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9 *Attorneys for Plaintiffs and the*
10 *Putative Class*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**

13
14 WALTER PETERS, individually and on behalf
of all others similarly situated,

15 Plaintiffs,

16 v.

17
18 APPLE INC., a California corporation;
DOES 1 to 100, inclusive,

19 Defendants.
20

Case No. 19STCV21787

21 CLASS ACTION

22 *[Assigned for all purposes to Hon. Elihu*
M. Berle, Dept. 6]

23 **STIPULATED REQUEST FOR LEAVE**
TO FILE PLAINTIFFS' FOURTH
AMENDED COMPLAINT; [~~Proposed~~]
ORDER

24 Initial Complaint filed: June 21, 2019
25 Trial date: Not set

FILED
Superior Court of California
County of Los Angeles

07/03/2023

David W. Slayton, Executive Officer / Clerk of Court

By: M. Fregoso Deputy

STIPULATION

1
2 Plaintiffs Diana Ismailyan and Jeff Torres (collectively, “Plaintiffs”), and Defendant
3 Apple Inc. (“Apple”) (jointly, the “Parties”), by and through their respective counsel, hereby
4 request that the Court grant leave for Plaintiffs to file their proposed Fourth Amended Complaint
5 attached hereto as **Exhibit 1**.

6 The proposed Fourth Amended Complaint correctly names the current Plaintiffs and
7 revises the proposed class definition per the Parties’ anticipated settlement agreement. This
8 amendment resulted from the Parties’ continuous work to finalize their settlement agreement
9 and is requested in anticipation of the motion for preliminary approval of class settlement.
10 Accordingly, the Parties respectfully request that the Court grant Plaintiffs leave to amend to
11 file their proposed Fourth Amended Complaint.

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13 Dated: June 30, 2023

Respectfully submitted,

14 */s/ Thiago M. Coelho*

15 _____
Thiago M. Coelho

WILSHIRE LAW FIRM, PLC

Attorneys for Plaintiffs and the Putative Class

16
17
18 Dated: June 30, 2023

Respectfully submitted,

19 */s/ Michelle C. Doolin*

20 _____
Michelle C. Doolin

Beatriz Mejia

Max A. Bernstein

COOLEY LLP

Attorneys for Defendant

EXHIBIT 1

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16 *Attorneys for Plaintiffs*
17 *and the Putative Class*

18 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

19 **COUNTY OF LOS ANGELES**

20 WALTER PETERS, individually and on
21 behalf of all others similarly situated,

22 Plaintiffs,

23 v.

24 APPLE INC., a California corporation;
25 DOES 1 to 100, inclusive,

26 Defendants.

27 Case No. 19STCV21787

28 CLASS ACTION

*[Assigned for All Purposes to
Hon. Elihu M. Berle, Dept. 6]*

**FOURTH AMENDED COMPLAINT;
DEMAND FOR JURY TRIAL**

Initial Complaint Filed: June 21, 2019
Trial Date: None set

1 Plaintiffs Diana Ismailyan and Jeff Torres (“Plaintiffs”), individually and on behalf of all
2 others similarly situated, bring this action based upon personal knowledge as to themselves and
3 their own acts, and as to all other matters upon information and belief, based upon, *inter alia*, the
4 investigation of their attorneys.

5 **NATURE OF THE ACTION**

6 1. Defendant Apple Inc. (“Apple” or “Defendant”) is a California corporation
7 headquartered in Cupertino, California, that designs, develops, and sells consumer electronics,
8 computer software, and online services. In order to use any of Apple’s services, a customer needs
9 to purchase an iPhone, or an iPad, or another similar Apple device. An Apple iPhone can cost as
10 much as \$1,349, but it also gives access to specific services of which only Apple offers. Apple’s
11 online services include the iOS App Store, a digital distribution platform for mobile software
12 applications (the “App Store”) developed with Apple’s iOS software development kit, these
13 applications are programs that have several different uses. Through the App Store, consumers can
14 download Apps onto the iPhone smartphone, the iPod Touch handheld computer, or the iPad tablet
15 computer. In addition, some Apps can be transferred to the Apple Watch smartwatch or fourth
16 generation or newer Apple TV as extensions of iPhone Apps. As of February 2019, there were 2.2
17 million Apps available for download on the App Store.

18 2. Apps with paid renewable or auto-renewable subscriptions have become an
19 increasingly popular and prevalent model on the App Store in recent years. Rather than a one-time
20 charge, these Apps require a periodic subscription payment, a monthly or yearly fee, in order for
21 the consumer to continue using the Apps. Apple takes thirty percent of these fees for the first year
22 that a subscriber maintains the Apps, and fifteen percent of the fees thereafter.

23 3. Apple’s “Media Services Terms and Conditions” purports to be a “contract” that
24 “govern[s]” a consumer’s use of “Apple’s services (‘Services’), through which you [the consumer]
25 can buy, get, license, rent or subscribe to media, apps (‘Apps’), and other in-app services
26 (‘Content’).” The purported contract further states that Apple’s “Services are: iTunes Store, App
27 Store, Apple Books, Apple Music, and Apple News.”

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1 4. Apple’s “Media Services Terms and Conditions” also describes Apple Family
2 Sharing as a service by incorporating the document’s definition of “Content” described above.
3 Indeed, the document states: “Purchase Sharing: Family Sharing’s Purchase Sharing feature allows
4 you to share eligible Content with up to six members of a Family.”

5 5. Apple Family Sharing is a service of the App Store through which Apple purports
6 to allow six family members to share Apps purchased. According to Apple’s advertisements, with
7 Family Sharing, once one family member purchases an App, it becomes immediately available to
8 all other family members’ devices. To set up Family Sharing, the initiating user designates up to
9 five other users as “family” in the initiator’s Apple Account. The family member next must consent
10 to entering the Apple family. Thereafter, once any family member purchases an App which supports
11 Family Sharing through the App Store, paying a single time for that App, the purchased App
12 downloads automatically in the background to the devices of the other family members. Once the
13 download completes, each family member has the same full use of the App and all its features
14 without any additional charge on their respective devices.

15 6. Apple places and/or demands that its software developers place a small
16 advertisement on the landing pages for its Apps which states that the App supports Family Sharing.
17 These landing pages contain descriptions and specifications for the App and are the means through
18 which the Apps are downloaded onto a device. As a result, when a consumer goes to the page on
19 which the App is described, and through which the App can be downloaded, the consumer receives
20 a statement from Apple, which states that the App is available for Family Sharing, and will therefore
21 be automatically downloaded onto six designated additional devices when it is downloaded onto
22 the original device. Up until January 30, 2019, this statement was as follows: “Supports Family
23 Sharing. With Family Sharing set up, up to six family members can use this app.” The statement,
24 and the icon which accompany it, pasted below, are designed by Apple:

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7 7. Apple included this advertisement on all or virtually all of the available Apps'
8 landing pages from the time at which Family Sharing was first initiated through January 30, 2019.
9 However, not all Apps supported Family Sharing during that time period. Specifically, the vast
10 majority of subscription-based Apps, which is a growing percentage of Apple Apps, cannot be
11 shared with designated family members. They are available only to the individual user who
12 downloads the App and sets up a subscription. All or virtually all of these Apps, however, included
13 the statement that they support Family Sharing on their landing pages through January 30, 2019.

14 8. Apple was aware that the vast majority of subscription-based Apps did not support
15 family sharing, yet it placed the advertisement and/or demanded that the software developer place
16 the advertisement on the landing pages of virtually all subscription-based Apps. This advertisement
17 is materially misleading, in that it plainly states that the App is available for Family Sharing, when
18 it is not. Millions of consumers have downloaded subscription-based Apps believing that they are
19 available for Family Sharing, only to learn after payment has been made that they are not so
20 available.

21 9. As a result of Apple's deceptive and misleading practices, Plaintiffs and the Class
22 Members were induced to purchase subscription-based Apps for which Apple receives hefty fees,
23 believing that those Apps could be shared with up to six family members—when in fact they were
24 available only to the single user who set up the subscription. Apple has made millions of dollars in
25 fraudulent sales to individuals who Apple told were receiving up to six copies of an App when they
26 were receiving only one. Apple's customers did not receive the benefit of their bargain. They were
27 misled.

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1 subscription called Brainwell: Brain Training Game (“Brainwell”), on the App Store using her
2 iPhone device.

3 22. Mr. Torres set up Family Sharing on his account on September 20, 2014, and had at
4 least one family member join him, registering a device, on September 21, 2015. On December 8,
5 2017, Mr. Torres also purchased the YouTube Red App, with a subscription, on the App Store using
6 his iPhone device.

7 23. When Plaintiffs made these purchases, Brainwell’s and YouTube Red’s landing
8 pages contained an advertisement which stated:

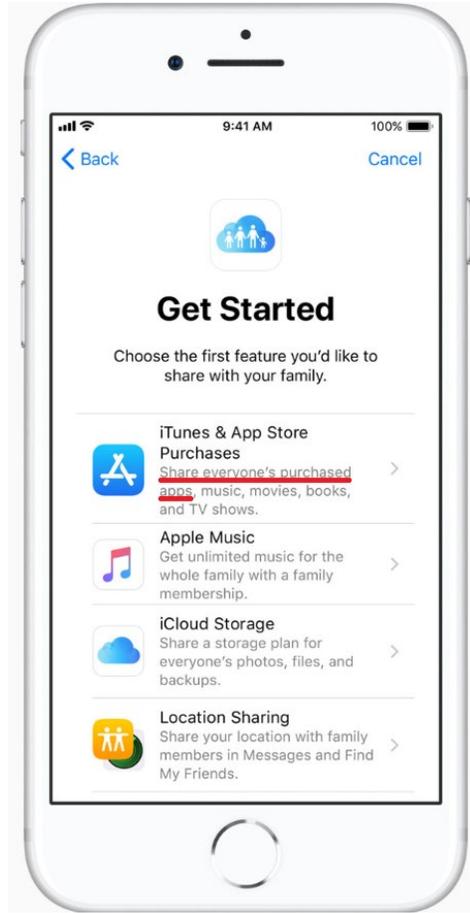


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15 Of course, if these Apps were not supported by the Family Sharing service, Apple had the option
16 of simply not including this advertisement with these, or any Apps.

17 24. Plaintiffs believed that this advertisement meant that Brainwell and YouTube Red
18 would be shared with their designated family members, and that, with a single purchase, each family
19 member would be able to use the Apps. Indeed, Apple’s Family Sharing set-up states just that:

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25. Apple’s own website also makes a similar statement: “All your family’s purchases on all your family’s devices. When you set up purchase sharing, the songs, albums, movies, TV shows, books, and apps purchased by family members are immediately available to everyone else in the group.” <https://www.apple.com/family-sharing/>. Had Plaintiffs known that the Apps they purchased did not support Family Sharing, they would not have purchased the App. Plaintiffs made their purchase in reliance upon this belief.

26. However, when Plaintiffs purchased the Brainwell App and YouTube Red subscriptions, the software did not automatically become available for use on each of their family members’ devices. Brainwell and YouTube Red are subscription-based Apps, requiring either a monthly or yearly subscription, in order for them to be used. The Brainwell and YouTube Red subscriptions were available for use only on Plaintiffs’ devices.

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1 32. *Commonality and Predominance.* There are questions of law and fact common to
2 Class Members, which predominate over any questions affecting only individual Class Members.

3 These common questions of law and fact include, without limitation:

- 4 a. Whether Defendants posted the advertisement on the landing pages or were
5 otherwise responsible for the advertisement’s presence on the landing pages;
- 6 b. Whether subscription-based Apps support Family Sharing;
- 7 c. Whether the advertisement stated that Family Sharing was enabled for the App in
8 question;
- 9 d. Whether Defendants had a policy of requiring App developers to place the
10 advertisement on the landing pages;
- 11 e. Whether Defendants created the advertisement;
- 12 f. Whether Defendants knew or should have known that the subscription-based Apps
13 in question would not support Family Sharing;
- 14 g. Whether Defendants owed a duty of care to its customers to ensure that the landing
15 pages for the Apps on the App Store did not contain misrepresentations, and the
16 scope of that duty of care;
- 17 h. The nature of the relief, including equitable relief, to which Plaintiffs and Class
18 Members are entitled; and
- 19 i. Whether Plaintiffs and Class Members are entitled to damages, civil penalties and/or
20 injunctive relief.

21 33. *Typicality.* Plaintiffs’ claims are typical of those of other Class Members because
22 Plaintiffs, like other Class Members, purchased an Apple device, signed up for family sharing and
23 had at least one family member with a registered device, and then purchased a subscription-based
24 App on the App Store which was advertised as a Family Sharing App, but did not permit Family
25 Sharing services to other users without paying additional money.

26 34. *Adequacy of Representation.* Plaintiffs will fairly and adequately represent and
27 protect the interests of the Class Members. Plaintiffs have retained competent counsel experienced
28 in litigation of class actions, including consumer class actions, and Plaintiffs intend to prosecute

1 this action vigorously. Plaintiffs and Class Members have a unified and non-conflicting interest in
2 pursuing the same claims and obtaining the same relief. Therefore, all Class Members will be fairly
3 and adequately represented by Plaintiffs and their counsel.

4 35. *Superiority of Class Action.* A class action is superior to other available methods for
5 the fair and efficient adjudication of the claims alleged in this action. The adjudication of this
6 controversy through a class action will avoid the possibility of inconsistent and potentially
7 conflicting adjudications of the asserted claims. There will be no difficulty in the management of
8 this action as a class action, and the disposition of the claims of the Class Members in a single
9 action will provide substantial benefits to all parties and to the Court. Damages for any individual
10 Class Member are likely insufficient to justify the cost of individual litigation so that, in the absence
11 of class treatment, Defendants’ violations of law inflicting substantial damages in the aggregate
12 would go un-remedied.

13 36. Class certification is also appropriate because Defendants have acted or refused to
14 act on grounds generally applicable to the Class Members, such that final injunctive relief or
15 corresponding declaratory relief is appropriate as to the Class as a whole.

16 **FIRST CAUSE OF ACTION**

17 **INTENTIONAL MISREPRESENTATION**

18 37. Plaintiffs repeat and incorporate herein by reference each and every allegation
19 contained in paragraphs 1 through 36, inclusive, of this Fourth Amended Complaint as if set forth
20 fully herein.

21 38. Defendants represented to Plaintiffs and Class Members that certain Apps, which
22 were subscription-based Apps, supported Apple’s Family Sharing service. Specifically, Defendants
23 placed an advertisement, or caused to be placed an advertisement, on the landing pages of all such
24 Apps through January 30, 2019, that stated, “Supports Family Sharing. With Family Sharing set
25 up, up to six family members can use this app.”

26 39. These representations were false. The Apps did not support Family Sharing services,
27 and could not be shared with family members, but required each individual who used the App to
28 purchase a copy and/or subscribe for the App.

1 40. Defendants knew that the representations at issue were false when they made them,
2 and/or made the representations recklessly and without regard for their truth. Defendants
3 understood, or should have understood, that as a rule of thumb subscription-based Apps do not
4 support Family Sharing services. Moreover, as Defendants were in a contractual relationship with
5 the App developers through which they shared in the App developer’s profits from the App Store,
6 including taking thirty percent of subscription-based revenue for the first year of the subscription,
7 and fifteen percent of subscription-based revenue thereafter, Defendants were in a position to learn
8 directly from the App developers whether or not their Apps would support Family Sharing.

9 41. Defendants intended that Plaintiffs and the Class Members rely on the
10 representations. The advertisement was placed on the landing pages for the express purpose of
11 inducing the potential customer to purchase the Apps.

12 42. Plaintiffs and the Class Members reasonably relied on the representations. Plaintiffs
13 and the Class Members, who had signed up for Family Sharing and had at least one family member
14 with a registered device, believed that the Apple devices and Apps they purchased would support
15 Family Sharing, i.e., that subscription-based Apps would be automatically shared with up to six
16 designated family members on their respective devices. Plaintiffs and the Class Members believed
17 that Apple’s advertisement would be accurate. Plaintiffs and the Class Members purchased the
18 Apple devices and Apps due to the fact that they believed that the Apps would automatically be
19 shared with their family members.

20 43. As a result, Plaintiffs and the Class Members were harmed when they purchased the
21 Apple devices and Apps and learned that Apple’s services were not automatically shared with their
22 family members. Plaintiffs and the Class Members did not receive the benefit of their bargains.
23 Plaintiffs and the Class Members also paid for Apple devices and Apps that they would not
24 otherwise have purchased.

25 44. Plaintiffs’ and the Class Members’ reliance on Defendants’ representations was a
26 substantial factor in causing this harm. Had Plaintiffs and Class Members known that the Apple
27 devices and Apps did not support Family Sharing, they would have made different purchasing
28 decisions, and not have paid for those Apple devices and Apps.

1 Family Sharing, i.e., that subscription-based Apps would be automatically shared with up to six
2 designated family members on their respective devices. Plaintiffs and Class Members believed that
3 Apple’s advertisement would be accurate. Plaintiffs and Class Members purchased the Apple
4 devices and Apps due to the fact that they believed that the Apps would automatically be shared
5 with their family members.

6 52. As a result, Plaintiffs and the Class Members were harmed when they purchased the
7 Apple devices and Apps and learned that Apple’s services were not automatically shared with their
8 family members. Plaintiffs and the Class Members did not receive the benefit of their bargains.
9 Plaintiffs and the Class Members also paid for Apple devices and Apps that they would not
10 otherwise have purchased.

11 53. Plaintiffs’ and the Class Members’ reliance on Defendants’ representations was a
12 substantial factor in causing this harm. Had Plaintiffs and Class Members known that the Apple
13 devices and Apps did not support Family Sharing, they would not have paid for those Apple devices
14 and Apps and would have made different purchasing choices.

15 54. As a direct and proximate result of Defendants’ negligent misrepresentation,
16 Plaintiffs and Class Members have suffered injury and are entitled to damages in an amount to be
17 proven at trial but in excess of the minimum jurisdictional requirement of this Court.

18 **THIRD CAUSE OF ACTION**

19 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW,**

20 **CAL. BUS. & PROF. CODE § 17500, ET. SEQ.**

21 55. Plaintiffs repeat and incorporate herein by reference each and every allegation
22 contained in paragraphs 1 through 54, inclusive, of this Fourth Amended Complaint as if set forth
23 fully herein.

24 56. Defendants’ advertisements, stating that the Apps in question were subject to Family
25 Sharing services, were false. The Apps could not be shared via Apple’s Family Sharing service.
26 These advertisements were made, through the internet, to California residents.

27 57. Plaintiffs and the Class Members, who had signed up for family sharing and had at
28 least one family member with a registered device, relied on the advertisements by purchasing Apps

1 that they believed could be shared with family members through Apple’s Family Sharing service.
2 The representation that the Apps could be shared through Apple’s Family Sharing service
3 contributed materially to Plaintiffs and the Class Members’ decisions to purchase the Apple devices
4 and Apps.

5 58. As a result, Plaintiffs and Class Members were damaged. Plaintiffs and Class
6 Members did not receive the benefit of their bargains and were unable to share the Apps with any
7 family members. Plaintiffs and Class Members also paid for Apple devices and Apps that they
8 would not have purchased had they known the truth.

9 59. Plaintiffs and the Class Members have suffered monetary injury in fact as a direct
10 and proximate result of the violations of the False Advertising Law committed by Defendants as
11 alleged herein in an amount to be proven at trial but in excess of the minimum jurisdictional amount
12 of this Court.

13 **FOURTH CAUSE OF ACTION**

14 **VIOLATION OF THE UNFAIR COMPETITION LAW,**

15 **CAL. BUS. & PROF. CODE § 17200, ET SEQ.**

16 60. Plaintiffs repeat and incorporate herein by reference each and every allegation
17 contained in paragraph 1 through 59, inclusive, of this Fourth Amended Complaint as if set forth
18 fully herein.

19 61. By their actions and conduct as alleged herein, Defendants have committed one or
20 more acts of unfair competition within the meaning of California Business and Professions Code §
21 17200 (“UCL”) that constitute unfair, unlawful and/or fraudulent business practices as those terms
22 are defined under California law.

23 62. Defendants’ business practices are unfair under the UCL because Defendants have
24 acted in a manner that is immoral, unethical, oppressive, unscrupulous and/or substantially injurious
25 to Plaintiffs and the Class Members. These business practices, described above, include creating
26 false advertisements in the App Store, placing the false advertisements in the App Store, requiring
27 App developers to include false advertisements in the App Store, knowingly permitting App
28 developers to include false advertisements in the App Store, and/or negligently permitting App

1 developers to include false advertisements in the App Store. The false advertisements are
2 substantially injurious because they induce consumers to make purchases that they would not
3 otherwise make, in expectation of receiving benefits that they do not receive. Further, the impact
4 of the practice against Plaintiffs and the Class Members far outweighs any possible justification or
5 motive on the part of Defendants. The impact on Plaintiffs and the Class Members has been
6 described. Defendants can have no possible justification for including a false inducement to
7 purchase every or nearly every subscription-based App. Plaintiffs and the Class Members could not
8 reasonably have avoided this injury because they relied on Defendants' advertisement as to the
9 quality and characteristics of the Apple devices and products being sold on the App Store, as all
10 consumers who purchase items on the App Store must do.

11 63. Defendants' false advertisement is violative of public policy as expressed in the
12 False Advertising Law. The False Advertising Law strictly forbids false advertisement such as
13 Defendants have disseminated and/or caused to be disseminated, and represents an expression of
14 public policy against this practice.

15 64. Defendants' business practices are also unfair because they significantly threaten or
16 harm competition. Competition is fostered by an environment in which information can be relied
17 upon, so that consumers can make wise decisions, and so that products which accurately reflect the
18 consumers' wishes can flourish.

19 65. As shown above, Defendants' business practices are also unlawful because they
20 violate the False Advertising Law.

21 66. Defendants' business practices are also fraudulent under the UCL because they
22 constitute representations to the public which are likely to deceive the public. The representations
23 state that the Apple devices and Apps in question support Family Sharing, when in fact they do not.
24 The public, receiving these representations, is likely to believe that the Apps in question do in fact
25 support Family Sharing, and is so deceived.

26 67. Defendants' representations are likely to deceive the public because they are untrue
27 and because they state that the Apple devices and Apps in question support Family Sharing, when
28 they do not in fact allow for such sharing. A reasonable consumer would be likely to believe that,

1 if Apple states that the Apple devices and Apps support Family Sharing, that they do in fact support
2 Family Sharing.

3 68. Plaintiffs and the Class Members, who had signed up for Family Sharing and had at
4 least one family member with a registered device, relied on these representations when they
5 purchased the Apple devices and Apps, which they would not have otherwise purchased.

6 69. Plaintiffs and Class Members have suffered monetary injury in fact as a direct and
7 proximate result of the acts of unfair competition committed by Defendants as alleged herein in an
8 amount to be proven at trial but in excess of the minimum jurisdictional amount of this Court.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs, individually and on behalf of the Class, pray for relief as follows:

- 11 (1) For compensatory damages in an amount to be proven at trial;
12 (2) For restitutionary damages in an amount to be proven at trial;
13 (3) For affirmative injunctive relief mandating that Defendants remove the false
14 advertisements from their Apple store and Apple App Store;
15 (4) For costs of suit and litigation expenses;
16 (5) For such other and further relief as this Court may deem just and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a jury
19 trial for all claims so triable.

20
21 Dated: June 30, 2023

Respectfully submitted,

22 /s/ Thiago M. Coelho

23 Thiago M. Coelho

24 **WILSHIRE LAW FIRM, PLC**

25 *Attorneys for Plaintiffs and the Putative Class*
26
27
28

PROOF OF SERVICE
Peters, et al. v. Apple Inc., et al.
19STCV21787

I, K. Elizabeth Maddison, am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 3055 Wilshire Blvd., 12th Fl., Los Angeles, California 90010. My electronic service address is *kmaddison@wilshirelawfirm.com*. On **June 30, 2023**, I served the foregoing document described as:

**STIPULATED REQUEST FOR LEAVE TO FILE
PLAINTIFFS' FOURTH AMENDED COMPLAINT; [Proposed] ORDER**

[✓] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service **CASEANYWHERE**.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **June 30, 2023**, at Los Angeles, California.

/s/ K. Elizabeth Maddison
K. Elizabeth Maddison

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