

1 JOSEPH P. GUGLIELMO (*pro hac vice*)
2 **SCOTT+SCOTT ATTORNEYS AT LAW LLP**
3 230 Park Ave., 24th Floor
4 New York, NY 10169
5 Telephone: (212) 223-6444
6 Facsimile: (212) 223-6334
7 jguglielmo@scott-scott.com

8 *Co-Lead Class Counsel*

9 [Additional Counsel Listed on Signature Page.]

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

13 CARL BARRETT, *et al.*,

14 Plaintiffs,

15 v.

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

17 Defendants.

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

**PLAINTIFFS' RESPONSE IN FURTHER
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Dept.: Courtroom 4 – 5th Floor
Judge: Honorable Edward J. Davila
Date: December 12, 2024
Time: 9:00 a.m.

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1 Plaintiffs Michel Polston, Nancy Martin, Maria Rodriguez, and Andrew Hagene and Court-
2 appointed Class Counsel¹ respectfully submit this response in further support of Plaintiffs’ Motion
3 for Final Approval of Class Action Settlement (“Motion for Final Approval”) (ECF No. 282), and
4 Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards (“Motion for Fees,
5 Expenses, and Service Awards”) (ECF Nos. 273).

6 **I. INTRODUCTION**

7 Plaintiffs respectfully submit this response to provide the Court with updated information
8 regarding requests for exclusion, objections to the Settlement, and claims submissions; to provide
9 the Court with Class Counsel’s updated lodestar and expenses; and to provide the Court with
10 updated information on the fees and costs incurred by the Court-appointed Settlement
11 Administrator. As set forth below, this updated information further demonstrates that the
12 Settlement is fair, reasonable, and adequate under Rule 23(e) and that Plaintiffs’ requested
13 attorneys’ fees and the requested Service Awards are fair and reasonable.

14 In support of this Response, Plaintiffs submit the Supplemental Joint Declaration of Joseph
15 P. Guglielmo, Nyran Rose Rasche, and Anthony F. Fata (“Supp. Joint Decl.”), the respective
16 Supplemental Declarations of Scott+Scott Attorneys at Law LLP, Cafferty Clobes Meriwether &
17 Sprengel LLP, and Kirby McInerney LLP, and the Declaration of Janeth Antonio in Support of
18 Final Approval (“Antonio Decl.”).

19 **II. THE REACTION OF THE CLASS AND THE EXPECTED PAYMENTS TO**
20 **CLASS MEMBERS CONTINUE TO SUPPORT THE RELIEF REQUESTED**

21 **A. The Reaction to the Settlement Continues to Support Final Approval**

22 Plaintiffs are pleased to report that no late-filed objections or late-filed opt-outs have been
23 received, and thus that no Settlement Class Member has objected to the Settlement, nor has any

24 ¹ Unless otherwise indicated, defined terms have the meanings set forth in the Settlement
25 Agreement and Release (“Settlement” or “Settlement Agreement”). The Settlement Agreement
26 and its exhibits are attached as Exhibit A to the Joint Declaration of Nyran Rose Rasche, Anthony
27 F. Fata, and Joseph P. Guglielmo in Support of Plaintiffs’ Motion for Preliminary Approval of
28 Proposed Settlement, filed on April 2, 2024. ECF No. 266-2.

1 Settlement Class Member objected to Plaintiffs' Motion for Fees, Expenses, and Service Awards.²
2 Plaintiffs are also pleased to report that, since the Motion for Final Approval was filed on
3 November 12, 2024, the Settlement Administrator, KCC, has continued to receive and respond to
4 inquiries and has continued to receive claim forms from both known and unknown Settlement
5 Class Members. *See* Antonio Decl. (updating information on web views, phone calls, and other
6 contacts from Settlement Class members, and reporting receipt of 158 late-filed known claims and
7 15,232 late-filed unknown claims).³ Indeed, the response by Settlement Class Members to the
8 Settlement has been robust and universally positive, with approximately 64,000 total claims
9 submitted to the Settlement Administrator and only one Settlement Class Member requesting
10 exclusion from the Settlement. The continued absence of objectors and the single opt-out, all while
11 additional, valid claims were received, reinforce the appropriateness of final approval here. *See*
12 *Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011 WL 1230826, at *11 (N.D. Cal.
13 Apr. 1, 2011) ("Generally, 'the absence of a large number of objections to a proposed class action
14 settlement raises a strong presumption that the terms of a proposed class action settlement are
15 favorable to the class members.'")⁴; *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852
16 (N.D. Cal. 2010) (4.86% opt-out rate supported approval of settlement); *Barcia v. Contain-A-Way*,

18 ² The only opposition to any aspect of the relief requested came from Apple, which objected
19 to the percentage of the common fund sought by Class Counsel as attorneys' fees and sought a
20 reduction of the requested Service Awards for two of the four named Plaintiffs. ECF No. 275.
21 Plaintiffs responded, arguing, *inter alia*, that Apple lacks standing to object and that the requested
22 fees and Service Awards are appropriate under Ninth Circuit law. *See* ECF No. 279.

23 ³ To the extent KCC receives additional claim forms postmarked by the October 31, 2024
24 claims filing deadline, KCC will consider them to be timely. Plaintiffs request that the Court
25 permit consideration and approval by the Settlement Administrator of any late-filed claims that
26 were postmarked or submitted by November 14, 2024.

27 ⁴ Unless otherwise indicated, citations are omitted and emphasis is added.

1 *Inc.*, No. 07cv938–IEG–JMA, 2009 WL 587844, at *4 (S.D. Cal. Mar. 6, 2009) (“The absence of
2 any objector strongly supports the fairness, reasonableness, and adequacy of the settlement.”); *In*
3 *re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 320 (N.D. Cal. 2018) (approving settlement
4 with 1.8% claims rate and finding that low rates of objections and opt-outs are “indicia of the
5 approval of the class”).

6 **B. Settlement Class Members Will Recover 100% of Their Damages**

7 KCC continues to engage in the ongoing claims validation process, and while the number
8 of valid claims is not yet known, KCC is able to confirm the earlier expectation that each
9 Settlement Class Member who submitted a valid claim will recover 100% of his or her losses.
10 Antonio Decl. ¶12. The recovery of 100% of each Settlement Class Members’ claimed losses is
11 an exceptional result for victims who, absent this Settlement, may not have recovered anything.
12 By any measure, the Settlement Class response and the fact that valid claimants will recover 100%
13 of the amounts they lost support the conclusion that the Settlement is fair, reasonable, and adequate
14 under Rule 23(e). *See Soule v. Hilton Worldwide, Inc.*, No. 13 Civ. 0652, 2015 WL 12827769, at
15 *1 (D. Haw. Aug. 25, 2015) (granting final approval where the settlement allowed “the class to
16 recover 100% of their potential damages”); *see also Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d
17 566, 575 (9th Cir. 2004) (assessing the reaction of the settlement as a factor to consider at final
18 approval). Indeed, based on Class Counsel’s experience in the field and knowledge regarding the
19 novel factual and legal theories at issue in this case, as well as the substantial risk presented by
20 continued litigation, it is Class Counsel’s opinion that the proposed Settlement is not only fair,
21 reasonable, and adequate, but is also an exceptional result that is unquestionably in the best
22 interests of the Settlement Class Members. Supp. Joint. Decl. ¶ 14; *see also Vizcaino v. Microsoft*
23 *Corp.*, 290 F.3d 1043, 1047-48 (9th Cir. 2002) (the results achieved are a factor to consider in
24 approving attorneys’ fees in a settled class action).

