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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MAURICE SILBERSTEIN, Individually,
On Behalf Of All Others Similarly Situated, and
On Behalf Of The General Public,

Plaintiffs,

vs.

PIONEER NORTH AMERICA, INC., a
Delaware corporation; PIONEER
ELECTRONICS (USA) INC., a Delaware
corporation; and DOES 1 through 100 inclusive,

Defendants.

Case No. BC320169

CLASS ACTION

~~PROPOSED~~ ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND DISMISSING
ACTION IN ITS ENTIRETY WITH
PREJUDICE

Date: August 17, 2005
Time: 8:30 a.m.
Dept: 39

ORIGINAL FILED
AUG 22 2005
LOS ANGELES
SUPERIOR COURT

The plaintiff Class and individual Plaintiff Maurice Silberstein ("Plaintiffs") and Defendants Pioneer Electronics (USA) Inc. and Pioneer North America, Inc. (collectively, "Pioneer") entered into an agreement to settle by stipulated dismissal and judgment the class action referenced above (the "Amended Settlement Agreement"). The Amended Settlement Agreement provides that Plaintiff Silberstein and each Class Member will receive benefits as follows:

1 Class Members who purchased a Pioneer DVR-810H-S and who have not opted out of the
2 class and timely submit valid claims are entitled to settlement vouchers redeemable for a cash
3 rebate from Pioneer on such Class Members' purchases of Pioneer home electronics products after
4 June 1, 2005, as follows:

- 5 (a) Purchases of Pioneer home electronics products with a minimum \$200
6 purchase price (excluding tax and delivery): \$25 cash rebate;
- 7 (b) Purchases of Pioneer home electronics products with a minimum \$400
8 purchase price (excluding tax and delivery): \$50 cash rebate;
- 9 (c) Purchases of Pioneer home electronics products with a minimum \$800
10 purchase price (excluding tax and delivery): \$100 cash rebate; and
- 11 (d) Purchases of Pioneer home electronics products with a minimum \$2,500
12 purchase price (excluding tax and delivery): \$250 cash rebate.

13 Class Members who purchased a Pioneer Elite DVR-57H and who have not opted out of
14 the class and timely submit valid claims are entitled to settlement vouchers redeemable for a cash
15 rebate from Pioneer on such Class Members' purchases of Pioneer home electronics products after
16 June 1, 2005, as follows:

- 17 (a) Purchases of Pioneer home electronics products with a minimum \$200
18 purchase price (excluding tax and delivery): \$50 cash rebate;
- 19 (b) Purchases of Pioneer home electronics products with a minimum \$400
20 purchase price (excluding tax and delivery): \$75 cash rebate;
- 21 (c) Purchases of Pioneer home electronics products with a minimum \$800
22 purchase price (excluding tax and delivery): \$150 cash rebate; and
- 23 (d) Purchases of Pioneer home electronics products with a minimum \$2,500
24 purchase price (excluding tax and delivery): \$350 cash rebate.

25 Pioneer agreed to pay the costs of notice to the Class as well as the administrative costs of
26 the claim and redemption process, and the Amended Settlement Agreement also provides that
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1 Pioneer will pay Class Counsel's Attorneys' Fees, as may be awarded by the Court, up to
2 \$425,000.00.

3 On June 1, 2005, the parties' motion for Preliminary Approval of Class Settlement came
4 on for hearing. After reviewing the Settlement Agreement and related documents, and considering
5 the oral argument of counsel at the hearing, the Court granted preliminary approval of the
6 Settlement Agreement, conditionally approved the proposed nationwide settlement class and
7 approved the proposed form of notice and the notice plan. A formal order to that effect was filed
8 on June 6, 2005. The Amended Settlement Agreement differs substantively from the original
9 Settlement Agreement preliminarily approved by the Court only in adding an additional carve-out
10 to the release given on behalf of the class and therefore has no potential adverse effect on any
11 Class Member. On June 1, 2005, the Court also set a Final Fairness and Approval Hearing for
12 August 5, 2005. The Court further ordered that any Class Member wishing to object to the
13 approval of the Settlement Agreement inform the Court and the parties in writing of his or her
14 intent to do so, and to file such objection in writing before the date of the Final Fairness and
15 Approval Hearing.

16 In compliance with the Court's Order, a Class Notice of Settlement and a Claim Form
17 were sent to the most recent known address of each known member of the class by first class mail
18 and/or electronic mail. In addition, members of the class were directed to Pioneer's website by a
19 message sent via the TiVo network to current subscribers who had a Pioneer DVR-810H-S or a
20 Pioneer Elite DVR-57H connected to the TiVo service. Pioneer's website contained a link from
21 which a copy of the Notice and Claim Form could be downloaded and printed. The notice process
22 was timely completed.

