

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

IN RE: SAMSUNG TOP-LOAD)	
WASHING MACHINE MARKETING,)	
SALES PRACTICES AND PRODUCT)	
LIABILITY LITIGATION)	
)	MDL Case No. 17-ml-2792-D
)	
THIS DOCUMENT RELATES TO)	
ALL CASES)	

ORDER

Before the Court is Plaintiff’s Unopposed Motion for Preliminary Approval of Settlement (“Motion”) [Doc. No. 108]. New Jersey Plaintiffs Colleen Kennedy, David Foster and Mitchell Orenstein (collectively “New Jersey Plaintiffs”) filed their Memorandum in Opposition to Plaintiffs’ Unopposed Motion for Preliminary Approval of Settlement [Doc. No. 122]. Plaintiffs’ filed a reply in support of preliminary approval [Doc. 123]. Defendants filed a notice of their position on New Jersey Plaintiffs’ opposition [Doc. 124].

On November 29, 2018, the Court held a hearing on the Motion. The Court heard argument from Plaintiffs, Defendants, and the New Jersey Plaintiffs. Through the briefs, exhibits attached thereto, and argument at the hearing, the Court has thoroughly examined and considered the proposed preliminary settlement agreement presented by the MDL parties, the proposed settlement and related filings pending in the New Jersey cases, and the New Jersey Plaintiffs’ opposition to the settlement.

BACKGROUND AND PROCEDURAL POSTURE

Plaintiffs filed numerous putative class-action lawsuits (“Lawsuits”) in various jurisdictions against Defendants Samsung Electronics America, Inc. (“SEA”) and Samsung Electronics Co., Ltd. (“SEC”) (together, “Defendants”), and in some cases against a number of retailers.¹ Plaintiffs alleged, among other things, that certain Samsung top-load washing machines (the “Washers,” defined in the Settlement Agreement² as a specific set of model and serial numbers) had their top detach from the washing machine chassis during operation, and some had drain pumps fail. Plaintiffs asserted claims for breach of express warranty, breach of implied warranty of merchantability, violation of the Magnuson-Moss Warranty Act, strict product liability, violations of various states’ consumer protection statutes, fraud, negligence, negligent misrepresentation, unjust enrichment, and declaratory and injunctive relief. On October 4, 2017, the Lawsuits were consolidated into MDL No. 2792 (*In re: Samsung Top-load Washing Machine Marketing, Sales Practices and Products Liability Litigation*) (“MDL”) by the United States Judicial Panel on Multidistrict Litigation (“JPML”), and transferred to this Court for pretrial proceedings.

New Jersey Plaintiffs are class representatives in putative class actions (“New Jersey cases”) filed on August 7, 2014, and June 15, 2015, in the District of New Jersey against

¹ Defendant retailers are Best Buy Co., Inc., The Home Depot, Inc., Home Depot U.S.A., Inc., Lowe’s Companies, Inc., Lowe’s Home Centers, LLC, and Sears Holding Corporation (collectively, “Retailer Defendants”). Sears Holding Corporation was subsequently dismissed from all Lawsuits on December 5, 2018. [Doc. No. 136].

² Capitalized terms not defined here have the meaning assigned to them in the Settlement Agreement. [Doc. No. 92-1].

Defendant SEA.³ The relevant procedural history of the New Jersey cases as it relates to this MDL is set forth in this Court's Orders of June 14, 2018 [Doc. No. 95], and August 2, 2018 [Doc. No. 116], and will not be restated here. However, of particular relevance to the instant Motion are: (1) settlement negotiations between New Jersey Plaintiffs and SEA in the summer of 2017; (2) an unexecuted settlement agreement; and (3) the Order to enforce that unexecuted settlement which was entered by Judge William J. Martini on May 21, 2018. *See* [Doc. No. 95]; [Doc. No. 116].

On March 30, 2018, the MDL parties informed the Court that they had reached a global settlement. [Doc. No. 75 at 1]. The MDL Plaintiffs, Defendants, and Retailer Defendants executed a Settlement Agreement [Doc. No. 92-1] ("MDL Settlement") on May 26, 2018, setting forth terms and conditions of the settlement and providing for the dismissal of the Lawsuits with prejudice.

