

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Plaintiffs

By: Monisha A. Kumar (900212012)
Deputy Attorney General
(973) 648-3070

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MERCER COUNTY
DOCKET NO. _____

GURBIR S. GREWAL, Attorney
General of the State of New Jersey, and
PAUL R. RODRÍGUEZ, Acting Director
of the New Jersey Division of Consumer
Affairs,

Plaintiffs,

v.

APPLE INC.

Defendant.

Civil Action

FINAL CONSENT JUDGMENT

Plaintiffs Gurbir S. Grewal, Attorney General and Paul R. Rodríguez, Acting Director of the New Jersey Division of Consumer Affairs (collectively, “the State”), and defendant Apple Inc., a corporation (“Defendant” or “Apple”) have stipulated and consent to the Court’s entry of this Final Consent Judgment (“Consent Judgment”) in this proceeding and accept this Consent Judgment as the final adjudication of this civil action without taking proof and without trial, without this Consent Judgment constituting evidence of or an admission by Defendant regarding any issue of law or fact alleged in the Complaint, without Defendant admitting any liability, and with all parties having waived their right to appeal.

This Consent Judgment is entered to resolve the investigations of Defendant undertaken by the Attorneys General of the states and commonwealths of Alaska, Arizona, Arkansas, California, Connecticut, Florida, Hawaii,¹ Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Montana, Nevada, Nebraska, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Wisconsin, and the District Of Columbia (the “Attorneys General” or “States”) pursuant to each of the States’ respective Consumer Protection Laws, including unfair and deceptive acts or practices statutes.

The Court having considered the matter and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED, AND AGREED AS FOLLOWS:

PARTIES

1. Plaintiffs are Gurbir S. Grewal, Attorney General and Paul R. Rodríguez, Acting Director of the New Jersey Division of Consumer Affairs.
2. Defendant is Apple Inc., a company with its principal office located in Cupertino, California.

JURISDICTION AND VENUE

3. Apple, at all relevant times, has transacted business in the State of New Jersey, including but not limited to business in Mercer County.
4. This Court has jurisdiction over the Complaint and the parties necessary for the Court to enter this Consent Judgment and any orders hereafter appropriate.

¹ Hawaii is represented by its Office of Consumer Protection. For simplicity purposes, the entire group will be referred to as the “Attorneys General,” or individually as “Attorney General.” Such designations, however, as they pertain to Hawaii, shall refer to the Executive Director of the Office of Consumer Protection, a division of the Department of Commerce and Consumer Affairs.

5. Pursuant to R. 4:3-2, venue as to all matters between the parties hereto relating to or arising out of this Consent Judgment shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Mercer County, as it is a County in which Apple transacted business.

6. This Consent Judgment is entered pursuant to and subject to the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -226 (“CFA”).

7. Apple accepts and expressly waives any defect in connection with service of process in this action issued to Apple, and further consents to service upon the below-named counsel via e-mail of all process in this action.

DEFINITIONS

8. “Clear and Conspicuous” means that statements, disclosures, or other information, by whatever medium communicated, including all electronic devices, are (a) in readily understandable language and syntax, and (b) in a type size, font, color, appearance, and location sufficiently noticeable for a consumer to read and comprehend them, in a print that contrasts with the background against which they appear.

9. “Consumer Protection Laws” means the consumer protection laws enforced by the Attorneys General under which the Attorneys General have conducted the investigation as set forth in Appendix A.

10. “Covered Conduct” means Apple’s business practices, acts and omissions, including its representations and disclosures, related to Performance Management in Relevant iOS Versions between 2016 and the Effective Date.

11. “Effective Date” means November 25, 2020.

12. “iOS” means the operating system software made available by Apple for iPhones and other mobile devices.

13. “iPhone” means the personal devices designed and marketed by Apple.

14. “Performance Management” means the functionality first introduced in iOS 10.2.1 for managing the performance of the Relevant iPhones to match the peak power delivery of lithium-ion batteries.

15. “Person” means any natural person or the person’s legal representative, partnership, domestic or foreign corporation, company, trust, business entity, or association, and any agent, employee, salesperson, partner, officer, director, member, stockholder, associate or trustee of the same.

