In re Sony Corp.

2010 | Cited 0 times | S.D. New York | August 24, 2010

OPINION AND ORDER

Following the Court's preliminary approval of the proposed settlement on May 19, 2010, and in advance of the fairness hearing held on August 13, 2010, Plaintiff Cardenas and Defendants separately moved for certification of the proposed class, final approval of the proposed class action settlement in this matter. Having reviewed the parties' submissions, along with the objections to the Court, and having heard testimony and argument at the August 13, 2010 fairness hearing, the Court: (1) certifies the proposed class; (2) approves the class action settlement; and (3) awards attorney's fees to class counsel.

I. FACTS AND PROCEEDINGS

In October 2008, Paul Meserole commenced the first of the class actions, concerning defective optical blocks in second generation SXRD rear projection television sets manufactured and sold by Sony, which was subsequently consolidated by the Panel for Multidistrict Litigation with six other class action lawsuits. While not immediately apparent to the purchaser, the defects allegedly cause various color anomalies and discolorations to manifest themselves over time and "severely interfere with the program display." (Meserole Compl. ¶ 3.)

Plaintiff Sabrina Cardenas filed a complaint in the Eastern District of Texas in June 2009, making similar -- and some identical -- allegations to those contained in the initial complaint brought by Plaintiff Meserole. In November 2009, Plaintiff Cardenas and Defendants announced, after informal discovery and discussions mediated by retired Judge Glenn Ashworth, a JAMS mediator in Dallas, that they had agreed upon terms to a class action settlement. (Letter to the Court from Sony and Plaintiff Cardenas, Nov. 12, 2009.)

Following formal confirmatory discovery, Plaintiff Cardenas and the Defendants separately moved for preliminary approval of the settlement, which the Court granted after three days of hearing and argument in April and May 2010. In re Sony Corp. SXRD Rear Projection Television Marketing, Sales Practices and Products Liability Litigation, 09 MD 2102, 2010 WL 1993817 (S.D.N.Y. May 19, 2010). The Court's May 19, 2010 order: (1) preliminarily certified the proposed class, for purposes of settlement only; (2) preliminarily approved the class settlement; (3) named the law firm of Federman & Sherwood, counsel for Plaintiff Cardenas, as class counsel; (4) approved the notice to the class and ordered the dissemination thereof by mail and publication; (5) stayed proceedings in all related cases; and (6) scheduled the August 13, 2010 fairness hearing. Id.

II. CLASS CERTIFICATION

Plaintiff Cardenas moves the Court to certify as a class, for settlement purposes only:

All individuals who purchased, or received as gifts, second generation Sony Grand WEGA SXRD rear projection HDTV televisions bearing the model designations KDS-R60XBR2, KDS-R70XBR2, KDS-50A2000/2020/3000, KDS-55A2000/2020/3000, KDS-60A2000/2020/3000 and KDS-70Q006. Excluded from the Settlement Class are: Sony, its affiliates, and their employees and immediate family members; persons who purchased or acquired a Television for commercial use or resale; persons who are claims aggregators; and persons who claim to be an assignee of rights associated with the Televisions. (Plaintiff Sabrina Cardenas' Memorandum in Support of Motion for Final Approval of Class Action Settlement and Response to Opposition to Proposed Class Action Settlement and Request for Attorneys' Fees ("Pl. Mem."), 10-11.) Certification of a class is appropriate if the proposed class meets the prerequisites of Rule 23(a) of the Federal Rules of Civil Procedure -- numerosity, commonality, typicality, and adequacy of representation -- and if "parties seeking class certification . . . show that the action is maintainable under Rule 23(b)(1), (2), or (3)." Amchem Products, Inc. v. Windsor, 521 U.S. 591, 614 (1997).

Numerosity: Rule 23(a)(1) of the Federal Rules of Civil Procedure requires that a class be "so numerous that joinder of all members is impracticable." The proper inquiry is whether such joinder is impracticable, not whether it is impossible. Robidoux v. Celani, 987 F.2d 931, 935 (2d Cir. 1993). In its submissions to the Court, Sony has represented that 352,022 televisions sets covered by the class were sold. (Letter to Court from Sony, Aug. 10, 2010.) With a class of this size, joinder would be impracticable.

