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8  
 9 Attorneys for Plaintiff RACHAEL SHAY,  
 on behalf of herself and all others similarly situated

10  
 11 **UNITED STATES DISTRICT COURT**  
 12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 RACHAEL SHAY, individually and  
 14 on behalf of all others similarly  
 situated,

15  
 16 Plaintiff,

17 v.

18 APPLE INC., a Delaware corporation;  
 19 APPLE VALUE SERVICES, LLC, a  
 20 Virginia limited liability corporation;  
 and DOES 1 through 10, inclusive,

21  
 22 Defendants.

Case No. 3:20-cv-1629-JO-BLM

**CLASS ACTION**

**PLAINTIFF’S NOTICE OF  
 MOTION AND MOTION FOR  
 PRELIMINARY APPROVAL OF  
 CLASS ACTION SETTLEMENT**

Date: October 4, 2023

Time: 9:00 a.m.

Judge: Hon. Jinsook Ohta

Courtroom: 4C, 4th Floor

[No oral argument unless requested by  
 the Court]

[Filed with Memorandum of Points and  
 Authorities, Declaration James R.  
 Hawkins, Declaration of Malte L. L.  
 Farnaes, Declaration of Christina M.  
 Lucio, Declaration of Mitchell J.  
 Murray, Declaration of Julie Green,  
 and Proposed Order]

1           **TO THE COURT, ALL PARTIES, AND TO THEIR ATTORNEYS**  
2 **OF RECORD:**

3           **PLEASE TAKE NOTICE** that on October 4, 2023, at 9:00 a.m., or as  
4 soon thereafter as counsel may be heard, before the Honorable Jinsook Ohta in  
5 Courtroom 4C of the United States District Court for the Southern District of  
6 California, located at 333 West Broadway, San Diego, CA 92101, Plaintiff  
7 Rachael Shay (“Plaintiff”) and her counsel (“Class Counsel”) will and hereby  
8 move under Federal Rule of Civil Procedure 23(e) for an order granting  
9 preliminary approval of the parties’ proposed classwide settlement. Specifically,  
10 Plaintiff seeks an order which (1) preliminarily approves the settlement as within  
11 the range of possible final approval; (2) directs that notice be provided to class  
12 members; (3) approves the Email Notice, Mail Notice, Publication Notice, and  
13 Website Notice attached as Exhibits 1, 4, 5 and 6; (4) approves Plaintiff’s counsel  
14 as Class Counsel and Plaintiff as Class Representative; and (5) schedules a  
15 hearing at which the Court will consider final approval of the settlement, the  
16 application for an award of attorneys’ fees and expenses and a service award for  
17 Plaintiff, and entry of final judgment.

18           This Motion is based on this Notice of Motion, the accompanying  
19 Memorandum of Points and Authorities, the papers on file in this matter, the  
20 arguments of counsel, the Declarations of Class Counsel, the Declaration of Julie

21 ///  
22 ///  
23 ///  
24 ///  
25 ///

1 Green on behalf of CPT Group, Inc.<sup>1</sup>, and other matters the Court wishes to  
2 consider.

3  
4 Dated: August 28, 2022

JAMES HAWKINS APLC

5 By: /s/ Mitchell J. Murray

6 James R. Hawkins

7 Malte L. L. Farnaes

8 Christina M. Lucio

9 Mitchell J. Murray

10 Attorneys for Plaintiff  
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27 <sup>1</sup> The Parties are finalizing the Declaration of Julie Green on behalf of CPT Group,  
28 Inc. and will file it as soon as possible.

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**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- I. INTRODUCTION AND SUMMARY OF MOTION.....1
- II. PROCEDURAL HISTORY.....3
- III. SUMMARY OF PROPOSED SETTLEMENT TERMS.....5
  - A. The Settlement Class.....5
  - B. The Settlement Amount, Release of Claims, and Potential Class Recovery.....6
  - C. Attorneys’ Fees and Costs, Service Award, and Administration Costs.....7
  - D. Class Notice and Implementation of Settlement.....8
    - 1. Dissemination of Class Notices.....8
    - 2. Procedure for Submitting Claims.....9
- IV. THE COURT SHOULD CONDITIONAL CERTIFY THE PROPOSED SETTLEMENT CLASS.....11
  - A. The Settlement Class Meets The Rule 23(a) Requirements.....11
    - 1. The Proposed Class is Sufficiently Numerous.....11
    - 2. Questions of Law and Fact are Common to the Class.....11
    - 3. Plaintiff’s Claims are Typical of the Settlement Class.....13
    - 4. Plaintiff and Class Counsel Will Adequately Protect the Interests of the Settlement Class.....13
  - B. The Settlement Class May Be Certified Under Rule 23(b)(3).....14
    - 1. Common Questions of Law and Fact Predominate Over Individual Questions.....14
    - 2. A Class Action is Superior to Other Methods of Adjudication.....15
- V. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL.....16
  - A. The Proposed Settlement is the Product of Serious, Informed and Non-Collusive Negotiations.....17

1           1. The Proposed Settlement Has No Obvious Deficiencies.....18

2           2. The Proposed Settlement Does Not Grant Preferential Treatment.....19

3        B. All Settlement Class Members Will Recover a Pro Rata Share Of the

4           Settlement.....20

5        C. The Request Service Awards for the Class Representative Reflects Their

6           Efforts on Behalf of the Settlement Class.....20

7        D. The Proposed Settlement Falls Within the Range of Possible Approval.....21

8    VI.    THE COURT SHOULD APPROVE THE PROPOSED CLASS NOTICE

9           PLAN AND CPT GROUP, INC. AS SETTLEMENT

10           ADMINISTRATOR.....23

11   VII.  CONCLUSION.....24

12

13

14

15

16

17

18

19

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23

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25

26

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28

**TABLE OF AUTHORITIES**

**CASE**

*Alcantar v. Hobart Serv.*,  
 800 F.3d 1047 (9th Cir. 2015).....12

*Allen v. Bedolla*,  
 787 F.3d 1218 (9th Cir. 2015).....8

*Amgen, Inc. v. Conn. Ret. Plans & Trust Funds*,  
 133 S. Ct. 1184 (2013).....14

*Arrendondo v. Delano Farms Co.*,  
 2011 WL 1486612, at \*15 (E.D. Cal. Apr. 19, 2011).....15

*Bellows v. NCO Fin. Sys. Inc.*,  
 No. 3:07-cv-01413-W-AJB, 2008 WL 5458986, at \*6-7 (S.D. Cal. Dec. 10,  
 2008).....18

*Evon v. Law Offices of Sidney Mickell*,  
 688 F.3d 1015 (9th Cir. 2012).....13

*Garner v. State Farm Mut. Auto. Ins. Co.*,  
 No. CV 08 1365 CW EMC, 2010 WL 1687832, at \*11 (N.D. Cal. Apr. 22,  
 2010).....21

*Gaudin v. Saxon Mortg. Servs., Inc.*,  
 No. 11-CV-01663-JST, 2015 WL 7454183, at \*8 (N.D. Cal. Nov. 23, 2015

*Gen. Tel. Co. v. Falcon*,  
 457 U.S. 147n. 13 (1982).....13

*Hanlon v. Chrysler Corp.*,  
 150 F.3d 1011, 1026 (9th Cir.1998).....12,17

*In re Anthem, Inc. Data Breach Litig.*,  
 327 F.R.D. 299 (N.D. Cal. 2018).....21

1 *In re Apple Inc. Device Performance Litig.*,  
 2 No. 5:18-MD-02827-EJD, 2021 WL 1022867, at \*14 (N.D. Cal. Mar. 17,  
 3 2021).....22  
 4 *In re Bluetooth*,  
 5 654 F.3d at 947.....18,19  
 6 *In re Currency Conversion Fee Antitrust Litig.*,  
 7 224 F.R.D. 555 (S.D.N.Y. 2004).....15,16  
 8 *In re Emulex Corp.*,  
 9 210 F.R.D. 717, 720 (C.D. Cal. 2002).....14  
 10 *In re Ferrero Litig.*,  
 11 278 F.R.D. 552 (S.D. Cal. 2011).....13  
 12 *In re Heritage Bond Litig.*,  
 13 No. 02-ML-1475 DT, 2005 WL 1594403, at \*9 (C.D. Cal. June 10, 2005)  
 14 *In re LinkedIn User Priv. Litig.*,  
 15 309 F.R.D. 573 (N.D. Cal. 2015).....17  
 16 *In re Lidoderm Antitrust Litig.*,  
 17 No. 14-MD-02521-WHO, 2018 WL 11293766, at \*2 (N.D. Cal. May 3,  
 18 2018).....16  
 19 *In re Mego Fin. Corp. Sec. Litig.*,  
 20 213 F.3d 454 (9th Cir. 2000).....21  
 21 *In re NVIDIA Corp. Derivative Litig.*,  
 22 No. C-06-06110-SBA(JCS), 2008 WL 5382544, at \*2 (N.D. Cal. Dec. 22,  
 23 2008).....21  
 24 *In re Online DVD-Rental Antitrust Litig.*,  
 25 779 F.3d 934 (9th Cir. 2015).....20  
 26 *In re Tableware Antitrust Litig.*,  
 27 484 F. Supp. 2d 1078 (N.D. Cal. 2007).....16,19,21  
 28 *In re Zynga Sec. Litig.*,  
 No. 12-cv- 04007-JSC, 2015 WL 6471171, at \*9 (N.D. Cal. Oct. 27, 2015).



1 *Jaffe v. Morgan Stanley & Co., Inc.*,  
 2 2008 WL 346417, at \*11 (N.D. Cal. Feb. 7, 2008).....1  
 3 *Kesler v. IKEA U.S., Inc.*,  
 4 2008 U.S. Dist. LEXIS 97555, at \*16 (C.D. Cal. Feb. 4, 2008).....14  
 5 *Linney v. Cellular Alaska P’ship*,  
 6 151 F.3d 1234 (9th Cir.1998).....21  
 7 *Mazza v. Am. Honda Motor Co., Inc.*,  
 8 666 F.3d 581 (9th Cir. 2012).....12  
 9 *Mullane v. Central Hanover Trust*,  
 10 339 U.S. 306 (1950).....26  
 11 *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*,  
 12 221 F.R.D. 523 (C.D. Cal. 2004).....18  
 13 *Noll v. eBay, Inc.*,  
 14 309 F.R.D. 593 (N.D. Cal. 2015).....17,20  
 15 *Officers for Justice v. Civil Serv. Comm’n*,  
 16 688 F.2d 615 (9th Cir.1982).....21  
 17 *Parra v. Bashas,’ Inc.*,  
 18 536 F.3d 975 (9th Cir. 2008).....12  
 19 *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*,  
 20 442 F.3d 741 (9th Cir. 2006).....6  
 21 *Rodriguez v. Hayes*,  
 22 591 F.3d 1105 (9th Cir. 2010).....13  
 23 *Rodriguez v. West Publ’g Corp.*,  
 24 563 F.3d 948 (9th Cir. 2009).....17  
 25 *Rollins v. Dignity Health*,  
 26 336 F.R.D. 456 (N.D. Cal. 2020).....19  
 27 *The Civil Rights Educ. & Enf’t Ctr. v. RLJ Lodging Tr.*,  
 28 No. 15-CV-0224-YGR, 2016 WL 314400, at \*11 (N.D. Cal. Jan. 25, 2016)  
*Vasquez v. Coast Valley Roofing, Inc.*,

1           670 F. Supp. 2d 1114 (E.D. Cal. 2009).....11

2 *Wal-Mart Stores, Inc. v. Dukes*,

3           131 S. Ct. 2541 (2011).....12,13

4 *Zepeda v. Paypal, Inc.*,

5           No. C 10-1668 SBA, 2015 WL 6746913, at \*4 (N.D. Cal. Nov. 5, 2015)...21

**FEDERAL RULES**

9 Fed. R. Civ. P. 23.....23

10 Fed. R. Civ. P. 23(a).....11

11 Fed. R. Civ. P. 23(a)(2) .....11

12 Fed. R. Civ. P. 23(a)(4) .....13

13 Fed. R. Civ. P. 23(b)(3) .....4,13,15

14 Fed. R. Civ. P. 23(c)(2).....23

15 Fed. R. Civ. P. 23(e).....16

16 Fed. R. Civ. P. 23(e)(1) .....1

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1 **I. INTRODUCTION AND SUMMARY OF MOTION**

2 Plaintiff Rachel Shay (“Plaintiff”) and Defendants Apple Inc. and Apple  
3 Value Services, LLC (collectively, “Defendants” or “Apple”) are pleased to report  
4 that, following mediation before the Honorable Irma E. Gonzalez (Ret.) and  
5 extensive follow-up telephonic discussions on numerous occasions over the months  
6 since the mediation, the parties have reached a proposed classwide settlement  
7 (“Settlement”) to resolve the claims asserted in the operative Second Amended  
8 Class Action Complaint (“SAC”) filed in this action. (ECF No. 18.) A copy of the  
9 Parties’ Settlement Agreement and Release (“Settlement Agreement”) is attached  
10 as Exhibit 1 to the Declaration of James R. Hawkins in Support of Plaintiff’s Motion  
11 for Preliminary Approval of Class Action Settlement.

12 Plaintiff files this Motion for Preliminary Approval, so that: notice of the  
13 proposed Settlement can be disseminated to the absent Settlement Class Members<sup>1</sup>;  
14 the absent Settlement Class Members can be given an opportunity to avail  
15 themselves of the Settlement, opt out of the Settlement Class, or file any objections  
16 to the proposed Settlement; and this action and all other proceedings involving the  
17 subject matter encompassed by this class action and Settlement Agreement can be  
18 stayed pending the Court’s determination as to whether to grant final approval to  
19 the proposed Settlement. *See* Fed. R. Civ. P. 23(e)(1) (directing that any notice of  
20 class action settlement may only be disseminated with prior court approval); *see*  
21 *also Jaffe v. Morgan Stanley & Co., Inc.*, 2008 WL 346417, at \*11 (N.D. Cal. Feb.  
22 7, 2008) (once a court grants preliminary approval it is proper to stay and enjoin  
23 members of settlement class from litigating matters covered by the proposed  
24 settlement before this or other courts).

25 This Motion for Preliminary Approval also seeks to set a date for the Final  
26

27  
28 <sup>1</sup> Capitalized terms not defined herein shall have the same meaning ascribed to  
them in the Settlement Agreement.

1 Approval Hearing on the proposed Settlement. *See* Settlement Agreement, at  
2 Definitions § J. At the Final Approval Hearing, the Court will have the opportunity  
3 to determine whether to grant final approval to the class action Settlement and to  
4 evaluate any objections to the Settlement that may have been filed. *See* Fed. R. Civ.  
5 P. 23(e)(2) (directing that class action settlement that purports to bind absent class  
6 members may only be entered after hearing held by the court).

7 Preliminary approval should be granted. The Settlement reached is  
8 unquestionably fair. It provides members of the Settlement Class compensation for  
9 the Apple App Store & iTunes Gift Cards that were allegedly stolen by third parties.  
10 To accomplish this, the Settlement Agreement directs Apple to pay \$1.8 million in  
11 non-reversionary Settlement consideration. *See* Settlement Agreement, at §§ 2.1,  
12 2.2. If the Settlement is approved, Settlement Class Members will be eligible to  
13 submit a claim for their *pro rata* share of the \$1.8 million Settlement Amount. The  
14 Class Payment made to each Settlement Class Member will be equal to the face  
15 value of the Eligible Gift Card at the time of purchase. To the extent that the total  
16 value of such payments exceeds the Settlement Amount, the payments made to each  
17 Settlement Class Member will be reduced *pro rata*. *Id.*, at ¶ 2.1 (describing Class  
18 Payment to Settlement Class Members).

19 By any objective standard, the Settlement warrants preliminary approval. The  
20 \$1.8 million amount of Settlement consideration strikes the appropriate balance  
21 between, on the one hand, fairly compensating Settlement Class Members for their  
22 claims and, on the other hand, accounting for the real and uncertain risks of  
23 continued litigation that may leave Settlement Class Members with no remedy. The  
24 particular litigation risks and uncertainties are detailed more fully below and will  
25 be further briefed in any motion for final approval of the Settlement. Class  
26 Counsel—who litigated this action since its inception three years ago, oversaw the  
27 review of thousands of pages of written discovery, conducted multiple depositions,  
28 fully briefed and argued the motion for class certification, and attended a full-day

1 mediation—are of the considered view that this Settlement fairly and adequately  
2 advances Settlement Class Members’ interests. *See* Hawkins Decl., at ¶¶ 41-43.

3 For all the foregoing reasons, and as more fully detailed below, Plaintiff’s  
4 Motion for Preliminary Approval should be granted.

## 5 **II. PROCEDURAL HISTORY**

6 On May 28, 2020, Plaintiff filed her original class action complaint in the  
7 Superior Court of California, County of San Diego, individually and on behalf of a  
8 putative nationwide class, asserting claims relating to Apple’s alleged failure to take  
9 adequate measures to prevent “point-of-sale” gift card fraud, adequately warn  
10 consumers of the risk of such fraud, and its purported refusal to refund consumers  
11 in connection with such fraud. (ECF No. 1-2). On July 13, 2020, Plaintiff filed her  
12 First Amended Complaint (“FAC”). On August 21, 2020, Apple filed a Notice of  
13 Removal to this Court pursuant to the Class Action Fairness Act. (ECF No. 1).

14 On October 9, 2020, Apple filed a motion to dismiss Plaintiff’s FAC. (ECF  
15 No. 6). While the Court denied Apple’s motion to dismiss with regards to the  
16 CLRA, UCL and negligent misrepresentation claims, the Court dismissed  
17 Plaintiff’s breach of implied warranty of merchantability and restitution claims with  
18 leave to amend, and dismissed the CCPA and negligence claims as unopposed.  
19 (ECF. No. 17).

20 On January 28, 2021, as permitted by the Court, Plaintiff filed her Second  
21 Amended Complaint (“SAC”). (ECF No. 18). On February 18, 2021, Apple filed a  
22 partial motion to dismiss with prejudice Plaintiff’s claims under the UCL, Plaintiff’s  
23 claim for equitable relief under the CLRA, and Plaintiff’s claim for breach of  
24 implied warranty of merchantability claim. (ECF No. 21). On May 3, 2021, the  
25 Court granted Apple’s partial motion to dismiss, and Apple subsequently answered  
26 the operative SAC on May 24, 2021. (ECF No. 30).

27 Before class certification, the parties conducted fact discovery. In total,  
28 Plaintiffs issued and Apple answered thirty-one interrogatories, thirty-one requests

1 for production, and thirty-eight requests for admission. Hawkins Decl. ¶ 7. Apple  
2 issued and Plaintiff responded to twenty-two interrogatories, eighteen requests for  
3 production, and sixteen requests for admission. *Id.* Apple produced and Plaintiffs  
4 reviewed more than 2,500 documents, consisting of approximately 20,500 pages.  
5 *Id.* ¶ 7. Plaintiff's counsel deposed three Rule 30(b)(6) designees for Apple. *Id.*  
6 Apple's counsel also deposed Plaintiff. *Id.*

7 On September 9, 2022, Plaintiff moved to certify a nationwide class and a  
8 California subclass pursuant to Rule 23(b)(3) and an issue class pursuant to Rule  
9 23(c)(4). Plaintiff's theory of liability on class certification was that Apple knew  
10 that certain iTunes Gift Cards were compromised by redemption attempts prior to  
11 the gift card's activation at the point of sale, that the risk of total loss with respect  
12 to these specific gift cards was not *de minimis*, and that Apple failed to disclose this  
13 material information to the purchasers of those specific gift cards. (ECF No. 59).  
14 Apple opposed certification arguing, *inter alia*, that there is a *de minimis* risk that  
15 iTunes Gift Cards will be compromised by third party theft; that a reasonable  
16 consumer may not find this risk material, such that individualized proof of reliance  
17 is necessary; and that putative class was unmanageable and overbroad because it  
18 did not attempt to exclude class members who were never injured, were not injured  
19 by any act or omission by Apple, or were already made whole through other means.  
20 (ECF No. 69). Apple also argued that Plaintiff was neither a typical nor adequate  
21 class member because she did not read the gift card package containing the alleged  
22 misrepresentations and omissions and because she continued buying gift cards even  
23 *after* she learned of the alleged risk of third party theft. *Id.* Apple further argued  
24 that Plaintiff could not certify a nationwide class or California class after July 2020,  
25 when Apple updated its gift card terms and conditions to select Virginia law as the  
26 governing law. *Id.*

27 On January 11, 2023, the Court heard oral arguments on the motion for class  
28 certification and took the matter under submission. (ECF No. 83). Before the Court

1 issued a final decision on the motion for class certification, the Parties agreed to  
2 attend mediation before the Hon. Irma E. Gonzalez (Ret.) on April 12, 2023. (ECF.  
3 No. 84). While the parties did not reach a settlement at the mediation, the parties  
4 continued to have follow-up discussions with the assistance of the mediator, which  
5 ultimately led to a mediator’s proposal that was accepted by the Parties. Hawkins  
6 Decl. ¶ 10.

7 Accordingly, the Parties have investigated the facts and have analyzed the  
8 relevant legal issues regarding the claims and defenses asserted in this Action,  
9 including through significant motion practice and extensive fact and expert  
10 discovery.

### 11 **III. SUMMARY OF PROPOSED SETTLEMENT TERMS**

#### 12 **A. The Settlement Class**

13 The Settlement Agreement provides for a Nationwide Class as well as a  
14 California Subclass, which are defined as follows:

15 “Nationwide Class” shall mean all consumers who purchased an  
16 Eligible Gift Card in the United States from March 2018 to July  
17 2020, whose Eligible Gift Card was subject to a redemption attempt  
18 prior to activation, whose gift card was redeemed by an unknown  
19 third party prior to attempted redemption by the consumer or  
20 intended user, and who did not receive a refund or replacement gift  
card from Defendants or any third party.

21 “California Subclass” shall mean all consumers who purchased an  
22 Eligible Gift Card in the State of California from May 2017 to  
23 February 2018, whose gift card was subject to a redemption attempt  
24 prior to activation, whose gift card was redeemed by an unknown  
25 third party prior to attempted redemption by the consumer or  
intended user, and who did not receive a refund or replacement gift  
card from Defendants or any third party.

26 The Settlement Class excludes Defendants, their parents, subsidiaries,  
27 affiliates, officers, directors, and employees; any entity in which Defendants have  
28 a controlling interest; and all judges assigned to hear any aspect of this litigation, as



1 well as their staff and immediate family members. Settlement Agreement,  
2 Definitions, § EE.

3  
4 **B. The Settlement Amount, Release of Claims, and Potential Class  
Recovery**

5 In exchange for the \$1.8 million in Settlement consideration, Settlement  
6 Class Members will release their claims against Apple and the other defined  
7 Released Persons. These Released Persons include Integrators and Retailers of  
8 iTunes Gift Cards, who might otherwise have contribution and/or indemnification  
9 claims against Apple should they be involved in a similar lawsuit. *See* Settlement  
10 Agreement, at Definitions §§ V-X; *id.*, at §§ 8.1-8.4. The Settlement Agreement  
11 properly tailors this release of claims to cover those claims related to the factual  
12 allegations in the SAC. *See id.*, at Definition, § B; *id.* at § 8.2. The Settlement’s  
13 bargained-for release of claims, therefore, is fair, reasonable, and supports  
14 preliminary approval because “a federal court may release not only those claims  
15 alleged in the complaint, but also a claim based on the identical factual predicate as  
16 that underlying the claims in the settled class action.” *Reyn’s Pasta Bella, LLC v.*  
17 *Visa USA, Inc.*, 442 F.3d 741, 748 (9th Cir. 2006).

18 Plaintiff calculates potential recovery in this matter to be approximately  
19 \$2.52 million if Plaintiff had certified and prevailed on her negligent  
20 misrepresentation and CLRA claim. Reflecting several unique aspects of this case,  
21 the Settlement Amount represents approximately 71% of the potential recovery that  
22 Plaintiff calculated.<sup>2</sup> Hawkins Decl. ¶ 14.

