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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

No. C 18-02300 WHA

**ORDER DENYING MOTION
FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT**

INTRODUCTION

In this putative class action under the Song-Beverly Act and Section 17200 of the California Business and Professions Code, plaintiff Crystal Hardin moves to certify a class for purposes of settlement and for preliminary approval of the class settlement. For the reasons below, the motion for preliminary approval of class settlement is **DENIED**. Because the settlement falls, the motion to certify the settlement class is **DENIED AS MOOT**.

STATEMENT

The Song-Beverly Act requires “[e]very manufacturer making an express warranty with respect to an electronic or appliance product” to “make available to service and repair facilities sufficient service literature and functional parts to effect the repair of a product for at least seven years after the date a product model or type was manufactured, regardless of whether the

1 seven-year period exceeds the warranty period for the product.” CAL. CIV. CODE § 1793.03(b).
2 Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.
3 manufactured plasma televisions during our period in question.

4 Plaintiffs Crystal Hardin and Alexis Bronson each bought Samsung plasma televisions
5 in 2013. Both television sets had been manufactured in 2013 and later developed colored-lines
6 on the screen. In 2018, each plaintiff was separately told by two different Samsung-authorized
7 service and repair facilities that a spare part was not available to fix their televisions. Further
8 factual and procedural details follow.

9 Turning first to plaintiff Hardin, in March 2013, plaintiff Hardin purchased a Samsung
10 plasma television from a local Best Buy store. The television did not work. Best Buy offered,
11 and plaintiff Hardin accepted, a more expensive television as a replacement at no cost. Three
12 years later, in November 2016, the more expensive television screen began to exhibit colored-
13 lines on the screen. By November 2017, the colored-lines had infected the screen to the degree
14 that the television could no longer be used. In February 2018, plaintiff Hardin called an
15 authorized repair center, TV Unlimited in Morgan Hill, to ask if the colored-lines could be
16 fixed. The repair center informed plaintiff Hardin that the necessary part was not available
17 (Hardin Dep. 61:1–12; 62:1–4; 71:24–72:1; 81:20–25; 86:19–87:1) (Dkt. No. 193-5).

18 Now for plaintiff Bronson. In August 2013, plaintiff Bronson purchased a Samsung 51-
19 inch plasma Smart 3D HDTV television from a Best Buy store in Union City. Within months,
20 his television displayed colored-lines on the screen. In April 2014, plaintiff Bronson called
21 Samsung about the colored-lines, and Samsung twice replaced the offending part under
22 warranty. In August 2015, plaintiff Bronson called Samsung about a different defect: the
23 television would abruptly turn on and off. At that point, however, the express warranty had run.
24 Plaintiff Bronson eventually paid an authorized service and repair facility, Alpha TV &
25 Electronics in Oakland, out of pocket to fix the on-and-off defect in May 2017. Plaintiff
26 retrieved his television from the repair center in June 2017. The colored-lines thereafter
27 returned (Bronson Dep. 91:8–12; 100:1–3, 18–23; 103:10–13; 110:2–7, 19–21; 111:13–16)
28 (Dkt. Nos. 122-4; 122-5).

1 The procedural history of this action is as follows. Plaintiff Bronson (but not plaintiff
2 Hardin) commenced this putative class action in April 2018. He alleged class-claims under the
3 aforementioned Section 1793.03(b) of the California Civil Code and under Section 17200 of the
4 California Business and Professions Code (Dkt. No. 1). In June 2018, plaintiff Bronson
5 amended his complaint primarily adding a claim under the California Consumer Legal
6 Remedies Act (Dkt. No. 35). Rule 12 practice followed (Dkt. Nos. 53, 63, 64, 67, 68, 77). In
7 November 2018, an order granted each defendants’ motion to dismiss in full (Dkt. No. 84).

8 In October 2018, plaintiff Bronson returned to Alpha TV & Electronics and asked
9 whether a replacement part for the television screen was available. An employee there told him
10 it was not (Bronson Dep. 158:5–9; 169–170) (Dkt. No. 128-3).

11 Subsequently, in November 2018, plaintiff Bronson moved for leave to amend his
12 complaint, adding this new fact and alleging claims only under Section 1793.03(b) of the
13 California Civil Code and a derivative violation of Section 17200 of the California Business and
14 Professions Code (Dkt. No. 86). In addition, plaintiff Hardin sought to intervene in the lawsuit.
15 In January 2019, an order granted plaintiff Bronson leave to amend and permitted plaintiff
16 Hardin to intervene (Dkt. No. 95).

