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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALEXIS BRONSON and CRYSTAL
HARDIN, on behalf of themselves and all
others similarly situated,

No. C 18-02300 WHA

Plaintiff,

v.

SAMSUNG ELECTRONICS AMERICA,
INC., and SAMSUNG ELECTRONICS
CO., LTD.,

**ORDER ON MOTION FOR
ATTORNEY'S FEES AND FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Defendants.

INTRODUCTION

In this class action certified under Rule 23(b)(2), plaintiff moves for final approval of a settlement agreement and for attorney's fees, costs, and incentive award. Defendant does not oppose. To the extent stated below, the motion for final approval of the class settlement is **GRANTED**. The motion for attorney's fees, costs, and incentive award is **GRANTED IN PART**.

STATEMENT

Prior orders set forth the background of this action (*see, e.g.*, Dkt. No. 230). In brief, plaintiffs Alexis Bronson and Crystal Hardin purchased Samsung plasma televisions in 2013 that had been manufactured the same year by defendants Samsung Electronics America, Inc., and Samsung Electronics Co., Ltd. Both television sets later developed colored-lines on the

1 screens. In 2018, two different Samsung-authorized repair facilities separately informed our
2 plaintiffs that Samsung did not have the spare part available necessary to fix their televisions.

3 By April 2018, plaintiff Bronson had commenced this then-putative class action. After
4 nine months and twice amending the complaint, only two claims remained in the operative
5 complaint: *First*, a violation of California Civil Code Section 1793.03(b), which provided:

6 Every manufacturer making an express warranty with respect to an
7 electronic or appliance product . . . shall make available to service
8 and repair facilities . . . functional parts to effect the repair of a
9 product for at least seven years after the date a product model or type
was manufactured, regardless of whether the seven-year period
exceeds the warranty period for the product.

10 *Second*, a derivative violation of “unlawfulness” under Section 17200 of California’s
11 Business and Professions Code for the alleged violation of Section 1793.03(b). An order also
12 then permitted plaintiff Hardin to intervene.

13 An order denied preliminary approval of one proposed class settlement in September
14 2019 (Dkt. No. 209). The parties tried again in October 2019. The October settlement made
15 no reference to plaintiff Bronson. Following a hearing and revisions, an order certified the
16 following settlement class (Dkt. No. 230):

17 Any resident of the State of California who owns a Samsung plasma
18 television model PN51F5500, PN51F5300, or PN51F5350
19 (“Affected Models”), that exhibits a “line” issue that requires a
replacement plasma display panel assembly (“PDP”).

20 The same order granted plaintiff’s motion for preliminary approval of a proposed class
21 settlement and approved, as to form and content, a class notice concerning the settlement
22 agreement and the final approval hearing.

23 The settlement administrator distributed notice in three ways. *First*, through a settlement
24 website that has been available to the public since November 15, 2019, and will remain
25 available through November 30, 2021. *Second*, by publication notice in the San Francisco
26 Chronicle, the Wall Street Journal’s California regional publications, and the California edition
27 of Parade Magazine. *Third*, class counsel provided the preliminary approval order, the
28 settlement agreement, and the short- and long-form notices to a third-party website that

1 regularly provides information to the public on class actions and class action settlements (Decl.
2 Rapazzini ¶¶ 4–10).

3 An order set January 31, 2020, as the deadline for filing objections to the settlement (Dkt.
4 No. 230). No class members objected to the settlement by January 31 (Dkt. No. 240 at 20).
5 Nor have any late objections been filed, as of class counsel’s March 19 supplemental brief. On
6 the other hand, two potential class members contacted Samsung regarding a display issue and
7 were directed to authorized service centers to determine whether their television sets required
8 the replacement part at issue. The supplemental brief also notes that “[n]o Settlement Class
9 Members have contacted Class Counsel or Samsung’s counsel[,]” but goes on to say that
10 notice has “reached a relevant group of consumers” as class counsel have “received inquiries
11 from Samsung plasma television owners since the publication” of the notice (Dkt. No. 248).

