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14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

15 **IN AND FOR THE COUNTY OF MARICOPA**

16 STATE OF ARIZONA, *ex rel.* MARK
17 BRNOVICH, Attorney General,

18 Plaintiff,

19 v.

20 APPLE INC.,

21 Defendant.

Case No. [NUMBER]

CONSENT JUDGMENT

(Assigned to the Hon. [NAME])

22 Plaintiff State of Arizona, *ex rel.* Mark Brnovich, the Attorney General (the “State”), and
23 defendant Apple Inc., a corporation (“Defendant” or “Apple”) have stipulated and consent to the
24 Court’s entry of this Consent Judgment (“Judgment”) in this proceeding and accept this Judgment
25 as the final adjudication of this civil action without taking proof and without trial, without this
26 Judgment constituting evidence of or an admission by Defendant regarding any issue of law or
27 fact alleged in the Complaint, without Defendant admitting any liability, and with all parties
28 having waived their right to appeal.

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

9 The Court having considered the matter and good cause appearing:

10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

11 **PARTIES**

- 12 1. Plaintiff is the State of Arizona, *ex rel.* Mark Brnovich, Attorney General.
13 2. Defendant is Apple Inc., a company with its principal office located in Cupertino,
14 California.

15 **JURISDICTION AND VENUE**

- 16 3. Apple, at all relevant times, has transacted business in the State of Arizona,
17 including but not limited to business in Maricopa County.
18 4. This Court has jurisdiction over the Complaint and the parties necessary for the
19 Court to enter this Judgment and any orders hereafter appropriate.
20 5. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.
21 6. This Judgment is entered pursuant to and subject to the Arizona Consumer Fraud
22 Act, A.R.S. §§ 44-1521 to -1534 (the “CFA”).
23
24

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

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

4 **DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

- 3 a. iPhone 6;
- 4 b. iPhone 6 Plus;
- 5 c. iPhone 6S;
- 6 d. iPhone 6S Plus;
- 7 e. First generation iPhone SE;
- 8 f. iPhone 7; and
- 9 g. iPhone 7 Plus.

10 **INJUNCTIVE RELIEF**

11 18. The injunctive provisions of this Judgment shall apply to Apple and its directors,
12 officers, employees, representatives, agents, affiliates, parents, subsidiaries, predecessors,
13 assigns and successors and shall be effective for three (3) years from the Effective Date of this
14 Judgment.

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

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

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

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

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

5 **DISPUTE RESOLUTION**

6 23. If one or more Attorneys General reasonably believe that Apple has failed to
7 comply with any term of the injunctive relief, each Attorney General shall provide written notice
8 to Apple, unless the failure to comply threatens the health or safety of the citizens of their
9 state(s) and/or creates an emergency requiring immediate action. Apple shall have sixty (60)
10 days from receipt of such notice to provide a good faith written response, including either a
11 statement that Apple believes it is in full compliance with the relevant provision or a statement
12 explaining how the violation occurred, how it has been addressed or when it will be addressed,
13 and what Apple will do to make sure the violation does not occur again. The Attorney(s)
14 General may agree to provide Apple with more than sixty (60) days to respond. During the sixty
15 (60) day period, each of the Attorney(s) General shall engage in good faith discussions with
16 Apple before taking any enforcement action(s), in an attempt to resolve the alleged non-
17 compliance. If Apple notifies the Attorneys General in writing that two or more Attorneys
18 General have notified Apple of alleged violations, the Attorney(s) General that provided notice
19 of alleged violations shall engage in those good faith discussions collectively if possible.

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

26 **MONETARY PAYMENT**

27 25. Apple shall pay a total of One Hundred and Thirteen Million Dollars
28 (\$113,000,000.00) to the Attorneys General, to be apportioned amongst the Attorneys General at

1 construed to limit the ability of the Arizona Attorney General to enforce Apple's obligations
2 under this judgment.

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

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

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

18 **GENERAL PROVISIONS**

19 30. The provisions of this Judgment shall be construed in accordance with the laws of
20 Arizona.

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

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

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

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

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

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

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

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

21 39. Nothing in this Judgment constitutes an agreement by the Arizona Attorney
22 General concerning the characterization of the amounts paid hereunder for purposes of any
23 proceeding under the Internal Revenue Code or any state tax laws. The Judgment takes no
24 position with regard to the tax consequences of the Judgment with regard to federal, state, local,
25 and foreign taxes.

26 40. This Judgment is binding upon the Arizona Attorney General and Apple, and any
27 of Apple's respective successors, assigns, or other entities or persons otherwise bound by law.
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1 41. Apple agrees that this Judgment does not entitle it to seek or to obtain attorneys'
2 fees as a prevailing party under any statute, regulation, or rule, and Apple further waives any right
3 to attorneys' fees that may arise under such statute, regulation, or rule.

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

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

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

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

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

19
20 For the Attorney General:
21 Matthew du Mée
22 Consumer Protection and Advocacy Section
23 The Office of the Arizona Attorney General
24 2005 N. Central Ave
25 Phoenix, AZ 85004

26 For Apple Inc.:
27 Winslow Taub
28 Covington & Burling LLP
 415 Mission Street, Suite 5400
 San Francisco, CA 94105-2533

1 wtaub@cov.com

2 Apple Inc.
3 Attn: General Counsel
4 1 Apple Park Way
5 Cupertino, CA 95014

6 47. This Judgment resolves all outstanding claims expressly identified in the Complaint
7 filed in the above captioned matter. As no further matters remain pending, this is a final judgment
8 entered pursuant to Ariz. R. Civ. P. 54(c).

9 DATED this _____ day of _____, 2020.

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JUDGE OF THE SUPERIOR COURT
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1 **CONSENT TO JUDGMENT**

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

5 2. Defendant admits the jurisdiction of this Court and consents to the entry of the
6 foregoing Judgment.

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

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


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

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

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

21 DATED this _____ day of _____, 20_____.

22
23 Apple Inc.

24
25 
26 By: _____
27 Noreen Krall, Vice President and Chief
28 Litigation Counsel

1 **APPROVED AS TO FORM AND CONTENT:**

2 **MARK BRNOVICH**
3 **Attorney General**

Covington & Burling LLP

4
5
6
7 By:



8 _____
9 Matthew du Mee
10 Consumer Litigation Unit Chief Counsel
11 Attorneys for the State of Arizona



12 _____
13 Winslow Taub
14 Attorneys for Defendant

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