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

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

Plaintiffs,

v.

APPLE INC.,

Defendant.

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

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT *AS
MODIFIED**

Re: ECF No. 171

Hon. Jon S. Tigar

1 likely be able to certify the Settlement Class for settlement purposes only, and (iii) directing notice
2 as set forth herein.

3 3. The Court preliminarily finds that, subject to the Final Approval Hearing, the
4 Settlement Agreement, including the exhibits attached thereto, is fair, reasonable, and adequate
5 pursuant to Federal Rule of Civil Procedure 23, is within the range of possible approval, and is in
6 the best interests of the Settlement Class defined below.

7 4. The Court further finds that the Settlement Agreement substantially fulfills the
8 purposes and objectives of the class action and provides substantial relief to the Settlement Class
9 without the risks, burdens, costs, or delay associated with continued litigation, trial, and/or appeal.
10 The Court also finds that the Settlement Agreement: (a) is the result of arm's-length negotiations
11 between experienced class action attorneys; (b) is sufficient to warrant notice of the Settlement
12 and the Final Approval Hearing to be disseminated to the Settlement Class; (c) meets all applicable
13 requirements of law, including Federal Rule of Civil Procedure 23 and the Class Action Fairness
14 Act, 28 U.S.C. § 1715, the United States Constitution, and the United States District Court for the
15 Northern District of California's Procedural Guidance for Class Action Settlements; and (d) is not
16 a finding or admission of liability by Defendant or any other person(s), nor a finding of the validity
17 of any claims asserted in the Lawsuit or of any wrongdoing or any violation of law.

18 5. **Certification of the Settlement Class.** For purposes of settlement only: (a)
19 Gregory F. Coleman, Adam A. Edwards, and William A. Ladnier of Milberg Coleman Bryson
20 Phillips Grossman PLLC and Andrea R. Gold, Hassan A. Zavareei, and Allison W. Parr of Tycko
21 & Zavareei LLP are appointed as Class Counsel for the Settlement Class; and (b) Plaintiffs Lisa
22 Tabak, De'Jhontai Banks, Matthew White, Kelly Camelo-Cenicola, Nestor Trujillo, and Christine
23 Clemence are appointed Settlement Class Representatives for the Settlement Class. The Court
24 finds that these attorneys are competent and capable of exercising the responsibilities of Settlement
25 Class Counsel and that Settlement Class Representatives will adequately protect the interests of
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1 the Settlement Class defined below.

2 For purposes of settlement only, the Court conditionally certifies the following
3 Settlement Class as defined in the Settlement Agreement:

4 “All individual persons who are United States residents and who
5 own or owned an Apple iPhone 7 or 7 Plus and reported to Apple in
6 the United States Covered Issues, including but not limited to those
7 who paid Apple out of pocket for repairs or replacements for
8 Covered Issues as reflected in Apple’s records.”

9 Settlement Agreement ¶ 25.

10 The Settlement Agreement defines “Covered Issues” as “issues reported to
11 Defendant Apple Inc. regarding the iPhone 7 and iPhone 7 Plus reflected in Apple’s records as
12 Sound-Speaker, Sound-Microphone, Sound – Receiver, Unexpected Restart / Shutdown, or Power
13 On – Device Unresponsive.” *Id.*

14 Excluded from the Settlement Class are: (i) Defendant Apple Inc.; (ii) any entity in
15 which Apple Inc. has a controlling interest; (iii) Apple Inc.’s directors, officers, and employees;
16 (iv) Apple Inc.’s legal representatives, successors, and assigns; and (v) all judicial officers assigned
17 to this case, their staff, and their immediate families. *Id.*

18 The Class Period shall be from September 16, 2016, to January 3, 2023. *Id.*

19 The Court finds, subject to the Final Approval Hearing referred to in Paragraph 10
20 below, that, within the context of and for the purposes of settlement only, the Settlement Class
21 satisfies the requirements of Federal Rule of Civil Procedure 23. Specifically, the Court finds that:
22 (a) the Settlement Class is so numerous that joinder of all members is impracticable; (b) there are
23 questions of fact and law common to the Settlement Class; (c) the claims of the Settlement Class
24 Representatives are typical of the claims of the members of the Settlement Class; (d) the Settlement
25 Class Representatives and Class Counsel will fairly and adequately protect the interests of the
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1 The Court finds that Angeion Group will comply with the notice provisions of the
2 Class Action Fairness Act of 2005, 28 U.S.C. § 1715, as described in the Declaration of Steven
3 Weisbrot of Angeion Group, LLC Re: Proposed Notice Plan.

