UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DONALD R. CAMERON, ET. AL.,

Plaintiffs,

v.

APPLE INC.,

Defendant.

CASE NO. 19-cv-3074-YGR

ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND SETTING DEADLINES FOR NOTICE, OBJECTION, EXCLUSION, AND FINAL FAIRNESS HEARING

Re: Dkt. No. 396

On November 2, 2021, the Court held a hearing on the unopposed motion of plaintiffs Donald Cameron and Pure Sweat Basketball, Inc. for preliminary approval of the parties' proposed settlement; approval of the proposed Class Notice; appointing Class Representative, Class Counsel and the proposed Settlement Administrator; and setting a date for the hearing on final approval of the settlement. (Dkt. No. 396.) Steve Berman, Rob Lopez, and Ben Harrington of Hagens Berman Sobol Shapiro LLP appeared for plaintiffs, and Mark Perry, Rachel Brass, and Caeli Higney of Gibson, Dunn, & Crutcher LLP appeared for defendant Apple, Inc.

Having considered the motion briefing, the arguments of counsel, the relevant law, the terms of the settlement agreement and the class notice, as well as the record in this case, and based on the reasons and terms set forth herein, the Court **GRANTS** the motion for preliminary approval of the class action settlement.

1. Class Definition and Basis for Conditional Certification

The Settlement Agreement, attached hereto as **Exhibit A**, defines the class as:

> All former or current U.S. developers of any Apple IOS application or in-app product (including subscriptions) sold for a non-zero price via Apple's IOS App Store that earned, through all Associated Developer Accounts, proceeds equal to or less than $1,000,000 through the App Store U.S. storefront in every calendar year in which the U.S. developer had a developer account between June 4, 2015 to the date of the Agreement (August 24, 2021). For class definition purposes, the 2015 calendar year consist of June 4, 2015 through December 31, 2015. The 2021 calendar year shall consist

> of January 1, 2021 through April 26, 2021. Additionally, excluded from the Settlement Class are (a) directors, officers, and employees of Apple or its subsidiaries and affiliated companies, as well as Apple's legal representatives, heirs, successors, or assigns, (b) the Court, the Court staff, as well as any appellate court to which this matter is ever assigned and its staff, (c) Defense Counsel, as well as their immediate family members, legal representatives, heirs, successors, or assigns, (d) any Developers who validly request exclusion ("opt out") from the Settlement Class, and (e) any other individuals whose claims already have been adjudicated to a final judgment.

The Court finds that, for purposes of settlement, plaintiffs have satisfied the requirements of Rule 23(a) as well as the requirements for certification under one or more subsections of Rule 23(b). With respect to numerosity under Rule 23(a)(1), the Settlement Class includes 67,000 members, making it so numerous that joinder of all members is impracticable.

Rule 23(a)(2) commonality requires "questions of fact or law common to the class," though all questions of fact and law need not be in common. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Plaintiffs brought the following causes of action: (i) Violation of the Sherman Act –Monopolization/ Monopsonization (15 U.S.C. § 2); (ii) Violation of the Sherman Act-Attempted Monopolization/ Monopsonization (15 U.S.C. § 2); (iii) Unlawful business practices and violations under California Business and Professions Code, § 17200, et seq. ("UCL"); and (iv) Unfair competition under California Business and Professions Code, § 17200, et seq. ("UCL"). (*See* Dkt. No. 53) ("Consolidated Class Complaint"). The focus of this action—whether Apple willfully acquired and maintained monopoly power, or attempted to gain monopoly power, by refusing to allow iOS device users to purchase iOS apps and in-app products other than through its own App Store—is common to all class members. Antitrust actions are particularly appropriate for class treatment as the allegations regarding the defendant's conduct, and the evidence of the same, which typically is expert heavy, impacts the class generally.

Rule 23(a)(3) requires that the plaintiffs show that the claims or defenses of the representative parties are typical of the claims or defenses of the class. Plaintiffs' and members of the Settlement Class claims all stem from the same alleged conduct, *i.e.* antitrust injury, making plaintiffs' claims typical of class members. Here, while the settlement class is narrower than that

alleged in the consolidated complaint, the class representatives themselves are typical of those members represented herein, namely the subgroup of 99% of the developers.

With respect to Rule 23(a)(4), the Court finds the representative parties and class counsel have fairly and adequately represented the interests of the Class. No conflicts of interest appear as between plaintiffs and the members of the Settlement Class. Class Counsel are deeply versed in this area of the law and have routinely demonstrated that they are qualified and have experience with prosecuting class actions of this kind and therefore adequate to represent the Settlement Class as well. The parties engaged in extensive discovery during the almost 2.5-year course of this litigation. More than 5 million documents and 20 million pages have been produced in this litigation. Berman Decl. ¶ 3. The parties collectively have taken over fifty depositions, including the depositions of Apple's Senior Management. *See Id.* Apple has produced 13 terabytes of transactional data that plaintiffs and their experts have analyzed. *Id.*

The Settlement Class further satisfies Rule 23(b)(3) in that common issues predominate and "a class action is superior to other available methods for fairly and efficiently adjudicating" the claims here.

Based on the foregoing, the proposed class is conditionally certified pursuant to Rule 23(c).

2. Class Representatives and Class Counsel

Plaintiffs Donald Cameron and Pure Sweat Basketball, Inc., are appointed the Class Representatives. Hagens Berman Sobol Shapiro LLP is appointed Class Counsel.

Class counsel are experts in antitrust litigation and argue that they have aggressively pursued and analyzed a massive discovery record, have conducted and/or defended at least seventeen depositions, retained prominent experts, and prepared a motion for class certification. (Berman Decl. ¶ 3.) With respect to the named plaintiffs, they have actively furthered the interests of the class by reviewing submissions, conferring with class counsel, producing documents, and sitting for depositions. Named plaintiffs appear to have no conflict of interest with the settlement class and have suffered the same alleged injury as all settlement class members. (Mot. at 11, 24.)

3. Settlement Agreement

In summary, the settlement provides $100,000,000 in monetary relief and structural relief in 6 areas of particular concern to the IOS developer community. (*See* Settlement Agreement). The Settlement Agreement appears to have been the product of arm's length and informed negotiations with the assistance of an experienced mediator. The relief provided for the Class appears to be adequate, taking into account:

(i) the costs and risks associated with trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreements required to be identified under Rule 23(e)(3) (in this case, none).

Moreover, the Settlement Agreement appears to treat Class members equitably relative to each other. The Court notes that it is particularly aware of the risks of trial in this case having tried and written a 185-page decision in the *Epic Games v. Apple* dispute referenced above. Preliminary approval will allow the Court to hear any objections by the proposed class members before final approval.

In terms of structural relief, under the Settlement, Apple has agreed to maintain the 15-percent commission tier for U.S. developers enrolled in the Small Business Program for at least three years after Final Approval. *See id.* § 5.1.1. Next, Apple has agreed to revise its App Store Guidelines to permit developers of all app categories to communicate with consenting customers outside their app, including via email and other communication services, about purchasing methods other than in-app purchase. *See id.* § 5.1.3. Third, for at least three years after Final Approval, Apple will continue to "conduct robust experimentation to drive continuous improvement" in App discoverability, including in ways that will "give new and high-quality apps a chance to be found." *See id.* § 5.1.2. Fourth, Apple will expand its pricing tiers from 100 to 500 (by December 31, 2022), and maintain those tiers for at least three years from Final Approval. *See id.* § 5.1.4. This enhanced pricing freedom will allow iOS developers to more carefully calibrate their prices to compete and enhance revenues. Fifth, Apple will create an appeal process, which will be available to any developer who "believes that there has been unfair treatment by Apple in

the review of any of the U.S. developer's apps, or in-app products, or updates." *See id.* 5.1.5. Apple will be required under the Settlement to maintain this appeal process, and the website callout, for at least three years. *See id.* Finally, in terms of transparency, for at least three years from Final Approval, Apple will publish an annual "transparency report" that (at a minimum) will provide (a) meaningful statistics on the number of apps rejected and reasons why, (b) the number of customer and developer accounts deactivated, and (c) objective data regarding search queries and results, and the number of apps removed from the App Store. *See id.* § 5.1.6. The Court finds these structural benefits are valuable to the settlement class.

Accordingly, the Settlement Agreement is granted preliminary approval pursuant to Rule 23(e)(2). Based upon the information before the Court, the Settlement Agreement falls within the range of possible approval as fair, adequate and reasonable, and there is a sufficient basis for notifying the Class and for setting a Fairness and Final Approval Hearing.

4. Plan of Allocation

The allocation plan provides a minimum payment to every member of the settlement class, with higher payments available to those who have participated more extensively in the iOS app ecosystem. Each class member's recovery will be tied to the historic proceeds they have generated through the App store. Given that settlement class members' proceeds in the app store can be influenced by discoverability issues outside their control, plaintiffs believe that an equitable means of allocating the settlement fund is to group settlement class members into tiers, which the settlement does. In its initial analysis, the Court finds that this appears to be a fair method of distribution.

The estimated recovery falls into the following categories:

51% will get a minimum payment of $250

23% will get a minimum payment of $500

11% will get a minimum payment of $1,000

4% will get a minimum payment of $1,500

6% will get a minimum payment of $2,000

2% will get a minimum payment of $3,500

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