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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

OTHAME DIB, JESUS GUERRERO, LUCA DELA CRUZ, JEANETTE PORILLO, PETER GHANEM, RITA CRANE, NATHANIEL SANSOM, individually and as the representatives of a class of similarly situated persons,

Plaintiffs,

v.

APPLE INC., a California corporation,

Defendant.

Civil Case No.: 5:25-cv-02043-NW-NMC

[PROPOSED] *AMICUS CURIAE* BRIEF OF ENVIRONMENTAL DEFENSE FUND IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

Motion Hearing Date: August 27, 2025
Time: 9:00 AM
Judge: Hon. Noël Wise
Location: Courtroom 3 – 5th Floor

TABLE OF CONTENTS

INTRODUCTION & INTEREST OF AMICUS CURIAE 1

ARGUMENT 4

I. High-Quality Carbon Offsets Are a Key Tool for Addressing the Climate Crisis 4

A. Corporate Climate Action is Essential to Mitigating Global Emissions 4

B. Carbon Offsets Play a Key Role in Corporate Climate Action 6

C. Apple's Approach to Reducing Its Emissions Follows Corporate Best Practices 8

II. Apple Lawfully Substantiates Its Carbon-Neutral Claims And May Rely on Project Documents Provided by the Carbon Crediting Body To Do So 11

CONCLUSION 20

TABLE OF AUTHORITIES

Page(s)

Cases

Whiteside v. Kimberly Clark Corp., 108 F.4th 771 (9th Cir. 2024) 12

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Cal. Bus. & Prof. Code § 17580.5(b)(1) 12

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INTRODUCTION & INTEREST OF AMICUS CURIAE

Environmental Defense Fund ("EDF") is a nonprofit organization headquartered in New York City that links science, economics, and the law to create innovative, equitable and cost-effective solutions to urgent environmental problems. EDF is one of the world's largest environmental organizations with hundreds of thousands of members across the United States and a staff of over 1,000 scientists, economists, policy experts, lawyers and other professionals from around the world. EDF's core missions include protecting public health and the environment and stabilizing the climate. EDF does not accept gifts from companies with whom it works or that are involved or impacted by EDF's U.S. advocacy or litigation, nor does EDF invest or otherwise have a financial interest in carbon credits, carbon crediting projects or markets.

Given the imperative need for near-term emission reductions, ambitious corporate action is critically important to addressing the climate crisis. In the view of EDF and other major environmental nonprofit organizations, corporate strategies to reduce emissions should prioritize internal decarbonization efforts and take into account the entire value chain. Alongside deep operational and value chain decarbonization, high-quality carbon credits purchased on the voluntary carbon market enable companies to take immediate, economically feasible climate action.[1] These credits can achieve meaningful emissions reductions and counterbalance (or "offset") a corporation's remaining emissions as it progresses toward achieving emissions reduction targets. Stakeholders in the voluntary carbon market are engaged in developing robust methodologies, paired with stringent information-gathering and verification processes, to ensure that responsible corporate buyers have access to quality credits. These guardrails help

[1] *See, e.g.*, Env't. Def. Fund & ENGIE Impact, Mobilizing Voluntary Carbon Markets to Drive Climate Action: Recommendations 7, Mar. 2021, available at https://library.edf.org/AssetLink/a08x10w3a7x8p5vloow5tyb2w7c01s34.pdf ("The vital and growing role of the voluntary carbon markets in delivering emissions reductions, avoidance and removals should be recognized, enabled and accelerated."); Env't. Def. Fund, Major NGOs Unveil Updated Guidance for Companies Navigating Tropical Forest Carbon Credit Market, Feb. 9, 2023, available at https://www.edf.org/media/major-ngos-unveil-updated-guidance-companies-navigating-tropical-forest-carbon-credit-market ("Combined with companies' emissions reductions and complementary actions, the voluntary market can play an important part in helping to limit global warming to 1.5 degrees Celsius.") (hereinafter "Tropical Forest Guidance").

distinguish the high-integrity carbon credits that EDF supports from projects that claim dubious environmental benefits.

Accordingly, EDF routinely encourages its corporate partners to engage in behavior like that of Apple, which has undertaken significant efforts to first reduce its emissions internally and then purchase and retire carbon credits to address remaining emissions. With other leading environmental organizations active in the voluntary carbon market, EDF recently sent a joint letter to the Science Based Targets Initiative ("SBTi"), a corporate climate action organization that establishes standards, tools, and guidance for companies to set emissions reduction targets in keeping with the Paris Agreement's international goals. In the letter, EDF expressed its public support for practices similar to those embraced by Apple: the limited and near-term use of high-quality carbon credits alongside emissions reductions.[2]

Unfortunately, misguided and unfounded greenwashing litigation increasingly targets companies that make legitimate environmental claims based on justifiable, good-faith emission reduction strategies. Such litigation can chill corporate action. At best, companies may not publicize their sustainability efforts, foregoing opportunities to inspire broader action and generate private sector momentum and diminishing employee excitement to align their company operations with climate goals. At worst, companies that fear legal action may not invest in decarbonization and climate mitigation at all.

Apple complied with consumer protection law here because it had a reasonable basis to substantiate all reasonable consumer interpretations of its carbon-neutral claims for the Apple Series 9 Watches purchased by plaintiffs. To substantiate its claims, Apple first reduced its own emissions by 75% or more and then purchased high-quality carbon credits on the voluntary carbon market. In purchasing those credits, Apple—like many buyers—relied in significant part on the rigorous methodology and procedural architecture deployed by carbon-crediting nonprofit organizations that list projects, issue credits, and operate a registry to document their issuance, ownership and retirement. Such organizations have developed carbon crediting methodologies built on science-based principles to assess and quantify

[2] *See generally* Env't. Def. Fund et al., Joint Open Letter on the Use of High-Quality Carbon Credits in Scope 3 Emissions Abatement, June 18, 2024, available at https://www.nature.org/content/dam/tnc/nature/en/documents/joint-letter-to-sbti-on-carbon-credits-for-scope-3.pdf.

the reductions or removals achieved by a project and the criteria necessary to demonstrate that the resulting reductions or removals are additional and permanent. This approach significantly reduces the odds that a credited project will give rise to fewer real carbon reductions than are sold for use in supporting carbon-reduction claims. Before issuing credits, registries also require that a third-party independent auditor produce monitoring, validation, and verification reports confirming that a project complies with the applicable methodology. Finally, they require that some credits be remitted to a buffer pool of credits to ensure that, if it is later determined that some issued credits did not correspond to real reductions, there are enough carbon credits to cover the deficit. This well-developed architecture helps to ensure that responsible corporate buyers can rely on the legitimacy of documents, reports, and materials evidencing these processes made available by carbon credit issuing bodies to substantiate the validity of the carbon credits they purchase.

Plaintiffs contend that Apple lacked a reasonable basis to substantiate its claims that the Apple Watches that named plaintiffs purchased were "carbon neutral." But they do not allege that Apple lacked substantiation that it reduced over 75% of the emissions of those Apple Watches. Instead, they allege that possible problems with certain projects from which Apple purchased carbon credits show that Apple lacked a reasonable basis to believe that the other 25% of emissions were fully offset. This is wrong. In the first place, Plaintiffs lack standing because the credits from those projects did not offset emissions from the Apple Watch models that named Plaintiffs purchased. *See* Mot. to Dismiss at 9–11. But even assuming these projects gave rise to the credits that offset 25% of Apple Watch emissions, Plaintiffs' claims are implausible because these credits were issued pursuant to the architecture of a carbon registry and crediting regime designed to ensure, to the extent possible at the time of purchase, that credits attributed to a project are additional, permanent, and correspond to real reductions (as indicated by the third-party monitoring, validation, and verification reports that demonstrate adherence to science-based methodologies). The regime also ensures that, if later-arising facts reveal that fewer emission reductions occurred than the number of credits that were issued, credits in the buffer pool will cover deficits. Plaintiffs' implausible assertion that Apple lacked a reasonable basis to substantiate its claim that it balanced the last 25% of its emissions depends on the allegation of (ostensibly later-arising) extrinsic

evidence. But Apple's approach to making this carbon-neutral claim—reducing at least 75% of its emissions and purchasing high-quality, conservatively estimated carbon credits to offset the rest—is eminently reasonable and consistent with industry practice, and Apple's substantiation of those claims is consistent with the law.

Plaintiffs' view that the law required Apple to do more to substantiate its carbon-neutral claims lacks any limiting factor. Because few companies have the resources or expertise to engage in comprehensive (and duplicative) investigation of every offset project, Plaintiffs' legal theory would chill corporate action to mitigate climate change. It would inject significant uncertainty into, and possibly paralyze, the voluntary carbon market. It would also disincentivize companies from making claims about the actions they are taking. Ironically, Plaintiffs' case thus threatens to *harm* the environment and result in *less* information for consumers. Apple's motion to dismiss should be granted.

ARGUMENT

I. High-Quality Carbon Offsets Are a Key Tool for Addressing the Climate Crisis

A. Corporate Climate Action is Essential to Mitigating Global Emissions

Global warming—which destabilizes our climate and leads to more frequent extreme weather events such as fires, floods, severe storms, heat waves, droughts, and sea level rise—results from the release of greenhouse gas emissions into the atmosphere.[3] Greenhouse gases include carbon dioxide (CO_2), methane (CH_4), and nitrous oxide (N_2O). Human activities, particularly the burning of fossil fuels, emit more greenhouse gases—especially carbon dioxide—than can be sustainably absorbed by the Earth.[4] Slowing the release of carbon dioxide into the atmosphere, so that the amount of carbon dioxide emitted equals the amount that can be absorbed, will help to restabilize the climate. Experts use the term "net zero" to refer to a global state in which the emissions rate of human-caused (or "anthropogenic") greenhouse gases equals the planet's rate of anthropogenic carbon uptake.

[3] Env't. Prot. Agency, Sources of Greenhouse Gas Emissions, available at https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions (last accessed May 13, 2025).

