

1 Gregory F. Coleman*
 gcoleman@milberg.com
 2 Adam A. Edwards*
 aedwards@milberg.com
 3 William A. Ladnier (CA Bar No. 330334)
 wladnier@milberg.com
 4 **MILBERG COLEMAN BRYSON**
PHILLIPS GROSSMAN, PLLC
 5 800 S. Gay Street, Suite 1100
 Knoxville, TN 37929
 6 Tel: (865) 247-0080
 Fax: (865) 522-0049

7 Hassan A. Zavareei (CA Bar No. 181547)
 hzavareei@tzlegal.com
 8 Andrea R. Gold*
 agold@tzlegal.com
 9 Allison Parr*
 aparr@tzlegal.com
 10 **TYCKO & ZAVAREEI LLP**
 2000 Pennsylvania Avenue, NW, Suite 1010
 11 Washington, DC 20006
 Tel: (202) 973-0900
 12 Fax: (202) 973-0950

13 * *Admitted pro hac vice*

14 *Attorneys for Plaintiffs*
15 *and the Proposed Classes*

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**

18 LISA TABAK, DE'JHONTAI
 19 BANKS, MATTHEW WHITE, KELLY
 CAMELO-CENICOLA, NESTOR
 20 TRUJILLO, and CHRISTINE CLEMENCE,
 on behalf of themselves and all others
 21 similarly situated,

22 Plaintiffs,

23 v.

24 APPLE, INC.,

25 Defendant.
26

CASE NO. 4:19-CV-02455-JST

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

Judge: Hon. Jon S. Tigar

Date: June 29, 2023

Time: 2:00 p.m.

Place: Courtroom 6, 2nd Floor
1301 Clay Street, Oakland, CA 94612

NOTICE OF MOTION

PLEASE TAKE NOTICE THAT on June 29, 2023 at 2:00 p.m., or as soon thereafter that the matter may be heard, in the Courtroom of the Honorable Jon S. Tigar, of the United States District Court for the Northern District of California, located in Courtroom 6 on the 2nd Floor, 1301 Clay Street, Oakland, CA 94612, Oakland Courthouse, Plaintiffs Lisa Tabak, De’Jhontai Banks, Matthew White, Kelly Camelo-Cenicola, Nestor Trujillo, and Christine Clemence (“Plaintiffs”) will and hereby do move, pursuant to Federal Rule of Civil Procedure 23, this Court for an Order (1) preliminarily approving the Proposed Settlement settling their claims, both on behalf of themselves and on behalf of a Settlement Class of similarly situated individuals; (2) certifying the Settlement Class for settlement purposes only; (3) directing notice to the Settlement Class; (4) appointing Plaintiffs’ counsel as Class Counsel and Plaintiffs as Class Representatives; and (5) scheduling a final approval hearing. As discussed more fully in the attached Memorandum of Points and Authorities, the Parties have negotiated a Settlement that provides substantial compensation to consumers who allegedly experienced certain audio issues with their iPhone 7 and iPhone 7 Plus devices, thereby providing meaningful relief to Class Members for the alleged defect. The proposed notice program, which was negotiated and agreed to by the Parties, includes both email notice and postcard notice, and thereby provides the best notice practicable under the circumstances, as required by Federal Rule of Civil Procedure 23. Thus, in this Motion, which is unopposed by Defendant Apple Inc., Plaintiffs respectfully request that the Court grant preliminary approval of the Proposed Settlement, direct notice to the proposed Settlement Class, and schedule a final approval hearing.

Dated: May 25, 2023

/s/ William A. Ladnier

William A. Ladnier (CA Bar No. 330334)

wladnier@milberg.com

Gregory F. Coleman*

gcoleman@milberg.com

Adam A. Edwards

aedwards@milberg.com

**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC**

800 S. Gay Street, Suite 1100
Knoxville, TN 37929
Tel: (865) 247-0080
Fax: (865) 522-0049

Andrea R. Gold*
agold@tzlegal.com
Hassan A. Zavareei (CA Bar No. 181547)
hzavareei@tzlegal.com
Allison Parr*
aparr@tzlegal.com

TYCKO & ZAVAREEI LLP
2000 Pennsylvania Avenue NW, Suite 1010
Washington, DC 20006
Tel: (202) 973-0900
Fax: (202) 973-0950

Annick Persinger (CA Bar No. 272996)
TYCKO & ZAVAREEI LLP
1970 Broadway, Suite 1070
Oakland, CA 94612
Tel: (510) 254-6808

** Admitted pro hac vice*

*Attorneys for Plaintiffs
and the Proposed Settlement Class*

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiffs originally filed this proposed class action against Defendant Apple Inc., (“Apple”) on May 6, 2019. Following approximately four years of vigorous litigation and discovery, the parties have reached an agreement to resolve the claims raised in this Action (the “Settlement” or the “Proposed Settlement”)¹. The Settlement provides for a total fund of \$35,000,000, providing between \$50 to \$349 to Settlement Class Members who paid Apple out-of-pocket for a repair or replacement (“OOP Payees”) for certain alleged audio-related issues with their iPhone 7 or iPhone 7 Plus phones and up to \$125 to Settlement Class Members who complained to Apple about such alleged audio-related issues but did not pay out-of-pocket to Apple for a repair or replacement (“Complainants”). The Proposed Settlement, which is attached as **Exhibit 1** to the Joint Declaration of Proposed Class Counsel (“Counsel Decl.”), was reached only after extensive litigation and arm’s-length negotiations before Mr. Randall Wulff, an experienced mediator. The Proposed Settlement is fair, reasonable, and adequate, and provides meaningful relief to the proposed Settlement Class, while balancing the risks and delays of continued, protracted litigation, including class certification briefing, expert reports, trial, and the potential for no recovery to Plaintiffs at all. Such recovery aligns with other consumer class action settlements approved in this District.² Based on an informed evaluation of the facts and governing legal principles, Plaintiffs respectfully request that the Court preliminarily approve the Proposed Settlement.

¹ Unless otherwise specifically defined herein, all capitalized terms have the same meanings as those set forth in the Parties’ Settlement Agreement, attached as **Exhibit 1**.

² See, e.g., *Bronson v. Samsung Elecs. Am., Inc.*, No. C 18-02300 WHA, 2020 WL 1503662, at *2 (N.D. Cal. Mar. 30, 2020); *In re Nexus 6P Products Liability Litigation*, No. 17-cv-02185-BLF, 2019 WL 6622842, at *1-2 (N.D. Cal. Nov. 12, 2019); *Miller v. Ghirardelli Chocolate Co.*, No. 12-cv-04936-LB, 2015 WL 758094 (N.D. Cal. Feb. 20, 2015); *Larsen v. Trader Joe’s Co.*, No. 11-cv-05188-WHO, 2014 WL 3404531 (N.D. Cal. July 11, 2014); *In re Apple iPhone/iPod Warranty Litig.*, No. CV-10-01610, 2014 WL 12640497, at *3 (N.D. Cal. May 8, 2014).

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

This case involves an alleged defect in iPhone 7 and iPhone 7 Plus devices (the “iPhones”), which were designed, marketed, and sold by Apple. This alleged issue affects the audio IC chip on the iPhone’s logic board and allegedly impacts the iPhone’s audio functionality. Plaintiffs allege the iPhone’s casing can bend excessively through normal and intended use, severing the connection between the audio IC chip and the logic board. As a result, Plaintiffs allege that the iPhones may experience issues with audio functionality as described in the Second Amended Complaint.

B. Procedural History

Plaintiffs filed their original Complaint on May 6, 2019. ECF No. 1. Following an amendment and full briefing on Apple’s motion to dismiss the complaint, the Court granted partial dismissal with leave to amend. ECF No. 62. Plaintiffs filed the operative Second Amended Complaint on February 20, 2020. ECF No. 67. Following further briefing on another motion to dismiss, the Court dismissed several claims with prejudice and left intact certain express warranty claims, implied warranty claims under the Song-Beverly Consumer Warranty Act, various state consumer protection claims, and common law fraud and negligent misrepresentation claims. ECF No. 90.

Since that time, the parties have engaged in significant discovery, issuing and responding to multiple sets of requests for production, interrogatories, and requests for admission. Counsel Decl. ¶ 7. Apple has produced, and Plaintiffs have reviewed, hundreds of thousands of pages of documents. *Id.* Plaintiffs requested, and reviewed, documents relating to third-party sales of the iPhones. *Id.* Apple deposed all named Plaintiffs. *Id.* ¶ 8. Further, the Parties have met and conferred extensively regarding discovery and testing of the iPhones, and, following a joint discovery letter and conference with the Court, they engaged a neutral expert to accomplish some of this testing.

1 See ECF No. 140; *see also* Counsel Decl. ¶ 9. The Court set regular case management conferences
2 for the Parties to discuss discovery, case status, and mediation. *See* ECF 94, 115, 117, 156.

3 At the Court’s request, the Parties engaged neutral mediator Randall Wulff to conduct a
4 mediation on November 2, 2022. With Mr. Wulff’s aid, the Parties reached an agreement to settle.
5 Since that mediation, the parties have continued to discuss and finalize the settlement terms.

6 **III. THE PROPOSED SETTLEMENT**

7 The Proposed Settlement provides substantial, meaningful relief to current and former
8 owners of the iPhones by compensating all who reported to Apple an alleged issue regarding the
9 iPhone 7 and iPhone 7 Plus reflected in Apple’s records as Sound-Speaker, Sound-Microphone,
10 Sound – Receiver, Unexpected Restart / Shutdown, or Power On – Device Unresponsive, with
11 higher compensation to those who paid out of pocket to Apple for a repair or replacement. The
12 Settlement Fund will contain enough funds to ensure that Settlement Class Members receive full
13 and fair relief.

14 **A. The Proposed Settlement Class**

15 The Settlement contemplates certification of the following Settlement Class for settlement
16 purposes only:

17 [I]ndividual persons who are United States residents and who own or owned an
18 Apple iPhone 7 or 7 Plus and reported to Apple in the United States Covered Issues,
19 including but not limited to those who paid Apple out of pocket for repairs or
20 replacements for Covered Issues as reflected in Apple’s records. The Settlement
21 Class excludes Apple; any entity in which Apple has a controlling interest; Apple’s
22 directors, officers, and employees; Apple’s legal representatives, successors, and
23 assigns. Also excluded from the Settlement Class are all judicial officers assigned
24 to this case as well as their staff and immediate families. The Class Period shall be
25 September 16, 2016, to January 3, 2023.

26 Settlement Agreement (“SA”) ¶ 25, Ex. A.

27 “Covered Issues” are defined as “issues reported to Apple regarding the iPhone 7 and
iPhone 7 Plus reflected in Apple’s records as Sound-Speaker, Sound-Microphone, Sound –
Receiver, Unexpected Restart / Shutdown, or Power On – Device Unresponsive.” *Id.*

1 The Settlement Class is more precisely defined than the classes set out in the operative
2 complaint. ECF No. 67, ¶¶ 245-46 (Procedural Guidance for Class Action Settlements
3 (“Guideline”) 1(a)). The Settlement Class includes all individuals who owned an iPhone 7 or 7
4 Plus, allegedly experienced a Covered Issue, and contacted Apple regarding the Covered Issue.
5 Purchasers of iPhone 7 or iPhone 7 Plus who did not experience any issue are not Settlement Class
6 Members. *See* Guideline 1(c).

7 Plaintiffs narrowed the Settlement Class given the serious risk associated with litigating
8 the claims of iPhone 7 and 7 Plus purchasers who never experienced the alleged audio issue. For
9 example, at trial, Apple could argue before a jury that the iPhone owners who never experienced
10 any alleged audio issue were never harmed—or that because a large majority of the iPhones did
11 not manifest any audio issue, there was no defect. In defining the Settlement Class to only include
12 those individuals who alleged that they experienced an issue, these risks are alleviated. Balancing
13 these risks with ensuring a recovery on behalf of the Settlement Class Members who experienced
14 an alleged audio issue is fair and reasonable.

15 **B. Benefits to the Settlement Class Members**

16 Apple will provide \$35,000,000 for the Settlement Fund to cover all Settlement Class
17 Member payments, administrative expenses, any taxes owed upon the gross settlement amount
18 (excluding taxes owed by any individual Settlement Class Counsel, Plaintiffs, or Settlement Class
19 Members), any attorneys’ fee and expense awards, and any class representative service awards.
20 SA ¶ 14. While recognizing that the Settlement entitles Class Counsel to apply for reasonable fees
21 and expenses, the outcome of that request will not impact the settlement becoming effective, and
22 Apple reserves the right to object to or oppose Class Counsel’s request for attorneys’ fees and
23 expenses. Settlement Class Members who provide valid payment information (directing the
24 settlement administrator as to whether they prefer to receive payment by physical check, electronic
25 check or direct deposit, and providing the information necessary for their chosen payment method)
26 will receive payment from the Settlement Fund. Any Settlement Class Member who paid any out-

1 of-pocket expenses to Apple for a repair or replacement allegedly relating to a Covered Issue
2 (“OOP Payee”) and who submits valid payment information will receive a cash payment between
3 \$50 and \$349, with all OOP Payees receiving the same amount. *Id.*, § B.3. Any Settlement Class
4 Member who did not pay out-of-pocket costs to Apple for repairs allegedly relating to a Covered
5 Issue (“Complainant”) and who submits valid payment information will receive a cash payment
6 of up to \$125, capped at 75% of the payment to OOP Payees, with all Complainants receiving the
7 same amount. *Id.* Settlement Class Members will have 105 days from the Notice Date (which is to
8 be established by the Court upon preliminarily approving the Settlement) to submit payment
9 information. *Id.* ¶ 21.

10 Should any payments to Class Members fail or remain uncashed after 120 days, such funds
11 will be used to pay any unanticipated costs of administration. *Id.* § B.7. If funds still remain after
12 payment of unanticipated administrative costs, the remaining funds will be distributed to Girls
13 Who Code as the *cy pres* recipient, subject to the Court’s approval. *Id.* § B.8. Under no
14 circumstances shall any settlement funds revert to Apple. *Id.* § B.7.

15 C. Settlement Administration

16 The parties have agreed to retain Angeion Group (“Angeion”) as the Settlement
17 Administrator, subject to the Court’s approval. SA § F.1; *see also* Counsel Decl. ¶ 23. Angeion
18 has substantial experience in managing class settlements nationwide. Declaration of Steven
19 Weisbrot of Angeion Group, LLC (“Weisbrot Decl.”) ¶¶ 9-10. Before deciding on Angeion, the
20 Parties reviewed competitive proposals from three prominent settlement administrators, all of
21 whom proposed similar methods of notice and class payment, with Angeion ultimately providing
22 the most cost-effective bid. Counsel Decl. ¶¶ 19-22. In the past two years, proposed Class Counsel
23 has worked with Angeion 35 times. *Id.* ¶ 24. All settlement administrative expenses will be paid
24 from the Settlement Fund. SA § F.1; Guideline 2(b).

25 Assuming 210,000 Settlement Class Members submit their payment information, which
26 Angeion estimates based on extensive prior experience in similar class actions as detailed in the
27

1 Administrator Declaration, the Administrator has agreed to cap the costs of notice and
2 administration at \$574,000, which is in line with the costs charged by other settlement
3 administrators for a comparable notice plan and effectuation of payment. Counsel Decl. ¶ 21;
4 Weisbrot Decl. ¶ 27.

5 The Administrator will oversee Notice to the Settlement Class Members and administration
6 of the Settlement Fund. Weisbrot Decl. ¶¶ 12-18. The Administrator also has established
7 procedures for handling class member data and accepts responsibility for mishandling of this data.
8 *Id.* ¶¶ 22-26; Guideline 2(b).