4 The Court orders Angeion Group to commence the Notice Plan to potential
5 Settlement Class Members within sixty (60) calendar days after entry of this Preliminary Approval
6 Order. Should supplemental notice be required, pursuant to the terms and requirements of the
7 Settlement Agreement, Angeion Group will provide and complete such supplemental notice no
8 later than thirty (30) calendar days prior to the Objection and Exclusion Deadline. The Objection
9 and Exclusion Deadline shall be set 105 calendar days after Angeion Group commences the Notice
10 Plan. Angeion Group will further provide a declaration that Notice has been effectuated (“Proof
11 of Notice Date”), which shall be filed with the Motion for Final Approval.

12 7. **Submission of Payment Information.** Settlement Class Members will have 105
13 calendar days from the Notice Date to submit their payment information (“Response Deadline”),
14 which is adequate and sufficient time. Settlement Class Members who submit valid payment
15 information approved by the Settlement Administrator within 105 days of the Notice Date may
16 qualify to receive benefits of the Settlement.

17 The total amount distributed to the Settlement Class Members who submit valid
18 payment information shall be the Settlement Fund, less the cost of settlement Notice and
19 administrative costs, any Attorney’s Fees and Expenses Award, and any Service Awards (the “Net
20 Settlement Fund”). In the event that funds remain in the Net Settlement Fund following payment
21 of such costs and awards, the remainder will be distributed to the *cy pres* Recipient set forth in the
22 Settlement Agreement and as approved by the Court. Each Settlement Class Member who submits
23 valid payment information shall be categorized as either an “Out of Pocket Payee” (“OOP Payee”)
24 or “Complainant,” as defined by the Settlement Agreement. OOP Payee Settlement Class
25 Members include those Settlement Class Members who paid Defendant for a repair or replacement
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1 allegedly related to a Covered Issue. Each OOP Payee Settlement Class Member who submits
2 valid payment information shall be provided with an equal *pro rata* share of the Net Settlement
3 Fund, up to \$349, but no less than \$50. Complainant Settlement Class Members include those
4 Settlement Class Members who complained to Defendant about allegedly experiencing a Covered
5 Issue, but who did not pay out of pocket to Defendant for a repair or replacement of that alleged
6 issue. Each Complainant Settlement Class Member who submits valid payment information shall
7 be provided with an equal *pro rata* share of the Net Settlement Fund, up to \$125, but no higher
8 than 75% of the *pro rata* share to be paid to each OOP Payee Settlement Class Member. The actual
9 amount provided to each Settlement Class Member who submits valid payment information may
10 be increased or decreased on a *pro rata* basis based on the size of the Net Settlement Fund and the
11 number of Settlement Class Members who submit valid payment information, subject to the
12 allocation plan described above and in the Settlement Agreement.

13 8. **Opting-Out from Settlement Class**. Any person falling within the definition of
14 the Settlement Class may, upon request, be excluded or “opt out” from the Settlement Class. Any
15 such person who desires to opt out must submit written notice of such intent online through the
16 Settlement Website or via United States mail to the Settlement Administrator at the designated
17 address included in the Notice. The written request for exclusion must (i) identify the case name
18 of the Lawsuit; (ii) identify the name of the individual seeking exclusion from the Settlement; (iii)
19 be personally signed and dated by the individual seeking exclusion; and (iv) include a statement
20 indicating the individual’s intent to be excluded from the Settlement. Information regarding
21 Settlement Class Members’ telephone numbers and addresses is not required.

22 To be effective, the written notice seeking exclusion shall be postmarked no later
23 than the Objection and Exclusion Deadline, which is set 105 calendar days after first Notice is
24 sent, or submitted online at the Settlement Website no later than the Objection and Exclusion
25 Deadline in accordance with the Settlement. All those persons submitting valid and timely requests
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1 for exclusion shall not be entitled to receive any benefits of the Settlement and shall not be entitled
2 to object to the Settlement. If a Settlement Class Member submits both valid payment information
3 and a request for exclusion, the submission of payment information shall take precedence and be
4 considered valid, and the request for exclusion will be deemed invalid and rejected.

5 Any Settlement Class Member who does not timely and validly exclude themselves
6 from the Settlement shall be bound by the terms of the Settlement. If final judgment is entered,
7 any Settlement Class Member who has not submitted a timely, valid written request for exclusion
8 from the Settlement Class shall be bound by all subsequent proceedings, orders, and judgments in
9 this matter, including but not limited to the Releases set forth in the Settlement Agreement and
10 incorporated in the judgment.

11 9. **Objections and Appearances.** Any Settlement Class Member who has not
12 submitted a timely written request for exclusion from the Settlement Class and who wishes to
13 object to the Settlement must submit a written objection to the Court by the Objection and
14 Exclusion Deadline, which is set 105 days after first Notice is sent. A Settlement Class Member
15 may object to the Settlement, the benefits of the Settlement, Service Awards, and/or the Attorney’s
16 Fees and Expenses Award, and/or may seek to appear at the Final Approval Hearing and show
17 cause, if any, why the Settlement should not be approved as fair, reasonable, and adequate to the
18 Settlement Class, why a Final Approval Order and Judgment should not be entered thereon, why
19 the benefits of the Settlement should not be approved, or why the Service Awards and/or the
20 Attorney’s Fees and Expenses Award should not be granted, but must proceed as set forth in this
21 paragraph.

22 A Settlement Class Member wishing to object to the Settlement must submit his or
23 her written objection (i) through the Court’s Electronic Court Files (“ECF”) system by 11:59 p.m.
24 Pacific Time on the Objection and Exclusion Deadline; (ii) by mailing them to Clerk of Court,
25 U.S. District Court, Northern District of California, 1301 Clay Street, Suite 400 S, Oakland, CA
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1 94612, postmarked by the Objection and Exclusion Deadline; or (iii) by filing them in person at
2 any location of the United States District Court for the Northern District of California by the
3 Objection and Exclusion Deadline. To be valid, any such objection must contain the Settlement
4 Class Member's full name, the basis for their belief that they are a member of the settlement class,
5 the basis of their objection, and their signature. Settlement Class Members should also be advised
6 that they may file an objection or appear at the Final Approval Hearing either on their own or
7 through an attorney, and that if they appear through an attorney, they are responsible for paying
8 that attorney. Settlement Class Members who fail to timely submit a written objection in the
9 manner described above shall be deemed to have waived any objection to the Settlement.

10 Any Settlement Member who timely submits a written objection in the manner
11 described above has the option to appear and request to be heard at the Final Approval Hearing,
12 either in person or through the objecting Settlement Class Member's counsel, if applicable. Any
13 objecting Settlement Class Member wishing to appear and be heard at the Final Approval Hearing,
14 either in person or through the objecting Settlement Class Member's counsel, must include Notice
15 of Intention to Appear in the body of the objector's written objection. If an objecting Settlement
16 Class Member wishes to be represented by an attorney, the objector shall be solely responsible for
17 the objector's attorney's fees and expenses. Counsel for an objecting Settlement Class Member
18 seeking to appear at the Final Approval Hearing must enter a Notice of Appearance no later than
19 14 days before the Final Approval Hearing.

20 10. **Final Approval Hearing.** The Court reserves the right to adjourn the Final
21 Approval Hearing to a later date and to approve the Settlement without modification, or with such
22 modifications as may be agreed to by the Parties, with or without further notice other than entry
23 of an order on the Court's docket. The Court may decide to hold the Final Approval Hearing
24 telephonically or by other virtual means without further notice.

25 11. **Final Approval Briefing.** Settlement Class Representatives and Class Counsel
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1 shall file their motion seeking final approval of the Settlement at least 21 days before the Final
2 Approval Hearing. All briefing and supporting documents in support of a motion for Attorney's
3 Fees and Expenses and Service Awards must be filed at least 35 days prior to the Objection and
4 Exclusion Deadline. Apple reserves the right to object to or oppose Class Counsel's requests for
5 attorney's fees and expenses.

6 The motion for final approval shall address the final approval guidelines in the
7 Northern District of California's Procedural Guidance for Class Action Settlements, available at
8 <https://cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/>, in the order
9 the guidelines are presented on the website.

10 As reflected in the Guidance, the Court will require a post-distribution accounting
11 within 21 days after the distribution of settlement funds. The Court will typically withhold
12 between 10% and 25% of the attorney's fees granted at final approval until after the post-
13 distribution accounting has been filed. The final approval motion should specify what percentage
14 class counsel believes it is appropriate to withhold and why.

