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# Judge Names 39-Member Plaintiffs Team to Lead iPhone Throttling MDL

By Catherine Wilson | May 16, 2018 at 01:30 PM

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Joe Cotchett, Cotchett, Pitre & McCarthy.

A federal judge has appointed two San Francisco Bay Area attorneys to lead the plaintiffs team and reached out to a Florida attorney to coordinate litigation for consumers claiming Apple Inc. throttled their iPhone speeds.

Joseph Cotchett of Cotchett, Pitre & McCarthy in Burlingame and Laurence King of Kaplan Fox & Kilsheimer in San Francisco were named co-lead plaintiffs counsel in the order issued Tuesday (https://images.law.com/contrib/content/uploads/documents/392/20511/Apple-MDL-5-15-18.pdf) by U.S. District Judge Edward Davila in San Jose, California.



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Mark Dearman of Robbins Geller Rudman & Dowd is heading the 23-member plaintiffs executive committee and takes responsibility for delegating assignments, communicating with the court, distributing orders and maintaining a master service list. A 14-member steering committee also was named.

Davila approved a broad proposal for a 39-member coalition approach to the plaintiffs case, which was opposed by Apple. The judge rejected competing leadership proposals with a lean approach to team members from Steve Berman of Seattle's Hagens Berman Sobol Shapiro and William Audet of San Francisco's Audet & Partners.

Coalition attorneys dominated the head count at a May 10 hearing on the competing motions to oversee about 80 class actions claiming Apple intentionally and surreptitiously slowed down older iPhones to nudge consumers to buy newer devices.

"At first blush," the coalition approach "may seem larger than necessary," the judge wrote. But he said the large number "is warranted in light of the projected size of the case, including the potential number of class members."

Davila didn't address the actual number, but Cotchett Pitre partner Mark Molumphy estimated 400 million to 500 million iPhones were potentially affected.

The judge noted the co-leaders "have demonstrated an ability to cooperate with a range of different interests that span across law firms, practice groups, geography, and gender and introduce smaller firms into the litigation experience."

Notably, four of nine committees are led by women, and eight women are on the 23-member executive committee directing the plaintiffs case. A Temple University study released last year cited a lack of women in multidistrict litigation leadership.

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King said by email that he was pleased the judge "adopted our inclusive approach to leadership in this important litigation."

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Wilson said, "We have some of the top women attorneys in the country leading this case with us."

Asked if it would be a time-zone challenge for an East Coast lawyer to administer a plaintiffs case in California, Dearman said his firm would be able to handle it.

"We're 200 lawyers, all we do is class action and mass action, and about 120 of our lawyers are located in San Francisco and San Diego. I'm in California as it is biweekly," he said.

Apple is accused of slowing the performance of iPhones with older, chemically aged batteries. The company in January announced a software battery-management upgrade allowing users to disable processor throttling.

Molumphy said he was "very skeptical" about the announcement.

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