

EXHIBIT E

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA CLARA

10 GABRIEL JOHNSON, individually and on behalf
11 of all others similarly situated,

12 Plaintiffs,

13 v.

14 APPLE, INC.; and DOES 1 through 10,
15

16 Defendants.

) Case No. 1-09-cv-146501

) **OBJECTION OF ALISON PAUL TO
PROPOSED SETTLEMENT AND NOTICE
OF INTENT TO APPEAR**

) Date: February 10, 2012
) Time: 9:00 a.m.
) Dept: 21

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18 COMES NOW, class member ALISON PAUL, by and through her undersigned counsel, and
19 hereby lodges this Objection to the Proposed Class Action Settlement, and gives notice of her counsel's
20 intent to appear at the February 10, 2012 hearing. Objector is a member of this class and, upon request
21 by Court or counsel in this action her attorney will provide her contact information. Her counsel of
22 record submits this objection on her behalf. All communications and actions taken with respect to this
23 objection should be directed to her attorney of record.

24 Objector summarily objects based on the lack of information provided to class members in the
25 notice of class action settlement and on the settlement website. Accordingly, Objector respectfully
26 submits the following:

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1 **I. NO INFORMATION HAS BEEN PROVIDED TO THE CLASS,**
2 **PRECLUDING APPROVAL AT THIS POINT**

3 When considering a motion for final approval of class action settlement, a court's inquiry is
4 whether the settlement is "fair, adequate, and reasonable." See *Dunk v. Ford Motor Co.*, 48 Cal.App. 4th
5 1794, 1801, n. 7 (1996). "The court has a fiduciary responsibility as guardian of the rights of the
6 absentee class members when deciding whether to approve a settlement agreement." *Kullar v. Foot*
7 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.

8
9 The factors generally considered by the Court in deciding whether to grant final approval to a
10 class action settlement include: (1) the actual settlement value; (2) the risk of continued litigation; (3) the
11 extent of discovery completed and the stage of the proceedings when settlement was reached; (4) the
12 complexity, expense and likely duration of the litigation absent settlement; (5) the experience and views
13 of Class counsel; and (6) the reaction of Class members. See *Dunk*, supra, 48 Cal.App. 4th at 1801.

14
15 In the present case, NONE of these questions can be answered because the information provided
16 to the class is nil. On the class settlement website, the only information provided is the long-form
17 notice. There are no pleadings, no motion for preliminary approval, no complaint, no motion for final
18 approval, no settlement agreement, and no information regarding any attorneys' fee application.
19 Furthermore, there is no information regarding the actual settlement value; the only information
20 provided is how much each class member may be eligible for.

21
22 With respect to the *Dunk* factors, there is absolutely no information regarding the size of the
23 class.¹ The class has zero information regarding the risk of continued litigation, because no pleadings
24 were provided regarding the progress of discovery or the parties' claims and defenses. No information
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28 ¹ This Objector is concerned about the size of the class only from the perspective of determining the settlement value. This Objector does not dispute that the class is sufficiently numerous.

1 was provided regarding how complex the legal claims were. Importantly, there is no information
2 regarding the experience of class counsel nor is there any information regarding the attorneys' fee
3 request or lodestar information. The information provided to class members regarding the fee request is
4 as follows: class counsel might request "up to" \$2.1 million. Whether this amount is justified cannot be
5 seen in the vacuum of information currently provided.
6

7 Accordingly, this lack of information must prevent the Court from making its determination of
8 reasonableness until the class has a meaningful opportunity to evaluate the settlement and have the full
9 and fair opportunity to either opt out or object to the settlement.
10

11 **II. THE COURT MUST REVIEW THE ATTORNEYS' FEE MOTION IN DETAIL, AND**
12 **PROVIDE THE CLASS WITH AN OPPORTUNITY TO REVIEW SAME.**

13 Class members are entitled to review the fee application and understand the fee request that their
14 attorneys are requesting be deducted from the class members' fund. As stated above, there is absolutely
15 zero information regarding the fairness or reasonableness of the fee request provided on either the
16 settlement website or in the notice. This is improper and this Objector reserves the right to object to the
17 class counsels' fee request once it is made available to the class.
18

