SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 01/07/2019 TIME: 09:21:00 AM DEPT: C-74

JUDICIAL OFFICER PRESIDING: Ronald L. Styn
CLERK: Kim Mulligan
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2013-00055830-CU-PL-CTL** CASE INIT.DATE: 07/02/2013
CASE TITLE: **Anthony Shamrell vs Apple Inc [E-File]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Product Liability

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EVENT TYPE: Motion Hearing to Certify/Decertify Class Action

APPEARANCES

Having deferred ruling pending supplemental briefing, and having reviewed Defendant Apple, Inc.'s Supplemental Submission of Evidence in Support of Opposition to Plaintiffs' Supplemental Motion for Class Certification, Post Remand [ROA 921] and Plaintiffs' Response [ROA 930], the court rules as follows.

Plaintiffs' motion for class certification is granted. CCP § 382, CC § 1781.

"The party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives. [Citations.] 'In turn, the "community of interest requirement embodies three factors: (1) predominant common 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." ' " (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021, 139 Cal.Rptr.3d 315, 273 P.3d 513 (*Brinker*).)

"The 'ultimate question' the element of predominance presents 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.' [Citations.] The answer hinges on 'whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment.' [Citation.] A court must examine the allegations of the complaint and supporting declarations [citation] and consider whether the legal and factual issues they present are such that their resolution in a single class proceeding would be both desirable and feasible." (*Brinker, supra*, 53 Cal.4th at pp. 1021-1022, 139

Cal.Rptr.3d 315, 273 P.3d 513, fn. omitted.) Plaintiffs must show " 'by a preponderance of the evidence that the class action proceeding is superior to alternate means for a fair and efficient adjudication of the litigation.' " (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 332, 17 Cal.Rptr.3d 906, 96 P.3d 194.)

"[T]he court does not look at the parties' evidence under a shifting burden of proof. The burden remains with the proponent of class certification to show common issues predominate. However, when assessing whether the plaintiff has satisfied that burden, the evidence must be evaluated under the prism of the plaintiff's theory of recovery." (*Department of Fish and Game v. Superior Court* (2011) 197 Cal.App.4th 1323, 1349, 129 Cal.Rptr.3d 719 (*Department of Fish and Game*).) A plaintiff's theory of recovery, moreover, must conform to the legal elements of the causes of action in its complaint, and it is those elements which must be considered to determine whether common issues predominate. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1106, 131 Cal.Rptr.2d 1, 63 P.3d 913; see *Brinker, supra*, 53 Cal.4th at p. 1024, 139 Cal.Rptr.3d 315, 273 P.3d 513.)

"Although predominance of common issues is often a major factor in a certification analysis, it is not the only consideration. In certifying a class action, the court must also conclude that litigation of individual issues, including those arising from affirmative defenses, can be managed fairly and efficiently. [Citation.] '[W]hether **680 in a given case affirmative defenses should lead a court to approve or reject certification will hinge on the manageability of any individual issues.' " (*Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 28-29, 172 Cal.Rptr.3d 371, 325 P.3d 916 (*Duran*).)

Apple Inc. v. Superior Court (2018) 19 Cal.App.5th 1101, 1115–1116.

Plaintiffs' moving papers explain that "[t]he iPhone 4/4S Class asserts claims under the Unfair Competition Law ("UCL"), the Consumer Legal Remedies Act ("CLRA"), and Song-Beverly and Magnuson-Moss warranty claims" and "[t]he iPhone 5 Class brings claims under the UCL and CLRA, and for breach of express warranty." The court analyzes the CLRA class action criteria [CC § 1781] in conjunction with the analysis under CCP § 382.

Ascertainable Class

As on the previous motion, the court finds the class is ascertainable.

"Whether a class is ascertainable is determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members" at the remedial stage (*Reyes v. Board of Supervisors, supra,* 196 Cal.App.3d at pp. 1271, 1274–1275, 242 Cal.Rptr. 339 (*Reyes*).)

Aguirre v. Amscan Holdings, Inc. (2015) 234 Cal.App.4th 1290, 1299-1300. See also, *Thompson v. Automobile Club of Southern California* (2013) 217 Cal.App.4th 719, 728.

Plaintiffs have again revised their proposed class definitions and now seek to certify the following classes:

iPhone 4 and 4S Class

All California citizens who purchased one or more iPhone 4 or 4S smartphones from Apple or a third-party retailer, from June 24, 2010 thru October 10, 2011 for the iPhone 4, and from October 11,

2011 through September 20, 2012 for the iPhone 4S, and whose sleep/wake (power) button stopped working or worked intermittently during a one year period from date of purchase.

iPhone 5 Class

All California citizens who purchased one or more iPhone 5 smartphones from Apple or a third-party retailer prior to April 1, 2013, and whose sleep/wake (power) button stopped working or worked intermittently during a three year period from date of purchase.

Excluded from both classes are persons whose Class iPhone was repaired or replaced by Apple due to a non-working sleep/wake button.

The court finds the class definitions sufficient to allow a member of the putative class to identify himself or herself as having a right to recover based on the description of the class. For the same reasons set forth in this court's ruling on Plaintiffs' original motion [ROA 804], the court finds Plaintiffs establish that the size of the class is sufficiently numerous and that it would be "impracticable to bring all members of the class before the court" [CC § 1781(b)(1)]. The court also finds Plaintiffs establish that there are sufficient means available for identifying class members and that class members are readily identifiable without unreasonable time and expense. *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908.

Community of Interest

The court finds Plaintiffs establish a sufficient community of interest.

As set forth above,

the "community of interest requirement embodies three factors: (1) predominant common 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." ' [Citations omitted.]"

Brinker, 53 Cal.4th at 1021. Apple does not challenge the second two factors. The issue before the court is whether there are predominant common questions of law or fact.

The "ultimate question" the element of predominance presents 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." (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238, 102 Cal.Rptr. 1, 497 P.2d 225; accord, *Sav–On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 17 Cal.Rptr.3d 906, 96 P.3d 194.) The answer hinges on "whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment." (*Sav–On,* at p. 327, 17 Cal.Rptr.3d 906, 96 P.3d 194.) A court must examine the allegations of the complaint and supporting declarations (*ibid.*) and consider whether the legal and factual issues they present are such that their resolution in a single class proceeding would be both desirable and feasible. "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.* (2001) 89 Cal.App.4th 908, 916, 107 Cal.Rptr.2d 761; accord, *Knapp v. AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941, 124 Cal.Rptr.3d 565.)

Brinker, 53 Cal.4th at 1021-1022.

The complaint arises out of alleged defects in the sleep/wake button on the iPhone 4, iPhone 4S and iPhone 5 [FAC ¶¶ 19-24]. Apple again argues that there is no common defect. The court previously addressed this issue in prior orders [ROA 593, 804] and does not again address this issue on this motion. The pertinent commonality issue before this court on remand is the issue of damages. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, explains

[c]ourts and commentators have taken great pains to point out that injury or "fact of damage," which must be proven on a class-wide basis, is separate and distinct from the issue of actual damages. . . . class treatment of fact of damage presumes the ability to prove the class as a whole was injured without becoming enmeshed in individual questions of actual damage. (*Ibid*.)

B.W.I. Custom Kitchen, 191 Cal.App.3d at 1350.

Thus, while Plaintiffs are not required to show that each member of the class has been injured [*Evans v. Lasco Bathware, Inc.* (2009) 178 Cal.App.4th 1417, 1422 citing *Hicks*, 89 Cal.App.4th at 914], Plaintiffs must demonstrate the fact of damage on a class-wide basis. Plaintiffs must show how they will establish the threshold issue of the total amount of damages due to the class. Plaintiffs must also present a method by which trial of the damage issue will be effectively managed. *Sav-On*, 34 Cal.4th at 334. *Morgan v. Wet Seal, Inc.* (2012) 210 Cal.App.4th 1341.

Plaintiffs submit authority addressing each of Plaintiffs' theories of recovery – UCL, CLRA and warranty – and holding that damages (or the amount of restitution) are measured at the time of sale and that cost of repair and/or diminution in value is the appropriate measure of damages. To establish the fact of damage, and the total amount of damages due to the class, Plaintiffs rely on experts Fred Schenkelberg, Heather Xitco, Gregory Pinsonneault and Ramamirtham Sukumar. Fred Schenkelberg provides his opinion on the sleep/wake button failure rates for Class iPhones.

Plaintiffs rely on Pinsonneault and Sukumar to establish the amount of diminution in value at the time of sale. Xitco's declaration sets forth a calculation comprised of the total number of Class iPhones sold, multiplied by Schenkelberg's failure rate, minus Class iPhones that were repaired, and then multiplying this result (the number of defective iPhones) by the diminution in value at the time of sale (as calculated by Pinsonneault and/or Sukumar) to calculate total class damages/restitution.

Apple challenges the admissibility of Plaintiffs' experts' opinions. The Court of Appeal, on the appeal in this case, explains,

[i]n *Sargon*, our Supreme Court built on prior interpretations of these statutes and provided definitive guidance to courts considering the admissibility of expert opinion evidence. "[U]nder Evidence Code sections 801, subdivision (b), and 802, the trial court acts as a gatekeeper to exclude expert opinion testimony that is (1) based on matter of a type on which an expert may not reasonably rely, (2) based on reasons unsupported by the material on which the expert relies, or (3) speculative." (*Sargon, supra*, 55 Cal.4th at pp. 771-772, 149 Cal.Rptr.3d 614, 288 P.3d 1237.) "This means that a court may inquire into, not only the type of material on which an expert relies, but also whether that material actually supports the expert's reasoning. 'A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered.' " (*Id.* at p. 771, 149 Cal.Rptr.3d 614, 288 P.3d 1237.)

"The trial court's preliminary determination whether the expert opinion is founded on sound logic is not a decision on its persuasiveness. The court must not weigh an opinion's probative value or substitute its own opinion for the expert's opinion. Rather, the court must simply determine whether the matter relied on can provide a reasonable basis for the opinion or whether that opinion is based on a leap of logic or conjecture. The court does not resolve scientific controversies. Rather, it conducts a 'circumscribed inquiry' to 'determine whether, as a matter of logic, the studies and other information cited by experts adequately support the conclusion that the expert's general theory or technique is valid.' [Citation.] The goal of trial court gatekeeping is simply to exclude 'clearly invalid and unreliable' expert opinion. [Citation.] In short, the gatekeeper's role 'is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.' " (*Sargon, supra*, 55 Cal.4th at p. 772, 149 Cal.Rptr.3d 614, 288 P.3d 1237.)

"[T]he gatekeeper's focus 'must be solely on principles and methodology, not on the conclusions that they generate.' " (*Sargon, supra*, 55 Cal.4th at p. 772, 149 Cal.Rptr.3d 614, 288 P.3d 1237.) The gatekeeper does not simply choose between competing expert opinions; the fact that one expert's testimony is reliable does not mean a competing expert's testimony is unreliable. (*Ibid.*) The standard " 'is broad enough to permit testimony that is the product of competing principles or methods in the same field of expertise.' " (*Ibid.*)

Apple Inc. v. Superior Court (2018) 19 Cal.App.5th 1101, 1118.

Schenkelberg. In his declaration Schenkelberg sets forth in detail the documents he reviewed and relied on in forming his opinions as to the sleep/wake button failure rate of the iPhone 4 and iPhone 5. Schenkelberg sets forth an extensive analysis of Apple's failure rate calculations performed as part of Apple's regular company operations. Schenkelberg includes a discussion of the various methodologies available for use and those used by Apple. Schenkelberg then uses the exact same data as was used by Apple for its failure rate calculations, and Schenkelberg's chosen methodology, to perform his own failure rate calculation of the iPhone 4 and iPhone 5. Schenkelberg specifically explains the reasons for his choice in methodology. Schenkelberg also explains that in his analysis he used the same warranty repair data that Apple's engineers used to model the failure rates for Class iPhones as part of regular company operations. Considering this evidence, the court finds Plaintiffs establish that Schenkelberg provides a reasonable basis for his opinions as to failure rates and that Schenkelberg's general theory/methodology is valid. None of the arguments Apple raises are sufficient to establish Schenkelberg's work as a "clearly invalid and unreliable expert opinion." The court is not persuaded by Apple's reliance on declarations from Justin McCrary. Schenkelberg's declaration explains that field data of actual warranty repairs is not only the same data Apple uses, but is "a well-accepted methodology in the consumer electronics industry." Schenkelberg explains why warranty repair data is superior to the other types of data McCrary references. Schenkelberg also explains that his calculated failure rates are consistent with the failure rates calculated by Apple engineers as part of regular company operations. The fact that Schenkelberg and McCrary use different data and different methodologies is not determinative. The Court of Appeal in *Apple* explains "[t]he standard 'is broad enough to permit testimony that is the product of competing principles or methods in the same field of expertise.' " *Apple*, 19 Cal.App.5th 1101, 1118. Considering this evidence, the court finds Apple fails to establish Schenkelberg's methodology as invalid.

At oral argument Apple requested and the court allowed Apple leave to submit the complete deposition transcript of Schenkelberg with certain testimony regarding the "take rate" highlighted. Specifically, deposition testimony wherein Schenkelberg states that he did not use take rates in his failure rate

calculations and that he has not evaluated which of the take rates (40%, 16% or 12%) is appropriate. A review of the cited to deposition testimony does not cause the court to alter its finding that Schenkelberg provides a reasonable basis for his opinions as to failure rates and that Schenkelberg's general theory/methodology is valid. In his declaration Schenkelberg explains that the "take rate" is used by Apple to calculate the percentage of failures that result in an actual warranty repair. Schenkelberg is tasked with calculation of the total number of failures over the warranty period, not the total number of repairs. As such, the "take rate" is irrelevant to Schenkelberg's failure rate analysis. Although Apple argues that the "take rate" must be part of the analysis, it is the trier of fact who will determine which of the competing methodologies to accept. At this stage, Plaintiffs only have to demonstrate that Schenkelberg's general theory or technique is valid. For the reasons set forth above, the court finds Plaintiffs have done so in this case.

Pinsonneault. Plaintiffs rely on Pinsonneault to provide a methodology for calculation of the diminution in value at the time of sale. In his declaration Pinsonneault first provides an extensive analysis of the Brightstar Program and concludes that information from the Brightstar Program "can be used to estimate the real impact on market value that would have occurred if the Power Button Defect had been disclosed at the time of sale." Pinsonneault goes on to discuss different methodologies to estimate the diminution in value at the time of sale. The first methodology uses the Brightstar Program data and a linear regression analysis applied to three different dates, 1) launch date, 2) class members' purchase date and 3) class members' date of first failure of the sleep/wake button. Pinsonneault also discusses a conjoint analysis based on a survey to be performed by Sukumar. As to the linear regression analysis, the court finds Plaintiffs establish that Pinsonneault provides a reasonable basis for his methodologies for calculating diminution in value as of the date of sale and that Pinsonneault's general theory/methodology is valid. The court is not persuaded by Apple's criticisms of Pinsonneault's linear regression analysis. Pinsonneault provides a satisfactory explanation for his use of Brightstar Program pricing including that Apple itself relies on Brightstar Program pricing in its market analyses. Pinsonneault also establishes that his liner regression analysis is comparable to an analyses performed by Apple as part of its business operations. While, based on Apple's criticisms, it may be necessary for Pinsonneault to refine his analysis, Plaintiffs establish that Pinsonneault's methodology is valid.

Xitco. In her Third Supplemental Declaration, Xitco states that she will rely on the failure rate provided by Schenkelberg and on the amount of diminution in value at the time of sale provided by Pinsonneault and/or Sukumar. Xitco then sets forth the calculation discussed above – total number of Class iPhones sold, multiplied by the failure rate, minus Class iPhones that were repaired, and then multiplying this result (the number of defective iPhones) by the amount of the diminution in value at the time of sale to calculate total class damages/restitution. Apple does not challenge Xitco's formula/calculation. Rather, Apple challenges the failure rate and diminution in value used by Xitco. For the reasons discussed herein, the court finds both Schenkelberg and Pinsonneault's methodologies sufficient to satisfy the requirements of *Sargon*. The court also finds Xitco provides a reasonable basis for her opinion and that her general theory/methodology is valid.

Because the court finds Schenkelberg, Xitco and Pinnsonneault's opinions sufficient to support Plaintiffs' proposed class-wide damages model, the court does not address the issues Apple raises as to Plaintiffs' other expert, Sukumar.

Apple raises several arguments as to the significance of post-sale events. However, the court is persuaded by Plaintiffs' reliance on *Pulaski & Middleman, LLC v. Google, Inc.* (9th Cir. 2015) 802 F.3d 979 and *In re MyFord Touch Consumer Litigation* (N.D. Cal. 2018) 291 F.Supp.3d 936 that post-sale

events do not defeat Plaintiffs' proposed calculation of class wide damages. All of Plaintiffs' theories of recovery – UCL, CLRA and warranty – measure damages/restitution at the time of sale. "[I]n calculating restitution under the UCL and FAL, the focus is on the difference between what was paid and what a reasonable consumer would have paid at the time of purchase without the fraudulent or omitted information. *Pulaski & Middleman,* 802 F.3d at 989 citing *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 329. As to the warranty claims, *Hewlett-Packard Co. v. Superior Court* (2008) 167 Cal.App.4th 87 explains

Degenshein's theory of liability is based on *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 107 Cal.Rptr.2d 761 (*Hicks*), and its holding that defect is defined by a substantial certainty of premature failure, not on an actual malfunction during the warranty period. In *Hicks,* the court of appeal reversed the trial court's denial of class certification for a construction defect breach of warranty claim in part on its finding that "proof of breach of warranty does not require proof the product has malfunctioned but only that it contains an inherent defect which is substantially certain to result in malfunction during the useful life of the product." (*Id.* at p. 918, 107 Cal.Rptr.2d 761.) The court concluded that common issues predominated for the purpose of class certification because the "question whether an inherently defective product is presently functioning as warranted goes to the remedy for the breach, not proof of the breach itself." (*Ibid.*) As applied to the present case, under this theory, an actual malfunction of the notebook screens would not be necessary to establish defect, if it could be established that the notebook screens were substantially certain to fail prematurely.

Contrary to HP's argument in this case, whether or not the alleged defects occurred during the warranty period does not affect a finding of community of interest in the present case. Plaintiffs here allege a common defect in the HP notebook computers and their display screens. In order to prove that defect, plaintiffs will present evidence of call records reporting dim displays, records of repairs of faulty inverters, service notes documenting defects that were known to HP, and an HP policy that all notebooks returned for any reason would have their inverter repaired, regardless of whether the screen actually failed. A jury could find, based on this evidence, that the inverters in question were defective and that HP is liable for the defect. The issue of whether the inverters were defective is appropriate for a joint trial with common proof. For example, if the jury finds that the inverters were defective, then each plaintiff would not need to separately prove that his or her inverter was defective, only that he or she had a computer that contained that type of inverter.

Hewlett-Packard, 167 Cal.App.4th at 95–96. As in these cases, Plaintiffs' claim is that Class iPhones were defective at the time of sale. Thus, damages/restitution is properly measured at the time of sale.

The court is not persuaded by the other arguments Apple raises. Evidence as to the availability of free repairs from Apple is an issue common to the class and does not defeat a finding of commonality. Evidence that not all iPhone customers trade in their iPhones and that in some circumstances customers who traded in their phones received "full" prices, or received lower prices for reasons unrelated to the sleep/wake button, defect does not preclude a finding of commonality as to the valuation of the sleep/wake button defect because the Apple documents Plaintiffs' experts rely on are specific to the sleep/wake button defect.

Based on the foregoing, the court finds Plaintiffs establish a method by which they can demonstrate the fact of damage on a class-wide basis and can present a class-wide damages model. The court also finds such circumstances are sufficient to establish that common issues predominate.

Superiority of Class Action

As is required for Plaintiffs' non-CLRA claims, the court finds Plaintiffs establish class treatment as superior.

By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation." (*Eisen v. Carlisle & Jacquelin* (2d Cir. 1968) 391 F.2d 555, 560.)

Richmond v. Dart Industries, Inc. (1981) 29 Cal.3d 462, 469. See also, *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429; *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 714-715. [Class certification is superior to individual litigation when certification allows many plaintiffs' claims to be adjudicated in a single proceeding, thereby saving time, conserving judicial resources and limiting duplication of effort.]

Plaintiffs sufficiently establish the benefit to class certification in this case. Each putative class members' individual claim is relatively small and, individual members may not have the ability or means to obtain redress. Any class member choosing to pursue litigation would bring a virtually identical action as other class members arising out of the alleged failure of the sleep/wake button. Such duplicative actions are not conducive to judicial economy and efficiency.

Plaintiffs also have the burden of demonstrating trial can be effectively managed. The court finds Plaintiffs' proffered common damages/restitution methodology sufficiently addresses the trial management issues Apple raises. Plaintiffs will offer proof of a common defect in the sleep/wake button of the iPhone 4, iPhone 4S and iPhone 5. Apple's own documents will provide the total number of Class iPhones sold and the number of phones repaired. Through Schenkelberg, Plaintiffs will offer a methodology for determining the failure rate of the sleep/wake button. Through Pinsonneault, Plaintiffs' will offer a methodology for calculating the diminution in value at the time of sale. Evidence of the total number of Class iPhones sold, Schenkelberg's failure rate, the number of phones repaired and Pinsonneault's calculation of the diminution in value at the time of sale, will be used by Xitco to calculate the aggregate amount of damages/restitution owed to the Class.

If Apple is found liable,

and there is a finding at trial as to the amount of class-wide damages, each class member's individual entitlement to damages may be litigated in a nonadversary administrative claims procedure with a lowered standard of proof. (*State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 472, 224 Cal.Rptr. 605, 715 P.2d 564; *Bell, supra,* 115 Cal.App.4th at p. 759, 9 Cal.Rptr.3d 544.) In such a claims procedure, the allocation of the total sum of damages among the individual class members " 'is an internal accounting question that does not directly concern the defendant....' " (*Bell, supra,* 115 Cal.App.4th at p. 759, 9 Cal.Rptr.3d 544, quoting 2 Conte & Newberg, Newberg on Class Actions, *supra,* § 4:26, p. 233; see also *Bruno v. Superior Court, supra,* 127 Cal.App.3d at p. 129, 179 Cal.Rptr. 342 ["A class action which affords due process of law to the defendant through the time when the amount of his liability is calculated cannot suddenly deprive him of his constitutional rights because of the way the damages are distributed"].)

In re Cipro Cases I and II, 121 Cal.App.4th at 417.

In light of the common issues regarding the alleged failure of the sleep/wake button, and Plaintiffs' evidence of a method for calculating class-wide damages, the court finds Plaintiff establishes "by a preponderance of evidence that the class action proceeding is superior to alternate means for a fair and efficient adjudication of the litigation." *Sav-On,* 34 Cal.4th at 332.

Certification

The court certifies the following classes:

iPhone 4 and 4S Class

All California citizens who purchased one or more iPhone 4 or 4S smartphones from Apple or a third-party retailer, from June 24, 2010 thru October 10, 2011 for the iPhone 4, and from October 11, 2011 through September 20, 2012 for the iPhone 4S, and whose sleep/wake (power) button stopped working or worked intermittently during a one year period from date of purchase.

iPhone 5 Class

All California citizens who purchased one or more iPhone 5 smartphones from Apple or a third-party retailer prior to April 1, 2013, and whose sleep/wake (power) button stopped working or worked intermittently during a three year period from date of purchase.

Excluded from both classes are persons whose Class iPhone was repaired or replaced by Apple due to a non-working sleep/wake button.

The court orders the parties to meet and confer on the issue of class notice. The court orders Plaintiff to submit a proposed class notice within 30 days of this ruling. The court sets a Status Conference for February 22, 2019 at 2:00pm to discuss a trial plan and a trial date. The court will also address any unresolved issues regarding class notice at the Status Conference.

The Status Conference (Civil) is scheduled for 02/22/2019 at 02:00PM before Judge Ronald L. Styn.

IT IS SO ORDERED.

Judge Ronald L. Styn