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Apple Inc. and Apple Value Services, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

APPLE, INC. and APPLE VALUE
SERVICES, LLC,

Defendants.

Case No. '20CV1629 GPC BLM

**DEFENDANTS APPLE INC. AND
APPLE VALUE SERVICES, INC.'S
NOTICE OF REMOVAL**

1 Defendants Apple Inc. (erroneously sued as “Apple, Inc.”) and Apple Value Services,
2 LLC (collectively, “Apple”) hereby effect the removal of this action from the Superior
3 Court of California, County of San Diego, to the United States District Court for the
4 Southern District of California. Removal is proper under the Class Action Fairness Act of
5 2005 (“CAFA”), 28 U.S.C. § 1332(d), because this case is a class action in which the
6 proposed class exceeds 100 members, at least one plaintiff is diverse from at least one
7 defendant, and the amount in controversy exceeds \$5 million. Venue is proper in this Court
8 because it is the “district and division embracing the place where [the] action is pending.”
9 28 U.S.C. § 1441(a); *see also* 28 U.S.C. § 84(d) (providing that San Diego County is part
10 of the Southern District of California).

11 **FACTUAL BACKGROUND AND STATE COURT PROCEEDINGS**

12 1. Plaintiff filed this lawsuit in San Diego County Superior Court on May 28,
13 2020. Before effecting service on Apple, Plaintiff amended her complaint on July 13, 2020.
14 Apple was served with the Summons and First Amended Complaint (“FAC”) on July 23,
15 2020. *See* Ex. 1.

16 2. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the state court case
17 file is attached to this Notice of Removal and is incorporated by reference herein. The file
18 includes all process, pleadings, motions, and orders filed in this case, including the
19 Summons and FAC (Exhibit 1) and all other documents filed in the state court (Exhibit 2).

20 3. Plaintiff alleges that Apple manufactured, marketed, sold, and/or distributed
21 Apple gift cards that were susceptible to an ongoing scam wherein third parties fraudulently
22 accessed and redeemed gift card funds prior to use by consumers. FAC ¶ 2. Plaintiff alleges
23 that Apple failed to take “preventative measures” to avert this third party conduct, failed to
24 “warn consumers that the Apple gift cards are easily susceptible to theft upon purchase,”
25 and “refus[ed] to refund consumers that complained when they discovered their Apple gift
26 cards were valueless.” *Id.* ¶ 3.

27 4. Based on these allegations, Plaintiff asserts claims for violations of the
28 Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750 *et seq.*, the Unfair

1 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and the California
2 Consumer Privacy Act (“CCPA”), Cal. Civ. Code §§ 1798.150 *et seq.* FAC ¶¶ 40-75.
3 Plaintiff also asserts common-law claims for negligence, negligent misrepresentation, and
4 breach of the implied warranty of merchantability. *Id.* ¶¶ 76-109. Plaintiff purports to
5 assert these claims on behalf of a proposed nationwide class consisting of “[a]ll consumers
6 in the United States who purchased an Apple gift card wherein the funds on the Apple gift
7 card was [sic] redeemed prior to use by the consumer,” as well as a proposed California
8 subclass consisting of “[a]ll consumers in the State of California who purchased an Apple
9 gift card wherein the funds on the Apple gift card was [sic] redeemed prior to use by the
10 consumer.” *Id.* ¶ 31. The proposed class definition does not include any temporal
11 limitation. *See id.*

12 5. Plaintiff seeks a variety of remedies on behalf of the proposed class, including
13 restitution; disgorgement; actual, punitive, and statutory damages; declaratory and
14 injunctive relief, including a “corrective advertising campaign;” and attorneys’ fees. *See*
15 FAC ¶¶ 47 & 75, Prayer for Relief.

16 **REMOVAL IS PROPER UNDER CAFA (28 U.S.C. § 1332(d))**

17 6. CAFA provides that federal courts have original jurisdiction over class actions
18 in which (a) any plaintiff is diverse from any defendant, (b) there are at least 100 members
19 in the proposed class, and (c) the amount in controversy exceeds \$5 million, exclusive of
20 interest and costs. 28 U.S.C. § 1332(d). Under 28 U.S.C. § 1441(a), any such action may
21 be removed to the district court for the district and division embracing the place where the
22 action is pending.

23 7. Under CAFA, there is no presumption against removal to federal court. *See*
24 *Dart Cherokee Basin Operating Co v. Owens*, 574 U.S. 81, 89 (2014). Until and unless a
25 plaintiff challenges removal, an assessment of the amount in controversy is based solely on
26 the allegations of the complaint, rather than “evidentiary submissions.” *Id.* at 84; *see also*
27 *Henry v. Cent. Freight Lines, Inc.*, 692 F. App’x 806, 807 (9th Cir. 2017) (noting in a case
28

1 removed under CAFA that a court must rely on “the allegations contained in the complaint”
2 in determining the amount in controversy).

3 8. In other words, a defendant need not offer evidence to substantiate the amount
4 in controversy; rather, a “notice of removal need include only a plausible allegation that the
5 amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee*, 574 U.S. at
6 89. “Evidence establishing the amount is required . . . only when the plaintiff contests, or
7 the court questions, the defendant’s allegation.” *Id.*; *see also Greene v. Harley-Davidson,*
8 *Inc.*, 965 F.3d 767, 772 (9th Cir. 2020) (applying *Dart Cherokee* standard to removal under
9 CAFA); *LaCross v. Knight Transp. Inc.*, 775 F.3d 1200, 1202 (9th Cir. 2015) (holding that
10 a “preponderance of the evidence” standard applies only *after* “a defendant’s assertion of
11 the amount in controversy is challenged”) (citations and internal quotation marks omitted).

12 **Plaintiff Has Alleged That the Proposed Class Is Sufficiently Numerous**

13 9. Plaintiff purports to bring this action on behalf of “[a]ll consumers in the
14 United States who purchased an Apple gift card wherein the funds on the Apple gift card
15 was [sic] redeemed prior to use by the consumer.” FAC ¶ 31. Plaintiff alleges that this
16 proposed class includes “thousands” of class members. *Id.* ¶ 32.

17 10. While Apple does not concede the truth of Plaintiff’s allegations, those
18 allegations establish that the proposed class satisfies CAFA’s numerosity requirement. *See*
19 28 U.S.C. § 1332(d)(5)(B).

20 **The Parties Are Minimally Diverse**

21 11. Apple Inc. is a Delaware corporation with its principal place of business in
22 Cupertino, California. *See* FAC ¶ 10. Apple Value Services, LLC is a Virginia limited
23 liability company with its principal office address in Cupertino, California. *See* Virginia
24 Secretary of State, State Corporation Commission, Entity Information, *available at*
25 [https://cis.scc.virginia.gov/EntitySearch/BusinessInformation?businessId=542620&source](https://cis.scc.virginia.gov/EntitySearch/BusinessInformation?businessId=542620&source=FromEntityResult&isSeries=False)
26 [=FromEntityResult&isSeries=False](https://cis.scc.virginia.gov/EntitySearch/BusinessInformation?businessId=542620&source=FromEntityResult&isSeries=False); *accord* FAC ¶ 11.

27 12. Plaintiff resides in San Diego County and is a citizen of California. *See id.*
28 ¶ 9. She seeks to represent not only a proposed class of California consumers, but also a

1 proposed nationwide class consisting of “[a]ll consumers in the United States who
2 purchased an Apple gift card wherein the funds on the Apple gift card was [sic] redeemed
3 prior to use by the consumer.” *Id.* ¶ 31.

4 13. Because the proposed nationwide class includes individuals who are not
5 citizens of California, the minimal diversity requirement is satisfied because at least one
6 proposed class member is diverse from at least one defendant. *See* 28 U.S.C. § 1332(d)(A)
7 (extending subject matter jurisdiction to cases in which “any member of a class of plaintiffs
8 is a citizen of a State different from any defendant”); *Rosas v. Carnegie Mortg., LLC*, No.
9 11-7692, 2012 WL 1865480, at *5 (C.D. Cal. May, 21, 2012) (“Because the complaint
10 alleges a ‘nationwide class’ . . . minimal diversity necessarily exists.”).

11 14. Moreover, because the proposed nationwide class includes consumers from all
12 fifty states and the District of Columbia, it is exceedingly unlikely that over a third of the
13 proposed class members are citizens of California, as would be necessary for CAFA’s “local
14 controversy” exception to apply. *See* 28 U.S.C. § 1332(d)(3). It is even more unlikely that
15 over two thirds of the proposed class members are citizens of California, as would be
16 necessary for CAFA’s “home state” exception to apply. *See id.* § 1332(d)(4). Indeed, there
17 are no factual allegations in Plaintiff’s complaint suggesting any basis for Plaintiff to meet
18 her burden of establishing that the “local controversy” or “home state” exceptions apply
19 here. *See generally Mondragon v. Capital One Auto Fin.*, 736 F.3d 880, 883 (9th Cir. 2013)
20 (noting that the “burden of proof for establishing the applicability of an exception to CAFA
21 jurisdiction rests on . . . the plaintiff”).

22 **Plaintiff Has Alleged That There Is at Least \$5,000,000 in Controversy**

23 15. “In measuring the amount in controversy, a court must assume that the
24 allegations of the complaint are true and that a jury will return a verdict for the plaintiff on
25 all claims made in the complaint.” *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199,
26 1205 (E.D. Cal. 2008). It must then “add[] up the value of the claim of each person who
27 falls within the definition of [the] proposed class.” *Standard Fire Ins. Co. v. Knowles*, 568
28 U.S. 588, 592 (2013).

1 16. To satisfy the amount in controversy requirement, a defendant must establish
2 only that “the potential damages could exceed the jurisdictional amount.” *Rea v. Michaels*
3 *Stores Inc.*, 742 F.3d 1234, 1239 (9th Cir. 2014) (quoting *Lewis v. Verizon Commc’ns, Inc.*,
4 627 F.3d 395, 397 (9th Cir. 2010)). The “amount in controversy is not a prospective
5 assessment of [a] defendant’s liability”; instead, “it is the amount at stake in the underlying
6 litigation.” *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 417 (9th Cir. 2018) (citations
7 and internal quotation marks omitted).

8 17. In other words, “[t]he ultimate inquiry is what amount is put ‘in controversy’
9 by the plaintiff’s complaint, not what a defendant will *actually* owe.” *Korn*, 536 F. Supp.
10 2d at 1205 (emphasis in original); *see also, e.g., Greene*, 965 F.3d at 772 (“[T]he amount
11 in controversy is the ‘amount *at stake* in the underlying litigation.’ ‘Amount at stake’ does
12 not mean likely or probable liability; rather it refers to *possible* liability.”) (quoting
13 *Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644, 648 (9th Cir. 2016)) (second
14 emphasis added); *Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005)
15 (“It’s not a question as to what you would owe. It’s a question as to what is in controversy.”)
16 (citation omitted). For that reason, the Ninth Circuit has made clear that a court cannot
17 “delve into the merits” or conduct “a fact-based analysis of the merits” in assessing the
18 amount in controversy. *Greene*, 965 F.3d at 774.

19 18. Without conceding any merit to Plaintiff’s allegations, causes of action, claims
20 for actual, statutory, or punitive damages, or claim for injunctive relief, the amount placed
21 in controversy by Plaintiff’s complaint satisfies CAFA’s jurisdictional threshold.

22 19. Although Plaintiff’s complaint does not specify a precise amount of damages,
23 she alleges a “rampant” pattern of fraud involving Apple gift cards, and she suggests that
24 this supposed pattern has affected “thousands” of consumers nationwide over an unlimited
25 period of time. FAC ¶¶ 3, 31, 104. In light of the fact that Apple’s popular gift cards are
26 widely available through Apple online and retail stores, as well as third-party retailers
27 including drugstores, department stores, and electronics stores throughout the United States,
28 it is “reasonably possible” that Plaintiff’s allegations of a “rampant” fraudulent scheme,

1 taken as true solely for purposes of the instant analysis, place at least \$5 million of Apple
2 gift card sales in controversy. *See Greene*, 965 F.3d at 772.¹

3 20. Plaintiff also seeks statutory damages under the CCPA, which authorizes up
4 to \$750 in statutory damages per consumer. *See Cal. Civ. Code* § 1798.150(a)(1)(A).
5 “Where a statutory maximum is specified, courts may consider the maximum statutory
6 penalty available in determining whether the jurisdictional amount in controversy
7 requirement is met.” *Korn*, 536 F. Supp. 2d at 1205; *see also Morey v. Louis Vuitton N.*
8 *Am., Inc.*, 461 F. App’x 642, 643 (9th Cir. 2011) (reversing order remanding lawsuit to state
9 court and using maximum statutory penalty of \$1,000 per violation to calculate amount in
10 controversy). Here, assuming that the “rampant” pattern of fraud alleged in Plaintiff’s
11 complaint impacted just 7,000 consumers nationwide, which is entirely consistent with
12 Plaintiff’s allegation that the proposed class includes “thousands” of class members, then
13 the amount of statutory damages alone could exceed \$5 million.²

14 21. In addition to actual and statutory damages, Plaintiff seeks punitive damages
15 under the CLRA and the CCPA. *See FAC* ¶¶ 47, 75. When a plaintiff seeks punitive
16 damages in her complaint, courts consider those potential damages in calculating the
17 amount in controversy. *See, e.g., Bell-Sparrow v. Wiltz*, No. 12-2782, 2014 WL 2927354,
18 at *4-5 (N.D. Cal. June 27, 2014) (including punitive damages award with a 5.5 multiplier
19 in amount-in-controversy in light of plaintiff’s request for punitive damages in connection
20 with a claim for intentional misrepresentation); *Lee v. Equifax Info. Servs., LLC*, No. 13-

21 _____
22 ¹ In 2017 and 2018 alone, Apple recorded approximately \$7.5 billion in “deferred revenue”
23 attributable in significant part to gift card sales. *See* 2018 Apple Inc. Form 10-K at 40, 44,
24 *available at* <https://investor.apple.com/sec-filings/default.aspx>.

25 ² Plaintiff asserts her CCPA claim not only on behalf of the proposed California subclass,
26 but on behalf of the proposed nationwide class. *See FAC* ¶ 66. While Apple does not admit
27 that Plaintiff is entitled to assert a CCPA claim on behalf of proposed class members outside
28 of California, Plaintiff — as the “master of [her] complaint” — has nonetheless placed in
controversy the statutory damages those proposed class members seek to recover under the
CCPA. *Greene*, 965 F.3d at 774 (holding that courts should not consider a defendant’s
potential defenses in determining whether damages are recoverable when calculating the
amount in controversy).

1 4302, 2013 WL 6627755, at *4 (N.D. Cal. Dec. 16, 2013) (similar); *Simmons v. PCR Tech.*,
2 209 F. Supp. 2d 1029, 1033 (N.D. Cal. 2002) (similar).

3 22. In assessing the amount in controversy, the Ninth Circuit does not require a
4 “likelihood” that the plaintiff will “prevail[] on the punitive damages claim,” and it has
5 directed district courts not to inquire into the merits of the punitive damages claim or
6 whether the case is factually analogous to other cases in which courts have awarded punitive
7 damages. *Greene*, 965 F.3d at 771-73 (holding that district court erred in requiring Harley-
8 Davidson to “compar[e] and analogiz[e] the underlying factual allegations” to those in other
9 cases where the courts awarded punitive damages).³

10 23. Punitive damages awards “can be substantial.” *Hurd v. Am. Income Life Ins.*,
11 No. 13-5205, 2013 WL 5575073, at *7 (C.D. Cal. Oct. 10, 2013). Even “applying the
12 ‘conservative’ estimate of a 1:1 ratio between compensatory damages and punitive
13 damages,” Plaintiff’s request for punitive damages would double the amount in controversy
14 attributable to the damages Plaintiff asserts here. *Tompkins v. Basic Research LLC*, No.
15 08-244, 2008 WL 1808316, at *4 (E.D. Cal. Apr. 22, 2008) (including potential punitive
16 damages in analyzing amount in controversy).