On June 19, 2018, the JPML issued a Conditional Transfer Order [JPML Doc. No. 47] transferring the New Jersey cases to this MDL. The New Jersey Plaintiffs filed a Motion to Vacate Conditional Transfer Order [JPML Doc. No. 54] on June 26, 2018. On July 9, 2018, MDL Plaintiffs moved for an Order preliminarily approving the proposed MDL Settlement pursuant to Federal Rule of Civil Procedure 23(e) and approving notice to the Settlement Class as more fully described *infra*.

³ *Kennedy v. Samsung Electronics America, Inc.*, Case No. CIV-14-4987 (D.N.J. 2014); *Orenstein v. Samsung Electronics America, Inc.*, Case No. CIV-15-4054 (D.N.J. 2015).

The Court granted New Jersey Plaintiffs' Motion to Intervene on August 2, 2018. [Doc. No. 116]. New Jersey Plaintiffs filed their Opposition to Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement [Doc. No. 122] on September 4, 2018. Plaintiffs filed their Reply [Doc. No. 123] and Defendants filed their Notice of Position [Doc. No. 124] on September 19, 2018. The JPML issued a Transfer Order [Doc. No. 69] on October 4, 2018, transferring the New Jersey cases to the MDL over the New Jersey Plaintiffs' objections. New Jersey Plaintiffs make three arguments in support of their opposition to the Unopposed Motion for Preliminary Approval: (1) the settlement was not fairly and honestly negotiated; (2) the settlement violates the first-to-file rule; and, (3) approval would "nullify" Judge Martini's Order to enforce settlement.

Upon reviewing the record, Settlement Agreement, MDL Plaintiffs' Motion and accompanying exhibits, and all briefing relating to the proposed settlement in the New Jersey cases, and having considered the arguments at the hearing, the Court enters the following order.

STANDARD OF DECISION

"Preliminary approval of a proposed settlement is the first of two steps required before a class action may be settled." *In re Motor Fuel Temperature Sales Practices Litig.*, 286 F.R.D. 488, 492 (D. Kan. 2012) (citing *Am. Med. Ass'n v. United Healthcare Corp.*, No. 00 Civ. 2800 (LMM), 2009 WL 1437819, at *3 (S.D.N.Y. May 19, 2009)). At the preliminary approval stage, the Court examines "the fairness of the proposed settlement and determines whether it has any reason to not notify the class members of the proposed settlement or to not hold a fairness hearing." *In re Motor*, 286 F.R.D. at 492 (citing *Am.*

Med. Ass'n, 2009 WL 1437819 at *3 and *Gautreaux v. Pierce*, 690 F.2d 616, 621 n. 3 (7th Cir.1982)). The Court's obligation at the preliminary approval stage is not to determine the ultimate question of fairness; that is the focus of the final approval hearing. Although, the standard for preliminary approval is less stringent than for final approval, "a higher degree of scrutiny applies when determining the fairness of a settlement which is negotiated before class certifications." *Id.* (citing *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir.2001)).

The Court may grant preliminary approval and direct notice to be given to the class if it finds that it "will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B). Pursuant to Rule 23(e)(2), the Court may only approve a proposed settlement "after a hearing and after finding that it is fair, reasonable, and adequate." Such a finding can only be made "after considering whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length, (C) the relief provided for the class is adequate"; and, "(D) the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(A), (B), (C) and (D); *see also*, *In re Motor*, 286 F.R.D. at 492 (quoting *Am. Med. Ass'n*, 2009 WL at *3) (Stating that preliminary approval is ordinarily granted "where the proposed settlement 'appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval.'). In determining the adequacy of the relief for the class, the Court must take into account: "(i) the costs, risks, and delay of trial

and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-members claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C). Rule 23(e)(3) requires notification to the Court of "any agreement made in connection with the proposal."

DISCUSSION

Fair and Honest Negotiation of the Settlement.

New Jersey Plaintiffs limit their assertions regarding fair and honest negotiation to Defendant SEA's conduct before the JPML, the District Court of New Jersey, and this Court. The thrust of their argument is as follows:

We submit that Samsung's conduct before Judge Martini, this court and the JPML has not been fair and honest and provides the strong basis to deny preliminary approval unless Samsung's misconduct is remedied. Not once has Samsung's counsel explained to Judge Martini, this MDL Court, or the JPML the reasons why they settled the *Kennedy/Orenstein* matter and then used a different failure claim in *Wagner* to nullify the prior settlement. Not once did they acknowledge that nullifying the *Kennedy/Orenstein* settlement would save Samsung over \$600,000 in attorney's fees and class representative premiums.