Commonality and Typicality: Rule 23(a)(2) of the Federal Rules of Civil Procedure permits certification of a class only if "there are questions of law or fact common to the class." Rule 23(a)(3) of the Federal Rules of Civil Procedure requires that "the claims or defenses of the representative parties [be] typical of the claims or defenses of the class." The Second Circuit has explained:

The crux of both requirements is to ensure that maintenance of a class action is economical and [that] the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence. The commonality requirement is met if plaintiffs' grievances share a common question of law or of fact. Typicality, by contrast, requires that the claims of the class representatives be typical of those of the class, and is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability. Marisol A. v. Giuliani, 126 F.3d 372, 376 (2d Cir. 1997) (internal quotations and citations omitted). Here, the models of television sets covered by the proposed class are all rear-projection high definition televisions. These television models use a form of technology known as an optical block, which has failed or degraded in a number of the class members' television sets over time. The problems described by the class

members in their letters to the Court have been similar, if not identical, to those alleged in Plaintiff Cardenas' complaint, namely, "yellow stains, green haze, and other color anomalies" that "severely interfere[e] with the program display." (Cardenas Compl. ¶ 1.) These common facts have given rise to common questions of law, concerning the extent to which Sony made misrepresentations to consumers and whether the two year warranty of the optical block or an implied warrant covers the instant problems. Therefore, the Court concludes that both the commonality and typicality requirements of Rule 23(a) are met by the proposed class.

Adequacy: Rule 23(a)(4) of the Federal Rules of Procedure requires that "the representative parties . . . fairly and adequately protect the interests of the class." Plaintiff Cardenas became involved in this lawsuit when her television developed the color anomalies complained of by other members of this class. (Cardenas Compl. ¶ 4; Transcript, Apr. 23, 2010 ("Apr. 23 Tr."), 10.) Her counsel has ably represented her interests and those of the rest of the class during extensive settlement negotiations, confirmatory discovery, and the settlement approval process. (Apr. 23 Tr. 10-26, 32-36.) On this basis, the Court concludes that Plaintiff Cardenas "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4).

Rule 23(b): Separate and apart from the Rule 23(a) requirements, the Court must determine whether the action falls within one of three "types of class actions," as described in Rule 23(b) of the Federal Rules of Civil Procedure before it may certify the case. Amchem Products, Inc., 521 U.S. at 614. Plaintiff Cardenas contends that this class falls within the third category of class action in that it is one where "the questions of law or fact common to class members predominate over any questions affecting only individual members" and where "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). In determining whether the requirements of Rule 23(b)(3) have been met, the Court must consider: (1) "the class members' interests in individually controlling the prosecution or defense of separate actions"; (2) "the extent and nature of any litigation concerning the controversy already begun by or against class members"; (3) "the desirability or undesirability of concentrating the litigation of the claims in the particular forum;" and (4) "the likely difficulties in managing a class action." Amchem Products, Inc., 521 U.S. at 623.

Because of the small size of potential claims, no more than a portion of the cost of the purchased television, the class members' interest in "individually controlling the prosecution . . . of separate actions" is minimal, and is substantially outweighed by the conveniences of aggregating claims. While there is a single separate class action lawsuit being brought under California consumer protection statutes in California, which has been stayed, there is nothing in the record before the Court to suggest that a significant number of individual lawsuits has been brought. After due consideration, the Multidistrict Panel on Litigation decided to consolidate these related cases here, in the Southern District of New York, in part because this Court had been the forum for prior litigation against Sony concerning the first generation of television sets that are the subject of this action and because five of the seven pending class actions were brought in this district, before this

judge. Finally, because the claims of the class members are straightforward and because the confines of the class are well drawn, the class, despite its size, presents no substantial difficulties. In light of these factors, the Court concludes that the proposed class is sufficiently cohesive, i.e. that "questions of law or fact common to class members predominate," and the Court concludes that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed R. Civ. P. 23(b)(3).

