

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

*Lerman v. Apple Inc.* Case No. 15-cv-07381 (SJ) (LB)

**IF YOU ARE OR WERE A NEW YORK OR NEW JERSEY RESIDENT  
AND CURRENTLY OWN OR HAVE OWNED AN iPhone 4S,  
AND DOWNLOADED ANY VERSION OF iOS 9 ONTO THE iPhone 4S, YOU MAY BE  
ENTITLED TO BENEFITS FROM A CLASS ACTION SETTLEMENT. YOU SHOULD  
READ THIS NOTICE AS IT MAY IMPACT YOUR LEGAL RIGHTS.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.  
You are not being sued.*

- A settlement has been reached with Apple Inc. (“Apple”) in a class action lawsuit. In the case, the plaintiffs claimed that upgrading to any version iOS 9 on the iPhone 4S substantially slowed down their phones. Apple denies all allegations of wrongdoing. By entering the Settlement, Apple does not concede the truth of any of the claims against it; Apple maintains that it did nothing wrong and that iOS 9 performed well on the iPhone 4S. The Court has not decided who is right. Instead, the parties agreed to a compromise.
- The Settlement only impacts you if you are a Settlement Class Member. You may be entitled to settlement benefits if (1) you downloaded iOS 9 (which was first released in September 2015), or any version thereof, onto your iPhone 4S; (2) you lived in New York or New Jersey at the time that you first downloaded any version of iOS 9; and (3) your iPhone 4S experienced a significant decline in performance as a result. For more information, you can visit the settlement website at [www.OperatingSystemUpdateSettlement.com](http://www.OperatingSystemUpdateSettlement.com), email [info@OperatingSystemUpdateSettlement.com](mailto:info@OperatingSystemUpdateSettlement.com), or call 1-877-540-0949.
- Your legal rights are affected whether you act or don’t act. Please read this Class Notice carefully in its entirety. Defined terms have the meanings in the Settlement Agreement.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>		
<b>OPTION</b>	<b>WHAT THEY MEAN</b>	<b>DEADLINE</b>
<b>SUBMIT A CLAIM FORM ONLINE OR IN THE MAIL</b>	The only way to get payment under the settlement. You must submit a Valid Claim to receive money in the Settlement. To find out how to submit a Claim Form, please read Question 11.	<b>August 29, 2022</b>
<b>EXCLUDE YOURSELF (OPT OUT)</b>	Get no payment under the settlement. This is the only option that allows you to be a part of any other lawsuit against Apple about the claims and allegations in this case. To find out how to opt out, please read Question 14.	<b>August 29, 2022</b>
<b>OBJECT TO THE SETTLEMENT</b>	Write to the Court about why you do or don’t like the settlement. To find out how to object, please read Question 19.	<b>August 29, 2022</b>

Questions? Visit [www.OperatingSystemUpdateSettlement.com](http://www.OperatingSystemUpdateSettlement.com), email [info@OperatingSystemUpdateSettlement.com](mailto:info@OperatingSystemUpdateSettlement.com), or call toll-free at 1-877-540-0949

<b>OBJECT TO ATTORNEYS'S FEES AND/OR EXPENSES</b>	Write to the Court about why you don't like the attorneys' fees and/or expenses that Class Counsel requests. To find out how to do so, please read Question 19.	<b>August 25, 2022</b>
<b>GO TO THE FINAL APPROVAL HEARING ON SEPTEMBER 22, 2022</b>	Ask to speak in Court about the fairness of the Settlement. To find out how to do so, please read Question 23.	<b>August 29, 2022</b>
<b>DO NOTHING</b>	Get no payment under the Settlement and give up your right to compensation for the claims and allegations in this case. If the Settlement is finally approved, you will be bound by the Court's Final Judgment and the release of claims explained in the Settlement Agreement.	N/A

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still must decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

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## **BASIC INFORMATION**

<b>1. Why did I get a notice?</b>
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You may be a United States owner of an iPhone 4S device that ran iOS 9. For more information, you can visit the settlement website at [www.OperatingSystemUpdateSettlement.com](http://www.OperatingSystemUpdateSettlement.com), email [info@OperatingSystemUpdateSettlement.com](mailto:info@OperatingSystemUpdateSettlement.com), or call 1-877-540-0949.

The Court ordered this notice because you have a right to know about a Proposed Settlement of a class action lawsuit against Apple relating to iOS 9 software that allegedly diminished the performance of the iPhone 4S, and about your options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement and after any appeals are resolved, an administrator will make the payments that the Settlement allows.

This notice explains the lawsuits, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Eastern District of New York, and the case is known as *Lerman v. Apple Inc.*, No. 15-cv-07381 (SJ) (LB). The people who sued are plaintiffs, and the company they sued, Apple, is the defendant.

## 2. What is this lawsuit about?

The plaintiffs claimed that they upgraded their iPhone 4S devices to iOS 9 as a result of Apple's supposedly false and deceptive representations about iOS 9, and that iOS 9 significantly diminished the performance of their iPhone 4s. Apple denies that it did anything wrong or misrepresented iOS 9 in any way. Accordingly, Apple has vigorously defended the plaintiffs' allegations. Apple, however, is entering into this settlement to avoid burdensome and costly litigation. The settlement is *not* an admission of wrongdoing by Apple.

## 3. Why is this a class action?

In a class action, one or more people, called Named Plaintiffs, sue on behalf of all people who purportedly have similar claims (called "Settlement Class Members"). Together, the Named Plaintiffs and the other members of the Settlement Class make up the "Settlement Class" – which in this case may include you. One court resolves the dispute for all members of the Settlement Class, except for those who exclude themselves from the Class. United States District Court for the Eastern District of New York is in charge of this class action.

## 4. Why is there a settlement?

The Court did not decide the case in favor of Plaintiffs or Apple. Instead, after extensive, years-long litigation and arms-length negotiations overseen by a former Magistrate Judge, both sides agreed to a settlement. That way, they avoid the cost of a trial, and settlement benefits go to the Settlement Class Members. The Named Plaintiffs and their attorneys ("Class Counsel") think the settlement is fair, reasonable, adequate, and in the best interests of the members of the Settlement Class.

### WHO IS IN THE SETTLEMENT?

To see if you are eligible for benefits, you first must determine whether you are a member of the Settlement Class.

## 5. What is an eligible device?

iPhone 4S devices that ran iOS 9. To be eligible, members of the Settlement Class must also meet the other requirements described in this notice.

## 6. How do I know if I am part of the settlement?

You are a member of the Settlement Class if you (1) downloaded iOS 9 (which was first released in September 2015), or any version thereof, onto your iPhone 4S; (2) lived in New York or New Jersey at the time that you first downloaded any version of iOS 9; and (3) your iPhone 4S experienced a significant decline in performance as a result. **You must meet all three criteria to be a member of the Settlement Class.**

An owner is someone who owned, purchased, leased, or otherwise received an eligible device, including for personal, work, or any other purposes.

## 7. Are there exceptions to being included?

The Settlement Class *excludes* (a) directors, officers, and employees of Apple or its subsidiaries and affiliated companies, as well as Apple’s legal representatives, heirs, successors, or assigns; (b) the Court, the Court staff, as well as any appellate court to which this matter is ever assigned and its staff; (c) Defense Counsel, as well as their immediate family members, legal representatives, heirs, successors, or assigns; (d) any other individuals whose claims already have been adjudicated to a final judgment; and (e) those individuals who timely and validly request exclusion.

## 8. I’m still not sure if I am included.

If you are still not sure whether you are a member of the Settlement Class, you can visit the Settlement Website at [www.OperatingSystemUpdateSettlement.com](http://www.OperatingSystemUpdateSettlement.com), email [info@OperatingSystemUpdateSettlement.com](mailto:info@OperatingSystemUpdateSettlement.com), or call 1-877-540-0949.

### **THE SETTLEMENT BENEFITS—WHAT YOU GET**

## 9. What does the Settlement provide?

Apple will provide a cash payment per eligible device (calculated as set forth below) to each Settlement Class Member who submits a declaration under penalty of perjury stating that they: (1) currently own or have owned an iPhone 4S; (2) downloaded any version of iOS 9 onto the iPhone 4S; (3) lived in New York or New Jersey at the time that you first downloaded any version of iOS 9; and (4) experienced a significant decline in performance on your iPhone 4S as a result.

**Amount of Cash Payment:** The cash payment per eligible device depends on the actual number of approved claims and other factors, including the award of attorneys’ fees and expenses and named plaintiff service awards. Under the Proposed Settlement, Apple agreed to pay a maximum of \$20,000,000 (the “Ceiling”). Under no circumstances shall any of that money revert to Apple.

Apple has agreed to provide a cash payment of approximately \$15 per eligible device, but that agreement is subject to the \$20 million Ceiling. If the total value of approved claims, fees, and expenses, exceeds the \$20 million Ceiling, then the amount paid per eligible device will be reduced on a pro rata basis. If, on the other hand, if the total value of approved claims submitted is less than the Ceiling, then the amount paid per eligible device may be increased on a pro rata basis, up to a maximum of \$150 per device.

