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11
 12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
 13 **IN AND FOR THE COUNTY OF MARICOPA**

14 STATE OF ARIZONA, *ex rel.* MARK
 15 BRNOVICH, Attorney General,
 16 Plaintiff,
 17 v.
 18 APPLE INC.,
 19 Defendant.
 20

Case No. CV2020-014863

CONSENT JUDGMENT

(Assigned to the Hon. Sally Duncan)

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 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
 24 the Court’s entry of this Consent Judgment (“Judgment”) in this proceeding and accept this
 25 Judgment as the final adjudication of this civil action without taking proof and without trial,
 26 without this Judgment constituting evidence of or an admission by Defendant regarding any
 27 issue of law or fact alleged in the Complaint, without Defendant admitting any liability, and
 28 with all parties 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,
5 North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont,
6 Virginia, Wisconsin, and the District Of Columbia (the “Attorneys General” or “States”)
7 pursuant to each of the States’ respective Consumer Protection Laws, including unfair and
8 deceptive acts or 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”).

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

10 9. “Consumer Protection Laws” means the consumer protection laws enforced by
11 the Attorneys General under which the Attorneys General have conducted the investigation as
12 set 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
21 10.2.1 for managing the performance of the Relevant iPhones to match the peak power delivery
22 of 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,
25 and any agent, employee, salesperson, partner, officer, director, member, stockholder, associate
26 or 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 a. are sufficiently familiar with the information in the webpage(s) described
2 in 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
8 notice to Apple, unless the failure to comply threatens the health or safety of the citizens of
9 their state(s) and/or creates an emergency requiring immediate action. Apple shall have sixty
10 (60) days from receipt of such notice to provide a good faith written response, including either
11 a statement that Apple believes it is in full compliance with the relevant provision or a
12 statement explaining how the violation occurred, how it has been addressed or when it will be
13 addressed, and what Apple will do to make sure the violation does not occur again. The
14 Attorney(s) General may agree to provide Apple with more than sixty (60) days to respond.
15 During the sixty (60) day period, each of the Attorney(s) General shall engage in good faith
16 discussions with Apple before taking any enforcement action(s), in an attempt to resolve the
17 alleged non-compliance. If Apple notifies the Attorneys General in writing that two or more
18 Attorneys General have notified Apple of alleged violations, the Attorney(s) General that
19 provided notice of alleged violations shall engage in those good faith discussions collectively if
20 possible.

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

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1 **MONETARY PAYMENT**

2 25. Apple shall pay a total of One Hundred and Thirteen Million Dollars
3 (\$113,000,000.00) to the Attorneys General, to be apportioned amongst the Attorneys General
4 at their sole discretion. The amount apportioned to the Arizona Attorney General,
5 \$5,009,240.97, is to be paid by Apple directly to the Arizona Attorney General. The wiring
6 instructions shall be provided to Apple no later than seven (7) days after the Effective Date. If
7 the Court has not entered this Judgment by the Effective Date, Apple shall make the payment
8 within sixty (60) days of the Effective Date or within thirty (30) days of the entry of the
9 Judgment, whichever is later. Said payment to the Arizona Attorney General shall be deposited
10 by the Arizona Attorney General into the Consumer Protection – Consumer Fraud Revolving
11 Fund pursuant to A.R.S. §§ 44-1531.01, and used for reimbursement of attorney fees and other
12 costs of investigation; distribution or application to any applicable consumer protection
13 enforcement funds, including future consumer protection enforcement, consumer education,
14 litigation or local consumer aid, or revolving funds; defraying the costs of the inquiry leading
15 hereto, or any other lawful purpose, at the sole discretion of the Arizona Attorney General.
16 Upon completion of the wire transfer described above, Apple shall have no further obligation to
17 assist Arizona in its use of its portion of the payment.

18 26. Also out of the total amount due to the Attorneys General set forth in paragraph
19 25, Apple will make a single payment on behalf of and at the direction of the States, within
20 sixty (60) days of the Effective Date, to funds maintained in trust by the National Association
21 of Attorneys General, in an amount designated and communicated to Apple by the Arizona
22 Attorney General.

23 **RELEASE**

24 27. By its execution of this Judgment, Arizona releases and forever discharges Apple
25 and its past and present directors, officers, employees, representatives, agents, affiliates,
26 parents, subsidiaries, predecessors, assigns and successors (“Releasees”) from any and all civil
27 causes of action or claims for damages, costs, attorneys’ fees, or penalties of any kind that the
28 Attorneys General have asserted or could have asserted concerning the Covered Conduct. The

1 Attorneys General execute this release in their official capacity and release only claims that the
2 Attorneys General have the authority to bring or release. Nothing contained in this paragraph
3 shall be construed to limit the ability of the Arizona Attorney General to enforce Apple's
4 obligations under this judgment.

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

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

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

20 **GENERAL PROVISIONS**

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

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

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

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

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

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

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

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

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

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

1 40. This Judgment is binding upon the Arizona Attorney General and Apple, and any
2 of Apple's respective successors, assigns, or other entities or persons otherwise bound by law.

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

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

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

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

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

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

22 For the Attorney General:

23 Matthew du Mée
24 Consumer Protection and Advocacy Section
25 The Office of the Arizona Attorney General
26 2005 N. Central Ave
27 Phoenix, AZ 85004
28

1 For Apple Inc.:
2 Winslow Taub
3 Covington & Burling LLP
4 415 Mission Street, Suite 5400
5 San Francisco, CA 94105-2533
6 wtaub@cov.com

7 Apple Inc.
8 Attn: General Counsel
9 1 Apple Park Way
10 Cupertino, CA 95014

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

14 DATED this ____ day of _____, 2020.

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17 _____
18 The Hon. Sally Duncan
19 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 17th day of November, 2020.

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 By: 

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



10 Winslow Taub
11 Attorneys for Defendant

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Appendix A

APPENDIX A

1 Alaska

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

3 Arizona

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

5 Arkansas

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

7 California

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

9 Connecticut

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

11 District of Columbia

- 12 • D.C. Code §§ 28-3901 *et seq.*

13 Florida

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

15 Hawaii

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

18 Idaho

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

20 Illinois

- 21 • 815 Ill. Comp. Stat. 505/1 *et seq.* Consumer Fraud and Deceptive Business Practices Act

22 Indiana

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

24 Iowa

- 25 • Iowa Code §§ 714.16 *et seq.*

26 Kansas

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

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APPENDIX A

1 Kentucky

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

3 Louisiana

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

6 Michigan

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

8 Minnesota

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

12 Missouri

- 13 • Chapter 407 RSMo, Missouri Merchandising Practices Act

14 Montana

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

17 Nebraska

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

20 Nevada

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

22 New Jersey

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

24 North Carolina

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

27 North Dakota

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

APPENDIX A

1 Ohio

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

3 Oregon

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

5 Pennsylvania

- 6 • 73 Pa. Stat. Ann. §§ 201-1 *et seq.* (West) Unfair Trade Practices and Consumer
7 Protection Law

8 South Carolina

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

10 Tennessee

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

12 Texas

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

15 Utah

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

19 Vermont

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

21 Virginia

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

23 Wisconsin

- 24 • Wis. Stat. § 100.18
25 • Wis. Stat. §§ 100.20 *et seq.*
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eSignature Page 1 of 1

Filing ID: 12249403 Case Number: CV2020-014863
Original Filing ID: 12243087

Granted as Submitted



/S/ Sally Duncan Date: 11/21/2020
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2020-014863

SIGNATURE DATE: 11/21/2020

E-FILING ID #: 12249403

FILED DATE: 11/24/2020 8:00:00 AM

MATTHEW B DU MEE

APPLE INC
1 APPLE PKWY CUPERTINO CA 92014