[4] Nat. Res. Def. Council, Greenhouse Effect 101, June 5, 2023, available at https://www.nrdc.org/stories/greenhouse-effect-101#gases.

Achieving a "net zero" world requires bold corporate climate action—and soon. The next five to ten years will determine whether our planet will hurtle toward increasingly catastrophic damage from climate change or maintain the climate that humans have enjoyed for the last 125,000 years. The world's largest corporations have the influence and resources to help stabilize emissions, including by supporting investment in lower-emission energy sources. Private companies drive 48% of energy investment decisions, representing a larger impact than either governments or households.[5] And while some may believe that climate action squanders corporate resources, in fact, the opposite is true. A 2024 report from HSBC and global environmental nonprofit CDP found that businesses have saved $13.6 billion in costs by working with their suppliers to reduce emissions in their value chains (referred to as "Scope 3 emissions").[6] In fact, climate inaction could cost $178 trillion in global economic value by 2070, while immediate action could *add* $43 trillion to the world's economy.[7] The private sector increasingly recognizes the significant business risk that climate change poses to operations and value chains, as well as the potential business value of climate action from supply chain resilience, sale of climate-friendly products, and workforce retention (among other benefits). Businesses are responding to this risk and opportunity by setting voluntary climate targets, disclosing greenhouse gas emissions, engaging suppliers, developing transition plans, and making investments in low-carbon solutions. Both businesses and society at large are better off when businesses take a lead role in climate action rather than sitting on the sidelines.

[5] Int'l Energy Agency, World Investment 2024: Overview and key findings, available at https://www.iea.org/reports/world-energy-investment-2024/overview-and-key-findings (last accessed May 13, 2025).

[6] HSBC and CDP, Strengthening the chain: Industry insights to accelerate sustainable supply chain transformation 5–6, Oct. 2024, available at https://cdn.cdp.net/cdp-production/cms/reports/documents/000/007/890/original/CDP_HSBC_Report_2024.pdf.

[7] Deloitte, Deloitte research reveals inaction on climate change could cost the world's economy US $178 trillion by 2070, May 23, 2022, available at https://www.deloitte.com/global/en/about/press-room/deloitte-research-reveals-inaction-on-climate-change-could-cost-the-world-economy-us-dollar-178-trillion-by-2070.html.

B. Carbon Offsets Play a Key Role in Corporate Climate Action

Carbon credits represent an important piece in the corporate climate action equation. Climate action has a cost.[8] For hundreds of years, society has been developing systems and technologies that rely on fossil fuels. Shifting to new lower-emission approaches, with the goal of matching the Earth's rate of carbon absorption, is urgent and necessary—but will take time and vast investment. As mentioned, however, society is running out of time to take meaningful climate action. Policies that can help to reduce emissions quickly at low costs are therefore critical tools to have in our arsenal.

Verified carbon credits have been recognized by the world's leading climate experts as one such cost-effective tool.[9] While carbon credits should be a complement to—not a replacement for—deep emissions reductions, these tools can help smooth and accelerate the global net zero transition and drive critical private-sector finance toward underfunded global climate priorities like halting deforestation. Companies may choose to purchase carbon credits for a variety of reasons as part of a holistic sustainability or climate change strategy. For example, companies might use carbon credits to counterbalance or offset remaining emissions along the path to net zero or a similar climate target; to support projects with benefits for climate change, nature, and/or local communities; to drive innovation in climate-smart technologies; or to contribute broadly to the global goals of mitigating climate change in line with the Paris Agreement. Carbon credits can also be used to make related public-facing claims such as "carbon neutral" and "net zero." These claims allow businesses to communicate effectively with stakeholders (including customers) and are highly valuable for building an internal business case for climate action.

High-integrity carbon credits allow companies to invest immediately in quantifiable, verified projects that help the Earth absorb more greenhouse gases from the atmosphere or avoid more emissions,

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[8] Fred Krupp, *Climate Advocates Must Use the Market*, WALL ST. J., Apr. 21, 2024, available at https://www.wsj.com/opinion/climate-advocates-must-use-the-market-carbon-credits-certificates-enable-investment-f7fa5731.

[9] Intergovernmental Panel on Climate Change, Climate Change 2022: Mitigation of Climate Change Frequently Asked Questions 19, available at https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_FAQs_Compiled.pdf (last accessed May 13, 2025).

often by protecting vast forests or other ecosystems that sequester carbon dioxide. Studies suggest that, far from encouraging companies to rest on their laurels or pollute further, "companies that are material users of carbon credits decarbonize twice as fast as those that do not use carbon credits."[10]

Notable recent efforts have been made to improve the integrity of the voluntary carbon market. For example, in 2023, the Integrity Council for the Voluntary Carbon Market ("ICVCM"), an independent governance body, announced the launch of its Core Carbon Principles, which are intended to establish principles for high-quality carbon offsets.[11] In October 2024, the Commodity Futures Trading Commission issued guidance regarding trading of carbon credit derivative contracts. *See* Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts, 89 Fed. Reg. 83,378 (Oct. 15, 2024). These initiatives to hold the voluntary carbon market to rigorous standards acknowledge that carbon crediting methodologies inherently face some "uncertainty."[12]

Yet these efforts have proceeded in parallel with innovative climate action from leading companies seeking to deploy capital beyond their value chain to achieve credible reductions and removals, often through reliance upon the science-based methodologies and independence provided by recognized registries, which deploy accredited third-party verification bodies to apply their standards and determine which reductions are worthy of recognition and in what amount. The recent efforts to improve the credibility and integrity of the market do not impugn companies that have proceeded to achieve significant reductions, offset their remaining emissions, and make credible claims in the absence of such guidance or regulation. Such companies can—and do, as Apple does here—have a "reasonable basis" on which to substantiate their carbon-reduction claims.

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[10] *See* Trove Research, Corporate Emission Performance and the Use of Carbon Credits 3, June 1, 2023, available at https://www.msci.com/www/research-report/corporate-emission-performance/04624149658.

[11] *See* Integrity Council for the Voluntary Carbon Market, Core Carbon Principles, Assessment Framework and Assessment Procedure Version 1.1 16–19, Jan. 2024, available at https://icvcm.org/wp-content/uploads/2024/02/CCP-Book-V1.1-FINAL-LowRes-15May24.pdf.

[12] *Id.* at 36.

Consumer protection law should not be applied to deter advertisers of carbon-related claims from relying on the methodologies and information from crediting bodies and third-party auditors with extensive expertise in the relevant project sectors. If the law were to do so, companies would likely not invest in urgent global climate mitigation projects via carbon credits. It is for exactly these reasons that a lawsuit like this poses considerable danger for the market—and, indeed, for corporate climate action generally.

C. Apple's Approach to Reducing Its Emissions Follows Corporate Best Practices

Apple's enterprise sustainability strategy—which underpins its enterprise and product-level claims—meets or exceeds global sustainability best practices, representing a leadership position even among peer companies. Several leading institutions, such as SBTi, the United Nations' High-Level Expert Group on the Net-Zero Commitments of Non-State Entities, and the International Organization for Standardization, have developed voluntary standards, frameworks or best practices for companies when setting emission reduction goals.[13] While these frameworks continue to be refined, and there remains some debate on their particular technical elements or requirements, there is significant convergence among experts on broad principles that constitute high-integrity corporate climate action. For example, these experts dictate that businesses should set "science-aligned" goals, which means companies must identify ways of reducing their emissions consistent with the goals of the Paris Agreement. This roughly translates to a 50% absolute reduction in a company's greenhouse gas emissions by 2030, and a more than 90% absolute reduction by around 2050 to achieve net zero status.

[13] *See, e.g.*, Science Based Targets initiative, The Corporate Net-Zero Standard Version 1.2, Mar. 2024, available at https://sciencebasedtargets.org/resources/files/Net-Zero-Standard-Criteria.pdf; United Nations, Integrity Matters: Net Zero Emissions Commitments by Businesses, Financial Institutions, Cities and Regions, Nov. 2022, available at https://www.un.org/sites/un2.un.org/files/high-levelexpertgroupupdate7.pdf; Int'l Org. for Standardization, Net Zero Guidelines, available at https://www.iso.org/netzero (last accessed May 13, 2025).

Apple has committed to reducing its absolute emissions by 75% by 2030 compared to a 2015 baseline, with its remaining emissions balanced using high-quality carbon offsets.[14] Apple's 2050 goal of a 90% reduction in its enterprise emissions aligns with the absolute reductions required for definitions of "net zero" established by leading corporate best practices, meaning that it is consistent with the overall trajectory needed to achieve the Paris Agreement's goals.[15] Furthermore, Apple's near-term 2030 goal was set through, and validated by, the Science Based Targets initiative.[16] Apple pursues a robust corporate strategy wherein it minimizes its impact on the environment by substantially reducing its direct and indirect emissions and investing in high-quality credits to offset the small amount of remaining emissions. Apple also pursues a similar strategy with respect to specific products, advertising that its Apple Watch Series 9, Apple Watch Ultra 2, and Apple Watch SE are "carbon neutral."

Even among large corporations, Apple is a leader in climate action. Out of the top 2,000 global companies by revenue, only about 850 have a net zero goal.[17] Out of those 850, only roughly 60% also include value chain emissions in their climate targets as Apple does.[18] And not only has Apple set goals aligned with or exceeding corporate climate standards, but it is also demonstrating marked progress toward achieving them. As of fiscal year 2022, Apple had recorded a 45% reduction in value chain emissions.[19] As of fiscal year 2024, Apple had achieved a 60% reduction.[20] Apple has completed 80% of its mission to reduce emissions by 75% before with over half a decade to go.

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[14] Apple, 2023 Environmental Progress Report (FY 2022) 9, available at https://www.apple.com/environment/pdf/Apple_Environmental_Progress_Report_2023.pdf (hereinafter "2023 Environmental Progress Report").

[15] *See supra* note 13.

[16] Science Based Targets initiative, Target Dashboard, available at https://sciencebasedtargets.org/target-dashboard (last accessed May 13, 2024).

[17] Net Zero Tracker, available at https://zerotracker.net/ (last accessed May 13, 2025).

[18] *Id.*

[19] 2023 Environmental Progress Report, *supra* note 14, at 9.

[20] Apple, 2025 Environmental Progress Report (FY 2024) 10, available at: https://www.apple.com/environment/pdf/Apple_Environmental_Progress_Report_2025.pdf (hereinafter "2025 Environmental Progress Report").

Central to Apple's success is its substantial investment in high-impact strategies to decarbonize its business and supply chain. The company has lowered emissions through investing in clean energy, implementing manufacturing energy efficiency strategies, increasing the use of recycled materials, helping to catalyze clean aluminum production, addressing highly polluting fluorinated gases, and shifting the transportation of products to lower-emitting ocean travel.[21] Even as it has made these multi-billion-dollar investments in reducing emissions, Apple's revenue has grown by more than 65%, demonstrating that the company has decoupled economic growth from emissions.[22]

For offsetting its remaining emissions, Apple is committed to high standards in purchasing voluntary carbon credits to address emissions and in being transparent about how those purchases fit into its broader emission reduction program. Transparency is at the core of recent efforts to improve the credibility of corporate carbon-reduction claims. For example, the Voluntary Carbon Markets Integrity Initiative ("VCMI") has convened a multi-stakeholder process to establish best practices for companies making credible carbon credit claims.[23] VCMI's 2024 guidance establishes four foundational criteria for such companies: (1) maintaining and publicly disclosing an annual greenhouse gas emissions inventory; (2) setting and publicly disclosing science-aligned near-term emission reduction targets, and publicly committing to reaching net zero emissions no later than 2050; (3) demonstrating that the company is making progress on financial allocation, governance, and strategy towards meeting a near-term emission reduction target; and (4) demonstrating that the company's public policy advocacy supports the goals of the Paris Agreement and does not represent a barrier to ambitious climate regulation.[24] VCMI's guidance and criteria evolved alongside leading companies' efforts to make such claims and, although Apple has not sought VCMI's endorsement of its efforts, its emission reduction strategy and public communications clearly meet these criteria. As noted above, Apple publicly reports on its environmental progress toward

[21] *Id.* at 10–33.

[22] *Id.* at 10.

[23] Voluntary Carbon Markets Integrity Initiative, Claims Code of Practice Version 2.1, at 4, Aug. 2024, available at https://vcmintegrity.org/wp-content/uploads/2024/10/VCMI-Claims-Code-v2.1.pdf.

[24] *Id.* at 7.

its science-aligned goals.[25] These company reports detail Apple's sustainability governance and climate strategy, as well as its public policy advocacy in support of the Paris Agreement.[26]

Apple employed an exemplary product-level carbon neutrality strategy for the Apple Watches in question. Apple identified critical greenhouse gas emissions hotspots associated with the product and deployed substantial investments toward innovative solutions to reduce these emissions in line with science. *See generally* Declaration of David R. Singh, Ex. E to Mot. to Dismiss ("Singh Decl."); Singh Decl. Ex. F; Singh Decl. Ex. G. For example, Apple addressed emissions from energy consumption in Apple Watch manufacturing and consumer use through direct renewable energy investments (including matching customer charging emissions with renewable energy), collaboration with suppliers, and policy advocacy. Apple mitigated emissions associated with the transportation of products by minimizing air freight and shifting to ocean and rail transport. Apple transparently disclosed these product emissions and the steps taken to directly reduce them, and then went above-and-beyond to match any remaining emissions with high-quality carbon credits. This product-level strategy, in support of a holistic and robust enterprise-level climate strategy, can serve as an example for other companies looking to mitigate the environmental impacts of complex global value chains.

II. Apple Lawfully Substantiates Its Carbon-Neutral Claims And May Rely on Project Documents Provided by the Carbon Crediting Body To Do So.

In arguing that Apple's claims that these Apple Watches are carbon neutral are misleading or deceptive, Plaintiffs misapply consumer protection law. Their flawed legal theory would aggressively expand consumer protection law and harm both consumers and the climate.

Plaintiffs argue that Apple violates the consumer protection laws of California and various other states, including the California Unfair Competition Law. *See generally* Compl. ¶¶ 92–162. To support their claims, they repeatedly cite and rely on the Federal Trade Commission's ("FTC" or "Commission") Guides for the Use of Environmental Marketing Claims ("Green Guides"). *See, e.g.*, *id.* ¶¶ 36–37, 68. California law explicitly provides that compliance with the Green Guides is a defense to Plaintiffs' claims.

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[25] 2025 Environmental Progress Report, *supra* note 20, at 10.

[26] 2023 Environmental Progress Report, *supra* note 14, at 13, 30.

Cal. Bus. & Prof. Code § 17580.5(b)(1) (providing that it is a defense "that the person's environmental marketing claims conform to the standards or are consistent with the examples contained in" the Green Guides); *see Whiteside v. Kimberly Clark Corp.*, 108 F.4th 771, 784 (9th Cir. 2024) (noting that the Green Guides have been codified as law in section 17580.5).

Apple fully complies with the Green Guides, which provide that "[m]arketers must ensure that all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis before they make the claims." 16 C.F.R. § 260.2 (citing FTC Policy Statement Regarding Advertising Substantiation, appended to *Thompson Medical Co.*, 104 FTC 648, 839 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986) ("Substantiation Policy Statement")). What constitutes a "reasonable basis" depends on "[1] the type of claim, [2] the product, [3] the consequences of a false claim, [4] the benefits of a truthful claim, [5] the cost of developing substantiation for the claim, and [6] the amount of substantiation experts in the field believe is reasonable." Substantiation Policy Statement, 104 FTC at 840. The Green Guides provide that, for environmental marketing claims, "a reasonable basis often requires competent and reliable scientific evidence." 16 C.F.R. § 260.2. They explain:

> Such evidence consists of tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results. Such evidence should be sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that each of the marketing claims is true.

Id.

Apple had a "reasonable basis" to support its claims that these Apple Watches are carbon neutral. In the first place, Plaintiffs allege no problem—nor can they—with the vast majority of carbon-reducing efforts that substantiate the claims. That is, they do not contest the substantiation in the Product Environmental Reports indicating that Apple has achieved industry-leading success at *directly* reducing emissions for each of these products by 75% or more. *See* Singh Decl., Ex. E, at 4 (78% reduction for the Apple Watch Series 9); Singh Decl. Ex. F, at 4 (81% reduction for the Apple Watch Ultra 2); Singh Decl. Ex. G, at 4 (75% reduction for the Apple Watch SE). These efforts include (1) transitioning to 100% clean electricity for manufacturing; (2) matching emissions from charging with 100% clean electricity;

(3) relying on increased shipping through lower-carbon modes like ocean/rail instead of air transportation; and (4) using recycled and renewable materials. *See* Singh Decl. Ex. E, at 3. All this is plainly a "reasonable basis" to substantiate the bulk of the carbon-neutral claim.

Plaintiffs allege only that Apple's substantiation of the offsetting of its remaining emissions is undermined because the amount of carbon dioxide *Plaintiffs* believe was sequestered differs from the science-based quantifications provided by established crediting protocols. But as the Product Environmental Reports indicate, for those residual emissions, Apple purchased and retired high-quality nature-based carbon credits that were verified by third parties to comply with an established crediting methodology. *See* Singh Decl. Ex. E, at 3. In doing so, Apple used credits that "align with international standards such as Verra, the Climate, Community & Biodiversity (CCB) Standard, and the Forest Stewardship Council (FSC), which ensure projects are real, additional, measurable, quantified, and have systems in place to avoid double-counting and ensure permanence." *Id.* Apple's retirement of carbon credits meeting such standards, as evidenced by the monitoring, validation and verification reports supporting the credits' issuance, provides a reasonable basis for Apple to substantiate that it has offset its remaining emissions. Nonetheless, Plaintiffs contend that Apple lacked substantiation for its Apple Watch-specific carbon neutrality claims because independent *post hoc* factual research has allegedly revealed flaws in certain projects from which Apple purchased credits. *See generally* Compl. ¶¶ 48-66. As Apple argues, because those projects did not offset emissions from the Apple Watches that named Plaintiffs purchased, Plaintiffs lack standing in the first place. *See* Mot. to Dismiss at 9–11. But even if these projects did form part of the basis of Apple's substantiation of the claims as to their Apple Watches, Plaintiffs would still fail to plausibly allege that Apple lacked a "reasonable basis" to make these claims.

Plaintiffs' citation to the Green Guides is misplaced. Carbon offsets were a key topic of focus during the FTC's 2012 rulemaking, yet the Commission provided relatively little detail in the final rule, stating that, "[g]iven the complexities of carbon offsets, sellers should employ competent and reliable scientific and accounting methods to properly quantify claimed emission reductions." 16 C.F.R. § 260.5(a). During the comment period, some commenters urged the Commission to prescribe more specific substantiation requirements for claims involving carbon offsets. But the Commission expressly

declined to do so, emphasizing that "[t]he FTC Act gives marketers *the flexibility to choose the substantiation method they prefer* as long as it meets the basic standards under the Act." *See* FTC, Green Guides Statement of Basis and Purpose, at 71, https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf (emphasis added). This flexibility has enabled companies to make climate commitments in the absence of more specific criteria or regulations and has helped foster the innovation of companies making credible claims.

To substantiate claims of carbon neutrality that rely (in small part) on carbon credits, Apple reasonably relies on the methodologies and structure of a recognized carbon crediting bodies, in this case Verra.[27] Crediting bodies such as Verra have promulgated science-based methodologies that set forth the boundaries, procedures and criteria used to measure, quantify, monitor, and verify the emission reductions or removals achieved by a carbon project and specify the steps a project developer must take to generate a carbon credit.[28] In at least three ways, the methodologies, structure and operation of associated registries ensure that carbon credits correspond to real and permanent reductions.

First, in the case of Verra, each of its methodologies must meet the principles set out in its Verified Carbon Standard, including requirements that greenhouse gas emission reduction and removals are "real," "measurable," "permanent," "additional," "independently audited," "unique," "transparent," and "conservative."[29] Each methodology is subject to a public review and comment period, and periodic review at least every five years to ensure that methodologies "continue to reflect best practices, scientific consensus, and evolving market conditions and technical developments."[30] Moreover, under registry protocols, credits are generally not issued until after a project demonstrates results consistent with

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[27] Although EDF cites to the existing versions of Verra's standards, similar principles and requirements have been in place (and have been evolving in sophistication) since the organization was founded in 2007 and were in place at the time the credits here were issued.

[28] *See* Verra, Program Guide v.4.4, at 3, Aug. 29, 2023, available at https://verra.org/wp-content/uploads/2023/08/VCS-Program-Guide-v4.4.pdf (hereinafter "Program Guide"); *see also* Verra, Registration and Issuance Process v4.6, Oct. 16, 2024, available at https://verra.org/wp-content/uploads/2024/10/Registration-and-Issuance-Process-v4.6-1.pdf.

[29] Program Guide, *supra* note 28, at 10.

[30] *Id*. at 18.

methodology requirements; the emission reductions or removals must be verified first.[31] Additionally, recognizing that forestry management projects do not permanently preclude future greenhouse gas emissions, any such emissions reductions must be verified over time.[32]

Second, every project must be validated and verified by an independent third party. Under Verra's Verified Carbon Standard, this is done by a validation and verification body ("VVB"), which is a qualified, independent auditor, accredited in in the sector they audit.[33] The VVB produces a monitoring, validation, and verification report to demonstrate that the project meets the applicable science-based methodology applied to demonstrate the project represents GHG emission reductions or removals that are real, measurable, additional, permanent, independently verified, conservatively estimated.[34] Third-party validation in this format is a critical element of the carbon crediting process.

Third, in the case of forestry-based projects, a "buffer pool" is established to address foreseeable and unforeseeable risks to project activities. In the case of Verra, VVBs apply Verra's Agriculture Forestry and Other Land Use ("AFOLU") Non-Permanence Risk Tool to assess the risk that a forestry-based project's reductions or removals might be reversed or turn out to be nonpermanent.[35] Each project must then deposit "a risk-adjusted percentage of the emission reductions and removals achieved into the pool which is managed by Verra. If and when reversals occur in any single project in the system, the carbon losses are covered through the cancellation of an equivalent number of buffer credits from the buffer pool."[36] Other registries similarly apply risk metrics and buffer pools to ensure the permanence of

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[31] Verra, VCS Standard v.4.7, at 4, Apr. 16, 2024, https://verra.org/wp-content/uploads/2024/04/VCS-Standard-v4.7-FINAL-4.15.24.pdf (hereinafter "VCS Standard").

[32] *Id.* at 5.

[33] Program Guide, *supra* note 28, at 12, 14–15.

[34] *See generally* VCS Standard, *supra* note 31, at 61–67.

[35] *See generally* Verra, AFOLU Non-Permanence Risk Tool, v.4.2, May 3, 2024, available at https://verra.org/wp-content/uploads/2023/10/AFOLU-Non-Permanence-Risk-Tool-v4.2-last-updated-May-3-2024.pdf.

[36] Verra, Area of Focus – Agriculture, Forestry, and Other Land Use (AFOLU), available at https://verra.org/programs/verified-carbon-standard/area-of-focus-agriculture-forestry-land-use/ (last accessed May 13, 2025); *see also* VCS Standard, *supra* note 31, at 5–6.

reductions and removals claimed by any project. The registries then document the ownership of reductions and removals and ensure that they are claimed only once, avoiding the risk of "double-counting."

In buying carbon credits, companies reasonably rely on carbon crediting methodologies, third-party monitoring, verification, validation reports, and buffer pools to substantiate emission-reduction claims. The monitoring, verification, and validation reports are "reliable scientific evidence" that is "evaluated in an objective manner by qualified persons," thereby meeting the standard in the Green Guides. 16 C.F.R. § 260.2. VVBs are objective entities independent of both the registry and project proponent and are deemed qualified by Verra and another accreditation body in relevant project sectors.[37] Monitoring, validation and verification reports produced in connection with each project issued by these crediting bodies are "sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields." *Id.* The reports are likewise "generally accepted in the profession to yield accurate and reliable results." *Id.*

These reports are one of the most widely accepted sources of information currently available for substantiating emissions reductions in the voluntary carbon market. As a general rule, relying upon the standardization of expert VVBs accredited to verify certain project sectors will necessarily amount to more consistent and reliable qualification of projects and quantification of the resulting reductions than asking each offset purchaser to conduct such tasks on its own.

This is precisely the sort of scenario where the flexibility of the substantiation test promulgated by the FTC supports reasonable reliance on recognized registries' methodologies and structure for verifying carbon-reduction or removal claims. Whether an advertiser has a "reasonable basis" for substantiation turns on "the cost of developing substantiation for the claim" and "the amount of substantiation experts in the field believe is reasonable." Substantiation Policy Statement, 104 FTC at 840. It would be prohibitively costly to require a company, before making a carbon-related claim, to independently substantiate the amount of carbon avoided or removed by forest projects in southwestern Kenya or on the high plateau of northwestern China. Recognized carbon crediting bodies such as Verra have already

[37] *See* Program Guide, *supra* note 28, at 14.

established and fine-tuned science-based methodologies to determine when a project should give rise to carbon credits (and how many); provide a framework for how information about a project is monitored, validated, and verified to comply with those methodologies; and provide for credits in a buffer pool as a safeguard in case some of the anticipated reductions do not occur.[38] VVBs accredited by such registries already monitor, validate, and verify this information, which is then provided to potential purchasers. No expert in the field has suggested that purchasers (as a rule) should *independently* perform all of these functions.

None of this is to say that a corporate purchaser making a claim based (in part) on use of carbon credits should *never* engage in additional inquiry beyond reliance on a recognized registry's methodology and the information in a monitoring, verification, and validation report. In some circumstances, additional inquiry may be important to ensure that there is a "reasonable basis" for the claim.[39] For example, the monitoring, verification, and validation report for a given project may appear dubious or contradictory. There might be publicly available information at the time of purchase casting material doubt on the legitimacy of the credits. (And, of course, additional inquiry would be critical if the credits were issued by an unreliable carbon crediting entity with a questionable methodology or were provided directly from the project proponent without any third-party vetting.) But given that the credits implicated by Plaintiffs' allegations were issued by Verra after being verified by a third party to comply with science-based methodology—and given the existence of Verra's buffer pool to guard against later occurring events that would undermine methodology calculations—Plaintiffs cannot state a plausible claim simply by alleging the existence of some extrinsic (apparently later-arising) evidence on the internet raising questions about a project. Plaintiffs must put forth *non-conclusory* allegations that there was contemporaneous

[38] Plaintiffs appear to misunderstand Verra's architecture and Apple's carbon neutral claim. Plaintiffs incorrectly allege that Verra is a "third-party certifier" and cite the provision of the Green Guides concerning misrepresentation of endorsements or certifications. *See* Compl. ¶ 68 (citing 16 C.F.R. § 260.6). But although Verra provides the framework for verification, broadly oversees third-party VVBs, ensures that each individual project has submitted all required materials, and issues the credits, it is *not* a VVB and does not audit or directly verify any project. *See* Program Guide, *supra* note 28, at 7–9.

[39] *See generally* Tropical Forest Guidance, *supra* note 1.

information indicating that the projects would not give rise to a sufficient number of real, additional, and permanent credits, and that this information was credible enough that Apple reasonably should have known it lacked a "reasonable basis" to substantiate that its carbon credits would offset the remaining 25% of emissions from these Apple Watches. Plaintiffs have not done so.

It is critical that this Court hold the line because Plaintiffs' theory implies no limiting principle to how much additional vetting and verification is required beyond that already done by carbon crediting bodies and by VVBs (in verifying compliance with a given methodology). If any *post hoc* evidence casting doubt on an underlying project can plausibly give rise to a claim that a "carbon neutral" statement is misleading, then a potential purchaser of carbon credits might be required to engage in a full and ongoing investigation of every project. Conceivably, an offset purchaser might even need to send employees to southwestern Kenya or to the high plateau of northwestern China to inspect each project in person for the entire duration of the crediting and monitoring periods. Possibly, *no* amount of investigation would insulate an offset purchaser from significant legal risk, if courts were to credit later-arising facts that the purchaser *could not have known* at the time of purchase. If Plaintiffs were to prevail, companies would be faced with far less certainty about their obligations in making purchases on the voluntary carbon market. If the law prevented purchasers from relying on established methodologies and information from crediting bodies and VVBs, few (if any) companies would purchase credits. Transactions would be limited to the most sophisticated buyers if each purchaser were required to replicate the work of the carbon crediting body, registry and accredited VVBs in order to make claims related to the performance of carbon credits used as offsets.

Plaintiffs' proposed legal standard could have the unintended effect of discouraging companies from engaging in voluntary climate efforts to reduce emissions. Apple's approach to substantiating these carbon-neutral claims—reducing 75% or more of its emissions directly and purchasing third party-verified credits to offset the remainder—conforms with best practices. Requiring companies to independently verify every single offset project would disincentivize them from using their resources to support precisely the sort of emission-reduction projects society needs to address the climate crisis. And even when companies deploy their resources to meaningfully mitigate climate change, legal risk would disincentivize

them from advertising their efforts to the public, resulting in less information for consumers. If Plaintiffs were to prevail, even at the pleading stage, companies would be dissuaded from even trying to buy carbon credits or make carbon-related claims. Such an outcome would help neither consumers nor the environment.

CONCLUSION

For all of these reasons, the Court should grant Apple's motion to dismiss.

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