



---

Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

---

## \$500M iPhone Deal Gets Nod, But Virus Delays Final OK

By **Dorothy Atkins**

Law360 (May 15, 2020, 5:18 PM EDT) -- A California federal judge on Friday preliminarily approved Apple's \$500 million deal to end multidistrict litigation accusing the company of releasing software updates that slowed down the performance of certain iPhones, but extended the final approval deadlines in light of the coronavirus pandemic.

During a hearing held via Zoom's videoconferencing tool, U.S. District Judge Edward J. Davila told the parties he wants to extend the final approval deadlines by a few weeks due to the COVID-19 crisis and he told them to meet and confer about proposing a new date for a final settlement approval hearing that would take place sometime in December.

If approved, the settlement would resolve dozens of lawsuits that were transferred to Judge Davila in April 2018 and consolidated the following May, after Apple admitted to occasionally slowing iPhones with older batteries to avoid unexpected shutdowns.

The suits generally allege that the company released a software update that diminished the battery life of older iPhones, just as it rolled out new models. The bugs allegedly prompted some customers to spend hundreds of dollars on new phones, the suits claim.

During more than two years of litigation, Judge Davila granted Apple's **motion to dismiss** the consumers' battery performance claims, overseas false advertising claims and rejected arguments that the computer giant was liable for breaking federal hacking laws, but he denied the company's bid to ax computer intrusion claims, among others.

The parties entered into mediation guided by Layn R. Phillips, a retired judge from the U.S. District Court for the Western District of Oklahoma, and in February informed the judge in **a motion for preliminary settlement approval** that they had struck a deal.

Under the proposed deal, 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 members would receive \$25 each for their phones. If the payouts, attorney 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.

Class counsel is seeking up to \$93 million in attorney 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.

During the hearing Friday, class counsel and attorneys for Apple both said the deal is fair, considering the litigation was hotly contested from the get-go and considering class members will receive cash payments of at least \$25. They also said Apple has the email addresses for most class members so they think there will be a high claims rate.

The judge suggested the notice be published in multiple languages, but Apple's counsel, Christopher Chorba of Gibson Dunn & Crutcher LLP, said the settlement **only covers class members in the**

**U.S.** and they don't want to confuse or mislead international users about the deal.

Chorba also stressed that the settlement only applies to individuals who performed certain software updates on their Apple iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus and SE devices, and not all owners of those phones.

At the end of the hearing, the judge said he would preliminarily sign off on the deal, which he said is "fair, reasonable and adequate." Judge Davila also said he would hold off on considering an objector's demand that Cotchett Pitre be disqualified as class counsel due to an alleged conflict of interest.

The judge said he has read the 55-page objection, but he noted that it isn't relevant to whether the deal should be preliminarily approved, so he'll take up the matter during final approval.

The objection, which was filed by Darlene D. Orr and Edward W. Orr, claims Cotchett Pitre should be disqualified because the firm represented Apple in multidistrict litigation over lithium-ion batteries and the firm purportedly had access to Apple's confidential information.

The objection also cites a sanctions and disqualifications bid that **Apple filed against the firm** in the instant litigation in April 2019, accusing Mark Molumphy and Joseph W. Cotchett of Cotchett Pitre of violating the court's protective order by repeatedly making references to confidential materials in open court.

**In June**, Judge Davila declined to disqualify the firm, but strongly cautioned the lawyers not to repeat the mistake. He did, however, impose sanctions, including not letting them bill for work related to the confidential materials dispute, and said one of the attorneys needs permission to make court arguments in the case from now on.

The consumers are represented by Mark Molumphy, Joseph W. Cotchett, Brian Danitz and Anya Thepot of Cotchett Pitre & McCarthy LLP, Frederic S. Fox, David A. Straite, Donald R Hall and Laurence D. King of Kaplan Fox & Kilsheimer LLP and Terrence Edwards.

Apple is represented by Christopher Chorba 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, Christopher Cole and Emily Field. Editing by Stephen Berg.