19 In reviewing an attorney fee provision in a class action settlement agreement, the trial court has
20 an independent duty to determine the reasonableness of the fee award. *Garabedian v. Los Angeles*
21 *Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 128; *Dunk, supra*, 48 Cal.App.4th at p. 1801.
22 Class Counsel bears the burden of demonstrating reasonableness to the Court. *Hensley v. Eckerhart*,
23 461 U.S. 424, 437 (1983.) The Court must pay particular attention to any evidence of fraud or collusion
24 in the fashioning of the agreement as to attorney fees. *Dunk*, at 1801. As the *Dunk* court explained, "a
25 defendant is interested only in disposing of the total claim asserted against it ... the allocation between
26 the class payment and the attorneys' fees is of little or no interest to the defense." The *Dunk* court further
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28

1 noted that the divergence in financial incentives between the Class and Class Counsel at this stage of the
2 litigation creates the very real danger that “the lawyers might urge a class settlement at a low figure or
3 on a less-than-optimal basis in exchange for red-carpet treatment for fees.” *Dunk*, supra, 48 Cal.App.4th
4 at p. 1808. “If fees are unreasonably high, the likelihood is that the defendant obtained an economically
5 beneficial concession with regard to the merits provisions, in the form of lower monetary payments to
6 class members or less injunctive relief for the class than [the defendant] could otherwise have obtained.”
7 *Staton v. Boeing Co.* (9th Cir.2003) 327 F.3d 938, 964.
8

9 This right to inspect the fee request also extends to the class members. Under both California
10 Rules of Court 3.769 and Federal Rule of Civil Procedure 23, Class Members have the right to object to
11 the fee award requested by Class Counsel. “Objectors may participate in settlement approval
12 proceedings relating to fees to assist in determining whether there is any indication of collusion and the
13 reasonableness of the overall fee award. “ *In re Cellphone Termination Fee Cases* (Cal.App.Dist.1
14 2009) 180 Cal.App.4th 1110, 1124, citing *Dunk*. 48 Cal.App.4th at pp. 1800-180; accord, *In re*
15 *Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006). Thus, California law suggests that class
16 members are entitled to review Class Counsels’ fee application in order to make her objection on a fully
17 informed basis.
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20 The Ninth Circuit has had the opportunity to opine on this specific issue in the *In re Mercury*
21 *Interactive Corp. Securities Litigation*, 618 F.3d 988 (9th Cir. 2010) decision.² The Court held that a
22 Motion for Fees and Costs necessarily must be filed prior to the deadline for objections to it. The Court
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26 ² “As a general rule, in class actions California courts are not bound by the federal rules of procedure but may look to them
27 and to the federal cases interpreting them for guidance or where California precedent is lacking.” *Wershba v. Apple*
28 *Computer, Inc.* (Cal. App. 6 Dist., 2001) 91 Cal.App.4th 224, 239-40. Although California Courts have held that objectors
are permitted to object to Counsels’ request for fees, *In re Cellphone* 180 Cal.App.4th at 1124, no Court has specifically
stated it in terms as clear as the Mercury Court. Thus, California Courts may find the *Mercury* decision instructive with

1 further explained that “[a]llowing class members an opportunity thoroughly to examine counsel's fee
2 motion, inquire into the bases for various charges and ensure that they are adequately documented and
3 supported is essential for the protection of the rights of class members. It also ensures that the district
4 court, acting as a fiduciary for the class, is presented with adequate, and adequately-tested, information
5 to evaluate the reasonableness of a proposed fee.” 618 F.3d at 994.

7 In this case, Objector has not had the opportunity to review Class Counsels' fee application. This
8 Objector, and the class as a whole, is without critical information regarding the reasonableness of the
9 fee, in contravention of both California and federal case and statutory law. This is unreasonable and
10 calls for a continuation of the fairness hearing until reasonable disclosure has been made and an
11 opportunity for comment has been provided to the class.

12
13 **III. JOINDER IN OTHER OBJECTIONS**

14 This Objector adopts and joins in all other well-taken, bona fide objections filed by other Class
15 Members in this case, and incorporates them by reference as if they appeared in full herein.

16 **IV. CONCLUSION**

17 For these reasons, Objector urges the Court to sustain her objections and modify the settlement.

18 WHEREFORE, this Objector respectfully requests that this Court:

19 A. Upon proper hearing, sustain these Objections;

20 B. Upon proper hearing, enter such Orders as are necessary and just to adjudicate these
21 Objections and to alleviate the inherent unfairness, inadequacies and unreasonableness of the proposed
22 settlement;

23 C. Inquire into any potential conflict between and class and defense counsel;

24 D. Award an incentive fee to this Objector for her service in examining the fairness of this
25 settlement; and

26
27 respect to whether a fee motion is required to be submitted prior to the objection and exclusion deadline and whether detailed
28 billing records should necessarily be included.

1 E. Award attorney fees to Objector's counsel for her role in improving the settlement.
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3 Law Offices of Darrell Palmer

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6 Dated: December 29, 2011

7 By: _____
8 Darrell Palmer
9 Attorney for Objector Alison Paul
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JUN 22 2012

Penelope A. Prevolos

5 Attorney for Objectors
6 Edmund F. Bandas and Alison Paul

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**

11 GABRIEL JOHNSON,

12 Plaintiff,

14 v.

15 APPLE INC., and DOES 1-10, inclusive

16 Defendant.

) Case No. 109CV146501

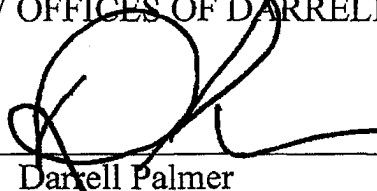
) **NOTICE OF APPEARANCE OF**
) **DARRELL PALMER**

VIA FAX

18 **PLEASE TAKE NOTICE** that Darrell Palmer hereby appears as Counsel for
19 Objectors Edmund F. Bandas and Alison Paul, and requests that all future papers or
20 pleadings be served upon him at the address listed above.
21

23 LAW OFFICES OF DARRELL PALMER

25 Dated: June 19, 2012

24 By: 
26 Darrell Palmer
27 Attorney for Objectors
28 Edmund F. Bandas and Alison Paul

1 **Gabriel Johnson v. Apple, Inc.**
2 **Case No. 109CV146501**

3 **DECLARATION OF SERVICE**
4 **STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

5 I, Maria V. Carapia, declare as follows:

6 I am employed with the Law Offices of Darrell Palmer whose address is 603 N. Hwy 101, Suite
7 A, Solana Beach, California 92075. I am readily familiar with the business practices of this office for
collection and processing of correspondence for mailing with the United States Postal Service; I am
over the age of eighteen (18) and I am not a party to this action.

8 On June 19, 2012, I caused to be served the following:

9 **Notice of Appearance of Darrell Palmer**

10 on the interested parties:

11 SEE ATTACHED SERVICE LIST

12 by placing a copy in an envelope addressed to the addressee as indicated above and
13 personally serving on this day.

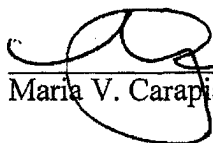
14 by sending a copy via overnight mail. Airbill No. _____.

15 by sending a true and correct copy via electronic mail transmission to the email addresses
16 as indicated on the attached service list. My email address is
maria.carapia@palmerlegalteam.com

17 by placing a copy in an envelope, with postage fully prepaid, for the addressees named on
18 the attached service list for collection and mailing on the above indicated day following
the ordinary business mailing practices of our offices

19 by sending a copy via facsimile transmission to the facsimile number listed for the
20 addressees listed. The facsimile machine I used complied with California Rules of Court,
Rule 2003, and no error was reported by machine.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is
22 true and correct. Executed on June 19, 2012, at Solana Beach, California.

23
24 
25 _____
26 Maria V. Carapia

SERVICE LIST

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