23  
24  
25 <sup>2</sup> The actual percentage of estimated damages recoverable is likely even higher, since  
26 Apple contends (1) there are non-fraudulent explanations for why a card might be  
27 subject to pre-activation redemption attempts, including that some retailers do not  
28 have real-time activation capabilities, meaning that a card purchaser may attempt to  
redeem a gift card before the retailer’s activation system has kicked in; and (2) not  
all cards subject to pre-activation redemption attempts by scammers ultimately result



1           **C. Attorneys' Fees and Costs, Service Award, and Administration**  
2           **Costs**

3           In addition to the Settlement consideration to be paid to Settlement Class  
4 Members, the Settlement Agreement provides that Apple will pay the costs of  
5 implementing the Settlement, as approved by the Court, including the  
6 Administrative and Notice Costs. *Id.*, at Definitions, § A; § 6.4. Further, the  
7 Settlement Agreement permits Class Counsel to seek an award of Attorneys' Fees  
8 and Costs, encompassing attorneys' fees and reasonable costs and expenses, for up  
9 to 33 1/3% of the Settlement Amount, to be paid by Apple in addition to the  
10 Settlement Amount, though the outcome of that request will not affect the  
11 Settlement becoming effective. *Id.* at § 7.1. Apple agrees to pay and will not object  
12 to Class Counsel's application for an award of Attorneys' Fees and Costs for up to  
13 25% of the Settlement Amount, but reserves the right to object to or oppose any  
14 request for Attorneys' Fees and Costs in excess of this amount. *Id.*; Hawkins Decl.,  
15 at ¶ 16.<sup>3</sup> If, after all payments to the Settlement Class Members are made, the value  
16 of the Settlement Amount exceeds the value of all payments made to Settlement  
17 Class Members, the unclaimed portion of the Settlement Amount will be applied as  
18 follows: (1) first, to pay the Administrative and Notice costs; (2) next, to pay the  
19 Attorneys' Fees and Costs; and (3) third, if there are funds remaining, to a *cy pres*,  
20 as approved by the Court. *Id.* at ¶ 2.3. In no event shall the unclaimed Settlement

21 \_\_\_\_\_  
22 in redemption by a third party prior to activation by the intended recipient. Hawkins  
23 Decl. ¶ 15.

24 <sup>3</sup> Consistent with Ninth Circuit precedent, Class Counsel will file their motion for  
25 Attorneys' Fees and Costs before the deadline for filing any objections, and that  
26 motion will be publicly posted on the Settlement Website. See *In re Mercury*  
27 *Interactive Corp. Securities Litig.*, 618 F.3d 988, 994–95 (9th Cir. 2010)  
28 (interpreting Fed. R. Civ. P. 23(h) to require that class counsel's motion for  
attorneys' fees be publicly filed sufficiently in advance of any objection deadline);  
Settlement Agreement, at ¶7.1 (setting deadline for filing of any motion for  
Attorneys' Fees and Costs and its posting on the Settlement Website).

1 Amount be returned to Apple. *Id.*

2 The Settlement Agreement also provides that Class Counsel may seek Court  
3 approval for a Service Award for the Named Plaintiff to be paid from the Settlement  
4 Amount. *See* Settlement Agreement, at § 7.2. Apple reserves the right to object to  
5 the amount of the Service Award. *Id.*

6 **D. Class Notice and Implementation of Settlement**

7 **1. Dissemination of Class Notices**

8 Notice of the Settlement to the Settlement Class will include an Email Notice,  
9 Mail Notice, Publication Notice, and Website Notice. Agreement, at § 6. The Mail  
10 Notice, Email Notice, Publication Notice, and Website Notice inform Settlement  
11 Class Members about the existence and key terms of the proposed classwide  
12 Settlement and advise Settlement Class Members as to their options to participate  
13 in the Settlement by submitting a claim, opt out of the Settlement Class, or object  
14 to the proposed Settlement. *Id.*

15 The Settlement Administrator will email each Settlement Class Member for  
16 whom Apple has an email address a copy of the Email Notice. *Id.* at § 6.2.3, Ex. 1.  
17 The Settlement Administrator will also mail to each Settlement Class Member for  
18 whom Apple has a physical address, but not an email address, a copy of the Mail  
19 Notice. *Id.*, at § 6.2.4, Ex. 4.

20 In addition to the Email Notice and Mail Notice for those Settlement Class  
21 Members whom Apple has either an email address or physical address, the  
22 Settlement Administrator shall publish in print publications and in a digital media  
23 campaign, the Publication Notice. *Id.* at § 6.2.5, Ex. 5. The Parties shall approve the  
24 content, design, layout, placement, medium, timing, duration, targeting parameters,  
25 and target audience for all publications, posts, and advertisements. *Id.* The  
26 Publication Notice will inform Settlement Class Members of the fact of the  
27 Settlement and that Settlement information is available on the Settlement Website.  
28 *Id.*, at § 6.2.5., Ex. 5.

1 The Settlement Administrator will also establish and maintain the Settlement  
2 Website optimized for viewing on both mobile devices and personal computers. Id.,  
3 at § 6.2.1. The Settlement Website will include case-related documents, including,  
4 but not limited to, the SAC and answer to the SAC, the Settlement Agreement, the  
5 Website Notice, the Preliminary Approval Order, Plaintiffs’ Motion for Attorneys’  
6 Fees and Costs, a set of frequently asked questions, information on how to submit  
7 a Claim, an Objection or request exclusion, and contact information for Class  
8 Counsel, Apple Counsel, and the Settlement Administrator. The Settlement  
9 Website shall remain accessible until thirty (30) calendar days after the Settlement  
10 Administrator has completed its obligations under this Settlement Agreement. Id.,  
11 at § 6.2.1.

## 12 **2. Procedure for Submitting Claims**

13 Settlement Class Members will be eligible to submit a claim for Class  
14 Payment in an amount equal to the face value of the Eligible Gift Card at the time  
15 of purchase. Id. at § 2.1.

16 To receive a Class Payment, the Settlement Class Members who receive  
17 Email Notice or Mail Notice, in addition to Publication Notice, must submit the  
18 following items through the Settlement Website: (1) the Settlement Class Member’s  
19 name and contact information, including a physical address, working telephone  
20 number, and email address; (2) proof of purchase (e.g., sales receipt) or an  
21 attestation that the Settlement Class Member (i) was the individual who purchased  
22 the Eligible Gift Card(s), and (ii) that the Settlement Class Member previously  
23 provided Proof of Purchase to Apple when they reported their scam incident to  
24 Apple (“Proof of Purchase Attestation”)<sup>4</sup>; (3) an attestation by the Settlement Class  
25

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26  
27 <sup>4</sup> Claims containing a Proof of Purchase Attestation shall be deemed to have  
28 satisfied the Proof of Purchase requirement set forth in this subsection unless Apple,  
at its sole discretion, undertakes efforts to confirm whether the Proof of Purchase  
exists in its records. If Apple elects to confirm whether the Proof of Purchase exists

1 Member or other intended user of the Eligible Gift Card that they: (i) were unable  
2 to redeem the Eligible Gift Card because it had already been redeemed by an  
3 unknown third party that was not the Eligible Gift Card's intended recipient or  
4 beneficiary; and (ii) have not obtained a refund, cash-out, or other form of  
5 compensation from Defendants or any third party in connection with their purchase  
6 of Eligible Gift Card(s); and (4) any necessary information to complete payment  
7 via the Settlement Class Member's payment method of choice (e.g., physical check,  
8 e-check, or ACH transfer). Id. at § 6.3.2.

9 Settlement Class Members who only receive Publication Notice (i.e.,  
10 Settlement Class Members for whom Apple does not have an email address of  
11 physical address) must submit the following items through the Settlement Website:  
12 (1) the Settlement Class Member's name and contact information, including a  
13 physical address, working telephone number, and email address; (2) proof of (e.g.,  
14 a sales receipt) of the Eligible Gift Card(s) which are the subject of the Settlement  
15 Class Member's claim, that includes: (i) the purchase date; (ii) the original purchase  
16 price; and (iii) the gift card number(s) associated with any alleged Eligible Gift  
17 Card(s); (3) an attestation by the Settlement Class Member or other intended user  
18 of the Eligible Gift Card that they: (i) were unable to redeem the Eligible Gift Card  
19 because it had already been redeemed by an unknown third party that was not the  
20 Eligible Gift Card's intended recipient or beneficiary; and (ii) have not obtained a  
21 refund, cash-out, or other form of compensation from Defendants or any third party  
22 in connection with their purchase of Eligible Gift Card(s); and (3) any necessary  
23 information to complete payment via the Settlement Class Member's payment  
24 method of choice (e.g., physical check, e-check, or ACH transfer). Id. at § 6.3.1.

25  
26  
27 in its records and is unable to locate that Proof of Purchase after a reasonably  
28 diligent search using the information provided by the Settlement Class Member,  
that Settlement Class Member will receive notice that they must then submit Proof  
of Purchase through the Settlement Website. Settlement Agreement, at § 6.3.2(b).

1 Settlement Class Members shall only be eligible to receive compensation  
 2 under the settlement if Apple’s records show that the Eligible Gift Card(s) that are  
 3 the subject of the Settlement Class Member’s claim was subject to a redemption  
 4 attempt prior to activation. Id. at § 6.3. The Settlement Administrator will review  
 5 all claims to determine their validity and eligibility. Id. at § 6.4 In order to evaluate  
 6 whether a claim was submitted by a Settlement Class Member, the Settlement  
 7 Administrator will verify that the potential Settlement Class Member’s proof of  
 8 purchase is sufficient or that Apple already possesses records of the potential  
 9 Settlement Class Member submitting sufficient proof of purchase; and that Apple  
 10 has records that the Eligible Gift Card(s) that are the subject of the Settlement Class  
 11 Member’s claim was subject to a redemption attempt prior to activation. Id.

#### 12 **IV. THE COURT SHOULD CONDITIONALLY CERTIFY THE** 13 **PROPOSED SETTLEMENT CLASS**

##### 14 **A. The Settlement Class Meets the Rule 23(a) Requirements**

##### 15 **1. The Proposed Class is Sufficiently Numerous.**

16 The numerosity requirement is met where “the class is so numerous that  
 17 joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Generally, courts  
 18 will find a class sufficiently numerous if it consists of 40 or more members. *Vasquez*  
 19 *v. Coast Valley Roofing, Inc.*, 670 F. Supp. 2d 1114, 1121 (E.D. Cal. 2009)  
 20 (numerosity is presumed at a level of 40 members). Assuming a unique purchaser  
 21 of each Eligible Gift Card, there are approximately a combined 53,226 Settlement  
 22 Class Members in the Nationwide Class and California Subclass, satisfying the  
 23 numerosity requirement. Hawkins Decl. ¶ 27.

##### 24 **2. The Questions of Law and Fact are Common to the Class**

25 The second Rule 23(a) requirement is commonality, which is satisfied “if  
 26 there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2).  
 27 The operative criterion for commonality is “the capacity of a class-wide proceeding  
 28 to general common answers apt to drive the resolution of the litigation.” *Wal-Mart*

1 *Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). The commonality requirement  
2 is “construed permissively.” *Hanlon*, 150 F. 3d at 1019-1020. Where “the  
3 circumstances of each particular class member vary but retain a common core of  
4 factual or legal issues with the rest of the class, commonality exists.” *Parra v.*  
5 *Bashas, Inc.*, 536 F.3d 975, 978-79 (9th Cir. 2008).

6 “All questions of fact and law need not be common to satisfy the rule.”  
7 *Hanlon*, 150 F.3d at 1019. “[F]or purposes of Rule 23(a)(2) even a single common  
8 question will do.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011).  
9 “[C]ommonality requires that the class members’ claims ‘depend upon a common  
10 contention’ such that ‘determination of its truth or falsity will resolve an issue that  
11 is central to the validity of each [claim] in one stroke.’” *Mazza v. Am. Honda Motor*  
12 *Co., Inc.*, 666 F.3d 581, 588 (9th Cir. 2012) (quoting *Wal-Mart Stores*, 131 S.Ct. at  
13 2551). Importantly, “[a] common contention need not be one that ‘will be answered,  
14 on the merits, in favor of the class.’” *Alcantar v. Hobart Serv.*, 800 F.3d 1047,  
15 1052-53 (9th Cir. 2015). “It only ‘must be of such a nature that it is capable of  
16 classwide resolution.’” *Id.* (quoting *Wal-Mart*, 131 S. Ct. at 2551).

17 Here, Plaintiff alleges that questions of law and fact common to the  
18 Settlement Class include whether Apple: (1) knew or should have known that  
19 specific iTunes Gift Cards were subject to a redemption attempt prior to activation;  
20 (2) made materially false representations or omissions with respect to the security  
21 or quality of iTunes Gift Cards that were subject to a redemption attempt prior to  
22 activation; and (3) failed to take adequate measures to ensure the safety of iTunes  
23 Gift Cards. Hawkins Decl. ¶ 28. Apple denies that it made any misrepresentations  
24 or omissions with respect to the security or quality of iTunes Gift cards, let alone  
25 any that were materially false, or that it failed to take adequate measures to ensure  
26 the safety of iTunes Gift Cards, given the considerable resources and efforts Apple  
27 has dedicated to preventing fraud. *See Settlement Agreement, Recitals.*  
28



### 3. Plaintiff's Claims Are Typical of the Settlement Class

“Like the commonality requirement, the typicality requirement is ‘permissive’ and requires only that the representative’s claims are ‘reasonably co-extensive with those of absent class members; they need not be substantially identical.’” *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (quoting *Hanlon*, 150 F.3d at 1020)). “The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.” *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1030 (9th Cir. 2012) (quotation marks and citation omitted).

Here, the typicality requirement is met for the same reasons that commonality is met. *See Dukes*, 131 S. Ct. at 2550-51 n.5 (“[T]he commonality and typicality requirements of Rule 23(a) tend to merge.”). Plaintiff and the Settlement Class were allegedly exposed to the same materially false representations and/or omissions with respect to the security and quality of the iTunes Gift Cards, were injured in the same manner in that they purchased an iTunes Gift Cards that was subject to a redemption attempt prior to activation and was redeemed by an unknown third party prior to attempted redemption. Hawkins Decl. ¶ 30. In addition, Plaintiff is typical of the California Subclass because she is a California resident who purchased an Eligible Gift Card in California. *Id.*

### 4. Plaintiff and Class Counsel Will Fairly and Adequately Protect the Interests of the Settlement Class

Adequacy requires that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Here, Plaintiff is an adequate representative because she is a member of the Settlement Class she seeks to represent, shares the same claims and interest in obtaining relief as all Settlement Class Members, and has no conflicts of interests with other Class members. *Beck-Ellman*, 283 F.R.D. at 567; *In re Ferrero Litig.*, 278 F.R.D. 552 (S.D. Cal. 2011);

1 *see Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 157-58, n. 13 (1982) (noting that where  
2 the claims of the class and class representatives are coextensive, there is no  
3 conflict). Plaintiff has no interests antagonistic to those of the Settlement Class, and  
4 there is no evidence of any conflict. She has vigorously prosecuted this action  
5 including sitting for her deposition and moving for class certification. *See Kesler v.*  
6 *IKEA U.S., Inc.*, 2008 U.S. Dist. LEXIS 97555, at \*16 (C.D. Cal. Feb. 4, 2008)  
7 (“Indeed, she has demonstrated her commitment thus far by sitting for her  
8 deposition.”).

9 For the reasons set forth in the declarations filed in support of Plaintiff’s  
10 Motion for Class Certification (ECF No. 59-2 – 59-5) and Class Counsels’  
11 declaration submitted herewith, Plaintiff’s counsel is adequate and should be  
12 appointed as Class Counsel. *See generally* Declarations of James R. Hawkins,  
13 Christina M. Lucio, Malte L. L. Farnae, and Mitchell J. Murray. They are  
14 experienced class action litigators who have litigated many complex actions. *See In*  
15 *re Emulex Corp.*, 210 F.R.D. 717, 720 (C.D. Cal. 2002) (In evaluating the adequacy  
16 of counsel, “a court may examine the attorneys’ professional qualifications, skill,  
17 experience, and resources. The court may also look at the attorneys’ demonstrated  
18 performance in the suit itself.”). Plaintiff’s counsel has diligently litigated this case  
19 including moving for class certification, and will continue to do so.

## 20 **B. The Settlement Class May Be Certified Under Rule 23(b)(3)**

### 21 **1. Common Questions of Law and Fact Predominate Over** 22 **Individual Questions**

23 Rule 23(b)(3) requires a showing that questions common to the class  
24 predominate, not that those questions will be answered, on the merits, in favor of  
25 the class.” *Amgen, Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1191  
26 (2013)(emphasis in original). Where the claims of each class member “will prevail  
27 or fail in unison,” Rule 23(b)(3) is satisfied because “[i]n no event will the  
28 individual circumstances of particular class members bear on the inquiry.” *Id.* at



1 1191. Individualized or deviating facts will not preclude class treatment if most  
2 class members were subjected to a company policy in a way that gives rise to  
3 consistent liability or lack thereof. *See Arrendondo v. Delano Farms Co.*, 2011 WL  
4 1486612, at \*15 (E.D. Cal. Apr. 19, 2011).

5 Plaintiff contends that questions as of law and fact common to the Settlement  
6 Class predominate over individual questions. Specifically, whether Apple knew or  
7 should have known that specific iTunes Gift Cards were subject to a redemption  
8 attempt prior to activation; whether Apple made materially false representations or  
9 omissions with respect to the security or quality of iTunes Gift Cards that were  
10 subject to a redemption attempt prior to activation; and whether Apple failed to take  
11 adequate measures to ensure the safety of iTunes Gift Card are all questions that  
12 can be answered on a classwide basis without the need for individual inquiries.

## 13 **2. A Class Action is Superior to Other Methods of Adjudication**

14 Plaintiff must also show that a class action is superior to individual actions.  
15 Superiority considers: “(A) the class members’ interest in individually controlling  
16 the prosecution or defense of separate actions; (B) the extent and nature of any  
17 litigation concerning the controversy already commenced by or against class  
18 members; (C) the desirability or undesirability of concentrating the litigation of the  
19 claims in the particular forum; (D) the likely difficulties in managing a class action.”  
20 Fed. R. Civ. P. 23(b)(3).

21 Here, a class action is the superior method for the fair and efficient  
22 adjudication of this action. First, Settlement Class Members are significant in  
23 number and geographically disbursed, making a “class action the superior method  
24 for the fair and efficient adjudication of the controversy.” *See In re Currency*  
25 *Conversion Fee Antitrust Litig.*, 224 F.R.D. 555, 566 (S.D.N.Y. 2004).

26 Second, many Settlement Class Members have neither the incentive nor the  
27 means to litigate these claims individually. No Settlement Class Member has  
28 displayed any interest in bringing an individual lawsuit. The damages most

1 Settlement Class Members suffered are small compared to the considerable expense  
2 and burden of individual litigation. This makes it uneconomic for an individual to  
3 protect his/her rights through an individual suit. A class action allows claimants to  
4 “pool claims which would be uneconomical to litigate individually,” as “no  
5 individual may have recoverable damages in an amount that would induce him to  
6 commence litigation on his own behalf.” *Currency Conversion*, 224 F.R.D. at 566.

7 Third, the prosecution of separate actions by hundreds (or thousands) of  
8 individual Settlement Class Members would impose heavy burdens upon the Court.  
9 It would create a risk of inconsistent or varying adjudications of the questions of  
10 law and fact common to the Settlement Class. Thus, both prongs of Rule 23(b)(3)  
11 are satisfied for purposes of the Settlement.

#### 12 **V. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE** 13 **APPROVAL**

14 Federal Rule of Civil Procedure 23(e) requires judicial approval of any  
15 compromise or settlement of class action claims. “Preliminary approval is not a  
16 dispositive assessment of the fairness of the proposed settlement, but rather  
17 determines whether it falls within the ‘range of reasonableness.’” *In re Lidoderm*  
18 *Antitrust Litig.*, No. 14-MD-02521-WHO, 2018 WL 11293766, at \*2 (N.D. Cal.  
19 May 3, 2018) (citation omitted). Preliminary approval “establishes an ‘initial  
20 presumption’ of fairness, such that notice may be given to the class and the class  
21 may have a ‘full and fair opportunity to consider the proposed [settlement] and  
22 develop a response.’” *Id.* (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d  
23 1078, 1079 (N.D. Cal. 2007)); *see also* Manual for Complex Litigation (Fourth) §  
24 21.631 (2015).

25 Preliminary approval of a settlement and notice to the proposed class is  
26 appropriate if: “(1) the proposed settlement appears to be the product of serious,  
27 informed, non-collusive negotiations, (2) has no obvious deficiencies, (3) does not  
28 improperly grant preferential treatment to class representatives or segments of the

1 class, and (4) falls with[in] the range of possible approval.” *The Civil Rights Educ.*  
2 *& Enf’t Ctr. v. RLJ Lodging Tr.*, No. 15-CV-0224-YGR, 2016 WL 314400, at \*11  
3 (N.D. Cal. Jan. 25, 2016); *see also Tableware*, 484 F. Supp. 2d at 1079 (same).  
4 “[T]he decision to approve or reject a settlement is committed to the sound  
5 discretion of the trial judge because he is exposed to the litigants and their strategies,  
6 positions, and proof.” *In re LinkedIn User Priv. Litig.*, 309 F.R.D. 573, 582 (N.D.  
7 Cal. 2015) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.1998)).  
8 The Settlement meets all of the requirements for preliminary approval.

9 **A. The Proposed Settlement is the Product of Serious, Informed and**  
10 **Non-Collusive Negotiations**

11 Weighing in favor of preliminary approval, the Settlement arises out of  
12 informed, arm’s-length negotiations among counsel for the Parties. The Parties  
13 reached an agreement after hard fought motion practice, conducting extensive fact  
14 discovery including Plaintiff’s deposition and multiple 30(b)(6) depositions of  
15 Apple, after the Parties fully briefed and argued Plaintiff’s motion for class  
16 certification, and after mediation and follow up discussions with the Honorable  
17 Irma E. Gonzalez (Ret.). *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 965 (9th  
18 Cir. 2009) (“We put a good deal of stock in the product of an arms-length, non-  
19 collusive, negotiated resolution.”). It is also significant that the settlement was  
20 negotiated by experienced counsel with extensive experience and success in class  
21 actions. Hawkins Decl. ¶¶ 47-48; *see In re Heritage Bond Litig.*, No. 02-ML-1475  
22 DT, 2005 WL 1594403, at \*9 (C.D. Cal. June 10, 2005) (“The recommendation of  
23 experienced counsel carries significant weight in the court’s determination of the  
24 reasonableness of the settlement.” (citation omitted)); *Noll v. eBay, Inc.*, 309 F.R.D.  
25 593, 608 (N.D. Cal. 2015) (counsel’s belief that settlement “is in the best interests  
26 of the class,” given the substantial expense and uncertainty of a trial on the merits,  
27 weighs in favor of approval). Class Counsel has worked on this case for three years  
28 and understands the risks and upside to this type of litigation generally, as well as

1 in this case specifically. Class Counsel is aware of the risks and additional expense  
2 of potential motions for summary judgment, as well as the risks and additional  
3 expense of a lengthy trial. Similarly during this litigation, Apple has engaged  
4 experienced law firms and understands the risks and expense of such a trial. *Id.* ¶  
5 36. Counsel’s judgment that this settlement is fair and reasonable is entitled to  
6 significant weight. *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D.  
7 523, 528 (C.D. Cal. 2004) (“‘Great weight’ is accorded to the recommendation of  
8 counsel, who are most closely acquainted with the facts of the underlying  
9 litigation.”) (citation omitted); *accord Bellows v. NCO Fin. Sys. Inc.*, No. 3:07-cv-  
10 01413-W-AJB, 2008 WL 5458986, at \*6-7 (S.D. Cal. Dec. 10, 2008). This  
11 Settlement is entitled to a presumption of fairness.