9 **D. Class Notice**

10 Apple will provide the Settlement Administrator with a list of Settlement Class Members,
11 including their emails and physical addresses to the extent available. SA § F.3. As soon as
12 practicable—but no later than 30 days following the date on which Apple provides the Settlement
13 Administrator the Settlement Class list—Notice will be sent via email to those Settlement Class
14 Members for whom Apple has an email address on record. *Id.* § F.4. Where Apple has only a
15 physical address for a Settlement Class Member, Notice will be sent via direct mail postcard. *Id.*
16 Should the Notice reach less than 90% of Settlement Class Members, the Settlement Administrator
17 will provide supplemental notice via direct mail postcard to those Settlement Class Members
18 whose emails were returned as undeliverable. Such supplemental notice will be completed at least
19 30 days prior to the deadline to submit an objection to or exclusion from the Settlement (“Objection
20 and Exclusion Deadline”). Additionally, the Settlement Administrator will create and administer
21 a settlement website and toll-free number where Settlement Class Members can easily access
22 information regarding the Settlement, review Settlement-related documents and deadlines, and
23 review procedures for submitting payment information, exclusion requests, or objections.

24 **E. Opt-Outs and Objections**

25 The Full Class Notice and Settlement Website will advise Settlement Class Members of
26 their right to opt out of or object to the Settlement, of Class Counsel’s application for Attorneys’
27

1 Fees and Expenses and for Service Awards to the Class Representatives, and of all deadlines and
2 dates associated with the Settlement. SA §§ F.5, F.6, Ex. A. A motion for attorneys' fees will be
3 filed at least 35 days prior to the Objection and Exclusion Deadline, as set forth in the timeline in
4 the proposed preliminary approval order. *See* Guideline 9. Settlement Class Members who wish to
5 object must mail a written objection to the Court on or before the Objection and Exclusion
6 Deadline (105 days after the Notice Date), providing: (a) the full name, address, telephone number,
7 and email address of the objector and any counsel representing the objector; (b) the case name and
8 number; (c) information sufficient to verify that the objector is a Settlement Class Member; (d)
9 whether the objection applies only to the objector, to a specific subset of the class, or to the entire
10 class; (e) the grounds for the objection; and (f) the objector's signature. SA ¶ 17, § D.4; *see also*
11 Guideline 5. Any objector wishing to appear and be heard at the Final Approval Hearing must
12 include a Notice of Intention to Appear in the Objection. SA § D.5. Settlement Class Members
13 may exclude themselves from the Settlement by submitting to the Administrator a written request
14 for exclusion on or before the Objection and Exclusion Deadline (105 days after the Notice Date)
15 online through the Settlement Website or by U.S. Mail, which must include: (a) the Settlement
16 Class Member's name, address, and telephone number; (b) the Settlement Class Member's
17 signature; and (c) a clear request that the individual would like to "opt out" or be excluded from
18 the Settlement. SA ¶ 17, § E.2; *see also* Guideline 4.

19 **F. Attorneys' Fees and Expenses**

20 Plaintiffs' counsel seek to be appointed as Class Counsel and intend to seek an award of
21 reasonable attorneys' fees and expenses. The Parties did not discuss fees and expenses during the
22 negotiations of the Settlement. Counsel Decl. ¶ 35. Following finalization of the Settlement's
23 terms, the Parties agreed that any awarded fees and expenses would be paid from the Settlement
24 Fund prior to distribution to the Settlement Class Members. SA ¶ 2. The Parties have not agreed
25 to any award of attorneys' fees or expenses, and Apple may object to the request for attorneys'
26 fees and expenses. *Id.* § G.2. Proposed Class Counsel shall file a separate request for fees and
27

1 expenses. Proposed Class Counsel intends to seek \$8,750,000 in attorneys’ fees and costs. This
2 figure represents a 25% benchmark compared to the total Settlement amount. Apple reserves the
3 right to object to or oppose Class Counsel’s requests for attorneys’ fees and expenses.

4 **G. Service Award to Named Plaintiffs**

5 Plaintiffs played a vital role in litigating this case, including reviewing pleadings and other
6 filings, staying abreast of the status of the case and regularly discussing the matter with their
7 counsel over a period of years, responding to discovery, searching for and producing documents,
8 preparing and sitting for depositions, playing an active role in considering and approving
9 settlement terms, and ensuring the interests of putative class members were protected. Counsel
10 Decl. ¶¶ 28-34; *see also* Guideline 7. Therefore, Plaintiffs intend to petition the Court to award
11 each Plaintiff \$3,000—a total of \$18,000—in recognition of their active role and significant time
12 expended in furtherance of this important, multi-year litigation on behalf of the proposed
13 Settlement Class. SA § G.1. Apple has agreed not to oppose this request. *Id.*

14 **H. Cy Pres Recipient**

15 Following agreement of a settlement in principle, the Parties have jointly agreed to propose
16 Girls Who Code as the *cy pres* recipient, pending the Court’s approval. SA § B.8; Guideline 8; *see*
17 *also* Counsel Decl. ¶¶ 25-26. Girls Who Code is a national organization that works to diminish the
18 gender gap in technological professions, to increase exposure to underrepresented minorities in the
19 technological field, and to expand computer science curricula in schools. The Parties believe that
20 Girls Who Code is an appropriate potential *cy pres* recipient in this case.

21 **I. Class Action Fairness Act (“CAFA”)**

22 The Proposed Settlement fully complies with CAFA, 28 U.S.C. § 1711, *et seq.* *See*
23 Guideline 10. The Proposed Settlement does not provide for a recovery of coupons, does not result
24 in a new loss to any Class Member, and does not treat Class Members inequitably based upon
25 geographic location or any other factor. *See* 28 U.S.C. §§ 1712-14. Moreover, “[u]pon the filing
26 of the motion requesting issuance of the Preliminary Approval Order, Apple will provide timely
27

1 notice of such motion as required by 28 U.S.C. § 1715.” SA § C.3; *see also* Weisbrot Decl. ¶ 28;
2 Guideline 10.

3 **J. Comparable Settlements**

4 Plaintiffs have identified three comparable class settlements, which involve similar
5 allegedly deceptive marketing of consumer products manifesting an alleged defect. Guideline 11.
6 These comparable settlements, which are discussed here, are also summarized in a chart included
7 as Appendix A to this Motion. *See id.*

8 *In re Apple iPhone/iPod Warranty Litigation*, the settlement class was certified to include
9 consumers who were required to pay out-of-pocket expenses to replace an iPhone or iPod due to
10 alleged issues with the liquid contact indicator on the devices. 2014 WL 12640497, at *2-3. On
11 average, eligible settlement class members there received an average payment of \$241 for each of
12 the approximately 152,000 affected class devices. *Id.* at *3. The *In re Apple iPhone/iPod Warranty*
13 *Litigation* court approved that settlement. *Id.* at *2. Here, the Proposed Settlement will provide up
14 to \$349 to Settlement Class Members who paid out-of-pocket costs and will, in addition, provide
15 cash benefits to those Settlement Class Members who did not incur costs.

16 *In re MacBook Keyboard Litigation*, which has been preliminarily approved but not finally
17 approved as of the date of this filing, involves consumer protection claims under various states’
18 laws brought on behalf of consumers who purchased certain Apple computers. No. 5:18-cv-02813-
19 EJD, 2022 WL 17409738, at *1 (N.D. Cal. Dec. 2, 2022). There, Apple established a \$50,000,000
20 common fund. Similar to the instant case, the allocation plan in *In re MacBook Keyboard*
21 *Litigation* includes multiple groups of claimants, whose recovery vary based on how the claimants
22 are categorized. *Id.* at *6. As of March 6, 2023, 86,117 claims were submitted to the settlement
23 administrator in *In re MacBook Keyboard Litigation*, and based on that claims rate, the settlement
24 administrator estimated that Group 1 class members would receive \$300, Group 2 class members
25 would receive \$125, and Group 3 class members would receive \$50. *In re MacBook Keyboard*
26 *Litigation*, 2022 WL 17409738, at *5-6.

