

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

IN RE APPLE INC. DEVICE
PERFORMANCE LITIGATION,

NAMED PLAINTIFFS AND
SETTLEMENT CLASS MEMBERS,
Plaintiff-Appellee,

v.

SARAH FELDMAN; HONDO JAN,
Objectors-Appellants,

v.

APPLE INC.,
Defendant-Appellee.

No. 21-15758

D.C. No.
5:18-md-02827-
EJD

IN RE APPLE INC. DEVICE
PERFORMANCE LITIGATION,

NAMED PLAINTIFFS AND
SETTLEMENT CLASS MEMBERS,
Plaintiff-Appellee,

v.

No. 21-15761

D.C. No.
5:18-md-02827-
EJD

2 IN RE APPLE INC. DEVICE PERFORMANCE LITIGATION

BEST COMPANIES, INC.,
Objector-Appellant,

v.

APPLE INC.,
Defendant-Appellee.

IN RE APPLE INC. DEVICE
PERFORMANCE LITIGATION,

NAMED PLAINTIFFS AND
SETTLEMENT CLASS MEMBERS,
Plaintiff-Appellee,

v.

DEBORAH PANTONI,
Objector-Appellant,

v.

APPLE INC.,
Defendant-Appellee.

No. 21-15762

D.C. No.
5:18-md-02827-
EJD

IN RE APPLE INC. DEVICE
PERFORMANCE LITIGATION,

No. 21-15763

NAMED PLAINTIFFS AND
SETTLEMENT CLASS MEMBERS,
Plaintiff-Appellee,

D.C. No.
5:18-md-02827-
EJD

v.

OPINION

ANNA ST. JOHN,
Objector-Appellant,

v.

APPLE INC.,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of California
Edward J. Davila, District Judge, Presiding

Argued and Submitted May 11, 2022
Pasadena, California

Filed September 28, 2022

Before: Jacqueline H. Nguyen, John B. Owens, and
Ryan D. Nelson, Circuit Judges.

Opinion by Judge Nguyen

SUMMARY*

Class Settlement

In consolidated appeals by five class objectors, the panel vacated the district court’s rulings arising from its approval of a \$310 million class action settlement resolving allegations that Apple Inc. secretly throttled the system performance of certain model iPhones to mask battery defects.

Best Companies, Inc. (“BCI”) contended that the district court provided inadequate notice of the settlement to nonnatural persons. The panel held that notice here satisfied both Fed. R. Civ. P. 23 and due process. The settlement administrator contacted 99% of the persons associated with potentially eligible devices via the email and postal addresses in Apple’s records. Additional class members received notice through the settlement’s substantial coverage in the press and on social media. Rule 23 and due process require only a “reasonable effort” to notify individual class members. The panel rejected BCI’s assertion that the parties could have given nonnatural persons constructive notice of the settlement through publication because the free media coverage and individual notice to device users was more than adequate to reach nonnatural persons. The district court did not abuse its discretion by authorizing the reasonable notice to nonnatural persons.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Three of the objectors (the “Feldman objectors”) complained that the settlement extinguished the claims of “all former or current U.S. owners” of certain devices who downloaded iOS software before Apple disclosed potential defects, but the settlement limited recovery to the subset of owners who can attest that “they experienced” the alleged defects. The panel held that the fundamental problem with the Feldman objectors’ argument was their assumption that all class members suffered the same impairment of iPhone performance and uniform damages. The parties agreed to the attestation requirement as a compromise, and the panel held that this compromise was reasonable. The settlement allowed Apple to limit its exposure while ensuring that compensation was available to every class member who suffered a compensable injury.

The Feldman objectors also argued that the district court cited the wrong legal standard in examining the settlement’s fairness by improperly applying a presumption of reasonableness to the settlement rather than applying a heightened scrutiny. The panel held that the district court applied the wrong legal standard and ignored precedent requiring a heightened fairness inquiry prior to class certification. Here, while the district court’s probing analysis suggested that it may have applied heightened scrutiny, its written order relied on a flawed legal standard. The district court abused its discretion by stating that it applied a presumption of reasonableness and fairness to the settlement. The panel vacated the order granting final settlement approval so that on remand the district court could evaluate the settlement under the correct standard. In light of this vacatur, the panel also vacated the district court’s order awarding attorney’s fees, expenses, and incentive payments.

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