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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CARL BARRETT, et al.,
Plaintiffs,
v.
APPLE INC., et al.,
Defendants.

Case No. 20-cv-04812-EJD

**ORDER GRANTING MOTION TO
APPOINT INTERIM CO-LEAD CLASS
COUNSEL**

Re: ECF No. 109

This matter comes before the Court on Plaintiffs’ Motion to Appoint Interim Co-Lead Counsel. ECF No. 109 (“Motion”). Having reviewed the Motion and all supporting materials, and having held oral argument on February 17, 2023, the Court GRANTS the Motion.


Pursuant to Federal Rule of Civil Procedure 23(g)(3), the court “may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.” Fed. R. Civ. P. 23(g)(3). Although Rule 23(g)(3) does not provide a standard for appointment of interim counsel, the court may consider the factors contained in Federal Rule of Civil Procedure 23(g)(1). Under that section, the court considers: “(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.” Fed. R. Civ. Proc. 23(g) (1)(A). The court may also “consider any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class.” Fed. R. Civ. Proc. 23(g)(1)(B).

1 Here, Plaintiffs ask the Court to appoint as interim co-lead counsel: Nyran Rose Rasche
2 and Nickolas Hagman of Cafferty Clobes Meriwether & Sprengel LLP (“Cafferty Clobes”);
3 Anthony Fata and Sarah Flohr of Kirby McInerney LLP (“Kirby McInerney”); and Joseph
4 Guglielmo, Alex Outwater, and Christopher Burke of Scott+Scott Attorneys at Law LLP
5 (“Scott+Scott”). ECF 109-3 ¶ 7. The Court has heard oral argument on the Motion and reviewed
6 the resumes and supporting information provided by these attorneys, and finds that their skill
7 shown to date, and knowledge and experience in the kind of case before the Court, is sufficient to
8 satisfy Rule 23(g). The Court also finds that the resources their firms possess is adequate. At the
9 hearing, the Court inquired about the potential for a conflict of interest between the representation
10 of the proposed nationwide class and the proposed subclass of individuals who contacted
11 Defendants regarding the gift card funds at issue in this litigation. The Court is satisfied that there
12 is no current concern regarding the appointment of Cafferty Clobes, Kirby McInerney, and
13 Scott+Scott as interim co-lead class counsel of the nationwide class and the subclass. However,
14 the Court remains mindful of the potential for a future conflict of interest, and this Order is subject
15 to modification as needed to address such issues.

16 On this basis, the court GRANTS the Motion and APPOINTS as interim co-lead counsel:
17 Nyran Rose Rasche and Nickolas Hagman of Cafferty Clobes; Anthony Fata and Sarah Flohr of
18 Kirby McInerney; and Joseph Guglielmo, Alex Outwater, and Christopher Burke of Scott+Scott.

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20 **IT IS SO ORDERED.**

21 Dated: February 17, 2023

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24 EDWARD J. DAVILA
25 United States District Judge