

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Scott Biddick, Individually and on Behalf	:	
of All Others Similarly Situated,	:	Case No. 1:20-cv-08091
	:	
Plaintiff,	:	Judge Vernon S. Broderick
	:	
v.	:	
	:	
Lumondi, Inc.,	:	
	:	
Defendant.	:	

PROPOSED ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, PRELIMINARILY CERTIFYING SETTLEMENT CLASS, AND APPROVING NOTICE PLAN

This case is before the Court on Plaintiff Scott Biddick’s Motion for Preliminary Approval of Class Action Settlement, Preliminary Certification of Settlement Class, and Approval of Notice Plan (the “Motion”). The Court, having considered the Motion, the supporting brief, the Parties’ Settlement Agreement and Release dated November __, 2021 (the “Settlement Agreement”¹); the Parties’ submissions filed on November 22, 2021; the proposed Notices (attached as Exhibit 1 to the Class Action Settlement Agreement and Release); the declaration from the Notice Administrator; the pleadings and other papers filed in this Action; and the statements of counsel and the Parties, and for good cause shown,

HEREBY ORDERS as follows:

Preliminary Approval of Settlement Agreement

1. Unless otherwise defined herein, all terms that are capitalized herein shall have the meanings ascribed to those terms in the Settlement Agreement.

¹ The Parties shall file a fully executed version of the revised Settlement Agreement and Release consistent with their supplemental submissions as soon as practicable.

2. This Court has jurisdiction over the Action, Plaintiff, all Settlement Class Members, Defendant Lumondi, Inc. (“Defendant” or “Lumondi”), and any party to any agreement that is part of or related to the Settlement.

3. The Court finds that the proposed Settlement set forth in the Settlement Agreement is sufficiently fair, reasonable and adequate such that it is hereby preliminarily approved and notice of the settlement should be provided to the Settlement Class Members and that a hearing should be held as set forth below.

Class Certification

4. Solely for purposes of the Settlement, the Court conditionally certifies the following class pursuant to Fed. R. Civ. P. 23(a) and (b)(3) (“Settlement Class”):

all consumers nationwide who purchased (or received as a gift) one or more Luminox Watch Series 3000/3900, 3050/3950, 3120, 3150, 3160, 3180, 3190, 3250, 3500, 3510, 3580, 3590, 3600, 3610, 3800, 3810, 7050, 7060, 7200, 7250 that contained an original Lumondi Warranty Card (the “Original Warranty”) at the time of purchase on or after June 1, 2018 through the date of preliminary approval by the Court.

5. Excluded from the Settlement Class are: Defendant and its officers, directors, and employees; Class Counsel and their partners, associates, lawyers, and employees; the judicial officers and their immediate family members and associated Court staff assigned to this case; and Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

6. Subject to final approval of the Settlement, the Court finds and concludes for settlement purposes only that the prerequisites to a class action, set forth in Fed. R. Civ. P. 23(a) and (b), are satisfied in that:

(a) the Settlement Class is so numerous that joinder of all members is impracticable;

- (b) there are questions of law or fact common to the Settlement Class;
- (c) Plaintiff and Class Counsel (as defined below) fairly and adequately represent the Settlement Class;
- (d) the claims of Plaintiff are typical of those of Settlement Class Members;
- (e) common issues predominate over any individual issues affecting the members of the Settlement Class;
- (f) Plaintiff fairly and adequately protects and represents the interests of all members of the Settlement Class, and Plaintiff's interests are aligned with the interests of all other members of the Settlement Class; and
- (g) settlement of the Action on a class-action basis is superior to other means of resolving this matter.

7. The Court appoints Jeffrey S. Goldenberg of Goldenberg Schneider, L.P.A., Todd S. Garber of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP, Sean K. Collins of Law Officers of Sean K. Collins, and Ex Kano S. Sams II of Glancy Prongay & Murray LLP as Settlement Class Counsel, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are fully satisfied by this appointment.

8. The Court hereby appoints Plaintiff Scott Biddick as the Class Representatives for settlement purposes only on behalf of the Settlement Class.

Notice to Settlement Class Members

9. Pursuant to Federal Rule of Civil Procedure 23(e), the Court approves the proposed Notices, and finds that the dissemination of the Notices substantially in the manner and form set forth in the Settlement Agreement ("Notice Plan") complies fully with the requirements of the Federal Rule of Civil Procedure 23 and due process of law and is the best notice practicable under

the circumstances.

10. The Court further approves the claim process for the Extended Limited Warranty Benefit and Replacement Watch Benefit, which shall utilize ReverseLogix software as described by Defendant in the Declaration of Ronnie Bernheim previously filed with the Court in support of preliminary approval of this Settlement. The process for Class Members to submit a claim for the Extended Limited Warranty Benefit and the Replacement Watch Benefit utilizing ReverseLogix software shall remain available and operational at least 33 months after the Effective Date.

11. The notice procedures described in the Notice Plan described in the declaration from the Notice Administrator are hereby found to be the best means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement Agreement and the Final Approval Hearing to all persons affected by and/or entitled to participate in the Settlement Agreement, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process of law.

12. The Court hereby orders that, within ten days of the entry of the Preliminary Approval Order, Defendant will provide to Class Counsel contact information for the top five (5) retail sellers of Luminox Watches for 2018, 2019, 2020, and 2021. Class Counsel and/or Defendant are authorized to issue subpoenas, as necessary, to these retailers to obtain name, address, and email information for the sole purpose of issuing class notice of this Settlement. All information obtained through these subpoenas must remain confidential and shall be subject to strict access restrictions and may only be provided to Defendant, Class Counsel, and to the Notice Administrator. Any information collected from these third parties pursuant to this paragraph shall be destroyed no later than five (5) days following the issuance of notice to such Class Members. The Notice Administrator shall certify to the Court prior to the Fairness Hearing that all such

information received pursuant to this paragraph has been destroyed. Retail sellers of Luminox Watches who receive a subpoena pursuant to this paragraph may choose to send or email the Class Notice directly to its customers rather than provide the contact information to the Notice Administrator, Defendant, or Class Counsel and may seek reimbursement from the Notice Administrator for the reasonable cost of postage to do so.

13. Within sixty days of the entry of this Order granting preliminary approval of the Settlement, Defendant will provide the Notice Administrator with electronic data containing the contact information Defendant has for Class Members as well as the contact information that Saltzman's Watches has for Class Members.

14. Pursuant to Federal Rule of Civil Procedure 23(c)(2)(B), the Court "must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort."

15. No later than sixty days following the Court's entry of the Preliminary Approval Order, the Notice Administrator shall begin sending copies of the Settlement Notice to every Class Member who reasonably can be identified. To the extent practicable, the Notice Administrator shall send or cause to be sent a copy of the Settlement Notice by electronic mail, or another electronic means of personal contact, to every Class Member whose email address or other electronic contact information is known or readily identifiable. If the Notice Administrator can identify updated email addresses or other electronic contact information for Class Members by performing an email address lookup or similar exercise, the Notice Administrator shall do so. The Notice Administrator also shall send or cause to be sent a copy of the Settlement Notice by U.S. mail to each Class Member for whom a mailing address is provided. The Notice Administrator will forward Settlement Notices that are returned by the U.S. Postal Service or electronically with

a forwarding address to the Class Member. For Settlement Notices returned as undeliverable, the Notice Administrator shall make reasonable effort to determine a proper electronic mail address, other electronic contact information, or mailing address, and re-send the Settlement Notice.

16. The Notices satisfy the requirements of due process and of Rule 23(e) of the Federal Rules of Civil Procedure and thus are approved for dissemination to the Settlement Class.

17. To facilitate the efficient administration of this Settlement, and to promote the provision of benefits pursuant to this Settlement, the Notice Administrator will establish a Settlement Website that enables or facilitates Class Members to read the Settlement Notice and FAQs and important case documents (e.g. Settlement Agreement, Order Granting Preliminary Approval); obtain updates on the status of the Settlement; and submit Extended Warranty Claims or Replacement Watch Claims. The Settlement website will be maintained for no less than 33 months following the Effective Date.

Responses by Settlement Class Members and the Scheduling of a Final Approval Hearing

18. Settlement Class Members may opt-out or object to the settlement up to sixty (60) days after the Notice Deadline (the “Opt-Out Deadline” and “Objection Deadline,” respectively).

19. Any member of the Settlement Class who wishes to be excluded (“opt out”) from the Settlement Class must send a written request (“Request for Exclusion”) to the Settlement Administrator postmarked on or before the Opt-Out Deadline. The Request for Exclusion must contain the name, company name (if applicable), address, email address, telephone number, and serial number(s) of the Settlement Class Member’s Watch(es), and a clear written statement as to the date of purchase of the Watch(es) and the retailer from which the Watch(es) were purchased. Each Settlement Class Member seeking exclusion from the Settlement must personally sign the Opt-Out Request. No Opt-Out Request may be signed electronically. No Settlement Class Member

may opt out by a request signed by an actual or purported agent or attorney acting on behalf of a group of Settlement Class Members. No Opt-Out Request may be made on behalf of a group of Settlement Class Members.

20. All Settlement Class Members who opt-out of the Settlement will not be eligible to receive any benefits under the Settlement, will not be bound by any further orders or judgments entered for or against the Settlement Class, and will preserve their ability to independently pursue any claims they may have against Defendant.

21. Any member of the Settlement Class who does not properly and timely opt-out of the Settlement shall, upon entry of the Order and Final Judgment, be bound by all the terms and provisions of the Settlement Agreement, whether or not such Settlement Class Member objected to the Settlement and whether or not such Settlement Class Member received consideration under the Settlement Agreement.

22. The Court adopts the following schedule for the remaining events in this case, which ensures that the appropriate state and federal officials are served with the notification required by the Class Action Fairness Act:

Event	Date
CAFA Notice required by 28 U.S.C. § 1715(b)	Within 10 days after the filing of this Motion
Defendant will provide Class Counsel contact information for top five retail sellers of Luminex Watches for 2018, 2019, 2020, and 2021	Within 10 days after Entry of Preliminary Approval Order
Defendant, working with Saltzman's Jewelers, to Provide Settlement Class List Containing Contact Information for Class Members	Within 60 days after Entry of Preliminary Approval Order
Notice Deadline – Date by which the issuance of notices shall be completed.	90 days after entry of Preliminary Approval Order

Compliance with CAFA Waiting Period under 28 U.S.C. § 1715(d)	90 days after the Appropriate Governmental Officials are Served with CAFA Notice
Deadline to file Plaintiffs' Motion for Attorneys' Fees, Litigation Costs and Expenses, and Service Award Payments	At least 21 days before the Opt-Out and Objection Deadlines
Deadline to file Plaintiffs' Motion for Final Approval of the Settlement Agreement	No later than fourteen (14) days prior to the Final Approval Hearing
Postmark Deadline for Request for Exclusion (Opt-Out) or Objections	60 days after the Notice Deadline
Deadline for Plaintiffs to File any Response to Objections or Supplement to Motion for Final Approval	No later than fourteen (14) days prior to the Final Approval Hearing
Deadline for Notice Administrator to File or Cause to be Filed, if Necessary, a Supplemental Declaration with the Court	At least seven (7) days prior to the Final Approval Hearing
Final Approval Hearing	June 2, 2022 at 3 am/pm Eastern

23. At the Final Approval Hearing, the Court will consider (a) the fairness, reasonableness, and adequacy of the proposed class Settlement and whether the Settlement should be granted final approval by the Court; (b) dismissal with prejudice of the Action; (c) entry of an order including the Release; (d) entry of the Final Approval Order; and (e) entry of final judgment in this Action. Class Counsel's application for award of attorney's fees and Litigation Costs and Expenses, and request for the Court to award a Service Award Payment to the named Plaintiffs, shall also be heard at the time of the hearing.

24. The date and time of the Final Approval Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class, other than that which may be posted by the Court. Should the Court adjourn the date for the Final Approval Hearing, that shall not alter the deadlines for mailing and issuing of notice, the Opt-Out deadline, or the deadlines for submissions of settlement objections, and notices of intention to appear at the Final Approval

Hearing unless those dates are explicitly changed by subsequent Order. The Court may also decide to hold the hearing via zoom or telephonically. Instructions on how to appear at the Final Approval Hearing will be posted on the Settlement Website. As referenced above, the Final Approval Hearing is scheduled to take place on June 2, 2022 at 3 am/pm Eastern.

25. Any person who does not elect to be excluded from the Settlement Class may, but need not, enter an appearance through their own attorney. Settlement Class Members that do not timely object or opt out and that do not have an attorney enter an appearance on their behalf will be represented by Class Counsel.

26. Any person who does not elect to be excluded from the Settlement Class may object to the proposed Settlement. Any Settlement Class Member may object to, among other things: (a) the proposed Settlement; (b) entry of Final Approval Order and the judgment approving the Settlement; (c) Class Counsel's application for attorneys' fees and Litigation Costs and Expenses, or (d) the Service Award Payment request, by serving a written objection upon Class Counsel; Defendant's counsel, and the Court.

27. The Notice shall explain the procedure for Settlement Class Members to object to the Settlement or Fee Application by submitting written objections to the Court no later than the Objection Deadline. A written objection must include (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) the identity of any attorneys representing the objector; (v) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; and (vi) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

28. Only Settlement Class Members that have filed and served valid and timely notices of objection shall be entitled to be heard at the Final Approval Hearing. Any Settlement Class Member who does not timely file and serve an objection in writing in accordance with the procedure set forth in the Notice and mandated in this Order shall be deemed to have waived any objection to (a) the Settlement Agreement; (b) the Release; (c) entry of Final Approval Order or any judgment; (d) Class Counsel's application for attorneys' fees and Litigation Costs and Expenses; and/or (e) the Service Award Payment requested for the Class Representative, whether by appeal, collateral attack, or otherwise.

29. Settlement Class Members need not appear at the hearing or take any other action to indicate their approval.

30. Upon entry of the Order and Final Judgment all members of the Settlement Class that have not personally and timely requested to be excluded from the Settlement Class will be enjoined from proceeding against Defendant with respect to all of the Released Claims.

31. The Notice Administrator shall prepare and send all notices that are required by the Class Action Fairness Act of 2005 ("CAFA") as specified in 28 U.S.C. § 1715. The Notice Administrator shall provide notice to Class Counsel and Defendant of compliance with the CAFA requirements within ten (10) days of providing notice to the appropriate government officials under CAFA.

Administration of the Settlement

32. The Court hereby appoints Kroll Settlement Administration to serve as the Notice Administrator. Responsibilities of the Notice Administrator shall include: (a) establishing a post office box for purposes of communicating with Settlement Class Members; (b) disseminating by email and U.S. Mail notice to the Settlement Class; (c) developing a web site to enable Settlement

Class Members to access documents and information about this Settlement; and (d) accepting and maintaining documents sent from Settlement Class Members relating to opt out and objections. Pursuant to the Settlement Agreement, the Notice Administrator and costs of administration shall be paid by Defendant.

33. In the event the Settlement Agreement and the proposed settlement are terminated in accordance with the applicable provisions of the Settlement Agreement, the Settlement Agreement, the proposed Settlement, and all related proceedings shall, except as expressly provided to the contrary in the Settlement Agreement, become null and void, shall have no further force and effect, and Settlement Class Members shall retain all of their current rights to assert any and all claims against Defendant and any other released party, and Defendant and any other released parties shall retain any and all of their current defenses and arguments thereto (including but not limited to arguments that the requirements of Fed. R. Civ. P. 23(a) and (b)(3) are not satisfied for purposes of continued litigation). The Action shall thereupon revert forthwith to its respective procedural and substantive status prior to the date of execution of the Settlement Agreement and shall proceed as if the Settlement Agreement and all other related orders and papers had not been executed.

34. Neither this Order nor the Settlement Agreement nor any other settlement-related document nor anything contained herein or therein or contemplated hereby or thereby nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or herein or in any other settlement-related document, shall constitute, be construed as or be deemed to be evidence of or an admission or concession by Defendant as to the validity of any claim that has been or could have been asserted against it or as to any liability by it as to any matter set forth in this Order, or as to the propriety of class certification for any purposes other than for purposes

of the current proposed settlement.

Dated: 11/30/2021

A handwritten signature in black ink that reads "Vernon Broderick". The signature is written in a cursive style with a large, stylized 'V' at the beginning.

HON. VERNON S. BRODERICK
UNITED STATES DISTRICT JUDGE