

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

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FILED

STATE OF TENNESSEE, *ex rel.* HERBERT
H. SLATERY III, Attorney General and
Reporter,

Plaintiff,

v.

APPLE INC.

Defendant.

Case No. 20-1154-I

COMPLAINT

INTRODUCTION

1. The State of Tennessee, by and through Herbert H. Slatery III, Attorney General and Reporter (Attorney General), brings this civil law enforcement action against Apple Inc. (Apple) for Apple's unfair and deceptive acts and practices, which violated the Tennessee Consumer Protection Act (TCPA), Tennessee Code Annotated §§ 47-18-101 to -131.

2. In short, and as described more fully below, Apple violated the TCPA by, among other things, misrepresenting and concealing information about "unexpected shutdowns" or "unexpected power-offs" (UPOs) affecting its iPhone devices; misrepresenting and concealing information about iPhone battery health and performance; and misrepresenting and concealing information about its iOS¹ software updates that slowed or "throttled" the performance of iPhone devices.

¹ iOS is the name of the operating system developed by Apple for its mobile devices, including iPhones.

3. Accordingly, the Attorney General seeks to enjoin Apple from further violations and to recover restitution, disgorgement, civil penalties, interest, costs, fees, and all other relief provided by law for Apple's past and ongoing violations.

PARTIES

4. The State brings this action through its Attorney General pursuant to Tenn. Code Ann. §§ 47-18-108 and -114. The Attorney General is charged with enforcing the TCPA, which prohibits unfair or deceptive acts or practices affecting the conduct of any trade or commerce. The Attorney General may initiate civil law enforcement proceedings under the TCPA in the name of the State.

5. Apple is a California corporation with its principal place of business in Cupertino, California.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to Tenn. Code Ann. §§ 47-18-108(a) and 47-18-114. Defendants are doing business in Tennessee and are also subject to the jurisdiction of the State's long-arm statutes.

7. Venue is proper in Davidson County pursuant to Tenn. Code Ann. § 47-18-108(a)(3) because it is one of the counties in which Defendants conduct, transact or have conducted or transacted business and a county in which the alleged unfair and/or deceptive trade practices took place.

8. Defendants were at all times relative hereto, engaged in trade or commerce in the state as defined in Tenn. Code Ann. § 47-18-103(19).

FACTUAL ALLEGATIONS

Apple

9. Apple is the largest public company in the United States, with a market capitalization of around \$2 trillion and roughly \$200 billion in cash and equivalents on hand.

10. Apple consistently has advertised its iPhones as premium products, with an emphasis on speed, performance, and battery life.

11. Apple, for example, marketed its iPhone 5 as having “blazing fast performance,” a “blazing fast A6 chip,” “the world’s most advanced mobile operating system,” “even longer battery life,” an “LTE solution that provides blazing fast speeds,” and support for “ultrafast wireless standards,” enabling consumers to “browse, download and stream content even faster.”

12. Apple also claimed:

The all-new A6 chip was designed by Apple to maximize performance and power efficiency to support all the incredible new features in iPhone 5, including the stunning new 4-inch Retina display-all while delivering **even better battery life**. With up to twice the CPU and graphics performance, almost everything you do on iPhone 5 is blazing fast for launching apps, loading web pages and downloading email attachments.

(Emphasis added.)

13. Apple released the iPhone 6 and 6 Plus devices in September 2014.

14. Apple advertised its iPhone 6 as having “The Biggest Advancements in iPhone History,” “packed with innovative technologies,” including “Advanced Cameras” and a “Powerful A8 Chip,” and designed for “**blazing fast performance and power efficiency**.” (Emphasis added.)

15. An Apple press release also claimed:

“iPhone 6 and iPhone 6 Plus are the biggest advancements in iPhone history,” said Tim Cook, Apple’s CEO. ... “Only Apple can combine the best hardware, software and services at this unprecedented level and we think customers are going to love it.”