17 24. Plaintiff also seeks to recover attorneys’ fees. *See* FAC ¶ 75; Prayer ¶ 6. For
18 purposes of assessing the amount in controversy, the Court is not limited to considering
19 fees incurred at the time of removal; rather, “a court must include future attorneys’ fees
20 recoverable by statute or contract when assessing whether the amount-in-controversy
21 requirement is met.” *Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 794 (9th Cir.
22 2018) (holding that the amount in controversy includes fees likely to be incurred after
23 removal); *see also Bayol v. Zipcar, Inc.*, No. 14-2483, 2015 WL 4931756, at *7 (N.D. Cal.
24 Aug. 18, 2015) (“The amount in controversy can include . . . attorneys’ fees[.]”). Fee
25 requests in consumer class actions, such as this case, are typically significant. *See, e.g.*,

26
27 ³ Under California law, punitive damages are available only upon a showing of “oppression,
28 fraud, or malice.” Cal. Civ. Code § 3294(a). Apple denies that its conduct is in any way
oppressive, fraudulent, or malicious or that it is liable for punitive damages.

1 *Wilson v. Airborne, Inc.*, No. 07-770, 2008 WL 3854963, at *12 (C.D. Cal. Aug. 13, 2008)
2 (awarding \$3,459,946 in attorneys’ fees in deceptive advertising class action); *Chavez v.*
3 *Netflix, Inc.*, 162 Cal. App. 4th 43, 46 (2008) (awarding attorneys’ fees of \$2.04 million as
4 part of the settlement of consumer class action); *In re Sony SXRDR Rear Projection*
5 *Television Class Action Litig.*, No. 06-5173, 2008 WL 1956267, at *16 (S.D.N.Y. May 1,
6 2008) (awarding class counsel \$1.6 million in attorneys’ fees and expenses in breach-of-
7 warranty class action).

8 25. Furthermore, Plaintiff seeks an order requiring Apple to “engage in a
9 corrective advertising campaign.” FAC at Prayer for Relief ¶ 5. “In actions seeking
10 declaratory or injunctive relief, it is well established that the amount in controversy is
11 measured by the value of the object of the litigation.” *Cohn v. Petsmart, Inc.*, 281 F.3d 837,
12 840 (9th Cir. 2002) (quoting *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 347
13 (1977)); *see also Rose v. J.P. Morgan Chase, N.A.*, No. 12-225, 2012 WL 892282, at *2-3
14 (E.D. Cal. Mar. 14, 2012) (denying motion to remand where value of injunctive relief
15 sought exceeded the amount in controversy). The amount in controversy therefore includes
16 “the cost [to Apple] of complying with [Plaintiff’s] requested injunctive relief” — *i.e.*, a
17 corrective advertising campaign. *Gen. Dentistry for Kids, LLC v. Kool Smiles, P.C.*, 379 F.
18 App’x 634, 635 (9th Cir. 2010).

19 26. The cost of a “corrective advertising” campaign would be significant —
20 particularly for an entity the size of Apple, which is one of the largest companies (if not the
21 single largest company) in the world. In fact, it is entirely possible that the cost of such a
22 corrective advertising campaign alone could come close to, or even exceed, \$5 million. *See,*
23 *e.g., Fefferman v. Dr. Pepper Snapple Grp., Inc.*, No. 13-160, 2013 WL 12114486, at *3
24 (S.D. Cal. Mar. 12, 2013) (noting that, “[i]n total, the corrective advertisement campaign
25 would cost Defendants approximately \$4,985,000”).

26 27. Therefore, when aggregated, Plaintiff’s request for actual damages, restitution
27 and disgorgement, statutory damages under the CCPA, punitive damages under the CLRA
28

1 and CCPA, and attorney’s fees, combined with the cost of Plaintiff’s requested “corrective
2 advertising campaign,” readily exceed CAFA’s \$5 million threshold.

3 **VENUE IS PROPER**

4 28. Venue is proper in this Court because Plaintiff filed her complaint in San Diego
5 County Superior Court, which is located in this District. *See* 28 U.S.C. § 1441(a) (“Except
6 as otherwise expressly provided by Act of Congress, any civil action brought in a State
7 court of which the district courts of the United States have original jurisdiction, may be
8 removed by the defendant or the defendants, to the district court of the United States for the
9 district and division embracing the place where such action is pending.”); 28 U.S.C. § 84(d)
10 (providing that San Diego County is part of the Southern District of California).

11 **REMOVAL IS TIMELY**

12 29. Under 28 U.S.C. § 1446(b), a notice of removal of a civil action must be filed
13 within thirty days of the defendant’s receipt of service of the Summons and the Complaint.
14 Apple was served on July 23, 2020. *See* Ex. 1. This Notice of Removal is therefore timely.

15 **OTHER REQUIREMENTS FOR REMOVAL ARE MET**

16 30. No attorneys for Apple have entered an appearance, or filed any pleadings or
17 other papers responding to the initial or amended complaint, in the Superior Court.

18 31. Pursuant to 28 U.S.C. § 1446(d), Apple will promptly give written notice of
19 the filing of this Notice of Removal to all parties and will promptly file a written notice,
20 along with a copy of this Notice of Removal, with the Clerk of the San Diego County
21 Superior Court and serve it on all parties. *See* Ex. 3 (Notice to State Court).

22
23 DATED: August 21, 2020

JENNER & BLOCK LLP

24 By: s/ Kate T. Spelman
25 Attorney for Defendants
26 Apple Inc. and Apple Value Services, LLC
27 E-mail: kspelman@jenner.com
28

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Rachael Shay</p> <p>(b) County of Residence of First Listed Plaintiff <u>San Diego</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> James Hawkins and Samantha A. Smith James Hawkins APLC 9880 Research Drive, Ste. 200, Irvine, CA 92618</p>	<p>DEFENDANTS Apple Inc. and Apple Value Services, LLC</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i> <u>'20CV1629 GPC BLM</u></p> <p>Kate T. Spelman and Alexander M. Smith Jenner & Block LLP 633 W. 5th St., Ste. 3600, Los Angeles, CA 90071</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left; border-bottom: 1px solid black;"></th> <th style="text-align: center; border-bottom: 1px solid black;">PTF</th> <th style="text-align: center; border-bottom: 1px solid black;">DEF</th> <th style="text-align: left; border-bottom: 1px solid black;"></th> <th style="text-align: center; border-bottom: 1px solid black;">PTF</th> <th style="text-align: center; border-bottom: 1px solid black;">DEF</th> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)* Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i> <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY - Product Liability</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<p>LABOR</p> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District *(specify)*
 6 Multidistrict Litigation - Transfer
 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
28 U.S.C. 1332(d) (Class Action Fairness Act)

Brief description of cause:
Consumer class action related to Apple gift cards

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE August 21, 2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Kate T.Spelman

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

EXHIBIT 1



PROCESS SERVER DELIVERY DETAILS

Date: Thu, Jul 23, 2020
Server Name: Douglas Forrest
Location: Los Angeles, CA-LA

Entity Served	APPLE VALUE SERVICES, LLC
Agent Name	C T CORPORATION SYSTEM (C0168406)
Case Number	37202000017475CUMCCTL
Jurisdiction	CA-LA



SUM-100

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California
County of San Diego
05/28/2020 at 01:03:28 PM
Clerk of the Superior Court
By: Cecile Van Pelt, Deputy Clerk

**NOTICE TO DEFENDANT
(AVISO AL DEMANDADO)**

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

**YOU ARE BEING SUED BY PLAINTIFF
(LO ESTÁ DEMANDANDO EL DEMANDANTE)**

RACHAEL SHAY, on behalf of herself and all others similarly situated.

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

(AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.)

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SAN DIEGO SUPERIOR COURT
330 West Broadway, San Diego, CA 92101

CASE NUMBER: (Número del Caso):

37-2020-00017475-CU-MC-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

James R. Hawkins, Samantha A. Smith, JAMES HAWKINS/APLC, 9880 Research Dr., Ste 200, Irvine, CA 92618, Tel: 949-387-7200

DATE: 05/29/2020
(Fecha)

Clerk by: (Secretario)

C. Van Pelt
C. Van Pelt

Deputy: (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons, (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of: (specify):
- 3. on behalf of (specify): **Apple Value Services LLC**
a Virginia limited liability Corporation
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other: (specify):
- 4. by personal delivery on (date) **7/23/20**

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JAMES HAWKINS, APLC
JAMES R. HAWKINS, ESQ. (#192925)
james@jameshawkinsaplc.com
SAMANTHA A. SMITH, ESQ. (#233331)
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9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676

ELECTRONICALLY FILED
Superior Court of California
County of San Diego
07/13/2020 at 04:05:00 PM
Clerk of the Superior Court
By: Valeria Contreras, Deputy Clerk

Attorneys for Plaintiff Rachael Shay,
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

RACHAEL SHAY, on behalf of herself and
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. 37-2020-00017475-CU-MC-CTL

Assigned for All Purposes to:
Hon. Richard Whitney, Dept. C-68

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
EQUITABLE, DECLARATORY AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff Rachael Shay brings this action on behalf of herself and all others similarly
2 situated against Defendants Apple, Inc. and Apple Value Services, LLC (“Apple” or
3 “Defendants”) and states as follows:

4 **NATURE OF ACTION**

5 1. This is a consumer class action on behalf consumers nationwide, and in California,
6 who purchased a defective, unsecure and valueless Apple gift card.

7 2. Throughout the Class Period, defined below, Defendants manufactured, marketed,
8 sold and/or distributed Apple gift cards Defendants knew, or should have known, were subject to
9 an ongoing scam wherein the funds on the gift cards are fraudulently redeemed by third parties
10 accessing the Personal Identification Number (“PIN”) prior to use by the consumer.

11 3. Rather than take simple preventative measures to curb the known and rampant
12 fraudulent conduct and/or warn consumers that the Apple gift card funds are easily susceptible to
13 theft upon purchase, Defendants perpetuated the fraud by staying silent, refusing to refund
14 consumers that complained when they discovered their Apple gift cards were valueless, and
15 failing to implement and maintain reasonable security procedures and practices appropriate to
16 protect consumers’ personal information.

17 4. As a result, Defendants have caused Plaintiff and other similarly situated
18 consumers to purchase a product, which is not secure and does not perform as represented.
19 Plaintiff and other similarly situated consumers have been harmed in the amount they paid for the
20 gift cards, plus interest.

21 5. Plaintiff brings this action on behalf of herself and all other similarly situated
22 consumers to halt Defendants’ dissemination of unsecure Apple gift cards, correct the false and
23 misleading perception it has created in the minds of consumers that the Apple gift cards are secure
24 and of good quality, and to obtain redress for those who have purchased the faulty Apple gift
25 cards.

26 **JURISDICTION AND VENUE**

27 6. This Court has jurisdiction over this action pursuant to the California Constitution,
28 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those

1 given by statutes to other courts. The statutes under which this action is brought do not specify
2 any other basis for jurisdiction.

3 7. This Court has jurisdiction over all Defendants because, upon information and
4 belief, they are either citizens of California, have sufficient minimum contacts in California or
5 otherwise intentionally avail themselves of the California market so as to render the exercise of
6 jurisdiction over them by the California courts consistent with traditional notions of fair play and
7 substantial justice.

8 8. Venue as to each defendant is proper in this judicial district, pursuant to California
9 Code of Civil Procedure section 395.5. On information and belief, Defendants distribute, market
10 and sell their products in San Diego County and throughout California, and each defendant is
11 within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged
12 herein have a direct effect on Plaintiff and those similarly situated within the State of California.

13 **PARTIES**

14 9. Plaintiff Rachael Shay is and was at all relevant times during the Class Period
15 defined herein, an individual residing in San Diego County, California. On April 3, 2020, Plaintiff
16 purchased a \$50 Apple gift card from Walmart in Encinitas, California, as a gift for her son. The
17 gift card was solely in her possession until she gave it to her son. When her son attempted to load
18 the gift card he received a message indicating that the gift card had already been redeemed.
19 Plaintiff contacted Apple and was told the gift card was redeemed by another account on April 3,
20 2020, the same day she purchased the gift card, and the card no longer had any value. For security
21 reasons, Defendants would not provide Plaintiff with any additional information about the owner
22 account that redeemed the code, other than it was an account unrelated to Plaintiff and/or her son.
23 Plaintiff was then told there was nothing else Defendants could do for her, that her case was
24 closed and any further contact would go unanswered. Had Plaintiff known the truth about
25 Defendants' defective gift cards, she would not have purchased it. As a result of her purchase,
26 Plaintiff suffered injury in fact and lost money.

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1 10. Defendant Apple, Inc. is a multinational technology company headquartered in
2 Cupertino, California, that designs, develops, and sells consumer electronics, computer software,
3 and online services.

4 11. Defendant Apple Value Services, LLC is a subsidiary of Apple, Inc. with its
5 headquarters also in Cupertino, California, and is responsible for “issuing and managing” Apple
6 gift cards in the United States.

7 12. Defendants manufacture, market, sell and/or distribute gift cards to thousands of
8 consumers across the country and in the State of California.

9 13. The true names and capacities, whether individual, corporate, associate, or
10 otherwise, of defendants sued herein as Does 1 to 10, inclusive, are currently unknown to
11 Plaintiff, who therefore sues these defendants by such fictitious names under California Code of
12 Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of
13 the defendants designated herein as a Doe is legally responsible in some manner for the unlawful
14 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
15 names and capacities of the defendants designated hereinafter as Does when such identities
16 become known. Throughout this complaint, the term “Defendants” shall include defendants Does
17 1 to 10, inclusive.

18 **FACTUAL ALLEGATIONS**

19 14. Throughout the Class period, Defendants have manufactured, marketed, sold
20 and/or distributed Apple gift cards on a nationwide basis, and throughout California, in a uniform
21 and similar fashion.

22 15. The Apple gift cards are sold online and through Defendants’ various retailers and
23 may be used to access Defendants’ various online services, including services available through
24 the App Store and iTunes.

25 16. Apple gift cards contain a Personal Identification Number (“PIN”) covered with
26 silver scratch off tape. When a consumer purchases a new Apple gift card, the PIN is activated so
27 that it can be loaded onto a consumer’s Apple account to use for Apple services. Upon
28 information and belief (and as the acronym suggests), the Apple gift card PINs contain “personal

1 information” associated with and/or reasonably linked, directly or indirectly, with the purchasing
2 consumer upon activation.

3 17. Upon information and belief, due to Defendants’ defective design, manufacture
4 and/or packaging of the Apple gift cards, including Apple’s failure to implement and maintain
5 reasonable security procedures and practices to properly secure the Apple gift cards, the Apple gift
6 cards are targeted by thieves who electronically access the Apple gift cards at the point of sale and
7 redeem the funds activated by the consumer. Subsequently, when a consumer attempts to load a
8 newly activated Apple gift card, the gift card registers as “redeemed” and is valueless.

9 18. Unbeknownst to Plaintiff, the Apple gift card she purchased as a birthday gift for
10 her son was subject to fraudulent conduct at the point of sale. Upon information and belief, after
11 activating the gift card, third parties intercepted the activated funds leaving Plaintiff with a
12 valueless card. Consequently, when Plaintiff’s son went to redeem the funds, Plaintiff’s son
13 received a message that the funds had already been redeemed.

14 19. When Plaintiff called Apple to complain, Apple informed Plaintiff that the gift
15 card was already redeemed, and the card no longer had any value. For security reasons,
16 Defendants would not provide Plaintiff with any additional information about who redeemed the
17 code, other than it was an account unrelated to Plaintiff and/or her son. Plaintiff was then told
18 there was nothing else Apple could do for her, that her case was closed, and any further contact
19 would go unanswered.

20 20. Upon information and belief, Apple maintains records indicating when the Apple
21 gift cards are activated, when they are redeemed, and how and where they are redeemed.

22 21. Upon information and belief, Defendants have known that the Apple gift cards they
23 sell to consumers are defective, unsecure and easily subject to known fraud.

24 22. The existence of numerous complaints from consumers regarding the unsecure and
25 valueless Apple gift cards are sufficient to put Apple on notice that the funds on the gift cards
26 were not guaranteed to be secure upon purchase.

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1 23. Despite this knowledge, Apple failed to take adequate and reasonable measures to
2 ensure that third parties did not tamper with its gift cards and to date continues to sell the Apple
3 gift cards easily prone to security breaches and theft as described herein.

4 24. Apple also failed to disclose to Plaintiff and Class Members that Apple did not
5 safeguard the gift cards and/or the gift card accounts to prevent the fraud and/or ensure that the
6 gift cards were not tampered with.

