

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE APPLE INC. DEVICE  
PERFORMANCE LITIGATION

Case No. 18-md-02827-EJD

**ORDER RE CORPORATE  
CLAIMANTS; SETTING HEARING  
DATE FOR MOTION FOR FINAL  
APPROVAL AND MOTION FOR  
ATTORNEYS' FEES, EXPENSES AND  
SERVICE AWARDS**

The Court has reviewed the parties' Joint Status Report In Support of Final Settlement Approval (Dkt. No. 596) and orders as follows.

1. Plaintiffs' Motion for Final Approval and Motion for Attorneys' Fees, Expenses, and Service Awards is scheduled for 1:00 p.m. on February 17, 2021.

2. The Court has considered the parties' respective position regarding the attestation requirement for corporate claimants. The parties agree that corporate and non-natural-person claimants may satisfy the attestation requirements by having an authorized representative (who has personal knowledge and/or conducted an appropriate inquiry) complete the attestation using a spreadsheet template. *Id.* at 6. However, the parties disagree as to "whether outside counsel (or an individual employed by a third-party claims filing firm) can execute the required attestation on behalf of a corporate claimant." *Id.* At present, there are 164,053 claims submitted by corporations that have not been approved because the attestations were signed by outside counsel (or an individual employed by a third-party claims filing firm).

The Court concludes that the representations by outside counsel (or an individual  
**ORDER RE CORPORATE CLAIMANTS; SETTING HEARING DATE**

1 employed by a third-party claims filing firm) are inadequate to satisfy the attestation requirement.  
2 The attestation requirement is a key provision of the settlement. Apple maintained throughout this  
3 litigation that the performance management feature at issue did not affect every device; “the  
4 feature was only activated in certain circumstances when the device was at risk of unexpectedly  
5 shutting down based on temporary factors.” *Id.* at 7. Furthermore, even if the feature was  
6 activated, not all users noticed a performance impact. *Id.* The parties’ negotiated, and this court  
7 approved, a requirement that every individual claimant attest, under penalty of perjury, that they  
8 experienced diminished performance on their device after running a relevant iOS version.  
9 Corporate claimants must be held to the same requirement as individual claimants. Accordingly,  
10 corporate claimants must submit an attestation signed by an authorized representative, such as a  
11 corporate information technology professional or in-house counsel, who is employed by the  
12 corporation and has personal knowledge after reasonable investigation. Enforcing the attestation  
13 requirement in this manner is consistent with standard practice for corporations when providing  
14 deposition testimony or verifying interrogatory responses, which “must be signed by the person  
15 answering the interrogatory, not only by the party’s attorney.” *Villareal v. El Chile, Inc.*, 266  
16 F.R.D. 207, 211 (N.D. Ill. 2010) (citing *Hindmon v. Nat’l-Ben Franklin Life Ins. Corp.*, 677 F.2d  
17 617, 619 (7th Cir. 1982)); *see also Perdana Capital Inc. v. Chowdry*, 2010 WL 11475933, at \*4  
18 (N.D. Cal. Sept. 2, 2010) (“under Rule 33(b)(1)(B), only an ‘officer or agent’ of a corporate party  
19 may execute the verifications for that party’s interrogatory responses); *Aaron v. Dickinson*, 2006  
20 WL 734881, at \*2 (E.D. Cal. Mar. 23, 2006) (“the answering party is required to sign the  
21 interrogatory answer or provide a verification that the answer is true and correct”). Neither  
22 Plaintiffs nor the corporate claimants have explained why an authorized corporate representative  
23 cannot sign the attestation.

24 The Settlement Administrator is directed to, at this time, reject the 164,053 claims  
25 submitted by corporations that are not accompanied by attestations signed by outside counsel (or  
26 an individual employed by a third-party claims filing firm). Claims rejected on this basis may be  
27 resubmitted to the Settlement Administrator with an attestation signed by an authorized

28 ORDER RE CORPORATE CLAIMANTS; SETTING HEARING DATE

1 representative, such as a corporate information technology professional or in-house counsel, who  
2 is employed by the corporation and has personal knowledge after reasonable investigation. The  
3 deadline for resubmissions is February 8, 2021.

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5 **IT IS SO ORDERED.**

6 Dated: January 28, 2021

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9 EDWARD J. DAVILA  
10 United States District Judge

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