’s length negotiations among experienced counsel well-versed in the facts and law relevant to this case and bears no obvious defects. The settlement constitutes an outstanding result for the Class. The total settlement fund constitutes approximately 13% to 25% of estimated damages according to Plaintiffs’ experts<sup>1</sup>—a significant recovery by any measure and well within the range of possible approval. Berman Decl. ¶¶ 12–13.

Accordingly, Plaintiffs respectfully request an order: (1) preliminarily approving the proposed class action settlement with Apple; and (2) approving the manner and form of notice and proposed plan of allocation to Class members.

## II. PROCEDURAL HISTORY

Apple is a manufacturer and retailer of iPhones and iPads (“devices”). Apple sells a two-year extended warranty called AppleCare or AppleCare+ (“AppleCare”). AppleCare provides that when a device is defective (or needs to be replaced for accidental damage), Apple will “exchange the [device] with a replacement product that is new or equivalent to new in performance and reliability.” ECF No. 155 at 2. Replacement devices provided under AppleCare can be either new or remanufactured. *Id.* Remanufactured replacement devices are devices built with a mix of used and new parts. *Id.* at 2–3. The used parts are primarily sourced from devices returned to Apple. *Id.* at 2.

Plaintiffs are purchasers of AppleCare who were given remanufactured replacement devices. *Id.* at 5–6. They represent a class of individuals who similarly purchased AppleCare and received remanufactured replacement devices. *Id.* at 27. Plaintiffs filed an Amended Complaint on

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<sup>1</sup> Apple maintains that Plaintiffs are not entitled to any damages and its experts would have testified that no damages were appropriate.

1 November 4, 2016, alleging that Apple breached its AppleCare contracts with Plaintiffs and the  
 2 class by giving them remanufactured devices that were not “equivalent to new in performance and  
 3 reliability.” ECF No. 45 ¶¶ 130–39. Plaintiffs also allege causes of action for violations of the  
 4 Song-Beverly Act, Magnusson-Moss, and California’s Unfair Claims Practices Act. *Id.* ¶¶ 140–70,  
 5 194–201.<sup>2</sup> Apple denied all allegations in the Amended Complaint. ECF Nos. 69–70.

#### 6 **A. Class Certification and Summary Judgment**

7 Before class certification, the parties engaged in significant discovery. Both parties issued  
 8 interrogatories and document requests. Berman Decl. ¶ 6. Apple deposed both named Plaintiffs and  
 9 Plaintiffs deposed three Apple Rule 30(b)(6) designees. *Id.* ¶ 5. Plaintiffs then moved for class  
 10 certification on February 25, 2019. ECF No. 102. Plaintiffs presented evidence that they argued  
 11 showed remanufactured devices are not equivalent to new in performance and reliability at the  
 12 moment of delivery. *Id.* at 5–10. Plaintiffs’ reliability and electrical engineering expert, Dr.  
 13 Michael Pecht, opined that remanufactured devices can never be equivalent to new in reliability  
 14 because they contain used parts. ECF No. 103-20 at 13. Dr. Pecht explained that reliability is  
 15 performance over time. *Id.* at 10. According to Dr. Pecht, electronic parts and products wear out  
 16 over time—an electronic part begins to degrade once it is manufactured. *Id.* at 10–11. Dr. Pecht  
 17 opined that load or stress conditions, such as operational wear and tear, thermal changes, humidity,  
 18 dust, and shock (e.g., dropping), will cause degradation. *Id.* According to Dr. Pecht, these load  
 19 conditions can cause damage to parts and components, which may not be seen by the naked eye or  
 20 by normal functional or performance testing, but they will reduce the life span of the product. *Id.*

21 Plaintiffs presented a second expert, Dr. Robert Bardwell, a statistician who reviewed  
 22 Apple’s grouped return data. ECF No. 103-23. He opined that he had determined in the first  
 23 thirteen weeks that remanufactured replacement iPhones are 2.3 times more likely to fail than new  
 24 replacement iPhones and remanufactured iPad replacements are 1.7 times more likely to fail than  
 25 new iPhone replacements. *Id.* at 4. He opined that his results were statistically significant at an

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27 <sup>2</sup> Defendants filed a motion to dismiss on December 19, 2016. ECF No. 50. The Court  
 28 dismissed Plaintiffs’ CLRA claim, False Advertising Claim, and the fraudulent prong of their UCL  
 claim. ECF No. 64 at 9–11.



1 extreme level. *Id.* at 9. Dr. Bardwell stated he could do a more robust analysis with Apple’s full  
2 return data. *Id.* at 16–17.

3 Plaintiffs also offered Dr. Lance Kaufman, an economist, as their damages expert. ECF No.  
4 103-25. Dr. Kaufman stated he would measure the benefit of the bargain by calculating the  
5 difference between what was promised, a new device, and what was received, a remanufactured  
6 device. *Id.* at 6–7, 9. Apple sells certified refurbished devices, which are the same remanufactured  
7 replacement devices. ECF No. 102 at 4. Dr. Kaufman stated that he would calculate the difference  
8 between the price of a new device and the price of a certified refurbished device, on the date of  
9 replacement. ECF No. 103-25 at 6–7, 9.

10 In response, Apple argued (among other things) that the class was overly broad because it  
11 included devices that were never returned or experienced an issue with their replacement,  
12 remanufactured devices were equivalent because they undergo the same performance and  
13 reliability testing as new devices, and Plaintiffs improperly relied on return data, which do not  
14 equate to failures. ECF No. 113 at 8–20. Apple also argued (among other things) that damages  
15 should measure the diminished value of AppleCare—the amount Plaintiffs overpaid for AppleCare.  
16 *Id.* at 20–21. Apple identified three experts to rebut Plaintiffs’ experts. ECF Nos. 113-18, 113-20,  
17 113-22. All six experts were deposed during the course of class certification briefing. Berman  
18 Decl. ¶ 7.

19 At the same time, Apple moved for summary judgment on Plaintiffs’ individual claims.  
20 ECF No. 111. Apple argued (among other things) that “equivalent to new” did not mean new and  
21 Plaintiffs could not show that their reported issues were caused by used parts. *Id.* at 8, 11. Apple  
22 also argued Plaintiffs’ devices met the same quality standards as new devices and return rates could  
23 not be used as a substitute for Plaintiffs’ own device failures. *Id.* at 12–13. Plaintiffs opposed  
24 summary judgment, citing much of the same evidence and arguments on liability in their Motion  
25 for Class Certification. ECF No. 130.

