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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE APPLE iPhone 4 PRODUCTS
LIABILITY LITIGATION

Case No. 5:10-md-02188-RMW
STIPULATION OF SETTLEMENT

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made by and between: (1) Apple Inc., a California corporation (“Apple”) and (2) Stacey Milrot, Christopher DeRose, Steve Tietze, Jeffrey Rodgers, Hung Michael Nguyen, Anthony Cologna, Joy Bearden, David Popik, Charles Fasano, Greg Aguilera II, Thomas Gionis, Christopher Bensberg, David Purdue, Michael James Goodglick, Karen Young, Joshua Gilson, Brandon Ellison Reininger, Trevor Antunez, Jessica Lares, Jaywill Sands, Bryan Colver, Jaclyn Badolato, Nicole Stankovitz, Vinny Curbelo, Kevin McCaffrey, James Blackwell, and Jethro Magat, individually and as representatives of the “Settlement Class” as defined below.

DEFINITIONS

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

1 A. “iPhone 4” means Apple’s iPhone 4 (as used herein, “iPhone 4” shall not include
2 or refer to the “iPhone 4S”).

3 B. “Class Representatives” or “Plaintiffs” means Stacey Milrot, Christopher DeRose,
4 Steve Tietze, Jeffrey Rodgers, Hung Michael Nguyen, Anthony Cologna, Joy Bearden, David
5 Popik, Charles Fasano, Greg Aguilera II, Thomas Gionis, Christopher Bensberg, David Purdue,
6 Michael James Goodglick, Karen Young, Joshua Gilson, Brandon Ellison Reininger, Trevor
7 Antunez, Jessica Lares, Jaywill Sands, Bryan Colver, Jaclyn Badolato, Nicole Stankovitz, Vinny
8 Curbelo, Kevin McCaffrey, James Blackwell, and Jethro Magat.

9 C. “Class Member” shall mean each member of the Settlement Class.

10 D. “Settlement Class Member” shall mean and include every Class Member who does
11 not validly and timely request exclusion from the Settlement Class.

12 E. “Published Notice” means publication of the notice of the proposed class action
13 settlement as set forth in Section IV(C), below.

14 F. “Notice Date” means the later of the last date of Published Notice or the last date
15 of e-mailed notice.

16 G. “Settlement” means the settlement described herein.

17 H. “Releasing Persons” means Plaintiffs, each Settlement Class Member, and their
18 respective heirs, executors, administrators, representatives, agents, partners, successors, and
19 assigns.

20 I. “Released Persons” means Apple and each of its past or present directors, officers,
21 employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives,
22 partners, affiliates, parents, subsidiaries, joint venturers, independent contractors, wholesalers,
23 resellers, distributors, retailers, related companies, and divisions, and each of their predecessors,
24 successors, heirs, and assigns.

25 J. “Class Counsel” means Ira P. Rothken of the Rothken Law Firm, 3 Hamilton
26 Landing, Ste 280, Novato, CA 94949, (415) 924-4250; Stuart A. Davidson and Mark Dearman of
27 Robbins Geller Rudman & Dowd LLP, 120 East Palmetto Park Rd., Suite 500, Boca Raton, FL
28 33432, (561) 750-3000; Jennifer Sarnelli of Gardy & Notis LLP, 560 Sylvan Avenue, Englewood

1 Cliffs, NJ 07632, (201) 567-7377; and Behram V. Parekh of Kirtland & Packard LLP, 2361
2 Rosecrans Avenue, Fourth Floor, El Segundo, CA 90245, (310) 536-1000.

3 K. "Plaintiffs State Liason Counsel" means William M. Audet of Audet & Partners,
4 LLP, 221 Main Street, Suite 1460, San Francisco, CA 94105.