For the reasons discussed above, the proposed class meets the requirements of Rule 23 of the Federal Rules of Civil Procedure. The Court therefore certifies the class for settlement purposes.

III. FAIRNESS OF THE SETTLEMENT

"If the propos[ed settlement] would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable and adequate." Fed. R. Civ. P. 23(e)(2). Such a finding must be premised both on a finding that negotiation process leading up to the settlement was fair and a finding that the terms of the settlement are substantively fair. Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 116 (2d Cir. 2005).

A. Terms of Settlement

The benefits of the settlement, as negotiated, are: (1) the extension of the limited warranty for models KDS-50A2000, KDS-55A2000, KDS-60A2000, KDS-R60XBR2, KDS-R70XBR2, and KDS-70Q006 until August 31, 2010; (Settlement Agreement ¶ 4.2.1) (2) the extension of the limited warranty for models KDS-50A2020, KDS-55A2020, and KDS-60A2020 until December 31, 2010; (Id.) (3) the extension of the limited warranty for models KDS-50A3000, KDS-55A3000, and KDS-60A3000 until July 31, 2011; (Id.) (4) the creation of a "dedicated team of technical representatives to handle telephone calls to the dedicated toll-free number under the Warranty Extension"; (Id. ¶ 4.3.2) (5) reimbursement for any "reasonable out-of-pocket expense incurred prior to the termination date of the Warranty Extension" to repair the optical block; (Id. ¶ 4.4.1) (6) reimbursement of the purchase price of an extended service plan from Sony after October 1, 2008 and prior to the effective date of the settlement; (Id. ¶ 4.5.1) and (7) reimbursement of any money "paid to Sony prior to the Effective Date in connection with Sony's customer service staff accommodating an . . . 'upgrade'." (Id. ¶ 4.6.1.) Additionally, Sony paid for the provision of notice to class members. (Id. ¶ 4.7.)

At the August 13, 2010 fairness hearing, Timothy McGowan, vice president of service engineering at Sony, testified extensively about the engineering fixes that had been put in place to improve the optical blocks over the SXRD I televisions and periodically thereafter. Sony engineers installed additional UV filters and increased the strength of the UV filters at the front of the optical block. (Transcript, Aug. 13, 2010 ("Aug. 13 Tr."), 21-32.) Sony engineers also re-engineered the manufacturing process of the optical block's LCD panel to reduce contamination and changed the voltage on the LCD panel. (Id., 33.) McGowan further testified that after Sony implemented these

fixes, he "saw [a] great decline [in] failure rates for optical blocks, specifically for these symptoms." (Id., 36.)

B. Procedural Fairness

A settlement is procedurally fair if: (1) the settlement is a product of "arms'-length negotiations"; (2) during negotiation, both sides were represented by "experienced, capable counsel"; and (3) it was reached after conducting "meaningful discovery." Wal-Mart Stores, Inc., 396 F.3d at 116 (citing MANUAL FOR COMPLEX LITIGATION THIRD, § 30.42 (1995)).

Here, the Court already concluded that the settlement was a product of "arms'-length negotiations," in its May 19, 2010 opinion:

While the counsel for the Meserole plaintiffs have made many insinuations and statements about the inadequacy or inappropriateness of counsel for plaintiff Cardenas, they have pointed to no evidence or documentation showing that the negotiations between the Defendants and counsel for plaintiff Cardenas were collusive. Indeed, at the hearing held on April 23, 2010, counsel for plaintiff Cardenas represented: (1) that his law firm became involved in this case when approached by Ms. Cardenas and her lawyer, Cornelius Dukelow of the Abington Intellectual Property Law Group, Transcript of Apr. 23, 2010 hearing ("Apr. 23 Tr."), at 10; (2) that the law firm had no contact with Sony before beginning settlement negotiations with counsel for Sony in "September or October" of 2009, Id. at 11; (3) that after consulting with plaintiff Cardenas and Mr. Dukelow, the firm began settlement negotiations with counsel for Sony, Id. at 12; (4) that the firm consulted with Dr. Sohail Dianat, a professor at the Rochester Institute of Technology who is an electrical engineer, specializing in monitors and televisions, Id.; Letter from William Federman to the Court (May 10, 2010); (5) that the firm consulted with William Rubenstein, a professor of consumer law at Harvard Law School, Apr. 23 Tr. at 13; Letter from William Federman to the Court (May 10, 2010); (6) that negotiations lasted six months, and that there was extensive "back and forth" over the terms of the settlement, Apr. 23 Tr. at 15; and (7) that the firm engaged in extensive confirmatory discovery, including seven transcribed interviews, two depositions, and 19,000 pages of documents reviewed, Defendants' Mem. of Law, at 19. On the record before the Court, there is no evidence or documentation that contradicts this account of the negotiations. The Court therefore finds, as a preliminary matter, that the negotiations were not collusive and were conducted at arms length.

In re Sony Corp. SXRD Rear Projection Television Mktg., Sales Practices and Prod. Liab. Litig., No. 09 MD 2102, 2010 WL 1993817, at *3 (S.D.N.Y. May 19, 2010). Furthermore, the parties engaged in mediation with the Honorable Glen Ashworth, a retired judge and JAMS mediator in Dallas, Texas. Based on the record before the Court, there is nothing to disturb these factual findings. Therefore, the Court concludes that the settlement was the product of "arms'-length negotiations."[1]

During negotiations, Plaintiff Cardenas was represented by William Federman, of the law firm of

Federman & Sherwood, and Cornelius Dukelow, of the Abington Intellectual Property Firm. Federman has twenty-eight years experience as a trial lawyer, including experience representing clients in appeals heard by the United States Supreme Court and litigating class action lawsuits. He has served as lead or co-lead counsel in a number of matters in this district and in trial courts across the country. (Ex. 3 to Plaintiff Sabrina Cardenas' Memorandum in Support of Plaintiff's Application for an Award of Attorneys' Fees and Reimbursement of Expenses ("Pl. Fee Mem.").) Dukelow has a decade of experience litigating cases involving patent and technology issues. (Aug. 13 Tr., 25.) During negotiations, they were advised by a professor of consumer law, at Harvard Law School, and a professor of electrical and microelectrical engineering, at the Rochester Institute of Technology. Sony was represented, during negotiations, by lawyers at the law firm of Quinn Emanuel Urquhart & Sullivan, LLP. Thus, the Court concludes that Plaintiff and Defendants were well represented by "experienced, capable counsel" during settlement negotiations.

Finally, the parties engaged in substantial confirmatory discovery as a part of the ongoing settlement negotiatons. Sony produced "approximately 19,000 pages of documents." (Aug. 13 Tr., 9.) Sony produced seven witnesses for interviews. (Id.) And the parties deposed the two "confidential sources" relied upon by the Meserole papers in the Second Amended Complaint. (Id.) Following the conclusion of this confirmatory discovery, Plaintiff and the Defendants signed a settlement agreement. Therefore, the Court concludes that the settlement was reached following extensive discovery.

For the reasons stated above, the Court finds that negotiation process leading up to the settlement was fair.

C. Substantive Fairness

In City of Detroit v. Grinnell Corp., the Second Circuit outlined a number of factors that a court must consider in evaluating whether the substantive terms of a settlement are fair and adequate. 495 F.2d 448 (2d Cir. 1974). Above all else, the Second Circuit emphasized that a court must consider "the strength of the case for the plaintiffs on the merits, balanced against the amount offered in settlement." Id., at 455. With this in mind, the Second Circuit directed courts to consider nine factors: "(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." Id. (citations omitted).

