

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

<p>RICHARD GRISAFI, on behalf of himself and the Putative Class</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>SONY ELECTRONICS INC.</p> <p style="text-align: right;">Defendant.</p>	<p>No. 2:18-cv-08494-JMV-JBC</p> <p>PROPOSED ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED CLASS-ACTION SETTLEMENT, CERTIFYING A CLASS FOR SETTLEMENT PURPOSES, APPROVING PROPOSED CLASS NOTICE PLAN, AND SCHEDULING FINAL APPROVAL HEARING</p>
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No. 2:18-cv-08494-JMV-JBC

~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF
PROPOSED CLASS-ACTION
SETTLEMENT, CERTIFYING A
CLASS FOR SETTLEMENT
PURPOSES, APPROVING
PROPOSED CLASS NOTICE PLAN,
AND SCHEDULING FINAL
APPROVAL HEARING

WHEREAS, plaintiff Richard Grisafi (“Plaintiff”) and defendant Sony Electronics Inc. (“Sony”, and collectively with Plaintiff, the “Parties”) have entered into a Settlement Agreement and Release (“Settlement Agreement”)¹, which, together with the exhibits attached thereto, sets forth the terms and conditions for the proposed class settlement of the claims alleged in the Second Amended Complaint (“SAC”), the operative complaint in the above-captioned action (the “Action”), on the merits and with prejudice (the “Proposed Settlement”);

WHEREAS, Plaintiff has filed a motion pursuant to Fed. R. Civ. P. 23(e) seeking preliminary approval of the Proposed Settlement (the “Motion”);

WHEREAS, the Parties consent to the granting of the Motion and the form and entry of this Order;

NOW THEREFORE, upon review and consideration of the Motion, the Settlement Agreement, and the exhibits attached thereto, including the proposed Full Notice, Email Notice,

¹ The Settlement Agreement, including all exhibits thereto, are hereby incorporated into this Order. Unless otherwise stated herein, the terms defined in the Settlement Agreement shall have the same meanings herein.

and Online Publication Notice, and the proposed Claim Form, and finding that substantial and sufficient grounds exist for entering this Order,

IT IS this 7th day of December, 2020

ORDERED and ADJUDGED as follows:

1. The Court has jurisdiction over the subject matter of this Action and all Parties to the Action, including all Class Members, and venue is proper in this District.

APPROVAL OF PROPOSED SETTLEMENT

2. Subject to further consideration by the Court at the time of the Final Approval Hearing provided for below, the Court has determined that the Proposed Settlement meets the requirements for preliminary approval for the following reasons.

3. *First*, the Court finds that the Proposed Settlement is the result of good faith negotiations, conducted at arms-length over a period of several months, including a formal mediation proceeding conducted before former United States District Judge Stephen Orlofsky.

4. *Second*, the Court finds that there are no obvious deficiencies in the Proposed Settlement. Plaintiff, represented by counsel experienced in the prosecution of complex consumer class actions, has investigated the factual bases for the allegations set forth in the SAC, and Plaintiff's Counsel has filed numerous submissions with the Court addressing the applicable law. As a result of the work performed to date, Plaintiff's Counsel has a comprehensive understanding of the strengths and weaknesses of the Action, and the risks associated with its continued litigation.

5. *Third*, the Court finds that the Proposed Settlement falls within the range of reasonable outcomes. The benefits conferred upon the proposed Settlement Class, as defined below, are reasonable and adequate in light of the relief that Plaintiff and Plaintiff's Counsel

believe is likely to be recovered at trial, without the costs, uncertainty, delay, and other risks associated with continued litigation.

**PROVISIONAL CERTIFICATION OF THE CLASS
FOR SETTLEMENT PURPOSES**

6. Plaintiff also asks the Court to certify the proposed Settlement Class, as defined below, for settlement purposes only. The Parties agree that if this case were to proceed to trial, Sony would contest the issue of class certification.

7. *Settlement Class.* The Court finds that, for settlement purposes only, the requirements of Fed. R. Civ. P. 23(a) and (b)(3) are satisfied, and hereby ^{preliminarily} ~~provisionally~~ certifies the following Settlement Class:

All individuals who (i) purchased a new Sony dash Personal Internet Viewer in the United States prior to July 12, 2017 and (ii) were residents of the United States at the time of purchase.

