

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement” or “Agreement”) is made as of July 15, 2022, by and between Zixuan Rao, Joseph Baruch, Bo Laurent, Ashley Marin, Kyle Barbaro, Steve Eakin, Michael Hopkins, Adam Lee, Kevin Melkowski, Lorenzo Ferguson, Benjamin Gulker, and Ashton Huey (collectively, “Plaintiffs” or “Class Representatives”), individually and as representatives of the Settlement Class as defined below, and Apple Inc. (“Apple”, and together with Plaintiffs, the “Parties”).

DEFINITIONS

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

- A. “Action” means the litigation entitled *In re MacBook Keyboard Litigation*, Case No. 5:18-cv-02813-EJD-VKD, filed in the United States District Court for the Northern District of California (the “Court”).
- B. “Apple Counsel” means Apple’s counsel of record in this Action.
- C. “Authorized Service Provider” means a company authorized by Apple to provide in-warranty and out-of-warranty repair services for Apple products.
- D. “Attorneys’ Fee and Expense Payment” means the amount of attorneys’ fees and reimbursement of costs and expenses awarded to Class Counsel by the Court from the Settlement Fund.
- E. “Claimant” means a Settlement Class Member who has made a claim to a share of, or who will receive an automatic payment from, the Net Settlement Fund.
- F. “Claim Form” means the form for Settlement Class Members to make a claim to a share of the Net Settlement Fund, substantially in the form of Exhibit 4.
- G. “Claim Period” means the period of time ending 120 days after entry of the preliminary approval order.
- H. “Class Computer” means any of the following Apple computer models:
- MacBook (Retina, 12-inch, Early 2015)
 - MacBook (Retina, 12-inch, Early 2016)
 - MacBook (Retina, 12-inch, 2017)
 - MacBook Air (Retina, 13-inch, 2018)
 - MacBook Air (Retina, 13-inch, 2019)
 - MacBook Pro (13-inch, 2016, Two Thunderbolt 3 Ports)
 - MacBook Pro (13-inch, 2017, Two Thunderbolt 3 Ports)
 - MacBook Pro (13-inch, 2019, Two Thunderbolt 3 Ports)
 - MacBook Pro (13-inch, 2016, Four Thunderbolt 3 Ports)
 - MacBook Pro (13-inch, 2017, Four Thunderbolt 3 Ports)
 - MacBook Pro (15-inch, 2016)
 - MacBook Pro (15-inch, 2017)
 - MacBook Pro (13-inch, 2018, Four Thunderbolt 3 Ports)
 - MacBook Pro (15-inch, 2018)
 - MacBook Pro (13-inch, 2019, Four Thunderbolt 3 Ports)
 - MacBook Pro (15-inch, 2019)

- I. “Class Counsel” means the law firms of Girard Sharp LLP and Chimicles Schwartz Kriner & Donaldson-Smith LLP.
- J. “Class Payment” means the amount to be paid to a Settlement Class Member who is eligible to receive a share of the Net Settlement Fund under this Settlement Agreement.
- K. “Effective Date” means the first day after which all of the following events and conditions of this Settlement Agreement have occurred or have been met: (i) the Court has entered the Final Approval Order and Judgment, and (ii) the Court has entered a judgment that has become final (“Final”) in that the time for appeal or writ of certiorari has expired or, if an appeal or writ of certiorari is taken and the Settlement is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the judgment is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, the judgment shall not become Final. In the event of an appeal or other effort to obtain review, the Parties may agree jointly in writing to deem the Effective Date to have occurred; however, there is no obligation to agree to advance the Effective Date. Any order or proceeding relating to the application for an Attorneys’ Fee and Expense Payment and Service Awards, the pendency of any such application, or any appeal from any such order, shall not operate to terminate or cancel this Settlement Agreement, or affect or delay the finality of the judgment approving the settlement.
- L. “Escrow Account” means the interest-bearing account—a qualified settlement fund as defined in Treasury Regulation § 1.468B-1 *et seq.*—to be opened by the Settlement Administrator and maintained by the Escrow Agent, subject to the continuing jurisdiction of the Court, holding the Settlement Fund.
- M. “Escrow Agent” means Huntington National Bank.
- N. “Final Approval Hearing” means the hearing, to be set by the Court, where the Plaintiffs will request that the Final Approval Order and Judgment be entered approving this agreement, and where Class Counsel will request that the Court approve the Fee, Cost, and Expense Award and the Service Awards. The Final Approval Hearing must occur at least 35 days after the Objection and Exclusion Deadline, on such date as set by the Court.
- O. “Final Approval Order and Judgment” means the judgment and order to be entered by the Court which approves the Settlement, substantially in the form of Exhibits 6 and 7 hereto.
- P. “Huey Action” means *Huey v. Apple Inc.*, Case No. 2018 CA 004200 B, pending in the Superior Court of the District of Columbia.
- Q. “Keyboard Service Program” means the program Apple announced on June 22, 2018, and later expanded to include additional MacBook computer models, providing keyboard repair service for eligible MacBook, MacBook Air, and MacBook Pro computers for four years from the date of purchase.
- R. “Net Settlement Fund” means the Settlement Fund, reduced by the sum of (1) the costs of notice and of administering the settlement, and (2) the sum of any Attorneys’ Fee and Expense Payment to Class Counsel, and any payments of Service Awards to the Class Representatives, that may be approved by the Court.
- S. “Notices” refer collectively to the following forms of notice to be provided to the Settlement Class in accordance with this Agreement:

- “Summary Notice” as follows:
 - “Group 1 Email Notice” means the Summary Notice of Class Action Settlement to be emailed to the Settlement Class in Group 1 in connection with the Settlement, in the form attached hereto as Exhibit 1a, and as set forth in Section 3.4.3 below.
 - “Groups 2 and 3 Email Notice” means the Summary Notice of Class Action Settlement to be emailed to the Settlement Class in Groups 2 and 3 in connection with the Settlement, in the form attached hereto as Exhibit 1b, and as set forth in Section 3.4.3 below.
 - “Group 4 Email Notice” means the Summary Notice of Class Action Settlement to be emailed to the Settlement Class for whom Apple’s records do not reflect a Qualifying Keyboard Repair (as defined in Section 3.2.1 below) in connection with the Settlement, in the form attached hereto as Exhibit 1c, and as set forth in Section 3.4.3 below.
 - “Group 1 Postcard Notice” means the Summary Notice of Class Action Settlement to be mailed to the Settlement Class in Group 1 in connection with the Settlement, in the form of the postcard attached hereto as Exhibit 2a, and as set forth in Section 3.4.3 below.
 - “Groups 2 and 3 Postcard Notice” means the Summary Notice of Class Action Settlement to be mailed to the Settlement Class in Groups 2 and 3 in connection with the Settlement, in the form of the postcard attached hereto as Exhibit 2b, and as set forth in Section 3.4.3 below.
 - “Group 4 Postcard Notice” means the Summary Notice of Class Action Settlement to be mailed to the Settlement Class for whom Apple’s records do not reflect a Qualifying Keyboard Repair (as defined in Section 3.2 below) in connection with the Settlement, in the form of the postcard attached hereto as Exhibit 2c, and as set forth in Section 3.4.3 below.
 - “Long-Form Notice” means the Notice of Class Action Settlement attached hereto as Exhibit 3, which will be available to the Settlement Class on the Settlement Website or from the Settlement Administrator.
- T. “Notice Date” means the date set forth in the Preliminary Approval Order by which the Settlement Administrator will begin transmission of the Summary Notice (the Settlement Administrator shall thereafter carry out and complete the Notice Plan as soon as practicable). Remaining of any Notices shall not change the Notice Date.
- U. “Notice Plan” means the plan for disseminating notice of the Settlement to the Settlement Class, described in Section 7.3 of this Agreement.
- V. “Objection” means the written notice that a Settlement Class Member may submit to the Court in order to object to the Settlement.
- W. “Objection and Exclusion Deadline” means the date by which Settlement Class members must submit an Objection to this Agreement to the Court or an Opt-Out Form to the Settlement Administrator.

- X. “Objector” means a person or entity who submits an Objection.
- Y. “Plan of Allocation” means the plan for allocating the Net Settlement Fund as described in Section 3 of this Agreement.
- Z. “Preliminary Approval” means the date of entry of the Preliminary Approval Order.
- AA. “Preliminary Approval Order” means the Court’s order preliminarily approving the settlement and providing for notice to the Settlement Class, substantially in the form of Exhibit 5 hereto.
- BB. “Request for Exclusion” means a written request submitted by a member of the Settlement Class to the Settlement Administrator to be excluded from the Settlement Class and containing their name, address, email address and, if available, the serial number of their Class Computer.
- CC. “Released Claims” means all claims, whether federal or state, known or unknown, asserted or unasserted, regardless of legal theory, arising out of the facts underlying the Action and the *Huey* Action, against Apple, its past or present parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, employees, agents, attorneys, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers and assigns of each of the foregoing).
- DD. “Released Persons” means Apple, its past or present parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, employees, agents, attorneys, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers and assigns of each of the foregoing).
- EE. “Releasing Persons” means Plaintiffs and all Settlement Class Members, including any and all of their respective heirs, executors, administrators, representatives, agents, partners, successors, or assigns.
- FF. “Reserve Period” means the period ending two years after Preliminary Approval.
- GG. “Service Award” means the award sought by each Class Representative—and subsequently approved by the Court—in consideration for their service during the course of the Action.
- HH. “Settlement” or “Settlement Agreement” means this agreement and the settlement and release described herein.
- II. “Settlement Administrator” means JND Legal Administration, an independent settlement administrator.
- JJ. “Settlement Class” means all persons and entities in the United States who purchased, other than for resale, one or more Class Computers, excluding Defendant Apple Inc. (“Apple”), its parents, subsidiaries, affiliates, officers, directors, and employees; any entity in which Apple has a controlling interest; and all judges assigned to hear any aspect of this litigation, as well as their staff and immediate family members
- KK. “Settlement Class Members” means all members of the Settlement Class, other than those persons or entities who validly request exclusion from the Settlement Class as set forth in this Agreement.
- LL. “Settlement Fund” means a non-reversionary cash fund of fifty million dollars

(\$50,000,000.00) described in Section 2 of this Agreement to be distributed in accordance with the terms of this Settlement Agreement.

MM. “Settlement Website” means a publicly accessible website created and maintained by the Settlement Administrator for the purpose of providing the Settlement Class with notice of and information about the proposed Settlement as well as submission of Applications for Inclusion in the Class and address verification.

RECITALS

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

WHEREAS, in May and June 2018, various plaintiffs filed lawsuits against Apple in the U.S. District Court for the Northern District of California, individually and on behalf of a proposed nationwide class of purchasers, asserting claims relating to an alleged defect in Apple’s MacBook computers equipped with butterfly keyboards; and the Court subsequently consolidated these actions and appointed Class Counsel as Interim Class Counsel.

WHEREAS, on July 2, 2020, as permitted by the Court, Plaintiffs filed a Second Amended Consolidated Class Action Complaint, which Apple answered on June 2, 2021.

WHEREAS, on March 8, 2021, the Court granted Plaintiffs’ Motion for Class Certification; certified a plaintiff class consisting of end-purchasers of Class Computers in California, New York, Florida, Illinois, New Jersey, Washington, and Michigan; appointed Plaintiffs to represent the class and its constituent state subclasses; and appointed Girard Sharp LLP and Chimicles Schwartz Kriner & Donaldson-Smith LLP as Class Counsel.

WHEREAS, the Parties have investigated the facts and analyzed the relevant legal issues regarding the claims and defenses asserted in this Action, including through significant motion practice and extensive fact and expert discovery. The Parties also conducted two mediations with the Hon. Jay C. Gandhi (Ret.) in June and August 2020 and a mediation with the Hon. Edward A. Infante (Ret.) in February 2022.

