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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

CLASS ACTION

**[PROPOSED] ORDER
GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

1 Before the Court is Plaintiff Rachel Shay’s (“Plaintiff”) Motion for
2 Preliminary Approval of Class Settlement. ECF No. 92. Having considered the
3 Motion, and the arguments of counsel presented at the hearing, the Court GRANTS
4 the Motion for Preliminary Approval and ORDERS as follows:

5 1. Preliminary Approval of the Proposed Settlement. The Settlement
6 Agreement and Release (the “Settlement Agreement”), attached as Exhibit 1
7 hereto, is preliminarily approved pending a Final Approval/Settlement Fairness
8 Hearing. The Court preliminarily finds that settlement on the terms in the
9 Settlement Agreement is fair, reasonable, and adequate. The Court further finds
10 that the settlement proposed in the Settlement Agreement resulted from arm’s
11 length negotiations, has no obvious deficiencies, does not grant preferential
12 treatment, and appears to be within the range of possible approval.

13 2. Conditional Certification of Settlement Class. Pursuant to Federal
14 Rule of Civil Procedure 23(b)(3), the Court conditionally certifies, for settlement
15 purposes only, a Nationwide Class as well as a California Subclass (collectively,
16 the “Settlement Class”), defined as follows:

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- 19 a. “Nationwide Class” shall mean all consumers who purchased an
20 Eligible Gift Card in the United States from March 2018 to July
21 2020, whose Eligible Gift Card was subject to a redemption
22 attempt prior to activation, whose gift card was redeemed by an
23 unknown third party prior to attempted redemption by the
24 consumer or intended user, and who did not receive a refund or
25 replacement gift card from Defendants or any third party; and
- 26 b. “California Subclass” shall mean all consumers who purchased
27 an Eligible Gift Card in the State of California from May 2017
28 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

1 consumer or intended user, and who did not receive a refund or
2 replacement gift card from Defendants 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
5 a controlling interest; and all judges assigned to hear any aspect of this litigation,
6 as well as their staff and immediate family members.
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8 3. Prerequisites for Class Action. Solely for the purposes of settlement,
9 the Court finds that the prerequisites for a class action under Federal Rule of Civil
10 Procedure 23(a) are satisfied for the following reasons:

- 11 (a) The Settlement Class appears so numerous that joinder of all
12 members is impracticable;
- 13 (b) There appear to be questions of law or fact common to the
14 Settlement Class for purposes of determining whether the
15 settlement should be approved;
- 16 (c) The Class Representative appears to be typical of the claims of
17 the Settlement Class; and
- 18 (d) The Class Representative and Class Counsel appear to be
19 capable of fairly and adequately protecting the interests of the
20 Settlement Class Members in connection with the proposed
21 settlement.
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24 4. Rule 23(b)(3) Class Action. The Court finds, for settlement purposes,
25 that this action is maintainable as a class action under Federal Rule of Civil
26 Procedure 23(b)(3) because:
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1 (a) Common questions of law and fact appear to predominate
2 over questions affecting only individual persons in the
3 Settlement Class; and

4 (b) Certification of the Settlement Class appears to be
5 superior to other available methods for the fair and
6 efficient resolution of the claims of the Settlement Class
7 members.
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9 5. Appointment of the Class Representative and Class Counsel. Pursuant
10 to Federal Rule of Civil Procedure 23(a), Plaintiff Rachel Shay is appointed as
11 Class Representative for the Settlement Class. In accordance with Federal Rule of
12 Civil Procedure 23(g), the Court appoints James R. Hawkins, Malte L. L. Farnaes,
13 Christina M. Lucio, and Mitchell J. Murray of James Hawkins APLC as Class
14 Counsel for the Settlement Class. Class Counsel will file a motion for attorneys'
15 fees and costs, to also be heard at the Final Fairness Hearing.

16 6. Notice of Proposed Class Action Settlement. The Court approves the
17 form and content of the Mail Notice, Email Notice, Publication Notice, and
18 Website Notice appended to the Settlement Agreement as Exhibits 1, 4, 5, and 6.
19 The Court finds that the proposed plan of notice and the proposed content of these
20 Notices meet the requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and
21 all due process requirements, is the best notice practicable under the
22 circumstances; and constitutes due and sufficient notice to all persons entitled to
23 notice.

24 7. Settlement Administrator. CPT Group, Inc. is appointed to serve as
25 the settlement administrator ("Settlement Administrator"). The Settlement
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1 Administrator is authorized to implement the notice plan, claims procedure, and
2 further administer the settlement in accordance with the Agreement and this Order.

3 (a) No later than October 19, 2023, Apple shall provide to the
4 Settlement Administrator the names, email addresses, and physical
5 addresses for all Settlement Class Members with respect to whom
6 it has records.

7 (b) No later than November 2, 2023 (the “Notice Date”), the Settlement
8 Administrator shall administer the Email Notice to the Settlement
9 Class Members for whom Apple provides names and email
10 addresses, and the Mail Notice to the Settlement Class Members
11 for whom Apple provides names and physical addresses.

12 (c) No later than the Notice Date, the Settlement Administrator shall
13 establish and maintain the Settlement Website.

14 (d) No later than the Notice Date, the Settlement Administrator shall
15 publish the Publication Notice in print publications and in a digital
16 media campaign.

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18 8. Time to Consider: Settlement Class Members shall be provided 65
19 days following the Notice Date to exercise any rights with regard to the Settlement.
20 Except as specifically provided in the Settlement Agreement or this Order, no
21 Settlement Class Member responses of any kind that are postmarked more than 65
22 days after the Notice Date shall be considered.

23 9. Requesting Exclusion from the Settlement. Unless a Settlement Class
24 Member timely opts out of the Settlement as described in the Settlement
25 Agreement and Notices, the individual shall be bound by the terms and conditions
26 of the Agreement, and shall also be bound by the Court’s Final Approval Order
27 and Judgment. A Settlement Class Member will not be entitled to opt-out of the
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1 Settlement unless the individual timely submits an Opt-Out Form. To be a valid
2 request for exclusion, a Settlement Class Member must provide his or her name
3 (and former names, if any), address, email address, and telephone number. Any
4 Opt-Out Form that does not include all of the required information or that is not
5 submitted in a timely manner will be deemed null, void, and ineffective.

6 10. Objecting to the Settlement. Settlement Class Members will have 65
7 days from the Notice Date to object to the Settlement by filing a written objection
8 with the Court. The written objection must (i) clearly identify the case name and
9 number, *Shay v. Apple, Inc., et al.*, Case No. 3:20-cv-01629-GPC-BLM; (ii) the
10 full name, address, telephone number, and email address of the person objecting;
11 (3) the full name, address, telephone number, and email address of the Objector's
12 counsel (if the Objector is represented by counsel); and (4) state the grounds for
13 the objection. Objections must be postmarked no later than 65 days after the
14 Notice Date if submitted by mail or filed by 11:59 p.m. PST if submitted through
15 ECF. Only objecting Settlement Class Members who make objections in the
16 manner described in Section 4 of the Settlement Agreement will be considered
17 Objectors and will therefore be permitted to be heard at the Final
18 Approval/Settlement Fairness Hearing if they state their intent to appear in their
19 written Objection. Settlement Class Members who fail to make written objections
20 in the manner specified in Section 4 of the Settlement Agreement are not
21 considered Objectors, shall be deemed to have waived any objections, shall be
22 foreclosed forever from seeking review or making any objection to the settlement
23 or the terms of the Settlement Agreement, and shall not be permitted to be heard
24 at the Final Approval/Settlement Fairness Hearing.

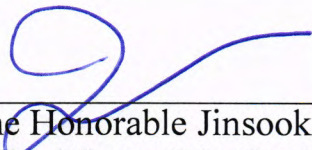
26 11. Final Fairness Hearing. A Final Approval/Settlement Fairness
27 Hearing is set for January 17, 2024 at 9:30 a.m. At the Final Approval/Settlement
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1 Fairness Hearing, the Court will consider the merits of any objections to the
2 Settlement; certification of the Settlement Class; the fairness, reasonableness, and
3 adequacy of the proposed Settlement; entry of a Final Approval Order; Class
4 Counsel’s motion for an award of attorneys’ fees and costs and Class
5 Representative Service Award, and other related matters. In the event that the
6 Effective Date does not occur, the Parties will be returned to their respective
7 positions nunc pro tunc as those positions existed prior to the execution of the
8 Settlement Agreement. The Parties are directed to carry out their obligations under
9 the Settlement Agreement.

10 12. Neither the Settlement, nor any of the terms set forth in the Settlement
11 Agreement, is an admission by Defendants, or any of the other Released Parties,
12 nor is this Order, a finding of the validity of any claims in the Action or of any
13 wrongdoing by Defendants, or any of the other Released Parties. Neither this
14 Order, the Settlement Agreement, nor any document referred to herein nor any
15 action taken to carry out the Settlement Agreement is, may be construed as, or may
16 be used as, an admission by or against Defendant, or any of the other Released
17 Parties, of any fault, wrongdoing or liability whatsoever.
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20 **IT IS SO ORDERED.**

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22 Dated: 10/6/23

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The Honorable Jinsook Ohta
United States District Judge