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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CARL BARRETT, et al.,

Plaintiffs,

v.

APPLE, INC., et al.,

Defendants.

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

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT; CERTIFYING
SETTLEMENT CLASS; AND
APPROVING FORM AND CONTENT
OF CLASS NOTICE**

WHEREAS, Plaintiffs Michel Polston, Nancy Martin, Michael Rodriguez, Maria Rodriguez, and Andrew Hagene (collectively, “Plaintiffs”) and Defendants Apple, Inc. and Apple Value Services, LLC (collectively, “Defendants” or “Apple,” and with Plaintiffs, the “Parties”) entered into a Settlement Agreement (ECF No. 266-2) on March 4, 2024, which sets forth the terms and conditions for a proposed resolution of this litigation and for its dismissal with prejudice;

WHEREAS, Plaintiffs have filed a Motion for preliminary approval of the Settlement Agreement (ECF No. 266);

WHEREAS, this Court has reviewed the Settlement Agreement entered into by the Parties, all exhibits thereto, the record in this case, and the Parties’ arguments;

WHEREAS, this Court preliminarily finds, for the purpose of settlement only, that the Settlement Class meets all the prerequisites of Federal Rule of Civil Procedure 23 for class certification, including numerosity, commonality, typicality, predominance of common issues,

1 superiority, and that the Plaintiffs and Plaintiffs' Counsel are adequate representatives of the
2 Settlement Class;

3 **GOOD CAUSE APPEARING, PLAINTIFFS' MOTION IS GRANTED. IT IS**
4 **HEREBY ORDERED AS FOLLOWS:**

5 1. All terms and definitions used herein have the same meanings as set forth in the
6 Settlement Agreement.

7 **Preliminary Approval of Settlement and**
8 **Certification of Settlement Class for Purposes of Settlement Only**

9 2. The Settlement is hereby preliminarily approved as fair, reasonable, and adequate
10 such that notice thereof should be given to members of the Settlement Class.

11 3. Under Federal Rule of Civil Procedure 23(b)(3), the Settlement Class, as set forth
12 in Section HH of the Settlement Agreement and defined as follows, is preliminarily certified for
13 the purpose of settlement only:

14 All persons who purchased an Apple App Store & iTunes gift card (an "Eligible
15 Gift Card") in the United States and its territories from January 1, 2015 to July 31,
16 2020, provided the redemption code of such Eligible Gift Card to a third party
17 unknown to them who sought the code under false pretenses, and did not receive a
full refund or other form of compensation for their complete losses from Apple or
any third party.

18 Excluded from the Class are Defendants, their parents, subsidiaries, affiliates, officers, directors,
19 and employees; any entity in which Defendants have a controlling interest; all employees of any
20 law firm involved in prosecuting or defending this litigation, as well as their immediate family
21 members; and all judges assigned to hear any aspect of this litigation, as well as their staff and
22 immediate family members. Also excluded from the Class are Settlement Class Members who
23 timely and validly request exclusion.

24 4. If the Settlement Agreement is not finally approved by this Court, or if such final
25 approval is reversed or materially modified on appeal by any court, this Order (including but not
26 limited to the certification of the class) shall be vacated, null and void, and of no force or effect,
27 and Plaintiffs and Apple shall be entitled to make any argument for or against certification for
28 litigation purposes.

1 5. Plaintiffs are appointed as adequate representatives of the Settlement Class. Nyran
2 Rose Rasche and Nikolas Hagman of Cafferty Clobes Meriwether & Sprengel LLP, Anthony Fata
3 and Sarah Flohr of Kirby McInerney LLP, and Joseph Guglielmo and Amanda Rolon of
4 Scott+Scott, together with their law firms, are hereby appointed as Class Counsel to represent the
5 proposed Settlement Class.

6 **Notice to the Settlement Class**

7 6. The Court approves the Email Notice, Mail Notice, Publication Notice, and
8 Website Notice, with modifications as indicated during the May 16, 2024 hearing, which are
9 attached to the Settlement Agreement as Exhibits 1 and 4-6, respectively, and finds that their
10 dissemination in the manner set forth in the Settlement Agreement substantially meets the
11 requirements of Federal Rule of Civil Procedure 23 and due process, constitutes the best notice
12 practicable under the circumstances, and is reasonably calculated, under the circumstances, to
13 apprise members of the Settlement Class of the pendency of the Action, the effect of the proposed
14 Settlement (including the releases contained therein), the anticipated motion for attorneys' fees,
15 costs and service awards, and their rights to participate in, opt out of, or object to any aspect of the
16 proposed Settlement.

17 7. By May 31, 2024, Apple shall, for the purpose of facilitating the proposed Notice
18 Plan, provide to the Settlement Administrator the names, email addresses, and physical addresses
19 for all Settlement Class Members whose records it can locate through reasonable efforts.

20 8. By the Notice Date of July 15, 2024, the Settlement Administrator shall commence
21 the transmission of the Email Notice, the mailing of the Mail Notice, the publication of the
22 Publication Notice, and the publication of the Website Notice pursuant to the terms of the
23 Settlement Agreement. The Settlement Website shall contain case-related documents including,
24 but not limited to, the operative complaint and answer to that complaint, the Settlement Agreement,
25 the Website Notice, the Preliminary Approval Order, Plaintiffs' forthcoming motion for attorneys'
26 fees, costs, and service awards, a set of frequently asked questions, information on how to submit
27 an Objection or request exclusion, and contact information for Class Counsel, Apple Counsel, and
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1 the Settlement Administrator.

2 **Settlement Administration**

3 9. The Court appoints KCC Class Action Services, LLC (“KCC”) to serve as the
4 Settlement Administrator. KCC shall supervise and administer the Notice Plan, establish and
5 operate the Settlement Website, administer the claims processes, distribute payments according to
6 the processes and criteria set forth in the Settlement Agreement, and perform any other duties that
7 are reasonably necessary and/or provided for in the Settlement Agreement.

8 10. All reasonable costs of notice and costs of administering the Settlement shall be
9 paid by Apple from the Settlement Amount as contemplated by paragraph 6.5 of the Settlement
10 Agreement. No later than June 15, 2024, Defendants shall make a payment of \$977,500.00 from
11 the Settlement Amount to the Settlement Administrator. In their motion seeking final approval of
12 the Settlement, Class Counsel shall petition the Court for disbursement of only those funds needed
13 to pay costs and expenses related to the settlement notice and administration functions to be
14 performed by the Settlement Administrator, including the claims administration process.

15 11. Settlement Class Members who wish to make a Claim must do so by submitting a
16 claim form online or by mail by the Claim Deadline of October 15, 2024, in accordance with the
17 instructions contained therein. The Settlement Administrator shall determine the eligibility of
18 Claims submitted and allocate the Settlement Funds in accordance with the Settlement Agreement.

19 12. Settlement Class Members who wish to object to the Settlement must submit a
20 written objection and supporting papers that: (a) clearly identifies the case name and number; (b)
21 includes the objector’s full name, address, telephone number, email address, and personally
22 executed signature; (c) includes the full name, address, telephone number, and email address of
23 the objector’s attorney (if the objector is represented by counsel); (d) states the grounds for the
24 objection; (e) includes any reasonably available proof that the objector is a Settlement Class
25 Member; and (f) is submitted to the Court by (i) ECF filing, (ii) mailing to the Clerk of Court for
26 the United States District Court for the Northern District of California, Robert F. Peckham Federal
27 Building & United States Courthouse, 280 South 1st Street, San Jose, CA 95113, or (iii) filing in
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1 person at any location of the United States District Court for the Northern District of California so
2 that the objection is filed or postmarked on or before the Objection and Exclusion Deadline of
3 October 15, 2024.

4 13. Any putative member of the Settlement Class who seeks to be excluded from the
5 Settlement Class must submit a letter requesting exclusion with the following: (a) the name and
6 contact information of the individual requesting the exclusion, including address, telephone
7 number, email address, and personally executed signature; (b) a statement that the individual
8 wishes to opt out of the Settlement Class in *Barrett v. Apple Inc.*, No. 5:20-cv-04812-EJD; and (c)
9 any reasonably available proof that the individual is a Settlement Class Member. The opt-out must
10 be mailed to the address specified on the Settlement Website by the Objection and Exclusion
11 Deadline of October 15, 2024. Any member of the Settlement Class who does not submit a valid
12 and timely request for exclusion shall be bound by the final judgment dismissing the action on the
13 merits with prejudice.

14 **Final Approval Hearing**

15 14. The Final Approval Hearing shall be held by the Court on December 12, 2024,
16 beginning at 9:00 a.m., to determine whether the requirements for certification of the Settlement
17 Class have been met; whether the proposed settlement of the Action on the terms set forth in the
18 Settlement should be approved as fair, reasonable, and adequate, and in the best interest of the
19 Settlement Class Members; whether Class Counsel's motion for attorneys' fees, costs and service
20 awards should be approved; and whether final judgment approving the Settlement and dismissing
21 the Action on the merits with prejudice should be entered. The Final Approval Hearing may,
22 without further notice to the Settlement Class Members, be continued or adjourned by order of the
23 Court.

24 15. By November 12, 2024, Class Counsel shall file papers in support of the Motion
25 for the Final Approval Order and Final Judgment.

26 16. By September 10, 2024, Class Counsel shall file all papers in support of their
27 forthcoming motion for attorneys' fees, costs and service awards.

1 17. By December 2, 2024, Class Counsel shall file a response to any Objections
2 received, and the Parties shall file any additional papers in support of the Motion for the Final
3 Approval Order and Final Judgment.

4 18. Objections by any Settlement Class Member to the fairness, reasonableness, or
5 adequacy of the Settlement, the request for Attorneys' Fees and Costs, or the request for Plaintiffs'
6 Service Awards, shall be considered by the Court at the Final Approval Hearing only if such
7 Settlement Class Member files with the Court a notice of his or her objection, submits documentary
8 proof that he or she is a Settlement Class Member, and states the basis for such objection, as
9 required by paragraph 12, above, so that the objection is filed or postmarked on or before October
10 15, 2024.

11 19. Plaintiffs' Counsel and Apple Counsel are hereby authorized to utilize all
12 reasonable procedures in connection with the administration of the Settlement, which are not
13 materially inconsistent with either this Order or the Settlement Agreement.

14 **IT IS SO ORDERED.**

15 Dated: May 16, 2024



EDWARD J. DAVILA
United States District Judge