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9 [Additional Counsel Listed on Signature Page.]

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13 CARL BARRETT, *et al.*,

14 Plaintiffs,

15 v.

16 APPLE, INC., *et al.*,

17 Defendants.

Case No. 5:20-cv-04812-EJD

**AMENDED JOINT DECLARATION IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR ATTORNEYS' FEES, EXPENSES,  
AND SERVICE AWARDS**

Judge: Hon. Edward J. Davila

18 We, Joseph P. Guglielmo, Nyran Rose Rasche, and Anthony F. Fata, on behalf of our  
19 respective firms ("Class Counsel"), submit this Joint Declaration and declare under penalty of  
20 perjury pursuant to 28 U.S.C. §1746 as follows:

21 1. I, Joseph P. Guglielmo, am a partner at the law firm of Scott+Scott Attorneys at  
22 Law LLP ("Scott+Scott"). I am admitted *pro hac vice* to this Court to represent Plaintiffs Michel  
23 Polston, Nancy Martin, Maria Rodriguez, and Andrew Hagene (together, "Plaintiffs") in the  
24 above-captioned action.

25 2. I, Nyran Rose Rasche, am a partner at the law firm of Cafferty Clobes Meriwether  
26 & Sprengel LLP ("Cafferty Clobes"). I am admitted *pro hac vice* to this Court to represent  
27 Plaintiffs in the above-captioned action.  
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1           3.       I, Anthony F. Fata, am a partner at the law firm of Kirby McInerney LLP (“Kirby  
2 McInerney”). I am admitted *pro hac vice* to this Court to represent Plaintiffs in the above-  
3 captioned action.

4           4.       On February 17, 2023, Class Counsel were appointed by the Court as interim Co-  
5 Lead Class Counsel in the above-captioned action (the “Action”) against Defendants Apple, Inc.,  
6 and Apple Value Services LLC (“Defendants” or “Apple”) (collectively with Class Counsel, the  
7 “Parties”). ECF No. 132. On May 16, 2024, the Court appointed the same firms as Class Counsel  
8 to represent the Settlement Class. ECF No. 269. Class Counsel has personal knowledge of the  
9 matters stated herein, and could testify competently regarding these matters if called upon by the  
10 Court to do so.

11           5.       Class Counsel respectfully submit this Joint Declaration in support of Plaintiffs’  
12 Motion for Attorneys’ Fees, Expenses, and Service Awards in connection with the Settlement of  
13 the Action (“Motion”).

14 **I.       INTRODUCTION**

15           6.       After filing this first-of-its-kind lawsuit and three years of hard-fought litigation,  
16 Class Counsel negotiated the Settlement, which is the first to provide relief to victims of gift card  
17 scams. The Settlement provides that Apple will pay \$35 million into a non-reversionary  
18 Settlement Fund from which Settlement Class Members can be made whole, receiving up to 100%  
19 of the amount they were defrauded into paying for Apple App Store and iTunes gift cards.

20           7.       Class Counsel vigorously pursued this Action against greater-than-usual risks and  
21 a resolute defense at every stage of the litigation. Class Counsel performed a substantial amount  
22 of work, as described in more detail below, and as summarized as follows:

- 23                   a.       Conducting an initial investigation of the nature and scope of the scam,  
24                               Apple’s role and refusal to issue refunds, and the resulting damages to  
25                               victims;
- 26                   b.       Identifying potential claims and remedies available to victims, and  
27                               ultimately filing this first-of-its-kind action on July 17, 2020;