5 L. "Parties" means Apple and Plaintiffs.

6 RECITALS

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

9 A. Between June and September 2010, Plaintiffs filed 16 class action complaints
10 against Apple in the United States District Courts for the Northern District of California, the
11 District of Massachusetts, the District of Maryland, the Middle District of Tennessee, and the
12 Southern District of Texas. These actions were titled *Goodglick v. Apple, Inc.*, et al., Northern
13 District of California Case No. 10-cv-2862; *Benvenisty v. Apple, Inc.*, Northern District of
14 California Case No. 10- cv-2885; *Dydyk v. Apple, Inc.*, Northern District of California Case No.
15 10-cv-2897; *Rodgers v. Apple, Inc.*, Northern District of California Case No. 10-cv-2916; *Popik*
16 *v. Apple, Inc., et al.*, Northern District of California Case No. 10-cv-2928; *Tietze v. Apple Inc.*,
17 Northern District of California Case No. 10-cv-2929; *Fasano v. Apple, Inc., et al.*, Northern
18 District of California Case No. 10-cv-3010; *Mayo v. Apple, Inc., et al.*, Northern District of
19 California Case No. 10-cv-3017; *Aguilera v. Apple, Inc., et al.*, Northern District of California
20 Case 10-cv-3056; *Milrot v. Apple Inc., et al.*, Northern District of California Case No. 10-cv-
21 4117; *Gionis v. Apple, Inc., et al.*, District of Massachusetts Case No. 10-cv-11110; *McCaffrey v.*
22 *Apple, Inc., et al.*, District of Maryland Case No. 10-cv-1776; *Purdue v. Apple, Inc., et al.*, Middle
23 District of Tennessee Case No. 10-cv-687; *Nguyen v. Apple, Inc.*, Southern District of Texas Case
24 No. 10-cv-252; and *Noble v. Apple Inc.*, Northern District of California Case No. 10-cv-3957. A
25 seventeenth action, *DeRose v. Apple Inc.*, Southern District of Florida Case No. 10-cv-61502, was
26 originally filed in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward
27 County, Florida, and removed to the Southern District of Florida. An eighteenth action, *Bensberg*
28 *v. Apple Inc. et al.*, Central District of California Case No. 10-cv-1146, was originally filed in the

1 in Los Angeles Superior Court, and removed to the Central District of California. These actions
2 were consolidated by the Judicial Panel on Multidistrict Litigation in the Northern District of
3 California pursuant to 28 U.S.C. § 1407. A nineteenth action, *Blackwell v. Apple Inc. et. al.*,
4 Northern District of California Case No. 11-cv-01453, was filed on March 25, 2011, and a
5 twentieth action, *Magat v. Apple Inc.*, Central District of California Case No. 11-cv-00938, was
6 filed on June 23, 2011. These twenty actions will be referred to herein as “the Federal Actions.”
7 A Master Consolidated Complaint was filed in the Actions on February 7, 2011 (the
8 “Complaint”). The Complaint alleged that the iPhone 4’s signal quality attenuates when users
9 handle the phone and that Apple engaged in misrepresentations regarding the iPhone 4, and
10 asserted various claims against Apple and AT&T Mobility LLC (“AT&T”). On May 20, 2011,
11 Plaintiffs in the Federal Actions voluntarily dismissed AT&T as a defendant in the Federal
12 Actions.

13 B. Between June 2010 and July 2010, five class action complaints were filed in
14 California state courts. These actions were titled *Balooch v. Apple Inc.*, Orange County Superior
15 Court Case No. 30-2010-00385372-CU-BT-CXC; *Garcia v. Apple Inc.*, Santa Clara County
16 Superior Court Case No. 1-10-CV-176695; *Hurtado v. Apple Inc.*, San Diego County Superior
17 Court Case No. 37-2010-00096200-CU-BC-CTL; *Musin v. Apple Inc.*, Santa Clara County
18 Superior Court Case No. 1-10-CV-177126; and *Vines v. Apple Inc.*, Santa Clara County Superior
19 Court Case No. 1-10-CV-176961 (collectively, the “State Actions”). The complaints in the State
20 Actions alleged that the iPhone 4’s signal quality attenuates when users handle the phone and that
21 Apple engaged in misrepresentations regarding the iPhone 4. On November 19, 2010, these
22 actions were coordinated in Santa Clara County Superior Court pursuant to California Code of
23 Civil Procedure § 404.1. On March 29, 2011 by court order the State Actions were consolidated
24 into JCCP 4639 (“Consolidated State Action”). Additionally, the court order coordinated the
25 Consolidated State Action with the Federal Actions. The Federal Actions and Consolidated State
26 Action will be collectively referred to as the “Actions.”

27 C. Apple disputes the claims alleged in the Actions and is entering into this
28 Settlement to avoid burdensome and costly litigation. The Settlement is not an admission of

1 wrongdoing.