12 Plaintiff now moves for final approval of the proposed injunctive-only class settlement
13 and for an award of attorney’s fees and costs in the total amount of \$487,000 and an incentive
14 award of \$6,000 for plaintiff Hardin. Defendants do not oppose. This order follows full
15 briefing and supplemental briefing. No in-court hearing could be held due to court closures in
16 response to the public health concern caused by COVID-19 (Dkt. Nos. 245, 246).

17 ANALYSIS

18 1. FINAL APPROVAL OF PROPOSED CLASS SETTLEMENT.

19 Under FRCP 23(e), court approval is required for any settlement agreement that will bind
20 absent class members. When a proposed settlement agreement is presented, the district court
21 must perform two tasks: (1) direct notice in a reasonable manner to all class members who
22 would be bound by the proposal; and (2) approve the settlement only after a hearing and on
23 finding that the terms of the agreement are fair, reasonable, and adequate. FRCP 23(e)(1)–(2).

24 A. Adequacy of Notice.

25 The notice must be “reasonably calculated, under all the circumstances, to apprise
26 interested parties of the pendency of the action and afford them an opportunity to present their
27 objections.” *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (citations
28 omitted). It must also describe “the terms of the settlement in sufficient detail to alert those

1 with adverse viewpoints to investigate and to come forward and be heard.” *Mendoza v. Tucson*
2 *Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980). The undersigned judge previously
3 approved the form, content, and planned distribution of the class notice (Dkt. No. 230). As
4 described above, the claims administrator has fulfilled the notice plan. This order accordingly
5 finds that notice to class members was adequate.

6 * * *

7 Following briefing of this motion, an order asked class counsel’s input on providing an
8 additional, final notice to the class and opportunity to object, as the final approval hearing had
9 to be vacated following court closures (Dkt. No. 246). Although both parties do not object to
10 providing such a notice through the settlement website, this order finds the additional notice
11 unnecessary based on counsel’s feedback. Prospective objectors had ample opportunity to
12 timely object and none did. Nor did any file a late objection in the nearly two months since
13 then. On the other hand, two potential class members contacted Samsung customer service
14 concerning the underlying display issue since an order preliminarily approved the settlement
15 on November 1, 2019. Stalling the proposed injunction risks these potential class members not
16 receiving the relief afforded by the settlement. Class counsel also received inquiries from
17 other Samsung television owners following the publication of the notice, although it remains
18 unclear whether those owners are potential class members (Dkt No. 248). Ultimately, while
19 some individuals contacted class counsel and Samsung regarding the subject matter of the
20 lawsuit, no class members objected to the settlement at any time. No additional notice shall be
21 required.

22 **B. Scope of Release.**

23 The proposed settlement agreement does not release any of the class members’ claims
24 “for money damages, injunctive or equitable relief, or other form of relief[,]” including any
25 claims related to the affected television sets, even if the class member benefits from relief
26 under the proposed settlement. Plaintiff Hardin releases any claims related to the underlying
27 dispute (Dkt. No. 214-4 at 5–6). Given that the class gives up no claims, but retains the
28

1 benefits of the provided injunctive relief, this order finds that the scope of release is
2 appropriately tailored and approved.

3 **C. Fairness, Reasonableness, and Adequacy of Proposed**
4 **Settlement.**

5 A district court may approve a proposed class settlement only upon finding that it is fair,
6 reasonable, and adequate, taking into account (1) the strength of the plaintiffs' case; (2) the
7 risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining
8 class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of
9 discovery completed and the stage of the proceedings; (6) the experience and view of counsel;
10 (7) the presence of a governmental participant; and (8) the reaction of the class members to the
11 proposed settlement. Rule 23(e); *Campbell v. Facebook, Inc.*, --- F.3d ----, 2020 WL 1023350
12 at *10 (9th Cir. 2020).

13 *First*, the settlement terms are fair, reasonable, and adequate. The class representatives
14 and class counsel have adequately represented the class. The parties reached the proposed
15 settlement agreement after extensive mediation efforts supervised by Magistrate Judge Corley,
16 including two in-person settlement conferences and several lengthy telephone settlement
17 conferences between May and August 2019. Continuing forward in litigation would not only
18 impose risks and costs on plaintiffs and the class, but would also delay the implementation of
19 the parties' agreed-upon remedies.

