

1 Aaron K. Block (*Pro Hac Vice*)
Georgia Bar No. 508192
2 Max Marks (*Pro Hac Vice*)
Georgia Bar No. 477397
3 THE BLOCK FIRM, LLC
309 E. Paces Ferry Road, Suite 400
4 Atlanta, Georgia 30305
Tel: (404) 997-8419
5 aaron@blockfirmllc.com
max.marks@blockfirmllc.com

Kyle McLean (SBN 330580)
Lisa R. Considine (*Pro Hac Vice*)
Leslie L. Pescia (*Pro Hac Vice*)
SIRI & GLIMSTAD LLP
700 S. Flower Street, Suite 1000
Los Angeles, CA 90017
Tel: 212-532-1091
Fax: 646-417-5967
kmclean@sirillp.com
lconsidine@sirillp.com
lpescia@sirillp.com

6 Candice L. Fields (SBN 172174)
7 CANDICE FIELDS LAW, PC
400 Capitol Mall, Suite 1620
8 Sacramento, California 95814
916-414-8050
9 cfields@candicefieldslaw.com

10 *Counsel for Plaintiffs Cassandra Edwards,*
11 *Allan Amsel, Brittany Frank, and*
the Putative Class

Counsel for Plaintiff Everett Scott and
the Putative Class

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

15 **CASSANDRA EDWARDS, EVERETT**
16 **SCOTT, ALLAN AMSEL, AND BRITTANY**
17 **FRANK**

Case No.: 5:24-cv-05795-ELK
CONSOLIDATED AMENDED
CLASS ACTION COMPLAINT

18 **Plaintiffs, individually and on**
19 **behalf of all others similarly**
situated,

20 **vs.**

21 **APPLE INC. AND APPECARE SERVICE**
22 **COMPANY, INC.,**

23 **Defendants.**

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

	<u>Page</u>
Introduction	1
Jurisdiction and Venue	2
Parties and Standing	3
Factual Allegations	7
<i>Background</i>	7
<i>The AppleCare + Terms and Conditions Tie Services to a Specific “Covered Device”</i>	9
<i>Apple Expressly Promised to Cancel Plaintiffs’ Plans on Trade-in</i>	10
<i>Consumers Benefit from Automatic Cancellation on Trade-in, while Apple Profits from Continuing Charges for Devices that Will Never Need Service</i>	12
<i>The Terms & Conditions Choose California Law and Preserve All Consumer Claims</i>	13
<i>Summary of Allegations Regarding the AppleCare+ Terms & Conditions</i>	14
<i>Apple Trade-ins</i>	15
<i>AppleCare+ is Worthless Without a Covered Device—and Apple Knows It</i>	16
<i>Apple’s Apparent Unilateral, Post-Lawsuit Refunds of Class Members</i>	20
Class Allegations	24
Choice of Law Allegations	27
Causes of Action	29
<i>Count 1: Breach of Contract</i>	29
<i>Count 2: California’s Unfair Competition Law (“UCL”)</i>	36
<i>Count 3: California’s Consumer Legal Remedies Act (“CLRA”)</i>	39
<i>Count 4: Unjust Enrichment or Quasi-Contract Claim for Restitution</i>	44
<i>Count 5: Conversion</i>	44

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Count 6: California Penal Code § 496 47

Prayer for Relief..... 49

Introduction

1
2 1. When someone trades in or returns an Apple device, Apple promises to cancel the
3 AppleCare+ contract tied to that device. That is what the AppleCare+ agreements state and what
4 consumers expect. Having traded in an Apple device, consumers have no need to pay for
5 protection or support on it. But instead of honoring its agreement and consumers’ expectations,
6 Apple failed to cancel the AppleCare+ contracts of Plaintiffs and members of the Class they seek
7 to represent after trade-ins or returns. In some cases, Apple kept collecting monthly fees for
8 years after a trade-in, amounting to hundreds of dollars. At the same time, Apple also charged
9 Plaintiffs for new AppleCare+ subscriptions on their new devices.

10 2. Apple knows when a device covered by an AppleCare+ contract has been traded
11 in or returned. Apple ties AppleCare+ to a particular device by serial number, it charges fees by
12 device, and services are available under the contract only in connection with that device. When
13 consumers like Plaintiffs sign up for an AppleCare+ subscription at purchase, Apple
14 automatically enrolls their specific device in AppleCare+ and begins charging fees as soon as it
15 ships. Apple also tracks trade-ins and returns by serial number. It would be just as easy for Apple
16 to automatically turn off AppleCare+ fees when a consumer trades in or returns a device as it is
17 for Apple to automatically start the fees on purchase. But it would be far less profitable.

18 3. It is wrong for Apple to charge consumers for AppleCare+ tied to devices that
19 Apple knows they no longer own. Apple’s own trade-in terms require consumers to relinquish
20 ownership of the covered devices forever. AppleCare+ is an extended warranty and service
21 contract that is worthless to the consumer without the covered device. Charging for AppleCare+
22 after a trade-in is pure profit for Apple because it cannot incur any replacement, repair, or
23 support-related costs for a device that is out of circulation. For Apple, it’s money for nothing.
24 For consumers, it’s one more obstacle to making ends meet. For both sides, these charges add up.

25 4. As set out below, Apple breached its contracts with consumers, violated
26 applicable laws, and unjustly enriched itself at its customers’ expense. On behalf of themselves
27 and the Class, Plaintiffs seek to recover all damages caused by Apple’s wrongful conduct,

1 injunctive relief requiring Apple to immediately cancel AppleCare+ on devices that have been
2 traded in or returned, punitive damages, treble damages, and attorneys' fees.

3 **Jurisdiction and Venue**

4 5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
5 1332(d)(2) because at least one class member is of diverse citizenship from Defendant, there are
6 more than 100 class members, and, upon information and belief, the aggregate amount in
7 controversy exceeds \$5,000,000.

8 6. This Court has personal jurisdiction over Defendant Apple, Inc. because it is a
9 California corporation, its principal place of business is in California, and it has conducted and
10 continues to conduct business in California.

11 7. This Court has personal jurisdiction over Defendant AppleCare Service Company,
12 including its "dba" entity Apple CSC, because its principal place of business is in California, and
13 it has conducted and continues to conduct business in the State of California.

14 8. Venue is proper in this District under 28 U.S.C. § 1391 because the events that
15 gave rise to the claims occurred in substantial part in this District.

16 9. Venue is proper in this Court with respect to California's Consumer Legal
17 Remedies Act ("CLRA") because Defendants' principal place of business is within a county
18 within this District. The affidavit required by Cal. Civ. Code § 1780(d) was submitted as an
19 exhibit to the original Complaint, and the Defendants remain the same. (Dkt. 1-1).

20 10. Upon information and belief, Defendants substantially developed and determined
21 the language and terms used in the AppleCare+ contracts in California.

22 11. Upon information and belief, all or substantially all marketing decisions related to
23 AppleCare+ were made in California.

24 12. Upon information and belief, all or substantially all policies and procedures
25 related to AppleCare+ were developed in California, including all policies and procedures related
26 to trade-ins, returns, and cancellation.

27 13. Upon information and belief, Apple Inc. engaged in unlawful conduct giving rise

1 to the claims of Plaintiffs and the Class—the electronic “collection and transfer” of funds from
2 the bank accounts of Plaintiffs and members of the Class that Apple had no right to collect—
3 from California as part of the performance of its role as the “Administrator” of the AppleCare+
4 contracts.

5 **Parties and Standing**

6 14. Plaintiff Cassandra Edwards is a resident of Florida. On October 16, 2020, Ms.
7 Edwards ordered an iPhone 12 Pro with the serial number F17DH22G0D88 from Apple. When
8 she purchased the device, she also ordered AppleCare+, and Apple notified her that a
9 subscription to “AppleCare+ with Theft and Loss for iPhone 12 Pro” was “[a]utomatically
10 registered with your Apple hardware” at a cost of \$13.49/month, which would begin when Apple
11 shipped the device. Every month thereafter, Ms. Edwards received a “Receipt & Renewal
12 Notice” from Apple for AppleCare+ with charges of \$14.19 (the \$13.49 fee plus \$0.70 tax) that
13 were specifically tied to Ms. Edwards’ device with serial number F17DH22G0D88. On
14 November 26, 2021, Ms. Edwards started the trade-in process directly with Apple through
15 Apple’s official trade-in program. On January 8, 2022, Ms. Edwards completed the trade-in
16 process, and Apple acknowledged that she had traded in her device with the serial number
17 F17DH22G0D88. Apple also informed Ms. Edwards that “[a]t this point, if you decide to return
18 your new Apple product, we will not be able to return your trade-in device to you.” As part of
19 this trade-in transaction, Apple sold Ms. Edwards a new phone with a new serial number, it sold
20 and automatically enrolled her in an AppleCare+ subscription connected to that new device, and
21 it began charging her a new monthly subscription fee for AppleCare+ for the new device. At the
22 same time, Apple continued to charge Ms. Edwards—and Ms. Edwards continued to unwittingly
23 pay—for the AppleCare+ subscription tied to device F17DH22G0D88 every month from
24 February 2022 through July 2024, when Ms. Edwards realized that these charges were for her
25 old phone, complained to Apple, and sought refunds. Apple provided certain refunds after
26 multiple levels of review but did not provide any compensation for the lost time value of money
27 or for her wasted time, opportunity costs, and transaction costs. Apple also failed to refund Ms.

1 Edwards for the prorated portion of January 2022 between when Apple approved her trade-in on
2 January 8 and when her next billing cycle began on January 11. Ms. Edwards' total refund
3 (\$439.89) was less than the total amount she paid Apple from the start of the AppleCare+ plan on
4 device F17DH22G0D88 through her last payment (\$624.36).

5 15. Plaintiff Everett Scott is a resident of California. He purchased an iPhone 13 on or
6 about May 1, 2023. This device was tied to Mr. Scott's official Apple user account and account
7 number, but Mr. Scott is currently unable to identify the device's serial number. On August 14,
8 2023, Mr. Scott purchased a monthly AppleCare+ subscription for this device at a cost of
9 \$7.99/month. On December 14, 2023, Mr. Scott made a monthly payment that provided coverage
10 on this plan on this device through January 14, 2024. On December 28, 2023, Mr. Scott traded in
11 this iPhone 13 at an AT&T store and received an iPhone 13 Pro with serial number
12 C0734YJ097. AT&T is an Apple Authorized Reseller. When Mr. Scott completed this Apple-
13 authorized trade-in transaction, Apple failed to cancel the AppleCare+ plan on his iPhone 13 that
14 he purchased on or around May 1, 2023, and failed to provide him with a prorated refund for his
15 unused time on the plan. At the same time, with respect to his new iPhone 13 Pro with serial
16 number C0734YJ097, an AppleCare+ subscription was automatically registered with his new
17 Apple device at a cost of \$9.99/month, and Apple deducted the first \$9.99 payment from Mr.
18 Scott's account on the same day as the trade-in. Because Apple failed to cancel Mr. Scott's old
19 AppleCare+ contract on trade-in and provide him the prorated refund to which he was entitled—
20 while at the same time immediately starting the new AppleCare+ contract—Apple effectively
21 double-charged Mr. Scott for AppleCare+ from December 28, 2023, through January 14, 2024.

22 16. Plaintiff Allan Amsel is a resident of New York. On November 6, 2020, Mr.
23 Amsel started a trade-in transaction with Apple through which he traded in his old iPhone 11 and
24 ordered a new iPhone 12 Pro Max with serial number F2MDMC8C0D46. As part of this
25 transaction, Mr. Amsel also purchased monthly AppleCare+ coverage for the new iPhone 12 Pro
26 Max, set to begin "starting when your device ships or is picked up in the store." On or around
27 November 13, 2020, Mr. Amsel's trade-in transaction was completed, his new device shipped,

1 and Apple confirmed the start of his monthly subscription of AppleCare+ with Theft and Loss
2 for his iPhone 12 Pro Max with serial number F2MDMC8C0D46 at a cost of \$13.49/month
3 before tax. On October 12, 2021, Mr. Amsel traded in his iPhone 12 Pro Max with serial number
4 F2MDMC8C0D46 in-person at an Apple Store in Burlingame, California—less than an hour
5 from Apple’s headquarters in Cupertino—and the documentation provided by Apple confirms
6 the trade-in. As part of this trade-in transaction, Mr. Amsel purchased a new iPhone 13 Pro Max
7 together with a two-year, fixed-term AppleCare+ subscription for his new phone. Despite
8 recognizing Mr. Amsel’s trade-in of his iPhone 12 Pro Max, the company failed to provide a
9 prorated refund and continued to charge him \$14.38/month (\$13.49 plus tax) for AppleCare+ on
10 phone F2MDMC8C0D46 for the next three years. During these years, Mr. Amsel continued to
11 trade in his Apple devices and upgrade approximately once per year. In or around September
12 2024, Mr. Amsel experienced an issue with his iPhone 15 Pro, and he wanted to use his existing
13 monthly AppleCare+ subscription that started with the purchase of the iPhone 12 Pro Max, for
14 which he knew he had been recently billed. Mr. Amsel took the phone to Best Buy—an Apple
15 Authorized Reseller and repair location—and he was told that his active AppleCare+
16 subscription was still on the iPhone 12 Pro Max with the serial number F2MDMC8C0D46 that
17 he had traded in years earlier, and a Best Buy employee suggested that he raise the issue with
18 Apple. Mr. Amsel then went to an Apple store and was told that the AppleCare+ subscription
19 was on the old iPhone 12 Pro Max and Mr. Amsel could not use it on the iPhone 15 Pro. With
20 respect to the AppleCare+ subscription on Mr. Amsel’s non-existent phone, an Apple employee
21 derisively told him “you should probably cancel that” and would not provide any refunds. It was
22 apparent to Mr. Amsel that this was not the first time that the Apple employee who handled his
23 repair request had encountered this issue; the employee showed no surprise that Mr. Amsel’s
24 AppleCare+ subscription was active on a phone he had traded in years ago and he refused to call
25 a manager or otherwise investigate the issue further. Mr. Amsel ultimately paid full price for the
26 iPhone 15 Pro repair. Mr. Amsel later submitted an online refund request to Apple for the years
27 he had been paying for a useless AppleCare+ subscription, but Apple refused to refund more

1 than one month (September 2024). Despite being a longtime Apple customer, Mr. Amsel was so
2 upset by Apple's predatory and disrespectful conduct that he cut the cord with Apple and has
3 now switched most but not all his devices to Android, which has been inconvenient, expensive,
4 and time-consuming given the extent to which Apple locks consumers into its ecosystem.

