

clear whether all Second Generation iPod nanos are coated; presumably this is the case, but it is not entirely clear from the notice. But this is only a small matter compared to the more significant problem with the class notice and class definition.

Other than providing a Serial Number on a website or by contacting the Claims Administrator, it is unclear how one can be sure one has an uncoated First Generation iPod nano. Ultimately, it appears the only sure-fire way to determine if one is a class member or not is to confirm one's Serial Number on a website or by contacting the Claims Administrator. Thus, the ultimate issue of class membership is not determined by reference to a clear, objective description of class membership; rather, it is wholly dependent upon whether one's Serial Number is confirmed by a website or Claims Administrator one class member at a time.

It is submitted that there really is no "class definition" in this case at all because one's ultimate membership in the class is determined exclusively by whether one's iPod has a certain Serial Number or not. This is a problem for applying *res judicata* and/or collateral estoppel in the future. Ultimately, a class settlement requires a clear, unambiguous class definition for a class that is presently ascertainable and objectively identifiable. The reason is so that one can know exactly whose claims are being released, among other things. Because all of the Serial Numbers are not published in the class notice, it will cause great uncertainty concerning whose claims are actually disposed of by this settlement, assuming it is approved, and therefore there will be great uncertainty as to the effect of *res judicata* and/or collateral estoppel. An even greater problem, for the same reasons, is that the Settlement Agreement does not contain all of the Serial Numbers. It is as though class membership for all class members is known only to a Claims Administrator or by persons with access to a website and confirmed on an *ad hoc* basis one class member at a time.

Moreover, the class notice states that “[t]o be entitled to a payment under the settlement, you must have experienced scratching of your iPod that impaired your use and enjoyment of your iPod nano.” This is unfair for several reasons. First, it is unclear what level of scratching or impairment of use is required to receive a payment. Second, this settlement discriminates against and is unfair to those class members who have not yet experienced scratching or impairment of use. According to the lawsuit, all of these uncoated First Generation iPod nanos are defective, so why should not all consumers of these iPod nanos be entitled to compensation?

Apparently excluded from this settlement, by implication, is any person or entity who received a new uncoated iPod nano as a gift, or any person or entity who purchased or acquired a used iPod nano. Objection is made to the extent Apple attempts to assert that this settlement bars future cases by those who acquired First Generation iPod nanos other than by purchasing them new from a retailer or from Apple. Objector asks that the court seek clarification from this matter by Apple.

In addition, the settlement formula is confusing and unfair. It is not fair and not the proper use of *cy pres* to make a *cy pres* distribution to charities before all class members are compensated. For example, even if a class member has yet to experience scratching and impairment of use and enjoyment, it seems that before giving the settlement funds away in a *cy pres* fund, at least some money should be distributed to those class members whose defective iPod nanos have not scratched yet or whose scratched iPods have not interfered with the use or enjoyment of the device

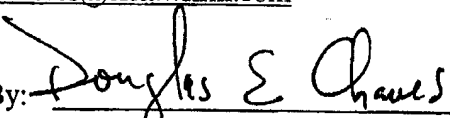
B. Fees and Expenses are Excessive.

The proposed attorneys’ fees and expenses are excessive under both a percentage of recovery or lodestar analysis.

Objector respectfully requests the Court grant these objections to the proposed settlement and to the attorneys' fees and expenses and deny the proponents' request to approve the proposed settlement. Because the notice states that Objector need not come to the fairness hearing, Objector asks that these objections be submitted on the pleadings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this the 26th day of March, 2009 a true and correct copy of the above and foregoing instrument was duly served upon the following counsel of record by the manner provided below:

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Superior Court for the County
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Central Civil West
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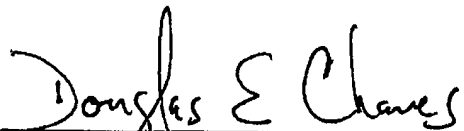
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