2 D. Class Counsel and the Class Representatives believe that the claims asserted in
3 the Actions possess merit and have examined and considered the benefits to be obtained under
4 the proposed Settlement set forth in this Agreement, the risks associated with the continued
5 prosecution of this complex and potentially time-consuming litigation, and the likelihood of
6 ultimate success on the merits of the Actions. Class Counsel have conducted discovery of
7 Apple, have diligently investigated the facts and law relevant to the merits of their claims, and
8 have concluded that the proposed Settlement set forth in this Agreement is fair, adequate,
9 reasonable, and in the best interests of the Settlement Class.

10 E. The Parties desire to settle the Actions in their entirety with respect to all potential
11 claims that were or could have been alleged in the complaints filed in each of the separate
12 Actions and/or the Master Consolidated Complaint. The Parties intend this Agreement to bind
13 Apple, Plaintiffs (both as Class Representatives and individually), and all members of the
14 Settlement Class as defined below who do not specifically request exclusion.

15 F. This document reflects the benefits obtained for and available to Class Members
16 as a result of the filing of the Actions as well as the negotiations and agreement reached between
17 Class Counsel and Apple.

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

21 **I. CERTIFICATION OF THE SETTLEMENT CLASS**

22 **A. Definition of the Settlement Class**

23 The "Settlement Class" shall be defined as follows:

24 All United States residents who are or were the original owners of
25 an iPhone 4. The Settlement Class excludes Apple; any entity in
26 which Apple has a controlling interest; Apple's directors, officers,
and employees; and Apple's legal representatives, successors, and
assigns.

1 **B. Stipulation Respecting Conditional Certification**

2 The Parties stipulate and agree that, subject to Court approval, the Settlement Class
3 described in Section I.A. above should be conditionally certified pursuant to Rule 23(b)(3) of the
4 Federal Rules of Civil Procedure solely for purposes of the Settlement embodied in this
5 Agreement. If, for any reason, this Agreement is not approved by the Court, the stipulation for
6 certification and all of the agreements contained herein shall be considered null and void and may
7 not be referred to or used as evidence or for any other purpose whatsoever in the Actions or in
8 any other action or proceeding.

9 **II. CONSIDERATION FOR SETTLEMENT; CLAIMS PROCESS**

10 **A. \$15 Cash Payment**

11 Eligible Settlement Class Members who meet the requirements and follow the procedures
12 set forth in Section II(B) below, including filing a valid Claim Form, shall receive a payment in
13 the amount of \$15.00 in cash.

14 **B. Claims Process**

15 **1. Claim Form**

16 Settlement Class Members who wish to claim a \$15 cash payment will be
17 required to submit a Claim Form executed under penalty of perjury setting forth, among other
18 things, the Settlement Class Member's name and address and the serial number of his or her
19 iPhone 4. A description on how to find the serial number will be included on the Claim Form.
20 Settlement Class Members who no longer own their iPhone 4 will be provided instructions on
21 how to contact Apple to verify ownership.

22 Settlement Class Members shall also declare in the Claim Form that they: (a)
23 experienced antenna or reception issues with their iPhone 4; (b) completed the troubleshooting
24 steps on <http://www.apple.com/support/iphone/assistant/calls/>; (c) could not have returned their
25 iPhone 4 without incurring any costs; and (d) were unwilling to use a case or free bumper for
26 their iPhone 4. Settlement Class Members who no longer own their iPhone 4 and as a result are
27 unable to complete the troubleshooting steps must complete an alternative declaration in the
28

1 Claim Form that they: (a) experienced antenna or reception issues with their iPhone 4; (b) could
2 not have returned their iPhone 4 without incurring any costs; (c) were unwilling to use a case or
3 free bumper for their iPhone 4; and (d) are unable to complete the troubleshooting steps on
4 <http://www.apple.com/support/iphone/assistant/calls/> because they no longer own their iPhone 4.

5 **2. Claims Period**

6 To be valid, Claim Forms must be submitted within one hundred and twenty (120)
7 days from the Notice Date.

8 **3. Claims Submission**

9 Completed Claim Forms may be mailed by U.S. mail or may be scanned and either
10 uploaded to the Settlement Administrator's website or e-mailed.

11 **4. Modification by Agreement**

12 The parties may make non-material modifications to the claims process as necessary by
13 mutual agreement without Court approval.