[Doc. No. 122 at 8]. New Jersey Plaintiffs did not address the negotiations between MDL Plaintiffs and Defendants in their opposition brief or during the preliminary approval hearing. New Jersey Plaintiffs do not contend the MDL parties failed to "vigorously advocate[] their respective positions throughout the pendency of the case." *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006) (citing *Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 284 (D.Colo.1997)).

The focus at the preliminary approval stage regarding the quality of negotiations is whether “the proposal was negotiated at arm’s length.” Fed. R. Civ. P. 23(e)(2)(B). The Court “assesses the reasonableness of the compromise, taking into account the context in which the parties reached settlement. *In re Motor Fuel Temperature Sales Practices Litig.*, 286 F.R.D. 488, 492 (D. Kan. 2012) (citing *Nat’l Treasury Emp. Union v. United States*, 54 Fed.Cl. 791, 797 (2002)). Defendant SEA’s conduct with regard to New Jersey Plaintiffs, Judge Martini, the JPML or any other party outside of the MDL settlement negotiations does not bear on the quality of the negotiations between Defendants and MDL Plaintiffs in reaching the proposed MDL Settlement.

First-to-File Rule

The first-to-file rule is not controlling in this case. The New Jersey cases and, therefore, the proposed settlement in those cases, are now before this Court pursuant to the JPML Certified Transfer Order [Doc. No. 125]. “Simply because a court is the first to obtain jurisdiction does not necessarily mean that it should decide the merits of the case.” *Buzas Baseball, Inc. v. Bd. of Regents of Univ. Sys. of Georgia*, 189 F.3d 477, (10th Cir. 1999) (unpublished) (quoting *Hospah Coal Co. v. Chaco Energy Co.*, 673 F.2d 1161, 1164 (10th Cir.1982) (emphasis in original). The purpose of the first-to-file rule is “to avoid the waste of duplication, to avoid rulings which may trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result.” *Cherokee Nation v. Nash*, 724 F. Supp. 2d 1159, 1166 (N.D. Okla. 2010) (quoting *Cadle Co. v. Whataburger of Alice, Inc.*, 174 F.3d 599, 603 (5th Cir.1999) (internal quotations omitted)). Moreover, “district court judges can, in the exercise of their discretion, dispense with the first-filed

principle for reasons of equity.” *Alltrade, Inc. v. Uniweld Products, Inc.*, 946 F.2d 622, 629 (9th Cir. 1991).

This MDL was created for the purpose of judicial economy. The JPML determined that the New Jersey cases involve product defects and a putative class overlapping with those of the cases already transferred to this district. In fact, the JPML apparently considered both the New Jersey and MDL proposed settlements in finding that “absent transfer there is a significant risk of inconsistent rulings as to class certification and waste of judicial resources” and that “[t]ransfer will ensure that a single judge oversees the common issues.” [Doc. No. 125 at 2]. The JPML decided that the balance of convenience favors the MDL proceeding and the determination of related pre-trial matters in this jurisdiction. Judge Martini determined likewise when he stayed the New Jersey cases in favor of potential transfer to the MDL.

Transfer of the New Jersey cases to this MDL effectively renders moot the New Jersey Plaintiffs’ objection based on the first-to-file rule. There are now two competing and overlapping proposed settlements before this Court, and the Court must consider each when weighing MDL Plaintiffs’ Motion for preliminary approval pursuant Rule 23(e).

Collateral Attack on the New Jersey Order to Enforce Settlement.

In their opposition brief, New Jersey Plaintiffs repeat the argument they made in their Motion to Intervene [Doc. No. 103-1], that preliminary approval of the settlement by the MDL parties would amount to a collateral attack and nullification of Judge Martini’s Order to enforce settlement in the New Jersey cases. [Doc. No. 122 at 15]. The Court addressed this in its Order granting permissive intervention:

Black's Law Dictionary defines "collateral attack" as "[a]n attack on a judgment in a proceeding other than a direct appeal." *Collateral Attack*, Black's Law Dictionary (10th ed. 2014); *see also*, *Wall v. Kholi*, 562 U.S. 545, 552, 131 S. Ct. 1278, 1284 (2011) (quoting *Black's Law Dictionary*, 298 (9th ed.2009)); *Fransen v. Conoco, Inc.*, 64 F.3d 1481, 1487 (10th Cir. 1995) (referring to the Oklahoma statutory definition of "collateral attack": "A collateral attack is an attempt to avoid, defeat, evade, or deny the force and effect of a final order or judgment in an incidental proceeding other than by appeal, writ of error, certiorari, or motion for new trial.") (quoting *Woods Petroleum Corp. v. Sledge*, 632 P.2d 393, 396 n. 4 (Okla.1981)).

Judge Martini's Enforcement Order was not a final order or judgment. In order for a settlement in a class action to be final, it must be approved by a court pursuant to Fed. R. Civ. P. 23(e). No hearings were conducted as to the fairness, reasonableness and adequacy of the terms of the *Kennedy/Orenstein* settlement, notice was not provided to all class members as to the proposed settlement, and an objection period was not provided. Judge Martini merely issued an order finding that the parties had reached an agreed settlement. Again, he made no rulings pursuant to Fed. R. Civ. P. 23(e) as to the terms of the settlement.

[Doc. No. 116 at 7-8]. The Court finds New Jersey Plaintiffs' re-argument of this position unpersuasive and adopts its previous reasoning. Judge Martini's Order to enforce settlement is not a final order subject to the doctrine of collateral attack. The proposed New Jersey settlement remains unapproved under Rule 23(e) and, therefore, no settlement has been effectively and fully adjudicated in the New Jersey cases.

For these reasons, the Court is not persuaded by the arguments of the New Jersey Plaintiffs, and will not reject the proposed MDL Settlement on those bases.⁴ The Court now turns to the evaluation of the MDL Plaintiff's Motion, and proposed MDL Settlement, pursuant to Rule 23(e), and further orders as follows:

⁴ In their opposition brief, the New Jersey Plaintiffs request alternative relief in the event preliminary approval of the MDL Settlement is granted. Such request will be considered at the appropriate time.

1. The Court adopts all defined terms as set forth in the MDL Plaintiffs' Settlement Agreement.

Certification of Settlement Class

2. Defendants and Retailer Defendants do not contest certification of the Settlement Class solely for purposes of the Settlement but retain their objections to the Lawsuits proceeding as a litigation class.

3. The Court hereby certifies the Class proposed in the MDL Settlement Agreement for purposes of settlement only. The Settlement Class is defined as: every resident of the United States or its territories who was the original purchaser of a new Washer for household use. The Settlement Class excludes: (1) officers, directors, and employees of Defendants and Retailer Defendants, (2) insurers of Settlement Class Members, (3) subrogees or all entities claiming to be subrogated to the rights of a Washer purchaser or a Settlement Class Member, and (4) all third-party issuers or providers of extended warranties or service contracts for the Washers.

4. Pursuant to Rule 23, and for Settlement purposes only, the Court appoints the MDL Plaintiffs as Class representatives. The Court previously appointed William B. Federman of Federman & Sherwood and Jason L. Lichtman of Lief Cabraser Heimann & Bernstein, LLP as Co-Lead Counsel for Plaintiffs in the Consolidated MDL Lawsuit, and now appoints them as Class Counsel pursuant to Rule 23(g).

Preliminary Approval of the MDL Settlement

5. The Court has scrutinized the MDL Settlement Agreement carefully. It finds that the MDL Settlement is the product of extensive, non-collusive, arm's-length

negotiations between experienced counsel who were thoroughly informed of the strengths and weaknesses of the case through discovery and motion practice, and whose negotiations were supervised by accomplished mediator Michael N. Ungar over the course of nine days of formal mediation sessions. The Court also finds that the MDL Settlement is within the range of possible approval because it compares favorably with the expected recovery balanced against the risks of continued litigation, does not grant preferential treatment to Plaintiffs or Class Counsel, and has no obvious deficiencies.

6. In considering the MDL Settlement the Court must, by necessity, compare it to any possible overlapping proposed settlement and examine the terms of both to determine the superiority of one over the other. *See* Order [Doc. No. 128 at 2]. In this case, the Court considered all pertinent briefing filed in the MDL and the New Jersey cases with respect to the overlapping proposed settlement agreements, as well as oral arguments during the November 29, 2018, hearing. Having heard from all parties and having examined both proposed settlements, the Court finds that the MDL Settlement is objectively superior to the proposed New Jersey settlement. For instance, the total relief for the class as a whole, and individually, is significantly greater in the MDL Settlement, the MDL Settlement covers future failures for a longer period of time, and, significantly, no proof of purchase is required in order for class members to assert their rights under the MDL Settlement. *See, e.g.*, MDL Plaintiffs' Memorandum in Response to Motion to Intervene and Stay Proceedings, Exhibit G [Doc. No. 111-7].

7. The Court hereby preliminarily approves the MDL Settlement, as memorialized in the MDL Settlement Agreement, as fair, reasonable, and adequate, after

having considered whether: (1) the class was adequately represented; (2) the proposal was negotiated at arm's length; (3) the relief provided to the class is adequate taking into account the factors of Rule 23 (e)(2)(C); and, (4) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2). In addition, the Court notes that the parties have identified no agreements made in connection with the proposal. Fed. R. Civ. P. 23(e)(3). The Court finds that the MDL Settlement is in the best interest of Plaintiffs and the other Settlement Class Members, subject to further consideration at the Fairness Hearing to be conducted as described below.

8. The Court hereby stays this Litigation pending final approval of the MDL Settlement (hereafter "Settlement"), and enjoins, pending final approval of the Settlement, any actions brought by Settlement Class Members concerning a Released Claim.

Manner and Form of Notice

9. The Court approves the Settlement Notice and FAQ substantially in the form attached as Exhibit 1 and Exhibit 2, respectively, to MDL Plaintiffs' Notice of Voluntary Dismissal of Defendant Sears Holding Corporation [Doc. No. 136]. The Court likewise approves the Claim Forms substantially in the form attached as Exhibits 4-7 to Plaintiffs' Motion [Doc. No. 108]. The Court finds that the proposed notice plan is reasonably calculated, under the circumstances, to apprise Settlement Class Members of: the pendency of this Litigation; the effects of the proposed Settlement on their rights (including the Released Claims contained therein); Class Counsel's upcoming motion for attorneys' fees, expenses, and service awards; their right to submit a claim form; and their right to object to any aspect of the proposed Settlement. The notice plan includes dissemination of the

Settlement Notice via First-Class Mail to every Settlement Class Member who can be identified by Defendants with reasonable cooperation by the Retailer Defendants, as well as the creation of a Settlement Website and a toll-free phone number providing information to Settlement Class Members, along with the issuance of Publication Notice. The Settlement Notice provides due, adequate, and sufficient notice to Settlement Class Members, and satisfies the requirements of Rule 23, due process, and all other applicable law and rules. The date and time of the Fairness Hearing shall be included in the Settlement Notice before it is disseminated.

10. The Court hereby appoints KCC, LLC to serve as the Settlement Administrator to supervise and administer the notice process, establish and operate a Settlement Website and a toll-free number, administer the Claims process, including the determination of Valid Claims, and perform any other duties of the Settlement Administrator provided for in the Settlement Agreement.

11. Defendants shall provide the Settlement Administrator with the names and mailing addresses of the Settlement Class Members who can reasonably be identified for the purpose of disseminating the Settlement Notice, at no expense to the Settlement Class or Class Counsel.

12. The Settlement Administrator shall provide notice of the Settlement and the Fairness Hearing to Settlement Class Members as follows:

a. As soon as practicable, but no later than sixty (60) calendar days after the entry of this Order, the Settlement Administrator shall send or cause to be sent by First-Class Mail with the United States Postal Service a copy of the Settlement Notice to every

Settlement Class Member who can be identified by reasonable efforts of Defendants and reasonable cooperation by the Retailer Defendants.

b. At approximately the same time as the Settlement Administrator mails the Settlement Notice, the Settlement Administrator shall provide Publication Notice to the Settlement Class Members.

c. As soon as practicable following the entry of this Order, and no later than the mailing of the Settlement Notice, the Settlement Administrator shall establish the Settlement Website and the toll-free telephone number pursuant to the terms of the Settlement Agreement. The Settlement Website shall permit Settlement Class Members to read the Settlement Notice and FAQ, and to complete, review, and submit a Claim Form online, including the ability to upload and submit supporting documentation. The Settlement Website shall also permit Settlement Class Members to complete, review, and submit an Opt-out Form online.

d. Within ninety-five (95) calendar days after this Order, the Settlement Administrator shall provide a declaration of compliance with these notice requirements.

Participation in the Settlement

13. Members of the Class who wish to participate in the Settlement and receive a benefit under the Settlement, as specified in Section IV of the Settlement Agreement, must complete and submit a Claim Form in accordance with the instructions contained therein. Unless the Court orders otherwise, all Claim Forms must be submitted no later than one-hundred-and-fifty (150) calendar days after the Notice Date. Each Claim Form shall be deemed to be submitted when posted, if received with a postmark indicated on the

envelope and if mailed by First-Class Mail and addressed in accordance with the instructions thereon. In all other cases, the Claim Form shall be deemed to have been submitted when it was actually received by the Settlement Administrator.

14. To be valid, the Claim Form submitted by each Class Member must satisfy the following conditions: (i) it must be properly completed, signed, and submitted in a timely manner in accordance with the provisions of the preceding paragraph; (ii) it must be accompanied by adequate supporting documentation, when and as needed; and (iii) it must be complete, and contain no material deletions or modifications of any of the printed matter contained therein, and must be signed under penalty of perjury.

The Fairness Hearing

15. The Court will hold a Fairness Hearing on August 1, 2019, at 10:00 a.m., Central Time, in the United States District Court for the Western District of Oklahoma, Courtroom 503, 200 NW 4th Street, Oklahoma City, OK 73102, for the following purposes: (i) to determine whether the Settlement should be approved as fair, reasonable, and adequate and in the best interests of the Settlement Class; (ii) to rule upon Class Counsel's application for an award of attorneys' fees and expenses; (iii) to rule upon Class Counsel's application for service awards for the Class Representatives; and (iv) to consider any other matters that may properly be brought before the Court in connection with the Settlement.

16. The Court reserves the right to: (a) adjourn or continue the Fairness Hearing without further notice to Settlement Class Members; and (b) approve the Settlement Agreement with modification and without further notice to Settlement Class Members. The

Parties retain their rights under the Settlement Agreement to terminate the Settlement if the Court rejects, materially modifies, materially amends or changes, or declines to grant final approval of the Settlement.

17. Class Counsel's application for an award of attorneys' fees and expenses, and Class Counsel's application for service awards, will be decided in an order separate from the order that addresses the fairness, reasonableness, and adequacy of the Settlement. Any appeal from any orders relating solely to Class Counsel's application for an award of attorneys' fees and expenses, or Class Counsel's application for service awards, or any reversal or modification thereof, shall not operate to terminate or cancel the Settlement, or affect or delay the finality of the judgment approving the Settlement and the Settlement Agreement.

18. If the Settlement is approved, all Settlement Class Members who do not exclude themselves will be bound by the proposed Settlement provided for in the Settlement Agreement, and by any judgment or determination of the Court affecting Settlement Class Members. All Settlement Class Members who do not exclude themselves shall be bound by all determinations and judgments in this Litigation concerning the Settlement, whether favorable or unfavorable to the Settlement Class.

19. Papers in support of Class Counsel's application for attorneys' fees and expenses, and service awards, shall be filed no later than ninety-five (95) calendar days after this Order. Papers in support of final approval of the Settlement shall be filed no later than one-hundred-and-thirty-five (135) calendar days after this Order. If any reply papers

are necessary, they shall be filed no later than seven (7) calendar days prior to the Fairness Hearing.

Objections and Appearance at the Fairness Hearing

20. Any Settlement Class Member may appear at the Fairness Hearing and show cause why the proposed Settlement should or should not be approved as fair, reasonable, and adequate and in the best interests of the Settlement Class, or why judgment should or should not be entered, or to present opposition to Class Counsel's application for attorneys' fees and expenses or to Class Counsel's application for service awards. However, no Settlement Class Member or any other person shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or if approved, the judgment to be entered approving the Settlement, or Class Counsel's application for an award of attorneys' fees and expenses or for service awards, unless that Settlement Class Member or person filed with the Clerk of the United States District Court for the Western District of Oklahoma, and contemporaneously served on Class Counsel and Defendants' counsel, an entry of appearance and notice of intention to appear at the Fairness Hearing setting forth the basis of their objections and summarizing the nature and source of any evidence they intend to present at the Fairness Hearing no later than one-hundred-and-fifty (150) calendar days after the entry of this Order. An objector not represented by an attorney seeking to appear at the Fairness Hearing must state the same in the objection that they file with the Court or submit to the Settlement Administrator or Class Counsel.

21. For an objection to be considered by the Court, the objection must be filed with the Court no later than one-hundred-and-fifty (150) calendar days after the entry of

this Order and must set forth: (a) the objector's full name, address, and telephone number and, if represented by counsel, the name, address, and telephone number of his or her counsel; (b) a statement whether the objector intends to appear at the Fairness Hearing, either in person or through counsel; (c) all grounds for his or her objection, accompanied by any legal support for the objection and supporting documents; (d) a statement of whether the objector or his or her counsel will ask to speak at the Fairness Hearing and, if so, the amount of time the objector or counsel requests for speaking; and (e) the objector's handwritten signature. Counsel's signature is not a substitute for the objector's signature.

22. Any Settlement Class Member who does not make his or her objection in the manner provided for herein shall be deemed to have waived such objection. By objecting, or otherwise requesting to be heard at the Fairness Hearing, a person 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 the terms of the Settlement.

23. Any Settlement Class Member may enter an appearance in the Consolidated MDL Lawsuit, at his or her own expense, individually or through counsel of his or her own choice. If a Settlement Class Member does not enter an appearance, he or she will be represented by Class Counsel.

Exclusion from the Settlement Class

24. Any requests for exclusion must be received no later than one-hundred-and-fifty (150) calendar days after the entry of this Order, which is the opt-out and objection deadline. Any person who would otherwise be a member of the Settlement Class who

wishes to be excluded from the Settlement Class must mail or submit online a completed Opt-out Form, and such submission must be postmarked by the United States Postal Service or actually received by the Settlement Administrator no later than one-hundred-and-fifty (150) calendar days after the entry of this Order. The completed Opt-out Form must include the Settlement Class Member's name, address, and telephone number, a statement that the Settlement Class Member wishes to be excluded from the Settlement, and be signed by the Settlement Class Member. All Settlement Class Members who submit valid and timely notifications of exclusion in the manner set forth in this paragraph shall have no rights under the Settlement Agreement, shall not share in the forms of relief provided by the Settlement, and shall not be bound by the Settlement Agreement, any orders of the Court, or any final judgment.

25. Any Settlement Class Member who does not notify the Settlement Administrator of his or her intent to exclude himself or herself from the Settlement Class in the manner stated in this Order shall be deemed to have waived his or her right to be excluded from the Settlement Class, and 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 but not limited to, the release of the Released Claims against the Releasees provided for in the Settlement Agreement and the judgment, if the Court approves the Settlement.

26. The Settlement Administrator shall also provide a final report to the Parties, no later than one-hundred-and-thirty-five (135) calendar days after the entry of this Order,

that summarizes the number of opt-out notifications received to date, and other pertinent information as set forth in the Settlement Agreement.

Termination of the Settlement

27. If the Settlement fails to become effective in accordance with its terms, or if the judgment is not entered or is reversed, vacated, or materially modified on appeal (and, in the event of material modification, if either Party elects to terminate the Settlement), this Order shall be null and void, the Settlement Agreement shall be deemed terminated (except for any paragraphs that, pursuant to the terms of the Settlement Agreement, survive termination of the Settlement Agreement), and the Parties shall return to their positions without prejudice in any way, as provided for in the Settlement Agreement.

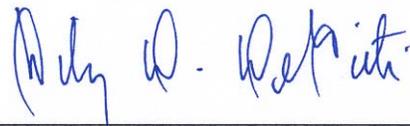
The Use of This Order

28. As set forth in the Settlement Agreement, the fact and terms of this Order and the Settlement, all negotiations, discussions, drafts, and proceedings in connection with this Order and the Settlement, and any act performed or document signed in connection with this Order and 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 against any party, including, but not limited to: (i) of any acts of wrongdoing or lack of wrongdoing; (ii) of any liability on the part of Defendants or Retailer Defendants to the Class Representatives, the Settlement Class, or anyone else; (iii) of any deficiency of any claim or defense that has been or could have been asserted in these Lawsuits; (iv) that Defendants or Retailer Defendants agree that a litigation class is proper in these Lawsuits; (v) of any damages or lack of damages suffered by the Class

Representatives, the Settlement Class, or anyone else; or (vi) that any benefits obtained by the Settlement Class pursuant to the Settlement Agreement or any other amount represents the amount that could or would have been recovered in these Lawsuits if they were not settled at this point in time. The fact and terms of this Order and the Settlement, all negotiations, discussions, drafts, and proceedings in connection with this Order and the Settlement, including but not limited to the judgment and the release of the Released Claims provided for in the Settlement Agreement and the judgment, 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 and/or the Settlement.

29. The Court retains exclusive jurisdiction over this Consolidated MDL Lawsuit to consider all further matters arising out of, or connected with, the Settlement.

IT IS SO ORDERED this 8th day of January, 2019.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE