

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EVELYN PASWALL,

Plaintiff,

v.

APPLE INC.,

Defendant.
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:
: NO. 12 CIV 1378 (ADS) (ARL)
:

: **DEFENDANT APPLE INC.'S**
: **ANSWER AND**
: **AFFIRMATIVE DEFENSES**
: **TO PLAINTIFF'S AMENDED**
: **COMPLAINT**
:

Defendant Apple Inc. ("Apple"), by its attorneys Schiff Hardin LLP, for its Answer and Affirmative Defenses to the Amended Complaint:

One. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "1" of the Complaint.

Two. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "2" of the Complaint.

Three. Denies the allegations set forth in paragraph "3" of the Complaint, except that it admits that it is a public corporation, was incorporated under the laws of the State of California on January 3, 1977, and is authorized to do business in the State of New York.

Four. Denies the allegations set forth in paragraph "4" of the Complaint, except that it admits that it maintains a retail store at 1900 Northern Boulevard, Manhasset, NY 11030.

Five. The allegations in paragraph "5" of the Complaint are conclusions of law and therefore need not be answered at this time.

Six. The allegations in paragraph "6" of the Complaint are conclusions of law and therefore need not be answered at this time.

Seven. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "7" of the Complaint.

Eight. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “8” of the Complaint.

Nine. Denies the allegations set forth in paragraph “9” of the Complaint, and refers all matters of law to this honorable Court.

Ten. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “10” of the Complaint, and refers all matters of law to this honorable Court.

Eleven. Denies the allegations set forth in paragraph “11” of the Complaint, and refers all matters of law to this honorable Court.

Twelve. Denies the allegations set forth in paragraph “12” of the Complaint, and refers all matters of law to this honorable Court.

Thirteen. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “13” of the Complaint, and refers all matters of law to this honorable Court.

Fourteen. Denies the allegations set forth in paragraph “14” of the Complaint, and refers all matters of law to this honorable Court.

Fifteen. Denies the allegations set forth in paragraph “15” of the Complaint, and refers all matters of law to this honorable Court.

Sixteen. Denies the allegations set forth in paragraph “16” of the Complaint.

Seventeen. Denies the allegations set forth in paragraph “17” of the Complaint, except that it admits that it maintains a retail store at 1900 Northern Boulevard, Manhasset, NY 11030.

Eighteen. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “18” of the Complaint, except that it admits that it

maintains a retail store at 1900 Northern Boulevard, Manhasset, NY 11030, and refers all matters of law to this honorable Court.

Nineteen. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “19” of the Complaint, except that it admits that it maintains a retail store at 1900 Northern Boulevard, Manhasset, NY 11030, and refers all matters of law to this honorable Court.

Twenty. Denies the allegations set forth in paragraph “20” of the Complaint, except that it admits that it maintains a retail store at 1900 Northern Boulevard, Manhasset, NY 11030, and refers all matters of law to this honorable Court.

Twenty-one. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “21” of the Complaint, except that it admits that it maintains a retail store at 1900 Northern Boulevard, Manhasset, NY 11030, and refers all matters of law to this honorable Court.

Twenty-two. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “22” of the Complaint, except that it admits that it maintains a retail store at 1900 Northern Boulevard, Manhasset, NY 11030, and refers all matters of law to this honorable Court.

Twenty-three. Denies the allegations set forth in paragraph “23” of the Complaint, and refers all matters of law to this honorable Court.

Twenty-four. Denies the allegations set forth in paragraph “24” of the Complaint, and refers all matters of law to this honorable Court.

Twenty-five. Denies the allegations set forth in paragraph “25” of the Complaint, and refers all matters of law to this honorable Court.

Twenty-six. Denies the allegations set forth in paragraph “26” of the Complaint, and refers all matters of law to this honorable Court.

Twenty-seven. Denies the allegations set forth in paragraph “27” of the Complaint, and refers all matters of law to this honorable Court.

Twenty-eight. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “28” of the Complaint, and refers all matters of law to this honorable Court.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Insofar as the Amended Complaint alleges a cause of action accruing on or after September 1, 1975 to recover damages for personal injuries, the amount of damages recoverable thereon must be diminished by reason of the culpable conduct attributable to Plaintiff, including contributory negligence and assumption of risk, in the proportion which the culpable conduct attributable to Plaintiff bears to the culpable conduct which caused the damages.

Second Affirmative Defense

Plaintiff’s claims may be barred in whole or in part due to the fault of other parties or entities over which Apple has no control, right to control, and for whose conduct Apple is not liable.

Third Affirmative Defense

Plaintiff’s claims may be barred in whole or in part because said injuries were the result of an open and obvious danger or hazard known to plaintiff.

Fourth Affirmative Defense

If Plaintiff was injured and damaged as alleged in the Complaint, said injuries and damages may have been caused or exacerbated by Plaintiff's failure to mitigate the damages.

Fifth Affirmative Defense

Any recovery by Plaintiff must be reduced by collateral source payments pursuant to CPLR Section 4545(c).

Sixth Affirmative Defense

If Apple is found liable, such liability is less than or equal to 50% of the total liability of all persons who may be found liable, and therefore Apple's liability shall be limited to its equitable share pursuant to CPLR Article 16.

Apple will rely upon any and all other further defenses which become available or appear during discovery in this action and hereby specifically reserves the right to amend its Answer for the purpose of asserting any such defenses.

[Signature page follows]

WHEREFORE, the defendant demands judgment against the plaintiff dismissing the Amended Complaint herein, together with costs and disbursements of this action and for such other relief as this Court may deem just, proper, and equitable.

Dated: New York, New York
June 1, 2012

Respectfully submitted,

/s/ Thomas M. Crispi

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