#### 12 **B. The Proposed Settlement Has No Obvious Deficiencies**

13 There are no obvious deficiencies in the proposed Settlement. In its opinion  
14 in *In re Bluetooth Headset Prods. Liability Litig.*, the Ninth Circuit pointed to three  
15 factors as troubling signs of a potential disregard for the class’s interests during the  
16 course of negotiation: (1) when class “counsel receive a disproportionate  
17 distribution of the settlement, or when the class receives no monetary distribution  
18 but class counsel are amply rewarded;” (2) “when the parties negotiate a ‘clear  
19 sailing’ arrangement that provides for the payment of attorneys’ fees separate and  
20 apart from class funds;” and (3) when the parties arrange for fees not awarded to  
21 class counsel to revert to the defendants rather than the class. 654 F.3d 935, 947  
22 (9th Cir. 2011). The court in *In re Bluetooth* offered these more strict criteria when  
23 a settlement occurs before certification. *Id.* at 946–47; *see also Allen v. Bedolla*,  
24 787 F.3d 1218, 1224 (9th Cir. 2015) (“That [*In re Bluetooth*] procedural burden is  
25 more strict when a settlement is negotiated absent class certification.”)

26 While Plaintiff must meet this stricter *Bluetooth* standard because the  
27 Settlement occurred before the Court issued its final decision on Plaintiff’s motion  
28 for class certification, none of these potential deficiencies exist here. The proposed

1 Settlement creates a \$1.8 million settlement fund, with no possibility of reversion  
2 to Apple. Settlement Agreement, § 2.3(d). The Settlement Amount will be used to  
3 pay claims made by Settlement Class Members based on the face value at the time  
4 of purchase of the Eligible Gift Card. While the Settlement Agreement permits  
5 Class Counsel to apply for an award of attorneys' fees equal to 33 1/3% of the  
6 Settlement Amount, Apple only agreed to pay attorneys' fees up to 25% of the  
7 Settlement Amount after the Parties agreed upon the Settlement Amount, subject to  
8 Court approval, and reserved the right to object to or oppose any request in excess  
9 of 25%. *Id.* at § 7.1; Hawkins Decl. ¶ 38. This agreement, therefore, is not a "clear  
10 sailing" arrangement like the agreements in *Bluetooth* or *Briseño*. Further, there is  
11 no "kicker" provision like the one in *Bluetooth*, which would allow money to revert  
12 back to Apple. *See In re Bluetooth*, 654 F.3d at 947. The proposed Class Notices  
13 inform Settlement Class Members that Class Counsel will request attorneys' fees  
14 up to 33 1/3% of the Settlement Amount and reimbursement of costs Class Counsel  
15 has advanced to date, to be paid by Apple separate from the Settlement Amount.<sup>5</sup>  
16 The absence of the *In re Bluetooth* warning signs here is further indication of the  
17 settlement's fairness. *See In re Zynga Sec. Litig.*, No. 12-cv- 04007-JSC, 2015 WL  
18 6471171, at \*9 (N.D. Cal. Oct. 27, 2015).

### 19 C. The Proposed Settlement Does Not Grant Preferential Treatment

20 The third factor in granting preliminary approval is whether the settlement  
21 gives preferential treatment to class representatives or segments of the class. *Rollins*  
22 *v. Dignity Health*, 336 F.R.D. 456, 461 (N.D. Cal. 2020) (quoting *In re Tableware*,

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24  
25 <sup>5</sup> While the requested attorneys' fees may exceed the Ninth Circuit benchmark of  
26 25% (using the "percentage-of-recovery" method accepted in this circuit), Plaintiff  
27 believes that there is good reason to exceed that benchmark here as shown above.  
28 *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *In re Wells Fargo & Co.*  
*S'holder Derivative Litig.*, 445 F. Supp. 3d at 519. Apple reserves the right to  
object to the amount of the requested attorneys' fees.

1 484 F. Supp. 2d at 1079). This factor also favors approving this settlement.

2 **1. All Settlement Class Members Will Recover a Pro Rata Share of**  
3 **the Settlement.**

4 All Class Members will recover a pro rata share of the settlement. The  
5 Settlement provides for a Class Payment to each Settlement Class Member who  
6 submits a valid claim. Settlement Agreement, §§ 2.1, 6.3. Specifically, Settlement  
7 Class Members will recover their share of Settlement Amount, based on the face  
8 value of the Eligible Gift Card at the time of purchase. *Id.*, § 2.1. As explained  
9 above, because the proposed plan of distribution compensates Settlement Class  
10 Members based on a pro rata share of the Settlement Fund based on the extent of  
11 their purported injuries (*i.e.*, the value of the stolen gift card), it satisfies the “fair,  
12 reasonable and adequate” standard that applies to approval of class settlements.  
13 *Gaudin v. Saxon Mortg. Servs., Inc.*, No. 11-CV-01663-JST, 2015 WL 7454183, at  
14 \*8 (N.D. Cal. Nov. 23, 2015) (“Such a plan ‘fairly treats class members by awarding  
15 a pro rata share’ to the class members based on the extent of their injuries.”) (citation  
16 omitted); *Noll v. eBay, Inc.*, 309 F.R.D. 593, 601, 607 (N.D. Cal. 2015) (approving  
17 pro-rata distribution as fair and reasonable).

18 **2. The Requested Service Awards for the Class Representative**  
19 **Reflects Her Efforts on Behalf of the Settlement Class.**

20 Class Counsel will request a service award for the Class Representative,  
21 Rachel Shay, in the amount of \$10,000, for her role in representing the Settlement  
22 Class. Apple reserves its right to object to the amount of this award. Settlement  
23 Agreement, at § 7.2. The Ninth Circuit recognizes service awards “that are intended  
24 to compensate class representatives for work undertaken on behalf of a class ‘are  
25 fairly typical in class action cases.’” *In re Online DVD-Rental Antitrust Litig.*, 779  
26 F.3d 934, 943 (9th Cir. 2015) (citation omitted). Class Counsel will submit this  
27 request simultaneously with their motion for attorneys’ fees—and in advance of the  
28 deadline for objections—so members of the Settlement Class that wish to



1 understand the basis for this request will have an opportunity to review Class  
2 Counsel’s motion and supporting materials. Class Counsel contends that the Class  
3 Representative’s efforts, outlined above, make such an award reasonable.

4 **D. The Proposed Settlement Falls Within the Range of Possible**  
5 **Approval**

6 The Court must also decide whether the settlement falls within the range of  
7 possible approval. *Zepeda v. Paypal, Inc.*, No. C 10-1668 SBA, 2015 WL 6746913,  
8 at \*4 (N.D. Cal. Nov. 5, 2015); *Tableware*, 484 F. Supp. 2d at 1079. In making this  
9 determination, courts evaluate settlements to ensure they are “fair, reasonable, and  
10 adequate” and “not the product of fraud or overreaching by, or collusion between,  
11 the negotiating parties.” *In re NVIDIA Corp. Derivative Litig.*, No. C-06-06110-  
12 SBA(JCS), 2008 WL 5382544, at \*2 (N.D. Cal. Dec. 22, 2008) (quoting *Officers*  
13 *for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir.1982)).

14 As shown above, the settlement provides the Settlement Class with \$1.8  
15 million, which represents approximately 71% of the possible recovery, accepting  
16 Plaintiff’s measure of damages. “The fact that a proposed settlement may only  
17 amount to a fraction of the potential recovery does not, in and of itself, mean that  
18 the proposed settlement is grossly inadequate and should be disapproved.” *In re*  
19 *Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 322 (N.D. Cal. 2018) (quoting  
20 *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir.1998)); *Garner v.*  
21 *State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW EMC, 2010 WL 1687832, at  
22 \*11 (N.D. Cal. Apr. 22, 2010) (“[C]ourts have recognized that even where—unlike  
23 here—the total settlement fund is small, it may not be unreasonable in light of the  
24 perils plaintiffs face in obtaining a meaningful recovery on their claims.”) (cleaned  
25 up)). “Estimates of what constitutes a fair settlement figure are tempered by factors  
26 such as the risk of losing at trial, the expense of litigating the case, and the expected  
27 delay in recovery (often measured in years).” *In re Anthem, Inc. Data Breach*, 327  
28 F.R.D. at 322 (citations omitted). Even applying Plaintiff’s measure of damages,

1 71% of the total damages easily falls within the range of possible approval. *In re*  
2 *Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,459 (9th Cir. 2000), as amended (June  
3 19, 2000) (approving settlement that was one-sixth, or 16%, of the potential  
4 recovery); *In re Apple Inc. Device Performance Litig.*, No. 5:18-MD-02827-EJD,  
5 2021 WL 1022867, at \*14 (N.D. Cal. Mar. 17, 2021) (approving settlement that  
6 represented 7% of the possible recovery).

7 Given the very real risks of continued litigation, \$1.8 million represents a  
8 fair, reasonable, and adequate settlement. Apple vigorously denied and continues to  
9 deny any and all alleged wrongdoing or liability. Specifically, Apple denies that it  
10 has failed to take adequate measures to ensure the security of iTunes Gift Cards and  
11 that it has made any misrepresentations, omissions, or other allegedly unlawful  
12 conduct with respect to the security or quality of Apple App Store & iTunes Gift  
13 Cards. Settlement Agreement, § Recitals. Further, Apple strenuously opposed class  
14 certification arguing, *inter alia*, that there is a *de minimis* risk that iTunes Gift Cards  
15 will be compromised by third party theft; that a reasonable consumer may not find  
16 this risk material, such that individualized proof of reliance is necessary; and that  
17 that putative class was unmanageable and overbroad because it did not attempt to  
18 exclude class members who were never injured, were not injured by any act or  
19 omission by Apple, or were already made whole through other means. (ECF No.  
20 69). Apple further argued that Plaintiff was neither a typical nor adequate class  
21 member because she did not read the gift card package containing the alleged  
22 misrepresentations and omissions and because she continued buying gift cards even  
23 *after* she learned of the alleged risk of third party theft. *Id.* Apple further argued  
24 that Plaintiff could not certify a nationwide class or California class after July 2020,  
25 when Apple updated its gift card terms and conditions to select Virginia law as the  
26 governing law. *Id.* Apple has further represented that it has strong summary  
27 judgment arguments, including that (1) the applicable terms of use disclaim liability  
28 for loss or damage resulting from cards that were lost, stolen, or used without



1 permission; (2) some of the putative class members' claims are barred by the  
2 applicable statutes of limitation; (3) Apple has no duty to disclose with respect to  
3 the CLRA; and (4) gift card credit redeemable only for digital content is not a  
4 tangible good or service actionable under the CLRA. And even if Plaintiff were  
5 able to certify a class *and* prevailed through summary judgment *and* trial *and* was  
6 awarded damages, recovery could be delayed by years if there was an appeal.

7 **VI. THE COURT SHOULD APPROVE THE PROPOSED CLASS**  
8 **NOTICE PLAN AND CPT GROUP, INC. AS SETTLEMENT**  
9 **ADMINISTRATOR**

10 Rule 23 and due process require that notice be provided to absent Settlement  
11 Class Members to inform them of the proposed Settlement and grant them the  
12 opportunity to opt out or object. *See* Fed. R. Civ. P. 23(c)(2). The notice and its  
13 dissemination must be the “best notice practicable” under the circumstances. *See*  
14 *Mullane v. Central Hanover Trust*, 339 U.S. 306, 314 (1950).

15 The Settlement Agreement adheres to that standard by calling for the notice  
16 to be provided via email notice, mail notice, website notice. *See* Settlement  
17 Agreement, at ¶¶ 6.1-6.2 (describing notice plan). Due to unique aspects of this  
18 case, publication notice will also be provide to the class. *Id.* Further, the content of  
19 the notice is unquestionably fair. The Mail Notice, Email Notice, Publication  
20 Notice, and Website Notice, attached as Exhibits 1, 4, 5, and 6 to the Settlement  
21 Agreement, inform Settlement Class Members about the existence and key terms of  
22 the proposed classwide Settlement and advise Settlement Class Members as to their  
23 options to participate in the Settlement by submitting a claim, opt out of the  
24 Settlement Class, or object to the proposed Settlement. *See* Exs. 1, 4, 5, and 6 to  
25 Settlement Agreement. Such mail, e-mail, publication, and website publication  
26 notice content comports with due process, per Rule 23.

27 As part of the Settlement Agreement, the Parties have agreed to have the CPT  
28 Group, Inc., an experienced settlement administrator, take charge of disseminating

1 the notice to Settlement Class Members. The accompanying Declaration of Julie  
2 Green from the CPT Group, Inc. details the nature, extent, and expected reach of  
3 the agreed upon e-mail and website publication notice plan. It also documents the  
4 CPT Group’s experience and track record in being a court-approved administrator  
5 of prior class action settlements.

6 Because the notice plan comports with due process, Rule 23, and represents  
7 the best notice practicable under the circumstances, it merits approval.

8 **VII. CONCLUSION**

9 The Settlement provides \$1.8 million for the Settlement Class. This  
10 Settlement was reached after intense negotiations that followed several years of  
11 hard-fought litigation and easily falls within the range of possible approval.  
12 Respectfully, Plaintiff requests that this Court enter an order: (1) preliminarily  
13 approving the proposed class action settlement with Apple; and (2) approving the  
14 manner and form of notice and proposed plan of allocation to Settlement Class  
15 Members.

16  
17 Dated: August 28, 2023

JAMES HAWKINS APLC

18  
19 By: s/ Mitchell J. Murray  
20 JAMES R. HAWKINS  
21 MALTE L. L. FARNAES  
22 CHRISTINA M. LUCIO  
23 MITCHELL J. MURRAY

24 Attorneys for Plaintiff  
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8 Attorneys for Plaintiff RACHAEL SHAY,  
 9 on behalf of herself and all others similarly situated

10 **UNITED STATES DISTRICT COURT**  
 11 **CENTRAL DISTRICT OF CALIFORNIA**

13 RACHAEL SHAY, individually and  
 14 on behalf of all others similarly  
 15 situated,

16 Plaintiff,

17 v.

19 APPLE INC., a Delaware  
 corporation; APPLE VALUE  
 20 SERVICES, LLC, a Virginia limited  
 liability corporation; and DOES 1  
 21 through 10, inclusive,

22 Defendants.  
 23

Case No. 3:20-cv-1629-JO-BLM

**CLASS ACTION**

**DECLARATION OF JAMES R.  
 HAWKINS IN SUPPORT OF  
 PLAINTIFF’S MOTION FOR  
 PRELIMINARY APPROVAL OF  
 CLASS ACTION SETTLEMENT**

Date: October 4, 2023  
 Time: 9:00 a.m.  
 Judge: Hon. Jinsook Ohta  
 Courtroom: 4C, 4th Floor

1 I, James R. Hawkins, declare as follows:

2 1. I am an individual over the age of 18. I am a principal at the law firm  
3 of James Hawkins, APLC. I am one of the attorneys of record for Plaintiff Rachel  
4 Shay (“Plaintiff”). I have personal knowledge of the facts set forth below, and if  
5 called to testify regarding them, I could and would do so competently.

6 2. I submit this Declaration in support of Plaintiff’s Motion for Preliminary  
7 Approval of Class Action Settlement (the “Preliminary Approval Motion”).

8 3. Attached hereto as Exhibit 1 is a true and correct copy of the Settlement  
9 Agreement and Release (“Settlement Agreement”), including Exhibits 1 through 7,  
10 which the Parties ask the Court to approve.

11 **PROCEDURAL HISTORY**

12 4. On May 28, 2020, Plaintiff filed her original class action complaint in  
13 the Superior Court of California, County of San Diego, individually and on behalf of  
14 a putative nationwide class, asserting claims relating to Apple’s alleged failure to  
15 take adequate measures to prevent “point-of-sale” gift card fraud, adequately warn  
16 consumers of the risk of such fraud, and its purported refusal to refund consumers in  
17 connection with such fraud. (ECF No. 1-2). On July 13, 2020, Plaintiff filed her First  
18 Amended Complaint (“FAC”). On August 21, 2020, Apple filed a Notice of Removal  
19 to this Court pursuant to the Class Action Fairness Act. (ECF No. 1).

20 5. On October 9, 2020, Apple filed a motion to dismiss Plaintiff’s FAC.  
21 (ECF No. 6). While the Court denied Apple’s motion to dismiss with regards to the  
22 CLRA, UCL and negligent misrepresentation claims, the Court dismissed Plaintiff’s  
23 breach of implied warranty of merchantability and restitution claims with leave to  
24 amend, and dismissed the CCPA and negligence claims as unopposed. (ECF. No.  
25 17).

26 6. On January 28, 2021, as permitted by the Court, Plaintiff filed her  
27 Second Amended Complaint (“SAC”). (ECF No. 18). On February 18, 2021, Apple  
28 filed a partial motion to dismiss with prejudice Plaintiff’s claims under the UCL,

1 Plaintiff's claim for equitable relief under the CLRA, and Plaintiff's claim for breach  
2 of implied warranty of merchantability claim. (ECF No. 21). On May 3, 2021, the  
3 Court granted Apple's partial motion to dismiss, and Apple subsequently answered  
4 the operative SAC on May 24, 2021. (ECF No. 30).

5 7. Before class certification, the parties conducted fact discovery. In total,  
6 Plaintiff issued and Apple answered thirty-one interrogatories, thirty-one requests for  
7 production, and thirty-eight requests for admission. Apple issued and Plaintiff  
8 responded to twenty-two interrogatories, eighteen requests for production, and  
9 sixteen requests for admission. *Id.* Apple produced and Plaintiffs reviewed more than  
10 2,500 documents, consisting of approximately 20,500 pages. Plaintiff's counsel  
11 deposed three Rule 30(b)(6) designees for Apple. Apple's counsel also deposed  
12 Plaintiff. *Id.*

13 8. On September 9, 2022, Plaintiff moved to certify a nationwide class and  
14 a California subclass pursuant to Rule 23(b)(3) and an issue class pursuant to Rule  
15 23(c)(4). Plaintiff's theory of liability on class certification was that Apple knew that  
16 certain iTunes Gift Cards were compromised by redemption attempts prior to the gift  
17 card's activation at the point of sale, that the risk of total loss with respect to these  
18 specific gift cards was not *de minimis*, and that Apple failed to disclose this material  
19 information to the purchasers of those specific gift cards. (ECF No. 59).

20 9. Apple opposed certification arguing, *inter alia*, that there is a *de minimis*  
21 risk that iTunes Gift Cards will be compromised by third party theft; that a reasonable  
22 consumer may not find this risk material, such that individualized proof of reliance  
23 is necessary; and that that putative class was unmanageable and overbroad because  
24 it did not attempt to exclude class members who were never injured, were not injured  
25 by any act or omission by Apple, or were already made whole through other means.  
26 (ECF No. 69). Apple also argued that Plaintiff was neither a typical nor adequate  
27 class member because she did not read the gift card package containing the alleged  
28 misrepresentations and omissions and because she continued buying gift cards even

1 after she learned of the alleged risk of third party theft. *Id.* Apple further argued that  
2 Plaintiff could not certify a nationwide class or California class after July 2020, when  
3 Apple updated its gift card terms and conditions to select Virginia law as the  
4 governing law. *Id.*

5 10. On January 11, 2023, the Court heard oral arguments on the motion for  
6 class certification and took the matter under submission. (ECF No. 83). Before the  
7 Court issued a final decision on the motion for class certification, the Parties agreed  
8 to attend mediation before the Hon. Irma E. Gonzalez (Ret.) on April 12, 2023. (ECF.  
9 No. 84). While the parties did not reach a settlement at the mediation, the parties  
10 continued to have follow-up discussions with the assistance of the mediator, which  
11 ultimately led to a mediator’s proposal that was accepted by the Parties.

12 11. Accordingly, the Parties have investigated the facts and have analyzed  
13 the relevant legal issues regarding the claims and defenses asserted in this Action,  
14 including through significant motion practice and extensive fact and expert  
15 discovery.

16 **SUMMARY OF PROPOSED SETTLEMENT TERMS**

17 12. The Settlement Agreement provides for a Nationwide Class as well as a  
18 California Subclass, which are defined as follows:

19 “Nationwide Class” shall mean all consumers who purchased an  
20 Eligible Gift Card in the United States from March 2018 to July 2020,  
21 whose Eligible Gift Card was subject to a redemption attempt prior to  
22 activation, whose gift card was redeemed by an unknown third party  
23 prior to attempted redemption by the consumer or intended user, and  
24 who did not receive a refund or replacement gift card from Defendants  
or any third party.

25 “California Subclass” shall mean all consumers who purchased an  
26 Eligible Gift Card in the State of California from May 2017 to February  
27 2018, whose gift card was subject to a redemption attempt prior to  
28 activation, whose gift card was redeemed by an unknown third party  
prior to attempted redemption by the consumer or intended user, and

1 who did not receive a refund or replacement gift card from Defendants  
2 or any third party.

3 The Settlement Class excludes Defendants, their parents, subsidiaries,  
4 affiliates, officers, directors, and employees; any entity in which Defendants have a  
5 controlling interest; and all judges assigned to hear any aspect of this litigation, as  
6 well as their staff and immediate family members. Settlement Agreement,  
7 Definitions, § EE.

8 13. In exchange for the \$1.8 million in Settlement consideration, Settlement  
9 Class Members will release their claims against Apple and the other defined Released  
10 Persons. These Released Persons include Integrators and Retailers of iTunes Gift  
11 Cards, who might otherwise have contribution and/or indemnification claims against  
12 Apple should they be involved in a similar lawsuit. See Settlement Agreement, at  
13 Definitions §§ V-X; id., at §§ 8.1-8.4. The Settlement Agreement properly tailors this  
14 release of claims to cover those claims related to the factual allegations in the SAC.  
15 See id., at Definition, § B; id. at § 8.2.

16 14. Plaintiff calculates potential recovery in this matter to be approximately  
17 \$2.52 million if Plaintiff had certified and prevailed on her negligent  
18 misrepresentation and CLRA claim. Reflecting several unique aspects of this case,  
19 the Settlement Amount represents approximately 71% of the potential recovery that  
20 Plaintiff calculated.

21 15. The actual percentage of estimated damages recoverable is likely even  
22 higher, since Apple contends (1) there are non-fraudulent explanations for why a card  
23 might be subject to pre-activation redemption attempts, including that some retailers  
24 do not have real-time activation capabilities, meaning that a card purchaser may  
25 attempt to redeem a gift card before the retailer's activation system has kicked in;  
26 and (2) not all cards subject to pre-activation redemption attempts by scammers  
27 ultimately result in redemption by a third party prior to activation by the intended  
28 recipient.



1           16. In addition to the Settlement consideration to be paid to Settlement Class  
2 Members, the Settlement Agreement provides that Apple will pay the costs of  
3 implementing the Settlement, as approved by the Court, including the Administrative  
4 and Notice Costs. *Id.*, at Definitions, § A; § 6.4. Further, the Settlement Agreement  
5 permits Class Counsel to seek an award of Attorneys’ Fees and Costs, encompassing  
6 attorneys’ fees and reasonable costs and expenses, for up to 33 1/3% of the Settlement  
7 Amount, to be paid by Apple in addition to the Settlement Amount, though the  
8 outcome of that request will not affect the Settlement becoming effective. *Id.* at § 7.1.  
9 Apple agrees to pay and will not object to Class Counsel’s application for an award  
10 of Attorneys’ Fees and Costs for up to 25% of the Settlement Amount, but reserves  
11 the right to object to or oppose any request for Attorneys’ Fees and Costs in excess  
12 of this amount.  
13

14           17. If, after all payments to the Settlement Class Members are made, the  
15 value of the Settlement Amount exceeds the value of all payments made to Settlement  
16 Class Members, the unclaimed portion of the Settlement Amount will be applied as  
17 follows: (1) first, to pay the Administrative and Notice costs; (2) next, to pay the  
18 Attorneys’ Fees and Costs; and (3) third, if there are funds remaining, to a *cy pres*,  
19 as approved by the Court. *Id.* at ¶ 2.3. In no event shall the unclaimed Settlement  
20 Amount be returned to Apple. *Id.*

21           18. The Settlement Agreement also provides that Class Counsel may seek  
22 Court approval for a Service Award for the Named Plaintiff to be paid from the  
23 Settlement Amount. See Settlement Agreement, at § 7.2. Apple reserves the right  
24 to object to the amount of the Service Award. *Id.*

25           19. Notice of the Settlement to the Settlement Class will include an Email  
26 Notice, Mail Notice, Publication Notice, and Website Notice. Agreement, at § 6. The  
27 Mail Notice, Email Notice, Publication Notice, and Website Notice inform  
28 Settlement Class Members about the existence and key terms of the proposed



1 classwide Settlement and advise Settlement Class Members as to their options to  
2 participate in the Settlement by submitting a claim, opt out of the Settlement Class,  
3 or object to the proposed Settlement. Id.

4         20. The Settlement Administrator will email each Settlement Class Member  
5 for whom Apple has an email address a copy of the Email Notice. Id. at 6.2.3, Ex. 1.  
6 The Settlement Administrator will also mail to each Settlement Class Member for  
7 whom Apple has a physical address, but not an email address, a copy of the Mail  
8 Notice. Id., at 6.2.4, Ex. 4.

9         21. In addition to the Email Notice and Mail Notice for those Settlement  
10 Class Members whom Apple has either an email address or physical address, the  
11 Settlement Administrator shall publish in print publications and in a digital media  
12 campaign, the Publication Notice. Id. at 6.2.5, Ex. 5. The Parties shall approve the  
13 content, design, layout, placement, medium, timing, duration, targeting parameters,  
14 and target audience for all publications, posts, and advertisements. Id. The  
15 Publication Notice will inform Settlement Class Members of the fact of the  
16 Settlement and that Settlement information is available on the Settlement Website.  
17 Id., at 6.2.5., Ex. 5.

18         22. The Settlement Administrator will also establish and maintain the  
19 Settlement Website optimized for viewing on both mobile devices and personal  
20 computers. Id., at § 6.2.1. The Settlement Website will include case-related  
21 documents, including, but not limited to, the SAC and answer to the SAC, the  
22 Settlement Agreement, the Website Notice, the Preliminary Approval Order,  
23 Plaintiffs' Motion for Attorneys' Fees and Costs, a set of frequently asked questions,  
24 information on how to submit a Claim, an Objection or request exclusion, and contact  
25 information for Class Counsel, Apple Counsel, and the Settlement Administrator.  
26 The Settlement Website shall remain accessible until thirty (30) calendar days after  
27  
28

1 the Settlement Administrator has completed its obligations under this Settlement  
2 Agreement. Id., at 6.2.1.

3 23. Settlement Class Members will be eligible to submit a claim for Class  
4 Payment in an amount equal to the face value of the Eligible Gift Card at the time of  
5 purchase. Id. at 2.1.

6 24. To receive a Class Payment, the Settlement Class Members who receive  
7 Email Notice or Mail Notice, in addition to Publication Notice, must submit the  
8 following items through the Settlement Website: (1) the Settlement Class Member’s  
9 name and contact information, including a physical address, working telephone  
10 number, and email address; (2) proof of purchase (e.g., sales receipt) or an attestation  
11 that the Settlement Class Member (i) was the individual who purchased the Eligible  
12 Gift Card(s), and (ii) that the Settlement Class Member previously provided Proof of  
13 Purchase to Apple when they reported their scam incident to Apple (“Proof of  
14 Purchase Attestation”); (3) an attestation by the Settlement Class Member or other  
15 intended user of the Eligible Gift Card that they: (1) were unable to redeem the  
16 Eligible Gift Card because it had already been redeemed by an unknown third party  
17 that was not the Eligible Gift Card’s intended recipient or beneficiary; and (2) have  
18 not obtained a refund, cash-out, or other form of compensation from Defendants or  
19 any third party in connection with their purchase of Eligible Gift Card(s); and (4) any  
20 necessary information to complete payment via the Settlement Class Member’s  
21 payment method of choice (e.g., physical check, e-check, or ACH transfer). Id. at §  
22 6.3.2.  
23

24 25. Settlement Class Members who only receive Publication Notice (i.e.,  
25 Settlement Class Members for whom Apple does not have an email address of  
26 physical address) must submit the following items through the Settlement Website:  
27 the Settlement Class Member’s name and contact information, including a physical  
28 address, working telephone number, and email address; (2) proof of (e.g., a

1 sales receipt) of the Eligible Gift Card(s) which are the subject of the Settlement  
2 Class Member's claim, that includes: (i) the purchase date; (ii) the original purchase  
3 price; and (iii) the gift card number(s) associated with any alleged Eligible Gift  
4 Card(s); (3) an attestation by the Settlement Class Member or other intended user of  
5 the Eligible Gift Card that they: (1) were unable to redeem the Eligible Gift Card  
6 because it had already been redeemed by an unknown third party that was not the  
7 Eligible Gift Card's intended recipient or beneficiary; and (2) have not obtained a  
8 refund, cash-out, or other form of compensation from Defendants or any third party  
9 in connection with their purchase of Eligible Gift Card(s); and (3) any necessary  
10 information to complete payment via the Settlement Class Member's payment  
11 method of choice (e.g., physical check, e-check, or ACH transfer). Id. at § 6.3.1.

12  
13 26. Settlement Class Members shall only be eligible to receive  
14 compensation under the settlement if Apple's records show that the Eligible Gift  
15 Card(s) that are the subject of the Settlement Class Member's claim was subject to a  
16 redemption attempt prior to activation. Id. at § 6.3. The Settlement Administrator  
17 will review all claims to determine their validity and eligibility. Id. at § 6.4 In order  
18 to evaluate whether a claim was submitted by a Settlement Class Member, the  
19 Settlement Administrator will verify that the potential Settlement Class Member's  
20 proof of purchase is sufficient or that Apple already possesses records of the potential  
21 Settlement Class Member submitting sufficient proof of purchase; and that Apple has  
22 records that the Eligible Gift Card(s) that are the subject of the Settlement Class  
23 Member's claim was subject to a redemption attempt prior to activation. Id.

24 **THE COURT SHOULD CONDITIONALLY CERTIFY THE PROPOSED**  
25 **SETTLEMENT CLASS**

26 27. **Numerosity:** Assuming a unique purchaser of each Eligible Gift Card,  
27 there are approximately a combined 53,226 Settlement Class Members in the  
28 Nationwide Class and California Subclass, satisfying the numerosity requirement.

1           28.    **Commonality:** Plaintiff alleges that questions of law and fact common  
2 to the Settlement Class include whether Apple: (1) knew or should have known that  
3 specific iTunes Gift Cards were subject to a redemption attempt prior to activation;  
4 (2) made materially false representations or omissions with respect to the security or  
5 quality of iTunes Gift Cards that were subject to a redemption attempt prior to  
6 activation; and (3) failed to take adequate measures to ensure the safety of iTunes  
7 Gift Cards.

8           29.    Apple denies that it made any misrepresentations or omissions with  
9 respect to the security or quality of iTunes Gift cards, let alone any that were  
10 materially false, or that it failed to take adequate measures to ensure the safety of  
11 iTunes Gift Cards, given the considerable resources and efforts Apple has dedicated  
12 to preventing fraud.

13           30.    **Typicality:** Plaintiff and the Settlement Class were allegedly exposed  
14 to the same materially false representations and/or omissions with respect to the  
15 security and quality of the iTunes Gift Cards, were injured in the same manner in that  
16 they purchased an iTunes Gift Cards that was subject to a redemption attempt prior  
17 to activation and was redeemed by an unknown third party prior to attempted  
18 redemption. In addition, Plaintiff is typical of the California Subclass because she is  
19 a California resident who purchased an Eligible Gift Card in California.

20           31.    **Adequacy:** For the reasons set forth in the declarations filed in support  
21 of Plaintiff's Motion for Class Certification, Plaintiff's counsel is adequate and  
22 should be appointed as Class Counsel. (*See generally* Declarations of James R.  
23 Hawkins (ECF No. 59-2), Christina M. Lucio (ECF No. 59-3), Malte L. L. Farnaes  
24 (ECF No. 50-4), and Mitchell J. Murray (ECF No. 59-5)).

25           32.    Mr. Farnaes, Ms. Lucio, Mr. Murray and I are experienced class action  
26 litigators who have litigated many complex actions. My firm has diligently litigated  
27 this case including moving for class certification, and will continue to do so.  
28

1           33.    **Predominance:** Plaintiff contends that questions as of law and fact  
2 common to the Settlement Class predominate over individual questions. Specifically,  
3 whether Apple knew or should have known that specific iTunes Gift Cards were  
4 subject to a redemption attempt prior to activation; whether Apple made materially  
5 false representations or omissions with respect to the security or quality of iTunes  
6 Gift Cards that were subject to a redemption attempt prior to activation; and whether  
7 Apple failed to take adequate measures to ensure the safety of iTunes Gift Card are  
8 all questions that can be answered on a classwide basis without the need for  
9 individual inquiries.

10  
11           34.    **Superiority:** A class action is the superior method for the fair and  
12 efficient adjudication of this action because: (1) Settlement Class Members are  
13 significant in number and geographically disbursed, (2) many Settlement Class  
14 Members have neither the incentive nor the means to litigate these claims individual;  
15 (3) no Settlement Class Member has displayed any interest in bringing an individual  
16 lawsuit; (4) the damages most Settlement Class Members suffered are small  
17 compared to the considerable expense and burden of individual litigation which  
18 makes it uneconomic for an individual to protect his/her rights through an individual  
19 suit; and (5) the prosecution of separate actions by hundreds (or thousands) of  
20 individual Settlement Class Members would impose heavy burdens upon the Court.  
21 It would create a risk of inconsistent or varying adjudications of the questions of law  
22 and fact common to the Settlement Class. Thus, both prongs of Rule 23(b)(3) are  
23 satisfied for purposes of the Settlement.

24    **THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL**

25           **The Proposed Settlement is the Product of Serious, Informed and Non-**  
26           **Collusive Negotiations**

27           35.    The Settlement of \$1.8 million arises out of informed, arm's-length  
28 negotiations among counsel for the Parties. The Parties reached an agreement after

1 hard fought motion practice, conducting extensive fact discovery including  
2 Plaintiff's deposition and multiple 30(b)(6) depositions of Apple, after the Parties  
3 fully briefed and argued Plaintiff's motion for class certification, and after mediation  
4 and follow up discussions with the Honorable Irma E. Gonzalez (Ret.).

5         36. My firm has worked on this case for three years and understands the  
6 risks and upside to this type of litigation generally, as well as in this case specifically.  
7 We are aware of the risks and additional expense of potential motions for summary  
8 judgment, as well as the risks and additional expense of a lengthy trial. Similarly  
9 during this litigation, Apple has engaged experienced law firms and understands the  
10 risks and expense of such a trial.

11         37. While Plaintiff firmly believes in the strength of her claims, Defendants  
12 have strong defenses to Plaintiff's claims, and those defenses created a real  
13 possibility that Defendants will be able to defeat the action and all recovery to  
14 Plaintiff and the Settlement Class.

15  
16         **The Proposed Settlement Has No Obvious Deficiencies**

17         38. The proposed Settlement creates a \$1.8 million settlement fund, with no  
18 possibility of reversion to Apple. Settlement Agreement, § 2.3(d). The Settlement  
19 Amount will be used to pay claims made by Settlement Class Members based on the  
20 face value at the time of purchase of the Eligible Gift Card. While the Settlement  
21 Agreement permits Class Counsel to apply for an award of attorneys' fees equal to  
22 33 1/3% of the Settlement Amount, Apple only agreed to pay attorneys' fees up to  
23 25% of the Settlement Amount after the Parties agreed upon the Settlement Amount,  
24 subject to Court approval, and reserved the right to object to or oppose any request  
25 in excess of 25%. Id. at § 7.1. The proposed Class Notices inform Settlement Class  
26 Members that Class Counsel will request attorneys' fees up to 33 1/3% of the  
27 Settlement Amount and reimbursement of costs Class Counsel has advanced to date,  
28 to be paid by Apple separate from the Settlement Amount.

1                   **The Proposed Settlement Does Not Grant Preferential Treatment**

2           39. All Class Members will recover a pro rata share of the settlement. The  
3 Settlement provides for a Class Payment to each Settlement Class Member who  
4 submits a valid claim. Settlement Agreement, §§ 2.1, 6.3. Specifically, Settlement  
5 Class Members will recover their share of Settlement Amount, based on the face  
6 value of the Eligible Gift Card at the time of purchase. *Id.*, § 2.1. Because the  
7 proposed plan of distribution compensates Settlement Class Members based on a pro  
8 rata share of the Settlement Fund based on the extent of their purported injuries (*i.e.*,  
9 the value of the stolen gift card), it satisfies the “fair, reasonable and adequate”  
10 standard that applies to approval of class settlements.

11  
12           40. In addition, Class Counsel will request a service award for the Class  
13 Representative, Rachel Shay, in the amount of \$10,000, for her role in representing  
14 the Settlement Class. Apple reserves its right to object to the amount of this award.  
15 Settlement Agreement, at § 7.2. Class Counsel will submit this request  
16 simultaneously with their motion for attorneys’ fees—and in advance of the deadline  
17 for objections—so members of the Settlement Class that wish to understand the basis  
18 for this request will have an opportunity to review Class Counsel’s motion and  
19 supporting materials. Class Counsel contends that the Class Representative’s efforts,  
20 outlined above, make such an award reasonable.

21                   **The Proposed Settlement Falls Within the Range of Possible Approval**

22           41. The settlement provides the Settlement Class with \$1.8 million, which  
23 represents approximately 71% of the possible recovery, accepting Plaintiff’s measure  
24 of damages. Given the very real risks of continued litigation, \$1.8 million represents  
25 a fair, reasonable, and adequate settlement.

26           42. Apple vigorously denied and continues to deny any and all alleged  
27 wrongdoing or liability. Specifically, Apple denies that it has failed to take adequate  
28 measures to ensure the security of iTunes Gift Cards and that it has made any



1 misrepresentations, omissions, or other allegedly unlawful conduct with respect to  
2 the security or quality of Apple App Store & iTunes Gift Cards. Settlement  
3 Agreement, § Recitals. Further, Apple strenuously opposed class certification  
4 arguing, inter alia, that there is a de minimis risk that iTunes Gift Cards will be  
5 compromised by third party theft; that a reasonable consumer may not find this risk  
6 material, such that individualized proof of reliance is necessary; and that that putative  
7 class was unmanageable and overbroad because it did not attempt to exclude class  
8 members who were never injured, were not injured by any act or omission by Apple,  
9 or were already made whole through other means. (ECF No. 69). Apple further  
10 argued that Plaintiff was neither a typical nor adequate class member because she did  
11 not read the gift card package containing the alleged misrepresentations and  
12 omissions and because she continued buying gift cards even after she learned of the  
13 alleged risk of third party theft. Id.

15 43. Apple further argued that Plaintiff could not certify a nationwide class  
16 or California class after July 2020, when Apple updated its gift card terms and  
17 conditions to select Virginia law as the governing law. Id. Apple has further  
18 represented that it has strong summary judgment arguments, including that (1) the  
19 applicable terms of use disclaim liability for loss or damage resulting from cards that  
20 were lost, stolen, or used without permission; (2) some of the putative class members'  
21 claims are barred by the applicable statutes of limitation; (3) Apple has no duty to  
22 disclose with respect to the CLRA; and (4) gift card credit redeemable only for digital  
23 content is not a tangible good or service actionable under the CLRA. And even if  
24 Plaintiff were able to certify a class and prevailed through summary judgment and  
25 trial and was awarded damages, recovery could be delayed by years if there was an  
26 appeal.



1 Honorable Consuelo B. Marshall, United States District Court, Central District.  
2 After approximately five months of service for Judge Marshall, I became a full-time  
3 extern for the United States Attorney's Office, Central District of California. My  
4 externship lasted for approximately five months. Thereafter, in 1997, I graduated  
5 from Whittier Law School. The same year, I was admitted to practice law in the State  
6 of California.

7  
8 48. From 1997-2007, I was a named partner at Hawkins & Sofonio, a law  
9 firm based out of Irvine, California. At Hawkins & Sofonio, I pioneered the  
10 employment department litigating plaintiff related employment issues such as:  
11 Wrongful Termination, Age Discrimination, Disability, Wage and Hour and Sexual  
12 Harassment claims. Through the success and experience I obtained litigating  
13 employment related matters, I commenced the Wage and Hour division of our  
14 employment department in 2002. Since then, I have spent the vast majority of my  
15 practice litigating class actions.

16 49. In 2007, I incorporated my wage and hour class action practice as James  
17 Hawkins APLC. Since its inception, this law firm has been exclusively involved in  
18 class action and complex litigation. In 2009, I opened an additional office in Miami,  
19 Florida, prosecuting class actions. I have been lead or co-lead counsel in hundreds  
20 of cases throughout the State of California and in the Federal Courts in this State,  
21 including all of the cases listed below.

22 50. I have a great deal of experience in class action litigation. I have been  
23 certified and approved as class counsel in many class actions, and I am currently  
24 litigating numerous others before this Court and others. Although not an all-inclusive  
25 list, over the years I have prosecuted the following class action matters as lead and/or  
26 co-lead counsel, all of which implicated similar law and facts to those associated with  
27 this Action:

28

1 a. ***Mojica v. Compass Group, Inc., et. al.*** USDC Central District, Case  
2 No. 8:13-cv-01754. Wage and Hour Class Action case seeking past wages for meal  
3 and rest break violations for production workers in the State of California.  
4 Plaintiff’s Counsel preliminarily appointed as Class Counsel. Case settled. Final  
5 approval granted, and funds fully disbursed.

6 b. ***Dao v. 3M Company, et al.*** USDC, CENTRAL DISTRICT, Case No.  
7 CV-08-04554. Wage and Hour Class Action case seeking past wages for “off the  
8 clock”, overtime and meal and rest break violations for production workers in the  
9 State of California. Plaintiff’s Counsel appointed as Lead Counsel. Case settled,  
10 Final Approval granted, no objections and funds fully distributed.

11 c. ***Ortiz v. Kmart,*** USDC, CENTRAL DISTRICT, Case No. SACV 06-  
12 638 ODW. Wage and Hour Class Action case seeking past wages for meal and rest  
13 period violations for retail employees in the State of California. Plaintiff’s counsel  
14 appointed co-lead counsel. Case settled, Final Approval granted, no objections and  
15 funds fully distributed.

16 d. ***Morgan v. Aramark Campus, LLC,*** USDC, CENTRAL DISTRICT,  
17 Case No. SACV08-00412. Wage and Hour Class Action case seeking past wages  
18 for meal and rest period violations for retail employees in the State of California.  
19 Plaintiff’s Counsel appointed as Lead Counsel. Case settled, Final Approval  
20 granted, no objections and funds fully distributed.

21 e. ***West v Iron Mountain Information Management, Inc, et. al.;*** Los  
22 Angeles County Superior Court, Case No. BC393709. Wage and Hour Class  
23 Action seeking past wages for overtime, meal and rest break violations for driver  
24 employees in the State of California. Stipulation for “binding arbitration.”  
25 Arbitration Award for Plaintiff Class. Arbitration Award confirmed. Plaintiff’s  
26 counsel lead trial counsel and class counsel.  
27  
28

1 f. ***Gonzalez v. Superior Industries International, Inc., et al.***, Los  
2 Angeles County Superior Court, Case No. BC 357912. Wage and Hour Class  
3 Action seeking past wages for overtime, meal and rest breaks violations for  
4 production employees in the State of California. Plaintiff’s counsel appointed as  
5 lead counsel. Case settled, Final Approval granted, no objections and funds fully  
6 distributed.

7 g. ***Acosta v. Fleetwood Travel Trailers of California, Inc., et al.***,  
8 Riverside County Superior Court, Case No. RIC 440630. Wage and Hour Class  
9 Action seeking past wages for overtime, meal and rest break violations for  
10 production employees in the State of California. Plaintiff’s counsel appointed as  
11 co-lead counsel. Case settled, Final Approval granted, no objections and funds  
12 fully distributed.

13 h. ***Walker v. Sharkeez, et al.***, Orange County Superior Court, Case No.  
14 05CC00293. Wage and Hour Class Action seeking past wages for unlawful  
15 deductions, meal and rest break violations for restaurant employees in the State of  
16 California. Plaintiff’s counsel appointed as lead counsel. Case settled. Final  
17 Approval granted and funds fully distributed.

18 i. ***Padron v. Universal Protection Service, et al.***, Orange County  
19 Superior Court, Case No. 05CC00013. Wage and Hour Class Action seeking past  
20 wages for overtime, meal and rest break violations for security officers in the State  
21 of California. Plaintiff’s counsel appointed as co-lead counsel. Case settled, Final  
22 Approval granted, no objections and funds fully distributed.

23 j. ***Martinez v. Securitas Security Services USA, et al.***, Santa Clara  
24 Superior Court, Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour  
25 Class Action seeking past wages for meal and rest break violations for security  
26 officers employed by defendant in the State of California. Plaintiff’s counsel and  
27 co-counsel. Case settled, Final Approval granted and funds fully distributed.  
28

1 k. ***Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.***, Riverside  
2 Superior Court, Case No. RIC 420909. Wage and Hour Class Action seeking past  
3 wages for overtime, meal and rest break violations for housekeepers employed by  
4 defendant in the State of California. Plaintiff’s counsel appointed as lead counsel.  
5 Case settled, Final Approval granted, no objections and funds fully distributed.

6 l. ***Ruiz, et al. v. Unisourse Worldwide, Inc., et al.***, USDC, CENTRAL  
7 DISTRICT, Case No. CV09-05848. Wage and Hour Class Action seeking past  
8 wages for meal and rest period violations for non-exempt employees employed by  
9 defendant in the state of California. Case settled., Final Approval granted, funds  
10 fully distributed.

11 m. ***Herrador v. Culligan International Company, et al.***, USDC,  
12 CENTRAL DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action  
13 seeking past wages for field and branch employees of defendant in the State of  
14 California. Plaintiff’s counsel appointed as lead counsel. Case settled, Final  
15 Approval granted, funds fully distributed.

16 n. ***Defries v. Domain Restaurants, et al.***, Orange County Superior  
17 Court, Case No. 05CC00128. Wage and Hour Class Action seeking past wages for  
18 restaurant employees of defendant in the State of California. Plaintiff’s counsel  
19 appointed as lead counsel. Case settled, Final Approval granted, no objections and  
20 funds fully distributed.

21 o. ***Denton v. BLB Enterprises, Inc., et al.***, Orange County Superior  
22 Court, Case No. 07CC01292. Wage and Hour Class Action seeking unpaid  
23 overtime, meal and rest break violations for security guards employed by defendant  
24 in the State of California. Plaintiff’s counsel appointed as lead counsel. Case  
25 settled, Final Approval granted, no objections and funds fully distributed.

26 p. ***Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.***, Los  
27 Angeles Superior Court, Case No. BC411477. Wage and Hour Class Action  
28

1 seeking unpaid meal and rest break violations for production employees employed  
2 by defendant in the State of California. Plaintiff counsel appointed as lead counsel.  
3 Case settled, Final Approval granted, no objections and funds fully distributed.

4 q. ***McMurray v. Dave and Busters, Inc., et al.***, Orange County Superior  
5 Court, Case No. 06CC00099. Wage and Hour Class Action seeking past wages for  
6 meal and rest break violations for restaurant employees employed by defendant in  
7 the State of California. Plaintiff's counsel appointed as co-lead counsel. Case  
8 settled, Final Approval granted, no objections and funds fully distributed.