20 *Second*, plaintiffs have sought only injunctive relief in this settlement. The proposed
21 settlement agreement provides, among other things, that class members will be able to receive
22 an exchange or refund for their broken television, Samsung will update its internal website to
23 show its authorized service and repair facilities that the faulty part is available, and authorized
24 service centers will also be contacted to ensure the service centers will be informed of the
25 parts' availability. Further, class counsel, with Samsung's cooperation, will file annual
26 statements by October 15 of 2020 and 2021 disclosing the number of settlement class members
27 who have received "some form of relief under" the settlement in the prior year. No class
28 member has objected to the settlement agreement.

1 This order notes that class counsel chose to abandon certification of a damages class
2 under Rule 23(b)(3) in favor of an injunctive-only class under Rule 23(b)(2). Still, considering
3 the expense and uncertainty in moving forward with litigation, as well as that no class claims
4 will be released, the settlement provides sufficient relief to the class:

5 Based on the foregoing reasons and those mentioned in the order granting preliminary
6 approval of the proposed agreement, final approval of the proposed class settlement is

7 **GRANTED.**

8 **2. MOTION FOR ATTORNEY’S FEES, COSTS, AND INCENTIVE**
9 **AWARD.**

10 A district court must ensure that attorney’s fees are “fair, adequate, and reasonable,” even
11 if the parties have entered into a settlement agreement that provides for those fees. *Staton v.*
12 *Boeing Co.*, 327 F.3d 938, 963–64 (9th Cir. 2003). Although the operative complaint alleges a
13 claim for damages, class counsel abandoned certification of a damages class. The settlement
14 agreement instead provides for injunctive relief.

15 Plaintiff here seeks attorney’s fees as the prevailing party in its claims under the Song-
16 Beverly Consumer Warranty Act. Section 1794(d) of California’s Civil Code provides:

17 If the buyer prevails in an action under [the Song-Beverly Consumer
18 Warranty Act], the buyer shall be allowed by the court to recover as
19 part of the judgment a sum equal to the aggregate amount of costs
20 and expenses, including attorney's fees based on actual time
expended, determined by the court to have been reasonably incurred
by the buyer in connection with the commencement and prosecution
of such action.

21 To recover attorney’s fees and expenses under the Song-Beverly Act’s fee-shifting scheme, the
22 plaintiff must first be determined to be a prevailing buyer. The Act does not define “prevail.”

23 To determine who “prevails” under Section 1794(d), we must “determine which party
24 succeeded on a practical level, by considering the extent to which each party realized its
25 litigation objectives.” *Wohlgemuth v. Caterpillar Inc.*, 207 Cal. App. 4th 1252, 1264 (2012).

26 A party may realize its litigation objectives “by judgment, settlement or otherwise.” *Graciano*
27 *v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th 140, 150–51 (2006). In assessing litigation
28 success, “respect [should be given to] substance rather than form, and to this extent [courts]

1 should be guided by equitable considerations. For example, a party who is denied direct relief
2 on a claim may nonetheless be found to be a prevailing party if it is clear that the party has
3 otherwise achieved its main litigation objective.” *Graciano v. Robinson Ford Sales, Inc.*, 144
4 Cal. App. 4th 140, 150–51 (2006).

5 In this action, plaintiff is the prevailing party. Plaintiff’s claims stem from Samsung’s
6 alleged failure to make available to its authorized repair facilities a part for a plasma television
7 that it manufactured, in violation of Section 1793.03(b). No decision since the 1986 enactment
8 of the statute has considered what constitutes success on a claim under Section 1793.03(b).
9 This order need not wade into a lengthy legal analysis, however, to find that plaintiff
10 succeeded here. Plaintiff, on behalf of this settlement class, sought injunctive relief in the form
11 of an order requiring Samsung to manufacture replacement parts for certain Samsung plasma
12 television models. In the operative complaint, plaintiff also sought compensatory damages
13 including the purchase price of Samsung plasma televisions, diminishment in value of the
14 televisions, and the cost of diagnosis, repair, or replacement of the televisions.

15 The proposed settlement largely achieves plaintiff’s objectives, at least “on a practical
16 level.” *See Wohlgemuth*, 207 Cal. App. 4th at 1264. While Samsung’s agreement to make the
17 television part available for class members to purchase is, as explained in the preliminary
18 approval order, nominal at best, the proposed settlement allows class members to exchange
19 their televisions or receive a refund of the purchase price (Dkt. No. 230 at 5–6). By allowing
20 class members to choose between exchanging their televisions or receiving the purchase price,
21 the proposed settlement secures in substance what the complaint sought as compensatory
22 damages. *See Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th at 150–51. The
23 exchange-or-refund option also exceeds the value of the injunctive relief sought in the
24 complaint, considering class members would still need to purchase and install the replacement
25 parts once Samsung began manufacturing them. This order thus finds that the class is entitled
26 to their reasonable attorney’s fees and expenses as “prevailing buyers” under the statute.

27 Although the relief afforded is relevant in determining whether the plaintiff “prevailed,”
28 the “plain wording” of Section 1794(d) requires the trial court to “base” the prevailing buyer’s

1 attorney fee award “upon actual time expended on the case, as long as such fees are reasonably
2 incurred — both from the standpoint of time spent and the amount charged.” *Robertson v.*
3 *Fleetwood Enterprises, Inc.*, 144 Cal. App. 4th 785, 817 (2006). “While the trial court has
4 broad discretion to increase or reduce the proposed lodestar amount based on the various
5 factors identified in case law, including the complexity of the case and the results achieved, the
6 court’s analysis must begin with the ‘actual time expended, determined by the court to have
7 been reasonably incurred. It is inappropriate and an abuse of a trial court’s discretion to tie an
8 attorney fee award to the amount of the prevailing buyer/plaintiff’s damages or recovery in a
9 Song-Beverly Act action.” *Hanna v. Mercedes-Benz USA, LLC*, 36 Cal.App.5th 493, 510
10 (2019).

11 Class counsel provide a detailed declaration organized by discrete project, breaking down
12 all attorney and paralegal time sought to be recovered. The result is a lodestar of \$1,400,000,
13 representing the time class counsel spent on this action since February 2018. Yet class counsel
14 seeks only \$487,000 total in attorney’s fees and expenses, thirty-four percent of counsel’s
15 lodestar. To get there, counsel discounted individual projects to account for inefficient,
16 duplicative, and unnecessary secondary work. For example, counsel cut the time billed to draft
17 and file the complaint and first amended complaint by seventy-five percent because the second
18 amended complaint superseded both and carried over pleading of certain claims and facts.
19 Similarly, counsel cut in full the time billed on their Consumer Legal Remedies Act demand
20 because an order dismissed the CLRA claims. Counsel’s rates for the billing attorneys range
21 from \$450 per hour to \$675 per hour.

22 Defense counsel have not objected to the amount sought. The amount comports with the
23 settlement in which the parties agreed, “Class Counsel will file with the Court a petition for
24 attorneys’ fees and costs in the amount of up to \$487,000.00” (Dkt. No. 214-4 ¶ II.C).
25 Furthermore, the fees sought represent approximately thirty-four percent of the claimed
26 lodestar, yielding a “negative multiplier.” The fees will not be deducted from a monetary class
27 settlement but will be paid separately by Samsung. In light of the foregoing, and the fact that
28 class counsel have conducted motion practice and engaged in extensive mediation efforts

1 supervised by Magistrate Judge Corley, this order finds the agreed-upon attorney’s fees
2 amount — “of up to \$487,000” — to be reasonable (*ibid.*).

3 This order further **APPROVES** the award of \$487,000 in attorney’s fees, half of which
4 shall be paid now and the remaining half to be paid when all the work is done in implementing
5 the relief to the class. This order will not make any findings regarding reasonableness of the
6 lodestar, the hours billed, nor the rate at which they are billed at since the parties have already
7 agreed to an attorney’s fee amount that this order finds reasonable.