15 12. **Reasonable Procedures.** Class Counsel and Defense Counsel are hereby
16 authorized to use all reasonable procedures in connection with approval and administration of the
17 Settlement that are not materially inconsistent with this Order or the Settlement Agreement,
18 including making, without further approval of the Court, minor changes to the form or content of
19 the notices and other exhibits that they jointly agree are reasonable or necessary to further the
20 purpose of effectuating the Settlement Agreement.

21 13. **Extension of Deadlines.** Upon application of the Parties and good cause shown,
22 the deadlines set forth in this Order may be extended by order of the Court, without further notice
23 to the Settlement Class. Settlement Class Members must check the Settlement website regularly
24 for updates and further details regarding extensions of these deadlines. The Court reserves the
25 right to adjourn or continue the Final Approval Hearing to a later date, and/or to extend the
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1 deadlines set forth in this Order, without further notice of any kind to the Settlement Class other
2 than entry of an order on the Court's docket.

3 14. **Termination of the Settlement and Use of this Order.** If the Settlement fails to
4 become effective in accordance with its terms, or if the Final Order and Judgment is not entered
5 or is reversed or vacated on appeal, this Order shall be null and void, the Settlement Agreement
6 shall be deemed terminated, and the Parties shall return to their positions without any prejudice,
7 as provided for in the Settlement Agreement. The fact and terms of this Order or the Settlement,
8 all negotiations, discussions, drafts and proceedings in connection with this Order or the
9 Settlement, and any act performed or document signed in connection with this Order or the
10 Settlement, shall not, in this or any other Court, administrative agency, arbitration forum, or other
11 tribunal, constitute an admission, or evidence, or be deemed to create any inference (i) of any acts
12 of wrongdoing or lack of wrongdoing, (ii) of any liability on the part of Defendant to Plaintiffs,
13 the Settlement Class, or anyone else, (iii) of any deficiency of any claim or defense that has been
14 or could have been asserted in this Lawsuit, (iv) of any damages or absence of damages suffered
15 by Plaintiffs, the Settlement Class, or anyone else, or (v) that any benefits obtained by the
16 Settlement Class under the Settlement represent the amount that could or would have been
17 recovered from Defendant in this Lawsuit if it were not settled at this time. The fact and terms of
18 this Order or the Settlement, and all negotiations, discussions, drafts, and proceedings associated
19 with this Order or the Settlement, including the judgment and the release of the Released Claims
20 provided for in the Settlement Agreement, shall not be offered or received in evidence or used for
21 any other purpose in this or any other proceeding in any court, administrative agency, arbitration
22 forum, or other tribunal, except as necessary to enforce the terms of this Order, the Final Order
23 and Judgment, and/or the Settlement.

24 15. **Related Orders.** All further proceedings in the Lawsuit are ordered stayed until
25 entry of the Final Approval Order or termination of the Settlement Agreement, whichever occurs
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1 earlier, except for those matters necessary to obtain and/or effectuate final approval of the
2 Settlement Agreement.

3 16. For the sake of clarity, the Court enters the following deadlines:


EVENT	DATE
Deadline for Defendant to provide the Settlement Administrator a list of Settlement Class Members	December 18, 2023
Notice Date, on which Notice commences	30 days following receipt of Settlement Class list, i.e., January 17, 2024, but not later than February 19, 2024
Deadline for Class Counsel to submit Motion for Attorney's Fees and Expenses and Service Awards	April 29, 2024
Deadline for Settlement Class Members to submit written Objections, including supporting documentation, if applicable	June 3, 2024
Deadline for Settlement Class Members to submit written requests for exclusion from the Settlement	June 3, 2024
Deadline for Settlement Class Members to submit valid payment information	June 3, 2024
Deadline to submit declaration establishing proof of notice	June 24, 2024
Deadline for Class Counsel to submit Motion for Final Approval, including supporting declarations and documentation and response to objections	June 24, 2024
Deadline for counsel for objectors seeking to appear at Final Approval Hearing to file a notice of appearance, if applicable	July 3, 2024

1 2 3	Deadline for Class Representatives, Class Counsel, and/or Apple to submit Responses to written Objections, if applicable	July 11, 2024
4	Final Approval Hearing	July 18, 2024

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6 **IT IS SO ORDERED.**

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9 DATED: November 21, 2023

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HON. JON S. TIGAR
UNITED STATES DISTRICT JUDGE