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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CARL BARRETT, et al.,

Plaintiff,

v.

APPLE INC. and APPLE VALUE SERVICES,
LLC,

Defendants.

Case No. 5:20-cv-4812-EJD

The Honorable Edward J. Davila

**APPLE’S ANSWER AND DEFENSES TO
PLAINTIFFS’ FIRST AMENDED
COMPLAINT**

1 Defendants Apple Inc. and Apple Value Services, LLC (“Apple”) hereby answer Plaintiffs’ First
2 Amended Class Action Complaint (“Complaint”) filed by Carl Barrett, Michel Polston, Nancy Martin,
3 Douglas Watson, Eric Marinbach, Michael Rodriguez, Maria Rodriguez, Guanting Qiu, and Andrew
4 Hagene (collectively “Plaintiffs”) and state their defenses thereto as follows:

5 **NATURE OF THE CASE**

6 1. Over the last several years, Apple has knowingly kept for itself millions, if not billions, of
7 dollars in stolen money. Apple has done so despite the fact that some of the victims of the theft, described
8 herein as the “Contact Subclass,” have contacted Apple directly and provided Apple with the information
9 necessary to identify and return the stolen funds.

10 Answer: Denied.

11 2. Apple’s practice of knowingly keeping stolen funds for itself is, standing alone, unfair. It
12 is also, standing alone, unlawful.

13 Answer: Denied.

14 3. Apple also employs a number of practices designed to perpetuate the theft at issue – a
15 common gift card scam which is well known to Apple – and to make it easier for Apple to keep the stolen
16 funds for itself. Those practices, separately and particularly when taken together, are unfair. They are also,
17 separately and taken together, unlawful, and many of them are also deceptive.

18 Answer: Denied.

19 4. Apple plays a direct and vital role in the gift card scams by converting stolen gift card
20 codes into U.S. dollars or other currency for the scammers and depositing that money directly into the
21 scammers’ bank accounts.

22 Answer: Denied.

23 5. Notably, Apple deposits only 70% of the stolen funds into the bank accounts of the
24 scammers, while unfairly and unlawfully retaining 30% of the funds for itself as a commission for the
25 service of knowingly converting the stolen gift card codes into dollars.

26 Answer: Denied.
27
28

1 12. Plaintiff Michael Rodriguez is a resident and citizen of Los Angeles County, California,
2 living in Walnut, California.

3 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
4 12 of the Complaint and on that basis denies those allegations.

5 13. Plaintiff Maria Rodriguez is a resident and citizen of Los Angeles County, California, living
6 in Walnut, California.

7 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
8 13 of the Complaint and on that basis denies those allegations.

9 14. Plaintiff Guanting Qiu is a resident and citizen of Essex County, Massachusetts, living in
10 Peabody, Massachusetts.

11 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
12 14 of the Complaint and on that basis denies those allegations.

13 15. Plaintiff Andrew Hagene is a resident and citizen of St. Louis, Missouri, an independent
14 city not located within a county.

15 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
16 15 of the Complaint and on that basis denies those allegations.

17 16. Defendant Apple Inc. (“Apple”) is a business incorporated under the laws of the State of
18 California with its principal place of business at 1 Infinite Loop, Cupertino, California 95014. Apple is
19 engaged in the business of designing, manufacturing, distributing, and selling, inter alia, smartphones,
20 tablet computers, wearable technology, headphones, laptops and desktop computers that come with
21 software programs that Apple develops pre-installed. Apple designs its products in California, and its
22 marketing efforts emanate from California. Defendant Apple is a citizen of the State of California.

23 Answer: Apple admits that Apple is a business incorporated under the laws of the State of
24 California with its principal place of business at One Apple Park Way, Cupertino, California 95014. Apple
25 admits that Apple is engaged in the business of designing, manufacturing, distributing, and selling, inter
26 alia, smartphones, tablet computers, wearable technology, headphones, laptops and desktop computers
27 that come with software preinstalled. Apple admits that Apple is a citizen of the State of California. Apple
28 denies the remaining allegations in Paragraph 16 of the Complaint.

1 personal jurisdiction in this District, thus rendering the exercise of jurisdiction by this Court proper and
2 necessary.

3 Answer: Paragraph 20 of the Complaint consists of a legal conclusion to which no response is
4 required. To the extent a response is required, Apple admits that this Court has personal jurisdiction over
5 Apple.

6 21. Venue is proper in this judicial District pursuant to 28 U.S.C. §1391(b) because Apple is
7 headquartered in this District, advertises in this District, receives substantial revenues and profits from the
8 sale of iTunes gift cards which it directs into the stream of commerce in this District; therefore, a
9 substantial part of the events or omissions giving rise to the claims alleged herein occurred in this District.

10 Answer: Paragraph 21 of the Complaint consists of a legal conclusion to which no response is
11 required. To the extent a response is required, Apple admits that venue is proper in this district pursuant
12 to 28 U.S.C. § 1391.

13 22. Intradistrict Assignment (L.R. 3-2(c) and (e) and 3-5(b)). This action arises in Santa Clara
14 County, in that a substantial part of the events which give rise to the claims asserted herein occurred in
15 Santa Clara County. Pursuant to L.R. 3-2(e), all civil actions that arise in Santa Clara County shall be
16 assigned to the San Jose Division.

17 Answer: Paragraph 22 of the Complaint consists of a legal conclusion to which no response is
18 required. To the extent a response is required, Apple admits that assignment to the San Jose Division is
19 proper.

20 **FACTUAL ALLEGATIONS**

21 23. Apple describes the iTunes gift card scam as follows:

22 A string of scams are taking place asking people to make payments over the phone for
23 things such as taxes, hospital bills, bail money, debt collection, and utility bills.

24 * * *

25 Regardless of the reason for payment, the scam follows a certain *formula*: The victim
26 receives a call instilling panic and urgency to make a payment by purchasing App Store &
27 iTunes Gift Cards or Apple Store Gift Cards from the nearest retailer (convenience store,
electronics retailer, etc.). After the cards have been purchased, the victim is asked to pay
by sharing the code(s) on the back of the card with the caller over the phone.

28 *See Apple, About Gift Card Scams, <https://support.apple.com/itunes-gift-card-scams> (emphasis supplied).
The scam is made possible by the nature of Apple's iTunes business.*

1 Answer: Apple admits that the quoted text in Paragraph 23 appeared in a prior version of the
 2 “About Gift Card Scams” page of the Support portion of Apple’s website. Apple denies the remainder of
 3 Paragraph 23. Apple specifically denies that “[t]he scam is made possible by the nature of Apple’s iTunes
 4 business.”

5 ***Apple’s Digital Products***

6 24. Apple owns and operates online platforms including the App and iTunes stores. Consumers
 7 who access the App and iTunes stores can purchase and download digital applications for mobile devices
 8 (“apps”) or digital multimedia (such as songs, movies, and television shows).

9 Answer: Apple admits that Apple operates online platforms, including the U.S. App and iTunes
 10 stores. Apple admits that consumers who access the App and iTunes stores can purchase and download
 11 digital applications for mobile devices or digital multimedia.

12 25. Apple describes the App Store as an “ecosystem” it created and controls.¹ The App Store
 13 hosts millions of apps that consumers purchase or download directly from the App Store. Apple separates
 14 the apps available on the App Store into different categories, including various types of free apps and paid
 15 apps.²

16 Answer: Apple admits that its Petition for Writ of Certiorari in *In re Apple iPhone Antitrust*
 17 *Litigation*, filed on August 2, 2017, includes the following statement: “Apple designed—from the ground
 18 up—an ecosystem for the use, development, sale, and distribution of apps.” Apple admits that the App
 19 Store hosts more than 1.8 million apps that consumers purchase or download directly from the App Store.
 20 Apple admits that the apps available on the App Store are categorized. Apple denies the remaining
 21 allegations of Paragraph 25 of the Complaint. Answering further, Apple responds that the documents cited
 22 in footnotes 1-2 of the Complaint speak for themselves and denies that Plaintiffs’ characterizations of the
 23 documents are accurate.

24
 25 _____
 26 ¹ See, e.g., *In re Apple iPhone Antitrust Litigation*, 139 S. Ct. 1514 (2019), Petition for Writ of Certiorari
 27 at 6 (“Apple designed – from the ground up – an ecosystem for the use, development, sale, and distribution
 of apps.”).

28 ² See *App Store – Principles and Practices*, APPLE (formerly available at:
<https://www.apple.com/ios/app-store/principles-practices>) (last visited July 16, 2020) (available with
 Plaintiffs’ counsel).

1 *Apple's Oversight of Its Platforms*

2 26. Apple reviews all apps before they are made available for consumers. Before an app is
 3 available on the App Store, developers must submit the prospective app to Apple for review and approval.³
 4 Apple “carefully review[s] each app” before it becomes available on the App Store using “a combination
 5 of automated systems and hundreds of human experts.”⁴ Apple may require the developer to modify or
 6 remove functions from the app.⁵

7 Answer: Apple admits that Apple reviews all apps, app updates, app bundles, in-app purchases,
 8 and in-app events submitted to the App Store. Apple admits that the quoted text in Paragraph 26 of the
 9 Complaint appears on Apple’s website. Apple admits that if an app submission does not pass review,
 10 details are provided to the submitter, including any specific App Store Review Guidelines the submission
 11 did not follow, and the submitter can correspond with App Review to resolve the issues before
 12 resubmitting the build. Apple denies the remainder of the allegations in Paragraph 26 of the Complaint.
 13 Answering further, Apple responds that the documents cited in footnotes 3-5 of the Complaint speak for
 14 themselves and denies that Plaintiffs’ characterizations of the documents are accurate.

15 27. Apple represents that most apps are reviewed “within 24 hours of the developer’s
 16 submission.” Apple says it rejects 40% of app submissions for issues such as “minor bugs [and] privacy
 17 concerns.”⁶ Apple thus has knowledge of the contents and design of all apps available on the App Store.

18 Answer: Apple admits that the quoted text in Paragraph 27 appears on Apple’s website. Apple
 19 denies the remainder of the allegations in Paragraph 27 of the Complaint. Answering further, Apple
 20 responds that the document cited in footnote 6 of the Complaint speaks for itself and denies that Plaintiffs’
 21 characterization of the document is accurate.

22 28. One of the purposes of Apple’s review process is to determine whether the app will be used
 23 for or facilitate illegal activity. Apple reserves the right to reject any app used for illegal or criminal
 24

25
 26 ³ See *App Review – App Store*, APPLE (<https://developer.apple.com/app-store/review>) (last visited Mar. 25, 2021).

27 ⁴ See *supra* note 2.

28 ⁵ See *supra* note 3.

⁶ See *App Review – App Store*, APPLE, (formerly available at: (<https://developer.apple.com/app-store/review>)) (last visited July 14, 2020) (available with Plaintiffs’ counsel).

1 activities.⁷ After Apple approves an app, it becomes available to purchase or download from the App Store.
 2 Apple reserves the right to suspend an approved app if it is suspected of facilitating illegal activity.⁸

3 Answer: Apple admits that Apple reserve the right to cease marketing, offering, and allowing
 4 download by end-users of an application in accordance with the terms of the Apple Developer Program
 5 License Agreement. Apple admits that under its App Review Guidelines, app developers must comply
 6 with all legal requirements in any location where an app is made available and that apps that solicit,
 7 promote, or encourage criminal or clearly reckless behavior will be rejected. Apple denies the remaining
 8 allegations in Paragraph 28 of the Complaint. Answering further, Apple responds that the documents cited
 9 in footnotes 7-8 of the Complaint speak for themselves and denies that Plaintiffs' characterizations of the
 10 documents are accurate.

11 ***Payment for Apple's Digital Products***

12 29. Apple receives a 30% commission on all sales of paid apps, purchases made within apps
 13 (often called "in-app purchases"), and paid subscriptions to apps.⁹ On information and belief, Apple take
 14 a similar 30 % commission for purchases from iTunes.¹⁰

15 Answer: Apple admits that Apple is entitled to a percentage of revenues generated by an app
 16 pursuant to its Apple Developer Program License Agreement with a given developer. Apple denies the
 17 remaining allegations in Paragraph 29 of the Complaint. Answering further, Apple responds that the
 18 documents cited in footnotes 9-10 of the Complaint speak for themselves and denies that Plaintiffs'
 19 characterizations of the documents are accurate.

21 _____
 22 ⁷ See *App Store Review Guidelines – Apple Developer*, APPLE (<https://developer.apple.com/app-store/review/guidelines>) (last visited Mar. 25, 2021); *Apple Developer Agreement – English*, APPLE (June 8, 2015) (<https://developer.apple.com/terms/apple-developer-agreement>).

23 ⁸ See *Apple Developer Agreement – English*, *supra* note 7.

24 ⁹ See *id.*; see also *Apple Inc. v. Pepper*, No. 17-204, 587 U.S. (2019), Brief of Petitioner to the Supreme
 25 Court of the United States at 9 (Apple acknowledges that it "review[s] apps for safety and compatibility,
 26 host[s] the App Store, act[s] as the developers' sales and delivery agent, collect[s] the purchase price (if
 27 any) from consumers on the developers' behalf, and remit[s] proceeds to developers from around the
 world" and that "developers agree to pay Apple an annual \$99 membership fee, and a 30% commission
 on their sales revenue from paid apps and in-app purchases.").

28 ¹⁰ See e.g., *iTunes Connect Resources and Help*, APPLE (formerly available at:
<https://itunespartner.apple.com/en/music/faq/Payments%20and%20Financial%20ReportsReading%20Your%20Financial%20Reports>) (last visited July 16, 2020) (available with Plaintiffs' counsel).

1 30. To purchase digital content from either iTunes or the App Store, consumers must create
2 and register an account with Apple, called an “Apple ID.”¹¹ Purchasing songs, movies, or apps from either
3 iTunes or the App Store requires the purchaser to sign in with the user’s unique Apple ID and provide
4 Apple with a valid method of payment.

5 Answer: Admitted.

6 31. To create an Apple ID, consumers must provide Apple with a valid email address, credit
7 card or billing information, and their date of birth.¹² Apple requires that all Apple ID accounts be verified
8 with a telephone number or the email address associated with the Apple ID account.¹³

9 Answer: Apple admits that to create an Apple ID, consumers must provide Apple with a valid
10 email address and their date of birth. Apple admits that Apple ID accounts may also require a telephone
11 number to verify consumers’ identities when they sign in on a new device or web browser. Apple denies
12 the remaining allegation in Paragraph 31 of the Complaint. Answering further, Apple responds that the
13 documents cited in footnotes 12-13 of the Complaint speak for themselves and denies that Plaintiffs’
14 characterizations of the documents are accurate.

15 32. Consumers make purchases from the App or iTunes stores by providing Apple with their
16 credit or debit card information, through PayPal or Apple Pay, or with Apple iTunes gift cards.¹⁴ Even if
17 consumers wish to use only Apple iTunes gift cards for purchases, Apple requests valid credit card or
18 billing information.¹⁵

19 Answer: Apple admits that consumers can make purchases from the App Store or the iTunes store
20 using most credit and debit cards, PayPal, Apple Pay, or an Apple account balance from gift cards or
21 added funds. Apple admits that a customer making an App Store or iTunes purchase using their Apple
22 account balance may be required in certain circumstances to have a credit card on file. Apple denies the
23

24 ¹¹ See *Apple ID FAQ*, APPLE (<https://appleid.apple.com/faq/#!/&page=faq>) (last visited Mar. 25, 2021).

25 ¹² See *Create Your Apple ID*, APPLE (<https://appleid.apple.com/account/#!/&page=create>) (last visited Mar.
26 25, 2021); *How to Create a New Apple ID*, APPLE (<https://support.apple.com/en-us/HT204316#macos>) (last
visited Mar. 25, 2021).

27 ¹³ See *id.*

28 ¹⁴ See *Payment methods that you can use with your Apple ID*, APPLE (<https://support.apple.com/en-us/HT202631>) (last visited Mar. 25, 2021).

¹⁵ See *Redeem App Store & iTunes Gift Card and content codes – Apple Support*, APPLE (<https://support.apple.com/en-us/HT201209>) (last visited Mar. 25, 2021).

1 remaining allegations in Paragraph 32 of the Complaint. Answering further, Apple responds that the
2 documents cited in footnotes 14-15 of the Complaint speak for themselves and denies that Plaintiffs’
3 characterizations of the documents are accurate.

4 ***App Developers***

5 33. Individuals and companies who develop apps distributed on the App Store are called
6 “Apple Developers.” Apple Developers are required to create and register an Apple ID, enroll in the Apple
7 Developer Program, enter into the Apple Developer Program License Agreement, and pay an annual fee
8 of \$99.16

9 Answer: Apple admits that individuals and organizations that develop apps distributed on the App
10 Store may enroll in the Apple Developer Program, which requires an Apple ID, an associated program
11 license agreement, and an annual membership fee. Apple denies the remaining allegations in Paragraph
12 33 of the Complaint. Answering further, Apple responds that the document cited in footnote 16 of the
13 Complaint speaks for itself and denies that Plaintiffs’ characterization of the document is accurate.

14 34. If Apple Developers want to distribute an app which charges a fee for download and/or has
15 in-app purchases, they must enter into Apple’s Schedule 2 agreement. By entering into the Schedule 2
16 agreement, Apple Developers appoint Apple as their agent relative to their apps made available on the
17 App Store.

18 Answer: Apple admits that under the Apple Developer Program License Agreement, if a developer
19 intends to distribute applications for which the distributor will charge end users a fee, including through
20 use of the In-App Purchase API, the developer must enter into a separate agreement with Apple and/or an
21 Apple subsidiary titled Schedule 2 of the Apple Developer Program License Agreement. Apple admits
22 that under section 1.1 of Schedule 2 of the Apple Developer Program License Agreement, developers
23 “appoint Apple and Apple Subsidiaries (collectively “Apple”) as: (i) [the developers’] agent for the
24 marketing and delivery of the Licensed Applications to End-Users located in those regions listed on
25 Exhibit A, Section 1 to [the] Schedule 2.” Apple denies the remaining allegations in Paragraph 34 of the
26 Complaint.

27
28

¹⁶ See *Purchase and Activation – Support – Apple Developer*, APPLE
(<https://developer.apple.com/support/purchase-activation>) (last visited Mar. 25, 2021).

1 35. Apple pays Apple Developers after a consumer purchases a Paid App from the App Store,
2 makes an in-app purchase, or pays a subscription to an app downloaded from the App Store. Apple makes
3 all payments to Apple Developers electronically.¹⁷ In order to be paid by Apple, Apple Developers must
4 provide Apple with their bank account information, and may also be required to submit tax forms to
5 Apple.¹⁸

6 Answer: Apple admits that Schedule 2 of the Apple Developer Program License Agreement states
7 that “upon collection of any amounts from any End-User as the price for any Licensed Application
8 delivered to that End-User hereunder, Apple shall deduct the full amount of its commission with respect
9 to that Licensed Application, and any taxes collected by Apple under Section 3.2 and 3.4 hereof, and shall
10 remit to [the developer], or issue a credit in [the developer’s] favor, as the case may be, the remainder of
11 those prices in accordance with Apple standard business practices, including the following: remittance
12 payments (i) are made by means of wire transfer only.” Apple also admits that to sell apps on the App
13 Store, developers must provide bank account information and may also be required to provide tax forms.
14 Apple denies the remaining allegations in Paragraph 35 of the Complaint. Apple specifically denies that
15 Apple pays developers; rather, it remits payments made by third-party purchasers. Answering further,
16 Apple responds that the documents cited in footnotes 17-18 of the Complaint speak for themselves and
17 denies that Plaintiffs’ characterizations of the documents are accurate.

18 36. Apple does not pay Apple Developers immediately after consumer transactions. Instead,
19 Apple waits for its fiscal month (the monthly period during which the purchase was made) to close, and
20 then waits up to 45 days after the close of that fiscal month before it electronically transfers the money to
21 the Apple Developer’s bank account.¹⁹ Moreover, Apple will not transfer payment unless the Apple
22 Developer meets the minimum payment threshold for that period.²⁰ As such, there is a delay of several
23

24 _____
25 ¹⁷ See *iTunes Connect Resources and Help*, APPLE (https://itunespartner.apple.com/en/movies/faq/Banking%20and%20Tax_Banking) (last visited Mar. 25, 2021).

26 ¹⁸ See *Agreements, Tax, and Banking Overview – Apple Store Connect Help*, APPLE (c) (last visited Mar.
27 25, 2021).

28 ¹⁹ See *Getting paid overview – App Store Connect Help*, APPLE (<https://help.apple.com/app-store-connect/#/dev6a92b6d7b>) (last visited Mar. 25, 2021).

²⁰ See *id.*

1 weeks between the time a consumer purchases an app from the App Store or makes an in-app purchase or
 2 subscription payment, and the time Apple pays the Apple Developer.

3 Answer: Apple admits that Schedule 2 of the Apple Developer Program License Agreement
 4 provides that “remittance payments . . . will be made no later than 45 days following the close of the
 5 monthly period in which the corresponding amount was received by Apple from the end-user,” and
 6 “remittance payments . . . are subject to minimum monthly remittance amount thresholds.” Apple denies
 7 the remaining allegations of Paragraph 36 of the Complaint. Answering further, Apple responds that the
 8 documents cited in footnotes 19-20 of the Complaint speak for themselves and denies that Plaintiffs’
 9 characterizations of the documents are accurate.

10 *iTunes Gift Cards*

11 37. Apple sells iTunes gift cards for use on iTunes, in the App Store, or inside of apps
 12 purchased or downloaded from the App Store (as noted, the latter are often called “in-app purchases”).
 13 iTunes gift cards are sold by Apple both directly to consumers, and indirectly to consumers through
 14 retailers.

15 Answer: Denied. Answering further, Apple responds that Apple previously sold App Store &
 16 iTunes gift cards (“iTunes gift cards”) but no longer does so. Rather, Apple sells Apple Gift Cards, which
 17 can be used to purchase goods and services from the Apple Store, the Apple Store app, apple.com, the
 18 App Store, iTunes, Apple Music, Apple TV, Apple Books, and other Apple properties.

19 38. iTunes gift cards are country/region specific. iTunes gift cards sold in the United States
 20 cannot be used outside of the United States.²¹

21 Answer: Apple admits that, during the period in which it sold iTunes gift cards, those iTunes gift
 22 cards could not be redeemed outside of the country or region of purchase. Apple denies the remaining
 23 allegations in Paragraph 38 of the Complaint. Answering further, Apple responds that the document cited
 24 in footnote 21 of the Complaint speaks for itself and denies that Plaintiffs’ characterization of the
 25 document is accurate.
 26
 27

28 ²¹ See *If You Can’t Redeem Your App Store & iTunes Gift Card, Apple Music Gift Card, or Content Code*,
 APPLE (<https://support.apple.com/en-us/HT201195>) (last visited Mar. 25, 2021).

1 39. iTunes gift cards generally are sold for the amount shown on the face of the iTunes gift
2 card (or an amount selected by the consumer within the range reflected on the face of the card), and
3 generally reflect a stored value equal to the amount paid by the consumer.

4 Answer: Apple admits that Apple gift cards generally are sold, and that iTunes gift cards were
5 generally sold, for the amount shown on the face of the gift card or an amount selected by the consumer
6 within the range reflected on the face of the card. Apple denies the remaining allegations in Paragraph 39
7 of the Complaint.

8 40. Every iTunes gift card has a unique redemption code and PIN on the back of the card.
9 iTunes gift cards are not active until purchased. Once purchased, the retailer activates the card. Unless
10 properly activated, an iTunes gift card cannot be redeemed. Accordingly, Apple knows the moment a
11 particular iTunes gift card has been purchased and the amount of “stored value” on the card because the
12 retailer must activate the card at the point of sale.

13 Answer: Apple admits that Apple gift cards have a unique redemption code and serial number on
14 the card and that iTunes gift cards contained a unique redemption code and serial number during the period
15 in which they were sold. Apple admits that its gift cards typically are not active until activated at the point
16 of sale. Apple denies the remaining allegations in Paragraph 40 of the Complaint.

17 ***Apple IDs***

18 41. A valid Apple ID is required to redeem iTunes gift cards. Consumers redeem iTunes gift
19 cards by logging into their Apple ID account and entering the redemption code and PIN on the back of the
20 card. The value of the iTunes gift card is then transferred to the consumer’s Apple ID account, and is
21 immediately available to make purchases on iTunes, from the App Store, or in apps. Once an iTunes gift
22 card has been redeemed, the physical card is worthless, as the entire value of the iTunes gift card has been
23 transferred to the redeemer’s Apple ID account.

24 Answer: Apple admits that an Apple ID is required to redeem iTunes gift cards, and Apple admits
25 that consumers can redeem iTunes gift cards by logging into an Apple ID account and entering the gift
26 card’s redemption code. Apple admits that iTunes gift card funds are redeemed to an Apple account
27 balance. Apple denies the remaining allegations in Paragraph 41 of the Complaint.
28

1 42. Apple tracks redemption codes on iTunes gift cards to ensure that a single iTunes gift card
2 is not redeemed multiple times. Therefore, when an iTunes gift card is redeemed, Apple knows which
3 iTunes gift card was redeemed *and which Apple ID account redeemed the iTunes gift card.*

4 Answer: Apple admits that [REDACTED]
5 [REDACTED] Apple denies the remaining allegations in Paragraph 42 of
6 the Complaint.

7 43. The packaging for iTunes gift cards contains minimal terms and conditions.²² For example,
8 the outer packaging, which is visible to consumers prior to purchase on iTunes gift card packaging, often
9 provides:

10 **Terms and Conditions**

11 Valid only on purchases made in the U.S. from Apple Media Services. Use requires an
12 Apple ID and prior acceptance of license & usage terms. Not redeemable for cash, for
13 resale, for shipments outside the U.S. & no refunds or exchanges (except as required by
14 law). Data collection and use subject to Apple's Privacy Policy; see apple.com/privacy.
15 Neither Apple nor Issuer is responsible for any loss or damage resulting from lost or stolen
16 cards or for use without permission. Void where prohibited. Terms apply; see
17 apple.com/us/go/legal/gc. App Store and iTunes gift cards are issued and managed by
18 Apple Value Services ("Issuer"). © 2017 Apple Inc. all rights reserved.

16 Answer: Apple admits that the quoted text appeared on certain versions of iTunes gift card
17 packaging. Apple denies the remaining allegations in Paragraph 43 of the Complaint.

18 44. The web address on the back of the iTunes gift card packaging directs users to the full
19 terms and conditions for iTunes gift cards (the "Online Terms and Conditions"). Until July 31, 2020, the
20 Online Terms and Conditions, which apply to iTunes gift cards and their related codes (together, "Store
21 Credit") provided, inter alia, that:

22 You agree to not use Store Credit in any manner that is misleading, deceptive, unfair, or
23 otherwise harmful to Issuer, Apple or its customers. We reserve the right, without notice
24 to you, to void or deactivate [iTunes gift cards] (including a portion of your Account
25 balance) without a refund, suspend or terminate customer accounts, suspend or terminate
26 the ability to use the Services, cancel or limit orders and bill alternative forms of payment
27 if we suspect Store Credit was obtained, used, or applied to an Apple ID fraudulently,
28 unlawfully, or otherwise in violation of these terms and conditions.

28 ²² Apple occasionally changes the language on the iTunes gift card packaging, but the terms
on all iTunes gift card packaging are all substantially similar.

* * *

1
2 **Risk of Loss:** Neither Issuer nor Apple is responsible for lost or stolen Store Credit or
3 Content Codes. . . . Apple reserves the right to close accounts and request alternative forms
4 of payment if Store Credit or a Content Code is fraudulently obtained or used on the
5 Service.

6 **Governing Law** Except [for residents of certain foreign countries], this Agreement and the
7 relationship between you and Issuer shall be governed by the laws of the State of California,
8 excluding its conflict of laws provisions. You and Issuer agree to submit to the personal
9 and exclusive jurisdiction of the courts located within the county of Santa Clara, to resolve
10 any dispute or claim arising from this Agreement.

11 Answer: Apple admits that quoted text appeared on Apple’s website as part of the online terms
12 for gift cards purchased in the United States during the Class Period. Apple denies the remaining
13 allegations of Paragraph 44 of the Complaint.

14 45. When consumers purchase an iTunes gift card at retail, they become bound by the terms
15 on the packaging, which incorporate the full Online Terms and Conditions. However, no victim of an
16 iTunes gift card scam is bound by Apple’s attempt to apply its disclaimer language, (which purports to
17 limits Apple’s liability for iTunes gift cards which are lost, stolen, or used without permission) to gift cards
18 which are subject to the iTunes gift card scam. Even if that limitation of liability applied by its terms –
19 which it arguably does not – Apple cannot disclaim liability for loss or damage resulting from its own
20 unfair and unlawful conduct.

21 Answer: Paragraph 45 of the Complaint consists of a legal conclusion to which no response is
22 required. To the extent a response is required, Apple denies the allegations in Paragraph 45 of the
23 Complaint.

24 46. Any attempt by Apple to apply its disclaimer language in a manner that exculpates itself
25 from liability for loss or damage resulting from iTunes gift card scams would be unconscionable and
26 unenforceable in light of its role in those scams, the profit that it makes and retains from such scams, its
27 violation of California law in connection with those scams, and the adhesive nature of the terms and
28 conditions foisted upon scam victims who purchase iTunes Gift cards.

Answer: Paragraph 46 of the Complaint consists of a legal conclusion to which no response is
required. To the extent a response is required, Apple denies the allegations in Paragraph 46 of the

1 Complaint. Apple specifically denies that Apple plays any role in gift card scams, denies that Apple profits
2 from gift card scams, and denies that Apple violated California law in connection with gift card scams.

3 47. Apple understands that the “formula” for the scams involves deceiving consumers into
4 believing that they have a need to make payment, and that the only form of payment which will be accepted
5 is an iTunes gift card.

6 Answer: Apple admits that the “About Gift Card Scams” page of Apple’s websites states that gift
7 card scams typically “follow a certain formula” wherein the victim is requested “to make a payment by
8 purchasing Apple Gift Cards, App Store & iTunes Gift Cards, or Apple Store Gift Cards from the nearest
9 retailer (convenience store, electronics retailer, etc.)” Apple denies the remaining allegations of Paragraph
10 47 of the Complaint.

11 48. Thus, Apple knows that scam victims believe they have no meaningful choice but to
12 purchase iTunes gift cards, yet Apple makes *no effort whatsoever to warn consumers at the time and*
13 *place where the scam can be avoided entirely* (that is, in the retail store prior to purchase, when targets
14 of the scam can be prevented from making fraudulently induced gift card purchases and becoming victims
15 of the scam).

16 Answer: Denied.

17 49. Apple knows that all targets of the scam will go to a retail location and select an iTunes
18 gift card from a retail sales rack, believing it to be the only acceptable form of payment under urgent
19 circumstances. Yet Apple does not inform targets prior to the sale of that card, i.e., on the exterior
20 packaging, that anyone who is asking for iTunes gift cards as payment is actually a scammer.

21 Answer: Denied.

22 50. Indeed, Apple fails to put this simple, critical information on its packaging or cards, despite
23 the fact that the FTC states, on a page of its website of which Apple sought judicial notice, that “anyone
24 who insists that you pay by gift card is always a scammer.”²³

25 Answer: Denied. Answering further, Apple responds that the document cited in footnote 23 of the
26 Complaint speaks for itself and denies that Plaintiffs’ characterization of the document is accurate.

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23 ECF No. 34-4 at 1.

1 51. In fact, as discussed below, Apple never informs consumers who are about to be victimized
2 that *anyone* who asks for payment via iTunes gift card is a scammer. Even after a target purchases Apple’s
3 product and opens the packaging, Apple fails to warn about the scams. Victims are merely instructed, on
4 the back of the card only, “Do not share your code with anyone you do not know.”²⁴

5 Answer: Denied. Answering further, Apple lacks information sufficient to admit or deny the
6 allegations set forth in footnote 24 of the Complaint and on that basis denies those allegations.

7 52. Apple knows its “warning” language, even when bolded, fails to inform potential victims
8 of the existence or nature of iTunes gift card scams, or provide them with the information they would need
9 to realize they are being scammed. Indeed, Apple knows that scammers often pose as friends, family
10 members, and authority figures, or otherwise identify themselves and/or form a relationship with victims,
11 such that victims believe they “know” the person who is requesting gift card codes.

12 Answer: Apple admits that Apple is aware that gift card scammers may impersonate others,
13 including but not limited to friends, family members, and authority figures. Apple denies the remaining
14 allegations in Paragraph 52 of the Complaint.

15 53. Moreover, even that ineffective warning language was *not added to Apple’s gift cards until*
16 *midway through the Class Period*, and did not appear on the gift cards purchased by some of the Plaintiffs.

17 Answer: Apple admits that the language quoted by Plaintiffs in Paragraph 51 was added to iTunes
18 gift cards sold in the United States during the Class Period. Apple denies the remaining allegations of
19 Paragraph 53 of the Complaint.

20 54. All targets of the scam will see the outer packaging before purchasing Apple’s gift cards,
21 but Apple does not place *any* warning on the outer packaging because Apple hopes and believes that more
22 iTunes gift cards will be sold if people who otherwise had no intent to purchase iTunes gift cards – such
23 as Plaintiffs – are successfully persuaded to do so by scammers.

24 Answer: Denied.

25 55. Similarly, Apple provides only an ineffective warning on the card itself (and did not even
26 provide that ineffective warning for much of the Class Period), because Apple hopes and believes that it
27

28 ²⁴ In contrast, gift cards for another company state that the gift card “should never be used for payment
outside of the [company’s website, and] other payment requests may be a scam.”

1 is more likely to be able to keep some or all of the proceeds from gift card purchases induced by fraud if
 2 the victim shares the codes.²⁵ Apple currently justifies its failure to provide refunds to victims by stating
 3 or implying that the funds are spent or gone and that there is nothing Apple can do. By contrast, Apple
 4 would be hard-pressed to deny refunds if the victims called Apple after purchasing the cards but before
 5 sharing the codes.

6 Answer: Denied. Answering further, Apple responds that the documents cited in footnote 25 of
 7 the Complaint speak for themselves and denies that Plaintiffs' characterizations of the documents are
 8 accurate.

9 56. Because Apple will sell more gift cards and be able to keep the revenue from those sales if
 10 the scammers successfully convince victims to purchase iTunes gift cards, Apple has a direct stake in the
 11 success of the scams. Apple does not merely charge a small transaction fee in connection with each scam,
 12 but rather sells product that it would not otherwise have sold and keeps, at minimum, a large commission
 13 from each such sale.

14 Answer: Denied.

15 57. Unlike mere payment processors, who keep a small per-transaction fee but ultimately remit
 16 the vast majority of payments made in connection with illegal scams to the organizers of those scams,
 17 here Apple's interests are more directly at stake. Successful scams mean not only that Apple will sell more
 18 gift cards, resulting in more revenue, but also on information and belief that Apple will – in some cases –
 19 retain the full dollar amount of those additional, fraudulently induced sales. Unlike passive payment
 20 processors, who are generally limited to their small contractual fees, Apple retains at least a 30%
 21
 22

23
 24 ²⁵ Apple's hope that its failure to adequately warn consumers will perpetuate the scams have been realized.
 25 Gift card scams have not only increased significantly each year, *see infra*, ¶58, but also the amount of
 26 losses per victim from gift card scams has also increased. *Compare* Emma Fletcher, *Scammers*
 27 *Increasingly Demand Payment by Gift Card*, FEDERAL TRADE COMMISSION (Oct. 16, 2018)
 28 (<https://www.ftc.gov/news-events/blogs/data-spotlight/2018/10/scammers-increasingly-demand-payment-gift-card>) (stating that total losses from gift card scams increased from \$20 million in 2015 to \$40 million in 2017, and the medial loss per incident is \$500), *with* Emma Fletcher, *Gift Cards Top Scammers' Wish Lists*, FEDERAL TRADE COMMISSION (Dec. 21, 2020) (<https://www.ftc.gov/news-events/blogs/data-spotlight/2020/12/gift-cards-top-scammers-wish-lists>) (stating that losses from gift card scams in 2018 through 2020 totaled \$245 million, and the median loss per incident is \$840).

1 commission, and retains the right to, and sometimes does, refuse to convert the stolen funds to dollars for
2 the scammers and instead keeps the scammers' 70% "share" of the profits for itself.

3 Answer: Denied.

4 **The iTunes Gift Card Scam Costs Hundreds of Millions of Dollars or More**

5 58. The overwhelming majority of iTunes gift card scam victims do not report the scam to the
6 Federal Trade Commission ("FTC"). Yet even the losses of the small percentage of victims who do report
7 to the FTC exceeded an estimated \$92.9 million during 2015-2019, with the dollar amounts increasing
8 significantly each year. According to FTC data, iTunes gift cards make up approximately 23.7% of all gift
9 card scams. Applying this 23.7% figure to the total gift card scams reported results in the following
10 estimated figures of scams reported to the FTC: 2015-\$4.7 million; 2016-\$6.4 million; 2017-\$9.5 million;
11 2018-\$18.5 million; 2019: \$24.4 million; and 2020: \$29.4 million; for a total of \$92.9 million. This dollar
12 amount is limited to consumers who fill out a detailed online FTC form asking for their personal
13 information. Given the time required to fill out the FTC form and its potential privacy implications, it can
14 reasonably be inferred that only a small percentage of victims submit a report to the FTC (versus another
15 governmental entity). As a result, this publicly reported \$92.9 million figure appears to be only the tip of
16 the iceberg. If only 10% of scam victims reported to the FTC (versus local police, attorney general offices,
17 Apple, or nobody at all), the iTunes gift card scam would approach \$1 billion in scammed proceeds, with
18 Apple retaining \$300 million in commissions.

19 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
20 58 of the Complaint and on that basis denies those allegations.

21 59. Apple is aware of the widespread nature of the scam and has been for years. Apple has
22 been receiving inquiries from victims (beginning on a date known only to Apple) and requests for
23 information from law enforcement officials. Since July 1, 2016 (the date for which Apple first began
24 separately disclosing this data), U.S. government entities have asked Apple to provide customer data
25 related to more than 60,000 "specific financial identifiers," such as credit card numbers or gift card
26 numbers. Apple has noted in its public transparency reports that the "[h]igh number" of "financial
27
28

1 identifier requests” from government entities in the United States is “predominantly due to iTunes Gift
2 Card and credit card fraud investigations.”²⁶

3 Answer: Apple admits that Apple is aware of the existence of gift card scams and has received
4 inquiries and requests for information related to allegations of such scams. Apple denies the remaining
5 allegations of Paragraph 59 of the Complaint. Answering further, Apple responds that the document cited
6 in footnote 26 of the Complaint speaks for itself and denies that Plaintiffs’ characterization of the
7 document is accurate.

8 60. Of course, the large number of financial identifiers included in law enforcement requests
9 are, again, only the tip of the iceberg. Many victims don’t report gift card fraud to any law enforcement
10 entity,²⁷ and even if they do, there is no guarantee their information will be investigated, much less
11 included in a law enforcement subpoena or other formal government request for information to Apple.

12 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
13 60 of the Complaint and on that basis denies those allegations. Answering further, Apple responds that
14 the document cited in footnote 27 of the Complaint speaks for itself and denies that Plaintiffs’
15 characterization of the document is accurate.

16 61. Indeed, in 2017, the FTC settled an enforcement action against Western Union where it
17 failed to prevent scammers from duping customers into sending money through Western Union. In
18 announcing the settlement, FTC Chairwoman Edith Ramirez stated: “Western Union owes a responsibility
19 to American consumers to guard against fraud, but instead the company looked the other way, and its
20 system facilitated scammers and rip-offs. . . . The agreements we are announcing today will ensure Western
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25 ²⁶ *Apple Transparency Report: Government and Private Party Requests, January 1–June 30, 2019* at 5,
26 20, APPLE (<https://www.apple.com/legal/transparency/pdf/requests-2019-H1-en.pdf>).

27 ²⁷ See, e.g., Tamara Lytle, *Give Gift Cards to Friends and Family – Not Fraudsters*, AARP (Nov. 24,
28 2020), (<https://www.aarp.org/money/scams-fraud/info-2019/prevent-gift-card-fraud.html>) (director of
fraud victim support at the American Association for Retired Persons, or AARP, says that victims often
do not contact law enforcement because “[t]hey are embarrassed and ashamed and they don’t think it does
any good”).

1 Union changes the way it conducts its business and provides more than a half billion dollars for refunds
 2 to consumers who were harmed by the company’s unlawful behavior.”²⁸

3 Answer: Apple admits that Paragraph 61 of the Complaint accurately quotes the website cited in
 4 footnote 28 of the Complaint, but responds that the website speaks for itself and denies that Plaintiffs’
 5 characterization of the website is accurate. Apple lacks sufficient knowledge or information to admit the
 6 remaining allegations in Paragraph 61 of the Complaint and on that basis denies those allegations.