17 One week later, plaintiffs filed the operative complaint (Dkt. No. 98). The operative
18 complaint alleged classes under both Rule 23(b)(2) and Rule 23(b)(3). Specifically, the
19 operative complaint defined the class as follows: “[w]ithin the applicable statute of limitations,
20 all persons in the State of California who purchased a Samsung plasma television manufactured
21 between January 2009 and November 30, 2014 and experienced a red line issue, for which the
22 plasma display panel assembly was unavailable” (Dkt. No. 98 ¶ 70).

23 In April 2019, Samsung moved for summary judgment (Dkt. No. 122). In May 2019,
24 plaintiff Bronson (but not plaintiff Hardin) moved for partial summary judgment (Dkt. No.
25 130). Two orders issued. The first denied Samsung’s summary judgment motion (Dkt. No.
26 154), and the second granted plaintiff Bronson’s partial summary judgment motion (Dkt. No.
27 171). In short, Samsung had not made functional parts available to service and repair facilities
28 for plaintiff Bronson’s television as required by Section 1793.03(b).

1 An order also permitted the scope of discovery to extend to television models other than
2 those owned by the plaintiffs. More specifically, the order permitted discovery for “plasma
3 television models purchased in 2013 and 2014 which contain[ed] the *identical* [faulty] part as
4 plaintiffs’ specific plasma televisions” (Dkt. No. 155 at 3) (emphasis in original). Thus, as
5 relevant for the instant motion, since the television model plaintiff Hardin owned contained the
6 identical faulty part (part number BN96-25240A), as two other models of television (models
7 PN51F5300 and PN51F5350) — discovery extended as to those models as well. Plaintiff
8 Hardin’s model is numbered PN51F5500.

9 Since May 2019, the parties have engaged in multiple settlement discussions. In June
10 2019, plaintiff Hardin (but not plaintiff Bronson) moved for class certification (Dkt. No. 173).
11 In August 2019, after the motion was fully briefed, the parties struck an agreement on a
12 settlement class. The parties stipulated to an order vacating the class certification hearing and
13 proposed that “[a]ll other deadlines [be] held in abeyance pending the Court’s consideration of
14 the forthcoming motion” (Dkt. Nos. 198; 198-2). An order modified the stipulation to hold in
15 abeyance only the motion for class certification (Dkt. No. 199).

16 In September 2019, plaintiff moved for certification of the settlement class and for
17 preliminary approval of class settlement (Dkt. No. 203). Samsung did not oppose. The parties
18 now march together.

19 Under the proposed settlement agreement, counsel abandoned certification of a Rule
20 23(b)(3) class, in-lieu of an injunctive-only class under Rule 23(b)(2). That is, although the
21 operative complaint sought class damages, the class would now receive zero dollars under the
22 deal. In contrast, under the settlement, plaintiff Bronson and plaintiff Hardin would each
23 receive \$6,000 — and plaintiffs’ counsel want \$487,000. Counsels’ fee and plaintiff Hardin’s
24 award would be subject to Court approval. Plaintiff Bronson’s would not.

25 The settlement also drastically narrowed the scope of the class. The class for settlement
26 purposes became:

27 Any person in the State of California who owned as of July
28 1, 2019, a Samsung plasma television model PN51F5500,
PN51F5300, or PN51F5350 manufactured since January 1,
2013 (“Affected Models”), that exhibits a “line” issue that

1 requires a replacement plasma display panel assembly
2 (“PDP”) as confirmed through diagnostic testing by [a
Samsung]-authorized service center (“ASC”).

3 In other words, this new class excluded both putative class members who owned televisions
4 from 2009 until 2013 and putative class members who no longer owned televisions as of July
5 2019. In addition, this new class limited the type of television to three models (the prior class
6 had included every plasma television model). Finally, the new class definition also imposed a
7 brand new requirement: all televisions must have undergone diagnostic testing by an
8 authorized repair center.