7 25. Apple failed to inform or disclose to the public, including Plaintiff and Class
8 Members, that it was aware of an ongoing fraud with the Apple gift cards, making it probable that
9 the funds on Apple gift cards could be easily accessed and stolen by third parties. Apple also
10 failed to disclose that its policy and practice was *not* to refund or replace the value of the Apple
11 gift cards subjected to the known fraud.

12 26. Apple failed to inform or disclose to the public, including Plaintiff and Class
13 Members, that its Apple gift card policies and security practices were inadequate to safeguard
14 customers' Apple gift card accounts and personal identifying information against theft.

15 27. Plaintiff and Class Members had a reasonable expectation that Apple would
16 maintain their Apple gift card funds and gift card account information secure.

17 28. As a direct and proximate cause of Apple's conduct, Plaintiff and Class Members
18 suffered injury in the amount of money loaded onto the gift cards.

19 29. Had Apple disclosed to Plaintiff and Class Members that Apple did not have
20 adequate systems, policies, and security measures in place to secure customers' Apple gift card
21 account information and Apple gift card funds, Plaintiff and Class Members would not have
22 purchased the Apple gift cards.

23 30. Defendants have reaped enormous profits from their unlawful, unfair and deceptive
24 business practices.

25 **CLASS DEFINITION AND ALLEGATIONS**

26 31. Pursuant to California Code of Civil Procedure 382, Plaintiff brings this action on
27 behalf of herself and on behalf of all members of the following class and subclass of similarly
28 situated individuals:

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Nationwide Class:

All consumers in the United States who purchased an Apple gift card wherein the funds on the Apple gift card was redeemed prior to use by the consumer. Excluded from this Class are Defendants and their officers, directors and employees, and those who purchased Apple gift cards for the purpose of resale.

California Subclass:

All consumers in the State of California who purchased an Apple gift card wherein the funds on the Apple gift card was redeemed prior to use by the consumer. Excluded from this Class are Defendants and their officers, directors and employees, and those who purchased Apple gift cards for the purpose of resale.

32. Numerosity. On information and belief, the Nationwide Class and California Subclass (collectively, the “Class” or “Class Members”) are each so numerous that joinder of all members of the Class is impracticable. Plaintiff is informed and believes that the proposed Class contains thousands of purchasers of Apple gift cards who have been damaged by Defendants’ conduct as alleged herein. The precise number of Class Members is unknown to Plaintiff but estimated to be in the thousands.

33. Existence and Predominance of Common Questions of Law and Fact. This action involves common questions of law and fact, which predominate over any questions affecting individual Class Members. These common legal and factual questions include, but are not limited to, the following:

- a. Whether Defendants knew, or should have known, that the Apple gift cards were defective, unsecure and easily susceptible to fraud and/or theft;
- b. Whether Defendants had a duty to disclose to Plaintiff and Class Members of the probability and/or possibility of an ongoing fraud with the Apple gift cards, making it probable that the funds on Apple gift cards could be easily accessed and stolen by third parties;

- 1 c. Whether Defendants owed a duty to Plaintiff and the Class Members to provide
- 2 security measures to ensure that its systems and networks, and the personnel
- 3 responsible for them, adequately protected the personal information of consumers;
- 4 d. Whether the PIN on the Apple gift cards constitutes personal information;
- 5 e. Whether Defendants had a duty to disclose to Plaintiff and Class Members that
- 6 Apple did not safeguard the gift cards and/or the gift card accounts to prevent the
- 7 fraud and/or ensure that the gift cards were not tampered with;
- 8 f. Whether Apple failed to take adequate and reasonable measures to ensure that third
- 9 parties did not tamper with its gift cards;
- 10 g. Whether Defendants had a duty to disclose to Plaintiff and Class Members that its
- 11 Apple gift card policies and security practices were inadequate to safeguard
- 12 customers' gift card accounts and personal identifying information against theft;
- 13 h. Whether Defendants' alleged conduct violates public policy;
- 14 i. Whether the alleged conduct constitutes violations of the laws asserted;
- 15 j. Whether Defendants engaged in unlawful, unfair or fraudulent business practices;
- 16 k. Whether Plaintiff and Class Members have sustained monetary loss and the proper
- 17 measure of that loss; and
- 18 l. Whether Plaintiff and Class Members are entitled to other appropriate remedies,
- 19 including corrective advertising and injunctive relief.

20 34. Typicality. Plaintiff's claims are typical of the claims of the members of the Class
21 because, *inter alia*, all Class Members were injured through the uniform misconduct described
22 above and were subject to Defendants' deceptive claims that accompanied each and every gift
23 card that Defendants sold. Plaintiff is advancing the same claims and legal theories on behalf of
24 herself and all members of the Class.

25 35. Adequacy of Representation. Plaintiff will fairly and adequately protect the
26 interests of the members of the Class. Plaintiff has retained counsel experienced in complex
27 consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff
28 has no adverse or antagonistic interests to those of the Class.

1 36. Superiority. A class action is superior to all other available means for the fair and
2 efficient adjudication of this controversy. The damages or other financial detriment suffered by
3 individual Class Members is relatively small compared to the burden and expense that would be
4 required to individually litigate their claims against Defendants. It would thus be virtually
5 impossible for Plaintiff and Class Members, on an individual basis, to obtain effective redress for
6 the wrongs done to them. Furthermore, even if Class Members could afford such individualized
7 litigation, the court system could not. Individualized litigation would create the danger of
8 inconsistent or contradictory judgments arising from the same set of facts. Individualized
9 litigation would also increase the delay and expense to all parties and the court system from the
10 issues raised by this action. By contrast, the class action device provides the benefits of
11 adjudication of these issues in a single proceeding, economies of scale, and comprehensive
12 supervision by a single court, and presents no unusual management difficulties under the
13 circumstances here.

14 37. The Class also may be certified because Defendants have acted or refused to act on
15 grounds generally applicable to the Class, thereby making appropriate final declaratory and/or
16 injunctive relief with respect to the members of the Class as a whole.

17 38. Plaintiff seeks preliminary and permanent injunctive and equitable relief on behalf
18 of the entire Class, on grounds generally applicable to the entire Class, to enjoin and prevent
19 Defendants from engaging in the acts described and requiring Defendants to provide full
20 restitution to Plaintiff and Class Members.

21 39. Unless a Class is certified, Defendants will retain monies received as a result of its
22 conduct that were taken from Plaintiff and Class Members. Unless an injunction is issued,
23 Defendants will continue to commit the violations alleged, and the members of the Class and the
24 general public will continue to be misled.

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COUNT I

Violations of the Consumers Legal Remedies Act

California Civil Code §1750 *et seq.*

40. Plaintiff repeats and re-alleges the allegations contained in the Paragraphs above, as if fully set forth herein.

41. Plaintiff brings this claim individually and on behalf of the Class.

42. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.* (the “CLRA”). Plaintiff is a “consumer” as defined by California Civil Code § 1761(d). Defendants’ Apple gift cards are “goods” within the meaning of the CLRA.

43. Defendants violated and continues to violate the CLRA by engaging in the following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of the Apple gift cards:

(5) Representing that [the gift cards have] . . . approval, characteristics , . . uses [and] benefits . . . which [they do] not have . . .

* * *

(7) Representing that [the gift cards are] of a particular standard, quality or grade . . . if [they are] of another.

* * *

(9) Advertising goods . . . with intent not to sell them as advertised.

* * *

(16) Representing that [the gift cards have] been supplied in accordance with a previous representation when [they have] not.

44. Defendants violated the CLRA by representing and failing to disclose material facts about the gift cards, as described above, when they knew, or should have known, that the representations were false and misleading and that the omissions were of material facts they were obligated to disclose.

1 above-described wrongful acts and practices constitute actual and constructive fraud within the
2 meaning of Civil Code §§ 1572 and 1573, as well as deceit, which is prohibited under Civil Code
3 §§ 1709 and 1711.

4 54. Plaintiff and the Class reserve the right to allege other violations of law, which
5 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this
6 date.

7 55. Defendants' actions also constitute "unfair" business acts or practices because, as
8 alleged above, *inter alia*, Defendants engaged in unfair business practices, misrepresented and
9 omitted material facts regarding the Apple gift cards, and thereby offended an established public
10 policy, and engaged in unethical, oppressive, and unscrupulous activities that are substantially
11 injurious to consumers.

12 56. As stated in this complaint, Plaintiff alleges violations of consumer protection and
13 unfair competition laws in California, resulting in harm to consumers throughout the United
14 States. Defendants' acts and omissions also violate and offend the public policy against engaging
15 in false and misleading advertising, unfair competition and deceptive conduct towards consumers.
16 This conduct constitutes violations of the unfair prong of Business & Professions Code § 17200,
17 *et seq.*

18 57. There were reasonably available alternatives to further Defendants' legitimate
19 business interests, other than the conduct described herein.

20 58. Business & Professions Code § 17200 *et seq.*, also prohibits any "fraudulent
21 business act or practice."

22 59. Defendants' actions, claims, nondisclosures and misleading statements, as more
23 fully set forth above, were also false, misleading and/or likely to deceive the consuming public
24 within the meaning of Business & Professions Code § 17200 *et seq.*

25 60. Defendants' advertising, labeling and packaging as described herein also
26 constitutes unfair, deceptive, untrue and misleading advertising.
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1 duty to implement and maintain reasonable security procedures and practices appropriate to the
2 nature of the information to protect the personal information of Plaintiff and Class Members.

3 70. As a direct and proximate result of the Defendants' conduct, Plaintiff's and the
4 Class Members' personal information was subjected to unauthorized disclosure to a third party.

5 71. As a direct and proximate result of Defendants' conduct, Plaintiff and Class
6 Members were injured and lost money or property, including but not limited to, the amount stolen
7 from their Apple gift cards, the loss of Plaintiff's and Class Members' legally protected interest in
8 the confidentiality and privacy of their personal information, nominal damages, and additional
9 losses as described herein.

10 72. Defendants knew or should have known that the security practices regarding the
11 Apple gift cards were inadequate to safeguard Plaintiff and Class Members personal information
12 and the risk of unauthorized disclosure to a third party was highly likely. Defendants failed to
13 implement and maintain reasonable security procedures and practices appropriate to the nature of
14 the information to protect the personal information of Plaintiff and Class Members.

15 73. Apple is a corporation that is organized and operated for the profit or financial
16 benefit of its owners with a reported total second quarter revenue for fiscal year 2020 of \$58.3
17 billion.

18 74. In accordance with Cal. Civ. Code §1798.150(b), Plaintiff has served Defendants
19 with notice of these CCPA violations and a demand for relief by certified mail, return receipt
20 requested. A copy of the letter is attached hereto as **Exhibit A**.

21 75. On behalf of Class Members, Plaintiff seeks injunctive relief in the form of an
22 order enjoining Defendants from continuing to violate the CCPA. If Defendants fail to properly
23 respond to Plaintiff's notice letter or agree to timely and adequately rectify the violations detailed
24 above, Plaintiff will seek actual, punitive, and statutory damages in an amount not less than one
25 hundred dollars (\$100) and not greater than seven hundred and fifty (\$750) per consumer per
26 incident, whichever is greater; restitution; attorneys' fees and costs (pursuant to Cal. Civ. Code
27 §1021.5); and any other relief the Court seems proper as a result of Defendants' CCPA violations.

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COUNT IV

Negligence

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3 76. Plaintiff repeats and re-alleges the allegations contained in the Paragraphs above,
4 as if fully set forth herein.

5 77. Plaintiff brings this claim individually and on behalf of the Class.

6 78. Defendants owed a duty to Plaintiff and Class Members to exercise reasonable care
7 in obtaining, securing, safeguarding, deleting, destroying and protecting Plaintiff's and Class
8 Members' personal information within their possession or control from being compromised, lost,
9 stolen, accessed and misused by unauthorized persons. This duty included, among other things,
10 designing, maintaining and testing Defendants' security systems to ensure that Plaintiff's and
11 Class Members' personal information was adequately secured and protected. Defendants further
12 owed a duty to Plaintiff and the Class Members to implement processes that would detect a breach
13 of its Apple gift cards in a timely manner and to timely act upon warning and alerts including
14 those generated by its own security systems.

15 79. Defendants owed a duty to Plaintiff and the Class Members to provide security to
16 ensure that its systems and networks, and the personnel responsible for them, adequately protected
17 the personal information of consumers.

18 80. Defendants owed a duty of care to Plaintiff and the Class Members because they
19 were foreseeable and probable victims of any inadequate security practices. Defendants knew or
20 *should have known they had inadequately safeguarded Apple gift cards, and yet Defendants failed*
21 *to take reasonable precautions to safeguard it.*

22 81. Defendants owed a duty to timely and accurately disclose to Plaintiff and the Class
23 Members that their personal information had been or was reasonably believed to have been
24 compromised. Timely disclosure was required, appropriate and necessary so that, among other
25 things, Plaintiff and the Class Members could take appropriate measures to avoid theft and/or
26 fraudulent charges, including, monitoring their account information and credit reports for
27 fraudulent activity, contact their banks or other financial institutions, obtaining credit monitoring
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1 services, filing reports with law enforcement and other governmental agencies and taking other
2 steps to mitigate or ameliorate the damages caused by Defendants' misconduct.

3 82. Plaintiff and the Class Members entrusted Defendants with their PII with the
4 understanding that Defendants would safeguard their information and that the company was in a
5 position to protect against the harm suffered by Plaintiff and the Class Members as a result of
6 Apple gift card fraud.

7 83. Defendants knew, or should have known, of the inherent risks in collecting and
8 storing the personal information of Plaintiff and the Class Members and of the critical importance
9 of providing adequate security of that information.

10 84. Defendants' own conduct also created a foreseeable risk of harm to Plaintiff and
11 the Class Members. Defendants' misconduct included, but was not limited to, failure to take the
12 steps and opportunities to prevent and stop the Apple gift card fraud as set forth herein.

13 85. Through its acts and omissions described herein, Defendants unlawfully breached
14 its duty to use reasonable care to protect and secure Plaintiff's and the Class Members' personal
15 information within its possession or control. More specifically, Defendants failed to maintain a
16 number of reasonable security procedures and practices designed to protect personal information
17 of Plaintiff and the Class Members, including, but not limited to, establishing and maintaining
18 industry-standard systems to safeguard its Apple gift cards from theft. Given the risk involved and
19 the amount of data at issue, Defendants' breach of its duties was unreasonable.

20 86. Defendants breached their duties to timely and accurately disclose that Plaintiff's
21 and Class Members' personal information in Defendants' possession had been or was reasonably
22 believed to have been, stolen or compromised.

23 87. As a direct and proximate result of Defendants' breach of its duties, Plaintiff and
24 the Class Members have been harmed by the loss of the funds stolen from their Apple gift cards,
25 plus interest.

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COUNT V

Negligent Misrepresentation

88. Plaintiff repeats and re-alleges the allegations contained in the Paragraphs above, as if fully set forth herein.

89. Plaintiff brings this claim individually and on behalf of the Class.

90. In the course of its business, Defendants misrepresented to Plaintiff and Class Members that Defendants were selling Apple gift cards that were original, usable, secure, valuable, and free from fraud, tampering or compromise.

91. Defendants had no reasonable grounds to believe these misrepresentations were true.

92. Defendants failed to inform or disclose to the public, including Plaintiff and Class Members, that Defendants were aware of an ongoing fraud with the Apple gift cards, making it probable that the value of Apple gift cards could be accessed and stolen by third parties. Defendants also failed to disclose that Defendants policy and practice was to not refund or replace the value of the Apple gift cards subjected to this fraud.

93. Defendants also failed to disclose to the public, including Plaintiff and Class Members, that Defendants did not safeguard the gift cards and/or the gift card accounts to prevent the fraud and/or ensure that the gift cards were not tampered with.

94. Defendants also failed to inform or disclose to the public, including Plaintiff and Class Members, that its Apple gift card policies and security practices are inadequate to safeguard customers' Apple gift card accounts and personal identifying information against theft.

95. Defendants intended to induce Plaintiff and Class Members to rely on its misrepresentations and omissions because they knew Plaintiff and Class Members would not have purchased the Apple gift cards had they known the Apple gift cards, as well as their personal information attached to the gift cards, was subject to an ongoing fraud.

96. Defendants made these representations and omissions as to Plaintiff and the Class Members in connection with their purchase of the Apple gift cards.

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7. Providing such further relief as may be just and proper.

Dated: July 13, 2020

JAMES HAWKINS, APLC



Samantha A. Smith
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all causes of action and/or issues so triable..

Dated: July 13, 2020

JAMES HAWKINS, APLC



Samantha A. Smith
Attorney for Plaintiff

EXHIBIT A

JAMES *JH* HAWKINS
ATTORNEYS AT LAW

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200. FACSIMILE (949) 387-66

May 28, 2020

Via Certified Mail (Receipt No. 7018 1130 0001 8270 4913)
Return Receipt Requested

Apple, Inc.
Apple Value Services, LLC
One Apple Park Way
Cupertino, CA 95014

Re: *Demand Letter Pursuant to California Civil Code Sections 1782 and 1798.150*

Dear Sir or Madam:

This letter serves as notice and demand for corrective action by Apple, Inc. and Apple Value Services, LLC (“Apple”) pursuant to the Consumer Legal Remedies Act, Cal. Civ. Code Section 1750 *et al.* (“CLRA”) and the California Consumer Privacy Act (“CCPA”), Cal. Civ. Code Section 1798.150(b). This letter is sent on behalf of our client, Rachael Shay, a consumer of Apple gift cards in the State of California, and all other persons similarly situated. We hereby demand that you take immediate corrective action within thirty (30) days as further described below.

Apple, Inc. is a multinational technology company that designs, develops, and sells consumer electronics, computer software, and online services. Apple sells Apple gift cards for its various online services, including its App Store and iTunes, throughout the United States. Upon information and belief, Apple manufactured, marketed, sold and/or distributed insecure and defective Apple gift cards it knew were prone to an ongoing scam wherein the funds on the gift cards are fraudulently redeemed by accessing the Personal Identification Number (“PIN”) on the Apple gift cards prior to use by the consumer.¹

Rather than take simple preventative measures to curb the known and rampant fraudulent conduct and/or warn consumers that the Apple gift card funds are easily susceptible to fraud and are not secure. Defendants perpetuated the fraud by staying silent, refusing to refund the stolen value after consumers complained, and failing to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect consumers’ personal information. This conduct violates the CLRA, including but not limited to sections 1770(a) (5), (7), (9) and (16), as well as the CCPA, including but not limited to section 1798.150. Apple has misled and continues to mislead consumers, thereby unfairly permitting Apple to increase its sales and capture market share from its competitors.

Our client is a citizen of the State of California and is a consumer as defined in California Civil Code section 1761(d) because she purchased an Apple gift card for personal, family, or household use. When our client purchased an Apple gift card for her son as a birthday gift, she was misled into believing that the funds on the Apple gift card, and any personal information associated with the Apple gift card, was secure. Had Ms. Shay known the truth about the Apple gift cards and Apple’s failure to properly secure them, she would not have made her purchase. As a result, our client suffered a loss of money.

¹ Upon information and belief, the PIN on the Apple gift cards is “personal information” as defined in Cal. Civ. Code §1798.140(o) as it “identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with” the purchasing consumers and/or their households.

We hereby demand on behalf of our client and all others similarly situated that Apple immediately: (1) cease and desist from continued sale of the faulty Apple gift cards; (2) initiate a corrective campaign to address the inadequate security practices and procedures described herein; and (3) offer to refund the purchase price of the gift cards, plus reimbursement for interest.

If Apple wishes to enter into discussions to resolve the demand asserted in this letter, please contact me immediately.

Sincerely,

JAMES HAWKINS, APLC


Samantha A. Smith

EXHIBIT B

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JAMES HAWKINS, APLC
JAMES R. HAWKINS, ESQ. (#192925)
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Tel.: (949) 387-7200
Fax: (949) 387-6676

Attorneys for Plaintiff Rachael Shay,
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

RACHAEL SHAY, on behalf of herself
and 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.

**AFFIDAVIT OF VENUE BY PLAINTIFF
RACHAEL SHAY**

I, Rachael Shay, hereby declare and state as follows:

1. I am over the age of 18, and if called as a witness, I would testify truthfully to the matters set forth in this Declaration. All of the matters set forth below are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true.

2. I am the Plaintiff in the above-entitled action.

3. Pursuant to Cal. Civ. Code § 1780(d), I make this Declaration in support of the Class Action Complaint and the claim for relief stated in that complaint under Cal. Civ. Code § 1780(a).

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4. This action for relief under Cal. Civ. Code § 1780(a) has been commenced in a county that is a proper place for trial of this action because I reside in San Diego County, and this is the county where the transaction or any substantial portion thereof occurred.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 27th day of May 2020, in Carlsbad, California.

DocuSigned by:
Rachael Shay
2F0848F882E840B...
Rachael Shay _____

ELECTRONICALLY FILED
Superior Court of California
County of San Diego
05/28/2020 at 01:03:28 PM
Clerk of the Superior Court
By: Cecile Van Pelt, Deputy Clerk

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JAMES HAWKINS, APLC
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Attorneys for Plaintiff Rachael Shay,
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

RACHAEL SHAY, on behalf of herself and
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. 37-2020-00017475-CU-MC-CTL

Assigned for All Purposes to:

**CLASS ACTION COMPLAINT FOR
DAMAGES AND EQUITABLE,
DECLARATORY AND INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff Rachael Shay brings this action on behalf of herself and all others similarly
2 situated against Defendants Apple, Inc. and Apple Value Services, LLC (“Apple” or
3 “Defendants”) and states as follows:

4 **NATURE OF ACTION**

5 1. This is a consumer class action on behalf consumers nationwide, and in California,
6 who purchased a defective, unsecure and valueless Apple gift card.

7 2. Throughout the Class Period, defined below, Defendants manufactured, marketed,
8 sold and/or distributed Apple gift cards Defendants knew, or should have known, were subject to
9 an ongoing scam wherein the funds on the gift cards are fraudulently redeemed by third parties
10 accessing the Personal Identification Number (“PIN”) prior to use by the consumer.

11 3. Rather than take simple preventative measures to curb the known and rampant
12 fraudulent conduct and/or warn consumers that the Apple gift card funds are easily susceptible to
13 theft upon purchase, Defendants perpetuated the fraud by staying silent, refusing to refund
14 consumers that complained when they discovered their Apple gift cards were valueless, and
15 failing to implement and maintain reasonable security procedures and practices appropriate to
16 protect consumers’ personal information.

17 4. As a result, Defendants have caused Plaintiff and other similarly situated
18 consumers to purchase a product, which is not secure and does not perform as represented.
19 Plaintiff and other similarly situated consumers have been harmed in the amount they paid for the
20 gift cards, plus interest.

21 5. Plaintiff brings this action on behalf of herself and all other similarly situated
22 consumers to halt Defendants’ dissemination of unsecure Apple gift cards, correct the false and
23 misleading perception it has created in the minds of consumers that the Apple gift cards are
24 secure and of good quality, and to obtain redress for those who have purchased the faulty Apple
25 gift cards.

26 **JURISDICTION AND VENUE**

27 6. This Court has jurisdiction over this action pursuant to the California Constitution,
28 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those

1 given by statutes to other courts. The statutes under which this action is brought do not specify
2 any other basis for jurisdiction.

3 7. This Court has jurisdiction over all Defendants because, upon information and
4 belief, they are either citizens of California, have sufficient minimum contacts in California or
5 otherwise intentionally avail themselves of the California market so as to render the exercise of
6 jurisdiction over them by the California courts consistent with traditional notions of fair play and
7 substantial justice.

8 8. Venue as to each defendant is proper in this judicial district, pursuant to California
9 Code of Civil Procedure section 395.5. On information and belief, Defendants distribute, market
10 and sell their products in San Diego County and throughout California, and each defendant is
11 within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged
12 herein have a direct effect on Plaintiff and those similarly situated within the State of California.

13 **PARTIES**

14 9. Plaintiff Rachael Shay is and was at all relevant times during the Class Period
15 defined herein, an individual residing in San Diego County, California. On April 3, 2020, Plaintiff
16 purchased a \$50 Apple gift card from Walmart in Encinitas, California, as a gift for her son. The
17 gift card was solely in her possession until she gave it to her son. When her son attempted to load
18 the gift card he received a message indicating that the gift card had already been redeemed.
19 Plaintiff contacted Apple and was told the gift card was redeemed by another account on April 3,
20 2020, the same day she purchased the gift card, and the card no longer had any value. For security
21 reasons, Defendants would not provide Plaintiff with any additional information about the owner
22 account that redeemed the code, other than it was an account unrelated to Plaintiff and/or her son.
23 Plaintiff was then told there was nothing else Defendants could do for her, that her case was
24 closed and any further contact would go unanswered. Had Plaintiff known the truth about
25 Defendants' defective gift cards, she would not have purchased it. As a result of her purchase,
26 Plaintiff suffered injury in fact and lost money.

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1 10. Defendant Apple, Inc. is a multinational technology company headquartered in
2 Cupertino, California, that designs, develops, and sells consumer electronics, computer software,
3 and online services.

4 11. Defendant Apple Value Services, LLC is a subsidiary of Apple, Inc. with its
5 headquarters also in Cupertino, California, and is responsible for “issuing and managing” Apple
6 gift cards in the United States.

7 12. Defendants manufacture, market, sell and/or distribute gift cards to thousands of
8 consumers across the country and in the State of California.

9 13. The true names and capacities, whether individual, corporate, associate, or
10 otherwise, of defendants sued herein as Does 1 to 10, inclusive, are currently unknown to
11 Plaintiff, who therefore sues these defendants by such fictitious names under California Code of
12 Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of
13 the defendants designated herein as a Doe is legally responsible in some manner for the unlawful
14 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
15 names and capacities of the defendants designated hereinafter as Does when such identities
16 become known. Throughout this complaint, the term “Defendants” shall include defendants Does
17 1 to 10, inclusive.

18 **FACTUAL ALLEGATIONS**

19 14. Throughout the Class period, Defendants have manufactured, marketed, sold
20 and/or distributed Apple gift cards on a nationwide basis, and throughout California, in a uniform
21 and similar fashion.

22 15. The Apple gift cards are sold online and through Defendants’ various retailers and
23 may be used to access Defendants’ various online services, including services available through
24 the App Store and iTunes.

25 16. Apple gift cards contain a Personal Identification Number (“PIN”) covered with
26 silver scratch off tape. When a consumer purchases a new Apple gift card, the PIN is activated so
27 that it can be loaded onto a consumer’s Apple account to use for Apple services. Upon
28 information and belief (and as the acronym suggests), the Apple gift card PINs contain “personal

1 information” associated with and/or reasonably linked, directly or indirectly, with the purchasing
2 consumer upon activation.

3 17. Upon information and belief, due to Defendants’ defective design, manufacture
4 and/or packaging of the Apple gift cards, including Apple’s failure to implement and maintain
5 reasonable security procedures and practices to properly secure the Apple gift cards, the Apple
6 gift cards are targeted by thieves who electronically access the Apple gift cards at the point of sale
7 and redeem the funds activated by the consumer. Subsequently, when a consumer attempts to load
8 a newly activated Apple gift card, the gift card registers as “redeemed” and is valueless.

9 18. Unbeknownst to Plaintiff, the Apple gift card she purchased as a birthday gift for
10 her son was subject to fraudulent conduct at the point of sale. Upon information and belief, after
11 activating the gift card, third parties intercepted the activated funds leaving Plaintiff with a
12 valueless card. Consequently, when Plaintiff’s son went to redeem the funds, Plaintiff’s son
13 received a message that the funds had already been redeemed.

14 19. When Plaintiff called Apple to complain, Apple informed Plaintiff that the gift
15 card was already redeemed, and the card no longer had any value. For security reasons,
16 Defendants would not provide Plaintiff with any additional information about who redeemed the
17 code, other than it was an account unrelated to Plaintiff and/or her son. Plaintiff was then told
18 there was nothing else Apple could do for her, that her case was closed, and any further contact
19 would go unanswered.

20 20. Upon information and belief, Apple maintains records indicating when the Apple
21 gift cards are activated, when they are redeemed, and how and where they are redeemed.

22 21. Upon information and belief, Defendants have known that the Apple gift cards
23 they sell to consumers are defective, unsecure and easily subject to known fraud.

24 22. The existence of numerous complaints from consumers regarding the unsecure and
25 valueless Apple gift cards are sufficient to put Apple on notice that the funds on the gift cards
26 were not guaranteed to be secure upon purchase.

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Nationwide Class:

All consumers in the United States who purchased an Apple gift card wherein the funds on the Apple gift card was redeemed prior to use by the consumer. Excluded from this Class are Defendants and their officers, directors and employees, and those who purchased Apple gift cards for the purpose of resale.

California Subclass:

All consumers in the State of California who purchased an Apple gift card wherein the funds on the Apple gift card was redeemed prior to use by the consumer. Excluded from this Class are Defendants and their officers, directors and employees, and those who purchased Apple gift cards for the purpose of resale.

32. Numerosity. On information and belief, the Nationwide Class and California Subclass (collectively, the “Class” or “Class Members”) are each so numerous that joinder of all members of the Class is impracticable. Plaintiff is informed and believes that the proposed Class contains thousands of purchasers of Apple gift cards who have been damaged by Defendants’ conduct as alleged herein. The precise number of Class Members is unknown to Plaintiff but estimated to be in the thousands.

33. Existence and Predominance of Common Questions of Law and Fact. This action involves common questions of law and fact, which predominate over any questions affecting individual Class Members. These common legal and factual questions include, but are not limited to, the following:

- a. Whether Defendants knew, or should have known, that the Apple gift cards were defective, unsecure and easily susceptible to fraud and/or theft;
- b. Whether Defendants had a duty to disclose to Plaintiff and Class Members of the probability and/or possibility of an ongoing fraud with the Apple gift cards, making it probable that the funds on Apple gift cards could be easily accessed and stolen by third parties;

- 1 c. Whether Defendants owed a duty to Plaintiff and the Class Members to provide
- 2 security measures to ensure that its systems and networks, and the personnel
- 3 responsible for them, adequately protected the personal information of consumers;
- 4 d. Whether the PIN on the Apple gift cards constitutes personal information;
- 5 e. Whether Defendants had a duty to disclose to Plaintiff and Class Members that
- 6 Apple did not safeguard the gift cards and/or the gift card accounts to prevent the
- 7 fraud and/or ensure that the gift cards were not tampered with;
- 8 f. Whether Apple failed to take adequate and reasonable measures to ensure that
- 9 third parties did not tamper with its gift cards;
- 10 g. Whether Defendants had a duty to disclose to Plaintiff and Class Members that its
- 11 Apple gift card policies and security practices were inadequate to safeguard
- 12 customers' gift card accounts and personal identifying information against theft;
- 13 h. Whether Defendants' alleged conduct violates public policy;
- 14 i. Whether the alleged conduct constitutes violations of the laws asserted;
- 15 j. Whether Defendants engaged in unlawful, unfair or fraudulent business practices;
- 16 k. Whether Plaintiff and Class Members have sustained monetary loss and the proper
- 17 measure of that loss; and
- 18 l. Whether Plaintiff and Class Members are entitled to other appropriate remedies,
- 19 including corrective advertising and injunctive relief.

20 34. Typicality. Plaintiff's claims are typical of the claims of the members of the Class
21 because, *inter alia*, all Class Members were injured through the uniform misconduct described
22 above and were subject to Defendants' deceptive claims that accompanied each and every gift
23 card that Defendants sold. Plaintiff is advancing the same claims and legal theories on behalf of
24 herself and all members of the Class.

25 35. Adequacy of Representation. Plaintiff will fairly and adequately protect the
26 interests of the members of the Class. Plaintiff has retained counsel experienced in complex
27 consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff
28 has no adverse or antagonistic interests to those of the Class.

1 36. Superiority. A class action is superior to all other available means for the fair and
2 efficient adjudication of this controversy. The damages or other financial detriment suffered by
3 individual Class Members is relatively small compared to the burden and expense that would be
4 required to individually litigate their claims against Defendants. It would thus be virtually
5 impossible for Plaintiff and Class Members, on an individual basis, to obtain effective redress for
6 the wrongs done to them. Furthermore, even if Class Members could afford such individualized
7 litigation, the court system could not. Individualized litigation would create the danger of
8 inconsistent or contradictory judgments arising from the same set of facts. Individualized
9 litigation would also increase the delay and expense to all parties and the court system from the
10 issues raised by this action. By contrast, the class action device provides the benefits of
11 adjudication of these issues in a single proceeding, economies of scale, and comprehensive
12 supervision by a single court, and presents no unusual management difficulties under the
13 circumstances here.

14 37. The Class also may be certified because Defendants have acted or refused to act on
15 grounds generally applicable to the Class, thereby making appropriate final declaratory and/or
16 injunctive relief with respect to the members of the Class as a whole.

17 38. Plaintiff seeks preliminary and permanent injunctive and equitable relief on behalf
18 of the entire Class, on grounds generally applicable to the entire Class, to enjoin and prevent
19 Defendants from engaging in the acts described and requiring Defendants to provide full
20 restitution to Plaintiff and Class Members.

21 39. Unless a Class is certified, Defendants will retain monies received as a result of its
22 conduct that were taken from Plaintiff and Class Members. Unless an injunction is issued,
23 Defendants will continue to commit the violations alleged, and the members of the Class and the
24 general public will continue to be misled.

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COUNT I

Violations of the Consumers Legal Remedies Act

California Civil Code §1750 *et seq.*

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40. Plaintiff repeats and re-alleges the allegations contained in the Paragraphs above, as if fully set forth herein.

41. Plaintiff brings this claim individually and on behalf of the Class.

42. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.* (the “CLRA”). Plaintiff is a “consumer” as defined by California Civil Code § 1761(d). Defendants’ Apple gift cards are “goods” within the meaning of the CLRA.

43. Defendants violated and continues to violate the CLRA by engaging in the following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of the Apple gift cards:

(5) Representing that [the gift cards have] . . . approval, characteristics , . . uses [and] benefits . . . which [they do] not have . . .

* * *

(7) Representing that [the gift cards are] of a particular standard, quality or grade . . . if [they are] of another.

* * *

(9) Advertising goods . . . with intent not to sell them as advertised.

* * *

(16) Representing that [the gift cards have] been supplied in accordance with a previous representation when [they have] not.

44. Defendants violated the CLRA by representing and failing to disclose material facts about the gift cards, as described above, when they knew, or should have known, that the representations were false and misleading and that the omissions were of material facts they were obligated to disclose.

1 53. In the course of conducting business, Defendants committed unlawful business
2 practices by, *inter alia*, making the misrepresentations, as set forth more fully herein. Defendants
3 have violated California Civil Code §§ 1572, 1573, 1709, 1711, 1770(a)(5), (7), (9) and (16);
4 California Business & Professions Code §§ 17200 *et seq.*; and the common law, including
5 negligent misrepresentation and breach of implied warranty of merchantability. Defendants'
6 above-described wrongful acts and practices constitute actual and constructive fraud within the
7 meaning of Civil Code §§ 1572 and 1573, as well as deceit, which is prohibited under Civil Code
8 §§ 1709 and 1711.

9 54. Plaintiff and the Class reserve the right to allege other violations of law, which
10 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this
11 date.

12 55. Defendants' actions also constitute "unfair" business acts or practices because, as
13 alleged above, *inter alia*, Defendants engaged in unfair business practices, misrepresented and
14 omitted material facts regarding the Apple gift cards, and thereby offended an established public
15 policy, and engaged in unethical, oppressive, and unscrupulous activities that are substantially
16 injurious to consumers.

17 56. As stated in this complaint, Plaintiff alleges violations of consumer protection and
18 unfair competition laws in California, resulting in harm to consumers throughout the United
19 States. Defendants' acts and omissions also violate and offend the public policy against engaging
20 in false and misleading advertising, unfair competition and deceptive conduct towards consumers.
21 This conduct constitutes violations of the unfair prong of Business & Professions Code § 17200,
22 *et seq.*

23 57. There were reasonably available alternatives to further Defendants' legitimate
24 business interests, other than the conduct described herein.

25 58. Business & Professions Code § 17200 *et seq.*, also prohibits any "fraudulent
26 business act or practice."
27
28

1 59. Defendants' actions, claims, nondisclosures and misleading statements, as more
2 fully set forth above, were also false, misleading and/or likely to deceive the consuming public
3 within the meaning of Business & Professions Code § 17200 *et seq.*

4 60. Defendants' advertising, labeling and packaging as described herein also
5 constitutes unfair, deceptive, untrue and misleading advertising.

6 61. Defendants' conduct caused and continues to cause substantial injury to Plaintiff
7 and the other Class Members. Plaintiff and Class Members have suffered injury in fact and have
8 lost money as a result of Defendants' unfair conduct.

9 62. As a result of its deception, Defendants have been able to reap unjust revenue and
10 profit.

11 63. Unless restrained and enjoined, Defendants will continue to engage in the above-
12 described conduct. Accordingly, injunctive relief is appropriate.

13 64. Plaintiff, on behalf of herself, all others similarly situated, and the general public,
14 seeks restitution of all money obtained from Plaintiff and the members of the Class as a result of
15 unfair competition, an injunction prohibiting Defendants from continuing such practices,
16 corrective advertising, and all other relief this Court deems appropriate, consistent with Business
17 & Professions Code § 17200.

18 **COUNT III**

19 **Violations of the California Consumer Privacy Act**

20 **California Civil Code §1798.150 *et seq.***

21 65. Plaintiff repeats and re-alleges the allegations contained in the Paragraphs above,
22 as if fully set forth herein.

23 66. Plaintiff brings this claim individually and on behalf of the Class.

24 67. The California Consumer Privacy Act of 2018 ("CCPA") went into effect on
25 January 1, 2020. This comprehensive privacy law was enacted to protect consumers' personal
26 information from unauthorized collection and disclosure.

27 68. Upon information and belief, the PIN on the Apple gift cards is "personal
28 information" as defined in Cal. Civ. Code §1798.140(o) as it "identifies, relates to, describes, is

1 reasonably capable of being associated with, or could reasonably be linked, directly or indirectly,
2 with” the purchasing consumers and/or their households.

3 69. Through the above-detailed conduct, Defendants violated the CCPA by, among
4 other things, failing to prevent Plaintiff’s and Class Members’ nonencrypted and nonredacted
5 personal information from unauthorized disclosure as a result of Defendants’ violation of their
6 duty to implement and maintain reasonable security procedures and practices appropriate to the
7 nature of the information to protect the personal information of Plaintiff and Class Members.

8 70. As a direct and proximate result of the Defendants’ conduct, Plaintiff’s and the
9 Class Members’ personal information was subjected to unauthorized disclosure to a third party.

10 71. As a direct and proximate result of Defendants’ conduct, Plaintiff and Class
11 Members were injured and lost money or property, including but not limited to, the amount stolen
12 from their Apple gift cards, the loss of Plaintiff’s and Class Members’ legally protected interest in
13 the confidentiality and privacy of their personal information, nominal damages, and additional
14 losses as described herein.

15 72. Defendants knew or should have known that the security practices regarding the
16 Apple gift cards were inadequate to safeguard Plaintiff and Class Members personal information
17 and the risk of unauthorized disclosure to a third party was highly likely. Defendants failed to
18 implement and maintain reasonable security procedures and practices appropriate to the nature of
19 the information to protect the personal information of Plaintiff and Class Members.

20 73. Apple is a corporation that is organized and operated for the profit or financial
21 benefit of its owners with a reported total second quarter revenue for fiscal year 2020 of \$58.3
22 billion.

23 74. In accordance with Cal. Civ. Code §1798.150(b), Plaintiff has served Defendants
24 with notice of these CCPA violations and a demand for relief by certified mail, return receipt
25 requested. A copy of the letter is attached hereto as **Exhibit A**.

26 75. On behalf of Class Members, Plaintiff seeks injunctive relief in the form of an
27 order enjoining Defendants from continuing to violate the CCPA. If Defendants fail to properly
28 respond to Plaintiff’s notice letter or agree to timely and adequately rectify the violations detailed

1 above, Plaintiff will seek actual, punitive, and statutory damages in an amount not less than one
2 hundred dollars (\$100) and not greater than seven hundred and fifty (\$750) per consumer per
3 incident, whichever is greater; restitution; attorneys' fees and costs (pursuant to Cal. Civ. Code
4 §1021.5); and any other relief the Court seems proper as a result of Defendants' CCPA violations.

5 **COUNT IV**

6 **Negligence**

7 76. Plaintiff repeats and re-alleges the allegations contained in the Paragraphs above,
8 as if fully set forth herein.

9 77. Plaintiff brings this claim individually and on behalf of the Class.

10 78. Defendants owed a duty to Plaintiff and Class Members to exercise reasonable
11 care in obtaining, securing, safeguarding, deleting, destroying and protecting Plaintiff's and Class
12 Members' personal information within their possession or control from being compromised, lost,
13 stolen, accessed and misused by unauthorized persons. This duty included, among other things,
14 designing, maintaining and testing Defendants' security systems to ensure that Plaintiff's and
15 Class Members' personal information was adequately secured and protected. Defendants further
16 owed a duty to Plaintiff and the Class Members to implement processes that would detect a
17 breach of its Apple gift cards in a timely manner and to timely act upon warning and alerts
18 including those generated by its own security systems.

19 79. Defendants owed a duty to Plaintiff and the Class Members to provide security to
20 ensure that its systems and networks, and the personnel responsible for them, adequately
21 protected the personal information of consumers.

22 80. Defendants owed a duty of care to Plaintiff and the Class Members because they
23 were foreseeable and probable victims of any inadequate security practices. Defendants knew or
24 should have known they had inadequately safeguarded Apple gift cards, and yet Defendants failed
25 to take reasonable precautions to safeguard it.

26 81. Defendants owed a duty to timely and accurately disclose to Plaintiff and the Class
27 Members that their personal information had been or was reasonably believed to have been
28 compromised. Timely disclosure was required, appropriate and necessary so that, among other

1 things, Plaintiff and the Class Members could take appropriate measures to avoid theft and/or
2 fraudulent charges, including, monitoring their account information and credit reports for
3 fraudulent activity, contact their banks or other financial institutions, obtaining credit monitoring
4 services, filing reports with law enforcement and other governmental agencies and taking other
5 steps to mitigate or ameliorate the damages caused by Defendants' misconduct.

6 82. Plaintiff and the Class Members entrusted Defendants with their PII with the
7 understanding that Defendants would safeguard their information and that the company was in a
8 position to protect against the harm suffered by Plaintiff and the Class Members as a result of
9 Apple gift card fraud.

10 83. Defendants knew, or should have known, of the inherent risks in collecting and
11 storing the personal information of Plaintiff and the Class Members and of the critical importance
12 of providing adequate security of that information.

13 84. Defendants' own conduct also created a foreseeable risk of harm to Plaintiff and
14 the Class Members. Defendants' misconduct included, but was not limited to, failure to take the
15 steps and opportunities to prevent and stop the Apple gift card fraud as set forth herein.

16 85. Through its acts and omissions described herein, Defendants unlawfully breached
17 its duty to use reasonable care to protect and secure Plaintiff's and the Class Members' personal
18 information within its possession or control. More specifically, Defendants failed to maintain a
19 number of reasonable security procedures and practices designed to protect personal information
20 of Plaintiff and the Class Members, including, but not limited to, establishing and maintaining
21 industry-standard systems to safeguard its Apple gift cards from theft. Given the risk involved
22 and the amount of data at issue, Defendants' breach of its duties was unreasonable.

23 86. Defendants breached their duties to timely and accurately disclose that Plaintiff's
24 and Class Members' personal information in Defendants' possession had been or was reasonably
25 believed to have been, stolen or compromised.

26 87. As a direct and proximate result of Defendants' breach of its duties, Plaintiff and
27 the Class Members have been harmed by the loss of the funds stolen from their Apple gift cards,
28 plus interest.

COUNT V

Negligent Misrepresentation

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3 88. Plaintiff repeats and re-alleges the allegations contained in the Paragraphs above,
4 as if fully set forth herein.

5 89. Plaintiff brings this claim individually and on behalf of the Class.

6 90. In the course of its business, Defendants misrepresented to Plaintiff and Class
7 Members that Defendants were selling Apple gift cards that were original, usable, secure,
8 valuable, and free from fraud, tampering or compromise.

9 91. Defendants had no reasonable grounds to believe these misrepresentations were
10 true.

11 92. Defendants failed to inform or disclose to the public, including Plaintiff and Class
12 Members, that Defendants were aware of an ongoing fraud with the Apple gift cards, making it
13 probable that the value of Apple gift cards could be accessed and stolen by third parties.
14 Defendants also failed to disclose that Defendants policy and practice was to not refund or replace
15 the value of the Apple gift cards subjected to this fraud.

16 93. Defendants also failed to disclose to the public, including Plaintiff and Class
17 Members, that Defendants did not safeguard the gift cards and/or the gift card accounts to prevent
18 the fraud and/or ensure that the gift cards were not tampered with.

19 94. Defendants also failed to inform or disclose to the public, including Plaintiff and
20 Class Members, that its Apple gift card policies and security practices are inadequate to safeguard
21 customers' Apple gift card accounts and personal identifying information against theft.

22 95. Defendants intended to induce Plaintiff and Class Members to rely on its
23 misrepresentations and omissions because they knew Plaintiff and Class Members would not have
24 purchased the Apple gift cards had they known the Apple gift cards, as well as their personal
25 information attached to the gift cards, was subject to an ongoing fraud.

26 96. Defendants made these representations and omissions as to Plaintiff and the Class
27 Members in connection with their purchase of the Apple gift cards.
28

1 97. There representations and omissions were material to Plaintiff's and Class
2 Members' decision to purchase the Apple gift cards.

3 98. Plaintiff and Class Members justifiably relied on Defendants' misrepresentations
4 and omissions about the Apple gift cards because Defendants' had superior knowledge about the
5 ongoing Apple gift card fraud.

6 99. As a direct and proximate cause of Plaintiff and Class Members' reliance on
7 Defendants misrepresentations and omissions about the Apple gift cards, Plaintiff and Class
8 Members suffered pecuniary loss in an amount determined to be fair and reasonable, but which is
9 equivalent to the funds loaded onto the Apple gift cards that was lost.

10 **COUNT VI**

11 **Breach of Implied Warranty of Merchantability**

12 100. Plaintiff repeats and re-alleges the allegations contained in the Paragraphs above,
13 as if fully set forth herein.

14 101. Plaintiff brings this claim individually and on behalf of the Class.

15 102. A warranty that the Apple gift cards were in merchantable quality and condition is
16 implied by law pursuant to California Commercial Code § 2314.

17 103. Defendants impliedly warranted that the Apple gift cards were of good and
18 *merchantable condition and quality – fit for sale for their ordinary intended use.*

19 104. The Apple gift cards were not merchantable or fit for their ordinary intended
20 purpose at the time they left Defendants' possession. Defendants knew the Apple gift cards were
21 frequently subject to an ongoing scam, yet Defendants failed to take simple preventative measures
22 to curb the known and rampant fraudulent conduct and/or warn consumers that the funds they
23 activated on the Apple gift cards may be stolen upon purchase. Instead, Defendants perpetuated
24 the fraudulent conduct by staying silent and refusing to refund consumers that complained when
25 they discovered their gift cards were defective and had no value. Thus, the Apple gift cards, when
26 sold and at all times thereafter, were not in merchantable condition or quality and are not fit for
27 their ordinary intended purpose.
28

1 105. By virtue of the conduct described herein and throughout this Complaint,
2 Defendants breached the implied warranty of merchantability.

3 106. Plaintiff and class members have been damaged as a direct and proximate result of
4 Defendants' breach of the implied warranty.

5 107. Plaintiff and class members have performed each and every duty required of them
6 under the terms of the warranties, except as may have been excused or prevented by the conduct
7 of Defendants or by operation of law in light of Defendants' unconscionable conduct.

8 108. Defendants received timely notice regarding the problems at issue in this litigation
9 and, notwithstanding such notice, Defendants have failed and refused to offer an effective
10 remedy.

11 109. As a direct and proximate result of Defendants' breach of implied warranty,
12 Plaintiff and Class Members were caused to suffer economic damage.

13 **PRAYER**

14 WHEREFORE, Plaintiff, on behalf of herself and on behalf of the other members of the
15 Class, request award and relief as follows:

- 16 1. Certifying the Class and California Subclass as requested herein;
- 17 2. Awarding Plaintiff and the proposed Class Members damages;
- 18 3. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff and
19 the proposed Class Members;
- 20 4. Awarding declaratory and injunctive relief as permitted by law or equity,
21 including: enjoining Defendants from continuing the unlawful practices as set forth herein and
22 directing Defendants to identify, with Court supervision, victims of its conduct and pay them all
23 money it is required to pay;
- 24 5. Ordering Defendants to engage in a corrective advertising campaign;
- 25 6. Awarding attorneys' fees and costs; and


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7. Providing such further relief as may be just and proper.

Dated: May 28, 2020

JAMES HAWKINS, APLC



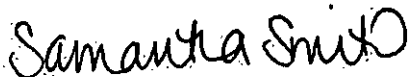
Samantha A. Smith
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all causes of action and/or issues so triable.

Dated: May 28, 2020

JAMES HAWKINS, APLC



Samantha A. Smith
Attorney for Plaintiff

EXHIBIT A

May 28, 2020

***Via Certified Mail (Receipt No. 7018 1130 0001 8270 4913)
Return Receipt Requested***

Apple, Inc.
Apple Value Services, LLC
One Apple Park Way
Cupertino, CA 95014

Re: *Demand Letter Pursuant to California Civil Code Sections 1782 and 1798.150*

Dear Sir or Madam:

This letter serves as notice and demand for corrective action by Apple, Inc. and Apple Value Services, LLC (“Apple”) pursuant to the Consumer Legal Remedies Act, Cal. Civ. Code Section 1750 *et al.* (“CLRA”) and the California Consumer Privacy Act (“CCPA”), Cal. Civ. Code Section 1798.150(b). This letter is sent on behalf of our client, Rachael Shay, a consumer of Apple gift cards in the State of California, and all other persons similarly situated. We hereby demand that you take immediate corrective action within thirty (30) days as further described below.

Apple, Inc. is a multinational technology company that designs, develops, and sells consumer electronics, computer software, and online services. Apple sells Apple gift cards for its various online services, including its App Store and iTunes, throughout the United States. Upon information and belief, Apple manufactured, marketed, sold and/or distributed insecure and defective Apple gift cards it knew were prone to an ongoing scam wherein the funds on the gift cards are fraudulently redeemed by accessing the Personal Identification Number (“PIN”) on the Apple gift cards prior to use by the consumer.¹

Rather than take simple preventative measures to curb the known and rampant fraudulent conduct and/or warn consumers that the Apple gift card funds are easily susceptible to fraud and are not secure. Defendants perpetuated the fraud by staying silent, refusing to refund the stolen value after consumers complained, and failing to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect consumers²

¹ Upon information and belief, the PIN on the Apple gift cards is “personal information” as defined in Cal. Civ. Code §1798.140(o) as it “identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with” the purchasing consumers and/or their households.

personal information. This conduct violates the CLRA, including but not limited to sections 1770(a) (5), (7), (9) and (16), as well as the CCPA, including but not limited to section 1798.150. Apple has misled and continues to mislead consumers, thereby unfairly permitting Apple to increase its sales and capture market share from its competitors.


Our client is a citizen of the State of California and is a consumer as defined in California Civil Code section 1761(d) because she purchased an Apple gift card for personal, family, or household use. When our client purchased an Apple gift card for her son as a birthday gift, she was misled into believing that the funds on the Apple gift card, and any personal information associated with the Apple gift card, was secure. Had Ms. Shay known the truth about the Apple gift cards and Apple's failure to properly secure them, she would not have made her purchase. As a result, our client suffered a loss of money.

We hereby demand on behalf of our client and all others similarly situated that Apple immediately: (1) cease and desist from continued sale of the faulty Apple gift cards; (2) initiate a corrective campaign to address the inadequate security practices and procedures described herein; and (3) offer to refund the purchase price of the gift cards, plus reimbursement for interest.

If Apple wishes to enter into discussions to resolve the demand asserted in this letter, please contact me immediately.

Sincerely,

JAMES HAWKINS, APLC



Samantha A. Smith

EXHIBIT B

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JAMES HAWKINS, APLC
JAMES R. HAWKINS, ESQ. (#192925)
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9880 Research Drive, Suite 200
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Tel.: (949) 387-7200
Fax: (949) 387-6676

Attorneys for Plaintiff Rachael Shay,
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

RACHAEL SHAY, on behalf of herself
and 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.

**AFFIDAVIT OF VENUE BY PLAINTIFF
RACHAEL SHAY**

I, Rachael Shay, hereby declare and state as follows:

1. I am over the age of 18, and if called as a witness, I would testify truthfully to the matters set forth in this Declaration. All of the matters set forth below are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true.

2. I am the Plaintiff in the above-entitled action.

3. Pursuant to Cal. Civ. Code § 1780(d), I make this Declaration in support of the Class Action Complaint and the claim for relief stated in that complaint under Cal. Civ. Code § 1780(a).

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4. This action for relief under Cal. Civ. Code § 1780(a) has been commenced in a county that is a proper place for trial of this action because I reside in San Diego County, and this is the county where the transaction or any substantial portion thereof occurred.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 27th day of May 2020, in Carlsbad, California.

DocuSigned by:
Rachael Shay
2F0848F802E84DB...
Rachael Shay _____

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): James R. Hawkins, Esq., SBN 192925 Samantha A. Smith, Esq., SBN 233331 JAMES HAWKINS APLC 9880 Research Dr., Suite 200, Irvine, CA 92618 TELEPHONE NO: 949-387-7200 FAX NO: (Optional) 949-387-6676 ATTORNEY FOR (Name): RACHAEL SHAY		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California County of San Diego 05/28/2020 at 01:03:28 PM Clerk of the Superior Court By Cecile Van Pelt, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, 92101 BRANCH NAME: Central Hourhouse		
CASE NAME: RACHAEL SHAY V. APPLE, INC., et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 37-2020-00017475-CU-MC-CTL JUDGE: DEPT.: Judge Richard S. Whitney

Items 1-6 below must be completed (see instructions on page 2)

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PUPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case: is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input checked="" type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 6

5. This case: is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 28, 2020

Samantha A. Smith, Esq. *Samantha Smith*

(TYPE OR PRINT NAME)	(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)
NOTICE	
<ul style="list-style-type: none"> • Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code) (Cal. Rules of Court, rule 3.220). Failure to file may result in sanctions. • File this cover sheet in addition to any cover sheet required by local court rule. • If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding. • Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only. 	

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages; (2) punitive damages; (3) recovery of real property; (4) recovery of personal property; or (5) a pre-judgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/
Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice

Other PI/PD/WD (23)

Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller, Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller/Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)

Confession of Judgment (non-domestic relations)

Sister State Judgment
Administrative Agency Award (not unpaid taxes)

Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint RICO (27)

Other Complaint (not specified above) (42)

Declaratory Relief Only
Injunctive Relief Only (non-harassment)

Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)

Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse

Election Contest
Petition for Name Change
Petition for Relief From Late Claim

Other Civil Petition



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2020-00017475-CU-MC-CTL CASE TITLE: Shay vs Apple Inc {EFILE}

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7088	
PLAINTIFF(S)/PETITIONER(S)/APPELLANT(S): Rachael Shay	
DEFENDANT(S)/RESPONDENT(S): Apple Inc et.al.	
Short Title: Shay vs Apple Inc (EFILE)	
NOTICE OF RESCHEDULED HEARING	CASE NUMBER: 37-2020-00017475-CU-MC-CTL

Notice is given that the hearing in the above-entitled case has been rescheduled from 11/13/2020 10:00 AM to date and time shown below. All inquiries regarding this notice should be referred to the court listed above.

<u>TYPE OF HEARING</u>	<u>DATE</u>	<u>TIME</u>	<u>DEPT</u>	<u>JUDGE</u>
Civil Case Management Conference	04/23/2021	10:00 am	C-68	Richard S. Whitney

All hearings will be conducted remotely until further notice. Absent an order of the court, personal appearances at the hearing will not be allowed. You must make arrangements to appear by telephone or video by contacting CourtCall at (888) 882-6878, or at www.courtcall.com. Please make your arrangements with CourtCall as soon as possible, before the hearing date. If you wait to contact CourtCall until the date and time of the hearing, CourtCall will be unable to process your request in time and you will not be able to appear at this hearing.

CourtCall will charge you a fee for making the arrangements for your appearance. The fee is required. However, if you have previously obtained an approved Order on Court Fee Waiver (FW-003/FW-003-GC), you must inform CourtCall that you have the Order so that CourtCall will not charge the fee for a telephonic appearance. If you do not have an approved Order on Court Fee Waiver (FW-003/FW-003-GC) but believe that you may be eligible for a fee waiver, you should immediately file a Request to Waive Court Fees (FW-001/FW-001-GC) with the Civil Business Office, to request an Order on Court Fee Waiver.


Counsel/Plaintiff in pro per: Check service list. If you have brought a party into this case who is not included in the service list, San Diego Superior Court Local Rules, Division II, requires you to serve the party with a copy of this notice.

A case management statement must be completed by counsel for all parties or parties in pro per and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR options.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO Central 330 West Broadway San Diego, CA 92101	
SHORT TITLE: SHAY VS APPLE INC {EFILE}	
CLERK'S CERTIFICATE OF SERVICE BY MAIL	CASE NUMBER: 37-2020-00017475-CU-MC-CTL

I certify that I am not a party to this cause. I certify that a true copy of NOTICE OF RESCHEDULED HEARING was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The certification occurred at San Diego, California on 06/25/2020. The mailing occurred at Gardena, California on 06/26/2020.

Clerk of the Court, by: , Deputy

JAMES R HAWKINS
JAMES HAWKINS APLC
9880 RESEARCH DRIVE # 200
IRVINE, CA 92618

SAMANTHA SMITH
JAMES HAWKINS, APLC
9880 RESEARCH DRIVE # 200
IRVINE, CA 92618

CLERK'S CERTIFICATE OF SERVICE BY MAIL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7068	
PLAINTIFF(S) / PETITIONER(S): Rachael Shay	
DEFENDANT(S) / RESPONDENT(S): Apple Inc et.al.	
SHAY VS APPLE INC (EFILE)	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2020-00017475-CU-MC-CTL

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: Richard S. Whitney

Department: C-68

COMPLAINT/PETITION FILED: 05/28/2020

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	11/13/2020	10:00 am	C-68	Richard S. Whitney

Due to the COVID-19 pandemic, all hearings will be conducted remotely until further notice. Absent an order of the court, personal appearances at the hearing will not be allowed. For information on arranging telephonic or video appearances, contact CourtCall at (888)882-6878, or at www.courtcall.com. Please make arrangements with CourtCall as soon as possible.

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases or guidelines and procedures.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdscourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> CENTRAL DIVISION, CENTRAL COURTHOUSE, 1100 UNION ST. SAN DIEGO, CA 92101 <input checked="" type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, SMALL CLAIMS, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, CIVIL, 330 W. BROADWAY, ROOM 225, SAN DIEGO, CA 92101 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910	FOR COURT USE ONLY <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> Clerk of the Superior Court <div style="text-align: center; font-size: 1.5em; font-weight: bold;">JUL 14 2020</div> By: V. Contreras, Deputy
PLAINTIFF(S) Rachael Shay	CASE NUMBER 37-2020-00017475-CU-MC-CTK
DEFENDANT(S) Apple Inc; Apple Value Services LLC	
APPLICATION AND ORDER CORRECTING COURT RECORD	

Upon review of the Register of Actions (ROA) of the above-entitled case, it has been determined that ROA # 10,
 Amendment to Complaint (First) filed by Shay, Rachael. _____ was erroneously entered
 on 07/13/2020.

- The document was filed in the wrong case and has since been filed in the correct case.
- The incorrect filing document name was selected in the case management system and has since been corrected to accurately reflect the document title.
- Other: _____

It is hereby requested that the court make an order striking the erroneous entry from the ROA.

Clerk of the Superior Court

Date: 07/14/2020 by: , Deputy
V. Contreras

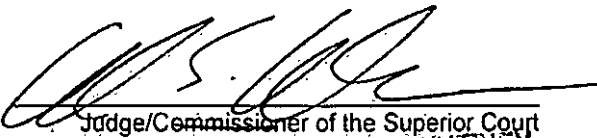
ORDER

The ROA entry indicated above is hereby stricken from the ROA.

Other: As indicated above - RSN

IT IS SO ORDERED.

Date: 7-16-20


 Judge/Commissioner of the Superior Court
RICHARD S. WHITNEY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): Rachael Shay	
DEFENDANT(S): Apple Inc et.al.	
SHORT TITLE: SHAY VS APPLE INC (EFILE)	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2020-00017475-CU-MC-CTL

Judge: Richard S. Whitney

Department: C-68

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|--|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____
_____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

 Name of Plaintiff

 Name of Defendant

 Signature

 Signature

 Name of Plaintiff's Attorney

 Name of Defendant's Attorney

 Signature

 Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 05/29/2020

 JUDGE OF THE SUPERIOR COURT

EXHIBIT 2

ATTORNEY FOR PLAINTIFF: James R. Hawkins, Esq., SBN 192925
Samantha A. Smith, Esq., SBN 233331
JAMES HAWKINS APLC
9880 Research Dr., Suite 200, Irvine, CA 92618
TELEPHONE NO.: 949-387-7200 FAX NO. (Optional): 949-387-6676
ATTORNEY FOR (Name): RACHAEL SHAY

FOR COURT USE ONLY
ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/28/2020 at 01:03:28 PM
Clerk of the Superior Court
By Cecile Van Pelt, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS:
CITY AND ZIP CODE: San Diego, 92101
BRANCH NAME: Central Hourthouse

CASE NAME:
RACHAEL SHAY V. APPLE, INC., et al.

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000) **Limited** (Amount demanded is \$25,000)
Complex Case Designation
 Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
37-2020-00017475-CU-MC-CTL

JUDGE: **Judge Richard S. Whitney**
DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	--	---

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
a. Large number of separately represented parties d. Large number of witnesses
b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 6
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 28, 2020
Samantha A. Smith, Esq.


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

(TYPE OR PRINT NAME)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
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By Cecile Van Pelt, Deputy Clerk

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Attorneys for Plaintiff Rachael Shay,
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

RACHAEL SHAY, on behalf of herself and
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. 37-2020-00017475-CU-MC-CTL

Assigned for All Purposes to:

**CLASS ACTION COMPLAINT FOR
DAMAGES AND EQUITABLE,
DECLARATORY AND INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff Rachael Shay brings this action on behalf of herself and all others similarly
2 situated against Defendants Apple, Inc. and Apple Value Services, LLC (“Apple” or
3 “Defendants”) and states as follows:

4 **NATURE OF ACTION**

5 1. This is a consumer class action on behalf consumers nationwide, and in California,
6 who purchased a defective, unsecure and valueless Apple gift card.

7 2. Throughout the Class Period, defined below, Defendants manufactured, marketed,
8 sold and/or distributed Apple gift cards Defendants knew, or should have known, were subject to
9 an ongoing scam wherein the funds on the gift cards are fraudulently redeemed by third parties
10 accessing the Personal Identification Number (“PIN”) prior to use by the consumer.

11 3. Rather than take simple preventative measures to curb the known and rampant
12 fraudulent conduct and/or warn consumers that the Apple gift card funds are easily susceptible to
13 theft upon purchase, Defendants perpetuated the fraud by staying silent, refusing to refund
14 consumers that complained when they discovered their Apple gift cards were valueless, and
15 failing to implement and maintain reasonable security procedures and practices appropriate to
16 protect consumers’ personal information.

17 4. As a result, Defendants have caused Plaintiff and other similarly situated
18 consumers to purchase a product, which is not secure and does not perform as represented.
19 Plaintiff and other similarly situated consumers have been harmed in the amount they paid for the
20 gift cards, plus interest.

21 5. Plaintiff brings this action on behalf of herself and all other similarly situated
22 consumers to halt Defendants’ dissemination of unsecure Apple gift cards, correct the false and
23 misleading perception it has created in the minds of consumers that the Apple gift cards are
24 secure and of good quality, and to obtain redress for those who have purchased the faulty Apple
25 gift cards.

26 **JURISDICTION AND VENUE**

27 6. This Court has jurisdiction over this action pursuant to the California Constitution,
28 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those

1 given by statutes to other courts. The statutes under which this action is brought do not specify
2 any other basis for jurisdiction.

3 7. This Court has jurisdiction over all Defendants because, upon information and
4 belief, they are either citizens of California, have sufficient minimum contacts in California or
5 otherwise intentionally avail themselves of the California market so as to render the exercise of
6 jurisdiction over them by the California courts consistent with traditional notions of fair play and
7 substantial justice.

8 8. Venue as to each defendant is proper in this judicial district, pursuant to California
9 Code of Civil Procedure section 395.5. On information and belief, Defendants distribute, market
10 and sell their products in San Diego County and throughout California, and each defendant is
11 within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged
12 herein have a direct effect on Plaintiff and those similarly situated within the State of California.

13 **PARTIES**

14 9. Plaintiff Rachael Shay is and was at all relevant times during the Class Period
15 defined herein, an individual residing in San Diego County, California. On April 3, 2020, Plaintiff
16 purchased a \$50 Apple gift card from Walmart in Encinitas, California, as a gift for her son. The
17 gift card was solely in her possession until she gave it to her son. When her son attempted to load
18 the gift card he received a message indicating that the gift card had already been redeemed.
19 Plaintiff contacted Apple and was told the gift card was redeemed by another account on April 3,
20 2020, the same day she purchased the gift card, and the card no longer had any value. For security
21 reasons, Defendants would not provide Plaintiff with any additional information about the owner
22 account that redeemed the code, other than it was an account unrelated to Plaintiff and/or her son.
23 Plaintiff was then told there was nothing else Defendants could do for her, that her case was
24 closed and any further contact would go unanswered. Had Plaintiff known the truth about
25 Defendants' defective gift cards, she would not have purchased it. As a result of her purchase,
26 Plaintiff suffered injury in fact and lost money.

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1 information” associated with and/or reasonably linked, directly or indirectly, with the purchasing
2 consumer upon activation.

3 17. Upon information and belief, due to Defendants’ defective design, manufacture
4 and/or packaging of the Apple gift cards, including Apple’s failure to implement and maintain
5 reasonable security procedures and practices to properly secure the Apple gift cards, the Apple
6 gift cards are targeted by thieves who electronically access the Apple gift cards at the point of sale
7 and redeem the funds activated by the consumer. Subsequently, when a consumer attempts to load
8 a newly activated Apple gift card, the gift card registers as “redeemed” and is valueless.

9 18. Unbeknownst to Plaintiff, the Apple gift card she purchased as a birthday gift for
10 her son was subject to fraudulent conduct at the point of sale. Upon information and belief, after
11 activating the gift card, third parties intercepted the activated funds leaving Plaintiff with a
12 valueless card. Consequently, when Plaintiff’s son went to redeem the funds, Plaintiff’s son
13 received a message that the funds had already been redeemed.

14 19. When Plaintiff called Apple to complain, Apple informed Plaintiff that the gift
15 card was already redeemed, and the card no longer had any value. For security reasons,
16 Defendants would not provide Plaintiff with any additional information about who redeemed the
17 code, other than it was an account unrelated to Plaintiff and/or her son. Plaintiff was then told
18 there was nothing else Apple could do for her, that her case was closed, and any further contact
19 would go unanswered.

20 20. Upon information and belief, Apple maintains records indicating when the Apple
21 gift cards are activated, when they are redeemed, and how and where they are redeemed.

22 21. Upon information and belief, Defendants have known that the Apple gift cards
23 they sell to consumers are defective, unsecure and easily subject to known fraud.

24 22. The existence of numerous complaints from consumers regarding the unsecure and
25 valueless Apple gift cards are sufficient to put Apple on notice that the funds on the gift cards
26 were not guaranteed to be secure upon purchase.

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1 23. Despite this knowledge, Apple failed to take adequate and reasonable measures to
2 ensure that third parties did not tamper with its gift cards and to date continues to sell the Apple
3 gift cards easily prone to security breaches and theft as described herein.

4 24. Apple also failed to disclose to Plaintiff and Class Members that Apple did not
5 safeguard the gift cards and/or the gift card accounts to prevent the fraud and/or ensure that the
6 gift cards were not tampered with.

7 25. Apple failed to inform or disclose to the public, including Plaintiff and Class
8 Members, that it was aware of an ongoing fraud with the Apple gift cards, making it probable that
9 the funds on Apple gift cards could be easily accessed and stolen by third parties. Apple also
10 failed to disclose that its policy and practice was *not* to refund or replace the value of the Apple
11 gift cards subjected to the known fraud.

12 26. Apple failed to inform or disclose to the public, including Plaintiff and Class
13 Members, that its Apple gift card policies and security practices were inadequate to safeguard
14 customers' Apple gift card accounts and personal identifying information against theft.

15 27. Plaintiff and Class Members had a reasonable expectation that Apple would
16 maintain their Apple gift card funds and gift card account information secure.

17 28. As a direct and proximate cause of Apple's conduct, Plaintiff and Class Members
18 suffered injury in the amount of money loaded onto the gift cards.

19 29. Had Apple disclosed to Plaintiff and Class Members that Apple did not have
20 adequate systems, policies, and security measures in place to secure customers' Apple gift card
21 account information and Apple gift card funds, Plaintiff and Class Members would not have
22 purchased the Apple gift cards.

23 30. Defendants have reaped enormous profits from their unlawful, unfair and
24 deceptive business practices.

25 **CLASS DEFINITION AND ALLEGATIONS**

26 31. Pursuant to California Code of Civil Procedure 382, Plaintiff brings this action on
27 behalf of herself and on behalf of all members of the following class and subclass of similarly
28 situated individuals:

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Nationwide Class:

All consumers in the United States who purchased an Apple gift card wherein the funds on the Apple gift card was redeemed prior to use by the consumer. Excluded from this Class are Defendants and their officers, directors and employees, and those who purchased Apple gift cards for the purpose of resale.

California Subclass:

All consumers in the State of California who purchased an Apple gift card wherein the funds on the Apple gift card was redeemed prior to use by the consumer. Excluded from this Class are Defendants and their officers, directors and employees, and those who purchased Apple gift cards for the purpose of resale.

32. Numerosity. On information and belief, the Nationwide Class and California Subclass (collectively, the “Class” or “Class Members”) are each so numerous that joinder of all members of the Class is impracticable. Plaintiff is informed and believes that the proposed Class contains thousands of purchasers of Apple gift cards who have been damaged by Defendants’ conduct as alleged herein. The precise number of Class Members is unknown to Plaintiff but estimated to be in the thousands.

33. Existence and Predominance of Common Questions of Law and Fact. This action involves common questions of law and fact, which predominate over any questions affecting individual Class Members. These common legal and factual questions include, but are not limited to, the following:

- a. Whether Defendants knew, or should have known, that the Apple gift cards were defective, unsecure and easily susceptible to fraud and/or theft;
- b. Whether Defendants had a duty to disclose to Plaintiff and Class Members of the probability and/or possibility of an ongoing fraud with the Apple gift cards, making it probable that the funds on Apple gift cards could be easily accessed and stolen by third parties;

- c. Whether Defendants owed a duty to Plaintiff and the Class Members to provide security measures to ensure that its systems and networks, and the personnel responsible for them, adequately protected the personal information of consumers;
- d. Whether the PIN on the Apple gift cards constitutes personal information;
- e. Whether Defendants had a duty to disclose to Plaintiff and Class Members that Apple did not safeguard the gift cards and/or the gift card accounts to prevent the fraud and/or ensure that the gift cards were not tampered with;
- f. Whether Apple failed to take adequate and reasonable measures to ensure that third parties did not tamper with its gift cards;
- g. Whether Defendants had a duty to disclose to Plaintiff and Class Members that its Apple gift card policies and security practices were inadequate to safeguard customers' gift card accounts and personal identifying information against theft;
- h. Whether Defendants' alleged conduct violates public policy;
- i. Whether the alleged conduct constitutes violations of the laws asserted;
- j. Whether Defendants engaged in unlawful, unfair or fraudulent business practices;
- k. Whether Plaintiff and Class Members have sustained monetary loss and the proper measure of that loss; and
- l. Whether Plaintiff and Class Members are entitled to other appropriate remedies, including corrective advertising and injunctive relief.

34. Typicality. Plaintiff's claims are typical of the claims of the members of the Class because, *inter alia*, all Class Members were injured through the uniform misconduct described above and were subject to Defendants' deceptive claims that accompanied each and every gift card that Defendants sold. Plaintiff is advancing the same claims and legal theories on behalf of herself and all members of the Class.

35. Adequacy of Representation. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained counsel experienced in complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

1 36. Superiority. A class action is superior to all other available means for the fair and
2 efficient adjudication of this controversy. The damages or other financial detriment suffered by
3 individual Class Members is relatively small compared to the burden and expense that would be
4 required to individually litigate their claims against Defendants. It would thus be virtually
5 impossible for Plaintiff and Class Members, on an individual basis, to obtain effective redress for
6 the wrongs done to them. Furthermore, even if Class Members could afford such individualized
7 litigation, the court system could not. Individualized litigation would create the danger of
8 inconsistent or contradictory judgments arising from the same set of facts. Individualized
9 litigation would also increase the delay and expense to all parties and the court system from the
10 issues raised by this action. By contrast, the class action device provides the benefits of
11 adjudication of these issues in a single proceeding, economies of scale, and comprehensive
12 supervision by a single court, and presents no unusual management difficulties under the
13 circumstances here.

14 37. The Class also may be certified because Defendants have acted or refused to act on
15 grounds generally applicable to the Class, thereby making appropriate final declaratory and/or
16 injunctive relief with respect to the members of the Class as a whole.

17 38. Plaintiff seeks preliminary and permanent injunctive and equitable relief on behalf
18 of the entire Class, on grounds generally applicable to the entire Class, to enjoin and prevent
19 Defendants from engaging in the acts described and requiring Defendants to provide full
20 restitution to Plaintiff and Class Members.

21 39. Unless a Class is certified, Defendants will retain monies received as a result of its
22 conduct that were taken from Plaintiff and Class Members. Unless an injunction is issued,
23 Defendants will continue to commit the violations alleged, and the members of the Class and the
24 general public will continue to be misled.

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COUNT I

Violations of the Consumers Legal Remedies Act

California Civil Code §1750 *et seq.*

40. Plaintiff repeats and re-alleges the allegations contained in the Paragraphs above, as if fully set forth herein.

41. Plaintiff brings this claim individually and on behalf of the Class.

42. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.* (the “CLRA”). Plaintiff is a “consumer” as defined by California Civil Code § 1761(d). Defendants’ Apple gift cards are “goods” within the meaning of the CLRA.

43. Defendants violated and continues to violate the CLRA by engaging in the following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of the Apple gift cards:

(5) Representing that [the gift cards have] . . . approval, characteristics , . . uses [and] benefits . . . which [they do] not have

* * *

(7) Representing that [the gift cards are] of a particular standard, quality or grade . . . if [they are] of another.

* * *

(9) Advertising goods . . . with intent not to sell them as advertised.

* * *

(16) Representing that [the gift cards have] been supplied in accordance with a previous representation when [they have] not.

44. Defendants violated the CLRA by representing and failing to disclose material facts about the gift cards, as described above, when they knew, or should have known, that the representations were false and misleading and that the omissions were of material facts they were obligated to disclose.

1 53. In the course of conducting business, Defendants committed unlawful business
2 practices by, *inter alia*, making the misrepresentations, as set forth more fully herein. Defendants
3 have violated California Civil Code §§ 1572, 1573, 1709, 1711, 1770(a)(5), (7), (9) and (16);
4 California Business & Professions Code §§ 17200 *et seq.*; and the common law, including
5 negligent misrepresentation and breach of implied warranty of merchantability. Defendants’
6 above-described wrongful acts and practices constitute actual and constructive fraud within the
7 meaning of Civil Code §§ 1572 and 1573, as well as deceit, which is prohibited under Civil Code
8 §§ 1709 and 1711.

9 54. Plaintiff and the Class reserve the right to allege other violations of law, which
10 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this
11 date.

12 55. Defendants’ actions also constitute “unfair” business acts or practices because, as
13 alleged above, *inter alia*, Defendants engaged in unfair business practices, misrepresented and
14 omitted material facts regarding the Apple gift cards, and thereby offended an established public
15 policy, and engaged in unethical, oppressive, and unscrupulous activities that are substantially
16 injurious to consumers.

17 56. As stated in this complaint, Plaintiff alleges violations of consumer protection and
18 unfair competition laws in California, resulting in harm to consumers throughout the United
19 States. Defendants’ acts and omissions also violate and offend the public policy against engaging
20 in false and misleading advertising, unfair competition and deceptive conduct towards consumers.
21 This conduct constitutes violations of the unfair prong of Business & Professions Code § 17200,
22 *et seq.*

23 57. There were reasonably available alternatives to further Defendants’ legitimate
24 business interests, other than the conduct described herein.

25 58. Business & Professions Code § 17200 *et seq.*, also prohibits any “fraudulent
26 business act or practice.”
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1 59. Defendants’ actions, claims, nondisclosures and misleading statements, as more
2 fully set forth above, were also false, misleading and/or likely to deceive the consuming public
3 within the meaning of Business & Professions Code § 17200 *et seq.*

4 60. Defendants’ advertising, labeling and packaging as described herein also
5 constitutes unfair, deceptive, untrue and misleading advertising.

6 61. Defendants’ conduct caused and continues to cause substantial injury to Plaintiff
7 and the other Class Members. Plaintiff and Class Members have suffered injury in fact and have
8 lost money as a result of Defendants’ unfair conduct.

9 62. As a result of its deception, Defendants have been able to reap unjust revenue and
10 profit.

11 63. Unless restrained and enjoined, Defendants will continue to engage in the above-
12 described conduct. Accordingly, injunctive relief is appropriate.

13 64. Plaintiff, on behalf of herself, all others similarly situated, and the general public,
14 seeks restitution of all money obtained from Plaintiff and the members of the Class as a result of
15 unfair competition, an injunction prohibiting Defendants from continuing such practices,
16 corrective advertising, and all other relief this Court deems appropriate, consistent with Business
17 & Professions Code § 17200.

18 **COUNT III**

19 **Violations of the California Consumer Privacy Act**

20 **California Civil Code §1798.150 *et seq.***

21 65. Plaintiff repeats and re-alleges the allegations contained in the Paragraphs above,
22 as if fully set forth herein.

23 66. Plaintiff brings this claim individually and on behalf of the Class.

24 67. The California Consumer Privacy Act of 2018 (“CCPA”) went into effect on
25 January 1, 2020. This comprehensive privacy law was enacted to protect consumers’ personal
26 information from unauthorized collection and disclosure.

27 68. Upon information and belief, the PIN on the Apple gift cards is “personal
28 information” as defined in Cal. Civ. Code §1798.140(o) as it “identifies, relates to, describes, is

1 reasonably capable of being associated with, or could reasonably be linked, directly or indirectly,
2 with” the purchasing consumers and/or their households.

3 69. Through the above-detailed conduct, Defendants violated the CCPA by, among
4 other things, failing to prevent Plaintiff’s and Class Members’ nonencrypted and nonredacted
5 personal information from unauthorized disclosure as a result of Defendants’ violation of their
6 duty to implement and maintain reasonable security procedures and practices appropriate to the
7 nature of the information to protect the personal information of Plaintiff and Class Members.

8 70. As a direct and proximate result of the Defendants’ conduct, Plaintiff’s and the
9 Class Members’ personal information was subjected to unauthorized disclosure to a third party.

10 71. As a direct and proximate result of Defendants’ conduct, Plaintiff and Class
11 Members were injured and lost money or property, including but not limited to, the amount stolen
12 from their Apple gift cards, the loss of Plaintiff’s and Class Members’ legally protected interest in
13 the confidentiality and privacy of their personal information, nominal damages, and additional
14 losses as described herein.

15 72. Defendants knew or should have known that the security practices regarding the
16 Apple gift cards were inadequate to safeguard Plaintiff and Class Members personal information
17 and the risk of unauthorized disclosure to a third party was highly likely. Defendants failed to
18 implement and maintain reasonable security procedures and practices appropriate to the nature of
19 the information to protect the personal information of Plaintiff and Class Members.

20 73. Apple is a corporation that is organized and operated for the profit or financial
21 benefit of its owners with a reported total second quarter revenue for fiscal year 2020 of \$58.3
22 billion.

23 74. In accordance with Cal. Civ. Code §1798.150(b), Plaintiff has served Defendants
24 with notice of these CCPA violations and a demand for relief by certified mail, return receipt
25 requested. A copy of the letter is attached hereto as **Exhibit A**.

26 75. On behalf of Class Members, Plaintiff seeks injunctive relief in the form of an
27 order enjoining Defendants from continuing to violate the CCPA. If Defendants fail to properly
28 respond to Plaintiff’s notice letter or agree to timely and adequately rectify the violations detailed

1 above, Plaintiff will seek actual, punitive, and statutory damages in an amount not less than one
2 hundred dollars (\$100) and not greater than seven hundred and fifty (\$750) per consumer per
3 incident, whichever is greater; restitution; attorneys' fees and costs (pursuant to Cal. Civ. Code
4 §1021.5); and any other relief the Court seems proper as a result of Defendants' CCPA violations.

5 **COUNT IV**

6 **Negligence**

7 76. Plaintiff repeats and re-alleges the allegations contained in the Paragraphs above,
8 as if fully set forth herein.

9 77. Plaintiff brings this claim individually and on behalf of the Class.

10 78. Defendants owed a duty to Plaintiff and Class Members to exercise reasonable
11 care in obtaining, securing, safeguarding, deleting, destroying and protecting Plaintiff's and Class
12 Members' personal information within their possession or control from being compromised, lost,
13 stolen, accessed and misused by unauthorized persons. This duty included, among other things,
14 designing, maintaining and testing Defendants' security systems to ensure that Plaintiff's and
15 Class Members' personal information was adequately secured and protected. Defendants further
16 owed a duty to Plaintiff and the Class Members to implement processes that would detect a
17 breach of its Apple gift cards in a timely manner and to timely act upon warning and alerts
18 including those generated by its own security systems.

19 79. Defendants owed a duty to Plaintiff and the Class Members to provide security to
20 ensure that its systems and networks, and the personnel responsible for them, adequately
21 protected the personal information of consumers.

22 80. Defendants owed a duty of care to Plaintiff and the Class Members because they
23 were foreseeable and probable victims of any inadequate security practices. Defendants knew or
24 should have known they had inadequately safeguarded Apple gift cards, and yet Defendants failed
25 to take reasonable precautions to safeguard it.

26 81. Defendants owed a duty to timely and accurately disclose to Plaintiff and the Class
27 Members that their personal information had been or was reasonably believed to have been
28 compromised. Timely disclosure was required, appropriate and necessary so that, among other

1 things, Plaintiff and the Class Members could take appropriate measures to avoid theft and/or
2 fraudulent charges, including, monitoring their account information and credit reports for
3 fraudulent activity, contact their banks or other financial institutions, obtaining credit monitoring
4 services, filing reports with law enforcement and other governmental agencies and taking other
5 steps to mitigate or ameliorate the damages caused by Defendants' misconduct.

6 82. Plaintiff and the Class Members entrusted Defendants with their PII with the
7 understanding that Defendants would safeguard their information and that the company was in a
8 position to protect against the harm suffered by Plaintiff and the Class Members as a result of
9 Apple gift card fraud.

10 83. Defendants knew, or should have known, of the inherent risks in collecting and
11 storing the personal information of Plaintiff and the Class Members and of the critical importance
12 of providing adequate security of that information.

13 84. Defendants' own conduct also created a foreseeable risk of harm to Plaintiff and
14 the Class Members. Defendants' misconduct included, but was not limited to, failure to take the
15 steps and opportunities to prevent and stop the Apple gift card fraud as set forth herein.

16 85. Through its acts and omissions described herein, Defendants unlawfully breached
17 its duty to use reasonable care to protect and secure Plaintiff's and the Class Members' personal
18 information within its possession or control. More specifically, Defendants failed to maintain a
19 number of reasonable security procedures and practices designed to protect personal information
20 of Plaintiff and the Class Members, including, but not limited to, establishing and maintaining
21 industry-standard systems to safeguard its Apple gift cards from theft. Given the risk involved
22 and the amount of data at issue, Defendants' breach of its duties was unreasonable.

23 86. Defendants breached their duties to timely and accurately disclose that Plaintiff's
24 and Class Members' personal information in Defendants' possession had been or was reasonably
25 believed to have been, stolen or compromised.

26 87. As a direct and proximate result of Defendants' breach of its duties, Plaintiff and
27 the Class Members have been harmed by the loss of the funds stolen from their Apple gift cards,
28 plus interest.

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COUNT V

Negligent Misrepresentation

88. Plaintiff repeats and re-alleges the allegations contained in the Paragraphs above, as if fully set forth herein.

89. Plaintiff brings this claim individually and on behalf of the Class.

90. In the course of its business, Defendants misrepresented to Plaintiff and Class Members that Defendants were selling Apple gift cards that were original, usable, secure, valuable, and free from fraud, tampering or compromise.

91. Defendants had no reasonable grounds to believe these misrepresentations were true.

92. Defendants failed to inform or disclose to the public, including Plaintiff and Class Members, that Defendants were aware of an ongoing fraud with the Apple gift cards, making it probable that the value of Apple gift cards could be accessed and stolen by third parties. Defendants also failed to disclose that Defendants policy and practice was to not refund or replace the value of the Apple gift cards subjected to this fraud.

93. Defendants also failed to disclose to the public, including Plaintiff and Class Members, that Defendants did not safeguard the gift cards and/or the gift card accounts to prevent the fraud and/or ensure that the gift cards were not tampered with.

94. Defendants also failed to inform or disclose to the public, including Plaintiff and Class Members, that its Apple gift card policies and security practices are inadequate to safeguard customers' Apple gift card accounts and personal identifying information against theft.

95. Defendants intended to induce Plaintiff and Class Members to rely on its misrepresentations and omissions because they knew Plaintiff and Class Members would not have purchased the Apple gift cards had they known the Apple gift cards, as well as their personal information attached to the gift cards, was subject to an ongoing fraud.

96. Defendants made these representations and omissions as to Plaintiff and the Class Members in connection with their purchase of the Apple gift cards.

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7. Providing such further relief as may be just and proper.

Dated: May 28, 2020

JAMES HAWKINS, APLC



Samantha A. Smith
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all causes of action and/or issues so triable.

Dated: May 28, 2020

JAMES HAWKINS, APLC



Samantha A. Smith
Attorney for Plaintiff

EXHIBIT A

May 28, 2020

***Via Certified Mail (Receipt No. 7018 1130 0001 8270 4913)
Return Receipt Requested***

Apple, Inc.
Apple Value Services, LLC
One Apple Park Way
Cupertino, CA 95014

Re: *Demand Letter Pursuant to California Civil Code Sections 1782 and 1798.150*

Dear Sir or Madam:

This letter serves as notice and demand for corrective action by Apple, Inc. and Apple Value Services, LLC (“Apple”) pursuant to the Consumer Legal Remedies Act, Cal. Civ. Code Section 1750 *et al.* (“CLRA”) and the California Consumer Privacy Act (“CCPA”), Cal. Civ. Code Section 1798.150(b). This letter is sent on behalf of our client, Rachael Shay, a consumer of Apple gift cards in the State of California, and all other persons similarly situated. We hereby demand that you take immediate corrective action within thirty (30) days as further described below.

Apple, Inc. is a multinational technology company that designs, develops, and sells consumer electronics, computer software, and online services. Apple sells Apple gift cards for its various online services, including its App Store and iTunes, throughout the United States. Upon information and belief, Apple manufactured, marketed, sold and/or distributed insecure and defective Apple gift cards it knew were prone to an ongoing scam wherein the funds on the gift cards are fraudulently redeemed by accessing the Personal Identification Number (“PIN”) on the Apple gift cards prior to use by the consumer.¹

Rather than take simple preventative measures to curb the known and rampant fraudulent conduct and/or warn consumers that the Apple gift card funds are easily susceptible to fraud and are not secure. Defendants perpetuated the fraud by staying silent, refusing to refund the stolen value after consumers complained, and failing to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect consumers’

¹ Upon information and belief, the PIN on the Apple gift cards is “personal information” as defined in Cal. Civ. Code §1798.140(o) as it “identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with” the purchasing consumers and/or their households.

personal information. This conduct violates the CLRA, including but not limited to sections 1770(a) (5), (7), (9) and (16), as well as the CCPA, including but not limited to section 1798.150. Apple has misled and continues to mislead consumers, thereby unfairly permitting Apple to increase its sales and capture market share from its competitors.

Our client is a citizen of the State of California and is a consumer as defined in California Civil Code section 1761(d) because she purchased an Apple gift card for personal, family, or household use. When our client purchased an Apple gift card for her son as a birthday gift, she was misled into believing that the funds on the Apple gift card, and any personal information associated with the Apple gift card, was secure. Had Ms. Shay known the truth about the Apple gift cards and Apple's failure to properly secure them, she would not have made her purchase. As a result, our client suffered a loss of money.

We hereby demand on behalf of our client and all others similarly situated that Apple immediately: (1) cease and desist from continued sale of the faulty Apple gift cards; (2) initiate a corrective campaign to address the inadequate security practices and procedures described herein; and (3) offer to refund the purchase price of the gift cards, plus reimbursement for interest.

If Apple wishes to enter into discussions to resolve the demand asserted in this letter, please contact me immediately.

Sincerely,

JAMES HAWKINS, APLC



Samantha A. Smith

EXHIBIT B

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JAMES HAWKINS, APLC
JAMES R. HAWKINS, ESQ. (#192925)
james@jameshawkinsapl.com
SAMANTHA A. SMITH, ESQ. (#233331)
samantha@jameshawkinsapl.com
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676

Attorneys for Plaintiff Rachael Shay,
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

RACHAEL SHAY, on behalf of herself
and 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.

**AFFIDAVIT OF VENUE BY PLAINTIFF
RACHAEL SHAY**

I, Rachael Shay, hereby declare and state as follows:

1. I am over the age of 18, and if called as a witness, I would testify truthfully to the matters set forth in this Declaration. All of the matters set forth below are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true.

2. I am the Plaintiff in the above-entitled action.

3. Pursuant to Cal. Civ. Code § 1780(d), I make this Declaration in support of the Class Action Complaint and the claim for relief stated in that complaint under Cal. Civ. Code § 1780(a).

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4. This action for relief under Cal. Civ. Code § 1780(a) has been commenced in a county that is a proper place for trial of this action because I reside in San Diego County, and this is the county where the transaction or any substantial portion thereof occurred.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 27th day of May 2020, in Carlsbad, California.

DocuSigned by:
Rachael Shay
2F0846F882E84DB...
Rachael Shay

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

05/28/2020 at 01:03:28 PM

Clerk of the Superior Court
By Cecile Van Pelt, Deputy Clerk

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

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

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

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

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
SAN DIEGO SUPERIOR COURT
330 West Broadway, San Diego, CA 92101

CASE NUMBER: (Número del Caso):
37-2020-00017475-CU-MC-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

James R. Hawkins; Samantha A. Smith, JAMES HAWKINS APLC, 9880 Research Dr., Ste 200, Irvine, CA 92618 Tel: 949-387-7200

DATE: 05/29/2020
(Fecha)

Clerk, by C. Van Pelt, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS:	330 W Broadway
MAILING ADDRESS:	330 W Broadway
CITY AND ZIP CODE:	San Diego, CA 92101-3827
BRANCH NAME:	Central
TELEPHONE NUMBER:	(619) 450-7068
PLAINTIFF(S) / PETITIONER(S):	Rachael Shay
DEFENDANT(S) / RESPONDENT(S):	Apple Inc et.al.
SHAY VS APPLE INC {EFILE}	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2020-00017475-CU-MC-CTL

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: Richard S. Whitney

Department: C-68

COMPLAINT/PETITION FILED: 05/28/2020

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	11/13/2020	10:00 am	C-68	Richard S. Whitney

Due to the COVID-19 pandemic, all hearings will be conducted remotely until further notice. Absent an order of the court, personal appearances at the hearing will not be allowed. For information on arranging telephonic or video appearances, contact CourtCall at (888)882-6878, or at www.courtcall.com. Please make arrangements with CourtCall as soon as possible.

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases or guidelines and procedures.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7068	
PLAINTIFF(S)/PETITIONER(S)/APPELLANT(S): Rachael Shay	
DEFENDANT(S)/RESPONDENT(S): Apple Inc et.al.	
Short Title: Shay vs Apple Inc {EFILE}	
NOTICE OF RESCHEDULED HEARING	CASE NUMBER: 37-2020-00017475-CU-MC-CTL

Notice is given that the hearing in the above-entitled case has been rescheduled from 11/13/2020 10:00 AM to date and time shown below. All inquiries regarding this notice should be referred to the court listed above.

<u>TYPE OF HEARING</u>	<u>DATE</u>	<u>TIME</u>	<u>DEPT</u>	<u>JUDGE</u>
Civil Case Management Conference	04/23/2021	10:00 am	C-68	Richard S. Whitney

All hearings will be conducted remotely until further notice. Absent an order of the court, personal appearances at the hearing will not be allowed. You must make arrangements to appear by telephone or video by contacting CourtCall at (888) 882-6878, or at www.courtcall.com. Please make your arrangements with CourtCall as soon as possible, before the hearing date. If you wait to contact CourtCall until the date and time of the hearing, CourtCall will be unable to process your request in time and you will not be able to appear at this hearing.

CourtCall will charge you a fee for making the arrangements for your appearance. The fee is required. However, if you have previously obtained an approved Order on Court Fee Waiver (FW-003/FW-003-GC), you must inform CourtCall that you have the Order so that CourtCall will not charge the fee for a telephonic appearance. If you do not have an approved Order on Court Fee Waiver (FW-003/FW-003-GC) but believe that you may be eligible for a fee waiver, you should immediately file a Request to Waive Court Fees (FW-001/FW-001-GC) with the Civil Business Office, to request an Order on Court Fee Waiver.

Counsel/Plaintiff in pro per: Check service list. If you have brought a party into this case who is not included in the service list, San Diego Superior Court Local Rules, Division II, requires you to serve the party with a copy of this notice.

A case management statement must be completed by counsel for all parties or parties in pro per and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR options.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

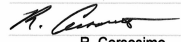
Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: SHAY VS APPLE INC {EFILE}

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2020-00017475-CU-MC-CTL

I certify that I am not a party to this cause. I certify that a true copy of NOTICE OF RESCHEDULED HEARING was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The certification occurred at San Diego, California on 06/25/2020. The mailing occurred at Gardena, California on 06/26/2020.

Clerk of the Court, by: 
R. Cersosimo, Deputy

JAMES R HAWKINS
JAMES HAWKINS APLC
9880 RESEARCH DRIVE # 200
IRVINE, CA 92618

SAMANTHA SMITH
JAMES HAWKINS, APLC
9880 RESEARCH DRIVE # 200
IRVINE, CA 92618

CLERK'S CERTIFICATE OF SERVICE BY MAIL

EXHIBIT 3

1 **JENNER & BLOCK LLP**
 2 Kate T. Spelman (Cal. Bar No. 269109)
 3 kspelman@jenner.com
 4 Alexander M. Smith (Cal. Bar No. 295187)
 5 asmith@jenner.com
 6 633 West 5th Street, Suite 3600
 7 Los Angeles, CA 90071-2054
 8 Telephone: (213) 239-5100
 9 Facsimile: (213) 239-5199

10 Attorneys for Defendants
 11 Apple Inc. and Apple Value Services, LLC

12 SUPERIOR COURT OF CALIFORNIA
 13 COUNTY OF SAN DIEGO

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

16 Plaintiff,

17 v.

18 APPLE INC., a Delaware Corporation; APPLE
 19 VALUE SERVICES, LLC, a Virginia Limited
 20 Liability Corporation; and DOES 1 through 10,
 21 inclusive,

22 Defendants.

Case No. 37-2020-00017475-CU-MC-CTL

**NOTICE TO STATE COURT OF REMOVAL
 TO FEDERAL COURT**

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that Defendants Apple Inc. and Apple Value Services, LLC have
3 removed this action to the United States District Court for the Southern District of California pursuant to
4 28 U.S.C. § 1441 *et seq.* A file-stamped copy of the Notice of Removal is attached as Exhibit 1.

5

6 Dated: August 21, 2020

JENNER & BLOCK LLP

7

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By: /s/ Kate T. Spelman
Kate T. Spelman

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Attorneys for Defendants
Apple Inc. and Apple Value Services, LLC

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [‘Ongoing Fraud’: Class Action Claims Apple Gift Card Funds Susceptible to Theft](#)