26 On September 16, 2019, this Court denied Apple’s summary judgment motion and granted  
27 class certification. ECF No. 155. The Court found both commonality and predominance because  
28 “plaintiffs’ injury occurred when they filed a claim under AC/AC+ and received a device that was

1 not ‘equivalent to new in performance and reliability’ because of load conditions or shorter  
2 lifespan. This injury occurred regardless of whether an individual experienced a problem with the  
3 device.” *Id.* at 19 (citing *Nguyen v. Nissan N. Am., Inc.*, 932 F.3d 811, 819 (9th Cir. 2019)). The  
4 Court found a jury could credit the testimony of Drs. Pecht and Bardwell and determine Plaintiffs  
5 and the class’s devices were not equivalent to new in performance and reliability. *Id.* at 10–11, 16–  
6 17. The Court held: “If a fact finder credits plaintiffs’ theory, then all individuals who received a  
7 remanufactured replacement device were injured.” *Id.* The Court also found the class was  
8 sufficiently numerous, Plaintiffs were typical, having purchased AppleCare and received  
9 remanufactured replacements, Plaintiffs were adequate class representatives, and Hagens Berman  
10 had extensive experience litigating consumer class actions. Last, the Court found that Plaintiffs’  
11 proposed damages met the requirements of *Comcast Corp. v. Behrend*, 569 U.S. 27, 34 (2013),  
12 because it was tethered to their theory of liability. *Id.* at 23.

13 The Court certified the following Class: “All individuals who purchased AppleCare or  
14 AppleCare+, either directly or through the iPhone Upgrade Program, on or after July 20, 2012, and  
15 received a remanufactured replacement Device.” *Id.* at 27. It also appointed Plaintiffs Maldonado  
16 and Carter as Class Representatives and appointed Hagens Berman as Class Counsel. ECF No. 155  
17 at 27.

## 18 **B. Fact and Expert Discovery**

19 After certification, the parties completed fact discovery. In total, Plaintiffs issued and Apple  
20 answered 25 interrogatories, 92 requests for production, and 159 requests for admission. Berman  
21 Decl. ¶ 6. Apple issued and Plaintiff Carter responded to 12 interrogatories, 19 requests for  
22 production, and 8 requests for admission. *Id.* Apple issued and Plaintiff Maldonado responded to  
23 13 interrogatories and 20 requests for production. *Id.* Apple produced and Plaintiffs reviewed over  
24 30,000 documents, consisting of approximately 230,000 pages. *Id.* ¶ 8. Plaintiffs deposed two  
25 additional Rule 30(b)(6) designees and three fact witnesses. *Id.* ¶ 5. Apple deposed one additional  
26 fact witness. *Id.*

27 The parties engaged in complete expert discovery. Plaintiffs identified five experts on the  
28 merits and an additional rebuttal expert. *Id.* ¶ 9. Plaintiffs again identified Drs. Pecht, Bardwell,

1 and Kaufman. *Id.* Dr. Pecht's opinions remained unchanged. *Id.* ¶ 10. Dr. Bardwell, with Apple's  
2 full return data, opined that he was able to determine that remanufactured replacement iPhones are  
3 3.2 times more likely to fail than new replacement iPhones and remanufactured replacement iPads  
4 are 7 times more likely to fail than new iPad replacements, and these higher failure rates are  
5 statistically significant at an extreme level. *Id.* ¶ 11. He also opined that he determined that over  
6 four years, remanufactured iPhones have 23.4 fewer weeks of life than new iPhones and  
7 remanufactured iPads have 18.5 fewer weeks than a new iPad. *Id.*

8 Dr. Kaufman opined that he measured the retail price difference between new and  
9 remanufactured devices, calculating damages of \$754,893,730. *Id.* ¶ 12. Plaintiffs also retained  
10 damage experts Stephen Gaskin and Colin Weir. *Id.* ¶ 13. Mr. Gaskin, with the input of Mr. Weir,  
11 conducted a conjoint survey to assess the differences in value between new and remanufactured  
12 devices. *Id.* Mr. Gaskin opined that his survey showed a 15.7% difference in value for iPhones and  
13 14.1% difference in value for iPads. Using these numbers, Mr. Weir calculated damages of  
14 \$386,106,741. *Id.* Drs. Pecht and Bardwell also issued rebuttal reports and Plaintiffs identified Dr.  
15 Abhijit Dasgupta, a reliability engineer, as a rebuttal expert to the testing performed by one of  
16 Apple's experts. *Id.* ¶ 14.

17 Apple identified three merits experts and seven rebuttal experts. *Id.* ¶ 15. Apple did not use  
18 any of the three experts it identified for class certification, but instead identified ten new experts in  
19 total. *Id.* Apple's merits experts included a reliability engineer, a survey expert, and an  
20 environmental expert. *Id.* Apple identified seven rebuttal experts to rebut each of Plaintiffs'  
21 experts, including two engineers, a statistician, two survey experts, and two damages experts. *Id.*  
22 Apple's experts opined that damages were inappropriate. *Id.* Plaintiffs deposed nine of Apple's ten  
23 experts and Apple deposed all six of Plaintiffs' experts. *Id.* ¶ 16.

#### 24 **C. Daubert Motions and Confirmation of Certification**

25 After expert discovery was complete, Apple filed *Daubert* motions to exclude all five of  
26 Plaintiffs' merits experts, and Plaintiffs filed *Daubert* motions to exclude two of Apple's rebuttal  
27 experts in full and two in part. ECF Nos. 240–243, 247–250. Apple also filed a Motion to Decertify  
28 the Class. ECF No. 239. In that motion to decertify, Apple argued that Plaintiffs failed to prove all

1 Class members were injured, because (among other things) they failed to conduct empirical testing  
2 showing “whether load conditions caused any actual specific effects on class devices,” Plaintiffs  
3 could not distinguish between benign and harmful effect of load without testing, and return rates  
4 did not show that all remanufactured devices were inferior. *Id.* at 17–21. Apple also argued that a  
5 significant portion of the Class was not harmed because 87% of Class members did not return their  
6 remanufactured devices, 6.1% of Class members had a used part combination with statistically  
7 significantly lower return rates, survey evidence proved that Class members prefer remanufactured  
8 devices, and some Class members eventually received a new device when they returned a defective  
9 remanufactured device. *Id.* at 22–24. Last, Apple argued that the Class could not pursue UCL and  
10 Song-Beverly Claims on a nationwide basis. *Id.* at 24–25.

