

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

CONNIE MCLENNAN, VIRGINIA  
ZONTOK, CARYL FARRELL, on  
behalf of themselves and all others  
similarly situated,

Plaintiffs,

v

LG ELECTRONICS USA, INC.

Defendant.

Civil Action No. 10 CV 3604  
(WJM)(MF)

**[PROPOSED] ORDER GRANTING  
CERTIFICATION OF A  
SETTLEMENT CLASS,  
PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT,  
AND PROVIDING FOR NOTICE TO  
THE SETTLEMENT CLASS**

WHEREAS, a class action is pending in this Court entitled *McLennan et al v. LG Electronics USA, Inc.* Civil Action No. 10 CV 3604 (WJM)(MF) (the “Action”);

WHEREAS, the parties to the Action have agreed, subject to Court approval following notice to the proposed Settlement Class and a hearing, to settle this Action upon the terms and conditions set forth in the settlement lodged with this Court (the “Settlement”);

WHEREAS, this Court has reviewed the Settlement, as well as the files, records, and proceedings to date in this matter;

WHEREAS, for purposes of this Order, capitalized terms used below shall have the meaning ascribed to them in the Settlement Agreement, unless otherwise

defined;

WHEREAS, for purposes of this Settlement, this Court has subject matter and personal jurisdiction over the parties, including all Settlement Class members; and

WHEREAS, this Court is familiar with the legal and factual issues in this matter;

NOW, THEREFORE, based on its review of the Settlement and familiarity with all of the files, records, and proceedings herein, the Court concludes, upon preliminary examination, that: (1) the proposed Class satisfies the requirements of Rule 23(a) and Rule 23(b)(3); (2) the Settlement appears fair, reasonable, and adequate, and within the range of reasonableness for preliminary approval such that a presumption of fairness is appropriate; (3) the Class should receive notice of the Settlement and be provided the opportunity to opt out of or object to it; and (4) whether the Settlement is fair, reasonable, and adequate and should be approved and confirmed through final judgment, and whether Class Counsel's request for payment of attorneys' fees and costs ("Fee Application") and incentive awards for the Class Representatives should be granted, should be considered at a hearing ("Fairness Hearing").

IT IS HEREBY ORDERED THAT:

1. Certification Of Settlement Class. For purposes of settlement only, Plaintiffs have proposed conditional certification of the following Settlement Class under Federal Rule of Civil Procedure 23 (the “Settlement Class” or “Class”):

All end user consumer residents of the United States who currently own or owned one or more of the following LG-manufactured Refrigerators consisting of the LG-branded (the “LG Models”) or Kenmore-branded (the “Kenmore Models”) refrigerators that are identified on Exhibit A to the Settlement Agreement (collectively, the “Refrigerators”). Excluded from membership in the Class are the following: (a) LGEUS or its affiliates; (b) Sears, Roebuck and Co. or its affiliates (“Sears”); (c) retailers, wholesalers, and other middlemen who purchased a Refrigerator for commercial use or resale; (d) persons who timely and validly exclude themselves from the Class; (e) state and federal governmental entities; and (f) the judge to whom this case is assigned and any member of the judge’s immediate family.

Plaintiffs Connie McLennan, Virginia Zontok, and Caryl Farrell (collectively, “Plaintiffs”) brought this Rule 23 Class Action on behalf of themselves and a nationwide class of customers who purchased allegedly defective Refrigerators manufactured, marketed, and sold by LG Electronics USA, Inc. (LGEUS). Plaintiffs filed this action on behalf of themselves and all others

similarly situated on July 16, 2010. Plaintiffs allege that the Refrigerators have an inherent defect that causes the interior lights of the Refrigerator to remain on even when the door is closed (the “Light Issue”). As a result, Plaintiffs allege, among other things, that the Refrigerators fail to keep food cool, and consumers are confronted with an appliance that does not perform its essential function and presents a potential safety hazard.

Plaintiffs assert claims for violations of the New Jersey Consumer Fraud Act, fraudulent concealment, breach of implied warranty, and unjust enrichment, all arising from the Light Issue.

LGEUS denies any liability with regard to Plaintiffs’ claims. Notwithstanding their denial of liability, and as described in the Settlement Notice, LGEUS has agreed to (1) reimburse Settlement Class members for repair costs necessitated by the interior light of the Refrigerator remaining on when the door is closed and such costs were incurred by any Class member prior to the date that Settlement Notice is distributed; and (2) extend the warranty with respect to the Light Issue for a period of 10 years from the date of the original purchase of the Refrigerator.

The Court hereby FINDS and CONCLUDES that the proposed nationwide Class is preliminarily certified as a Class Action for settlement purposes only pursuant to Rule 23(a) and Rule 23(b)(3). LGEUS retains all rights to assert that

this Action may not be certified as a class except for settlement purposes.

Provisional certification of a nationwide class is appropriate in part because LGEUS does not object to class certification for settlement purposes only.

Because certification of the Rule 23 Class is proposed in the context of a settlement, the Court need not inquire whether the case, if tried as a class action, would present intractable management problems.

Accordingly, and for the reasons set forth above, the Court hereby CERTIFIES the Rule 23 Class under Rule 23(a) and Rule 23(b)(3), for the purposes of this settlement only.

2. Appointment Of Class Representatives And Class Counsel.

The Court finds that Plaintiffs Connie McLennan, Virginia Zontok, and Caryl Farrell have claims typical of absent class members belonging to the Class and are adequate representatives of those Class members. The Court appoints all of the above-mentioned Plaintiffs to serve as Class Representatives for settlement purposes only.

The Court finds that Lieff Cabraser Heimann & Bernstein, LLP; Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C.; and Kiesel Boucher Larson, LLP have, separately and collectively, extensive experience and expertise in prosecuting complex class cases involving defective products. The Court appoints these firms as Class Counsel for settlement purposes only.

3. Preliminary Approval Of Settlement. The Settlement Agreement, including all exhibits thereto, is preliminarily approved as fair, reasonable, and adequate, and within the range of reasonableness, such that a presumption of fairness is appropriate for the purposes of preliminary settlement approval. The Court finds that: (a) the Settlement resulted from extensive arm's length negotiations; (b) sufficient discovery occurred prior to the Settlement to inform all parties and the Court of the relative strengths and weaknesses of their positions; (c) Class Counsel are experienced in litigation and settlement of similar litigation; and (d) the Settlement is in all other respects sufficient to warrant notice of the Settlement to the Class and a full hearing, the Fairness Hearing, on the approval of the Settlement.

4. Fairness Hearing. A Fairness Hearing shall be held before the Honorable William J. Martini on \_\_\_\_\_, 2011, at \_\_\_\_\_ [*the Parties request that the Court set the Fairness hearing for 100 days after the date of this Order*] to determine whether the Settlement is fair, reasonable, and adequate and should be approved. Papers in support of final approval of the Settlement, the proposed incentive awards to Plaintiffs, and Class Counsel's Fee Application shall be filed with the Court according to the schedule set forth in Paragraph 10 below. The Fairness Hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Settlement Class. After the Fairness Hearing,

the Court may enter a final approval order and final judgment in accordance with the Settlement that will adjudicate the rights of the Settlement Class members with respect to the Released Claims being settled.

5. Class Notice. LGEUS shall cause notice to be disseminated as follows:

a. Internet Notice. Not later than 30 days after the entry of the present Order, the Claims Administrator shall publish both the Summary and Long Form Notices on a settlement website, which shall be made available through a link on Plaintiffs' Counsel's websites, and shall contain copies of the Settlement Notices, the fully executed Settlement Agreement, and relevant Court Orders and filings (including the Fee Application). The Settlement Notices shall direct recipients to the location of the settlement website, which shall remain active through August 1, 2018.

b. Publication Notice. Not later than 45 days after the entry of the present Order, the Claims Administrator shall publish the Publication Notice, which attached to the Settlement Agreement as Exhibit D, once in *Parade* magazine, which is a publication with nationwide circulation.

c. Mail Notice. Not later than 30 days after the entry of the present Order, the Claims Administrator shall mail the Summary Notice, which is attached to the Settlement Agreement as Exhibit C, via First Class Mail to potential

Class members, at their last known addresses as provided by LGEUS, to the extent that LGEUS has records of such Persons' addresses, and as updated by the Claims Administrator. The records LGEUS provides to the Claims Administrator shall include Class member contact information received from Sears and Class Counsel. The Claims Administrator shall update all mailing addresses with an available national change of address database so as to update accurate mailing addresses for all Class Members.

d. Email Notice. The Claims Administrator shall email the Long Form Notice and Claim Form, attached to the Settlement Agreement as Exhibits B and E, to Class members, to the extent that LGEUS has an email address but not a mailing address for such Class members.

6. Findings Concerning Class Notice. The Court finds that the foregoing program of Class Notice and the manner of its dissemination is the best practicable notice under the circumstances and is reasonably calculated to apprise Settlement Class members of the pendency of this Action and their right to object to or exclude themselves from the Settlement Class. The Settlement Notices provided to Class members will be posted on the Internet, published in a nationally recognized news publication, and, to the extent practicable, sent directly to the Settlement Class. Accordingly, the Court finds that the Class Notice program is reasonable, that it constitutes due, adequate, and sufficient notice to all persons

entitled to receive notice, and that it meets the requirements of due process and Federal Rule of Civil Procedure 23.

7. Approval Of Claims Process And Forms. The Claim Form and the claims submission process described in the Settlement Agreement are approved.

8. Exclusion From The Settlement Class.

a. Any Settlement Class member may opt out of the Settlement by following the “Exclusion” procedure set forth in the Long Form Notice and the Settlement Agreement. All Settlement Class members who do not opt out in accordance with the terms set forth in the Settlement Notice and the Settlement Agreement will be bound by all determinations and judgments in the Action.

b. Any Class member who wishes to opt out of the Class must do so in writing by mailing a request for exclusion to the Claims Administrator. Any such request must be sent to the Claims Administrator and postmarked or received no later than ninety (90) days after the entry of the present Order. The request to opt out must be signed by the Class member seeking to opt out and must set out the Class member’s first and last names, valid mailing address and functioning telephone number. Any Class member who opts out may rescind or revoke such decision by submitting a written revocation to the Claims

Administrator. Any such revocation must be postmarked or received by the opt-out deadline.

c. No later than five (5) days before the Fairness Hearing, the Claims Administrator shall file with the Court the names of all Class members who have submitted a timely request to opt out of the Class.

9. Objections And Appearances.

a. Any Settlement Class member may object to the fairness, reasonableness or adequacy of the proposed Settlement, including the proposed award of attorneys' fees and expenses. Each Settlement Class member who wishes to object to any term of this Agreement must do so in writing by filing a written objection with the Clerk of the Court and mailing it to the Parties' respective counsel at the addresses set forth in the Long Form Notice. Any such objection must be filed with the Clerk of the Court and received by the Parties' respective counsel no later than ninety (90) days after the entry of the present Order. Any such objection must (a) identify the Refrigerator owned by the Class member (by serial and model number) if possible; (b) attach copies of any materials that will be submitted to the Court or presented at the final approval hearing; (c) be signed by the Class member or his/her counsel; and (d) clearly state in detail (i) the legal and factual ground(s) for the objection, (ii) the Class member's name, address and telephone number, and (iii) if represented by counsel, such counsel's name,

address and telephone number. This Court shall not be obliged to consider any objection that is not provided in accordance with the deadlines and other specifications set forth in the Settlement Notices. Only Settlement Class members may object to the Settlement Agreement, and Persons who opt out of the Settlement Class may not object to the Settlement Agreement.

b. Class members who have submitted timely and valid written objections may also appear and be heard at the Fairness Hearing if they wish, but they are not required to do so. As set forth in the Long Form Notice, Class members who wish to be heard at the hearing shall request permission to do so by letter to the Court, in the manner described in the Long Form Notice.

10. Further Papers In Support Of Settlement And Fee Application.

The parties shall file their opening papers in support of final approval of the Settlement fourteen (14) days prior to the Objection Deadline. Class Counsel shall file their Fee Application, no later than forty-five (45) days after the entry of the present Order. Any reply papers or other responses the parties wish to file in response to Class member objections shall be filed with the Court no less than seven (7) days prior to the Fairness Hearing.

11. Effect of Failure to Approve the Settlement. In the event the

Settlement is not approved by the Court, or for any reason the parties fail to obtain

a Final Judgment as contemplated in the Settlement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

a. All orders and findings entered in connection with the Settlement shall become null and void and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding.

b. Nothing contained in this Order is, or may be construed as, any admission or concession by or against LGEUS or Plaintiffs on any point of fact or law; and

c. This Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Parties or the Settlement Class members, including the Defendant's right to assert any and all defenses to class certification, including without limitation the propriety of the class and/or substantive allegations asserted by the putative class, shall not be deemed or construed to be an admission or confession by any Party of any fact, matter or proposition of law, and shall not be used in any matter for any purpose, and all Parties shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

A modification or reversal on appeal of the resolution of any dispute relating to the claim of anyone claiming to be a Settlement Class member shall not be

deemed a material modification of this Agreement.

12. Stay/Bar Of Other Proceedings. All proceedings in this Action are stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement. Pending final determination of whether the Settlement should be approved, Plaintiffs, all persons in the Settlement Class and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively or in any other capacity) against any of the Released Parties any action, arbitration or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable William J. Martini