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-2264-JFB-SIL**

SONY MOBILE COMMUNICATIONS (U.S.A.), INC. AND SONY ELECTRONICS, INC.'S REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT FOR ENTRY OF AN ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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Defendants Sony Mobile Communications (U.S.A.), Inc. and Sony Electronics, Inc. (collectively, "Sony" or the "Sony Defendants") submit this reply memorandum in further support of the class action settlement. The Sony Defendants respectfully request that the Court overrule the single objection and finally approve the Settlement as fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23.

I. PRELIMINARY STATEMENT

The reaction of the Class to the Settlement Agreement has been overwhelmingly positive. There have been an astounding zero Class Members who have excluded themselves from the Class in the Sony Xperia class action Settlement and only one objection.[1] *See* Supplemental Declaration of Jeanne C. Finegan, APR ("Supplemental Finegan Decl."), Dkt. No. 34, ¶3. Of course, "that some class members object is neither uncommon nor fatal to settlement approval." *Lazy Oil Co. v. Witco Corp.*, 95 F. Supp. 2d 290, 334 (W.D. Pa. 1997). It is the nature of class action litigation that a settlement may not satisfy every class member. *See In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 761 (E.D.N.Y. 1984), *aff'd* 818 F.2d 145 (2d Cir. 1987); *Mathes v. Roberts*, 85 F.R.D. 710, 715 (S.D.N.Y. 1980) ("while the objectants [sic] may have preferred a different resolution, such a preference is neither a ground for rejecting the instant proposal as unfair and inequitable nor is it evidence of the inappropriateness of the benefits to be accorded to plaintiffs").

From the numerous Class Members, Sony received only two responses, one of which was a request for a Standard Claim Form, which has been sent by the Class Action Settlement Administrator. *See* Christopher Riviera Letter ("Riviera Letter"), Dkt. No. 27. The sole objection was from James J. Rogers. *See* James J. Rogers Objection ("Rogers Objection"), Dkt.

[1] All capitalized terms shall have the meaning ascribed to them in the Settlement Agreement unless otherwise specified herein.

No. 26. The infinitesimal number of meaningful objections and absolutely no requests for exclusion both weigh strongly in favor of final approval of the Settlement, reflecting *Grinnell*'s second factor – reaction of the class to the settlement. *See City of Detroit v. Grinnell*, 495 F.2d 448 (2nd Cir. 1974). "If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) (quoting 4 Alba Conte & Herbert B. Newberg, NEWBERG ON CLASS ACTIONS § 11:41, at 108 (4th ed. 2002)); *see also See D'Amato v. Deutsche Bank*, 236 F.3d 78, 86–87, 236 F.3d 78, 85 (2d Cir. 2001) (affirming the final approval of a settlement where 72 people out of a class size of 27,883 requested exclusion from the settlement).

Furthermore, Mr. Rogers does not argue that the Settlement is not fair, nor is he displeased with the remedy. Instead he is displeased with the Standard Claim Form and states that the form is too long and complex. *See* Rogers Objection, Dkt. No. 26. However, the information requested, which is supported by case law, is necessary to: (i) prove up a claim; (ii) prevent fraud and abuse; and (iii) confirm that the submitter is an eligible Class Member. Mr. Rogers' objection – the only one received by the Parties – should give this Court no cause for concern in approving the Settlement, as discussed further below.

This Settlement was negotiated at arm's-length and the terms of the Agreement provide benefits to *all* Class Members. The lack of any meritorious objections reflects the fairness, reasonableness, and adequacy of the Settlement terms. The Settlement Agreement provides substantial and immediate benefits to the Class. By entering into the Settlement Agreement, Sony has agreed to provide multifaceted relief, including (i) a warranty extension for Class Members where there is damage resulting from water intrusion, including where the applicable warranty has already expired; (ii) changes to Sony's packaging, labeling and advertising going

forward; and (iii) reimbursements to Class Members who previously had timely claims for water-related damage to their Mobile Device denied 50% of the MSRP for the affected Mobile Device. *See* Settlement Agreement, at section III.A.-C.

In sum, this Court should overrule the sole objection (i.e., Rogers Objection) and finally approve the Settlement as fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23.