11 In response, Plaintiffs argued there was no change in circumstances requiring  
12 decertification. ECF No. 273 at 2–10. Plaintiffs countered that their evidence on the effect of load  
13 conditions on remanufactured devices remained unchanged, that any load conditions reduce the  
14 reliability of the device as a matter of physics, and testing was not required to prove the load  
15 theory. *Id.* at 12–14. Plaintiffs argued that Apple had presented no evidence that there were  
16 remanufactured devices within the Class with benign loads that would defeat certification. *Id.* at  
17 15. Plaintiffs also argued that their reliance on return data remained the same, but a jury could still  
18 rely on load theory for those devices and there was no evidence that Class members preferred used  
19 parts. *Id.* at 18–23. Last, Plaintiffs argued that the California law claims were encompassed in the  
20 choice-of-law clause in the AppleCare contracts. *Id.* at 25.

21 This Court denied Apple’s decertification motion, denied all of Apple’s *Daubert* motions,  
22 granted two of Plaintiffs’ *Daubert* motions, denied two of Plaintiffs’ *Daubert* motions, and found  
23 all the remaining expert testimony for both parties were “fit for trial.” ECF No. 304 at 1–2, 5.  
24 Following the Court’s rulings on the *Daubert* motions, Apple still had rebuttal experts to counter  
25 each of Plaintiffs’ experts. Berman Decl. ¶ 17. The Court determined that many of the issues raised  
26 by Apple were “for the merits,” that Plaintiffs’ theory of liability had an “important weakness,” and  
27 that it would “be left to a jury to determine whether the plaintiffs or Apple are correct about what  
28

1 the evidence actually proves.” ECF No. 304 at 1, 7–8. After the Court issued its order, the parties  
2 began preparing for trial, which was set to begin on August 16, 2021. Berman Decl. ¶ 18.

3 **D. Mediation**

4 The parties engaged in two mediations before the Class was certified with retired Justice  
5 Edward A. Panelli, one on October 29, 2018, and one on March 13, 2019. *Id.* ¶ 19. Both mediations  
6 were unsuccessful. *Id.* On April 22, 2020, after the Class was certified, the parties engaged in a  
7 third mediation with Chief Magistrate Judge Joseph C. Spero. *Id.* ¶ 20. That mediation was also  
8 unsuccessful. *Id.* After the Court issued its order denying Apple’s decertification motion, Judge  
9 Spero ordered the parties to engage in another settlement session. *Id.* ¶ 21. On June 30, 2021, the  
10 parties held a mediation with retired Judge Rebecca Westerfield. *Id.* After a full day of mediation,  
11 the parties agreed to settle the case for an all-in common fund of \$95 million. *Id.* The parties  
12 executed a Memorandum of Understanding that same day. *Id.*

13 **III. SUMMARY OF SETTLEMENT TERMS**

14 **A. The Certified Class**

15 The settlement encompasses the Certified Class, which the court defined as:

16 All individuals who purchased AppleCare or AppleCare+, either directly or  
17 through the iPhone Upgrade Program, on or after July 20, 2012, and  
received a remanufactured replacement Device.

18 “Class Member” means any person or entity that falls within the definition of the “Certified Class”  
19 and who did not previously elect to be excluded, or any Class Member receiving notice for the first  
20 time, who does not timely and validly elect to be excluded from the Certified Class. The Class  
21 period cutoff date is September 30, 2021, the execution date of the Settlement Agreement. Berman  
22 Decl. Ex. A ¶¶ 6, 14.

1 **B. The Settlement Consideration and Release of Claims, Anticipated Class Recovery, and**  
 2 **Potential Class Recovery**

3 The settlement releases all Defendants from all claims based on the facts alleged in the  
 4 complaint, as previously certified by this Court in exchange for a common fund of \$95,000,000.<sup>3</sup>  
 5 Those claims include breach of contract and violations of the Song-Beverly Act, the Magnusson-  
 6 Moss Act, and the UCL. In making this settlement, Class Counsel considered the risks of going to  
 7 trial, including the possibility that a trial could result in a smaller or zero recovery for the Class, the  
 8 time and resources that would be expended by both parties and the Court, and the possibility of  
 9 delay caused by any appeal if Plaintiffs did prevail.

10 If Plaintiffs had prevailed on their breach of contract claim, the total settlement fund  
 11 amount represents approximately 13% to 25% of estimated damages according to Plaintiffs'  
 12 experts.<sup>4</sup> Plaintiffs are not entitled to additional damages under their other claims, but Plaintiff  
 13 argued that they could have sought a civil penalty under the Song-Beverly Act of up to two times  
 14 the amount of damages subject to a showing of willfulness on Apple's part. Plaintiffs assert that the  
 15 award of such a penalty would have been at the discretion of the jury.

16 It is anticipated that the Certified Class will recover a total amount of between \$63,434,000  
 17 and \$68,184,000, once administrative costs, incentive awards, and attorneys' fees<sup>5</sup> and costs have  
 18 been deducted, as shown below. While recovery at trial could have been higher, it also could have  
 19 been much lower or zero. Also, Class Counsel would have sought administrative costs, incentive  
 20 awards, and attorneys' fees and costs out of any trial recovery. And those incentive awards and  
 21 attorneys' fees and costs would have increased significantly because of the additional time, effort,  
 22 and costs that would be expended at trial.

24 <sup>3</sup> Attached as Exhibit B to the Berman Declaration is a chart showing past comparable  
 25 settlements of Class Counsel, as required by Northern District's Procedural Guidance for Class  
 Action Settlements.

26 <sup>4</sup> Plaintiffs' experts measured damages ranging from \$386,106,741 to \$754,893,730. Apple  
 27 claimed that Plaintiffs were not injured and were not entitled to any damages.

28 <sup>5</sup> These estimates are based on an attorneys' fees request of between 25–30% of the Settlement  
 Fund.