1 *In re Nexus 6P Products Liability Litigation* asserted violations of California consumer
2 protection laws, as well as breach of warranty claims, on behalf of consumers who purchased
3 allegedly defective smartphones. 2019 WL 6622842, at *1-2. Defendants established a settlement
4 fund of \$9,750,000, which after notice and administrative expenses, attorneys’ fees and expenses,
5 taxes, and service awards, yielded a net settlement fund of \$6,375,000. *Id.* at *2. The *Nexus 6P*
6 settlement provided a tiered allocation plan, with the largest maximum payout reserved for class
7 members who had multiple devices manifesting the defects. *Id.* at *2-3. Direct notice was sent to
8 383,965 class members, and the parties estimated that 77% of the settlement class was contacted
9 through direct and indirect notice. *Id.* at *3-4. At the time final approval was granted, the parties
10 estimated that claimants would receive the following distributions: (1) 7,250 claimants would
11 receive approximately \$5; (2) 43,750 claimants would receive approximately \$10 or \$20,
12 depending on the type of defect (battery drain or bootloop); (3) 11,600 claimants would receive
13 approximately \$150 (battery defect) or \$325 (bootloop defect); and (4) approximately 5,000
14 claimants would receive \$400. *Id.* at *4. Following the distribution of benefits to class members,
15 payment of attorneys’ fees and costs, and payment of \$319,972.84 in administrative costs, a total
16 of \$132,920.62 remained and was distributed to the *cy pres* recipient. *See In re Nexus 6P Prods.*
17 *Liab. Litig.*, ECF Nos. 232 (N.D. Cal. Mar. 6, 2023), 238 ECF No. 238 (N.D. Cal. Apr. 27, 2021),
18 240 (N.D. Cal. Mar. 14, 2022), 241 (N.D. Cal. Mar. 15, 2022).

19 These cases support compensating Settlement Class Members who actually experienced
20 manifestation of the alleged issue. Here, the Proposed Settlement will provide up to \$349 to
21 Settlement Class Members who paid out-of-pocket and will, in addition, provide cash benefits to
22 those Settlement Class Members who did not. These settlements strongly support preliminary
23 approval of this Proposed Settlement

24 **IV. LEGAL STANDARD**

25 In the Ninth Circuit, there is a “strong judicial policy that favors settlements” of class
26 actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). “[T]here is an
27

1 overriding public interest in settling and quieting litigation,” and this is “particularly true in class
2 action suits.” *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976). Recognizing that
3 “[p]arties represented by competent counsel” are “positioned . . . to produce a settlement that fairly
4 reflects each party’s expected outcome in [the] litigation,” courts favor approval of settlements. *In*
5 *re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). At the preliminary approval stage,
6 courts generally “require a determination of whether the proposed settlement ‘falls within the range
7 of possible approval’ and ‘has no obvious deficiencies.’” *O’Connor v. Uber Techs., Inc.*, No. 13-
8 CV-03826-EMC, 2019 WL 1437101, at *4 (N.D. Cal. Mar. 29, 2019). Moreover, preliminary
9 approval should be granted where the parties have ‘show[n] that the court will likely be able to . . .
10 approve the proposal under [the final approval factors in] Rule 23(e)(2)’” and ‘certify the class for
11 purposes of judgment on the proposal.’” *Id.* (citing Fed. R. Civ. P. 23(e)(1)(B)). The relative degree
12 of importance to be attached to any particular factor will depend upon . . . the unique facts and
13 circumstances presented by each individual case.” *Officers for Justice v. Civil Serv. Comm’n of*
14 *City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). In particular, determining whether
15 a proposed settlement is fair, adequate and reasonable depends upon:

16 (1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely
17 duration of further litigation; (3) the risk of maintaining class action status
18 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
19 completed and the stage of the proceedings; (6) the experience and views of
20 counsel; (7) the presence of a governmental participant; and (8) the reaction of the
21 class members to the proposed settlement.

22 *Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566, 575 (9th Cir. 2004).

1 **V. ARGUMENT**

2 **A. The Court Should Approve the Proposed Settlement Because It Is Fair,**
 3 **Reasonable, and Adequate.**

4 The Proposed Settlement represents a fair, reasonable, and adequate resolution to this
 5 litigation, providing meaningful relief to consumers. The relevant considerations weigh in favor
 6 of preliminarily approving—and of eventually finally approving—the Proposed Settlement.

7 **1. The Proposed Settlement is the result of good faith, arm’s-length**
 8 **negotiations before an experienced Mediator.**

9 The Parties reached the Proposed Settlement following a day-long mediation session and
 10 extensive discussions thereafter overseen by Randall Wulff, an experienced litigator and mediator
 11 capable of analyzing the strengths and weaknesses of the parties’ cases. Mr. Wulff offered a
 12 reasonable, unbiased analysis of each party’s arguments, claims, and defenses, helping the Parties
 13 to recognize the validity (and shortcomings) of their positions. Mr. Wulff ensured that the Parties’
 14 negotiations were conducted in good faith and at arm’s length. After an approximately 10-hour
 15 mediation session and numerous discussions thereafter, the parties reached an agreement to settle.
 16 “[T]he assistance of an experienced mediator in the settlement process confirms that the settlement
 17 is non-collusive.” *See G. F. v. Contra Costa Cnty.*, No. 13-cv-03667-MEJ, 2015 WL 4606078, at
 18 *13 (N.D. Cal. July 30, 2015) (citation omitted); *Villegas v. J.P. Morgan Chase & Co.*, No. CV
 19 09–00261 SBA (EMC), 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (noting that private
 20 mediation “tends to support the conclusion that the settlement process was not collusive”). This
 21 favors preliminary approval.

22 **2. The Proposed Settlement falls within the range of possible approval.**

23 It is axiomatic that “the very essence of a settlement is compromise, ‘a yielding of absolutes
 24 and an abandoning of highest hopes.’” *Officers for Just. v. Civ. Serv. Comm’n of City & Cnty. of*
 25 *San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982). The Proposed Settlement provides substantial
 26 monetary relief to the Class considering (1) the costs, risks, expenses, and delays of trial and
 27

1 appeal, (2) the effectiveness of the proposed distribution plan, and (3) the fair and explained terms
2 of the substantial gross Settlement fund that will sufficiently pay for all of the settlement costs,
3 including any award of attorneys' fees and expenses. Fed. R. Civ. P. 23(e)(2)(C).

4 *a. The Strengths and Risks of Plaintiffs' Case and the Complexity*
5 *and Likely Duration of Further Litigation*

6 The Proposed Settlement provides substantial relief to the Class in the face of the inherent
7 uncertainties of litigation. "The substantial and immediate relief provided to the Class under the
8 Settlement weighs heavily in favor of its approval compared to the inherent risk of continued
9 litigation, trial, and appeal, as well as the financial wherewithal of the defendant." *Kim v. Space*
10 *Pencil, Inc.*, No. C 11-03796 LB, 2012 WL 5948951, at *5 (N.D. Cal. Nov. 28, 2012).

11 This case presents significant risks to recovery. On the merits, Apple disputes all Plaintiffs'
12 claims. Since inception, Apple has denied that the iPhone 7 and 7 Plus contained any alleged
13 defect. Apple also argued that Plaintiffs and all consumers of the iPhone 7 and iPhone 7 Plus
14 received the benefit of their bargain. According to Apple, the challenged components and design
15 are not deficient. Further, Apple maintains that all its representations were true and denies that
16 Apple at any time acted in violation of any consumer protection law or inconsistent with its
17 warranties. Additionally, Apple denies that class treatment is appropriate under the circumstances
18 and will point to what it claims are individualized issues.

19 There is meaningful risk that a factfinder could agree with Apple at trial. Indeed, consumer
20 class action trials are inherently risky. Seemingly meritorious class actions have recently gone to
21 trial in California, with judgments returned for defendants. *See e.g., Farar v. Bayer AG*, No. 14-
22 cv-4601 (N.D. Cal. 2017); *Allen v. Hyland's, Inc.*, No. 12-cv-1150 DMG (MANx) (C.D. Cal.
23 2014); *cf. Racies v. Quincy Bioscience, LLC*, No. 15-cv-292 (N.D. Cal. 2017) (declaring mistrial
24 and decertifying class).

25 Similarly, summary judgment is also not without risk, where Apple could analogize to the
26 Ninth Circuit's recent dismissal in *Hamilton v. TBC Corp.*, 821 F. App'x 720, 723 (9th Cir. 2020).

1 There, the Ninth Circuit held that plaintiffs were not able to pinpoint and prove a defect to support
2 their claims. Proving an actionable defect can be difficult even in strong cases. *Id.* Therefore, in
3 the face of additional months, if not years, of litigation, Plaintiffs must weigh the very real risk
4 that the Court—or a jury—could be unconvinced that a legitimate defect exists in the iPhones.
5 Accordingly, while Plaintiffs vigorously dispute Apple’s contentions on the merits, the risks of
6 litigation weigh in favor of settlement. *See Knapp v. Art.com, Inc.*, 283 F. Supp. 3d 823, 832 (N.D.
7 Cal. 2017) (approving settlement where “[c]ase law suggests that plaintiff would have faced
8 challenges in continuing to litigate” and “unless the settlement is clearly inadequate, its acceptance
9 and approval are preferable to lengthy and expensive litigation with uncertain results”).

10 *b. The Risk of Maintaining Class Action Status*

11 The risk of maintaining class action status through trial supports preliminary approval.
12 Counsel Decl. ¶¶ 15-16. A class has not been certified in this case, and Apple will oppose
13 certification if the case proceeds. *See In re Netflix Privacy Litig.*, No. 5:11-CV-00379 EJD, 2013
14 WL 1120801, at *6 (N.D. Cal. Mar. 18, 2013). Indeed, Apple would argue that individual questions
15 predominate over common questions with regard to exposure, reliance, materiality, causation, and
16 injury. Although Plaintiffs assert that certification for litigation is appropriate here, the risk remains
17 that the Court could refuse to certify a class. In that event, putative class members would receive
18 nothing. And even if the Court did certify a litigation class, Plaintiff would still face potential
19 review on appeal, and would need to prove their claims at trial, which carries serious expense and
20 further delay—potentially delaying recovery for years. Likewise, Plaintiffs would continue to face
21 the risk that a “district court may decertify a class at any time.” *Rodriguez v. W. Publ’g Corp.*, 563
22 F.3d 948, 966 (9th Cir. 2009). The Proposed Settlement allows Plaintiffs and Settlement Class
23 Members to avoid these risks, additional expenses, and delays in favor of immediate recovery.

24 *c. The Amount Offered in Settlement*

25 Plaintiffs and their counsel secured for the Settlement Class a gross Settlement fund of
26 \$35,000,000, which is reasonable in relation to potential trial damages for the Settlement Class.

1 As discussed above, after mediation with Mr. Wulff and analysis of the facts and risks, the
2 Plaintiffs concluded that it was appropriate to define a Settlement Class of iPhone 7 and 7 Plus
3 owners nationwide who allegedly experienced a manifestation of the Defect and who contacted
4 Apple regarding the Covered Issue. Thus, the recovery under this Settlement is different than
5 recovery at trial based on Plaintiffs' complaint. But settling on these bases avoids the more
6 significant risks associated with seeking certification of or trying claims by consumers who never
7 experienced any alleged audio issue and who enjoyed full use of their iPhone.

8 The Settlement ensures payment of up to \$349 through a straightforward process to any
9 consumer who paid out-of-pocket expenses allegedly related to a Covered Issue. This figure is
10 intended to compensate such consumers, because it is designed to track the average out-of-pocket
11 expenses related to repairing or replacing an iPhone allegedly experiencing one of the Covered
12 Issues. Apple's data shows that, on average, following alleged manifestation, customers paid \$193
13 in out-of-pocket expenses to Apple for repairs or replacements allegedly related to the Covered
14 Issues. Additional benefits are reserved for those who contacted Apple allegedly regarding a
15 Covered Issue but did not pay for repairs or replacements. These consumers may receive up to
16 \$125.

17 This tiered allocation plan ensures that consumers are reasonably compensated for Covered
18 Issues they allegedly experienced with their iPhones and, where applicable, their out-of-pocket
19 payments. The plan also reasonably compares to any recovery that could be awarded to
20 compensate for Covered Issues they allegedly experienced without related out-of-pocket costs.
21 The Settlement benefits available to OOP Payees amount to 180% of the total average costs paid
22 by them to Apple related to Covered Issue.

23 *d. Extent of Discovery Completed and Stage of Proceedings*

24 The Parties have been engaged in discovery since 2021, document production and review
25 are substantially complete (with hundreds of thousands of pages produced and reviewed), and all
26 of the named Plaintiffs had been deposed at the time the Parties engaged in the mediation that

1 resulted in the Proposed Settlement. *See* Counsel Decl. ¶¶ 7-8. Plaintiffs have conducted sufficient
2 discovery, including from Apple and third-party retailers, to permit Plaintiffs’ counsel and the
3 Court to intelligently and fairly evaluate the fairness and adequacy of the Settlement. This favors
4 preliminary approval.

5 *e. Views of Class Counsel*

6 Proposed Class Counsel, who are experienced in consumer class action litigation, believe
7 the Proposed Settlement represents an outstanding recovery for the Settlement Class given the
8 risks of continuing the litigation. Counsel Decl. ¶¶ 15-16. “Great weight is accorded to the
9 recommendation of counsel, who are most closely acquainted with the facts of the underlying
10 litigation.” *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

11 *f. Government Participation, Class Member Reactions, and Other*
12 *Cases Affected*

13 There is no government participant and, because the Court has not yet approved Notice,
14 the Settlement Class has not had an opportunity to react, so these factors are neutral. *See Hillman*
15 *v. Lexicon Consulting, Inc.*, 2017 WL 10433869, at *8 (C.D. Cal. April 27, 2019). Moreover, Class
16 Counsel is aware of no other cases that will be affected by the Settlement. Counsel Decl. ¶ 27; *see*
17 *also* Guideline 1(d).

18 **3. The Proposed Settlement treats Settlement Class Members equitably.**

19 The Proposed Settlement provides benefits to all Settlement Class Members who submit
20 valid payment information, without any preferential treatment of Class Representatives or any
21 segment of the Settlement Class. *See* Fed. R. Civ. P. 23(e)(2)(D). Specifically, all Settlement Class
22 Members who submit valid payment information will receive cash payments that are proportionate
23 to the type of injury allegedly suffered. OOP Payees will be paid between \$50 and \$349, while
24 Complainants—who did not pay any out-of-pocket expenses allegedly due to a Covered Issue—
25 will receive up to \$125. Each OOP Payee will receive the same amount under the Settlement as
26 other OOP Payees, and each Complainant will receive the same amount as other Complainants.

1 This plan of allocation protects the interests of all parties by directing relief to the most
2 significantly impacted Settlement Class Members—awarding more to OOP Payees, while also
3 paying Complainants. *See In re MacBook Keyboard Litig.*, 2022 WL 17409738, at *6
4 (preliminarily approving allocation plan which “divide[s] Claimants into three groups which are
5 based on the extent of Settlement Class Members’ injuries Compensation varies by group,
6 with those who have experienced the greatest harm in Group 1 being compensated the greatest
7 amount”); *In re Nexus 6P Prod. Liab. Litig.*, 2019 WL 6622842, at *9 (“The plan divides claimants
8 into different groups based on the relative size of their potential claims and distributes funds based
9 on these groups.”).

