

1 ISABELLE L. ORD (Bar No. 198224)
isabelle.ord@dlapiper.com
2 JEANETTE T. BARZELAY (Bar No. 261780)
jeanette.barzelay@dlapiper.com
3 ALEXANDER E. WOLF (Bar No. 299775)
alexander.wolf@dlapiper.com
4 **DLA PIPER LLP (US)**
5 555 Mission Street, Suite 2400
San Francisco, CA 94105-2933
6 Tel: 415.836.2500
7 Fax: 415.836.2501

8 RAJ N. SHAH (*admitted pro hac vice*)
raj.shah@dlapiper.com
9 ERIC M. ROBERTS (*admitted pro hac vice*)
eric.roberts@dlapiper.com
10 **DLA PIPER LLP (US)**
11 444 West Lake Street, Suite 900
Chicago, IL 60606-0089
12 Tel: 312.368.4000
13 Fax: 312.236.7516

14 Attorneys for Defendant
APPLE INC.

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **OAKLAND DIVISION**

19 MATTHEW PRICE, individually and on behalf
of all others similarly situated,
20
21 Plaintiff,
22
23 v.
24 APPLE INC., a California corporation,
25
26 Defendant.

CASE NO. 4:21-CV-02846-HSG

**DEFENDANT APPLE INC.'S NOTICE
OF MOTION AND MOTION TO
DISMISS SECOND AMENDED CLASS
ACTION COMPLAINT, AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: November 17, 2022
Time: 2:00 p.m.
Crtrm: 2 (4th Floor, Oakland)
Judge: Hon. Haywood S. Gilliam, Jr.

Complaint filed: April 20, 2021

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NOTICE OF MOTION AND MOTION**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on **November 17, 2022**, at **2:00 p.m.**, or as soon thereafter as this matter may be heard by the Honorable Haywood S. Gilliam, Jr. in Courtroom 2, 4th Floor, of the above-entitled Court located at 1301 Clay Street, Oakland, California, 94612, Defendant Apple Inc. (“Apple”) will, and hereby does, move to dismiss with prejudice the Second Amended Complaint (“SAC”) of Plaintiff Matthew Price (“Plaintiff”), individually and on behalf of all others similarly situated, and each claim asserted therein against Apple.

Apple brings this Motion pursuant to Federal Rule of Civil Procedure 12(b)(6) because Plaintiff fails to state a claim for relief as to any and each claim alleged against Apple. This Motion is based on this Notice of Motion and Motion, Memorandum of Points and Authorities, and all pleadings, arguments, and matters before the Court.

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Plaintiff’s Second Amended Complaint (“SAC”) is his third attempt to state a claim against Apple Inc. (“Apple”) for allegedly terminating his Apple ID because he sought and obtained chargebacks on multiple in-app game purchases. But the SAC fares no better because Plaintiff still fails to allege any facts establishing that Apple’s alleged conduct was impermissible. As the Court acknowledged in dismissing the First Amended Complaint (“FAC”), Apple’s Media Services Terms and Conditions (the “Terms”) grant Apple a clear, unambiguous, and enforceable right to terminate the “Services” to Plaintiff “if Apple determined (or even suspected) that he failed to comply with the Apple Terms.” *See* Dkt. 52 (“Order”) at 11. Having twice failed to show that Apple’s exercise of its contractual right to terminate his Apple ID and access to the Services violated California law and public policy, Plaintiff tries a new tack in the SAC—he now concedes that the Terms are enforceable but contends that Apple allegedly breached them by “erroneously” determining that Plaintiff’s conduct failed to comply with the Terms.

But Plaintiff’s own allegations indicate that Apple rightfully could have determined that he breached the Terms by engaging in the admitted chargebacks. The Terms expressly prohibit users

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