1 **C. Attorneys' Fees and Costs, Incentive Awards, and Administration Costs**

2 Class Counsel will request that the costs of notice and distribution, attorneys' fees and  
3 costs, and service awards for the two Class Representatives be taken out of the settlement fund.

4 The estimated costs of notice and distribution are \$1,663,688. Declaration of Cameron  
5 Azari ("Azari Decl.") ¶ 17. The costs of administration will be taken out of the settlement fund.

6 Through September 24, 2021, Plaintiffs have advanced costs of \$1,374,835.64, which  
7 includes \$1,128,798.78 in expert fees. Berman Decl. ¶ 22. Plaintiffs have also expended  
8 approximately \$6,823,841.80 in attorneys' fees in this litigation, which is based on 11,775.9 hours  
9 expended. *Id.* Plaintiffs will assuredly expend significant additional attorney resources between  
10 now and the final approval hearing (and likely thereafter for class member support).

11 While the benchmark for fees in the Ninth Circuit is 25%, when awarding fees under a  
12 common fund, courts generally start with the 25% benchmark and adjust upward or downward  
13 depending on:

- 14 (1) The extent to which class counsel achieved exceptional results for the class;
- 15 (2) Whether the case was risky for class counsel;
- 16 (3) Whether counsel's performance generated benefits beyond the cash fund;
- 17 (4) The market rate for the particular field of law (in some circumstances);
- 18 (5) The burdens class counsel experienced while litigating the case (e.g., cost, duration,  
19 foregoing other work); and
- (6) Whether the case was handled on a contingency basis.

20 *In re Wells Fargo & Co. S'holder Derivative Litig.*, 445 F. Supp. 3d 508, 519 (N.D. Cal. 2020),  
21 aff'd, 845 F. App'x 563 (9th Cir. 2021) (quoting *In re Online DVD-Rental Antitrust Litig.*, 779  
22 F.3d 934, 954–55 (9th Cir. 2015)). Class Counsel's work and success in this case merits an upward  
23 adjustment of up to 30% and Class Counsel believe that any lodestar cross-check will support  
24 Plaintiffs' requested adjustment. Despite taking over the case in a precarious posture, Class  
25 Counsel's skill and effort produced an extraordinary result against an aggressive, top-tier defense.  
26 Accordingly, Plaintiffs intend to request attorneys' fees between 25-30% of the total settlement  
27 fund of \$95 million, as well as their costs. Class Counsel will more fully support their request,  
28 including detailing the relevant circumstances of the *Wells Fargo* factors, in their motion for



1 attorneys' fees. Apple reserves its rights to oppose any request for attorneys' fees and costs that  
2 exceeds 25% of the settlement fund.

3 For service awards, Class Counsel will also seek an award of \$15,000 for the Class  
4 Representative Vicky Maldonado, and \$12,500 for Class Representative Justin Carter, totaling  
5 \$27,500, out of the settlement fund.<sup>6</sup> In determining whether a service award is fair, courts look at  
6 "(1) the amount of time and effort spent by the class representatives on the litigation; (2) the degree  
7 to which the class representatives' efforts benefitted the class; (3) the personal difficulties  
8 encountered by the class representatives; (4) the duration of the litigation; (5) the personal benefit,  
9 or lack thereof, enjoyed by the class representatives as a result of the litigation; and (6) the risk to  
10 the class representative in commencing suit, both financial and otherwise." *Villalpando v. Exel*  
11 *Direct Inc.*, No. 3:12-CV-04137-JCS, 2016 WL 7785852, at \*1 (N.D. Cal. Dec. 9, 2016)  
12 (approving a service award of \$15,000). Both Class Representatives have been actively involved in  
13 this litigation and without their willingness to come forward and prosecute the action, the Class  
14 Members would have received nothing for their injuries. Class Representatives assisted Class  
15 Counsel in investigating and prosecuting this action, responded to detailed interrogatories, searched  
16 for and produced documents responsive to document requests on multiple occasions, answered  
17 requests for admission, and traveled to San Francisco and sat for depositions. Berman Decl. ¶ 23.  
18 Class Representatives also persisted with this litigation for almost five years, with Ms. Maldonado  
19 acting longer, since the inception of the lawsuit, justifying a slightly higher award. Given their  
20 efforts, awards of \$15,000 and \$12,500, respectively, are reasonable.

21 **D. Notice and Implementation of Settlement**

22 Plaintiffs have attached hereto proposed Settlement Class Notices and propose the  
23 following plan for the dissemination of those Notices. Azari Decl. ¶ 4. Plaintiffs propose using the  
24 same notice method after the Class was certified and propose using the same notice administrator,  
25 Epiq Class Action & Claims Solutions, Inc. ("Epiq") along with Epiq's Notice business unit,  
26

27 <sup>6</sup> Apple reserves its rights to oppose any incentive awards that exceed \$7,500 per class  
28 representative.



1 Hilsoft Notifications (“Hilsoft”). When the Court certified the Class, Class Counsel sent a request  
2 for proposal to five reputable notice and claims administrators requesting proposed notice plans  
3 and costs estimates. Each of the five potential notice administrators proposed a notice program  
4 relying on direct email notice to reach the Class Members. After this competitive bidding process,  
5 Class Counsel—following discussion with Defendants and the approval of the Court—selected  
6 Epiq and worked with them to prepare the notice and dissemination plan. Because Class Counsel  
7 already went through the bidding process and Epiq has already proven capable of disseminating  
8 notice to the Class, a second bidding process is not necessary. Other than the Class Notice in this  
9 case, Class Counsel has worked with Epiq nine times over the last two years.

10 Apple will provide to Epiq the names, addresses, and email addresses for all members of  
11 the Certified Class, in substantially the same form and using substantially the same methods as it  
12 did as part of the Class Notice program. Using that data, Epiq will again direct notice by email. The  
13 proposed form of Email Notice is Attachment 1 to the Azari Declaration. For all Certified Class  
14 members for whom a facially valid email address does not exist, but a physical address does, a  
15 standard 4” by 6” Postcard Notice will be mailed. The proposed form of Postcard Notice is  
16 Attachment 3 to the Azari Declaration. Based on the prior Class Notice, Epiq anticipates that 90%  
17 of the Certified Class can be noticed by email or by US mail. Azari Decl. ¶ 19. Additional details  
18 on the notice plan are set forth in Section IV(D) below.