10 Class Counsel intends to apply for a \$3,000 service award for each of the Plaintiffs as Class
11 Representatives for their dedication to and time expended during this litigation and in furtherance
12 of putative class members’ interests. Such service awards “are fairly typical in class action cases”
13 and are intended to compensate class representatives for work done on behalf of the class, to make
14 up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize
15 their willingness to act as a private attorney general.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948,
16 958-59 (9th Cir. 2009). The service awards are appropriate given the effort expended by the class
17 representatives, including sitting for day-long depositions. *See, e.g., In re Apple Inc. Device*
18 *Performance Litig.*, No. 5:18-md-02827-EJD, 2023 WL 2090981, at *19 (N.D. Cal. Feb. 17, 2023)
19 (granting \$3,500 service awards for each plaintiff who sat for their deposition). Such a service
20 award, if awarded here, would not constitute preferential treatment. Plaintiffs were not promised
21 that they would receive such an award for their participation in this litigation, and their agreement
22 to serve as class representatives was not conditioned on receiving such an award. Counsel Decl. ¶
23 34. If granted, such an award would be offered for the significant time the Class Representative
24 expended in this litigation, working tirelessly on behalf of the Class; it would be separate from and
25 not replace their recovery as Settlement Class Members, should they qualify. *See id.* ¶¶ 28-33.

1 Because all Settlement Class Members, including the named Plaintiffs, are treated in an
2 equitable manner under the Settlement, based upon the submission of valid payment information,
3 this factor weighs in favor of preliminary approval.

4 **4. The proposed Fee and Expense Award is fair and reasonable.**

5 Class Counsel intends to seek \$8,750,000 in attorneys' fees and expenses, which represents
6 a 25% benchmark. Should the Court award Class Counsel attorneys' fees and expenses, they will
7 be paid from the Settlement Fund. However, the Settlement is not contingent on Class Counsel's
8 fee and expense request, and the Settlement will remain intact regardless of the amount of fees and
9 expenses ultimately awarded. Further, the \$35,000,000 gross Settlement fund is designed to
10 contain funds sufficient to pay administrative costs and cover Class Counsel's requested fees and
11 expenses, while still ensuring that the Settlement Class is fairly and adequately compensated.
12 Apple reserves the right to object to or oppose Class Counsel's requests for attorneys' fees and
13 expenses.

14 Courts routinely favor parties who fully negotiate and finalize Settlement terms with non-
15 contingent class counsel fees. *E.g., In re Volkswagen "Clean Diesel" Mktg., Sales Practices &*
16 *Prod. Liab. Litig.*, MDL No. 2672 CRB, 2016 WL 6248426, at *23 (N.D. Cal. Oct. 25, 2016).
17 Here, while an award of reasonable attorneys' fees and expenses affects the net Settlement amount,
18 Class Counsel intend only to seek an award of fees and expenses that would ensure the Settlement
19 Class may still be fairly compensated, while weighing the risks borne and significant work and
20 time expended by Class Counsel in this multi-year litigation. *See In re Wells Fargo & Co.*
21 *Shareholder Derivative Litig.*, 445 F. Supp. 3d 508, 519 (N.D. Cal. 2020) ("For more than two
22 decades the Ninth Circuit has set the benchmark for an attorneys' fee award in a successful class
23 action at twenty-five percent of the entire common fund.") (Tigar, J.) (internal quotation marks
24 omitted); *Bakhtiar v. Info. Res., Inc.*, No. 17-cv-04559-JST, 2021 WL 4472606, at *7 (N.D. Cal.
25 Feb. 10, 2021) (same) (Tigar, J.). The Settlement is not contingent on Class Counsel's fees and
26

1 expenses and will ensure the Settlement Class is fairly compensated regardless of the fees and
2 expenses ultimately awarded. Accordingly, this favors preliminary approval.

3 **B. The Court Should Certify the Settlement Class for Settlement Purposes.**

4 Certification of a settlement class is a “two-step process.” *In re Volkswagen “Clean*
5 *Diesel” Mktg., Sales Practices & Prod. Liab. Litig.*, No. 2672 CRB, 2016 WL 4010049, at *10
6 (N.D. Cal. July 26, 2016) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997)).
7 First, the court must determine that the proposed settlement class satisfies the four requirements
8 of Rule 23(a). *Id.* The court then must examine whether a “class action may be maintained under
9 [Rule 23(b)].” *Id.* (citing *Amchem Prods.*, 521 U.S. at 613). Unlike other class actions, however,
10 when presented with a class action settlement, the court need not consider manageability concerns.
11 *Amchem Prods.*, 521 U.S. at 620.

12 **1. The Settlement Class meets the requirements of Rule 23(a).**

13 *a. The Settlement Class is sufficiently numerous.*

14 Rule 23(a)(1) requires that a class be sufficiently numerous so as to make joinder of all
15 class members impracticable. Fed. R. Civ. P. 23(a)(1). “Although there is no exact number, some
16 courts have held that numerosity may be presumed when the class comprises forty or more
17 members.” *Bailey v. Rite Aid Corp.*, 338 F.R.D. 390, 398 (N.D. Cal. 2021) (citation omitted). Here,
18 Apple has received 2,030,595 unique complaints from iPhone 7 and 7 Plus owners regarding
19 Covered Issues across the United States. Among these iPhone owners, approximately 113,000 paid
20 out of pocket for a repair or replacement (“OOP Payees”). Counsel Decl. ¶ 18. The total Settlement
21 Class, including the categories of Settlement Class Members, are so substantial that joinder is
22 impracticable.

23 *b. There are common questions of law and fact.*

24 Rule 23 also requires that there be “questions of law or fact common to the class.” Fed. R.
25 Civ. P. 23(a)(2). A common question must be of “such nature that it is capable of class-wide
26 resolution—which means that the determination of its truth or falsity will resolve an issue that is
27

1 central to the validity of each of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564
2 U.S. 338, 350 (2011). The commonality requirement should be “construed permissively,” and is
3 satisfied when class members share ‘some . . . legal issues or a common core of facts.’” *J.L. v.*
4 *Cissna*, No. 18-cv-04914-NC, 2019 WL 415579, at *9 (N.D. Cal. Feb. 1, 2019) (quoting *Rodriguez*
5 *v. Hayes*, 591 F.3d 1105, 1122 (9th Cir. 2010)). Here, whether the iPhone 7 and 7 Plus contained
6 the alleged defect, whether Apple had knowledge of the alleged defect, and whether Apple had a
7 duty to disclose the alleged defect are common questions affecting the putative class. Hence,
8 commonality is satisfied.

9 *c. The named Plaintiffs’ claims are typical of other Class Members’*
10 *claims.*

11 Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical
12 of the claims or defenses of the class,” and “assure[s] that the interest of the named
13 representative[s] align[] with the interests of the class,” *Wolin v. Jaguar Land Rover N. Am., LLC*,
14 617 F.3d 1168, 1175 (9th Cir. 2010) (citation omitted). This requirement, like commonality, is
15 “permissive and requires only that the representative’s claims are reasonably co-extensive with
16 those of absent class members; they need not be substantially identical.” *Rodriguez v. Hayes*, 591
17 F.3d at 1124 (citation and internal quotation marks omitted); *see also Stearns v. Ticketmaster*
18 *Corp.*, 655 F.3d 1013, 1019 (9th Cir. 2011) (noting that typicality is “satisfied when each class
19 member’s claim arises from the same course of events and each class member makes similar legal
20 arguments to prove the defendant’s liability”). Here, all Plaintiffs’ claims arise from the same
21 course of conduct. Because all Settlement Class Members purchased an iPhone 7 or 7 Plus and
22 allegedly experienced a Covered Issue, all “the named plaintiffs have the same or similar [alleged]
23 injury as the unnamed [Settlement Class Members].” *Keilholtz v. Lennox Hearth Prod. Inc.*, 268
24 F.R.D. 330, 337 (N.D. Cal. 2010). Accordingly, Plaintiffs’ experiences are typical of the
25 Settlement Class Members’ experiences, and their alleged injuries are similar. *See id.* at 338.

