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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re Apple In-App Purchase Litigation

Case No. 5:11-CV-01758-EJD

STIPULATION OF SETTLEMENT

This Document Relates To:

All Actions

I. SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made by and between: (1) Garen Meguerian, Lauren Scott, Kathleen Koffman, Heather Silversmith, and Twilah Monroe (“Plaintiffs” or “Class Representatives”), individually and as representatives of the “Settlement Class” as defined below; and (2) Apple Inc., a California corporation (“Apple”) (collectively, the “Parties”), subject to Court approval pursuant to Rule 23 of the Federal Rules of Civil Procedure.

II. RECITALS

WHEREAS, on or about April 11, 2011, Plaintiff Garen Meguerian filed a class action complaint against Apple in the United States District Court for the Northern District of California, San Jose Division, titled *Meguerian v. Apple, Inc.*, Case No. 11-1758 (“Meguerian Action”);

WHEREAS, on or about April 22, 2011, Plaintiffs Lauren Scott, Kathleen Koffman, and Heather Silversmith filed a class action complaint against Apple in the United States District Court for

1 the Northern District of California, San Jose Division, titled *Scott, et al. v. Apple, Inc.*, Case No.
2 11-1989 (“Scott Action”);

3 WHEREAS, on or about May 16, 2011, Plaintiff Twilah Monroe filed a class action complaint
4 against Apple in the United States District Court for the Northern District of California, San Jose
5 Division, titled *Monroe v. Apple, Inc.*, Case No. 11-02394 (“Monroe Action”);

6 WHEREAS, pursuant to an order entered by the United States District Court for the Northern
7 District of California on or about May 15, 2011, the Meguerian Action, Scott Action, and Monroe
8 Action (collectively, the “Actions”) were consolidated as one case captioned *In re Apple In-App*
9 *Purchase Litigation*, Case No. C 11-1758 (hereinafter, the “Consolidated Action”);

10 WHEREAS, Plaintiffs filed a Consolidated Class Action Complaint on June 16, 2011 (the
11 “Complaint”);

12 WHEREAS, Plaintiffs in the Actions and the Consolidated Action allege that minors charged
13 Game Currency inside third-party Game Apps to iTunes accounts belonging to Settlement Class
14 Members without the Settlement Class Members’ knowledge or permission;

15 WHEREAS, the Complaint asserts claims for declaratory judgment, alleged violations of
16 California’s Consumer Legal Remedies Act (Cal. Civ. Code § 1750 *et seq.*) and California’s Unfair
17 Competition Law (Bus. & Prof. Code § 17200 *et seq.*), breach of duty of good faith and fair dealing,
18 and unjust enrichment, and seek damages, reimbursement, restitution, disgorgement, attorneys’ fees,
19 and injunctive relief on behalf of a nationwide class of consumers;

20 WHEREAS, Apple has vigorously denied and continues to vigorously deny all of Plaintiffs’
21 allegations in the Complaint, denies any and all wrongdoing, fault, liability or damage of any kind to
22 Plaintiffs and the putative class, and states that it acted properly at all times and is entering this
23 settlement to avoid costly and burdensome litigation;

24 WHEREAS, Class Counsel and Plaintiffs believe that the claims asserted in the Actions and the
25 Consolidated Action possess merit, have diligently investigated the facts and law relevant to the merits
26 of their claims, and have examined and considered that, if the claims asserted in the Complaint are not
27 settled now by voluntary agreement among the parties, future proceedings (including appeals) would
28 be protracted and expensive, would involve highly complex legal and factual issues relating to class

1 certification, liability, and damages, and would involve substantial uncertainties, delays, and other
2 risks inherent in litigation. In light of these factors, Class Counsel and Plaintiffs have concluded that it
3 is desirable and in the best interests of Plaintiffs and the members of the putative class to settle the
4 claims asserted in the Complaint at this time upon the terms set forth in this Agreement, and that the
5 settlement terms confer exceptional benefits upon the Settlement Class, particularly in light of the
6 damages that Plaintiffs and Class Counsel believe are potentially recoverable at trial. Based on their
7 evaluation, Plaintiffs and Class Counsel have determined that the terms and conditions of this
8 Agreement are fair, reasonable, and in the best interests of Plaintiffs and the Settlement Class;

9 WHEREAS, this Agreement was reached as a result of extensive arm's-length negotiations
10 between counsel for Plaintiffs, on the one hand, and counsel for Apple, on the other hand, occurring
11 over several months and multiple mediation sessions with a respected mediator, the Honorable Daniel
12 Weinstein (Ret.) of JAMS;

13 WHEREAS, the Parties desire to settle the Actions and the Consolidated Action in their entirety
14 with respect to all potential claims arising out of the facts that were or could have been alleged in the
15 complaints filed in the Meguerian Action, the Scott Action, the Monroe Action, and/or the
16 Consolidated Action. The Parties intend this Agreement to bind Apple, Plaintiffs (both as Class
17 Representatives and individually), and all members of the Settlement Class as defined below who do
18 not specifically request exclusion;

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

22 III. DEFINITIONS

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

24 A. "App" means a third-party software application that runs on iOS Devices.

25 B. "App Store" means a digital application distribution platform for iOS Apps, which is
26 developed and maintained by Apple, and which allows users of iOS Devices to browse, download, and
27 purchase Apps for use on their iOS Devices.

28 C. "Claims Administrator" means the settlement administrator selected by Apple, as set

1 forth in Section XII.B.1.

2 D. “Class Counsel” means Simon Bahne Paris and Patrick Howard of Saltz, Mongeluzzi,
3 Barrett & Bendesky, P.C and Michael J. Boni and Joshua D. Snyder of Boni & Zack LLC (collectively,
4 “Proposed Co-Lead Counsel”); Joseph J. Tabacco, Jr., Christopher T. Heffelfinger, and Anthony D.
5 Phillips of Berman DeValerio; Jonathan Shub of Seeger Weiss, LLP; Benjamin G. Edelman of Law
6 Offices of Benjamin Edelman; Roberta D. Liebenberg, Jeffrey S. Istvan, and Gerard A. Dever of Fine,
7 Kaplan & Black, R.P.C.; and Shanon J. Carson and Sarah R. Schalman-Bergen of Berger & Montague,
8 P.C.

9 E. “Class Representatives” or “Plaintiffs” means Garen Meguerian, Lauren Scott,
10 Kathleen Koffman, Heather Silversmith, and Twilah Monroe.

11 F. “Conditional Approval Date” shall be the date the Court has signed the Conditional
12 Approval Order.

13 G. “Effective Date” means the date of this Agreement, as set forth in Section XII.A.

14 H. “Game Apps” means Apps categorized by developers as games in the App Store.

15 I. “Game Currency” means any In-App Purchase in a Qualified App.

16 J. “In-App Purchase” means any purchase made inside of an App using Apple’s In-App
17 Purchase Application Program Interface (or “API”).

18 K. “iOS Device” means any mobile device manufactured by Apple that runs the iOS
19 operating system, including the iPhone, iPad, and iPod touch.

20 L. “iTunes Store credit” means an amount credited towards an individual’s iTunes account
21 that can be used to purchase content (such as songs, movies, television shows, Apps, books, and other
22 items) available for purchase from the iTunes Store, App Store, iBookstore, or Mac App Store.

23 M. “Notice Date” means the last date of Summary Notice.

24 N. “Qualified Apps” means all Game Apps that (a) were available for download through
25 the App Store prior to the Conditional Approval Date, (b) offered Game Currency, and (c) have a “4+”
26 or “9+” or “12+” rating in the App Store.

27 O. “Qualified Game Currency Charges” means Game Currency charged to an iTunes
28 account belonging to a Class Member by a minor without the Class Member’s knowledge or

1 permission.

2 P. “Releasing Persons” means Plaintiffs, each Settlement Class Member, and their
3 respective heirs, executors, administrators, representatives, agents, partners, successors, and assigns.

4 Q. “Released Persons” means Apple and each of its past or present directors, officers,
5 employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners,
6 affiliates, parents, subsidiaries, joint ventures, independent contractors, wholesalers, resellers,
7 distributors, retailers, related companies, and divisions, and each of their predecessors, successors,
8 heirs, and assigns.

9 R. “Settlement” means the settlement described herein.

10 IV. CERTIFICATION OF SETTLEMENT CLASS

11 A. Definition of the Settlement Class

12 The “Settlement Class” shall be defined as follows:

13 All United States residents who, prior to [**date of Conditional**
14 **Approval Order**] paid for Game Currency charged to their iTunes
15 account by a minor without their knowledge or permission. The
16 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; and all
persons who validly request exclusion from the Settlement Class.

17 B. Stipulation Respecting Conditional Certification

18 The Parties stipulate and agree that, subject to Court approval, the Settlement Class described in
19 Section IV.A above should be conditionally certified solely for purposes of the settlement embodied in
20 this Agreement. If, for any reason, this Agreement is not approved by the Court, the stipulation for
21 certification and all of the agreements contained herein shall be considered null and void and may not
22 be referred to or used as evidence or for any other purposes whatsoever in the Actions or the
23 Consolidated Action or any other action or proceeding.

24 C. Definition of “Class Member” and “Settlement Class Member”

25 “Class Member” shall mean each member of the Settlement Class. “Settlement Class Member”
26 shall mean and include every Class Member who does not validly and timely request exclusion from
27 the Settlement Class.
28

V. CONSIDERATION FOR SETTLEMENT; CLAIMS PROCESS**A. Settlement Consideration****1. \$5 Credit Relief**

Settlement Class Members shall be entitled to receive a single iTunes Store credit (or, for any Settlement Class Member who no longer maintains an iTunes account, a cash payment of \$5) in the amount of five dollars (“\$5 Credit Relief”). Settlement Class Members seeking this \$5 Credit Relief must follow the procedures and meet the requirements set forth in Section V.B.1. below, including filing a valid Claim Form. Settlement Class Members who elect to receive \$5 Credit Relief are not entitled to any other settlement consideration under this agreement.

2. Aggregate Relief

As an alternative to the \$5 Credit Relief, Settlement Class Members shall be entitled to receive an iTunes Store credit (or, for any Settlement Class Member who no longer maintains an iTunes account, a cash refund), in an amount equal to the aggregate total of all Qualified Game Currency Charges that were made to their iTunes accounts within a single forty-five (45) day period of the first Qualified Game Currency Charge, for which they have not previously received a refund (“Aggregate Relief”). At their election, Settlement Class Members who currently maintain an iTunes account and who are claiming Aggregate Relief totaling \$30 or more may choose to receive a cash refund in lieu of an iTunes Store credit. Settlement Class Members seeking Aggregate Relief must follow the procedures and requirements set forth in Section V.B.2 below, including filing a valid Claim Form.

The Claims Administrator may include as part of Aggregate Relief Qualified Game Currency Charges that occurred after the forty-five (45) day period for Settlement Class Members who meet the procedures and requirements set forth in Section V.B.2.c below.

B. Claims Process**1. Claim Form for \$5 Credit Relief**

Settlement Class Members who wish to claim \$5 Credit Relief pursuant to Section V.A.1 above will be required to submit a properly executed Claim Form, setting forth, among other things, the Settlement Class Member’s name, address, and Apple ID. Additionally, such Settlement Class Members must attest that they: (a) paid for Qualified Game Currency Charges that a minor charged to

1 their iTunes account without their knowledge or permission; (b) did not knowingly enter their iTunes
2 password to authorize any such purchases and did not give their password to the minor to make such
3 purchases; and (c) have not already received a refund from Apple for those Qualified Game Currency
4 Charges.

5 **2. Claim Form for Aggregate Relief**

6 **a. Aggregate Relief Totaling Less than \$30**

7 Settlement Class Members who wish to claim Aggregate Relief totaling less than \$30 pursuant
8 to Section V.A.2 above will be required to submit a properly executed Claim Form that sets forth,
9 among other things, the Settlement Class Member's name, address, and Apple ID. Such Settlement
10 Class Members shall also be required to identify the Qualified App, date of purchase, and price paid for
11 each Qualified Game Currency Charge incurred within a single forty-five (45) day period for which
12 credit is sought, and attest that they: (a) paid for each claimed Qualified Game Currency Charge;
13 (b) did not knowingly enter their iTunes password to authorize any such purchase and did not give their
14 password to the minor to make such purchase; and (c) have not already received a refund from Apple
15 for the claimed Qualified Game Currency Charges.

16 **b. Aggregate Relief Totaling \$30 or More**

17 Settlement Class Members who wish to claim Aggregate Relief totaling \$30 or more pursuant
18 to Section V.A.2 above will be required to submit a properly executed Claim Form that sets forth,
19 among other things, the Settlement Class Member's name, address, and Apple ID. Such Settlement
20 Class Members shall also be required to identify the Qualified App, date of purchase, and price paid for
21 each Qualified Game Currency Charge incurred within a single forty-five (45) day period for which
22 credit is sought, and attest that they: (a) paid for each claimed Qualified Game Currency Charge;
23 (b) did not knowingly enter their iTunes password to authorize any such purchases and did not give
24 their password to the minor to make such purchases; and (c) have not already received a refund from
25 Apple for the claimed Qualified Game Currency Charges. Finally, Settlement Class Members must
26 describe briefly and under penalty of perjury the circumstances under which the minor made Qualified
27 Game Currency Charges without their knowledge or permission.

28 **c. Relief for Qualified Game Currency Purchases After the 45-Day Period**

1 Settlement Class Members may request refunds for Qualified Game Currency Charges that
2 occurred after the forty-five (45) day period in a claim for Aggregate Relief if they furnish an
3 explanation of the circumstances that made it possible for a minor to make Qualified Game Currency
4 Charges after forty-five (45) days, including specifically the circumstances that made it possible for the
5 minor to continue to charge Game Currency after they were notified of earlier Game Currency charges
6 through Apple emails and their credit card statement(s).

7 **d. Records of Settlement Class Members' In-App Purchases**

8 Complete records of Settlement Class Members' In-App Purchases may be obtained by
9 reviewing their purchase history in iTunes as follows: (1) selecting "View My Apple ID" from the
10 iTunes "Store" menu, (2) entering their Apple IDs and associated password, and (3) clicking "See All"
11 under the heading titled "Purchase History."

12 **C. Claims Period**

13 To be valid, Claim Forms must be submitted within one hundred and eighty (180) days from the
14 Notice Date ("Claims Period").

15 **D. Payment of Notice Costs, Costs of Administration, and Attorneys' Fees**

16 Except as otherwise provided herein, Apple agrees to pay all costs of notice and all of the costs
17 of administering the settlement as set forth in Sections VII and IX below.

18 **VI. OBTAINING COURT APPROVAL OF THE AGREEMENT**

19 A. Upon full execution of this Agreement, the Parties shall take all necessary steps to
20 obtain an Order from the Court substantially in the form of Exhibit D hereto (the "Conditional
21 Approval Order"), granting conditional certification of the Settlement Class, granting preliminary
22 approval of this Agreement, and approving the forms and methods of the notice to the Settlement Class
23 set forth herein. The Conditional Approval Order shall further set a date for a hearing ("Final Approval
24 Hearing") at which the Court will determine whether the requirements of certification of the Settlement
25 Class have been met; whether the award of fees and expenses to Class Counsel should be approved;
26 whether a service award should be paid to the Class Representatives; and whether a final judgment
27 should be entered dismissing the Actions and the Consolidated Action on the merits and with prejudice
28 against the Class Representatives and the Settlement Class Members.

1 B. If at any point the Court does not approve this Agreement or the Effective Date does not
2 occur, certification shall be automatically vacated and the Agreement shall terminate and be of no force
3 or effect, unless the Parties voluntarily agree to modify this Agreement in the manner necessary to
4 obtain Court approval.

5 **VII. NOTICE AND SETTLEMENT ADMINISTRATION**

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

8 A. A copy of the Notice of Pendency and Proposed Settlement of Class Action
9 substantially in the form attached hereto as Exhibit A (the “Long Form Notice” or “Class Notice”),
10 together with the Claim Form (including the Instructions, Claim Form and Release) substantially in the
11 form attached hereto as Exhibit C, shall be posted in English and Spanish and available for download
12 on a settlement website, www._____.com (the “Settlement Website”), and shall be sent by mail or by
13 electronic mail at no charge to Class Members who call a toll-free number to the establishment at
14 Apple’s expense (“Toll-Free Number”). This information shall remain available on the Settlement
15 Website until the last day of the Claims Period. All costs and expenses associated with complying with
16 this provision shall be borne exclusively by Apple.

17 B. Apple shall e-mail a copy of the Summary Notice of Settlement substantially in the form
18 attached hereto as Exhibit B (“Summary Notice”) to every individual who paid for one or more
19 purchase(s) of Game Currency prior to the date of the Conditional Approval Order. The Summary
20 Notice shall provide notice of the fact of the settlement and that the Class Notice and Claim Form are
21 available on the Settlement Website or by calling the Toll-Free Number, and shall provide a direct link
22 to the Settlement Website. All costs and expenses associated with complying with this provision shall
23 be borne exclusively by Apple.

24 C. For any notified individuals for whom e-mailed notice is returned undeliverable and for
25 whom the Claims Administrator is unable to update or otherwise identify a valid e-mail address, Apple
26 shall mail a copy of the Long-Form Notice informing notified individuals of the fact of the settlement
27 and that the Class Notice and Claim Form are available on the Settlement Website or by calling the
28 Toll-Free Number. All costs and expenses associated with complying with this provision shall be

1 borne exclusively by Apple.

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

4 E. The Class Notice shall provide a procedure whereby Class Members may object or
5 exclude themselves from the Settlement Class. If a Settlement Class Member has objected to a class
6 action settlement on more than three (3) occasions, the Class Member shall list all cases in which they
7 have filed an objection. Class Members shall have no less than forty-five (45) days following the
8 Notice Date to object or exclude themselves, and the actual date shall be established by the Court. (If
9 such period ends on a weekend or holiday, Class Members shall have until the next business day.) Any
10 Class Member who does not timely and validly request exclusion shall be a Settlement Class Member
11 and shall be bound by the terms of this Agreement. The Class Notice shall also provide a procedure for
12 Class Members to appear at the hearing; and/or to be represented by counsel of their choice at their own
13 expense. Requests for exclusion shall be postmarked no later than twenty-five (25) days prior to the
14 Final Hearing. Objections shall be filed with the Court and served on counsel for the Parties (as
15 identified in the Class Notice) no later than twenty-five (25) days prior to the Final Hearing. Any
16 objection shall, at a minimum, require the Class Member to provide: (a) a detailed statement of such
17 person's specific objections to any matters before the Court; (b) the grounds for such objections and the
18 reasons that such person desires to appear and be heard; and (c) proof of membership in the Class, as
19 well as all documents or writings such person desires the Court to consider.

20 **VIII. PAYMENT OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES TO**
21 **CLASS COUNSEL**

22 A. Apple agrees not to oppose an award to Class Counsel of attorneys' fees and costs in the
23 amount of \$1.3 million; and a service award of \$1,500 to each Class Representative (total service
24 awards not to exceed \$7,500), all of which is to be paid by Apple (the "Fee Amount"). These amounts
25 are in addition to and separate from all other consideration and remedies available to the Settlement
26 Class. Apple agrees not to object to the reasonableness of Class Counsel's attorneys' fees and expenses
27 set forth above.

28 B. Apple shall not be liable for any additional fees or expenses of Plaintiffs or any Class

1 Member in connection with the Actions or the Consolidated Action. Class Counsel agree that they will
2 not seek any additional fees or costs from Apple in connection with the Actions and the Consolidated
3 Action or the settlement of the Action and the Consolidated Action. Apple expressly agrees that it will
4 not seek to recover its Court costs, attorneys' fees, or expenses once the Court enters a dismissal of the
5 Action. No later than fifteen (15) banking days following the Effective Date as defined below, Apple
6 shall pay the Fees Amount by wire transfer. Proposed Co-Lead Counsel agree to provide Apple all
7 identification information necessary to effectuate the payment of the Fees Amount including, but not
8 limited to, Taxpayer Identification Number(s), completed Internal Revenue Service Form W-9(s), and
9 wire transfer information.

10 **IX. FINAL JUDGMENT, APPROVAL OF SETTLEMENT, AND DISMISSING CLAIMS**
11 **OF SETTLEMENT CLASS MEMBERS WITH PREJUDICE; RELEASE OF CLAIMS BY**
12 **SETTLEMENT CLASS MEMBERS**

13 **A. Entry of Final Judgment**

14 Upon the Court's approval of this Agreement and the Settlement, a judgment substantially in
15 the form attached hereto as Exhibit E ("Judgment") shall be entered dismissing the claims of Plaintiffs
16 and of the Settlement Class Members with prejudice.

17 **B. Redress of Claims**

18 1. As of the Effective Date of this Agreement as defined below, Releasing Persons hereby
19 fully and irrevocably release and forever discharge Released Persons from any and all liabilities,
20 claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements,
21 damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any kind whatsoever,
22 whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by
23 claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or
24 may claim now or in the future to have, that were or could have been alleged or asserted against any of
25 the Released Persons in the Actions and the Consolidated Action, including but not limited to any claim
26 that Apple breached any obligation of good faith and fair dealing related to Qualified Game Currency
27 Charges and/or offers; that Apple misrepresented or failed to disclose any material fact with respect to
28 Qualified Game Currency Charges and/or offers, that any Qualified Game Currency Charge is voidable

1 or may be disaffirmed, or any other consumer claim relating to Qualified Game Currency Charges
2 and/or offers (“Released Claims”).

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

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

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

14 3. As of the Effective Date, by operation of entry of judgment, the Released Persons shall
15 be deemed to have fully released and forever discharged Plaintiffs, all other Settlement Class Members
16 and Class Counsel from any and all claims of abuse of process, malicious prosecution, or any other
17 claims arising out of the initiation, prosecution or resolution of the Action, including, but not limited to,
18 claims for attorneys’ fees, costs of suit or sanctions of any kind, or any claims arising out of the
19 allocation or distribution of any of the consideration distributed pursuant to this Settlement.

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

1 **X. PLAINTIFFS’ CLAIMS AND THE BENEFIT OF SETTLEMENT**

2 A. Before commencing these Actions and the Consolidated Action and during settlement
3 negotiations, Class Counsel conducted a thorough examination and evaluation of the relevant law and
4 facts to assess the merits of Plaintiffs’ claims and potential claims and to determine how best to serve
5 the interests of the Class. Further, Plaintiffs’ conducted discovery and Apple provided Class Counsel
6 with the information requested to permit them to assess the merits of their claims and potential claims
7 and negotiate a settlement.

8 B. However, Class Counsel, on behalf of the Settlement Class, have agreed to settle the
9 Actions and the Consolidated Action pursuant to the provisions of this Agreement after considering,
10 among other things: (a) the substantial benefits to Plaintiffs and the Settlement Class under the
11 Settlement; (b) the risks and uncertainty of future proceedings (including appeals), which would be
12 protected and expensive, would involve highly complex legal and factual issues relating to class
13 certification, liability, and damages, and would involve substantial uncertainties, delays, and other
14 risks inherent to litigation; (c) Apple’s implementation of an additional password requirement and
15 parental controls that address the concerns that led Plaintiffs to file this litigation; and (d) the
16 desirability of consummating this Settlement to provide effective timely relief to Plaintiffs and the
17 Settlement Class.

18 C. In consideration of all of these circumstances, Class Counsel and Plaintiffs have
19 concluded that the proposed settlement set forth in this Agreement is fair, adequate, reasonable, and in
20 the best interests of the Settlement Class.

21 **XI. DEFENDANT’S DENIAL OF LIABILITY; AGREEMENT AS DEFENSE IN FUTURE**
22 **PROCEEDINGS**

23 A. Apple has indicated its intent vigorously to contest each and every claim in the Actions
24 and Consolidated Action, and continues vigorously to deny all of the material allegations in the Actions
25 and Consolidated Action. Apple enters into this Agreement without in any way acknowledging any
26 fault, liability, or wrongdoing of any kind. Apple nonetheless has concluded that it is in its best
27 interests that the Actions and the Consolidated Action be settled on the terms and conditions set forth
28 herein in light of the expense that would be necessary to defend the Actions and Consolidated Action,

1 the benefits of disposing of protracted and complex litigation, and the desire of Apple to conduct its
2 business unhampered by the distractions of continued litigation.

3 B. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or
4 proceedings connected with it, shall be construed as an admission or concession by Apple of the truth
5 of any of the allegations in the Actions and the Consolidated Action, or of any liability, fault, or
6 wrongdoing of any kind.

7 C. To the extent permitted by law, neither this Agreement, nor any of its terms or
8 provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or
9 received in evidence in any pending or future civil, criminal, or administrative action or proceeding to
10 establish any liability or admission by Apple.

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

14 **XII. ADMINISTRATIVE AND IMPLEMENTATION MATTERS**

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

16 1. The “Effective Date” of this Agreement shall be the first day after which all of the
17 following events and conditions of this Agreement have been met or have occurred:

18 a. All of the Parties, by and through their counsel, have executed this Agreement;

19 b. The Court has conditionally certified the Settlement Class, preliminarily
20 approved the Settlement embodied in this Agreement, and provided for approved notice to the
21 Settlement Class by entry of an order substantially in the form of Exhibit D hereto;

22 c. Following the final date for Class Members to exclude themselves from the
23 Settlement Class pursuant to Section IV.F. hereof, and no less than seven (7) days prior to the Final
24 Hearing, Class Counsel has verified in writing that fewer than three thousand (3,000) of the Class
25 Members have elected to exclude themselves from the Settlement Class, except that if this condition is
26 not met, Apple shall have the option to give written notice to Class Counsel waiving this condition and
27 stating that Apple intends to proceed with the settlement set forth in this Agreement;

28 d. The Court has signed the Judgment; and

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

6 **B. Settlement Administration; Invalid or Incomplete Claims**

7 1. Apple shall, in good faith, administer the process of receiving, handling, processing,
8 and paying claims through a third-party settlement administrator (“Claims Administrator”). Class
9 Counsel shall have the right to submit names of proposed settlement administrators, but Apple shall
10 have the sole discretion to select the Claims Administrator. Class Counsel shall have the right to
11 inquire of Apple’s counsel regarding any aspect of implementation of the settlement, including but not
12 limited to the settlement administration process and the treatment of individual Settlement Class
13 Members’ claims under Section V of this Agreement. Class Counsel shall also receive quarterly
14 written reports summarizing claims received and action taken thereon at Class Counsel’s request.

15 2. The Claims Administrator shall have the right to reject any claims deemed to be
16 fraudulent, insufficient, or incomplete. However, all Claimants will be given a fair and reasonable
17 opportunity to cure any insufficient or incomplete claim submissions in order to maximize the overall
18 benefit to the Class in accordance with Section XII.C. below.

19 **C. Invalid or Incomplete Claims; Cure Period**

20 The Claims Administrator will mail originals or copies of Claim Forms rejected as invalid or
21 incomplete, or a written notice of additional information required for the Claim Form to be valid (“Cure
22 Notice”), directly to the Settlement Class Member who submitted the Claim Form. Settlement Class
23 Members shall have a forty-five (45) day period to cure defective or incomplete claims, which shall run
24 from the date of mailing of the original or copy of the Claim Form or Cure Notice to the Settlement
25 Class Member. The forty-five (45) day cure period may extend after the end of the period for
26 submission of Claim Forms as long as the original Claim Form was timely submitted. Settlement Class
27 Members shall have only one opportunity to cure.

28

1 **D. Disputed Claims**

2 On a quarterly basis after the commencement of claims fulfillment, the Claims Administrator
3 will provide Class Counsel with a list of rejected Claims (including the Settlement Class Member's
4 name, address, and telephone number and the reason for rejection), including, without limitation, any
5 Claims rejected for failure to comply with Section V.B.2.c above. Class Counsel shall have a
6 reasonable opportunity to inspect originals or copies of the Claim Forms. Counsel for the Parties will
7 first attempt to resolve any disputes concerning rejected claims informally between themselves. If
8 counsel cannot reach an agreement concerning one or more claims, the claims will be submitted to the
9 Court for determination.

10 **XIII. MISCELLANEOUS PROVISIONS**

11 **A. Extensions of Time**

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

14 **B. Integration**

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

19 **C. Governing Law**

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

22 **D. Gender and Plurals**

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

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

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

28

1 **F. Representative Capacity**

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

4 **G. Counterparts**

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

8 **H. Cooperation of Parties**

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

12 **I. Execution Voluntary**

13 This Agreement is executed voluntarily by each of the Parties without any duress or undue
14 influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that
15 they have read and fully understand the provisions of this Agreement and have relied on the advice and
16 representation of legal counsel of their own choosing. Each of the Parties has cooperated in the
17 drafting and preparation of this Agreement and has been advised by counsel regarding the terms,
18 effects, and consequences of this Agreement. Accordingly, in any construction to be made of this
19 Agreement, this Agreement shall not be construed as having been drafted solely by any one or more of
20 the Parties.

21 **J. Notices**

22 1. All notices from Class Members provided herein shall be sent by email to Claim
23 Administrator at [Address].

24 2. The notice recipients and addresses designated in Section 1 above may be changed by
25 written notice pursuant to this Section.

26 3. Upon the request of any of the Parties, the Parties agree to promptly provide each other
27 with copies of objections, requests for exclusion, or other filings received as a result of the Class
28 Notice.


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K. Modifications and Amendment

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


Dated: March 8th, 2013

GIBSON, DUNN & CRUTCHER LLP
S. ASHLIE BERINGER

By: 
S. Ashlie Beringer
Attorneys for Defendant
APPLE INC.

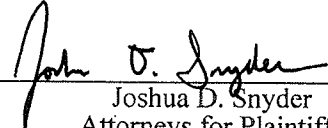
Dated: March 8th, 2013

SALTZ MONGELUZZI BARRETT & BENDESKY,
P.C.
SIMON BAHNE PARIS

By: 
Simon Bahne Paris
Attorneys for Plaintiffs
and for the Settlement Class

Dated: March 8th, 2013

BONI & ZACK LLC
Joshua D. Snyder

By: 
Joshua D. Snyder
Attorneys for Plaintiffs
and for the Settlement Class