19 The settlement website shall also include an Application for Inclusion in the Class that may  
20 be submitted by individuals who believe themselves to be members of the Certified Class, but who  
21 have not received email or mail notice. Epic will work with Apple to attempt to determine whether  
22 those individuals are members of the Certified Class, and Apple will coordinate with Epic in those  
23 verification efforts in accordance with its obligations as set out in the Settlement Agreement.

24 Berman Decl. Ex. A ¶ 56.

25 Notice is also required under the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.* Apple  
26 will provide the required notice under that statute no later than ten days after the filing of this  
27 Motion. The cost of notice will be paid out of the settlement fund, which Epiq estimates will cost  
28 \$3,515, which amount is included in the estimated costs of administration above.

1 **E. Plan of Distribution**

2 Plaintiffs propose using direct payments to distribute funds to the Certified Class, with the  
3 Settlement fund being divided equally among the Class members based on the number of  
4 remanufactured replacement devices they received. Each Class member will receive an equal  
5 amount per remanufactured replacement device that is within the scope of the Certified Class.  
6 Along with the Class contact data, Apple will provide data sufficient to identify the number of  
7 remanufactured replacement devices within the scope of the Certified Class it issued to each Class  
8 member.

9 The parties engaged in private dispute resolution on how to allocate the Settlement funds  
10 with retired Judge Daniel Weinstein. The proposed distribution reflects that the most equitable way  
11 of dividing the fund is to treat the claims equally, and that such a distribution “corresponds to the  
12 liability theory and the predominate class claims asserted.” This proposed allocation takes into  
13 account both parties’ proposed arguments and theories regarding damages, accepts that all Class  
14 members were alleging the same harm, and recognizes that the recovery for each Class member  
15 will be relatively low regardless of how damages are allocated. Given these considerations,  
16 Plaintiffs adopt Judge Weinstein’s recommendations as fair, adequate, and reasonable.

17 After the Settlement receives Final Approval, an email will be sent to Class members. The  
18 email will provide Class members with the option to select to receive their payment as a Digital  
19 Visa/MasterCard or as an ACH deposit into their bank account, as described in the Settlement  
20 Agreement. Berman Decl. Ex. A ¶ 49. Class Members can also elect to receive checks, as  
21 described in the Settlement Agreement. *Id.*

22 If there are unclaimed funds, the parties agree to meet and confer on whether to do a second  
23 distribution to the Class or to distribute those funds to a *cy pres* recipient. The parties also agree to  
24 meet and confer on the identity of the *cy pres* recipient. If the parties cannot agree on either or both  
25 issues, they have agreed to submit their dispute to private dispute resolution. Any proposed  
26 subsequent distribution, either to the Class or to a *cy pres* recipient, will then be submitted to the  
27 Court for approval. The Parties agreed in the Settlement Agreement that there will be no reversion  
28 of unclaimed funds to Apple. *Id.* ¶ 51.

## IV. ARGUMENT

### A. The Standards and Procedure for Preliminary Approval of Class Settlement

Federal Rule of Civil Procedure 23(e) requires judicial approval of any compromise or settlement of class action claims. “Preliminary approval is not a dispositive assessment of the fairness of the proposed settlement, but rather determines whether it falls within the ‘range of reasonableness.’” *In re Lidoderm Antitrust Litig.*, No. 14-MD-02521-WHO, 2018 WL 11293766, at \*2 (N.D. Cal. May 3, 2018) (citation omitted). Preliminary approval “establishes an ‘initial presumption’ of fairness, such that notice may be given to the class and the class may have a ‘full and fair opportunity to consider the proposed [settlement] and develop a response.’” *Id.* (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)); *see also* Manual for Complex Litigation (Fourth) § 21.631 (2015).

Preliminary approval of a settlement and notice to the proposed class is appropriate if: “(1) the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls with[in] the range of possible approval.”<sup>7</sup> *The Civil Rights Educ. & Enf’t Ctr. v. RLJ Lodging Tr.*, No. 15-CV-0224-YGR, 2016 WL 314400, at \*11 (N.D. Cal. Jan. 25, 2016); *see also Tableware*, 484 F. Supp. 2d at 1079 (same). “[T]he decision to approve or reject a settlement is committed to the sound discretion of the trial judge because he is exposed to the litigants and their strategies, positions, and proof.” *In re LinkedIn User Priv. Litig.*, 309 F.R.D. 573, 582 (N.D. Cal. 2015) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.1998)). This settlement meets all of the requirements for preliminary approval.

#### 1. The settlement with Apple was the result of arm’s-length negotiations.

Weighing in favor of preliminary approval, the settlement arises out of informed, arm’s-length negotiations among counsel for the parties. The parties reached agreement on the eve of trial, after conducting all fact and expert discovery, after the Court heard and decided all

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<sup>7</sup> Certain changes to Rule 23 went into effect on December 1, 2018. These changes codify what is already the standard in the Ninth Circuit, and as shown in the text, that standard is met.

1 dispositive and expert motions, after the Class had been certified, and after multiple mediations.  
2 *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (“We put a good deal of stock  
3 in the product of an arms-length, non-collusive, negotiated resolution.”). It is also significant that  
4 the settlements were negotiated by experienced counsel with extensive experience and success in  
5 large consumer class actions. Berman Decl. ¶ 24; see *In re Heritage Bond Litig.*, No. 02-ML-1475  
6 DT, 2005 WL 1594403, at \*9 (C.D. Cal. June 10, 2005) (“The recommendation of experienced  
7 counsel carries significant weight in the court’s determination of the reasonableness of the  
8 settlement.” (citation omitted)); *Noll v. eBay, Inc.*, 309 F.R.D. 593, 608 (N.D. Cal. 2015) (counsel’s  
9 belief that settlement “is in the best interests of the class,” given the substantial expense and  
10 uncertainty of a trial on the merits, weighs in favor of approval). Class Counsel has worked on this  
11 case for more than four years and understands the risks and upside to this type of litigation  
12 generally, as well as in this case specifically. Class Counsel is aware of the risks and additional  
13 expense of a lengthy trial. Similarly during this litigation, Apple has engaged experienced law  
14 firms and understands the risks and expense of such a trial. Counsel’s judgment that this settlement  
15 is fair and reasonable is entitled to significant weight. *Nat’l Rural Telecomms. Coop. v. DIRECTV,*  
16 *Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (“‘Great weight’ is accorded to the recommendation of  
17 counsel, who are most closely acquainted with the facts of the underlying litigation.”) (citation  
18 omitted); *accord Bellows v. NCO Fin. Sys. Inc.*, No. 3:07-cv-01413-W-AJB, 2008 WL 5458986, at  
19 \*6-7 (S.D. Cal. Dec. 10, 2008). The settlement was also reached after the Class had been certified  
20 and withstood decertification, which ameliorates concerns that the settlement was collusive. *In re*  
21 *Ferrero Litig.*, 583 F. App’x 665, 668 (9th Cir. 2014). This settlement is entitled to a presumption  
22 of fairness.