16. Apple released the iPhone 7 and 7 Plus devices in September 2016.

17. Apple later advertised its iPhone 7 as “the best, most advanced iPhone ever,” with “the Best Battery Life Ever in an iPhone,” and “packed with unique innovations,” including “advanced camera systems,” “more power and performance with the best battery life ever in an iPhone,” “the most powerful chip ever in a smartphone,” and more powerful graphics performance, “[e]nabling a new level of gaming and professional apps.”

Unexpected Power-Offs

iPhone 5 Series Devices

18. Notwithstanding Apple's advertising, consumers had begun complaining about unexpected shutdowns (internally referred to by Apple as "unexpected power-offs" or "UPOs") that consumers experienced on iPhone 5 devices as early as 2012.

iPhone 6 Series Devices

19. Consumers in 2016 began reporting even greater numbers of UPOs affecting newer iPhones, including the iPhone 6 and 6s.

20. These shutdowns were tied to issues with the iPhone batteries, which would sometimes show available power dropping dramatically from 50% to 30% or lower.

21. Apple confirmed that these UPOs were indeed battery-related, like the prior iPhone 5 UPOs.

22. However, Apple limited the amount of battery information available to its consumers which prevented consumers from being able to ascertain the true reason they were experiencing UPOs.

23. Apple initiated a recall related to the UPO issue in November 2016 during ongoing discussions with the Chinese authorities.

24. During that time, however, Apple never publicly disclosed that the UPO issue actually extended well beyond what Apple claimed was a "very small number of iPhone 6s devices" involved in the recall.

25. Instead, Apple's statements regarding the extent of the UPO issues in late 2016 were false, misleading, and even contradictory, and they were targeted solely to the Chinese market, despite the fact that UPOs occurred in iPhones across the globe.

26. Indeed, Apple's statement of December 1, 2016, *which was published only on the company's Chinese support page*, claimed:

After hearing reports from iPhone customers whose devices unexpectedly shut down, we thoroughly looked into these reports, and collected and analyzed devices. We found that a **small number of iPhone 6s devices**

made in September and October 2015 contained a battery component that was exposed to controlled ambient air longer than it should have been before being assembled into battery packs. As a result, these batteries degrade faster than a normal battery and cause unexpected shutdowns to occur. It's important to note, this is not a safety issue.

...

We also want our customers to know that an iPhone is actually designed to shut down automatically under certain conditions, such as extremely cold temperature. To an iPhone user, some of those shutdowns might seem unexpected, but they are designed to protect the device's electronics from low voltage.

We looked for any other factors that could cause an iPhone to shut down unexpectedly. After intensive investigations, no new factors have been identified. We will continue to monitor and analyze customer reports.

(Emphasis added.)

27. Apple's statement just five days later, published on the very same webpage, claimed:

We take every customer concern very seriously, including the **limited number of reports of unexpected shutdown** with iPhones. We also want to thank the agencies for forwarding concerns to us and their engagement with us. Every time we encounter an issue, we investigate using a thorough process including analyzing these devices. We also look at diagnostic information from the broader set of customers who have opted in to our standard diagnostic data reporting. When we find something, we work to quickly provide our customers with a solution.

As a result of our investigation on this, we found that a **small number of iPhone 6s devices** made in September and October 2015 contained a battery component that was exposed to controlled ambient air longer than it should have been before being assembled into battery packs. Two weeks ago, we launched a worldwide program to replace affected batteries, free of charge. We again apologize for any customer inconvenience. It's important to note, this is not a safety issue.

A small number of customers outside of the affected range have also reported an unexpected shutdown. Some of these shutdowns can occur under normal conditions in order for the iPhone to protect its electronics. In an effort to gather more information, we are including additional diagnostic capability in an iOS software update which will be

available next week. This will allow us to gather information over the coming weeks which may potentially help us improve the algorithms used to manage battery performance and shutdown. If such improvements can be made, they will be delivered in future software updates.

(Emphasis added.)

28. Apple never publicly disclosed what constituted the “small number of iPhone 6S devices”; the “limited number of reports of unexpected shutdown”; or the “small number of customers” repeatedly referenced in these statements. Apple certainly had such information, however.

29. On information and belief, Apple’s worldwide “installed base” of iPhones was roughly 715 million in December 2016, and **millions of iPhone devices worldwide experienced at least one UPO each day in late 2016.**

30. Thus, contrary to Apple’s public statements, the UPO issue was not affecting a “small number” or “very small number” of users or devices in late 2016.

31. Instead, the UPO issue was affecting millions of users daily.

32. Apple’s behavior confirms this understanding, given that it chose to adopt a drastic countermeasure that was not limited to a “small number” of devices but was delivered instead to the entire installed base of iPhone 6 series devices in iOS 10.2.1 and 7 series devices in iOS 11.2, as described below.

Battery Replacements

33. Despite Apple’s attempt to minimize the public perception of the breadth and depth of its UPO problems, various consumers and journalists continued to report that the UPO issues occurred far more frequently than Apple was admitting.

34. In the end, the UPO issues came down to a battery problem. Thus, some consumers were able to fix the problem by replacing their iPhone batteries.

35. Apple, however, never confirmed during the relevant period that a simple battery replacement would have resolved the UPO issue.

36. To the contrary, Apple actively worked to prevent consumers from replacing their iPhone batteries (even at full, out-of-warranty cost) unless the batteries failed Apple's own diagnostic test.

37. To make matters worse, Apple's diagnostic test did not account for the problem that Apple knew was causing the UPOs.

38. Thus, Apple was providing misleading information to consumers about the state of their batteries and, based on that misleading information, discouraging and preventing battery replacements.

Throttling

39. Instead of simply disclosing the UPO issues or allowing battery replacements to resolve the UPO issues, Apple developed a scheme that could cover up the UPO issues quietly through an iOS software update.

40. Apple chose to implement an update to the iOS software to limit the phones' hardware performance (*e.g.*, throttle) so that the phones could not demand the power levels that were exceeding the abilities of problem batteries, which were, in turn, causing the UPOs.

41. After the data received from the iOS 10.2 release largely confirmed Apple's understanding of the issue, the company moved forward with iOS 10.2.1, which was first released to the public on January 23, 2017, and implemented the throttling with regard to iPhone 6, 6 Plus, 6s, 6s Plus, and SE devices.

42. Apple later implemented throttling for iPhone 7 and 7 Plus devices in December 2017 with the release of iOS 11.2.

43. As noted above, despite Apple's repeated statements regarding a purportedly "small number" of devices affected by UPOs, the throttling mechanisms in iOS 10.2.1 and 11.2 were delivered to Apple's "entire install base" and were not phone specific—in other words, any phone could be affected at any time, depending on a number of factors.

44. In addition, despite Apple's statements that the UPO issues did not affect iPhone 8 and later devices, the company eventually conceded that it would need to throttle those devices, as well.

45. In short, the UPO issue was not limited to a "small number" of phones but was instead endemic to all iPhones.

Concealment of Throttling

46. Again, though, Apple chose to conceal its throttling (along with the underlying UPO issues described above) from consumers.

47. Indeed, despite the significance of the throttling "fix," the original release or "read me" notes for iOS 10.2.1 and 11.2 gave no indication of any anticipated throttling or reduced performance whatsoever.

48. To the contrary, the notes for 10.2.1 referred only to unspecified "bug fixes," security updates, new features, and other "improvements."

49. Further, although Apple later quietly amended the iOS 10.2.1 release notes on February 23, 2017 (one month after the original release date), the amended notes merely reflected that the update "also improves power management during peak workloads to avoid unexpected shutdowns on iPhone."

50. In addition, the release notes were amended only after more than 50% of users had already downloaded the update, such that those users never were prompted to review the release notes.

51. Likewise, consumers who purchased an iPhone with iOS 10.2.1 (or a subsequent iOS version) pre-installed never would have been prompted to review the notes either.

52. Therefore, the vast majority of affected iPhone users never had any indication that Apple had "improve[d] power management," let alone intentionally throttled the performance of their iPhone.

Admission of Throttling

53. Due to Apple's lack of disclosures, it was not until mid-December 2017 when several sophisticated Apple consumers reported, based on their own research, that iOS 10.2.1 and 11.2 appeared to have throttled iPhones.

54. By December 20, 2017, the public reaction to this news had forced Apple to confirm the consumers' suspicions.

55. In doing so, however, Apple again provided only vague explanations for its conduct, claiming that the iOS updates were intended to "smooth out instantaneous peaks" in performance demands for devices with older batteries.

56. After further outcry, though, Apple finally released a more detailed statement and apology on December 28, 2017, ultimately confirming the reports of throttling.

57. Apple also noted in its December 28 statement that the throttling updates applied to the iPhone 6, 6 Plus, 6s, 6s Plus, SE, 7, and 7 Plus, and it attempted to address customer concerns by (i) reducing the price for out-of-warranty replacement batteries for these phones from \$79 to \$29; (ii) promising to issue a new iOS update "with new features that give users more visibility into the health of their iPhone's battery, so they can see for themselves if its condition is affecting performance"; and (iii) vaguely ensuring that it was "working on ways to make the user experience even better"

58. Thereafter, Apple released iOS 11.3 on March 29, 2018, which, for the first time, allowed consumers to turn off the throttling mechanism in their iPhones.

Effects of Apple's Conduct on Sales

59. Although consumers eventually learned the truth about Apple's secret throttling, Apple reaped the benefits of that throttling for about a year.

60. During that time, consumers with iPhones experienced reduced performance, and Apple told many of those consumers that their batteries did not need to be replaced. As a result, many consumers decided that the only way to get improved performance was to purchase a newer-model iPhone from Apple.

61. Apple, of course, fully understood such effects on sales.

62. When informed of UPO and throttling issues, and when given the choice, consumers were far more likely to replace their batteries (thus avoiding an unnecessary upgrade to another iPhone) than they had been prior to Apple's UPO and throttling disclosures.

63. In sum, Apple's unfair and deceptive acts and practices described above artificially increased Apple's iPhone sales, potentially by millions of devices per year.

64. Apple recently settled a private class action lawsuit regarding this conduct. Under that proposed settlement, Apple must pay affected consumers up to \$500 million.

VIOLATIONS OF LAW

COUNT I:

Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-104(a) and (b)

65. Plaintiff, the State of Tennessee, incorporates by reference and re-alleges the allegations contained in this Complaint as if set forth fully herein.

66. In connection with its advertisement and sale of iPhones, iPhone batteries, and iOS software releases within Tennessee and to Tennessee consumers and residents, Apple engaged in unfair and deceptive acts and practices in violation of Tenn. Code Ann. §§ 47-18-104(a) and (b)(27).

67. Such conduct includes but is not limited to:

- a. Making deceptive representations and misrepresentations about the number of iPhone devices affected by UPOs and the causes of those UPOs;
- b. Concealing, suppressing, and omitting material facts about the number of iPhone devices affected by UPOs and the causes of those UPOs with the intent that consumers rely on such concealments, suppressions, or omissions;
- c. Making deceptive representations and misrepresentations about the health of consumers' iPhone batteries;

- d. Concealing, suppressing, and omitting material facts about the health of consumers' iPhone batteries with the intent that consumers rely on such concealments, suppressions, or omissions;
- e. Unfairly discouraging and preventing iPhone users from replacing their batteries, when Apple knew that replacing the batteries likely would fix the UPO issue;
- f. Making deceptive representations and misrepresentations about the nature, effects, and consequences of iOS software updates;
- g. Concealing, suppressing, and omitting material facts about the nature, effects, and consequences of iOS software updates with the intent that consumers rely on such concealments, suppressions, or omissions; and
- h. Unfairly precluding iPhone users from declining or turning off the throttling of their devices.

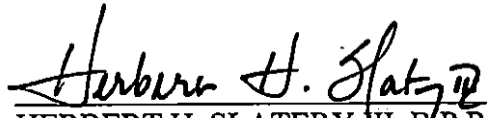
PRAYER FOR RELIEF

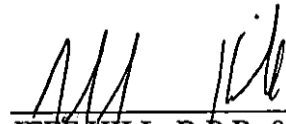
The State requests the court grant the following relief:

- a. That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101 and 47-18-116;
- b. Enter judgment against the Defendants and in favor of the State for each violation alleged in this Complaint;
- c. Enter a permanent injunction to prevent future violations of the TCPA by Defendants;
- d. Order Defendants, pursuant to Tenn. Code Ann. § 47-18-108(b)(1), to offer Tennessee consumers restitution and refunds of ascertainable losses;
- e. Order Defendants to pay the State a civil penalty of \$1,000 for each violation of the TCPA pursuant to Tenn. Code Ann. § 47-18-108(b)(3);

- f. Pursuant to Tenn. Code Ann. §§ 47-18-108(a)(5) and (b)(4), order the Defendants to pay costs and reasonable attorneys' fees incurred by the Plaintiff in connection with the investigation and litigation of this matter;
- g. Order that all costs in this case be taxed against the Defendants and no costs taxed to the State as provided in Tenn. Code Ann. § 47-18-116; and
- h. That the Court grant such further relief as the Court deems appropriate or just to remedy the effects of Ethicon's unlawful trade practices.

RESPECTFULLY SUBMITTED this 18th day of Nov.


HERBERT H. SLATTERY III, B.P.R. 9077
Attorney General and Reporter of Tennessee


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NOV 20 2020

Davidson County Chancery Court

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE, *ex rel.* HERBERT)
H. SLATERY III, Attorney General and)
Reporter,)
)
Plaintiff,)
)
v.)
)
APPLE INC.)
)
Defendant.)

Case No.

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AGREED FINAL JUDGMENT

Plaintiff, State of Tennessee, by and through Herbert H. Slatery III, Attorney General ("the State"), and defendant Apple Inc., a corporation ("Defendant" or "Apple") have stipulated and consent to the Court's entry of this Consent Judgment ("Judgment") in this proceeding and accept this Judgment as the final adjudication of this civil action without taking proof and without trial, without this 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 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.

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.

The Court having considered the matter and good cause appearing:

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

PARTIES

1. Plaintiff is the State of Tennessee, represented by Herbert H. Slatery III Attorney General and Reporter.
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 Tennessee, including but not limited to business in Davidson County.
4. This Court has jurisdiction over the Complaint and the parties necessary for the Court to enter this Judgment and any orders hereafter appropriate.
5. Venue is proper in Davidson County.
6. This Judgment is entered pursuant to and subject to the Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101 to -131.
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 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 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 Judgment after the date of its entry, or to prevent the Tennessee Attorney General 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 Judgment. Further, nothing in paragraph 23 shall be construed to limit the authority of the Tennessee Attorney General in this action to protect the interests of Tennessee.

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 State of Tennessee, \$2,113,063.81, is to be paid by Apple directly to the Tennessee 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 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 Judgment, whichever is later. Said payment to the Tennessee Attorney General shall be used and designated by and in the sole discretion of the Tennessee 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, a payment to the state, or any other lawful purpose, at the sole discretion of the Tennessee Attorney General. Upon completion of the wire transfer described above, Apple shall have no further obligation to assist Tennessee 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 Judgment, Tennessee 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 Tennessee Attorney General to enforce Apple's obligations under this judgment.
28. Notwithstanding any term of this 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 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 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 Judgment shall be construed in accordance with the laws of Tennessee.
31. Nothing in this 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 Tennessee, or any state agency has approved or approves of any of Apple's actions or past, present, or future business practices.
33. This Judgment shall not bar the Tennessee 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 Judgment.
34. Apple willingly has entered into this Judgment in order to resolve the Attorney General's claims under the Tennessee Consumer Protection Act as to the matters addressed in this Judgment and thereby avoid significant expense, inconvenience, and uncertainty.
35. Apple has entered into this 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. Except as specifically set forth in Tennessee law, no part of this 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 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 Judgment. Notwithstanding the foregoing, the Tennessee Attorney General may file an action to enforce the terms of this Judgment.
37. No part of this 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 Judgment shall be with the parties to this Judgment and the Court.

39. Nothing in this Judgment constitutes an agreement by the Tennessee Attorney General concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws. The Judgment takes no position with regard to the tax consequences of the Judgment with regard to federal, state, local, and foreign taxes.
40. This Judgment is binding upon the State of Tennessee and Apple, and any of Apple's respective successors, assigns, or other entities or persons otherwise bound by law.
41. Apple agrees that this 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 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 judgment will continue in full force.
43. This 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 Judgment not fully expressed herein or attached hereto.
44. Jurisdiction is retained by the Court for the purpose of enabling any party to the Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for constructing this Judgment's terms, for modifying any of the injunctive provisions, for enforcing compliance, and for punishing violations, if any.
45. This Judgment becomes effective upon entry, which is ordered forthwith. No notice of entry of judgment is required to be served upon Defendant.
46. This 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.
47. Any notices or other documents required to be sent to the Parties pursuant to this 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:

Deputy Attorney General

Consumer Protection Division
Office of the Tennessee Attorney General
P.O. Box 20207
Nashville, TN 37202-0207

For Apple Inc.:

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

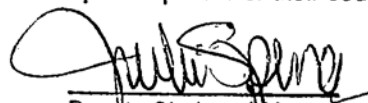
Apple Inc.
Attn: General Counsel
1 Apple Park Way
Cupertino, CA 95014

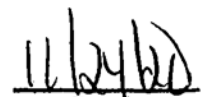
DATED this _____ day of _____, 20_____.


CHANCELLOR

RULE 58 CERTIFICATION

A Copy of this order has been served by U. S. Mail
upon all parties or their counsel named above.

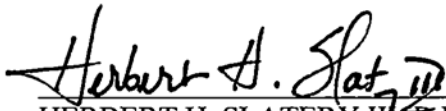

Deputy Clerk and Master
Chancery Court


Date

CONSENT TO JUDGMENT

1. Defendant acknowledges that it has waived service of the Summons and Complaint, has read this Judgment, and is aware of its right to a trial in this matter and has waived the same.
2. Defendant admits the jurisdiction of this Court and consents to the entry of the foregoing Judgment.
3. Defendant states that no promise of any kind or nature whatsoever was made to induce it to enter into this Judgment and declares that it has entered into this Judgment voluntarily.
4. This 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 Judgment. Nothing herein is intended to create a private right of action by other parties; however, this Judgment shall not limit the rights of any private party to pursue any remedies allowed by law.
5. Defendant acknowledges that its acceptance of this Judgment is for the purpose of settling the ongoing consumer fraud lawsuit filed by the State.
6. This Consent to 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.
7. Defendant represents and warrants that the individual signing below on its behalf is duly appointed and authorized to do so.

DATED this 20th day of November 2020.



HERBERT H. SLATTERY III, B.P.R. 9077
Attorney General and Reporter of Tennessee




JEFF HILL, B.P.R. 016731
Deputy Attorney General
Consumer Protection Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
T: (615) 253-3819
F: (615) 532-2910
Email: jeff.hill@ag.tn.gov

ATTORNEYS FOR THE STATE OF TENNESSEE

State of Tennessee v. Apple Inc.

DEFENDANT APPLE INC.

By: 

Noreen Krall

Vice President and Chief Litigation Counsel

Apple Inc.

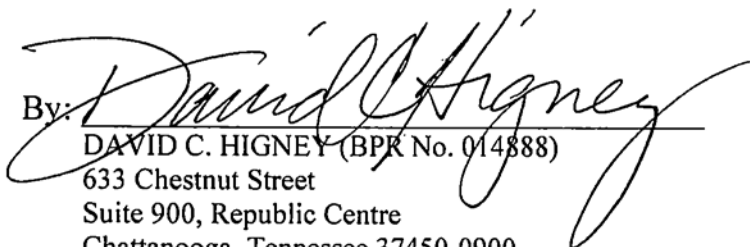
1 Apple Park Way

Cupertino, CA 95014

DEFENDANT APPLE INC.

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

**GRANT KONVALINKA & HARRISON, P.C.
Local Counsel**

By: 
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