14 **5. Special Class Member Rights Provision**

15 If a Class Member is deceased, the Class Member's executor, administrator, or legally
16 determined heir may submit a Claim Form. If a Class Member has a legal guardian, or due to age
17 or disability, has executed a power of attorney authorizing another to manage the Class Member's
18 financial affairs, the guardian or attorney may submit a Claim Form. The Claims Administrator
19 may require reasonable proof of the guardian's or attorney's authority. Claims shall not be
20 transferable in any other circumstances.

21 **C. Apple Bumpers**

22 Since July 2010, Apple has offered a free bumper for iPhone 4 owners who have
23 experienced antenna or reception issues. Apple has confirmed in connection with the settlement
24 that it will continue to offer free Apple Bumpers as described at
25 <http://support.apple.com/kb/HT4389> for at least eighteen (18) months after it discontinues the
26 iPhone 4, at no cost to any Class Members. The Class Notice and Summary Notice described in
27 Sections IV(A) and (B) below will include a reference to the Bumper offer, including a link to the
28 web page in the Summary Notice.

1 **D. Payment of Notice Costs and Costs of Administration**

2 Except as otherwise provided herein, Apple will pay all of the costs of notice and costs of
3 administering the Settlement as set forth in Sections IV and XI below.

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

5 A. Upon full execution of this Agreement, the Parties shall take all necessary steps to
6 obtain an Order from the Court substantially in the form of Exhibit D hereto (the “Conditional
7 Approval Order”), granting conditional certification of the Settlement Class, granting preliminary
8 approval of this Agreement, and approving the forms and methods of notice to the Settlement
9 Class set forth herein. The Conditional Approval Order shall further set a date for a hearing
10 pursuant to Rule 23(e) of the Federal Rules of Civil Procedure (“Final Approval Hearing”) at
11 which the Court will determine whether the requirements for certification of the Settlement Class
12 have been met; whether the Settlement should be finally approved as fair, reasonable, adequate,
13 and in the best interests of the Settlement Class Members; whether the award of fees and
14 expenses to Class Counsel should be approved; and whether a final judgment should be entered.

15 B. If at any point the Court does not approve this Agreement, the Agreement shall
16 terminate and be of no force or effect, unless the Parties voluntarily agree to modify this
17 Agreement in the manner necessary to obtain Court approval.

18 **IV. NOTICE AND SETTLEMENT ADMINISTRATION**

19 The Parties agree to, and will request approval by the Court of, the following forms and
20 methods of notice to the Settlement Class:

21 A. A copy of the Notice of Pendency and Proposed Settlement of Class Action
22 substantially in the form attached hereto as Exhibit A (the “Class Notice”), together with the
23 Claim Form (including the Instructions, Claim Form and Release) substantially in the form
24 attached hereto as Exhibit C, shall be posted and available for download on a settlement website,
25 www._____.com (the “Settlement Website”), and shall be mailed at no charge to Class
26 Members who call a toll-free number to be established at Apple’s expense (“Toll-Free Number”).
27 This information shall remain available on the Settlement Website until the last day of the Claims
28 Period. All costs and expenses associated with complying with this provision shall be borne

1 exclusively by Apple.

2 B. Apple shall e-mail a copy of the Summary Notice of Settlement substantially in the
3 form attached hereto as Exhibit B (“Summary Notice”) to each Class Member for whom Apple
4 has an e-mail address in its warranty registration database. The Summary Notice shall: (i) notify
5 Settlement Class Members about the claims made and benefits available through the Settlement
6 (ii) provide the Settlement Website address (hyperlinked in the e-mailed notice) with a
7 description that the Class Notice and Claim Form are available on the Settlement Website (iii)
8 provide the Toll-Free Number where Settlement Class Members can call to obtain a Class Notice
9 and Claim Form, and (iv) inform Settlement Class Members of the Apple Bumper offer described
10 in Section II(C) above. All costs and expenses associated with complying with this provision
11 shall be borne exclusively by Apple.

12 C. Apple shall cause a copy of the Summary Notice to be published once in *USA*
13 *Today*, a newspaper of national circulation, and once on a different date in *Macworld*. The
14 Summary Notice shall not be less than 1/4 of a page in size. The Summary Notice shall include
15 the address of the Settlement Website and the Toll-Free Number.

16 E. Apple shall be solely responsible for making all arrangements necessary to
17 effectuate the notice set forth above and for payment of the costs and expenses of such notice.