## 23 **2. The settlement has no obvious deficiencies.**

24 There are no obvious deficiencies in the proposed settlement. In its opinion in *In re*  
25 *Bluetooth Headset Prods. Liability Litig.*, the Ninth Circuit pointed to three factors as troubling  
26 signs of a potential disregard for the class’s interests during the course of negotiation: (1) when  
27 class “counsel receive a disproportionate distribution of the settlement, or when the class receives  
28 no monetary distribution but class counsel are amply rewarded;” (2) “when the parties negotiate a

1 ‘clear sailing’ arrangement that provides for the payment of attorneys’ fees separate and apart from  
 2 class funds;” and (3) when the parties arrange for fees not awarded to class counsel to revert to the  
 3 defendants rather than the class. 654 F.3d 935, 947 (9th Cir. 2011). The court in *In re Bluetooth*  
 4 offered these more strict criteria when a settlement occurs *before* certification. *Id.* at 946–47; *see*  
 5 *also Allen v. Bedolla*, 787 F.3d 1218, 1224 (9th Cir. 2015) (“That [*In re Bluetooth*] procedural  
 6 burden is more strict when a settlement is negotiated absent class certification.”).

7 While Plaintiffs do not have to meet this stricter standard because the settlement occurred  
 8 post certification, none of these potential deficiencies exist here. The proposed settlement creates a  
 9 common fund, with no possibility of reversion. The funds will be used to cover costs and fees and  
 10 compensate the Class based on a *pro rata* formula as outlined above. There is no “clear sailing”  
 11 arrangement that provides payment of fees separate and apart from the common fund and no  
 12 “kicker” provision like the one in *Bluetooth*, which would allow money to revert back to Apple.  
 13 *See In re Bluetooth*, 654 F.3d at 947. The proposed Class Notices inform Class Members that Class  
 14 Counsel will request attorneys’ fees up to 30% of the total settlement fund and reimbursement of  
 15 certain costs Class Counsel has advanced to date.<sup>8</sup> The absence of the *In re Bluetooth* warning  
 16 signs here is further indication of the settlement’s fairness. *See In re Zynga Sec. Litig.*, No. 12-cv-  
 17 04007-JSC, 2015 WL 6471171, at \*9 (N.D. Cal. Oct. 27, 2015).

18 **3. The settlement does not provide preferential treatment for segments of the**  
 19 **Class or the Class Representatives.**

20 The third factor in granting preliminarily approval is whether the settlement gives  
 21 preferential treatment to class representatives or segments of the class. *Rollins v. Dignity Health*,  
 22 336 F.R.D. 456, 461 (N.D. Cal. 2020) (quoting *In re Tableware*, 484 F. Supp. 2d at 1079). This  
 23 factor also favors approving this settlement.  
 24  
 25

26 <sup>8</sup> While the requested attorneys’ fees may exceed the Ninth Circuit benchmark of 25% (using  
 27 the “percentage-of-recovery” method accepted in this circuit), there is good reason to exceed that  
 28 benchmark here as shown above. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *In re*  
*Wells Fargo & Co. S’holder Derivative Litig.*, 445 F. Supp. 3d at 519.

1                   **a. All Class Members will recover a *pro rata* share of the settlement.**

2                   The settlement will be distributed equally to each Class Member based on the number of  
3 remanufactured replacement devices they received. Specifically, Class Members will recover their  
4 *pro rata* share of Settlement Fund, based on the number of remanufactured devices within the  
5 scope of the Certified Class they received. As explained above, because the proposed plan of  
6 distribution compensates Class Members based on a *pro rata* share of the Settlement Fund, it  
7 satisfies the “fair, reasonable and adequate” standard that applies to approval of class settlements.  
8 *Gaudin v. Saxon Mortg. Servs., Inc.*, No. 11-CV-01663-JST, 2015 WL 7454183, at \*8 (N.D. Cal.  
9 Nov. 23, 2015) (“Such a plan ‘fairly treats class members by awarding a pro rata share’ to the class  
10 members based on the extent of their injuries.”) (citation omitted); *Noll v. eBay, Inc.*, 309 F.R.D.  
11 593, 601, 607 (N.D. Cal. 2015) (approving pro-rata distribution as fair and reasonable).

12                   **b. The requested service awards for the Class Representatives reflects  
13 their efforts on behalf of the Class.**

14                   Class Counsel will request service awards for the Class Representatives, Vicky Maldonado  
15 and Justin Carter, in the amount of \$15,000 and \$12,500 respectively, for their roles in representing  
16 the Class. The Ninth Circuit recognizes service awards “that are intended to compensate class  
17 representatives for work undertaken on behalf of a class ‘are fairly typical in class action cases.’”  
18 *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (citation omitted).  
19 Class Counsel will submit this request simultaneously with their motion for attorneys’ fees—and in  
20 advance of the deadline for objections—so members of the Certified Class that wish to understand  
21 the basis for this request will have an opportunity to review Class Counsel’s motion and supporting  
22 materials. Their efforts, outlined above, make such an award reasonable.