7 62. Indeed, following changes in practices designed to detect previously popular money order
 8 scams, iTunes gift cards became the most requested type of gift card brand by scammers “by a wide
 9 margin.”²⁹

10 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
 11 62 of the Complaint and on that basis denies those allegations. In addition, Apple responds that the
 12 document cited in footnote 29 of the Complaint speaks for itself and denies that Plaintiffs’ characterization
 13 of the document is accurate.

14 **The Mechanics of the “Formulaic” iTunes Gift Card Scam**

15 **Step One: Victims Buy iTunes Gift Cards and Provide Numbers to Scammers**

16 63. As Apple acknowledges, the first step in the formulaic iTunes gift card scam is to obtain a
 17 gift card number from the victim:

18 Regardless of the reason for payment, the scam follows a certain formula: The victim
 19 receives a call instilling panic and urgency to make a payment by purchasing App Store &
 20 iTunes Gift Cards or Apple Store Gift Cards from the nearest retailer (convenience store,
 21 electronics retailer, etc.). After the cards have been purchased, the victim is asked to pay
 22 by sharing the code(s) on the back of the card with the caller over the phone.
 23

24 ²⁸ See *Western Union Admits Anti-Money Laundering Violations and Settles Consumer Fraud Charges, Forfeits \$586 Million in Settlement with FTC and Justice Department*, FEDERAL TRADE COMMISSION (Jan. 29, 2017), (<https://www.ftc.gov/news-events/press-releases/2017/01/western-union-admits-anti-money-laundering-violations-settles>).

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 26
 27 ²⁹ See Meagan Morris, *Why Online Scammers Ask for an iTunes Gift Card*, METRO (July 12, 2018) (<https://www.metro.us/why-online-scammers-ask-for-an-itunes-gift-card/>). See also Emma Fletcher, *Scammers Increasingly Demand Payment by Gift Card*, FEDERAL TRADE COMMISSION (Oct. 16, 2018) (<https://www.ftc.gov/news-events/blogs/data-spotlight/2018/10/scammers-increasingly-demand-payment-gift-card>).

1 See Apple, About Gift Card Scams, <https://support.apple.com/itunes-gift-card-scams>.³⁰

2 Answer: Apple admits that the quoted text in Paragraph 63 of the Complaint appeared in a prior
3 version of the “About Gift Card Scams” page of the Support portion of Apple’s website. Apple denies the
4 remaining allegations of Paragraph 63 of the Complaint. In addition, Apple responds that the documents
5 cited in Paragraph 63 and footnote 30 of the Complaint speak for themselves and denies that Plaintiffs’
6 characterizations of the documents are accurate.

7 64. Most recently, scammers are preying on the high levels of emotion generated by the
8 Coronavirus and COVID-19 pandemic. Consumers are home more often, and senior citizens may be more
9 isolated than before. Scammers prey on fears and sympathies by promising testing kits, vaccines, and
10 cleaning services, and soliciting donations for charities or organizations impacted by the pandemic.³¹
11 Many such scammers are seeking payment in iTunes gift cards.

12 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
13 64 of the Complaint and on that basis denies those allegations. Answering further, Apple responds that
14 the document cited in footnote 31 of the Complaint speaks for itself and denies that Plaintiffs’
15 characterization of the document is accurate.

16 65. If scammers successfully convince victims to purchase iTunes gift cards a first time, they
17 will often demand that victims purchase more iTunes gift cards from retail stores.

18 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
19 65 of the Complaint and on that basis denies those allegations.

20 66. Once scammers obtain gift card numbers, they can monetize the stored value into U.S.
21 dollars or other currency in one of two ways. First, scammers may control an app on which they make in-
22 app purchases. In this situation, scammers keep 100% of the gift card’s value, less Apple’s 30%
23

24
25 ³⁰ See also *Paying Scammers with Gift Cards*, FEDERAL TRADE COMMISSION (Oct. 2018) (<https://www.consumer.ftc.gov/articles/paying-scammers-gift-cards>); Jim Pavia, *Scam Victims Pay “Back Taxes” with iTunes Gift Cards*, CNBC (Mar. 5, 2018) (<https://www.cnbc.com/2018/03/05/would-you-pay-those-back-taxes-with-itunes-gift-cards.html>).

27 ³¹ See e.g., Karen Hobbs, *Socially Distancing from COVID-19 Robocall Scams*, FEDERAL TRADE
28 COMMISSION (Mar. 27, 2020) (<https://www.consumer.ftc.gov/blog/2020/03/socially-distancing-covid-19-robocall-scams>); *Police Warn of Scams During COVID-19 Pandemic*, JAMES CITY COUNTY, VIRGINIA (Mar. 26, 2020) (<https://jamescitycountyva.gov/CivicAlerts.aspx?AID=3774&ARC=5633>).

1 commission. Alternatively, scammers can resell the gift card number. Due to the discounts associated with
2 resale markets and the counterparty risks, this is the less profitable way of monetizing a scammed gift
3 card. In either instance, Apple can track the gift card number's history and subsequent use, and Apple
4 keeps 30% of the stored value.

5 Answer: Denied.

6 **Step Two: Loading the iTunes Gift Card Numbers onto Apple IDs**

7 67. If scammers choose to monetize the stored value by making in-app purchases on apps they
8 control, they will upload the iTunes gift card number onto Apple IDs they control. Alternatively, scammers
9 can resell iTunes gift card numbers to third parties who will eventually upload the iTunes gift card numbers
10 onto their Apple IDs. In either case, Apple knows the Apple IDs onto which the gift card numbers have
11 been uploaded.

12 Answer: Apple admits that [REDACTED]

13 [REDACTED] Apple denies the remaining allegations of Paragraph 67 of
14 the Complaint.

15 **Step Three: Spending the Stored Value on Apps or iTunes Products**

16 68. The third step in transforming the iTunes gift cards' stored value into currency involves
17 spending stored value on Apps or iTunes products.

18 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
19 68 of the Complaint and on that basis denies those allegations.

20 69. The Apple ID where the gift card was uploaded will spend stored value by purchasing apps,
21 making in-app purchases, or buying iTunes products.

22 Answer: Apple admits that, in certain instances, the Apple ID to which a gift card is redeemed
23 may use some or all of the balance available on the Apple ID account to purchase apps, make in-app
24 purchases, or buy iTunes products. Apple denies the remaining allegations of Paragraph 69 of the
25 Complaint.

1 70. By this point, Apple has three important data points: (1) the retail store where the gift cards
2 were purchased; (2) the Apple IDs where the gift cards' stored value was uploaded; and (3) the Apps or
3 iTunes products where the stored value was spent.

4 Answer: Apple admits that [REDACTED]
5 [REDACTED]

6 Apple further admits that it has access to data regarding purchases made by an Apple ID using an Apple
7 account balance. Apple denies the remaining allegations of Paragraph 70 of the Complaint.

8 **Step Four: Distributing the Proceeds of the Scam**

9 71. Approximately 45 days after the end of the fiscal month, Apple either pays Apple
10 Developers 70% of the total purchases for the period (including those from Apple IDs associated with
11 scammed iTunes gift cards), or retains that amount for itself based on indicia of fraud. Either way, Apple
12 retains at least 30% of the stolen funds from the scam as its commission.

13 Answer: Denied.

14 **Apple Fails to Disclose the Whereabouts of the Stolen Funds or Return Them to Victims**

15 72. Victims usually realize they have been scammed within a few hours or days, and often
16 contact Apple before any of the funds stolen from them have been disbursed to scammers. When victims
17 identify themselves and provide the codes from the gift cards they purchased, Apple then knows that those
18 particular gift card codes were stolen, and that scammers are in the process of attempting to turn 70% of
19 the money paid by the victim for those particular gift cards into dollars for the scammers' own use.

20 Answer: Denied. Apple specifically denies that it has knowledge that a particular customer has
21 been the victim of a gift card scam or that "particular gift card codes we stolen" based on a customer call.

22 73. Apple thus knows that it has, or soon will have, possession and control of stolen property,
23 and knows the identity of, and contact information for, the rightful owner.

24 Answer: Denied.
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1 74. When Apple learns that it has possession of stolen property, it has a duty to return it to its
2 rightful owner, the victim. However, Apple neither returns it nor informs the rightful owner of its
3 whereabouts.

4 Answer: Paragraph 74 of the Complaint consists of a legal conclusion to which no response is
5 required. To the extent a response is required, Apple denies the allegations in Paragraph 74 of the
6 Complaint.

7 75. Apple does not disclose to victims that it has the money that was stolen from them. Instead,
8 [REDACTED]
9 [REDACTED]

10 Answer: Denied.

11 76. As discussed herein, when Apple says [REDACTED]
12 [REDACTED] Apple does not explain that is currently in possession of the stolen funds, and that it will
13 convert 70% the stored value on the cards into dollars for the scammers, who have used the stolen codes
14 to “purchase” their own content.

15 Answer: Denied.

16 77. Apple also does not explain that it will keep for itself either 30%, or in some cases 100%,
17 of the money stolen from the victim.

18 Answer: Denied.

19 78. Instead, Apple allows victims to believe that the scammers have redeemed, and or either
20 have used or will use the cards for the only purpose of the cards victims are likely to know about, i.e., to
21 purchase apps, songs, and other content from legitimate sellers.

22 Answer: Denied.

23 79. Victims thus believe that the funds which were stolen from them *now rightfully belong to*
24 *innocent third-party content providers, rather than to Apple or the scammers.*

25 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
26 79 of the Complaint and on that basis denies those allegations.

27 80. Believing any efforts to get their money back will be futile because they believe that an
28 innocent third party has a legitimate claim to that money, most victims quietly accept Apple’s refusal to

1 issue a refund, and neither pursue legal action, nor approach the press, nor raise the issue with law
2 enforcement, much less with legislators.

3 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
4 80 of the Complaint and on that basis denies those allegations.

5 81. However, some victims do contact Apple directly, and thus become members of the
6 “Contact Subclass” alleged herein.

7 Answer: Apple admits that some customers claiming to be victims of gift card scams contact
8 Apple directly. Apple lacks sufficient knowledge or information to admit the remaining allegations in
9 Paragraph 81 of the Complaint and on that basis denies those allegations.

10 82. In fact, [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Answer: Apple [REDACTED]
15 [REDACTED]
16 [REDACTED] Apple denies the remainder of the allegations in Paragraph 82 of the Complaint.

17 83. When victims contact it for help, Apple uniformly records the victim’s name and contact
18 information, records the gift card information, and takes steps which will helps it track the scam and the
19 stolen funds through Apple’s system:

- 20 a. [REDACTED]
21 [REDACTED]
- 22 b. [REDACTED]
- 23 c. [REDACTED]
- 24 d. [REDACTED]
25 [REDACTED]

26 Answer: Apple [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED] Apple denies the remaining
3 allegations of Paragraph 83 of the Complaint. Apple specifically denies that it “knows” an Apple ID
4 belongs to a scammer based on a call from a customer.

5 84. Even when a victim contacts Apple before the scammers have redeemed the codes, or
6 before the funds have been used by the scammers, [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 Answer: Apple [REDACTED]
10 [REDACTED]

11 [REDACTED] Apple denies the remaining allegations in Paragraph 85 of the
12 Complaint.

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 Answer: Apple [REDACTED]
20 [REDACTED]

21 [REDACTED] Apple denies the remaining allegations in Paragraph 85 of the
22 Complaint.

23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 Answer: Denied.
28

1 87. And, even for such victims, on information and belief, cash refunds from Apple in
2 connection with gift card scams are exceedingly rare, if they ever occur at all. Indeed, despite investigation
3 by their counsel, Plaintiffs are unaware of a single instance in which Apple has issued a cash refund to the
4 victim of a gift card scam.

5 Answer: Apple [REDACTED] Apple
6 lacks sufficient knowledge or information to admit the allegations in the second sentence of Paragraph 87
7 of the Complaint and on that basis denies those allegations.

8 **Apple Perpetuates and Profits from the iTunes Gift Card Scam**

9 88. As noted above, Apple keeps at least 30% of the proceeds from all iTunes gift card scams.

10 Answer: Denied.

11 89. Apple is fully aware of the iTunes gift card scam but does little to stop it. Instead, Apple
12 engages in conduct that it hopes and believes – and actually does – perpetuate gift card scams.

13 Answer: Denied.

14 90. In particular, Apple tells victims that once redemption codes are provided to scammers,
15 “the funds on the card will likely be spent before you are able to contact Apple or law enforcement.”³²
16 This statement is highly misleading and suggests to victims that there is nothing Apple can do. First, telling
17 a victim that the funds likely have been “spent” suggests that the funds have been spent for legitimate
18 content and that the funds are no longer in Apple’s possession but, instead, are now in the hands of
19 legitimate content sellers. In other words, Apple intends to and does convey the false impression that the
20 funds are now the property of an innocent party who had no involvement in the scam. Second, Apple does
21 not inform consumers that it is keeping at least 30% of the scammed iTunes gift card proceeds. Finally,
22 Apple does not inform victims of the whereabouts of the funds that were stolen from them, that is, that it
23 keeps the stored value for 45 days before converting it into currency and paying third-party vendors – who
24 often are the scammers themselves.

25 Answer: Apple admits that the quoted text in Paragraph 90 of the Complaint appears on the “About
26 Gift Card Scams” page of the Support portion of Apple’s website. Apple denies the remaining allegation
27

28 ³² See *About Gift Card Scams*, APPLE (<https://support.apple.com/gift-card-scams>) (last visited Mar. 25, 2021).

1 in Paragraph 90 of the Complaint. Answering further, Apple responds that the document cited in footnote
2 32 of the Complaint speaks for itself and denies that Plaintiffs’ characterization of the document is
3 accurate.

4 91. If victims of the scam contact Apple, it responds uniformly and, on information and belief,
5 using a standardized protocol or message. Apple requests and records victims’ Apple ID accounts and
6 redemptions codes on the back of the iTunes gift cards and determines whether the iTunes gift cards have
7 been redeemed. If the iTunes gift cards have not been redeemed or exchanged for content, Apple may
8 cancel the iTunes gift cards and return the money to victims. If the iTunes gift cards have been redeemed
9 and exchanged for content – which is most often the case by the time a scam victim reaches Apple – Apple
10 informs victims there is nothing it can do, even if the content was “sold” by a scammer to himself or
11 herself in an effort to convert the stolen gift card codes to dollars, with Apple’s knowing assistance.

12 Answer: Apple [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 [REDACTED] Apple denies the remaining allegations of Paragraph 91 of the
18 Complaint. Apple specifically denies that it provides “knowing assistance” to any scammers and notes
19 that the Court has dismissed with prejudice Plaintiffs’ claim that Apple aids and abets these scammers.

20 92. Moreover, if the victim contacts Apple within 45 days of providing the codes to the
21 scammers, even if the scammers have redeemed the gift card codes before the victim contacts Apple
22 reporting a scam, Apple’s statement that there is nothing it can do about the scam is false. When the victim
23 provides the codes to Apple, Apple verifies that the gift cards have been redeemed, and will suspend both
24 the gift card codes and the Apple ID account that redeemed the gift card. At that point, Apple will have
25 prevented the scam from being completed – the stored credit on the gift cards cannot be used for any
26 purchases, and the scammers will not receive the profits from the scam. Despite stopping the scam from
27 being completed, Apple representatives follow the standard script and inform the victims that there is
28 nothing further Apple can do and that Apple cannot return the stolen funds. Apple’s knowing retention of

1 the funds that were stolen from the scam victim is unfair and unlawful. Further, Apple’s statements that
2 the gift cards have already been spent and that there is nothing that Apple can do conceal the fact that
3 Apple retains 100% of the victim’s property.

4 Answer: Denied.

5 93. Although Apple remains largely silent about this epidemic – addressing it almost
6 exclusively through the page on its website referenced above – it has described a common corporate
7 protocol for dealing with victims who call Apple after realizing scammers swindled them by exploiting
8 Apple’s gift card system.

9 Answer: Denied.

10 94. When NBC News contacted Apple in 2016, the network reported:

11 A spokesman said that if someone contacts Apple Support after sending off the gift card
12 code – and the money has not been drained from the card – they can freeze the account and
13 have the money refunded to them. If the money is already gone, Apple advises people to
file a complaint with the FTC.³³

14 Apple’s spokesman thus confirmed that Apple does not restore funds to scam victims who contact Apple
15 after their cards have been redeemed. Apple’s spokesman also confirmed that Apple deceptively suggests
16 to scam victims that their money is “gone,” even when it will retain a 30% commission, and, in many
17 cases, has not yet paid or will not pay the remaining 70% into the scammer’s bank account.

18 Answer: Apple admits the quoted text in Paragraph 94 of the Complaint appears in the news article
19 cited in footnote 33 of the Complaint. Apple denies the remaining allegations of Paragraph 94 of the
20 Complaint. Answering further, Apple responds that the document cited in footnote 33 of the Complaint
21 speaks for itself and denies that Plaintiffs’ characterization of the document is accurate.

22 95. Apple’s suggestions of futility and statements that there is nothing it can do are false.

23 Answer: Denied.

24 96. When Apple receives redemption codes from victims or law enforcement, it can identify:

- 25 • the Apple ID that uploads the gift card number and its stored value;
26 • apps or digital media purchased, or in-app purchases made, with funds from gift cards;

27 _____
28 ³³ Herb Weisbaum, *Fraud Alert: Scammers Get Victims to Pay with iTunes Gift Cards*, NBC NEWS (May
27, 2016) (<https://www.nbcnews.com/tech/apple/fraud-alert-scammers-get-victims-pay-itunes-gift-cards-n581591>).

- 1 • the Apple Developer financial accounts associated with App Store purchases; and
- 2 • whether Apple has paid Apple Developers for those purchases.

3 Answer: Denied.

4 97. Because Apple can identify Apple ID accounts involved in scams, it can suspend the Apple
5 ID accounts that redeemed fraudulently obtained iTunes gift cards.

6 Answer: Apple admits that Apple can freeze or disable Apple ID accounts. Apple denies the
7 remaining allegation in Paragraph 97 of the Complaint.

8 98. Moreover, because Apple does not transfer payment to Apple Developers for purchases of
9 apps or in-app purchases until approximately 45 days after its fiscal month, Apple can and does stop
10 payment to the Apple Developer’s bank account, and can suspend or remove from the App Store any apps
11 involved in a scam. Indeed, it reserves the right to cancel payment to, or obtain reimbursement from, App
12 Developers if there is a complaint.

13 Answer: Apple admits that Schedule 2 of the Apple Developer Program License Agreement states
14 that, if “Apple determines or suspects” that a developer has “engaged in, or encouraged or participated
15 with other developers to engage in, any suspicious, misleading, fraudulent, improper, unlawful or
16 dishonest act or omission, Apple may withhold payments due to” the developer. Apple also admits that as
17 stated in Schedule 2, Apple “reserve the right to cease marketing, offering, and allowing download by
18 end-users” of an application in accordance with the terms of the Apple Developer Program License
19 Agreement, including if the application “violates any applicable law” or if the developer has “violated the
20 terms of the Agreement, this Schedule 2, or other documentation including without limitation the App
21 Store Review Guidelines.” Apple denies the remaining allegations in Paragraph 98 of the Complaint.

22 99. On information and belief, Apple – a highly sophisticated participant in the technology
23 industry which monitors and tracks key information at each point in the process of the scam, from the time
24 the iTunes gift card is sold through redemption and use – possesses other means and technology to
25 determine which iTunes gift cards have been redeemed by scammers, the identity of the Apple ID and
26 Apple Developer accounts involved in gift card scams, and the identity of victims of gift card scams.

27 Answer: Denied.

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1 100. Despite such means and technology, Apple uniformly and consistently informs victims
2 using a standardized script that there is nothing that Apple can do if the iTunes gift card has been redeemed
3 by scammers. Apple knows that representation is false.

4 Answer: Denied.

5 101. Further, Apple fails to inform consumers – online or by telephone – that, regardless of
6 whether the iTunes gift card was redeemed, if the victim contacts Apple after becoming the victim of a
7 scam and provides the redemption code to Apple, Apple can determine the identities of the Apple ID and
8 Apple Developer accounts involved in the scam, stop payment to the Apple Developer account, and refund
9 the value of the iTunes gift card to the victim.

10 Answer: Denied.

11 102. Apple has a duty to disclose and not conceal from Plaintiffs and Class members the
12 foregoing material facts. Apple’s duty to disclose arises out of: (1) its misrepresentation to consumers that
13 if the iTunes gift card has been redeemed there is nothing Apple can do as the funds have been spent; and
14 (2) its exclusive knowledge and active concealment of the material facts that Apple can identify all
15 accounts involved in iTunes gift card scams, stop payment to scammers, and return the value of iTunes
16 gift cards to scam victims.

17 Answer: Paragraph 102 of the Complaint consists of a legal conclusion to which no response is
18 required. To the extent a response is required, Apple denies the allegations of Paragraph 102 of the
19 Complaint. Answering further, Apple responds that the Court has dismissed Plaintiffs’ claims to the extent
20 they are premised on purported omissions of facts about gift card scams that Apple allegedly had a duty
21 to disclose to Plaintiffs and other putative class members.

22 103. Apple’s omissions and false and misleading statements, as set forth above, are intentional
23 and done for the purpose of retaining, at a minimum, its 30% commission on all purchases made with
24 fraudulently obtained iTunes gift cards, and to perpetuate iTunes gift card scams to continue to profit from
25 the scams.

26 Answer: Denied. Answering further, Apple responds that the Court has dismissed with prejudice
27 Plaintiffs’ claims to the extent they are premised on Apple’s alleged misrepresentations or omissions about
28 gift card scams.

1 104. Apple intentionally aids and abets scammers, and ensures that the iTunes gift card scams
2 will continue, to the direct benefit of Apple.

3 Answer: Paragraph 104 of the Complaint consists of legal conclusions to which no response is
4 required. To the extent a response is required Apple denies the allegations contained in Paragraph 104 of
5 the Complaint. Answering further, Apple responds that the Court has dismissed with prejudice Plaintiffs’
6 claim that Apple aids and abets gift card scammers.

7 105. In addition to misleading consumers and refusing to refund their money – even when
8 consumers contact Apple and directly provide Apple with all the information needed to do so – Apple
9 makes payment to Apple Developers it knows are scammers, and thus encourages additional scams by
10 those same Apple Developers and future Apple Developers.

11 Answer: Denied. Answering further, Apple responds that the Court has dismissed with prejudice
12 Plaintiffs’ claim that Apple aids and abets gift card scammers.

13 106. Further, in 2012, prior to the current start of the Class Period but while iTunes gift card
14 scams were occurring,³⁴ Apple began making iTunes gift cards sold by retailers available for purchase in
15 amounts up to \$500. Making iTunes gift cards available in such large denominations dramatically
16 increased the amount scammers could obtain from unwitting consumers, and thus dramatically increased
17 gift card revenue for Apple. On information and belief, Apple knows that a disproportionate number of
18 \$500 iTunes gift cards were being redeemed by scammers, and yet it continued to sell them through at
19 least 2016, including to Plaintiff Qiu, and either continues to sell them or has quietly discontinued their
20 use.

21 Answer: Denied.

22 107. Apple also fails to warn consumers about iTunes gift card scams at the point of retail
23 purchase. Apple knows that iTunes gift card scams are designed to instill “panic and urgency” in victims,
24 thus preventing them from doing the research and investigation that would lead them to Apple’s “About
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27 ³⁴ See Catalin Cimpanu, *Apple sued for not taking action against iTunes gift card scams*, ZDNET (July 26,
28 2020) (<https://www.zdnet.com/article/apple-sued-for-not-taking-action-against-itunes-gift-card-scams/>) (“The iTunes gift card scam has been around since the mid-2000s when Apple introduced gift card for the iTunes store[.]”).

1 Gift Card Scams” website page. Despite this knowledge, Apple generally provides no warning to
2 consumers on the outer retail packaging of its gift cards.

3 Answer: Denied. Answering further, Apple responds that the Court has dismissed with prejudice
4 Plaintiffs’ claims to the extent they are premised on purported omissions of facts about gift card scams
5 that Apple allegedly had a duty to disclose to Plaintiffs and other putative class members.

6 108. Apple could, and should, state prominently on its outer packaging that consumers should
7 beware of telephone and internet scams involving gift cards and should not purchase the card in their
8 hands if they have been asked to do so by anyone who claims to be able to accept payment by iTunes gift
9 card.

10 Answer: Denied. Answering further, Apple responds that the Court has dismissed with prejudice
11 Plaintiffs’ claims to the extent they are premised on purported omissions of facts about gift card scams
12 that Apple allegedly had a duty to disclose to Plaintiffs and other putative class members.

13 109. Instead, Apple aids and abets scammers, and perpetuates the scams, by issuing only a weak
14 warning *after* its iTunes gift card has been purchased. Even that ineffective warning was not added to
15 Apple’s cards until midway through the Class Period.

16 Answer: Paragraph 109 of the Complaint consists of legal conclusions to which no response is
17 required. To the extent a response is required Apple denies the allegations contained in Paragraph 109 of
18 the Complaint. Answering further, Apple responds that the Court has dismissed with prejudice Plaintiffs’
19 claim that Apple aids and abets gift card scammers.

20 110. Because Apple hopes and believes that more gift cards will be sold if people who have no
21 independent desire to purchase them are persuaded to do by scammers – and because Apple also hopes
22 and believes that its “no refund” policy and attempted disclaimer of liability will be unchallenged by
23 victims if those card purchasers proceed to provide the codes on the cards to scammers so that Apple can
24 suggest that the funds have been “spent” – Apple says nothing on its outer packaging or even the iTunes
25 gift cards themselves regarding scams or urgent demands for payment by unknown persons. Instead, Apple
26 instructs, on the back of the card only, “Do not share your code with anyone you do not know.” This
27 anemic instruction, even when bolded, not only fails to alert consumers of the widespread phenomenon
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1 known to Apple, but is visible to consumers only after they have already purchased an iTunes gift card
2 and committed those funds to Apple in a transaction which, by its terms, permits no refunds.

3 Answer: Apple admits that certain versions of Apple gift cards included the warning “Do not
4 share your card with anyone you do not know.” Apple denies the remaining allegations of Paragraph 110
5 of the Complaint.

6 111. As a direct and proximate result of Apple’s unfair and unlawful business practices
7 described herein, Plaintiffs and Class members suffered damages including the amount of money that each
8 Plaintiff and class member spent on iTunes gift cards that was not refunded to them by Apple.

9 Answer: Paragraph 111 of the Complaint consists of legal conclusions to which no response is
10 required. To the extent a response is required Apple denies the allegations contained in Paragraph 111 of
11 the Complaint.

12 **FACTS PERTAINING TO PLAINTIFFS**

13 ***Plaintiff Barrett***

14 112. In May 2017, Plaintiff Barrett was experiencing computer problems, and searched online
15 for assistance. Eventually, Barrett was contacted by someone who told him that they could fix his computer
16 problems.

17 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
18 112 of the Complaint and on that basis denies those allegations.

19 113. After the individual obtained remote access to Barrett’s computer, the individual told
20 Barrett that he needed to purchase a \$100 iTunes gift card and provide the code on the back of the gift
21 card to tech support, who would refund him the money he paid for the gift card. Plaintiff Barrett was
22 specifically advised to purchase an iTunes gift card.

23 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
24 113 of the Complaint and on that basis denies those allegations.

25 114. Plaintiff Barrett selected a \$100 iTunes gift card from a retail display and read the outer
26 packaging for the card before purchasing it. After purchasing the card and opening the packaging, Plaintiff
27 Barrett scanned all of the language on the card itself, including looking at the back of the card to locate
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1 the codes, but remained unaware of the existence, much less the prevalence and nature of iTunes gift card
2 scams, and did not realize he was in the process of being scammed.

3 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
4 114 of the Complaint and on that basis denies those allegations.

5 115. Had the packaging advised purchasers of the existence and nature of gift card scams and/or
6 stated that anyone asking for payment via iTunes gift card was a scammer, and done so prominently,
7 Plaintiff Barrett would not have purchased the card.

8 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
9 115 of the Complaint and on that basis denies those allegations.

10 116. Had the card itself, once opened, advised purchasers of the existence and nature of gift card
11 scams and/or stated that anyone asking for payment via iTunes gift card was a scammer, and done so
12 prominently, Plaintiff Barrett would not have provided the codes to the scammer.

13 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
14 116 of the Complaint and on that basis denies those allegations.

15 117. However, no such information appeared on either the packaging or the card (in fact the
16 card purchased by Plaintiff Barrett contained no warning at all), and Plaintiff Barrett provided the codes
17 on the back of the iTunes gift cards to the person who accessed his computer.

18 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
19 117 of the Complaint and on that basis denies those allegations.

20 118. The individual then told Barrett that he needed to purchase another iTunes gift card and
21 provide the codes on the back before he received his refund, this time for the full amount of both cards.
22 At that point Barrett realized he had been scammed.

23 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
24 118 of the Complaint and on that basis denies those allegations.

25 119. Neither the packaging nor the card contained any instructions for victims of this prevalent
26 scam, which is well known to Apple. If any language on the card itself had instructed consumers to call
27 Apple immediately if they were deceived into providing the code on the card to scammers, Plaintiff Barrett
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1 would have called Apple and provided his name, contact information and gift card code well before any
2 of the funds stolen from him would have been deposited into the bank account of scammers.

3 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
4 119 of the Complaint and on that basis denies those allegations.

5 120. Plaintiff Barrett did not contact Apple after being victimized by scammers, for those
6 reasons and because he was informed by law enforcement that that there was nothing that Apple would
7 do for him.

8 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
9 120 of the Complaint and on that basis denies those allegations.

10 ***Plaintiff Polston***

11 121. In 2019, Plaintiff Polston received text messages from a person who was posing as a family
12 member. The individual told Polston that if he purchased gift cards and provided the codes to him, Polston
13 would win money. Plaintiff Polston was specifically advised to purchase iTunes gift cards.

14 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
15 121 of the Complaint and on that basis denies those allegations.

16 122. Plaintiff Polston selected \$350 in iTunes gift cards from a retail display and read the outer
17 packaging for the cards before purchasing them. After purchasing the cards and opening the packaging,
18 Plaintiff Polston scanned all of the language on the cards themselves, including looking at the back of the
19 cards to locate the codes, but remained unaware of the existence, much less the prevalence and nature of
20 iTunes gift card scams, and did not realize he was in the process of being scammed. Plaintiff Polston did
21 not believe that the language on the back of the gift cards applied to him because thought he was providing
22 the codes to someone he knew.

23 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
24 122 of the Complaint and on that basis denies those allegations.

1 123. Had the packaging advised purchasers of the existence and nature of gift card scams and/or
2 stated that anyone asking for payment via iTunes gift card was a scammer, and done so prominently,
3 Plaintiff Polston would not have purchased the cards.

4 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
5 123 of the Complaint and on that basis denies those allegations.

6 124. Had the cards themselves, once opened, advised purchasers of the existence and nature of
7 gift card scams and/or stated that anyone asking for payment via iTunes gift card was a scammer, and
8 done so prominently, Plaintiff Polston would not have provided the codes to the scammer.

9 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
10 124 of the Complaint and on that basis denies those allegations.

11 125. However, no such information appeared on either the packaging or the cards, and Plaintiff
12 Polston provided the codes on the back to the individual who was posing as a family member.

13 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
14 125 of the Complaint and on that basis denies those allegations.

15 126. Soon thereafter, Plaintiff Polston realized he was the victim of a scam.

16 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
17 126 of the Complaint and on that basis denies those allegations.

18 127. Upon realizing he had been scammed, Plaintiff Polston re-read all of the language on the
19 packaging and the card to determine his next steps. He was discouraged from contacting Apple by Apple's
20 disclaimer language, which suggested that he was not legally entitled to the return of the funds that had
21 been stolen from him.

22 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
23 127 of the Complaint and on that basis denies those allegations.

24 128. Moreover, neither the packaging nor the card contained any instructions for victims of this
25 prevalent scam, which is well known to Apple. If any language on the card had instructed consumers to
26 call Apple immediately if they were deceived into providing the code on the card to scammers, Plaintiff
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1 Polston would have called Apple and provided his name, contact information and gift card code well
2 before any of the funds stolen from him would have been deposited into the bank account of scammers.

3 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
4 128 of the Complaint and on that basis denies those allegations.

5 129. Plaintiff Polston contacted his local police department to report that he was the victim of a
6 scam involving gift cards. Polston did not contact Apple after being victimized by scammers, for the
7 reasons above and because he was informed by law enforcement that once the scammers redeemed the
8 iTunes gift card there is nothing that Apple would do for him.

9 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
10 129 of the Complaint and on that basis denies those allegations.

11 ***Plaintiff Martin***

12 130. In January 2020, Plaintiff Martin received a telephone call from a person who threatened
13 to disable Martin's computer unless she purchased \$125 in iTunes gift cards and provided the code on the
14 back of the cards. Plaintiff Martin was specifically advised to purchase iTunes gift cards.

15 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
16 130 of the Complaint and on that basis denies those allegations.

17 131. Plaintiff Martin selected three iTunes gift cards from a retail display and read the outer
18 packaging for the cards before purchasing them. After purchasing the cards and opening the packaging,
19 Plaintiff Martin scanned all of the language on the cards themselves, including looking at the back of the
20 cards to locate the codes, but remained unaware of the existence, much less the prevalence and nature of
21 iTunes gift card scams, and did not realize she was in the process of being scammed.

22 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
23 131 of the Complaint and on that basis denies those allegations.

24 132. Had the packaging advised purchasers of the existence and nature of gift card scams and/or
25 stated that anyone asking for payment via iTunes gift card was a scammer, and done so prominently,
26 Plaintiff Martin would not have purchased the cards.

27 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
28 132 of the Complaint and on that basis denies those allegations.

1 133. Had the cards themselves, once opened, advised purchasers of the existence and nature of
2 gift card scams and/or stated that anyone asking for payment via iTunes gift card was a scammer, and
3 done so prominently, Plaintiff Martin would not have provided the codes to the scammer.

4 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
5 133 of the Complaint and on that basis denies those allegations.

6 134. However, no such information appeared on either the packaging or the cards, and Plaintiff
7 Martin provided the codes on the back to the caller.

8 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
9 134 of the Complaint and on that basis denies those allegations.

10 135. Later the same day, Martin realized she was the victim of a scam and contacted Apple. She
11 told an Apple representative what happened and provided the codes on the back of the three cards. Martin
12 asked Apple to refund the money she spent on the iTunes gift cards.

13 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
14 135 of the Complaint and on that basis denies those allegations.

15 136. The Apple representative informed Martin that the iTunes gift cards had already been
16 redeemed. The Apple representative told Plaintiff Martin that because the gift cards had been redeemed,
17 there was nothing that Apple could do, and refused to return to Plaintiff Martin any portion of the money
18 she spent on the gift cards. The Apple representative told Plaintiff Martin that Apple does not receive the
19 money she spent to purchase the iTunes gift cards.

20 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
21 136 of the Complaint and on that basis denies those allegations.

22 ***Plaintiff Watson***

23 137. In November 2019, Plaintiff Watson was contacted by an unknown individual over social
24 media. After a couple of months of communicating, the individual began asking Watson for financial
25 assistance. The individual asked Watson to purchase gift cards, including iTunes gift cards specifically,
26 and provide the codes on the back.

27 Answer: Paragraph 137 of the Complaint consists of allegations concerning Plaintiff Watson, who
28 has been dismissed from this lawsuit and about whom no response is required. To the extent a response is

1 required, Apple lacks sufficient knowledge or information to admit the allegations in Paragraph 137 of
2 the Complaint and on that basis denies those allegations.

3 138. Plaintiff Watson selected approximately \$250 of iTunes gift cards from a retail display and
4 read the outer packaging for the cards before purchasing them. After purchasing the cards and opening the
5 packaging, Plaintiff Watson scanned all of the language on the cards themselves, including looking at the
6 back of the cards to locate the codes, but remained unaware of the existence, much less the prevalence
7 and nature of iTunes gift card scams, and did not realize he was in the process of being scammed.

8 Answer: Paragraph 138 of the Complaint consists of allegations concerning Plaintiff Watson, who
9 has been dismissed from this lawsuit and about whom no response is required. To the extent a response is
10 required, Apple lacks sufficient knowledge or information to admit the allegations in Paragraph 138 of
11 the Complaint and on that basis denies those allegations.

12 139. Had the packaging advised purchasers of the existence and nature of gift card scams and/or
13 stated that anyone asking for payment via iTunes gift card was a scammer, and done so prominently,
14 Plaintiff Watson would not have purchased the cards.

15 Answer: Paragraph 139 of the Complaint consists of allegations concerning Plaintiff Watson, who
16 has been dismissed from this lawsuit and about whom no response is required. To the extent a response is
17 required, Apple lacks sufficient knowledge or information to admit the allegations in Paragraph 139 of
18 the Complaint and on that basis denies those allegations.

19 140. Had the cards themselves, once opened, advised purchasers of the existence and nature of
20 gift card scams and/or stated that anyone asking for payment via iTunes gift card was a scammer, and
21 done so prominently, Plaintiff Watson would not have provided the codes to the scammer.

22 Answer: Paragraph 140 of the Complaint consists of allegations concerning Plaintiff Watson, who
23 has been dismissed from this lawsuit and about whom no response is required. To the extent a response is
24 required, Apple lacks sufficient knowledge or information to admit the allegations in Paragraph 140 of
25 the Complaint and on that basis denies those allegations.

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1 141. However, no such information appeared on either the packaging or the cards, and Plaintiff
2 Watson provided the codes on the back to the individual.

3 Answer: Paragraph 141 of the Complaint consists of allegations concerning Plaintiff Watson, who
4 has been dismissed from this lawsuit and about whom no response is required. To the extent a response is
5 required, Apple lacks sufficient knowledge or information to admit the allegations in Paragraph 141 of
6 the Complaint and on that basis denies those allegations.

7 142. Watson realized he was the victim of a scam when he noticed social media profiles using
8 the same profile pictures as the individual, but with different names.

9 Answer: Paragraph 142 of the Complaint consists of allegations concerning Plaintiff Watson, who
10 has been dismissed from this lawsuit and about whom no response is required. To the extent a response is
11 required, Apple lacks sufficient knowledge or information to admit the allegations in Paragraph 142 of
12 the Complaint and on that basis denies those allegations.

13 143. Upon realizing he had been scammed, Plaintiff Watson re-read all of the language on the
14 packaging and the cards to determine his next steps. He was discouraged from contacting Apple by Apple’s
15 disclaimer language, which suggested that he was not legally entitled to the return of the funds that had
16 been stolen from him.

17 Answer: Paragraph 143 of the Complaint consists of allegations concerning Plaintiff Watson, who
18 has been dismissed from this lawsuit and about whom no response is required. To the extent a response is
19 required, Apple lacks sufficient knowledge or information to admit the allegations in Paragraph 143 of
20 the Complaint and on that basis denies those allegations.

21 144. Moreover, neither the packaging nor the card contained any instructions for victims of this
22 prevalent scam, which is well known to Apple. If any language on the card itself had instructed consumers
23 to call Apple immediately if they were deceived into providing the code on the card to scammers, Plaintiff
24 Watson would have called Apple and provided his name, contact information and gift card code well
25 before any of the funds stolen from him would have been deposited into the bank account of scammers.

26 Answer: Paragraph 144 of the Complaint consists of allegations concerning Plaintiff Watson, who
27 has been dismissed from this lawsuit and about whom no response is required. To the extent a response is
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1 required, Apple lacks sufficient knowledge or information to admit the allegations in Paragraph 144 of
2 the Complaint and on that basis denies those allegations.

3 145. Plaintiff Watson did not contact Apple after being victimized by scammers, for the reasons
4 above and because he was informed that once the scammers redeemed the iTunes gift card there is nothing
5 that Apple would do for Watson.

6 Answer: Paragraph 145 of the Complaint consists of allegations concerning Plaintiff Watson, who
7 has been dismissed from this lawsuit and about whom no response is required. To the extent a response is
8 required, Apple lacks sufficient knowledge or information to admit the allegations in Paragraph 145 of
9 the Complaint and on that basis denies those allegations.

10 ***Plaintiff Marinbach***

11 146. In 2018, Plaintiff Marinbach began communicating with an individual on social media.
12 After a couple of months, the individual began asking Marinbach for financial assistance. The individual
13 asked Marinbach to purchase iTunes gift cards specifically, and provide the codes on the back.

