

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

**LOGAN LANDES, and JAMES
GODDARD, individually and on behalf of
all others similarly situated,**

Plaintiffs,

v.

**SONY MOBILE COMMUNICATIONS
(U.S.A.), INC., and SONY
ELECTRONICS, INC.,**

Defendants.

Case No. 2:17-cv-02264

**REPLY IN FURTHER SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF
SETTLEMENT AND UNOPPOSED MOTION FOR AN AWARD OF ATTORNEYS'
FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND PLAINTIFFS'
INCENTIVE AWARD**

I. INTRODUCTION

On October 13, 2017, Court-appointed Plaintiffs Logan Landes (“Landes”) and James Goddard (“Goddard,” collectively, “Plaintiffs”), and Defendants Sony Electronics, Inc. and Sony Mobile Communications (U.S.A.), Inc. (the “Sony Defendants”), submitted a Joint Motion for Final Approval of Class Action Settlement and memoranda in support thereof (“Final Approval Motion”) (Dkt. Nos. 28-31) and Unopposed Motion for An Award of Attorneys’ Fees, Reimbursement of Litigation Expenses, and Plaintiffs’ Incentive Award and memorandum in support thereof (“Fee Motion,” collectively, “Final Approval Papers”) (Dkt. No. 33), along with accompanying documents.¹ Between August 17, 2017 and September 26, 2017, notice was disseminated to members of the Class, reaching an estimated 92 percent of the target audience. Declaration of Jeanne C. Finegan, APR at ¶4 (Dkt. No. 28-3). As of the date of filing the Final Approval Motion and Fee Motion, only one objection had been filed (Dkt. No. 26). The deadline to submit objections or to opt out of the Settlement was November 1, 2017. Fee Motion at 3. This deadline has passed and, as of November 6, 2017, no additional objections or opt out requests have been received. Supplemental Declaration of Jeanne C. Finegan, APR, Dkt. No 34 at ¶3, submitted herewith. Accordingly, this is further evidence that the Settlement and requested attorneys’ fee and incentive award are fair, reasonable and adequate and should be approved.

II. SUMMARY OF ACTION LEADING UP TO THE FILING OF THE FINAL APPROVAL PAPERS

On April 14, 2017, Plaintiffs filed this Action on behalf of a nationwide class, alleging, *inter alia*, that the Sony Defendants deceptively advertised the Xperia line of smartphones and tablets as “waterproof” when, in fact, those Devices were not waterproof or designed for

¹ All capitalized terms shall have the same meaning as set forth in the Plaintiffs’ Final Approval Motion and Fee Motion (Dkts. 30, 33).

underwater use. Complaint, Dkt. No. 1. The Complaint alleged violations under the CLRA, California's FAL, UCL, ICFA, as well as claims for breach of express warranty, breach of implied warranty and unjust enrichment. Complaint; Dkt. 30 at 3. Plaintiffs sought declaratory relief, compensatory damages, punitive damages, injunctive relief, attorneys' fees and costs, and other relief. *Id.*

Pursuant to Section 1782 of the CLRA, on January 13, 2016, Plaintiffs' Class Counsel provided written notice to Defendants of their alleged violations of the CLRA prior to initiating this Action. Dkt. 30 at 3. The CLRA Demand caused the Parties to engage in numerous meetings and telephonic discussions regarding a potential resolution of the Class' claims. Dkt. 30 at 4. Consequently, prior to the filing of the Complaint, among other things: (i) the Sony Defendants produced over 11,000 documents to the Plaintiffs; (ii) Plaintiffs' Counsel conducted an interview of the Director of Sony Customer Services of the Americas in order to assess the merits of Plaintiffs' claims and asked follow-up questions on two separate occasions thereafter; and (iii) the Parties attended an in-person mediation before Patrick A. Juneau on March 17, 2017. Dkt. No. 30 at 4. The Parties engaged in negotiations for approximately one year prior to reaching this Settlement. Dkt. 30 at 5.

On July 14, 2017 the Parties jointly moved for preliminary approval of the Settlement (Dkt. No. 16) which was granted on August 3, 2017 (Dkt. No. 23). Pursuant to the Preliminary Approval Order, Notice was mailed to potential Class members between August 17, 2017 and September 26, 2017, reaching an estimated 92 percent of the target audience. Declaration of Jeanne C. Finegan at ¶4 (Dkt. No. 28-3). The Preliminary Approval Order also set a final approval hearing date for December 1, 2017. Dkt. No. 23.