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- c. Filing the First Amended Class Action Complaint amending the allegations, adding additional named Plaintiffs, and asserting claims under: (1) the California Penal Code §496 for concealing and withholding stolen property; (2) common law conversion for exercising dominion and control over that stolen property; and (3) the California Consumers Legal Remedies Act (“CLRA”) and Unfair Competition Law (“UCL”), and for declaratory relief;
- d. Opposing Apple’s second Motion to Dismiss Plaintiffs’ claims;
- e. Engaging in extended negotiations to propose an Electronically Stored Information (“ESI”) Protocol and Protective Order acceptable to the Parties;
- f. Propounding multiple sets of Requests for Production of documents and structured data, totaling 30 requests, 11 interrogatories, and 52 requests for admission;
- g. Responding to discovery requests propounded on each named Plaintiff totaling approximately 192 interrogatories and 152 document requests;
- h. Engaging in dozens of meet and confers and exchanging frequent discovery correspondence;
- i. Taking the depositions of 10 Apple witnesses under Rule 30(b)(6), Rule 30(b)(1), or both;
- j. Propounding several third-party discovery requests, including FOIA requests to various government agencies and subpoenas to Apple’s business partners known as integrators;
- k. Reviewing and analyzing over 680,000 pages of documents produced by Apple and third parties;
- l. Submitting multiple discovery disputes and engaging in multiple rounds of oral argument before the Honorable Virginia DeMarchi;

- 1 m. Searching for and consulting with expert witnesses, including retaining two
- 2 experts on class certification issues and overseeing their reports regarding
- 3 critical components of the litigation;
- 4 n. Coordinating the efforts of Plaintiffs in developing and reviewing pleadings
- 5 and written discovery responses, retrieving documents for production,
- 6 appearing for their depositions, and reviewing and approving the
- 7 Settlement;
- 8 o. Drafting Plaintiffs' Motion for Class Certification with extensive
- 9 supporting expert disclosures and accompanying exhibits;
- 10 p. Negotiating the Settlement which involved drafting a detailed mediation
- 11 statement, participating in a full-day mediation, and subsequently
- 12 negotiating and drafting the Settlement terms;
- 13 q. Obtaining preliminary approval of the Settlement; and
- 14 r. Communicating with Class members and the settlement administrator
- 15 regarding the Settlement.

16 8. Class Counsel has continued to dedicate considerable time and resources to  
17 overseeing the Settlement administration process and, if the Settlement is approved, will continue  
18 to do so, likely for many months, to ensure that distribution of the Settlement funds is completed.

19 **II. DESCRIPTION OF THE LITIGATION AND WORK PERFORMED**

20 **A. The Complaints and Motions to Dismiss**

21 9. Following a thorough investigation by Class Counsel, on July 17, 2020, Plaintiffs  
22 filed the Class Action Complaint against Defendants, alleging that unwitting consumers were  
23 tricked by third-party scammers into purchasing Apple App Store and iTunes gift cards and  
24 providing the cards' redemption codes to scammers, and that Defendants knowingly kept the  
25 money stolen from the victims of those gift card scams and unconscionably and unlawfully refused  
26 to issue refunds to the victims. *See generally* ECF No. 1.

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1           10.     On March 4, 2021, the Court granted Apple’s Motion to Dismiss in full, with leave  
2 to amend. ECF No. 51. Plaintiffs sought leave to include new parties and new claims in the  
3 amended pleading, which leave was granted (*see* ECF Nos. 54 and 58), and on April 14, 2021,  
4 Plaintiffs filed the First Amended Class Action Complaint. ECF No. 59. Class Counsel dedicated  
5 substantial effort to the pleadings, from the beginning of the pre-suit investigations through the  
6 filing of the respective complaints, including analyzing publicly available information and reports  
7 relating to Apple’s alleged conduct and investigating the individual experiences of gift card scam  
8 victims.

9           11.     Following a second round of Rule 12(b)(6) briefing, the Court issued an order on  
10 June 13, 2022, sustaining certain claims. ECF No. 97. Specifically, the Court denied Defendants’  
11 motion to dismiss the following claims arising from Apple’s unconscionable application of its  
12 disclaimer language to gift card scam victims: (1) California Penal Code §496 for concealing and  
13 withholding stolen property as to the Contact Subclass; (2) common law conversion for exercising  
14 dominion and control over that stolen property as to the Contact Subclass; (3) claims under the  
15 CLRA and UCL; and (4) claims for declaratory judgment.

16           12.     Following a ruling from the Supreme Court of California on an issue relevant to  
17 this Action, Class Counsel sought leave to file a motion for reconsideration and briefed and  
18 presented argument on a novel legal issue relating to California Penal Code §496. *See* ECF Nos.  
19 134, 167, and 232.

20           **B.     Appointment of Class Counsel**

21           13.     On August 31, 2022, Class Counsel filed their motion to appoint interim class  
22 counsel. ECF No. 109. On February 17, 2023, the Court appointed the undersigned as Interim  
23 Co-Lead Class Counsel following a hearing on the motion (“Appointment Order”). ECF No. 132.

24           14.     Subsequently, on May 16, 2024, the Court appointed Nyran Rose Rasche and  
25 Nickolas Hagman of Cafferty Clobes Meriwether & Sprengel LLP, Anthony Fata and Sarah Flohr  
26 of Kirby McInerney LLP, and Joseph Guglielmo and Amanda Rolon of Scott+Scott, together with  
27 their law firms, as Class Counsel. ECF No. 269.

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1           **C.     Discovery Efforts**

2           15.     Class Counsel defeated any early motion to stay discovery and dove headfirst into  
3 the discovery process on October 22, 2020. ECF No. 38. By that point, the parties were already  
4 negotiating a protective order and ESI protocol, and in the first 18 months of discovery alone,  
5 Plaintiffs negotiated those orders to completion, propounded two sets of document requests and a  
6 comprehensive Rule 30(b)(6) notice, submitted a dispute regarding that Rule 30(b)(6) notice to  
7 Magistrate Judge DeMarchi, responded to document requests and interrogatories served on them,  
8 and met and conferred dozens of times with Apple, resulting in the finalization of search terms and  
9 an initial custodian list, and the production of nearly half a million pages of documents. Following  
10 the June 13, 2022 Order sustaining certain of Plaintiffs' claims, Class Counsel continued to  
11 conduct an extensive discovery process, investing considerable time consulting with experts and  
12 utilizing specialized knowledge to determine appropriate additional discovery requests. Class  
13 Counsel drafted, propounded, and responded to three additional sets of discovery requests and  
14 engaged in frequent and lengthy additional negotiations concerning discovery responses,  
15 objections, and document production. Discovery in this matter was highly contested at all phases  
16 and included the submission of multiple additional discovery disputes to the Magistrate Judge,  
17 along with the negotiation of a stipulation and proposed order to defer certain categories of  
18 discovery until after a ruling on class certification.

19           16.     Class Counsel reviewed approximately 680,000 pages of documents, many of  
20 which were highly technical and industry-specific. Class Counsel organized the efficient and  
21 expeditious review of documents. A team of approximately 10 attorneys from Scott+Scott,  
22 Cafferty Clobes, and Kirby McInerney reviewed and coded documents, met weekly to share and  
23 discuss discovery-related issues, identified key witnesses and departments within Apple, and  
24 developed a keen understanding of the technological concepts and core functionalities within  
25 Apple that relate to the alleged Apple App Store and iTunes gift card scams. This extensive work  
26 frequently involved linking issues and concepts across multiple documents and sets of structured  
27 data. The team also collaborated closely to exchange insights on critical aspects of the case,  
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1 including Apple's internal handling and discussion of gift card scams and the details surrounding  
2 the flow of funds related to gift card scams within Apple's systems. By the time the class  
3 certification motion was filed, and settlement was reached, Plaintiffs had gained a deep  
4 understanding of how Apple's systems function and had pinpointed the areas for further discovery,  
5 should discovery resume.

6 17. Motion practice related to the Parties' discovery was hard fought (*see* ECF Nos.  
7 138, 141, 144-45, 201) and included briefing and multiple rounds of oral argument before the  
8 Honorable Virginia DeMarchi (*see, e.g.*, ECF Nos. 158, 213), one of which lasted approximately  
9 two hours and required the courtroom to be cleared so that Plaintiffs could seek to compel  
10 production of several categories of confidential documents and structured electronic data.

11 18. Class Counsel also took depositions of 10 Apple witnesses pursuant to Rule  
12 30(b)(6), Rule 30(b)(1), or both, and defended the depositions of the five named Plaintiffs.

13 19. Class Counsel consulted with and retained two experts on key issues concerning  
14 the litigation, such as Apple's structured data and other technological aspects, including the  
15 ascertainability of class members and damages. Class Counsel also worked with the experts to  
16 coordinate the preparation of two reports supporting class certification.

17 20. Despite the Parties' disputes regarding the scope of certain discovery in this Action,  
18 Apple ultimately produced, and Plaintiffs reviewed, hundreds of thousands of pages of documents  
19 and several sets of structured electronic data. Apple also served and supplemented substantive  
20 responses to several of Plaintiffs' interrogatories. As fact discovery came to a close, at the Court's  
21 direction, Plaintiffs successfully negotiated with Apple a stipulation and proposed order deferring  
22 certain categories of data until after a ruling on class certification. ECF Nos. 204-05.

23 **D. Motion for Reconsideration**

24 21. On August 31, 2022, following a ruling from the Supreme Court of California,  
25 Class Counsel sought leave to file a motion for reconsideration, and ultimately briefed and  
26 presented oral argument on a novel legal issue relating to California Penal Code §496. This effort  
27 involved a thorough analysis of the legal framework and innovative advocacy for an interpretation  
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1 of the decision of the Supreme Court of California favorable to the Class. Although the Court  
2 ultimately denied reconsideration, this effort required both creativity and a willingness to navigate  
3 the complexities of uncharted legal territory on behalf of the Class.

4 **E. Motion for Class Certification**

5 22. On June 15, 2023, Plaintiffs filed their Motion for Class Certification. *See* ECF  
6 No. 237. This tremendous effort by Class Counsel involved identifying and compiling supporting  
7 common evidence, meticulous preparation of comprehensive legal briefs, and coordination and  
8 incorporation of two expert reports on key aspects of the litigation.

9 **F. Mediation And Settlement Administration Efforts on Behalf of the Class**

10 23. On July 28, 2023, the Parties attended a full-day, in-person mediation in California  
11 before Randall W. Wulff, of Wulff Quinby Sochynsky.

12 24. Prior to the mediation, the Parties prepared and exchanged detailed, written  
13 submissions regarding their positions. The session ended with a Mediator's Proposal outlining the  
14 general terms of a settlement.

15 25. It then took several months of negotiations for the Parties to reach agreement on a  
16 term sheet, followed by additional months spent drafting and finalizing the long-form settlement  
17 agreement. The Parties also negotiated and agreed on a list of candidates for the role of settlement  
18 administrator, developed a detailed request for proposals which outlined many details of the notice  
19 plan, and reviewed and negotiated the resulting submissions before jointly selecting the  
20 administrator. Ultimately, the Parties completed their negotiations and execution of the long-form  
21 Settlement Agreement and Release on April 1, 2024. *See* ECF No. 266-2.

22 26. The Settlement is an outstanding result as it provides a significant non-reversionary  
23 cash fund and the opportunity for Settlement Class Members to recover up to 100% of the amount  
24 each lost in the scam. Indeed, the Settlement Fund is equal to approximately 21% of the estimated  
25 total actual losses of the Settlement Class, and given anticipated claim rates, Class Counsel believe  
26 that victims who file a valid claim will likely recover their full losses. This result will be  
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1 extraordinarily impactful for Settlement Class Members, many of whom lost hundreds, thousands,  
2 or even tens of thousands of dollars in Apple App Store and iTunes gift card scams.

3 27. Further, the non-reversionary aspect of the Settlement ensures that any remaining  
4 or unclaimed funds will be distributed to *cy pres* recipients and will not revert back to Defendants.  
5 Class Counsel believe that this Settlement is the best possible outcome for the named Plaintiffs  
6 and the Class, who previously stood to recover none of their losses.

7 28. In sum, years of effort and preparation by Class Counsel put them in a position to  
8 negotiate this extraordinarily impactful first-of-its-kind Settlement for Plaintiffs and the Settlement  
9 Class Members.

10 **G. Preliminary Approval and Dissemination of the Notice**

11 29. On April 2, 2024, Plaintiffs filed a Motion for Preliminary Approval of the  
12 Settlement supported by declarations of counsel and the Settlement Administrator, KCC Class  
13 Action Services LLC (“KCC”). ECF No. 266.

14 30. On May 16, 2024, the Court granted preliminary approval of the Settlement,  
15 provisionally certified the Settlement Class, and approved the Notice Plan. ECF No. 269.

16 31. Following preliminary approval, KCC began to implement the Settlement notice  
17 program. *See, e.g.*, [www.giftcardscamsettlement.com](http://www.giftcardscamsettlement.com). Class Counsel have been reviewing  
18 weekly activity reports and have communicated with KCC concerning class member inquiries,  
19 technical updates, the functionality of the toll-free support lines, and data on submitted claims.  
20 Class Counsel expect that this process will continue as the administration progresses and will  
21 continue until disbursement of settlement funds is complete.

22 **III. ATTORNEYS’ FEES, LITIGATION EXPENSES, AND SERVICE AWARDS**

23 **A. Attorneys’ Fees Incurred by Class Counsel**

24 32. Class Counsel’s efforts in this case – which over the course of three years of  
25 adversarial litigation and more than a year of active settlement work have included thousands of  
26 hours of work – culminated in a Settlement that provides for an exceptional recovery for novel  
27 claims. Class Counsel undertook this case despite greater-than-ordinary risks and demonstrated  
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1 their commitment to the Class through the advancement of substantial out-of-pocket costs and  
2 investment of attorney and staff resources that were commensurate to the challenge of litigating  
3 against sophisticated Defendants with virtually unlimited resources. Class Counsel negotiated a  
4 Settlement which is likely to provide all Settlement Class Members who submit valid claims with  
5 a cash recovery of 100% of their losses.

6 33. Class Counsel made every effort to litigate this complex case with efficiency and  
7 effectiveness, utilizing their specialized knowledge and invaluable experience in high-profile  
8 consumer class actions. The work was performed by attorneys and staff from Scott+Scott, Cafferty  
9 Clobes, and Kirby McInerney, under the leadership of Joseph P. Guglielmo, Nyran Rose Rasche,  
10 and Anthony Fata.

11 34. Class Counsel undertook this action on an entirely contingent basis, assuming a  
12 substantial risk that the litigation would yield little-to-no recovery and leave them uncompensated  
13 for their time and substantial out-of-pocket expenses. To date, Class Counsel have received no  
14 compensation for their efforts or expenditures.

15 35. Class Counsel are experienced in class action litigation, and they and their firms  
16 have recovered billions of dollars, in total, on behalf of their clients in class actions nationwide.

17 36. Class Counsel request an award of \$11.65 million in attorneys' fees, which  
18 represents just under one-third of the \$35 million Settlement Fund.

19 37. Filed concurrently herewith are the individual Amended Declarations of  
20 Scott+Scott, Cafferty Clobes, and Kirby McInerney ("Individual Declarations"), which identify  
21 the individuals who performed work on this matter, along with their historical hourly rates.

22 38. The reasonableness of the proposed percentage fee award is supported by a lodestar  
23 cross-check. As outlined in the Individual Declarations, as of July 31, 2024, Class Counsel have  
24 collectively devoted 16,622.5 hours to litigating this case, from inception through July 31, 2024,  
25 with a collective lodestar of \$11,701,465. Therefore, the requested fee award of \$11.65 million  
26 represents a negative multiplier of .99, with significant work remaining.