II. ZERO REQUESTS FOR EXCLUSION AND ONE OBJECTION STRONGLY WEIGH IN FAVOR OF FINAL APPROVAL OF THE SETTLEMENT.

The second of the nine *Grinnell* factors is the reaction of the class. *See Grinnell*, 495 at 463; *see also* Preliminary Approval Order , Dkt. No. 23, ¶26.[2] The reaction of the Class in this case overwhelmingly favors Settlement as "the absence of substantial opposition is indicative of class approval." *Wal-Mart Stores, Inc.*, 396 F.3d at 118. The Second Circuit has held that a district court properly concluded that 18 objections from a class of 27,883 weighed in favor of settlement. *See D'Amato*, 236 F.3d at 86–87 (72 people requested exclusion from the settlement). Here, the reaction is even better than in *D'Amato* as there is only one objection out of a much larger Class and not a single request for exclusion. Rogers Objection, Dkt. No. 26; *see also Willix v. Healthfirst, Inc.*, No. 07 Civ. 1143, 2011 WL 754862, at *4 (E.D.N.Y. Feb. 18, 2011) (approving settlement where seven of 2,025 class member submitted timely objections and two requested exclusion); *Willix v. Healthfirst, Inc.*, No. 07 CIV. 1143 ENV RER, 2011 WL 754862, at *4 (E.D.N.Y. Feb. 18, 2011) ("Only seven of the 2,025 Class Members submitted timely objections to the Settlement, and only two have requested exclusion. This favorable response recommends final approval."); *Khait v. Whirlpool Corp.*, No. 06 Civ. 6381, 2010 WL

[2] Per the Preliminary Approval Order, "[a]ny reply briefs relating to final approval of the Settlement … shall be filed on or before November 14, 2017."

2025106, at *5 (E.D.N.Y. Jan. 20, 2010) (the fact that no class members objected and two opted out demonstrated favorable response weighing in favor of final approval); *Wright v. Stern*, 553 F. Supp. 2d 337, 344–45 (S.D.N.Y. 2008) ("[t]he fact that the vast majority of class members neither objected nor opted out is a strong indication" of fairness); *In re Warner Communications Secs. Litig.*, 618 F. Supp. 735, 746 (S.D.N.Y. 1985) (noting small number of objections and opt-outs, approving settlement).

"'The fact that the vast majority of [C]lass [M]embers neither objected nor opted out is a strong indication' of fairness." *Willix v. Healthfirst, Inc.*, No. 07 CIV. 1143 ENV RER, 2011 WL 754862, at *4 (E.D.N.Y. Feb. 18, 2011) (quoting *Wright v. Stern*, 553 F. Supp. 2d 337, 344–45 (S.D.N.Y. 2008) (approving settlement where 13 out of 3,500 class members objected and 3 opted out)). The fact that only one person in the entire Class objected and no one has chosen to opt out of the Settlement should weigh heavily in favor of final approval of the Settlement Agreement.

III. THE ROGERS' OBJECTION IS MERITLESS AS THE STANDARD CLAIM FORM REQUIREMENTS ARE WARRANTED AND NECESSARY.

Notably, the Rogers' Objection does not allege that the Settlement Agreement is unfair nor does it argue that the Settlement does not provide sufficient relief to the Class. Instead, Mr. Rogers argues that "the requirements of this information [in the claim form] be lifted." *See* Rogers Objection, Dkt. No. 26 at 2. "This information" that Mr. Rogers complains of is: (i) "the date of submission of the in-warranty mobile device;" (ii) "the name and address of the facility where Sony instructed [him] to send the phone;" and (iii) "the document from Sony indicating that [his] warranty claim was denied." *See id.* However, this information certainly is not burdensome, and the Standard Claim Form require this exact information to ensure that the

person submitting the form is an actual Class Member who is properly owed a reimbursement. *See Hamilton v. SunTrust Mortg. Inc*., No. 13-60749-CIV, 2014 WL 5419507, at *7 (S.D. Fla. Oct. 24, 2014) ("Filing a claim form is a reasonable administrative requirement which generally does not impose an undue burden on members of a settlement class."); *see also Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 696 (S.D. Fla. 2014) ("There is nothing inherently suspect about requiring class members to submit claim forms in order to receive payment.").

Furthermore, in *Saccoccio*, the court held that objectors "cannot derail a settlement because the members of the class are being asked to provide a tiny fraction of the information they would be required to prove at trial in a claims form." *Saccoccio*, 297 F.R.D. at 698. Accordingly, far from being an overly onerous or unnecessary measure, the Claim Process "strike[s] a proper balance between, on the one hand, avoiding fraudulent claims and keeping administrative costs low, and on the other hand, allowing as many class members as possible to claim benefits." *Hamilton*, 2014 WL 5419507, at *7; *see also Hall v. Bank of Am., N.A.*, No. 1:12-CV-22700-FAM, 2014 WL 7184039, at *6 (S.D. Fla. Dec. 17, 2014) (noting that the claims process is needed "to ensure that only aggrieved individuals receive monetary relief and to reduce the risk of fraud, waste, and abuse that might arise from sending unsolicited checks to unverified addresses and recipients").

Without this information and without requiring the attestation, a significant number of fraudulent claims could be submitted and paid. *See Hashw v. Dep't Stores Nat'l Bank*, 182 F. Supp. 3d 935, 948–49 (D. Minn. 2016). In *Hashw*, two class members objected to the claim form. *Id.* That form required each class member to provide his or her name, address, cell phone number, and type of credit-card account he or she had, as well as to sign an affirmation that the information on the form was true and correct. *Id.* One of the class members argued that the

"form should not have required class members to provide cell phone numbers," while the other argued "the affirmation should have been made 'to the best of the affiant's knowledge.'" *Id.* However, the court found that there was "no infirmity in the form" as "both the affirmation and the provision of cell phone numbers were designed to ensure that each person submitting a claim actually was a member of the settlement class…." *Id.* The court further noted that since the claim forms were publicly available on the settlement website, just as they are in this instant case, "anyone in the United States could have obtained and submitted a form." *Id.* Thus, "[t]he affirmation and cell phone numbers…served as useful checks to prevent fraud." *Id.* (citing *In re WorldCom, Inc. Sec. Litig.*, No. 02 Civ. 3288, 2004 WL 2591402, at *12 (S.D.N.Y. Nov. 12, 2004) (requirement that claim form be signed under penalty of perjury was "important in helping to insure that the settlement fund is distributed to class members who deserve to recover from the fund"); *Mangone v. First USA Bank*, 206 F.R.D. 222, 235 (S.D. Ill. 2001) ("The requirement of an affirmation on the claim *949 form, under penalty of perjury, from the Settlement Class Member seeking reimbursement ... was appropriate and not objectionable.").

Furthermore, the Southern District of New York finally approved a partial settlement in a class action and rejected this exact argument in an objection which stated that the claim form was 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). The Southern District found that objection "meritless" 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.*; *see also Saccoccio*, 297 F.R.D. at 698; *Hamilton*, 2014 WL 5419507, at *7; *Hall*, 2014 WL 7184039, at *6.

Because Mr. Rogers is not objecting to the fairness of the Settlement Agreement itself or its remedy, he may submit a Standard Claim Form (the deadline is not until January 30, 2018)

with the information that he can attest to. The claim will be reviewed and analyzed by the Class Action Settlement Administrator, pursuant to the terms of the Settlement Agreement.

If Mr. Rogers did not like the requirements of the Claim Process or any other term of the Settlement Agreement, he could have chosen to opt out. *See Eisen v. Porsche Cars N. Am., Inc.*, No. 2:11-CV-09405-CAS, 2014 WL 439006, *8 (C.D. Cal. Jan. 30, 2014) ("Federal courts routinely hold that the opt-out remedy is sufficient to protect class members who are unhappy with the negotiated class action settlement terms."). The 76-day opt out period (measured as the time between the beginning of notice and the opt-out deadline) is more than enough time to protect Class Members' due process rights to exercise this option. *See, e.g., In re Marsh & McLennan Cos., Inc. Sec. Litig.*, No. 04 Civ. 8144(CM), 2009 WL 5178546, at *13 (S.D.N.Y. Dec. 23, 2009) (approving a pre-certification settlement with a 30–day opt out period in a complex securities fraud class action case); *Rowe v. E.I. du Pont de Nemours & Co.*, Civil Nos. 06–1810 and 06–3080 (RMB/AMD), 2011 WL 3837106, at *7 (D.N.J. Aug. 26, 2011) (approving thirty-five day opt out period for class action settlement of water pollution claims over the objection of intervenors who claimed that longer notice was required because the "issues involved in the settlement are complex, thereby demanding highly specialized, scientific knowledge").

IV. CONCLUSION

For the foregoing reasons and the arguments made in the Memorandum of Law in Support for Entry of an Order Granting Final Approval of Class Action Settlement, the Sony Defendants respectfully request that the Court overrule all objections, finally approve the

Settlement as fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23, and issue related relief.

Dated: New York, New York
November 14, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2017, the above and foregoing document was electronically filed on the CM/ECF system and served in accordance with the Federal Rules of Civil Procedure, the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, and/or the United States District Court for the Eastern District's Rules on Electronic Service, which will send notification of such filing to all counsel of record.

In addition, the objector to the Settlement is being served via first-class postage prepaid U.S. Mail as follows:

James J. Rogers
2100 Raintree Drive
Conway, AR 72032

s/ Eric F. Gladbach
Eric F. Gladbach