8 Class counsel does not separately ask for reimbursement of its costs and expenses.
9 Instead, counsel submits only the combined attorney’s fees and expenses request for \$487,000.
10 Counsel does, however, include some documentation of their expenses. The largest
11 components of these expenses are related to depositions (\$13,736.09), flights (\$11,995.72),
12 lodging (\$10,842.04), consulting fees (\$6,406.74), online research (\$5,031.08), and a category
13 titled “Research - Vendor” (\$4,850). Although counsel provides an itemized list of these
14 expenses, including the date and cost, no description is provided beyond the categorical name
15 of the expense (*e.g.*, “depositions,” “online research”). Counsel’s documentation falls far short
16 of what is normally required. Still, the award of \$487,000 remains reasonable despite
17 counsel’s shortfall here.

18 * * *

19 Plaintiff Hardin also seeks an incentive award of \$5,000 plus \$1,000 for a new television.
20 As stated, defendants do not oppose this request. To the extent the \$1,000 goes beyond what is
21 afforded to the class, this amount is **DENIED**. The class settlement should be good enough for
22 the class representative.

23 The remaining \$5,000 is meant to reward plaintiff Hardin for the work she put into
24 prosecuting this action. Plaintiff Hardin swears she spent roughly forty-five documented hours
25 on this case and many more hours that she did not write down. A portion of those hours
26 included sitting for a deposition that purportedly devolved into disparaging personal attacks,
27 challenging plaintiff’s commitment to the litigation. Still, plaintiff Hardin stayed the course
28 throughout the litigation and settlement process (Decl. Hardin ¶¶ 6, 11).

1 While this work is appreciated, the undersigned’s “Notice Regarding Factors to be
2 Evaluated for Any Proposed Class Settlement” cautions that “[a] request for an incentive
3 payment is a red flag.” Incentive awards pose the risk that a class representative has gone
4 along with a settlement, not because it secures a good outcome for the class, but simply for the
5 incentive award. Such awards should therefore be subject to careful scrutiny. Particularly,
6 when the return for each individual is merely the option of a refund of the purchase price or
7 replacement of the television, an award of \$6,000 is extremely unreasonable. In light of the
8 foregoing, plaintiff’s request for an incentive award is **GRANTED IN PART**. An award of \$500
9 is reasonable and will be granted here. Any award for the replacement of plaintiff Hardin’s
10 television or a refund of the purchase price shall be the same relief as afforded to the class.

11 **CONCLUSION**

12 Accordingly, it is hereby ordered as follows:

13 1. The notice of settlement, as well as the manner in which it was sent to class
14 members, fairly and adequately described the proposed class settlement; was the best notice
15 practicable under the circumstances; was valid, due, and sufficient notice to class members;
16 and complied fully with the Federal Rules of Civil Procedure, due process, and all other
17 applicable laws. A full and fair opportunity has been afforded to class members to participate
18 in the proceedings convened to determine whether the proposed class settlement should be
19 given final approval.

20 2. The undersigned also finds that the proposed class settlement is fair, reasonable,
21 and adequate as to the class, plaintiffs, and defendants; that it is the product of good faith,
22 arms-length negotiations between the parties; and that the settlement is consistent with public
23 policy and complies with all applicable provisions of law. The settlement is accordingly
24 **APPROVED**.

25 3. Having considered class counsel’s motion for attorney’s fees, the undersigned
26 hereby awards class counsel attorney’s fees of \$487,000. Half of this amount shall be paid
27 now and the other half shall be paid when all relief to the class hereunder has been
28 implemented (following the final status report).

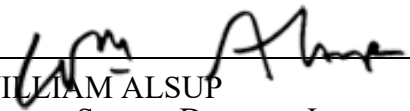
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4. Plaintiff Hardin shall also receive \$500 as an incentive award for the time spent prosecuting this action on behalf of the class.

Judgment will be entered separately.

IT IS SO ORDERED.

Dated: March 30, 2020.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE