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FILED
Superior Court of California
County of Los Angeles
12/20/2023
David W. Slayton, Executive Officer / Clerk of Court
By: I. Arellanes Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JEFFREY KOENIG on Behalf of himself
and All Others Similarly Situated,

 Plaintiffs,

 v.

VIZIO, Inc.,

 Defendant.

Case No.: BC702266
Hon., Kenneth R. Freeman, Dept. 14

**~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

DATE: NOVEMBER 30, 2023
TIME: 3:00 PM
DEPT: SS 014

This matter came before the Court for hearing on Plaintiff’s unopposed Motion for Preliminary Approval of Class Action Settlement. The Court, having considered the papers submitted in support of the Motion, **HEREBY ORDERS THE FOLLOWING:**

1. The Court grants preliminary approval of the Settlement based upon the terms set forth in the Class Action Settlement Agreement (“Settlement Agreement”). Capitalized terms not otherwise defined in this Order shall have the definitions set forth in the Settlement Agreement.
2. The Court grants provisional certification of the Settlement Class pursuant to Code of Civil Procedure § 382 and California Rules of Court, Rule 3.769. On August 4, 2020, the Court issued its ruling granting class certification of the Class Representative’s claims against

1 Defendant. (See Court’s Ruling and Order Re: Plaintiff’s Motion for Class Certification and
2 Applications to Seal (August 4, 2020) [hereinafter “Certification Order”].) For settlement
3 purposes only, the Court provisionally certifies the following Settlement Class:

4 all individuals who purchased a VIZIO television in California in the Class Period
5 that was advertised as having a “120Hz Effective Refresh Rate” or “240Hz
6 Effective Refresh Rate.

7 This definition of the Settlement Class is comprised of the same individuals in the class
8 the Court previously certified, and this definition does not change or undermine the
9 Court’s analysis and conclusions in the Certification Order. The Class Period is from
10 April 30, 2014, through Final Judgment. Excluded from the Settlement Class are all
11 persons who: (i) validly opted out pursuant to the Court-approved notice parties provided
12 following the Court’s Certification Order; (ii) validly opt out of the Settlement in a timely
13 manner as provided in the Settlement Agreement; (iii) governmental entities; (iv) counsel
14 of record (and their respective law firms) for the Parties; (v) Defendant and any of its
15 parents, affiliates, subsidiaries, and all its respective employees, officers, and directors;
16 (vi) the presiding judge in the Action or judicial officer presiding over the matter, and all
17 of their immediate families and judicial staff; and (vii) any natural person or entity that
18 entered into a release with Defendant prior to the Effective Date concerning the
19 Televisions.

20 3. The Court finds that the requirements for provisional certification of the
21 Settlement Class are met for the same reasons that the Court already set forth when granting
22 certification. Specifically, (a) joinder of all two million plus Settlement Class Members in a single
23 proceedings would be impracticable, if not impossible, because of their numbers and dispersion;
24 (b) the Settlement Class is defined by objective characteristics and common transactions and is
25 therefore ascertainable; (c) the claims being settled are the same as those the Court already
26 certified and, thus, they raise questions of law and fact common to the Settlement Class; (d) the
27 claims asserted by Plaintiff are typical of the claims of the Settlement Class that they seek to
28 represent for settlement purposes; (e) Plaintiff has fairly and adequately represented the interests

1 of the Settlement Class and will continue to do so; (f) Plaintiff and the Settlement Class are
2 represented by qualified, reputable counsel who are experienced in prosecuting class actions,
3 including those involving the practices alleged in this action; and (g) final relief is appropriate to
4 the Settlement Class as a whole. (Certification Order at pp. 37-64.)

5 4. The Court appoints Plaintiff Jeffrey Koenig as Class Representative and Milberg
6 Coleman Bryson Phillips Grossman, PLLC, Crueger Dickinson LLC, Hudock Law Group S.C,
7 and Nelson & Fraenkel LLP as Settlement Class Counsel.

8 5. The Court finds on a preliminary basis that the Settlement Agreement, which is
9 hereby incorporated in full by reference as part of this Order is within the range of reasonableness
10 of a settlement that could ultimately be given final approval. A trial court’s preliminary approval
11 of a class action settlement requires “[a determination] that ‘there is, in effect, ‘probable cause’ to
12 submit the proposal to members of the class and to hold a full-scale hearing on its fairness.’”

13 (*State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 485 [quoting Manual for
14 Complex Litigation (Second), § 1.46].) The Court need only “scrutinize the proposed settlement
15 agreement to the extent necessary to reach a reasoned judgment that the agreement is not the
16 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
17 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Wershba v.*
18 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 [internal quotation marks omitted].)

19 Further, a “‘presumption of fairness exists where: (1) the settlement is reached through arm’s-
20 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
21 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
22 objectors is small.’ [Citation]” (*Ibid.* [quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
23 1794, 1802].)

24 6. The presumption of fairness applies here. The first three elements are clearly
25 satisfied. The parties reached the settlement only after trying to resolve the case with the
26 assistance of two different highly experienced mediators skilled in resolving complex class action
27 litigation and only after nearly five years of intensive discovery, investigation, and motion
28 practice. No evidence of collusion exists. Moreover, counsel for both Plaintiff and Defendant are

1 experienced in class action litigation and claims involving false advertising at issue here. The fact
2 that the case settled on the eve of trial and at such an advanced stage of the litigation, when the
3 parties had a clear view of the merits and potential risks, further weighs in favor of preliminary
4 approval. (*Chun-Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F. Supp. 2d 848, 851–852
5 [“The parties have engaged in several years of litigation, including depositions, substantial
6 research, an interlocutory appeal and several motions. By the time the settlement was reached,
7 therefore, the litigation had proceeded to a point at which both plaintiffs and defendants ha[d] a
8 clear view of the strengths and weaknesses of their cases.”] [citations omitted].) The fourth
9 element—the percentage of objections—cannot be evaluated until final approval after Settlement
10 Class Members receive notice.

11 7. The Court finds that the Settlement Agreement is fair, adequate, and reasonable
12 and justifies authorizing notice to Settlement Class Members and setting a final approval hearing.
13 (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93-94; *Kullar v. Foot Locker Retail, Inc.*
14 (2008) 168 Cal.App.4th 116, 133; *Dunk, supra*, 48 Cal.App.4th at p. 1807). Preliminary approval
15 of the class action settlement is also appropriate because the Court finds on a preliminary basis
16 that the relief outlined in the Settlement Agreement—injunctive relief regarding the advertising at
17 issue; enhanced service and a limited warranty for all Settlement Class Members; and the
18 opportunity for Settlement Class Members to obtain additional monetary relief in line with what
19 they could have obtained at trial—is fair, adequate, and well within the range of reasonableness.

20 8. The Court finds that the form and content of the proposed Class Notice and Claim
21 Form, as well as the distribution method provided for in the Settlement Agreement, are
22 reasonable and designed to fully satisfy due process and the requirements of the California Rules
23 of Court. The Settlement Agreement’s proposed notice plan is designed to reach as many
24 Settlement Class Members as possible and mirrors the notice plan used after class certification.
25 The Court accordingly authorizes and approves the proposed form, method, and timing of giving
26 notice to the Settlement Class of this action and the proposed Settlement as set forth in the
27 Settlement Agreement.

1 9. The proposed deadlines are also reasonable. Class members will have 60 days after
2 Notice to object or opt out from the Settlement and 90 days after Notice to submit a claim.

3 10. The Court approves Plaintiffs' attorneys' fees and costs award of \$9,975,000,
4 subject to final approval of the settlement.

5 11. The Court approves the Plaintiff enhancement fee of \$25,000, subject to final
6 approval of the settlement.

7 12. The Court appoints A.B. Data Ltd. as the Settlement Administrator. The
8 Settlement Administrator shall, in addition to other notice and claim administration efforts,
9 provide email notifications to those claimants for whom it has email addresses of any changes to
10 the date, time, and/or location of the Final Approval hearing.

11 13. The Court approves Public Counsel as the *cy pres*, to the extent there are any
12 unclaimed Settlement Funds. Funds distributed to the *cy pres* shall not include any uncashed
13 settlement awards. Unclaimed Funds are to be provided to the *cy pres*, and uncashed Settlement
14 Awards are to escheat to the State of California.

15 14. The Court sets the Final Approval Hearing for ~~DECEMBER~~, and orders the
16 implementation of the following schedule for further proceedings:

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<u>Event</u>	<u>Deadline</u>
Notice Deadline ¹	No later than 21 days after Preliminary Approval (December 21, 2023)
Exclusion Deadline	60 days after Notice Deadline (February 19, 2024)
Written Objections	60 days after Notice Deadline (February 19, 2024)
Claim Deadline	90 days after Notice Deadline (March 20, 2024)
Motion for Final Approval	30 days prior to date of Final Approval Hearing
Plaintiff's and Defendant's Responses to Objections	5 days prior to date of Final Approval Hearing

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28 ¹ The specific dates are calculated from the November 30, 2023 preliminary approval hearing.

1 The Final Approval Hearing and related prior deadlines set forth above may, from time to
2 time, and without further notice to the Settlement Class Members (except those who have filed
3 timely and valid objections) be continued or adjourned by order of the Court.

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5 **IT IS SO ORDERED.**

6 Dated: Ö^&{ à^!Á€, 2023




Honorable Kenneth R. Freeman
Judge of the Superior Court
Kenneth R. Freeman / Judge

SERVICE LIST
KOENIG v. VIZIO, INC.
Case No. BC 702266

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