1 d. *The Class Representatives and Class Counsel will continue to*
2 *fairly and adequately protect the Settlement Class's interests.*

3 The adequacy requirement of Rule 23 demands that “the representative parties will fairly
4 and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Courts employ a two-
5 pronged approach to analyze adequacy, examining whether “the named plaintiffs and their counsel
6 have any conflicts of interest with other class members” and whether “the named plaintiffs and
7 their counsel [will] prosecute the action vigorously on behalf of the class.” *Evon v. Law Offices of*
8 *Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d
9 1011, 1020 (9th Cir. 1998)). Plaintiffs and their counsel meet both these requirements.

10 Plaintiffs’ interests are perfectly aligned with those of putative class members because their
11 individual class claims arise from the same alleged issues and course of conduct. *See supra* Section
12 V.B.1.c. There are no conflicts between Plaintiffs’ claims and those of Settlement Class Members.
13 Plaintiffs played an active role throughout this litigation by reviewing filings, answering discovery,
14 preparing for and sitting for depositions, staying informed of new developments in this Action,
15 and discussing the Proposed Settlement with their counsel to ensure the Proposed Settlement fairly
16 compensates Settlement Class Members. Counsel Decl. ¶¶ 28-32. *see also Clemens v. Hair Club*
17 *for Men, LLC*, No. C 15-01431 WHA, 2016 WL 1461944, at *2-3 (N.D. Cal. Apr. 14, 2016); *Cole*
18 *v. Asurion Corp.*, 267 F.R.D. 322, 327-28 (C.D. Cal. 2010). Since the inception of this litigation,
19 Plaintiffs zealously acted in the interests of the Class as a whole and will continue to protect the
20 interests of the Settlement Class through final approval. *See* Counsel Decl. ¶¶ 28-32.

21 Likewise, Plaintiffs’ counsel are committed to continuing to pursue this Action on behalf
22 of Plaintiffs’ and the Settlement Class Members’ interests. *Id.* ¶ 5. Plaintiffs’ counsel—Milberg
23 Coleman Bryson Phillips Grossman, PLLC (“Milberg”) and Tycko & Zavareei LLP—have
24 extensive experience in complex and class action litigation. *Id.* ¶¶ 39-41. Plaintiffs’ counsel seek
25 appointment as Class Counsel under Rule 23(g). Plaintiffs’ counsel have demonstrated their skill
26 and experience throughout this litigation by successfully staving off multiple motions to dismiss,
27

1 as well as expending significant time and effort in discovery in an effort to prepare to seek
 2 certification and, if necessary, to proceed to trial on behalf of the Class. Plaintiffs’ counsel retained
 3 and interfaced with qualified experts regarding the alleged challenged conduct in this case and to
 4 prepare to seek class certification. In addition to their extensive class action and complex litigation
 5 experience, including in litigating consumer product class actions like this one, Plaintiffs’ counsel
 6 brought their significant resources to bear in vigorously representing the interests of Plaintiffs and
 7 putative class members—and they will continue to do so on behalf of the Settlement Class through
 8 final approval and the disbursement of relief to the Settlement Class. The Court should appoint
 9 Plaintiffs’ counsel as Class Counsel, and should find that the adequacy requirement of Rule 23 has
 10 been met.

11 **2. The Settlement Class Meets the Requirements of Rule 23(b)(3).**

12 *a. Common issues of law and fact predominate.*

13 Rule 23(b)(3) first requires “predominance,” which tests the cohesion of the class,
 14 “ask[ing] whether the common, aggregation-enabling, issues in the case are more prevalent or
 15 important than the non-common, aggregation-defeating, individual issues.” *Tyson Foods, Inc. v.*
 16 *Bouaphakeo*, 577 U.S. 442, 453 (2016) (citation omitted). Predominance is ordinarily satisfied, for
 17 settlement purposes, when the claims arise out of the defendant’s common conduct. *Gold v.*
 18 *Lumber Liquidators, Inc.*, 323 F.R.D. 280, 288 (N.D. Cal. 2017) (predominance satisfied where
 19 claims were based on “the same deceptive conduct”); *Kacsuta v. Lenovo (U.S.) Inc.*, No. SACV
 20 13-00316-CJC(RNBx), 2014 WL 12585783, at *3 (C.D. Cal. 2014) (common issues “significantly
 21 outweigh any individual questions” where the claims arise out of the “same alleged course of
 22 conduct” by the defendant).

23 This Settlement Class is cohesive: All Settlement Members purchased an iPhone 7 or 7
 24 Plus that allegedly contain a common audio defect that Apple is alleged to have known about and
 25 failed to disclose, and the common questions noted above present a significant aspect of litigation
 26 and predominate. *See, e.g., Allagas v. BP Solar Int’l*, No. 3:14-cv-00560-SI (EDL), 2016 WL

1 9114163, at *3-4 (N.D. Cal. Dec. 22, 2016) (finding common issues, including alleged common
2 design defect, defendant’s alleged knowledge of the defect, and defendant’s alleged failure to
3 disclose known information about the defect, predominate). Thus, common questions predominate
4 for settlement purposes.

5 *b. A class action is the superior method for adjudicating, and*
6 *settling, the Plaintiffs’ and the Class’s claims.*

7 Rule 23(b)(3)’s superiority requirement inquires “whether the objectives of the particular
8 class action procedure will be achieved in the particular case,” *Hanlon*, 150 F.3d 1011 at 1023,
9 and whether maintaining the “litigation as a class action is efficient and . . . fair.” *Wolin*, 617 F.3d
10 at 1175-76 (citation omitted). Pursuant to the rule, a court must consider four factors for this
11 inquiry: (1) class members’ interests in individually controlling separate actions; (2) the extent and
12 nature of any litigation concerning the controversy already commenced by or against the class; (3)
13 the desirability of maintaining the litigation in the particular forum; and (4) the difficulties likely
14 to be encountered in managing a class action. Fed. R. Civ. P. 23(b)(3). All four factors favor
15 certification of the Settlement Class here.

16 *First*, the price of the subject iPhones—starting at \$649 for the iPhone 7 and \$769 for the
17 iPhone 7 Plus when they were first launched³—is not significant enough to provide the financial
18 incentive necessary for individual consumers to pursue this action. *Mazza v. Am. Honda Motor*
19 *Co.*, 254 F.R.D. 610, 628 (C.D. Cal. 2008) (finding that “the individual class members do not have
20 a strong interest in controlling the litigation” when “the potential damages for each class member
21 are approximately \$4,000”). Moreover, a single claimant would likely lack the ability to undertake
22 the significant costs associated with such individual litigation, which would still require substantial
23 discovery and expert proof of liability. *See id.*

24
25
26 ³ Antonio Billas-Boas, *Here’s how much the new iPhone 7 costs and when you can get it*, Business
27 Insider (Sept. 7, 2016), <https://www.businessinsider.com/apple-iphone-7-release-date-price-2016-9>
(last visited May 25, 2023).

1 *Second*, “it does not appear that any members of the class have commenced any other
2 litigation concerning the controversy alleged herein.” *Menagerie Prods. v. Citysearch*, No. CV 08-
3 4263 CAS (FMO), 2009 WL 3770668, at *19 (C.D. Cal. Nov. 9, 2009).

4 *Third*, “[c]lass action certifications to enforce compliance with consumer protection laws
5 are ‘desirable and should be encouraged.’” *Ballard v. Equifax Check Servs., Inc.*, 186 F.R.D. 589,
6 600 (E.D. Cal. 1999). This Action accomplishes that purpose.