23                   **4. The settlement with Apple easily falls within the range of possible approval.**

24                   The Court must also decide whether the settlement falls within the range of possible  
25 approval. *Zepeda v. Paypal, Inc.*, No. C 10-1668 SBA, 2015 WL 6746913, at \*4 (N.D. Cal. Nov. 5,  
26 2015); *Tableware*, 484 F. Supp. 2d at 1079. In making this determination, courts evaluate  
27 settlements to ensure they are “fair, reasonable, and adequate” and “not the product of fraud or  
28 overreaching by, or collusion between, the negotiating parties.” *In re NVIDIA Corp. Derivative*

1 *Litig.*, No. C-06-06110-SBA(JCS), 2008 WL 5382544, at \*2 (N.D. Cal. Dec. 22, 2008) (quoting  
2 *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir.1982)).

3 As shown above, the settlement provides the Certified Class with \$95 million, which  
4 represents 13–25% of the possible recovery, accepting Plaintiffs’ measure of damages. “The fact  
5 that a proposed settlement may only amount to a fraction of the potential recovery does not, in and  
6 of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” *In re*  
7 *Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 322 (N.D. Cal. 2018) (quoting *Linney v. Cellular*  
8 *Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir.1998)); *Garner v. State Farm Mut. Auto. Ins. Co.*, No.  
9 CV 08 1365 CW EMC, 2010 WL 1687832, at \*11 (N.D. Cal. Apr. 22, 2010) (“[C]ourts have  
10 recognized that even where—unlike here—the total settlement fund is small, it may not be  
11 unreasonable in light of the perils plaintiffs face in obtaining a meaningful recovery on their  
12 claims.”) (cleaned up)). “Estimates of what constitutes a fair settlement figure are tempered by  
13 factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay  
14 in recovery (often measured in years.” *In re Anthem, Inc. Data Breach*, 327 F.R.D. at 322  
15 (citations omitted). Even applying Plaintiffs’ measure of damages, 13–25% of the total damages  
16 easily fall within the range of possible approval. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,  
17 459 (9th Cir. 2000), as amended (June 19, 2000) (approving settlement that was one-sixth, or 16%,  
18 of the potential recovery); *In re Apple Inc. Device Performance Litig.*, No. 5:18-MD-02827-EJD,  
19 2021 WL 1022867, at \*14 (N.D. Cal. Mar. 17, 2021) (approving settlement that represented 7% of  
20 the possible recovery).

21 Given the very real risks of continued litigation, \$95 million represents a fair, reasonable,  
22 and adequate settlement. Defendants have vigorously denied that remanufactured devices are  
23 inferior, and proving liability here would require a lengthy trial, with competing and conflicting  
24 expert testimony. Apple intended on arguing at trial that even if Plaintiffs prevailed, they were not  
25 entitled to any damages, meaning Plaintiffs could have prevailed on liability and not recovered any  
26 damages. And even if Plaintiffs prevailed and were awarded damages, recovery could be delayed  
27 by years if there was an appeal.



1 **B. The Class Was Previously Certified Under Rule 23**

2 This Court already certified the Class under Rule 23 and Plaintiffs are not seeking to  
3 change or alter the Certified Class. As part of that certification, Hagens Berman was appointed as  
4 Class counsel and Plaintiffs Vicky Maldonado and Justin Carter were appointed as Class  
5 Representatives.

6 **C. The Proposed Class Notice and Plan for Dissemination Comply with Rule 23(e)**

7 Rule 23(e)(1) requires that a court approving a class action settlement must “direct notice in  
8 a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P.  
9 23(e)(1)(B). In addition, for a Rule 23(b)(3) class, the court must “direct to class members the best  
10 notice that is practicable under the circumstances, including individual notice to all members who  
11 can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). A class action settlement  
12 notice “is satisfactory if it ‘generally describes the terms of the settlement in sufficient detail to  
13 alert those with adverse viewpoints to investigate and to come forward and be heard.’” *Churchill*  
14 *Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (citations omitted); *see also* Fed. R. Civ.  
15 P. 23(c)(2)(B) (describing specific information to be included in the notice).

16 The proposed notice plan is supported by an experienced notice and claims administrator—  
17 Epiq—that has worked cooperatively with counsel to develop the proposed plan of notice. Azari  
18 Decl. ¶¶ 2–3, 18–21. The proposed Notice forms provide all of the information required by Rule  
19 23(c)(2)(B) to the Certified Class, in language that is plain and easy to understand. Plaintiffs have  
20 followed, as closely as possible, the language for settlements recommended by this District’s  
21 Procedural Guidance for Class Action Settlements. *See* Procedural Guidance for Class Action  
22 Settlements, U.S. District Court for the Northern District of California,  
23 <http://www.cand.uscourts.gov/ClassActionSettlementGuidance> (last updated Dec. 5, 2018). With  
24 this motion Plaintiffs provide proposed forms for the Email Notice, Postcard Notice, and Long  
25 Form Notice. Azari Decl. Attachments 1–3.

26 Settlement Notice will include an Email Notice to be sent to all potential Certified Class  
27 members for whom a facially valid email address is available. The Email Notice will be created using  
28 an embedded html text format. This format will provide text that is easy to read without graphics,



1 tables, images and other elements that would increase the likelihood that the message could be  
2 blocked by Internet Service Providers (ISPs) and/or SPAM filters. The emails will be sent using a  
3 server known to the major email providers as one not used to send bulk “SPAM” or “junk” email  
4 blasts. Also, the emails will be sent in small groups so as to not be erroneously flagged as a bulk junk  
5 email blast. Each Email Notice will be transmitted with a unique message identifier. If the receiving  
6 email server cannot deliver the message, a “bounce code” should be returned along with the unique  
7 message identifier. For any Email Notice for which a bounce code is received indicating that the  
8 message is undeliverable, at least two additional attempts will be made to deliver the Notice by email.

9 *Id.* ¶ 7.

10 The Email Notice will include the website address of the case website. By accessing the  
11 website, recipients will be able to easily access a Long Form Notice, the Amended Complaint and  
12 important court documents, the Settlement Agreement, and answers to frequently asked questions.

13 *Id.* ¶ 8.