Excluded from the Class are Sony's Counsel, Sony's officers and directors, and the judges presiding over the Action.

8. The Court makes the following findings with respect to class certification, for settlement purposes only.

9. *Ascertainability.* The Parties agree that each member of the Settlement Class can be identified through Sony's internal records and/or proofs of my purchase in the form of (i) receipts, (ii) picture(s) of dashes showing class series/model and serial number, and/or (iii) other circumstantial documentation showing purchases.

10. *Numerosity.* The Parties estimate that the size of the Settlement Class exceeds 100,000 individuals. The proposed Settlement Class is thus sufficiently numerous that joinder of all class members into one suit would be impractical.

11. *Commonality.* The commonality requirement is satisfied because Plaintiff shares

at least one question of fact or law with the members of the Settlement Class he seeks to represent. They arise from the same events that give rise to the claims of other Class Members and are based on the same legal theories.

12. *Adequate Representation.* Plaintiff's interests are aligned with those of the other Class Members, and there is no conflict between Plaintiff's interests and those of the Class Members. Further, the Court finds that Plaintiff's Counsel possesses adequate experience, has vigorously prosecuted this Action, and has acted at arm's length from Sony.

13. *Predominance of Common Issues.* The Court finds that, with respect to the Proposed Settlement, the common issues raised by Sony's termination of support for the dash predominate over any individual questions relating to the settlement of this litigation, weighing in favor of class treatment at this junction.

14. *Superiority of the Class Action Mechanism.* The Court finds that, with respect to the Proposed Settlement, a class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

15. *Conditional Appointment of Class Representative and Class Counsel.* The Court conditionally appoints Richard Grisafi as Class Representative for the purposes of the Proposed Settlement and certification of the Settlement Class for settlement purposes only. The Court conditionally appoints Bruce H. Nagel and Randee M. Matloff of Nagel Rice LLP, 103 Eisenhower Parkway, Roseland, New Jersey 07068 as Class Counsel pursuant to Fed. R. Civ. P. 23(g). Plaintiff and Class Counsel must fairly and adequately protect and represent the interests of the Class Members.

CLASS NOTICE

16. *Provision of Class Notice.* The Court finds that the proposed Full Notice, Email

Notice, and Online Publication Notice attached to the Settlement Agreement, and their manner of transmission, comply with Rule 23 and due process because the notices and forms are reasonably calculated to adequately apprise Class Members of (i) the pending lawsuit, (ii) the proposed settlement, and (iii) their rights, including the right to either participate in the settlement, exclude themselves from the settlement, or object to the settlement. Accordingly, Sony shall notify Class Members of the settlement in the manner specified under Section 3.3 of the Settlement Agreement.

17. **CAFA Notice.** The Court finds that Sony has complied with 28 U.S.C. § 1715(b).

REQUESTS FOR EXCLUSION AND OBJECTIONS TO SETTLEMENT

18. **Requesting Exclusion.** Class Members who want to be excluded from the settlement must send a letter or postcard to the Claims Administrator stating: (a) the name and case number of the Action: “*Richard Grisafi v. Sony Electronics Inc.*, Case No. 18-cv-8494 (JMV) (JBC)”; (b) the full name, address, and telephone number of the Class Member requesting exclusion (email address is optional); and (c) a statement that the person does not wish to participate in the Proposed Settlement, postmarked no later than one hundred sixty (160) calendar days after entry of this Order. The delivery date is deemed to be the date the request for exclusion is deposited in the U.S. Mail as evidenced by the postmark.

19. **Objection to Settlement.** Class Members who have not submitted a timely written exclusion request pursuant to paragraph 20 above and who want to object to the Settlement Agreement must deliver a written objection to the Claims Administrator no later than one hundred sixty (160) calendar days after entry of this Order. The objection must include: (a) the name and case number of the Action “*Richard Grisafi v. Sony Electronics Inc.*, Case No. 18-cv-8494 (JMV) (JBC)”; (b) the full name, address, and telephone number of the person objecting (email address is optional); (c) the words “Notice of Objection” or “Formal Objection”; (d) in clear and concise

terms, the objection and legal and factual arguments supporting the objection; and (e) facts showing that the person objecting is a Class Member. The written objection must be signed and dated, and must include the following language immediately above the signature and date: “I declare under penalty of perjury under the laws of the United States of America that the foregoing statements regarding class membership are true and correct to the best of my knowledge.” The delivery date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark. Any Class Member who submits a written objection, as described in this paragraph, may appear at the Final Approval Hearing, either in person or through personal counsel hired at the Class Member’s expense, to object to the Settlement Agreement. Class Members or their attorneys intending to make an appearance at the Final Approval Hearing, however, must include on the timely and valid written objection a statement substantially similar to “Notice of Intention to Appear.” If the objecting Class Member intends to appear at the Final Approval Hearing through counsel, he or she must also identify the attorney(s) representing the objecting Class Member who will appear at the Final Approval Hearing and include the attorney(s) name, address, phone number, email address, and the state bar(s) to which counsel is admitted. If the objecting Class Member intends to request the Court to allow the Class Member to call witnesses at the Final Approval Hearing, such request must be made in the Class Member’s written objection, which must also contain a list of any such witnesses and a summary of each witness’s expected testimony. Only Class Members who submit timely written objections including Notices of Intention to Appear may speak at the Final Approval Hearing. If a Class Member makes an objection through an attorney, the Class Member will be responsible for his or her personal attorney’s fees and costs. The objection will not be valid if it only objects to the lawsuit’s appropriateness or merits.

20. *Failure to Object to Settlement.* Class Members who fail to object to the

Settlement Agreement in the manner specified above will: (1) be deemed to have waived their right to object to the Settlement Agreement; (2) be foreclosed from objecting (whether by a subsequent objection, intervention, appeal, or any other process) to the Settlement Agreement; and (3) not be entitled to speak at the Final Approval Hearing.

SCHEDULE AND PROCEDURES

21. *No Admissions.* Nothing in this Order is, or may be construed as, an admission or concession on any point of fact or law by or against any Party.

22. *Administration of Settlement.* Class Counsel and Counsel for Sony 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, including making, without further approval of the Court, non-material changes to the form or content of the Class Notice and other exhibits that they jointly agree are reasonable and/or are necessary.

23. *Termination.* If the Settlement Agreement terminates for any reason, the following will occur: (a) Class certification for settlement purposes will be automatically vacated; (b) Plaintiff will revert to his prior status as a non-Class Representative; (c) Plaintiff's Counsel will revert to their prior status as non-Class Counsel; and (d) this Action will revert to its previous status in all respects as it existed immediately before the Parties executed the Settlement Agreement. This Order will not waive or otherwise impact the Parties' rights or arguments regarding class certification or any trial of any claims.

24. *Stay of Dates and Deadlines.* All pretrial and trial proceedings and deadlines are stayed and suspended until further notice from the Court, except for such actions as are necessary to implement the Settlement Agreement and this Order.

25. *Final Approval Hearing.* On June 30th ²⁰²¹ at 11:30am [at least one hundred ninety-eight

(198) calendar days out from entry of Preliminary Approval Order] this Court will hold a Final Approval Hearing to determine whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate. This Court may order the Final Approval Hearing to be postponed, adjourned, or continued. If that occurs, Sony will not be required to provide additional notice to the Settlement Class, but the updated hearing date shall be posted on the Settlement Website.

RELEVANT DEADLINES		
Event	Deadline	Date
Deadline for CAFA Notice	10 days after filing of Preliminary Approval Motion	Completed
Deadline for Settlement Website, Email Notice, and Online Publication Notice	60 days after entry of Preliminary Approval Order	2/5/21
Deadline to File Papers in Support of Class Counsel's Application for Attorneys' Fees and Expenses and the Class Representative Incentive Award	139 days after entry of Preliminary Approval Order	4/26/21
Deadline to Submit Claims, Exclusion Requests, and Objections	160 days after entry of Preliminary Approval Order	5/17/21
Deadline to Respond to Objections and File Papers in Support of Final Approval	At least 24 days prior to Final Approval Hearing	6/4/21
Deadline for Proof of Notice	At least 10 days prior to Final Approval Hearing	6/18/21
Final Approval Hearing	At least 198 days after entry of Preliminary Approval Order	6/30/21 @ 11:30 am

Dated: December 7, 2020



Hon. James B. Clark, III
 U.S. MAGISTRATE JUDGE