

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MICHAEL BENTLEY, *et al.*, on behalf
of themselves and all others similarly
situated,

Plaintiffs,

v.

LG ELECTRONICS U.S.A., INC.

Defendant.

Case No. 2:19-cv-13554-MCA-MAH
(consolidated with Case Nos. 2:19-cv-
15185-MCA-MAH, 2:19-cv-15826-
MCA-MAH, and 2:20-cv-07652-
MCA-MAH)

**ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
AND PROVIDING FOR NOTICE**

WHEREAS, Plaintiffs Terry Driscoll, Cheryl Ervin, Leah Scala Israel, Sarah Johnson, Sam Lee, Patrick Romano, Carlos Stocco, Diane Terry, and Michael Burrage (“Plaintiffs”) and Defendant LG Electronics America, Inc. (“LG” or “Defendant”) entered into a Settlement Agreement on July 21, 2020, which, together with the Exhibits annexed thereto (“Settlement” or “Settlement Agreement”), sets forth the terms and conditions for a proposed settlement of this Litigation and for its dismissal with prejudice upon the terms and conditions set forth therein;

WHEREAS, Plaintiffs and Defendant are collectively referred to herein as the “Parties”;

WHEREAS, the Litigation includes this action and *Sosenko, et al. v. LG*

Electronics U.S.A., Inc., No. 8-19-cv-00610-JLS (ADSx) (C.D. Cal.), and the Court in *Sosenko* entered the Parties' stipulation to transfer that action to this Court under 28 U.S.C. § 1404 for the purpose of considering the proposed Settlement of the Litigation;

WHEREAS, the Parties have submitted substantial evidence that the Settlement was the product of informed, arm's-length negotiations, including in two in-person mediation sessions overseen by Hon. Jay Gandhi (Ret.) of JAMS;

WHEREAS, at the time the Parties entered into the Settlement Agreement, the pleadings in *Sosenko* were settled after the Court granted in part and denied in part LG's motion to dismiss (*see* 2019 WL 6118355), and the Parties had litigated multiple motions to compel discovery and taken substantial discovery on the merits of the claims and defenses, including through production and review of thousands of documents, analysis of LG's sales, service, and pricing data, deposition practice, extensive non-party discovery, retention of technical and economic experts, product testing, and analysis of evidence relevant to class certification issues;

WHEREAS, Plaintiffs have moved this Court for an order (i) preliminarily approving the Settlement under Federal Rule of Civil Procedure 23, (ii) finding that the Court will likely be able to certify the Settlement Class after the Final

Approval Hearing, and (iii) directing notice as set forth herein;

WHEREAS, Defendant does not oppose this request;

WHEREAS, the Court is familiar with and has reviewed the record, the Settlement Agreement, Plaintiffs' Notice of Motion and Motion for Preliminary Approval of Class Action Settlement, and Memorandum of Points and Authorities in Support Thereof, and the supporting Declarations, and has found good cause for entering this Order;

WHEREAS, unless otherwise specified, all capitalized terms used herein have the same meanings as set forth in the Settlement Agreement;

NOW THEREFORE, it is hereby ORDERED and ADJUDGED as follows:

Provisional Certification of the Settlement Class

1. The Court finds, upon preliminary evaluation and for purposes of the Settlement only, that the Court will likely be able to certify the following class pursuant to Federal Rule of Civil Procedure 23:

All Persons in the United States who purchased from an authorized retailer, other than for resale, a Covered Model¹ of LG Refrigerator produced between January 1, 2014 and December 31, 2017.

¹ A list of Covered Models is annexed to the Settlement Agreement as Exhibit 5 and shall also be provided in the Notice and at the dedicated Settlement Website identified in the Notice.

Persons who previously executed a release of claims in favor of LG with respect to the Released Claims are excluded from the Settlement Class.

2. The Court preliminarily concludes, for purposes of the Settlement only, that the requirements of Federal Rules of Civil Procedure 23(a) and (b)(3) are likely to be satisfied for the Settlement Class. In support of this conclusion, the Court provisionally finds as follows:

a. The number of Settlement Class Members is too numerous for their joinder to be practicable, as at least tens of thousands of Persons purchased the refrigerators at issue.

b. There are questions of law and fact common to the Settlement Class, and these common questions predominate over individualized questions for settlement purposes. The common questions include whether the LG Refrigerators are defective; whether LG had a duty to disclose an alleged defect in the LG Refrigerators; whether the allegedly concealed information would have been material to a reasonable consumer; and whether class members sustained harm as a direct and proximate result of LG's conduct.

c. Plaintiffs' claims are typical of the claims of the Settlement Class in that each of the claims arises from alleged violations of consumer and

warranty laws with regard to the same alleged product defect and course of conduct.

d. Plaintiffs are adequate class representatives, whose interests in this matter are aligned with those of the other Settlement Class Members.

