

IF YOU PURCHASED POWERBEATS 2 EARPHONES NOT FOR RESALE, YOU SHOULD READ THIS NOTICE CAREFULLY BECAUSE IT WILL AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS.

A CALIFORNIA SUPERIOR COURT AUTHORIZED THIS NOTICE.

THIS IS NOT AN ADVERTISEMENT FROM A LAWYER. YOU ARE NOT BEING SUED.

- A settlement (“Settlement”) has been proposed in the class action lawsuit *Simmons et al. v. Apple Inc.*, Case No. 17-cv-312251, pending in the Superior Court of the State of California, County of Santa Clara. You may be a Class Member in the proposed Settlement and may be entitled to participate in the proposed Settlement.
- The Superior Court of the State of California, County of Santa Clara, has ordered the issuance of this notice in this Action (“Notice”). Apple Inc. (“Apple”) denies it did anything wrong and has defended itself throughout the lawsuit. The Court has not decided who is right. Both sides have agreed to settle the dispute to avoid burdensome and costly litigation.
- If the Court gives final approval to the Settlement, Apple will provide for each Class Member who properly and timely completes and submits a Claim Form a check. The value of a Class Member’s award depends in part upon the number of persons who participate in the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

| | | |
|-------------------------------------|---|---|
| SUBMIT A CLAIM FORM | This is the only way to get an award under the Settlement. Visit the Settlement Website located at www.WirelessEarphonesSettlement.com to obtain a Claim Form. | Deadline: November 20, 2020 |
| EXCLUDE YOURSELF | If you exclude yourself from the Settlement, you will not receive an award under the Settlement. Excluding yourself is the only option that allows you to bring or maintain your own lawsuit against Apple regarding the allegations in the Action ever again. | Deadline: November 20, 2020 |
| OBJECT | You may write to the Court about why you object to (i.e., don’t like) the Settlement and think it shouldn’t be approved. You do not need to submit a written objection to appear at the “Fairness Hearing” and object. Submitting an objection does not exclude you from the Settlement. | Deadline: November 20, 2020 |
| GO TO THE “FAIRNESS HEARING” | The Court will hold a “Fairness Hearing” to consider the Settlement, the request for attorneys’ fees and costs of the lawyers who brought the Action, and the Representative Plaintiffs’ request for Service Awards for bringing the Action. You may, but are not required to, speak at the Fairness Hearing about any objection you have to the Settlement. | Hearing Date: January 21, 2021 at 1:30 p.m. |
| DO NOTHING | You will not receive a Settlement award under the Settlement. You will also give up your right to object to the Settlement and you will not be able to be part of any other lawsuit about the legal claims in this case. | N/A |

- These rights and options—**and the deadlines to exercise them**—are explained in more detail below.
- The Court in charge of this Action has preliminarily approved the Settlement and must decide whether to give final approval to the Settlement. The relief provided to Class Members will be provided only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement. *Please be patient.*

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BACKGROUND INFORMATION

1. *Why did I get a notice?*

You received a Notice because a Settlement has been reached in this Action. If you are a member of the Class, you may be eligible for the relief detailed below.

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement (which defines certain capitalized terms used in this Notice), see Section 20 below.

2. *What is this lawsuit about?*

Plaintiffs Latanya Simmons and Kevin Tobin (the “Representative Plaintiffs”) filed a lawsuit against Apple on behalf of themselves and all others similarly situated. The lawsuit alleges that Powerbeats 2 contained a defect, causing them to stop working and fail to retain a charge after minimal usage. Plaintiffs claim that as a result of the defect Apple misrepresented the battery life of Powerbeats 2, that Powerbeats 2 earphones were sweat & water resistant, and that Apple did not properly repair or replace defective Powerbeats 2 within the one year limited warranty period.

Apple denies each and every one of the allegations of unlawful conduct, any wrongdoing, and any liability whatsoever, and no court or other entity has made any judgment or other determination of any liability. Apple further denies that any Class Member is entitled to any relief and, other than for settlement purposes, that this Action is appropriate for certification as a class action.

The issuance of this Notice is not an expression of the Court’s opinion on the merits or the lack of merits of the Representative Plaintiffs’ claims in the Action.

For information about how to learn about what has happened in the Action to date, please see Section 20 below.

3. *Why is this a class action?*

In a class action lawsuit, one or more people called “Representative Plaintiff(s)” (in this Action, Latanya Simmons and Kevin Tobin) sue on behalf of other people who allegedly have similar claims. For purposes of this proposed Settlement, one court will resolve the issues for all Class Members. The company sued in this case, Apple, is called the Defendant.

4. *Why is there a Settlement?*

The Representative Plaintiffs have made claims against Apple. Apple denies that it has done anything wrong or illegal and admits no liability. The Court has **not** decided that the Representative Plaintiffs or Apple should win this Action or any of the other pending actions. Instead, both sides agreed to a Settlement. That way, they avoid the cost of a trial, and the Class Members will receive relief now rather than years from now, if at all.

5. *How do I know if I am part of the Settlement?*

The Court has decided that everyone who fits this description is a Class Member for purposes of the proposed Settlement: All persons residing in the United States who purchased Powerbeats 2 earphones not for resale before August 7, 2020. Excluded from the Class are employees, officers and directors of Apple, members of the immediate families of the officers and directors of Apple, and their legal representatives, heirs, successors or assigns, and any entity in which they have a controlling interest. Also excluded from the Class are the Court, and the Court's staff, as well as their heirs, successors or assigns.

6. *I'm still not sure if I am included.*

If you are still not sure whether you are included, you can write the Settlement Administrator for free help. The email address of the Settlement Administrator is info@WirelessEarphonesSettlement.com and the U.S. postal (mailing) address is

Wireless Earphones Settlement Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103.

THE PROPOSED SETTLEMENT

7. *What relief does the Settlement provide to the Class Members?*

If you are a Class Member, you are eligible to receive a share of the Settlement Amount, by timely and validly claiming, through submission of a Claim Form.

All Class Members who do not opt-out of the Class Settlement and submit a valid and timely Claim Form shall receive a cash settlement in the form of a check or electronic payment to be issued by the Settlement Administrator from the Net Settlement Amount. The Net Settlement Amount is the amount remaining from the total \$9,750,000 (the "Gross Settlement Amount") to be funded by Apple, minus the attorneys' Fee and Expense Award to be paid to Class Counsel, the Service Award to Representative Plaintiffs for bringing this Action, and the costs of the Settlement Administrator for providing notice to the Class of the Settlement and administering the Settlement (which are expected to total approximately \$3,735,500). The actual amount of the cash settlement distributed to each Class Member will be determined by whether the Claimant provides the Settlement Administrator a Proof of Purchase, whether Apple has a record of the Class Member obtaining a warranty repair or replacement on a Powerbeats 2, and the number of qualifying Claims approved by the Settlement Administrator. Cash settlements are limited to one per household.

Each Class Member who submits a timely and valid Claim Form will receive a payment according to the number of points he/she is eligible to receive.

Every Claimant who submits a timely and valid Claim Form but does not submit a valid Proof of Purchase and is not identified in Apple's records as having obtained a warranty replacement or repair on a Powerbeats 2, will receive one point. Each Class Member who submits a timely and valid Claim Form and either (1) submits at least one valid Proof of Purchase or (2) is identified in Apple's records as having obtained at least one warranty repair or replacement on a Powerbeats

2, will receive two points per Proof of Purchase or warranty repair or replacement, whichever is greater.¹

The following chart contains examples of how points will be calculated in different scenarios:

| Number of Proofs of Purchase or Records of Warranty Repairs or Replacements | Points |
|--|---------------|
| <ul style="list-style-type: none"> • No Proof of Purchase • No record of warranty repair or replacement | 1 point |
| <ul style="list-style-type: none"> • No Proof of Purchase • Record of one warranty repair or replacement | 2 points |
| <ul style="list-style-type: none"> • One valid Proof of Purchase • No record of warranty repair or replacement | 2 points |
| <ul style="list-style-type: none"> • One valid Proof of Purchase • Record of one warranty repair or replacement | 2 points |
| <ul style="list-style-type: none"> • Two valid Proofs of Purchase • No record of warranty repair or replacement | 4 points |
| <ul style="list-style-type: none"> • One valid Proof of Purchase • Record of three successive warranty repairs or replacements | 6 points |

If the Court awards Plaintiffs’ Counsel the full amount of attorneys’ fees and costs that they seek, if there are 150,000 points claimed, each Authorized Claimant will receive approximately \$40.10 per point he or she claimed. If there are such 300,000 points claimed, each Authorized Claimant will receive approximately \$20.04 per point he or she claimed.

The most a Class Member can receive is \$189, unless he or she submits multiple valid Proofs of Purchase; then the most that Class Member could receive would be \$189 per Proof of Purchase.

Any remaining funds in the Gross Settlement Amount after the Settlement has been administered, including due to the effect of uncashed checks or unsuccessful electronic transmission of funds, will be distributed to the Consumer Federation of America. In no event shall any such remaining funds be returned to Apple.

For complete information on the formula used to calculate a Settlement award, please review Section 3 of Settlement Agreement.

¹ Two or more records of warranty repairs or replacements will only be eligible for additional points if they are “successive,” meaning that the second, or later, warranty repair or replacement must be on the device that was previously repaired or was provided to the customer as a replacement unit.

HOW TO REQUEST AN AWARD UNDER THE SETTLEMENT – SUBMITTING A CLAIM FORM

8. *How can I get a Settlement Award?*

To qualify for a Settlement award, you must send in a Claim Form. A Claim Form is available on the Internet at the website www.WirelessEarphonesSettlement.com. The Claim Form may be submitted electronically or by postal mail. Read the instructions carefully, fill out the form, and postmark it by **November 20, 2020** or submit it online on or before 11:59 p.m. (Pacific) on **November 20, 2020**.

9. *When will I get a Settlement award?*

As described in Sections 17 and 18, the Court will hold a hearing on **January 21, 2021** at 1:30 p.m., to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. You can check on the progress of the case on the website dedicated to the Settlement at www.WirelessEarphonesSettlement.com. *Please be patient.*

THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE PLAINTIFFS

10. *Do I have a lawyer in this case?*

The Court has ordered that the law firms of Tycko & Zavareei LLP, The Miller Law Firm, P.C., and Greg Coleman Law (“Class Counsel”) will represent the interests of all Class Members. You will not be separately charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. *How will the lawyers be paid?*

Class Counsel, and any other attorneys involved in bringing the Action and similar actions, will petition the Court to receive a Fee and Expense Award of up to \$3,217,500. The Court will make the final decision as to the amount to be paid to the attorneys for the Fee and Expense Award. You will not be required to separately pay any attorneys' fees or costs.

12. *Will the Representative Plaintiffs receive any compensation for their efforts in bringing this Action?*

The Representative Plaintiffs will request a service award of up to \$1,000 (each) for their services as Class Representatives and their efforts in bringing the Action and related actions. The Court will make the final decision as to the amount to be paid to the Class Representatives.

DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS

13. *What am I giving up to obtain relief under the Settlement?*

If the Court approves the proposed Settlement, unless you exclude yourself from the Settlement, you will be releasing your claims against Apple. This generally means that you will not be able to file a lawsuit, continue prosecuting a lawsuit, or be part of any other lawsuit against Apple regarding the allegations in the Action. The Settlement Agreement, available on the Internet at the website www.WirelessEarphonesSettlement.com contains the full terms of the release.

HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT

14. *How do I exclude myself from the Settlement?*

You may exclude yourself from the Class and the Settlement. If you want to be excluded, complete the form on the Internet at the website www.WirelessEarphonesSettlement.com. You may also send a letter or postcard to the Settlement Administrator that must (i) state the name and case number of the Action, (ii) include the Class Member's name, address, and telephone number; (iii) be personally signed and dated by the Class Member; and (iv) must contain a clear request that the individual would like to "opt out" or be excluded, by use of those or other words clearly indicating a desire not to participate in the Settlement. The letter or postcard must be postmarked no later than **November 20, 2020** and sent to the Settlement Administrator at:

Wireless Earphones Settlement Administrator
Attn: Exclusion Request
P.O. Box 58220
Philadelphia, PA 19102

If you timely request exclusion from the Class, you will be excluded from the Class, you will not be bound by the judgment entered in the Action, and you will not be precluded from prosecuting any timely, individual claim against Apple based on the conduct complained of in the Action.

HOW TO OBJECT TO THE SETTLEMENT

15. *How do I tell the Court that I disagree with the Settlement?*

At the date, time, and location stated in Section 18 below, the Court will hold a Fairness Hearing to determine if the Settlement is fair, reasonable, and adequate, and to also consider the attorneys' who initiated the Action's request for a Fee and Expense Award, and a Service Award to the Representative Plaintiffs.

If you wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, you may submit a written objection no later than (*i.e.*, postmarked by) **November 20, 2020** to the Settlement Administrator at:

Wireless Earphones Settlement Administrator
Attn: Objections
P.O. Box 58220
Philadelphia, PA 19102

Any written objections must (i) include the objecting Class Member's name, address, and telephone number; (ii) be personally signed and dated by the objecting Class Member; (iii) state each objection and the specific legal and factual bases for each; (iv) include Proof of Purchase if available, or alternative information sufficient to show that the objector is a member of the Class. The objection will not be valid if it only objects to the lawsuit's appropriateness or merits. You may, but need not, submit your objection through counsel of your choice. If you do make your objection through an attorney, you will be responsible for your personal attorney's fees and costs.

Objections are not required to be made in writing. Class Members may appear at the Fairness Hearing to make objections without providing any prior notice or objection. If you intend to appear at the Fairness Hearing through counsel, you may submit a written objection that identifies the attorney(s) representing you who will appear at the Fairness Hearing and include the attorney(s) name, address, phone number, e-mail address, and the state bar(s) to which counsel is admitted. Also, if you intend to request the Court to allow you to call witnesses at the Fairness Hearing, such request must be made in your written brief, which must also contain a list of any such witnesses and a summary of each witness' expected testimony.

16. *What is the difference between excluding myself and objecting to the Settlement?*

Objecting is simply telling the Court that you disagree with something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

FAIRNESS HEARING

17. *What is the Fairness Hearing?*

The Court has preliminarily approved the Settlement and will hold a hearing to decide whether to give final approval to the Settlement. The purpose of the Fairness Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Class; to consider the Fee and Expense Award to the attorneys who initiated the Action; and to consider the request for a Service Award to the Representative Plaintiffs.

18. *When and where is the Fairness Hearing?*

On **January 21, 2021** at **1:30 a.m.**, a hearing will be held on the fairness of the proposed Settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement's fairness. The hearing will take place before the Honorable Judge Brian C. Walsh, Downtown Superior Courthouse, 191 First Street, San Jose, California 95113, Department 1. The hearing may be postponed to a different date or time or location without notice. Please check **www.WirelessEarphonesSettlement.com** for any updates about the Settlement generally or the Fairness Hearing specifically. If the date or time of the Fairness Hearing changes, an update to the Settlement website will be the only way you will be informed of the change.

Due to the COVID-19 pandemic, hearings before the judge overseeing this case are currently being conducted remotely with the assistance of a third-party service provider, CourtCall. If that remains the case at the time of the final Fairness Hearing, Class Members who wish to appear at the final Fairness Hearing should contact Class Counsel to arrange a telephonic appearance through CourtCall, at least three days before the hearing if possible. Any CourtCall fees for an appearance by an objecting Class Member shall be paid by Class Counsel.

19. *May I speak at the hearing?*

At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement. You may attend, but you do not have to. If you have requested exclusion from the Settlement, however, you may not speak at the Fairness Hearing.

ADDITIONAL INFORMATION

20. *How do I get more information?*

To see a copy of the Settlement Agreement, the Court's Preliminary Approval Order, the application for attorneys' fees and costs, and the operative complaint filed in the Action, please visit the Settlement Website located at: www.WirelessEarphonesSettlement.com. Alternatively, you may contact the Settlement Administrator at the email address info@WirelessEarphonesSettlement.com or the U.S. postal (mailing) address:

Wireless Earphones Settlement Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

This description of this Action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file, you should visit <http://www.sccaseinfo.org> or visit the Clerk's office at 191 First Street, San Jose, California 95113. The Clerk will tell you how to obtain the file for inspection and copying at your own expense.

21. *What if my address or other information has changed or changes after I submit a Claim Form?*

It is your responsibility to inform the Settlement Administrator of your updated information. You may do so by email to info@WirelessEarphonesSettlement.com or by mail to the address below:

Wireless Earphones Settlement Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.