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RANDALL W. EDWARDS (S.B. #179053)
redwards@omm.com
MATTHEW D. POWERS (S.B. #212682)
mpowers@omm.com
O'MELVENY & MYERS LLP
Two Embarcadero Center
28th Floor
San Francisco, California 94111-3823
Telephone: +1 415 984 8700
Facsimile: +1 415 984 8701

WILLIAM K. PAO (S.B. #252637)
wpao@omm.com
O'MELVENY & MYERS LLP
400 S. Hope. St., 18th Floor
Los Angeles, California 90071-2899
Telephone: +1 213 430 6000
Facsimile: +1 213 430 6407

Attorneys for Defendant Apple Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

LUCILA BAPTISTE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

APPLE INC., a California corporation,

Defendant.

Case No. 4:22-cv-02888-HSG

**DEFENDANT APPLE INC.'S NOTICE OF
MOTION AND MOTION TO DISMISS
PLAINTIFF'S COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Hearing Date: October 13, 2022
Time: 2 p.m.
Judge: Hon. Haywood S. Gilliam, Jr.
Courtroom: Courtroom 2, 4th Floor

Complaint Filed: March 30, 2022 (case
removed to this Court May 16, 2022)

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NOTICE OF MOTION AND MOTION TO DISMISS

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

Please take notice that on October 13, 2022 at 2 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. will, and hereby does, move to dismiss with prejudice the Complaint of Plaintiff Lucila Baptiste, 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 claim alleged against Apple. Plaintiff has not pled facts supporting a cause of action under the New York Video Consumer Privacy Act, N.Y. General Business Law §§ 670-675, no private right of action for wrongful retention of consumer personally identifying information (“PII”) exists, and Apple is in any event not a video tape service provider subject to the statute. This Motion is based on this Notice of Motion and Motion, Memorandum of Points and Authorities, Apple’s Request for Judicial Notice, the Declaration of Randall W. Edwards and its exhibits, and all pleadings, arguments, and matters before the Court.

Dated: June 15, 2022

O’MELVENY & MYERS LLP

/s/ Randall W. Edwards

Randall W. Edwards
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
Telephone: (415) 984-8700
Facsimile: (415) 984-8701
E-mail: redwards@omm.com

Attorney for Defendant Apple Inc.

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