7 *Fourth*, Plaintiffs’ and the Class Members’ ability to adjudicate all their claims efficiently
8 in a unified mechanism highlight the superiority of the class action vehicle. *Wiener v. Dannon Co.,*
9 *Inc.*, 255 F.R.D. 658, 672 (C.D. Cal. 2009). “[P]ermitting the potential class members, who
10 individually would be unable to vindicate their rights, to collectively assert their causes of action
11 is consistent with the primary purpose of a Rule 23(b)(3) class action.” *Id.* Accordingly, each of
12 Rule 23(b)(3)’s superiority factors strongly favor certification.

13 **C. The Proposed Notice Program Provides the Best Notice Practicable.**

14 For a settlement class, the Court must “direct to class members the best notice that is
15 practicable under the circumstances, including individual notice to all members who can be
16 identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Notice should “generally
17 describe[] the terms of the settlement in sufficient detail to alert those with adverse viewpoints to
18 investigate and come forward and be heard.” *Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566,
19 575 (9th Cir. 2004). The proposed notice program accomplishes that.

20 The Parties jointly developed the proposed notice program with the aid of the Settlement
21 Administrator, Angeion Group, an experienced firm specializing in the management of class
22 settlements. The Notice program includes an email, postcard, and long form notice, a toll-free
23 phone number, and a comprehensive settlement website, all of which provide clear, complete
24 instructions to Settlement Class Members of how to submit valid payment information. Notice will
25 be sent to Settlement Class Members (1) by email, for Settlement Class Members for whom Apple
26 has an email address, (2) by mail to Settlement Class Members for whom Apple does not have an

1 email address; and (3) if the aforementioned two methods do not reach 90% of the Settlement
 2 Class, by supplemental notice via mail to Settlement Class Members whose emails returned a hard
 3 bounce back and for whom a mailing address can be located. Additionally, the Settlement
 4 Administrator will establish a case-specific toll-free number and a settlement website, to host
 5 important Settlement information. Long Form notices will be available on the settlement website
 6 and upon request from the Settlement Administrator. The notice program informs Settlement Class
 7 Members of their right to opt-out from or object to the Settlement. This notice program provides
 8 for the best notice practicable under the circumstances and meets the requirements of Rule
 9 23(c)(2)(B).

10 Further, Apple will provide notice to all necessary government officials, as required by
 11 CAFA. Upon the filing of this Motion, “Apple will provide timely notice . . . as required by 28
 12 U.S.C. § 1715.” SA § C.3; *see also* Weisbrot Decl. ¶ 28; Guideline 10.

13 VI. CONCLUSION

14 For the reasons stated above, Plaintiffs respectfully request that the Court (1) preliminarily
 15 approve the Proposed Settlement; (2) certify the Settlement Class; (3) direct notice to the
 16 Settlement Class through the proposed notice program; (4) appoint Plaintiffs’ counsel as Class
 17 Counsel and Plaintiffs as Class Representatives; and (5) schedule the final approval hearing.

18
 19 Dated: May 25, 2023

/s/ William A. Ladnier

William A. Ladnier (CA Bar No. 330334)

wladnier@milberg.com

Gregory F. Coleman*

gcoleman@milberg.com

Adam A. Edwards

aedwards@milberg.com

MILBERG COLEMAN BRYSON

PHILLIPS GROSSMAN, PLLC

800 S. Gay Street, Suite 1100

Knoxville, TN 37929

Tel: (865) 247-0080

Fax: (865) 522-0049

Andrea R. Gold*

1 agold@tzlegal.com
Hassan A. Zavareei (CA Bar No. 181547)
2 hzavareei@tzlegal.com
Allison Parr*
3 aparr@tzlegal.com
TYCKO & ZAVAREEI LLP
2000 Pennsylvania Avenue NW, Suite 1010
4 Washington, DC 20006
Tel: (202) 973-0900
5 Fax: (202) 973-0950

6 Annick Persinger (CA Bar No. 272996)
TYCKO & ZAVAREEI LLP
7 1970 Broadway, Suite 1070
Oakland, CA 94612
8 Tel: (510) 254-6808

9 * *Admitted pro hac vice*

10 *Attorneys for Plaintiffs*
11 *and the Proposed Settlement Class*

CERTIFICATE OF SERVICE

I, William A. Ladnier, hereby certify that on May 25, 2023, I caused a true and correct copy of the foregoing Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement to be served upon the following by electronic mail:

Arturo J. González
agonzalez@mofocom
Penelope A. Preovolos
ppreovolos@mofocom
Alexis A. Amezcua
aamezcua@mofocom
Camila A. Tapernoux
ctapernoux@mofocom
Ashley Quinn
aquinn@mofocom
Zachary Maldonado
zmaldonado@mofocom
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105-2482
Tel: (415) 268-7000
Fax: (415) 268-7522

/s/ William A. Ladnier
William A. Ladnier

APPENDIX A**CHART OF COMPARABLE SETTLEMENTS**

Case	Fund	Class Size	Type of Claims	Claims Rate and Other Information^{1,2}
<i>In re Apple iPhone/iPod Warranty Litigation</i> , No. CV-10-01610, 2014 WL 12640497 (N.D. Cal. May 8, 2014); Stipulation of Settlement and Release of Claims, 2013 WL 3328448 (N.D. Cal. May 28, 2013); ECF No. 146; ECF No. 154	\$53,000,000	Approx. 152,000 class devices	Declaratory relief; breach of express warranty; Song-Beverly Consumer Warranty Act; fraud; CLRA; UCL; unjust enrichment	Type of notice: direct and publication Claims: approx. 40,000 Claims rate: approx. 2.6% Approx. \$241 per class device Attorneys' fees: 25% Admin. costs not paid from settlement fund
<i>In re Nexus 6P Products Liability Litigation</i> , No. 17-cv-02185-BLF, 2019 WL 6622842 (N.D. Cal. Nov. 12, 2019); ECF No. 233; ECF No.	\$9,750,000	Approx. 500,000	Breach of express warranty; breach of implied warranty of merchantability; Magnuson-Moss Warranty Act;	Type of notice: direct and publication Notice sent to 383,808 class members Claims: 92,474

¹ To be clear, the instant settlement does not include a claims process, but rather only requires that Settlement Class Members submit their payment information.

² The settlement in *In re Apple iPhone/iPod Warranty Litigation* required settlement class members to release “any known or unknown claims, which they have or may claim now or in the future to have, that were or could have been alleged or asserted against [Apple].” No. 3:10-cv-01610-RS, ECF No. 76-1, at 26. The settlement in *In re Nexus 6P Products Liability Litigation* required settlement class members to release *all* claims “that [had] been asserted or could have been asserted in the Action relating to the Nexus 6P.” No. 5:17-cv-02185-BLF, ECF No. 194-2, at 12. The settlement in *In re Macbook Keyboard Litigation* required settlement class members to release *all* claims “asserted or unasserted, regardless of legal theory, arising out of the facts underlying the Action and the [companion] Action, against Apple.” No. 5:18-cv-02813-EJD, ECF No. 410-1, at 5.

Case	Fund	Class Size	Type of Claims	Claims Rate and Other Information ^{1,2}
238; ECF No. 240-1; ECF No. 241			Song-Beverly Consumer Warranty Act; UCL; fraud by omission; CLRA; fraudulent concealment	Claims rate: 18.49% Average payment of \$76.53 per claimant; median \$29.11 per claimant Attorneys' fees: 30% Admin. costs of approx. \$302,000 <i>Cy pres</i> : \$132,920.62
<i>In re MacBook Keyboard Litigation</i> , No. 5:18-cv-02813-EJD, 2022 WL 17409738 (N.D. Cal. Dec. 2, 2022); ECF No. 445	\$50,000,000	Approx. 15,000,000 class devices	Fraudulent concealment; Song-Beverly Consumer Warranty Act; a number of consumer protection claims including the CLRA and UCL	Type of notice: direct Notice sent to 14,359,253 class members Claims: approx. 86,117* Claims rate: approx. 0.57%* Estimated payments of \$300 for Group 1, \$125 for Group 2, and \$50 for Group 3* Attorneys' fees: 30%* Admin. cost cap: estimated \$1,400,000 *Pending final approval