14 For all Class members for whom a facially valid email address does not exist, but a physical  
15 address does, a standard 4” by 6” Postcard Notice will be mailed. *Id.* ¶ 9. The Postcard Notice will  
16 be sent via USPS first class mail. *Id.* Before mailing, all mailing addresses will be checked against  
17 the National Change of Address (“NCOA”) database maintained by the USPS. *Id.* Any addresses  
18 returned by the NCOA database as invalid will be updated through a third-party address search  
19 service. *Id.* In addition, the addresses will be certified via the Coding Accuracy Support System  
20 (“CASS”) to ensure the quality of the zip code and verified through Delivery Point Validation  
21 (“DPV”) to verify the accuracy of the addresses. *Id.* This address updating process is standard for  
22 the industry and for most promotional mailings that occur today. *Id.*

23 Postcard Notices returned as undeliverable will be re-mailed to any new address available  
24 through USPS information, for example, to the address provided by USPS on returned pieces for  
25 which the automatic forwarding order has expired, or to other addresses that may be found using a  
26 third-party lookup service that uses public lookup information. *Id.* ¶ 10. Upon successfully locating  
27 such addresses, Postcard Notices will be promptly re-mailed. *Id.*

28

1 The proposed Email and Postcard Notices both feature a prominent headline and are  
2 identified as a Notice from the District Court. Important information about the lawsuit and settlement,  
3 including Plaintiffs' claims, the definition of the Certified Class, the amount of the Settlement, and  
4 the right to request exclusion is summarized. *Id.* ¶ 11. The Email Notice includes embedded links  
5 directly to the Long Form Notice at the case website. *Id.* These design elements alert recipients and  
6 readers that the Notice is an important document authorized by a court and that the content may  
7 affect them, thereby supplying reasons to read the Notice and visit the Case Website for additional  
8 information. *Id.* Finally, a full Long Form Notice will be mailed via USPS first class mail to all  
9 persons who requested one via the toll-free telephone number. *Id.*

10 To assist potential Class members in understanding the information concerning the lawsuit  
11 and their rights, Epiq will use a dedicated and case-specific website with the URL  
12 [www.replacementdevicelawsuit.com](http://www.replacementdevicelawsuit.com), the same website that was used to disseminate information in  
13 connection with Class Notice. *Id.* ¶ 12. Class Members will be able to obtain detailed information  
14 about the case and review key documents, including the Complaint, the Long Form Notice (available  
15 in both English and Spanish), important court documents, the Settlement Agreement, and answers to  
16 frequently asked questions. *Id.* The case website will also include information on how Certified Class  
17 members who did not previously receive notice can request exclusion from the Certified Class.<sup>9</sup> *Id.*  
18 The case website address will be displayed prominently on all notice documents. *Id.* A toll-free  
19 telephone number will also be established to allow Certified Class members to call for additional  
20 information, listen to answers to FAQs, and request that a Notice be mailed to them. *Id.* ¶ 13. The  
21 toll-free telephone number will be prominently displayed in the Notice documents as well. *Id.*  
22 Finally, a post office box for correspondence about the case will also be established and maintained,  
23 allowing Certified Class members to contact the Notice Administrator by mail with any specific  
24 requests or questions, including requests for exclusion. *Id.* ¶ 14.

25  
26 \_\_\_\_\_  
27 <sup>9</sup> Notice was previously sent to the Certified Class, giving the opportunity to opt out. Certified  
28 Class members who were not within the scope of the previous notice program—because they  
received their remanufactured replacement device after Class contact data was provided to Epiq—  
will now be given an opportunity to opt out.

1 Based on the prior notice to the certified class, Epiq estimates that individual, direct notice is  
 2 expected to reach over 90% of the identified Certified Class. *Id.* ¶ 19. This follows the reach and  
 3 frequency recommended by the Federal Judicial Center’s Judges’ Class Action Notice and Claims  
 4 Process Checklist and Plain Language Guide, which considers a 70-95% reach among class members  
 5 to be reasonable. *Id.* Epiq also opines the Notice Plan described above provides for the best notice  
 6 practicable under the circumstances, conforms to all aspects of the Rule 23, and comports with the  
 7 guidance for effective notice set out in the Manual for Complex Litigation, Fourth edition. *Id.* ¶ 20.

8 Finally, Class Counsel proposes that the deadline for Certified Class Members who were  
 9 not previously within the scope of the Court-approved notice program to request exclusion from  
 10 the Class be set at 60 days following the start of the direct Notice Campaign (“Notice Start Date”),  
 11 which Epiq opines affords sufficient time to provide full and proper notice to Class Members  
 12 before the opt-out deadline (*id.* ¶ 21), and which also follows the recommendations of the Federal  
 13 Judicial Center’s Judges’ Class Action Notice and Claims Process Checklist and Plain Language  
 14 Guide.

15 These notice provisions meet the requirements of Rule 23. They will allow the Certified  
 16 Class a full and fair opportunity to review and respond to the proposed settlement.

17 **D. Proposed Schedule for Dissemination of Notice and Final Approval**

18 Plaintiffs propose the following schedule for the dissemination of class notice and final  
 19 approval:

Event	Proposed Deadline
Notice campaign to begin, including website, mailing, and digital notice	(30 days following Epiq’s receipt of final and approved Class member contact data)
Last day for motion for attorneys’ fees, costs, expenses, and service awards	(35 days before objection deadline)
Last day for objections	(60 days from notice)
Last day for requests for exclusion from the Class (for Class members who were not within the scope of the prior Class Notice program)	(60 days from Notice Start Date)

Last day for motion in support of final approval of settlements	(14 days after objection deadline)
Fairness Hearing	(38 days from motion for final approval), unless otherwise ordered by the Court.

**V. CONCLUSION**

The Settlement provides \$95 million for the Certified Class. This Settlement was reached after intense negotiations that followed several years of hard-fought litigation and easily falls within the range of possible approval. Respectfully, Plaintiffs request that this Court enter an order: (1) preliminarily approving the proposed class action settlement with Apple; and (2) approving the manner and form of notice and proposed plan of allocation to Class members.

DATED: October 1, 2021

HAGENS BERMAN SOBOL SHAPIRO LLP  
 Steve W. Berman (*pro hac vice*)  
 Robert B. Carey (*pro hac vice*)  
 Michella A. Kras (*pro hac vice*)  
 Renee F. Kennedy (*pro hac vice*)

By: /s/ Steve W. Berman  
 Steve W. Berman (*Pro Hac Vice*)  
 1301 Second Avenue, Suite 2000  
 Seattle, WA 98101  
 Telephone: (206) 623-7292  
 Facsimile: (206) 623-0594

*Attorneys for Plaintiffs*