

SETTLEMENT AGREEMENT AND RELEASE

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

DEFINITIONS

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

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

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

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

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

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

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

1. CONFIDENTIALITY

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

in the Action).

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

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

2. CONSIDERATION FOR SETTLEMENT AND CLASS PAYMENTS

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

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

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

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

3. OBTAINING COURT APPROVAL OF THE AGREEMENT

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

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

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

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

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

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

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

4. OBJECTIONS

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

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

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

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

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

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

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

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

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

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

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

5. EXCLUSIONS

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

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

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

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

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

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

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

6. SETTLEMENT ADMINISTRATION

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

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

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

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

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

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

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

6.3 Claims Package

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

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

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

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

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

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

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

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

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

7. ATTORNEYS' FEES AND COSTS AND SERVICE AWARD

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

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

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

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

8. RELEASES AND WARRANTIES

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

affect the Releasing Parties' release of the Released Parties.

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

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

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

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

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

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

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

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

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

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

10. MISCELLANEOUS

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

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

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

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

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

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

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

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

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

10.10 Notices.

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

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

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

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

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

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

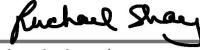
10.13 Any and all disputes arising out of or related to the Settlement or this Agreement must be brought by the Parties and/or each member of the Settlement Class exclusively in this Court. The Parties and each member of the Settlement Class hereby irrevocably submit to the exclusive and continuing jurisdiction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

[Signatures on next page]

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

Dated: August 28, 2023

RACHEL SHAY



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

RACHEL SHAY

Plaintiff

Dated: August 28, 2023

APPLE INC.



HEATHER GRENIER

Vice President of Commercial Litigation and LGS
Operations

Defendant Apple Inc.

Dated: _____, 2023

APPLE VALUE SERVICES, LLC



JOSUE N. DEL RIO NAVA

Vice President

Defendant Apple Value Services, LLC