Proposed Co-Lead Class Counsel—Daniel C. Girard of Girard Sharp LLP and Shanon J. Carson of Berger Montague PC—are experienced in prosecuting consumer class actions, have committed the necessary resources to represent the Settlement Class, and are hereby appointed as Co-Lead Class Counsel.

e. A class action is a superior method for the fair and efficient resolution of the Litigation.

Preliminary Approval of the Settlement

3. The Settlement is the product of non-collusive arm's-length negotiations between experienced counsel who were well informed of the strengths and weaknesses of the Litigation, including through discovery and motion practice, and whose settlement negotiations included mediation sessions supervised by Hon. Jay Gandhi (Ret.). The Settlement confers substantial benefits upon the Settlement Class and avoids the costs, uncertainty, delays, and other risks associated with continued litigation, trial, and/or appeal. The consideration provided to the Settlement Class under the Settlement falls within the range of

possible recovery, compares favorably with the potential recovery when balanced against the risks of continued litigation, does not grant preferential treatment to Plaintiffs, their counsel, or any subgroup of the Settlement Class, and has no obvious deficiencies. In addition to substantial monetary consideration, the Settlement provides the Class with valuable prospective relief in the form of warranty extensions and modifications to LG's customer service protocols and procedures.

4. The Court thus preliminarily approves the Settlement, as memorialized in the Settlement Agreement, as fair, reasonable, and adequate and in the best interest of Plaintiffs and the other Settlement Class Members, subject to further consideration at the Final Approval Hearing to be conducted as described below.

Manner and Form of Notice

5. The Court approves the Notice substantially in the forms attached as Exhibits 2(a) and 2(b) to the Settlement Agreement. The proposed Notice Plan as set forth in the Settlement Agreement, which includes direct and publication notice, will provide the best notice practicable under the circumstances. The Notice Plan and the proposed Settlement Notice as set forth in the Settlement Agreement are reasonably calculated, under the circumstances, to apprise

Settlement Class Members of the pendency of the Litigation, the effect of the proposed Settlement (including on the Released Claims), the anticipated motion for attorneys' fees, costs, and expenses and for service awards, and their rights to participate in, opt out of, or object to any aspect of the proposed Settlement; constitute due, adequate and sufficient notice to Settlement Class Members; and satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and all other applicable laws and rules. The date and time of the Final Approval Hearing shall be included in the Notice of Settlement before dissemination and on the Settlement Website.

6. The Court hereby appoints Angeion Group to serve as the Settlement Administrator to supervise and administer the notice procedures, establish and operate the Settlement Website and a toll-free number, administer the claims processes, determine the eligibility of claims, distribute cash payments according to the processes and criteria set forth in the Settlement Agreement, and perform any other duties of the Settlement Administrator that are reasonably necessary or provided for in the Settlement Agreement.

7. All reasonable expenses incurred in identifying and notifying Settlement Class Members, as well as in administering all aspects of the Settlement, shall be paid by LG as set forth in the Settlement Agreement. In the

event the Settlement is not approved by the Court or otherwise fails to become effective, the Settlement Administrator shall not be obligated to repay amounts received from or owed by LG for notice and settlement administration.

8. The Court approves, as to form and content, the Claim Form and Notice of Settlement annexed to the Settlement Agreement at Exhibits 1 and 2, respectively, and finds that the distribution, publication, and mailing of the Notice of Settlement, substantially in the manner and form set forth in this Order, meet the requirements of due process and Federal Rule of Civil Procedure 23, constitute the best notice practicable under the circumstances, and will provide due and sufficient notice to all persons entitled thereto.

9. Within 20 days after entry of this Order (the “Notice Date”), the Settlement Administrator shall mail, first-class postage prepaid, and email the Notice of Settlement and Claim Form, substantially in the form annexed to the Settlement Agreement, to all Settlement Class Members who have been and can be identified with reasonable effort, in addition to all LG direct customers, authorized retailers, and authorized repair companies with respect to the LG Refrigerators.

