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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **OAKLAND DIVISION**

17 DONALD R. CAMERON, ET AL.,

18 Plaintiffs,

19 v.

20 APPLE INC.,

21 Defendant.

CASE NO. 4:19-cv-03074-YGR

**DEFENDANT APPLE INC.'S STATEMENT
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT**

The Honorable Yvonne Gonzalez Rogers

1 Pursuant to Local Civil Rule 7-3(b), Defendant Apple Inc. respectfully submits this statement
2 of non-opposition to the Developer Plaintiffs’ motion for preliminary approval of the settlement in
3 this case. Apple believes the settlement is fair, reasonable, and adequate; that it complies with the
4 requirements of Rule 23 and this Court’s guidelines; and that it should receive preliminary approval.
5 The settlement provides substantial monetary and structural relief to the thousands of small U.S. de-
6 velopers who comprise the settlement class, and will benefit all iOS app developers worldwide.

7 Apple is confident that if this litigation were to continue, Apple would defeat class certifica-
8 tion and/or Apple would prevail at trial. The Court is aware from the *Epic* trial, including the testi-
9 mony of Apple’s most senior executives, of Apple’s commitment to building and maintaining the
10 App Store as a great place for both developers and consumers to transact in apps and in-app pur-
11 chases. The evidence of record establishes that the practices challenged in this and other cases are
12 both lawful and well-justified by business necessity—including the protection of Apple’s intellectual
13 property, and protecting the security and privacy of Apple’s customers.

14 Nevertheless, Apple would rather work with developers than litigate against them. Accord-
15 ingly, after extensive arms-length negotiations, Apple and the Developer Plaintiffs reached a solution
16 that, if approved by the Court, will avoid the expense and distraction of further litigation while
17 providing real assistance to the small developers who are so important to the burgeoning app econ-
18 omy. Apple also agrees to class certification for settlement purposes only, without in any way con-
19 ceding that a litigation class could ever be certified here or in any related case.¹

20 Apple knows that the Court will study the papers, including the settlement agreement, very
21 carefully. Accordingly, Apple simply highlights here the key benefits provided by the settlement for
22 the developer community:

23
24
25
26 ¹ Although Apple agrees that a settlement class may be certified consistent with Rule 23, particu-
27 larly because the Court does not have to address manageability, Apple does not agree with Devel-
28 oper Plaintiffs’ assertion that market definition, monopoly power, or antitrust impact are common
issues or could be proved, in a contested trial, with common evidence. However, the settlement
obviates the individualized (and divergent) inquiries that would be required to adjudicate the
claims of the class members on these supposedly common questions.

- 1 • **Small Developer Assistance Fund.** Apple will pay \$100 million into a fund to assist U.S. de-
2 velopers who use paid downloads or in-app purchases and earn less than a million dollars
3 each year—with a minimum payment of \$250 for every class member who submits a valid
4 claim.
- 5 • **Small Business Program Maintenance.** Apple will continue its popular Small Business Pro-
6 gram, and associated 15% commission rate, for at least three years after final approval.
- 7 • **Search and Discovery.** Apple will commit to drive search results by a variety of factors that
8 will give new and high-quality apps a chance to be found.
- 9 • **Steering.** Apple will permit developers to communicate outside the app (e.g., by e-mail) with
10 customers regarding alternative purchase options, and will eliminate the Guidelines restriction
11 that currently prevents developers from using information from within the app for this pur-
12 pose.
- 13 • **Price Points.** Apple will expand the number of price points available to developers from
14 fewer to 100 today to more than 500 by December 31, 2022.
- 15 • **App Rejection.** Apple will clarify that developers can appeal the rejection of apps where they
16 believe there has been unfair treatment by Apple.
- 17 • **Transparency.** Apple will publish an annual report with meaningful information regarding
18 app rejections, search queries and results, and other issues of interest to developers.

19
20 Absent a settlement, the Developer Plaintiffs could receive nothing. They acknowledge in
21 their motion the substantial risks of this litigation. This settlement, in contrast, will quickly deliver
22 benefits to app developers. Importantly, the settlement underscores Apple’s commitment to app de-
23 velopers and acknowledges their valuable contributions to the app economy.²

24
25 _____
26 ² Apple notes in this respect that, according to the motion, class counsel may request something in
27 excess of 33% of the settlement fund in fees, expenses, and costs. If they do, Apple expects to
28 take the position that the amount sought is excessive. Of course, if they request less, then Apple
may have no objection. In all events, Apple reserves the right to object to or oppose any request
for fees and expenses that class counsel may eventually make. The Parties have reached no
agreement on this amount, and the Court will ultimately have to make the decision.

1 Of course, Apple benefits from the settlement too. The class members “expressly agree to the
2 appropriateness of Apple’s commission structure, including but not limited to the Small Business
3 Program, as it applies to the Settlement Class.” They also release their claims against Apple, includ-
4 ing “any claim, contention, argument, or theory that they were ‘overcharged’ during the Class Period
5 by virtue of commissions charged by Apple on paid downloads or in-app purchases of digital content
6 (including subscriptions) through the App Store.” These are important acknowledgments.

7 This is a win-win situation. The settlement class and Apple both benefit from the settlement,
8 as do non-party app developers worldwide. It should be approved by the Court.

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10 //

11 DATED: August 26, 2021

GIBSON, DUNN & CRUTCHER LLP

13 By: /s/ Mark A. Perry
14 Mark A. Perry

15 *Attorneys for Defendant Apple Inc.*