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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CHRISTINA GRACE and KEN POTTER,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

vs.

APPLE INC.,

Defendant.

CASE NO. 5:17-cv-00551-LHK-NC

CLASS ACTION

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Judge: Hon. Lucy H. Koh

1 This matter before the Court is Plaintiffs’ motion for preliminary approval of the proposed
2 class action settlement. Plaintiffs, individually and on behalf of the proposed settlement class, and
3 Defendant have entered into a Settlement Agreement that, if approved, would settle the above-
4 captioned litigation (the “Action”). Having considered the motion, the Settlement Agreement
5 together with all exhibits and attachments thereto, the record in this matter, and the briefs and
6 arguments of counsel, the Court finds as follows: On September 3, 2020, this Court heard
7 Plaintiffs Christina Grace and Ken Potter’s (“Plaintiffs”) motion for preliminary approval of class
8 settlement. This Court reviewed the motion, including the Settlement Agreement and supporting
9 declaration of Class Counsel. Based on this review and the findings below, the Court finds good
10 cause to grant the motion.

11 **FINDINGS:**

12 1. The Court has reviewed the terms of the proposed Settlement Agreement, the
13 exhibits and attachments thereto, Plaintiffs’ motion papers and briefs, and the declaration of
14 counsel. Based on its review of these papers, the Court finds that the Settlement Agreement
15 appears to be the product of serious, informed, non-collusive negotiations conducted with the
16 assistance of United States District Court Magistrate Judge Nathanael Cousins and Judge William
17 H. Cahill (Ret.), over the course of several months. The Court further observes that the Settlement
18 Agreement was entered into after almost three years of litigation, including a motion to dismiss,
19 extensive fact and expert discovery, contested discovery-related motion practice, a motion for
20 class certification, and a motion for summary judgment. The terms of the Settlement Agreement
21 do not improperly grant preferential treatment to any individual within or segment of the
22 Settlement Class and fall within the range of possible approval as fair, reasonable, and adequate.

23 2. The Email Notice, Long-Form Notice and Postcard Notice (attached to the
24 Settlement Agreement as Exhibits A-C, respectively), and their manner of transmission are
25 reasonably calculated to adequately apprise class members of: (i) the pending lawsuit, (ii) the
26 proposed settlement, and (iii) their rights, including the right to either participate in the settlement,
27 exclude themselves from the settlement, or object to the settlement and thus comply with Rule 23
28 and the principles of due process.

1 3. Pursuant to the Settlement Agreement, Apple Inc. (“Apple”) has agreed to provide
2 the requisite notice in compliance with 28 U.S.C. § 1715(b).

3 **IT IS ORDERED THAT:**

4 1. **Settlement Approval.** The Settlement Agreement, including the Email Notice,
5 Long-Form Notice, Postcard Notice and Application for Inclusion in Class, attached to the
6 Settlement Agreement as Exhibits A-C and E, respectively, are approved.¹

7 2. **Appointment of Settlement Administrator and the Provisions of Class Notice.**
8 Pursuant to the Settlement Agreement, the Parties have designated Epiq Systems, Inc. as the
9 Settlement Administrator. The Settlement Administrator shall perform all the duties of the
10 Settlement Administrator set forth in the Settlement Agreement. Defendant, through the
11 Settlement Administrator, will notify Class Members of the settlement in the manner specified in
12 paragraphs 6 *et seq.* of the Settlement Agreement. Notice shall be disseminated no later than 30
13 days after the entry of this Order (“Notice Date”).

14 3. **Claim for Settlement Award.** Class Members for whom Apple has contact
15 information and who do not timely submit a valid request for exclusion, will automatically receive
16 an electronic or paper settlement check. Those Class Members who do not receive direct notice
17 must complete an Application for Inclusion in the Settlement Class and submit it to the Settlement
18 Administrator no later than 60 days after the Notice Date in order to be eligible to receive an
19 award under the Settlement Agreement.

20 4. **Objection to Settlement.** Any Class Member who has not submitted a timely
21 written Request for Exclusion pursuant to paragraph 6 below and who wishes to object to the
22 fairness, reasonableness, or adequacy of the Settlement Agreement must file a written objection
23 with the Clerk of the Court no later than 60 days from the Notice Date (“Objection and Exclusion
24 Deadline”). Any written objection must: (1) identify the case name and number, *Grace et al. v.*
25 *Apple Inc.*, Case No. 5:17-cv-00551-LHK-NC; (2) include the full name, address, telephone
26

27 ¹ Non-substantive changes, such as typographical errors, can be made to the notice documents and
28 Application for Inclusion in Settlement Class by agreement of the Parties without leave of Court.

1 number, and email address of the person objecting; (3) include the full name, address, telephone
2 number, and email address of the objector's counsel (if the objector is represented by counsel);
3 and (4) state whether the objection applies only to the objector, to a specific subset of the class, or
4 to the entire class, and the grounds for the objection. Delivery, if submitted through ECF, must be
5 completed by 11:59 p.m. PST on the day of Objection and Exclusion Deadline. If submitted by
6 U.S. mail or other mail services, the objection must be postmarked by the Objection and Exclusion
7 Deadline. In the event that a postmark is illegible or unavailable, the date of mailing shall be
8 deemed to be three days prior to the date that the Court scans the Objection into the electronic case
9 docket.

10 **5. Failure to Object to Settlement.** Class Members who fail to object to the
11 Settlement Agreement in the manner specified above shall: (i) be deemed to have waived any
12 objection to the Settlement Agreement; (ii) be foreclosed from making any objection to the
13 Agreement and proposed Settlement by appearing at the Final Fairness Hearing; and (iii) be
14 foreclosed from making any objection through appeal, collateral attack, or otherwise.

15 **6. Requesting Exclusion.** Class Members may elect to not be part of the Class and
16 not be bound by this Settlement Agreement. To request to be excluded from the Settlement, Class
17 Members must timely submit a written request for exclusion. The request for exclusion must be
18 sent by postal mail to the Settlement Administrator. To be excluded from the Settlement, the
19 request for exclusion must be received by the Objection and Exclusion Deadline, which is 60 days
20 after the Notice Date. Any person or entity who falls within the definition of the Settlement Class
21 and who validly and timely requests exclusion from the Settlement shall not be a Settlement Class
22 Member; shall not be bound by the Settlement Agreement; shall not be eligible to apply for any
23 benefit under the terms of the Settlement Agreement; and shall not be entitled to submit an
24 Objection to the Settlement.

25 **7. Certification of Settlement Class.** The Court finds that the proposed Settlement
26 Class definition is consistent with the Class previously certified (Dkt. No. 269) and therefore
27 meets the requirements of Federal Rule of Civil Procedure 23 for the reasons set forth in the Order
28 Granting in Part and Denying in Part Motion for Class Certification (Dkt. No. 269). Class

1 Representatives Christina Grace and Ken Potter are appointed as Settlement Class Representatives
2 to implement the settlement in accordance with the Settlement Agreement. Class Counsel Jill M.
3 Manning, Daniel L. Warshaw, David F.E. Tejtzel, and John Austin Curry, on behalf of their firms,
4 shall continue to serve as Class Counsel.

5 **8. Termination.** If this Settlement Agreement terminates for any reason, this Action
6 will revert to its previous status in all respects as it existed immediately before the Parties executed
7 the Settlement Agreement. This Order will not waive or otherwise impact the Parties rights or
8 arguments.

9 **9. Motion for Fees, Expenses, or Service Awards:** No later than 46 days after the
10 Notice Date, Plaintiffs shall file their Motion for Fees, Expenses, and Incentive Awards. Plaintiffs
11 shall be permitted to file a reply to any objections to their request for fees, expenses, or service
12 awards on or before 35 days before the Fairness Hearing.

13 **10. Final Approval Hearing.** The Court will hold a Final Approval Hearing on
14 February 8, 2021, at 1:30 p.m. in Courtroom 8, 4th Floor, of the Northern District of California,
15 280 South 1st Street, San Jose, CA 95113.

16 **11.** At the Final Approval Hearing, the Court will consider whether: (a) the Settlement
17 is fair, reasonable, and adequate; (b) the Settlement Class should be finally certified; (c) a final
18 judgment should be entered; (d) Class Counsel's motion for attorneys' fees and costs should be
19 granted; and (e) the Service Payments sought for Settlement Class Representatives should be
20 awarded.

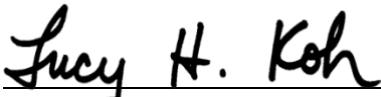
21 **12.** The Court reserves the right to continue the date of the Final Approval hearing
22 without further notice to Settlement Class Members.

23 **13.** If that occurs, the updated hearing date shall be posted on the Settlement Website.
24 Other than the Settlement Website posting the Parties will not be required to provide any
25 additional notice to Class Members.

26 **14. Stay of Dates and Deadlines.** All discovery and pretrial and trial proceedings and
27 deadlines are vacated until further notice from the Court, except for such actions as are necessary
28 to implement the Settlement Agreement and this Order.

1 For the reasons set forth above, the Court GRANTS Plaintiffs' motion for preliminary
2 approval.

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4 DATED: September 10, 2020

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7 Hon. Lucy H. Koh
8 United States District Court Judge
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