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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CARL BARRETT, MICHEL POLSTON,
NANCY MARTIN, DOUGLAS WATSON,
ERIC MARINBACH, MICHAEL
RODRIGUEZ, and MARIA RODRIGUEZ,
Individually, and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

APPLE INC., a California Corporation;
APPLE VALUE SERVICES LLC; and
DOES 1 Through 10, Inclusive,

Defendants.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs Carl Barrett, Michel Polston, Nancy Martin, Douglas Watson, Eric Marinbach,
 2 Michael Rodriguez, and Maria Rodriguez (collectively, “Plaintiffs”), individually and on behalf
 3 of all others similarly situated, bring this Class Action Complaint (“Complaint”) against
 4 Defendants Apple Inc. and Apple Value Services LLC (collectively, “Apple”) and DOES 1
 5 through 10 (collectively, with Apple, “Defendants”). The following allegations are based upon
 6 personal knowledge as to Plaintiffs’ own facts, upon investigation by Plaintiffs’ counsel, and upon
 7 information and belief where facts are solely in possession of Defendants.¹

8 NATURE OF THE CASE

9 1. This case arises from Apple’s knowing or reckless enabling of the “iTunes gift card
 10 scam.” Scammers have found a uniform way of tricking victims into paying them large sums of
 11 money via iTunes gift cards. Apple is incentivized to allow the scam to continue because it reaps
 12 a 30% commission on all scammed proceeds, and knowingly or recklessly, Apple plays a vital role
 13 in the scheme by failing to prevent payouts to the scammers.

14 2. The iTunes gift card scam preys upon many, including the elderly and vulnerable.
 15 It is prevalent. Apple dedicates a webpage to it, but apparently does little more.

16 3. Perhaps most alarming, Apple describes the scam as “*formulaic*,” yet does little to
 17 stop it or to return its 30% commission to scammed victims (much less other moneys that Apple
 18 can recover from the scammers).

19 4. Despite the fact that Apple retains the funds from purchases made using iTunes gift
 20 cards for four to six weeks before paying App and iTunes store vendors and keeps a 30%
 21 commission on scammed proceeds, Apple’s webpage and other communications falsely inform
 22 the public that all scammed proceeds are irretrievable:

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

25 * * *

26 Regardless of the reason for payment, the scam follows a certain *formulaic*: The victim
 27 receives a call instilling panic and urgency to make a payment by purchasing App Store

28 ¹ Plaintiffs will work with Apple on the timing of Apple’s response to this Complaint and
 other ways of reducing the burdens of litigation on the parties, their counsel, and the Court in light

1 & iTunes Gift Cards or Apple Store Gift Cards from the nearest retailer (convenience
2 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.

3 * * *

4 Never provide the numbers on the back of a Gift Card to someone you do not know.
5 ***Once those numbers are provided to the scammers, the funds on the card will likely
be spent before you are able to contact Apple or law enforcement.***

6 See Apple, About Gift Card Scams, <https://support.apple.com/itunes-gift-card-scams>. [Emphasis
7 added.]

8 5. The last sentence is highly misleading, and falsely suggests that there is nothing
9 Apple can do for consumers who report the scam to it. Apple retains 30% of the spent funds for
10 itself. At all times, this amount remains retrievable to the consumer. Apple holds the remaining
11 spent funds for four to six weeks before paying the third-party vendors on the App and iTunes
12 stores on which the stored value was spent, meaning the remainder is also retrievable to the
13 consumer.

14 6. The iTunes gift card scam deprives consumers of hundreds of millions of dollars or
15 more. The overwhelming majority of victims do ***not*** report the scam to the Federal Trade
16 Commission (“FTC”). Yet even the limited iTunes gift card scams reported to the FTC during
17 2015-2019 exceed \$93.5 million, with the dollar amounts increasing significantly each year. These
18 publicly reported dollar amounts include the losses of only the subset of victims who fill out a
19 detailed online FTC form asking for their personal information. As a result, this \$93.5 million
20 figure appears to be only the tip of the iceberg. Even if only 10% of scam victims report to the
21 FTC (versus local police, attorney general offices, Apple, or nobody at all), the iTunes gift card
22 scam would approach \$1 billion, with Apple retaining \$300 million in commissions.

23 7. As set forth in detail below, scammers monetize scammed gift card values in one
24 of two ways. First, they can use the stored value on the iTunes gift cards they obtain through
25 scams to purchase App and iTunes store content for apps that they control. Using this method,
26 scammers receive payment from Apple (less Apple’s 30% commission) four to six weeks after
27 spending the stored value from the wrongfully obtained iTunes gift cards. Apple has shut down
28 apps for violating its fraud policies, begging the question of what happened to the fraudulently

1 obtained proceeds. Second, scammers can sell the gift card numbers to third parties who then use
2 them to purchase App store or iTunes products, but this latter method involves significant counter-
3 party risk and steep discounts. Regardless of which method the scammers use, Apple keeps 30%
4 of the scammed proceeds.

5 8. Not only does Apple keep 30% of the scammed proceeds, it is able to track all key
6 points in the scheme. Apple has long bragged about its App Store “ecosystem.” The App Store is
7 a marketplace created by Apple, over which it has full control, and into which it has full visibility.
8 There are four key steps in the iTunes gift card scam:

9 9. Step One: The Point of Sale. Apple knows when, where, and in what amount the
10 victim purchases the gift card. At the point of sale, the retailer must communicate with Apple to
11 “activate” the gift card and record the stored value.

12 10. Step Two: The Apple ID Upload. Apple knows the Apple ID onto which the gift
13 card number is uploaded. An Apple ID is a unique Apple “account” identifier through which
14 customers on the App and iTunes stores transact. Apple iTunes gift card numbers must be
15 uploaded to an Apple ID before being used in the App and iTunes stores. The amounts associated
16 with these gift card numbers are referred to as “stored value” or “stored credit.” Apple reserves
17 the right to void the stored value if it merely “suspects” that the store credit was obtained
18 fraudulently.

19 11. Step Three: Spending Stored Value on an App. Apple also knows where the Apple
20 ID spends stored value in the App store ecosystem because each purchase must be made from an
21 Apple ID.

22 12. Step Four: Payment of U.S. Dollars (Less Commission). Apple knows the identity
23 and financial account information of the App and iTunes store proprietors who receive U.S. dollars
24 from the gift card purchases because, four to six weeks after the purchase, Apple sends them the
25 U.S. dollars (minus Apple’s commission).

26 13. Reverse Mapping. If a victim calls Apple and provides the gift card number that
27 was scammed, Apple can use the gift card number to find out which Apple ID(s) and which App
28 or iTunes products were involved in converting the scammed gift card number into U.S. dollars.

1 Apple can also interrogate the Apple ID and the App and iTunes transactional data to determine if
2 there were other suspect transactions and, if so, suspend the Apple ID and the App. At minimum,
3 Apple knows that it has kept 30% of the scammed gift card value.

4 14. Rather than publicizing its omniscience in this Apple “ecosystem” and its 30% take,
5 Apple, as noted above, falsely tells victims that 100% of their money is irretrievable.

6 15. Plaintiffs bring this class action on behalf of themselves and an objectively
7 identifiable class consisting of all victims of scams involving Apple iTunes gift cards.

8 PARTIES

9 16. Plaintiff Carl Barrett is a resident and citizen of Prince George’s County, Maryland,
10 living in Hyattsville, Maryland. Plaintiff Barrett is 57 years old.

11 17. Plaintiff Michel Polston is a resident and citizen of Marion County, Oregon, living
12 in Salem, Oregon. Plaintiff Polston is 71 years old.

13 18. Plaintiff Nancy Martin is a resident and citizen of Sarasota County, Florida, living
14 in Nokomis, Florida. Plaintiff Martin is 61 years old.

15 19. Plaintiff Douglas Watson is a resident and citizen of Butte County, California,
16 living in Chico, California. Plaintiff Watson is 64 years old.

17 20. Plaintiff Eric Marinbach is a resident and citizen of Queens, New York, living in
18 Bayside, New York. Plaintiff Marinbach is 55 years old.

19 21. Plaintiff Michael Rodriguez is a resident and citizen of Los Angeles County,
20 California, living in Walnut, California. Plaintiff Michael Rodriguez is 50 years old.

21 22. Plaintiff Maria Rodriguez is a resident and citizen of Los Angeles County,
22 California, living in Walnut, California. Plaintiff Maria Rodriguez is 68 years old.

23 23. Defendant Apple Inc. (“Apple”) is a business incorporated under the laws of the
24 State of Delaware with its principal place of business at 1 Infinite Loop, Cupertino, California
25 95014. Apple is engaged in the business of designing, manufacturing, distributing, and selling,
26 *inter alia*, smartphones, tablet computers, wearable technology, headphones, laptops and desktop
27 computers that come with software programs that Apple develops pre-installed. Apple designs its
28



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