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Apple Will Pay Up To \$500M To End MDL Over Slow iPhones

By **Emily Field**

Law360 (March 1, 2020, 3:18 PM EST) -- Apple has agreed to pay up to \$500 million to iPhone users in a deal that would end multidistrict litigation accusing the tech company of releasing software updates that slowed down the performance of some smartphones.

The iPhone buyers told a California federal judge Friday that they have agreed to end two years of litigation in a deal that will give class members \$25 each for their phones. If the payouts and the attorneys' fees and expenses don't add up to at least \$310 million, class members will receive up to \$500 apiece until that minimum settlement amount is reached.

Apple has agreed to pay up to \$500 million in total, depending on the amount of iPhone users to participate in the deal, according to court filings.

Class counsel is seeking up to \$93 million in attorneys' fees and \$1.5 million in expenses, according to the filing. Cotchett Pitre & McCarthy LLP and Kaplan Fox & Kilsheimer LLP are co-lead counsel for the plaintiffs.

Layn R. Phillips, a retired judge from the U.S. District Court for the Western District of Oklahoma, was a mediator in the deal and made a settlement proposal in September after a third round of in-person negotiations, court filings show.

The suits in the MDL generally claim that an Apple software update released around the same time as a new version of the iPhone negatively affected the battery life of older models, forcing some customers to spend hundreds of dollars on a new phone.

"We believe the proposed settlement provides a significant cash benefit to the proposed settlement class and we look forward to presenting it to the court," Frederic S. Fox of Kaplan Fox & Kilsheimer, told Law360 on Sunday.

In early 2019, Apple sought to dismiss the claims that the company intentionally slowed down the performance of older iPhones. Users claiming the iPhone's operating system damaged their devices gave Apple permission to install it and assumed the associated risks, and so they can't now claim they were fraudulently induced to install the updates, the tech giant said.

U.S. District Judge Edward Davila granted Apple's motion to dismiss the battery performance claims, but denied the company's motion to dismiss computer intrusion claims that arose from the software updates.

Apple also asked to remove co-lead plaintiffs counsel in April, saying the attorneys had quoted from protected Apple documents in open court during a hearing and doubled down when challenged.

The company claimed that both Joseph Cotchett and Mark Molumphy, who are co-lead counsel along with two other attorneys for the class of iPhone users, not only quoted from documents designated as confidential but also refused to make amends for the mistake, instead threatening to have Apple sanctioned for overusing the confidential designation.

In June, Judge Davila denied that motion, saying that disqualifying the two attorneys would be too severe a penalty.

Representatives for Apple didn't immediately respond to requests for comment on Sunday.

Co-lead counsel for the class are Mark Molumphy and Joseph W. Cotchett of Cotchett Pitre & McCarthy LLP and David A. Straite and Laurence D. King of Kaplan Fox & Kilsheimer LLP.

Apple is represented by Christopher Chorba, Theodore J. Boutrous Jr., Richard Doren and Diana Feinstein of Gibson Dunn & Crutcher LLP.

The case is In re: Apple Inc. Device Performance Litigation, case number 5:18-md-02827, in the U.S. District Court for the Northern District of California.

--Additional reporting by Matt Bernardini and Christopher Cole.

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