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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: APPLE INC. DEVICE
PERFORMANCE LITIGATION

Case No. [5:18-md-02827-EJD](#)

**ORDER GRANTING NAMED
PLAINTIFFS’ MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

This Document Relates To:

ALL ACTIONS.

Re: Dkt. No. 470

This matter is before the Court on Named Plaintiffs’ Motion For Final Approval of Proposed Settlement (hereinafter “Mot.”). Dkt. No. 470. Specifically, Named Plaintiffs move for an order: (i) granting final certification of the Settlement Class under Federal Rules of Civil Procedure (“Rule”) 23(a) and 23(b)(3); (ii) granting final approval of the proposed Settlement reached between Named Plaintiffs and Apple Inc. (“Apple” or “Defendant”), under Rule 23(e); (iii) finding that notice has been conducted in accordance with the Court-approved notice plan and comports with due process and Rule 23; and (iv) dismissing with prejudice Named Plaintiffs’ and Settlement Class Members’ claims against Apple. *Id.* The Court received numerous responses to the Settlement, including requests for exclusions, as well as responses to Named Plaintiffs’ related Motion for Attorneys’ Fees, Expenses, and Service Awards (Dkt. No. 468). Named Plaintiffs filed a reply on November 11, 2020 (hereinafter “Reply”). Dkt. No. 549. Named Plaintiffs and Apple submitted a joint proposed order granting final approval. Dkt. No. 554. Apple also filed a Statement in Support of Final Settlement Approval and Response to Settlement Objections

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1 (“Statement”). Dkt. No. 555. The Motion was heard on December 4, 2020 and February 17,
2 2021. Based on pleadings filed to date and the comments made at the hearing, the Court grants
3 Named Plaintiffs’ Motion.

4 **I. BACKGROUND**

5 **A. The Consolidated Actions**

6 In 2015, reports of unexplained shutdowns of certain Apple devices began surfacing, with
7 consumers complaining their devices were suddenly shutting down even though the batteries were
8 more than 30% charged. Second Consol. Am. Compl. (“SCAC”) ¶ 2, Dkt. No. 244. Complaints
9 accelerated in the autumn of 2016 and were accompanied by reports of unexplained heating. *Id.*
10 This affected, among other devices, the iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and SE. *Id.* ¶ 1. In
11 2017, Apple released iOS 10.2.1 and iOS 11.2 to address the alleged defects but, rather than fix
12 the defects, the software updates allegedly “concealed [them] by secretly throttling the Devices’
13 performance to reduce the number of unexpected shutdowns to a more manageable volume.” *Id.*
14 ¶¶ 9-10.

15 On December 20, 2017, Apple released a statement regarding a performance management
16 feature in its iOS 10.2.1 and iOS 11.2 software to prevent unexpected power-offs from occurring
17 in its devices, stating, in relevant part:

18 Our goal is to deliver the best experience for customers, which
19 includes overall performance and prolonging the life of their devices.
20 Lithium-ion batteries become less capable of supplying peak current
21 demands when in cold conditions, have a low battery charge or as
22 they age over time, which can result in the device unexpectedly
23 shutting down to protect its electronic components.

24 Last year we released a feature for iPhone 6, iPhone 6s and iPhone
25 SE to *smooth out* the instantaneous peaks only when needed to
26 prevent the device from unexpectedly shutting down during these
27 conditions. We’ve now extended that feature to iPhone 7, with iOS
28 11.2, and plan to add support for other products in the future.

25 SCAC ¶ 16; *see also* Decl. of Joseph W. Cotchett and Laurence D. King in Supp. of Mot. for
26 Settlement (“Decl. of Co-Lead Class Counsel”) ¶ 9, Dkt. No. 471. On December 28, 2017, Apple

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1 issued the following statement:

2 iOS 10.2.1 (released January 2017) includes updates for previous
3 models of iPhone to prevent them from unexpectedly shutting down.
4 This includes a feature for iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone
5 6s Plus, and iPhone SE to dynamically manage the instantaneous
6 performance peaks, only when needed, to prevent the device from
7 unexpectedly shutting down. This capability was also extended to
8 iPhone 7 and iPhone 7 Plus with iOS 11.2, and we will continue
9 improving our power management feature in the future. This feature's
10 only intent is to prevent unexpected shutdowns so that the iPhone can
11 still be used.

12 This power management works by looking at a combination of the
13 device temperature, battery state of charge, and battery impedance.
14 Only if these variables require it, iOS will dynamically manage the
15 maximum performance of some system components, such as the CPU
16 and GPU, in order to prevent unexpected shutdowns. As a result, the
17 device workloads will self-balance, allowing a smoother distribution
18 of system tasks, rather than larger, quick spikes of performance all at
19 once. In some cases, a user may not notice any differences in daily
20 device performance. The level of perceived change depends on how
21 much power management is required for a particular device.

22 In cases that require more extreme forms of this power management,
23 the user may notice effects such as:

24 Longer app launch times

25 Lower frame rates while scrolling

26 Backlight dimming (which can be overridden in Control Center)

27 Lower speaker volume by up to -3dB

28 Gradual frame rate reductions in some apps

29 During the most extreme cases, the camera flash will be disabled as
30 visible in the camera UI

31 Apps refreshing in background may require reloading upon launch.

32 SCAC ¶ 22.

33 The allegedly diminished performance of iPhone 6s and iPhone 7s running these operating
34 systems led to sixty-six class action complaints filed against Apple between December 2017 and
35 June 2018 in federal district courts around the country (the "Federal Actions"). *Id.* In the same
36 time, four class action complaints were filed against Apple in California Superior Courts in San
37

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1 Francisco, San Mateo, and Los Angeles (the “State Actions”). Decl. of Andrew J. Brown and
 2 Thomas J. Brandi in Supp. of Mot. for Settlement (“Decl. of JCCP Counsel”) ¶ 10, Dkt. No. 471-
 3 2.

4 Beginning in 2018, the Federal Actions were consolidated by the U.S. Judicial Panel on
 5 Multidistrict Litigation in the Northern District of California pursuant to 28 U.S.C. § 1407, into
 6 MDL proceedings captioned *In re Apple Inc. Device Performance Litig.*, No. 8-md-2827-EJD.
 7 Decl. of Co-Lead Class Counsel ¶ 9; *See* Transfer Order, Dkt. No. 1. By August 2, 2018, the four
 8 State Actions were coordinated into a single action in San Francisco Superior Court as JCCP No.
 9 4976. Decl. of JCCP Counsel ¶ 11. The JCCP Action follows its own lengthy litigation history,
 10 including demurrers, amended complaints, discovery, etc., not repeated here. *See id.* ¶¶ 12-33.
 11 The nationwide Settlement Class includes the California Class represented by JCCP Counsel.

12 **B. Motions to Dismiss and the Operative Complaint**

13 On May 15, 2018, the Court granted in part and denied in part the motion to serve as
 14 interim lead counsel filed by Cotchett, Pitre & McCarthy LLP (“CPM”) and Kaplan Fox &
 15 Kilsheimer LLP. Order Consolidating Related Actions and Appointing Interim Co-Lead Pls.’
 16 Counsel at 4, Dkt. No. 99. Class Counsel filed a Consolidated Amended Complaint (“CAC”) on
 17 July 2, 2018. CAC, Dkt. No. 145. The CAC was a lengthy document, detailing the grievances of
 18 one hundred twenty-two Named Plaintiffs and including seventy-six causes of action. Decl. of
 19 Co-Lead Counsel ¶ 10. On August 9, 2018, Apple moved to dismiss the CAC. Mot. to Dismiss
 20 Pls.’ CAC, Dkt. No. 176. On October 1, 2018, the Court granted in part and denied in part
 21 Apple’s motion to dismiss the CAC, with leave to amend. Order Granting in Part and Den. in Part
 22 Mot. to Dismiss, Dkt. No. 219. On November 30, 2018, Class Counsel filed the SCAC. On
 23 January 24, 2019, Apple filed a motion to dismiss. Mot. to Dismiss Pls.’ SCAC, Dkt. No. 272.
 24 The Court granted in part and denied in part this motion to dismiss on May 3, 2019 with leave to
 25 amend. Order, Dkt. No. 331.¹ Named Plaintiffs ultimately chose not to amend the SCAC and on
 26

27 ¹ This Order also resolved other issues, such as a pending motion to compel discovery, requests
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1 July 31, 2019, Apple filed its Answer to the SCAC. Answer, Dkt. No. 365.

2 **C. Discovery and Other Matters**

3 Throughout 2018 and 2019, Named Plaintiffs and Defendants took part in a contentious
4 discovery process. Ultimately, with the Parties' stipulation, the Court appointed the Honorable
5 Judge Rebecca J. Westerfield (Ret.) as Special Discovery Master. Decl. of Co-Lead Counsel ¶ 18;
6 Order re: Appointment of Special Disc. Master, Dkt. No. 173. Judge Westerfield issued ten
7 Discovery Master Orders concerning issues such as protective orders, motions to compel, the time
8 period governing discovery, preservation of certain documents, requests for production of
9 documents, a request to conduct forensic inspection of devices, and deposition of certain plaintiffs.
10 Dkt. Nos. 229-232, 240, 245, 310, 323, 354, 389.

11 Apple produced over seven million pages of documents. Decl. of Co-Lead Counsel ¶ 25.
12 Named Plaintiffs produced over 6,000 pages of documents. *Id.* ¶ 28. Class Counsel took
13 depositions of ten Apple witnesses, including software and hardware engineers, and moved to
14 compel the depositions of ten additional witnesses. *Id.* ¶¶ 32-33. The case was settled before
15 Judge Westerfield ruled on the Motion to Compel the depositions of the ten additional witnesses.
16 *Id.* ¶ 33. Apple deposed nine of the Named Plaintiffs. *Id.* ¶ 34. Both Parties also issued and
17 objected to subpoenas to third parties, such as service carriers, manufacturing entities, and
18 retailers. *Id.* ¶¶ 37-39.

19 **D. Settlement Negotiations and Mediation**

20 The Parties selected the Honorable Judge Layn Phillips (Ret.), a former United States
21 District Judge and "the founder and lead mediator at Phillips ADR Enterprises, P.C.", to facilitate
22 mediation and settlement discussions. Decl. of Hon. Layn Phillips in Supp. of Settlement
23 ("Phillips Decl.") ¶¶ 1-4, Dkt. No. 470-1. At Judge Phillips' direction, the Parties submitted
24 mediation and supplemental statements. Decl. of Co-Lead Counsel ¶ 41, Dkt. No. 471. After
25 submitting their statements, counsel for all Parties attended in-person mediations before Judge
26

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for judicial notice, and a motion for reconsideration.

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