

1 XAVIER BECERRA
2 Attorney General of California
3 Nicklas A. Akers
4 Senior Assistant Attorney General
5 Michael Elisofon, SBN 240707
6 Supervising Deputy Attorney General
7 Sarah E. Kurtz, SBN 99881
8 Devin Mauney, SBN 294634
9 Daniel Osborn, SBN 311037
10 Deputy Attorneys General
11 1515 Clay St., Suite 2000
12 Oakland, CA 94612
13 Telephone: (510) 879-1300
14 E-mail: Devin.Mauney@doj.ca.gov

10 JACKIE LACEY
11 District Attorney of Los Angeles County
12 Hoon Chun, SBN 132516
13 Assistant Head Deputy
14 Steven Wang, SBN 221950
15 Deputy District Attorney
16 Jessie Lee Ann McGrath, SBN 131702
17 Deputy District Attorney
18 211 W. Temple Street, Ste. 1000
19 Los Angeles, CA 90012
20 Telephone: (213) 257-2450
21 Email: hchun@da.lacounty.gov

NANCY E. O'MALLEY
District Attorney of Alameda County
Matthew L. Beltramo, SBN 184796
Assistant District Attorney
Nancy H. Tung, SBN 203236
Autrey B James, SBN 236516
Deputy District Attorneys
7677 Oakport Street, Suite 650
Oakland, CA 94621
Telephone: (510) 383-8600
Facsimile: (510) 383-8615
Email: matthew.beltramo@acgov.org

(Additional attorneys for the People appearing on the Appendix)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No.

[PROPOSED] FINAL JUDGMENT

1
2 Plaintiff, the People of the State of California (hereinafter, Plaintiff or People), represented
3 by Xavier Becerra, Attorney General of the State of California, by Devin Mauney, Deputy
4 Attorney General; Jackie Lacey, District Attorney of Los Angeles County, by Hoon Chun,
5 Assistant Head Deputy District Attorney, and Steven Wang, Deputy District Attorney; Nancy E.
6 O'Malley, District Attorney of Alameda County, by Matthew Beltramo, Assistant District
7 Attorney; Summer Stephan, District Attorney of San Diego County, by Thomas Papageorge,
8 Deputy District Attorney, and Colleen E. Huschke, Deputy District Attorney; Jeffrey Rosen,
9 District Attorney of Santa Clara County, by Bud Porter, Supervising Deputy District Attorney;
10 Jeffrey Rosell, District Attorney of Santa Cruz County, by Douglas Allen and Francisca Allen,
11 Assistant District Attorneys; and defendant Apple Inc., a corporation ("Defendant" or "Apple"),
12 appearing through its attorneys Covington & Burling LLP, by Winslow Taub, having stipulated
13 and consented to the Court's entry of this Final Judgment ("Judgment") in this proceeding and
14 accepting this Judgment as the final adjudication of this civil action without taking proof and
15 without trial, without this Judgment constituting evidence of or an admission by Defendant
16 regarding any issue of law or fact alleged in the Complaint, without Defendant admitting any
17 liability, and with all parties having waived their right to appeal.

18 This Judgment is entered to resolve the investigations of Defendant undertaken by the
19 Attorneys General of the states and commonwealths of Alaska, Arizona, Arkansas, California¹,
20 Connecticut, Florida, Hawaii,² Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana,
21 Michigan, Minnesota, Missouri, Montana, Nevada, Nebraska, New Jersey, North Carolina, North
22 Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia,
23 Wisconsin, and the District Of Columbia (the "Attorneys General" or "States") pursuant to each of
24

25 _____
26 ¹ References to the California Attorney General include the California Attorney General's Office
27 and the District Attorneys of Los Angeles, San Diego, Alameda, Santa Clara, and Santa Cruz.

28 ² 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.

1 the States' respective Consumer Protection Laws, including unfair and deceptive acts or practices
2 statutes.

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

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

5 **PARTIES**

6 1. Plaintiff is the People of the State of California.

7 2. Defendant is Apple Inc., a company with its principal office located in Cupertino,
8 California.

9 **JURISDICTION AND VENUE**

10 3. Apple, at all relevant times, has transacted business in the State of California,
11 including but not limited to business in the Counties of Alameda, Santa Clara, San Diego, Los
12 Angeles, and Santa Cruz.

13 4. This Court has jurisdiction over the Complaint and the parties necessary for the
14 Court to enter this Judgment and any orders hereafter appropriate.

15 5. Venue is proper in the County of Alameda.

16 6. This Judgment is entered pursuant to and subject to the Unfair Competition Law,
17 Business and Professions Code section 17200 et seq. (the "UCL") and False Advertising Law,
18 Business and Professions Code section 17500 et seq. (the "FAL").

19 **DEFINITIONS**

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

25 8. "Consumer Protection Laws" means the consumer protection laws enforced by
26 Plaintiff, including, as relevant herein, the UCL (Bus. & Prof. § 17200 et seq.) and the FAL (Bus.
27 & Prof. § 17500 et seq.).

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

4 10. “Effective Date” means November 25, 2020.

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

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

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

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

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

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

- 19 a. iPhone 6;
- 20 b. iPhone 6 Plus;
- 21 c. iPhone 6S;
- 22 d. iPhone 6S Plus;
- 23 e. First generation iPhone SE;
- 24 f. iPhone 7; and
- 25 g. iPhone 7 Plus.

26 **INJUNCTIVE RELIEF**

27 17. The injunctive provisions of this Judgment shall apply to Apple and its directors,
28 officers, employees, representatives, agents, affiliates, parents, subsidiaries, predecessors, assigns

1 and successors and shall be effective for three (3) years from the Effective Date of this
2 Judgment.

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

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

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

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

- 17 a. are sufficiently familiar with the information in the webpage(s) described
18 in paragraph 18 of this Judgment, and the iPhone user interface described
19 in paragraph 20;
- 20 b. communicate such information to consumers wherever relevant; and
- 21 c. refer consumers to such webpage(s) or interface, where appropriate.

22 **DISPUTE RESOLUTION**

23 22. If one or more Attorneys General reasonably believe that Apple has failed to
24 comply with any term of the injunctive relief, each Attorney General shall provide written notice
25 to Apple, unless the failure to comply threatens the health or safety of the citizens of their state(s)
26 and/or creates an emergency requiring immediate action. Apple shall have sixty (60) days from
27 receipt of such notice to provide a good faith written response, including either a statement that
28 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

1 will do to make sure the violation does not occur again. The Attorney(s) General may agree to
2 provide Apple with more than sixty (60) days to respond. During the sixty (60) day period, each
3 of the Attorney(s) General shall engage in good faith discussions with Apple, before taking any
4 enforcement action(s), in an attempt to resolve the alleged non-compliance. If Apple notifies the
5 Attorneys General in writing that two or more Attorneys General have notified Apple of alleged
6 violations, the Attorney(s) General that provided notice of alleged violations shall engage in
7 those good faith discussions collectively if possible.

8 23. Nothing herein shall be construed to exonerate any contempt or failure to comply
9 with any provision of this Judgment after the date of its entry, or to prevent any of the agencies
10 representing the People in this action from initiating a proceeding for any contempt or other
11 sanctions for failure to comply, or to compromise the authority of a court to punish as contempt
12 any violation of this Judgment. Further, nothing in paragraph 22 shall be construed to limit the
13 authority of the agencies representing the People in this action to protect the interests of
14 California or its residents.

15 **MONETARY PAYMENT**

16 24. Apple shall pay a total of One Hundred and Thirteen Million Dollars
17 (\$113,000,000.00) to the Attorneys General, to be apportioned amongst the Attorneys General at
18 their sole discretion. As part of this total payment, and pursuant to Business and Professions Code
19 section 17206, Defendant shall pay the sum of twenty-four million six hundred thousand dollars
20 (\$24,600,000.00) to the California Attorney General's Office and the District Attorney's Offices
21 representing the People of the State of California in this action. Payment instructions shall be
22 provided to Apple by the Attorney General no later than seven (7) days after the Effective Date. If
23 the Court has not entered this Judgment by the Effective Date, Apple shall make the payment
24 within sixty (60) days of the Effective Date or within thirty (30) days of the date of entry of the
25 Judgment, whichever is later. Upon completion of the payment described above, Apple shall have
26 no further obligation to assist the agencies representing Plaintiff in their use of the payment.
27 Payment shall be apportioned as follows:

- 28 a. Four million one hundred thousand dollars (\$4,100,000) shall be paid to the
California Attorney General's Office.

- b. Four million one hundred thousand dollars (\$4,100,000) shall be paid to the District Attorney's Office for the County of Alameda.
- c. Four million one hundred thousand dollars (\$4,100,000) shall be paid to the District Attorney's Office for the County of Los Angeles.
- d. Four million one hundred thousand dollars (\$4,100,000) shall be paid to the District Attorney's Office for the County of San Diego.
- e. Four million one hundred thousand dollars (\$4,100,000) shall be paid to the District Attorney's Office for the County of Santa Clara.
- f. Four million one hundred thousand dollars (\$4,100,000) shall be paid to the District Attorney's Office for the County of Santa Cruz.

25. Also out of the total amount due to the Attorneys General set forth in paragraph 24, 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

26. By its execution of this Judgment, California 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 and agencies representing the People in this action have asserted or could have asserted concerning the Covered Conduct. The Attorneys General and the agencies representing the People in this action execute this release in their official capacity and release only claims that the Attorneys General and said agencies have the authority to bring or release. Nothing contained in this paragraph shall be construed to limit the ability of the agencies representing the People in this action to enforce Apple's obligations under this judgment.

27. Notwithstanding any term of this Judgment, specifically reserved and excluded from the release in paragraph 26 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

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

8 35. This Judgment shall not be construed or used as a waiver or limitation of any
9 defense otherwise available to Apple in any other action, or of Apple's right to defend against, or
10 make any agreements in, any private individual action, class claims or suits, or any other
11 governmental or regulatory action relating to the subject matter or terms of this Judgment.
12 Notwithstanding the foregoing, the California Attorney General and the agencies representing
13 the People in this action may file an action to enforce the terms of this Judgment.

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

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

18 38. Nothing in this Judgment constitutes an agreement by the Plaintiff concerning the
19 characterization of the amounts paid hereunder for purposes of any proceeding under the Internal
20 Revenue Code or any state tax laws. The Judgment takes no position with regard to the tax
21 consequences of the Judgment with regard to federal, state, local, and foreign taxes.

22 39. This Judgment is binding upon Plaintiff and Apple, and any of Apple's respective
23 successors, assigns, or other entities or persons otherwise bound by law.

24 40. The parties will bear their own costs in this action, including any first appearance
25 filing fees, attorneys' fees, and other costs of investigation.

26 41. If any provision of this judgment is found to be invalid or unenforceable in any
27 degree, the provision will be enforced to the maximum extent permissible by law to effectuate the
28 intent of the parties, and the remainder of this judgment will continue in full force.

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

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

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

10 45. This is a final judgment that resolves all outstanding claims expressly identified in
11 the Complaint filed in the above captioned matter.

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

15
16 For the Attorney General:
17 Michael Elisofon
18 Daniel Osborn
19 California Attorney General’s Office
20 Consumer Protection Section
21 1515 Clay Street, 20th Floor
22 Oakland, CA 94612
23 Michael.Elisofon@doj.ca.gov
24 Daniel.Osborn@doj.ca.gov

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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

DATED this _____ day of _____, 2020.

JUDGE OF THE SUPERIOR COURT