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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: MACBOOK KEYBOARD LITIGATION

Case No. 5:18-cv-02813-EJD-VKD

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Judge: Hon. Edward J. Davila
Date: March 16, 2023
Time: 9:00 a.m.
Courtroom: 4 – 5th Floor

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on March 16, 2023 at 9:00 a.m., before the Honorable Edward J. Davila of the United States District Court for the Northern District of California, Plaintiffs Zixuan Rao, Joseph Baruch, Bo Laurent, Ashley Marin, Kyle Barbaro, Steve Eakin, Michael Hopkins, Adam Lee, Kevin Melkowski, Lorenzo Ferguson, and Benjamin Gulker, will and do hereby move the Court, pursuant to Federal Rules of Civil Procedure 23(a), (b)(3), and (e), for entry of the proposed Final Approval Order and Judgment granting final approval of the proposed settlement of this action.

The Motion is based on this Notice of Motion, the incorporated memorandum of points and authorities, the Joint Declaration of Simon S. Grille and Steven A. Schwartz ("Joint Decl.") filed herewith, the Declaration of Jennifer Keough ("Keough Decl."), the record in this action, the argument of counsel, and any other matters the Court may consider.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs respectfully request the Court grant final approval of their non-reversionary $50,000,000 cash settlement with Apple Inc. The settlement will pay owners of 2015 to 2019 MacBooks who experienced multiple repairs at least $300 and up to $395. These payments will be distributed automatically, without the need for claim procedures. Other MacBook purchasers who were dissatisfied with a repair can file claims, for up to $50 or $125, depending on their circumstances. The Court granted preliminary approval on December 2, 2022, and the Settlement Administrator has implemented the notice program, sending over 10 million emails to class members. As of this filing, one objection has been made and there have been 648 opt-out requests.[1] *See* Keough Decl., ¶ 34. Claims may be submitted through March 6, 2023, and Class Counsel continue to assist class members in making claims. There is every indication that the settlement is a hard-fought, fair, reasonable and adequate compromise, and the discerning Settlement Class Members who stand to benefit from the settlement favor final approval and distribution of payments.

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[1] Plaintiffs will update the Court on the number of claims and opt-outs and respond to objections in their reply brief due March 6th.

1 As discussed in more detail in the Joint Declaration and in Plaintiffs' accompanying petition
2 for attorneys' fees, the settlement followed heavily contested litigation that included three motions to
3 dismiss, the Court's class certification and *Daubert* rulings, Rule 23(f) briefing in the Ninth Circuit,
4 review of 1.2 million pages of documents, and 38 depositions, including 12 of experts. Two retired
5 judges—Hon. Jay Gandhi (Ret.) and Hon. Edward Infante (Ret.)—supervised the parties' negotiations,
6 which lasted approximately two years. The well-developed record gave the parties a sound
7 understanding of the strengths and weaknesses of their positions, and the settlement will provide
8 hundreds of dollars in relief to the class members who were most affected by the allegedly defective
9 keyboard. Eligible claimants are all persons and entities in the United States who purchased, other than
10 for resale, an Apple MacBook from model years 2015-2017, an Apple MacBook Pro from model years
11 2016-2019 (excluding the 16" MacBook Pro released in November 2019), or an Apple MacBook Air
12 from model years 2018-2019 (the "Class Computers")[2] and who experienced a keyboard issue. The
13 plan of allocation provides for greater compensation to Settlement Class Members who experienced
14 multiple issues resulting in two or more keyboard replacements. Class Counsel anticipate $300
15 payments to those Settlement Class Members, who had to obtain multiple keyboard replacements,
16 payments of up to $125 to others who obtained a single keyboard replacement, and payments of up to
17 $50 to those who obtained key cap replacements only. Settlement Class Members also remain eligible
18 for Apple's Keyboard Service Program ("KSP"), which is provided for in the settlement and which
19 offers free keyboard repairs for four years from the date of purchase.

20 The relief secured through this settlement is excellent when compared with the risks and
21 uncertainty of continued litigation. As noted in the Court's Preliminary Approval Order (Dkt. No. 426
22 at 6-7), the fund represents between 9% and 28% of the total estimated damages—but a class trial
23 could have resulted in a lesser recovery or none at all. Apple denies liability and disputed class
24 certification based on the design changes it implemented to the keyboard components and the varying
25 repair rates across Class Computer models. Apple further contended that it lacked sufficient presale
26
27 [2] Unless otherwise noted, capitalized terms have the meaning ascribed to them in the Settlement
28 Agreement, Dkt. No. 410-1.

knowledge to give rise to a duty to disclose the alleged defect, that it owes no damages because it provided adequate service through its KSP, and that most purchasers did not experience problems. Even if Plaintiffs were to overcome all of these defenses, allocating a trial judgment would require a claim procedure to ensure adequate compensation for those who had issues with their keyboard. Under the settlement, MacBook purchasers can achieve a certain, timely recovery with the benefit of a claimant-friendly procedure supervised by an experienced claims administrator. The settlement satisfies the Northern District's Procedural Guidance for Class Action Settlements ("Guidelines")[3] and meets all criteria for final approval. Therefore, for the reasons discussed further below, Plaintiffs respectfully ask that the Court enter the proposed Final Approval Order and Judgment.

II. STATEMENT OF ISSUE TO BE DECIDED

Should the Court grant final approval of the parties' settlement under Fed. R. Civ. P. 23(e)?

III. PROSECUTION AND SETTLEMENT OF THE ACTION

A. Plaintiffs' Allegations and Apple's Motions to Dismiss

Beginning in May 2018, four lawsuits against Apple were filed in this District asserting claims arising out of an alleged defect in Apple's MacBook computers equipped with "butterfly" keyboards. On June 26, 2018, the Court consolidated these actions and on September 24, the Court appointed Girard Sharp LLP and Chimicles Schwartz Kriner & Donaldson-Smith LLP as Interim Class Counsel. Dkt. Nos. 27, 62; *see also* Dkt. No. 33. Plaintiffs filed their Consolidated Class Action Complaint on October 11, 2018. Dkt. No. 66. Apple moved to dismiss it on December 3, 2018, arguing, among other things, that the KSP it implemented after the litigation began mooted certain of Plaintiffs' claims. Dkt. No. 72. The Court heard arguments on February 21, 2019 (Dkt. No. 92), and on April 22, 2019, granted in part and denied in part the motion to dismiss with leave to amend. *See* 2019 WL 1765817.

On May 13, 2019, Plaintiffs filed their First Amended Consolidated Class Action Complaint ("FAC"), Dkt. No. 117, which Apple moved to dismiss on June 4. Dkt. No. 130. The Court heard arguments on November 21 (Dkt. No. 161), and on November 22 denied Apple's motion to dismiss. Dkt. No. 164. Over Apple's opposition, on July 2, 2020, the Court granted Plaintiffs leave to file a

[3] https://www.cand.uscourts.gov/ClassActionSettlementGuidance.

Second Amended Consolidated Class Action Complaint ("SAC") to add several named plaintiffs and to modify the proposed class definition to specify the models of MacBook laptops included as Class Computers. Dkt. No. 218. On July 16, Apple moved to dismiss the UCL and equitable relief claims in the SAC, Dkt. No. 221, and the Court granted Apple's motion on October 13. *See* 2020 WL 6047253.

B. Fact and Expert Discovery

Class Counsel served Apple with four sets of document requests and three sets of interrogatories and issued ten subpoenas *duces tecum* to non-party resellers and repair providers. Joint Decl., ¶ 21. After extensive negotiation, Apple produced about 1.2 million pages of documents, and non-parties produced an additional 1,237 pages, all of which Class Counsel reviewed and analyzed. *Id.* Class Counsel also conferred with Apple to obtain responses and supplemental responses to Plaintiffs' interrogatories, including concerning sales volume and repair rates. Class Counsel deposed 15 Apple employees and defended depositions of each of the 11 Class Representatives. *Id.* Each Plaintiff responded to 19 document requests, eight interrogatories, a request for inspection of their MacBooks, and produced documents. Expert discovery included two rounds of depositions and document productions, with Class Counsel taking seven depositions of Apple's experts and Apple taking five depositions of Plaintiffs' experts. The parties also engaged in significant discovery motion practice before Judge DeMarchi. Dkt. Nos. 87, 89, 95, 98, 101, 170, 183, 189, 198.

C. Class Certification Proceedings

In August 2020, Plaintiffs moved to certify a seven-state class of Class Computer purchasers (made up of seven constituent state subclasses of purchasers in California, New York, Florida, Illinois, New Jersey, Washington, and Michigan) as to their consumer fraud and warranty claims. Dkt. No. 229. Apple opposed the motion and also moved to strike the opinions of Plaintiffs' experts Hal J. Singer, Ph.D. and David Niebuhr, Ph.D. Dkt. Nos. 235, 238, 239. The Court heard those motions on February 4, 2021. Dkt. No. 287. On March 8, 2021, the Court granted Plaintiffs' motion, certifying the seven-state class and subclasses under Rules 23(a) and 23(b)(3). Dkt. No. 298 at 29-30. The Court granted in part and denied in part Apple's motion to exclude the expert opinions of Plaintiffs' damages expert, Dr. Singer. *Id.* at 4-6. The Court found that Dr. Niebuhr, while qualified, rendered opinions that were "irrelevant at the class certification stage" but could be offered at trial. *Id.* at 8. Apple filed a

1 petition with the Ninth Circuit for permission to appeal the Court's Class Certification Order under
2 Rule 23(f), which Plaintiffs opposed. The Ninth Circuit denied Apple's petition on October 12, 2021.

3 **D. *Daubert* Motions and Trial Setting**

4 Plaintiffs served merits expert reports on April 13, 2021, Apple served rebuttal expert reports
5 on May 13, and Plaintiffs served reply expert reports on May 27. Joint Decl., ¶ 30. On July 15, 2021,
6 Apple moved to strike the expert opinions of Plaintiffs' experts. Dkt. Nos. 333, 334, 336. On January
7 25, 2022, the Court denied Apple's motions to strike. Dkt. No. 386. The Court held a Trial Setting
8 Conference on January 27, 2022 and set a trial date for March 21, 2023. Dkt. Nos. 390, 398.

9 **E. Settlement Negotiations and Preliminary Approval**

10 After a period of factual development, in the spring of 2020, the parties began discussing
11 settlement. Judge Gandhi conducted full-day mediation sessions with the parties in June and August
12 2020. The parties then continued to negotiate under Judge Gandhi's supervision but reached an
13 impasse. The parties did not re-engage on settlement until June 2021, after the Court decided class
14 certification. After the Court denied Apple's *Daubert* motions, the parties appeared before Judge
15 Infante for a third mediation, on February 8, 2022. The parties reached an agreement in principle and
16 signed a term sheet on February 10. The parties then drafted and negotiated the settlement agreement,
17 executing it on July 18, 2022. Joint Decl., ¶¶ 33-35.

18 Plaintiffs moved for preliminary settlement approval on July 18, 2022. Dkt. No. 410. The
19 Court heard the motion on November 3, and granted it on December 2. Dkt. Nos. 419, 426.

20 **IV. TERMS OF SETTLEMENT**

21 **A. The Settlement Class**

22 The proposed Settlement Class consists of all persons and entities in the United States who
23 purchased, other than for resale, one or more MacBook computers manufactured from 2015 to 2019
24 with a "butterfly" keyboard.[4] These are the same MacBooks that are subject to Apple's KSP and at
25
26 [4] The Class Computers are: MacBook (Retina, 12-inch, Early 2015), MacBook (Retina, 12-inch, Early
27 2016), MacBook (Retina, 12-inch, 2017), MacBook Air (Retina, 13-inch, 2018), MacBook Air
28 (Retina, 13-inch, 2019), MacBook Pro (13-inch, 2016, Two Thunderbolt 3 Ports), MacBook Pro (13-

issue in Plaintiffs' operative complaint. Dkt. No. 219. The Settlement Class excludes Apple; any entity in which Apple has a controlling interest; Apple's directors, officers, and employees; Apple's legal representatives, successors, and assigns; all judges assigned to this case and any members of their immediate families; the Parties' counsel in this litigation; and all persons who validly request exclusion from the Settlement Class. SA §§ JJ, KK.

B. Settlement Consideration

Apple has paid $50,000,000 into a non-reversionary settlement fund. *Id.* § 2.1. Notice costs, administration expenses, attorneys' fees and costs, and service awards awarded by the Court will be deducted from the fund. *Id.* § 2.3. The balance (the "Net Settlement Fund") will go to payment of claims. In their accompanying petition for attorneys' fees, Plaintiffs seek 30% of the fund in attorneys' fees, $1,559,090.75 in reimbursement of expenses (including expert expenses) and a $5,000 service award for each of the class representatives. *Id.* §§ 8.1-8.2; Joint Decl., ¶ 68. The Settlement also secures Apple's commitment to maintain the KSP, which provides four years of protection from the date of purchase for all manifestations of the alleged defect, such as stuck keys or nonresponsive keys. SA § 3.1.1. Settlement Class Members are eligible for this benefit, regardless of whether they received a prior repair. Joint Decl., ¶ 39. Depending on the keyboard issues presented, Settlement Class Members may receive a free replacement of their entire computer topcase (the laptop assembly that contains the keyboard as well as the battery, trackpad, and speakers). *Id.* The KSP thus provides eligible Settlement Class Members with a new keyboard and other major components. *Id.*

C. Distribution of the Settlement Fund

All Settlement Class Members who went to Apple or an Authorized Service Provider and received a "Topcase Replacement" or a "Keycap Replacement" within four years after the date they

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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), and MacBook Pro (15-inch, 2019). Settlement Agreement ("SA"), Dkt. 410-1 §§ H, JJ, KK.

purchased their Class Computer are eligible for a cash payment. SA § 3.2. A "Topcase Replacement" refers to the replacement of the full keyboard module (including the battery, trackpad, speakers, top case, and keyboard), performed by Apple or an Apple Authorized Service Provider. *Id.* § 3.2.1. A "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. *Id.*. Apple has records of the Settlement Class Members who received Topcase and Keycap Replacements, which it provided to the Settlement Administrator. *Id.* § 3.2.2. Settlement Class Members can receive compensation for each Class Computer they purchased. *Id.* § 3.1.3.

Class Counsel designed the streamlined claim procedure to balance the objectives of limiting recovery to eligible claimants, including to prevent fraud, while also optimizing the recoveries for those who experienced repeat issues. Joint Decl., ¶ 49. To determine payment amounts the Settlement Administrator will divide Claimants into three groups. Group 1 consists of Settlement Class Members who received two or more Topcase Replacements from Apple or an Authorized Service Provider within four years of purchase based on Apple's records. Group 1 Claimants need not submit a claim to receive compensation. *Id.* § 3.4.3.1. Settlement Class Members may become eligible for Group 1 payment until two years from preliminary approval. *Id.* § 3.4.4. Group 1 payments will be initially set at $300 but may increase up to a cap of $395. *Id.* §§ 3.4.3.1, 3.4.4. Group 2 consists of Settlement Class Members who obtained a single Topcase Replacement from Apple or an Authorized Service Provider within four years of purchase, and who attest on the Claim Form that the repair did not resolve their keyboard issues. *Id.* § 3.4.3.2. Group 3 consists of Settlement Class Members who obtained one or more Keycap Replacements (but not Topcase Replacements) within four years of purchase, and who attest on the Claim Form that the repair did not resolve their keyboard issues. *Id.* § 3.4.3.3.

Unlike Group 1 claimants, Group 2 and Group 3 claimants must submit a Claim Form to receive payment. *Id.* § 3.3.1. Group 2 Claimants can receive up to $125 while Group 3 Claimants can receive up to $50. *Id.* at §§ 3.4.3.2; 3.4.3.3. The Claim Form will be pre-populated with Class Member contact information to the extent reasonably practicable, and Settlement Class Members will be able to update or confirm their current contact information. *Id.* at §§ 3.3.2-3.3.3. To be eligible for payment, Group 2 and 3 Settlement Class Members must confirm under oath that (1) they purchased a Class

Computer in the United States, (2) they did not purchase the Class Computer for resale, (3) they received a Topcase or Keycap Replacement, and (4) the repair did not resolve their keyboard issues. *Id.* § 3.3.4. If a Class Member receives a Claim Form with pre-populated responses to (1) and (3) (indicating that Apple has their records), they will not be required to submit supporting documentation. *Id.* § 3.3.5. If a Settlement Class Member's Claim Form is not pre-populated, they will need to submit reasonable documentation or information to support their claims. *Id.* §§ 3.3.5-3.3.6.

After the Claim Period ends, the Settlement Administrator will deduct from the Net Settlement Fund the amount sufficient to pay $300 to each Group 1 Claimant. *Id.* § 3.4.4. The administrator will also set aside a reserve amount sufficient to pay $300 to the number of Settlement Class Members projected to become a future Group 1 Claimant within two years after Preliminary Approval. The administrator will consult with the parties to determine the reserve amount using Apple's records and projections. *Id.*

The amount remaining in the Net Settlement Fund after the above amounts are set aside for Group 1 claimants will then be divided among eligible Group 2 and 3 claimants on a proportionate basis using a set of formulas that account for the number of claims in each group and the maximum value of those claims. *Id.* § 3.4.5. Group 2 Claimants will receive up to $125 and Group 3 Claimants will receive up to $50. Joint Decl., ¶ 45. If, however, the payment amount for each Group 3 Claimant exceeds the $50 limit, any excess will be redistributed to Group 2 Claimants up to the $125 cap. SA § 3.4.5.5. 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 a proportional increase of the amount to be paid to Settlement Class Members who become Group 1 Claimants within two years after Preliminary Approval. *Id.* Any Class Member who qualifies as a Group 1 Claimant within two years after Preliminary Approval and who did not receive a Group 1 payment, or was paid as a Group 2 Claimant in the first round of payments, will be paid up to the Group 1 amount, subject to the *pro rata* increase or reduction mentioned above. *Id.* § 3.5.1.

After awards to Claimants are calculated following the conclusion of the Claims Period (March 6, 2023), Class Counsel will submit a proposed Order to the Court directing payment be made to eligible Claimants and providing that the payments to Settlement Class Members who may become

Group 1 Claimants within two years of Preliminary Approval may be reduced if the actual number exceeds Apple's projections. *Id.* § 3.4.6. If, after that Order is entered and carried out, there are still sufficient funds remaining, the Settlement Administrator will pay up to $395 to Group 1 Claimants. *Id.* § 3.5.2. Any remaining funds may be directed to supplemental payments to Group 2 and 3 Claimants up to the $125 or $50 caps or in a manner the Court approves, including *cy pres*. *Id.*

D. Release of Claims

The proposed release applies to claims arising from the facts underlying the claims and allegations in this litigation. SA § 10.1 Consistent with the Guidelines, the release tracks the claims in the SAC. *See, e.g.*, *K.H. v. Secretary of Dep't of Homeland Sec.*, 2018 WL 6606248, at *4 (N.D. Cal. Dec. 17, 2018). The release also extends to *Huey v. Apple Inc.*, No. 2018 CA 004200 B, a parallel suit in the Superior Court of the District of Columbia. Plaintiff Huey joins in the settlement agreement.

E. Attorneys' Fees and Expenses, and Service Awards for the Class Representatives

Class Counsel are concurrently applying for an award of attorneys' fees and reimbursement of litigation costs, together with service awards for the class representatives. SA §§ 8.1-8.7. After its filing, counsel's fee application will be posted on the settlement website. *Id.* § 7.3.1. The parties have reached no agreement on the amount of attorneys' fees, and Apple has reserved the right to object or oppose Class Counsel's requests for attorneys' fees and expenses or for service awards. *Id.* § 8.2.

V. NOTICE AND SETTLEMENT ADMINISTRATION

Class Counsel retained and the Court appointed JND to serve as the Settlement Administrator. Joint Decl., ¶¶ 62-63; Dkt. No. 426 at 12. Administrative costs will be paid from the fund. Joint Decl., ¶ 64. 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. *Id.* As detailed in the Declaration of Jennifer Keough, the current and projected cost of JND's activities in administering the Notice Program and the Settlement falls within this budget, and JND has implemented the Notice Plan as ordered by the Court.

Notice was provided to all purchasers of Class Computers in Apple's records, regardless of whether there was a corresponding repair. Based on its purchase, registration, and other databases, Apple has records of contact information (either email address or physical mailing address) for more

than 95% of the Settlement Class. Joint Decl., ¶ 67. Apple furnished this information to the Settlement Administrator. *Id.* In December 2022 and January 2023, the administrator sent direct email notice to each Class Member for whom Apple has a valid email address—a total of 14,359,248 individuals and entities. SA § 7.3.3; Keough Decl., ¶ 12. To the 401,579 individuals for whom Apple did not have a valid email address, or as to whom the Settlement Administrator determined the email notice was returned as undeliverable, the Settlement Administrator will mail a postcard version of the Notice. SA. § 7.3.4; Keough Decl., ¶ 12. The Settlement has also received substantial press and social media coverage. Keough Decl., ¶ 28.

If a postcard Notice is returned by the U.S. Postal Service with a forwarding address, the Settlement Administrator will re-mail the postcard notice to that address. SA. § 7.3.4; Keough Decl., ¶ 21. Notice is also posted on the settlement website, www.keyboardsettlement.com, and the administrator established a toll-free number Class Members can call for assistance in filing a claim. *Id.* §§ 7.3.1-7.3.2; Keough Decl., ¶¶ 25, 29. The administrator also gave notice to governmental enforcement authorities, at Apple's direction, under 28 U.S.C. § 1715. SA § 4.2; Keough Decl., ¶ 24.

The deadline to opt out or object is February 10, 2023. Dkt. No. 426 at 14. Thus far, 648 class members have opted out, and one objection has been filed. Keough Decl., ¶ 34. Any Settlement Class Member may submit a claim through March 6th. Dkt. No. 426 at 14. The Claim Form, designed in accordance with this District's Procedural Guidance, allows for ease of use by Settlement Class Members, who may submit a claim online or by mail. Joint Decl., ¶ 49. As of this filing, JND has received 48,675 claims. Keough Decl., ¶ 34.

VI. ARGUMENT

A. The Settlement Is Fair, Reasonable, and Adequate.

"[T]here is a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.'" *In re Chrysler-Dodge-Jeep EcoDiesel Mktg., Sales Practices, & Prods. Liab. Litig.*, 2019 WL 536661, at *5 (N.D. Cal. Feb. 11, 2019) (quoting *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015)). The heightened scrutiny that applies to settlements reached prior to class certification "does not apply to this case because the Court previously certified a class." *Theodore Broomfield v. Craft Brew All., Inc.*, 2020 WL 1972505, at *6 (N.D. Cal. Feb. 5, 2020). Rule

23(e)(2) directs the Court to consider whether "the class representatives and class counsel have adequately represented the class"; "the proposal was negotiated at arm's length"; "the relief provided for the class is adequate"; and "the proposal treats class members equitably relative to each other." As applied here, these factors confirm that both the procedure used in negotiating the Settlement and its substance are fair, reasonable, and adequate.

1. The Settlement Resulted From Arm's Length Negotiations Among Experienced Counsel.

Under Rule 23(e)(2), the Court considers whether the class was adequately represented and whether the settlement proposal was negotiated at arm's length. To negotiate a fair and reasonable settlement, "the parties [must] have sufficient information to make an informed decision about settlement." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998).

