

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN MATEO

Coordination Proceeding Special Title  
(Rule 1550(b))

Judicial Council Coordination Proceeding No. 4355

**IN RE IPOD CASES**

**NOTICE OF PENDENCY AND PROPOSED  
SETTLEMENT OF CLASS ACTION**

**TO: ALL PERSONS OR ENTITIES RESIDING IN THE UNITED STATES WHO PURCHASED OR OBTAINED  
A NEW FIRST, SECOND, OR THIRD GENERATION IPOD ON OR BEFORE MAY 31, 2004:**

**THIS NOTICE AFFECTS YOUR RIGHTS.  
PLEASE READ THE COMPLETE NOTICE CAREFULLY.**

The above-captioned proceeding (“Litigation”) is pending before the Superior Court of California for San Mateo County (“Court”). In the Litigation, Plaintiffs Lisa Chin, Andrew Westley, Courtney Craft, Joseph Smiley, Brenda Keegan, Sylvia Kieta, Sam Wagya, and Steve Yamin (“Representative Plaintiffs”) claim that the Apple iPod Digital Music Player (“iPod”) did not have the battery life represented and/or that the battery’s capacity to take and hold a charge substantially diminished over time. Defendant Apple Computer, Inc. (“Apple”) has denied the Representative Plaintiffs’ allegations and asserted various affirmative defenses in the Litigation.

The Court has conditionally ruled that the Litigation may be maintained on behalf of the following Class:

All persons or entities residing in the United States who purchased or obtained a First, Second, or Third Generation iPod on or before May 31, 2004.

Excluded from the Class are Apple; any entity in which Apple has a controlling interest; Apple’s directors, officers, and employees; Apple’s legal representatives, successors, and assigns; any Judge to whom the Litigation is assigned and the members of his or her immediate family; and all persons and entities who timely and validly request exclusion from the Class in compliance with the requirements set forth in this Notice.

The above definition of those persons who fall within or are excluded from the Class is referred to in this Notice as “the Class Definition.”

**I. PURPOSE OF THIS NOTICE**

The purpose of this Notice is to inform you, as a potential Class Member, of (a) the existence of the Litigation; (b) a proposed Class Action Settlement of the Litigation, described below; and (c) your rights with respect to the proposed Settlement. Those rights include the right to be excluded from the Class and the Settlement. If you are a Class Member and do not request exclusion in compliance with the procedures and deadline set forth below, you will remain in the Class and be bound by the terms of the Settlement.

Plaintiffs’ Counsel have investigated and evaluated the claims asserted in the Litigation and have determined that the proposed Settlement is fair, reasonable, and adequate for the Class as a whole, in light of the benefits of the settlement and the disadvantages of continuing the Litigation. The proposed Settlement is a compromise of disputed claims and does not mean that Apple has any liability as alleged in the Litigation. Apple has denied and continues to deny any wrongdoing or liability on its part.

**II. DEFINITIONS**

The following defined terms are used in this Settlement and this Notice.

- **First Generation iPod:** First Generation iPods (iPod) are white and have a mechanical scroll wheel that physically turns and a Firewire port with no cover.
- **Second Generation iPod:** Second Generation iPods (iPod Touchwheel) are white and have a touchwheel that does not physically turn and a Firewire port with a cover.
- **Third Generation iPod:** Third Generation iPods (iPod with Dock Connector) are white and have a touchwheel that does not physically turn, a horizontal row of control buttons, and a dock connector.
- **“Battery Failure”** means that the capacity of an iPod’s battery to hold an electrical charge has dropped to four hours or less of continuous audio playback, with earbuds attached, with respect to the Third Generation iPod, or five hours or less of continuous audio playback, with earbuds attached, with respect to the First Generation iPod and the Second Generation iPod.
- **“Store Credit”** means a credit in the amount of \$50 redeemable toward the purchase of any Apple-branded products or services (except iTunes downloads, iTunes Music Store Cards, iTunes Gift Certificates, or any other product redeemable for iTunes downloads or cash) at either The Apple Store (Online) or at a kiosk (a computer linked to The Apple Store (Online)) located in a “brick and mortar” Apple retail store, issued as a discount code number. Store Credit may be transferred once but may not be aggregated or redeemed for cash. Store Credit may be used to purchase multiple products but, in all instances, the full value of the Store Credit must be used up or exhausted in a single transaction. Store Credit does not apply to any shipping, handling and sales tax charges applicable. Store Credit will expire eighteen (18) months after the date of issuance.
- **“Battery Replacement Program”** or **“BRP”** means a service policy and/or program implemented and maintained by Apple, under which Apple will replace a consumer’s iPod with an iPod of similar or better quality if the battery’s ability to hold an electrical charge has diminished. The price currently charged by Apple for iPod replacement under the Battery Replacement Program is \$99.00, plus a shipping fee of \$6.95, for a total cost of \$105.95.
- **“APP”** means the AppleCare Protection Plan For iPod, a program that extends the 90-day complimentary single-incident phone support and one-year warranty on an iPod for a period of up to two years from the date of purchase. At this time, the price charged by Apple for the APP is \$59.00.

**III. SETTLEMENT BENEFITS FOR CLASS MEMBERS**

If the Settlement is approved, Apple will make the benefits described below available to Class Members. Class Members may receive only one of the benefits described below for each iPod owned or purchased.

**A. Benefits for Class Members Who Purchased or Obtained a New Third Generation iPod**

If you are a Class Member who purchased or obtained a new Third Generation iPod on or before May 31, 2004:

Apple will extend the one-year limited warranty on that iPod for one additional year solely to cover Battery Failures. If the

iPod experiences or has experienced Battery Failure during the one-year extension period, and you submit a valid claim, you have the option of either:

- returning the iPod to Apple, which will, in its sole discretion, send you either a battery replacement or a replacement iPod at no charge to you (except for shipping and handling fees applicable under Apple's iPod limited warranty, which will be paid by the Class Member); or
- receiving a Store Credit in the amount of \$50.00 by mail.

**B. Benefits for Class Members Who Purchased or Obtained a New First or Second Generation iPod**

If you purchased or obtained a new First or Second Generation iPod on or before May 31, 2004 that experienced a Battery Failure within two years of purchase, and you submit a valid claim, you will be mailed, at your option, either:

- a Store Credit in the amount of \$50.00, or
- a payment in the form of a check for \$25.00.

**C. Compensation for Class Members Who Already Paid for Battery Replacement**

If you are a Class Member who purchased or obtained a new First, Second, or Third Generation iPod on or before May 31, 2004 that experienced a Battery Failure within two years of purchase and paid for service for that iPod under the Battery Replacement Program before June 3, 2005, and you submit a valid claim, you will be mailed a check for 50 percent (50%) of the amount you paid for the battery or iPod replacement (exclusive of any shipping and sales tax charged).

**D. Benefits for Class Members Who Already Obtained Battery Replacement or Repair under the AppleCare Protection Plan for iPod**

If you are a Class Member who: (1) purchased or obtained a new First, Second, or Third Generation iPod on or before May 31, 2004; (2) purchased the APP for that iPod before June 3, 2005; and (3) obtained a replacement or repair for a Battery Failure under that APP at any time, you are entitled to a check for \$25.00. You need not submit a claim to receive this payment. Apple will search its records for all Class Members who are entitled to this compensation and will have a \$25.00 check mailed to each such Class Member it locates.

**E. Continuation of Battery Replacement Program**

Apple will keep its Battery Replacement Program in force for Class Members through at least September 30, 2006, and agrees that it will not raise the price charged to Class Members from the price and shipping fee currently charged by Apple under the program.

**F. Claims Process**

Only one settlement benefit is available for each qualifying iPod. To make a claim, complete and submit the enclosed Claim Form in compliance with the instructions set forth on the Claim Form, along with any required documentation. You must submit a Claim Form for each iPod owned or purchased. You have the option of submitting your claim by mail or electronically. If you submit your claim by mail, sign and send the original of the Claim Form and a copy of any required documentation, and keep copies for your records. If you submit your claim electronically, sign the Claim Form, scan and send it and any required documentation as a single portable document format (pdf) file and keep the original documents for your records. Failure to keep a copy of your Claim Form and proof of purchase documents may result in denial of your claim if the version electronically submitted is not received or readable.

**G. Claims Deadline**

For Third Generation iPod Claims for battery or iPod replacement, the postmark deadline for submitting a claim by mail and the transmission deadline for submitting a claim electronically is (a) two years after the original purchase date of the iPod for which you are making the claim, or (b) September 30, 2005, whichever is later.

For all other claims, the postmark deadline for submitting a claim by mail and the transmission deadline for submitting a claim electronically is September 30, 2005.

**IV. DISMISSAL OF LITIGATION AND RELATED LAWSUIT, ENTRY OF JUDGMENT, AND RELEASE OF CLAIMS**

If the Court approves the proposed settlement, it will enter a judgment that will dismiss the Litigation with prejudice as to all Class Members, except those Class Members who request to be excluded from the Settlement. Furthermore, if the Court enters the judgment, the proposed New York state class action, *Mosley v. Apple Computer, Inc.*, which is currently pending in the United States District Court for the Southern District of New York as Case No. 7-04-cv-5773 ("Mosley Action"), and which asserts allegations against Apple similar to those asserted in this Litigation, will be dismissed with prejudice by the named plaintiff in that lawsuit ("Mosley Plaintiff"). All people and entities who meet the Class Definition and do not validly and timely request exclusion from the Class will be forever barred from prosecuting their own lawsuits, and they and their heirs, executors, administrators, representatives, agents, partners, successors, and assigns shall be deemed to have fully released and forever discharged the Released Persons (defined below) from all Released Claims (defined below).

"Released Persons" means Apple Computer, Inc. and, whether or not specifically named in the Litigation or Mosley Action, each of its past or present directors, officers, employees, agents, shareholders, attorneys, advisors, consultants, representatives, partners, affiliates, parents, subsidiaries, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, related companies, and divisions, and each of their predecessors, successors, heirs and assigns.

"Released Claims" means any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, restitution, disgorgement, costs, attorneys' fees, losses, expenses, obligations or demands, of any kind whatsoever that the Releasing Persons may have or may have had, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown, suspected or unsuspected, threatened, asserted or unasserted, actual or contingent, liquidated or unliquidated, that were alleged or could have been alleged in the Litigation or in the Mosley Action, regarding the iPod battery, including without limitation, claims relating to any alleged defect, misrepresentation, or failure to disclose regarding the iPod battery or the iPod

battery's life, lifespan, playtime or charge-holding capacity in iPods bought or obtained by Representative Plaintiffs, the Mosley Plaintiff, or Class Members on or before May 31, 2004. Notwithstanding the foregoing, Released Claims shall not include any claims for personal injury. By operation of the judgment, all Class Members shall be deemed to have waived any and all provisions, rights, and benefits conferred by section 1542 of the California Civil Code or any comparable statutory or common law provision of any other jurisdiction with respect to the Released Claims. Section 1542 reads as follows:

Certain Claims Not Affected By General Release: A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Although the releases granted under the proposed settlement are not general releases, all Class Members nonetheless expressly acknowledge that they are waiving the protections of section 1542 and of any comparable statutory or common law provision of any other jurisdiction.

## V. COSTS AND ATTORNEYS' FEES AND EXPENSES

From the inception of these lawsuits beginning in 2003 to the present, Plaintiffs' Counsel have not received any payment for their services in prosecuting the lawsuit, nor have they been reimbursed for any out-of-pocket expenses. If the Court approves the proposed settlement, Plaintiffs' Counsel will ask the Court to award them attorneys' fees and out-of-pocket expenses in the amount of \$2,768,000. Apple has agreed not to oppose an award that does not exceed \$2,768,000. In addition, Plaintiffs' Counsel will ask the Court to award a \$1,500 incentive payment to each of the Class representatives, in addition to the benefits to which they are entitled under the settlement, for their time and effort related to the Litigation. Finally, Apple has agreed to pay all costs of mailed and published notice to the Class, as well as the costs of administering the Settlement.

Any awards of attorneys' fees, expenses, and incentive payments will be paid separately from, and will not reduce, the benefits provided to Class Members under the settlement. Under no circumstances will Class Members be personally liable for any attorneys' fees or expenses of Plaintiffs' Counsel or incentive payments to the Class representatives.

## VI. RIGHTS AND OPTIONS OF CLASS MEMBERS

If you meet the Class Definition set forth at the start of this Notice, you have the following rights and options:

### A. Remain a Class Member

1. If you do not request exclusion from the Class, you will remain a Class Member. Your interests in connection with the proposed Settlement will be represented by the Plaintiffs and their counsel. You will not be charged for the services of the Plaintiffs' Counsel.

Plaintiffs' Counsel include the following attorneys and law firms, who serve as Plaintiffs' Co-Lead Counsel:

Eric H. Gibbs  
Girard Gibbs & De Bartolomeo LLP  
601 California Street, Suite 1400  
San Francisco California 94108

Steven N. Williams,  
Elizabeth C. Pritzker  
Cotchett, Pitre, Simon & McCarthy  
San Francisco Airport Office Center  
840 Malcolm Road, Suite 200  
Burlingame, California 94010

Apple is represented in the Litigation by:

James P. Bennett  
Penelope A. Prevolos,  
Andrew D. Muhlbach,  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105

2. If the Settlement is approved by the Court and the judgment becomes final, you will be entitled to the benefits described in section III above.
3. As a Class Member, you will be bound by any judgment or other disposition of this Litigation, even if you do not submit a claim or take advantage of any of the benefits of the Settlement. Furthermore, you and your heirs, executors, administrators, representatives, agents, partners, successors, and assigns will be deemed to have agreed to the terms of the release described in section IV above.

### B. Objections to or Comments on the Settlement

As a Class Member, you have the right to object to or comment in support of the proposed Settlement, the proposed award of attorneys' fees and expenses, or the proposed payment of incentive awards to the Representative Plaintiffs and the Mosley Plaintiff. The procedure for doing so is explained in section VII.B below.

### C. Request Exclusion

You have the right to request exclusion from the Class. If you request exclusion from the Class, you will not be bound by any judgment or settlement of the Litigation, and you will not receive the benefits of the Settlement. If you wish to be excluded from the Class, you must submit a written, signed request for exclusion, by First-Class mail, stating (1) your name, address, and telephone number; (2) the reference "*In re iPod Cases*, Judicial Council Coordination Proceeding No. 4355"; (3) the serial number, if available, of each iPod you purchased or obtained that brings you within the Class definition, or if the serial number is not available, the approximate date you purchased or obtained the iPod and whether it is First, Second, or Third Generation; and (4) that you wish to be excluded from the Class. Requests for exclusion must be mailed to both of Plaintiffs' Co-Lead Counsel at the addresses listed in section VI.A.1 above, postmarked no later than July 29, 2005. If you submit a request for exclusion that does not comply with these requirements, your request will be deemed invalid, and you will not be excluded from the Class.

#### **D. Retain Your Own Attorney and Seek Intervention**

You have the right to consult and/or retain an attorney of your choice, at your own expense, to advise you regarding the Settlement and your rights in connection with the Settlement. You also have the right, either personally or through an attorney retained by you, at your own expense, to seek to intervene in the Litigation.

### **VII. FAIRNESS HEARING**

#### **A. Time, Place, and Purpose of Hearing**

A Fairness Hearing will be held on Thursday, August 25, 2005, at 1:30 p.m., before the Honorable Beth Labson Freeman, Judge of the Superior Court, at the Superior Court of California for San Mateo County, Hall of Justice and Records, 400 County Center, Redwood City, California 94063, to determine: (1) whether the proposed settlement of the Litigation on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate for the Class as a whole and should be granted final approval; (2) whether the certification of the Class should be made final; (3) whether the Court should enter the proposed judgment dismissing the Litigation with prejudice; (4) whether the Court should grant the application of Plaintiffs' Counsel for attorneys' fees and reimbursement of expenses and, if so, in what amount; and (5) whether the Court should grant the request for incentive awards to the Representative Plaintiffs and the Mosley Plaintiff and, if so, in what amount. Class Members need not attend the Fairness Hearing.

#### **B. Procedure for Objecting to or Commenting in Support of the Settlement**

##### **1. Written Objections or Comments**

If you are a Class Member, you have the right to submit written objections to or comments in support of the proposed Settlement, the proposed award of attorneys' fees and expenses, or the proposed payment of incentive awards to the Representative Plaintiffs and the Mosley Plaintiff. To do so, you must submit a written statement setting forth: (1) your name, address, and telephone number; (2) the reference "*In re iPod Cases*, Judicial Council Coordination Proceeding No. 4355"; (3) the serial number, if available, of each iPod you purchased or obtained that brings you within the Class definition, or if the serial number is not available, the approximate date you purchased or obtained the iPod and whether it is First, Second, or Third Generation; and (4) your objections, comments and any supporting arguments, to:

Clerk of the Court  
Superior Court of California for San Mateo County  
Hall of Justice and Records  
400 County Center  
Redwood City, CA 94063

You must also mail copies of your entire written submission to Plaintiffs' Co-Lead Counsel and Apple's counsel at the addresses listed in section VI.A.1 above. To be considered by the Court, your objections or supporting comments must be actually received by the Clerk of the Court, Plaintiffs' Co-Lead Counsel, and Apple's counsel, and not merely postmarked, no later than July 29, 2005. You cannot both request exclusion and make an objection. Only those who remain in the Class may make an objection.

##### **2. Presentation of Objections and Supporting Comments at Fairness Hearing**

You may also attend the Fairness Hearing, either personally or through an attorney retained by you, at your own expense, and ask to be heard by the Court on your comments. If you wish to do so, you must submit your objections or comments in writing in compliance with section VI.B.1 above and include in your comments a statement that you intend to appear and wish to be heard at the Fairness Hearing.

### **VIII. ADDITIONAL INFORMATION**

If the Settlement is not granted final approval, or if the Settlement is granted final approval but the judgment does not become final, the certification of the Class will be vacated and the Litigation will proceed as though no proposed Settlement had been reached.

Any questions you may have about the matters described in this Notice should be directed in writing to either of Plaintiffs' Co-Lead Counsel listed in section VI.A.1 above. You may also send questions by e-mail to Plaintiffs' Co-Lead Counsel at [iPodSettlement@girardgibbs.com](mailto:iPodSettlement@girardgibbs.com). Please do not direct any questions to the Court. Copies of the Settlement Agreement and the pleadings and other documents filed in the Litigation are on file at the Superior Court of California for San Mateo County, and may be examined and copied during regular office hours at the Office of the Clerk of the Court, Superior Court of California for San Mateo County, Hall of Justice and Records, 400 County Center, Redwood City, California 94063.

### **IX. DEADLINES**

Remember:

- **If you wish to be excluded from the Class, you must mail your written request for exclusion, postmarked no later than July 29, 2005, to both of Plaintiffs' Co-Lead Counsel at the addresses listed in section VI.A.1 above.**
- **If you wish to submit objections or supportive comments, you must submit them in writing to the Clerk of the Court at the address listed in section VII.B.1, with copies to both of Plaintiffs' Co-Lead Counsel and Apple's counsel at the addresses listed in section VI.A.1 above, such that they are received no later than July 29, 2005.**
- **If you wish to seek to intervene in the Litigation, you must do so no later than July 29, 2005.**
- **For Third Generation iPod Claims for battery replacement, the deadline for submitting this claim either by electronic or U.S. mail is (a) two years after the original purchase date of the iPod for which you are making the claim, or (b) September 30, 2005, whichever is later.**
- **For all other Claims, the deadline for submitting a claim by electronic or U.S. mail is September 30, 2005.**

DATED: May 12, 2005

BY ORDER OF THE SUPERIOR COURT  
OF CALIFORNIA FOR SAN MATEO COUNTY