SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

THOMAS J. BUTLER,

Plaintiff,

vs.

APPLE INC.,

Defendant.

Case No.: 2014-1-CV-262989

ORDER AFTER HEARING ON APRIL 19, 2019

(1) Motion by Plaintiff Thomas J. Butler for Preliminary Approval of Class Action Settlement and
(2) Motions by Defendant to Seal Records

The above-entitled matter came on for hearing on Friday, April 19, 2019 at 9:00 a.m. in Department 1 (Complex Civil Litigation), the Honorable Brian C. Walsh presiding. A tentative ruling was issued prior to the hearing. The appearances are as stated in the record. Having reviewed and considered the written submissions of all parties and being fully advised, the Court orders as follows:

This is a putative consumer class action arising from the alleged failure of Wi-Fi and Bluetooth functions on the iPhone 4S. Before the Court is the parties' joint motion for preliminary approval of a settlement. Also at issue are two motions by Apple to seal materials lodged in connection with a prior motion by plaintiff.

I. Factual and Procedural Background

This action involves Apple's iPhone 4S smartphone, which retailed for $649.99 to $849.99 at the time it was initially sold. (First Amended Complaint ("FAC"), ¶¶ 12-15.) Like all iPhones, the iPhone 4S ran on Apple's iOS operating system. (*Id.* at ¶ 17.) When the iPhone 4S was released, it operated on version 5 of iOS. (*Ibid.*)

In the operative FAC, Apple upgraded iPhone 4S devices in the hands of consumers first to iOS 6 and then to iOS 7. (FAC, ¶ 22.) When these new versions of iOS were initially released, Apple gave users a short period of time in which they could "choose" to upgrade; later, though, it automatically "pushed out" the updates to users' phones. (*Id.* at ¶¶ 23-24.) Apple prevented users from "rolling back" to iOS 6 once they had upgraded to iOS 7. (*Id.* at ¶ 24.) Unfortunately, iOS 7 was not fully compatible with the iPhone 4S. (*Id.* at ¶ 26.) Plaintiff alleges that Apple's forced updates to iOS 7 caused significant damage to many iPhone 4S devices, making them incapable of both connecting to the internet via Wi-Fi and using Bluetooth wireless device connectivity, two of the core features of any smartphone. (*Ibid.*) After installing iOS 7 on their iPhone 4S devices, many users found that Wi-Fi and Bluetooth were no longer operating properly. (*Id.* at ¶ 33.) The option to turn on the antennas associated with these features appears "grayed out" on these users' phones, meaning users can see the buttons to turn the options on, but they cannot actually be selected. (*Ibid.*)

Before sending iOS 7 out to iPhone 4S owners, Apple did not provide any warning or notification indicating that the upgrade could negatively affect their devices' Wi-Fi or Bluetooth connectivity. (FAC, ¶ 35.) To the contrary, the iOS 7 software push came with a "Software Update" description that stated:

> This update features a beautiful new design and contains hundreds of new features, including Control Center, AirDrop, iTunes Radio, and improvements to Notification Center, Multitasking, Camera, Photos, Safari, Siri and more.

(*Ibid.*) Descriptions accompanying subsequent updates to iOS versions 7.0.1 through 7.0.6 also did not give any indication that the updates would affect Wi-Fi or Bluetooth performance and generally stated that the updates would make improvements to or fix various issues or "bugs" in the iOS 7 software. (*Ibid.* at fn. 9.) Thus, before installing iOS 7, iPhone

4S owners did not consent to having their ability to use Wi-Fi or Bluetooth damaged or removed, and had no way of knowing that such damage would occur as a result of installing iOS 7. (*Id.* at ¶ 38.) To the contrary, Apple's notifications set expectations that iOS 7 would only improve customers' experience with their iPhone 4S. (*Ibid.*)

After experiencing a similar issue with the iOS 6.1.3 update, Apple knew or should have known that the "gray out" issue would persist with iOS 7. (FAC, ¶¶ 39-42.) In addition, Apple began receiving complaints about the issue in connection with iOS 7 after its initial release, but still pushed automatic updates to iPhone 4S devices and removed users' ability to roll back to a version that allowed them to use Wi-Fi and Bluetooth. (*Id.* at ¶ 43.) As the issues continued, Apple claimed it was not responsible for the Wi-Fi or Bluetooth problems affecting iPhone 4S devices that were out of warranty. (*Id.* at ¶ 45.) It refused to provide a software update to correct the problem and refused to allow users to roll back to a previous version of iOS with Wi-Fi and Bluetooth functionality. (*Ibid.*) The only remedy Apple offered to affected iPhone 4S users who were no longer under warranty was the option to buy a refurbished iPhone 4S with working Wi-Fi for $199. (*Id.* at ¶ 47.)

Like other putative class members, plaintiff experienced the "gray out" issue when he upgraded his iPhone 4S to iOS 7.0.3, and ultimately purchased a refurbished phone. (FAC, ¶¶ 48-55.) When he bought the replacement device, the Apple sales representative who processed the transaction told plaintiff that he was required to give his damaged iPhone back to Apple, which he did. (*Id.* at ¶ 56.)

Plaintiff filed this action on behalf of a putative class of "[a]ll California residents who own an Apple iPhone 4s device that is no longer covered by warranty and who lost the ability to use the Wi-Fi and/or Bluetooth features on their iPhone 4s devices after their iPhones were updated to a version of the iOS operating system numbered iOS 7 or later." (FAC, ¶ 57.) The operative FAC asserts claims for (1) violation of Business & Professions Code section 17200 et seq. (the Unfair Competition Law or "UCL") and (2) violation of Business & Professions Code section 17500 et seq. (the False Advertising Law or "FAL").

The Court (Hon. Kirwan) overruled Apple's demurrer to the FAC on October 13, 2015, and Apple answered on October 22, 2015. The parties engaged in discovery and mediation and repeatedly stipulated to continue the briefing and hearing of a motion to certify the class: most recently, the briefing schedule was vacated by stipulation on March 23, 2017. On January 2, 2019, the Court entered a stipulated order extending the time to bring the action to trial until December 31, 2019.

II. Motion for Preliminary Approval of Class Settlement

The parties have now reached a settlement. They move for an order preliminarily approving the settlement, provisionally certifying the settlement class, approving the form and method for providing notice to the class, and scheduling a final fairness hearing.

A. Legal Standard for Approving a Class Action Settlement

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

(*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at pp. 244-245, internal citations and quotations omitted.)

In general, the most important factor is the strength of plaintiffs' case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) Still, the list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.

(*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, quoting *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801, internal quotation marks omitted.)

> The burden is on the proponent of the settlement to show that it is fair and reasonable. However "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245, citing *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1802.) The presumption does not permit the Court to "give rubber-stamp approval" to a settlement; in all cases, it must "independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished," based on a sufficiently developed factual record. (*Kullar v. Foot Locker Retail, Inc.*, *supra,* 168 Cal.App.4th at p. 130.)

B. Settlement Process

According to a declaration by plaintiff's counsel, after plaintiff Butler served initial discovery requests beginning in late 2015, Apple made five document productions over the course of 2016, totaling over 330,000 pages. Plaintiff served a supplemental set of requests for production in November 2016, and a dispute arose over his request for a sampling of devices that had "grayed out." The parties participated in an informal discovery conference with the Court, and plaintiff ultimately filed a motion for sanctions arising from Apple's asserted failure to preserve and produce the grayed-out devices at issue in this action. On December 8, 2017, the Court continued that motion and directed Apple to file a declaration providing more information about its preservation efforts and the grayed-out devices in its possession.

Meanwhile, in November 2016 and January 2017, plaintiff deposed two persons most knowledgeable designated by Apple.

The parties participated in mediation sessions before Hon. Edward A. Infante in February and June of 2017. They continued these efforts with a face-to-face settlement discussion on January 11, 2018, at which point they reached a tentative agreement. Plaintiff withdrew his motion for sanctions and the parties finalized their settlement over the course of 2018.

Consistent with the results of plaintiff's investigation, the settlement provides that plaintiff will file a Second Amended Complaint ("SAC") alleging that the "gray out" issue that class members experienced was caused by a hardware defect affecting certain iPhone 4S devices with a Wi-Fi module supplied by third-party manufacturer Universal Scientific Industrial Co., Ltd. ("USI"), and redefining the class to encompass users who purchased devices with that component. As alleged in the SAC, Apple began receiving complaints about the "gray out" issue shortly after releasing the iPhone 4S in October 2011. Apple investigated these complaints, and by September 1, 2012, had concluded that hardware problems, including defective Wi-Fi modules manufactured by USI, were the root cause. However, defendant continued to sell iPhones with the defective Wi-Fi modules, which were at risk of experiencing Wi-Fi "gray out" at any time. Apple would replace phones that "grayed out" within the warranty period, but if a device malfunctioned after its warranty had expired, the purchaser was forced to (1) continue using a device without Wi-Fi capabilities, (2) buy a new phone, or (3) pay up to $200 for a replacement phone supplied by Apple.

C. Provisions of the Settlement

The non-reversionary gross settlement amount is $6,645,440. Attorney fees and expenses of $1,500,000 (22.5 percent of the gross settlement) and administration costs not to

///

///

///

///

exceed $169,000 will be paid from the gross settlement. A new named plaintiff, Fernanda Rocha Hawkins, will also seek an enhancement award of $1,000.[1]

The net settlement fund of approximately $4,975,440 will be divided among participating class members in the following manner:

- The 12,989 class members who paid $199 for an out-of-warranty replacement iPhone 4S due to a Wi-Fi/Bluetooth issue will receive $199.

- Class members who paid a lesser amount for a replacement iPhone will receive $30 (for the 386 customers who paid between $1-30); $50 (for the 42 customers who paid $30.01-50); $75 (for the 7 customers who paid between $50.01-75); $100 (for the 422 customers who paid $75.01-100); $150 (for the 103 customers who paid $100.01-150); $185 (for the 286 customers who paid $150.01-185); or $198 (for the 3 customers who paid $185.01-198).

- The 98,490 class members who complained about a Wi-Fi/Bluetooth issue when their iPhone 4S was out of warranty but did not purchase a replacement from Apple will receive $23.

Class members will not be required to submit a claim to receive their payments. Funds associated with checks uncashed after 185 days will distributed half to the National Center for Youth Law, a child advocacy program, and half to Public Counsel, a nonprofit organization that provides legal services to the indigent.

Class members who do not opt out of the settlement will release all claims, causes of action, etc. "that were or reasonably could have been asserted based on the factual allegations in the Second Amended Complaint, or based on any facts discovered in the course of litigating the Action, or that relate to or arise out of all iPhone 4S Wi-Fi/Bluetooth issues." The release specifically excludes claims "related to any phone models other than the iPhone 4S or problems with the iPhone 4S other than Wi-Fi or Bluetooth problems," as well as claims asserted in "any ongoing or pending litigation against Apple."

///

///

---

[1] Counsel explains that the original named plaintiff, Thomas Butler, is not part of the settlement class because he purchased his iPhone before the beginning of the settlement class period. He will accordingly no longer serve as the named plaintiff as of the filing of the SAC.

D. Fairness of the Settlement

The parties submit that the settlement is fair and reasonable to the class because it provides full refunds to settlement class members who purchased a replacement iPhone 4S devices from Apple and also provides some compensation to class members who merely complained to Apple about the "gray out" issue. As directed by the Court, plaintiff filed a supplemental declaration on April 18, 2019 providing further information regarding the claims that will be dismissed under the settlement, as well as the claims of class members who did not purchase a replacement iPhone, to enable the Court to evaluate those aspects of the settlement. Based on the analysis in the supplemental declaration, the Court agrees that the settlement is fair and reasonable to all members of the class and that notice need not be provided to individuals included in the original putative class but not the settlement class. (Cal. Rules of Court, rule 3.770.)

The Court retains an independent right and responsibility to review the requested attorney fees and award only so much as it determines to be reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) While an award of less than 1/4 of the common fund is generally considered reasonable in a consumer class action, counsel shall submit lodestar information prior to the final approval hearing in this matter so the Court can compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the reasonableness of a percentage fee through a lodestar calculation].)

E. Proposed Settlement Class

The parties request that the following settlement class be provisionally certified:

> All customers who, according to Apple's company records, owned an iPhone 4S that was purchased on or after September 1, 2012, whose phone had a Wi-Fi module that was or may have been manufactured by USI, and who either paid for an out-of-warranty replacement iPhone 4S due to a Wi-Fi/Bluetooth issue or complained to Apple about a Wi-Fi/Bluetooth issue when their iPhone 4S was out-of-warranty (limited to the first customer who complained to Apple about a specific [by serial number] device).

The settlement class excludes Apple; any entity in which Apple has a controlling interest; Apple's directors, officers, and employees; Apple's legal representatives successors, and assigns; and all persons who validly request exclusion from the Settlement Class.

1. Legal Standard for Certifying a Class for Settlement Purposes

Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court ...." As interpreted by the California Supreme Court, Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence (1) an ascertainable class and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 326, 332.)

The "community-of-interest" requirement encompasses three factors: (1) predominant questions of law or fact, (2) class representatives with claims or defenses typical of the class, and (3) class representatives who can adequately represent the class. (*Ibid.*) "Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court (Botney)* (1976) 18 Cal.3d 381, 385.)

In the settlement context, "the court's evaluation of the certification issues is somewhat different from its consideration of certification issues when the class action has not yet settled." (*Luckey v. Superior Court (Cotton On USA, Inc.)* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the settlement-only context, the case management issues inherent in the ascertainable class determination need not be confronted, and the court's review is more lenient in this respect. (*Id.* at pp. 93-94.) However, considerations designed to protect

absentees by blocking unwarranted or overbroad class definitions require heightened scrutiny in the settlement-only class context, since the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

2. Ascertainable Class

"The trial court must determine whether the class is ascertainable by examining (1) the class definition, (2) the size of the class and (3) the means of identifying class members." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) "Class members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932.)

Here, the estimated 112,728 class members have already been identified based on defendant's records, and the class is clearly defined. The Court finds that the class is numerous and ascertainable. Based on the results of plaintiff's investigation, the class is appropriately defined to encompass consumers who purchased a defective iPhone 4S after Apple learned of the "gray out issue" caused by USI components, and who complained of that issue to Apple.

3. Community of Interest

With respect to the first community of interest factor, "[i]n order to determine whether common questions of fact predominate the trial court must examine the issues framed by the pleadings and the law applicable to the causes of action alleged." (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916.) The court must also give due weight to any evidence of a conflict of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants. (*Lockheed Martin Corp. v. Superior Court, supra,* 29 Cal.4th at pp. 1104-1105.) "As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Hicks v. Kaufman & Broad Home Corp., supra,* 89 Cal.App.4th at p. 916.)

Here, common legal and factual issues predominate. Plaintiff's claims all arise from defendant's business practices applied to the similarly-situated class members.

As to the second factor,

> The typicality requirement is meant to ensure that the class representative is able to adequately represent the class and focus on common issues. It is only when a defense unique to the class representative will be a major focus of the litigation, or when the class representative's interests are antagonistic to or in conflict with the objectives of those she purports to represent that denial of class certification is appropriate. But even then, the court should determine if it would be feasible to divide the class into subclasses to eliminate the conflict and allow the class action to be maintained.

(*Medrazo v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations, brackets, and quotation marks omitted.)

Like other members of the class, plaintiff Fernanda Rocha Hawkins purchased an iPhone 4S and experienced a "gray out" after her warranty had expired. The anticipated defenses are not unique to plaintiff, and there is no indication that plaintiff's interests are otherwise in conflict with those of the class.

Finally, adequacy of representation "depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class representative does not necessarily have to incur all of the damages suffered by each different class member in order to provide adequate representation to the class. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 238.) "Differences in individual class members' proof of damages [are] not fatal to class certification. Only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." (*Ibid.*, internal citations and quotation marks omitted.)

Plaintiff has the same interest in maintaining this action as any class member would have. Further, she has hired experienced counsel. Plaintiff has sufficiently demonstrated adequacy of representation.

///

4. Substantial Benefits of Class Certification

"[A] class action should not be certified unless substantial benefits accrue both to litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120, internal quotation marks omitted.) The question is whether a class action would be superior to individual lawsuits. (*Ibid.*) "Thus, even if questions of law or fact predominate, the lack of superiority provides an alternative ground to deny class certification." (*Ibid.*) Generally, "a class action is proper where it provides small claimants with a method of obtaining redress and when numerous parties suffer injury of insufficient size to warrant individual action." (*Id.* at pp. 120-121, internal quotation marks omitted.)

Here, there are an estimated 112,728 members of the proposed class. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits to both the litigants and the Court in this case.

F. Notice

The content of a class notice is subject to court approval. (Cal. Rules of Court, rule 3.769(f).) "The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (*Ibid.*)

Here, the long-form notice describes the lawsuit, explains the settlement, and instructs class members that they may opt out of the settlement or object. The gross settlement amount is provided, along with the payments to be provided to class members in the various categories outlined above. The attorney fees and expenses and incentive award that will be requested are stated. Class members are given 50 days to request exclusion from the class or submit a written objection. E-mail and postcard notices appropriately summarize the settlement and refer class members to a dedicated web site and toll-free phone number for further information.

The notices are generally adequate, but must be modified to instruct class members that they may appear at the final fairness hearing to make an oral objection even if they do not submit a written objection. The notices must also be modified to state the administrative costs that will be deducted from the gross settlement. Section 7 of the long-form notice must be corrected to reflect the $23 payment to class members who did not purchase a replacement iPhone. Finally, the e-mail and postcard notices must be modified to reflect the attorney fees and expenses and incentive award that will be deducted from the gross settlement.

Turning to the notice procedure, the court must consider: "(1) The interests of the class; (2) The type of relief requested; (3) The stake of the individual class members; (4) The cost of notifying class members; (5) The resources of the parties; (6) The possible prejudice to class members who do not receive notice; and (7) The res judicata effect on class members." (Cal. Rules of Court, rule 3.766(e).) "If personal notification is unreasonably expensive or the stake of individual class members is insubstantial, or if it appears that all members of the class cannot be notified personally, the court may order a means of notice reasonably calculated to apprise the class members of the pendency of the action—for example, publication in a newspaper or magazine; broadcasting on television, radio, or the Internet; or posting or distribution through a trade or professional association, union, or public interest group." (Cal. Rules of Court, rule 3.766(f).)

The parties have selected KCC as the settlement administrator. The administrator will establish and maintain a settlement web site and set up a toll-free telephone number to provide information about the settlement at Apple's expense. KCC will send the e-mail notice to class members for whom Apple has an e-mail address on file, and will mail the postcard notice to class members whose e-mail notices are returned as undeliverable or for whom Apple has no e-mail address on file. Postcard notices returned as undeliverable will be re-mailed to any forwarding address provided or located through a search of credit bureau information. These notice procedures are appropriate and are approved.

///

///

G. Conclusion and Order

Plaintiffs' motion for preliminary approval is GRANTED. The final approval hearing shall take place on **August 9, 2019** at 9:00 a.m. in Dept. 1.

The following class is provisionally certified for settlement purposes:

> All customers who, according to Apple's company records, owned an iPhone 4S that was purchased on or after September 1, 2012, whose phone had a Wi-Fi module that was or may have been manufactured by USI, and who either paid for an out-of-warranty replacement iPhone 4S due to a Wi-Fi/Bluetooth issue or complained to Apple about a Wi-Fi/Bluetooth issue when their iPhone 4S was out-of-warranty (limited to the first customer who complained to Apple about a specific [by serial number] device).

III. Motions to Seal

In separate motions, Apple moves to seal (1) its opposition to plaintiff's motion for sanctions and Exhibit A to the Declaration of Andrew C. Stanley filed in support thereof and (2) plaintiff's memorandum of points and authorities supporting its motion and the associated Declaration of Alexander S. Vahdat.

A. Legal Standard

California Rules of Court, rules 2.550 and 2.551 set forth specific criteria for permanently sealing court records. (See Cal. Rules of Court, rule 2.550(d) [stating that the court must make the following express factual findings before granting leave to file records under seal: (1) an overriding interest overcomes the public's presumptive right of access to court records, (2) that interest supports sealing the records, (3) a substantial probability exists that the overriding interest will be prejudiced if the records are not sealed, (4) the proposed sealing is narrowly tailored, and (5) no less restrictive means exist to achieve the overriding interest].)

These criteria do not directly apply to "discovery motions and records filed or lodged in connection with discovery motions or proceedings." (See Cal. Rules of Court, rule 2.550(a)(3).) Nonetheless, even in discovery proceedings, a party moving for leave to file records under seal must identify the specific information claimed to be entitled to

confidentially and the nature of the harm threatened by disclosure. (See *H.B. Fuller Co. v. Doe* (2007) 151 Cal.App.4th 879, 894.)

Where rule 2.550 applies, "[c]ourts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute overriding interests." (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 298, fn. 3.) In addition, confidential matters relating to the business operations of a party may be sealed where public revelation of the information would interfere with the party's ability to effectively compete in the marketplace. (See *Universal City Studios, Inc. v. Superior Court (Unity Pictures Corp.)* (2003) 110 Cal.App.4th 1273, 1285-1286.)

Where some material within a document warrants sealing, but other material does not, the document should be edited or redacted if possible, to accommodate both the moving party's overriding interest and the strong presumption in favor of public access. (Cal. Rules of Court, rule 2.550(d)(4), (5).) In such a case, the moving party should take a line-by-line approach to the information in the document, rather than framing the issue to the court on an all-or-nothing basis. (*In re Providian, supra*, 96 Cal.App.4th at p. 309.)

B. Analysis

In support of its motions, Apple provides declarations by its attorneys stating that the documents at issue contain confidential business and technical information regarding customer complaints about and Apple's response to the "gray out" issue. Public disclosure of this information would give competitors an unfair advantage over Apple. At the Court's direction, Apple filed public versions of the documents at issue, with redactions tailored to the confidential information described in its motions. The Court finds that the redacted information is appropriately filed under seal, and the factors set forth in rule 2.550(d) are satisfied under the circumstances.

///

///

///

///

C. Conclusion and Order

Apple's motions to seal are GRANTED.

IT IS SO ORDERED.

Dated: April 22, 2019

Honorable Brian C. Walsh
Judge of the Superior Court