25 **C. KCC’s Fees and Expenses Should be Approved**

26 Since the filing of the Motion for Final Approval, KCC has continued to administer the
27 Settlement, and incur out-of-pocket costs and fees for its services. The \$661,118.01 reflected in
28 the declaration supporting that Motion (*see* ECF No. 282-2) included all costs and fees incurred

1 through October 31, 2024, and invoiced in early November. As of the date of this filing, which is
2 the first business day of December, KCC's billing system has not yet generated an invoice for
3 services provided and costs incurred during the month of November, but that information likely
4 can be provided at the Final Approval Hearing scheduled for December 12, 2024. In any event,
5 the Settlement Agreement caps KCC's fees and costs at \$977,500, absent any work outside the
6 scope originally contemplated by the Parties, and to date, the only additional work requested by
7 the Parties has been the reminder notice, which added \$56,082 to the cap. Antonio Decl., ¶14.
8 KCC does not anticipate that its final invoice – which will be generated following the completion
9 of the claims validation process and issuance of payments to Settlement Class Members and cy
10 pres recipients – will exceed the updated cap of \$1,033,582. *Id.* As such, Class Counsel
11 respectfully submit that the blank in paragraph 12 of the proposed final approval order (ECF 282-
12 3) be filled in to provide that KCC “shall be paid an amount invoiced and approved by Class
13 Counsel not to exceed \$1,033,582 in settlement administration costs in accordance with the terms
14 of the Settlement Agreement and the Order.” Even if KCC were to incur this entire amount in
15 costs and fees, it would not exceed 3% of the \$35 million Settlement – a small percentage of the
16 fund which the Court noted in connection with preliminary approval is “pretty much average.”
17 Hearing Transcript at 7, ECF No. 268 (May 16, 2024).

18 **D. Class Counsel's Attorneys' Fees and Expenses Should be Approved**

19 Since the filing of the Motion for Fees, Expenses, and Service Awards (ECF No. 273),
20 Class Counsel have dedicated additional time and resources to meet their obligations to the
21 Settlement Class to obtain final approval of the Settlement (ECF No. 269). Supp. Joint Decl., ¶6.
22 The additional time and expenses were incurred by Class Counsel between August 1, 2024 and
23 November 30, 2024. *Id.* The additional time spent was necessary to this litigation, and included
24 communicating with Settlement Class Members to address their inquiries, assisting with the filing
25 of claims, drafting a reminder notice and coordinating efforts to send it by both email and U.S.
26 mail, overseeing the claims administration process, and researching, drafting, and filing the Motion
27 for Final Approval. *Id.*, ¶7. Class Counsel's fees and expenses are updated in the respective firm
28 declarations filed concurrently herewith. *Id.* As set forth in those declarations, Class Counsel

1 have incurred a total of \$554,771.96 in unreimbursed litigation expenses in order to prosecute this
2 action from inception through November 30, 2024, including expenses incurred in anticipation of
3 the December 12, 2024 final approval hearing. *Id.*, ¶8. These expenses were recorded
4 contemporaneously by the respective firms and represent an accurate record of costs and expenses
5 incurred in connection with the prosecution of this Action. The expenses, including each firm’s
6 respective contributions to the litigation fund used to finance the prosecution of this Action, were
7 advanced by Class Counsel on a fully contingent basis and have not been reimbursed.

8 Class Counsel have now spent 17,541.9 hours litigating this Action from inception through
9 November 30, 2024. *Id.*, ¶11. Accordingly, the lodestar reported in the Motion for Fees, Expenses,
10 and Service Awards has grown to \$12,481,842, when calculated using historical hourly rates (*i.e.*,
11 the rates in effect when the time was billed), resulting in a negative multiplier of .93. *Id.*, ¶12. If
12 lodestar were calculated using today’s billing rates – which is commonly done when years pass
13 between the time services are rendered and the time a fee for those services is awarded – the
14 multiplier would be even lower. *Id.* This further supports Class Counsel’s request for an award
15 of attorneys’ fees of \$11.65 million, or just under one third of the settlement fund, as reasonable.
16 *See, e.g., In re Portal Software, Inc. Secs. Litig.*, No. C-03-5138 VRW, 2007 WL 4171201, at *16
17 (N.D. Cal. Nov. 26, 2007) (“negative multiplier suggests that the percentage-based amount is
18 reasonable and fair”); *Covillo v. Specialtys Cafe*, No. C-11-00594 DMR, 2014 WL 954516, at *7
19 (N.D. Cal. Mar. 6, 2014) (“the requested fee award results in a so-called negative multiplier,
20 suggesting that the percentage of the fund is reasonable and fair.”); *Zyda v. Four Seasons Hotels*
21 *and Resorts*, No. 16-00591-LEK-RT, 2020 WL 9762910, at *3 (D. Haw. Apr. 1, 2020) (“*negative*
22 lodestar [] further supports the reasonableness of attorneys’ fees requested in this matter”)
23 (emphasis in original). Although Apple opposes the percentage of Class Counsel’s fee request –
24 as Apple routinely does – no Settlement Class Member has objected.

25 Given Class Counsel’s effort, expertise, and commitment of financial resources despite
26 enormous risk, and considering both the extraordinary monetary recovery negotiated in the
27 Settlement and the participation of the named Plaintiffs to achieve that recovery, the Court should
28

1 grant Plaintiffs’ Motion for Fees, Expenses, and Service Awards as it is reasonable and
2 appropriate. Supp. Joint. Decl., ¶13.

3 **III. CONCLUSION**

4 For the reasons set forth above, as well as in Plaintiffs’ Motion for Final Approval and
5 Motion for Fees, Expenses, and Service Awards, Plaintiffs and Class Counsel respectfully request
6 that the Court: (i) grant final certification of the Settlement Class; (ii) grant final approval of the
7 proposed Settlement and plan of allocation; (iii) find that the proposed plan of allocation is fair,
8 reasonable, and adequate; (iv) find that notice has been conducted in accordance with the Court-
9 approved notice plan; (v) grant Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service
10 Awards; and (vi) dismiss with prejudice Plaintiffs’ and the Settlement Class Members’ claims
11 against Apple.

12 Dated: December 2, 2024

Respectfully submitted

13 **SCOTT+SCOTT ATTORNEYS AT LAW LLP**

14 *s/ Joseph P. Guglielmo*

15 Joseph P. Guglielmo (*pro hac vice*)

Amanda M. Rolon (*pro hac vice*)

16 The Helmsley Building

230 Park Ave., 24th Floor

17 New York, NY 10169

Telephone: 212-223-6444

18 jguglielmo@scott-scott.com

19 arolon@scott-scott.com

20 **SCOTT+SCOTT ATTORNEYS AT LAW LLP**

Hal D. Cunningham (CA Bar No. 243048)

21 600 W. Broadway, Suite 3300

San Diego, CA 92101

22 Telephone: 619-233-4565

23 hcunningham@scott-scott.com

24 **CAFFERTY CLOBES MERIWETHER
& SPRENGEL LLP**

25 *s/ Nyran Rose Rasche*

26 Nyran Rose Rasche (*pro hac vice*)

27 Nickolas J. Hagman (*pro hac vice*)

135 South LaSalle Street, Suite 3210

28 Chicago, IL 60603

Telephone: 312-782-4880

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nrasche@caffertyclobes.com
nhagman@caffertyclobes.com

KIRBY McINERNEY LLP

s/ Anthony F. Fata
Anthony F. Fata (*pro hac vice*)
Sarah E. Flohr (*pro hac vice*)
211 West Wacker Drive, Suite 550
Chicago, IL 60606
Telephone: 312-767-5180
afata@kmlp.com
sflohr@kmlp.com

Attorneys for Plaintiffs and the Class

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CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties registered on the CM/ECF system.

By: s/ Joseph P. Guglielmo
Joseph P. Guglielmo
SCOTT+SCOTT ATTORNEYS AT LAW LLP

1 JOSEPH P. GUGLIELMO (*pro hac vice*)
2 **SCOTT+SCOTT ATTORNEYS AT LAW LLP**
3 230 Park Ave., 24th Floor
4 New York, NY 10169
5 Telephone: (212) 223-6444
6 Facsimile: (212) 223-6334
7 jguglielmo@scott-scott.com

8 *Co-Lead Class Counsel*

9 [Additional Counsel Listed on Signature Page.]

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

13 CARL BARRETT, *et al.*,

14 Plaintiffs,

15 v.

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

17 Defendants.

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

**SUPPLEMENTAL JOINT
DECLARATION IN FURTHER
SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Judge: Hon. Edward J. Davila

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

21 1. I, Joseph P. Guglielmo, am a partner at the law firm of Scott+Scott Attorneys at
22 Law LLP ("Scott+Scott"). I am admitted *pro hac vice* to this Court to represent Plaintiffs in the
23 above captioned matter (the "Action").¹
24

25 _____
26 ¹ Unless otherwise indicated, defined terms have the meanings set forth in the Settlement
27 Agreement and Release ("Settlement" or "Settlement Agreement"). The Settlement Agreement
28 and its exhibits are attached as Exhibit A to the Joint Declaration of Nyran Rose Rasche, Anthony

1 2. I, Nyran Rose Rasche, am a partner at the law firm of Cafferty Clobes Meriwether
2 & Sprengel LLP (“Cafferty Clobes”). I am admitted *pro hac vice* to this Court to represent
3 Plaintiffs in the Action.

4 3. I, Anthony F. Fata, am a partner at the law firm of Kirby McInerney LLP (“Kirby
5 McInerney”). I am admitted *pro hac vice* to this Court to represent Plaintiffs in the Action.

6 4. On February 17, 2023, Class Counsel were appointed by the Court as interim Co-
7 Lead Class Counsel in the Action against Defendants. ECF No. 132. Class Counsel have personal
8 knowledge of the matters stated herein and could testify competently regarding these matters if
9 called upon by the Court to do so.

10 5. Class Counsel respectfully submit this Supplemental Joint Declaration in further
11 support of Plaintiffs’ Motion for Final Approval of Class Action Settlement. For the reasons set
12 forth herein, and in the Joint Declarations of Class Counsel filed at ECF Nos. 273-2 and 282-1, it
13 is Class Counsel’s opinion that the proposed Settlement is fair, reasonable, and adequate, and is
14 an outstanding outcome that is in the best interests of the Settlement Class Members.

15 **I. ADDITIONAL WORK PERFORMED**

16 6. Since the filing of the Motion for Attorneys’ Fees, Expenses, and Service Awards
17 (ECF No. 273), Class Counsel have dedicated additional time and resources to meet their
18 obligations to the Settlement Class to obtain final approval of the Settlement. The additional time
19 and expenses were incurred by Class Counsel between August 1, 2024 and November 30, 2024.

20 7. The additional time spent was necessary to this litigation and included
21 communicating with Settlement Class Members to address their inquiries, assisting with the filing
22 of claims, drafting a reminder notice and coordinating efforts to send it by both email and U.S.
23 mail, overseeing the claims administration process, and researching, drafting, and filing the Motion
24 for Final Approval. Class Counsel’s fees and expenses are updated in the respective firm
25 declarations filed concurrently herewith.

26
27 _____
28 F. Fata, and Joseph P. Guglielmo in Support of Plaintiffs’ Motion for Preliminary Approval of
Proposed Settlement, filed on April 2, 2024. ECF No. 266-2.

1 **II. ATTORNEYS' FEES AND LITIGATION EXPENSES**

2 **A. Unreimbursed Costs and Litigation Expenses**

3 8. Class Counsel have incurred a total of \$554,771.96 in unreimbursed litigation
4 expenses in order to prosecute this action from inception through November 30, 2024.

5 9. These expenses were recorded contemporaneously by the respective firms and
6 represent an accurate record of costs and expenses incurred in connection with the prosecution of
7 this Action. Itemized reports of the unreimbursed expenses paid by each firm and the
8 unreimbursed expenses to the litigation fund appear in the respective supplemental firm
9 declarations filed contemporaneously herewith.

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

13 **B. Additional Attorneys' Fees Necessarily Incurred by Class Counsel**

14 11. As demonstrated by the respective firm declarations, Class Counsel have spent a
15 total of 17,541.9 hours litigating this Action from inception through November 30, 2024.

16 12. The lodestar reported in the Motion for Fees, Expenses, and Service Awards has
17 grown to \$12,481,842, when calculated using historical hourly rates (*i.e.*, the rates in effect when
18 the time was billed), resulting in a negative multiplier of 0.93. If lodestar were calculated using
19 today's billing rates – which is commonly done when years pass between the time services are
20 rendered and the time a fee for those services is awarded – the multiplier would be even lower.

21 13. Given Class Counsel's effort, expertise, and commitment of financial resources
22 despite enormous risk, and considering both the extraordinary monetary recovery negotiated in the
23 Settlement and the participation of the named Plaintiffs to achieve that recovery, we believe the
24 Court should grant Plaintiffs' Motion for Fees, Expenses, and Service Awards as it is reasonable
25 and appropriate.

26 **III. CONCLUSION**

27 14. Based on Class Counsel's experience and knowledge regarding the novel factual
28 and legal theories at issue in this case, and the substantial risk presented by continued litigation, it

1 is Class Counsel’s opinion that the proposed Settlement is not only fair, reasonable, and adequate,
2 but is also an exceptional result that is in the best interests of the Settlement Class Members.

3
4 We declare, under penalty of perjury, that the foregoing is true and correct. Executed on
5 December 2, 2024, in New York, New York, and Chicago, Illinois.

6 **SCOTT+SCOTT ATTORNEYS AT LAW LLP**

7 s/ Joseph P. Guglielmo

8 Joseph P. Guglielmo (*pro hac vice*)

9 Amanda M. Rolon (*pro hac vice*)

10 The Helmsley Building

230 Park Ave., 24th Floor

11 New York, NY 10169

Telephone: 212-223-6444

12 jguglielmo@scott-scott.com

arolon@scott-scott.com

13 **SCOTT+SCOTT ATTORNEYS AT LAW LLP**

14 Hal D. Cunningham (CA Bar No. 243048)

600 W. Broadway, Suite 3300

15 San Diego, CA 92101

Telephone: 619-233-4565

16 hcunningham@scott-scott.com

17 **CAFFERTY CLOBES MERIWETHER**
18 **& SPRENGEL LLP**

19 s/ Nyran R. Rasche

Nyran Rose Rasche (*pro hac vice*)

20 Nickolas J. Hagman (*pro hac vice*)

135 South LaSalle Street, Suite 3210

21 Chicago, IL 60603

Telephone: 312-782-4880

22 nrasche@caffertyclobes.com

23 nhagman@caffertyclobes.com

24 **KIRBY McINERNEY LLP**

25 s/ Anthony F. Fata

Anthony F. Fata (*pro hac vice*)

26 Sarah E. Flohr (*pro hac vice*)

211 West Wacker Drive, Suite 550

27 Chicago, IL 60606

Telephone: 312-767-5180

28 afata@kmlp.com

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sflohr@kmlp.com

Attorneys for Plaintiffs and the Class

1 JOSEPH P. GUGLIELMO (*pro hac vice*)
2 **SCOTT+SCOTT ATTORNEYS AT LAW LLP**
3 230 Park Ave., 24th Floor
4 New York, NY 10169
5 Telephone: (212) 223-6444
6 Facsimile: (212) 223-6334
7 jguglielmo@scott-scott.com

8 *Co-Lead Class Counsel*

9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

13 CARL BARRETT, et al.,
14 Plaintiffs,
15 v.
16 APPLE INC., et al.,
17 Defendants.

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

DECLARATION OF JANETH ANTONIO IN SUPPORT OF FINAL APPROVAL

1 I, Janeth Antonio, pursuant to 28 U.S.C. § 1746 declare as follows:

2 1. My name is Janeth Antonio. I have personal knowledge of the matters set forth
3 herein, and if called as a witness I could and would testify competently to them.

4 2. I am a Director for Verita Global LLC formerly known as KCC Class Action
5 Services, LLC (“KCC”).¹

6 3. This declaration is for the purpose of updating the parties and the Court on
7 Settlement activity since the November 12, 2024 submission of the Declaration of Carla A. Peak
8 Regarding Implementation of the Settlement Notice Program (ECF No. 282-2) (“Peak
9 Declaration”).

10 **SETTLEMENT WEBSITE**

11 4. On June 5, 2024, KCC established a website, www.giftcardscamsettlement.com,
12 dedicated to this Action to provide information to the Settlement Class Members and answer
13 frequently asked questions. The website URL was included in the Mail Notice, Email Notice,
14 Publication Notice, Website Notice, claim form, and reminder notices, as well as in the press
15 release and organizational outreach materials sent by KCC. Visitors can also submit claims online,
16 and, if applicable, upload supporting documentation. As of December 2, 2024, the website has
17 received at least 165,293 visits (nearly 5,000 more than reported in the Peak Declaration).

18 5. The settlement website also had a chat bot feature where class members can ask
19 questions regarding the settlement. As of December 2, 2024, there have been at least 1,070 chats
20 initiated without an agent, and at least 142 with an agent (or an increase of 69 chats, 8 of which
21 were with an agent, since the Peak Declaration).

22 **EMAIL BOX**

23 6. KCC established a shared email inbox for Settlement Class Members to email and
24 obtain information about the Settlement. The email address, admin@giftcardscamsettlement.com,
25 was made available on the settlement website. As of the date of this Declaration, KCC has
26 responded to 332 emails (or an additional 93 emails since the Peak Declaration).

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28 ¹ KCC and Gilardi & Co. LLC rebranded as Verita Global LLC in June 2024.

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TELEPHONE NUMBER

7. KCC established and continues to maintain a toll-free telephone number, 1-877-519-3812, for potential Settlement Class Members to call and obtain information about the Settlement, request a notice packet, and/or seek assistance from a live operator during regular business hours. The telephone hotline became operational on July 12, 2024, and is accessible 24 hours a day, 7 days a week. As of December 2, 2024, KCC has received at least 1,686 calls (an increase of 102) to the telephone hotline. Of those calls, at least 148 (an increase of 17) were transferred to a live agent.

P.O. BOX

8. KCC established a P.O. box address for Settlement Class Members to use to obtain information about the Settlement. The P.O. box address, *Barrett v. Apple* Settlement Administrator, P.O. Box 301172, Los Angeles, CA 90030-1172, was made available on the settlement website and the long form notice, and used as the return address on the Mail Notice. As of the date of this Declaration, KCC has received and processed 47 pieces of mail correspondence (or an additional 4 pieces of mail correspondence since the Peak Declaration).

CLAIM FORMS AND EXPECTED PAYMENT PERCENTAGE

9. The postmark and online filing deadline for Settlement Class Members to file claims in this Action was October 31, 2024. As of December 2, 2024, KCC has received 49,149 timely-filed claim forms. Of the 49,149 claim forms, 2,009, including 15 duplicates, were submitted by known Settlement Class Members, resulting in a slightly increased 2.11% known claims rate. The remaining 47,140, including 3,586 duplicates, were submitted by unknown Settlement Class Members, resulting in a slightly increased 11.64% unknown claims rate.

10. KCC has also received 15,390 late claim forms. Of the 15,390 late claims, 158 were submitted by known class members and 15,232 were submitted by unknown class members.

11. In total, as of December 2, 2024, KCC has received 64,539 claim forms. KCC expects additional claim forms to arrive via U.S. Mail.

1 12. Settlement data to date confirms the expectation, initially reported in the Peak
2 Declaration, that Settlement Class Members who submitted valid claims will be paid 100% of their
3 losses.

4 **ADMINISTRATION COSTS**

5 13. As reported in the Peak Declaration, as of October 31, 2024, KCC had incurred
6 approximately \$661,118.01 for administrative fees and costs. This included, but was not limited
7 to, costs incurred in connection with CAFA notice, significant out-of-pocket spending on print and
8 digital media for the publication notice program, data analysis, formatting of the notices and
9 reminder notices. labor costs associated with physically mailing notice to class members, postage
10 for sending physical notices, costs for sending email notices, developing the settlement website,
11 developing the online chat bot, monthly telephone charges, intake and processing of physical and
12 email correspondence, and claims processing. This amount did not include future costs related to
13 claims adjudication, monthly telephone charges, distribution of funds, etc.

14 14. KCC is still administering this Settlement and does not expect its final invoice to
15 exceed \$1,033,582, which represents the original cap of \$977,500, updated to reflect an additional
16 \$56,082 in fees and costs related to the reminder noticing process, which was outside the scope of
17 work originally agreed upon with the Parties.

18 I declare under penalty of perjury under the laws of the United States of America that the
19 foregoing is true and correct.

20 Executed this 2nd day of December 2024, at San Rafael, California.

21
22 *Janeth Antonio*

23 _____
24 Janeth Antonio
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1 JOSEPH P. GUGLIELMO (*pro hac vice*)
2 **SCOTT+SCOTT ATTORNEYS AT LAW LLP**
3 230 Park Ave., 24th Floor
4 New York, NY 10169
5 Telephone: (212) 223-6444
6 Facsimile: (212) 223-6334
7 jguglielmo@scott-scott.com

8 *Co-Lead Class Counsel*

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

12 CARL BARRETT, et al.,

13 Plaintiffs,

14 v.

15 APPLE, INC., et al.,

16 Defendants.

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

**SUPPLEMENTAL DECLARATION OF
DARYL F. SCOTT IN FURTHER
SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT ON BEHALF
OF SCOTT+SCOTT ATTORNEYS AT
LAW LLP**

Judge: Hon. Edward J. Davila

17
18 I, Daryl F. Scott, subject to the penalties of perjury provided by 18 U.S.C. § 1746, hereby
19 declare as follows:

20 1. I am a partner at the law firm Scott+Scott Attorneys at Law LLP (“Scott+Scott”).
21 I submit this Declaration in further support of Plaintiffs’ Motion for Final Approval of Class Action
22 Settlement (ECF No. 282), and its Motion for an Award of Attorneys’ Fees, Expenses, and Class
23 Representative Service Awards (ECF No. 273) to provide the Court with the current total of
24 attorneys’ fees and expenses incurred by my firm in connection with this litigation.

25 2. On February 17, 2023, the Court appointed Cafferty Clobes Meriwether and
26 Sprengel LLP (“Cafferty Clobes”), Kirby McInerney LLP, and Scott+Scott as interim co-lead
27 counsel for the proposed class in the above-captioned action (the “Litigation”). ECF No. 132. On

1 May 16, 2024, the Court appointed the same firms as Class Counsel to represent the Settlement
2 Class. ECF No. 269.

3 3. My firm’s submission of its time and expenses in this Declaration adheres to the
4 reporting protocols established by Class Counsel in this Litigation.

5 4. The work performed by Scott+Scott on behalf of Plaintiffs and the Class includes
6 the following: investigating and developing the claims, including pre-filing factual and legal
7 development; drafting the initial complaint and subsequent amended complaints; opposing
8 Apple’s motions to dismiss; briefing and appearing in Court on various matters, including motion
9 practice and case management issues; participating in meetings of Class Counsel; obtaining and
10 reviewing discovery from Apple, including negotiating and reviewing document productions and
11 transaction data, taking and defending depositions; mediating the case, negotiating the settlement
12 agreement and obtaining preliminary approval thereof; liaising with the claims administrator in
13 connection with the settlement process; engaging and working with experts and consultants on
14 numerous aspects of the case; communicating with Settlement Class Members; addressing class
15 member inquiries; assisting with the filing of claims; coordinating efforts to submit a reminder
16 notice to known claimants; overseeing the claims administration process; coordinating the issuance
17 of a deficiency notice for timely claims; researching and drafting the Motion for Final Approval;
18 and replying to Apple’s Opposition to the Motion for an Award of Attorneys’ Fees. The specifics
19 of the work performed by my firm are set forth in the Joint Declaration of Nyran Rose Rasche,
20 Anthony F. Fata, and Joseph P. Guglielmo filed in Support of Plaintiffs’ Motions for Attorneys’
21 Fees, Expenses, and Service Awards (ECF No. 273-2), and in the Supplemental Joint Declaration
22 of Nyran Rose Rasche, Anthony F. Fata, and Joseph P. Guglielmo in further support of the Motion
23 for Final Approval of Class Action Settlement filed concurrently herewith.

24 5. **Exhibit 1** sets forth the time spent by category of work performed by partners,
25 attorneys, and support staff of my firm, from inception of the Litigation through November 30,
26 2024. The billing rates for the partners, attorneys, and support staff align with the firm’s standard
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1 billing rates for contingent cases. The rates reflected are historical rates, *i.e.*, the rates that were in
2 effect at the time when the work was done.

3 6. The hours spent by my firm from inception of the Litigation through November 30,
4 2024 totals 6,431.6. The firm's lodestar to date totals \$4,126,974.50. Total hours were calculated
5 through an examination of contemporaneous time records regularly prepared and maintained by
6 my firm. My firm and I have reviewed the accuracy of these time records and their relevance and
7 have concluded they are reasonable and necessary for the prosecution of the Litigation. While
8 conducting this review, my firm and I made adjustments to align certain entries with the reporting
9 protocol established in this Litigation, as well as to adhere to the firm's policies and procedures.
10 These adjustments were not only consistent with the firm's best practices but also beneficial to the
11 class.

12 7. **Exhibit 2** sets forth the unreimbursed expenses my firm incurred in prosecuting the
13 Litigation from inception through November 30, 2024, totaling \$73,531.33, exclusive of payments
14 made to the litigation fund.¹ These unreimbursed expenses, incurred on behalf of the Plaintiffs,
15 are accurately reflected on the books and records of my firm and were prepared from expense
16 reports with attached receipts, check records, and other source materials.


17 8. To facilitate the sharing of expenses, Class Counsel contributed to a litigation fund
18 administered by Cafferty Clobes. **Exhibit 3** sets forth common expenses paid or incurred by the
19 litigation fund, which was fully funded by Class Counsel, from inception of the Litigation through
20 the present, 2024, totaling \$413,684.21.

21 I declare under penalty of perjury, under the laws of the United States of America, that to
22 the best of my knowledge, the foregoing is true and correct.

23
24
25 ¹ The reported costs include both actual costs incurred to date and anticipated costs associated with
26 attending the final approval hearing. Exhibit 2 also details miscellaneous expenses, the majority
27 of which consist of electronic document review platform costs amounting to approximately
28 \$39,995.

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Executed on this 2nd day of December, 2024 at Richmond, Virginia.



Daryl F. Scott

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CERTIFICATE OF SERVICE

I, Joseph P. Guglielmo, certify that on December 2, 2024 the foregoing document entitled **SUPPLEMENTAL DECLARATION OF DARYL F. SCOTT IN FURTHER SUPPORT OF PLAINTIFFS’ MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT ON BEHALF OF SCOTT+SCOTT ATTORNEYS AT LAW LLP** was filed electronically in the Court’s ECF; thereby upon completion the ECF system automatically generated a “Notice of Electronic Filing” as service through CM/ECF to registered e-mail addresses of parties of record in this case.

/s/ Joseph P. Guglielmo

EXHIBIT 1

Barrett, et al. v. Apple, Inc., et al.
 Case No. 5:20-cv-04812 (N.D. Cal.)
 Time Summary

Firm Name: Scott+Scott Attorneys at Law LLP
 Date: Inception thru November 2024

Categories: 1. Investigations and Factual Research; 2. Case Management and Litigation Strategy; 3. Discovery (other than document review); 4. Document Review; 5. Pleadings, Briefs and Legal Research; 6. Court Appearances and Preparation; 7. Experts/Consultants; 8. Class Certification; 9. Trial & Preparation; 10. Post-trial proceedings; 11. Appeal; 12. Settlement; 13. Miscellaneous (describe)

Name (Title)	Status	1	2	3	4	5	6	7	8	9	10	11	12	13	Hourly Rate	Cumulative Hours	Cumulative Lodestar
Chris Burke	PT	10.10	2.60			2.00		0.50							\$1,295.00	15.20	\$ 19,684.00
Daryl Scott	PT												1.50		\$1,495.00	1.50	\$ 2,242.50
Daryl Scott (new rate)	PT												16.10		\$1,545.00	16.10	\$ 24,874.50
Joe Guglielmo	PT	30.10	6.10	173.70	22.10	82.70	20.60	7.60							\$1,150.00	342.90	\$ 394,335.00
Joe Guglielmo	PT		111.80	241.90	7.50	54.50	44.40	27.80	35.80				87.00		\$1,395.00	610.70	\$ 851,926.50
Joe Guglielmo (new rate)	PT			1.30			5.30	23.80					148.00		\$1,420.00	178.40	\$ 253,328.00
Erin Comite	PT	0.30		0.10	0.50			4.40							\$995.00	5.30	\$ 5,273.50
Erin Comite (new rate)	PT		3.40			4.00			5.50				0.50		\$1,095.00	13.40	\$ 14,673.00
Alex Outwater	A	70.40	29.10	141.20	80.90	154.70	4.90	0.50							\$725.00	481.70	\$ 349,232.50
Alex Outwater	A	1.60	70.80	99.10	34.90	54.30									\$750.00	260.70	\$ 195,525.00
Alex Outwater	A		17.60	42.90	1.70	12.30	10.80		0.30						\$795.00	85.60	\$ 68,052.00
Alex Outwater (new rate)	A												1.40		\$875.00	1.40	\$ 1,225.00
Amanda Rolon	A	1.60	68.30	186.90	171.70	66.80	0.30								\$525.00	495.60	\$ 260,190.00
Amanda Rolon	A	5.10	86.70	102.00	4.30	42.20	54.90	9.40	48.10				12.50		\$550.00	365.20	\$ 200,860.00
Amanda Rolon (new rate)	A		5.60			31.30	1.00						183.60		\$575.00	221.50	\$ 127,362.50
Anjori Mitra	A												11.30		\$575.00	11.30	\$ 6,497.50
Melanie Porter (doc rev)	SA	0.80	23.00	11.00	1273.50	3.90									\$400.00	1,312.20	\$ 524,880.00
Victoria Burke (doc rev)	SA		33.80	16.60	1441.60			56.50							\$400.00	1,548.50	\$ 619,400.00
Angelique Lewis	PR		0.80										6.50		\$435.00	7.30	\$ 3,175.50
Ellen DeWan	PR	16.00	4.80	21.30		50.80									\$395.00	92.90	\$ 36,695.50
Ellen DeWan (new rate)	PR												15.50		\$435.00	15.50	\$ 6,742.50
Kim Jager	PR	1.00		3.50		3.00									\$395.00	7.50	\$ 2,962.50
Kim Jager	PR	0.50	1.50	0.30		5.00							10.00		\$415.00	17.30	\$ 7,179.50
Kim Jager (new rate)	PR												23.50		\$435.00	23.50	\$ 10,222.50
Michael Himes	PR	1.20		2.00											\$395.00	3.20	\$ 1,264.00
Michael Himes	PR		2.00	4.40			14.60								\$415.00	21.00	\$ 8,715.00
Michael Himes (new rate)	PR						1.50						0.80		\$435.00	2.30	\$ 1,000.50
Matthew Malloy	PR	5.90				13.70									\$395.00	19.60	\$ 7,742.00
Sumner Caesar	PR		3.20	14.90		13.80									\$395.00	31.90	\$ 12,600.50
Sumner Caesar (new rate)	PR		3.30	11.20		31.60	0.30								\$415.00	46.40	\$ 19,256.00
Mario Tlatenchi	O		5.00	7.20	2.20										\$395.00	14.40	\$ 5,688.00
Mario Tlatenchi (new rate)	O		3.30	1.60		0.70	1.00								\$415.00	6.60	\$ 2,739.00
Jonathan Swerdloff	O		4.40	19.70	6.40										\$750.00	30.50	\$ 22,875.00
Jonathan Swerdloff (new rate)	O		7.00	6.60	1.40	0.90	1.10								\$795.00	17.00	\$ 13,515.00
Jenna Goldin	O	9.50													\$500.00	9.50	\$ 4,750.00
Jenna Goldin (new rate)	O	7.00													\$525.00	7.00	\$ 3,675.00
Michelle Petrick	O	51.00	1.50												\$395.00	52.50	\$ 20,737.50
Ekene Avery	O		0.50	4.00	0.50										\$395.00	5.00	\$ 1,975.00
Ekene Avery (new rate)	O		15.50	4.00		14.00									\$415.00	33.50	\$ 13,902.50
TOTALS		212.10	497.40	1112.10	3049.20	633.50	179.20	106.70	89.70	0.00	0.00	0.00	518.20	0.00		6,431.60	\$ 4,126,974.50

Partner (PT)
 Of Counsel (OC)
 Associate (A)
 Contract (C)
 Paralegal (PR)
 Other (O)
 Law Clerk (LC)
 Staff Attorney (SA)

EXHIBIT 2

EXHIBIT 2 – S + S Expenses

EXPENSE	AMOUNT
Filing/Court Fees	\$1,027.00
Federal Express/Local Courier, etc.	\$251.81
Lexis/Westlaw/Pacer	\$9,836.62
Photocopying	\$1,418.40
Postage	\$1.71
Travel (Hotel, Meals, Transportation)	\$17,806.85
Long Distance	\$372.64
Witness/Expert Fees	\$75.00
Investigation Fees/Service Fees	\$1,858.65
Transcripts	\$882.15
Miscellaneous (Document Storage, Supplies)	\$40,000.50
TOTAL	\$73,531.33

EXHIBIT 3

EXHIBIT 3 – Common Expenses Paid through the Litigation Fund

EXPENSE	AMOUNT
Expert Bruce McFarlane	281,673.00
Expert Claudiu Dimofte	57,000.00
Mediator Randall W. Wulff	12,500.00
Miscellaneous (litigation fund check purchase)	147.96
Veritext Deposition Services	62,363.25
TOTAL	413,684.21

1 Nyran Rose Rasche (pro hac vice)
Nickolas J. Hagman (pro hac vice)
2 CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP
135 South LaSalle Street, Suite 3210
3 Chicago, Illinois 60603
4 Telephone: (312) 782-4880
Facsimile: (318) 782-4485
5 nrasche@caffertyclobes.com
nhagman@caffertyclobes.com
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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN JOSE DIVISION**

10 CARL BARRETT, et al.,

11 Plaintiffs,

12 v.

13 APPLE, INC., et al.,

14 Defendants.

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

**SUPPLEMENTAL DECLARATION OF
NYRAN ROSE RASCHE IN FURTHER
SUPPORT OF PLAINTIFFS’ MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT ON BEHALF
OF CAFFERTY CLOBES
MERIWETHER & SPRENGEL LLP**

Judge: Hon. Edward J. Davila

16 I, Nyran Rose Rasche, subject to the penalties of perjury provided by 28 U.S.C. § 1746,
17 hereby declare as follows:

18 1. I am a partner at the law firm Cafferty Clobes Meriwether & Sprengel LLP
19 (“Cafferty Clobes”). I submit this Declaration in further support of Plaintiffs’ Motion for Final
20 Approval of Class Action Settlement (ECF No. 282), and its Motion for an Award of Attorneys’
21 Fees, Expenses, and Class Representative Service Awards (ECF No. 273) to provide the Court
22 with the current total of attorneys’ fees and expenses incurred by my firm in connection with this
23 litigation.

24 2. On February 17, 2023, the Court appointed Cafferty Clobes, Kirby McInerney LLP,
25 and Scott+Scott Attorneys at Law LLP as interim co-lead counsel for the proposed class in the
26

1 above-captioned action (the “Litigation”). ECF No. 132. On May 16, 2024, the Court appointed
2 the same firms as Class Counsel to represent the Settlement Class. ECF No. 269.

3 3. My firm’s submission of its time and expenses in this Declaration adheres to the
4 reporting protocols established by Class Counsel in this Litigation.

5 4. The work performed by Cafferty Clobes on behalf of Plaintiffs and the Class
6 includes the following: investigating and developing the claims, including pre-filing factual and
7 legal development; drafting the initial complaint and subsequent amended complaints; opposing
8 Apple’s motions to dismiss; briefing and appearing in Court on various matters, including motion
9 practice and case management issues; participating in meetings of Class Counsel; obtaining and
10 reviewing discovery from Apple, including negotiating and reviewing document productions and
11 transaction data and taking and defending depositions; mediating the case, negotiating the
12 settlement agreement, and obtaining preliminary approval thereof; liaising with the claims
13 administrator in connection with the settlement process; engaging and working with experts and
14 consultants on numerous aspects of the case; communicating with Settlement Class Members;
15 addressing class member inquiries; assisting with the filing of claims; coordinating efforts to
16 submit a reminder notice to known claimants; overseeing the claims administration process;
17 coordinating the issuance of a deficiency notice for timely claims; researching and drafting the
18 Motion for Final Approval; and replying to Apple’s Opposition to the Motion for an Award of
19 Attorneys’ Fees. The specifics of the work performed by my firm are set forth in the Joint
20 Declaration of Nyran Rose Rasche, Anthony F. Fata, and Joseph P. Guglielmo filed in Support of
21 Plaintiffs’ Motions for Attorneys’ Fees, Expenses, and Service Awards (ECF No. 273-2), and in
22 the Supplemental Joint Declaration of Nyran Rose Rasche, Anthony F. Fata, and Joseph P.
23 Guglielmo in further support of the Motion for Final Approval of Class Action Settlement filed
24 concurrently herewith.

25 5. **Exhibit 1** sets forth the time spent by category of work performed by partners,
26 attorneys, and support staff of my firm, from inception of the Litigation through November 30,

1 2024. The billing rates for the partners, attorneys, and support staff align with the firm’s standard
2 billing rates for contingent cases. The rates reflected are historical rates, *i.e.*, the rates that were in
3 effect at the time when the work was done.

4 6. The hours spent by my firm from inception of the Litigation through November 30,
5 2024 totals 6,866.4. The firm’s lodestar to date totals \$5,662,655.00. Total hours were calculated
6 through an examination of contemporaneous time records regularly prepared and maintained by
7 my firm. My firm and I have reviewed the accuracy of these time records and their relevance and
8 have concluded they are reasonable and necessary for the prosecution of the Litigation. While
9 conducting this review, my firm and I made adjustments to align certain entries with the reporting
10 protocol established in this Litigation, as well as to adhere to the firm’s policies and procedures.
11 These adjustments were not only consistent with the firm’s best practices but were also beneficial
12 to the class.

13 7. **Exhibit 2** sets forth the unreimbursed expenses my firm incurred in prosecuting the
14 Litigation from inception through November 30, 2024, as well as expenses incurred in anticipation
15 of the December 12, 2024 final approval hearing, totaling \$33,568.90, exclusive of payments made
16 to the litigation fund. These unreimbursed expenses, incurred on behalf of the Plaintiffs, are
17 accurately reflected on the books and records of my firm and were prepared from expense reports
18 with attached receipts, check records, and other source materials.

19 8. To facilitate the sharing of expenses, Class Counsel contributed to a litigation fund
20 administered by my firm. **Exhibit 3** sets forth common expenses paid or incurred by the litigation
21 fund, which was fully funded by Class Counsel, from inception of the Litigation through the
22 present totaling \$413,684.21.

23 I declare under penalty of perjury, under the laws of the United States of America, that to
24 the best of my knowledge, the foregoing is true and correct.

25 Executed on this 2nd day of December, 2024 at Chicago, Illinois.

26 /s/ Nyran Rose Rasche
27 Nyran Rose Rasche

CERTIFICATE OF SERVICE

I, Joseph P. Guglielmo, certify that on December 2, 2024 the foregoing document entitled ***SUPPLEMENTAL DECLARATION OF NYRAN ROSE RASCHE IN FURTHER SUPPORT OF PLAINTIFFS’ MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT ON BEHALF OF CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP*** was filed electronically in the Court’s ECF; thereby upon completion the ECF system automatically generated a “Notice of Electronic Filing” as service through CM/ECF to registered e-mail addresses of parties of record in this case.

/s/ Joseph P. Guglielmo

Joseph P. Guglielmo

EXHIBIT 1

Barrett, et al. v. Apple, Inc., et al.
Case No. 5:20-cv-04812 (N.D. Cal.)
Time Summary

Firm Name: Cafferty Clobes Meriwether and Sprengel LLP
Date: Inception through November 2024

Categories: 1. Investigations and Factual Research; 2. Case Management and Litigation Strategy; 3. Discovery (other than document review); 4. Document Review; 5. Pleadings, Briefs and Legal Research; 6. Court Appearances and Preparation; 7. Experts/Consultants; 8. Class Certification; 9. Trial & Preparation; 10. Post-trial proceedings; 11. Appeal; 12. Settlement; 13. Miscellaneous (describe)

Name (Title)	Status	1	2	3	4	5	6	7	8	9	10	11	12	13	Current Hourly Rate	Total Hours	Total Lodestar
Nyran Rose Rasche	PT	98.60	65.1	72.5		173.10									\$825.00	409.3	\$337,672.50
Nyran Rose Rasche	PT	20.00	30.3	290.2		263.10	7.70						0.9		\$900.00	612.2	\$550,980.00
Nyran Rose Rasche	PT	6.9	55.8	756.7		89.0	28.5	20.0	33.3						\$950.00	990.2	\$940,690.00
Nyran Rose Rasche	PT	9.5	71.2	569.8		77.2	150.3	133.5	216.3				258.6		\$1,025.00	1,486.4	\$1,523,560.00
Nyran Rose Rasche	PT	1.2	0.5				64.9						631.3		\$1,125.00	697.9	\$785,137.50
Anthony F. Fata	PT	0.8													\$775.00	0.8	\$620.00
Anthony F. Fata	PT	38.3	20.3	5.2		15.5									\$900.00	79.3	\$71,370.00
Anthony F. Fata	PT	15.4	3.6	3.7		66.2							3.3		\$925.00	92.2	\$85,285.00
Anthony F. Fata	PT		0.4	2.4											\$950.00	2.8	\$2,660.00
Nickolas J. Hagman	PT				5.1										\$400.00	5.1	\$2,040.00
Nickolas J. Hagman	A	91.6	49.3	26.0		114.6									\$575.00	281.5	\$161,862.50
Nickolas J. Hagman	A	9.3	17.5	213.5		197.1							0.4		\$600.00	437.8	\$262,680.00
Nickolas J. Hagman	A	1.0	25.8	178.3		63.8			2.3						\$650.00	271.2	\$176,280.00
Nickolas J. Hagman	P	2.2	15.7	143.5		24.9	1.3	1.0	51.6				3.4		\$700.00	243.6	\$170,520.00
Nickolas J. Hagman	P						0.6						44.6		\$800.00	45.2	\$36,160.00
Alex Lee	A		9.9						15.2						\$550.00	25.1	\$13,805.00
Mohammed A. Rathur	A												20.0		\$650.00	20.0	\$13,000.00
Olivia Lawless	A				272.2										\$400.00	272.2	\$108,880.00
Olivia Lawless	A			2.4		38.2									\$450.00	40.6	\$18,270.00
Olivia Lawless	A			91.5		14.2		3.2							\$475.00	108.9	\$51,727.50
Olivia Lawless	A	0.1	0.4	144.0					1.8						\$525.00	146.3	\$76,807.50
Chris Tourek	A	18.6													\$525.00	18.6	\$9,765.00
Chris Tourek	A					21.9									\$575.00	21.9	\$12,592.50
Chris Tourek	A			5.0		0.8									\$600.00	5.8	\$3,480.00
Edward Khatskin	A			94.3											\$650.00	94.3	\$61,295.00
Paige Smith	A	2.9		38.2		12.8			23.9						\$550.00	77.8	\$42,790.00
Sharon M. Nyland	PL	1.4	2.9	0.2		0.3									\$300.00	4.8	\$1,440.00
Sharon M. Nyland	PL	2.1	1.5	3.8		1.5									\$325.00	8.9	\$2,892.50
Sharon M. Nyland	PL		22.3	8.1											\$350.00	30.4	\$10,640.00
Sharon M. Nyland	PL	0.6	14.6	4.6		0.1			1.4				1.2		\$375.00	22.5	\$8,437.50
Sharon M. Nyland	PL		1.3				2.3						87.9		\$425.00	91.5	\$38,887.50
Kelly McDonald	PL		9.9	0.4		0.4									\$300.00	10.7	\$3,210.00
Kelly McDonald	PL		6.8	18.9		5.1									\$325.00	30.8	\$10,010.00
Kelly McDonald	PL		8.7	28.1					1.5						\$350.00	38.3	\$13,405.00
Kelly McDonald	PL	2.7	3.4	31.6		0.6	0.3		29.9				4.4		\$375.00	72.9	\$27,337.50
Kelly McDonald	PL					0.1			1.9				30.9		\$425.00	32.9	\$13,982.50
Kathy Hollenstine	PL			0.5											\$325.00	0.5	\$162.50
Kathy Hollenstine	PL		0.9	34.3											\$350.00	35.2	\$12,320.00
TOTALS		323.2	438.1	2,767.7	277.3	1,180.5	255.9	157.7	379.1	0.0	0.0	0.0	1,086.9	0.0		6,866.4	\$5,662,655.00

Partner (PT)
Of Counsel (OC)
Associate (A)
Contract (C)
Paralegal (PR)
Other (O)
Law Clerk (LC)

EXHIBIT 2

EXHIBIT 2 – CCMS Expenses
Updated Through Final Approval Hearing

EXPENSE	AMOUNT
Filing Fees	975.00
Miscellaneous (Polston Incident Report)	10.00
Miscellaneous (City of Salem Police Report)	23.00
Miscellaneous (Client Rodriguez Fax Charges)	20.42
Miscellaneous (Electronic Agreements)	63.00
Online Research	16,406.46
Overnight Delivery	62.61
Photocopies	4,123.50
Postage	69.15
Service of Process	370.00
Travel (Hotel, Meals, Transportation)	11,445.76
TOTAL	33,568.90

EXHIBIT 3

EXHIBIT 3 – Common Expenses Paid through the Litigation Fund

EXPENSE	AMOUNT
Expert Bruce McFarlane	281,673.00
Expert Claudiu Dimofte	57,000.00
Mediator Randall W. Wulff	12,500.00
Miscellaneous (litigation fund check purchase)	147.96
Veritext Deposition Services	62,363.25
TOTAL	413,684.21

1 Anthony F. Fata (*pro hac vice*)
Sarah E. Flohr (*pro hac vice*)
2 **KIRBY McINERNEY LLP**
211 West Wacker Drive, Suite 550
3 Chicago, IL 60606
Telephone: 312-767-5180
4 afata@kmlp.com
sflohr@kmlp.com
5

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

9 CARL BARRETT, et al.,

Plaintiffs,

11 v.

12 APPLE, INC., et al.,

13 Defendants.

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

**SUPPLEMENTAL DECLARATION OF
ANTHONY F. FATA IN FURTHER
SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT ON BEHALF
OF KIRBY McINERNEY LLP**

Judge: Hon. Edward J. Davila

15
16 I, Anthony F. Fata, subject to the penalties of perjury provided by 28 U.S.C. § 1746, hereby
17 declare as follows:

18 1. I am a partner at the law firm Kirby McInerney LLP (“Kirby McInerney”). I submit
19 this Declaration in further support of Plaintiffs’ Motion for Final Approval of Class Action
20 Settlement (ECF No. 282), and its Motion for an Award of Attorneys’ Fees, Expenses, and Class
21 Representative Service Awards (ECF No. 273) to provide the Court with the current total of
22 attorneys’ fees and expenses incurred by my firm in connection with this litigation.

23 2. On February 17, 2023, the Court appointed Cafferty Clobes Meriwether & Sprengel
24 LLP, Kirby McInerney, and Scott+Scott Attorneys at Law LLP as interim co-lead counsel for the
25 proposed class in the above-captioned action (the “Litigation”). ECF No. 132. On May 16, 2024,
26
27

1 the Court appointed the same firms as Class Counsel to represent the Settlement Class. ECF No.
2 269.

3 3. My firm's submission of its time and expenses in this Declaration adheres to the
4 reporting protocols established by Class Counsel in this Litigation.