WHEREAS, Class Counsel and the Class Representatives believe that the claims asserted in the Action have merit and have examined and considered the benefits to be obtained under this Settlement, the risks associated with the continued prosecution of this complex and time-consuming litigation, and the likelihood of ultimate success on the merits, and have concluded that the Settlement is fair, adequate, reasonable and in the best interests of the Settlement Class Members.

WHEREAS, Apple denies all of the allegations made in the lawsuit, denies that any MacBooks are defective, and denies that Apple did anything improper or unlawful. Apple asserts numerous defenses to the claims in this case. The proposed settlement to resolve this case is not an admission of guilt or wrongdoing of any kind by Apple.

WHEREAS, the Parties desire to settle the Action in its entirety as to the Plaintiffs, the Settlement Class Members, and Apple with respect to all claims arising out of the facts underlying the Action. The Parties intend this Agreement to bind Plaintiffs (both as the Class Representatives and individually), Apple, Class Counsel, and Settlement Class Members.

NOW THEREFORE, in light of the foregoing, for good and valuable consideration, the Parties, and each of them, hereby warrant, represent, acknowledge, covenant, and agree, subject to approval by the Court, as follows:

1. CONFIDENTIALITY

- 1.1 The Parties, Class Counsel, and Apple Counsel agree that until publication of this Settlement Agreement by submission to the Court, the terms of this Settlement Agreement and all associated documents and communications, including the negotiations leading to the execution of the Settlement Agreement and all submissions and arguments related to the mediation proceedings, shall not be disclosed by the Parties, Class Counsel, and Apple Counsel other than as necessary to finalize the Settlement and Notice Plan. Upon publication of the Settlement Agreement by submission to the Court, the nondisclosure obligations set forth in this paragraph will no longer apply to the as-filed Settlement Agreement or the terms thereof, but such obligations will continue to apply to all other materials and information covered by this paragraph, including but not limited to any negotiations leading to the execution of this Settlement Agreement.
- 1.2 Other than to a court in any case filing, the Parties, Class Counsel, and Apple Counsel agree not to initiate publicity regarding the settlement or submit information about the settlement to Jury Verdicts. Notwithstanding the foregoing, Class Counsel may list the Action on their law firm websites and publicity materials as a representative case along with a neutral and factual description of the subject matter of the Action, including the amount of the settlement. Any comments made by Class Counsel concerning the settlement or the Action, including in response to inquiries from the press, shall be in neutral terms to communicate that the Action has been resolved between the Parties and shall not contain inflammatory language about the Parties or their perceived conduct in the Action.
- 1.3 The Parties will continue to comply with the Stipulated Protective Order in this Action, ECF No. 84, including with respect to the requirements of Paragraph 15 thereof, which govern the return or destruction of any material produced, submitted, or filed under seal under the Protective Order.
- 1.4 If, through the actions of any of the Parties or their counsel, this Settlement Agreement and the proposed Settlement become public before the Motion for Preliminary Approval is filed with the Court, the responsible Party or counsel shall pay liquidated damages of Twenty-Five Thousand U.S. Dollars (\$25,000.00) to the non-responsible Party.

2. SETTLEMENT FUND

- 2.1 Apple's total financial commitment under this Agreement is \$50,000,000.00 and in no event shall Apple's total monetary obligation with respect to this Agreement exceed or be less than that amount. Apple will make no further payments in connection with this Agreement.
- 2.2 Within 30 days after Preliminary Approval, Apple shall pay the Settlement Fund into the Escrow Account according to instructions to be furnished by the Escrow Agent. If Final Approval is not granted for any reason, the balance of the Escrow Account (after payment of costs associated with notice and administration related to the preliminary and final approval process), plus any interest earned on the Escrow Account, will be returned to Apple within 10 days.
- 2.3 The Settlement Fund will be applied to Class Payments, notice and administration expenses, attorneys' fees and expenses of Class Counsel, and Service Awards for the Class Representatives. The Settlement Administrator will open the Escrow Account and will thereafter manage distribution of the Settlement Fund.
- 2.4 Any taxes owed by the Settlement Fund will be paid by the Settlement Administrator out of

the Settlement Fund, and interest earned on the balance of the account will accrue to the Settlement Fund.

2.5 **Disposition of the Settlement Fund.** The Settlement Fund shall be applied as follows, in accordance with the terms and conditions set forth elsewhere in this Agreement:

2.61 To pay the costs of notice and the costs of administering the Settlement;

2.62 To pay any Attorneys' Fee and Expense Payment to Class Counsel, and any Service Awards to the Class Representatives, that may be approved by the Court; and

2.63 To distribute the Net Settlement Fund to Settlement Class Members in accordance with the Plan of Allocation.

2.6 **No reversion.** Subject to 2.2 above, no portion of the Settlement Fund or Net Settlement Fund will revert to Apple.

3. **ALLOCATION OF THE NET SETTLEMENT FUND**

3.1 **General provisions.** The Net Settlement Fund will be distributed according to the following plan, subject to approval by the Court.

3.1.1 Apple's Keyboard Service Program provides four years of protection and remains available for any Class Member whose Class Computer keyboard may experience future issues within four years of purchase.

3.1.2 This Plan of Allocation is subject to modification without further notice to Class Members provided any such modification is approved by the Court.

3.1.3 Settlement Class Members can receive compensation only once per Class Computer; but any Class Member may make additional claims in the event they purchased multiple Class Computers that qualify for payment.

3.1.4 Class Payments will be made in two stages—the first payment to occur within a reasonable time after the Effective Date, and the second within a reasonable time after the Reserve Period has elapsed.