10. By the Notice Date, as set forth in the Settlement Agreement, the Settlement Administrator shall also implement the publication notice, cause

publication of the joint press release to occur, establish the Settlement Website and post the Notice of Settlement and Claim Form thereon, and establish the toll-free telephone number.

Deadlines for Settlement Class Members to Exercise Their Rights

11. Settlement Class Members who wish to participate in the Settlement shall complete and submit a Claim Form in accordance with the instructions contained therein. All Claim Forms must be postmarked or submitted electronically within 130 days after entry of this Order as set forth in the Settlement Agreement. Late Claims submitted prior to the entry of the Final Approval Order and Judgment may be considered and paid if deemed appropriate by the Settlement Administrator.

12. Any objections or exclusion requests by Class Members must be postmarked within 60 days of the Notice Date (the “Objection and Opt-Out Deadline”) and comply with all other applicable requirements set forth in the Settlement Agreement.

13. The dates provided for herein may be extended by Order of the Court, for good cause shown, without further notice to the Settlement Class.

The Final Approval Hearing

14. The Court will hold a Final Approval Hearing on

December 15, 2020 at 2:00 p.m. [no earlier than 115 days after entry of this Order], at the United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07102, for the following purposes: (i) to finally determine whether the Settlement Class satisfies the applicable requirements for certification under Federal Rules of Civil Procedure 23(a) and 23(b)(3); (ii) to determine whether the Settlement should be finally approved as fair, reasonable, and adequate and in the best interests of the Settlement Class; (iii) to consider Class Counsel's application for an award of attorneys' fees, costs, and expenses and for service awards to the representative Plaintiffs; and (iv) to consider any other matters that may properly be brought before the Court in connection with the Settlement.

15. Class Counsel's application for an award of attorneys' fees, expenses, and costs and for service awards will be considered separately from the fairness, reasonableness, and adequacy of the Settlement. Any appeal from an order relating solely to Class Counsel's application for an award of attorneys' fees, costs, and expenses, and/or to Class Counsel's application for service awards, or any reversal or modification of any such order, shall not operate to terminate or cancel the Settlement or to affect or delay the finality of a judgment approving the Settlement.

16. Class Counsel's motion for attorneys' fees, costs, and expenses, and application for Plaintiffs' service awards shall be filed no later than 30 days prior to the Opt Out and Objection deadline. Class Counsel's motion for final approval of the Settlement shall be filed no later than 21 days prior to the Final Approval Hearing.

Objections and Appearances at the Final Approval Hearing

17. Any member of the Settlement Class may appear at the Final Approval Hearing and offer cause why the proposed Settlement should or should not be approved as fair, reasonable, and adequate, or why judgment should or should not be entered, or to comment on or oppose Class Counsel's application for attorneys' fees, costs, and expenses, or to Plaintiffs' application for service awards. No person shall be heard or entitled to contest the approval of the Settlement, or if approved, the judgment to be entered approving the Settlement, or of Class Counsel's application for an award of attorneys' fees, costs, and expenses and for service awards, unless that person submitted a timely objection to the Settlement Administrator by 60 days after the Notice Date, and by following the procedures set forth in the Settlement Agreement. Any Settlement Class Member who does not make their objection in the time and manner provided for in the Settlement Agreement shall be deemed to have waived such

objection and shall forever be barred from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement, and to Class Counsel's application for an award of attorneys' fees, costs, and expenses and for service awards. Attendance at the Final Approval Hearing is not necessary, but persons wishing to be heard orally in connection with approval of the Settlement and/or the application for an award of attorneys' fees, costs, and expenses and for service awards must indicate in their written objection their intention to appear at the hearing. By objecting, or otherwise requesting to be heard at the Final Approval Hearing, a Settlement Class Member shall be deemed to have submitted to the jurisdiction of the Court with respect to the objection or request to be heard and the subject matter of the Settlement, including but not limited to enforcement of its terms.

18. To be considered by the Court, an objection must be stated in detail and must specify the particular aspect(s) of the Settlement being challenged; the reason(s), if any, for the objection, including any evidence and legal authority that the Settlement Class Member wishes to bring to the Court's attention; and whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class. Additionally, to be considered by the Court, an objection must clearly identify the case name and number, and contain

(i) the objecting Settlement Class Member's printed name, address, telephone number, and email address; (ii) evidence that the objector is a Settlement Class Member, including the address of the dwelling or business location that contains or contained a Covered Model and documentary proof that the objector purchased a Covered Model; (iii) any other supporting papers, materials, or briefs that the Settlement Class Member wishes the Court to consider when reviewing the objection; (iv) the actual written signature of the Settlement Class Member making the objection; and (v) a statement whether the objecting Settlement Class Member and/or his or her counsel intend to appear at the Final Approval Hearing. An objector who wishes to present evidence at the Final Approval Hearing must include in their written objection the identity of any witness(es) they may call to testify and copies of any exhibit(s) they intend to offer at the hearing. All attorneys representing any objector in any capacity must file a notice of appearance with the Court by the Objection and Opt Out Deadline. If a Settlement Class Member or counsel for the Settlement Class Member has objected to a class action settlement on any prior occasion, the objection shall also disclose all cases in which they have filed an objection by caption, court and case number, and for each case, the disposition of the objection.

Exclusion from the Settlement Class

19. Any requests for exclusion are due no later than 60 days after the Notice Date. Any person who would otherwise be a member of the Settlement Class who wishes to be excluded from the Settlement Class must mail the Settlement Administrator a written request to opt out, postmarked by the Objection and Opt-Out Deadline and containing the Settlement Class Member's printed name, actual written signature, address, telephone number, and email address.

20. All persons who submit valid and timely notifications of exclusion shall have no rights under the Settlement Agreement, shall not share in the relief provided by the Settlement, and shall not be bound by the Settlement Agreement or any Orders or final judgment of the Court in this Litigation.

21. Any member of the Settlement Class who does not notify the Settlement Administrator of their intent to be excluded from the Settlement Class in the manner set forth in the Settlement Agreement shall be deemed to have waived their right to be excluded from the Settlement Class. If the Court approves the Settlement, any such person shall forever be barred from requesting exclusion from the Settlement Class in this or any other proceeding, and shall be bound by the Settlement and the judgment, including the release of the Released Claims provided for in the Settlement Agreement, and the Final Approval Order and

Judgment.

Termination of the Settlement

22. If the Settlement fails to become effective in accordance with its terms, or if the Final Approval Order and Judgment is not entered or is reversed or vacated on appeal, this Order shall be null and void, the Settlement Agreement shall be deemed terminated, and the Parties shall return to their positions without any prejudice, as provided for in the Settlement Agreement.

Limited Use of This Order

23. The fact and terms of this Order or the Settlement, all negotiations, discussions, drafts, and proceedings in connection with this Order or the Settlement, and any act performed or document signed in connection with this Order or the Settlement, shall not, in this or any other Court, administrative agency, arbitration forum, or other tribunal, constitute an admission, or evidence, or be deemed to create any inference (i) of any acts of wrongdoing or lack of wrongdoing, (ii) of any liability on the part of Defendant to Plaintiffs, the Settlement Class, or anyone else, (iii) of any deficiency of any claim or defense that has been or could have been asserted in this Litigation, (iv) of any damages or absence of damages suffered by Plaintiffs, the Settlement Class, or anyone else, or (v) that any benefits obtained by the Settlement Class under the Settlement

represent the amount that could or would have been recovered from Defendant in this Litigation were it not settled at this time. The fact and terms of this Order or the Settlement, and all negotiations, discussions, drafts, and proceedings associated with this Order or the Settlement, including the judgment and the release of the Released Claims provided for in the Settlement Agreement, shall not be offered or received in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration forum, or other tribunal, except as necessary to enforce the terms of this Order, the Final Approval Order and Judgment, and/or the Settlement.

Reservation of Jurisdiction

24. The Court retains exclusive jurisdiction over the Litigation to consider all further matters arising out of or connected with the Settlement.

25. Pending further order of the Court, all litigation activity and events, except those contemplated by this Order or in the Settlement Agreement, are hereby STAYED, and all hearings, deadlines, and other proceedings in the Litigation, except the Final Approval Hearing and the matters set forth in this Order, are VACATED.

IT IS SO ORDERED.



Dated: August 19, 2020

Hon. Madeline Cox Arleo
United States District Judge