The parties reached their settlement after extensive document, deposition and expert discovery that addressed the key factual questions in this case: the scope of the alleged keyboard issues, related technical details, the extent and timing of Apple's knowledge of the alleged defect, how Apple could have disclosed it, and Apple's procedures for responding to customer complaints and warranty claims, including the KSP. *See, e.g.*, *LaGarde v. Support.com, Inc.*, 2012 WL 13034899, at *7 (N.D. Cal. Nov. 2, 2012) (existence of robust discovery indicates plaintiffs were sufficiently informed during settlement negotiations). Also, before the parties reached their agreement, Plaintiffs' experts had (1) developed a class-wide damages model through the use of a choice-based conjoint survey, and (2) investigated the alleged defect by reviewing failure analysis documents and examining and testing the internal components of each of the Class Computers. *See Kacsuta v. Lenovo (U.S.) Inc.*, 2014 WL 12585783, at *5 (C.D. Cal. 2014) (that class counsel hired engineering experts to test and analyze the computers at issue weighed in favor of the settlement). Class Counsel's discovery and expert work—further informed by this Court's opinions—enabled counsel to "enter[] the settlement discussions with a substantial understanding of the factual and legal issues from which they could advocate for their respective positions and which are necessary for a robust negotiation." *Kulesa v. PC Cleaner, Inc.*, 2014 WL 12581769, at *10 (C.D. Cal. 2014).

The Settlement before the Court is the product of over two years of hard-fought negotiations supervised by two retired judges. *See* Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment (stating that "involvement of a neutral" in negotiations "may bear on whether they were conducted in a manner that would protect and further the class interests."); *Federal Ins. Co. v. Caldera Med., Inc.*, 2016 WL 5921245, at *5 (C.D. Cal. 2016). This Court noted that "Counsel for both parties are highly experienced in complex class litigation" and "the record does not indicate collusion or self-dealing." Dkt. No. 426 at 7. Thus, the first factor is satisfied.

2. The Settlement Treats Settlement Class Members Equitably.

The Court also previously found that "the distribution of the settlement fund is an objective, well-tailored method," *id.* at 11, and nothing about that method has changed. The plan of allocation will discourage fraudulent claims and reasonably accounts for differing experiences across the Class.

"Approval of a plan of allocation of settlement proceeds in a class action . . . is governed by the same standards of review applicable to approval of the settlement as a whole: the plan must be fair, reasonable and adequate." *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 6778406, at *3 (N.D. Cal., 2016) (quoting *In re Oracle Sec. Litig.*, 1994 WL 502054, at *1-2 (N.D. Cal. 1994)). The plan of allocation in this case treats all class members fairly in relation to the strength of their claims. *Khoja v. Orexigen Therapeutics, Inc.*, 2021 WL 5632673, at *7 (S.D. Cal. 2021) ("A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable."). The plan establishes a uniform, objective method for determining awards that accounts for structural differences among claims, based on their value and evidentiary support, including by making common-sense distinctions between: (1) Settlement Class Members who received two or more Topcase Replacements from Apple or an Authorized Service Provider; and (2) Settlement Class Members who received only one Topcase or Keycap Replacements from Apple or an Authorized Service Provider and who attest that the repair did not resolve their keyboard issues. SA § 3.4.3; Joint Decl. ¶¶ 42-49. The plan protects the interests of all parties by directing relief to the most affected Settlement Class Members—awarding more to those whose keyboards required multiple repairs—while also paying Settlement Class Members who received at least one repair and attest that it did not resolve their keyboard issues (but who did not bring their Class Computer in for another repair). *See In re Nexus 6P Prod. Liab.*

Litig., 2019 WL 6622842, at *9 (N.D. Cal. 2019) ("The plan divides claimants into different groups based on the relative size of their potential claims and distributes funds based on these groups.").

The plan of allocation therefore ensures the Settlement Class Members will be treated equitably relative to each other. *See Banh v. Am. Honda Motor Co., Inc.*, 2021 WL 3468113, at *7 (C.D. Cal. 2021) (approving settlement that gave some class members extended coverage if they made more than one service visit that did not resolve their problems with vehicle "infotainment" system).

3. The Relief Afforded by the Settlement Is Adequate.

The settlement affords Settlement Class Members relief from keyboard issues for the four-year useful life of a laptop by providing monetary compensation in addition to guaranteeing the KSP's protections. *See Carlotti v. ASUS Computer Int'l*, 2019 WL 6134910, at *6 (N.D. Cal. 2019) ("[C]lass members who were affected by the defects can receive a full equitable remedy in the form of repairs while still recovering a significant monetary benefit."). Moreover, Settlement Class Members who experience multiple repairs will remain eligible for payment for two years after Preliminary Approval, compensating those who may experience issues in the future. The class-wide relief is adequate under Rule 23(e)(2), which considers "the costs, risks, and delay of trial and appeal"; "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims"; "the terms of any proposed award of attorney's fees, including timing of payment"; and "any agreement required to be identified under Rule 23(e)(3)."[5]

Had Plaintiffs prevailed at trial and in a post-trial appeal, the class might have obtained a judgment in the range of $178 to $569 million. Dkt. No. 395-1 (Merits Expert Report of Hal J. Singer), ¶ 51 & App'x 4, Table A1. The $50 million settlement fund thus represents between approximately 9% to 28% of the total estimated damages at trial, matching or exceeding reasonable recoveries in prior class action settlements. *See Fleming v. Impax Lab'ys Inc.*, 2021 WL 5447008, at *10 (N.D. Cal. 2021) (settlement recovery representing 12.5% of total recoverable damages is "in a range consistent with the median settlement recovery in class actions"); *In re MyFord Touch*

[5] There is no side agreement to disclose under Rule 23(e)(3).

1 *Consumer Litig.*, 2019 WL 1411510, at *10 (N.D. Cal. 2019) (approving settlement providing for
2 5.7% of total possible recovery); *Deaver v. Compass Bank*, 2015 WL 8526982, at *7 (N.D. Cal.
3 2015) (10.7% of total damages); *In re Lithium Ion Batteries Antitrust Litig.*, 2017 WL 1086331, at *4
4 (N.D. Cal. 2017) (overruling objections to settlement amount representing between 2.2% and 11.2%
5 of total possible damages). In this case, if the Court were to require any form of individualized prove-
6 up following a favorable liability verdict, the total recovery likely would be less. And these estimates
7 also do not include the value of the benefits provided by the KSP, which Apple introduced after
8 Plaintiffs filed suit. *See Churchill*, 361 F.3d at 576 (in considering the amount of the settlement, court
9 properly considered the fact that "class members had already received a rebate from GE as part of the
10 recall program"); *Kearney v. Hyundai Motor Am.*, 2012 WL 13049699, at *11 (C.D. Cal. Dec. 17,
11 2012). Other product defect cases have resulted in much lower payments to customers than those
12 contemplated here. *Horvath v. LG Electronics MobileComm U.S.A., Inc.*, No. 3:11-cv-01576-H-RBB,
13 Dkt. No. 101 (S.D. Cal. Jan. 14, 2014) (approving settlement of $19 per claimant in class action
14 alleging smartphones had a defect); *see also Linney*, 151 F.3d at 1242 (settlement amounting to a
15 fraction of the potential total recovery was reasonable given the significant risks of going to trial);
16 *Hendricks v. StarKist Co.*, 2015 WL 4498083, at *7 (N.D. Cal. 2015) (settlement representing "only a
17 single-digit percentage of the maximum potential exposure" was reasonable given the risks).

18 While Plaintiffs are confident in the strength of their case, Apple denied liability from the
19 outset. *See, e.g.*, *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 326 (C.D. Cal. 2016) ("The settlement
20 the parties have reached is even more compelling given the substantial litigation risks in this case.").
21 Apple advanced vigorous defenses and most Class Computers are more than four years old; many are
22 six or seven years old. *See Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004)
23 (rejecting challenge to the settlement amount where "the recalled dishwashers had depreciated in value
24 through years of use"). Plaintiffs faced major risks associated with a motion to decertify the class, trial,
25 and a likely post-trial appeal. *See Aarons v. BMW of N. Am., LLC*, 2014 WL 4090564, at *10 (C.D.
26 Cal. 2014) ("In the absence of a settlement, it is very likely that this case could ultimately be decided
27 at trial by a 'battle of the experts' over the existence of a [defect] . . . taking those issues to trial might
28 be more challenging for Plaintiffs than for BMW, given complex technical nature of the . . . system.").

Apple argued that there are at least 20 different butterfly MacBook models and that the changes it made to components would prevent Plaintiffs from establishing a common defect. *See, e.g.*, Dkt. No. 235 at 15, 19-22. Although Plaintiffs believe there is sufficient evidence that the butterfly keyboard shares the same underlying design, Apple argued that there were lowered failure rates for the newer models. *See Kacsuta v. Lenovo (U.S.) Inc.*, 2014 WL 12585783, at *5 (C.D. Cal. 2014) (noting that plaintiffs had good idea of the relative strengths of their case after engaging in "confirmatory discovery" regarding "an alleged hardware fix implemented by [defendant]"). Apple also argued that its knowledge of the alleged defect evolved over time as the design changed (Dkt. No. 235 at 2-3), an argument that could have limited the damages period. *See, e.g.*, *In re Seagate Tech. LLC*, 326 F.R.D. 223, 245 (N.D. Cal. 2018) (evidence of defendant's knowledge from later in class period did not show requisite knowledge for class members who purchased earlier in the class period). In short, the difficulties with establishing Apple's liability weigh in favor of settlement approval.

Apple further contended that the KSP moots the claims by offering an effective remedy. *See, e.g.*, Dkt. No. 235 at 26 (arguing that class members have no warranty claim because they obtained relief under the KSP). Although Plaintiffs successfully argued at the pleadings stage that the KSP did not moot the case because it did not provide *all* of the relief they sought, including damages, Apple would have contended at trial that any damages must account for the value conferred by the KSP, which runs for four years from purchase and provides for the replacement of not only the keyboard but other Topcase components as well. *See Looper v. FCA US LLC*, 2017 WL 11650429, at *6 (C.D. Cal. 2017) (noting that the manufacturer's recalls made the plaintiffs' recovery uncertain which supported the settlement). Apple also disputed the severity of the alleged defect and contested Plaintiffs' complex theory of damages, which they would have had to explain to a lay jury. Thus, the risk and uncertainty arising from the KSP and the value it provides further favor settlement approval. *See In re Samsung Top-load Washing Mach. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 2020 WL 2616711, at *14 (W.D. Okla. 2020) ("Plaintiffs would also have to wrestle against the reality that a voluntary recall meant to address the very injuries complained of here was already in place").

Moreover, a jury could have found in favor of Apple. *See, e.g.*, *In re: Whirlpool Corp. Front-loading Washer Prod. Liab. Litig.*, 2016 WL 5338012, at *11 (N.D. Ohio Sept. 23, 2016) (noting in

heavily litigated case involving allegedly defective washing machines that "a jury found for Whirlpool after just two hours of deliberation"). And, although the Court granted class certification, Apple's arguments regarding a common defect presented not only a trial risk but also a risk of decertification following trial. *See Mazzei v. Money Store*, 829 F.3d 260, 265-67 (2d Cir. 2016) (court can decertify even after a jury verdict in favor of a certified class); *Walker v. Life Ins. Co. of the Sw.*, 2021 WL 1220692, at *8 (C.D. Cal. 2021) (parties' demonstrated willingness to appeal supported approval of the settlement, "because in its absence there will be inevitable costs, high risks and delay.").

In contrast to the significant risks and further delays after four years of active litigation, the settlement "relief is directly targeted to the harm suffered by the class and adequately redresses their injuries." *Shin v. Plantronics, Inc.*, 2020 WL 1934893, at *3 (N.D. Cal. Jan. 31, 2020) (approving settlement that allowed consumers to receive cash or replacement of headphones "with a functional equivalent should defects emerge"). The parties' settlement provides certain relief to the Settlement Class Members, including "a significant, easy-to-obtain benefit to class members" in the form of a cash payment to any purchaser with a valid claim. *In re Haier Freezer Consumer Litig.*, No. 5:11-CV-02911-EJD, 2013 WL 2237890, at *4 (N.D. Cal. 2013). Thus, under the Rule 23(e)(2)(C) factors, the relief provided for the Class is adequate.