9 r. ***Osuna v. DFG Restaurants, Inc., et al.***, Los Angeles Superior Court,  
10 Case No. BC 330145. Wage and Hour Class Action seeking past wages of overtime  
11 for mis-classification of managers employed by Defendant, DBA Carl's Jrs. in the  
12 State of California. Plaintiff's counsel appointed as co-lead counsel. Case settled,  
13 Final Approval granted, no objections and funds fully distributed.

14 s. ***Burns v. Gymboree Operations, Inc., et al.***, San Francisco Superior  
15 Court, Case No. CGC-07-461612. Wage and Hour Class Action seeking past  
16 wages for meal and rest break violations for retail employees employed by  
17 defendant in the State of California. Plaintiff's counsel appointed lead counsel.  
18 Case settled, Final Approval granted, no objections and funds fully distributed.

19 t. ***Willems v. Diedrich Coffee, Inc., et al.***, Orange County Superior  
20 Court, Case No. 07CC00015. Wage and Hour Class Action seeking past wages of  
21 overtime for mis-classification of managers employed by Defendant in the State of  
22 California. Plaintiff's counsel appointed lead counsel. Case settled, Final Approval  
23 granted, no objections and funds fully distributed.

24 u. ***Davila, et al. v. Beckman Coulter, Inc., et al.***, Orange County  
25 Superior Court, Case No. 07CC01347. Wage and Hour Class Action seeking past  
26 wages for overtime, meal and rest break violations for production workers  
27 employed by defendant in the State of California. Plaintiff's counsel appointed lead  
28



1 counsel. Case settled, Final Approval granted, no objections and funds fully  
2 distributed.

3 v. ***Perez v. Naked Juice Company of Glendora, Inc.***, Los Angeles  
4 Superior Court, Case No. BC387088. Wage and Hour Class Action seeking past  
5 wages for overtime, meal and rest period violations for production employees  
6 employed by defendant in the State of California. Plaintiff counsel appointed as  
7 lead counsel. Case settled. Final Approval granted, no objections and funds fully  
8 distributed.

9 w. ***Coordination Proceeding Special Title [Rule 1550(b)] Wackenhut***  
10 ***Wage and Hour Cases***, Los Angeles Superior Court, Case No. JCCP 4545. Wage  
11 and Hour Class Action seeking past wages for overtime, meal and rest period  
12 violations for security guards employed by defendant in the State of California.  
13 Certification granted. Plaintiff's counsel appointed as co-lead counsel. Writ taken.  
14 Court stays action pending Appellate Court ruling. Court lifts stay.

15 x. ***Placencia v. Amcor Packaging Distribution, Inc.***, Orange County  
16 Superior Court, Case No. 30-2013-00694012-CU-OE-CXC. Wage and Hour Class  
17 Action seeking past wages for overtime, meal and rest period violations, and  
18 penalties on behalf of non-exempt production, maintenance, shipping, and  
19 receiving employees employed by Defendant in California. Plaintiff counsel  
20 appointed as lead counsel. Case settled. Final Approval granted, no objections and  
21 funds fully distributed.

22 y. ***Trani v. Lisi Aerospace, et al.***, Los Angeles Superior Court, Case No.  
23 BC495527. Wage and Hour Class Action seeking past wages for overtime, meal  
24 and rest period violations, and penalties on behalf of non-exempt manufacturing  
25 employees employed by Defendant in California. Plaintiff counsel appointed as  
26 lead counsel. Case settled. Final Approval granted, no objections and funds fully  
27 distributed.  
28

1           **z. Galvan v. Goodwin Co.**, Orange County Superior Court, Case No. 30-  
2 2013-00637062-CU-OE-CXC, Wage and Hour Class Action seeking past wages  
3 for meal period violations, and non-compliant wage statements on behalf of non-  
4 exempt production employees employed by Defendant in California. Plaintiff  
5 counsel appointed as lead counsel. Case settled. Final Approval granted, no  
6 objections and funds fully distributed.

7           **aa. Reyes v. Bristol Fiberlite**, Orange County Superior Court, Case No.  
8 30-2013-00653425-CU-OE-CXC. Wage and Hour Class Action seeking past  
9 wages for overtime, meal and rest period violations, inaccurate wage statements,  
10 and penalties on behalf of non-exempt employees employed by Defendant in  
11 California. Plaintiff counsel appointed as lead counsel. Case settled. Final  
12 Approval granted, no objections and distribution of funds pending.

13           **bb. Gutierrez v. HMT Tank, USDC Central Dist.**, Case No. CV14-1967-  
14 CAS(MANx). Wage and Hour Class Action seeking past wages for meal and rest  
15 period violations, failure to indemnify necessary expenses, inaccurate wage  
16 statements, and penalties on behalf of non-exempt employees working in positions  
17 related to servicing, refabricating and repairing storage tanks employed by  
18 Defendant in California. Plaintiff counsel appointed as lead counsel. Case settled.  
19 Final Approval granted, no objections and funds fully distributed.

20           **cc. Williams v. Il Fornaio America Corp.**, Sacramento County, Case No.  
21 34-2011-0009616. Wage and Hour Class Action seeking past wages for overtime,  
22 meal and rest period violations, reimbursements, and penalties on behalf of non-  
23 exempt restaurant employees employed by Defendant in California. Plaintiff  
24 counsel appointed as lead counsel. Case settled. Final Approval granted, and funds  
25 fully distributed.

26           **dd. Aguilar v. 7-Eleven, Inc.**, Orange County, Case No. 30-2009-  
27 002687141-CU-OE-CXC. Wage and Hour Class Action seeking past wages for  
28

1 overtime, meal and rest period violations, and penalties on behalf of non-exempt  
2 retail clerks employed by Defendant in California. Plaintiff counsel appointed as  
3 lead counsel. Case settled. Final Approval granted, no objections and funds fully  
4 distributed.

5 *ee. Madrigal v. Huntington Beach Market Broiler, Inc.*, Orange County,  
6 Case No. 30-2012-00611260. Wage and Hour Class Action seeking past wages for  
7 overtime, meal and rest period violations, reimbursements, and penalties on behalf  
8 of non-exempt employees employed by Defendant in California. Plaintiff counsel  
9 appointed as lead counsel. Case settled. Final Approval granted, no objections and  
10 funds fully distributed.

11 *ff. Vang v. Jazz Semiconductor, Inc.*, Orange County, Case no. 30-2011-  
12 00460278. Wage and Hour Class Action seeking past wages for overtime, meal  
13 and rest period violations, reimbursements, and penalties on behalf of non-exempt  
14 production workers employed by Defendant in California. Plaintiff counsel  
15 appointed as lead counsel. Case settled. Final Approval granted, no objections and  
16 funds fully distributed.

17  
18 I declare under penalty of perjury that the foregoing is true and correct.  
19 Executed on August 28, 2023, at Irvine, California.

20  
21 /s/ James R. Hawkins  
22 James R. Hawkins  
23  
24  
25  
26  
27  
28

# Exhibit 1

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement” or “Agreement”) is made as of August 28, 2023, by and between Rachel Shay (“Plaintiff”), on behalf of herself and the putative class (the “Class” or “Settlement Class” as defined below), and Apple Inc. and Apple Value Services, LLC (collectively, “Apple” or “Defendants”) in *Shay v. Apple Inc.*, Case No. 3:20-cv-01629-GPC-BLM (S.D. Cal.) (the “Action”). Each of the Plaintiff and Defendants are referred to individually as “Party” and collectively as the “Parties.”

### DEFINITIONS

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

- A. “Administrative and Notice Costs” means all fees, costs, and expenses incurred by the Settlement Administrator while carrying out its duties under this Agreement, including, without limitation: issuing Email, Mail, and Website Notice; reviewing and approving claims; and administering, calculating, and distributing the Settlement Amount to Settlement Class Members.
- B. “Apple Counsel” means Apple’s counsel of record in the Action.
- C. “Attorneys’ Fees and Costs” means the amount of attorneys’ fees and reimbursement of costs and expenses awarded to Class Counsel by the Court.
- D. “Class Counsel” means:
  - a. James R. Hawkins, Malte L. L. Farnaes, Christina M. Lucio, and Mitchell J. Murray of James Hawkins APLC, 9880 Research Drive, Suite 200, Irvine, CA 92618.
- E. “Class Payment” means a distribution from the Settlement Amount to each Settlement Class Member in an amount equal to the face value at the time of purchase of the Eligible Gift Card(s) purchased by that Settlement Class member and subject to a redemption attempt prior to activation and redeemed by an unknown third party prior to attempted redemption by the Settlement Class Member or intended user. To the extent the total value of payments to eligible Settlement Class members would exceed the Settlement Amount, the payments of all eligible Settlement Class members shall be reduced *pro rata*.
- F. “Court” means the United States District Court of the Southern District of California, where the Action is pending.
- G. “Effective Date” means five days after which all of the following events and conditions of this Agreement have occurred or have been met: (a) the Court has entered a Final Approval Order approving the Settlement, and (b) the Court has entered Final Judgment that has become final in that the time for appeal or writ of certiorari has expired or, if an appeal or writ of certiorari is taken and the Settlement is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the Final Judgment is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, the Final Judgment shall not become

final. In the event of an appeal or other effort to obtain review, the Parties may agree jointly in writing to deem the Effective Date to have occurred; however, there is no obligation to agree to advance the Effective Date.

- H. “Eligible Gift Card” means Apple App Store & iTunes gift cards.
- I. “Email Notice” means the notice of the Settlement to be emailed to all Settlement Class Members (if an email address is available) in connection with the Settlement, in the form attached hereto as Exhibit 1, and as set forth below.
- J. “Final Approval Hearing” means the Court hearing where the Parties will request the Final Approval Order be entered approving this Agreement, and where Class Counsel will request that the Court enter Final Judgment.
- K. “Final Approval Order” means the final order to be entered by the Court, following the Final Approval Hearing, approving the Settlement. A proposed Final Approval Order is attached hereto as Exhibit 2.
- L. “Final Judgment” means a document labeled by the Court as such and that has the effect of a judgment under Fed. R. Civ. P. 54. The Final Judgment will set the amounts of the Attorneys’ Fees and Costs award and Service Award and allow for the distribution of Class Payment. A proposed Final Judgment is attached hereto as Exhibit 3.
- M. “Integrators” means integrators of Eligible Gift Cards.
- N. “Mail Notice” means the notice of the Settlement to be mailed to all Settlement Class Members (if Defendants have a physical address, but not email address, on record) in connection with the Settlement, in the form attached hereto as Exhibit 4, and as set forth below.
- O. “Notice Date” means the date set forth in the Preliminary Approval Order for commencing the transmission of the Email Notice, the mailing of the Mail Notice, the publication of the Publication Notice, and the publication of the Website Notice.
- P. “Objection” means the written notice that a Settlement Class Member may submit to the Court objecting to the Settlement.
- Q. “Objection and Exclusion Deadline” means the date by which a Settlement Class Member must submit an Objection, if any, to the Court or an Opt-Out Form to the Settlement Administrator. The Objection and Exclusion Deadline shall be 65 days after the Notice Date.
- R. “Objector” means a person or entity who is a Settlement Class Member who submits an Objection.
- S. “Opt-Out Form” means a Settlement Class Member’s request to be excluded from the Settlement by submitting a written request to be excluded to the Settlement Administrator containing their name, address, and email address.

- T. “Preliminary Approval Order” means the Court’s order preliminarily approving the Settlement and providing for Email Notice, Mail Notice, Publication Notice, and Website Notice.
- U. “Publication Notice” means the notice of the Settlement to be published in print publications and in a digital media campaign in connection with the Settlement, in the form attached hereto as Exhibit 5, and as set forth below.
- V. “Released Claims” means any and all damages, suits, claims, debts, demands, assessments, obligations, liabilities, attorneys’ fees, costs, expenses, rights of action and causes of action, of any kind or character whatsoever, whether based on contract (express, implied, or otherwise), statute, or any other theory of recovery, and whether for compensatory or punitive damages, and whether known or unknown, suspected or unsuspected, occurring before the effective date of the settlement arising out of or related to the subject matter of the Action or the facts underlying the Action.
- W. “Released Parties” means Defendants, Integrators, and Retailers, and each of Defendants’, Integrators’, and Retailers’ present and former principals, agents, servants, partners, joint venturers, directors, officers, managers, employees, contractors, predecessors, successors, assigns, administrators, representatives, parents, shareholders, subsidiaries, affiliates, insurers, underwriters, accountants, and lawyers.
- X. “Releasing Parties” means Plaintiff and all Settlement Class Members, including any and all of their respective principals, agents, servants, partners, joint venturers, employees, contractors, predecessors, assigns, heirs, spouses, beneficiaries, executors, administrators, representatives, insurers, underwriters, accountants, and lawyers, provided that any Settlement Class Member who timely and properly excludes themselves under Section 5 below shall not be included herein.
- Y. “Retailers” means retailers of Eligible Gift Cards, including, without limitation, third-party retailers such as Walmart, Target, Walgreens, etc.
- Z. “Second Amended Class Action Complaint” means the Second Amended Class Action Complaint filed in this Action (ECF No. 18 in the Action).
- AA. “Settlement Amount” means the amount not to exceed one million and eight hundred thousand dollars (\$1,800,000.00) from which the Class Payment will be made.
- BB. “Service Award” means the award sought by Plaintiff in consideration for her service during the course of the Action and approved by the Court. Any such Service Award is separate and apart from any Class Payment the Plaintiff may receive as a Settlement Class Member.
- CC. “Settlement Administrator” means CPT Group, Inc. (“CPT”), an independent settlement administrator, or any such administrator agreed by the Parties and approved by the Court to provide notice and administer the settlement claims in this Action.
- DD. “Settlement Website” means a publicly accessible website created and maintained by the



Settlement Administrator for the purpose of providing the Settlement Class with notice of and information about the proposed Settlement, as well as the option of submitting a claim within a specified time period to the Settlement Administrator to receive the Class Payment by physical check, electronic check, or Automatic Clearing House (“ACH,” a/k/a direct deposit) transfer.

- EE. “Settlement Class” means an individual who is a member of the Nationwide Class as defined in subparagraph EE(a) or the California Subclass defined in subparagraph DD(b), and who is not subject to the exclusions set forth in subparagraph EE(c):
- a. “Nationwide Class” shall mean all consumers who purchased an Eligible Gift Card in the United States from March 2018 to July 2020, whose Eligible Gift Card was subject to a redemption attempt prior to activation, whose gift card was redeemed by an unknown third party prior to attempted redemption by the consumer or intended user, and who did not receive a refund or replacement gift card from Defendants or any third party; and
  - b. “California Subclass” shall mean all consumers who purchased an Eligible Gift Card in the State of California from May 2017 to February 2018, whose gift card was subject to a redemption attempt prior to activation, whose gift card was redeemed by an unknown third party prior to attempted redemption by the consumer or intended user, and who did not receive a refund or replacement gift card from Defendants or any third party.
  - c. Excluded from the Class are Defendants, their parents, subsidiaries, affiliates, officers, directors, and employees; any entity in which Defendants have a controlling interest; and all judges assigned to hear any aspect of this litigation, as well as their staff and immediate family members.
- FF. “Settlement Class Members” means any person who meets the criteria set forth in the definition of “Settlement Class” as defined above.
- GG. “Unclaimed Settlement Amount” means any amount of the Settlement Amount remaining after all Class Payments to eligible Settlement Class Members are made.
- HH. “Website Notice” means the notice of the Settlement to be displayed to all Settlement Class Members in connection with the Settlement on the Settlement Website maintained by the Settlement Administrator, in the form attached hereto as Exhibit 6, and as set forth in Section 6.2 below.

## RECITALS

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

WHEREAS, on August 21, 2020, Plaintiff Rachel Shay filed her Initial Complaint in this Action, individually and on behalf of a putative nationwide class, asserting claims relating to Apple’s purported failure to take adequate measures to prevent “point-of-sale” gift card fraud,

warn consumers of the risk of such fraud, and its purported refusal to refund consumers in connection with such fraud.

WHEREAS, on January 28, 2021, as permitted by the Court, Plaintiff filed her Second Amended Complaint.

WHEREAS, on February 18, 2021, Apple filed a partial motion to dismiss Plaintiff's claims under the Unfair Competition Law, Plaintiff's claim for equitable relief under the Consumer Legal Remedies Act, and the breach of implied warranty of merchantability claim with prejudice.

WHEREAS, on May 3, 2021, the Court granted Apple's partial motion to dismiss, and Apple subsequently answered the Second Amended Complaint on May 24, 2021.

WHEREAS, on September 9, 2022, Plaintiff moved to certify a nationwide class and a California subclass.

WHEREAS, the Parties have investigated the facts and have analyzed the relevant legal issues regarding the claims and defenses asserted in this Action, including through significant motion practice and extensive fact and expert discovery. The Parties also conducted a mediation before the Hon. Irma E. Gonzalez (Ret.) on April 12, 2023.

WHEREAS, Class Counsel and Plaintiff believe that the claims asserted in the Action have merit and have examined and considered the benefits to be obtained under this Settlement, the risks associated with the continued prosecution of this complex and time-consuming litigation, and the likelihood of ultimate success on the merits, and have concluded that the Settlement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.

WHEREAS, Apple has at all times denied and continues to deny any and all alleged wrongdoing or liability. Specifically, Apple denies that it has failed to take adequate measures to ensure the security of Apple App Store & iTunes Gift Cards and that it has made any misrepresentations, omissions, or other allegedly unlawful conduct with respect to the security or quality of Apple App Store & iTunes Gift Cards. Even so, taking into account the uncertainty and risks inherent in litigating this case through trial, Apple has concluded that continuing to defend this Action would be burdensome and expensive.

WHEREAS, the Parties desire to settle the Action in its entirety as to the Plaintiff, the Settlement Class, Apple, and the other Released Parties with respect to all claims arising out of the facts underlying this Action. The Parties intend this Agreement to bind Plaintiff (both as the class representative and individually), Apple, Class Counsel, and all Settlement Class Members.

In light of the foregoing, for good and valuable consideration, the Parties, and each of them, hereby warrant, represent, acknowledge, covenant, and agree, subject to approval by the Court, as follows:

**1. CONFIDENTIALITY**

1.1 The Parties must comply with all portions of the Stipulated Protective Order (ECF No. 37

in the Action).

1.2 The Parties, Class Counsel, and Apple Counsel agree that until publication of this Settlement Agreement by submission to the Court, the terms of this Settlement Agreement and all associated documents and communications, including the negotiations leading to the execution of the Settlement Agreement and all submissions and arguments related to the mediation proceedings, shall not be disclosed by the Parties, Class Counsel, and Apple Counsel other than as necessary to finalize the Settlement and Notice. Upon publication of the Settlement Agreement by submission to the Court, the nondisclosure obligations set forth in this paragraph will no longer apply to the as-filed Settlement Agreement or the terms thereof, but such obligations will continue to apply to all other materials and information covered by this paragraph, including but not limited to any negotiations leading to the execution of this Settlement Agreement.

1.3 Other than to a court in any case filing, the Parties, Class Counsel, and Apple Counsel agree not to initiate publicity regarding the settlement or submit information about the settlement to Jury Verdicts. Notwithstanding the foregoing, Class Counsel may list the Action on their law firm websites and publicity materials as a representative case along with a neutral and factual description of the subject matter of the Action, including the amount of the settlement. Any comments made by Class Counsel concerning the settlement or the Action, including in response to inquiries from the press, shall be in neutral terms to communicate that the Action has been resolved between the Parties and shall not contain inflammatory language about the Parties or their perceived conduct in the Action.

## **2. CONSIDERATION FOR SETTLEMENT AND CLASS PAYMENTS**

2.1 Class Payment to Settlement Class Members. Settlement Class Members shall be compensated in an amount equal to the face value at the time of purchase of the Eligible Gift Card(s) purchased by that Settlement Class member and subject to a redemption attempt prior to activation and redeemed by an unknown third party prior to attempted redemption by the Settlement Class Member or intended user. To the extent the total value of payments to eligible Settlement Class members would exceed the Settlement Amount, the payments of all eligible Settlement Class members shall be reduced *pro rata*.

2.2 Payment Method. Within 60 days of the issuance of the Preliminary Approval Order, the Settlement Amount shall be paid to the Settlement Administrator, who will distribute the Class Payment to Settlement Class Members in accordance with Section 6 below. Such distribution will occur within 90 days of the Effective Date, subject to such supervision and direction of the Court and the Parties as may be necessary or as circumstances may require. In the Email Notice, Mail Notice, Publication Notice, and Website Notice, Settlement Class Members will be notified of the Settlement and each will be given the option to submit a claim to the Settlement Administrator to receive the Class Payment by physical check, electronic check, or ACH transfer.

2.3 Application of Unclaimed Settlement Amount. If after all Class Payments to eligible Settlement Class Members are made, the value of the Settlement Amount exceeds the value of all such Class Payments, that money shall be distributed in the order of priority as follows:

- a) The Unclaimed Settlement Amount shall be used to pay the Administrative and Notice Costs;
- b) If there are funds remaining in the Unclaimed Settlement Amount after paying the Administrative and Notice Costs (as contemplated by Section 2.3(a) above), such funds shall be used to pay the Attorneys' Fees and Costs, as set forth in Section 7 below; and
- c) If there are funds remaining in the Unclaimed Settlement Amount after paying the Administrative and Notice Costs (as contemplated by Section 2.3(a) above) and the Attorneys' Fees and Costs (as contemplated by Section 2.3(b) above), Class Counsel and Apple Counsel shall meet and confer to discuss a proposal to present to the Court regarding a *cy pres* distribution.
- d) In no event shall the Unclaimed Settlement Amount be returned to Apple.

### **3. OBTAINING COURT APPROVAL OF THE AGREEMENT**

3.1 Settlement Class. Solely for the purposes of settlement and the proceedings contemplated herein, the Parties stipulate and agree that Plaintiffs will seek certification of the Settlement Class, which Apple will not oppose. The certification of the Settlement Class shall be binding only with respect to the Settlement set forth in the Settlement Agreement.

3.2 Class Counsel shall draft and file the motion requesting issuance of the Preliminary Approval Order and shall provide that draft to Apple Counsel in the Action no later than 7 days before filing. The motion shall be written in a neutral manner that does not contain inflammatory language about the Parties, the allegations or defenses asserted in the Action, or the Parties' perceived conduct in the Action. Apple may provide feedback concerning the motion, and Class Counsel will meet and confer with Apple in good faith regarding Apple's feedback. Additionally, Apple may file supplemental briefing in support of Plaintiff's preliminary approval motion.

3.3 Upon filing of the motion requesting issuance of the Preliminary Approval Order, Apple shall provide timely notice of such motion to the appropriate official as required by the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.*

3.4 Final Approval and Final Judgment. In accordance with the schedule set forth in the Preliminary Approval Order, Class Counsel shall draft and file the motion requesting final approval of the Settlement, the Proposed Final Approval Order, and the Proposed Final Judgment and shall provide those drafts to Apple Counsel at least 10 days before filing such motion with the Court. Apple may provide feedback concerning the motion, and Class Counsel will meet and confer with Apple in good faith regarding Apple's feedback.

3.5 In the event that the Agreement is not approved, or in the event that its approval is conditioned on any modifications (including modifications to the proposed form and method of notice) that are not acceptable to Apple and/or Plaintiff, then (a) this Agreement shall be null and void and of no force and effect and (b) any release shall be of no force or effect. In such event, the Action will revert to the status that existed before the Agreement's execution date, the Parties

shall each be returned to their respective procedural postures so that the Parties may take such litigation steps that they otherwise would have been able to take absent the pendency of this Settlement, and neither the Agreement nor any facts concerning its negotiation, discussion, terms, or documentation shall be admissible in evidence for any purpose in this Action or in any other litigation.

3.6 In the event that the Court does not grant final approval of the Agreement or the judgment contemplated herein does not become final for any reason, the Settlement Amount (including accrued interest) shall be returned to Apple within 15 days, less any Administrative and Notice Costs already incurred by the Settlement Administrator.

#### 4. OBJECTIONS

4.1 Objections. Any Settlement Class Member who has not submitted a timely written Opt-Out Form and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, the Attorneys' Fees and Costs award, or the Service Award must comply with the below requirements.

4.2 Content of Objections. All Objections and supporting papers must be in writing and must:

- (1) Clearly identify the case name and number, *Shay v. Apple Inc.*, Case No. 3:20-cv-01629-GPC-BLM;
- (2) Include the full name, address, telephone number, and email address of the person objecting;
- (3) Include the full name, address, telephone number, and email address of the Objector's counsel (if the Objector is represented by counsel); and
- (4) State the grounds for the Objection.

4.3 Submission of Objections. Any Objections from Settlement Class Members regarding the proposed Agreement must be submitted in writing to the Court. If a Settlement Class Member does not submit a timely written Objection, the Settlement Class Member will not be able to participate in the Final Approval Hearing.

4.4 Deadline for Objections. Objections must be submitted by the Objection and Exclusion Deadline, which is 65 days after the Notice Date.

- 4.4.1 If submitted through ECF, Objections must be submitted no later than 11:59 p.m. PST of the date of the Objection and Exclusion Deadline.
- 4.4.2 If submitted by U.S. mail or other mail services, Objections must be postmarked by the Objection and Exclusion Deadline. The date of the postmark on the envelope containing the written statement objecting to the Settlement shall be the exclusive

means used to determine whether an Objection has been timely submitted. In the event a postmark is illegible or unavailable, the date of mailing shall be deemed to be three days prior to the date that the Court scans the Objection into the electronic case docket.

4.5 Settlement Class Members who fail to submit timely written Objections in the manner specified above shall be deemed to have waived any Objections and shall be foreclosed from making any Objection to the Agreement and the proposed Settlement by appearing at the Final Approval Hearing, or through appeal, collateral attack, or otherwise.

4.6 Attendance at Final Approval Hearing. Any Objector who timely submits an Objection has the option to appear and request to be heard at the Final Approval Hearing, either in person or through the Objector's counsel. Any Objector wishing to appear and be heard at the Final Approval Hearing must include a request to appear and provide notice of his or her intention to appear in the body of the Objector's Objection.

4.7 Objectors' Attorneys' Fees and Costs. If an Objector makes an Objection through an attorney, the Objector shall be solely responsible for the Objector's attorneys' fees and costs unless the Court orders otherwise. In no event shall Apple be responsible for more than the Settlement Amount, Attorneys' Fees and Costs, and Administrative and Notice Costs.

4.8 No Solicitation of Settlement Objections. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members or other counsel purporting to represent Settlement Class Members to submit written Objections to the Settlement or encourage an appeal from the Court's Final Approval Order.

## 5. EXCLUSIONS

5.1 Opt-Out Forms. The Email, Mail, and Website Notice shall advise all Settlement Class Members of their right to exclude themselves from the Settlement. This Agreement will not bind Settlement Class Members who exclude themselves from the Settlement.

5.2 How to Request Exclusion. To request to be excluded from the Settlement, Settlement Class Members must timely submit a completed Opt-Out Form. The Opt-Out Form must be sent by postal mail to the Settlement Administrator.

5.3 Content of Opt-Out Form. All Opt-Out Forms and supporting papers must be in writing and must:

- (1) Clearly identify the case name and number, *Shay v. Apple Inc.*, Case No. 3:20-cv-01629-GPC-BLM; and
- (2) Include the full name, address, telephone number, and email address of the person requesting exclusion.



5.4 Deadline to Request Exclusion. To be excluded from the Settlement, the completed Opt-Out Form must be received by the Objection and Exclusion Deadline, which is 65 days after the Notice Date.

5.5 Effect of Exclusion. Any person or entity who falls within the definition of the Settlement Class and who validly and timely requests exclusion from the Settlement shall not be a Settlement Class Member; shall not be bound by the Agreement; shall not be eligible to apply for any benefit under the terms of the Agreement; and shall not be entitled to submit an Objection to the Settlement. In the event that a Settlement Class Member timely submits both an Objection and an Opt-Out Form, the Opt-Out Form shall prevail.

5.6 Exclusion List. No later than 14 days after the Objection and Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Apple Counsel with the number and identity of the persons who have timely and validly excluded themselves from the Settlement.

## **6. SETTLEMENT ADMINISTRATION**

6.1 Apple will provide to the Settlement Administrator the names, email addresses, and physical addresses for all Settlement Class Members with respect to whom it has records. The Settlement Administrator shall administer the Email, Mail, and Website Notice described herein and pursuant to the Preliminary Approval Order. The Settlement Administrator shall keep the Settlement Class Members' identities and contact information strictly confidential and shall only use them for purposes of administering this Settlement.

6.2 The Parties agree upon and will request the Court's approval of the following forms and methods of notice to the Settlement Class:

6.2.1 The Settlement Administrator shall establish and maintain the Settlement Website with a mutually acceptable domain name. The Settlement Website shall be optimized for viewing on both mobile devices and personal computers. The Settlement Website will include case-related documents, including, but not limited to, the operative complaint and answer to that complaint, this Agreement, the Website Notice, the Preliminary Approval Order, Plaintiffs' Motion for Attorneys' Fees and Costs, a set of frequently asked questions, information on how to submit an Objection or request exclusion, and contact information for Class Counsel, Apple Counsel, and the Settlement Administrator. The Settlement Website shall remain accessible until thirty (30) calendar days after the Settlement Administrator has completed its obligations under this Settlement Agreement.

6.2.2 The Settlement Administrator shall also establish a toll-free telephone number (the "Toll-Free Number") where members of the Settlement Class can receive instructions for accessing Settlement information and case documents.

6.2.3 The Settlement Administrator shall email each Settlement Class Member for whom Apple has an email address a copy of the Email Notice substantially in the



form attached hereto as Exhibit 1. The Email Notice shall inform Settlement Class Members of the fact of the Settlement and that Settlement information is available on the Settlement Website.

- 6.2.4 The Settlement Administrator shall mail to each Settlement Class Member for whom Apple has a physical address, but not an email address, a copy of the Mail Notice substantially in the form attached hereto as Exhibit 4. The Mail Notice shall inform Settlement Class Members of the fact of the Settlement and that Settlement information is available on the Settlement Website.
- 6.2.5 The Settlement Administrator shall publish in print publications and in a digital media campaign, as set forth in the Declaration of Julie Green of CPT, attached as Exhibit 7, a copy of the Publication Notice substantially in the form attached hereto as Exhibit 5. The Parties shall approve the content, design, layout, placement, medium, timing, duration, targeting parameters, and target audience for all publications, posts, and advertisements under this Section, and approval shall not be withheld without good cause. The Publication Notice shall inform Settlement Class Members of the fact of the Settlement and that Settlement information is available on the Settlement Website.
- 6.2.6 Website Notice will also be available to all Settlement Class Members on the Settlement Website.
- 6.2.7 The Settlement Website shall explain how Class Payment will be distributed. Settlement Class Members will be given the option of submitting a claim within a specified time period to the Settlement Administrator to receive the Class Payment by physical check, electronic check, or ACH transfer.

### 6.3 Claims Package

- 6.3.1 In order to receive Class Payment, the Settlement Class Members who only receive Publication Notice must submit the following items through the Settlement Website:
  - a) Contact Information: The Settlement Class Member's name and contact information, including a physical address, working telephone number, and email address;
  - b) Proof of Purchase: Proof of purchase (e.g., a sales receipt) of the Eligible Gift Card(s) which are the subject of the Settlement Class Member's claim, that includes: (i) the purchase date; (ii) the original purchase price; and (iii) the gift card number(s) associated with any alleged Eligible Gift Card(s) (a "Proof of Purchase");
  - c) Attestation: An attestation by the Settlement Class Member or other intended user of the Eligible Gift Card that they: (1) were unable to redeem the Eligible Gift Card because it had already been redeemed by an unknown third party that

was not the Eligible Gift Card's intended recipient or beneficiary; and (2) have not obtained a refund, cash-out, or other form of compensation from Defendants or any third party in connection with their purchase of Eligible Gift Card(s); and

- d) Payment Information: Any necessary information to complete payment via the Settlement Class Member's payment method of choice (e.g., physical check, e-check, or ACH transfer).

6.3.2 In order to receive Class Payment, the Settlement Class Members who receive Email Notice or Mail Notice, in addition to Publication Notice, must submit the following items through the Settlement Website:

- a) Contact Information: The Settlement Class Member's name and contact information, including a physical address, working telephone number, and email address;
- b) Proof of Purchase: Either (a) Proof of Purchase; or (b) an attestation that the Settlement Class Member (i) was the individual who purchased the Eligible Gift Card(s), and (ii) that the Settlement Class Member previously provided Proof of Purchase to Apple when they reported their scam incident to Apple ("Proof of Purchase Attestation"). Claims containing a Proof of Purchase Attestation shall be deemed to have satisfied the Proof of Purchase requirement set forth in this subsection unless Apple, at its sole discretion, undertakes efforts to confirm whether the Proof of Purchase exists in its records. If Apple elects to confirm whether the Proof of Purchase exists in its records and is unable to locate that Proof of Purchase after a reasonably diligent search using the information provided by the Settlement Class Member, that Settlement Class Member will receive notice that they must then submit Proof of Purchase through the Settlement Website;
- c) Attestation: An attestation by the Settlement Class Member or other intended user of the Eligible Gift Card that they: (1) were unable to redeem the Eligible Gift Card because it had already been redeemed by an unknown third party that was not the Eligible Gift Card's intended recipient or beneficiary; and (2) have not obtained a refund, cash-out, or other form of compensation from Defendants or any third party in connection with their purchase of Eligible Gift Card(s); and
- d) Payment Information: Any necessary information to complete payment via the Settlement Class Member's payment method of choice (e.g., physical check, e-check, or ACH transfer).

Settlement Class Members shall only be eligible to receive compensation under the settlement if Apple's records show that the Eligible Gift Card(s) that are the subject of the Settlement Class Member's claim was subject to a redemption attempt prior to activation.

6.4 The Settlement Administrator will review all claims to determine their validity and eligibility under this Section. The Settlement Administrator will reject any claim that does not

materially comply with the instructions in Section 6.3 above; is not submitted by a Settlement Class Member; or is duplicative or fraudulent. In order to evaluate whether a claim was submitted by a Settlement Class Member, the Settlement Administrator will verify (a) that the potential Settlement Class Member's proof of purchase is sufficient or that Apple already possesses records of the potential Settlement Class Member submitting sufficient proof of purchase; and (b) that Apple has records that the Eligible Gift Card(s) that are the subject of the Settlement Class Member's claim was subject to a redemption attempt prior to activation.

6.5 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 (the "Administrative and Notice Costs") not expected to exceed two hundred and twenty thousand dollars (\$220,000.00). This amount shall cover all costs and expenses related to the settlement administration functions to be performed by the Settlement Administrator, including providing Email Notice, Mail Notice, Publication Notice, and Website Notice, and performing the other administration processes described in this Agreement. In the event that unanticipated costs and expenses arise in connection with the notice and/or administration process, such that they exceed the capped amount of \$220,000.00, the Settlement Administrator shall promptly raise the matter with Apple Counsel and Class Counsel as soon as practicable after becoming aware of the unanticipated costs and expenses. Defendants will pay the Administrative and Notice Costs in addition to the Settlement Amount, except as contemplated in Section 2.3 above.

6.6 The Email Notice, Mail Notice, Publication Notice, and Website Notice shall provide information on the procedure by which Settlement Class Members may request exclusion from the Settlement Class or submit an Objection to the Settlement.

6.7 No later than 14 days after the Objection and Exclusion Deadline, the Settlement Administrator shall give written notice to Apple and Class Counsel of the total number and identity of Settlement Class Members who have elected to exclude themselves from the Settlement Class. If the number of Settlement Class Members who request exclusion from the Settlement Class exceeds more than 1,000 Settlement Class Members, Apple, in its sole discretion, may elect to reject this Settlement, in which case the entire Agreement shall be null and void. Alternatively, Apple may elect to waive this condition and proceed with the Settlement. Any such waiver by Apple must be unambiguous and in writing and provided to Class Counsel with 14 days after the Settlement Administrator provides Apple and Class Counsel the total number and identity of Settlement Class Members who have elected to exclude themselves from the Settlement Class.

## **7. ATTORNEYS' FEES AND COSTS AND SERVICE AWARD**

7.1 Class Counsel will apply to the Court for up to 33 1/3% of the Settlement Amount in attorneys' fees and for reasonable costs and expenses (the "Fee Application"). Class Counsel's Motion for Attorneys' Fees and Costs shall be filed at least 35 days before the Objection and Exclusion Deadline and shall be posted on the Settlement Website within 3 days of it being filed. Defendants agree to pay and will not object to Class Counsel's application for attorneys' fees for up to 25% of the Settlement Amount, subject to Court approval, but reserve the right to object to or oppose any attorneys' fees, costs, or expenses sought in excess of that amount. Defendants will

pay the Attorneys' Fees and Costs in addition to the Settlement Amount, except as contemplated in Section 2.3 above. The Attorneys' Fees and Costs shall be wired to an account specified by Class Counsel no later than 90 days after the Effective Date. Except as otherwise provided herein, Class Counsel and Defendants' counsel shall bear their own respective fees, costs, and expenses.

7.2 Class Counsel will also apply to the Court for a Service Award for the Plaintiff, which the Settlement Administrator will pay from the Settlement Amount. The Service Award is not a measure of damages whatsoever, but is solely an award for the Plaintiff's service. Apple, while recognizing that the Settlement may entitle Class Counsel to seek a reasonable Service Award for Plaintiff, reserves the right to object to the amount of the Service Award. Class Counsel shall provide a Form W-9 for the Plaintiff receiving a Service Award, and for Class Counsel, within 15 days of the issuance of the Preliminary Approval Order. The Settlement Administrator shall issue an IRS Form Misc.-1099 for the Service Award payment to Plaintiff. The Settlement Administrator shall disburse the Service Award to Plaintiff no later than 90 days after the Effective Date.

7.3 Apple shall not be liable for any additional fees or expenses of Plaintiff or any Settlement Class Member in connection with the Action. Class Counsel agree that they will not seek any additional fees or costs from Apple in connection with the Action or the Settlement of the Action beyond the approved Attorneys' Fees and Costs award. Apple expressly agrees that it will not seek to recover its Court costs, attorneys' fees, or expenses once the Court enters a Final Approval Order and Final Judgment.

## **8. RELEASES AND WARRANTIES**

8.1 Except as otherwise set forth herein or as to obligations created hereby, as of the Effective Date and Apple's funding of the Settlement Amount, each Settlement Class Member who does not validly and timely request exclusion from the Settlement, on their own behalf and on behalf of their present and former principals, agents, servants, partners, joint venturers, employees, contractors, predecessors, assigns, heirs, spouses, beneficiaries, executors, administrators, representatives, insurers, underwriters, accountants, and lawyers, separately and collectively, releases and forever discharge and covenants not to sue, and is permanently enjoined from suing Defendants, Integrators of Eligible Gift Cards and Retailers of Eligible Gift Cards, including, without limitation, third-party retailers such as Walmart, Target, Walgreens, etc., and each of Defendants', Integrators', and Retailers' present and former principals, agents, servants, partners, joint venturers, directors, officers, managers, employees, contractors, predecessors, successors, assigns, administrators, representatives, parents, shareholders, subsidiaries, affiliates, insurers, underwriters, accountants, and lawyers, separately and collectively, from any and all damages, suits, claims, debts, demands, assessments, obligations, liabilities, attorneys' fees, costs, expenses, rights of action and causes of action, of any kind or character whatsoever, whether based on contract (express, implied, or otherwise), statute, or any other theory of recovery, and whether for compensatory or punitive damages, and whether known or unknown, suspected or unsuspected, occurring before the Effective Date of the settlement arising out of or related to the subject matter of this Action or the facts underlying this Action. This release will include claims relating to the Released Matters of which the Releasing Parties are presently unaware or which the Releasing Parties do not presently suspect to exist which, if known to the Releasing Parties, would materially

affect the Releasing Parties' release of the Released Parties.

8.2 The Releasing Parties expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code § 1542, or any other similar provision under federal or state law. The Releasing Parties understand that California Civil Code § 1542 states:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

The Releasing Parties expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable, or equivalent to Section 1542, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, the Releasing Parties hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe exist with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims known or unknown, suspected or unsuspected, that they have against the Released Parties. In furtherance of such intention, the release herein given by the Releasing Parties to the Released Parties shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional different claims or facts. Each Releasing Party and Released Party expressly acknowledges that he/she/it has been advised by his/her/its attorney of the contents and effect of Section 1542, and with knowledge, each of the Releasing Parties and Released Parties hereby expressly waives whatever benefits he/she/it may have had pursuant to such section. Plaintiff and Settlement Class Members who do not validly and timely request exclusion from the Settlement shall be deemed by operation of the Final Approval Order and Final Judgment to have acknowledged that the foregoing waiver was separately bargained for and a material element of the Settlement of which this release is a part.

8.3 The amount of the Class Payment pursuant to this Agreement shall be deemed final and conclusive against all Settlement Class Members who shall be bound by all of the terms of this Agreement, including the terms of the Final Judgment to be entered in the Action and the releases provided for herein.

8.4 No person shall have any claim of any kind against the Parties, their counsel, or the Settlement Administrator with respect to the matters set forth in Section 6 hereof, or based on determinations or distributions made substantially in accordance with this Agreement, the Final Approval Order, the Final Judgment, or further order(s) of the Court.



## **9. APPLE'S DENIAL OF LIABILITY; AGREEMENT AS DEFENSE IN FUTURE PROCEEDINGS**

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

9.2 Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Apple of the truth of any of the allegations in this Action, or of any liability, fault, or wrongdoing of any kind, nor as an admission or concession by Plaintiff of any lack of merit of his claims against Apple.

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

9.4 To the extent permitted by law, the Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted for the Released Claims.

## **10. MISCELLANEOUS**

10.1 Extensions of Time. All time periods and dates described in this Agreement are subject to the Court's approval. Unless otherwise ordered by the Court, the Parties through their counsel may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement. These time periods and dates may be changed by the Court or the Parties' counsel's written consent without notice to the Settlement Class Members.

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

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

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

10.5 Survival of Warranties and Representations. The warranties and representations of this Agreement are deemed to survive the date of execution hereof.

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

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

10.8 Cooperation of Parties. The Parties to this Agreement and their counsel agree to prepare and execute all documents, to seek Court approvals, to defend Court approvals, and to do all things reasonably necessary to complete the Settlement.

10.9 Execution Voluntary. This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand the provisions of this Agreement and have relied on the advice and representation of legal counsel of their own choosing. Each of the Parties has cooperated in the drafting and preparation of this Agreement and has been advised by counsel regarding the terms, effects, and consequences of this Agreement. Accordingly, in any construction or interpretation to be made of this Agreement, this Agreement shall not be construed as having been drafted solely by any one or more of the Parties or their counsel. The Agreement has been, and must be construed to have been, drafted by all Parties and their counsel, so that any rule that construes ambiguities against the drafter will have no force or effect.

10.10 Notices.

10.10.1 All Notices to Class Counsel provided for herein shall be sent by email and a hard copy sent by overnight mail to: Class Counsel as identified in Definition D.

10.10.2 All Notices to Apple provided for herein shall be sent by email and a hard copy sent by overnight mail to:

- Apple Inc., 1 Apple Park Way, MS:60-1NYJ, Cupertino, California 95014; Attn: Chief Litigation Counsel
- Apple Value Services, LLC, 1 Apple Park Way, MS: 37-2AVS, Cupertino, California 95014; Attn: Chief Legal Officer
- David R. Singh, Weil, Gotshal & Manges LLP, 201 Redwood Shores Parkway, Redwood Shores, CA 94065, david.singh@weil.com.

10.10.3 The notice recipients and addresses designated above may be changed by written notice pursuant to this Section.



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

10.12 Severability. If any provision of this Settlement Agreement is declared by the Court to be invalid, void, or unenforceable, the remaining provisions of this Settlement Agreement will continue in full force and effect, unless the provision declared to be invalid, void, or unenforceable is material, at which point the Parties shall attempt to renegotiate the Settlement Agreement or, if that proves unavailing, either Party can terminate the Settlement Agreement without prejudice to any Party.


10.13 Any and all disputes arising out of or related to the Settlement or this Agreement must be brought by the Parties and/or each member of the Settlement Class exclusively in this Court. The Parties and each member of the Settlement Class hereby irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or related to the Settlement or this Agreement.

*[Signatures on next page]*

The Parties have agreed to the terms of this Agreement and have signed below.

Dated: August 28, 2023

**RACHEL SHAY**



Rachael Shay (Aug 28, 2023 15:09 PDT)

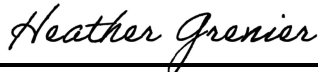
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RACHEL SHAY

*Plaintiff*

Dated: August 28, 2023

**APPLE INC.**



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HEATHER GRENIER

Vice President of Commercial Litigation and LGS  
Operations

*Defendant Apple Inc.*

Dated: \_\_\_\_\_, 2023

**APPLE VALUE SERVICES, LLC**



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JOSUE N. DEL RIO NAVA

Vice President

*Defendant Apple Value Services, LLC*

# Exhibit 1

**If you purchased an App Store & iTunes Gift Card at any point between May 2017 and February 2018 in California, or March 2018 and July 2020 in the United States, and your App Store & iTunes gift card(s) were redeemed by an unknown third party before you or the intended recipient attempted to redeem the gift card, you should read this notice as it may impact your legal rights.**

*A court authorized this notice. This is not a solicitation.*

**You must file a Claims Package by [DATE] to receive cash benefits from this Settlement. To file a Claims Package, please visit the website, [www.\[URL\].com](http://www.[URL].com).**

**A Settlement has been reached with Apple Inc. and Apple Value Services, LLC (“Apple” or “Defendants”) in a class action lawsuit** alleging that Apple made certain misrepresentations and omissions regarding the value and security of App Store and iTunes gift cards. Apple denies that it made any misrepresentations or omissions regarding App Store and iTunes gift cards and denies all allegations of wrongdoing.

**You received this email because Apple’s records indicate you may be a “Class Member” and entitled to receive a payment called the “Class Payment.”** The Court has decided that everyone who fits the following descriptions is a Class Member, and is thus included in the Settlement:

- “Nationwide Class” shall mean all consumers who purchased an Eligible Gift Card in the United States from March 2018 to July 2020, whose Eligible Gift Card was subject to a redemption attempt prior to activation, whose gift card was redeemed by an unknown third party prior to attempted redemption by the consumer or intended user, and who did not receive a refund or replacement gift card from Defendants or any third party; and
- “California Subclass” shall mean all consumers who purchased an Eligible Gift Card in the State of California from May 2017 to February 2018, whose gift card was subject to a redemption attempt prior to activation, whose gift card was redeemed by an unknown third party prior to attempted redemption by the consumer or intended user, and who did not receive a refund or replacement gift card from Defendants or any third party.
- Excluded from the Class are Defendants, their parents, subsidiaries, affiliates, officers, directors, and employees; any entity in which Defendants have a controlling interest; and all judges assigned to hear any aspect of this litigation, as well as their staff and immediate family members.

#### **What are your options?**

- **Stay in the Class and File a Claim.** The Parties to the Lawsuit have settled for \$1.8 million. If you purchased an App Store & iTunes Gift Card between May 2017 and February 2018 in California, or March 2018 to July 2020 anywhere in the United States (including California), and the App Store & iTunes Gift Card(s) you purchased were redeemed by an unknown third party before you or the intended recipient of your App Store & iTunes Gift Card(s) attempted to redeem them, and you did not receive a refund or replacement gift card from Defendants or any third party, you are eligible to file a claim for the amount equal to the face value of the eligible App Store & iTunes Gift Card(s) you purchased at the time you purchased the card(s). Instructions for filing a claim can be found on the Settlement Website at [www.\[URL\].com](http://www.[URL].com) and in Section 6.3 of the Settlement Agreement, available on the Settlement Website. Your claims package must be received by [DATE].
- Please note that you will only qualify as a Class Member if the independent Settlement Administrator confirms that the App Store & iTunes Gift Card(s) that are the subject of your claim were subject to a redemption attempt prior to the card’s activation. Please also note that the Class Payments may be reduced depending on the number of valid claims. Final payment amounts will

be calculated and distributed based on the total number and value of valid claims submitted by Class Members.

- If you are a Class Member, you have the option of electing to receive a Class Payment by ACH transfer or by check when you file your claim form. If you decide to stay in the Class, you will give up the right to sue Apple in a separate lawsuit related to the subject matter of the claims in the Lawsuit. The Released Claims are described in more detail in Section 8 of the Settlement Agreement available at [www.\[URL\].com](#).
- **Ask to Be Excluded (Opt Out).** If you decide to opt out of this Settlement, you will keep the right to sue Apple in a separate lawsuit related to the subject matter of the claims this Settlement resolves, but you give up the right to get a Class Payment from this Settlement. This is the only option that allows you to sue, continue to sue, or be part of another lawsuit against Apple related to the subject matter of the claims in this Lawsuit. If you elect to opt out of this Settlement and the Settlement is approved, you will no longer be represented by Class Counsel and will be responsible for retaining legal representation at your expense should you choose to sue Apple in a separate lawsuit. Instructions for requesting to opt out of the Settlement can be found in Section 5 of the Settlement Agreement, available at [www.\[URL\].com](#). Your opt-out request must be received by **[DATE]**.
- **Object to the Settlement.** If you do not opt out of the Settlement, you may object to it by writing to the Court about why you don't like the Settlement. You may object to the Settlement, and if the Settlement is approved by the Court, you may still be able to receive a Class Payment. Instructions for objecting and attending the Final Approval Hearing where the Parties will request that the Final Approval Order be entered approving the Settlement can be found in Section 4 of the Settlement Agreement, available at [www.\[URL\].com](#). Your objection must be filed or postmarked on or before **[DATE]**.

More detailed information, including the Settlement Agreement, is available at [www.\[URL\].com](#) or by calling **[PHONE NUMBER]**.

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, you may (1) see the Settlement Agreement available at [www.\[URL\].com](#); (2) contact Class Counsel representing the Class Members (shown below); (3) access the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>; or (4) visit the office of the Clerk of Court for the United States District Court for the Southern District of California, 333 West Broadway, Suite 420, San Diego, CA 92101, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS NOTICE, THIS SETTLEMENT, OR THE CLAIMS PROCESS.**

James R. Hawkins  
Malte L. L. Farnaes  
Christina M. Lucio  
Mitchell J. Murray  
JAMES HAWKINS APLC  
9880 Research Drive, Suite 200  
Irvine, CA 92618  
(949) 387-7200

# Exhibit 2

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RACHAEL SHAY, individually and on behalf of all others similarly situated,

Plaintiff,

v.

APPLE INC., a Delaware corporation;  
APPLE VALUE SERVICES, LLC, a Virginia limited liability corporation;  
and DOES 1 through 10, inclusive,

Defendants.

Case No. 3:20-cv-1629-JO-BLM

Assigned to: Hon. Jinsook Ohta

**[PROPOSED] ORDER GRANTING  
FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND  
AWARD OF ATTORNEYS' FEES  
AND COSTS AND SERVICE  
AWARD**



1 This matter comes before the Court to determine whether to approve Plaintiff  
2 Rachael Shay’s (“Plaintiff”) settlement with Defendants Apple, Inc. and Apple  
3 Value Services, LLC (collectively, “Defendants” or “Apple”). The Court, having  
4 reviewed and considered the Plaintiff’s Motion for Final Approval of Class Action  
5 Settlement (ECF No. \_\_\_ ) and Motion for Award of Attorneys’ Fees and Costs and  
6 Class Representative Service Award (ECF No. \_\_\_ ), the Settlement Agreement and  
7 Release (“Settlement Agreement”), the pleadings and other papers on file in this  
8 action, and the statements of counsel and the parties, including at the Fairness  
9 Hearing the Court hereby **ORDERS** as follows:

10 1. The Court has jurisdiction over the subject matter of this litigation (the  
11 “Action”) and over the Parties to the Settlement, including Plaintiff, Defendants, and  
12 all members of the Settlement Class.

13 2. For purposes of this Order, except as otherwise set forth herein, the Court  
14 incorporates the definitions contained in the Settlement Agreement.

15 3. Plaintiff’s Motion for Final Approval of Class Action Settlement and Motion  
16 for Award of Attorneys’ Fees and Costs and Class Representative Service Award are  
17 **GRANTED**.

18 4. The Court finds that the Settlement Amount of \$1.8 million to the Settlement  
19 Class to be fair, adequate, and reasonable, appears to be the product of arm’s-length  
20 and informed negotiations, and treats all members of the class fairly in accordance  
21 with Rule 23 of the Federal Rules of Civil Procedure.

22 5. The Parties shall perform their obligations pursuant to the terms of the  
23 Settlement Agreement and the Order.

24 6. The following Settlement Class is certified under Federal Rule of Civil  
25 Procedure 23(c) for settlement purposes:

26 “Nationwide Class” shall mean all consumers who purchased an  
27 Eligible Gift Card in the United States from March 2018 to July  
28 2020, whose Eligible Gift Card was subject to a redemption attempt  
prior to activation, whose gift card was redeemed by an unknown

1 third party prior to attempted redemption by the consumer or intended  
2 user, and who did not receive a refund or replacement gift card from  
Defendants or any third party.

3 “California Subclass” shall mean all consumers who purchased an  
4 Eligible Gift Card in the State of California from May 2017 to  
5 February 2018, whose gift card was subject to a redemption attempt  
6 prior to activation, whose gift card was redeemed by an unknown  
7 third party prior to attempted redemption by the consumer or intended  
user, and who did not receive a refund or replacement gift card from  
Defendants or any third party.

8 The Settlement Class excludes Defendants, their parents, subsidiaries,  
9 affiliates, officers, directors, and employees; any entity in which Defendants have a  
10 controlling interest; and all judges assigned to hear any aspect of this litigation, as  
11 well as their staff and immediate family members.

12 7. Pursuant to Federal Rule of Civil Procedure 23(g), the Court previously  
13 appointed James Hawkins APLC as Class Counsel, and the named Plaintiff,  
14 Rachael Shay, as the Class Representative on behalf of the Certified Class.

15 8. The form, manner, and content of the Email, Mail, Publication, and  
16 Website Notice were the best notice practicable under the circumstances,  
17 satisfied due process, provided adequate information to the Certified Class of  
18 all matters relating to the Class Settlement, and fully satisfied the  
19 requirements of Federal Rules of Civil Procedure 23(c)(2) and (e)(1).

20 9. Defendants Apple, Inc. and Apple Value Services, LLC (“Defendants”  
21 or “Apple”) shall fund the Settlement Amount of \$1.8 million in accordance  
22 with the terms of the Settlement Agreement, the Order, and this Judgment.

23 10. Plaintiff Rachel Shay shall be paid a Class Representative Service  
24 Award of \$ \_\_\_\_\_ from the Settlement Amount in accordance with the  
25 terms of the Settlement Agreement, the Order, and this Judgment.

26 11. Class Counsel shall be paid \$ \_\_\_\_\_ in attorneys’ fees and  
27 \$ \_\_\_\_\_ in costs in accordance with the terms of the Settlement  
28 Agreement and the Order.

1 12. The Settlement Administrator, CPT Group, Inc., shall be paid  
2 \$ \_\_\_\_\_ in settlement administration costs in accordance with the  
3 terms of the Settlement Agreement and the Order.

4 13. The Settlement Administrator shall disburse the Settlement Amount in  
5 accordance with the terms of the Settlement Agreement, the Order, and this  
6 Judgment.

7 14. As of the Effective Date and Defendants' funding of the Settlement  
8 Amount, all Class Members who did not validly and timely request exclusion  
9 from the Settlement have released the Released Claims (as defined in the  
10 Settlement Agreement), against all of the Released Parties (as defined in the  
11 Settlement Agreement).

12 15. The Court retains jurisdiction over the Parties, including Class  
13 Members, for the purposes of construing, enforcing, and administering the  
14 Order and Judgment, as well as the Settlement Agreement itself.

15 16. The Court finds, pursuant to Rules 54(a) and (b) of the Federal Rules  
16 of Civil Procedure, that Final Judgment of Dismissal with prejudice as to the  
17 Defendants ("Judgment") should be entered forthwith and further finds that  
18 there is no just reason for delay in the entry of the Judgment, as Final  
19 Judgment, in accordance with the Settlement Agreement. The Clerk is  
20 **DIRECTED** to enter this Judgment pursuant to Federal Rule of Civil  
21 Procedure 58.

22 **IT IS SO ORDERED.**

23  
24 Dated: \_\_\_\_\_

\_\_\_\_\_   
Hon. Jinsook Ohta  
U.S. District Court Judge

# Exhibit 3

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and DOES 1 through 10, inclusive,

Defendants.

Case No. 3:20-cv-1629-JO-BLM

Assigned to: Hon. Jinsook Ohta

**JUDGMENT**

Judgment is hereby entered in accordance with the Order Granting Final Approval of Settlement; Awarding Attorney’s Fees, Costs, and Service Award.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Jinsook Ohta  
U.S. District Court Judge

# Exhibit 4

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JAMES HAWKINS APLC  
9880 Research Drive, Suite 200  
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# Exhibit 5

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# Exhibit 6

**IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

**IF YOU PURCHASED AN APP STORE & iTUNES GIFT CARD AT ANY POINT BETWEEN MAY 2017 AND FEBRUARY 2018 IN CALIFORNIA, OR MARCH 2018 AND JULY 2020 IN THE UNITED STATES, AND YOUR APP STORE & iTUNES GIFT CARD(S) WERE REDEEMED BY AN UNKNOWN THIRD PARTY BEFORE YOU OR THE INTENDED RECIPIENT ATTEMPTED TO REDEEM THE GIFT CARD, YOU SHOULD READ THIS NOTICE AS IT MAY IMPACT YOUR LEGAL RIGHTS.**

*A court authorized this notice. This is not a solicitation.*

- A Settlement has been reached with Apple Inc. and Apple Value Services, LLC (“Apple” or “Defendants”) in a class action lawsuit alleging that Apple made certain misrepresentations regarding the value and security of App Store & iTunes gift cards, and that Apple did not disclose the risk that the gift card may be subject to fraud. Apple denies that it made any misrepresentations or omissions regarding App Store & iTunes gift cards and denies all allegations of wrongdoing.
- You may be included in this Settlement as a “Class Member” and entitled to receive a payment called the “Class Payment” if you purchased an App Store & iTunes Gift Card in the United States between May 2017 and February 2018 in California, or March 2018 to July 2020 anywhere in the United States (including California), and the App Store & iTunes Gift Card you purchased was redeemed by an unknown third party before you or the intended recipient of your App Store & iTunes Gift Card attempted to redeem it, and you did not receive a refund or replacement gift card from Defendants or any third party.
- The criteria to be a Class Member are defined more fully in the answers to Questions 5 and 6 below. Together, all Class Members are collectively known as the “Class.”
- You must file a Claim Package by [date] to receive cash benefits from this Settlement.
- Your rights are affected whether you act or don’t act. Read this notice carefully.
- These rights and options—and the deadlines to exercise them—are explained in this Notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>FILE A CLAIM</b>	The Parties to the Lawsuit have settled for \$1.8 million. If you purchased an App Store & iTunes Gift Card between May 2017 and February 2018 in California, or March 2018 to July 2020 anywhere in the United States (including California), and the App Store & iTunes Gift Card you purchased was redeemed by an unknown third party before you or the intended recipient of your App Store & iTunes Gift Card attempted to redeem it, and you did not receive a refund or replacement gift card from Defendants or any third party, you are eligible to file a claim for the amount equal to the face value of the eligible App Store & iTunes Gift Card(s) you purchased. Please note that you will only qualify as a Class Member if the independent Settlement Administrator confirms that the App Store & iTunes Gift Card(s) that are the subject of your claim were subject to a redemption attempt prior to the card’s activation. Please also note that the Class Payments may be reduced depending on the number of valid claims. Final payment amounts will be calculated and distributed based on the total number and value of valid claims submitted by Class Members. To file a claim, visit the Settlement website at www.[URL].com.

**QUESTIONS? CALL 1•[XXX-XXX-XXX] OR VISIT WWW.[URL].COM**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
	<p>If you are a Class Member, you have the option of electing to receive a Class Payment by ACH transfer or by check.</p> <p>If you decide to stay in the Class, you will give up the right to sue Apple in a separate lawsuit related to the subject matter of the claims in the Lawsuit. The Released Claims are described in more detail in Section 8 of the Settlement Agreement available at <a href="http://www.[URL].com">www.[URL].com</a>.</p>
<p><b>ASK TO BE EXCLUDED (OPT OUT)</b></p> <p><b>DEADLINE: [DATE]</b></p>	<p>If you decide to opt out of this Settlement, you will keep the right to sue Apple at your expense in a separate lawsuit related to the subject matter of the claims this Settlement resolves, but you give up the right to get a Class Payment from this Settlement.</p> <p>This is the only option that allows you to sue, continue to sue, or be part of another lawsuit against Apple related to the subject matter of the claims in this Lawsuit. If you opt out of this Settlement and the Settlement is approved, you will no longer be represented by Class Counsel.</p>
<p><b>OBJECT TO THE SETTLEMENT</b></p> <p><b>DEADLINE: [DATE]</b></p>	<p>If you do not opt out of the Settlement, you may object to it by writing to the Court about why you don't like the Settlement.</p> <p>You may object to the Settlement, and if the Settlement is approved by the Court, you may still be able to receive a Class Payment.</p>
<p><b>GO TO A HEARING ON:</b></p> <p><b>[DATE]</b></p>	<p>You may object to the Settlement and ask the Court for permission to speak at the Final Approval Hearing where the Parties will request that the Final Approval Order be entered approving the Settlement.</p> <p>You may object to the Settlement and speak at the Final Approval Hearing, and if the Settlement is approved by the Court, you may still be able to receive a Class Payment.</p>

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court overseeing this case still has to decide whether to approve the Settlement.
- This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, you may (1) see the Settlement Agreement available at [www.\[URL\].com](http://www.[URL].com); (2) contact Class Counsel representing the Class Members (contact info listed under Question 16 below); (3) access the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>; or (4) visit the office of the Clerk of Court for the United States District Court for the Southern District of California, 333 West Broadway, Suite 420, San Diego, CA 92101, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS NOTICE, THIS SETTLEMENT, OR THE CLAIMS PROCESS.**

**QUESTIONS? CALL 1•[XXX-XXX-XXX] OR VISIT WWW.[URL].COM**



WHAT THIS NOTICE CONTAINS

**BASIC INFORMATION ..... 1**

1. Why was this Notice issued? ..... 1

2. What is a class action? ..... 1

3. What is the Lawsuit about? ..... 1

4. Why is there a Settlement? ..... 1

**WHO IS INCLUDED IN THE SETTLEMENT ..... 1**

5. How do I know if I am part of the Settlement? ..... 1-2

6. I'm still not sure if I am included in the Class..... 2

**THE SETTLEMENT BENEFITS – WHAT YOU GET IF YOU QUALIFY ..... 2**

7. What does the Settlement provide? ..... 2

8. How much will my Class Payment be?..... 2

**HOW TO GET A CLASS PAYMENT ..... 2**

9. How do I get a Class Payment? ..... 2-3

10. When would I get my Class Payment? ..... 3

11. What rights am I giving up to get a Class Payment and stay in the Class?..... 3

12. What are the Released Claims?..... 3

**OPTING OUT OF THE SETTLEMENT ..... 4**

13. How do I request to opt out of the Settlement? ..... 4

14. If I opt out, can I still get a Class Payment from this Settlement?..... 4

15. If I do not opt out, can I sue Apple for the same claims later?..... 4

**THE LAWYERS REPRESENTING THE CLASS ..... 4**

16. Do I have a lawyer in this case?..... 4-5

17. How will the lawyers be paid? ..... 5

18. May I get my own lawyer? ..... 5

**OBJECTING TO THE SETTLEMENT ..... 5**

19. How do I tell the Court that I do not like the Settlement?..... 5

20. What is the difference between objecting and asking to opt out?..... 5

**THE COURT’S FINAL APPROVAL HEARING ..... 6**

21. When and where will the Court decide whether to approve the Settlement? ..... 6

22. Do I have to come to the Final Approval Hearing? ..... 6

**QUESTIONS? CALL 1•[XXX-XXX-XXX] OR VISIT WWW.[URL].COM**

23. May I speak at the Final Approval Hearing?..... 6

**IF YOU DO NOTHING ..... 6**

24. What happens if I do nothing at all? ..... 6

**GETTING MORE INFORMATION ..... 6**

25. Are more details available? ..... 6

**QUESTIONS? CALL 1•[XXX-XXX-XXX] OR VISIT WWW.[URL].COM**

## BASIC INFORMATION

### 1. Why was this Notice issued?

A federal Court authorized this Notice because you have a right to know about the proposed Settlement of the Lawsuit and all of your options before the Court decides whether to approve the proposed Settlement. This Notice explains the Lawsuit, the Settlement, your legal rights, what benefits are available, and who can get them.

Judge Jinsook Ohta of the United States District Court for the Southern District of California is currently overseeing this case and will decide whether to approve the Settlement. The case is entitled *Shay v. Apple Inc.*, No. 3:20-cv-01629 (S.D. Cal.). The person who sued is called the Plaintiff. The companies she is suing are Apple Inc. and Apple Value Services, LLC, which are called the Defendants.

### 2. What is a class action?

In a class action, one or more people called “Class Representatives” (in this case, Rachel Shay, the Plaintiff) sue on behalf of people who have similar claims. All these people are a “Class” or “Class Members.” One court resolves the issues for all Class Members, except for those who opt out of the Class.

### 3. What is the Lawsuit about?

Plaintiff brought claims for negligent misrepresentation and violation of California consumer protection laws based on various representations and omissions regarding the value and security of App Store & iTunes Gift Cards.

Apple maintains that it did nothing wrong and denies that it made any misrepresentations or omissions regarding App Store & iTunes Gift Cards. Apple asserts numerous defenses to the claims in this case. The proposed Settlement to resolve this Lawsuit is not an admission of guilt or any wrongdoing of any kind by Apple, and it is not an admission by Apple of the truth of any of the allegations in the Lawsuit.

### 4. Why is there a Settlement?

The Court has not decided in favor of the Class or Defendants. Instead, the Class Representative and Defendants agreed to a Settlement. This way, they avoid the cost, burden, and uncertainty of a trial and the purchasers allegedly affected can get benefits. The Class Representative and her attorneys think the proposed Settlement is best for all Class Members.

## WHO IS INCLUDED IN THE SETTLEMENT

### 5. How do I know if I am part of the Settlement?

The Court has decided that everyone who fits the following descriptions is a Class Member, and is thus included in the Settlement:

“Nationwide Class” shall mean all consumers who purchased an Eligible Gift Card in the United States from March 2018 to July 2020, whose Eligible Gift Card was subject to a redemption attempt prior to activation, whose gift card was redeemed by an unknown third party prior to attempted redemption by the consumer or intended user, and who did not receive a refund or replacement gift card from Defendants or any third party; and

QUESTIONS? CALL 1•[XXX-XXX-XXX] OR VISIT WWW.[URL].COM

“California Subclass” shall mean all consumers who purchased an Eligible Gift Card in the State of California from May 2017 to February 2018, whose gift card was subject to a redemption attempt prior to activation, whose gift card was redeemed by an unknown third party prior to attempted redemption by the consumer or intended user, and who did not receive a refund or replacement gift card from Defendants or any third party.

Excluded from the Class are Defendants, their parents, subsidiaries, affiliates, officers, directors, and employees; any entity in which Defendants have a controlling interest; and all judges assigned to hear any aspect of this litigation, as well as their staff and immediate family members.

#### 6. I'm still not sure if I am included in the Class.

If you are still not sure whether you are included in the Class, you can visit the website [www.\[URL\].com](#), call toll-free 1-[XXX-XXX-XXXX], or write to the *Shay v. Apple* Class Action Settlement Administrator, [ADDRESS], for more information.

### THE SETTLEMENT BENEFITS-WHAT YOU GET IF YOU QUALIFY

#### 7. What does the Settlement provide?

The Parties to the Lawsuit have agreed to a \$1.8 million Settlement. After deducting any Court-approved Service Award, Apple will provide to the Settlement Administrator information for all Class Members for whom it has records. The Settlement Administrator will contact all such Class Members via email or U.S. mail, and will additionally publish notice of this Settlement in print publications and in a digital media campaign. The Settlement Administrator will evaluate all claims by potential Class Members to determine their validity and eligibility and will determine the Class Payment that will be made available to Class Members in accordance with the description provided in the response to Question 8 below.

#### 8. How much will my Class Payment be?

Class Members shall be compensated in an amount equal to the face value at the time of purchase of the App Store & iTunes Gift Card(s) purchased by that Class Member and subject to a redemption attempt prior to activation and redeemed by an unknown third party prior to attempted redemption by the Class Member or intended user. If the total value of payments to eligible Class Members exceeds the settlement amount (\$1.8 million, less any Service Award to the Class Representative), the payments of all eligible Class members shall be reduced pro rata.

### HOW TO GET A CLASS PAYMENT

#### 9. How do I get a Class Payment?

To receive Class Payment, you must submit a claim through the Settlement Website, [www.\[URL\].com](#), with the following items:

- Your name, address, telephone number, and email address; and

**QUESTIONS? CALL 1•[XXX-XXX-XXX] OR VISIT WWW.[URL].COM**

- Proof of purchase (e.g., a sales receipt) of the App Store & iTunes Gift Card(s) that are the subject of your claim, that includes: (i) the purchase date; (ii) the original purchase price; and (iii) the gift card number(s) associated with the App Store & iTunes Gift Card(s) that are the subject of your claim; or
- If you or the other intended user previously reported the scam incident to Apple, an attestation that you were the individual who purchased the Eligible Gift Card and that you previously provided the Proof of Purchase to Apple; and
- An attestation by you or another intended user of your App Store & iTunes Gift Card(s) that you or the other intended user: (1) were unable to redeem the App Store & iTunes Gift Card(s) because they had already been redeemed by an unknown third party that was not the gift card's intended recipient or beneficiary; and (2) have not obtained a refund, cash-out, or other form of compensation from Defendants or any third party in connection with the purchase of the App Store & iTunes Gift Card(s) that are the subject of your claim; and
- Any necessary information to complete payment via your payment method of choice (e.g., physical check, e-check, or ACH transfer).

#### 10. When would I get my Class Payment?

The Court will hold a hearing on [DATE], at [TIME], to decide whether to grant final approval of the Settlement. If the Court approves the Settlement, there may be objections. It is always uncertain whether objections will be filed and, if so, how long it will take to resolve them. Class Payments will be distributed to Class Members as soon as possible, if and when the Court grants final approval of the Settlement and any objections are overruled with finality. The Court may also elect to move the Final Approval Hearing to a different date or time in its sole discretion, without providing further notice to the Class. The date and time of the Final Approval Hearing can be confirmed at [www.\[URL\].com](http://www.[URL].com).

#### 11. What rights am I giving up to get a Class Payment and stay in the Class?

Unless you opt out, you will remain in the Class. If the Settlement is approved and becomes final, all of the Court's orders will apply to you and legally bind you. You won't be able to sue, continue to sue, or be part of any other lawsuit against Apple that is related to the subject matter of the claims in this Lawsuit. The rights you are giving up are called Released Claims, which are explained in Question 12.

#### 12. What are the Released Claims?

Generally, if and when the Settlement Agreement becomes final, Class Members who do not opt out will permanently release Apple Inc. and Apple Value Services, integrators of App Store and iTunes Gift Cards, and retailers of App Store and iTunes Gift Cards, including Defendants', Integrators', and Retailers' past or present parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, employees, agents, attorneys, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers, and assigns of each of the foregoing), from claims that are related to the subject matter of the claims in this Lawsuit. The Released Claims are described in more detail in Section 8 of the Settlement Agreement, available at [www.\[URL\].com](http://www.[URL].com).

**QUESTIONS? CALL 1•[XXX-XXX-XXX] OR VISIT WWW.[URL].COM**

### OPTING OUT OF THE SETTLEMENT

If you want to keep the right to sue or continue to sue Apple at your expense for any claim related to the subject matter of this Lawsuit, and you do not want to receive a Class Payment from this Settlement, you must take steps to get out of the Settlement. This is called opting out of, or excluding yourself from, the Settlement.

#### 13. How do I request to opt out of the Settlement?

To opt out, you must send a letter with the following information:

- Your name, address, telephone number, and email address;
- A statement that you wish to opt out of the Class in *Shay v. Apple Inc.*, No. 3:20-cv-01629; and
- Your signature.

You must mail your opt-out request to:

[ADDRESS]

Your opt-out request must be received no later than [DATE].

#### 14. If I opt out, can I still get a Class Payment from this Settlement?

No. If you opt out, you are telling the Court that you don't want to be part of the Class in this Settlement. You can only get a Class Payment if you remain in the Class. See Question 9.

#### 15. If I do not opt out, can I sue Apple for the same claims later?

No. Unless you opt out, you are giving up the right to sue Apple regarding any claims that are related to the subject matter of the claims in this Lawsuit. You must opt out of this Lawsuit to have the ability to start or continue with your own lawsuit or be part of any other lawsuit against Apple.

### THE LAWYERS REPRESENTING THE CLASS

#### 16. Do I have a lawyer in this case?

Yes. The Court appointed the following attorneys to represent you as "Class Counsel":

James R. Hawkins  
Malte L. L. Farnaes  
Christina M. Lucio  
Mitchell J. Murray  
JAMES HAWKINS APLC  
9880 Research Drive, Suite 200  
Irvine, CA 92618  
(949) 387-7200

QUESTIONS? CALL 1•[XXX-XXX-XXX] OR VISIT WWW.[URL].COM

You do not have to pay Class Counsel out of your own pocket. If you want to be represented by your own lawyer and have that lawyer appear in Court for you in this case, you may hire one at your own expense.

#### 17. How will the lawyers be paid?

Class Counsel may ask the Court for an award of Attorneys' Fees and Costs, as well as a Service Award to the Class Representative. Class Counsel will move for both the Service Award and for Attorneys' Fees and Costs at the Final Approval Hearing, and the Court will determine the amounts to be awarded. The Service Award will be paid from the \$1.8 million that the Parties settled for before making Class Payments to Class Members. The Attorneys' Fees and Costs will be paid by Apple in addition to the Settlement Amount, except as set forth in Section 2.3 of the Agreement. Apple reserves the right to object to the amount of the Service Award and any Attorneys' Fees and Costs in excess of 25% of the Settlement Amount.

A copy of Class Counsel's motion for Attorneys' Fees and Costs and for the Class Representative's Service Award will be available at [www.\[URL\].com](http://www.[URL].com) by [DATE].

#### 18. May I get my own lawyer?

If you are in the Class, you are not required to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you may hire one at your own expense. If you opt out of the Settlement, you will no longer be represented by Class Counsel once the Settlement is approved.

### OBJECTING TO THE SETTLEMENT

#### 19. How do I tell the Court that I do not like the Settlement?

If you are a Class Member, you can tell the Court if there is something about the Settlement that you do not like by submitting an objection. You can't ask the Court to order a different Settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no Class Payments will be sent out and the Lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing. If you submit a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Shay v. Apple Inc.*, No. 3:20-cv-01629); (b) include your full name, address, telephone number, and email address of your attorney (if you are represented by counsel); (c) state the grounds for the objection; (d) be submitted to the Court either by mailing them to the Clerk of Court for the United States District Court for the Southern District of California, 333 West Broadway, Suite 420, San Diego, CA 92101, or by filing them in person at any location of the United States District Court for the Southern District of California; and (e) be filed or postmarked on or before [DATE].

#### 20. What is the difference between objecting and opting out?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class (and do not opt out). Opting out is telling the Court that you don't want to be part of the Class. If you opt out, you cannot object because the Settlement no longer affects you.



## THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don't have to.

### 21. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing on [DATE], at [TIME], at the United States District Court for the Southern District of California, Edward J. Schwartz United States Courthouse, 221 West Broadway, Courtroom 4C, 4<sup>th</sup> Floor, San Diego, CA 92101. At this hearing, the Court will decide whether to approve the Settlement, Class Counsel's request for Attorneys' Fees and Costs, and the Service Award to the Class Representative. If there are objections, the Court will consider them. The Court may elect to move the Final Approval Hearing to a different date or time in its sole discretion, without providing further notice to the Class. The date and time of the Final Approval Hearing can be confirmed at www.[URL].com.

### 22. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to come to the Final Approval Hearing at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but that is not necessary.

### 23. May I speak at the Final Approval Hearing?

Yes. You may ask the Court for permission to speak at the Final Approval Hearing.

## IF YOU DO NOTHING

### 24. What happens if I do nothing at all?

If you are a Class Member and you do nothing, you will not be eligible to receive a Class Payment. However, you will still be bound by the Settlement.

You will give up the rights explained in Question 12, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Apple related to the Lawsuit or for claims that in any way are related to the subject matter of the claims in this Lawsuit.

## GETTING MORE INFORMATION

### 25. Are more details available?

Visit the website at www.[URL].com, where you will find the Settlement Agreement and other related documents. You may also call toll-free at 1-[XXX-XXX-XXXX] or write to [ADDRESS]. Inquiries should NOT be directed to the Court.

**QUESTIONS? CALL 1•[XXX-XXX-XXX] OR VISIT WWW.[URL].COM**

# Exhibit 7

1 JAMES R. HAWKINS (SBN 192925)  
 james@jameshawkinsaplc.com  
 2 MALTE L. L. FARNAES (SBN 222608)  
 malte@jameshawkinsaplc.com  
 3 CHRISTINA M. LUCIO (SBN 253677)  
 christina@jameshawkinsaplc.com  
 4 MITCHELL J. MURRAY (SBN 285691)  
 mitchell@jameshawkinsaplc.com  
 5 **JAMES HAWKINS APLC**  
 9880 Research Drive, Suite 200  
 6 Irvine, CA 92618  
 Telephone: (949) 387-7200  
 7 Facsimile: (949) 387-6676

8  
 9 Attorneys for Plaintiff RACHAEL SHAY,  
 on behalf of herself and all others similarly situated

10  
 11 **UNITED STATES DISTRICT COURT**  
 12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 RACHAEL SHAY, individually and  
 14 on behalf of all others similarly  
 15 situated,

16 Plaintiff,

17 v.

18 APPLE INC., a Delaware corporation;  
 19 APPLE VALUE SERVICES, LLC, a  
 20 Virginia limited liability corporation;  
 21 and DOES 1 through 10, inclusive,

22  
 23 Defendants.  
 24

Case No. 3:20-cv-1629-JO-BLM

**DECLARATION OF MALTE L. L.  
 FARNAES IN SUPPORT OF  
 PLAINTIFF’S MOTION FOR  
 PRELIMINARY APPROVAL OF  
 CLASS ACTION SETTLEMENT**

Date: October 4, 2023

Time: 9:00 a.m.

Judge: Hon. Jinsook Ohta

Courtroom: 4C, 4<sup>th</sup> Floor

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I, Malte L. L. Farnaes, declare as follows:

1. I am an attorney at law duly licensed to practice law before all of the Courts of the State of California. I am Of Counsel at James R. Hawkins, APLC, the law firm representing Plaintiff Rachel Shay (“Plaintiff”) and the proposed Settlement Class. I am one of the attorneys of record involved in the litigation and prosecution of this matter. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, and specifically to address the adequacy of James Hawkins, APLC, to be appointed Class Counsel by this Court. This declaration is based upon the best of my personal knowledge and, if called to testify, I could and would testify to the facts contained herein.

2. In 1997, I graduated from the University of California, San Diego with a Bachelor of Arts Degree. I attended the University of San Diego School of Law (USD Law School). During law school, I was Lead Articles Editor of the San Diego Law Review. I graduated from the USD Law School in 2002. The same year, I was admitted to practice law in the State of California.

3. From 2002 until 2010, I was an associate with Troutman Sanders LLP in San Diego (formerly Ross, Dixon, & Bell). As an associate, I assisted with the litigation and trials of general business matters on an individual and class-wide basis.

4. In 2010, I opened my own law firm, Law Office of Malte Farnaes, in Solana Beach, California. After Attorney Christina Lucio joined me, we renamed the firm Farnaes & Lucio, APC in 2012. I have litigated and tried a wide variety of matters on both the plaintiff and defense side, including individual actions, as well as consumer and employment class actions.

5. Since 2015, I have also been of counsel to the law firm of James Hawkins APLC. In that capacity, my work has been focused on employment litigation and complex class actions. In my practice as a class action plaintiffs'

1 attorney, I have been involved in litigating, mediating and settling numerous class  
2 actions dealing with class sizes ranging from several hundred to thousands of class  
3 members resulting in settlements ranging from six figures to multimillion dollar  
4 settlements.

5 6. The following is a non-exhaustive list of class actions I have actively  
6 litigated with Farnaes & Lucio and/or with James Hawkins APLC as one of the  
7 counsels of record for Plaintiff: *Keody v. Davis Trucking, LLC*, San Diego  
8 Superior Court, 37-2014-00029149; *Johnson v. U.S. Bank*, USDC, Southern Dist.  
9 Cal. 19-CV-00286-JLS-LL; *McGrath v. Wyndham Resort Development Corp.*,  
10 USDC, Southern Dist. Cal. 15-CV-1631-JM-KSC; *Prestwood v. Marriot*  
11 *Ownership Resorts, Inc.*, Orange County Superior Court, 30-2019-01046340;  
12 *Ross v. Stater Bros. Markets*, San Bernardino Superior Court., CIVDS1902518;  
13 *Mauleon v. Hanken Cono Assad & Co., Inc.*, San Diego Superior Court, 37-2020-  
14 00015364; *Dougan v. Healthy Living at Home*, San Diego Superior Court, 37-  
15 2020-00018447.

16 7. I was also trial counsel for the Plaintiff in a federal court jury trial in a  
17 wage and hour class action which eventually settled prior to verdict. *Vigueras v.*  
18 *Red Robin Int'l*, No. SACV 17-1422 JVS (DFMx), 2020 U.S. Dist. LEXIS 262135  
19 (C.D. Cal. Dec. 2, 2020).

20 8. Our office is currently litigating at least forty other putative class  
21 actions in State and Federal courts in the state of California with the Hawkins  
22 firm.

23 9. I have also appeared as lead defense counsel or co-lead defense  
24 counsel in several consumer class actions including *Schwartz, et al. v. Lights of*  
25 *America, Inc.*, Case No. 2:11-cv-01712-JVS; and *Moorer v. StemGenex Med. Grp.*,  
26 *Inc.*, United States District Court for the Southern District of California, Case No.  
27 3:16-cv-02816-AJB-AHG. In connection with *Moorer v. StemGenex Med. Grp.*, I  
28 also argued certification-related issues before the Ninth Circuit Court of Appeals.

1 See, *Moorer v. StemGenex Med. Grp., Inc.*, 830 F. App'x 218 (9th Cir. 2020).

2 10. Since 2016 I have also served as the Honorary Consul of Denmark in  
3 San Diego and Imperial Counties.

4 11. I have no conflicts of interest with the proposed Settlement Class or  
5 with the Class Representative. I am not related to any representative Plaintiff. I  
6 have not previously represented Defendant in any matter. In sum, I am well-suited  
7 to act as Class Counsel and will continue to vigorously represent the interests of  
8 the Class.

9 I declare under penalty of perjury that the foregoing is true and correct.  
10 Executed August 28, 2023 at Encinitas, California.

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s/ Malte L. L. Farnaes  
Malte L. L. Farnaes

1 JAMES R. HAWKINS (SBN 192925)  
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8  
 9 Attorneys for Plaintiff RACHAEL SHAY,  
 on behalf of herself and all others similarly situated

10  
 11 **UNITED STATES DISTRICT COURT**  
 12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 RACHAEL SHAY, individually and  
 14 on behalf of all others similarly  
 15 situated,

16 Plaintiff,

17 v.

18 APPLE INC., a Delaware corporation;  
 19 APPLE VALUE SERVICES, LLC, a  
 20 Virginia limited liability corporation;  
 21 and DOES 1 through 10, inclusive,

22 Defendants.

Case No. 3:20-cv-1629-JO-BLM

**DECLARATION OF CHRISTINA M.  
 LUCIO IN SUPPORT OF  
 PLAINTIFF’S MOTION FOR  
 PRELIMINARY APPROVAL OF  
 CLASS ACTION SETTLEMENT**

Date: October 4, 2023

Time: 9:00 a.m.

Judge: Hon. Jinsook Ohta

Courtroom: 4C, 4<sup>th</sup> Floor



1 I, Christina M. Lucio, declare as follows:

2 1. I am an attorney at law duly licensed to practice law before all of the  
3 Courts of the State of California. I am Of Counsel at James R. Hawkins, APLC, the  
4 law firm representing Plaintiff Rachel Shay (“Plaintiff”) and the proposed  
5 Settlement Class. I am one of the attorneys of record involved in the litigation and  
6 prosecution of this matter. I submit this declaration in support of Plaintiff’s Motion  
7 for Preliminary Approval of Class Action Settlement, and specifically to address  
8 the adequacy of James Hawkins, APLC, to be appointed Class Counsel by this  
9 Court. This declaration is based upon the best of my personal knowledge and, if  
10 called to testify, I could and would testify to the facts contained herein.

11 **Counsel’s Qualifications, Experience, and Education**

12 2. In 2003, I graduated from the University of California, Riverside  
13 with a Bachelor of Arts Degree. Following graduation, I attended the University  
14 of Southern California, Gould School of Law (USC Law School). At various  
15 points during law school, I worked with the USC Post-Conviction Justice Project,  
16 the Western Center for Disability Rights and the Barrister’s Domestic Violence  
17 Clinic. During the Summer of 2005, I was a law clerk for the Law Offices of  
18 Bruce Austin (Safeco Insurance). In 2007, while a full-time law student, I was  
19 also a Judicial Extern for the Honorable Sandra Ikuta, United States Court of  
20 Appeals, Ninth Circuit. Thereafter, in 2007, I graduated from the USC Law  
21 School. The same year, I was admitted to practice law in the State of California.

22 3. From 2007 until 2010, I was an associate with Troutman Sanders  
23 LLP in San Diego (formerly Ross, Dixon, & Bell). As an associate, I assisted with  
24 the litigation of general business and labor & employment matters on an  
25 individual and class-wide basis. I assisted with the representation of both  
26 employers and employees. I also assisted employers on issues related to  
27 compliance with employment laws.

1           4.     From 2011 until 2012, I was an associate with Wilson Turner Kosmo  
2 LLP. As an associate, I assisted with the litigation of labor & employment matters  
3 on an individual and class-wide basis solely on the side of management. I also  
4 assisted employers on issues related to compliance with employment laws.

5           5.     Since 2012, I have been a named partner with Farnaes & Lucio,  
6 APC, a law firm based out of Encinitas, California. I have litigated a wide variety  
7 of matters on both the plaintiff and defense side, including individual actions, as  
8 well as consumer and employment class actions.

9           6.     Since 2015, I have also been of counsel to the law firm of James  
10 Hawkins APLC. In that capacity, my work has been focused on employment  
11 litigation and complex class actions. In my practice as a class action plaintiffs'  
12 attorney, I have been involved in litigating, mediating and settling numerous class  
13 actions dealing with class sizes ranging from several hundred to thousands of class  
14 members resulting in settlements ranging from six figures to multimillion dollar  
15 settlements.

16           7.     The following is a non-exhaustive list of class actions I have  
17 successfully litigated with James Hawkins APLC as one of the counsels of record:  
18 *Placencia v. Amcor Packaging Distribution, Inc.*, Orange County Superior Court,  
19 Case No. 30-2013-00694012-CU-OE-CXC; *Trani v. Lisi Aerospace, et al.*, Los  
20 Angeles Superior Court, Case No. BC495527; *Galvan v. Goodwin Co.*, Orange  
21 County Superior Court, Case No. 30-2013-00637062-CU-OE-CXC; *Reyes v.*  
22 *Bristol Fiberlite*, Orange County Superior Court, Case No. 30-2013-00653425-  
23 CU-OE-CXC; *Gutierrez v. HMT Tank*, USDC Central Dist., Case No. CV14-  
24 1967-CAS(MANx); *Williams v. Il Fornaio America Corp.*, Sacramento County,  
25 34-2011-0009616; *Aguilar v. 7-Eleven, Inc.*, Orange County, Case No. 30-2009-  
26 002687141-CU-OE-CXC; *Madrigal v. Huntington Beach Market Broiler, Inc.*,  
27 Orange County, Case No. 30-2012-00611260; *Vang v. Jazz Semiconductor, Inc.*,  
28 Orange County, Case no. 30-2011-00460278; *Cano v. Financial Statement*

1 *Services, Inc.*, Orange County, Case No. 30-2013-00653349-CU-OE-CXC;  
2 *Gonzalez v. Quality Aluminum Force, LLC*, Orange County, Case No. 30-2015-  
3 00817941-CU-OE-CXC; *Smith v. Space Exploration Technologies Corp.*, Los  
4 Angeles County Case No. BC554258; *Madrigal v. Balda C Brewer, Inc.*, 30-  
5 2015-00820218-CU-OE-CXC; *Mendez v. Liberty Glass Fabricators, Inc.*,  
6 Riverside County Case No. RIC1800119; *Aguilar v. LDI Mechanical, Inc.*,  
7 Riverside County Case No. RIC1610019.

8 8. I am currently litigating at least forty other putative class actions in  
9 State and Federal courts in the state of California with the Hawkins firm.

10 9. I have also appeared as lead defense counsel or co-lead defense  
11 counsel in several consumer class actions including *Schwartz, et al. v. Lights of*  
12 *America, Inc.*, Case No. 2:11-cv-01712-JVS; and *Moorer v. StemGenex Med. Grp.,*  
13 *Inc.*, United States District Court for the Southern District of California, Case No.  
14 3:16-cv-02816-AJB-AHG. In connection with *Moorer v. StemGenex Med. Grp., I*  
15 also argued certification-related issues before the Ninth Circuit Court of Appeals.  
16 See, *Moorer v. StemGenex Med. Grp., Inc.*, 830 F. App'x 218 (9th Cir. 2020).

17 10. I was lead trial counsel in a federal court jury trial in a wage and hour  
18 class action which eventually settled prior to judgment. *Vigueras v. Red Robin*  
19 *Int'l*, No. SACV 17-1422 JVS (DFMx), 2020 U.S. Dist. LEXIS 262135 (C.D. Cal.  
20 Dec. 2, 2020).

21 11. I have no conflicts of interest with the proposed Class or with the  
22 Class Representative. I am not related to any representative Plaintiff. I have not  
23 previously represented Defendant in any matter. In sum, I am well-suited to act as  
24 Class Counsel and will continue to vigorously represent the interests of the Class.

25 I declare under penalty of perjury under that the foregoing is true and  
26 correct. Executed August 28, 2023.

27 s/ Christina M. Lucio  
28 Christina M. Lucio

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8  
 9 Attorneys for Plaintiff RACHAEL SHAY,  
 on behalf of herself and all others similarly situated

10  
 11 **UNITED STATES DISTRICT COURT**  
 12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 RACHAEL SHAY, individually and  
 14 on behalf of all others similarly  
 15 situated,

16 Plaintiff,

17 v.

18 APPLE INC., a Delaware corporation;  
 19 APPLE VALUE SERVICES, LLC, a  
 20 Virginia limited liability corporation;  
 21 and DOES 1 through 10, inclusive,

22 Defendants.

Case No. 3:20-cv-1629-JO-BLM

**DECLARATION OF MITCHELL J.  
 MURRAY IN SUPPORT OF  
 PLAINTIFF’S MOTION FOR  
 PRELIMINARY APPROVAL OF  
 CLASS ACTION SETTLEMENT**

Date: October 4, 2023

Time: 9:00 a.m.

Judge: Hon. Jinsook Ohta

Courtroom: 4C, 4<sup>th</sup> Floor

1 I, Mitchell J. Murray, declare as follows:

2 1. I am an attorney at law duly licensed to practice law before the Courts  
3 of the State of California. I am Of Counsel at James R. Hawkins, APLC, the law  
4 firm representing Plaintiff Rachel Shay (“Plaintiff”) and the proposed Settlement  
5 Class. I am one of the attorneys of record involved in the litigation and prosecution  
6 of this matter. I submit this declaration in support of Plaintiff’s Motion for  
7 Preliminary Approval of Class Action Settlement, and specifically to address the  
8 adequacy of James Hawkins, APLC, to be appointed Class Counsel by this Court.  
9 This declaration is based upon the best of my personal knowledge and, if called to  
10 testify, I could and would testify to the facts contained herein.

11 **Counsel’s Qualifications, Experience, and Education**

12 2. I received my bachelor’s degree from the University of California,  
13 Santa Diego and my Juris Doctor degree from California Western University. I  
14 have practiced law in California since 2012.

15 3. Since 2016, I have been an attorney at Farnaes & Lucio, APC. During  
16 that time, my primary practice has been wage and hour class and representative  
17 actions and individual employment matters.

18 4. I am also Of Counsel at the law firm James Hawkins APLC, an  
19 employment law firm that handles mainly wage and hour class and representative  
20 actions as well as consumer class actions. I am currently litigating numerous wage  
21 and hour class action and representative action cases in the Los Angeles Superior  
22 Courts, the Orange County Superior Courts, the San Diego County Superior  
23 Courts, and the United States District Courts for the Central, Southern, and Eastern  
24 Districts of California.

25 5. I have been certified as Class Counsel in a number of wage and hour  
26 class actions, including but not limited to: *Vigueras v. Red Robin International,*  
27 *Inc.*, USDC Central Dist. Case No. SACV 17-1422 JVS (DFMx); *Aguilar v. Peach*  
28 *Home Services, Inc., et al.*, Riverside Superior Court Case No. RIC1823057;

1 *McGrath/O'Boy v. Wyndham Vacation Ownership, Inc., et al.*, Southern District of  
2 California, Case No. 15-CV-1631-JM-KSC; *Mata, et al. v. Living Ecology*  
3 *Manufacturing, Inc., et al.*, Riverside Superior Court, Case No. RIC1610281;  
4 among others.

5 6. I was third-chair in a federal court jury trial in a wage and hour class  
6 action, which resulted in a \$8.5 million settlement. *Vigueras v. Red Robin Int'l*, No.  
7 SACV 17-1422 JVS (DFMx), 2020 U.S. Dist. LEXIS 262135 (C.D. Cal. Dec. 2,  
8 2020)

9 7. I have also defended consumer class actions including *Moorer v.*  
10 *StemGenex Med. Grp., Inc.*, United States District Court for the Southern District  
11 of California, Case No. 3:16-cv-02816-AJB-AHG.

12 8. Plaintiff will adequately represent the proposed Settlement Class in  
13 this action and will continue to zealously represent Plaintiff and the Settlement  
14 Class and pursue this lawsuit to its conclusion.

15 9. Plaintiff's Counsel's only relationship with Plaintiff is the attorney-  
16 client relationship in this matter.

17 I declare under penalty of perjury under that the foregoing is true and  
18 correct. Executed on August 28, 2023.

19  
20 s/ Mitchell J. Murray  
21 Mitchell J. Murray  
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