Complexity, expense, and duration of litigation: The first of the lawsuits consolidated herein was brought in October 2008. The first amended complaint filed in Meserole was dismissed by the Court

for failure to state a claim upon which relief could be granted. Meserole v. Sony Corp. of America, Inc., 08 CV 8987, 2009 WL 1403933 (S.D.N.Y. May 19, 2009). Plaintiff Meserole subsequently filed a second amended complaint. The Defendants have moved to dismiss this complaint, along with the operative complaints in the four related actions filed by the same counsel. If this case were to proceed, it would face either dismissal or years of litigation and discovery, with all the attendant costs. Therefore, the Court concludes that this factor weighs in favor of approving the settlement.

Reaction of class: Of a class consisting of over 352,000 members, eighty-three have opted out of the class and twenty have objected. (Aug. 13 Tr. 4.) Opt-outs and objectors constitute a miniscule percentage of the class.[2] The objectors have opposed the length of warranty extension and have commented that there is no "fix" to this problem. (Opp., 1-3.) While the objectors raise substantive objections to the settlement, the Defendants introduced evidence at the hearing and in written submissions to the Court that suggest that the optical block fix has been successful in the vast majority of televisions where it has been implemented and that the final product has been within the normal range of failure for television sets. (Aug. 13 Tr., 36, 50; Letter to Court from Sony, Aug. 10, 2010.) More relevant here, however, is the fact that the objectors and opt-outs constitute a miniscule percentage of the total class. Therefore, the Court concludes that, on balance, this factor weighs in favor of approving the settlement.

Stage of the proceedings and amount of discovery completed: As noted above, the first amended complaint in the Meserole action was dismissed. Currently, motions to dismiss are pending in each of the related actions. Defendants have produced 19,000 pages of documents concerning the engineering fix, customer complaints, failure rates, repairs, and aging studies of the optical blocks. (Aug. 13 Tr., 9; Defendants' Memorandum in Support of Motion for Final Approval of Class Action Settlement ("Def. Mem."), 15.) Counsel for Cardenas and the Meserole Plaintiffs participated in interviews and depositions of nine current and former Sony employees. (Aug. 13 Tr., 9.) Both the pending motions to dismiss and the extensive discovery already conducted on behalf of the class weigh in favor of approval of the settlement.

Risks of establishing liability, establishing damages, and maintaining the class action through trial: The Court granted Sony's motion to dismiss the first amended complaint in the Meserole case, for failure to state a claim. Since then, the Meserole Plaintiffs have filed a second amended complaint -- a version of which was filed in many of the related actions. However, the Meserole Plaintiffs agreed to strike portions of the complaint containing statements attributed to two former Sony employees, which purported to show that, prior to marketing the television models which are the subject of these actions, Sony had knowledge that the optical blocks contained the defect, when discovery authorized by the Court did not support these allegations. Sony has filed and fully briefed motions to dismiss in all related cases. Rather than rule, in anticipation, upon these motions, the Court simply notes that the Plaintiffs face substantial obstacles to establishing liability and damages. Separately, as noted above, the costs of maintaining the class action through trial are substantial. Therefore, the Court concludes that the risks of continuing, rather than settling, this action are substantial.

Ability of the defendants to withstand a greater judgment: Sony is a large, multinational company. Defendants appear to concede, in their papers, that they could withstand a greater judgment, but note that "Defendants have calculated that this settlement bears significant monetary cost to the Defendants." (Def. Mem., 19.) In a letter sent to the Court, upon the Court's request at the August 13 hearing, which is attached hereto, the Defendants estimate that at a minimum the proposed settlement will cost Sony roughly seven million dollars. (Letter to Court from Sony, Aug. 18, 2010.)

The Court concludes, therefore, that this factor weighs neither against nor in favor of approval of the settlement.

Range of reasonableness of the settlement fund in light of the best possible recovery and all the attendant risks of litigation: While the Plaintiffs and class members face many possible obstacles to recovery, if this litigation continues, the proposed settlement offers real relief to class members whose television sets have malfunctioned due to a defective optical block. The extensions of the warranty have added months of full coverage for class members and will continue to add months for class members who own the later models. For those class members who purchased an extended service plan from Sony that has been made redundant by the extensions of the warranty, the Defendants will refund the cost of that plan. Additionally, if there is any delay in the replacement of their optical blocks or if the class members experience problems subsequent to receiving a replacement optical block, class members will be entitled to a cash payment from Sony, ranging from $200 to $700, depending on the model. Any class members who paid out-of-pocket for repairs of their optical blocks will be reimbursed those expenses, as will any class members who paid Sony to upgrade to a new television set. These benefits are meaningful and address the problems experienced by class members. In light of the substantial litigation risks, outlined above, and the obstacles facing these lawsuits should they proceed, the settlement offers benefits to the class members that are reasonable, fair and adequate.

Based on its consideration of the Grinnell factors, the Court finds that the terms of the settlement are fair, reasonable, and adequate. Therefore, the Court grants final approval to the settlement.

IV. ATTORNEY'S FEES

The Second Circuit has held "that both the lodestar and the percentage of fund methods are available to district judges in calculating attorneys' fees in common fund cases." Goldberger v. Integrated Res., Inc., 209 F.3d 43, 50 (2d Cir. 2000). The Second Circuit has emphasized, however, that regardless of whether a district court looks to the lodestar method or the percentage of fund method, "district courts should continue to be guided by the traditional criteria in determining a reasonable common fund fee, including: (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." Id. (internal quotation marks and citations omitted).

Here, class counsel has submitted records for itself and for the Abington Intellectual Property Law Group showing that the total number of hours expended on this matter, by attorneys and paralegals, is 1102.85. (Ex. 1-2 to Pl. Fee Mem.) Those hours, billed at the firms' current rates, amounted to $608,391.25 as a lodestar amount. (Id.) Class counsel has submitted records showing $33,567.77 in expenses. (Id.) At the fairness hearing, class counsel indicated that it had overlooked a $15,000 fee, attributable to one expert who assisted them in settlement negotiations. (Aug. 13 Tr., 24.) Class counsel also indicated that they would not be requesting fees for labor expended in managing and administering the settlement. (Id., 25.) Thus, expenses and the lodestar figure amount to $641,959.02, which is greater than the $625,000 that the Defendants agreed to pay class counsel for fees and expenses.

As noted throughout this opinion, the litigation was substantial and complex. With a class containing over 350,000 members, and with the substantial challenges raised by plaintiffs raised in related actions, this litigation qualifies as complex.

Likewise, as noted above, this litigation involved substantial risks -- both in establishing liability and in determining damages.

Class counsel has extensive experience litigating large class action suits, albeit little in consumer class actions. (Ex. 3 to Pl. Fee Mem.) In the proceedings before the Court, class counsel has demonstrated a facility with the law, and, by use of experts for supplementary advice, a dedication to the interests of class members. The Court therefore concludes that the representation provided to class members by class counsel has been of high quality.

Sony has calculated that the settlement benefits will cost Sony roughly seven million dollars. (Letter to Court from Sony, Aug. 18, 2010.) Specifically, they calculate that the costs incurred for the warranty extension, excluding the costs of warranty extensions granted to class members prior to the settlement, will amount to $6,845,614.60. (Id.) Sony estimates that the costs of reimbursing covered extended service plan purchases will amount to $14,415.22. (Id.) Sony estimates that the costs of reimbursing covered upgrade expenses will amount to $13,218.24. (Id.) Sony does not have an estimate for the cost of reimbursing class members for out-of-pocket expenses for optical blocks, as the total number of these claims is not yet known, although Sony has already received claims for reimbursement that "could exceed $200,000." (Id.) Alternatively, Defendants calculated the benefit to the class, using a method similar to that used by the Plaintiffs in the SXRD I litigation, taking the two year warranty extension price to the customer to arrive at a monthly cost for a warranty on all repairs, and reducing that cost by 60% to calculate the cost of the optical block monthly extension and then multiplying that by the remaining months of warranty provided to the class by the Cardenas negotiations. (Id.) By this method, they determined that the total cost of the warranty extensions, if they had been purchased via extended service contract, would be $15,905,818.80. (Id.)

The requested fee, $625,000, was a number reached by the parties after participating in a mediation

overseen by a retired Texas judge. That number is less than counsel's lodestar amount (including expenses), and represents roughly 8.8 % of the estimated value of this settlement. The Court therefore concludes, in light of the above factors, that such a figure is a reasonable fee for legal services and related costs in this case.[3]

V. CONCLUSION

For the reasons stated herein, the Court certifies the class, grants final approval to the proposed class action settlement, and awards attorney's fees of $625,000 to class counsel.

1. The Meserole Plaintiffs, in their objection to this Court, contend that the settlement was collusive, and cite two cases to support their contention. (Opposition of Paul Meserole, et al., to Proposed Class Action Settlement and Request for Attorneys' Fees ("Opp."), 3-6.) However, both cases relied upon by Plaintiff Meserole et al. are inapposite. In the first, Reynolds v. Beneficial National Bank, the Seventh Circuit concluded that the settlement process was likely collusive where three lawyers, none of whom had pending suits or even clients, lunched with defense counsel discussed settlement and apparently made a tentative agreement as to the monetary value of such a settlement, before "buying" a client from another lawyer, bringing suit against Defendants, and settling for the agreed upon figure. 288 F.3d 277 (7th Cir. 2002). None of those facts -- or any other facts suggesting a "reverse auction" or other collusion -- is present here. In the second case relied upon by the objectors, Figueroa v. Sharper Image Corp., the settlement was opposed by the Attorneys General of thirty-six states, based in great part on their concern that the "coupon settlement" would not provide meaningful compensation to class members. 517 F. Supp. 2d 1292, 1301-02 (S.D. Fla. 2007). The Court there concluded that the counsel or plaintiffs were at a substantial disadvantage during settlement negotiations, as evidenced by how far the substantive terms of the settlement differed from the plaintiffs' proposed terms, and that this tainted the entire settlement negotiations. Id. At 1321-23. Here, the settlement negotiations reveal no such substantial weakness on the part of Plaintiff's counsel. Rather, it appears that Plaintiff's counsel used the framework of the SXRD I settlement as a foundation and suggested additional terms, after consulting with various experts, that would provide more relief to class members, and that these terms were accepted by Sony. (Apr. 23 Tr. 12, 16.)

2. Sony has mailed notice of the fairness hearing to over 50,000 class members who registered their purchases with Sony, of which over 44,000 were successfully delivered. (Letter to the Court from Sony, Aug. 10, 2010.) Sony has also set up a website with notice of the Settlement, which had had 17,637 unique visitors, as of August 1, 2010. (Id.) Additionally, Sony published notice of the settlement in the Wall Street Journal and USA Today. There are only eighty-three opt-outs, of whom thirty-five are California residents who may be members of the class in the action being brought in California state courts. Only twenty objections have been filed, of which thirteen are part of the Meserole group, whose counsel are Plaintiffs' counsel in the California state court action. (See Opp.)

3. The Court notes that, in connection with earlier motions, lawyers for Sony represented to the Court that they had engaged in extensive settlement discussions with counsel for the Meserole Plaintiffs in November 2008, and that they were able to agree on all material terms to a proposed settlement with less benefit to class members, but did not reach a settlement because the attorney's fees requested by counsel for the Meserole Plaintiffs were "so high that no final settlement was possible." (Defendants' Memorandum of Law in Support of Motion for Preliminary Approval of

Settlement, 2; Purcell Declaration in Support of Motion for Preliminary Approval of Settlement.) Moreover, the Court notes that in the SXRD I litigation, it approved an award of attorney's fees of $1.6 million. In re Sony SXRD Rear Projection Television Class Action Litigation, 2008 WL 1956267, at *15-16 (S.D.N.Y. May 1, 2008). Class counsel had submitted a lodestar amount of $1,279,405.00, and requested a multiplier of 1.21. Id.