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U.S. DISTRICT COURT E.D.N.Y.

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

★ **AUG 03 2017** ★

LONG ISLAND OFFICE

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

Case No. 2:17-cv-2264-JFB-SIL

Plaintiffs,

v.

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

Defendants.

~~**PROPOSED**~~
**ORDER, INTER ALIA, GRANTING
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT,
PROVISIONALLY CERTIFYING
SETTLEMENT CLASS, DIRECTING
NOTICE TO THE CLASS AND
SCHEDULING FAIRNESS HEARING**

WHEREAS, this matter has come before the Court pursuant to *Plaintiffs' and Defendants' Joint Motion for Entry of an Order Granting Preliminary Approval of Class Action Settlement and Issuance of Related Orders (the "Motion")*;

WHEREAS, the Court finds that it has jurisdiction over this Action and each of the parties for purposes of settlement and asserts jurisdiction over the Class Members for purposes of effectuating this settlement and releasing their claims (all capitalized terms have the meaning set forth in the Settlement Agreement, which is attached to the Joint Motion as Exhibit 2); and

WHEREAS, this Court has considered all of the submissions related to the Motion and is otherwise fully advised in the premises;

IT IS HEREBY ORDERED AS FOLLOWS:

I. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

1. The terms of the Settlement Agreement dated July 12, 2017, including all exhibits thereto (the "Settlement Agreement"), which is attached to the Motion as Exhibit 2, are preliminarily approved as fair, reasonable and adequate, are sufficient to warrant sending notice

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to the Class, and are subject to further consideration thereof at the Fairness Hearing referenced below. This Preliminary Approval Order (“Order”) incorporates herein the Settlement Agreement, and all of its exhibits and related documents. Unless otherwise provided herein, the terms defined in the Settlement Agreement shall have the same meanings in this Order.

2. The Settlement Agreement was entered into only after extensive arm’s length negotiations by experienced counsel. The Court finds that the settlement embodied in the Settlement Agreement (“the Settlement”) is sufficiently within the range of reasonableness so that notice of the Settlement should be given as provided in the Settlement Agreement and this Order. In making this determination, the Court has considered the current posture of this litigation and the risks and benefits to the Parties involved in both settlement of these claims and continuation of the litigation.

**II. THE CLASS, CLASS REPRESENTATIVES
AND PLAINTIFFS’ CLASS COUNSEL**

3. The Court provisionally certifies the following Class for settlement purposes only (the “Class”): all persons, entities or organizations who, at any time as of or before the entry of this Order, purchased, own(ed), received as a gift or received as a customer service exchange the Mobile Devices manufactured, marketed, sold and/or distributed by Sony Mobile Communications (USA), Inc. in any of the fifty States, the District of Columbia, and Puerto Rico. Excluded from the Class are: (a) any persons or entities that purchased or acquired the Mobile Devices for commercial use or resale; (b) any claims aggregators; (c) any person who claims to be an assignee of rights associated with the Mobile Products; (d) Sony Mobile Communications (USA), Inc., their officers, directors and employees; their affiliates and affiliates’ officers, directors and employees; their distributors and distributors’ officers, directors and employees; (e) Plaintiffs’ Class Counsel; (f) judicial officers and their immediate family

members and associated court staff assigned to this case; and (g) persons or entities who or which timely and properly exclude themselves from the Class.

4. The “Mobile Devices” are the Sony products listed in Exhibit 5 to the Settlement Agreement, which is expressly incorporated in this Order.

5. The Court preliminarily finds, for settlement purposes only and conditioned upon the entry of this Order and the Final Order and Final Judgment, the terms of the Settlement Agreement, and the occurrence of the Final Effective Date, that the Class meets all the applicable requirements of FED. R. CIV. P. 23(a) and (b)(3), and hereby provisionally certifies the Class for settlement purposes only. The Court preliminarily finds, in the specific context of this Settlement, that: (a) the number of Class Members is so numerous that their joinder in one lawsuit would be impractical; (b) there are some questions of law or fact common to the Class that are sufficient for settlement purposes; (c) the claims of Class Representatives are typical of the claims of the Class Members they seek to represent for purposes of settlement; (d) the Class Representatives have fairly and adequately represented the interests of the Class for settlement purposes and the Class Representatives have retained experienced counsel to represent them and the Class – Nancy Kulesa and Shannon Hopkins of Levi & Korsinsky LLP, whom the Court finds have satisfied the requirements of FED. R. CIV. P. 23(a)(4) and 23(g); (e) the questions of law and fact common to the Class, as pertains to consideration of the Settlement, predominate over any questions affecting any individual Class Member; and (f) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy through settlement.

6. The Court designates the following Named Plaintiffs as Class Representatives: Logan Landes and James Goddard.

7. The Court further preliminarily finds that the following counsel fairly and adequately represent the interests of the Class for settlement purposes and hereby appoints them as counsel for the Class pursuant to FED. R. CIV. P. 23(g):

Nancy Kulesa, Esq.
Shannon Hopkins, Esq.
Levi & Korsinsky LLP
30 Broad Street
24th Floor
New York, NY 10004

8. If the Settlement Agreement is not finally approved by the Court, or for any reason the Final Order and Final Judgment are not entered as contemplated in the Settlement Agreement, or the Settlement Agreement is terminated pursuant to its terms for any reason or the Final Effective Date does not occur for any reason, then:

- (a) All orders and findings entered in connection with the Settlement Agreement shall become null and void and have no force or effect whatsoever, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding;
- (b) The provisional certification of the Class pursuant to this Order shall be vacated automatically and the Action shall proceed as though the Class had never been certified;
- (c) Nothing contained in this Order is to be construed as a presumption, concession or admission by or against Sony or Plaintiffs of any default, liability or wrongdoing as to any facts or claims alleged or asserted in the Action, or in any action or proceeding, including but not limited to, factual or legal matters relating to any effort to certify the Action or any action as a class action;
- (d) Nothing in this Order pertaining to the Settlement Agreement, including any of the documents or statements generated or received pursuant to the claims administration process, shall be used as evidence in any further proceeding in the Action, including but not limited to motions or proceedings seeking treatment of the Action or any action as a class action;
- (e) All of the Court's prior Orders having nothing whatsoever to do with class certification or the Settlement Agreement shall, subject to this Order, remain in force and effect; and
- (f) The terms in Section X of the Settlement Agreement, relating to the

termination of the Settlement Agreement, shall survive.

III. NOTICE TO CLASS MEMBERS

9. The Court has considered the Notice Program in the Settlement Agreement and finds that the notice to the Class and dissemination methodology as described in the Settlement Agreement and in the Declaration of the Settlement Notice Administrator: (a) meet the requirements of due process and FED. R. CIV. P. 23(c) and (e); (b) constitutes the best notice practicable under the circumstances to all persons entitled to notice, and (c) satisfies the Constitutional requirements regarding notice. In addition, the forms of notice: (a) apprise Class Members of the pendency of the Action, the terms of the Settlement, their rights and deadlines under the Settlement; (b) are written in simple terminology; (c) are readily understandable by Class Members; and (d) comply with the Federal Judicial Center's illustrative class action notices.

10. The Court approves the notice to the Class and dissemination methodology as described in the Settlement Agreement and in the Declaration of the Settlement Notice Administrator in all respects, and it hereby orders that notice be commenced no later than August 17, 2017.

11. The Class Action Settlement Administrator shall send the Long Form Notice, substantially in the form attached to the Settlement Agreement as Exhibit 4, by U.S. Mail, proper postage prepaid, or by e-mail where addresses are reasonably and readily available to Sony through its own customer registration databases or other such lists as it may possess. The mailings of the Long Form Notice to these persons and entities shall be substantially completed by September 1, 2017.

12. The Court further approves, as to form and content, the Short Form Notice and the Long Form Notice.

13. The Court further approves the establishment of an Internet website for the Settlement, which will inform Class Members of the terms of the Settlement Agreement, their rights, dates and deadlines and related information. The website shall include documents relating to the Settlement, orders of the Court relating to the Settlement and such other information as Plaintiffs' Class Counsel and Sony's Counsel mutually agree would be beneficial to potential Class Members, including but not limited to the Long Form Notice and the Settlement Agreement. The Court also approves the establishment of Internet banner notifications that will provide settlement-related information to Class Members in accordance with the Settlement Agreement or otherwise agreed to by the Parties.

14. The Court further approves the establishment of a toll-free telephone number that will provide settlement-related information to Class Members using an automated response system.

15. Sony shall pay the costs of the Notice Program in accordance with the Settlement Agreement.

16. The Parties are hereby authorized to establish the means necessary to implement the notice and/or other terms of the Settlement Agreement.

17. The Class Action Settlement Administrator is Heffler Claims Group. Responsibilities of the Class Action Settlement Administrator are found in the Settlement Agreement. No later than 20 days before the date of the Fairness Hearing, the Class Action Settlement Administrator shall file with the Court: (a) a list of those persons who have opted out or excluded themselves from the settlement; (b) the details outlining the scope, methods and results of the Notice Program for which he/she is responsible under the Settlement Agreement.

18. The Settlement Notice Administrator is Jeanne Finegan of HF Media LLC. Responsibilities of the Settlement Notice Administrator are found in the Settlement Agreement. No later than 20 days before the date of the Fairness Hearing, the Settlement Notice Administrator shall file with the Court the details outlining the scope, methods and results of the parts of the Notice Program for which he/she is responsible under the Settlement Agreement.

IV. REQUEST FOR EXCLUSION FROM THE CLASS

19. Any potential Class Member who wishes to be excluded from the Class must mail a written request for exclusion to the Class Action Settlement Administrator at the address provided in the Long Form Notice, postmarked no later than November 1, 2017. Any request for exclusion must be signed by the potential Class Member and contain the following information: name, address, and telephone number of the Class Member; the Mobile Device's model name, approximately when and where the model was purchased, the Class Member's signature and statement that the Class Member wants to be excluded from the Class or settlement in *Landes et al. v. Sony Mobile Communications (U.S.A.), Inc., et al.*, No. 2:17-cv-2264 (E.D.N.Y.).

20. Potential Class Members who timely and validly exclude themselves from the Class shall not be bound by the Settlement Agreement, the Settlement, or the Final Order and Final Judgment. If a potential Class Member files a request for exclusion, he/she/it may not assert an objection to the Settlement. The Class Action Settlement Administrator shall provide copies of any requests for exclusion to Plaintiffs' Class Counsel and Sony's Counsel as provided in the Settlement Agreement.

21. Any potential Class Member that does not properly and timely exclude himself/herself/itself from the Class shall remain a Class Member and shall be bound by all the terms and provisions of the Settlement Agreement, the Settlement, the Final Order and Final

Judgment, whether or not such Class Member objected to the Settlement or submits a Claim Form(s).

V. OBJECTIONS

22. Any Class Member who has not requested exclusion and who wishes to object to the Settlement or Attorneys' Fees, Costs and Expenses (as that term is defined in the Settlement Agreement) or incentive payments to the Named Plaintiffs/Class Representatives must deliver to Plaintiffs' Class Counsel and Sony's Counsel identified below so that it is received by November 1, 2017 and on file with the Clerk of Court on or before November 1, 2017 a written statement of his/her/its objection.

23. To be considered by the Court, any objection must be in writing and include the following information: (a) a heading indicating that the writing is an objection to the settlement in this Action; (b) the full name, telephone number and residential address of the objecting Class Member; (c) if represented by counsel, the full name, telephone number, and address of all counsel; (d) all of the reasons why the Class Member objects to the Settlement (including any legal or factual support); (e) a statement whether the objecting Class Member intends to appear at the Fairness Hearing, including whether he/she will on his/her own behalf or through counsel; (f) a statement that the objector is a Class Member, including the Mobile Device's model name, and approximately when and where the Mobile Device was purchased; and (g) the Class Member's dated, handwritten signature (an electronic signature or attorney's signature are not sufficient). Any documents supporting the objection must also be attached to the objection. If any testimony is proposed to be given in support of the objection, the names of all persons who will testify must be set forth in the objection. Class Members may do so either on their own or through an attorney retained at their own expense. The objection must include proof that he or

she falls within the definition of the Class. No objection that fails to satisfy these requirements and any other requirements found in the Long Form Notice shall be considered by the Court.

24. Any notice pursuant to this Section shall be sent to the following:

<u>Clerk of Court:</u>	<u>Class Counsel:</u>	<u>Sony's Counsel:</u>
United States District Court Eastern District of New York 100 Federal Plaza Central Islip, NY 11722	Nancy A. Kulesa, Esq. Shannon Hopkins, Esq. Levi & Korsinsky LLP 30 Broad Street 24th Floor New York, NY 10004	John P. Hooper, Esq. Reed Smith LLP 599 Lexington Avenue 28th Floor New York, NY 10022

VI. FAIRNESS HEARING

25. The Fairness Hearing will be held on December 1, 2017 at 1:30 p.m. E.S.T. before this Court in courtroom 1020, at the United States District Court for the Eastern District of New York, located at 100 Federal Plaza, Central Islip, NY 11722, to consider, *inter alia*, the following: (a) whether the Class should be finally certified for settlement purposes; (b) whether the Settlement and Settlement Agreement should be finally approved as fair, reasonable and adequate. The Court will rule on Plaintiffs' Class Counsel's application for Attorneys' Fees, Costs and Expenses and the Plaintiffs/Class Representatives' requests for incentive awards at or after that time.

26. On or before October 13, 2017, Plaintiffs' Class Counsel and Sony's Counsel shall file with the Court any memoranda or other materials in support of final approval of the Settlement. On or before October 13, 2017, Plaintiffs' Class Counsel shall file any application for Attorneys' Fees, Costs and Expenses. Any reply briefs relating to final approval of the Settlement or Plaintiffs' Class Counsel's Attorneys' Fees, Costs and Expenses or responses to objections to the Settlement shall be filed on or before November 14, 2017.

27. Any Class Member who has not excluded himself/herself/itself from the Class may appear at the Fairness Hearing in person or by counsel (at his/her/its own expense) and may be heard, to the extent allowed by the Court, either in support of or in opposition to the Settlement and/or Plaintiffs' Class Counsel's Attorneys' Fees, Costs and Expenses. However, no Class Member shall be heard at the Fairness Hearing unless such person/entity files a "Notice of Intent to Appear in *Landes, et al. v. Sony Mobile Communications (U.S.A.), Inc., et al.*" with the Clerk of Court on or before November 1, 2017 and delivers the same to Plaintiffs' Class Counsel and Sony's Counsel so that it is received by November 1, 2017. In the notice, the Class Member must include: (a) his/her/its name, address, telephone number; (b) the Mobile Device's model name, and approximately when and where the Mobile Device was purchased; and (c) the Class Member's signature.

28. Class Members who intend to object at the Fairness Hearing must also have followed the procedures for objecting in writing as set forth in Paragraphs 22-24 of this Order.

29. The date and time of the Fairness Hearing shall be subject to adjournment by the Court without further notice to the Class Members other than that which may be posted at the Court, on the Court's website, and/or the settlement website.

30. Any Class Member may hire an attorney at his/her/its own expense to appear in the Action. Such attorney shall serve a Notice of Appearance on Plaintiffs' Class Counsel and Sony's Counsel listed in Paragraph 24 above so that it is received on or before November 1, 2017 and file it with the Court on or before November 1, 2017.

VII. STAY OF LITIGATION

31. Pending the Fairness Hearing and the Court's decision whether to finally approve the Settlement, all proceedings in the Action, other than proceedings necessary to carry out or

enforce the Agreement or this Order, are stayed and suspended, until further order from this Court.

32. Pending the Fairness Hearing and the Court's decision whether to finally approve the Settlement, no Class Member, either directly, representatively, or in any other capacity (other than a Class Member who validly and timely elects to be excluded from the Class), shall commence, continue or prosecute against any of the Released Parties (as that term is defined in the Settlement Agreement) any action or proceeding in any court or tribunal asserting any of the matters, claims or causes of action that are to be released in the Settlement Agreement. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Action. Upon final approval of the Settlement, all Class Members who do not timely and validly exclude themselves from the Class shall be forever enjoined and barred from asserting any of the matters, claims or causes of action released pursuant to the Settlement Agreement against any of the Released Parties, and any such Class Member shall be deemed to have forever released any and all such matters, claims, and causes of action as provided for in the Settlement Agreement.

VIII. CONFIDENTIALITY

33. Any information received by the Class Action Settlement Administrator, the Settlement Notice Administrator, or any other person in connection with the Settlement that pertains to personal information regarding a particular Class Member (other than objections or requests for exclusion) shall not be disclosed to any other person or entity other than Plaintiffs' Class Counsel, Sony, Sony's Counsel, the Court and as otherwise provided in the Settlement Agreement.

IX. OTHER PROVISIONS

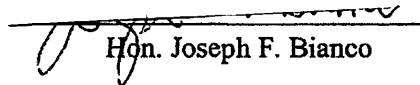
34. The Parties are authorized to take all necessary and appropriate steps to establish the means necessary to implement the Settlement Agreement.

35. The deadlines set forth in this Order, including but not limited to adjourning the Fairness Hearing, may be extended by Order of the Court, for good cause shown, without further notice to the Class Members – except that notice of any such extensions shall be included on the settlement website. Class Members should check the settlement website regularly for updates and further details regarding extensions of these deadlines.

36. Plaintiffs' Class Counsel and Sony's Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the Settlement Agreement, to the form or content of the notice to the Class or to any other exhibits that the Parties jointly agree are reasonable or necessary.

37. This Court shall maintain continuing jurisdiction over these settlement proceedings to assure the effectuation thereof for the benefit of the Class.

SO ORDERED this 3rd day of August 2017.


Hon. Joseph F. Bianco