

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION 1
CIVIL ACTION NO. 20-CI-903

ENTERED
NOV 18 2020
FRANKLIN CIRCUIT COURT AMY FELDMAN, CLERK

Kem

PEOPLE OF THE COMMONWEALTH OF KENTUCKY)

Plaintiff,)

v.)

APPLE INC.)

Defendant.)

Case No. _____

CONSENT JUDGMENT

* * * * *

The Plaintiff, the Commonwealth of Kentucky by and through Daniel Cameron, the Attorney General, and Apple Inc., as evidenced by the signatures below, do consent to entry of this Judgment and its provisions. This Consent Judgment is part of a larger multistate action and is being filed in concert with judgments in those jurisdictions.

WHEREFORE,

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 this 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 Commonwealth.

6. This Consent 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.
8. The Defendant does not object to the Attorney General's *ex-parte* submission and presentation of this Complaint and Consent Judgment to the Franklin Circuit Court for approval, and agrees that the Franklin Circuit Court is the proper venue for this action.
9. The amount payable to the Commonwealth of Kentucky pursuant to the following Consent Judgment is \$1,696,490.38 of which \$424,122.60 is for the recovery of the reasonable cost of investigation and attorney's fees of the Kentucky Attorney General's Office.

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO. _____

PEOPLE OF THE COMMONWEALTH OF KENTUCKY)

Plaintiff,)

v.)

APPLE INC.)

Defendant.)

Case No. _____

CONSENT JUDGMENT

Plaintiff Commonwealth of Kentucky, ex rel. Daniel Cameron, Attorney General (“the Commonwealth”), 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.

The Court having considered the matter and good cause appearing:

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

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.

PARTIES

1. Plaintiff is the Commonwealth of Kentucky, *ex rel.* Daniel Cameron, Attorney General.
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 Commonwealth of Kentucky, including but not limited to business in Franklin County, Kentucky.
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 Franklin County, Kentucky.
6. This Judgment is entered pursuant to and subject to the Kentucky Consumer Protection Act KRS 367.110-993, *et seq.* (the “KCPA”).
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 Kentucky 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 Kentucky Attorney General in this action to protect the interests of the KCPA.

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 Kentucky Attorney General, \$1,696,490.38, is to be paid by Apple directly to the Kentucky 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. The amount payable to the Commonwealth of Kentucky is \$1,696,490.38 of which \$424,122.60 is for the recovery of the reasonable cost of investigation and attorney's fees of the Kentucky Attorney General's Office. Upon completion of the wire transfer described above, Apple shall have no further obligation to assist Kentucky 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, Kentucky 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 Kentucky 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 Kentucky.
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 Commonwealth of Kentucky, 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 Kentucky 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 KCPA 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. 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 Kentucky 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 Office of the Kentucky 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 Office of the Kentucky Attorney General 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 entered pursuant to CR 54.
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:

J. Christian Lewis
Executive Director of Consumer Protection
Christian.Lewis@ky.gov
Jonathan E. Farmer
Special Attorney in Consumer Protection
Jonathan.Farmer@ky.gov
Attorneys for the Commonwealth of Kentucky
Office of the Attorney General of Kentucky
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601
Tel: 502-696-5300
Fax: 502-573-8317

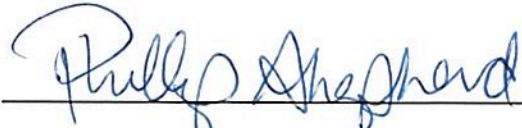
For Apple Inc.:

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 18 day of Nov., 2020.

A handwritten signature in blue ink, reading "Philip D. Shepherd", written over a horizontal line.

JUDGE, FRANKLIN CIRCUIT COURT

Daniel Cameron
Attorney General

By: Jonathan Farmer - with permission
 J. Christian Lewis *Rebecca Price*
Executive Director of Consumer Protection
Jonathan E. Farmer
Special Attorney in Consumer Protection
Attorneys for the Commonwealth of Kentucky
Office of the Attorney General of Kentucky
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601
Tel: 502-696-5300
Fax: 502-573-8317

DEFENDANT APPLE INC.

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