

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.)	CASE NO. CI 20-_____
DOUGLAS J. PETERSON, ATTORNEY)	
GENERAL,)	
)	
Plaintiff,)	
)	COMPLAINT
v.)	
)	
APPLE INC.)	
)	
Defendant.)	

The State of Nebraska, ex rel. Douglas J. Peterson, Attorney General, by and through the undersigned Assistant Attorney General (“State”), sets forth its causes of action against Defendant.

INTRODUCTION

1. This is a consumer protection action brought pursuant to the Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq. (“Consumer Protection Act”), and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 et seq. (“Uniform Deceptive Trade Practices Act”).

2. The State has cause to believe the Defendant Apple Inc. (“Apple” or “Defendant”) has violated the Consumer Protection Act and Uniform Deceptive Trade Practices Act. The State also has cause to believe this action is in the public interest because Apple has deceived, misled, and caused harm to Nebraska consumers 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.

PARTIES

3. Plaintiff is the State of Nebraska, ex rel. Douglas J. Peterson, Attorney General of the State of Nebraska, who is charged with, inter alia, the enforcement of the Consumer Protection Act and the Uniform Deceptive Trade Practices Act, which prohibit unconscionable, unfair, misleading or deceptive acts or practices affecting the conduct of trade or commerce or consumer transactions. Pursuant to the Consumer Protection Act and Uniform Deceptive Trade Practices Act, the Attorney General may initiate civil law enforcement proceedings in the name of the State to enjoin violations of the Consumer Protection Act and Uniform Deceptive Trade Practices Act and to secure such equitable and other relief as may be appropriate in each case.

4. Apple Inc. is California corporation with its principal place of business in Cupertino, California.

5. At all times relevant hereto, Apple transacted business in the State of Nebraska.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the Defendant pursuant to Neb. Rev. Stat. § 59-1608 and Neb. Rev. Stat. § 87-303.05(1) because Apple has transacted business within the State of Nebraska at all times relevant to this Complaint.

7. Venue for this action is proper in this Court pursuant to Neb. Rev. Stat. § 59-1608.01 and Neb. Rev. Stat. 87-303.05(1) because Defendant transacts business in Lancaster County, Nebraska and throughout Nebraska and/or some of the transactions upon which this action arose occurred in Lancaster County, Nebraska and throughout Nebraska.

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

FACTUAL ALLEGATIONS

Apple

8. 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.

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

10. 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.”

11. 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.)

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

13. 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.)

14. 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.”

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

16. 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

17. 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

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

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

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

21. 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.

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

23. 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.

24. 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.

25. 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.)

26. 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.)

27. 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.

28. 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.

29. 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.

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

31. 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

32. 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.

33. 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.

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

35. 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.

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

37. 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

38. 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.

39. 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.

40. 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.

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

42. 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.

43. 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.

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

Concealment of Throttling

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

46. 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.

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

48. 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."

49. 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.

50. 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.

51. 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

52. 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.

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

54. 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.

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

56. 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”

57. 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

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

59. 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.

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

61. 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.

62. 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.

63. 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 the Uniform Deceptive Trade Practices Act **Deceptive Trade Practices – Count I**

64. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding paragraphs 1 through 63 as if they were set out at length herein.

65. In the course of marketing, promoting, selling, and distributing iPhones, iPhone batteries, and iOS software releases within Nebraska and to Nebraska consumers, Apple engaged in conduct which constitutes deceptive or misleading practices, which is therefore unlawful under the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 et seq., including but 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.
- i. Making representations concerning the characteristics, uses, benefits, and/or qualities of Apple's iPhones, iPhone batteries, and iOS software releases that they did not have.

66. Accordingly, Apple violated the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 *et seq.*

67. In doing so, Apple acted willfully in that it knew or should have known, at all relevant times, that its conduct was of the nature prohibited by the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 *et seq.*

Violations of the Consumer Protection Act
Deceptive Trade Practices – Count II

68. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding paragraphs 1 through 67 as if they were set out at length herein.

69. In the course of marketing, promoting, selling, and distributing iPhones, iPhone batteries, and iOS software releases within Nebraska and to Nebraska consumers, Apple engaged in conduct which constitutes deceptive or misleading practices, which is therefore unlawful under the Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq., including but 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.
- i. Making representations concerning the characteristics, uses, benefits, and/or qualities of Apple's iPhones, iPhone batteries, and iOS software releases that they did not have.

70. Accordingly, Apple violated the Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1601 *et seq.*

71. In doing so, Apple acted willfully in that it knew or should have known, at all relevant times, that its conduct was of the nature prohibited by the Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1601 *et seq.*

Request for Relief

WHEREFORE, the State of Nebraska respectfully requests this Court enter an Order:

A. Pursuant to Neb. Rev. Stat. §§ 59-1608 and 87-303.05, the Court permanently enjoin and restrain Defendant, its agents, servants, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in false, misleading, or deceptive trade practices in the marketing, promotion, advertising, offering for sale, selling and distributing of Defendant's iPhones, iPhone batteries, and iOS software releases.

B. Pursuant to Neb. Rev. Stat. § 59-1614 and Neb. Rev. Stat. § 87-303.11, the Defendant be ordered to pay civil penalties in the amount of \$2,000.00 for each and every violation of the Consumer Protection Act and the Uniform Deceptive Trade Practices Act;

C. Pursuant to the Consumer Protection Act, Neb. Rev. Stat. § 59-1608, and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-303, the Defendant be ordered to pay costs and reasonable attorney's fees incurred by the State in connection with the investigation and litigation of this matter; and

D. That the Court grant such other and further relief as the Court deems necessary or appropriate to remedy the effects of Defendant's unlawful trade practices.

Dated this 18th day of November, 2020.

BY: Douglas J. Peterson, #18146
Attorney General of Nebraska

BY: s/ Meghan E. Stoppel
Meghan E. Stoppel, #26290
Assistant Attorney General
Consumer Protection Division
Nebraska Attorney General's Office
2115 State Capitol Building
Lincoln, NE 68509
Phone: (402) 471-2811
meghan.stoppel@nebraska.gov

Counsel for State of Nebraska

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.)	CASE NO. CI 20-_____
DOUGLAS J. PETERSON, ATTORNEY)	
GENERAL,)	
)	
Plaintiff,)	AGREEMENT TO
)	ENTRY OF FINAL CONSENT
v.)	JUDGMENT
)	
APPLE INC.,)	
)	
Defendant.)	

AND NOW, comes Plaintiff, the State of Nebraska, acting by and through Attorney General Douglas J. Peterson, has brought this action against Defendant Apple Inc. a corporation hereinafter, referred to as (“Defendant” or “Apple”). The Parties 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 Agreement 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,

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.

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.

PARTIES

1. The State of Nebraska, Douglas J. Peterson (“Attorney General”), is the Plaintiff in this case. The Attorney General is charged with, among other things, the responsibility of enforcing the Consumer Protection Act, Neb. Rev. Stat. § 59-1601 *et seq.* and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 *et seq.*

2. Apple Inc. is a Defendant in this case and is a California company, with its principal office located in Cupertino, California.

3. Apple Inc. consents to the jurisdiction of the court solely for purposes of this Agreement and entry of a Final Consent Judgment.

4. Defendant conducts business in the State of Nebraska, including but not limited to business in Lancaster County.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. FINDINGS

5. This Court has jurisdiction over the subject matter of this lawsuit and over all Parties.

6. The terms of this Agreement shall be governed by the laws of the State of Nebraska.

7. Entry of this Agreement is in the public interest and reflects a negotiated agreement among the Parties.

DEFINITIONS

The following definitions shall be used in construing the Agreement:

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 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 Agreement.

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 Agreement after the date of its entry, or to prevent the Nebraska 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 Agreement. Further, nothing in paragraph 23 shall be construed to limit the authority of the Nebraska Attorney General in this action to protect the interests of the State of Nebraska.

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 Nebraska, one million, three hundred and thirty nine thousand, four hundred and twenty seven dollars and forty five cents (\$1,339,427.45), is to be paid by Apple directly to the State of Nebraska. The payment 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 Nebraska Attorney General shall be deposited into the State Settlement Cash Fund 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 Nebraska Attorney General. Upon completion of the payment described above, Apple shall have no further obligation to assist the State of Nebraska 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 Agreement, Nebraska 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 Nebraska Attorney General to enforce Apple’s obligations under this Agreement.

28. Notwithstanding any term of this Agreement, 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 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 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.

GENERAL PROVISIONS

30. The provisions of this Agreement shall be construed in accordance with the laws of Nebraska.

31. Nothing in this Agreement shall be construed as an approval by the Attorney 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 Nebraska, or any other governmental unit of the State of Nebraska has approved or approves of any of Apple's actions or past, present, or future business practices.

33. This Agreement shall not bar the Nebraska Attorney General or any other governmental entity of the State of Nebraska from enforcing applicable laws, regulations, or rules against Apple for conduct subsequent to the Effective Date or otherwise not covered by this Agreement.

34. Apple willingly has entered into this Agreement in order to resolve the Attorney General's claims under the Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1601 *et seq.* and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 *et seq.* as to the matters addressed in this Agreement and thereby avoid significant expense, inconvenience, and uncertainty.

35. Apple has entered into this 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 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 litigation and not by any other party or for any other purpose.

36. This 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 Agreement. Notwithstanding the foregoing, the Nebraska Attorney General may file an action to enforce the terms of this Agreement.

37. No part of this 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.

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

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

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

41. Apple agrees that this 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.

42. If any provision of this 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 Agreement will continue in full force.

43. This 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 Agreement 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 Agreement's terms, for modifying any of the injunctive provisions, for enforcing compliance, and for punishing violations, if any.

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

46. This Agreement 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 Agreement to Entry of Final Consent 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:

Chief, Consumer Protection Division
Nebraska Attorney General's Office
2115 State Capitol Building
Lincoln, NE 68509
ago.consumer@nebraska.gov

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.

JOINTLY APPROVED AND SUBMITTED FOR ENTRY:

FOR PLAINTFF:

THE STATE OF NEBRASKA, ex rel.
DOUGLAS J. PETERSON, Attorney General

DOUGLAS J. PETERSON, #18146
Attorney General



Date: November 18, 2020

Meghan E. Stoppel, #26290
Assistant Attorney General
Consumer Protection Division
Nebraska Attorney General's Office
2115 State Capitol Building
Lincoln, NE 68509-8920
Phone: (402) 471-2811
meghan.stoppel@nebraska.gov

Counsel for State of Nebraska

APPROVED AS TO FORM AND CONTENT:

For Defendant Apple Inc.



11/18/2020

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

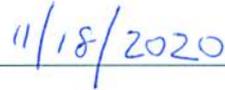
Date

Counsel for Defendant

APPROVED AS TO FORM:



Daniel E. Klaus (#17889)
Rembolt Ludtke LLP
1128 Lincoln Mall, Suite 300
Lincoln, NE 68508
(402) 475-5100
dklaus@remboltlawfirm.com



Local Counsel for Defendant

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

APPENDIX A

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

APPENDIX A

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

APPENDIX A

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.*