

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 IN RE IPHONE 4S CONSUMER
5 LITIGATION,

No. C 12-1127 CW

6 _____/
7 ORDER DENYING
8 MOTION TO CHANGE
9 INTERIM LEAD CLASS
10 COUNSEL STRUCTURE
11 (Docket No. 50)

12 On March 29, 2012, the Court appointed the firms of Robbins,
13 Geller, Rudman & Dowd, LLP, Barnow and Associates, P.C. and Gardy
14 & Notis, LLP as interim co-lead class counsel. Docket No. 14.
15 Faruqi & Faruqi, LLP (F&F), counsel for Plaintiff David Jones, now
16 moves to modify the Court's Order and appoint it as co-lead class
17 counsel, along with the three firms already serving in that role.
18 Having considered the papers filed by the parties, the Court
19 DENIES the motion.

20 Federal Rule of Civil Procedure 23(g)(3) states, "The court
21 may designate interim counsel to act on behalf of a putative class
22 before determining whether to certify the action as a class
23 action." Rule 23 requires that, when appointing counsel, the
24 court consider the following factors:

25 (i) the work counsel has done in identifying or
26 investigating potential claims in the action;

27 (ii) counsel's experience in handling class actions,
28 other complex litigation, and the types of claims
asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to
representing the class.

1 Federal Rule of Civil Procedure Rule 23(g) (1) (A) . "All other
2 things being equal," if an attorney has performed the
3 investigatory and analytical tasks necessary to draft the
4 complaint, unless that attorney has merely copied a complaint
5 from another action, "he or she is in a better position to
6 represent the class fairly and adequately than attorneys who
7 have not undertaken those tasks." 5 Moore's Federal Practice
8 § 23.120[3][a] (citing Rule 23, advisory committee note of
9 2003). The Court may also "consider any other matter
10 pertinent to counsel's ability to fairly and adequately
11 represent the interests of the class." Federal Rule of Civil
12 Procedure Rule 23(g) (1) (B) .

13 There is no dispute that F&F and the current co-lead class
14 counsel all have experience in class actions and complex
15 litigation, knowledge of the applicable law and adequate
16 resources. However, the first factor favors the current co-lead
17 class counsel. They filed the original complaints in the separate
18 actions several weeks before F&F filed its complaint in the Jones
19 case, during which time the first lawsuits received substantial
20 national attention. A comparison of the complaints reveals that
21 the Jones complaint contains strikingly similarly allegations to
22 those in the original Fazio complaint. Contrary to F&F's
23 characterization, the similarities are not limited to quotations
24 from Defendant Apple, Inc.'s press releases and advertisements.
25 The allegations are organized in almost identical manners, cite
26 the same sources in the same order and use similar language
27 outside of quotations. Cf. Fazio Compl. ¶ 32 ("In addition to the
28 fact that Siri does not perform as advertised, recent reports have

1 shown that continuous Siri usage dramatically increases an iPhone
2 4S users' monthly data usage, and can easily push users over their
3 data plans."), with Jones Compl. ¶ 25 ("In addition to the fact
4 that the Siri Function does not function as advertised, a recent
5 report has warned that continuous usage of the Siri Function
6 dramatically increases an iPhone 4S users' monthly data usage, and
7 can easily push users over the allotted data usage on their data
8 plans.").

9 F&F shows no deficiency with the current co-lead class
10 counsel. Thus, continuity of counsel, instead of changing counsel
11 during the pendency of a potentially dispositive motion, serves
12 the interest of providing proper representation for the putative
13 class. To the extent that F&F implies that the current co-lead
14 class counsel sought to create the current structure purposefully
15 to exclude F&F from participating in the prosecution of the
16 action, the Court finds that F&F has offered no evidence to
17 support any nefarious purpose. The Court also notes that the co-
18 lead class counsel filed their stipulation proposing the current
19 structure before F&F initiated the Jones action. Further, the
20 current structure does provide for participation in the litigation
21 of all Plaintiffs' counsel and not just those serving as co-lead
22 class counsel. Not all of Plaintiffs' attorneys need to serve as
23 lead class counsel. While the Court allowed the first three firms
24 to serve in this capacity, instead of one or two of them, because
25 they agreed to share the responsibilities, the Court declines to
26 impose a more unmanageable and complicated administrative
27 structure for class counsel in this relatively straightforward
28 litigation.

1 Accordingly, the Court finds that maintenance of the current
2 interim class counsel structure best provides proper
3 representation of the interests of the putative class, and DENIES
4 F&F's motion (Docket No. 50).

5 IT IS SO ORDERED.

6
7 Dated: July 5, 2012


CLAUDIA WILKEN
United States District Judge