

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into as of the 25th day of November, 2020 (hereinafter, “Effective Date”), by and between the Wisconsin Attorney General, Joshua L. Kaul, and Apple Inc. (hereinafter “Apple”). These parties shall be referred to collectively herein as “the Parties.”

WHEREAS, an Attorneys General Multistate Working Group has been engaged in an investigation regarding Apple’s business practices, acts and omissions, including its representations and disclosures, related to Performance Management in certain iPhones; and

WHEREAS, this Settlement Agreement is agreed to by the Parties and entered into solely for the purpose of allowing the Parties to avoid expenses of litigation and to avoid protracted litigation; and

WHEREAS, contemporaneous with this Settlement Agreement, Apple is entering into similar agreements with the Attorneys General 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”) hereinafter collectively (including Wisconsin) referred to as “Attorneys General” or “Signatory Attorneys General;”

NOW THEREFORE, for the mutual consideration and release described herein, the Parties agree as follows.

I. DEFINITIONS

As used in this Settlement Agreement, the following words or terms shall have the following meanings:

1.1. “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,

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.

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.

1.2. “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.

1.3. “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.

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

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

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

1.7. “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.

1.8. “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.

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

1.10. “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.

II. REMEDIAL ACTIONS

2.1 The Remedial Actions provisions of this Settlement Agreement 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 Settlement Agreement.

2.2 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.

2.3 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.

2.4 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.

2.5 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 2.2 and the iPhone user interface described in paragraph 2.4;
- b. communicate such information to consumers wherever relevant; and
- c. refer consumers to such webpage(s) or interface, where appropriate.

III. DISPUTE RESOLUTION

3.1 If one or more Attorneys General reasonably believe that Apple has failed to comply with any term of the Remedial Actions, 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.

3.2 Nothing herein shall be construed to exonerate any failure to comply with any provision of this Settlement Agreement after the Effective Date, or to prevent the Wisconsin Attorney General from initiating a proceeding for failure to comply with this Settlement Agreement. Further, nothing in paragraph 3.1 shall be construed to limit the authority of the Wisconsin Attorney General to protect the interests of the State of Wisconsin.

IV. MONETARY PAYMENT

4.1. 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 Wisconsin Attorney General, \$3,293,355.19, is to be paid by Apple directly to the Wisconsin Department of Justice. The wiring instructions shall be provided to Apple no later than seven (7) days after the Effective Date. Apple shall make the payment within sixty (60) days of the Effective Date. Said payment to the Wisconsin Department of Justice shall be used and designated by and in the sole discretion of the Wisconsin Attorney General and shall be used for reimbursement of attorney fees and other costs of investigation; distribution or application to any applicable consumer protection enforcement funds, including future consumer protection enforcement, consumer education, litigation or local consumer aid, or revolving funds; defraying the costs of the inquiry leading hereto, or any other lawful purpose, at the sole discretion of the Wisconsin Attorney General. Upon completion of the wire transfer described above, Apple shall have no further obligation to assist the State of Wisconsin in its use of its portion of the payment.

4.2 Also out of the total amount due to the Attorneys General set forth in paragraph 4.1, 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

5.1 By its execution of this Settlement Agreement, the State of Wisconsin 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 Wisconsin Attorney General has asserted or could have asserted concerning the Covered Conduct. The Wisconsin Attorney General executes this release in his official capacity and releases only claims that the Wisconsin Attorney General has the authority to bring or release. Nothing contained in this paragraph shall be construed to limit the ability of the Wisconsin Attorney General to enforce Apple’s obligations under this Settlement Agreement.

5.2 Notwithstanding any term of this Settlement Agreement, specifically reserved and excluded from the release in paragraph 5.1 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.

5.3 Nothing in this Settlement Agreement 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 Settlement Agreement 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.

VI. GENERAL PROVISIONS

6.1 The provisions of this Settlement Agreement shall be construed in accordance with the laws of Wisconsin.

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

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

6.4. This Settlement Agreement shall not bar the Wisconsin 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 Settlement Agreement.

6.5. Apple willingly has entered into this Settlement Agreement in order to resolve the Attorney General's claims under Wis. Stat. § 100.18(1) as to the matters addressed in this Settlement Agreement and thereby avoid significant expense, inconvenience, and uncertainty.

6.6. Apple has entered into this Settlement Agreement solely for the purposes of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Apple expressly denies. No part of this Settlement Agreement, 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 matter and not by any other party or for any other purpose.

6.7. This Settlement Agreement 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 Settlement Agreement. Notwithstanding the foregoing, the Wisconsin Attorney General may file an action to enforce the terms of this Settlement Agreement.

6.8. No part of this Settlement Agreement 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.

6.9. The exclusive right to enforce any violation or breach of this Settlement Agreement shall be with the parties to this Settlement Agreement.

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

6.11. This Settlement Agreement is binding upon the State of Wisconsin and Apple, and any of Apple's respective successors, assigns, or other entities or persons otherwise bound by law.

6.12. Apple agrees that this Settlement Agreement 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.

6.13. If any provision of this Settlement Agreement 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.

6.14. This Settlement Agreement 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 Settlement Agreement not fully expressed herein or attached hereto.

6.15. This Settlement Agreement becomes effective upon execution.

6.16. 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:

Lewis W. Beilin

Assistant Attorney General

17 West Main Street

Post Office Box 7857

Madison, WI 53707-7857

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

[This space intentionally left blank. Signature pages follow.]

Apple Inc.:



By: _____

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

State of Wisconsin:

By:  _____

Lewis W. Beilin
Assistant Attorney General
Wisconsin Department of Justice
17 West Main Street
Post Office Box 7857
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beilinlw@doj.state.wi.us

APPENDIX A

Alaska

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

Arizona

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

Arkansas

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

California

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

Connecticut

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

District of Columbia

- D.C. Code §§ 28-3901 *et seq.*

Florida

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

Hawaii

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

Idaho

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

Illinois

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

Indiana

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

Iowa

- Iowa Code §§ 714.16 *et seq.*

Kansas

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

Kentucky

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

Louisiana

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

Michigan

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

Minnesota

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

Missouri

- Chapter 407 RSMo, Missouri Merchandising Practices Act

Montana

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

Nebraska

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

Nevada

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

New Jersey

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

North Carolina

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

North Dakota

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

Ohio

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

Oregon

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

Pennsylvania

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

South Carolina

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

Tennessee

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

Texas

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

Utah

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

Vermont

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

Virginia

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

Wisconsin

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