B. Certification of the Settlement Class Is Appropriate.

The Court certified a multistate class for trial, *see* 2021 WL 1250378, and in granting preliminary approval conditionally certified the nationwide Settlement Class. Dkt. No. 426 at 5-6. There have been no intervening events that would warrant reconsideration of the relevant determinations under Rule 23. Accordingly, the Court should certify the Settlement Class in granting final approval of the Settlement. *See Dickey v. Advanced Micro Devices, Inc.*, 2019 WL 4918366, at *3 (N.D. Cal. 2019) (incorporating "prior analysis . . . in the order certifying the class").

1. The Settlement Class Members Are Too Numerous to Be Joined.

The Class includes purchasers of approximately 15 million Class Computers. Numerosity under Rule 23(a)(1) is therefore satisfied because joinder would be "impracticable."

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2. There Are Common Questions of Law and Fact.

Common questions under Rule 23(a)(2) include whether the butterfly keyboard within the Class Computers is defective, whether Apple had knowledge of the alleged defect (and if so, when), and whether Apple had a duty to disclose the alleged defect. These questions are capable of class-wide resolution and would "resolve an issue that is central to the validity of each one of the claims in one stroke." *In re Chrysler-Dodge-Jeep*, 2019 WL 536661, at *5 (citation omitted). Thus, commonality is satisfied.

3. Plaintiffs' Claims Are Typical of the Class.

Plaintiffs and Settlement Class Members have the same types of claims stemming from the same alleged violations concerning the same products, satisfying typicality under Rule 23(a)(3). *See Gold v. Lumber Liquidators, Inc.*, 323 F.R.D. 280, 288 (N.D. Cal. 2017).

4. Plaintiffs and Class Counsel Are Adequate Representatives.

Plaintiffs and their counsel do not have any conflicts with Settlement Class Members and have vigorously prosecuted this case. *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). They have shown that they are adequate representatives of the Settlement Class under Rule 23(a)(4).

5. Predominance and Superiority Are Satisfied.

Rule 23(b)(3) is also satisfied for settlement purposes because the Settlement Class is cohesive: All Settlement Class Members purchased Class Computers that allegedly contain a common design defect that Apple is alleged to have fraudulently concealed. The common questions stated above present a significant aspect of the litigation and predominate. *See, e.g.*, *Kacsuta*, 2014 WL 12585783, at *3 (predominant common issue was "the knowing sale of defective Class Computers"). Further, a class action is superior and efficient because Settlement Class Members are unlikely to bring individual lawsuits against Apple given the relatively low amount of the individual claims. *See Mullins v. Premier Nutrition Corp.*, 2016 WL 1535057, at *8 (N.D. Cal. 2016).

Therefore, the Court should finalize its conditional certification of the Settlement Class.

C. The Class Notice Satisfied Due Process and Rule 23.

"A binding settlement must provide notice to the class in a 'reasonable manner'" under Rule 23(c)(2)(B) and 23(e)(1)(B). *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th Cir. 2019)

(en banc). Due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

Applying these standards, the Court approved the parties' proposed class notice procedures, which used plain language and relied on emails, postcards, and creation of a settlement website and toll-free phone number for the Settlement Class. Dkt. No. 426 at 9-10. *See, e.g.*, *Wahl v. Yahoo! Inc.*, No. 17-cv-02745-BLF, 2018 WL 6002323, at *3 (N.D. Cal. Nov. 15, 2018) (notice plan using direct email notice, followed by mailed notice to individuals to whom emails "bounced," constituted "the best notice practicable under the circumstances"). JND followed the approved notice procedures to reach a large majority of the Settlement Class. Keough Decl., ¶¶ 9, 19, 25, 29. As such, the Court should reaffirm its finding that this Notice Program was adequate and met all applicable standards and requirements. *See* Dkt. No. 426 at 10.

VII. CONCLUSION

For all these reasons, the Court should enter the Proposed Final Approval Order and Judgment.

Dated: January 6, 2023

Respectfully submitted,

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/s/ *Simon Grille*

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE MACBOOK KEYBOARD LITIGATION	Case No. 5:18-cv-02813-EJD-VKD **[PROPOSED] FINAL APPROVAL ORDER**

This matter came before the Court for hearing pursuant to the Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, dated _____ ("Preliminary Approval Order"), on the motion of Plaintiffs Zixuan Rao, Joseph Baruch, Bo Laurent, Ashley Marin, Kyle Barbaro, Steve Eakin, Michael Hopkins, Adam Lee, Kevin Melkowski, Lorenzo Ferguson, and Benjamin Gulker (collectively, "Plaintiffs") for approval of proposed class action settlement with Defendant Apple Inc. ("Apple" or "Defendant"). Due and adequate notice having been given of the Settlement as required by the Preliminary Approval Order, the Court having considered all papers filed and proceedings conducted herein, and good cause appearing therefor, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** as follows:

1. This Final Approval Order incorporates by reference the definitions in the Settlement Agreement with Defendant dated July 18, 2022 (the "Agreement"), and all defined terms used herein that are defined in the Settlement Agreement have the same meanings ascribed to them in the Agreement.

2. This Court has jurisdiction over the subject matter of the Action and over all Parties thereto, and venue is proper in this Court.

3. The Court reaffirms and makes final its provisional findings, rendered in the Preliminary Approval Order, that, for purposes of the Settlement only, all prerequisites for maintenance of a class action set forth in Federal Rules of Civil Procedure 23(a) and (b)(3) are satisfied. The Court accordingly certifies the following Settlement Class:

> All persons and entities in the United States who purchased, other than for resale, one or more of the following Class Computers: 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), and MacBook Pro (15-inch, 2019).

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4. Excluded from the Settlement Class are 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.

5. Pursuant to Federal Rule of Civil Procedure 23(e), the Court hereby grants final approval of the Settlement and finds that it is, in all respects, fair, reasonable, and adequate and in the best interests of the Settlement Class.

6. The Court finds that notice of this Settlement was given to Settlement Class Members in accordance with the Preliminary Approval Order and constituted the best notice practicable of the proceedings and matters set forth therein, including the Settlement, to all Persons entitled to such notice, and that this notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process. The Court further finds that the notification requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, have been met.

7. The Court directs the Parties and the Settlement Administrator to implement the Settlement according to its terms and conditions and the Final Approval Order.

8. Upon the Effective Date, Releasing Persons shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Persons from all Released Claims.

9. The persons and entities identified in Exhibit 1 hereto requested exclusion from the Settlement Class as of the Exclusion Deadline. These persons and entities shall not share in the benefits of the Settlement, and this Final Order and Judgment does not affect their legal rights to pursue any claims they may have against Apple. All other members of the Settlement Class are hereinafter barred and permanently enjoined from prosecuting any Released Claims against Apple in any court, administrative agency, arbitral forum, or other tribunal.

10. Neither Class Counsel's application for attorneys' fees, reimbursement of litigation expenses, and service awards for Plaintiffs, nor any order entered by this Court thereon, shall in any way disturb or affect this Judgment, and all such matters shall be treated as separate from this Order or the Judgment entered herein.

11. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement, is or may be deemed to be or may be used as an admission of, or evidence of, (a) the validity of any Released Claim, (b) any wrongdoing or liability of Apple, or (c) any fault or omission of Apple in any proceeding in any court, administrative agency, arbitral forum, or other tribunal. To the extent permitted by law, neither the Settlement Agreement, the Settlement, this Order, the Judgment, any of their terms or provisions, nor any of the negotiations or proceedings connected with them, shall be offered as evidence or received in evidence or used in any way in any pending or future civil, criminal, or administrative action or any other proceeding to establish any liability or wrongdoing of, or admission by Apple. Notwithstanding the foregoing, nothing in this Order shall be interpreted to prohibit the use of this Order or the Judgment in a proceeding to consummate or enforce the Settlement Agreement or Judgment, or to defend against the assertion of Released Claims in any other proceeding. All other relief not expressly granted to the Settlement Class Members is denied.

12. No Settlement Class Member or any other person will have any claim against Apple, Plaintiffs, Class Counsel, or the Settlement Administrator arising from or relating to the Settlement or actions, determinations or distributions made substantially in accordance with the Settlement or Orders of the Court.

13. Without affecting the finality of this Order or the Judgment entered herein, this Court reserves exclusive jurisdiction over all matters related to administration, consummation, enforcement, and interpretation of the Settlement, and this Final Order and the Judgment entered herein, including (a) distribution or disposition of the Settlement Fund; (b) further proceedings, if necessary, on the application for attorneys' fees, reimbursement of litigation expenses, and service awards for Plaintiffs; and (c) the Parties for the purpose of construing, enforcing, and administering the Settlement. If any Party fail(s) to fulfill its or their obligations under the Settlement, the Court retains authority to vacate the provisions of this Judgment releasing, relinquishing, discharging, barring and enjoining the prosecution of, the Released Claims against the Releasees, and to reinstate the Released Claims against the Releasees.

14. If the Settlement does not become effective, then this Order and any Judgment entered herein shall be rendered null and void to the extent provided by and in accordance with the Agreement

and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Agreement.

15. The Court finds, pursuant to Rules 54(a) and (b) of the Federal Rules of Civil Procedure, that Final Judgment of Dismissal with prejudice as to the Defendants ("Judgment") should be entered forthwith and further finds that there is no just reason for delay in the entry of the Judgment, as Final Judgment, in accordance with the Settlement Agreement.

IT IS SO ORDERED.

DATED: ______________________

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THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE MACBOOK KEYBOARD LITIGATION

Case No. 5:18-cv-02813-EJD-VKD

[PROPOSED] FINAL JUDGMENT

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For the reasons set forth in this Court's Final Approval Order, in the above-captioned matter as to the following class of persons:

> All persons and entities in the United States who purchased, other than for resale, one or more of the following Class Computers: 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), and MacBook Pro (15-inch, 2019).

Excluded from the Settlement Class are 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.

JUDGMENT IS HEREBY ENTERED, pursuant to Federal Rule of Civil Procedure 58, as to the above-specified class of persons and entities, Plaintiffs 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") and Defendant Apple Inc. ("Apple") on the terms and conditions of the Settlement Agreement and Release (the "Settlement Agreement") approved by the Court's Final Approval Order, dated ______________.

1. The Court, for purposes of this Final Judgment, adopts the terms and definitions set forth in the Settlement Agreement incorporated into the Final Approval Order.

2. All Released Claims of the Releasing Persons are hereby released as against Apple and the Released Persons, as defined in the Settlement Agreement.

3. The claims of Plaintiffs and the Settlement Class Members are dismissed with prejudice in accordance with the Court's Final Approval Order.

1 4. The Parties shall bear their own costs and attorneys' fees, except as set forth in the
2 Settlement Agreement or otherwise set forth in the Final Approval Order or any Order regarding
3 Plaintiffs' request for attorneys' fees, expenses, and service awards.
4 5. This document constitutes a final judgment and separate document for purposes of Federal
5 Rule of Civil Procedure 58(a).
6 6. The Court finds, pursuant to Rule 54(a) of the Federal Rules of Civil Procedure, that this
7 Final Judgment should be entered and that there is no just reason for delay in the entry of this Final
8 Judgment as to Plaintiffs, the Settlement Class Members, and Apple. Accordingly, the Clerk is hereby
9 directed to enter Judgment forthwith.
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11 **IT IS SO ORDERED.**
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13 **JUDGMENT ENTERED** this ___________.
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16 ______________________________________
17 THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE
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