Additionally, if multiple Settlement Class Members submit Claims pertaining to the same eligible device, the payment amount for that device shall be divided equally among those submitting Approved Claims regarding that particular device.

For more details, please refer to the more detailed Settlement Agreement available at [www.OperatingSystemUpdateSettlement.com](http://www.OperatingSystemUpdateSettlement.com), email [info@OperatingSystemUpdateSettlement.com](mailto:info@OperatingSystemUpdateSettlement.com), or call 1-877-540-0949.

## 10. What do I need to do to participate in the Settlement?

To receive the benefits of the Settlement, you must complete a timely, valid Claim Form that includes, among other things, your name, e-mail, mailing address, and iPhone serial number, if you have it. You also must declare under penalty of perjury that: (1) you downloaded iOS 9 (which was first released in

September 2015), or any version thereof, onto your iPhone 4S; (2) you lived in New York or New Jersey at the time that you first downloaded any version of iOS 9; and (3) your iPhone 4S experienced a significant decline in performance as a result. If you have multiple eligible devices, you must submit a separate Claim Form for each device.

If you satisfy these requirements, you will receive a cash payment for each valid Claim Form you submit, based on the calculation methodology explained above.

**To receive cash payment, you must submit your Claim Form by the Claims Deadline – no later than August 29, 2022.**

### **HOW YOU GET A SETTLEMENT BENEFIT—SUBMITTING A CLAIM FORM**

#### **11. How can I get a settlement benefit?**

To qualify for a settlement benefit, you must submit a valid Claim Form, which you can do online or in paper. This Claim Form, including instructions on how to make a Claim, can be accessed at [www.OperatingSystemUpdateSettlement.com](http://www.OperatingSystemUpdateSettlement.com). You can also request a Claim Form by calling toll-free **1-877-540-0949** or by email at [info@OperatingSystemUpdateSettlement.com](mailto:info@OperatingSystemUpdateSettlement.com).

You must read the instructions carefully, fill out the Claim Form as directed in the instructions, and sign and return the Claim Form either electronically at [www.OperatingSystemUpdateSettlement.com](http://www.OperatingSystemUpdateSettlement.com) or mail it to **Lerman vs. Apple Inc. c/o JND Legal Administration, PO Box 91446, Seattle, WA 98111**. The Claim Form must be **received by August 29, 2022. If you fail to submit your Claim Form by the deadline, your Claim will be rejected, and you will be deemed to have waived all rights to receive any cash benefit under this settlement.**

Please carefully follow all instructions on the Claim Form.

#### **12. When would I get my settlement benefit?**

The Court will hold a Final Approval Hearing on **September 22, 2022 at 10:30 a.m.**, to decide whether to approve the Settlement. The date of the Final Approval Hearing may change without further notice. You should check the Court's Public Access to Court Electronic Records (PACER) site at <https://ecf.nyed.uscourts.gov/> to confirm that the date has not been changed. The Final Hearing will take place at 225 Cadman Plaza E, Brooklyn, NY 11201, or virtually. If the Court approves the Settlement, there may be appeals. The appeal process can take time, perhaps more than a year. If there is no appeal, your settlement benefit will be processed promptly. Please be patient.

#### **13. What am I giving up to get a settlement benefit?**

Unless you submit a valid request to be excluded from the Settlement Class, you will be a Settlement Class Member. If you remain a Settlement Class Member, you will be eligible for a Settlement benefit but you can't sue, continue to sue, or be part of any other lawsuit against Apple about the claims and allegations in this case. It also means that all of the Court's orders will apply to you and legally bind you.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don't want a payment from this Settlement, but you want to keep the right to sue, or continue to sue, Apple on your own about the claims and allegations in this case, then you must take steps to get

out of the Settlement Class. This is what it means to request to be excluded from or “opt out” of the Settlement Class.

**14. How do I get out of the settlement?**

To request to be excluded from the settlement, you must send a letter saying that you want to be excluded from the Settlement Class in *Lerman v. Apple Inc.*, No. 15-cv-07381 (SJ) (LB). You must include your name, mailing address, telephone number, and your handwritten signature.

Your exclusion request must be **received** by no later than **August 29, 2022**, to:

*Lerman vs. Apple Inc.*  
c/o JND Legal Administration  
PO Box 91446  
Seattle, WA 98111

If your request is not received by that date, your right to opt out will be waived and you will be bound by all orders and judgments entered in connection with the Settlement.

If you are excluded, you will not receive any Settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Apple in the future about the claims and allegations in this case.

**15. If I don’t request exclusion, can I sue Apple for the same thing later?**

No. Unless you request to be excluded, you give up the right to sue Apple for the claims that this settlement resolves.

**16. If I request exclusion, can I get a settlement benefit?**

No. If you request to be excluded, you may not submit a Claim Form to ask for any benefit. But you will not lose any right you may have to sue, continue to sue, or be part of a different lawsuit against Apple about the claims and allegations in this case as long as suit is filed before the relevant statute of limitations expires.

**THE LAWYERS REPRESENTING YOU**

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

The Settlement Class is represented by the law firms of Pomerantz LLP and Bronstein, Gewritz & Grossman, LLC, who have been appointed by the Court as Class Counsel for the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**18. How will the lawyers be paid?**

Court-appointed Class Counsel, which have been prosecuting this litigation since its inception in 2015, have not received any payment of attorneys’ fees for their representation of the Settlement Class and have advanced all expenses necessarily incurred in order to prosecute the Action. Class Counsel will ask the

Court for attorneys' fees in the amount not to exceed 33.33% of the \$20,000,000 Ceiling. Class Counsel will also apply for reimbursement of expenses paid on behalf of the Class in an amount not to exceed \$3.1 million and Service Awards to Named Plaintiffs of up to \$15,000 each. A copy of Class Counsel's Motion for Attorneys' Fees and Expenses and for Named Plaintiff Service Awards will be available at [www.OperatingSystemUpdateSettlement.com](http://www.OperatingSystemUpdateSettlement.com) by August 11, 2022. Apple reserves the right to challenge Class Counsel's request for Attorneys' Fees and Expenses and for Named Plaintiff Service Awards.

### **OBJECTING TO THE SETTLEMENT**

You can tell the Court that you don't agree with the settlement or some part of it.

#### **19. How do I tell the Court that I don't like the settlement?**

If you're a Settlement Class Member, you can object to the settlement if you don't agree with a part of it and give reasons you think the Court should not approve it. You can also object to the requested award of Attorneys' Fees and Expenses or Service Awards to the Named Plaintiffs. The Court will consider your views.

Anyone who objects to the Settlement, the Settlement Agreement, the application for attorneys' fees, expenses, or service awards for the Named Plaintiffs, or the other matters to be considered at the Final Approval Hearing may appear and present such objections. To be permitted to do so, however, you must, on or before August 29, 2022 (as to the Settlement) or August 25, 2022 (as to the application for attorneys' fees, expenses, or service awards for the Named Plaintiffs) submit your written objection and it must include the following information:

- Your name, address, telephone number and, if represented by counsel, the name, address, and telephone number of your counsel;
- A statement whether you intend to appear at the Final Approval Hearing, either in person or through counsel;
- All grounds for your objection, accompanied by any legal support for the objection known by you or your counsel;
- Copies of any papers, briefs, or other documents upon which the objection is based or upon which you or your counsel intend to rely; and
- Your handwritten signature.

You must sign your own objection. Attorneys' signatures on objections will not be accepted.

**If you do not comply with the foregoing procedures and deadlines for submitting written objections, you may lose substantial legal rights to contest the orders or judgments of the Court entered in connection with the Settlement.**

The letter and any supporting documents must be delivered to and received by the following addressees by **August 29, 2022** (as to the Settlement) or **August 25, 2022** (as to the application for attorneys' fees, expenses, or service awards for the Named Plaintiffs):

<b>Court</b>	<b>Class Counsel</b>	<b>Defense Counsel</b>
Clerk of Court	Jeremy A. Lieberman, Esq.	Raj N. Shah, Esq.



<p>United States District Court Eastern District of New York 225 Cadman Plaza East Brooklyn, NY 11201</p>	<p>Michael Grunfeld, Esq. Pomerantz LLP 600 Third Avenue, 20<sup>th</sup> Floor New York, New York 10016 <a href="mailto:jalieberman@pomlaw.com">jalieberman@pomlaw.com</a> <a href="mailto:mgrunfeld@pomlaw.com">mgrunfeld@pomlaw.com</a></p> <p>Peretz Bronstein, Esq. Eitan Kimelman, Esq. Bronstein, Gewirtz &amp; Grossman, LLC 60 East 42<sup>nd</sup> Street, Suite 4600 New York, New York 10165 <a href="mailto:peretz@bgandg.com">peretz@bgandg.com</a> <a href="mailto:eitank@bgandg.com">eitank@bgandg.com</a></p>	<p>Keara M. Gordon, Esq. DLA Piper LLP 1251 Avenue of the Americas New York, New York 10020 <a href="mailto:raj.shah@us.dlapiper.com">raj.shah@us.dlapiper.com</a> <a href="mailto:keara.gordon@us.dlapiper.com">keara.gordon@us.dlapiper.com</a></p>
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**20. What’s the difference between objecting and requesting exclusion?**

If you object, you are telling the Court that you disagree with something in the Settlement. You can object only if you *stay in* the Settlement Class. If you object but the Court still approves the Settlement, you will be bound by the Settlement and can receive the benefits it provides.

If you request exclusion, you are telling the Court that you don’t want to be part of the Settlement Class. You would then have no basis to object, because the Settlement would no longer affect you.

**THE COURT’S FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the Settlement. You may attend, and you may ask to speak, but you don’t have to.

**21. When and where will the Court decide whether to approve the settlement?**

The Court will hold a Final Hearing at **10:30 a.m. on September 22, 2022**, at the United States District Court for the Eastern District of New York, 225 Cadman Plaza E, Brooklyn, NY 11201, or virtually. At the Final Hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to Settlement Class Members who have asked to speak at the hearing. The Court will also consider how much money to award Class Counsel and the amount of the Named Plaintiff Service Awards. After the Final Hearing, the Court will decide whether to approve the settlement and will rule on Class Counsel’s Motion for Attorneys’ Fees and/or Expenses, and for Named Plaintiff Service Awards.

We do not know how long these decisions will take. The date of the Final Hearing can change without further notice. Please check [www.OperatingSystemUpdateSettlement.com](http://www.OperatingSystemUpdateSettlement.com) for further updates.

Do not write or call the judge or the clerk concerning this Class Notice or the Litigation.

**22. Do I need to come to the Final Hearing?**

No. Class Counsel will answer questions about the settlement that the Court may have. But you are welcome to come at your own expense. If you send an objection, you don't need to come to the Final Hearing to talk about it. As long as your written objection was received on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

**23. May I speak at the Final Hearing?**

You may ask the Court for permission to speak at the Final Hearing.

If you want to have a lawyer appear on your individual behalf at the Final Approval Hearing, your lawyer must enter a written notice of appearance with the Clerk of the Court no later than August 29, 2022 and must comply with all of the requirements explained in response to Question 19 of this Class Notice.

You cannot speak at the Final Hearing if you requested to be excluded from the Settlement Class or if you do not comply with the procedure explained in this Class Notice.

**IF YOU DO NOTHING**

**24. What happens if I do nothing at all?**

If you do nothing, you will be a Settlement Class Member. You will not receive a benefit from the settlement unless you file a valid Claim Form on time. If you submit a valid Claim Form on time, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Apple about the claims and allegations in this case.

IF YOU DO NOTHING AND THE SETTLEMENT IS FINALLY APPROVED, YOU WILL BE BOUND BY THE COURT'S FINAL JUDGMENT AND RELEASE OF CLAIMS EXPLAINED IN THE SETTLEMENT AGREEMENT.

**GETTING MORE INFORMATION**

**25. Are there more details about the settlement?**

This Class Notice summarizes the proposed Settlement. More details are in a Settlement Agreement. Copies of the Settlement Agreement and the pleadings and other documents relating to the case, including motions for approval of the Settlement and awards of Attorneys' Fees and Expenses and Service Awards, are or will be on file at the United States District Court for the Eastern District of New York. The Settlement Agreement and other important documents are also available on the Settlement Website at [www.OperatingSystemUpdateSettlement.com](http://www.OperatingSystemUpdateSettlement.com). If you would like this Class Notice or the Settlement Agreement mailed to you, please call 1-877-540-0949 or write to JND Legal Administration at:

*Lerman vs. Apple Inc.*  
PO Box 91446  
Seattle, WA 98111

In addition, you can access the Court docket in this case, for a fee, through the Court's PACER system at <https://ecf.nyed.uscourts.gov/>. You can also visit the office of the Clerk of the Court for the United

States District Court for the Eastern District of New York, located at 225 Cadman Plaza E, Brooklyn, NY 11201, between 8:30 a.m. and 5:00 p.m., Monday through Friday, excluding Court holidays, subject to COVID-19 protocols, set forth at <https://www.nyed.uscourts.gov/covid-19-screening-coming-eastern-district-new-york>.

You can visit the Settlement Website at [www.OperatingSystemUpdateSettlement.com](http://www.OperatingSystemUpdateSettlement.com), or call 1-877-540-0949, where you will find answers to common questions about the settlement, a Claim Form, and other information.

**PLEASE DO NOT CALL THE COURT.**

Date: May 19, 2022