3.1.5 With respect to claims administration, the Settlement Administrator's responsibilities will include, without limitation, receiving and processing requests for Claim Forms; setting up and maintaining the Settlement Website where Settlement Class Members can download and submit Claim Forms; establishing, in consultation with Apple and Class Counsel, appropriate claim auditing and verification protocols and procedures, including reasonable fraud control measures; fielding inquiries about claim procedures; receiving and processing Settlement Class Member claims; determining the eligibility of claims for payment, subject to Class Counsel and Apple's right to contest such determinations; distributing Class Payments; and any other tasks reasonably necessary to administer the claim process.

3.2 **Qualifying Keyboard Repair.** members of the Settlement Class who went to Apple or an Authorized Service Provider for a Qualifying Keyboard Repair within four years after the date they purchased their Class Computer are eligible for a Class Payment from the Net Settlement Fund.

- 3.2.1 A Qualifying Keyboard Repair is a Topcase Replacement or a Keycap Replacement. “Topcase Replacement” refers to the replacement of the full keyboard module (including the battery, track pad, speakers, top case, and keyboard), performed by Apple or an Apple Authorized Service Provider. “Keycap Replacement” refers to the replacement of one or more keycaps on a keyboard, performed by Apple or an Apple Authorized Service Provider, and does not involve replacement of the full keyboard module.
- 3.2.2 Apple has records of members of the Settlement Class who received a Topcase Replacement or Keycap Replacement and will provide those records to the Settlement Administrator.
- 3.2.3 Settlement Class Members who received at least two Topcase Replacements, within four years after purchase and prior to two years after Preliminary Approval, will be paid a share of the Net Settlement Fund without the need to submit a claim.
- 3.2.4 Settlement Class Members who obtained one or more Qualifying Keyboard Repairs, within four years after purchase, are eligible to submit a claim during the Claim Period to be paid a share of the Net Settlement Fund.

3.3 **The Claim Form.**

- 3.3.1 For Settlement Class Members who did not receive two or more Topcase Replacements, there will be one Claim Form, and each Class Computer purchased may be the subject of only one claim.
- 3.3.2 Where reasonably practicable, Claim Forms for Settlement Class Members in Groups 2 or 3 for whom Apple has records of repair will be pre-populated with Settlement Class Member contact and repair information.
- 3.3.3 The Claim Form will call for each Claimant to confirm or update their current contact information.
- 3.3.4 The Claim Form will require that the Claimant confirm the following under oath:
 - 3.3.4.1 The Claimant purchased a Class Computer in the United States;
 - 3.3.4.2 The Claimant did not purchase the Class Computer for resale;
 - 3.3.4.3 The Claimant obtained a Qualifying Keyboard Repair; and
 - 3.3.4.4 The Qualifying Keyboard Repair did not resolve the Claimant’s keyboard issues.
- 3.3.5 Settlement Class Members who receive a link to a Claim Form with pre-populated answers to questions 3.3.4.1 or 3.3.4.3 need not submit documentation in support of any pre-populated answer but must also affirm under oath that any pre-populated information in the Claim Form is true and correct. All other Claimants must submit information to support their affirmations in 3.3.4.1 and 3.3.4.3. The Claim Form shall reflect the information and/or documentation necessary to validate claims for those Claimants whose purchases and/or repairs are not documented in Apple’s records.
- 3.3.6 For each claim accompanied by documentation, the Settlement Administrator will

determine whether the attestation and documentation submitted conforms with the requirements agreed to pursuant to 3.3.5.

3.4 **Determination and processing of Class Payments.**

3.4.1 The Settlement Administrator will review all claims to determine their validity, eligibility, and appropriate classification under this Section. The Settlement Administrator will reject any claim that does not materially comply with the instructions on the Claim Form; is not submitted by a Settlement Class Member; or is duplicative or fraudulent. To the extent any Claim Form contains curable deficiencies, the Settlement Administrator shall inform the claimant of the deficiency via email, or if no email address is available by USPS mail, and provide 30 days to cure.

3.4.2 Upon completion of the Claim Period, the Settlement Administrator will provide Apple Counsel and Class Counsel a spreadsheet detailing the Claims that were submitted, the Settlement Administrator's determination of validity, eligibility, and classification for each Claim, and the reasoning for any rejected Claims. Personally identifiable information will not be included in this spreadsheet. Apple Counsel and Class Counsel shall have 21 days after receiving this information to contest the Settlement Administrator's determination with respect to any of the submitted Claims. Apple Counsel and Class Counsel shall meet and confer in good faith within ten (10) days of any contestation to reach resolution of any such disputed Claim(s). If Class Counsel and Apple Counsel cannot agree on a resolution of any such disputed Claim(s), the disputed Claim(s) shall be presented to the Court for summary and non-appealable resolution.

3.4.3 Eligible Settlement Class Members will be sorted into one of three claim groups:

3.4.3.1 **Group 1:** Settlement Class Members who, within four years after purchase, obtained two or more Topcase Replacements from Apple or an Authorized Service Provider based on Apple's records. Group 1 Claimants will be paid using Apple's records without the need to submit a claim. The total payment to a Group 1 Claimant will not exceed \$395 per Class Computer.

3.4.3.2 **Group 2:** Settlement Class Members who, within four years after purchase, obtained one Topcase Replacement from Apple or an Authorized Service Provider, and who attest on the Claim Form that the repair did not resolve their keyboard issues. The total payment to a Group 2 Claimant will not exceed \$125 per Class Computer. Class Members in Group 2 who do not receive a pre-populated Claim Form must submit additional information and/or documentation consistent with 3.3.5 above.

3.4.3.3 **Group 3:** Settlement Class Members who, within four years after purchase, obtained one or more Keycap Replacements (but not any Topcase Replacements) from Apple or an Authorized Service Provider, and who attest on the Claim Form that the repair did not resolve their keyboard issues. The total payment to a Group 3 Claimant will not exceed \$50 per Class Computer. Class Members in Group 3 who do not receive a pre-populated Claim Form must submit additional information and/or documentation consistent with 3.3.5 above.

3.4.4 Upon completion of the Claim Period, the Settlement Administrator will calculate and

deduct from the Net Settlement Fund an amount sufficient to make Class Payments of \$300 to each Settlement Class Member identified in Apple's records as a Group 1 Claimant. Additionally, a reserve amount sufficient to make Class Payments of \$300 to each of Settlement Class Members projected to become a Group 1 Claimant within the Reserve Period will be calculated and deducted from the Net Settlement Fund. The amount of this reserve will be determined by the Parties in consultation with the Settlement Administrator based on Apple's records and projections to be provided by Apple under oath. At the completion of the Claim Period, Apple will provide updated projections of future Group 1 Claimants anticipated under the Settlement.

3.4.5 After completion of the deductions set forth in 3.4.3, the amount remaining in the Net Settlement Fund (the "Group 2-3 NSF") will be divided among eligible Group 2 and Group 3 Claimants to determine the Class Payment to each such Claimant using the following formulae:

3.4.5.1 The Settlement Administrator will calculate a Group 2 Payment Ratio using the following formula: $(\text{Total Group 2 Claims} \times \$125) \div [(\text{Total Group 2 Claims} \times \$125) + (\text{Total Group 3 Claims} \times \$50)]$.

3.4.5.2 The Settlement Administrator will calculate a Group 3 Payment Ratio using the following formula: $(\text{Total Group 3 Claims} \times \$50) \div [(\text{Total Group 2 Claims} \times \$125) + (\text{Total Group 3 Claims} \times \$50)]$.

3.4.5.3 The Settlement Administrator will calculate payments to Group 2 Claimants using the following formula: $(\text{Group 2-3 NSF} \times \text{Group 2 Payment Ratio}) \div \text{Total Group 2 Claims}$.

3.4.5.4 The Settlement Administrator will calculate payments to Group 3 Claimants using the following formula: $(\text{Group 2-3 NSF} \times \text{Group 3 Payment Ratio}) \div \text{Total Group 3 Claims}$.

3.4.5.5 If a Group 3 payment would exceed the \$50 cap, any excess will be redistributed to Group 2 Claimants up to the \$125 cap. If a Group 2 payment would exceed the \$125 cap, any such excess will be redistributed to Group 1 Claimants up to the \$395 cap, including through proportional increase of the amount to be paid to Settlement Class Members who become Group 1 Claimants within the Reserve Period (and resulting increase of the reserve fund described in 3.4.4).

3.4.5.6 To the extent the total Group 1 payments at \$300 together with valid Group 2 and 3 Claims would exceed the Net Settlement Fund, the payments to all eligible Settlement Class Members shall be reduced *pro rata*.

3.4.6 The Settlement Administrator shall provide its calculations performed under 3.4.3 and 3.4.4 above to Class Counsel and Apple for review. Class Counsel and Apple Counsel shall meet and confer within ten days to resolve any issues regarding the calculations. Then, Class Counsel will submit to the Court a proposed Order directing payment to eligible Claimants, as well as providing that payments to Settlement Class Members who become Group 1 Claimants within the Reserve Period may be reduced if the actual number of such Claimants exceeds Apple's projections (the "Class Payment Order").

3.4.7 After entry of the Class Payment Order, and upon the Effective Date, the Settlement

Administrator will set aside the amount reserved for future Group 1 Claimants and make Class Payments to all other eligible Claimants in Group 1, Group 2 and Group 3 according to the above. Class Payments shall be made by check. The Settlement Administrator will distribute the Class Payments in accordance with the Plan of Allocation. The Settlement Administrator will advise Claimants that the Class Payment check must be cashed or redeemed within 90 days or become void, and will also send at least one check-cashing reminder.

3.5 **Claims arising after the Claim Period and Distribution of Residual Funds.**

3.5.1 Settlement Class Members who, within two years after Preliminary Approval, qualify as being within Group 1 based on Apple's records showing that they had two or more Topcase Replacements from Apple or an Authorized Service Provider within four years after purchase, and who, in the first round of Settlement payments, were either (a) not paid or (b) paid as a Group 2 Claimant, will be paid up to the Group 1 amount in the second round, subject to a *pro rata* increase under 3.5.3 below or a *pro rata* reduction if the total payments to such Claimants would exhaust the reserve fund.

3.5.2 If checks attributable to Settlement Class Members remain uncashed for 90 days after the Class Payment is distributed, those funds shall remain in the Net Settlement Fund.

3.5.3 If sufficient funds remain in the Net Settlement Fund, the Settlement Administrator will make a payment of up to \$395 to Group 1 Claimants who received a second Topcase Replacement after the expiration of the Claim Period, and a supplemental payment to Group 1 Claimants who received two or more Topcase Replacements before the expiration of the Claims Period, such that all Group 1 Claimants receive up to \$395 in total distributions from the Net Settlement Fund. If, after any such payments, there are remaining funds in the Net Settlement Fund, supplemental payments shall be made to Group 2 Claimants up to \$125 and Group 3 Claimants up to \$50. If making a supplemental distribution to Settlement Class Members is not practicable, or if, after all such supplemental payments are made, there are remaining funds in the Net Settlement Fund, Class Counsel and Apple shall meet and confer to discuss a proposal to present to the Court regarding distribution of remaining funds, including a *cy pres* distribution.

3.5.4 Within sixty (60) days of the deadline to submit claims, Class Counsel and Apple shall meet and confer regarding the status of any late claims.

4. **OBTAINING COURT APPROVAL OF THE AGREEMENT**

4.1 **Preliminary Approval.** Class Counsel will draft the motion requesting issuance of the Preliminary Approval Order and will provide that draft to Apple Counsel of record in the Action. The motion shall be written in a neutral manner that does not contain inflammatory language about the Parties or their perceived conduct in the Action. The motion will request that the Court modify its class certification order to certify the Settlement Class. Apple will not oppose the motion. Apple may, however, provide feedback concerning the motion, and Class Counsel will meet and confer with Apple in good faith regarding Apple's feedback.

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

4.3 **Final Approval and Judgment.** In accordance with the schedule set in the Preliminary

Approval Order, Class Counsel will draft the motion requesting final approval of the Settlement and entry of the Final Approval Order and Judgment, and will provide those drafts to Apple Counsel at least seven (7) days prior to the filing of the motion. The motion shall be written in a neutral manner that does not contain inflammatory language about the Parties or their perceived conduct in the Action. Apple may provide feedback concerning the motion, and Class Counsel will meet and confer with Apple in good faith regarding Apple's feedback. The Final Approval Order and Judgment will contain a provision stating that the Settlement Administrator and the Parties and their counsel will have no liability to any person in connection with the Action or Settlement, or determinations and distributions made substantially in accordance with the terms of the Settlement, including payments made to Class Members who become Group 1 Claimants during the Reserve Period.

- 4.4 **Huey Action.** Plaintiff Ashton Huey's separate action—entitled *Huey v. Apple Inc.*, Case No. 2018 CA 004200 B, pending in the Superior Court of the District of Columbia—will be dismissed with prejudice via a stipulation of Plaintiff Huey and Apple to be filed in that court no later than seven days after the Effective Date. Prior to that, and within three days after the filing of Plaintiffs' Motion for Preliminary Approval, Plaintiff Huey and Apple will jointly advise that court of the Settlement and request a stay of the proceedings in that action.
- 4.5 In the event that the Settlement Agreement is not approved or that its approval is conditioned on any material modifications that are not acceptable to Apple, then (a) this Settlement Agreement shall be null and void and of no force and effect; (b) the Net Settlement Fund and any and all interest earned thereon, less monies expended toward settlement administration, will be returned to Apple within 10 days after the date the Settlement Agreement becomes null and void; and (c) any release shall be of no force or effect. In such event, unless the Parties can negotiate a modified settlement agreement, the Action will revert to the status that existed before the Settlement Agreement's execution date; the Parties will each be returned to their respective procedural postures in the litigation, and neither the Settlement Agreement nor any facts concerning its negotiation, discussion or terms will be admissible in evidence for any purpose in the Action (or in any other litigation).

5. OBJECTIONS

- 5.1 Any Settlement Class Member who has not submitted a timely written Request for Exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, or to the requested Attorneys' Fee and Expense Award or Service Awards, must comply with the following requirements.
- 5.2 **Procedural requirements.** Any Objections from Settlement Class Members regarding the proposed Settlement Agreement must be submitted in writing to the Court. If a Settlement Class Member does not submit a timely written Objection, the Settlement Class Member will not be able to participate in the Final Approval Hearing.
- 5.3 **Deadline.** Objections must be submitted by the Objection and Exclusion Deadline—which is 95 days after entry of the preliminary approval order.
- 5.3.1 If submitted through ECF, Objections must be submitted on the Objection and Exclusion Deadline by 11:59 p.m. Pacific Time.
- 5.3.2 If submitted by U.S. mail or another delivery service, Objections must be postmarked by the Objection and Exclusion Deadline. The date of the postmark on the envelope containing the written statement objecting to the Settlement will be the exclusive means used to determine whether an Objection and/or intention to appear has been

timely submitted. In the event a postmark is illegible or unavailable, the date of mailing will be deemed to be three days prior to the date that the Court posts the Objection on the electronic case docket.

5.4 **Responses to objections.** The Parties may file responses to any timely written objections no later than 120 days after entry of the preliminary approval order.

5.5 **Mandatory content.** All Objections must be in writing and must:

5.4.1 Include the full name, address, telephone number, and email address of the Objector and any counsel representing the Objector;

5.4.2 Clearly identify the case name and number: *In re MacBook Keyboard Litigation*, 5:18-cv-02813-EJD;

5.4.3 Include information sufficient to verify that the Objector is a Class Member;

5.4.4 Include a detailed statement of the grounds and evidence upon which the Objection is based;

5.4.5 State whether the Objection applies only to the Objector, to a specific subset of the class, or to the entire class; and

5.4.6 Include a list of all cases in which the Objector or his or her counsel has filed an objection within the past five years.

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

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

6. EXCLUSIONS

6.1 **Requests for Exclusion.** The Notice will advise all members of the Settlement Class of their right to exclude themselves from the Settlement. This Settlement Agreement will not bind Class Members who exclude themselves from the Settlement.

6.2 **Requesting process.** To request to be excluded from the Settlement, members of the Settlement Class must timely submit a written Request for Exclusion. The Request for Exclusion may be sent either through a portal on the Settlement Website or by U.S. mail to the Settlement Administrator, which will be responsible for receiving and processing Requests for Exclusion.

6.3 **Deadline.** To be excluded from the Settlement, the completed Exclusion Form must be postmarked or submitted through the portal by the Objection and Exclusion Deadline, which

is 95 days after entry of the preliminary approval order.

- 6.4 **Effect of exclusion.** Any person or entity who is a member of the Settlement Class and who validly and timely requests exclusion from the Settlement shall not be a Settlement Class Member; shall not be bound by the Settlement Agreement; shall not be eligible to apply for or receive any benefit under the terms of the Settlement Agreement; and shall not be entitled to submit an Objection to the Settlement.
- 6.5 **Exclusion list.** No later than 14 days after the Objection and Exclusion Deadline, the Settlement Administrator will provide Class Counsel and Apple Counsel with the number of persons and entities who have timely and validly excluded themselves from the Settlement. If the number of Class Members who elect to exclude themselves from the Settlement Class exceeds the threshold agreed to by the Parties and confidentially submitted to the Court with the Preliminary Approval Motion, Apple, in its sole discretion, may elect to reject this Settlement, in which case the entire Settlement Agreement shall be null and void. Alternatively, Apple may elect to waive this condition and proceed with the Settlement. Any such waiver by Apple must be unambiguous and in writing.

7. NOTICE AND SETTLEMENT ADMINISTRATION

- 7.1 Apple will provide to the Settlement Administrator (but not to Class Counsel) the names, addresses, and email addresses for all members of the Settlement Class for whom it has records. Apple will also provide to the Settlement Administrator its records of members of the Settlement Class who received a Qualifying Keyboard Repair.
- 7.2 The Settlement Administrator will administer the notice described herein and in accordance with the Preliminary Approval Order. The Settlement Administrator will keep identities and contact information of members of the Settlement Class confidential, using them only for purposes of administering this Settlement.
- 7.3 **Notice Plan.** The Parties agree upon and will seek Court approval of the following forms and methods of notice to the members of the Settlement Class:
- 7.3.1 **Settlement Website.** The Settlement Administrator will establish and maintain a Settlement Website with a mutually acceptable domain name. The Settlement Website will be optimized for viewing on both mobile devices and personal computers. The Settlement Website will include, without limitation, the Notice, this Agreement, the operative Second Amended Consolidated Complaint and Apple's Answer thereto, the Preliminary Approval Order as entered, Plaintiffs' Motion for Attorneys' Fees and Costs, Plaintiffs' Motion for Final Approval of Class Action Settlement, a set of frequently asked questions, and information on how to object or request exclusion, as well as contact information for Class Counsel and the Settlement Administrator. The Settlement Website will include a readily accessible means for members of the Settlement Class to electronically submit a Claim Form.
- 7.3.2 **Toll-Free Number.** The Settlement Administrator will establish a toll-free telephone number (the "Toll-Free Number") where members of the Settlement Class can obtain assistance in filing a Claim and receive instructions for accessing settlement information, the Claim Form, and case documents.
- 7.3.3 **Notice via email.** The Settlement Administrator will email each member of the Settlement Class for whom Apple has an email address a copy of the Group 1 Email Notice, Group 2 and 3 Email Notice, or Group 4 Email Notice, as applicable.

- 7.3.4 **Additional postcard notice.** For members of the Settlement Class (a) who do not have valid email addresses in Apple's records, and (b) as to whom the emailed Notice is returned as undeliverable, the Settlement Administrator will mail to each such Class Member, for whom a mailing address can be located, either the Group 1 Postcard Notice, Group 2 and 3 Postcard Notice, or Group 4 Postcard Notice as applicable. All postcard Notices returned by the U.S. Postal Service with a forwarding address will be re-mailed to that address.
- 7.4 Based on information provided by the parties to date, The Settlement Administrator has agreed to perform all settlement notice and administration duties required by the Settlement Agreement at a cost not expected to exceed \$1,400,000. The Settlement Administrator will withdraw from the Settlement Fund funds sufficient to cover all costs and expenses related to the settlement notice and administration functions to be performed by the Settlement Administrator, including the claims administration process. Under no circumstances will Apple be responsible for any costs of settlement administration in excess of its contribution to the Settlement Fund.
- 8. CLASS COUNSEL FEES AND EXPENSES, AND SERVICE AWARDS**
- 8.1 Any award of Attorneys' Fees and Expenses shall be decided by the Court and payable from the Settlement Consideration. Class Counsel will seek, on behalf of all Plaintiffs' Counsel, Attorneys' Fees and Expenses for the benefit of all Named Plaintiffs and all other Settlement Class Members. It is the Parties' understanding that no other counsel will be entitled to an independent award of attorneys' fees or expenses.
- 8.2 The Parties have reached no agreement on the amount of Attorneys' Fees and Expenses that Class Counsel will seek. While recognizing that the Settlement entitles Class Counsel to apply for reasonable fees and expenses, Apple reserves the right to object to or oppose Class Counsel's requests for Attorneys' Fees and Expenses or for Service Awards. Settlement Class Members shall also have at least thirty-five (35) days to object to and oppose Class Counsel's request for Attorneys' Fees and Expenses by filing with the Court and serving on Class Counsel and Apple Counsel any objections relating to Class Counsel's Motion for Attorneys' Fees and Expenses.
- 8.3 The Settlement Administrator will pay Class Counsel 50% of any Court-approved Attorneys' Fees and Expenses award within 14 days after the Court's entry of the Final Approval Order and Judgment, notwithstanding any Objections, appeals, or other challenge to the Settlement, the Fee, Cost, and Expense Award, or the Service Awards, provided that Class Counsel execute an undertaking reasonably satisfactory to Apple. The balance of any approved Fee, Cost, and Expense Award, and any approved Service Awards, will be paid from the Escrow Account no later than seven days after the Effective Date, using payment instructions to be furnished to the Escrow Agent by Class Counsel.
- 8.4 Procedures connected with the application by Class Counsel for a Fee and Expense Award form no part of this Settlement Agreement, and the application will be considered separately from the Court's consideration of the fairness, reasonableness, and adequacy of this Settlement Agreement. Any order or proceeding relating to the application for a Fee and Expense Award, the pendency of the application, or any appeal from any such order, will not operate to terminate or cancel this Settlement Agreement, or affect or delay the finality effected by entry of the Final Approval Order and Judgment.

- 8.5 Class Counsel will allocate the Fee and Expense Award among Plaintiffs' counsel in a manner which reflects their respective contributions to the prosecution and resolution of the Action. In no event shall Apple have any liability to any Plaintiffs' counsel regarding the allocation of the Fee and Expense Award.
- 8.6 Class Counsel may apply for a Service Award of no more than \$5,000 per Class Representative. The Service Award is not a measure of damages, but instead solely an award for the Class Representatives' services, time and effort on behalf of the Settlement Class Members. For tax purposes, the Service Award will be treated as 100% non-wage claim payment. Class Counsel will provide a Form W-9 for each Plaintiff receiving a Service Award, and the Settlement Administrator will issue an IRS Form Misc.-1099 for the Service Award payment to the Plaintiff.
- 8.7 Any order or proceeding relating to the application for a Service Award, the pendency of the application, or any appeal from any such order, will not operate to terminate or cancel this Settlement Agreement, or affect or delay the finality effected by entry of the Final Approval Order and Judgment. The Class Representatives' approval of this Settlement Agreement is not contingent on Class Counsel making an application for a Service Award, or the Court approving any application for a Service Award.

9. DENIAL OF LIABILITY; PROHIBITION OF USE

- 9.1 Apple has indicated its intent to vigorously contest each and every claim in the Action and continues to vigorously deny all of the material allegations in the Action. Apple enters into this Agreement without in any way acknowledging any fault, liability, or wrongdoing of any kind. Apple further denies the truth of any of the claims asserted in the Action, including any allegations that Plaintiffs or any member of the Class has been harmed by any conduct by Apple, whether as alleged in the Action or otherwise. Apple nonetheless has concluded that it is in its best interests that the Action and the *Huey* Action be settled on the terms and conditions set forth herein in light of the expense that would be necessary to defend this litigation and the benefits of disposing of protracted and complex litigation.
- 9.2 To the extent permitted by law, neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding to establish any liability or admission by Apple, or to establish the truth of any of the claims or allegations alleged in the Action.
- 9.3 Neither the Agreement nor anything that the Parties said or did during the negotiation of the Agreement shall be construed or used in any manner as an admission of liability or evidence of any Party's fault, liability, or wrongdoing of any kind; nor as an admission of any lack of merit of the causes of action asserted in the Action or the *Huey* Action.
- 9.4 To the extent permitted by law, the Agreement may be pleaded or invoked as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted for the Released Claims.

10. RELEASES AND WARRANTIES

- 10.1 As of the Effective Date, all Settlement Class Members and each of their successors, assigns, heirs, and personal representatives, in consideration of the obligations set forth in this Agreement, shall finally and irrevocably release and forever discharge with prejudice, and covenant not to sue, and are permanently enjoined from suing, Apple, its past or present

parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, employees, agents, attorneys, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers and assigns of each of the foregoing) from all claims, whether federal or state, known or unknown, asserted or unasserted, regardless of legal theory, arising out of the facts underlying the Action and the *Huey* Action (the “Released Claims”).

- 10.2 Each Settlement Class Member expressly agrees that, upon the Effective Date, he, she, or it waives and forever releases any and all provisions, rights and benefits with respect to the Released Claims conferred by Section 1542 of the California Civil Code and any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Section 1542 of the California Civil Code reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

- 10.3 The amount of the Class Payment pursuant to this Agreement will be deemed final and conclusive against all Settlement Class Members, who will be bound by all of the terms of this Agreement and the Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein.
- 10.4 All proceedings with respect to Settlement administration and Class Payments to Settlement Class Members and determination of any controversies relating thereto, including disputed questions regarding the amount of such Class Payment, will not in any event delay or affect the finality of the judgment entered with the Final Approval Order and Judgment.
- 10.5 No person will have any claim of any kind against the Parties or their counsel or the Settlement Administrator with respect to the Settlement and the matters set forth herein, or based on determinations or distributions made substantially in accordance with this Agreement, the Final Approval Order and Judgment, or further order(s) of the Court.

11. MISCELLANEOUS

- 11.1 **Extensions of time.** All time periods and dates described in this Settlement Agreement are subject to the Court’s Approval. Unless otherwise ordered by the Court, the Parties through their counsel may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement. The time periods and dates provided for herein or in the Preliminary Approval Order may be altered by the Court or through written consent of the Parties’ counsel, without notice to the Class Members; provided, however, that any such changes in the schedule of Settlement proceedings will be posted on the Settlement Website.
- 11.2 **Integration.** This Agreement, including all exhibits, constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.
- 11.3 **Governing law.** This Agreement shall be construed in accordance with, and be governed by, the laws of the State of California, without regard to the principles thereof regarding choice of law.

- 11.4 **Gender and plurals.** As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.
- 11.5 **Representative capacity.** Each person executing this Agreement in a representative capacity represents and warrants that he or she is empowered to do so.
- 11.6 **Headings and counterparts.** The headings or captions in this agreement will not be deemed to have any effect and are provided for convenience only. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts.
- 11.7 **Cooperation of Parties.** The Parties to this Agreement and their counsel agree to prepare and execute all documents, to seek Court approvals, to defend Court approvals, and to do all things reasonably necessary to complete the Settlement.
- 11.8 **Voluntary execution.** This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand the provisions of this Agreement and have relied on the advice and representation of legal counsel of their own choosing. Each of the Parties has cooperated in the drafting and preparation of this Agreement and has been advised by counsel regarding the terms, effects, and consequences of this Agreement. Accordingly, in any construction or interpretation to be made of this Agreement, this Agreement shall not be construed as having been drafted solely by any one or more of the Parties or their counsel. The Settlement Agreement has been, and must be construed to have been, drafted by all Parties and their counsel, so that any rule that construes ambiguities against the drafter will have no force or effect.
- 11.9 **Notices.**
- 11.9.1 All Notices to Class Counsel provided for herein shall be sent by email to Class Counsel, identified in Definition I above, whose contact information is provided in the Notice.
- 11.9.2 All Notices to Apple provided for herein shall be sent by email to Claudia Vetesi, Morrison & Foerster LLP, cvetesi@mof.com.
- 11.9.3 The notice recipients and addresses designated above may be changed by written notice pursuant to this Section.
- 11.10 **Modification or amendment.** Exception as otherwise provided herein, this Agreement may be amended or modified only by a written instrument signed by the Parties' counsel.
- 11.11 **Continuing jurisdiction.** Any and all disputes arising from or related to the Settlement or this Agreement must be brought by Parties, Class Counsel, Apple Counsel and/or each member of the Settlement Class, exclusively in this Court. The Parties, Class Counsel, Apple Counsel and each member of the Settlement Class hereby irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to the Settlement or this Agreement.

[Signatures on next page]

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APPLE INC.

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Katherine Adams
Senior Vice President and General Counsel