SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CAROLYN LEVIN, in Her Individual and Representative Capacity on Behalf of a Class of All Persons Similarly-Situated, Plaintiff, v. NIKE, INC., an Oregon Corporation; APPLE INC., a California Corporation; and DOES 1 through 10, inclusive, Defendant.	CASE NO. BC509363 Assigned to Hon. William F. Highberger

SETTLEMENT AGREEMENT

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SETTLEMENT AGREEMENT
(Subject To Court Approval)

This settlement agreement ("Agreement" or "Settlement Agreement") is entered into by and between Nike, Inc. ("Nike," as defined herein at paragraph 24), Apple Inc. ("Apple," as defined herein at paragraph 25), and the named Plaintiff Class Representative Carolyn Levin ("Plaintiff," as defined herein at paragraph 31), both individually and on behalf of a Settlement Class (as defined herein at paragraph 15) of people and entities who purchased a Nike+ FuelBand.

I. BACKGROUND

1. Plaintiff filed a lawsuit against Nike and Apple on behalf of numerous persons claiming damages arising out of their purchases of the Nike+ FuelBand. That lawsuit, *Levin v. Nike, Inc. et al.* (Case No. BC509363), is currently pending in the Superior Court of California.

2. Plaintiff alleges that Nike and Apple made false and/or misleading statements regarding the Nike+ FuelBand and failed to honor the warranty terms of the Nike+ FuelBand. Plaintiff's Second Amended Complaint, a copy of which is attached hereto as Exhibit 1, and which Plaintiff has expressed an intention to file with the Court as the operative complaint in this action, alleges that Nike's and Apple's conduct violates California's Unfair Competition Law (Cal. *Bus. & Prof. Code* § 17200 *et seq.*), Consumer Legal Remedies Act (Cal. *Civ. Code* § 1750 *et seq.*), and False Advertising Law (Cal. *Bus. & Prof. Code* § 17500 *et seq.*), and alleges claims for breach of warranty and "common counts" of "assumpsit, restitution, and quasi-contract."

3. Nike and Apple deny and continue to deny each and every allegation and all charges of wrongdoing or liability of any kind whatsoever that Plaintiff or members of the Class presently have asserted in this Litigation (as defined herein at paragraph 27) or may in the future assert. Despite Nike's and Apple's belief that they are not liable for, and have good defenses to, the claims alleged in the Litigation, Nike and Apple desire to settle the Litigation, and thus avoid the expense, risk, exposure, inconvenience, and distraction of continued litigation of any action or proceeding relating to the matters being fully settled and finally put to rest in this Agreement. Neither this Settlement Agreement, nor any negotiation or act performed or document created in relation to the settlement is, or may be deemed to be, or may be used as, an admission of, or evidence of, any wrongdoing or liability.

4. Following arms' length negotiations, including mediation before an experienced mediator, the Parties now seek to enter into this Settlement Agreement. Plaintiff and Class Counsel have conducted an investigation into the facts and the law regarding this Litigation and have concluded that a settlement with Nike and Apple according to the terms set forth below is fair, reasonable, and adequate, and

beneficial to and in the best interests of Plaintiff and the Class recognizing (1) the existence of complex and contested issues of law and fact, (2) the risks inherent in litigation, (3) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement with Nike and Apple, (4) the magnitude of the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever, and (5) the Plaintiff's determination that the settlement is fair, reasonable, adequate, and will substantially benefit the Class Members.

5. The Parties shall use their best efforts to effectuate this Agreement, including, but not limited to, cooperating in promptly seeking the Court's approval of this Agreement, certification of the settlement class, and release of the Releasees of the Released Claims.

6. No party shall be deemed the drafter of this Agreement or any provision thereof. No presumption shall be deemed to exist in favor of or against any party as a result of the preparation or negotiation of this Agreement.

7. This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of California without regard to conflict of laws principles.

8. Nothing express or implied in this Agreement is intended or shall be construed to confer upon or give any person or entity other than the Parties and Class Members any right or remedy under or by reason of this Agreement.

9. This Agreement may be executed in multiple counterparts, all of which taken together shall constitute one and the same Settlement Agreement.

10. In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Litigation be settled and compromised, and that the Class Members release the Releasees of the Released Claims, without costs as to Releasees, Plaintiff, or the Class, except as explicitly provided for in this Agreement, subject to the approval of the Court, on the following terms and conditions.

11. This Agreement may not be modified or amended unless such modification or amendment is in writing executed by the Parties, except as specifically permitted by this Agreement. An electronic signature will be considered an original signature for purposes of execution of this Agreement.

12. Where this Agreement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by email or letter by overnight delivery to their counsel in the Litigation.

II. DEFINITIONS

The following terms, as used in this Agreement, have the following meanings:

13. "Administrative Expenses" shall mean expenses associated with the Settlement Administrator, including but not limited to costs in providing notice and disbursing payments or gift cards to the proposed Settlement Class Members.

14. "Approved Claims" shall mean complete and timely claims, submitted by Class Members, that have been approved for payment by the Settlement Administrator.

15. "Class," "Settlement Class," "Class Member," or "Settlement Class Member" shall mean each member of the settlement class, as defined in Section III of this Agreement, who does not timely elect to be excluded from the Class, and includes, but is not limited to, Plaintiff.

16. "Class Counsel" shall refer to:

    a. Thomas V. Girardi
    GIRARDI | KEESE
    1126 Wilshire Blvd.
    Los Angeles, CA 90071; and

    b. Paul N. Philips
    LAW OFFICES OF PAUL N. PHILIPS, APLC
    9255 W. Sunset Blvd., Suite 920
    Los Angeles, CA 90069.

17. "Counsel" means both Class Counsel and Nike's and Apple's Counsel, as defined in paragraphs 16 and 26.

18. "Class Period" shall mean the period from and including January 19, 2012, up to and including the date of the Court's order granting preliminary approval of the settlement.

19. "Class Release" shall have the meaning set forth in Section VI.

20. "Class Relief" means those benefits awarded to Class Members by the Settlement Agreement, including without limitation the right to submit a Proof of Claim Form.

21. "Court" shall mean the Superior Court of the State of California for the County of Los Angeles and the Honorable William F. Highberger, who presides over the Litigation, and his successors, if any.

22. "Effective Date" shall mean the date when the Settlement Agreement becomes Final.

a. "Final" means the Order and Judgment has been entered on the docket in the Action, and (a) the time to appeal from such order has expired and no appeal has been timely filed; (b) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmation of the Final Approval Order and Judgment; or (c) this Court following the resolution of the appeal enters a further order or orders approving settlement on the terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).

b. "Order and Judgment" shall mean an order and judgment entered by the Court that:

i. Certifies the Settlement Class pursuant to sections 382 and 1781 of the California *Code of Civil Procedure*;

ii. Enters judgment consistent with California Rule of Court 3.769(h) including a provision for the retention of the Court's jurisdiction over the parties to enforce the terms of the judgment;

iii. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Agreement;

iv. Releases each Releasee from the Released Claims which any Settlement Class Members have, had, or may have in the future, against such Releasee;

v. Bars and enjoins all Settlement Class Members from asserting against any Releasees any and all Released Claims which the Settlement Class Member had, has, or may have in the future; and

vi. Preserves the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Nike, Apple, Plaintiff, and all Settlement Class Members, to administer, supervise, construe and enforce this Agreement in accordance with its terms for the mutual benefit of the Parties, but without affecting the finality of the Judgment.

23. "Execution Date" shall mean the date on which this Agreement is fully executed by all parties.

24. "Nike" shall mean Nike, Inc. (an Oregon corporation), its past and present parents, predecessors, successors, affiliates, holding companies, subsidiaries, employees, agents, assigns, contractors, and resellers of the Nike+ FuelBand.

25. "Apple" shall mean Apple Inc. (a California corporation), its past and present parents, predecessors, successors, affiliates, holding companies, subsidiaries, employees, agents, assigns, and contractors.

26. "Nike's and Apple's Counsel" shall refer to:

a. Samuel Liversidge
GIBSON DUNN & CRUTCHER LLP
333 South Grand Ave.
Los Angeles, CA 90071; and

b. Austin V. Schwing
GIBSON DUNN & CRUTCHER LLP
555 Mission Street
San Francisco, CA 94105.

27. "Litigation" shall mean *Levin v. Nike, Inc. et al.,* Case No. BC509363, currently pending in the Superior Court of California.

28. "Opt-Out" shall mean a written request for exclusion from the Class as provided in Section IX of this Settlement Agreement.

29. "Opt-Out Period" shall have the meaning set forth in paragraph 61.

30. "Parties" shall mean Nike, Apple, the Plaintiff, and the proposed Settlement Class.

31. "Plaintiff" of "Plaintiff Class Representative" shall mean the named class representative, Carolyn Levin.

32. "Preliminary Approval Order" shall mean an order of this Court preliminarily approving the Settlement Agreement.

33. "Proof of Claim Form" shall mean the form that Class Members may submit to obtain compensation under this Settlement.

34. "Nike+ FuelBand" shall mean the whole or any part of the Nike+ FuelBand, regardless of which entity sold it.

35. "Related Actions" shall mean any proceeding, other than the Litigation, that is related to the Nike+ FuelBand in any federal, state, or other arbitral forum.

36. "Released Claims" shall have the meaning set forth in Section VI.

37. "Releasees" shall refer, jointly and severally, and individually and collectively, to Nike and Apple, their past and present parents, predecessors, successors, affiliates, holding companies, subsidiaries, employees, agents, assigns, contractors, joint venturers, third-party agents with which they have or have had contracts or their affiliates relating to the Nike+ FuelBand, and any resellers of the Nike+ FuelBand.

38. "Releasors" shall refer, jointly and severally, and individually and collectively, to Plaintiff, the Class Members, and to each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them.

39. "Settlement Administrator" means the individual mutually selected and supervised by the Parties to administer the settlement. The Parties shall recommend Gilardi & Co. to serve as Settlement Administrator.

III. SETTLEMENT CLASS CERTIFICATION

40. Subject to Court approval, the following Class shall be certified for settlement purposes:

> All people and entities in the United States who purchased a Nike+ FuelBand from the time period from and including January 19, 2012, through the date of the order granting preliminary approval of the settlement.

41. Excluded from the Class are all persons who elect to exclude themselves from the Class, the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family.

42. If for any reason the settlement is not granted preliminary and final approval, Nike's and Apple's agreement to certification of the Settlement Class shall not be used for any purpose, including in any request for class certification in this Litigation, Related Actions, or any other proceeding.

IV. SETTLEMENT OF LITIGATION AND ALL CLAIMS AGAINST RELEASEES

43. As set forth in Sections VI, XII, and XIII, final approval of this Settlement Agreement will settle and resolve with finality, on behalf of the Plaintiff and the Class, the Litigation, any Related Actions, and the Released Claims and any other claims that have been brought, could have been brought, or could be brought now or at any time in the future against Releasees by the Plaintiff, Class Members, and their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, in the Litigation, Related Actions, or any other proceeding arising out of, in any manner related to, or connected in any way with the Released Claims (the "Class Release").

V. PAYMENTS TO THE SETTLEMENT ADMINISTRATOR AND THE CLASS MEMBERS UNDER THE SETTLEMENT

44. **Payment of the Settlement Administrator**

a. Nike shall be solely responsible for paying the Settlement Administrator the Administrative Expenses.

45. **Class Member's Election of Benefits Under the Settlement**

a. A Class Member who timely submits a Proof of Claim Form shall receive, according to the Class Member's election, either a Fifteen Dollar ($15) payment or a Twenty-Five Dollar ($25) gift card redeemable at Nike-owned stores in the US and Puerto Rico, and online at Nike.com, for each Nike+ FuelBand purchased by the Class Member during the Class Period. The gift card will be freely transferable and will not expire. Nike will be solely responsible for these payments and gift cards and will coordinate their delivery with the Settlement Administrator. Apple will have no responsibility or liability with respect to payments or gift cards to Class Members.

46. **Submission and Evaluation of Claims**

a. All claims must be submitted on a Proof of Claim Form. The Proof of Claim Form will require the Class Member to provide his or her name, mailing address, telephone number, and serial number for each Nike+ FuelBand for which a Proof of Claim Form is being submitted. The Proof of Claim Form must be submitted on or before the Proof of Claim Form Deadline, which shall be sixty (60) days after the date the Court sets for the Fairness Hearing in the Preliminary Approval Order. The Proof of Claim Form shall be substantially in the form attached hereto as Exhibit 2.

b. Completed Proof of Claim Forms shall be submitted directly to the Settlement Administrator for processing, assessment, and payment. The Proof of Claim Form may be mailed, faxed or electronically transmitted.

c. A Proof of Claim Form will be deemed to be complete if the Class Member fully answers all applicable questions on the Proof of Claim Form.

d. Any Proof of Claim Form that lacks the requisite information will be deemed to be incomplete and ineligible for payment. For any partially completed Claim Forms, the Settlement Administrator shall attempt to contact the Class Member who submitted the Claim Form at least one time by e-mail (1) to inform the Class Member of any errors and/or omissions in the Claim Form and (2) to give the Class Member one opportunity to cure any errors and/or omissions in the Claim Form. The Class Member shall have until the Claim Form Deadline or 30-days after the Settlement Administrator sends the e-mail to the Class Member regarding the deficiencies in the Claim Form, whichever is later, to cure the errors and/or omissions in the Claim Form.

e. A Class Member is not entitled to Class Relief if he/she submits a Proof of Claim Form after the Proof of Claim Form Deadline, if the Proof of Claim

Form is incomplete after an opportunity to cure any errors and/or omissions, or contains false information.

f. The Settlement Administrator shall have sole and final authority for determining if Class Members' Proof of Claim Forms are complete and timely, in which case they will be accepted as Approved Claims. The Settlement Administrator may reject, accept in part, or accept in whole any claim submitted, and may, upon its sole discretion, request additional information prior to rejecting, accepting in part, or accepting in whole any claim submitted.

g. Within fourteen (14) days of completion of its review of the Proof of Claim Forms, the Settlement Administrator will submit to the Parties a report listing all Approved Claims. The Settlement Administrator will inform Nike of the number of Approved Claims and the total money and gift cards necessary to satisfy those Approved Claims. Nike will provide the necessary money and gift cards to the Settlement Administrator within forty (40) days of being provided with the information described above in this sub-paragraph. The funds provided to the Settlement Administrator will be maintained by an escrow agent as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1 et seq. of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing account.

h. Prompt payment shall be made by the Settlement Administrator on Approved Claims after the Effective Date of the settlement. Checks will be mailed to Class Members with Approved Claims who opted for money. Gift cards may be mailed or e-mailed to Class Members with Approved Claims who opted for gift cards. The Settlement Administrator shall use the addresses and e-mail address provided by the Class Members on the Approved Claims.

i. The Settlement Administrator shall notify the Parties that all Approved Claims have been paid within 10 days of the last such payment.

j. In the event that checks sent to Class Members are not cashed within one (1) year of their mailing date, whether because the checks were not received or otherwise, those checks will become null and void and a corresponding amount of the null and void check will be paid through cy prés to Partnership for a Healthier America. The Class Members who did not cash their checks, whether or not they were actually received, shall not receive any payment from this Settlement Agreement. The Court may revise this cy prés provision as necessary without terminating or otherwise impacting this settlement, provided the Court's revision does not increase the amount that Defendants would otherwise pay under this Settlement Agreement.

VI. RELEASE

47. In addition to the effect of any final judgment entered in accordance with this Agreement, upon final approval of this Agreement, and for other valuable consideration as described herein, Releasees shall be completely released, acquitted, and forever discharged from any and all Released Claims as defined in this Section arising on or after January 19, 2012.

48. Except as specifically provided for below in this Section, "Released Claims" shall mean any and all claims against Releasees whatsoever arising out of, related to, or connected with the design, manufacturing, pricing, advertising, describing, representing, marketing, offering, promoting, facilitating, providing, warrantying, replacing, repairing, or selling of the Nike+ FuelBand in the United States that relate to the Nike+ FuelBand. "Released Claims" include all claims that were or could have been asserted in the Litigation, regardless of whether such claims are known or unknown, filed or unfiled, asserted or as yet unasserted, existing or contingent, and regardless of the legal theory or theories of damages involved.

49. "Released Claims" expressly excludes any warranty claims that are in no way related to the Nike+ FuelBand's ability to monitor, track, record, display, calculate, estimate, compute and/or report a user's activity and calories burned.

50. "Released Claims" expressly excludes any claims and/or damages for personal injuries in any way related to the Nike+ FuelBand.

51. As of the Effective Date, and with the approval of the Court, all Releasors hereby fully, finally, and forever release, waive, discharge, surrender, forego, give up, abandon, and cancel any and all Released Claims against Releasees. As of the Effective Date, all Releasors will be forever barred and enjoined from prosecuting any action against the Releasees asserting any and/or all Released Claims.

52. Each Releasor waives California Civil Code Section 1542 and similar provisions in other states. Each Releasor hereby certifies that he, she, or it is aware of and has read and reviewed the following provision of California Civil Code Section 1542 ("Section 1542"):

> A general release does not extend to claims which the creditor does not know or 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.

53. The provisions of the release set forth above shall apply according to their terms, regardless of the provisions of Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction.

54. Each Releasor waives any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Agreement.

55. The Parties and each member of the proposed Settlement Class agree that the amounts to be paid under this Settlement Agreement to each Class Member represent the satisfaction of that Class Member's claims for compensatory damages for the Released Claims. No portion of such settlement represents the payment of punitive or exemplary damages. Nonetheless, in consideration for the satisfaction of each Class Member's claim for compensatory damages, claims for punitive or exemplary damages shall be released as provided in Section VI.

VII. CERTIFICATION OF THE SETTLEMENT CLASS AND RELATED MOTIONS

56. This Settlement shall be subject to approval of the Court. As set forth in Section XIV, Nike and Apple shall have the right to withdraw from the Settlement if the Court does not issue any of the requested orders (including the Order and Judgment) or if the Settlement Class is not certified, among other things.

57. Plaintiff shall submit to the Court a motion (the "Motion"): (a) for certification of a Class for settlement purposes; and (b) for preliminary approval of the Agreement, and authorization to disseminate notice of Class certification, the settlement, and the final judgment contemplated by this Agreement to all potential Class Members. The Motion shall include: (i) the definition of the Class for settlement purposes as set forth in Section III of this agreement; (ii) a proposed form of, method for, and date of dissemination of notice; (iii) a proposed form of preliminary approval, (iv) a proposed Proof of Claim Form; and (v) a date for the final approval hearing. The text of the items referred to in clauses (i) through (v) above shall be agreed upon by the parties before submission of the Motion. The Motion shall be accompanied by a proposed order for preliminary approval of the settlement substantially in the form attached hereto as Exhibit 3.

VIII. NOTICE TO PROPOSED CLASS MEMBERS

58. **List of Potential Class Members**

a. Nike, with the assistance of the Settlement Administrator as appropriate, shall create a list of potential Class Members, based on readily available information already within its possession ("List of Potential Class Members").

b. The List of Potential Class Members shall include the names, e-mail addresses, and mailing addresses of potential Class Members, to the extent such information is readily available.

c. The Settlement Administrator shall keep the List of Potential Class Members confidential. Absent a Court order, the Settlement Administrator shall not release the List of Potential Class Members to

persons other than (1) Class Counsel; (2) Counsel and/or (3) under seal to the Court. The List of Potential Class Members is subject to the confidentiality provisions of the protective order issued in this Action.

59. **Type of Notice Required**

a. The Class Settlement Notice, which shall be substantially in the form of Exhibits 4–6 attached hereto, shall be used for the purpose of informing proposed Class Members, prior to the fairness hearing before the Court ("Fairness Hearing"), that there is a pending settlement, and further (a) inform Class Members as to how they may obtain a copy of the Proof of Claim Form; (b) protect their rights regarding the settlement; (c) request exclusion from the Class and the proposed settlement, if desired; (d) object to any aspect of the proposed settlement; and (e) participate, if desired, in the Fairness Hearing. Finally, the Notice shall make clear the binding effect of the settlement on all persons who do not timely request exclusion from the Class.

b. Dissemination of the Notice shall be the responsibility of the Settlement Administrator. The text of the Notice shall be agreed upon by the Parties, and shall be substantially in the forms attached as Exhibits 4–6 hereto.

c. Individual notice shall be e-mailed to the List of Potential Class Members (substantially in the form of Exhibit 4) where possible and by mailing (substantially in the form of Exhibit 5) where e-mail delivery is not possible.

d. Additionally, notice of the settlement shall be posted on the Settlement Administrator's website and published in an agreed upon national publication (substantially in the form of Exhibit 6).

60. **Notice Deadline**

a. Notice shall be sent to persons on the List of Potential Class Members within 30 days after the date that the Court enters the order preliminarily approving the Settlement, or such other date that the Court may set ("Notice Deadline").

IX. OPT-OUTS

61. **Opt-Out Period**

a. Class Members will have up to and including 60 days following the Notice Deadline to opt out of the settlement in accordance with this Section (the "Opt-Out Period"). If the settlement is finally approved by the Court, all Class Members who have not opted out by the end of the Opt-Out Period will be bound by the Settlement and the Class Release, and the relief

provided by the Settlement will be their sole and exclusive remedy for the claims alleged by the Class.

62. **Opt-Out Process**

a. Any potential Class Member who wishes to be excluded from the Class must provide a request for exclusion to the Settlement Administrator, known as an "Opt-Out," on the form available on the Settlement Administrator's website.

b. In order to be valid, the Opt-Out must be on the form available on the Settlement Administrator's website, and it must state the following in writing: (a) the Class Member's name, address, and the telephone number, and (b) that the Class Member wishes to be excluded from the Class. An original Opt-Out form must be signed by the Class Member and must be mailed to the address provided in the Class Notice. The Opt-Out Form shall be substantially in the form of Exhibit 7. An Opt-Out signed by counsel shall not be sufficient. The Opt-Out request must be postmarked or received within the Opt-Out Period.

c. Within three (3) business days after the Opt-Out Period, the Settlement Administrator shall provide Counsel a written list reflecting all timely and valid requests for exclusion from the Class.

d. A list reflecting all timely and valid requests for exclusion shall also be filed with the Court at the time of the motion for final approval of the settlement.

X. OBJECTIONS

63. Class Members may object to this Agreement up to and including the date ordered by the Court in the Preliminary Approval Order.

64. The Parties will request that the Court order that any Class Member who has any objection to certification of the Class, or to approval of this Settlement Agreement or any terms hereof, or to the approval process must send a letter providing:

a. the name and case number of this lawsuit (*Levin v. Nike, Inc. et al.,* Case No. BC509363 (L.A. Super. Ct.));

b. the objector's full name, current address and phone number;

c. proof of purchase of a Nike+ FuelBand and/or a serial number for the Nike+ FuelBand that qualifies him/her/it as a Class Member;

d. the reasons why the objector objects to the Settlement along with any supporting materials;

e. information about other objections the objector or his or her lawyer(s) have made in other class action cases in the last four (4) years; and

f. the objector's signature.

65. The Parties will request the Court to set the Objection Deadline 30 days before the Fairness Hearing. The Parties will further request that the Court order that objections must be mailed to all four (4) of the following:

Clerk of the Court
Central Civil West Courthouse
600 South Commonwealth Ave.
Los Angeles, CA 90005

Thomas V. Girardi
Girardi | Keese
1126 Wilshire Blvd.
Los Angeles, CA 90071

Paul N. Philips
LAW OFFICES OF PAUL N. PHILIPS, APLC,
9255 W. Sunset Blvd., Suite 920
Los Angeles, CA 90069

Austin V. Schwing
Gibson, Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105

66. The Parties will request that the Court order that failure to comply timely and fully with these procedures shall result in the invalidity and rejection of an objection. No Class Member shall be entitled to be heard at the Fairness Hearing (whether individually or through the objector's counsel), or to object to certification of the Class or to the Settlement Agreement, and no written objections or briefs submitted by any Class Member shall be received or considered by the Court at the Fairness Hearing, unless written notice of the Class Member's objection and any brief in support of the objection have been filed with the Court and served upon the Counsel not later than 30 days before the date of the Fairness Hearing.

67. The Parties will request that the Court order that the Court, within its discretion, may exercise its right to deem any objection as frivolous and award appropriate costs and fees to the Parties opposing such objection(s).

68. The Parties will request that the Court order that Class Members who fail to file and serve timely written objections in accordance with this Section shall be deemed to have waived any objections and shall be foreclosed from making any

objection (whether by appeal or otherwise) to the certification of the Settlement Class or to the Settlement Agreement.

XI. FAIRNESS HEARING

69. Together with the motion for preliminary approval of the Settlement Agreement, the Parties will jointly request that the Court hold a Fairness Hearing.

70. At the Fairness Hearing, the Parties will request the Court to consider whether the Class should be certified pursuant to sections 382 and 1781 of the California *Code of Civil Procedure* for settlement, and, if so, (1) consider any properly filed objections to the Settlement Agreement, (2) determine whether the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connection therewith, and (3) enter the Order and Judgment, including final approval of the Settlement Class and the Settlement Agreement.

XII. ORDER AND JUDGMENT

71. The Parties shall jointly seek entry of an Order and Judgment, the text of which Plaintiff, Nike, and Apple shall agree upon. The orders, motions or stipulation to implement this Section shall, among other things, seek or provide for a release of the Releasees of the Released Claims and waiving any rights of appeal.

72. The Parties shall jointly submit to the Court a proposed Order and Judgment, substantially in the form attached hereto as Exhibit 8.

73. Class Counsel shall use their best efforts to assist Releasees in obtaining dismissal with prejudice of any Related Actions filed or maintained by any potential Class Member, whether in state court, federal court, or any arbitral forum.

XIII. BAR ORDER

74. As part of the Order and Judgment, the Court shall issue a bar order and permanent injunction against any and all pending or future claims by Class Members against Releasees raising or arising out of a Released Claim.

75. The bar order and permanent injunction shall enjoin and forever bar any and all Class Members from commencing and/or maintaining any action, legal or otherwise, against Releasees raising or arising out of a Released Claim.

76. This provision is not intended to prevent or impede the enforcement of claims or entitlement to benefits under this Settlement Agreement.

XIV. TERMINATION OF THE SETTLEMENT

77. The settlement is conditioned upon preliminary and final approval of the Parties' written Settlement Agreement, and all terms and conditions thereof without

material change, amendments, or modifications by the Court (except to the extent such changes, amendments or modifications are agreed to in writing between the Parties). All Exhibits attached hereto are incorporated into this Settlement Agreement. Accordingly, this Settlement Agreement shall be terminated and cancelled, at the option of any Party, upon any of the following events:

a. This Settlement Agreement is changed in any material respect to which the Parties have not agreed in writing.

b. The Court declines to enter the Preliminary Approval Order;

c. The Fairness Hearing is not held by the Court;

d. The Order and Judgment approving the Settlement and certifying the Settlement Class for the Class Period as provided in this Agreement is not entered by the Court or is reversed by a higher court; or

e. Another party to this Settlement Agreement materially breaches the Settlement Agreement and such breach materially frustrates the purposes of this Agreement;

78. This Settlement Agreement shall be terminated and cancelled, at the sole and exclusive discretion of Nike and Apple, upon any of the following events:

a. The notice required by the Court is inconsistent with Section VIII;

b. The Proof of Claim required by the Court is inconsistent with Section V;

c. The bar order and permanent injunction as provided in Section XII are not entered by the Court as provided in that Section;

d. If at any time prior to final approval any governmental entity files or indicates its intention to investigate or file or bring a claim, cause of action, complaint, petition, or other action in any administrative, legal, equitable or governmental proceeding against Nike or Apple relating to the Nike+ FuelBand;

e. Greater than 5% of the Class Members Opt-Out; or

f. The Court does not permit the amendment of the operative complaint as set forth in Exhibit 1 prior to its order on preliminary approval of this Settlement Agreement.

79. In the event the Settlement Agreement is not approved or does not become final, or is terminated consistent with this Settlement Agreement, the Parties, pleadings, and proceedings will return to the *status quo ante* as if no settlement had been negotiated or entered into, and the Parties will negotiate in good faith to establish a new case schedule.