18 F. The Class Notice shall provide a procedure whereby Class Members may object or
19 exclude themselves from the Settlement Class. Class Members shall have no less than 45 days
20 following the Notice Date to object or exclude themselves; the actual date shall be established by
21 the Court. (If such period ends on a weekend or holiday, Class Members shall have until the next
22 business day.) Any Class Member who does not timely and validly request exclusion shall be a
23 Settlement Class Member and shall be bound by the terms of this Agreement. The Class Notice
24 shall also provide a procedure for Class Members to object to the proposed settlement; and/or to
25 be represented by counsel of their choice at their own expense. Requests for exclusion shall be
26 postmarked no later than 25 days prior to the Final Hearing. Objections shall be filed with the
27 Court and served on counsel for the Parties (as identified in the Class Notice) no later than 25
28 days prior to the Final Hearing. Any objection shall, at a minimum, require the Class Member to

1 provide: (a) a detailed statement of such person's specific objections to any matters before the
2 Court; (b) the grounds for such objections and the reasons that such person desires to appear and
3 be heard; and (c) proof of membership in the Class, as well as all documents or writings such
4 person desires the Court to consider.

5 **V. PAYMENT OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**
6 **TO CLASS COUNSEL AND STIPENDS TO NAMED PLAINTIFFS**

7 A. Apple agrees not to oppose an award to Plaintiffs' Counsel of attorney's fees and
8 expenses in the amount of \$5.9 million which is to be paid by Apple (the "Fees Amount"). This
9 amount is in addition to and separate from all other consideration and remedies available to the
10 Settlement Class.

11 B. In recognition of the time and effort the named Plaintiffs expended in pursuing this
12 action and in fulfilling their obligations and responsibilities as class representatives, and of the
13 benefits conferred on all Settlement Class Members by the Settlement, Class Counsel will ask the
14 Court for the payment of a stipend from Apple to each of the named Plaintiffs not to exceed \$500
15 per named Plaintiff. Apple does not oppose this request by Class Counsel for stipend payments.
16 Class Counsel will not seek in excess of \$500 per named Plaintiff for stipends and, in any event,
17 Class Counsel agrees that Apple shall not pay, or be obligated to pay, in excess of \$500 per
18 Plaintiff for stipends.

19 C. Apple shall not be liable for any additional fees or expenses of Plaintiffs or any
20 Class Member in connection with the Actions or the Litigation. Class Counsel agree that they
21 will not seek any additional fees or costs from Apple in connection with the Actions or the
22 settlement of the Actions. Apple expressly agrees that it will not seek to recover its Court costs,
23 attorneys' fees, or expenses once the Court enters a dismissal of the Actions. No later than fifteen
24 (15) banking days following the Effective Date as defined below, Apple shall pay the fees
25 awarded by the Court, to Robbins Geller Rudman & Dowd LLP, Attn: Mark Dearman, as
26 receiving agent for Class Counsel. Plaintiffs and Class Counsel agree to provide Apple all
27 identification information necessary to effectuate the payment of such fees and stipends awarded
28

1 to the named Plaintiffs including, but not limited to, Taxpayer Identification Number(s),
2 completed Internal Revenue Service Form W-9(s), and wire transfer information.

3 **VI. CALIFORNIA STATE ACTIONS**

4 Plaintiffs State Liaison Counsel has agreed to the terms and conditions of this Settlement.
5 Plaintiffs State Liaison Counsel shall dismiss the Consolidated State Action. After the Court
6 awards Class Counsel fees and costs pursuant to Section V, Class Counsel shall allocate to
7 Plaintiffs State Liaison Counsel an appropriate amount of attorneys fees and costs in their
8 discretion as is fair and equitable. Any and all payments of attorneys fees or costs to the state
9 plaintiffs counsel shall be subject to the provisions of Section V(C) of this Agreement. Plaintiffs
10 State Liaison Counsel shall solely be responsible for the allocation of any award of fees and
11 expenses among all plaintiffs counsel in the State Actions. No plaintiffs counsel in the State
12 Actions shall be allowed to make an independent claim for attorneys' fees or costs. In addition to
13 any benefit allowed under this Settlement, and in recognition of their respective efforts on behalf
14 of the Class, the plaintiffs in the State Actions that join in the settlement shall be entitled to
15 receive the stipend as provided for under section V(B) of the Settlement Agreement.

16 **VII. FINAL JUDGMENT APPROVING SETTLEMENT AND DISMISSING CLAIMS**
17 **OF SETTLEMENT CLASS MEMBERS WITH PREJUDICE; RELEASE OF**
18 **CLAIMS BY SETTLEMENT CLASS MEMBERS**

18 **A. Entry of Final Judgment**

19 Upon the Court's approval of this Agreement and the settlement set forth herein, a
20 judgment substantially in the form attached hereto as Exhibit E ("Judgment") shall be entered.

21 **B. Release of Claims**

22 1. As of the Effective Date of this Agreement as defined below, Releasing Persons
23 hereby fully and irrevocably release and forever discharge Released Persons from any and all
24 liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts,
25 agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any
26 kind whatsoever, whether known or unknown, existing or potential, or suspected or unsuspected,
27 whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown
28 claims, which they have or may claim now or in the future to have, that were or could have been

1 alleged or asserted against any of the Released Persons in the Actions relating to any claims that
2 the iPhone 4 experiences antenna, signal strength or reception issues and any alleged
3 misrepresentation or failure to disclose concerning such antenna, signal strength or reception
4 issues (“Released Claims”). “Released Claims” shall not include personal injury claims.

5 2. Plaintiffs, on behalf of themselves and all Settlement Class Members, hereby
6 waive any and all provisions, rights, and benefits conferred by section 1542 of the California
7 Civil Code or any comparable statutory or common law provision of any other jurisdiction.

8 Section 1542 reads as follows:

9 Certain Claims Not Affected By General Release: A general
10 release does not extend to claims which the creditor does not know
11 or suspect to exist in his or her favor at the time of executing the
12 release, which if known by him or her must have materially
13 affected his or her settlement with the debtor.

14 Although the releases granted under this Agreement are not general releases, Plaintiffs, on behalf
15 of themselves and of all Settlement Class Members, nonetheless expressly acknowledge that
16 Plaintiffs and the Settlement Class Members are waiving the protections of section 1542 and of
17 any comparable statutory or common law provision of any other jurisdiction.

18 3. Upon entry of the Final Order and Judgment pursuant to the Final Approval
19 Hearing, each and every Settlement Class Member shall be permanently barred and enjoined from
20 initiating, asserting and/or prosecuting any released claims against any Releasing Parties in any
21 court or any forum.

22 4. Notwithstanding the entry of Judgment, this Court shall retain jurisdiction of the
23 Actions until such time as the Court determines that the Settlement is fully consummated
24 according to the terms and conditions of this Agreement.

25 **VIII. PLAINTIFFS’ CLAIMS AND THE BENEFITS OF SETTLEMENT**

26 A. Before commencing these Actions and during settlement negotiations, Class
27 Counsel and their consultants conducted a thorough examination and evaluation of the relevant
28 law and facts to assess the merits of Plaintiffs’ claims and potential claims and to determine how
best to serve the interests of the Class. Further, Plaintiffs conducted discovery and Apple
provided Class Counsel with the information requested to permit the Class Representatives and

1 Class Counsel to assess the merits of their claims and potential claims and negotiate a settlement.
2 Class Counsel and the Class Representatives believe that the claims asserted in these Actions
3 have merit.

4 B. Class Counsel, on behalf of the Settlement Class, have agreed to settle the Actions
5 pursuant to the provisions of this Agreement after considering, among other things: (a) the
6 substantial benefits to Plaintiffs and the Settlement Class under the Settlement; (b) the attendant
7 risks and uncertainty of litigation, especially in complex actions such as this, as well as the
8 difficulties and delays inherent in such litigation; and (c) the desirability of consummating this
9 Settlement to provide effective timely relief to Plaintiffs and the Settlement Class.

10 C. In consideration of all of these circumstances, Class Counsel and the Class
11 Representatives have concluded that the proposed settlement set forth in this Agreement is fair,
12 adequate, reasonable, and in the best interests of the Settlement Class.

13 **IX. DEFENDANT'S DENIAL OF LIABILITY; AGREEMENT AS DEFENSE IN**
14 **FUTURE PROCEEDINGS**

15 A. Apple has indicated its intent to vigorously contest each and every claim in the
16 Actions, and denies all of the material allegations in the Actions. Apple enters into this
17 Agreement without in any way acknowledging any fault, liability, or wrongdoing of any kind.
18 Apple nonetheless has concluded that it is in its best interests that the Actions be settled on the
19 terms and conditions set forth herein in light of the expense that would be necessary to defend the
20 Actions, the benefits of disposing of protracted and complex litigation, and the desire of Apple to
21 conduct its business unhampered by the distractions of continued litigation.

22 B. Neither this Agreement, nor any of its terms or provisions, nor any of the
23 negotiations or proceedings connected with it, shall be construed as an admission or concession
24 by Apple of the truth of any of the allegations in the Actions, or of any liability, fault, or
25 wrongdoing of any kind, nor as an admission or concession by plaintiffs of any lack of merit of
26 their claims against Apple.

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

1 evidence or received in evidence in any pending or future civil, criminal, administrative or other
2 action or proceeding to establish any liability or admission by Apple.

3 D. To the extent permitted by law, the Agreement may be pleaded as a full and
4 complete defense to, and may be used as the basis for an injunction against, any action, suit, or
5 other proceeding which may be instituted, prosecuted, or attempted for claims covered by the
6 releases in this Agreement.

7 **X. CONFIRMATORY DISCOVERY**

8 Defendants agree to provide reasonable confirmatory discovery before the preliminary
9 approval hearing. In addition to previously produced documents, Apple will provide
10 confirmatory discovery regarding (1) the total number of iPhone 4 units sold in the United States,
11 (2) the total number of iPhone 4 units returned or restocked in the United States, and (3) the total
12 number of bumpers provided free of charge since July 2010.

13 **XI. ADMINISTRATIVE AND IMPLEMENTATION MATTERS**

14 **A. Effective Date of the Agreement**

15 The "Effective Date" of this Agreement shall be the first day after which all of the
16 following events and conditions of this Agreement have been met or have occurred:

- 17 1. All of the Parties and their counsel have executed this Agreement;
- 18 2. The Court has conditionally certified the Settlement Class, preliminarily
19 approved the settlement embodied in this Agreement, and provided for approved notice to the
20 Settlement Class by entry of an order substantially in the form of Exhibit D hereto;
- 21 3. Following the final date for Class Members to exclude themselves from the
22 Settlement Class pursuant to Section IV(F) hereof, and no less than seven (7) days prior to the
23 Final Hearing, Class Counsel has verified in writing that fewer than five thousand (5,000) of the
24 Class Members have elected to exclude themselves from the Settlement Class, except that if this
25 condition is not met, Apple shall have the option to give written notice to Class Counsel waiving
26 this condition and stating that Apple intends to proceed with the settlement set forth in this
27 Agreement;
- 28 4. The Court has signed the Judgment;

1 5. The Judgment has become final (“Final”) in that the time for appeal or writ
2 of that judgment has expired or, if an appeal and/or petition for review is taken and the settlement
3 is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari
4 can be taken has expired. If the Judgment is set aside, materially modified, or overturned by the
5 trial court or on appeal, and is not fully reinstated on further appeal, the Judgment shall not
6 become “Final”; and

7 6. The Consolidated State Action, Case # JCCP 4639, is dismissed,
8 notwithstanding an individual plaintiff’s ability to opt out of the settlement and pursue individual
9 claims.

10 **B. Settlement Administration**

11 Apple shall, in good faith, administer the process of receiving, handling, processing, and
12 fulfilling claims through a third-party settlement administrator (“Settlement Administrator”).
13 Class Counsel shall have the right to inquire of Apple’s counsel regarding any aspect of
14 implementation of the settlement, including but not limited to the settlement administration
15 process and the treatment of individual Settlement Class Member’s claims. The Settlement
16 Administrator shall have the right to reject any claims deemed to be fraudulent, insufficient, or
17 incomplete. However, the Settlement Class Member will be notified after receipt of any timely
18 claim if the claim is incomplete, inadequate or if the Settlement Administrator cannot otherwise
19 process the claim, at which time the Settlement Class Member will be provided with a fourteen
20 (14) day opportunity to cure his or her timely claim. Class Counsel shall have a reasonable
21 opportunity to inspect the Claim Forms of any rejected claim. Counsel for the Parties will first
22 attempt to resolve through meet and confer regarding any disputes concerning rejected claims
23 informally between themselves. If counsel cannot reach an agreement concerning a claim, the
24 claim will be submitted to the Court for determination.

25 **XII. ADDITIONAL PROVISIONS**

26 **A. Extensions Of Time**

27 Unless otherwise ordered by the Court herein, the Parties may jointly agree to reasonable
28 extensions of time to carry out any of the provisions of this Agreement.

1 **B. Integration**

2 This Agreement, including all exhibits, constitutes a single, integrated written contract
3 expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants,
4 agreements, representations, or warranties of any kind whatsoever have been made by any Party
5 hereto, except as provided for herein.

6 **C. Governing Law**

7 This Agreement shall be construed in accordance with, and be governed by, the laws of
8 the State of California, without regard to the principles thereof regarding choice of law.

9 **D. Gender and Plurals**

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

12 **E. Survival of Warranties and Representations**

13 The warranties and representations of this Agreement are deemed to survive the date of
14 execution hereof.

15 **F. Representative Capacity**

16 Each person executing this Agreement in a representative capacity represents and warrants
17 that he or she is empowered to do so.

18 **G. Counterparts**

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

22 **H. Cooperation of Parties**

23 The Parties to this Agreement agree to prepare and execute all documents, to seek Court
24 approvals, to defend Court approvals, and to do all things reasonably necessary to complete the
25 settlement described in this Agreement.

26 **I. Execution Voluntary**

27 This Agreement is executed voluntarily by each of the Parties without any duress or undue
28 influence on the part, or on behalf, of any of them. The Parties represent and warrant to each

1 other that they have read and fully understand the provisions of this Agreement and have relied
2 on the advice and representation of legal counsel of their own choosing. Each of the Parties has
3 cooperated in the drafting and preparation of this Agreement and has been advised by counsel
4 regarding the terms, effects, and consequences of this Agreement. Accordingly, in any
5 construction to be made of this Agreement, this Agreement shall not be construed as having been
6 drafted solely by any one or more of the Parties.

7 **J. Notices**

8 1. All Notices to Class Counsel provided for herein shall be sent by email to
9 djr@rgrdlaw.com with a hard copy sent by overnight mail to Robbins Geller Rudman & Dowd
10 LLP, Attn: Rick Nelson, 655 West Broadway, Suite 1900, San Diego, CA 92101.

11 2. All Notices to Apple provided for herein shall be sent by email to
12 PPreovolos@mofocom, with a hard copy sent by overnight mail to Penelope A. Preovolos,
13 Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482.

14 3. The notice recipients and addresses designated in Sections 1 and 2 above
15 may be changed by written notice pursuant to this Section.

16 4. Upon the request of any of the Parties, the Parties agree to promptly
17 provide each other with copies of objections, requests for exclusion, or other filings received as a
18 result of the Class Notice.

19 **K. Continuing Jurisdiction**

20 The United States District Court for the Northern District of California shall retain
21 jurisdiction over the Parties and all such disputes regarding the Actions and the Stipulation.

22 **L. Modification and Amendment**

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

25 Dated: 1/24, 2012

APPLE INC.

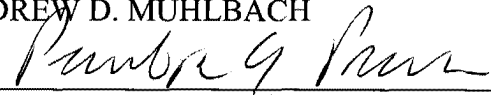
26 By: 

27 Title: Director, Litigation

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Dated: 1/24, 2012

MORRISON & FOERSTER LLP
PENELOPE A. PREOVOLOS
ANDREW D. MUHLBACH

By: 
Penelope A. Preovolos
Attorneys for Defendant
APPLE INC.

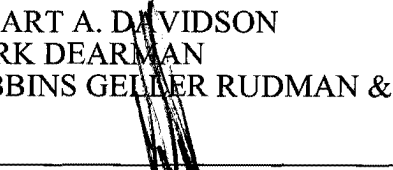
Dated: 1/24, 2012

IRA P. ROTHKEN
ROTHKEN LAW FIRM

By: 
Ira P. Rothken
Attorneys for Plaintiffs and for the Settlement
Class

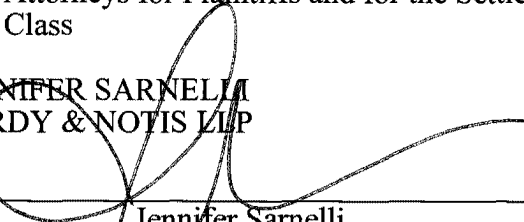
Dated: 1/24, 2012

STUART A. DAVIDSON
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Class


Dated: 1/24, 2012

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KIRTLAND & PACKARD LLP

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Class

Dated: 1/24, 2012

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AUDET & PARTNERS LLP

By: 
William M. Audet
Plaintiffs State Liasion Counsel