5 17. Plaintiff Brittany Frank is a resident of New York. On or around March 18, 2020,
6 Ms. Frank purchased an iPhone 11 Pro Max with serial number G6VZKMKJN70L from
7 AT&T—an Apple Authorized Reseller. On or before April 27, 2020, Ms. Frank purchased
8 AppleCare+ coverage for this device at a cost of \$10.79/month (\$9.99/month plus \$0.80 tax). On
9 October 27, 2022, Ms. Frank made a monthly payment on this AppleCare+ plan that provided
10 coverage for this device through November 27, 2022. On or around November 12, 2022, Ms.
11 Frank started the trade-in process for this device with AT&T, and her trade-in was completed on
12 November 13, 2022. Despite completing this trade-in and relinquishing ownership of her iPhone
13 11 Pro Max with serial number G6VZKMKJN70L forever, Apple failed to provide a prorated
14 refund for the unused period of her monthly plan from November 14–27, 2022. Further, Apple
15 failed to cancel recurring charges going forward and instead charged her \$10.79/month from
16 November 27, 2022, through August 27, 2024, for a total cost of \$248.47 in recurring charges for
17 an AppleCare+ plan that Apple knew she no longer owned. After this payment, Ms. Frank
18 noticed that the recurring charges were for the iPhone 11 Pro Max with serial number
19 G6VZKMKJN70L that she had traded in years ago, and Ms. Frank went to an Apple store to ask
20 why she was getting charged. No one at the store could figure it out. Apple then stopped Ms.
21 Frank's monthly subscription from renewing moving forward but did not provide any refunds.
22 Despite this experience, Ms. Frank intends to continue using Apple products and AppleCare+
23 moving forward.

24 18. Each of the Plaintiffs has identified at least one Covered Device that gives rise to
25 the claims asserted in this action based on the information currently available to them. To the
26 extent discovery shows that Apple failed to provide the benefits of cancellation with respect to
27 other Covered Devices they have traded in or returned within the relevant period, Plaintiffs

1 intend for their claims to encompass all such Covered Devices.

2 19. Apple, Inc. is a California corporation with its principal place of business located
3 at One Apple Park Way, Cupertino, California, 95014.

4 20. AppleCare Service Company, Inc., an Arizona corporation, is a subsidiary of
5 Apple with its principal place of business located at One Apple Park Way, Cupertino, California,
6 95014. AppleCare Service Company does business as Apple CSC Inc. in the state of Texas.

7 21. As explained further below, Defendants are both named in the AppleCare+ Terms
8 and Conditions and each have defined responsibilities that relate directly to the claims of
9 Plaintiffs and the Class they seek to represent.

10 **Factual Allegations**

11 *Background*

12 22. Apple is one of the most sophisticated consumer product companies in the world.
13 Apple designs, manufactures, and markets mobile communication and media devices, personal
14 computers, and portable digital music players, and it sells a variety of related software, services,
15 accessories, networking solutions, and third-party digital content and applications.

16 23. Apple's flagship product, the iPhone, is the most popular smartphone brand in the
17 United States, with an estimated market share above 50%. Indeed, the Department of Justice and
18 the Attorneys General of fifteen states—including California—and the District of Columbia
19 alleged earlier this year that "Apple's U.S. market share by revenue is over 70 percent in the
20 performance smartphone market—a more expensive segment of the broader smartphone market
21 where Apple's own executives recognize the company competes—and over 65 percent for all
22 smartphones." *United States of America, et. al. v. Apple Inc.*, Case 2:24-cv-04055 (D. N.J.) at
23 Dkt. 1 ¶ 22. Apple also sells a variety of other popular devices, such as the iPad tablet and Mac
24 computers.

25 24. Apple has a loyal customer following for its devices, and it markets and sells a
26 variety of services to consumers who use its devices and operating systems. Over time, Apple
27 has expanded the interconnected ecosystem of devices and services that it offers to its customers.

1 As noted by the DOJ, “Apple increasingly extracts revenue from iPhone users beyond the initial
2 smartphone sale” such that, “[i]n fiscal year 2023, these offerings [*i.e.*, ‘Services’ and
3 ‘Wearables, Home, and Accessories’] accounted for nearly one-third of Apple’s total revenue, or
4 four times what Apple earned from selling Mac computers.” *Id.* ¶ 21.

5 25. Apple’s development of an ecosystem of interconnected products and services
6 with a loyal and locked-in customer base has been part of the company’s core strategy for well
7 over a decade. As quoted by the DOJ, “as early as 2010, then-CEO Steve Jobs discussed how to
8 ‘further lock customers into our ecosystem’ and ‘make Apple[’s] ecosystem even more sticky,’”
9 and Apple executives later strategized about “how to ‘get people hooked to the ecosystem.’” *Id.*
10 ¶ 3. This strategy has allowed Apple to “buil[d] and sustain[] the most dominant smartphone
11 platform and ecosystem in the United States,” but it has also empowered Apple “to harm
12 consumers in a wide variety of . . . ways.” *Id.* ¶¶ 4, 11.

13 26. Among consumer product companies, Apple has virtually unparalleled knowledge
14 of who its customers are, which Apple devices and products they own and use, and how much
15 money Apple is collecting from those customers on a real-time basis. As the DOJ observes,
16 “[b]ecause smartphone users generally use a single smartphone to access related products and
17 services, locking up key user groups allows Apple to capture greater spending on iPhone-related
18 products and services, realize higher margins per user as compared to its smartphone rivals, and
19 exercise greater control over developers and other smartphone ecosystem participants.” *Id.* ¶ 23.

20 27. One of the services that Apple sells to its customers is AppleCare+. According to
21 Apple, “[m]ost Apple hardware comes with a one-year limited warranty and up to 90 days of
22 complimentary technical support.”¹ Apple encourages consumers who want to “extend your
23 coverage further” to “purchase AppleCare+.”² “Both AppleCare+ and AppleCare+ with Theft
24 and Loss extend that coverage and give you additional features such as 24/7 priority tech support
25
26
27

¹ <https://www.apple.com/support/products/> (last accessed November 11, 2024).

² *Id.*

1 and accidental damage protection.”³

2 28. Apple emphasizes to consumers that one of the benefits of AppleCare+ is that
3 Apple provides “a truly integrated system” because “Apple designs iPhone, iOS, and many
4 applications.”⁴ This integrated approach has been a great success for Apple; it is among the
5 largest companies in the world by market capitalization with such a large stockpile of cash on
6 hand that the investing press views it as a “problem.”⁵

7 ***The AppleCare+ Terms and Conditions Tie Services to a Specific “Covered Device”***

8 29. Consumers’ purchases of AppleCare+ are subject to Terms and Conditions that
9 Apple publishes and periodically updates on its website.⁶ Apple’s Terms and Conditions define
10 the AppleCare+ contract as “the Plan.” Since at least July 15, 2020, all mobile devices—e.g.,
11 iPhones, iPads, Apple Watches, AirPods—have been covered by a single set of Terms and
12 Conditions, which Apple has updated over the years.⁷ Apple’s Mac computers and Apple
13 Display monitors are governed by separate but substantially similar Terms and Conditions.⁸
14 Unless otherwise specified, references to the Terms and Conditions are to those for mobile
15 devices like iPhones, but the overall structure of the contract and the related legal issues are the
16 same regardless.

17 30. AppleCare+ coverage is tied to specific “Covered Devices” or “Covered
18
19

20 ³ <https://www.apple.com/support/products/iphone/> (last accessed November 11, 2024).

21 ⁴ *Id.*

22 ⁵ See, e.g., <https://www.morningstar.com/markets/what-apples-cash-problem-means-its-stock-investors> (May 10,
2023: “Apple AAPL has a problem that most of us would love: It has too much cash.”) (last accessed November 11,
2024); <https://www.fool.com/investing/2024/05/05/apple-has-a-problem-and-investors-should-love-it/> (May 5,
2024: “Some problems are good ones to have. That’s the story with Apple. The iPhone maker has too much cash on
23 its hands. As of March 30, 2024, Apple’s cash, cash equivalents, and marketable securities totaled \$162.3 billion.”)
(last accessed November 11, 2024).

24 ⁶ <https://www.apple.com/legal/sales-support/applecare/applecareplus/us/> (last accessed November 11, 2024).

25 ⁷ See, e.g., https://www.apple.com/legal/sales-support/applecare/applecareplus/071520_applecareplus_us.pdf (Terms
and Conditions effective July 15, 2020, for Apple Watch, HomePod, iPad, iPhone, iPod, and Headphones) (last
26 accessed November 11, 2024); [https://www.apple.com/legal/sales-
support/applecare/applecareplus/2406/240618_applecareplus_us.pdf](https://www.apple.com/legal/sales-support/applecare/applecareplus/2406/240618_applecareplus_us.pdf) (Terms and Conditions effective June 20, 2024,
for Apple TV, Apple Watch, Headphones, HomePod, iPad, iPhone, and iPod) (last accessed November 11, 2024).

27 ⁸ See, e.g., <https://www.apple.com/legal/sales-support/applecare/applecareplus/us/mac/> (chronological listing of
Terms and Conditions from September 14, 2020–present) (last accessed November 11, 2024).

1 Equipment” (collectively “Covered Devices” herein). Apple assigns each Covered Device it sells
2 a serial number, and each purchase of AppleCare+ is tied to the Covered Device’s serial number.
3 Thus, each Covered Device has its own serial number, and Apple tracks which specific Apple
4 devices in circulation are Covered Devices under an AppleCare+ contract by using that number.

5 *Apple Expressly Promised to Cancel Plaintiffs’ Plans on Trade-in*

6 31. Since September 14, 2021, Apple’s Terms and Conditions for iPhones and other
7 mobile devices have expressly recognized the obvious: trading in a Covered Device is an
8 expression of a consumer’s intent to cancel an associated AppleCare+ plan. Since then, Apple
9 has promised to cancel all monthly plans—and sometimes annual plans—on trade-in, with some
10 variation on the following: **“For Monthly Plans, if you trade-in your Covered Equipment to
11 Apple or an Apple Authorized Reseller as part of an Apple authorized trade-in program,
12 that trade-in will be deemed an expression of your intent to cancel your Monthly Plan and
13 it will be cancelled consistent with clause 9.1(b)(i).”** (emphasis added).

14 32. Apple made that term effective as to existing plans via a Notice published on the
15 company’s website the next day that also represented to existing consumers that the cancellation-
16 on-trade-in policy applied to annual plans: “This notice confirms that your AppleCare+ terms
17 and conditions have been updated, effective September 15, 2021 in order to: . . . add a
18 cancellation provision in the event a device is traded-in pursuant to an Apple authorized trade-in
19 program for customers who have purchased monthly or annually recurring AppleCare+ plans.”⁹

20 33. Further, at all relevant times, each version of the Terms and Conditions has
21 included an express provision that any updates Apple makes that benefit the consumer take effect
22 immediately: “If Apple adopts any revision to this Plan that would broaden your coverage
23 without additional cost or any increase in service fees, the broadened coverage will immediately
24

25 _____
26
27 ⁹ <https://www.apple.com/legal/sales-support/applecare/applecareplus/notices/us-en.html> (last accessed November 11, 2024).

1 apply to this Plan.”¹⁰ Through both Apple’s published notice and this baseline contract provision,
2 Apple’s express cancellation-on-trade-in policy became effective for all relevant consumers
3 when it was adopted. And, even before then, Apple’s Terms & Conditions recognized that
4 consumers could cancel AppleCare+ “at any time for any reason” by providing the company
5 with notice of their intention to do so by mail, phone call, or later, email.¹¹

6 34. Apple’s Terms and Conditions for Macs and Desktop monitors have contained a
7 substantially identical term with respect to annual plans since November 12, 2021, and more
8 recently for monthly plans.¹²

9 35. With respect to their subject Covered Devices, Plaintiffs were all on monthly
10 plans, and they all traded in their Covered Devices through Apple’s authorized trade-in
11 program—either directly with Apple or via an Apple Authorized Reseller—after September 14,
12 2021. Despite Apple’s express promise to automatically cancel their plans, it failed to do so.
13 Consequently, Plaintiffs failed to receive the promised benefits of cancellation. For Ms.
14 Edwards, Mr. Amsel, and Ms. Frank, Apple failed to provide a prorated refund for the unused
15 time in the month they traded in their devices and then continued charging for AppleCare+ tied
16 to Covered Devices that Apple knew they no longer owned for years, amounting to hundreds of
17 dollars. For Mr. Scott, Apple failed to provide the prorated refund on cancellation he was owed.

18 36. With respect to Plaintiffs and other members of the Class who were on monthly—
19 or sometimes annual—plans and traded in their Covered Devices on or after September 14, 2021,
20 Apple has plainly breached its express contractual promise to automatically cancel associated
21 AppleCare+ contracts on trade-in.

22 37. As set out below, the claims of Plaintiffs and members of the Class extend beyond
23
24

25 ¹⁰ https://www.apple.com/legal/sales-support/applecare/applecareplus/071520_applecareplus_us.pdf § 11 (last
accessed November 11, 2024).

