

Apple trial likely to go on with new plaintiff

December 10 2014, by Brandon Bailey

A billion-dollar class-action lawsuit against Apple will likely continue, after a 65-year-old Massachusetts business consultant read about the plaintiffs' floundering case online and volunteered to represent consumers in the suit.

A federal judge said she's tentatively satisfied with a proposal to add Barbara Bennett as the new named plaintiff in the lawsuit over Apple's iTunes software and the price of its iPods. Bennett, who sometimes used her iPod to listen to music while ice skating, boarded a plane early Tuesday and flew to California at the request of lawyers who are suing Apple Inc. on behalf of an estimated 8 million consumers who purchased iPods between 2006 and 2009.

Bennett, who said she bought a special-edition iPod Nano in 2006 because she liked its striking red case, contacted the lawyers and offered to help after reading an online news account that said the case was close to collapsing for lack of a named plaintiff. The case actually started with three plaintiffs suing Apple nearly 10 years ago, but two of them withdrew and the judge disqualified the last one, Marianna Rosen, on Monday amid indications that Rosen didn't herself purchase any of the affected iPods during the time frame covered by the suit.

Attorneys suing Apple have alleged that its use of restrictive software, which kept iPods from playing music purchased from competitors of Apple's iTunes store, effectively blocked rivals from the market and allowed the Cupertino, California, company to sell iPods at inflated prices. Apple says the software was necessary to prevent unauthorized

copying. The plaintiffs are seeking \$350 million in damages, which could be tripled if the jury finds violations of [federal antitrust law](#).

U.S. District Judge Yvonne Gonzalez Rogers has repeatedly shown impatience with the plaintiffs' attorneys for not doing a better job of vetting the original named plaintiffs in the case, who are supposed to represent the class of affected consumers.

"We shouldn't have been here in the first place," Rogers said as attorneys on both sides debated how to proceed Tuesday morning. A moment later, the judge sharply disagreed when plaintiffs' lawyer Patrick Coughlin suggested his side had suffered when Apple provided an incorrect list—which was later amended—of affected iPod models three years ago.

"You never checked" whether the last plaintiff had purchased the right models, the judge told Coughlin. "So don't talk to me" about that, she added.

Bennett's answers to questions in court suggested she wasn't fully up to speed on the complex allegations in the case, but Rogers said she was tentatively satisfied that Bennett qualifies for the job of class representative. The judge said she won't rule until Apple attorneys have a chance to question Bennett more closely in a deposition outside court.

The judge also said she'll wait to rule on a request by [news organizations](#) to release a copy of a video showing late Apple CEO Steve Jobs testifying outside court, a few months before he died of cancer in 2011. An attorney for The Associated Press, Bloomberg News and CNN argued Friday that the public has a right to see the video, which was played in open court last week, and that there is a benefit in letting the public see the same depiction of the influential CEO that jurors were shown.

But an Apple attorney argued against releasing the video, saying it would be comparable to releasing a video of testimony given inside the courtroom, which is not allowed under federal court rules. Apple lawyer Jonathan Sherman also said releasing the video would encourage news organizations or the public to request other deposition videos in the future and discourage witnesses from cooperating.

Apple shares closed up \$1.72 at \$114.12 on Tuesday.

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