23 On August 5 and 17, 2005, the Court held the Final Fairness and Approval Hearing. There
24 were two (2) objections submitted to counsel for the parties and forwarded to the Court by Class
25 Counsel. One objection was solely to the requirement that a Class Member must submit an
26 original sales receipt in order to have a valid claim. After consideration of the objection and the
27 argument of counsel, the Court decided that the settlement should require Pioneer to accept a copy
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1 of a sales receipt or store invoice showing the retailer, the product sold and the date and amount of
2 the sale in lieu of the original sales receipt as sufficient proof of purchase if no other claim with
3 respect to the same purchase is submitted. The second objection was submitted by an individual
4 who also elected to exclude himself from the settlement and expressly stated his desire to retain
5 his legal rights. Having done so, the Court finds that the objector lacks standing to object to the
6 settlement and by electing not to participate in the settlement waived any purported objection.

7 The Court granted the parties' Motion for Final Approval of the Class Action Settlement
8 and Class Counsel's Application for Attorneys' Fees. The Court further specifically found that the
9 Amended Settlement Agreement was the product of serious, informed, non-collusive negotiations
10 conducted at arms' length by the parties. In granting final approval of the Amended Settlement
11 Agreement, the Court considered the estimated approximation of the Class Members' total
12 recovery, Pioneer's proportionate potential liability, the amounts and kinds of benefits available to
13 the class in settlement, and the fact that a settling party should pay less in settlement than as a
14 result of a finding of liability at trial. Additionally, the Court found that the terms of the Amended
15 Settlement Agreement have no obvious deficiencies and do not improperly grant preferential
16 treatment to any individual Class Member. Accordingly, the Court finds that the Amended
17 Settlement Agreement is in good faith, pursuant to section 877.6 of the California Code of Civil
18 Procedure.

19 Finally, the Court held that, pursuant to the provisions of section 382 of the California
20 Code of Civil Procedure and Federal Rule of Civil Procedure 23, as approved for use by the
21 California Supreme Court in *Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 821, the terms of the
22 Amended Settlement Agreement are fair, reasonable and adequate.

23 Based on the foregoing, and having duly considered all of the submissions and
24 arguments presented with respect to the negotiation, terms and conditions of the Amended
25 Settlement Agreement, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

26 1. The Court hereby certifies a nationwide settlement class consisting of all
27 persons in the United States who, prior to March 31, 2005, purchased or acquired either (a) a
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1 Pioneer digital video recorder model no. DVR-810H-S (with TiVo) or (b) a Pioneer Elite digital
2 video recorder model no. DVR-57H (with TiVo) (collectively "CHALLENGED DVR
3 MODELS") who have not opted out of the class in accordance with Paragraph 7 of the Court's
4 Order Granting Conditional Certification Of Nationwide Settlement Class, Preliminary Approval
5 Of Proposed Settlement And Approval Of Class Notice entered on June 6, 2005.

6 2. The notification provided for and given to Class Members constitutes the best
7 notice practicable under the circumstances and is in full compliance with the laws of the State of
8 California, the Federal Rules of Civil Procedure, to the extent applicable, the United States
9 Constitution and due process. The notification given to Class Members fully and accurately
10 informed Class Members of all material elements of the proposed Amended Settlement Agreement
11 and of each Class Member's right and opportunity to object thereto or to comment thereon. A full
12 opportunity was afforded each Class Member to object and to participate in the Final Approval
13 and Fairness Hearing, and each Class Member or other person wishing to be heard was heard.

14 3. The Court finds the Amended Settlement Agreement to be fair, reasonable,
15 adequate and in the best interests of the Class Members. Accordingly, the Court hereby grants
16 final approval to the Amended Settlement Agreement, and hereby directs that the terms and
17 conditions of the Amended Settlement Agreement be effected promptly.

18 4. The Claim Form attached to the Amended Settlement Agreement is approved
19 as the Claim Form to be used in administering the Amended Settlement Agreement.