26 ¹¹ See, e.g., https://www.apple.com/legal/sales-support/applecare/applecareplus/1020/101320_applecareplus_us.pdf
§ 9.1 (last accessed November 11, 2024).

27 ¹² See, e.g., [https://www.apple.com/legal/sales-
support/applecare/applecareplus/1021/111221_applecareplusmacus.pdf](https://www.apple.com/legal/sales-support/applecare/applecareplus/1021/111221_applecareplusmacus.pdf) (last accessed November 11, 2024).

1 Apple’s express contract language. For all consumers, Apple could not in good faith view the
2 trade-in or return of a covered device as anything but an obvious expression of the consumer’s
3 intent to cancel their associated AppleCare+ contract. By returning or trading-in their actual
4 Covered Devices to Apple or its agents—relinquishing ownership forever—consumers have
5 always gone far beyond a mere phone call or postcard in demonstrating their intent to cancel any
6 associated AppleCare+ plan, and they have substantially performed their obligation to notify
7 Apple of their intent to cancel. Further, with respect to Plaintiffs and all members of the Class,
8 Apple’s decision not to cancel such contracts was a breach of its duty of good faith and fair
9 dealing, a violation of consumer protection laws, and otherwise unlawful and actionable.

10 ***Consumers Benefit from Automatic Cancellation on Trade-in, while Apple Profits from***
11 ***Continuing Charges for Devices that Will Never Need Service***

12 38. Over time, Apple has offered AppleCare+ contracts of different lengths,
13 sometimes limited by device, including monthly subscriptions, annual subscriptions, and fixed-
14 term plans. At all relevant times, the contract has set a “Plan Term” for monthly subscriptions of
15 one month that “will automatically renew each month unless cancelled as set forth in the
16 ‘Cancellation’ Section.”¹³ In addition to stopping recurring payments, Apple expressly promised
17 starting January 1, 2022, that consumers on monthly plans could “cancel a Monthly Plan
18 immediately and receive a pro rata refund based on the percentage of unexpired time remaining
19 on your Monthly Plan Term.”¹⁴ At all relevant times, cancelling a fixed-term or annual plan early
20 entitled consumers under such plans to a prorated refund tied to the unused time under the plan,
21 sometimes minus certain defined fees. In other words, immediately cancelling an AppleCare+
22 subscription when a device is returned or traded in would always benefit the consumer regardless
23 of their plan type or type of Covered Device, including all mobile devices and Macs/Displays.

24
25
26 ¹³ https://www.apple.com/legal/sales-support/applecare/applecareplus/071520_applecareplus_us.pdf (last accessed
November 11, 2024)

27 ¹⁴ https://www.apple.com/legal/sales-support/applecare/applecareplus/2201/220101_applecareplus_us.pdf at §
9.1(b)(1) (last accessed November 11, 2024).

1 39. Regardless of the terms of the Cancellation provision, consumers received no
2 benefit from an AppleCare+ plan from the moment they traded in or returned the associated
3 Covered Devices forward. Those customers were also immediately entitled to a pro-rata refund
4 as soon as their plans were cancelled, as well as a discontinuation of recurring charges upon
5 cancellation. And Apple knew that trading in or returning a Covered Device is an expression of a
6 consumer’s intent to cancel the associated AppleCare+ plan; Apple has expressly acknowledged
7 as much in the Terms and Conditions for certain plans since 2021.

8 40. When Apple knew that consumers no longer owned a Covered Device because it
9 had been traded in or returned, Apple could not keep charging them under an associated
10 AppleCare+ contract or retain pre-paid benefits in good faith because Apple knew that the
11 consumer would not and could not receive any consideration in exchange for their payments.
12 Indeed, Apple now expressly acknowledges that certain trade-ins and returns show an intent to
13 cancel, and Apple never could have believed otherwise. Apple has never had any good faith
14 reason to believe that any consumer who has ever traded in or returned their Covered Device
15 would intend to do anything but immediately cancel their associated AppleCare+ plan and
16 receive the benefits of cancellation. But on Apple’s side of the ledger, failing to provide prorated
17 refunds and continuing to charge consumers for protection on devices that will never need
18 service offers 100% profit, which was apparently too tempting to resist.

19 41. Apple was obligated by its duty of good faith and fair dealing—as well as other
20 legal requirements that prohibited Apple from withdrawing funds from consumers’ accounts
21 without providing any good or service in return—to cancel AppleCare+ contracts upon trade-ins
22 and returns. Apple’s decision to deprive certain consumers of their contractual rights to pro-rata
23 refunds and the discontinuation of subscription renewals after the consumers had traded in or
24 returned their devices to Apple was not and could not have been made in good faith.

25 ***The Terms & Conditions Choose California Law and Preserve All Consumer Claims***

26 42. At all relevant times, the Terms and Conditions have provided at the top of the
27 contract that “THE BENEFITS CONFERRED BY THIS PLAN ARE IN ADDITION TO ALL

1 RIGHTS AND REMEDIES PROVIDED UNDER CONSUMER PROTECTION LAWS AND
2 REGULATIONS. THIS PLAN SHALL NOT PREJUDICE THE RIGHTS GRANTED BY
3 APPLICABLE CONSUMER LAW, INCLUDING THE RIGHT TO RECEIVE REMEDIES
4 UNDER STATUTORY WARRANTY LAW AND TO SEEK DAMAGES IN THE EVENT OF
5 THE NON-PERFORMANCE BY APPLE OF ANY OF ITS CONTRACTUAL
6 OBLIGATIONS.”¹⁵

7 43. At all relevant times, the Terms and Conditions have provided that “the laws of
8 the State of California govern Plans purchased in the United States” unless they are “inconsistent
9 with the laws of any jurisdiction where” a consumer purchased their Plan.¹⁶

10 44. At all relevant times, the Terms and Condition define the “Administrator” of the
11 Plan as “Apple Inc.”¹⁷ “The Administrator is responsible for the collection and transfer to
12 AppleCare Service Company, Inc. of the purchase price for the Plan and for the administration of
13 claims under the Plan.”¹⁸ In other words, the parent entity Apple Inc., incorporated and based in
14 California, is expressly responsible under the AppleCare+ contract for the unauthorized and
15 unlawful “collection and transfer” of funds from the bank accounts of Plaintiffs and members of
16 the Class at issue in this case.

17 ***Summary of Allegations Regarding the AppleCare+ Terms & Conditions***

18 45. To summarize, at all relevant times, the only consideration Apple provided
19 consumers under AppleCare+ contracts was repair, replacement, and support services for a
20 specific Covered Device. As explained in Count I below, once a Covered Device was traded in
21 or returned, Apple had substantial notice of the consumer’s intent to cancel, and Apple could not
22

23
24 ¹⁵ https://www.apple.com/legal/sales-support/applecare/applecareplus/071520_applecareplus_us.pdf (last accessed
25 November 11, 2024)

¹⁶ https://www.apple.com/legal/sales-support/applecare/applecareplus/071520_applecareplus_us.pdf § 12(n) (last
26 accessed November 11, 2024)

¹⁷ https://www.apple.com/legal/sales-support/applecare/applecareplus/071520_applecareplus_us.pdf (last accessed
27 November 11, 2024)

¹⁸ *Id.*

1 in good faith continue to charge consumers or fail to provide prorated refunds for AppleCare+ on
2 devices that Apple knew the consumers no longer owned. Apple was therefore obligated to
3 cancel AppleCare+ contracts when the associated Covered Devices were traded in or returned
4 regardless of the trade-in or return date or the details of the Cancellation provision.

5 46. Further, from at least September 21, 2021, forward, the Terms and Conditions
6 have expressly required Apple to automatically cancel certain AppleCare+ contracts upon the
7 completion of trade-ins or returns. Because these updates to the AppleCare+ cancellation
8 provision benefitted the consumer, they took effect immediately. Further, Apple expressly
9 incorporated its obligation to automatically cancel “monthly or annually recurring AppleCare+
10 plans” upon trade-in by providing a formal notice of the change to all existing customers on
11 September 15, 2021.¹⁹ Therefore, Apple was obligated by the express terms of the contract in
12 effect at the time of Plaintiffs’ trade-ins and the trade-ins or returns of many members of the
13 Class to automatically cancel the AppleCare+ contract associated with the old Covered Devices.

14 47. Throughout the relevant period, the Terms and Conditions have also always
15 provided that Apple is subject to “applicable consumer law.” As set out in Counts II, III, and VI,
16 Apple violated applicable consumer protection law throughout this period.

17 *Apple Trade-Ins*

18 48. Just as Apple tracks Covered Devices under AppleCare+ by serial number, Apple
19 also tracks trade-ins and returns of Apple devices by serial number. In fact, Apple’s trade-in
20 FAQ includes an answer to “How do I find the serial number on my Apple device?”²⁰

21 49. Apple advertises its “Apple Trade In” service as “a win-win-win.”²¹ “With Apple
22 Trade In, you can get a great value for your current device and apply it toward a new one. And
23 you can do it all online or at an Apple Store. If your device isn’t eligible for credit, we’ll recycle

24
25
26 ¹⁹ <https://www.apple.com/legal/sales-support/applecare/applecareplus/notices/us-en.html> (last accessed November
11, 2024)

27 ²⁰ <https://www.apple.com/shop/trade-in> (last accessed November 11, 2024).

²¹ *Id.* (last accessed November 11, 2024).

1 it for free. It’s a great deal for you and the planet.”²²

2 50. The Terms and Conditions of the Apple Trade In Program provide that, “[a]t
3 completion of this transaction, ownership of your device transfers to Vendor, and you assign to
4 Apple the right to collect from Vendor the value you receive.”²³ Further, “the trade-in transaction
5 is final and cannot be cancelled by you unless the quoted value has been revised and declined by
6 you.”²⁴

7 51. Apple informs consumers that, after a trade-in, “[i]f your device is in good shape,
8 we’ll help get it to a new owner.”²⁵ In other words, if Apple can return the device to circulation
9 for Apple’s own benefit, it will. And Apple tells consumers that, if the device has “seen better
10 days, we can recycle it for free.”²⁶ That is, Apple will permanently destroy devices that it does
11 not believe it can profitably return to circulation.

12 52. Because Apple tracks all Covered Devices under an AppleCare+ plan, trade-ins,
13 and returns by serial number, Apple has actual knowledge each time a Covered Device has been
14 traded in or returned. Apple also knows that each specific device that has been traded in has
15 either been recycled (*i.e.*, permanently destroyed), distributed to a new owner—a new owner
16 who may also be paying for an AppleCare+ subscription on their “new” device—or kept by
17 Apple or its vendor pending distribution or destruction.

18 ***AppleCare+ is Worthless Without a Covered Device—and Apple Knows It***

19 53. After a consumer trades in or returns a Covered Device, the consumer receives no
20 value from AppleCare+ for that device. Because AppleCare+ is an extended warranty and
21 service plan for a specific device, it becomes worthless once a consumer no longer owns the
22 Covered Device.

23
24
25 ²² *Id.*

²³ <https://www.apple.com/legal/sales-support/trade-in/us/> (last accessed November 11, 2024).

²⁴ *Id.*

²⁵ <https://www.apple.com/shop/trade-in> (last accessed November 11, 2024).

²⁶ *Id.*

1 54. For Apple, on the other hand, AppleCare+ becomes exceptionally profitable if it
2 is not cancelled after a consumer returns or trades in a Covered Device because the service is
3 guaranteed to be cost-free to Apple. If a consumer still owns a Covered Device, Apple remains
4 on the hook for repair, replacement, and support services. That is Apple’s end of the deal and the
5 only consideration provided to consumers by the contract. But as soon as the consumer returns or
6 trades in a Covered Device, Apple no longer needs to worry about providing any repairs,
7 replacements, or support. For Apple, the AppleCare+ contract becomes pure profit from that
8 point forward, and the consumer receives no consideration from that point forward.

9 55. Apple knows that it is wrong to charge consumers something for nothing. Apple
10 nevertheless originally chose to adopt and retain a system that did not automatically cancel
11 AppleCare+ subscriptions when consumers returned or traded in devices, instead purporting to
12 require consumers to send a written cancellation notice in the mail with a proof of purchase.
13 When Apple later updated the Terms and Conditions to provide for automatic cancellation,
14 Apple failed to adopt procedures sufficient to implement the updated cancellation policy. Given
15 Apple’s status as an integrated and sophisticated tech company capable of automatically starting
16 AppleCare+ subscriptions by serial number, Apple’s failure to implement an adequate system for
17 automatic cancellations can only be seen as intentional. As a result, Apple continued to charge
18 Plaintiffs and members of the Class for AppleCare+ services that it knew were worthless.

19 56. Apple has disregarded public criticisms of its institutional decision to continue
20 charging its customers for AppleCare+ for devices they no longer own. Consumers have been
21 publicly complaining for years on Apple’s own forums and elsewhere about Apple charging for
22 AppleCare+ subscriptions after a device had already been traded in or returned. For example:

- 23 • *January 5, 2020*: “Why am I being charged 12.99 each month for Apple Care when I
24
25
26
27

1 don't have an [i]phone 8 anymore?"²⁷

- 2 • *January 9, 2020*: "Charge \$14.99 For Apple care for an iPhone that I don't have!!