On October 13, 2017, the Parties jointly moved for final approval of the Settlement. Dkts. No. 28-33.

SUBSEQUENT EVENTS SINCE FILING THE FINAL APPROVAL PAPERS

On September 26, 2017, prior to filing the Final Approval Papers, an objection was filed with this Court, objecting to the information required in order to submit a claims form but not to the terms of the Settlement, the requested attorneys' fees, or the requested incentive awards. Dkt. No. 26. The objector, James Rogers, does not maintain that the Settlement is unfair, nor does he object to the relief sought under the settlement. Rather, Mr. Rogers objected to the settlement on the basis that the Claim Form was too long and because he disliked the process for submitting the Claim Form and the information required. *See* Rogers Objection, Dkt. No. 26. However, the information required of class members to complete the Claim Form is necessary to provide proof that a class member has a valid claim and can be included as a class member. Moreover, the information that is required here is necessary to ensure that claims are not fraudulent. Since Mr. Rogers is not objecting to the fairness of the Settlement itself or to the relief being made available to the Class, he may submit a Standard Claim Form until the January 30, 2018 deadline with the information concerning his claim. Such a submission will be reviewed by the Claims Administrator, according to the Settlement Agreement.

Courts in this Circuit have rejected similar objections based on the claim form being too lengthy and complex. *In re WorldCom, Inc. Sec. Litig.*, No. 02 CIV 3288(DLC), 2004 WL 2591402, at *12 (S.D.N.Y. Nov. 12, 2004). In *WorldCom*, the court overruled the objection and stated that “[t]he information that claimants are required to submit is necessary in order for a fair distribution of the settlement proceeds.” *Id.*

Mr. Rogers' objection, the sole objection in connection with this settlement, should be overruled by this Court on similar grounds as in *WorldCom* because the information the claimants are required to submit is similarly necessary in order to fairly distribute the settlement relief to the class and because the Settlement is fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23.

The deadline to submit an objection or to opt out of the Settlement was November 1, 2017. Fee Motion at 3. This deadline has passed and, as of November 6, 2017, no other objections or opt out requests have been received. Supplemental Declaration of Jeanne C. Finegan, APR, Dkt. No. 34 at ¶3. Additionally, no oppositions to the Final Approval Papers have been filed with the Court or received by the Parties.

Where a settlement receives no opposition papers, objections, or opt-outs, it is further evidence of the fairness and adequacy of the settlement, fee award, and incentive awards. *See Yuzary v. HSBC Bank USA, N.A.*, No. 12civ3693 (PGG), 2013 WL 5492998, at *6 (S.D.N.Y. Oct. 2, 2013) (“The fact that the vast majority of class members neither objected nor opted out is a strong indication of fairness.”); *Massiah v. MetroPlus Health Plan, Inc.*, No. 11cv05669, 2012 WL 5874655, at *4 (E.D.N.Y. Nov. 20, 2012) (“No Class Members have objected to or requested exclusion from the settlement. This favorable response recommends final approval.”); *Willix v. Healthfirst, Inc.*, No. 07 Cv1143, 2011 WL 754862, at *4 (E.D.N.Y. Feb. 11, 2011) (approving settlement where seven of 2,025 class members submitted timely objections and two requested exclusion); *Khait v. Whirlpool Corp.*, No. 06cv6381, 2010 WL 2025106, at *2, 5 (E.D.N.Y. Jan. 20, 2016) (granting approval where “[n]o Class Member objected to the settlement, the service payments, or counsel's request for fees and costs, and only two Class Members requested exclusion.”).

III. CONCLUSION

For the aforementioned reasons, and for the reasons stated in the Final Approval Motion and Fee Motion, the Plaintiffs respectfully request that the Settlement be finally approved as fair, reasonable and adequate, that the Class should be certified for settlement purposes only, that the requested attorneys' fees and incentive award should be granted and that the Court overrule the objection.

DATED: November 14, 2017

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CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on November 14, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Nancy A. Kulesa
Nancy A. Kulesa