16. “Relevant iOS Versions” means all iOS versions between iOS 10.2.1 and 11.2.6, inclusive.

17. “Relevant iPhones” means the iPhone models relevant to the States’ claims, which are as follows:

- a. iPhone 6;
- b. iPhone 6 Plus;
- c. iPhone 6S;
- d. iPhone 6S Plus;
- e. First generation iPhone SE;
- f. iPhone 7; and
- g. iPhone 7 Plus.

INJUNCTIVE RELIEF

18. The injunctive provisions of this Consent Judgment shall apply to Apple and its directors, officers, employees, representatives, agents, affiliates, parents, subsidiaries,

predecessors, assigns and successors and shall be effective for three (3) years from the Effective Date of this Consent Judgment.

19. Apple will maintain easily accessible and prominent webpage(s) that provide Clear and Conspicuous information to consumers about lithium-ion batteries, unexpected shutdowns, and Performance Management. The webpage(s) will provide guidance to consumers on steps they can take to maximize battery health. The webpage(s) will also describe the operation of Performance Management and its impact on iPhone battery and performance.

20. If a future iOS update materially changes the impact of Performance Management when downloaded and installed on an iPhone, Apple will notify consumers in a Clear and Conspicuous manner of those changes in the installation notes for the update.

21. Apple will provide information to consumers in the iPhone user interface (e.g., Settings > Battery > Battery Health) about the battery, such as the battery's maximum capacity and information about its peak performance capability, as well as a notification of the option to service the battery once the performance of the battery has become significantly degraded.

22. Apple will implement procedures to ensure its consumer-facing staff and Apple-authorized iPhone retailers:

- a. are sufficiently familiar with the information in the webpage(s) described in paragraph 19 and the iPhone user interface described in paragraph 21;
- b. communicate such information to consumers wherever relevant; and
- c. refer consumers to such webpage(s) or interface, where appropriate.

DISPUTE RESOLUTION

23. If one or more Attorneys General reasonably believe that Apple has failed to comply with any term of the injunctive relief, each Attorney General shall provide written notice to Apple, unless the failure to comply threatens the health or safety of the citizens of their state(s)

and/or creates an emergency requiring immediate action. Apple shall have sixty (60) days from receipt of such notice to provide a good faith written response, including either a statement that Apple believes it is in full compliance with the relevant provision or a statement explaining how the violation occurred, how it has been addressed or when it will be addressed, and what Apple will do to make sure the violation does not occur again. The Attorney(s) General may agree to provide Apple with more than sixty (60) days to respond. During the sixty (60) day period, each of the Attorney(s) General shall engage in good faith discussions with Apple before taking any enforcement action(s), in an attempt to resolve the alleged non-compliance. If Apple notifies the Attorneys General in writing that two or more Attorneys General have notified Apple of alleged violations, the Attorney(s) General that provided notice of alleged violations shall engage in those good faith discussions collectively if possible.

24. Nothing herein shall be construed to exonerate any contempt or failure to comply with any provision of this Consent Judgment after the date of its entry, or to prevent the New Jersey Attorney General and the New Jersey Division of Consumer Affairs in this action from initiating a proceeding for any contempt or other sanctions for failure to comply, or to compromise the authority of a court to punish as contempt any violation of this Consent Judgment. Further, nothing in paragraph 23 shall be construed to limit the authority of the New Jersey Attorney General in this action to protect the interests of New Jersey.

MONETARY PAYMENT

25. Apple shall pay a total of One Hundred and Thirteen Million Dollars (\$113,000,000.00) to the Attorneys General, to be apportioned amongst the Attorneys General at their sole discretion. The amount apportioned to the New Jersey Attorney General, \$3,005,721.15, is to be paid by Apple directly to the New Jersey Attorney General. The wiring instructions shall

be provided to Apple no later than seven (7) days after the Effective Date. If the Court has not entered this Consent Judgment by the Effective Date, Apple shall make the payment within sixty (60) days of the Effective Date or within thirty (30) days of the entry of the Consent Judgment, whichever is later. Said payment to the New Jersey Attorney General shall be used and designated by and in the sole discretion of the New Jersey Attorney General and shall be used for reimbursement of attorney fees and other costs of investigation; distribution or application to any applicable consumer protection enforcement funds, including future consumer protection enforcement, consumer education, litigation or local consumer aid, or revolving funds; defraying the costs of the inquiry leading hereto, or any other lawful purpose, at the sole discretion of the New Jersey Attorney General. Upon completion of the wire transfer described above, Apple shall have no further obligation to assist New Jersey in its use of its portion of the payment.

26. Also out of the total amount due to the Attorneys General set forth in paragraph 25, Apple will make a single payment on behalf of and at the direction of the States, within sixty (60) days of the Effective Date, to funds maintained in trust by the National Association of Attorneys General, in an amount designated and communicated to Apple by the Arizona Attorney General.

RELEASE

27. By its execution of this Consent Judgment, New Jersey releases and forever discharges Apple and its past and present directors, officers, employees, representatives, agents, affiliates, parents, subsidiaries, predecessors, assigns and successors (“Releasees”) from any and all civil causes of action or claims for damages, costs, attorneys’ fees, or penalties of any kind that the Attorneys General have asserted or could have asserted concerning the Covered Conduct. The Attorneys General execute this release in their official capacity and release only claims that the Attorneys General have the authority to bring or release. Nothing contained in this paragraph shall

be construed to limit the ability of the New Jersey Attorney General to enforce Apple's obligations under this judgment.

28. Notwithstanding any term of this Consent Judgment, specifically reserved and excluded from the release in paragraph 27 as to any entity or Person, including the Releasees, are any and all of the following:

- a. any criminal liability that any Person or entity, including Releasees, has or may have to the States;
- b. any civil or administrative liability that any Person or entity, including Releasees, has or may have to the States under any statute, regulation or rule giving rise to any and all of the following claims:
 - i. state or federal antitrust violations;
 - ii. state or federal securities violations; or
 - iii. state or federal tax claims.

29. Nothing in this Consent Judgment shall be construed as excusing or exempting Apple from complying with any applicable state or federal law, rule, or regulation, and no provision of this Consent Judgment shall be deemed to authorize or require Apple to engage in any acts or practices prohibited by any state or federal law, rule, or regulation.

GENERAL PROVISIONS

30. The provisions of this Consent Judgment shall be construed in accordance with the laws of New Jersey.

31. Nothing in this Consent Judgment shall be construed as an approval by the Attorneys General or any state agency of Apple's past, present, or future conduct.

32. Apple shall not represent or imply that the Attorneys General, the State of New Jersey, or any state agency has approved or approves of any of Apple's actions or past, present, or future business practices.

33. This Consent Judgment shall not bar the New Jersey Attorney General or any other governmental entity from enforcing applicable laws, regulations, or rules against Apple for conduct subsequent to the Effective Date or otherwise not covered by this Consent Judgment.

34. Apple willingly has entered into this Consent Judgment in order to resolve the Attorney General's claims under the CFA as to the matters addressed in this Consent Judgment and thereby avoid significant expense, inconvenience, and uncertainty.

35. Apple has entered into this Consent Judgment solely for the purposes of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Apple expressly denies. No part of this Consent Judgment, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Apple. This document and its contents are intended to be used in resolving this litigation and not by any other party or for any other purpose.

36. This Consent Judgment shall not be construed or used as a waiver or limitation of any defense otherwise available to Apple in any other action, or of Apple's right to defend against, or make any agreements in, any private individual action, class claims or suits, or any other governmental or regulatory action relating to the subject matter or terms of this Consent Judgment. Notwithstanding the foregoing, the New Jersey Attorney General may file an action to enforce the terms of this Consent Judgment.

37. No part of this Consent Judgment shall create, waive, release or limit a private cause of action or confer any right to any third party for a violation of any state or federal statute.

38. The exclusive right to enforce any violation or breach of this Consent Judgment shall be with the parties to this Consent Judgment and the Court.

39. Nothing in this Consent Judgment constitutes an agreement by the State of New Jersey concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws. The Consent Judgment takes no position with regard to the tax consequences of the Consent Judgment with regard to federal, state, local, and foreign taxes.

40. This Consent Judgment is binding upon the State of New Jersey and Apple, and any of Apple's respective successors, assigns, or other entities or persons otherwise bound by law.

41. Apple agrees that this Consent Judgment does not entitle it to seek or to obtain attorneys' fees as a prevailing party under any statute, regulation, or rule, and Apple further waives any right to attorneys' fees that may arise under such statute, regulation, or rule.

42. If any provision of this Consent Judgment is found to be invalid or unenforceable, the provision will be enforced to the maximum extent permissible by law to effectuate the intent of the parties, and the remainder of this Consent Judgment will continue in full force.

43. This Consent Judgment represents the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Consent Judgment not fully expressed herein or attached hereto.

44. Jurisdiction is retained by the Court for the purpose of enabling any party to the Consent Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for constructing this Consent Judgment's terms, for modifying any of the injunctive provisions, for enforcing compliance, and for punishing violations, if any.

45. This Consent Judgment becomes effective upon entry, which is ordered forthwith. No notice of entry of judgment is required to be served upon Defendant.

46. This Consent Judgment resolves all outstanding claims expressly identified in the Complaint filed in the above captioned matter. As no further matters remain pending, this is a final judgment entered.

47. Any notices or other documents required to be sent to the Parties pursuant to this Consent Judgment shall be sent to the following addresses via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

For the Attorney General:

Monisha A. Kumar, Deputy Attorney General
Office of the Attorney General
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Monisha.Kumar@law.njoag.gov

For Apple Inc.

Winslow Taub
Covington & Burling LLP
415 Mission Street, Suite 5400
San Francisco, CA 94105-2533
WTaub@cov.com

Apple Inc.
Attn: General Counsel
1 Apple Park Way
Cupertino, CA 95014

CONSENT TO JUDGMENT

48. Defendant acknowledges that it has waived service of the Summons and Complaint, has read this Consent Judgment, and is aware of its right to a trial in this matter and has waived the same.

49. Defendant admits the jurisdiction of this Court and consents to the entry of the foregoing Consent Judgment.

50. Defendant states that no promise of any kind or nature whatsoever was made to induce it to enter into this Consent Judgment and declares that it has entered into this Consent Judgment voluntarily.

51. This Consent Judgment is entered as a result of a compromise and a settlement agreement between the parties. Only the parties to this action may seek enforcement of this Consent Judgment. Nothing herein is intended to create a private right of action by other parties; however, this Consent Judgment shall not limit the rights of any private party to pursue any remedies allowed by law.

52. Defendant acknowledges that its acceptance of this Consent Judgment is for the purpose of settling the ongoing consumer fraud lawsuit filed by the State.

53. This Consent Judgment may be executed in counterparts and be delivered by facsimile or electronic transmission, or a copy thereof, such constituting an original counterpart hereof, all of which together will constitute one and the same document.

54. Defendant represents and warrants that the individual signing below on its behalf is duly appointed and authorized to do so.

**IT IS ON THIS _____ DAY OF _____, 2020, SO ORDERED
ADJUDGED AND DECREED.**

HON. ROBERT T. LOUGY

JOINTLY APPROVED AND SUBMITTED FOR ENTRY:

FOR THE PLAINTIFFS:

**GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY**

By: Monisha A. Kumar
Monisha A. Kumar, Deputy Attorney General
Consumer Fraud Prosecution Section

Dated: November 18, 2020

124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

FOR THE DEFENDANT APPLE INC.:

By: Winslow Taub
Winslow Taub
Covington & Burling LLP
415 Mission Street, Suite 5400
San Francisco, CA 94105-2533

FOR THE DEFENDANT APPLE INC.:

By: 

Noreen Krall, Vice President and Chief Litigation Counsel
Apple Inc.
1 Apple Park Way
Cupertino, CA 95014

APPENDIX A

Alaska

- Alaska Stat. §§ 45.50.471 *et seq.* Unfair Trade Practices and Consumer Protection Act

Arizona

- Ariz. Rev. Stat. §§ 44-1521 *et seq.* Consumer Fraud Act

Arkansas

- Ark. Code Ann. §§ 4-88-101 *et seq.* Deceptive Trade Practices Act

California

- Cal. Bus. & Prof. Code §§ 17200 *et seq.* (West) Unfair Competition Law

Connecticut

- Conn. Gen. Stat. §§ 42-110a *et seq.* Connecticut Unfair Trade Practices Act

District of Columbia

- D.C. Code §§ 28-3901 *et seq.*

Florida

- Fla. Stat. §§ 501.201 *et seq.* Deceptive and Unfair Trade Practices Act

Hawaii

- Haw. Rev. Stat. § 480-2
- Haw. Rev. Stat. §§ 481A-1 *et seq.* Uniform Deceptive Trade Practice Act

Idaho

- Idaho Code §§ 48-601 *et seq.* Consumer Protection Act

Illinois

- 815 Ill. Comp. Stat. 505/1 *et seq.* Consumer Fraud and Deceptive Business Practices Act

APPENDIX A

Indiana

- Ind. Code §§ 24-5-0.5-1 *et seq.* Deceptive Consumer Sales Act

Iowa

- Iowa Code §§ 714.16 *et seq.*

Kansas

- Kan. Stat. Ann. §§ 50-623 *et seq.* Kansas Consumer Protection Act

Kentucky

- Ky. Rev. Stat. Ann. §§ 367.110 *et seq.* (West) Consumer Protection Act

Louisiana

- La. Rev. Stat. Ann. §§ 51:1401 *et seq.* Unfair Trade Practices and Consumer Protection Law

Michigan

- Mich. Comp. Laws §§ 445.901 *et seq.* Consumer Protection Act

Minnesota

- Minn. Stat. § 8.31
- Minn. Stat. §§ 325D.43 *et seq.* Uniform Deceptive Trade Practices Act
- Minn. Stat. §§ 325F.68 *et seq.* Prevention of Consumer Fraud Act

Missouri

- Chapter 407 RSMo, Missouri Merchandising Practices Act

Montana

- Mont. Code Ann. §§ 30-14-101 *et seq.* Unfair Trade Practices and Consumer Protection Act

APPENDIX A

Nebraska

- Neb. Rev. Stat. §§ 59-1601 *et seq.* Consumer Protection Act
- Neb. Rev. Stat. §§ 87-301 *et seq.* Uniform Deceptive Trade Practices Act

Nevada

- NRS 598.0903 *et seq.* Deceptive Trade Practices Act

New Jersey

- N.J. Stat. Ann. §§ 56:8-1 *et seq.* (West)

North Carolina

- N.C. Gen. Stat. §§ 75-1.1 *et seq.* North Carolina Unfair and Deceptive Trade Practices Act

North Dakota

- N.D. Cent. Code §§ 51-15-01 *et seq.*

Ohio

- R.C. §§ 1345.01 *et seq.* Consumer Sales Practices Act,

Oregon

- Or. Rev. Stat. §§ 646.605 *et seq.* Unlawful Trade Practices Law

Pennsylvania

- 73 Pa. Stat. Ann. §§ 201-1 *et seq.* (West) Unfair Trade Practices and Consumer Protection Law

South Carolina

- S.C. Code Ann. §§ 39-5-10 *et seq.* Unfair Trade Practices Act

Tennessee

- Tenn. Code Ann. §§ 47-18-101 *et seq.* Consumer Protection Act

APPENDIX A

Texas

- Tex. Bus. & Com. Code §§ 17.41 *et seq.* Deceptive Trade Practices-Consumer Protection Act

Utah

- Utah Code Ann. §§ 13-2-1 *et seq.* and 13-5-1 *et seq.* (West) Unfair Practices Act
- Utah Code Ann. §§ 13-11-1 *et seq.* (West) Consumer Sales Practices Act
- Utah Code Ann. §§ 13-11a-1 *et seq.* (West) Truth in Advertising

Vermont

- Vt. Stat. Ann. tit. 9, §§ 2451 *et seq.* Consumer Fraud Act

Virginia

- Va. Code §§ 59.1-196 *et seq.* Consumer Protection Act

Wisconsin

- Wis. Stat. § 100.18
- Wis. Stat. §§ 100.20 *et seq.*