3 Apple is charge me for 3 months apple care 14.99 for a phone that was returned to

4 Apple !!!!!"²⁸

- 5 • *June 3, 2021*: "I am still being charged Apple Care for a phone I returned. I was

6 charged Apple Care, which I did not want. I returned the phone and was informed the

7 Apple Care would be removed as well. I was recently charged for Apple Care for a

8 phone I returned within the allotted time frame. How do I remove this subscription

9 from my account?"²⁹

- 10 • *July 16, 2021*: "I swapped my iphone 11 to 12 pro but unable to continue using my

11 previous apple care. I was told by Apple sales agent to buy a new one and to request

12 for refund."³⁰

- 13 • *February 9, 2022*: "I'm being charged for Apple Care of an iPhone I returned to

14 Apple. . . . I had Apple care on my iPhone 11. Bought a new 13 from Apple and sent

15 old phone in for part exchange. Foolishly assumed the apple care would transfer to

16 new phone and carry on but have now been charged for the 2nd month in a row for

17 Apple care on a device that Apple knows I don't own. I tried to find a way to remove

18 the subscription online but don't see how to. I don't have the serial number or details

19 any more."³¹

20 _____

21
22 ²⁷

23 [https://discussions.apple.com/thread/251013977?=&followedChain=true&previousThread=253669574021](https://discussions.apple.com/thread/251013977?=&followedChain=true&previousThread=253669574021&sortBy=rank)
&sortBy=rank (last accessed November 11, 2024).

24 ²⁸

25 [https://discussions.apple.com/thread/251026334?=&followedChain=true&previousThread=253990631021](https://discussions.apple.com/thread/251026334?=&followedChain=true&previousThread=253990631021&sortBy=rank)
&sortBy=rank (last accessed November 11, 2024).

26 ²⁹ <https://discussions.apple.com/thread/252830105?sortBy=rank> (last accessed November 11, 2024).

27 ³⁰

[https://discussions.apple.com/thread/252961984?=&followedChain=true&previousThread=254104517021](https://discussions.apple.com/thread/252961984?=&followedChain=true&previousThread=254104517021&sortBy=rank)
&sortBy=rank (last accessed November 11, 2024).

³¹ <https://discussions.apple.com/thread/253653398?=&previousThread=252830105021&sortBy=rank> (last
accessed November 11, 2024).

- 1 • *February 15, 2022*: “I’m being charged for iPhone Apple Care when I already trade
2 it. My two son’s traded in their iPhones last year I noticed that I’m still be charged for
3 one iPhone 7 AppleCare. I have two iPhones and four iPads. I’m not sure why I am
4 still being charged please advise.”³²
- 5 • *May 16, 2022*: “PSA: Apple care and returns . . . Background: I bought a iPhone 13
6 pro with apple care from Apples['] own online store, returned it and noticed that
7 apple did NOT cancel apple care when it was returned unopen within the 14 day
8 window. Spoke with support who cancelled the apple care and have basically told me
9 I’m SOL [*i.e.*, shit out of luck] for a refund for the time I was paying for apple care
10 for a phone I purchased through them. So, be wary of apple care with returns. Let my
11 loss be your gain. . . . TLDR: if you return a phone, apparently they don’t cancel
12 warranty on the product you’re returning and tell you ‘it’s just like any other
13 subscription, you have to cancel it’. So cancel apple care separately when returning!
14 Greasy.”³³
- 15 • *June 10, 2022*: “How do I cancel an Apple Care account for a device that I traded in
16 and was removed from my account? I am still getting charged for it. I initially
17 purchased an Apple Watch 3, and then used it to trade in and receive a credit for a 7. I
18 had initially set the apple care plan to be charged monthly. Is there a way to stop these
19 charges? Since the device was traded in, it doesn’t appear on my account or anything
20 related to it. The subscription doesn’t appear in my subscription area either.”³⁴
- 21 • *June 22, 2022*: “[I’m] being charged for apple care on a phone that was returned the
22

23
24
25 ³² <https://discussions.apple.com/thread/253669574?previousThread=254579670021&sortBy=rank> (last
accessed November 11, 2024).

26 ³³ https://www.reddit.com/r/iphone/comments/ur8fnm/psa_apple_care_and_returns/ (last accessed November 11,
2024).

27 ³⁴ [https://discussions.apple.com/thread/253961688?followedChain=true&previousThread=253653398021
&sortBy=rank](https://discussions.apple.com/thread/253961688?followedChain=true&previousThread=253653398021&sortBy=rank) (last accessed November 11, 2024).

1 Ne[xt] day of purchase. I have returned that phone a day after I purchased it back to
2 Stevens creek apple. I just realized I am still getting charged for apple care.”³⁵

- 3 • *August 10, 2022*: “I have been paying apple care since dec. 2021 on a device that i
4 traded in, how do i get a refund or transfer this coverage to my new phone.”³⁶
- 5 • *January 23, 2023*: “I’m still getting charged for AppleCare from my iPhone13, I
6 recently change to the iPhone14 pro.”³⁷
- 7 • *February 14, 2024*: “This just happened to me. Paying AppleCare on a phone since
8 2020. They refunded for two of the four years, but I still don’t find that satisfactory.
9 I’m shocked there isn’t a class action lawsuit about this.”³⁸

10 57. Despite Apple’s unilateral, post-lawsuit refund campaign discussed below, Apple
11 has continued to fail to fully compensate Plaintiffs and all members of the Class for the damage
12 they have suffered due to Apple’s conduct, and it appears that Apple has not provided any
13 refunds at all to some Plaintiffs and members of the Class. Further, on information and belief,
14 Apple continues to refuse to give prorated refunds and continues charging some members of the
15 Class for AppleCare+ for devices that Apple knows they no longer own to the present. Unless
16 enjoined, there is every reason to believe that Apple will continue this profitable practice with
17 respect to at least some members of the Class and/or that Apple will return to this practice for all
18 consumers in the future.

19 **Apple’s Apparent Unilateral, Post-Lawsuit Refunds of Class Members**

20 58. Less than a week before the filing deadline for this Consolidated Amended Class
21

22
23 ³⁵ [https://discussions.apple.com/thread/253990631?=&followedChain=true&previousThread=251775524021](https://discussions.apple.com/thread/253990631?=&followedChain=true&previousThread=251775524021&sortBy=rank)
24 [https://discussions.apple.com/thread/253990631?=&followedChain=true&previousThread=251775524021](https://discussions.apple.com/thread/253990631?=&followedChain=true&previousThread=251775524021&sortBy=rank)
&sortBy=rank (last accessed November 11, 2024).

25 ³⁶ [https://discussions.apple.com/thread/254104517?=&followedChain=true&previousThread=253990631021](https://discussions.apple.com/thread/254104517?=&followedChain=true&previousThread=253990631021&sortBy=rank)
26 [https://discussions.apple.com/thread/254104517?=&followedChain=true&previousThread=253990631021](https://discussions.apple.com/thread/254104517?=&followedChain=true&previousThread=253990631021&sortBy=rank)
&sortBy=rank (last accessed November 11, 2024).

27 ³⁷ <https://discussions.apple.com/thread/254579670?sortBy=rank> (last accessed November 11, 2024).

³⁸ https://www.reddit.com/r/iphone/comments/ur8fnm/psa_apple_care_and_returns/ (reply comment by n0mad17)
(last accessed November 12, 2024).

1 Action Complaint, it became apparent that, without conferring with Plaintiffs about it, Apple
2 unilaterally began a refund campaign targeting at least some members of the Class and one
3 named plaintiff—Ms. Edwards. No later than November 11, 2024, Apple began sending
4 notifications to at least certain customers that they “are eligible for a refund associated with your
5 AppleCare+ agreement” on previously traded-in devices—sometimes devices traded in years
6 ago. For some members of the Class, Apple informs them that it “ha[s] issued a refund” in an
7 amount determined by Apple. For others, Apple instructs the Class members “[t]o receive your
8 refund . . . , contact Apple Support.” Apple’s communications to the putative class members do
9 not disclose why it made the charges in question, why it is suddenly refunding them, or how the
10 refunds are calculated; do not disclose the existence of this case; and do not disclose whether or
11 how the refunds will, in Apple’s view, affect the legal rights of putative class members.

12 59. On November 11, 2024, Ms. Edwards received an unsolicited email from Apple
13 titled “Refund for AppleCare+ agreement” that was specific to the iPhone 12 Pro with serial
14 number F17DH22G0D88 at issue in this case, which Ms. Edwards identified in her original
15 Class Complaint. (Dkt. 1 ¶ 13). The email reads in full:

16 Dear Customer,

17 Our records indicate that you are eligible for a refund associated
18 with your AppleCare+ agreement #5618352841, for the iPhone 12
Pro you returned or traded in.

19 We have issued a refund for \$2.52 to the payment method associated
20 with your Apple Account.

21 Please allow 30 days for the refund to process.

22 If you have questions or need help, contact Apple Support.

23 60. It appears that this unilateral refund to Ms. Edwards may correspond to the
24 prorated refund that Apple was required to give—but failed to give—for the unused time during
25 the month in which she traded in the device. Apple had not provided any refund for this amount
26 before Ms. Edwards filed the original Class Complaint, although it had refunded certain other
27 amounts after multiple requests by Ms. Edwards and levels of review at Apple, as described in

1 Paragraph 14 above. Apple’s pre-suit refunds to Ms. Edwards were for the flat amounts she paid
2 and did not include prejudgment interest or any other compensation for the time value of money,
3 and the post-suit amount Apple unilaterally refunded this week is too small to include
4 prejudgment interest on the wrongful charges that Apple had previously refunded. It is not clear
5 how Apple calculated the \$2.52 refunded to her this week or whether it includes some
6 component for the time value of money for some subset of the damages Apple caused her, but
7 the post-suit refund does not make her whole for even single damages plus interest.

8 61. Also on November 11, 2024, a consumer and apparent unnamed member of the
9 putative Class posted the following message publicly online: “Received an email this morning
10 that looked like spam from Apple Care did the usual checks and then clicked on the link and it
11 brought me to a bad website on Apple’s Support Website. That said nothing associated with ...
12 [ellipses in original]. You would think they would be better about making emails and links not
13 look like scams. I called apple care and after an hour got a refund and while I was at it canceled
14 my other Apple Care on my old phone.”³⁹ The fact that the website to which Apple directed this
15 consumer was not yet operational suggests that Apple may be rushing out this refund program to
16 as many consumers as possible as a result of this litigation and before Plaintiffs file this
17 Consolidated Amended Class Action Complaint.

18 62. The putative class member above also posted a redacted screenshot of the email
19 he received from Apple. The first sentence of the email is substantively identical to the email
20 received by Ms. Edwards and quoted above. But instead of Apple automatically applying the
21 identified refund, it states: “To receive your refund of \$95.98, contact Apple Support.”⁴⁰ This
22 post does not suggest that Apple mentioned this lawsuit or any effect that accepting the refund
23 may have on this consumer’s rights as a member of the putative Class. Further, this consumer’s
24

25
26 ³⁹ <https://forums.macrumors.com/threads/repair-extension-program-refund.2442619/> (last accessed November 15,
2024).

27 ⁴⁰ *Id.*

1 post shows that he had a separate AppleCare+ contract on an old phone that Apple had not
2 automatically cancelled in the first instance or when it was sending out refunds, requiring the
3 user to orally request to cancel it on this hour-long call.

4 63. On November 13, 2024, another consumer and apparent unnamed member of the
5 putative Class replied to the post above, stating: “I got the same email, I always cancel
6 AppleCare on the older phones but however Apple acknowledged that there was an error on their
7 part and it wasn’t ‘processed correctly’ but money is money so [sunglasses emoji].”⁴¹ This post
8 does not suggest that Apple mentioned this lawsuit or any effect that accepting the refund may
9 have on this consumer’s rights as a member of the putative Class. Further, Apple’s representation
10 that this consumer was experiencing an individualized issue regarding her AppleCare+
11 cancellation not being “processed correctly”—rather than being a victim of Apple’s scheme to
12 enrich itself at its customers’ expense for years by failing to cancel AppleCare+ contracts—is
13 almost certainly false and misleading.

14 64. As reflected above, Apple’s unilateral refunds did not just go out to Ms. Edwards
15 this week, but rather to an unknown number of unidentified class members. To date, the other
16 named plaintiffs in this action have not, to their knowledge, received unilateral refunds from
17 Apple.

18 65. On information and belief, Apple’s post-lawsuit refund campaign discussed above
19 resulted directly from Plaintiffs’ lawsuit. As an initial matter, the timing could not be more
20 suspicious, with a large wave of refunds stretching back years and sometimes involving hundreds
21 of dollars going out to consumers at a break-neck pace ahead of Plaintiffs’ filing deadline.
22 Further, while Plaintiffs have not been able to precisely determine how Apple has calculated the
23 amounts unilaterally refunded through its post-lawsuit campaign, it appears that there may be
24 substantive differences between its post-lawsuit refund practices and its individually requested
25

26
27 ⁴¹ *Id.* at Nov. 13, 2024, reply post by user eddiezus.

1 pre-lawsuit refunds.

2 66. As demonstrated by Apple’s recalcitrant response to the CLRA letter—as well as
3 the instances in which it expressly refused to provide refunds to affected consumers like Mr.
4 Amsel—engaging in pre-suit settlement discussions would have been futile, and litigation was
5 necessary to prompt any remedial action by Apple without an individual refund request.

6 67. As set out further below, Apple cannot moot the claims of Plaintiffs and the Class
7 by unilaterally issuing refunds after the filing of this putative class action and after the expiration
8 of its thirty-day deadline to respond to the CLRA damages letter seeking class-wide relief it
9 received on October 2, 2024, and formally rejected on October 30, 2024. Refunds are just the
10 starting point. Refunds do not fully and verifiably compensate all affected Class members for all
11 their damages, including the lost time-value of money; they do not adequately punish or deter
12 Apple’s long-term, large-scale wrongdoing, as would the claims for punitive and treble damages
13 asserted in this action; and they provide no guarantee that Apple will not continue or resume the
14 practice at issue going forward.

15 68. Apple’s unilateral refunds nonetheless demonstrate Apple’s knowledge of its
16 wrongdoing. Despite ignoring years of complaints from its customers about its failure to cancel
17 AppleCare+ on trade-in or return, Apple now faces a nationwide class action seeking not only
18 refunds, but interest, punitive damages, treble damages, injunctive relief, and other relief. Now
19 that Apple knows that Plaintiffs and the Class caught it with its hand in the cookie jar, Apple
20 wants to try to jam all the cookies it has already taken back in before it gets in trouble. But that is
21 not how things work. Apple must face the consequences of its deliberate decision to fleece its
22 customers for years.

23 **Class Allegations**

24 69. Plaintiffs bring this action under Federal Rule of Civil Procedure 23(b)(2) and
25 (b)(3) individually and for this Class of similarly situated individuals:

26 All individuals who traded in or returned a Covered Device under
27 an AppleCare+ contract in the last four years whose contract was
not immediately cancelled, resulting in continuing subscription fees

and/or a failure to provide prorated refunds.

1
2 70. Excluded from the Class are Defendants, their co-conspirators, officers, directors,
3 legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated
4 companies; class counsel and their employees; and the judicial officers and their immediate
5 family members and associated court staff assigned to this case, and all persons within the third
6 degree of relationship to any such persons. The Class is ascertainable by objective criteria and
7 can be established and notice accomplished through Defendants' business records.

8 71. **Numerosity.** The Class is so numerous that joinder of all members is unfeasible
9 and not practical. Apple sells millions of devices each year. Given Apple's scale and the volume
10 of public complaints regarding the practice at issue in this case and the years they span, the Class
11 contains at least thousands and potentially up to millions of consumers. The exact size of the
12 Class is easily ascertainable, as each class member can be identified by using Defendants'
13 records tracking AppleCare+ Covered Devices by serial number on the one hand and
14 Defendants' records tracking trade-ins and returns by serial number on the other.

15 72. **Commonality and Predominance.** Questions of law and fact common to all
16 Class members exist and predominate over questions affecting only individual Class members,
17 including:

- 18 i. The meaning of the AppleCare+ contracts during the relevant period;
- 19 ii. Whether consumers receive any consideration in exchange for their payments
20 under an AppleCare+ contract after returning or trading in the related Covered
21 Device;
- 22 iii. Whether Apple tracks Covered Devices under AppleCare+ contracts by serial
23 number;
- 24 iv. Whether Apple tracks trade-ins of Apple devices by serial number;
- 25 v. Whether Apple tracks returns of Apple devices by serial number;
- 26 vi. Whether Apple knew, should have known, or recklessly disregarded
27 information sufficient to show when Covered Devices under an AppleCare+

1 contract were traded in or returned;

2 vii. Whether a consumer trading-in or returning their Covered Devices to Apple
3 was substantial performance of their obligation to notify Apple of their intent
4 to cancel their associated AppleCare+ plans “at any time for any reason”
5 regardless of the express terms of the Cancellation provision;

6 viii. Whether Apple breached its duty of good faith and fair dealing;

7 ix. Whether Apple breached its contracts with the Plaintiffs and Class members;

8 x. Whether Apple violated the California Consumer Legal Remedies Act, Cal.
9 Civ. Code § 1750, *et seq.*;

10 xi. Whether Apple violated California’s Unfair Competition Law, Cal. Bus. &
11 Prof. Code § 17200 *et seq.*;

12 xii. Whether Apple unjustly enriched itself;

13 xiii. Whether Apple’s conduct should be enjoined;

14 xiv. Whether Apple knowingly intended to charge consumers for AppleCare+ on
15 devices that Apple knew had been traded in or returned; and

16 xv. Whether Apple’s deliberate decision to charge its customers something for
17 nothing warrants the imposition of punitive damages.

18 73. **Typicality.** Plaintiffs’ claims are typical of the claims of the Class, as they arise
19 out of the same conduct of Defendants, involve the same legal theories, and challenge the same
20 practices. Specifically, Plaintiffs challenge Apple’s practice of failing to cancel AppleCare+
21 contracts when it knows consumers have traded in or returned their devices, resulting in damages
22 to the consumer (*i.e.*, new recurring charges and/or a failure to provide a prorated refund).

23 Plaintiffs and all Class members have been subjected to the same practices and hold the same
24 rights, they are all entitled to the same legal and equitable relief, they have suffered the same
25 impact and injury, and they have all similarly incurred financial damages due to Apple’s failure
26 to cancel their AppleCare+ contracts when they traded in or returned a Covered Device. Further,
27 Plaintiffs and all members of the Class are entitled to recover at least nominal damages and

1 interest, even where Apple has refunded some or all its wrongful overcharges. Therefore, each
2 member of the Class is entitled to recover some amount of financial damages, there are no
3 uninjured class members, and there are no unique defenses that could result in the dismissal of
4 Plaintiffs' claims or the claims of any member of the Class.

5 74. **Adequacy.** Plaintiffs and their counsel will fairly and adequately represent the
6 interests of the Class members. Plaintiffs have no interests antagonistic to, or in conflict with, the
7 interests of the other Class members, and they will zealously pursue their claims. Plaintiffs'
8 lawyers are highly experienced with consumer class actions and complex commercial litigation,
9 they are capable of providing the financial resources needed to litigate this matter to conclusion,
10 and they have successfully litigated other nationwide consumer class actions.

11 75. **Superiority.** A class action is superior to all other available methods for fairly
12 and efficiently adjudicating the claims of Plaintiffs and the Class members. Plaintiffs and the
13 Class members—many of whom are unaware of their rights—have been harmed by Defendants'
14 conduct. Litigating this case as a class action reduces the possibility of repetitious litigation
15 relating to Defendants' wrongful actions and provides an efficient mechanism for adjudication
16 for Class members, whose claims are too small to warrant individual litigation.

17 76. **Injunctive and Declaratory Relief.** Apple has acted or refused to act on grounds
18 that apply generally to the Class, and final injunctive relief or corresponding declaratory relief is
19 appropriate respecting the Class as a whole.

20 **Choice of Law Allegations**

21 77. As set out above, each iteration of the Terms and Conditions has a choice of law
22 clause that provides that “the laws of the State of California govern Plans purchased in the
23 United States” unless they are “inconsistent with the laws of any jurisdiction where” a consumer
24 purchased their Plan.

25 78. As the Ninth Circuit recently explained, “[s]ubject to constitutional limitations
26 and the forum state’s choice-of-law rules, a court adjudicating a multistate class action is free to
27 apply the substantive law of a single state to the entire class.” *Espinosa v. Ahearn (In re Hyundai*

1 & *Kia Fuel Econ. Litig.*), 926 F.3d 539, 561 (9th Cir. 2019) (*en banc*) (citations omitted).

2 79. “By default, California courts apply California law ‘unless a party litigant timely
3 invokes the law of a foreign state,’ in which case it is ‘the foreign law proponent’ who must
4 ‘shoulder the burden of demonstrating that foreign law, rather than California law, should apply
5 to class claims.’” *Id.* (citations omitted).

6 80. Where choice-of-law is challenged, “California has two different analyses for
7 selecting which law should be applied in an action. When the parties have an agreement that
8 another jurisdiction’s law will govern their disputes, the appropriate analysis for the trial court to
9 undertake is set forth in [*Nedlloyd Lines B.V. v. Superior Court*, 834 P.2d 1148 (Cal. 1992)],
10 which addresses the enforceability of contractual choice-of-law provisions. Alternatively, when
11 there is no advance agreement on applicable law, but the action involves the claims of residents
12 from outside California, the trial court may analyze the governmental interests of the various
13 jurisdictions involved to select the most appropriate law.” *Wash. Mut. Bank v. Superior Court*,
14 15 P.3d 1071, 1077 (Cal. 2001).

15 81. As recognized by another court in this district interpreting the same AppleCare+
16 choice-of-law provision in an otherwise unrelated case, the *Nedlloyd* rule controls. *See*
17 *Maldonado v. Apple, Inc.*, No. 3:16-cv-04067-WHO, 2021 U.S. Dist. LEXIS 92483, at *19–22
18 (N.D. Cal. May 14, 2021). The AppleCare+ contract contains an “unambiguous choice-of-law
19 clause” through which “the parties subjected themselves to California law.” *Id.* at *23. Under the
20 *Nedlloyd* test, “[i]t would be surprising for any state in the Union to have a fundamental policy
21 against claims for, essentially, a breach of the express terms of a contract.” *Id.* at *26.

22 82. Even if the governmental interest test applied, California law would control. As
23 explained by the Supreme Court of California—discussing a case involving Apple—certification
24 of a nationwide class under California law is appropriate where “the unlawful conduct that
25 formed the basis of the out-of-state plaintiffs’ claims . . . , and that justified the application of
26 California law to resolve those claims, occurred in California.” *Sullivan v. Oracle Corp.*, 254
27 P.3d 237, 248 (Cal. 2011) (discussing *Wershba v. Apple Comput., Inc.*, 110 Cal. Rptr. 2d 145,

1 159 (Cal. App. 2001) (“[W]e find there were significant contacts with California in this case to
2 satisfy constitutional concerns and support certification of a nationwide class.”); *see also People*
3 *v. Ashford Univ., LLC*, 100 Cal. App. 5th 485, 519 (2024) (“The *Wershba* court ruled that the
4 UCL could constitutionally be applied to the claims of nonresident class members because Apple
5 was a California corporation with its principal place of business in California, substantial
6 numbers of class members were located in California, and the brochures at issue were prepared
7 in and distributed from California.”); *Rutledge v. Hewlett-Packard Co.*, 238 Cal. App. 4th 1164,
8 1187 (2015) (“The facts of *Wershba* and *Wolph* are similar to the present case. HP’s
9 headquarters and principal place of business is California, policy decisions regarding the
10 notebooks at issue, including issuing the service notes, were made in California, and all of the
11 warranty repairs were performed in California. . . . We find the trial court’s order denying
12 nationwide class certification must be reversed.”).

13 83. Here, as in *Wershba*, much of Apple’s “unlawful conduct that form[s] the basis
14 of . . . plaintiffs’ claims . . . , and that justifie[s] the application of California law to resolve those
15 claims, occurred in California.” *Sullivan*, 254 P.3d at 248 (discussing *Wershba*). Therefore, even
16 if the governmental interest test applied, California law would control.

17 **Causes of Action**

18 **Count 1: Breach of Contract**

19 84. Each version of the AppleCare+ Terms and Conditions is a contract between
20 Defendants and consumers.

21 85. Each of the Defendants has a defined role and responsibilities under the Terms
22 and Conditions. Defendant Apple Inc. advertises AppleCare+ as one of many “integrated”
23 services it offers to consumers, and the Terms and Conditions provide that Apple Inc. “is
24 responsible for the collection and transfer to AppleCare Service Company, Inc. of the purchase
25
26
27

1 price for the Plan and for the administration of claims under the Plan.”⁴² That is, Apple Inc. is the
2 party that takes money from Plaintiffs and members of the Class under the express terms of the
3 parties’ contract. Defendant AppleCare Service—a fully owned subsidiary of Apple Inc.—has
4 certain other defined responsibilities under the contract.

5 86. To begin with the low-hanging fruit, Apple breached the express terms of its
6 contract with Plaintiffs and many members of the Class who traded in or returned their Covered
7 Devices on or after September 14, 2021. From that date forward, the express terms of the parties’
8 contract required Defendants to automatically cancel AppleCare+ when consumers made certain
9 returns and trade-ins. For instance, when Ms. Edwards completed the trade-in process through
10 Apple’s official program for device number F17DH22G0D88 on January 8, 2022, the
11 corresponding Cancellation provision stated: “For Monthly Plans, if you trade-in your Covered
12 Equipment to Apple or an Apple Authorized Reseller as part of an Apple authorized trade-in
13 program, that trade-in will be deemed an expression of your intent to cancel your Monthly Plan
14 and it will be cancelled.”⁴³ When Ms. Edwards completed this trade-in, Apple also expressly
15 promised that consumers who “cancel a Monthly Plan” would “receive a pro rata refund based
16 on the percentage of unexpired time remaining on your Monthly Plan Term.”⁴⁴ Ms. Edwards was
17 on a Monthly Plan when she completed her authorized trade-in directly with Apple, but Apple
18 did not cancel the AppleCare+ plan on her old Covered Device and did not provide a prorated
19 refund but instead kept charging her monthly fees for the device for over two years.

20 87. When Apple adopted more consumer-friendly terms in its updates to
21 AppleCare+’s Terms and Conditions, those more beneficial terms took effect immediately for
22 consumers who had purchased AppleCare+ under less favorable terms. Therefore, Plaintiffs and
23 members of the Class had the right to rely on more favorable Cancellation terms in effect when
24

25
26 ⁴² *Id.*

⁴³ https://www.apple.com/legal/sales-support/applecare/applecareplus/2201/220101_applecareplus_us.pdf § 9.3 (last
accessed November 11, 2024).

⁴⁴ *Id.* at § 9.1(b)(i).

1 they traded in or returned their devices regardless of the date of purchase. Further, Apple
2 published a notice on September 15, 2021, expressly incorporating the automatic cancellation on
3 trade-in provision for “monthly or annually recurring AppleCare+ plans.”⁴⁵

4 88. The contract claims in this case are not limited to the foregoing express breach
5 theory, for two reasons. First, regardless of the express terms of the Cancellation provision,
6 consumers substantially performed their obligation of notifying Apple of their intent to cancel
7 AppleCare+ “at any time for any reason” by trading in or returning their Covered Devices.
8 Returning the Covered Device itself goes far beyond a mere phone call or post card, as Apple
9 knew at that point that the device was out of circulation and AppleCare+ was worthless, and
10 Apple was contractually obligated to recognize consumers’ substantial performance of their
11 obligation to notify Apple of their intent to cancel. Second—and independently—Apple was
12 obligated to cancel AppleCare+ contracts when consumers traded in or returned their Covered
13 Devices by its duty of good faith and fair dealing.

14 89. First, consumers have always substantially performed their obligation of notifying
15 Apple of their intent to cancel AppleCare+ “at any time for any reason” by returning the Covered
16 Device itself. To the extent that older versions of the AppleCare+ Terms & Conditions direct
17 consumers to give notice of their desire to cancel AppleCare+ by calling or mailing a letter to
18 Apple, while remaining silent on the efficacy of trading in or returning a device as a means of
19 notice, consumers nonetheless substantially complied with the notice-of-cancellation term by
20 trading in or returning their Covered Devices. By doing so, consumers gave Apple actual notice
21 that they no longer had any use for AppleCare+ on those devices, and Apple knew that the
22 AppleCare+ contract had become worthless to the consumer. Under black-letter contract
23 doctrine, ““substantial performance is sufficient, and justifies an action on the contract.”” *Magic*
24 *Carpet Ride LLC v. Rugger Investment Grp., L.L.C.*, 41 Cal. App. 5th 357, (2019) (quoting

25
26
27 ⁴⁵ <https://www.apple.com/legal/sales-support/applecare/applecareplus/notices/us-en.html> (last accessed November 11, 2024).

1 *Posner v. Grunwald-Marx, Inc.*, 56 Cal. 2d 169, 186–87 (1961)). Although “what constitutes
2 substantial performance is a question of fact,” any “defect” in providing notice by trade-in rather
3 than by mailing a letter is trivial—Apple “g[ot] practically what the contract calls for.” *Id.*

4 90. Separately, “[e]very contract imposes upon each party a duty of good faith and
5 fair dealing in its performance and its enforcement.” *Foley v. Interactive Data Corp.*, 765 P.2d
6 373, 389 (Cal. 1988) (quoting *Restat 2d of Contracts*, § 205). “As to the scope of the covenant,
7 ‘[the] precise nature and extent of the duty imposed by such an implied promise will depend on
8 the contractual purposes.’” *Id.* (quoting *Egan v. Mut. of Omaha Ins. Co.*, 620 P.2d 141, 145 (Cal.
9 1979)). “The implied promise requires each contracting party to refrain from doing anything to
10 injure the right of the other to receive the benefits of the agreement.” *Egan*, 620 P.2d at 145
11 (citations omitted).

12 91. Here, every iteration of the AppleCare+ Terms and Conditions promised a benefit
13 to all consumers on cancellation regardless of plan type: pro-rata refunds and/or ending ongoing
14 subscriptions. Apple also understands the obvious: consumers who trade in or return their
15 Covered Devices intend to simultaneously cancel their now-worthless AppleCare+ subscription.
16 Apple has expressly acknowledged as much for certain plan types at certain times.

17 92. When Apple knows that a consumer has traded in or returned their Covered
18 Device, Apple cannot in good faith deprive the consumer of the promised benefits of
19 cancellation. When Apple itself or its agents have assumed ownership of a Covered Device to
20 return it to circulation or have it destroyed, Apple knows that its performance of all its remaining
21 obligations for the life of the contract have become impossible. Apple also knows that the
22 AppleCare+ contract will necessarily provide the consumer with no consideration for the life of
23 the deal. Apple recognizes as much by giving customers even under fixed term plans the right to
24 receive a prorated refund upon cancellation and by its current policy of promising to
25 automatically cancel at least certain types of AppleCare+ contracts after trade-ins and returns.

26 93. There is no possible good faith justification for Apple to have ever believed that
27 consumers who have given up ownership of their Covered Devices forever to Apple or its agents

1 could have intended to do anything but cancel their associated AppleCare+ contracts. Apple's
2 refusal to recognize consumers' obvious intent to cancel their associated AppleCare+ plans with
3 the trade-in or return of their Covered Devices "injure[d] the right of [Plaintiffs and the Class] to
4 receive the benefits of" cancellation promised by "the agreement." *Id.* Further, once a Covered
5 Device had been removed from circulation through a trade-in or return, Apple knew that it would
6 not and could not provide consumers any further consideration in exchange for their AppleCare+
7 payments. Apple nevertheless decided to charge consumers something for nothing to enrich itself
8 instead of honoring the consumers' expressed intent and contractual rights. That is not good faith
9 conduct.

10 94. Apple's decision not to automatically cancel AppleCare+ when it knew
11 consumers had traded in or returned their Covered Devices was a breach of its duty of good faith
12 and fair dealing, and therefore a breach of contract.

13 95. To summarize, Apple breached its contracts with Plaintiffs and members of the
14 Class in three ways: (1) it failed to honor the express terms of the cancellation provision for
15 Plaintiffs and many members of the Class, (2) it failed to recognize the trade-in or return of
16 Covered Devices as substantial performance of the obligation of Plaintiffs and all members of
17 the Class to notify Apple of their intent to cancel "at any time for any reason," and (3) Apple
18 breached its duty of good faith and fair dealing with respect to Plaintiffs and all members of the
19 Class. While each of these contract theories has independent force, none of them is mutually
20 exclusive, and Plaintiffs and the Class plead them both simultaneously and in the alternative.
21 Under each theory, the damages analysis discussed below is the same.

22 96. Plaintiffs and members of the Class have been damaged by Defendants' breach of
23 contract. Plaintiffs Edwards, Amsel, and Frank did not receive a prorated refund and then
24 continued paying monthly AppleCare+ subscription fees for years for Covered Devices that
25 Apple knew they no longer owned, and Apple failed to give Plaintiff Scott the prorated refund it
26 had promised. These unnecessary and unlawful fees came at a time of high inflation and high
27 interest rates, when household budgets were strained and any extra money could earn interest at

1 rates not seen in decades.

2 97. Because every consumer would be financially benefitted by automatic
3 cancellation regardless of their Plan Term, every consumer who did not have their AppleCare+
4 subscription cancelled when they traded in or returned their Covered Devices was damaged by
5 making additional subscription payments they should never have made and/or by failing to
6 receive the benefit of the prorated refunds promised by the Terms and Conditions.

7 98. Even where Apple has provided refunds, affected consumers were damaged, have
8 Article III standing, and have the right to pursue various forms of relief. Beginning with
9 standing, the Ninth Circuit has squarely held that a plaintiff who receives a refund for a
10 challenged practice nonetheless has standing to pursue interest or other compensation for the
11 “lost [] use of her money” while the defendant wrongly possessed it. *Van v. LLR, Inc.*, 962 F.3d
12 1160, 1165 (9th Cir. 2020) (joining the other circuits in so holding). Pre-judgment interest is
13 available as a remedy for breach of contract claims, Cal. Civ. Code § 3289, and alternative UCL
14 claims for restitution in the Court’s discretion, *Espejo v. The Copley Press, Inc.*, 13 Cal. App. 5th
15 329, 375 (2017). Under the CLRA, the Supreme Court of California has recognized that even a
16 person who manages to avoid an unlawful practice in the first instance through their own efforts
17 has been damaged because “the expenditure of such transaction costs to avoid the consequences
18 of a deceptive practice falls within the broad meaning of suffering ‘any damage as a result of the
19 use or employment’ of an unlawful practice, whether or not those transaction costs are
20 cognizable as ‘actual damages,’” and the person “may have also incurred opportunity costs.”
21 *Meyer v. Sprint Spectrum L.P.*, 200 P.3d 295, 300-01 (Cal. 2009) (citation omitted); *see also Huu*
22 *Nguyen v. Nissan N. Am., Inc.*, 932 F.3d 811, 818 (9th Cir. 2019) (explaining that, under the
23 CLRA’s “capacious” damages regime, consumers can seek relief for “opportunity costs and
24 transaction costs,” as well as “punitive damages”). And Apple’s refund for its past misconduct,
25 while continuing to follow the same unlawful course of conduct going forward, does not vitiate
26 claims for declaratory or injunctive relief to prevent further misconduct.

27 99. AppleCare+ plan’s Limitation of Liability, if enforceable, does not bar individuals

1 like Ms. Edwards who have received a refund from seeking further relief. As an initial matter,
2 Ms. Edwards has not actually received a full refund, as explained above. Regardless, Apple’s
3 Limitation of Liability term reads in pertinent part as follows: “To the maximum extent
4 permitted by applicable law, the limit of Apple and its employees’ and agents’ liability to you
5 and any subsequent owner arising under the plan shall not exceed the original price paid for the
6 plan.” ¶ 8 (all-caps removed for ease of reading). The most natural reading of “the original price
7 paid for the plan” is that consumers can recover up to the full price they paid over the life of an
8 AppleCare+ plan without implicating the Limitation of Liability provision. That is doubly true
9 considering that any ambiguity in Apple’s contract of adhesion would be construed “against the
10 interest of the party that drafted it,” Apple, “with particular force.” *Schertzer v. Bank of Am., NA*,
11 109 F.4th 1200, 1213 (9th Cir. 2024). To use Ms. Edwards as an illustration, over the course of
12 her plan, Ms. Edwards paid Apple more (\$624.36) than she received in refunds (\$439.89 pre-suit
13 and \$2.52 post-suit), leaving her with ample margin under the nominal cap. Consequently, she
14 would be entitled to further contractual remedies—such as prejudgment interest at “10 percent
15 per annum” pursuant to Cal. Civ. Code § 3289—within the terms of Apple’s cap. Moreover,
16 Apple cannot exculpate itself from liability for statutory claims like the CLRA and UCL or for
17 its “own [] misconduct.” *Diep v. Apple, Inc.*, 2024 U.S. App. LEXIS 7214 (9th Cir. 2024)
18 (citing, *inter alia*, Cal. Civ. Code §§ 1668; 1751). Likewise, Apple’s Limitation of Liability term
19 cannot preclude claims for injunctive and declaratory relief.

20 100. In addition to all other categories of damages that Plaintiffs and members of the
21 Class are entitled to recover for breach of contract, Plaintiffs and the Class seek nominal
22 damages to vindicate their contract rights as well.

23 101. At all relevant times, the Terms and Conditions have provided that “the laws of
24 the State of California govern Plans purchased in the United States” unless they are “inconsistent
25
26
27

1 with the laws of any jurisdiction where” a consumer purchased their Plan.⁴⁶

2 102. With respect to the issues raised in this case, there are no material conflicts
3 between the laws of California and the laws of any other jurisdiction. Further, as the drafter of
4 the Terms and Conditions and a resident of California, Apple should have every expectation that
5 California law will govern claims arising under AppleCare+ contracts. As set out in more detail
6 in the Choice of Law Allegations section above, California law applies to all claims nationwide
7 regardless of whether consumers purchased their AppleCare+ plans or Covered Devices.

8 **Count 2: California’s Unfair Competition Law (“UCL”)**

9 103. Plaintiffs bring a UCL claim for restitution and equitable interest in the alternative
10 to their legal claims. *See Guzman v. Polaris Indus.*, 49 F.4th 1308 (9th Cir. 2022) (explaining
11 that the presence of a legal claim for damages will generally preclude a UCL claim for
12 restitution). Plaintiffs’ UCL claim also seeks prospective injunctive relief, as to which damages
13 are likely inadequate, as explained below.

14 104. California’s UCL, Cal. Bus. & Prof. Code § 17200 *et seq.*, prohibits “unfair
15 competition,” including “any unlawful, unfair or fraudulent business act or practice” Each
16 of these three categories of conduct provides a distinct basis for liability under the UCL. As set
17 out below, Plaintiffs bring claims under the “unfair” and “unlawful” prongs of the UCL. At this
18 time, Plaintiffs and the Class do not bring a claim under the “fraudulent” prong or allege any
19 claims sounding in fraud.

20 105. With respect to “unfair” practices, courts applying the UCL distinguish between
21 competitor and consumer claims. For consumers, courts “generally continu[e] to apply a broad[]
22 standard . . . encompassing business practices that ‘offend[] an established public policy or when
23 the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to
24

25 _____
26
27 ⁴⁶ https://www.apple.com/legal/sales-support/applecare/applecareplus/071520_applecareplus_us.pdf § 12(n) (last
accessed November 11, 2024).

1 consumers.” *Stark v. Patreon, Inc.*, 635 F. Supp. 3d 841, 854 (N.D. Cal. 2022) (quoting *S. Bay*
2 *Chevrolet v. Gen. Motors Acceptance Corp.*, 72 Cal.App.4th 861, 886-87(1999)).

3 106. At heart, it is simply unfair for Apple to continue charging for AppleCare+
4 coverage when Apple knows a consumer has traded in or returned a Covered Device. Through
5 the return or trade-in, the consumer has relinquished ownership of the device forever to Apple or
6 its agents. From that moment forward, Apple is free to return the device to circulation for its own
7 benefit or to destroy the device, as it tells consumers it will do—a practice that is also to Apple’s
8 benefit because it reduces the overall supply of smartphones in the market. But whatever Apple
9 decides to do, it is guaranteed to never have to provide repair, replacement, or support services
10 under the prior owner’s AppleCare+ contract. Without the Covered Device, consumers are not
11 entitled to any benefits under an AppleCare+ contract tied to that device, and Apple knows that
12 they will receive no consideration going forward either for subscription renewals or for the
13 remaining unused period that has already been paid under all plan types. Apple is relying on the
14 statistical certainty that, with its millions of AppleCare+ customers, a substantial percentage of
15 them will not immediately notice that their AppleCare+ subscriptions were not automatically
16 cancelled by Apple when trading in or returning a device, and Apple will be able to reap
17 guaranteed profits in exchange for nothing. That is unfair. In legal terms, “the practice is
18 immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.” *Stark*,
19 635 F. Supp. 3d at 854 (citation omitted). Or, as one consumer put it above, the practice is
20 “greasy.”⁴⁷ And it violates the “unfair” prong of the UCL regardless of whether Apple
21 committed fraud or made any misrepresentations.

22 107. Apple’s conduct is also “unlawful” under the UCL. “Unlawful acts are ‘anything
23 that can properly be called a business practice and that at the same time is forbidden by law . . .
24 be it civil, criminal, federal, state, or municipal, statutory, regulatory, or court-made.”

25
26
27 ⁴⁷ https://www.reddit.com/r/iphone/comments/ur8fnm/psa_apple_care_and_returns/ (last accessed November 11,
2024).

1 *Sybersound Records, Inc. v. UAV Corp.*, 517 F.3d 1137, 1151 (9th Cir. 2008).

2 108. Apple's conduct is unlawful because it violates California's Consumer Legal
3 Remedies Act and California's Penal Code § 496 and § 484, as set out in Counts III and VI
4 below.

5 109. Apple's conduct is also unlawful under the common law because it constitutes
6 conversion, as set out in Count V below, and because a company is not knowingly allowed to
7 charge its customers without providing a good or service in return. Apple provided no
8 consideration to consumers under AppleCare+ contracts from the moment of trade-in or return
9 forward, and Apple had no lawful right to continue charging customers or otherwise retain the
10 benefits of the AppleCare+ contracts when it knew consumers no longer owned the associated
11 Covered Devices.

12 110. As set out in Count I, Plaintiffs and members of the Class all suffered financial
13 injury, including the lost time value of money, due to Defendants' unfair and unlawful conduct
14 in violation of the UCL.

15 111. Plaintiffs prospectively seek to enjoin further unlawful and unfair acts or practices
16 by Defendants under Cal. Bus. & Prof. Code § 17203. Plaintiffs Edwards, Scott, and Frank have
17 standing to seek injunctive relief. They intend to continue using AppleCare+ on Apple devices
18 they own and trading those devices in for new Apple devices in the future. Absent an injunction
19 requiring Apple to comply with its representations regarding the termination of AppleCare+,
20 Plaintiffs will be unable to rely on the accuracy of Apple's representations and will instead be
21 forced to scrutinize their billing statements for improper charges and then spend time contacting
22 Apple to reverse improper charges, which historically has been unreliable (*e.g.*, Mr. Amsel's
23 effort was largely unsuccessful, and Ms. Frank's efforts were entirely so) and burdensome, with
24 Ms. Edwards' effort taking several phone calls, multiple levels of elevation to customer service
25 managers, and several hours of annoyance and wasted time, in addition to the lost time-value of
26 money Apple wrongly took. Those allegations go beyond those necessary to establish standing to
27 seek injunctive relief. *See Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 969 (9th Cir. 2018).

1 Further, “[m]oney damages are an inadequate remedy for future harm as they will not prevent
2 [Apple] from continuing” its unfair practices. *Clark v. Eddie Bauer LLC*, 2024 U.S. App.
3 LEXIS 1066 (9th Cir. 2024) (quoting *Andino v. Apple, Inc.*, 2021 U.S. Dist. LEXIS 76011, *5
4 (E.D. Cal. 2021)).

5 112. Plaintiffs, individually and on behalf of the other Class members, request that this
6 Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing
7 their unfair and/or unlawful practices; to order Defendants to cancel the AppleCare+ contracts of
8 all customers who have already returned or traded in the Covered Devices; to order Defendants
9 to implement systems sufficient to automatically cancel all AppleCare+ contracts when the
10 associated Covered Device has been traded in or returned; to restore, via restitution or
11 disgorgement, any monies Defendants acquired by unfair competition, as provided by Cal. Bus.
12 & Prof. Code §§ 17203 & 3345; and for such other relief as may be just and proper.

13 **Count 3: California’s Consumer Legal Remedies Act (“CLRA”)**

14 113. The CLRA prohibits certain “unfair methods of competition and unfair or
15 deceptive acts or practices . . . undertaken by any person in a transaction intended to result or that
16 results in the sale or lease of goods or services to any consumer.” Cal. Civ. Code § 1770.

17 114. Defendants are “persons” under Cal. Civ. Code § 1761(c).

18 115. Plaintiffs and members of the Class are “consumers” under Cal. Civ. Code §
19 1761(d) who purchased an AppleCare+ contract.

20 116. The Covered Devices under an AppleCare+ contract are “goods” under Cal. Civ.
21 Code § 1761(a).

22 117. The services that Apple is obligated to provide in connection with a Covered
23 Device under an AppleCare+ contract are “services” under Cal. Civ. Code § 1761(b).

24 118. Both the making of and performance under the AppleCare+ contracts are
25 “transactions” under Cal. Civ. Code § 1761(e).

26 119. To the extent that Apple promised automatic cancellation of AppleCare+
27 contracts for certain consumers, including Plaintiffs, upon trade-in or return but failed to deliver

1 on that promise, Apple “[r]epresent[ed] that a transaction confers or involves rights, remedies, or
2 obligations that it does not have or involve,” in violation of Cal. Civ. Code § 1770(a)(14).
3 Specifically, Apple represented that consumers had the right to automatic cancellation—or that
4 Apple had the obligation to implement automatic cancellation—but the transactions of Plaintiffs
5 and certain members of the Class did not involve or confer those promised rights or obligations.
6 Further, Apple promised that consumers could cancel “at any time for any reason” but refused to
7 recognize the trade-in or return of the Covered Device itself—the most definitive action a
8 consumer could take—as sufficient notice of the consumer’s intent to cancel.

9 120. To the extent that the AppleCare+ contracts did not provide for automatic
10 cancellation upon trade-in or return for certain devices at certain times but instead suggested that
11 consumers had to take affirmative action to cancel AppleCare+ beyond the trade-in or return,
12 Apple “[i]nser[ed] an unconscionable provision in the contract” in violation of Cal. Civ. Code §
13 1770(a)(19). It is unconscionable for Apple to assert a right to continue charging customers or
14 retain pre-paid benefits under AppleCare+ contracts associated with Covered Devices that Apple
15 knows the consumers no longer own. From that point forward, Apple knows that the AppleCare+
16 contract cannot provide the consumer any benefit, and Apple knows that it is guaranteed to be
17 cost-free for the company. It is unconscionable for Apple to assert a right to continue charging
18 consumers something for nothing under these circumstances for essentially the same reasons the
19 conduct is unfair under the UCL and breaches Apple’s duty of good faith and fair dealing.

20 121. Defendants’ actions occurred in the sale of services to a consumer.

21 122. Plaintiffs and members of the Class suffered ascertainable loss caused by
22 Defendants’ conduct, as set out in Count I.

23 123. Plaintiffs Edwards, Scott, and Frank, on behalf of themselves and the Class, seek
24 an order enjoining Defendants’ unfair acts or practices under Cal. Civ. Code § 1780(a)(2).
25 Specifically, these Plaintiffs ask the Court to order Apple to (1) immediately cancel all
26 AppleCare+ contracts for Covered Devices that have already been traded in or returned and (2)
27 adopt systems and practices sufficient to automatically cancel AppleCare+ subscriptions

1 whenever Apple learns a Covered Device has been traded in or returned.

2 124. Plaintiffs prospectively seek to enjoin further unlawful and unfair acts or practices
3 by Defendants under Cal. Bus. & Prof. Code § 17203. Plaintiffs Edwards, Scott, and Frank have
4 standing to seek injunctive relief. They intend to continue using AppleCare+ on Apple devices
5 they own and trading those devices in for new Apple devices in the future. Absent an injunction
6 requiring Apple to comply with its representations regarding the termination of AppleCare+,
7 Plaintiffs will be unable to rely on the accuracy of Apple’s representations and will instead be
8 forced to scrutinize their billing statements for improper charges and then spend time contacting
9 Apple to reverse improper charges, which historically has been unreliable (*e.g.*, Mr. Amsel’s
10 effort was largely unsuccessful, and Ms. Frank’s efforts were entirely so) and burdensome, with
11 Ms. Edwards’ effort taking several phone calls, multiple levels of elevation to customer service
12 managers, and several hours of annoyance and wasted time, in addition to the lost time-value of
13 money Apple wrongly took. Those allegations go beyond those necessary to establish standing to
14 seek injunctive relief. *See Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 969 (9th Cir. 2018).
15 Further, “[m]oney damages are an inadequate remedy for future harm as they will not prevent
16 [Apple] from continuing” its unfair practices. *Clark v. Eddie Bauer LLC*, 2024 U.S. App.
17 LEXIS 1066 (9th Cir. 2024) (quoting *Andino v. Apple, Inc.*, 2021 U.S. Dist. LEXIS 76011, *5
18 (E.D. Cal. 2021)).

19 125. Plaintiffs, on behalf of themselves and the Class, seek an award of costs and
20 attorneys’ fees under Cal. Civ. Code § 1780(e).

21 126. In addition to injunctive relief, costs, and attorneys’ fees, Plaintiffs and the Class
22 bring a claim for all available damages under Cal. Civ. Code §§ 1780(a) and 1781, including
23 punitive damages.

24 127. On October 2, 2024, Mr. Scott served Apple by certified mail with a letter dated
25 September 27, 2024, that met the requirements of Cal. Civ. Code § 1782(a) and requested relief
26 on behalf of all affected consumers. When Apple received this letter, Mr. Scott had already filed
27 his putative class complaint in *Scott v. Apple, Inc.*, Case No. 5:24-cv-6866-NC (N.D. Cal.). (*See*

1 *id.* at Dkt. 1 (September 30, 2024, Complaint)). More than a month earlier, Apple had been
2 served with the *Edwards* complaint. (Dkt. 1 (August 23, 2023, Complaint)). Before Apple’s
3 November 1, 2024, deadline to respond to Mr. Scott’s CLRA letter expired, Apple formally
4 acknowledged that both cases “relate[] to the same underlying conduct and assert[] the same
5 legal claims.” (Dkt. 24 at 1 (October 23, 2024, Joint Motion to Relate and Consolidate Cases)).

6 128. On October 30, 2024, Apple responded to Mr. Scott’s letter but failed to remedy
7 or agree to remedy its conduct in compliance with Cal. Civ. Code § 1782(b) and (c). Apple did
8 not address the demand for classwide relief at all. *See, e.g., Kagan v. Gibraltar Sav. & Loan*
9 *Ass’n*, 676 P.2d 1060, 1064 (Cal. 1984) (“[A] prospective defendant receiving notice of a
10 grievance which affects a class of consumers can avert a subsequent class action only by
11 remedying the contested practices as to all affected consumers.”), *disapproved on other grounds*
12 *by Meyer v. Sprint Spectrum L.P.*, 200 P.3d 295, 299 (Cal. 2009).

13 129. With respect to Mr. Scott’s individual claims, Apple had actual knowledge of all
14 the information set out in Paragraph 15 above regarding his purchase history. Apple nevertheless
15 seized on a typo in the letter—identifying the serial number of the device he *received* in the
16 relevant transaction rather than the device he *traded in* as the affected device—to assert that he
17 had not stated a claim with respect to the device he identified. Apple’s letter also asserted that
18 Mr. Scott had not alleged that the relevant trade-in was via Apple or an Apple Authorized
19 Reseller, even though Apple had actual knowledge regarding the details of all transactions tied to
20 his user number and Apple account, including the serial number and trade-in method for the
21 device at issue in this case. Apple did not reach out at any point before its 30-day deadline to ask
22 for clarification regarding the claims asserted by Mr. Scott individually or his request for
23 classwide relief.

24 130. In short, the CLRA’s notice requirement has been satisfied, and Apple failed to
25 remedy or agree to remedy its conduct by its November 1, 2024, deadline. Therefore, a class-
26 wide CLRA damages claim can proceed.

27 131. With respect to the punitive damages claim asserted by Plaintiffs and members of

1 the Class, Apple’s conduct is at least “malicious” as defined by California’s punitive damages
2 statute, justifying the imposition of punitive damages. Cal. Civ. Code § 3294(a) (allowing for
3 punitive damages in appropriate cases where “the defendant has been guilty of oppression, fraud,
4 or malice”). By statute, “[m]alice’ means conduct which is intended by the defendant to cause
5 injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful
6 and conscious disregard of the rights or safety of others.” *Id.* at (c)(1). Here, Plaintiffs allege that
7 Apple intentionally, knowingly, and systematically adopted corporate policies and procedures
8 that failed to give Plaintiffs and members of the Class the benefits of cancellation when they
9 traded in or returned their devices. Apple persisted in this conduct despite years of complaints
10 from consumers, which reflects a deliberate decision by Apple’s management and
11 decisionmakers to put its own corporate interests and profits ahead of its most basic obligations
12 to consumers. That is “despicable conduct” carried out by Apple “with a willful and conscious
13 disregard of the rights” of Plaintiffs and members of the Class sufficient to support the
14 imposition of punitive damages.

15 132. Further, regardless of whether Plaintiffs or members of the Class could prove
16 reliance such to bring an independent fraud claim, Apple’s conduct constitutes “[f]raud” within
17 the meaning of California’s punitive damages statute, which “means an intentional
18 misrepresentation, deceit, or concealment of a material fact known to the defendant with the
19 intention on the part of the defendant of thereby depriving a person of property or legal rights or
20 otherwise causing injury.” *Id.* at (c)(3). Here, Apple either materially misrepresented that it
21 would cancel AppleCare+ plans on trade-in or return or it omitted that it would fail to cancel
22 AppleCare+ contracts after consumers expressed their intent to do so by trading in or returning
23 their Covered Devices. Through these misrepresentations and omissions, Apple intended to
24 deprive Plaintiffs and members of the Class of their property rights to their money, either by
25 retaining pro-rata benefits and/or continuing to charge for AppleCare+ subscriptions that Apple
26 knew provided no benefit.

Count 4: Unjust Enrichment or Quasi-Contract Claim for Restitution

133. In the alternative to Count I, Plaintiffs and the Class allege a claim for unjust enrichment/restitution.

134. Although the Ninth Circuit has previously suggested that California does not recognize a distinct state law cause of action for unjust enrichment, “the California Supreme Court” has since “recognized that an unjust enrichment claim is valid in at least some circumstances.” *Stark v. Patreon, Inc.*, 635 F. Supp. 3d 841, 856 (N.D. Cal. 2022) (discussing *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 762 (9th Cir. 2015), and *Hartford Cas. Ins. Co. v. J.R. Mktg., L.L.C.*, 353 P.3d 319, 327 (Cal. 2015)). “[E]ven under the Ninth Circuit’s *Astiana* decision, a court may construe a purportedly non-existent claim for unjust enrichment as a valid ‘quasi-contract claim seeking restitution,’ *Astiana*, 783 F.3d at 762, the elements of which are ‘that the defendant received and unjustly retained a benefit at the plaintiff’s expense,’ *ESG Cap. Partners, LP v. Stratos*, 828 F.3d 1023, 1038 (9th Cir. 2016).” *Stark*, 635 F. Supp. 3d at 857.

135. Here, whether labelled “unjust enrichment” or a “quasi-contract claim,” Defendants received and unjustly retained a benefit at the expense of Plaintiffs and members of the Class each time Defendants failed to cancel an AppleCare+ contract when they learned the Covered Device had been traded in or returned. Defendants’ conduct is unjust for the same reasons it is “unfair” under the UCL, “unconscionable” under the CLRA, and a breach of the duty of good faith and fair dealing.

136. To the extent Defendants are not otherwise required to do so as a matter of contract, they should be required to return all the benefits they unjustly retained under AppleCare+ contracts following trade-ins or returns of Covered Devices to Plaintiffs and members of the Class.

Count 5: Conversion

137. “The elements of a conversion are the plaintiff’s ownership or right to possession of the property at the time of the conversion; the defendant’s conversion by a wrongful act or

1 disposition of property rights; and damages.” *Roley v. Google LLC*, No. 18-cv-07537-BLF,
2 2020 U.S. Dist. LEXIS 250987, at *36 (N.D. Cal. July 20, 2020) (certifying class conversion
3 claim that depended on the court’s interpretation of a tech company’s “unilateral contract” with
4 consumers) (quoting *Spates v. Dameron Hosp. Assn.*, 114 Cal. App. 4th 208, 221 (2003)).
5 Plaintiffs and members of the Class meet all three elements.

6 138. First, Plaintiffs and all members of the Class had either ownership or the right to
7 possession of the funds converted by Apple. With respect to continued subscription payments
8 after the trade-in of the Covered Device, affected consumers had ownership of the relevant funds
9 before Apple withdrew them from consumers’ accounts or otherwise charged consumers
10 following the trade-in. With respect to Apple’s failure to return prorated refunds of pre-paid
11 benefits, consumers had the right to cancel the plan “immediately” or “at any time, for any
12 reason” and obligate Apple to return these funds.⁴⁸

13 139. Second, Apple’s conversion of the funds was a wrongful act. Apple had the right
14 to withdraw or retain consumers’ funds only as set out in the AppleCare+ contract. When
15 consumers cancelled their plans by trading in their Covered Devices, the consumers withdrew
16 their consent for Apple to withdraw or retain their funds, and Apple no longer had any right to do
17 so. Apple nevertheless made the intentional decision to retain prepaid benefits and/or impose
18 continuing subscription charges following cancellation for Plaintiffs and members of the Class.
19 Apple’s decision to retain or withdraw funds after Apple knew consumers had expressed their
20 intent to cancel AppleCare+ was a wrongful act. *See id.* at *36–37 (“[W]hether Google breached
21 that contract by only allowing the 1 TB Benefit to last for only two years — and, therefore,
22 whether Google’s conversion was a wrongful act — will again turn on the Court’s interpretation
23 of the unilateral contract.”); *Fine v. Kan. City Life Ins. Co.*, No. 2:22-cv-02071-SSS-PDx, 2023
24 U.S. Dist. LEXIS 200218, at *19 (C.D. Cal. Nov. 6, 2023) (certifying consumer class asserting

25
26
27 ⁴⁸ https://www.apple.com/legal/sales-support/applecare/applecareplus/2201/220101_applecareplus_us.pdf at §
9.1(b)(1) (last accessed November 11, 2024).

1 breach of contract and conversion claim based on the defendant’s disregard of its contractual
2 obligations where the “parties’ main disagreements are about whether individualized inquiries
3 are needed to resolve any purported contractual ambiguity regarding the COI language and for
4 calculating damages will preclude a finding of predominance.”).

5 140. Third, as set out in prior Counts, Plaintiffs and all members of the Class have
6 been damaged regardless of whether Apple has issued certain refunds.

7 141. The economic loss doctrine does not bar the claims of Plaintiffs and the Class.
8 “Whether the economic loss rule bars a conversion claim turns on ‘whether the ownership
9 interest that formed the basis for the conversion claim preexisted the contract or arises from the
10 contract. Where the interest preexisted the contract, a conversion claim will lie.’” *Fine v. Kan.*
11 *City Life Ins. Co.*, 627 F. Supp. 3d 1153, 1161 (C.D. Cal. 2022) (citation omitted). Here,
12 Plaintiffs’ ownership of the funds predated the AppleCare+ contracts; the money was sitting in
13 Plaintiffs’ bank accounts or otherwise immediately available before Apple imposed charges.
14 Further, the prepaid benefits that Apple failed to refund consist totally of the funds originally
15 supplied by consumers.

16 142. The funds converted by Apple from Plaintiffs and each member of the Class are
17 capable of identification. As alleged above, Apple ties both AppleCare+ and trade-ins and
18 returns to specific Covered Devices by serial number. Apple’s wrongful charges as well as the
19 prorated refunds that it wrongfully failed to give can be identified by date and amount and tied to
20 specific members of the Class. Any refunds provided by Apple are also tied to specific Covered
21 Devices that are associated with specific consumer accounts. Using these data points, Plaintiffs
22 will be able to calculate (1) the prorated refunds wrongfully withheld by Apple, (2) the
23 continuing AppleCare+ subscription charges wrongfully imposed by Apple, (3) any refunds
24 provided by Apple, and (4) the appropriate amount of prejudgment interest for each specific
25 wrongful charge or wrongful retention of funds.

26 143. Apple took and used the funds that it converted for its own benefit. It did not and
27 could not take or use those funds to benefit Plaintiffs or any member of the Class, and it could

1 not retain or take funds for any proper purpose under the AppleCare+ contract after the trade-in
2 or return of a Covered Device. At that point, Apple knew that Plaintiffs and all members of the
3 Class had relinquished ownership of their Covered Devices and could receive no further benefit
4 either from pre-paid funds that Apple wrongly misappropriated rather than providing prorated
5 refunds or from continuing subscription charges that Apple wrongfully imposed.

6 144. With respect to this conversion claim, Plaintiffs and each member of the Class
7 seek the return of all funds converted by Apple, prejudgment interest, and punitive damages. As
8 set out in the CLRA section above, Apple’s conduct justifies the imposition of punitive damages
9 because its conduct plausibly amounts to both “malice” and “fraud.” Cal. Civ. Code § 3294(c)(1)
10 and (3).

11 **Count 6: California Penal Code § 496**

12 145. California Penal Code § 496 provides a civil cause of action in favor of victims of
13 theft offenses. As the Supreme Court of California recently held, the statute “afford[s] . . . treble
14 damages and attorney’s fees when, as here, property ‘has been obtained in any manner
15 constituting theft.’” *Siry Inv., L.P. v. Farkhondehpour*, 513 P.3d 166, 188 (Cal. 2022) (quoting §
16 496(a)); *see also* § 496(c). Section 496(c) specifically applies to contract disputes involving
17 money. *See Tim Cross, LLC v. Associated Adjusters Network, Inc.*, 2023 U.S. Dist. LEXIS
18 214511, at *11 (C.D. Cal. Nov. 30, 2023).

19 146. Pursuant to § 496(c), civil plaintiffs must establish that they were “injured by a
20 violation of” one of the statute’s subdivisions. Pertinent here, subsection § 496(a) targets
21 defendants who take or retain property “that has been obtained in any manner constituting theft,”
22 as well as those who take or retain property “knowing the property to be so stolen or obtained, or
23 who conceal[], sell[], withhold[], or aid[] in concealing, selling or withholding” any such
24 property from the rightful owner. Thus, civil plaintiffs must establish both an underlying theft
25 offense and injury therefrom, albeit by a preponderance of the evidence rather than beyond a
26 reasonable doubt. *Siry*, 513 P.3d at 168, 183.

27 147. California’s baseline definition of theft is as follows: “Every person who shall

1 feloniously steal [or] take . . . the personal property of another . . . is guilty of theft.” Cal. Penal
2 Code § 484(a). Among the several variants of theft, one plausible version is larceny. “The
3 elements of theft by larceny are well settled: the offense is committed by every person who (1)
4 takes possession (2) of personal property (3) owned or possessed by another, (4) by means of
5 trespass and (5) with intent to steal the property, and (6) carries the property away.” *People v.*
6 *Davis*, 965 P.2d 1165, 1167 (Cal. 1998) (citations omitted).

7 148. The only element of larceny subject to reasonable factual dispute is Apple’s level
8 of intent. Turning first to the other elements, by taking the payments at issue, Apple (1) took
9 possession of (2) money (3) owned by Plaintiffs and the putative Class members (4) without
10 legal right to do so and (6) kept that property. To constitute larceny, and therefore support a §
11 496 claim, Apple must have (5) acted with “the intent, without a good faith claim of right, to
12 permanently deprive the owner of possession.” *Garrabrants v. Erhart*, 98 Cal. App. 5th 486, 504
13 (2023) (remanding for retrial on § 496 claim with jury instruction specifying that intent is
14 required to establish the underlying larceny offense) (citing *Davis*, 965 P.2d at 1167–68)).

15 149. The available information indicates that Apple acted with the careful planning and
16 deliberation reflecting requisite criminal intent and that discovery will show Apple acted with
17 “criminal intent on the part of the defendant[s] beyond mere proof of nonperformance or actual
18 falsity.” *Siry*, 513 P.3d at 184 (cleaned up). As explained above, Apple knows its own carefully
19 drafted contract language, Apple knows the trade-in status of all covered devices, Apple knows
20 consumers have been complaining about this particular practice on its own forums for years, and
21 Apple knows it continues to charge consumers for AppleCare+ on traded-in devices in violation
22 of the company’s legal obligations and explicit promise to the contrary. Nor could Apple
23 seriously think that consumers want to keep paying for AppleCare+ on devices they no longer
24 own. The scale of revenue associated with Apple’s non-cancellation practice cannot have
25 escaped notice. Assuming that only 1% of Apple’s 130 million domestic iPhone customers is
26
27

1 affected, the practice would generate over \$150 million a year.⁴⁹ Without discovery into Apple’s
2 internal decision-making, the most plausible conclusion is that Apple intentionally and
3 knowingly chose to persist in this hyper-profitable scheme, correctly assuming that most
4 customers would neither notice nor take the time and trouble to seek refunds, allowing Apple to
5 retain money for nothing. For its part, Apple may characterize the practice as mere negligence on
6 a massive scale, but the truth is for discovery to illuminate. *See, e.g., Schwake v. Ariz. Bd. Of*
7 *Regents*, 967 F.3d 940, 949 (9th Cir. 2020) (holding that the plausibility standard does not require
8 detailed allegations about the defendant’s state of mind because “[i]t may be difficult for a
9 plaintiff to know the full extent of [mal-intent] in decision-making before discovery allows a
10 plaintiff to unearth information controlled by the defendant.”) (citing *Swierkiewicz v. Sorema,*
11 *N.A.*, 534 U.S. 506, 512 (2002)); *accord, e.g., People v. Truong*, 10 Cal. App. 5th 551, 559
12 (2017) (“[I]ntent is rarely susceptible of direct proof and ordinarily must be inferred from a
13 consideration of all the facts and circumstances shown in evidence.”) (citing *People v. Lyles*, 319
14 P.2d 745, 747 (Cal. App. 1957)).

15 Prayer for Relief

16 150. Plaintiffs, individually and for members of the Class, respectfully requests that the
17 Court enter judgment in Plaintiff’s favor and against Defendants, as follows:

- 18 i. Certification of the proposed Class, including appointment of Plaintiffs’
19 counsel as Class Counsel and Plaintiffs as class representatives;
- 20 ii. An order temporarily and permanently enjoining Defendants from continuing
21 to charge consumers for AppleCare+ after a Covered Device has been traded-
22 in or returned and requiring Defendants to identify and cancel all such active
23 contracts;
- 24 iii. An order declaring that Apple is required to cancel AppleCare+ contracts

25
26
27 ⁴⁹ Assuming 1.3 million affected customers paying \$9.99 monthly for AppleCare+, rather than the \$13.49 for Apple’s premium plans for newer devices: 1,300,000 * \$9.99 * 12 = \$155,844,000.

- 1 when it knows a consumer has traded-in or returned a Covered Device;
- 2 iv. Damages, costs, restitution, and/or disgorgement, each in an amount to be
- 3 determined;
- 4 v. Treble damages, costs of suit, and reasonable attorney's fees, pursuant to
- 5 California Penal Code § 496;
- 6 vi. Nominal damages;
- 7 vii. Punitive damages;
- 8 viii. Statutory and/or equitable pre- and post-judgment interest on any amounts
- 9 awarded;
- 10 ix. An award of costs and attorneys' fees;
- 11 x. A jury trial on all issues so triable; and
- 12 xi. Such other or further relief as may be appropriate.
- 13

14 Dated this 15th day of November, 2024.

15 /s/ Aaron K. Block

16 Aaron K. Block (*Pro Hac Vice*)

17 Max Marks (*Pro Hac Vice*)

18 THE BLOCK FIRM, LLC

19 Candice L. Fields (SBN 172174)

20 CANDICE FIELDS LAW, PC

21 *Counsel for Plaintiffs Edwards, Amsel, Frank,*
22 *and the Putative Class*

23 Kyle McLean (SBN 330580)

24 Lisa R. Considine (*Pro Hac Vice*)

25 Leslie L. Pescia (*Pro Hac Vice*)

26 SIRI & GLIMSTAD LLP

27 *Counsel for Plaintiff Scott and the Putative Class*