14 Answer: Paragraph 146 of the Complaint consists of allegations concerning Plaintiff Marinbach,
15 who has been dismissed from this lawsuit and about whom no response is required. To the extent a
16 response is required, Apple lacks sufficient knowledge or information to admit the allegations in
17 Paragraph 146 of the Complaint and on that basis denies those allegations.

18 147. Plaintiff Marinbach selected approximately \$600 of iTunes gift cards from a retail display
19 and read the outer packaging for the cards before purchasing them. After purchasing the cards and opening
20 the packaging, Plaintiff Marinbach scanned of the language on the cards, including looking at the back of
21 the cards to locate the codes, but remained unaware of the existence, much less the prevalence and nature
22 of iTunes gift card scams, and did not realize he was in the process of being scammed.

23 Answer: Paragraph 147 of the Complaint consists of allegations concerning Plaintiff Marinbach,
24 who has been dismissed from this lawsuit and about whom no response is required. To the extent a
25 response is required, Apple lacks sufficient knowledge or information to admit the allegations in
26 Paragraph 147 of the Complaint and on that basis denies those allegations.

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1 148. Had the packaging advised purchasers of the existence and nature of gift card scams and/or
2 stated that anyone asking for payment via iTunes gift card was a scammer, and done so prominently,
3 Plaintiff Marinbach would not have purchased the cards.

4 Answer: Paragraph 148 of the Complaint consists of allegations concerning Plaintiff Marinbach,
5 who has been dismissed from this lawsuit and about whom no response is required. To the extent a
6 response is required, Apple lacks sufficient knowledge or information to admit the allegations in
7 Paragraph 148 of the Complaint and on that basis denies those allegations.

8 149. Had the cards themselves, once opened, advised purchasers of the existence and nature of
9 gift card scams and/or stated that anyone asking for payment via iTunes gift card was a scammer, and
10 done so prominently, Plaintiff Marinbach would not have provided the codes to the scammer.

11 Answer: Paragraph 149 of the Complaint consists of allegations concerning Plaintiff Marinbach,
12 who has been dismissed from this lawsuit and about whom no response is required. To the extent a
13 response is required, Apple lacks sufficient knowledge or information to admit the allegations in
14 Paragraph 149 of the Complaint and on that basis denies those allegations.

15 150. However, no such information appeared on either the packaging or the cards (in fact most
16 of the cards purchased by Plaintiff Marinbach contained no warning at all), and Plaintiff Marinbach
17 provided the codes on the back to the individual.

18 Answer: Paragraph 150 of the Complaint consists of allegations concerning Plaintiff Marinbach,
19 who has been dismissed from this lawsuit and about whom no response is required. To the extent a
20 response is required, Apple lacks sufficient knowledge or information to admit the allegations in
21 Paragraph 150 of the Complaint and on that basis denies those allegations.

22 151. Marinbach realized that he was the victim of a scam after the individual did not show up
23 to an in-person meeting.

24 Answer: Paragraph 151 of the Complaint consists of allegations concerning Plaintiff Marinbach,
25 who has been dismissed from this lawsuit and about whom no response is required. To the extent a
26 response is required, Apple lacks sufficient knowledge or information to admit the allegations in
27 Paragraph 151 of the Complaint and on that basis denies those allegations.

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1 152. Marinbach contacted Apple approximately a week after he purchased the iTunes gift cards,
2 and provided the codes on the back to an Apple representative. The representative told Marinbach that the
3 iTunes gift cards had been redeemed. The Apple representative told Plaintiff Marinbach that because the
4 gift cards had been redeemed, there was nothing that Apple could do, and refused to return to Plaintiff
5 Marinbach any portion of the money he spent on the gift cards. The representative told Plaintiff Marinbach
6 that it is Apple's policy not to refund iTunes gift cards, and refund requests must be directed to the
7 merchant that sold him his iTunes gift cards. Plaintiff Marinbach informed Apple that the retailer denied
8 his request for a refund, but Apple advised Plaintiff Marinbach that there was nothing further that Apple
9 could do.

10 Answer: Paragraph 152 of the Complaint consists of allegations concerning Plaintiff Marinbach,
11 who has been dismissed from this lawsuit and about whom no response is required. To the extent a
12 response is required, Apple admits that an individual identifying himself as Eric Marinbach contacted
13 Apple in or around 2018. Apple lacks sufficient knowledge or information to admit the remaining
14 allegations in Paragraph 152 of the Complaint and on that basis denies those allegations.

15 ***Plaintiffs Michael and Maria Rodriguez***

16 153. In December 2016, Plaintiff Michael Rodriguez believed that the computer that he shared
17 with his mother, Plaintiff Maria Rodriguez, was infected with a computer virus. The computer was locked
18 and the monitor displayed the telephone number for a computer company they needed to call to resolve
19 their computer problems. The company's computer technician convinced Maria and Michael Rodriguez
20 to provide him with remote access to their computer.

21 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
22 153 of the Complaint and on that basis denies those allegations.

23 154. After the technician gained remote access to the computer, he told Michael and Maria
24 Rodriguez that he would not fix their computer until they purchased iTunes gift cards and provided him
25 with the codes on the back. Plaintiffs Maria and Michael Rodriguez were specifically advised to purchase
26 iTunes gift cards.

27 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
28 154 of the Complaint and on that basis denies those allegations.

1 155. Plaintiffs Michael and Maria Rodriguez selected approximately \$1,000 in iTunes gift cards
2 from a retail display and read the outer packaging for the cards before purchasing them. After purchasing
3 the cards and opening the packaging, Maria and Michael Rodriguez scanned all of the language on the
4 cards themselves, including looking at the back of the cards to locate the codes, but remained unaware of
5 the existence, much less the prevalence and nature of iTunes gift card scams, and did not realize they were
6 in the process of being scammed.

7 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
8 155 of the Complaint and on that basis denies those allegations.

9 156. Had the packaging advised purchasers of the existence and nature of gift card scams and/or
10 stated that anyone asking for payment via iTunes gift card was a scammer, and done so prominently,
11 Plaintiffs Maria and Michael Rodriguez would not have purchased the cards.

12 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
13 156 of the Complaint and on that basis denies those allegations.

14 157. Had the cards themselves, once opened, advised purchasers of the existence and nature of
15 gift card scams and/or stated that anyone asking for payment via iTunes gift card was a scammer, and
16 done so prominently, Plaintiffs Maria and Michael Rodriguez would not have provided the codes to the
17 scammer.

18 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
19 157 of the Complaint and on that basis denies those allegations.

20 158. However, no such information appeared on either the packaging or the cards (in fact the
21 cards purchased by Plaintiffs Maria and Michael Rodriguez contained no warning at all), and Plaintiffs
22 Maria and Michael Rodriguez provided the codes on the back to the individual.

23 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
24 158 of the Complaint and on that basis denies those allegations.

25 159. Michael and Maria Rodriguez realized they were victims of a scam when the company
26 stopped answering their phone calls.

27 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
28 159 of the Complaint and on that basis denies those allegations.

1 160. Upon realizing they had been scammed, Plaintiffs Michael and Maria Rodriguez re-read
2 all of the language on the packaging and the cards to determine their next steps. They were discouraged
3 from contacting Apple by Apple’s disclaimer language, which suggested that they were not legally entitled
4 to the return of the funds that had been stolen from them.

5 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
6 160 of the Complaint and on that basis denies those allegations.

7 161. Moreover, neither the packaging nor the cards contained any instructions for victims of this
8 prevalent scam, which is well known to Apple. If any language on the card itself had instructed consumers
9 to call Apple immediately if they were deceived into providing the code on the card to scammers, Plaintiffs
10 Michael and Maria Rodriguez would have called Apple and provided their name, contact information, and
11 gift card code well before any of the funds stolen from them would have been deposited into the bank
12 account of scammers.

13 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
14 161 of the Complaint and on that basis denies those allegations.

15 162. Michael and Maria Rodriguez contacted the district attorney and local police to report that
16 they were victims of a scam. Michael and Maria Rodriguez did not contact Apple after being victimized
17 by scammers, for the reasons above and because they were informed by law enforcement and their own
18 internet research that once the scammers redeemed the iTunes gift card there is nothing that Apple would
19 do for them.

20 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
21 162 of the Complaint and on that basis denies those allegations.

22 ***Plaintiff Qiu***

23 163. In June 2016, Plaintiff Qiu received a telephone call from an individual who stated that he
24 was a representative of the Internal Revenue Service. The individual informed Plaintiff Qiu that her taxes
25 had been miscalculated and that she owed the IRS thousands of dollars in back taxes and legal fees. The
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1 individual threatened Plaintiff Qiu that unless she paid them she would be arrested and all of her financial
2 accounts would be frozen.

3 Answer: Paragraph 163 of the Complaint consists of allegations concerning Plaintiff Qiu, who
4 has been dismissed from this lawsuit and about whom no response is required. To the extent a response is
5 required, Apple lacks sufficient knowledge or information to admit the allegations in Paragraph 163 of
6 the Complaint and on that basis denies those allegations.

7 164. The individual instructed Plaintiff Qiu to purchase iTunes gift cards specifically, and to
8 provide the codes on the back of the cards to settle the matter.

9 Answer: Paragraph 164 of the Complaint consists of allegations concerning Plaintiff Qiu, who
10 has been dismissed from this lawsuit and about whom no response is required. To the extent a response is
11 required, Apple lacks sufficient knowledge or information to admit the allegations in Paragraph 164 of
12 the Complaint and on that basis denies those allegations.

13 165. Plaintiff Qiu selected approximately \$2,600 in iTunes gift cards from retail displays,
14 including at an Apple Store, and read the outer packaging for the cards before purchasing them. After
15 purchasing the cards and opening the packaging, Qiu scanned all of the language on the cards themselves,
16 including looking at the back of the cards to locate the codes, but remained unaware of the existence,
17 much less the prevalence and nature of iTunes gift card scams, and did not realize she was in the process
18 of being scammed.

19 Answer: Paragraph 165 of the Complaint consists of allegations concerning Plaintiff Qiu, who
20 has been dismissed from this lawsuit and about whom no response is required. To the extent a response is
21 required, Apple lacks sufficient knowledge or information to admit the allegations in Paragraph 165 of
22 the Complaint and on that basis denies those allegations.

23 166. Had the packaging advised purchasers of the existence and nature of gift card scams and/or
24 stated that anyone asking for payment via iTunes gift card was a scammer, and done so prominently,
25 Plaintiff Qiu would not have purchased the cards.

26 Answer: Paragraph 166 of the Complaint consists of allegations concerning Plaintiff Qiu, who
27 has been dismissed from this lawsuit and about whom no response is required. To the extent a response is
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1 required, Apple lacks sufficient knowledge or information to admit the allegations in Paragraph 166 of
2 the Complaint and on that basis denies those allegations.

3 167. Had the cards themselves, once opened, advised purchasers of the existence and nature of
4 gift card scams and/or stated that anyone asking for payment via iTunes gift card was a scammer, and
5 done so prominently, Plaintiff Qiu would not have provided the codes to the scammers.

6 Answer: Paragraph 167 of the Complaint consists of allegations concerning Plaintiff Qiu, who has
7 been dismissed from this lawsuit and about whom no response is required. To the extent a response is
8 required, Apple lacks sufficient knowledge or information to admit the allegations in Paragraph 167 of
9 the Complaint and on that basis denies those allegations.

10 168. However, no such information appeared on either the packaging (in fact, the cards
11 purchased by Plaintiff Qiu contained no warning at all), nor did the card contain any indication that it
12 could not be used to pay taxes, and Plaintiff Qiu provided the codes on the back of the card.

13 Answer: Paragraph 168 of the Complaint consists of allegations concerning Plaintiff Qiu, who
14 has been dismissed from this lawsuit and about whom no response is required. To the extent a response is
15 required, Apple lacks sufficient knowledge or information to admit the allegations in Paragraph 168 of
16 the Complaint and on that basis denies those allegations.

17 169. Later that day, Plaintiff Qiu realized that she was the victim of a scam and contacted Apple.
18 Plaintiff Qiu provided the codes on the gift cards to the Apple representative, who informed her that the
19 cards had been redeemed. The Apple representative further informed Plaintiff Qiu that Apple was able to
20 identify the individual who redeemed the gift cards that she purchased, and was able to freeze both the
21 gift cards and the Apple ID account that redeemed the gift cards, so that stored credit on the gift cards
22 could not be spent. However, Apple despite telling her that the funds had not been spent, Apple refused to
23 provide Plaintiff Qiu with a refund, and told her there was nothing Apple could do.

24 Answer: Paragraph 169 of the Complaint consists of allegations concerning Plaintiff Qui, who
25 has been dismissed from this lawsuit and about whom no response is required. To the extent a response is
26 required, Apple admits that an individual identifying themselves as Guanting Qiu contacted Apple in or
27 around June 2016. Apple lacks sufficient knowledge or information to admit the remaining allegations in
28 Paragraph 169 of the Complaint and on that basis denies those allegations.

1 ***Plaintiff Hagene***

2 170. In July 2020, Plaintiff Hagene received emails from an individual purporting to be his
3 supervisor. The individual instructed Plaintiff Hagene that he needed iTunes gift cards to provide to clients,
4 but that he was in a meeting and could not talk or purchase the gift cards himself, and instructed Plaintiff
5 Hagene to purchase iTunes gift cards specifically, and to provide the codes on the back of the cards.

6 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
7 170 of the Complaint and on that basis denies those allegations.

8 171. Plaintiff Hagene selected approximately \$2,600 in iTunes gift cards from a retail display
9 and read the outer packaging for the cards before purchasing them. After purchasing the cards and opening
10 the packaging, Plaintiff Hagene scanned the language on the cards, including looking at the back of the
11 cards to locate the codes, but remained unaware of the existence, much less the prevalence and nature of
12 iTunes gift card scams, and did not realize he was in the process of being scammed.

13 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
14 171 of the Complaint and on that basis denies those allegations.

15 172. Had the packaging advised purchasers of the existence and nature of gift card scams and/or
16 stated that anyone asking for payment via iTunes gift card was a scammer, and done so prominently,
17 Plaintiff Hagene would not have purchased the cards.

18 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
19 172 of the Complaint and on that basis denies those allegations.

20 173. Had the cards themselves, once opened, advised purchasers of the existence and nature of
21 gift card scams and/or stated that anyone asking for payment via iTunes gift card was a scammer, and
22 done so prominently, Plaintiff Hagene would not have provided the codes to the scammers.

23 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
24 173 of the Complaint and on that basis denies those allegations.

25 174. However, no such information appeared on either the packaging or the card, and he
26 provided the codes on the back of the card.

27 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
28 174 of the Complaint and on that basis denies those allegations.

1 175. After providing the codes to the individual who contacted him, Plaintiff Hagene became
2 suspicious of the interaction, and contacted his supervisor through alternative means. Plaintiff Hagene
3 then realized that he was a victim of a scam. Plaintiff Hagene re-read the language on the packaging and
4 the card, researched gift card scams online, and decided to contact Apple regarding the scam.

5 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
6 175 of the Complaint and on that basis denies those allegations.

7 176. Within approximately a half hour of providing the codes to the scammer, Plaintiff Hagene
8 contacted Apple, informed Apple that he was the victim of a gift card scam and provided the codes on the
9 gift cards to Apple. The Apple representative informed Plaintiff Hagene that the cards had been redeemed
10 and stated that he would need 24 hours to investigate whether the stored credit from the gift cards had
11 been spent.

12 Answer: Apple admits that an individual identifying himself as Andrew Hagene contacted Apple
13 in or around July 2020. Apple lacks sufficient knowledge or information to admit the remaining allegations
14 in Paragraph 176 of the Complaint and on that basis denies those allegations.

15 177. The next day, the Apple representative informed Plaintiff Hagene that because the gift cards
16 had been spent, there was nothing that Apple could do. Apple denied Plaintiff Hagene's requests for a
17 refund.

18 Answer: Apple admits that Apple did not provide a refund to an Andrew Hagene in or around July
19 2020. Apple lacks sufficient knowledge or information to admit the remaining allegations in Paragraph
20 177 of the Complaint and on that basis denies those allegations.

21 **TOLLING OF STATUTES OF LIMITATIONS**

22 178. Any applicable statute(s) of limitations were tolled by Apple's knowing, active
23 concealment, and denial of the facts alleged herein. Apple's conduct is inherently self-concealing because
24 Apple does not disclose the details of its iTunes gift card tracking capabilities, Apple ID tracking
25 capabilities and App and iTunes Store merchant policies. As a result, Plaintiffs and members of the Class
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1 could not have reasonably discovered the true nature of Apple’s conduct until shortly before this class
2 action litigation was commenced.

3 Answer: Paragraph 178 consists of a legal conclusion to which no response is required. To the
4 extent a response is required, Apple denies the allegations in Paragraph 178 of the Complaint.

5 179. In addition, even after Plaintiffs and Class members contacted Apple concerning gift card
6 scams, Apple routinely told them that, if their gift cards were redeemed, there was nothing Apple can do,
7 or that Apple does not retain any money from the gift card. Apple’s representations of futility and
8 statements that it does not profit from the scam are false.

9 Answer: Denied.

10 180. Apple was and remains under a continuing duty to disclose to Plaintiffs and Class members
11 the true nature of its involvement in gift card scams, including that it can identify all accounts involved in
12 the scam, stop payment to scammers, and return the value of iTunes gift cards to victims. As a result of
13 Apple’s active concealment, any and all statutes of limitations otherwise applicable to the allegations
14 herein were tolled.

15 Answer: Paragraph 180 consists of a legal conclusion to which no response is required. To the
16 extent a response is required, Apple denies the allegations in Paragraph 180 of the Complaint.

17 **CLASS ALLEGATIONS**

18 181. Plaintiffs bring this action, individually, and on behalf of a nationwide class, pursuant to
19 Federal Rule of Civil Procedure 23(a), 23(b)(2), and/or 23(b)(3), defined as follows:

20 **Nationwide Class**

21 All persons in the United States who, during the Class Period, purchased one or more gift
22 cards redeemable on iTunes or the App Store, provided the redemption codes to people
23 unknown to them who sought the codes under false pretenses, and were not refunded the
value of the gift cards by Apple.

24 Answer: Apple admits that Plaintiffs purport to bring an action individually and on behalf of a
25 nationwide class defined in paragraph 181 of the Complaint. Apple denies the remaining allegations in
26 Paragraph 181 of the Complaint and specifically denies that class certification is appropriate. Answering
27 further, Apple responds that the Court has dismissed certain claims of the Nationwide Class.
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1 182. The Class Period is initially defined as the period between January 1, 2015 and July 31,
2 2020.³⁵

3 Answer: Paragraph 182 consists of a legal conclusion to which no response is required. To the
4 extent a response is required, Apple denies the allegations in Paragraph 182 of the Complaint.

5 183. Pursuant to Federal Rule of Civil Procedure 23(c)(5), Plaintiffs also seek to represent a
6 subclass, defined as follows:

7 **Contact Subclass**

8 All persons in the United States who, during the Class Period, purchased one or more gift
9 cards redeemable on iTunes or the App Store, provided the redemption codes to people
10 unknown to them who sought the codes under false pretenses, contacted Apple regarding
the scam, and were not refunded the value of the gift cards by Apple.

11 Answer: Apple admits that Plaintiffs purport to bring an action on behalf of a contact subclass
12 defined in paragraph 183 of the Complaint. Apple denies the remaining allegations in Paragraph 183 of
13 the Complaint and specifically denies that class certification is appropriate.

14 184. The Nationwide Class and Contact Subclass shall be collectively referred to herein as the
15 “Class.” Excluded from the Class are: (a) Defendants; (b) Defendants’ affiliates, agents, employees,
16 officers and directors; (c) Plaintiffs’ counsel and Defendant’s counsel; and (d) the judge assigned to this
17 matter, the judge’s staff, and any member of the judge’s immediate family. Plaintiffs reserve the right to
18 modify, change, or expand the various class definitions set forth above based on discovery and further
19 investigation.

20 Answer: Paragraph 184 consists of a legal conclusion to which no response is required. To the
21 extent a response is required, Apple denies the allegations in Paragraph 184 of the Complaint.

22 185. Numerosity: Upon information and belief, the Class is so numerous that joinder of all
23 members is impracticable. While the exact number and identity of individual members of the Class is
24 unknown at this time, such information being in the sole possession of Apple and/or third parties and
25 obtainable by Plaintiffs only through the discovery process, Plaintiffs believe, and on that basis allege,
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28 ³⁵ Plaintiffs reserve the right to expand or amend the Class Period based on discovery produced in this matter.

1 that the Class consists of hundreds of thousands of people. The number of Class members can be
2 determined based on Apple's and other third party's records.

3 Answer: Paragraph 185 consists of a legal conclusion to which no response is required. To the
4 extent a response is required, Apple denies the allegations in Paragraph 185 of the Complaint.

5 186. **Commonality:** Common questions of law and fact exist as to all members of each Class.
6 These questions predominate over questions affecting individual Class members. These common legal
7 and factual questions include, but are not limited to:

- 8 a. whether Apple engaged in unfair business practices;
- 9 b. whether Apple engaged in unlawful business practices;
- 10 c. whether Apple engaged in deceptive business practices;
- 11 d. whether Apple kept stolen property for itself;
- 12 e. whether Apple converted the property of others to its own use;
- 13 f. whether Apple knowingly and intentionally profited from gift card scams involving
14 iTunes gift cards;
- 15 g. whether Apple misrepresents that there is nothing that Apple can do after iTunes
16 gift cards are redeemed;
- 17 h. whether Apple conceals material facts regarding its ability to stop payments to
scammers and return money to scam victims;
- 18 i. whether Apple's conduct violates the California consumer protection statutes
19 asserted herein;
- 20 j. whether money Apple obtained from gift card scams rightfully belongs to Plaintiffs
21 and Class members;
- 22 k. whether Apple should be required to return money it received as a result of gift card
scams to Plaintiffs and Class members;
- 23 l. whether Apple converts at least 30% of the money stolen during gift card scams for
24 its own use; and
- 25 m. whether Apple aids and abets scammers in perpetrating gift card scams and
26 converting 70% of the proceeds of many of those scams to their own use.

27 Answer: Paragraph 186 consists of a legal conclusion to which no response is required. To the
28 extent a response is required, Apple denies the allegations in Paragraph 186 of the Complaint.

1 187. Typicality: Plaintiffs have the same interest in this matter as all Class members, and
2 Plaintiffs' claims arise out of the same set of facts and conduct as the claims of all Class members.
3 Plaintiffs' and Class members' claims all arise out Apple's uniform misrepresentations, omissions, and
4 unlawful and unfair business practices related to iTunes gift cards.

5 Answer: Paragraph 187 consists of a legal conclusion to which no response is required. To the
6 extent a response is required, Apple denies the allegations in Paragraph 187 of the Complaint.

7 188. Adequacy: Plaintiffs have no interest that conflicts with the interests of the Class, and are
8 committed to pursuing this action vigorously. Plaintiffs have retained counsel competent and experienced
9 in complex consumer class action litigation. Accordingly, Plaintiffs and their counsel will fairly and
10 adequately protect the interests of the Class.

11 Answer: Paragraph 188 consists of a legal conclusion to which no response is required. To the
12 extent a response is required, Apple denies the allegations in Paragraph 188 of the Complaint.

13 189. Superiority: A class action is superior to all other available means of fair and efficient
14 adjudication of the claims of Plaintiffs and members of the Class. The injury suffered by each individual
15 Class member is relatively small compared to the burden and expense of individual prosecution of the
16 complex and extensive litigation necessitated by Apple's conduct. It would be virtually impossible for
17 individual Class members to effectively redress the wrongs done to them. Even if Class members could
18 afford individualized litigation, the court system could not. Individualized litigation would increase delay
19 and expense to all parties, and to the court system, because of the complex legal and factual issues of this
20 case. Individualized rulings and judgments could result in inconsistent relief for similarly-situated
21 individuals. By contrast, the class action device presents far fewer management difficulties, and provides
22 the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

23 Answer: Paragraph 189 consists of a legal conclusion to which no response is required. To the
24 extent a response is required, Apple denies the allegations in Paragraph 189 of the Complaint.

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1 190. Defendants have acted or refused to act on grounds generally applicable to the Class,
2 thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the
3 Class as a whole.

4 Answer: Paragraph 190 consists of a legal conclusion to which no response is required. To the
5 extent a response is required, Apple denies the allegations in Paragraph 190 of the Complaint.

6 **CALIFORNIA LAW APPLIES TO THE ENTIRE CLASS**

7 191. California’s substantive laws apply to every member of the Class, regardless of where in
8 the United States the Class members reside. Apple’s applicable terms and conditions state:

9 **Governing Law.** Except [for residents of certain foreign countries], this Agreement and
10 the relationship between you and Issuer shall be governed by the laws of the State of
11 California, excluding its conflict of laws provisions. You and Issuer agree to submit to the
12 personal and exclusive jurisdiction of the courts located within the county of Santa Clara,
to resolve any dispute or claim arising from this Agreement.³⁶

13 Answer: Paragraph 191 consists of a legal conclusion to which no response is required. To the
14 extent a response is required, Apple admits that the quoted text appeared on Apple’s website. Apple denies
15 the remaining allegations in Paragraph 191 of the Complaint.

16 192. By choosing California law for the resolution of disputes in the agreement, Apple concedes
17 that it is appropriate for this Court to apply California law to the instant dispute.

18 Answer: Paragraph 192 of the Complaint consists of legal conclusions to which no response is
19 required. To the extent a response is required Apple denies the allegations contained in Paragraph 192 of
20 the Complaint.

21 193. Further, California’s substantive laws may be constitutionally applied to the claims of
22 Plaintiffs and the Class under the Due Process Clause, 14th Amend. §1, and the Full Faith and Credit
23 Clause, Art. IV §1 of the U.S. Constitution. California has significant contact, or significant aggregation
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27 _____
28 ³⁶ See *Legal – iTunes Gift Cards and Codes*, APPLE (Mar. 20, 2018)
(<https://www.apple.com/legal/internet-services/itunes/giftcards/us/terms.html>) (available with Plaintiffs’
counsel).

1 of contacts, to the claims asserted by Plaintiffs and all Class members, thereby creating state interests that
2 ensure that the choice of California state law is not arbitrary or unfair.

3 Answer: Paragraph 193 consists of a legal conclusion to which no response is required. To the
4 extent a response is required, Apple denies the allegations in Paragraph 193 of the Complaint.

5 194. Apple's headquarters and principal place of business is located in California. Apple also
6 owns property and conducts substantial business in California, and therefore California has an interest in
7 regulating Apple's conduct under its laws. Apple's decision to reside in California and avail itself of
8 California's laws, and to engage in the challenged conduct from and emanating out of California, renders
9 the application of California law to the claims herein constitutionally permissible.

10 Answer: Paragraph 194 consists of a legal conclusion to which no response is required. To the
11 extent a response is required, Apple admits that its headquarters and principal place of business are located
12 in California and denies the remaining allegations in Paragraph 194 of the Complaint.

13 195. California is also the state from which Apple's alleged misconduct emanated. On
14 information and belief, the decision-making regarding the design and marketing of Apple products,
15 including the iTunes gift cards, app store and iTunes occurred in and emanated from California, and Apple
16 received commissions from purchases with fraudulently obtained iTunes gift cards in California. As such,
17 the conduct complained of herein emanated from California. This conduct similarly injured and affected
18 Plaintiffs and all other Class members.

19 Answer: Denied.

20 196. The application of California laws to the Class is also appropriate under California's choice
21 of law rules because California has significant contacts to the claims of Plaintiffs and the proposed Class,
22 and California has a greater interest in applying its laws here than any other interested state.

23 Answer: Paragraph 196 consists of a legal conclusion to which no response is required. To the
24 extent a response is required, Apple denies the allegations in Paragraph 196 of the Complaint.

FIRST CAUSE OF ACTION

Unfair Practices

in Violation of the California Consumers Legal Remedies Act

Cal. Civil Code §1750, et seq.

(on Behalf of the Nationwide Class and the Contact Subclass)

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6 197. Plaintiffs hereby re-allege and incorporate all allegations in the Complaint, as though fully
7 set forth herein.

8 Answer: Apple admits that Plaintiffs purport to reallege and incorporate all allegations in the
9 Complaint as through set forth in full herein, and Apple repeats and incorporates by reference its answers
10 to the remainder of the Complaint as if set forth in full herein.

11 198. At all relevant times there was in full force and effect the California Consumers Legal
12 Remedies Act (“CLRA”), Cal. Civil Code §1750, et seq.

13 Answer: Paragraph 198 consists of a legal conclusion to which no response is required. To the
14 extent a response is required, Apple admits the allegations in Paragraph 198 of the Complaint.

15 199. Plaintiffs and Class members are “consumers” as that term is defined by California Civil
16 Code §1761(d).

17 Answer: Paragraph 199 consists of a legal conclusion to which no response is required. To the
18 extent a response is required, Apple admits the allegations in Paragraph 199 of the Complaint.

19 200. Apple is a “person” as that term is defined by California Civil Code §1761(c).

20 Answer: Paragraph 200 consists of a legal conclusion to which no response is required. To the
21 extent a response is required, Apple admits the allegations in Paragraph 200 of the Complaint.

22 201. Apple engaged in unfair acts in violation of the CLRA by engaging in the practices
23 described above, including knowingly and intentionally disbursing illegally obtained money to scammers,
24 and knowingly and intentionally retaining money (either 30% or 100% of the proceeds of the scam) that
25 rightfully belongs to Plaintiffs and other victims of iTunes gift card scams.

26 Answer: Denied.

27 202. Apple also engaged in a number of practices designed to perpetuate the scheme and the
28 stream of revenue it generates for Apple. Those practices, which are unfair separately and particularly

1 when taken together, include, but are not limited to, failing to adequately warn consumers about the
2 existence, nature, and prevalence of the scams on the packaging of its gift cards, failing to adequately
3 warn consumers on the cards themselves about the existence, nature, and prevalence of scams, reducing
4 the numbers of victims who contact Apple by including an unconscionable and adhesive disclaimer on its
5 packaging and in its term and conditions, reducing the numbers of victims who contact Apple by failing
6 to include an instruction to do so on its cards, and reducing the number of victims who contact Apple by
7 falsely suggesting on its website that, by the time a victim can call, the funds will have become the rightful
8 property of legitimate content sellers.

9 Answer: Denied.

10 203. Apple's unfair practices designed to perpetuate the scheme and the stream of revenue it
11 generates for Apple also include discouraging victims who do contact Apple from vindicating their rights
12 or otherwise taking action against Apple by similarly suggesting that the funds now rightfully belong to
13 someone other than Apple or the scammers, and by uniformly failing to inform victims who hear that
14 message from Apple of the contrary material facts, known only to Apple, that redeemed funds are not
15 "spent" on bona fide content but rather "used" by the scammers on their own apps, and that Apple waits
16 weeks before knowingly depositing 70% of money stolen from victims into the bank accounts of
17 scammers and knowingly keeping 30% – and sometimes keeping 100% – of the stolen funds for itself.

18 Answer: Denied.

19 204. In the course of their business, Defendants repeatedly and regularly engaged in unfair acts
20 or practices that imposed a serious harm on consumers, including Plaintiffs and Class members.

21 Answer: Denied.

22 205. Apple's acts and practices are unfair because they offend public policy, are immoral,
23 unethical, oppressive unscrupulous, and substantially injurious to consumers, including Plaintiffs and
24 members of the Class. The injuries suffered by Plaintiffs and Class members greatly outweigh any
25 potential countervailing benefit to consumers or competition, and are not injuries that Plaintiffs and Class
26 members should have reasonably avoided.

27 Answer: Denied.
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1 206. The acts and practices complained of herein violate, at a minimum, §a(19) of the CLRA,
2 which prohibits inserting an unconscionable provision in a contract.

3 Answer: Paragraph 206 consists of a legal conclusion to which no response is required. To the
4 extent a response is required, Apple denies the allegations in Paragraph 206 of the Complaint.

5 207. As set forth above, Apple inserted an unconscionable and adhesive provision in the Gift
6 Card terms and conditions. Apple’s attempt to disclaim liability for all lost or stolen Gift Cards discourages
7 consumers from contacting Apple, and the provision cannot lawfully be applied to gift cards involved in
8 iTunes gift card scams because Apple engages in conduct in connection with those scams that is unlawful,
9 including but not limited to violation of penal code provisions and consumer protection statutes. Apple’s
10 attempt to disclaim liability for its knowing participation in and profiting from gift card scams is
11 unconscionable.

12 Answer: Paragraph 207 consists of a legal conclusion to which no response is required. To the
13 extent a response is required, Apple denies the allegations in Paragraph 207 of the Complaint.

14 208. Under California Civil Code §1780(a), Plaintiffs and Class members seek damages,
15 injunctive and equitable relief for Apple’s violations of the CLRA. Pursuant to California Civil Code
16 §§1782(a) & (d), on or about July 17, 2020, Plaintiffs provided Apple with notice and their intent to amend
17 the Complaint to seek damages if Apple did not cease its unfair and unlawful conduct, and Apple has
18 failed to do so.

19 Answer: Apple admits that Plaintiffs purport to seek damages, injunctive, and equitable relief
20 under section 1780(a) of the California Civil Code. Apple admits that Plaintiffs sent Apple notice,
21 purporting to comply section 1782 of the California Civil Code. Apple denies the remaining allegations
22 of Paragraph 208 of the Complaint and denies that Plaintiffs or any member of the putative class are
23 entitled to any relief whatsoever.

24 209. Plaintiffs and the Class therefore also request this Court enter such orders or judgments
25 necessary to restore to any person any money acquired as a result of Apple’s unfair business practices, and
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1 for such other relief, including attorneys’ fees and costs, as provided in California Civil Code §1780 and
2 the Prayer for Relief.

3 Answer: Apple admits that Plaintiffs purport to request relief from this Court. Apple denies the
4 remaining allegations of Paragraph 209 of the Complaint and denies that Plaintiffs or any member of the
5 putative class are entitled to any relief whatsoever.

6 **SECOND CAUSE OF ACTION**

7 **Unfair Practices**

8 **in Violation of the California Unfair Competition Law**

9 **Cal. Bus. & Prof. Code §17200**

10 **(on Behalf of the Nationwide Class and the Contact Subclass)**

11 210. Plaintiffs hereby re-allege and incorporate all allegations in the Complaint, as though fully
12 set forth herein.

13 Answer: Apple admits that Plaintiffs purport to reallege and incorporate all allegations in the
14 Complaint as through set forth in full herein, and Apple repeats and incorporates by reference its answers
15 to the remainder of the Complaint as if set forth in full herein.

16 211. At all relevant times there was in full force and effect the California Unfair Competition
17 Law (“UCL”), Cal. Bus. & Prof. Code §17200, et seq., which prohibits, inter alia, “any unlawful, unfair,
18 or fraudulent business act or practice” and “unfair, deceptive, untrue, or misleading advertising.” Cal. Bus.
19 & Prof. Code §17200 (emphasis supplied).

20 Answer: Paragraph 211 of the Complaint consists of a legal conclusion to which no response is
21 required. To the extent a response is required, Apple admits that Paragraph 211 of the Complaint
22 accurately quotes section 17200 of the California Business & Professions Code.

23 212. Apple has unfairly retained millions of dollars in funds that it knows were stolen from
24 Plaintiffs and other victims of the iTunes gift card scam.

25 Answer: Denied.
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1 213. Apple has also engaged in other business acts and practices which are “unfair” under the
2 UCL, including knowingly and intentionally disbursing illegally obtained money to scammers.

3 Answer: Paragraph 213 consists of a legal conclusion to which no response is required. To the
4 extent a response is required, Apple denies the allegations in Paragraph 213 of the Complaint.

5 214. Apple also engaged in a number of practices designed to perpetuate the scheme and the
6 stream of revenue it generates for Apple. Those practices, which are unfair separately and particularly
7 when taken together, include but are not limited to failing adequately warn consumers about the existence,
8 nature, and prevalence of gift card scams on the packaging of its gift cards, failing to adequately warn
9 consumers about the existence, nature, and prevalence of gift card scams on the cards themselves, reducing
10 the numbers of victims who contact Apple by including an unconscionable and adhesive disclaimer on its
11 packaging and in its term and conditions, reducing the numbers of victims who contact Apple by failing
12 to include an instruction to do so on its cards, and reducing the number of victims who contact Apple by
13 falsely suggesting on its website that, by the time a victim can call, the funds will have become the rightful
14 property of legitimate content sellers.

15 Answer: Denied.

16 215. Apple’s unfair practices designed to perpetuate the scheme and the stream of revenue it
17 generates for Apple also include discouraging victims who do call Apple from vindicating their rights or
18 otherwise taking action against Apple by similarly suggesting that the funds now rightfully belong to
19 someone other than Apple or the scammers, and by failing to inform victims who hear that message of the
20 contrary material facts, known only to Apple, that redeemed funds are “spent” on bona fide content but
21 rather “used” by the scammers on their own apps, and that Apple waits weeks before knowingly depositing
22 70% of money stolen from victims into the bank accounts of scammers and knowingly keeping 30% –
23 and sometimes keeping – 100% of the funds for itself.

24 Answer: Denied.

25 216. Unfair acts under the UCL have been interpreted using three different tests: (1) whether the
26 public policy which is a predicate to a consumer unfair competition action under the unfair prong of the
27 UCL is tethered to specific constitutional, statutory, or regulatory provisions; (2) whether the gravity of
28 the harm to the consumer caused by the challenged business practice outweighs the utility of the

1 defendant's conduct; and (3) whether the consumer injury is substantial, not outweighed by any
2 countervailing benefits to consumers or competition, and is an injury that consumers themselves could not
3 reasonably have avoided. Apple's conduct alleged is unfair under all of these tests.

4 Answer: Paragraph 216 consists of a legal conclusion to which no response is required. To the
5 extent a response is required, Apple denies the allegations in Paragraph 216 of the Complaint.

6 217. As a direct and proximate result of Apple's unfair practices, Plaintiffs and Class members
7 suffered injury and have paid monies that Apple has improperly retained from the iTunes gift cards.
8 Apple's participation in the gift card scams and concealment of its role and ability to track and stop
9 payments to scammers, aids and abets scammers, and perpetuates the scams.

10 Answer: Paragraph 217 consists of a legal conclusion to which no response is required. To the
11 extent a response is required, Apple denies the allegations in Paragraph 217 of the Complaint.

12 218. Plaintiffs seek to enjoin further unfair acts or practices by Apple, to obtain restitution and
13 disgorgement of all monies generated as a result of such practices, and for all other relief allowed under
14 California Business & Professions Code §17200.

15 Answer: Apple admits that Plaintiffs purport to seek relief. Apple denies the remaining allegations
16 of Paragraph 218 of the Complaint and denies that Plaintiffs or any member of the putative class are
17 entitled to any relief whatsoever.

18 **THIRD CAUSE OF ACTION**

19 **Unlawful Practices**

20 **in Violation of the California Consumers Legal Remedies Act**

21 **Cal. Civil Code §1750, et seq.**

22 **(on Behalf of the Nationwide Class and the Contact Subclass)**

23 219. Plaintiffs hereby re-allege and incorporate all allegations in the Complaint, as though fully
24 set forth herein.

25 Answer: Apple admits that Plaintiffs purport to reallege and incorporate all allegations in the
26 Complaint as through set forth in full herein, and Apple repeats and incorporates by reference its answers
27 to the remainder of the Complaint as if set forth in full herein.
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1 220. At all relevant times there was in full force and effect the California Consumers Legal
2 Remedies Act (“CLRA”), Cal. Civ. Code §1750, et seq.

3 Answer: Paragraph 220 consists of a legal conclusion to which no response is required. To the
4 extent a response is required, Apple admits the allegations in Paragraph 220 of the Complaint.

5 221. Plaintiffs and Class members are “consumers” as that term is defined by California Civil
6 Code §1761(d).

7 Answer: Paragraph 221 consists of a legal conclusion to which no response is required. To the
8 extent a response is required, Apple admits the allegations in Paragraph 221 of the Complaint.

9 222. Apple is a “person” as that term is defined by California Civil Code §1761(c).

10 Answer: Paragraph 222 consists of a legal conclusion to which no response is required. To the
11 extent a response is required, Apple admits the allegations in Paragraph 222 of the Complaint.

12 223. Apple engaged in unlawful acts in violation of the CLRA by the practices described above.

13 Answer: Paragraph 223 consists of a legal conclusion to which no response is required. To the
14 extent a response is required, Apple denies the allegations in Paragraph 223 of the Complaint.

15 224. In the course of their business, Defendants repeatedly and regularly engaged in unlawful
16 acts or practices that imposed a serious harm on consumers, including Plaintiffs and Class members.

17 Answer: Paragraph 224 consists of a legal conclusion to which no response is required. To the
18 extent a response is required, Apple denies the allegations in Paragraph 224 of the Complaint.

19 225. Apple’s acts and practices are unlawful for many reasons, including because Apple violates
20 Cal. Penal Code §496 by, inter alia, intentionally secreting stolen property in violation of its affirmative
21 duty to return it or to disclose its whereabouts to its rightful owner.

22 Answer: Paragraph 225 consists of a legal conclusion to which no response is required. To the
23 extent a response is required, Apple denies the allegations in Paragraph 225 of the Complaint.

24 226. Apple’s acts and practices are also unlawful because they violate the California Unfair
25 Competition Law.

26 Answer: Paragraph 226 consists of a legal conclusion to which no response is required. To the
27 extent a response is required, Apple denies the allegations in Paragraph 226 of the Complaint.

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1 227. Apple’s acts and practices are also unlawful because Apple attempts to apply its disclaimer
2 language to exculpate itself from its own violations of the Penal Code and consumer protection statutes
3 and its own acts of conversion.

4 Answer: Paragraph 227 consists of a legal conclusion to which no response is required. To the
5 extent a response is required, Apple denies the allegations in Paragraph 227 of the Complaint.

6 228. Under California Civil Code §1780(a), Plaintiffs and Class members seek damages,
7 injunctive and equitable relief for Apple’s violations of the CLRA. Pursuant California Civil Code
8 §§1782(a) & (d), on or about July 17, 2020, Plaintiffs provided Apple with notice and their intent to amend
9 the Complaint to seek damages if Apple did not cease its unfair and unlawful conduct, and Apple has
10 failed to do so.

11 Answer: Apple admits that Plaintiffs purport to seek damages, injunctive, and equitable relief
12 under section 1780(a) of the California Civil Code. Apple admits that Plaintiffs sent Apple notice,
13 purporting to comply section 1782 of the California Civil Code. Apple denies the remaining allegations
14 of Paragraph 228 of the Complaint and denies that Plaintiffs or any member of the putative class are
15 entitled to any relief whatsoever.

16 229. Plaintiffs and the Class therefore also request this Court enter such orders or judgments
17 necessary to restore to any person any money acquired as a result of Apple’s deceptive and/or unfair
18 business practices, and for such other relief, including attorneys’ fees and costs, as provided in California
19 Civil Code §1780 and the Prayer for Relief.

20 Answer: Apple admits that Plaintiffs purport to seek relief. Apple denies the remaining allegations
21 of Paragraph 229 of the Complaint and denies that Plaintiffs or any member of the putative class are
22 entitled to any relief whatsoever.

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FOURTH CAUSE OF ACTION

Unlawful Practices

in Violation of the California Unfair Competition Law

Cal. Bus. & Prof. Code §17200

(on Behalf of the Nationwide Class and the Contact Subclass)

230. Plaintiffs hereby re-allege and incorporate all allegations in the Complaint, as though fully set forth herein.

Answer: Apple admits that Plaintiffs purport to reallege and incorporate all allegations in the Complaint as through set forth in full herein, and Apple repeats and incorporates by reference its answers to the remainder of the Complaint as if set forth in full herein.

231. At all relevant times there was in full force and effect the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §17200, et seq., which prohibits, inter alia, “any unlawful, unfair, or fraudulent business act or practice” and “unfair, deceptive, untrue, or misleading advertising.” Cal. Bus. & Prof. Code §17200 (emphasis supplied).

Answer: Paragraph 231 of the Complaint consists of a legal conclusion to which no response is required. To the extent a response is required, Apple admits that Paragraph 231 of the Complaint accurately quotes section 17200 of the California Business & Professions Code.

232. Apple has unlawfully retained millions of dollars in funds that it knows were stolen from Plaintiffs and other victims of the iTunes gift card scam.

Answer: Paragraph 232 consists of a legal conclusion to which no response is required. To the extent a response is required, Apple denies the allegations in Paragraph 232 of the Complaint.

233. In the course of their business, Defendants repeatedly and regularly engaged in unlawful acts or practices that imposed a serious harm on consumers, including Plaintiffs and Class members.

Answer: Paragraph 233 consists of a legal conclusion to which no response is required. To the extent a response is required, Apple denies the allegations in Paragraph 233 of the Complaint.

1 234. Apple's acts and practices are unlawful for many reasons, including because Apple violates
2 Cal. Penal Code §496 by, inter alia, intentionally secreting stolen property in violation of its affirmative
3 duty to return it or to disclose its whereabouts to its rightful owner.

4 Answer: Paragraph 234 consists of a legal conclusion to which no response is required. To the
5 extent a response is required, Apple denies the allegations in Paragraph 234 of the Complaint.

6 235. Apple's acts and practices are also unlawful because they violate the California's
7 Consumers Legal Remedies Act.

8 Answer: Paragraph 234 consists of a legal conclusion to which no response is required. To the
9 extent a response is required, Apple denies the allegations in Paragraph 234 of the Complaint.

10 236. Apple's acts and practices are also unlawful because Apple attempts to apply its disclaimer
11 language to exculpate itself from its own violations of the Penal Code and consumer protection statutes
12 and its own acts of conversion.

13 Answer: Paragraph 236 consists of a legal conclusion to which no response is required. To the
14 extent a response is required, Apple denies the allegations in Paragraph 236 of the Complaint.

15 237. As a direct and proximate result of Apple's unlawful practices, Plaintiffs and Class
16 members suffered injury and have paid monies that Apple has improperly retained from the iTunes gift
17 cards.

18 Answer: Paragraph 237 consists of a legal conclusion to which no response is required. To the
19 extent a response is required, Apple denies the allegations in Paragraph 237 of the Complaint.

20 238. Plaintiffs seek to enjoin further unlawful acts or practices by Apple, to obtain restitution
21 and disgorgement of all monies generated as a result of such practices, and for all other relief allowed
22 under California Business & Professions Code §17200.

23 Answer: Apple admits that Plaintiffs purport to seek relief. Apple denies the remaining allegations
24 of Paragraph 238 of the Complaint and denies that Plaintiffs or any member of the putative class are
25 entitled to any relief whatsoever.
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FIFTH CAUSE OF ACTION

Deceptive Practices

in Violation of the California Consumers Legal Remedies Act

Cal. Civil Code §1750, et seq.

(on Behalf of the Nationwide Class and the Contact Subclass)

239. Plaintiffs hereby re-allege and incorporate all allegations in the Complaint, as though fully set forth herein.

Answer: Apple admits that Plaintiffs purport to reallege and incorporate all allegations in the Complaint as through set forth in full herein, and Apple repeats and incorporates by reference its answers to the remainder of the Complaint as if set forth in full herein.

240. At all relevant times there was in full force and effect the California Consumers Legal Remedies Act (“CLRA”), Cal. Civil Code §1750, et seq.

Answer: Paragraph 240 consists of a legal conclusion to which no response is required. To the extent a response is required, Apple admits the allegations in Paragraph 240 of the Complaint.

241. Plaintiffs and Class members are “consumers” as that term is defined by California Civil Code §1761(d).

Answer: Paragraph 241 consists of a legal conclusion to which no response is required. To the extent a response is required, Apple admits the allegations in Paragraph 241 of the Complaint.

242. Apple is a “person” as that term is defined by California Civil Code §1761(c).

Answer: Paragraph 242 consists of a legal conclusion to which no response is required. To the extent a response is required, Apple admits the allegations in Paragraph 242 of the Complaint.

243. Apple engaged in deceptive acts and practices in violation of the CLRA, including by knowingly and intentionally omitting material facts from the packaging of its gift cards and the gift cards themselves, as described above, including the nature, existence and prevalence of gift card scam, and the fact that consumers should call Apple immediately if they are victimized in a gift card scam.

Answer: Paragraph 243 consists of a legal conclusion to which no response is required. To the extent a response is required, Apple denies the allegations in Paragraph 243 of the Complaint.

1 244. Apple also omitted material facts in violation of the CLRA when victims contacted Apple
2 directly, including failing to tell victims that Apple is in possession of the property that was stolen from
3 them, and that Apple keeps 30% or 100% of the scam proceeds for itself.

4 Answer: Paragraph 244 consists of a legal conclusion to which no response is required. To the
5 extent a response is required, Apple denies the allegations in Paragraph 244 of the Complaint.

6 245. Apple also engaged in deceptive acts and practices in violation of the CLRA by telling
7 victims that the money was redeemed and/or spent, and that there was nothing Apple could do, and thus
8 suggesting that the scammers purchased bona fide content from legitimate sellers, and that the money thus
9 no longer was in Apple's or the scammers' possession, but rather belonged to innocent third parties. When
10 Apple made these statements to victims, it did not disclose the material (and contrary) fact that Apple
11 retains the funds for weeks before paying it out to vendors, and that those vendors are not innocent third
12 parties, but rather the scammers themselves in the case of gift card scams.

13 Answer: Paragraph 245 consists of a legal conclusion to which no response is required. To the
14 extent a response is required, Apple denies the allegations in Paragraph 245 of the Complaint.

15 246. Defendants knowingly and intentionally made false representations and omissions of
16 material fact because Apple knows that it has the capability of determining the Apple ID account that
17 redeemed the iTunes gift card, the accounts that created the products that were distributed on iTunes or
18 the App Store that were purchased with the funds from the iTunes gift card involved in a scam, and that
19 Apple can stop payment to the Apple Developer accounts and return the Plaintiffs' and Class members'
20 money. Instead, Apple makes payment to Apple Developers who are known to Apple to be profiting from
21 scams, and thus encourages additional scams by those same Apple Developers and future Apple
22 Developers. As such, Apple misrepresented its affiliation, connection, or association with the scammers.

23 Answer: Denied.

24 247. Defendants knowingly and intentionally made false representations and omissions of
25 material fact because Apple fails to inform consumers and falsely represents that, if the victim of a gift
26 card scam provides the redemption code on the back of an iTunes gift card, Apple can identify the Apple
27 ID accounts involved in a gift card scam, stop payment to Apple Developer accounts for purchases made
28 with funds from fraudulently obtained iTunes gift cards, and can return the money to Plaintiffs and Class

1 members. Instead, by informing consumers that the funds have been or likely have been “spent” or that
2 there is nothing that Apple can do if a scammer has redeemed the iTunes gift card, Apple misrepresents
3 the characteristics and uses of iTunes gift cards.

4 Answer: Denied.

5 248. Apple knows that its representations and omissions are false and deceptive because when
6 victims contact Apple directly and report being the victim of a scam – and through other means that Apple
7 has to identify gift cards, Apple IDs, apps, and Apple Developers associated with scams – Apple has actual
8 knowledge that it is in possession of the victim’s stolen property.

9 Answer: Denied.

10 249. Apple was under a duty to warn consumers of the scam and to disclose to Plaintiffs and
11 Class members that it retains a minimum of 30% of the scammed funds at all time, because Apple can
12 identify the iTunes gift card, Apple ID, and Apple Developer accounts involved in a gift card scam, and
13 can stop payment to scammers and return the money that victims of gift card scams paid because:

- 14 a. Apple misrepresents that there is nothing that it can do if the iTunes gift card has
15 been redeemed;
- 16 b. Apple has exclusive knowledge of the methods of identifying scammers, stopping
17 payment to scammers, and returning the value of the iTunes gift card to victims;
18 and
- 19 c. Apple actively conceals the material facts that it is in possession of the victim’s
20 property and can identify the scammers, stop payment to scammers, and return the
21 value of the iTunes gift card to the victim.

22 Answer: Paragraph 249 consists of a legal conclusion to which no response is required. To the
23 extent a response is required, Apple denies the allegations in Paragraph 249 of the Complaint.

24 250. Apple knowingly and intentionally concealed those material facts and breached its duty
25 not to do so.

26 Answer: Paragraph 250 consists of a legal conclusion to which no response is required. To the
27 extent a response is required, Apple denies the allegations in Paragraph 250 of the Complaint.
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1 251. Apple fails to disclose on the packaging of the gift cards that consumers should beware of
2 telephone and internet scams involving gift cards and should not purchase the card if they have been asked
3 to do so by persons unknown to them who claim that payment by iTunes gift card is urgently needed.

4 Answer: Denied.

5 252. The facts concealed or not disclosed by Apple to Plaintiffs and Class members are material
6 in that a reasonable consumer would have acted differently by, inter alia, not purchasing the gift card in
7 the first place, not providing the redemption code on the back of the iTunes gift card to scammers,
8 contacting Apple to provide their information and demand that Apple return the value of the gift card,
9 and/or the 30% commission that Apple retains, to the victim of the gift card scam, and pursuing legal and
10 other action against Apple regarding its involvement and profiting from gift card scams.

11 Answer: Denied.

12 253. Apple inserted a deceptive provision in the Gift Card terms and conditions by attempting
13 to disclaim liability for lost or stolen Gift Cards. The disclaimer of liability is deceptive because it suggests
14 to victims that they are not legally entitled to the return of the stolen fund, and discourages them from
15 contacting Apple and providing actual knowledge of their particular scam.

16 Answer: Denied.

17 254. Under California Civil Code §1780(a), Plaintiffs and Class members seek damages,
18 injunctive and equitable relief for Apple's violations of the CLRA. Pursuant to California Civil Code
19 §§1782(a) & (d), on or about July 17, 2020, Plaintiffs provided Apple with notice and their intent to amend
20 the Complaint to seek damages if Apple did not cease its unfair and unlawful conduct, and Apple has
21 failed to do so.

22 Answer: Apple admits that Plaintiffs purport to seek damages, injunctive, and equitable relief
23 under section 1780(a) of the California Civil Code. Apple admits that Plaintiffs sent Apple notice,
24 purporting to comply section 1782 of the California Civil Code. Apple denies the remaining allegations
25 of Paragraph 254 of the Complaint and denies that Plaintiffs or any member of the putative class are
26 entitled to any relief whatsoever.

27 255. Plaintiffs and the Class therefore also request this Court enter such orders or judgments
28 necessary to restore to any person any money acquired as a result of Apple's unfair business practices, and

1 for such other relief, including attorneys’ fees and costs, as provided in California Civil Code §1780 and
2 the Prayer for Relief.

3 Answer: Apple admits that Plaintiffs purport to seek relief. Apple denies the remaining allegations
4 of Paragraph 255 of the Complaint and denies that Plaintiffs or any member of the putative class are
5 entitled to any relief whatsoever.

6 **SIXTH CAUSE OF ACTION**

7 **Deceptive Practices**

8 **in Violation of the California Unfair Competition Law**

9 **Cal. Bus. & Prof. Code §17200**

10 **(on Behalf of the Nationwide Class and the Contact Subclass)**

11 256. Plaintiffs hereby re-allege and incorporate all allegations in the Complaint, as though fully
12 set forth herein.

13 Answer: Apple admits that Plaintiffs purport to reallege and incorporate all allegations in the
14 Complaint as through set forth in full herein, and Apple repeats and incorporates by reference its answers
15 to the remainder of the Complaint as if set forth in full herein.

16 257. At all relevant times there was in full force and effect the California Unfair Competition
17 Law (“UCL”), Cal. Bus. & Prof. Code §17200, et seq., which prohibits, inter alia, “any unlawful, unfair,
18 or fraudulent business act or practice” and “unfair, deceptive, untrue, or misleading advertising.” Cal. Bus.
19 & Prof. Code §17200.

20 Answer: Paragraph 257 consists of a legal conclusion to which no response is required. To the
21 extent a response is required, Apple admits that Paragraph 257 of the Complaint accurately quotes section
22 17200 of the California Business & Professions Code.

23 258. Apple engaged in business acts and practices which are deceptive under the UCL, because
24 Apple fails to disclose to consumers on the packaging of the gift cards, on the gift cards themselves, on
25 its website, and directly to consumers who contact Apple, the extent and nature of the gift card scams, that
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1 Apple can identify and stop the scams, that Apple retains the proceeds from the gift card scams, and that
2 Apple is under a duty to return the stolen money to the victims if they contact Apple regarding the scam.

3 Answer: Paragraph 258 consists of a legal conclusion to which no response is required. To the
4 extent a response is required, Apple denies the allegations in Paragraph 258 of the Complaint.

5 259. Apple also engaged in deceptive acts and practices in violation of the CLRA by telling
6 victims that the money was redeemed and/or spent, and that there was nothing Apple could do, and thus
7 suggesting that the scammers purchased bona fide content from legitimate sellers, and that the money thus
8 no longer was in Apple's or the scammers' possession, but rather belonged to innocent third parties. When
9 Apple made these statements to victims, it did not disclose the material (and contrary) fact that Apple
10 retains the funds for weeks before paying it out to vendors, that those vendors are not innocent third parties
11 but rather the scammers themselves in the case of gift card scams.

12 Answer: Paragraph 259 consists of a legal conclusion to which no response is required. To the
13 extent a response is required, Apple denies the allegations in Paragraph 259 of the Complaint.

14 260. Apple knows that its representations and omissions are false and deceptive because when
15 victims contact Apple directly and report being the victim of a scam – and through other means that Apple
16 has to identify gift cards, Apple IDs, apps, and Apple Developers associated with scams – Apple has actual
17 knowledge that it is in possession of the victim's stolen property.

18 Answer: Denied.

19 261. Apple was under a duty to warn consumers of the scam and to disclose to Plaintiffs and
20 Class members that it retains a minimum of 30% of the scammed funds at all time, and that Apple can
21 identify the iTunes gift card, Apple ID, and Apple Developer accounts involved in a gift card scam, and
22 stop payment to scammers and return the money that victims of gift card scams paid because:

- 23 a. Apple fails to inform consumers, on the outer packaging of iTunes gift cards on the
24 cards themselves, once opened, of the existence, prevalence, or nature of iTunes
25 gift card scams, or to provide information sufficient to inform potential victims that
26 they are in the process of being scammed, such as stating that anyone seeking
27 payment via iTunes gift cards is a scammer;
- 28 b. Apple misrepresents that there is nothing that it can do if the iTunes gift card has
been redeemed;

- 1 c. Apple has exclusive knowledge of the methods of identifying scammers, stopping
2 payment to scammers, and returning the value of the iTunes gift card to victims;
3 and
4 d. Apple actively conceals the material facts that it can identify the scammers, stop
5 payment to scammers, and return the value of the iTunes gift card to the victim.

6 Answer: Paragraph 261 consists of a legal conclusion to which no response is required. To the
7 extent a response is required, Apple denies the allegations in Paragraph 261 of the Complaint.

8 262. The facts concealed or not disclosed by Apple to Plaintiffs and Class members are material
9 in that a reasonable consumer would have acted differently by, inter alia, not purchasing the gift card in
10 the first place, not providing the codes on the card to scammers, or failing that, contacting Apple and
11 providing the redemption code on the back of the iTunes gift card involved in the gift card scam,
12 demanding that Apple return the value of the Gift Card and/or the 30% commission that Apple retains to
13 the victim of the gift card scam, and pursuing legal, legislative and/or public relations action against Apple
14 regarding its involvement and profiting from gift card scams.

15 Answer: Denied.

16 263. Apple inserted a deceptive provision in the Gift Card terms and conditions by attempting
17 to disclaim liability for lost or stolen Gift Cards. The disclaimer of liability is deceptive because it suggests
18 to victims that they are not legally entitled to the return of the stolen fund, and discourages them from
19 contacting Apple and providing actual knowledge of their particular scam.

20 Answer: Denied.

21 264. As a direct and proximate result of Apple's deceptive practices, Plaintiffs and Class
22 members suffered injury and have paid monies that Apple has improperly retained from the iTunes gift
23 cards. Apple's participation in the gift card scams and concealment of its role and ability to track and stop
24 payments to scammers, aids and abets scammers, and perpetuates the scams.

25 Answer: Paragraph 264 consists of a legal conclusion to which no response is required. To the
26 extent a response is required, Apple denies the allegations in Paragraph 264 of the Complaint.
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1 269. Apple violated §17500 because the misrepresentations and omissions as set forth in this
2 Complaint were material and likely to deceive a reasonable consumer.

3 Answer: Paragraph 269 consists of a legal conclusion to which no response is required. To the
4 extent a response is required, Apple denies the allegations in Paragraph 269 of the Complaint.

5 270. Plaintiffs and the other Class members have suffered an injury in fact, including the loss of
6 money or property, as a result of Defendants' unfair, unlawful, and/or deceptive practices. Plaintiffs and
7 Class members relied on the misrepresentations and/or omissions of Apple. Defendants' representations
8 were untrue because Apple actually possesses the ability to identify the Apple ID and Apple Developer
9 accounts involved in iTunes gift card scams, stop payment to the scammers, and return the money to the
10 victims of the scam, including Plaintiffs and Class members. Had Plaintiffs and Class members known
11 this, they would have contacted Apple before Apple paid the scammers. Accordingly, Plaintiffs and the
12 Class members suffered injuries as a direct and proximate result of Apple's conduct.

13 Answer: Denied.

14 271. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct
15 of Defendants' businesses. Defendants' wrongful conduct is part of a pattern or generalized course of
16 conduct that is still being perpetuated and repeated, both in the state of California and nationwide.

17 Answer: Denied.

18 272. Plaintiffs, individually and on behalf of all the other Class members, request that this Court
19 enter such orders or judgements as may be necessary to enjoin Apple from continuing its unfair, unlawful,
20 and/or deceptive practices and to restore to Plaintiffs and Class members any money Apple acquired,
21 including restitution and/or disgorgement, and for such other relief set forth below.

22 Answer: Apple admits that Plaintiffs purport to seek relief. Apple denies the remaining allegations
23 of Paragraph 272 of the Complaint and denies that Plaintiffs or any member of the putative class are
24 entitled to any relief whatsoever.

EIGHTH CAUSE OF ACTION

Receiving, Retaining, Withholding or Concealing Stolen Property

Cal. Penal Code §496

(on Behalf of the Nationwide Class and the Contact Subclass)

273. Plaintiffs hereby re-allege and incorporate all allegations in the Complaint, as though fully set forth herein.

Answer: Apple admits that Plaintiffs purport to reallege and incorporate all allegations in the Complaint as through set forth in full herein, and Apple repeats and incorporates by reference its answers to the remainder of the Complaint as if set forth in full herein.

274. California Penal Code §496 declares unlawful for any “person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, [to] conceal[], sell[], withhold[], any property from the owner” Cal. Penal Code §496(a).

Answer: Paragraph 274 of the Complaint consists of a legal conclusion to which no response is required. To the extent a response is required, Kellogg admits that Paragraph 274 of the Complaint accurately quotes section 496 of the California Penal Code.

275. California Penal Code §496 also creates a private right of action for “any person who has been injured by a violation of subdivision (a).” Cal. Penal Code §496(c).

Answer: Paragraph 275 of the Complaint consists of a legal conclusion to which no response is required. To the extent a response is required, Kellogg admits that Paragraph 275 of the Complaint accurately quotes section 496 of the California Penal Code.

276. At all relevant times, Plaintiffs and Class members were the rightful owners of the money used to purchase the iTunes gift cards, which was converted to stored value in the iTunes gift cards.

Answer: Paragraph 276 of the Complaint consists of a legal conclusion to which no response is required. To the extent a response is required, Apple denies the allegations of Paragraph 276 of the Complaint.

277. Plaintiffs’ and Class members’ property was stolen or obtained in a manner constituting theft or extortion by the scammers. The scammers, through false representations and/or false pretenses

1 defrauded Plaintiffs and Class members, convincing them to purchase iTunes gift cards and provide the
2 codes on the back of the cards to the scammers.

3 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
4 277 of the Complaint and on that basis denies those allegations.

5 278. Apple comes into possession of Plaintiffs' and Class members' property.

6 Answer: Paragraph 278 of the Complaint consists of a legal conclusion to which no response is
7 required. To the extent a response is required, Apple denies the allegations of Paragraph 278 of the
8 Complaint.

9 279. Apple has actual knowledge that it is in possession of Plaintiffs' and Class members' stolen
10 property when victims of iTunes gift card scams contact Apple, advise Apple that they were the victim of
11 a scam, and provide Apple with the numbers on the back of the gift card. Additionally, on information and
12 belief, Apple possesses other means and technology to determine which iTunes gift cards have been
13 redeemed by scammers, the identity of the Apple ID and Apple Developer accounts involved in gift card
14 scams, and the identity of victims of gift card scams.

15 Answer: Denied.

16 280. Apple wrongfully conceals the location of Plaintiffs' and Class members' property by
17 informing them that the gift card funds have been spent, despite the fact that Apple does not pay Apple
18 Developers for purchases made with iTunes gift cards until approximately 45 days after the purchase.
19 Additionally, Apple conceals that, when it freezes the gift cards and/or Apple ID accounts associated with
20 gift card scams, it retains 100% of the victim's property.

21 Answer: Denied.

22 281. Apple wrongfully retains the property stolen from Plaintiffs and Class members by refusing
23 to return the property that rightfully belongs to Plaintiff and Class members. After Apple transfers the
24 money to Apple Developers, Apple continues to wrongfully retain possession of Plaintiffs' and Class
25 members' property by retaining the 30% commission on purchased made with the funds from the iTunes
26 gift cards, and sometimes retaining 100% of the stolen funds.

27 Answer: Denied.
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1 282. As a direct and proximate result of Apple’s conduct, Plaintiffs and Class members suffered
2 damages.

3 Answer: Denied.

4 **NINTH CAUSE OF ACTION**

5 **Conversion**

6 **(on Behalf of the Nationwide Class and the Contact Subclass)**

7 283. Plaintiffs hereby re-allege and incorporate all allegations in the Complaint, as though fully
8 set forth herein.

9 Answer: Apple admits that Plaintiffs purport to reallege and incorporate all allegations in the
10 Complaint as through set forth in full herein, and Apple repeats and incorporates by reference its answers
11 to the remainder of the Complaint as if set forth in full herein.

12 284. At all relevant times, Plaintiffs and Class members had a right to possession in, and were
13 the rightful owners of, the money used to purchase the iTunes gift cards, which was converted to stored
14 credit in the iTunes gift cards. Plaintiffs’ and Class members’ property was used to purchase iTunes gift
15 cards under false pretenses.

16 Answer: Apple lacks sufficient knowledge or information to admit the allegations in Paragraph
17 284 of the Complaint and on that basis denies those allegations.

18 285. Apple has actual knowledge that it is in possession of Plaintiffs’ and Class members’
19 property when victims of iTunes gift card scams contact Apple, advise Apple that they were the victim of
20 a scam, and provide Apple with the numbers on the back of the gift card. Additionally, on information and
21 belief, Apple possesses other means and technology to determine which iTunes gift cards have been
22 redeemed by scammers, the identity of the Apple ID and Apple Developer accounts involved in gift card
23 scams, and the identity of victims of gift card scams.

24 Answer: Denied.

25 286. Apple substantially interfered with Plaintiffs’ and Class members’ property by knowingly
26 and intentionally by retaining a commission on all purchased made with the stolen property, and refusing
27
28

1 to return Plaintiffs' and Class members' property. Apple permanently deprived Plaintiffs and Class
2 members from the use and enjoyment of their property.

3 Answer: Paragraph 286 consists of a legal conclusion to which no response is required. To the
4 extent a response is required, Apple denies the allegations in Paragraph 250 of the Complaint.

5 287. Plaintiffs and Class members who contacted Apple demanded that Apple return their
6 property. Apple denied the demands to return the property. Moreover, it was unnecessary for Plaintiffs and
7 Class members to demand return of the property as, on information and belief, Apple possesses other
8 means and technology to determine which iTunes gift cards have been redeemed by scammers, the identity
9 of the Apple ID and Apple Developer accounts involved in gift card scams, and the identity of victims of
10 gift card scams.

11 Answer: Denied.

12 288. Plaintiffs and Class members did not consent for Apple to exercise dominion or control or
13 to retain their property.

14 Answer: Paragraph 288 consists of a legal conclusion to which no response is required. To the
15 extent a response is required, Apple denies the allegations in Paragraph 288 of the Complaint.

16 289. Apple's conduct was a substantial factor in the harm caused to Plaintiffs and Class
17 members.

18 Answer: Paragraph 289 consists of a legal conclusion to which no response is required. To the
19 extent a response is required, Apple denies the allegations in Paragraph 289 of the Complaint.

20
21 **TENTH CAUSE OF ACTION**

22 **Aiding and Abetting Intentional Torts**

23 **(on Behalf of the Nationwide Class and the Contact Subclass)**

24 290. Plaintiffs hereby re-allege and incorporate all allegations in the Complaint, as though fully
25 set forth herein.

26 Answer: Apple admits that Plaintiffs purport to reallege and incorporate all allegations in the
27 Complaint as through set forth in full herein, and Apple repeats and incorporates by reference its answers
28

1 to the remainder of the Complaint as if set forth in full herein. Answering further, Apple responds that the
2 Court has dismissed Plaintiffs' claim for aiding and abetting intentional torts with prejudice.

3 291. The gift card scams that were perpetrated on Plaintiffs and Class members by the scammers
4 constitute intentional torts, including conversion of 70% of the stolen funds to their own use, fraud, and
5 false pretenses.

6 Answer: Paragraph 291 consists of a legal conclusion to which no response is required. To the
7 extent a response is required, Apple denies the allegations in Paragraph 291 of the Complaint. Answering
8 further, Apple responds that the Court has dismissed Plaintiffs' claim for aiding and abetting intentional
9 torts with prejudice.

10 292. Apple had knowledge of the tortious acts perpetrated on Plaintiffs and Class members by
11 means of, including but not limited to, Plaintiffs and Class members contacting Apple to inform them that
12 they were a victim of a gift card scam, providing Apple with the redemption codes on iTunes gift cards
13 that were involved in scams, and Apple's internal processes and technology that are able to, and do,
14 identify iTunes gift cards, Apple IDs, and Apple Developers that are associated with gift card scams before
15 Apple pays the scammers or decides to retain the full proceeds of a given scam for itself.

16 Answer: Denied. Answering further, Apple responds that the Court has dismissed Plaintiffs' claim
17 for aiding and abetting intentional torts with prejudice.

18 293. Apple provides substantial assistance to the scammers, and ratifies and conceals the
19 wrongful and unlawful conduct perpetrated upon victims of scams involving iTunes gift cards, including
20 Plaintiffs and Class members, by failing to suspend or cancel iTunes gift cards that are involved in scams,
21 failing to suspend or terminate Apple IDs accounts involved in gift card scams, permitting Apple ID
22 accounts involved in gift cards scams to make purchases on iTunes, in the App Store, or in apps,
23 transferring payment to Apple Developer accounts that were involved in scams, failing to suspend or
24 terminate Apple Developer accounts that are involved in gift cards scams, and retaining for its own benefit
25 commissions from purchases on iTunes or in the App Store that were made with iTunes gift cards from
26 scams perpetrated on Plaintiffs and Class members.

27 Answer: Denied. Answering further, Apple responds that the Court has dismissed Plaintiffs' claim
28 for aiding and abetting intentional torts with prejudice.

1 gift cards, Apple ID accounts, Apple Developer accounts, knowingly making payments to Apple
2 Developer accounts involved in gift card scams, and failing to return the money to Plaintiffs and the Class.

3 Answer: Paragraph 298 of the Complaint consists of a legal conclusion to which no response is
4 required. To the extent a response is required, Apple denies the allegations of Paragraph 298 of the
5 Complaint.

6 299. Plaintiffs and Class members lack an adequate remedy at law.

7 Answer: Paragraph 299 of the Complaint consists of a legal conclusion to which no response is
8 required. To the extent a response is required, Apple denies the allegations of Paragraph 299 of the
9 Complaint.

10 300. Apple purports to bind Plaintiffs and Class members to the terms and conditions set forth
11 on the back of iTunes gift cards and the Online Terms and Conditions on Apple’s website. The back of the
12 iTunes gift cards provides, in part: “Card will not be replaced if lost, stolen, or used without permission.
13 Use of card constitutes acceptance of terms; see apple.com/us/go/legal/gc.” The Online Terms and
14 Conditions provide, in part, that: “Neither Issuer nor Apple is responsible for lost or stolen [iTunes gift
15 cards] or Content Codes.”

16 Answer: Apple admits that the phrases quoted in Paragraph 301 of the Complaint appeared on
17 certain versions of Apple gift cards and certain versions of Apple’s online terms. Apple denies the
18 remaining allegations of Paragraph 300 of the Complaint.

19 301. Apple cannot, as a matter of law, disclaim or assign the liability of loss, conversion, or
20 destruction of the balance of iTunes gift cards when Apple knows that the iTunes gift cards were purchased
21 as a result of wrongful and unlawful conduct, Apple has knowledge of the gift card scams perpetrated on
22 Plaintiffs and Class members, Apple aids and abets the gift card scams, and Apple knowingly retains
23 profits from gift card scams perpetrated on Plaintiffs and Class members. Apple cannot, as a matter of law,
24 disclaim or assign the liability of loss for its own criminal conduct, including its violation of California
25 Penal Code §496.

26 Answer: Paragraph 301 of the Complaint consists of a legal conclusion to which no response is
27 required. To the extent a response is required, Apple denies the allegations in Paragraph 301 of the
28 Complaint.

1 **JURY DEMAND**

2 Plaintiffs, on behalf of themselves and the putative Class demand a trial by jury on all issues so
3 triable.

4 Answer: Apple admits that Plaintiffs are entitled to a trial by jury on all issues so triable, and it
5 likewise demands a trial by jury on all issues so triable.

6
7 **APPLE’S STATEMENT OF DEFENSES**

8 The following statement of defenses is not intended to characterize any particular defense as
9 “affirmative,” nor to specify which party bears the burden of proof or persuasion on a particular issue.

10 **FIRST DEFENSE (FAILURE TO STATE A CLAIM)**

11 The Complaint fails to state a claim on which relief can be granted because the representations on
12 Apple’s gift cards were accurate and were not false or misleading. Further, the Complaint fails to allege
13 any facts supporting Plaintiffs’ allegations that they suffered any damages as a result of any act or omission
14 on the part of Apple.

15 **SECOND DEFENSE (LACK OF RIGHT TO PROPERTY)**

16 Plaintiffs’ claims are barred, in whole or in part, because Plaintiffs intentionally gave up their
17 rights to own or possess gift cards by providing the gift cards to third parties.

18 **THIRD DEFENSE (APPLE POSSESSES NO PROPERTY)**

19 Plaintiffs’ claims are barred, in whole or in part, because Apple has not interfered and is not
20 interfering with Plaintiffs’ right to property. Apple holds a portion of the dollars associated with gift cards,
21 but the owner of the Apple account has title over the property. Even if Apple forced the transfer of credit
22 from the account balance of an alleged fraudster’s Apple ID to a Plaintiff’s Apple ID, Plaintiffs would not
23 be entitled to a cash refund under sections 1749.5 and 1749.6 of the California Civil Code.

24 **FOURTH DEFENSE (LACK OF KNOWLEDGE THAT PROPERTY WAS STOLEN)**

25 Plaintiffs’ claims are barred, in whole or in part, because Apple did not have actual knowledge that
26 property was stolen.

1 **FIFTH DEFENSE (FAULT OF OTHERS)**

2 Plaintiffs' claims are barred, in whole or in part, because third-parties interfered with Plaintiffs'
3 property right in Apple gift cards, not Apple. Plaintiff's damages, if any, resulted from the criminal acts
4 of third-party fraudsters who were beyond Apple's control and whose conduct breaks the chain of
5 causation between Apple's alleged acts and/or omissions and Plaintiff's alleged damages.

6 **SIXTH DEFENSE (CONSENT TO CONTROL)**

7 Plaintiffs' claims are barred, in whole or in part, because Plaintiffs consented to Apple's
8 management of redeemed funds. At all relevant times, Apple disclosed that gift cards are redeemed as
9 store credit to an Apple account.

10 **SEVENTH DEFENSE (NO RIGHT TO UNAUTHORIZED CHARGES)**

11 Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have no right to funds spent on
12 App Store or iTunes products or services without showing that the App developer perpetrated the
13 fraudulent scheme.

14 **EIGHTH DEFENSE (ESTOPPEL)**

15 Plaintiffs' claims are barred, in whole or in part, because Plaintiffs intentionally provided gift card
16 redemption codes to alleged fraudsters. By such conduct, representations, and omissions, Plaintiffs are
17 equitably estopped to assert a claim for relief against Apple based on Apple's presumptions that Plaintiffs
18 provided gift cards to intended beneficiaries or that the Apple ID accounts that redeemed the gift cards
19 are legitimate, or based on any requirements by Apple that Plaintiffs rebut the presumption prior to Apple
20 taking action the Apple ID account.

21 **NINTH DEFENSE (CAUSATION)**

22 Claims are barred, in whole or in part, because Apple's conduct was not a substantial factor in
23 causing Plaintiffs harm. Plaintiffs harm resulted from the Plaintiffs intentionally providing gift card
24 redemption codes to third-parties and failing to show right to own or possess gift cards. The general
25 purpose of gift cards is for customers to gift the cards to another person, and Apple has appropriate
26 measures in place to ensure ownership and fraud prior to taking action against other customers or
27 developers.

1 **TENTH DEFENSE (DISCLAIMER/WAIVER)**

2 Plaintiffs' claims are barred, in whole or in part, because Plaintiffs knew or should have known
3 that the gift cards could be stolen by third parties and that they would not be entitled to a refund due to
4 theft. At all relevant times, Apple disclaimed liability for any loss or damage resulting from lost or stolen
5 cards or for use without permission. Accordingly, at all relevant times, Plaintiffs knew that they would
6 not be entitled to a refund when they were defrauded out of gift card funds, or they ignored information
7 on packaging that disclosed this fact.

8 **ELEVENTH DEFENSE (LACK OF STANDING TO CHALLENGE DISCLAIMER/WAIVER)**

9 Plaintiffs lack standing to challenge the disclaimer because they cannot establish that they lost
10 money or property as a result of the disclaimer.

11 **TWELFTH DEFENSE (NO DUTY)**

12 Plaintiffs' claims are barred, in whole or in part, because, even though Apple tries to root out
13 fraudulent developers, Apple has no duty to identify fraudsters or victims. Apple instead relies on victims
14 to contact law enforcement. Moreover, Apple has no duty to claw back funds spent and either remitted or
15 to be remitted to developers for their applications based solely on customer complaints of fraud.

16 **THIRTEENTH DEFENSE (FAILURE TO MITIGATE)**

17 Plaintiffs' claims are barred, in whole or in part, because, Plaintiffs failed to mitigate damages, if
18 any. Plaintiffs each went out and purchased gift cards at retailers based on interactions with alleged
19 fraudsters, provided gift card redemption codes to the alleged fraudsters, and knew or suspected that they
20 were defrauded shortly thereafter. Plaintiffs each should have taken steps to ensure that appropriate
21 authorities were informed and should have promptly contacted Apple, explaining clearly that Plaintiff was
22 the victim of a gift card scam.

23 **FOURTEENTH DEFENSE (RATIFICATION)**

24 Plaintiffs' claims are barred, in whole or in part, because Plaintiffs ratified the alleged misconduct.

25 **FIFTEENTH DEFENSE (ADEQUATE REMEDY AT LAW)**

26 Plaintiffs' claims are barred, in whole or in part, because the injury or damage suffered by
27 Plaintiffs, if any, would be adequately compensated in an action at law for damages. Accordingly,
28 Plaintiffs have a complete and adequate remedy at law and are not entitled to seek equitable relief.

1 **SIXTEENTH DEFENSE (STATUTE OF LIMITATIONS/LACHES)**

2 Plaintiffs’ claims are barred to the extent that they seek damages beyond the four-year statute of
3 limitations applicable to Plaintiffs’ claims. Plaintiffs have not pleaded any facts establishing an entitlement
4 to equitable tolling. Additionally, Plaintiffs’ claims are barred because of Plaintiffs’ excessive delay in
5 bringing this action.

6 **SEVENTEENTH DEFENSE (NO GOODS OR SERVICES)**

7 Plaintiff’s claim under the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, is barred
8 because the Apple gift cards at issue are not “goods” or “services” within the meaning of section 1761(a)
9 of the California Civil Code.

10 **EIGHTEENTH DEFENSE (SETOFF)**

11 Plaintiffs’ claims are barred, in whole or in part, to the extent that they have already received a
12 refund, credit, or any other form of reimbursement for the damages they claim to have incurred.

13 **NINETEENTH DEFENSE (RELEASE)**

14 Plaintiffs’ claims are barred to the extent that they have released their claims.

15 **TWENTIETH DEFENSE (RESERVATION OF ADDITIONAL DEFENSES)**

16 Apple hereby reserves the right to amend its Answer to raise additional defenses as they become
17 available or apparent to Apple through discovery in this matter or otherwise.

18
19 DATED: June 24, 2022

JENNER & BLOCK LLP

20 By: s/ Kate T. Spelman
21 Attorney for Defendants
22 Apple Inc. and Apple Value Services, LLC
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