20 5. With the final approval of the Amended Settlement Agreement, it is hereby
21 ordered that any and all claims, actions or causes of action that were alleged against Pioneer or
22 arose from or related to any of the facts, transactions, events, occurrences, acts, disclosures,
23 statements, omissions or failures to act alleged, or that could have been alleged, in this action are
24 hereby dismissed in their entirety with prejudice as against all Class Members who did not
25 effectively and irrevocably opt out of the class; provided, however, that nothing in this order
26 releases any claim relating to the incompatibility of any Pioneer DVD player with the DVD
27 Forum's DVD Video Specifications, their ability to properly play pre-recorded read-only DVD
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1 Video discs authored in accordance with these Specifications, or any representation or omission of
2 fact relating thereto, which have been heretofore asserted in *Olmstead v. Pioneer Electronics*
3 *(USA) Inc.* (Los Angeles Superior Court Case No. BC 257222), *Messick v. Pioneer Electronics*
4 *(USA) Inc.* (Los Angeles Superior Court Case No. BC 323499), *Eusini v. Pioneer Electronics*
5 *(USA) Inc.* (New York Supreme Court, Nassau County Index No. 4526/04), *Freed v. Pioneer*
6 *Electronics (USA) Inc.* (New Jersey Superior Court, Middlesex County Dkt. No. MID-L-2714-04),
7 *Sidella v. Pioneer Electronics (USA) Inc.* (Florida Circuit Court for the Eleventh Circuit, Miami-
8 Dade County Case No. 04-12071 CA 03) or *Spencer v. Pioneer Electronics (USA) Inc.* (Texas
9 District Court of Travis County, 200th Judicial Circuit Case No. GN 403865), or any claim based
10 on the same allegations that may be hereafter asserted elsewhere; and provided further, however,
11 that Class Members will retain whatever right, if any, they may have in accordance with, but
12 subject to all time and other limitations in, Pioneer's written limited warranty to submit a
13 CHALLENGED DVR MODEL for repair or replacement, at Pioneer's option, if it fails to
14 function under normal use due to a manufacturing defect.

15 6. Counsel representing the Plaintiff has requested the amount of \$425,000.00
16 as part of the settlement agreement.

17 The Court has reviewed the itemized bills presented by counsel and the
18 accompanying Declarations and determined the following: (1) the California Appellate Court has
19 ruled that the lodestar (or touchstone) is produced by multiplying the number of hours reasonably
20 expended by counsel by a reasonable hourly rate. Part of this request includes fees for associate
21 counsel, Mr. Herzog who attendeed some meetings and reviewed pleadings in this matter. For the
22 purpose of this Court's analysis, the information submitted did not support the reasonableness of
23 his rate or hours expended. The Court has, therefore reduced his portion of the requested fees of
24 \$7,200. (See *Thayer v. Wells Fargo Bank* (2001) 92 Cal. App. 4th 819, 833). (2) With regard to
25 Daniels, Fine, Israel & Schonbuch, LLP fee request, they submitted detailed time records for the
26 Court of review. In reviewing the time records, the Court has determined to reduce, slightly the
27 lodestar amount of fees due a few questionable entries. The lodestar figure has been reduced by
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1 the amount of \$9,290.00 to a sum of \$124,735.00 for the unenhanced lodestar amount (plus Mr.
2 Herzog's fees of \$7,200 for a total of \$131,935.).

3 Counsel have further suggested that the Court should enhance the lodestar amount
4 by a factor of 2.86 in order to achieve the negotiated attorney's fees figure. Given the reduction
5 by the Court in the lodestar amount, in order to obtain the requested fees the Court would have to
6 apply a factor of 3.22. The Court believes under this approach and in keeping with the analysis
7 under the *Ramos* case, the factor of 3.22 is too high. The factor should be diminished somewhat
8 because the Court finds that under the circumstances of this case (1) the novelty and difficulty of
9 the questions involved and the skill displayed in presented them was minimal; (2) the extend to
10 which the nature of the litigation precluded other employment by the attorney does not appear to
11 be a substantial factor; (3) the contingent nature of the fee award, based on the uncertainty of
12 prevailing on the merits and of establishing eligibility for the award is applicable but of little
13 effect. *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal. App. 4th 615.

14 Counsel has also suggested an analysis under the percentage of recovery method
15 for the Court's analysis. Because of the uncertainty of the extent of the class actually redeeming
16 the coupons and at what percentage, the Court has chosen to adopt the reasonably applied lodestar
17 method in its calculation of attorney's fees.

18 The Court is adopting the factor of 2.86 that counsel suggested to apply to the
19 lodestar figure and thereby awards attorney's fees to class counsel in the sum of \$377,334.10.

20 7. Without affecting the finality of this order, this Court shall retain exclusive
21 and continuing jurisdiction over this action and the parties, including all Class Members, for
22 purposes of resolving any dispute arising under or relating to the Amended Settlement Agreement,
23 any claim asserted thereunder and any claim to which the Amended Settlement Agreement
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provides a defense and for purposes of supervising, administering, implementing, enforcing and interpreting the Amended Settlement Agreement and the claims process established therein.

IT IS SO ORDERED.

DATE: August 22 2005

VICTOR H. PERSON, JUDGE

VICTOR PERSON
JUDGE OF THE SUPERIOR COURT