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1           39. Pursuant to the Appointment Order, Class Counsel maintained contemporaneous  
2 time records and provided monthly reporting of their time that was audited and reviewed on a  
3 regular basis. *See generally* ECF No. 132. Class Counsel also performed an additional audit and  
4 review of all time entries in advance of bringing this Motion. Class Counsel divided tasks to avoid  
5 overlap and unnecessary duplication of efforts.

6           40. Time spent by attorneys and paralegals who worked fewer than 10 hours on the  
7 case has been omitted from the fee calculation. Moreover, the time set forth in the individual  
8 Declarations does not include the hundreds of additional hours Class Counsel will spend (1)  
9 advocating for final approval of the Settlement, including briefing final approval issues and  
10 attending the Final Approval hearing on December 12, 2024, and (2) communicating with the class  
11 members and, assuming it is approved by the Court, administering the Settlement to completion.

12           41. Class Counsel continue to devote substantial time and resources to this Action daily  
13 by overseeing the Settlement administration process and will continue to do so until the conclusion  
14 of the Settlement's disbursement process, which may take many months depending on the *cy pres*  
15 process.

16           **B. Billing Rates of Scott+Scott Attorneys at Law LLP**

17           42. Scott+Scott has grown into one of the most respected U.S.-based law firms  
18 specializing in the investigation and prosecution of complex securities, antitrust, and other  
19 commercial actions in both the United States and Europe. Today, Scott+Scott is comprised of 13  
20 office locations worldwide, with its largest offices in New York, N.Y., and San Diego, CA., which  
21 allow the firm to keep current on federal and California state law developments concerning  
22 attorneys' fees. Accordingly, Scott+Scott is familiar with the prevailing California market rates  
23 for leading attorneys in complex class action litigation addressing important issues.

24           43. Scott+Scott periodically establishes hourly rates for the firm's billing personnel  
25 based on several factors, including prevailing market rates for attorneys and law firms in California  
26 that have comparable skill, experience, and qualifications. Scott+Scott's historical hourly rates  
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1 applied here are fully commensurate with the hourly rates of prominent firms at that time, and as  
2 such are reasonable for each professional who performed work in this litigation.

3 44. Scott+Scott's billing rates have been accepted by courts in other contingent  
4 complex litigation and class actions. *See, e.g., In re Vaxart, Inc. Sec. Litig.*, No. 3:20-cv-05949-  
5 VC (N.D. Cal. Jan. 25, 2023), ECF No. 274 (approving fee award with Scott+Scott's rates ranging  
6 from \$795 to \$1,395 for partners or senior counsel, \$595 to \$750 for associates, and roughly \$395  
7 for paralegals); *Steamship Trade Ass'n of Balt. – Int'l Longshoremen's Ass'n Pension Fund v. Olo*  
8 *Inc.*, No. 1:22-cv-08228 (S.D.N.Y. June 11, 2024), ECF Nos. 123-2, 125-5 (approving fee award  
9 with Scott+Scott's rates ranging from \$1,150 to \$1,975 for partners or senior counsel, \$525 to  
10 \$675 for associates, and roughly \$435 for paralegals); *In re Foreign Exch. Benchmark Rates*  
11 *Antitrust Litig.*, No. 13 Civ. 7789, 2018 WL 5839691, at \*5 (S.D.N.Y. Nov. 8, 2018) (approving  
12 partner rates, including for Class Counsel, ranging from \$630 to \$1,375, and \$325 to \$625 for  
13 associates), *aff'd sub nom. Kornell v. Haverhill Ret. Sys.*, 790 F. App'x 296 (2d Cir. 2019).

14 45. Biographical details for the members of the Scott+Scott litigation team who  
15 dedicated their time to this Action can be found in Scott+Scott's firm résumé, filed with the Court.  
16 *See* Exhibit C to Joint Declaration in Support of Plaintiffs' Motion to Appoint Interim Co-Lead  
17 Counsel in this Action (ECF No. 109-3, at Exhibit C) (providing biographical details for members  
18 of the Scott+Scott litigation team and a representative list of cases where Scott+Scott has  
19 represented plaintiffs in a variety of matters, including consumer, antitrust, and securities cases).

20 **C. Billing Rates of Cafferty Clobes Meriwether Sprengel LLP**

21 46. Cafferty Clobes – the originating firm which performed the initial investigation and  
22 development of this lawsuit – is a national leader in managing and litigating complex class actions  
23 on behalf of a wide variety of consumers and has recovered billions of dollars for consumers since  
24 its founding in 1992.

25 47. Cafferty Clobes periodically establishes hourly rates for the firm's billing personnel  
26 based on several factors, including prevailing market rates for attorneys and law firms that have  
27 comparable skill, experience, and qualifications. Cafferty Clobes' historical hourly rates applied  
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1 here are fully commensurate with the hourly rates of prominent firms at that time, and as such are  
2 reasonable for each professional who performed work in this litigation.

3 48. Cafferty Clobes' billing rates have been approved by courts in other contingent  
4 complex litigation and class actions. *See, e.g., Nielsen v. Walt Disney Parks and Resorts U.S.,*  
5 *Inc.*, No. 8:21-cv-02055 (C.D. Cal. Mar. 4, 2024), ECF Nos. 93-2 and 102 (approving Cafferty  
6 Clobes' rates of \$700 to \$1,100 for partners, \$525 to \$550 for associates, and \$375 for paralegals);  
7 *Budicak Inc. v. Lansing Trade Grp., LLC*, No. 19-CV-02449, 2023 WL 7189144, at \*2 (D. Kan.  
8 June 16, 2023) (approving Cafferty Clobes' rates of \$900 to \$1,100 for partners, \$525 to \$600 for  
9 associates, and \$375 for paralegals).

10 49. Biographical details for the members of the Cafferty Clobes litigation team who  
11 dedicated their time to this Action can be found in Cafferty Clobes' firm résumé filed with the  
12 Court. *See* Exhibit A to Joint Declaration in Support of Plaintiffs' Motion to Appoint Interim Co-  
13 Lead Counsel in this Action (ECF No. 109-3, at Exhibit A) (providing biographical details of the  
14 Cafferty Clobes litigation team and a list and description of class action cases where Cafferty  
15 Clobes has served as counsel, including those where it served as lead or co-lead counsel for  
16 plaintiffs).

17 **D. Billing Rates of Kirby McInerney LLP**

18 50. Kirby McInerney is a specialist plaintiffs' litigation firm with expertise in antitrust,  
19 commodities, securities, structured finance, whistleblower, health care, consumer, and other fraud  
20 litigation. Kirby McInerney attorneys have substantial experience in, and knowledge of, class  
21 action litigation and have been at the forefront of consumer fraud class actions for over 70 years.

22 51. Kirby McInerney periodically establishes hourly rates for the firm's billing  
23 personnel based on several factors, including prevailing market rates for attorneys and law firms  
24 in California that have comparable skill, experience, and qualifications. Kirby McInerney's  
25 historical hourly rates applied here are fully commensurate with the hourly rates of prominent  
26 firms at that time, and as such are reasonable for each professional who performed work in this  
27 litigation.

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1           52. Kirby McInerney's billing rates have been approved by courts in other contingent  
2 complex litigation and class actions. *See, e.g., Tim Doyle v. Reata Pharms., Inc.*, No. 4:21-cv-  
3 00987 (E.D. Tex. Mar. 29, 2024), ECF No. 84 (approving Kirby McInerney's rates of \$900 to  
4 \$1,250 for partners, \$450 to \$800 for associates, and \$275 to \$300 for paralegals); *Macovski v.*  
5 *Groupon, Inc.*, No. 1:20-cv-02581 (N.D. Ill. Oct. 28, 2022), ECF No. 129 (approving Kirby  
6 McInerney rates of \$800 to \$995 for partners, \$350 to \$525 for associates, and \$275 to \$300 for  
7 paralegals); *In re Libor-Based Fin. Instruments Antitrust Litig.*, No. 1:11-md-02262 (S.D.N.Y.  
8 Sept. 5, 2024), ECF No. 899 (approving Kirby McInerney rates of \$900 to \$1,250 for partners,  
9 \$400 to \$800 for associates, and \$275 to \$300 for paralegals).

10           53. Biographical details for the members of the Kirby McInerney litigation team who  
11 dedicated their time to this Action can be found in Kirby McInerney's firm résumé filed with the  
12 Court. *See* Exhibit B to Joint Declaration in Support of Plaintiffs' Motion to Appoint Interim Co-  
13 Lead Counsel in this Action (ECF No. 109-3, at Exhibit B) (providing biographical details of the  
14 Kirby McInerney litigation team and a summary list of notable work where Kirby McInerney has  
15 represented plaintiffs in consumer and antitrust litigation).

16           **E. Unreimbursed Costs and Litigation Expenses**

17           54. Class Counsel have incurred \$546,657.27 in unreimbursed litigation expenses,  
18 including costs advanced in connection with expert fees, legal research, court reporting services,  
19 mediation fees, fees for document uploading and hosting, and other customary litigation expenses.  
20 This amount will be updated at or shortly before the final approval hearing to reflect expenses  
21 occurred after July 31, 2024.

22           55. These expenses were recorded contemporaneously by the respective firms and  
23 represent an accurate record of costs and expenses incurred in connection with the prosecution of  
24 this Action. Itemized reports of the unreimbursed expenses paid by each firm and the  
25 unreimbursed expenses to the litigation fund are filed contemporaneously herewith as Exhibits 2  
26 and 3 to Individual Declarations.

1           56.     The unreimbursed expenses were advanced by Class Counsel on a fully contingent  
2 basis, including, but not limited to, their respective contributions to the litigation fund used to  
3 finance the prosecution of this Action.

4           **F.     Service Award Payments to the Named Plaintiffs**

5           57.     Class Counsel seek \$10,000 in service awards for each of the four named Plaintiffs  
6 in compensation for their involvement in this Action over three years and their service on behalf  
7 of other Class Members. Plaintiffs provided tremendous assistance in the prosecution of the  
8 litigation, expending numerous hours reviewing drafts of pleadings and discovery responses,  
9 participating in telephone calls with Class Counsel, retrieving documents to produce during  
10 discovery, responding to several discovery requests from Defendants, and preparing for and  
11 appearing for their depositions. After sitting for depositions, the Plaintiffs spent additional time  
12 and continued to serve the Class by providing additional discovery responses and documents  
13 requested by Apple. Plaintiffs searched their files and devices to obtain and produce additional  
14 information. Plaintiffs Martin and Polston worked with technical experts to locate, access, and  
15 recover files and social media accounts they were unable to access on their own. Indeed, following  
16 receipt of the police report by his counsel, Mr. Polston engaged in significant additional effort to  
17 locate documents that would confirm his recollection and resolve the questions raised by the police  
18 report, but the case settled before he was able to do so. Plaintiffs also worked with Class Counsel  
19 to provide updated and revised interrogatory responses following requests by Apple. Finally,  
20 Plaintiffs participated in settlement discussions with Class Counsel and reviewed and approved  
21 the Settlement.

22           **IV.    CONCLUSION**

23           58.     The Settlement results from the cumulative efforts of Class Counsel in  
24 collaboration with Apple.

25           59.     Class Counsel achieved an exceptional result for the Class in a groundbreaking,  
26 first-of-its-kind action that presented an outsized risk of nonpayment due to the novelty of the legal  
27 and factual theories.

28



1           60.     Given Class Counsel’s effort, expertise, and commitment of financial resources,  
2 and considering both the significant trailblazing recovery negotiated in the Settlement and the  
3 participation of the named Plaintiffs to achieve that recovery, we believe the relief requested in the  
4 Motion is reasonable and appropriate.

5           We declare, under penalty of perjury, that the foregoing is true and correct. Executed on  
6 October 1, 2024, in New York, New York, and Chicago, Illinois.

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