5 4. The work performed by Kirby McInerney on behalf of Plaintiffs and the Class
6 includes the following: investigating and developing the claims, including pre-filing factual and
7 legal development; drafting the initial complaint and subsequent amended complaints; opposing
8 Apple's motions to dismiss; briefing and appearing in Court on various matters, including motion
9 practice and case management issues; participating in meetings of Class Counsel; obtaining and
10 reviewing discovery from Apple, including negotiating and reviewing document productions and
11 transaction data and taking and defending depositions; mediating the case, negotiating the
12 settlement agreement, and obtaining preliminary approval thereof; liaising with the claims
13 administrator in connection with the settlement process; engaging and working with experts and
14 consultants on numerous aspects of the case; communicating with Settlement Class Members;
15 addressing class member inquiries; assisting with the filing of claims; coordinating efforts to
16 submit a reminder notice to known claimants; overseeing the claims administration process;
17 coordinating the issuance of a deficiency notice for timely claims; researching and drafting the
18 Motion for Final Approval; and replying to Apple's Opposition to the Motion for an Award of
19 Attorneys' Fees. The specifics of the work performed by my firm are set forth in the Joint
20 Declaration of Nyran Rose Rasche, Anthony F. Fata, and Joseph P. Guglielmo filed in Support of
21 Plaintiffs' Motions for Attorneys' Fees, Expenses, and Service Awards (ECF No. 273-2), and in
22 the Supplemental Joint Declaration of Nyran Rose Rasche, Anthony F. Fata, and Joseph P.
23 Guglielmo in further support of the Motion for Final Approval of Class Action Settlement filed
24 concurrently herewith.

25 5. **Exhibit 1** sets forth the time spent by category of work performed by partners,
26 attorneys, and support staff of my firm, from inception of the Litigation through November 30,

27

28

1 2024. The billing rates for the partners, attorneys, and support staff align with the firm’s standard
2 billing rates for contingent cases. The rates reflected are historical rates, *i.e.*, the rates that were in
3 effect at the time when the work was done.

4 6. The hours spent by my firm from inception of the Litigation through November 30,
5 2024 totals 4,243.90. The firm’s lodestar to date totals \$2,692,212.50. Total hours were calculated
6 through an examination of contemporaneous time records regularly prepared and maintained by
7 my firm. My firm and I have reviewed the accuracy of these time records and their relevance and
8 have concluded they are reasonable and necessary for the prosecution of the Litigation. While
9 conducting this review, my firm and I made adjustments to align certain entries with the reporting
10 protocol established in this Litigation, as well as to adhere to the firm’s policies and procedures.
11 These adjustments were not only consistent with the firm’s best practices but were also beneficial
12 to the class.

13 7. **Exhibit 2** sets forth the unreimbursed expenses my firm incurred in prosecuting the
14 Litigation from inception through November 30, 2024, as well as expenses incurred in anticipation
15 of the December 12, 2024 final approval hearing, totaling \$33,987.52, exclusive of payments made
16 to the litigation fund. These unreimbursed expenses, incurred on behalf of the Plaintiffs, are
17 accurately reflected on the books and records of my firm and were prepared from expense reports
18 with attached receipts, check records, and other source materials.

19 8. To facilitate the sharing of expenses, Class Counsel contributed to a litigation fund
20 administered Cafferty Clobes. **Exhibit 3** sets forth common expenses paid or incurred by the
21 litigation fund, which was fully funded by Class Counsel, from inception of the Litigation through
22 the present totaling \$413,684.21.

23 I declare under penalty of perjury, under the laws of the United States of America, that to
24 the best of my knowledge, the foregoing is true and correct.

25 Executed on this 2nd day of December, 2024 at Chicago, Illinois.

26 /s/ Anthony F. Fata
27 Anthony F. Fata

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CERTIFICATE OF SERVICE

I, Anthony F. Fata, certify that on December 2, 2024 the foregoing document entitled ***SUPPLEMENTAL DECLARATION OF ANTHONY F. FATA IN FURTHER SUPPORT OF PLAINTIFFS’ MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT ON BEHALF OF KIRBY McINERNEY LLP*** was filed electronically in the Court’s ECF; thereby upon completion the ECF system automatically generated a “Notice of Electronic Filing” as service through CM/ECF to registered e-mail addresses of parties of record in this case.

/s/ Anthony F. Fata
Anthony F. Fata

EXHIBIT 1

Barrett, et al. v. Apple, Inc., et al.
 Case No. 5:20-cv-04812 (N.D. Cal.)
 Time Summary

Firm Name: Kirby McInerney LLP

Date: Inception through November 30, 2024

Categories: 1. Investigations and Factual Research; 2. Case Management and Litigation Strategy; 3. Discovery (other than document review); 4. Document Review; 5. Pleadings, Briefs and Legal Research; 6. Court Appearances and Preparation; 7. Experts/Consultants; 8. Class Certification; 9. Trial & Preparation; 10. Post-trial proceedings; 11. Appeal; 12. Settlement; 13. Miscellaneous (describe)

Name (Title)	Status	1	2	3	4	5	6	7	8	9	10	11	12	13	Hourly Rate	Total Hours	Total Lodestar At Historical Rates
Anthony F. Fata	PT	0.3	0.8			0.3							114.3		\$1,200	115.7	\$138,840.00
Anthony F. Fata	PT	11.7		93.8		65.9		0.5	107.9				107.8		\$1,100	387.6	\$426,360.00
Anthony F. Fata	PT	5.9	1.1	51.4		96.8		3.7	31.7				1.1		\$950	191.7	\$182,115.00
Cormac Broeg	A					8.2							65.2		\$600	73.4	\$44,040.00
Sarah Flohr	A												237.4		\$700	237.4	\$166,180.00
Sarah Flohr	A	1.9	4.6	206.4		92.3			110.4				47.1		\$650	462.7	\$300,755.00
Sarah Flohr	A		9.1	42.5		160.0			68.3						\$525	279.9	\$146,947.50
Belden Nago	A	4.5		334.5		60.4			28.2						\$700	427.6	\$299,320.00
Belden Nago	A			0.2					27.9						\$575	28.1	\$16,157.50
Belden Nago*	A				401.0										\$400	401.0	\$160,400.00
Marko Radisavljevic	A					0.4	1.9						2.0		\$700	4.3	\$3,010.00
Marko Radisavljevic	A	72.2	4.1	336.3		34.9	19.2	74.9	62.6				66.4		\$600	670.6	\$402,360.00
Marko Radisavljevic	A	24.9	5.1	495.3		66.3			13.1						\$500	604.7	\$302,350.00
Marko Radisavljevic	A				0.4										\$400	0.4	\$160.00
Elizabeth Ely	PR	0.3	2.5	1.0		15.9		0.2	0.3						\$300	20.2	\$6,060.00
Daniel Sokolin	PR			11.8		58.4									\$275	70.2	\$19,305.00
Fabiha Khan	PR	24.1	0.6	13.6		32.5			18.0						\$275	88.8	\$24,420.00
Casey Liu	PR			0.3									12.1		\$300	12.4	\$3,720.00
Kristen Bolster	PR		3.9	8.2		7.3			83.8				46.1		\$300	149.3	\$44,790.00
Kristen Bolster	PR					0.8									\$275	0.8	\$220.00
Marya Jureidini	PR		1.6			5.0							10.5		\$275	17.1	\$4,702.50
TOTALS		145.8	33.4	1,595.3	401.4	705.4	21.1	79.3	552.2	0.0	0.0	0.0	710.0	0.0		4,243.9	\$2,692,212.50

- Partner (PT)
- Of Counsel (OC)
- Associate (A)
- Contract (C)
- Paralegal (PR)
- Other (O)
- Law Clerk (LC)

EXHIBIT 2

EXHIBIT 2 - KM Expenses**Updated Through Final Approval Hearing**

EXPENSE	AMOUNT
Lexis/Westlaw/Pacer	\$17,242.16
Travel (Hotel, Meals, Transportation)	\$10,814.16
Miscellaneous (Jury profile reports, Third Party Discovery - US Treasury - FOIA)	\$4,610.00
Court Fees	\$317.00
Federal Express/Local Courier, etc.	\$294.95
Process Server	\$258.79
Outside Photocopying	\$235.21
Deposition Costs - (Veritext)	\$215.25
TOTAL	\$33,987.52

EXHIBIT 3

EXHIBIT 3 – Common Expenses Paid through the Litigation Fund

EXPENSE	AMOUNT
Expert Bruce McFarlane	281,673.00
Expert Claudiu Dimofte	57,000.00
Mediator Randall W. Wulff	12,500.00
Miscellaneous (litigation fund check purchase)	147.96
Veritext Deposition Services	62,363.25
TOTAL	413,684.21