9 The settlement did not attempt to release the absent class members’ claims for damages,
10 but the damages claims were not expressly reserved. Instead, the agreement merely noted that it
11 was an injunctive-only class and “requires no release of any monetary remedies by any member
12 of the [s]ettlement [c]lass” (Dkt. No. 204 ¶ IV.A.). Moreover, the agreement explicitly
13 *prohibited* any form of notice to the class. That is, “Samsung consider[ed] the absence of notice
14 to the Settlement Class a non-severable material term” (*id.* ¶ IV.B). This order now follows a
15 hearing.

16 ANALYSIS

17 Class action lawsuits benefit society through “promot[ing] efficiency and economy of
18 litigation by consolidating numerous individual suits into a single suit.” *Catholic Soc. Servs.,*
19 *Inc. v. I.N.S.*, 232 F.3d 1139, 1146–47 (9th Cir. 2000) (en banc) (internal quotations omitted).
20 Still, the class action procedure has been occasionally abused. Problems may stem from the
21 “unique due process concerns for absent class members.” *Hanlon v. Chrysler Corp.*, 150 F.3d
22 1011, 1026 (9th Cir. 1998). In protecting the absent class, a court must look for “subtle signs
23 that class counsel have allowed pursuit of their own self-interests and that of certain class
24 members to infect the negotiations.” *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935,
25 947 (9th Cir. 2011) (internal citations omitted). The signs of self-interest here are not so subtle.
26 Thus, even if all elements under Rule 23 have been satisfied by this settlement class — not a
27 foregone conclusion in its own right — the motion for preliminary approval of class settlement
28 is **DENIED**.

1 **1. DEPRIVATION OF NOTICE TO THE CLASS.**

2 In this case, the only money goes to the lawyer and the plaintiffs: the lawyer wants
3 \$487,000 and each plaintiff would receive \$6,000. Absent class members would receive zero.
4 Instead, the only conceivable relief for them will be “injunctive relief.”

5 *The first problem is that the settlement agreement specifically prohibits giving any*
6 *notice to the absent class members.* Therefore, even though damages claims would
7 theoretically survive this settlement, absent class members would not be put on notice that they
8 now need to bring their own claims for damages because plaintiffs’ counsel have abandoned
9 class damages claims.

10 During the pendency of this litigation, all claims have been tolled. *Crown, Cork and*
11 *Seal Co. v. Parker*, 462 U.S. 345 (1983); *see also American Pipe and Constr. Co. v. Utah*, 414
12 U.S. 538 (1974). But the tolling is only of value if the class members learn that class counsel
13 have left them to fend for themselves on their own damages claims. For class members to
14 realize this predicament, they must be told. This alone sinks the settlement — but it’s even
15 worse than that.

16 The original complaint purported to cover “[w]ithin the applicable statute of limitations,
17 all persons in the State of California who purchased a Samsung plasma television manufactured
18 between January 2009 and November 30, 2014 and experienced a red line issue, for which the
19 plasma display panel assembly was unavailable” (Dkt. No. 98 ¶ 70). The settlement class,
20 however, would be narrower, namely:

21 Any person in the State of California who owned as of July
22 1, 2019, a Samsung plasma television model PN51F5500,
23 PN51F5300, or PN51F5350 manufactured since January 1,
24 2013 (“Affected Models”), that exhibits a “line” issue that
 requires a replacement plasma display panel assembly
 (“PDP”) as confirmed through diagnostic testing by [a
 Samsung]-authorized service center (“ASC”).

25 The tolling applies to the broader class, so the original class will get nothing — not even notice
26 of the need to bring their own lawsuit.

27 Counsel cannot reasonably argue that no one knows about this lawsuit. There have been
28 news articles describing the case, at least one of which contains approximately twenty comments

1 from individuals asking to be added to *this* lawsuit. See Christina Davis, *Samsung Must Face*
2 *Plasma TV Class Action*, Top Class Actions (June 5, 2019), [https://topclassactions.com/lawsuit-](https://topclassactions.com/lawsuit-settlements/consumer-products/electronics/900443-samsung-must-face-plasma-tv-class-action/)
3 [settlements/consumer-products/electronics/900443-samsung-must-face-plasma-tv-class-action/](https://topclassactions.com/lawsuit-settlements/consumer-products/electronics/900443-samsung-must-face-plasma-tv-class-action/).

4 In addition, a member of an internet forum specifically published the following post in
5 July 2019 which referred to the aforementioned article: “I’ve seen a few messages on multiple
6 threads where owners had their 3-D tv’s die. Many were SOL (‘sadly’ out of luck) after being
7 informed by the manufacturers that they could not be repaired. I recently learned about the
8 Song-Beverly ‘CA lemon law,’ . . . Here’s a link to a specific CA case involving defective
9 Samsung 3-D tv’s . . . I live and purchased my set in California so I have a little stake in this
10 matter” The entry concluded by noting the television model owned and date purchased
11 and signed off as “Jason.” See Jason (@jchung30), *3-D TV Warranty Repairs and the*
12 *California Lemon Law (Song-Beverly Consumer Warranty)*, Blu-ray.com (July 31, 2019, 8:22
13 AM), <https://forum.blu-ray.com/showthread.php?p=16682821>.

14 The point is that at least some possible class members of the original, broader class have
15 had notice of this class lawsuit and arguably here relied on it to potentially vindicate their
16 interests. Yet, they will not be told that the tolling will end once judgment will be entered and
17 that they need to bring their own lawsuit. This alone means the settlement cannot be
18 preliminarily approved: it is unfair, unreasonable, and inadequate.

19 Of course, this is all exactly what Samsung wants. Samsung is trying to avoid a new
20 damages class action by a new lawyer to pursue the abandoned damages claim. Samsung
21 alternatively is trying to avoid individual lawsuits brought by absent class members. Absent
22 class members need to know that they now have to fight for themselves.

23 **2. ONEROUS OBJECTION PROCEDURES.**

24 Another problem exists. The procedures for objectors are so onerous, they too, tank the
25 settlement. More specifically, the objection must include the objector’s name, address, all
26 arguments, all citations, all evidence which support the objection — including copies of all
27 documents relied upon, and an affirmative statement that the objector either intends to appear at
28 the final approval hearing on his or her own or through counsel. The objection must also

1 affirmatively state that the objector is a settlement class member and append proof, either
2 through: (i) a photograph of the television and the television’s serial number or (ii) a notarized
3 sworn statement which, among other requirements, confirms that a Samsung-authorized service
4 center performed diagnostic testing on the television. Moreover, if an attorney “in any way”
5 assisted the objector — the attorney’s name and contact information must also be provided.
6 Failure to meet any of these requirements kills the objection (Dkt. No. 204 ¶ IV.F.).

7 No settlement can fairly move forward with these procedures. They require objectors to
8 jump through so many hoops, no one would ever object.

9 Further, even if someone would object, there is no way for them to know about these
10 procedures because no notice will be sent. “An elementary and fundamental requirement of due
11 process in any proceeding which is to be accorded finality is notice reasonably calculated, under
12 all the circumstances, to apprise interested parties of the pendency of the action and afford them
13 an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339
14 U.S. 306, 314 (1950).

15 To this end, one more point must be made. In addition to the aforementioned, the
16 agreement also requires objectors to file all papers to be presented at the final approval hearing
17 to the Clerk of Court within sixty days of preliminary approval. Copies of these papers must
18 also be sent to both class counsel and Samsung’s counsel. In addition, if the objector has a
19 lawyer, a copy of the objection must also be filed through the Court’s ECF system (Dkt. No.
20 204 ¶ IV.E). *In other words, objectors must provide counsel notice of their objection.* It is
21 unfair and unreasonable to impose a notice requirement *on* the absent class when the parties
22 refuse to do the same *for* the absent class.

23 Other problems may be lurking, including numerosity and the adequacy of the
24 “injunctive remedy,” but the foregoing are sufficient to find the proposed settlement unfair,
25 unreasonable, and inadequate for the class.

26 **CONCLUSION**

27 For the foregoing reasons, the terms of the parties’ settlement agreement is **DENIED**. In
28 this connection, the motion to certify the class agreed to for purposes of settlement is **DENIED**

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AS MOOT. The parties will be permitted to move for a new class settlement by **OCTOBER 4 AT NOON**. A hearing on any such class settlement will be held on **OCTOBER 10 AT 8:00 A.M.** For the time being, the motion on class certification remains held in abeyance.

Furthermore, this Court cautions that any renewed motion for preliminary approval of class settlement must point to the specific parts of the record that show that plaintiff Hardin has met her burden to establish the elements under Rule 23. The parties should not gloss over any specific evidence that numerosity, in particular, has been satisfied.

IT IS SO ORDERED.

Dated: September 29, 2019.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE