

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

REBECCA RYSEWYK, BRIAN VAN
VOOREN, and KATIE SMITH, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

SEARS HOLDINGS CORPORATION and
SEARS, ROEBUCK AND COMPANY,

Defendants.

Civil Action No.: 1:15-cv-4519-MSS

Judge Manish S. Shah

**FINAL ORDER AND JUDGMENT CERTIFYING THE CLASS, APPROVING THE
CLASS ACTION SETTLEMENT, AND
DISMISSING THE ACTION WITH PREJUDICE**

Upon considering Plaintiffs' Motion for Final Approval of Class Action Settlement and Certification of Settlement Class (Dkt. No. 208, the "Final Approval Motion"), seeking approval of the Proposed Settlement Agreement (or the "Proposed Settlement," on file with the Court as Exhibit A to Plaintiffs' Memorandum of Law in Support of Their Motion for Preliminary Approval of the Proposed Settlement and Related Matters (Dkt. No. 185), including the Revised and Updated Exhibit A to the CRLT Settlement Agreement (Dkt. 193-1)), and the memorandum, declarations and exhibits submitted in support of this motion, and on considering the record of these proceedings, the representations, argument, and recommendation of counsel, and the requirements of law at a hearing held on the 29th of January 2019,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The Court has jurisdiction over the subject matter and parties to this proceeding pursuant to 28 U.S.C. § 1332.

2. Venue is proper in this district.
3. The Court finds for settlement purposes only, that the Rule 23 factors are present and that certification of the proposed Class, as defined and set forth below, which was approved previously, is appropriate under Rule 23(a) and Rule 23(b)(3), in particular:

“Class” or “Settlement Class” means:

All individuals who between January 1, 2009 and December 31, 2015, purchased from Sears, Roebuck and Co. (“Sears”) in the United States certain new Craftsman® Riding Lawn Tractors for primarily personal use, the model numbers of which are attached as Exhibit A to the Settlement Agreement (hereinafter “CRLT”).¹

Excluded from the Settlement Class are (a) officers, directors, and employees of Sears; (b) insurers of members of the Settlement Class; (c) any entity purporting to be a subrogee of a member of the Settlement Class; (d) all suppliers, manufacturers, distributors, shippers, and third party issuers or providers of extended warranties or service contracts for CRLTs; (e) individuals who previously settled and released claims against Sears with respect to their CRLTs which fall within the definition of “Released Claims” in Section 1.31; (f) individuals other than the Settlement Class Representatives who, as of the date of the Settlement Agreement, have legal damage claims pending against Sears with respect to their CRLTs, and (g) the judge overseeing the proposed settlement and the judge’s immediate family.

4. The following are the “Released Claims,” “Released Claims of Named Plaintiffs” and

“Released Persons” as defined in the Settlement Agreement:

“Released Claims” means any and all known or unknown economic injury claims, demands, actions, suits, causes of action, damages whenever incurred whether compensatory or exemplary, liabilities of any nature or under any theory or statute whatsoever, including costs, expenses, penalties and attorneys’ fees, in law or equity, that any Settlement Class Member, whether or not they object to the settlement, ever had or now has, directly, representatively, derivatively or in any capacity, arising out of or in any way connected with the purchase, use and performance of a CRLT, including but not limited to, (i) all claims for out-of-pocket expense, diminution-in-value, benefit-of-the-bargain, cost-of-repair, cost-of-replacement, cost-of-maintenance, consequential damages, or premium price damages, arising out of the Settlement Class Member’s purchase or use of a CRLT, and (ii) the allegations contained in the Litigation. The Released Claims do not include any claims for property damage, personal injury or death or claims

¹ The Revised and Updated Exhibit A is at Dkt. 193-1.

derivative of such claims, nor does this Settlement Agreement revive any such claims.

“Released Claims of Named Plaintiffs” means any and all known or unknown claims, demands, actions, suits, causes of action, damages whenever incurred whether compensatory or exemplary, liabilities of any nature or under any theory or statute whatsoever, including costs, expenses, penalties and attorneys’ fees, in law or equity, that Plaintiffs Rebecca Rysewyk, Katie Smith, and Brian Van Vooren, and former Plaintiff Mary Rood, ever had or now has, directly, representatively, derivatively or in any capacity, arising out of or in any way connected with the purchase, use and performance of a CRLT, including but not limited to, (i) all claims for property damage, out-of-pocket expense, diminution-in-value, benefit-of-the-bargain, cost-of-repair, cost-of-replacement, cost-of-maintenance, economic loss or injury, consequential damages, or premium-price damages, arising out of the purchase or use of a CRLT, (ii) the allegations contained in the Litigation, and/or (iii) any claim for reimbursement under this Settlement. The Released Claims of Named Plaintiffs do not include any claims for personal injury or death or claims derivative of such claims, nor does this Settlement Agreement revive any such claims.

“Released Persons” means (a) Sears Holding Corporation, (b) Sears, Roebuck and Co., (c) Sears Home Products, Inc., (d) Husqvarna Consumer Outdoor Products N.A., Inc., (e) all manufacturers, distributors, suppliers, wholesalers, retailers, licensors or licensees, and/or any other Person who was in any way involved in or within the chain of distribution of CRLTs, including the chain of design, testing, manufacture, assembly, distribution, marketing, sale, transport, or servicing of CRLTs as well as any warranty service providers involved in servicing the CRLTs purchased or used by a Plaintiff or Settlement Class Member pursuant to a CRLT new product warranty issued by Sears, and (f) the respective past, present, and future parents, subsidiaries, affiliates, joint ventures, officers, directors, shareholders, agents, representatives, servants, employees, attorneys, predecessors and successors in interest, assigns, and insurers of the Persons described in the preceding clauses (a) through (e) above.

5. Unless otherwise defined in this Final Order and Judgment, capitalized terms shall have the meaning given them in the Proposed Settlement Agreement. The capitalized terms below shall have the following meanings:

“Settlement Class Member” means all Persons in the Settlement Class who do not exclude themselves from the Class by the Opt-Out Procedure as set forth in the Long Form Notice.

“CRLT” means certain new Craftsman® Riding Lawn Tractors sold by Sears, Roebuck and Co. from January 1, 2009 through December 31, 2015 in the United

States for primarily personal use, the model numbers of which are listed in Exhibit A to the Settlement Agreement.

“Opt-Out Procedure” shall mean the process for a Settlement Class Member to exercise his or her right to be excluded from the Settlement Class and this Settlement in accordance with Fed. R. Civ. P. 23(c)(2) and the procedures set forth in the Long Form Notice.

“Opt-Outs” shall mean those Settlement Class Members who have timely and properly exercised their right to exclude themselves from the Class pursuant to the Opt-Out Procedure, and therefore are no longer Settlement Class Members.

“Person” means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such individual’s or entity’s owners, members, partners, shareholders, spouse, heirs, predecessors, successors, representatives, and assignees.

“United States” means the United States of America including the fifty States of the United States, the District of Columbia, and the territories, possessions, and commonwealths of the United States.

6. Specifically, the Court finds for settlement purposes only that the Class described above satisfies the following factors of Rule 23(a) and Rule 23(b)(3):

- a. Numerosity: In this case, many thousands of individuals have asserted claims or have potential claims given the number of CRLTs purchased from 2009 through 2015. Thus, the Rule 23(a)(1) numerosity requirement has been met.
- b. Commonality: Plaintiffs’ claims are common in that they allege that CRLTs contain certain common allegedly defective parts in the fuel delivery system and that such alleged defects could lead to fuel leaks or loose fuel connections.
- c. Typicality: The proposed class representatives’ claims arise from the same alleged course of conduct and share the substantially same legal theory, as do the claims of the putative Class members. Furthermore, the proposed Class representatives will advance the interests of all class members. The individual class representatives allege various causes of action for recovery of alleged harms arising from the purchase and use of a CRLT, including Fuel Leaks. The proposed class representatives’ claims are typical of those of the proposed Class and satisfy Rule 23(a)(3).
- d. Adequacy: The proposed class representatives assert claims representative of the claims of the entire class. As such, even though the claims may not be identical to

every claim of every putative Class member, the proposed class representatives can adequately represent the putative Class.

The adequacy factor also considers Class Counsel. In this case, Class Counsel regularly engage in complex litigation similar to the present case and have dedicated substantial resources to the prosecution of this matter. The adequacy requirement is satisfied.

- e. Predominance: There is predominance. Common issues include: (a) whether CRLTs had defects that could lead to fuel leaks or loose fuel line connections, and (b) whether these alleged defects caused harm. The resolution of these questions is relevant to essential elements of every Class member's claims.
 - f. Superiority: A settlement class that will determine the issues common to all Class members and fix recovery for alleged injury is superior to thousands of trials that would risk disparate results for similarly situated people and entities.
7. The Court makes the above findings set forth in paragraphs 3 and 6 regarding certification of the Class only for the purposes of settlement.
8. The Court reconfirms the appointment of the Class Representatives.

Fairness and Adequacy of the Proposed Settlement.

9. A class action settlement should be approved so long as it is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2); *Wong v. Accretive Health, Inc.*, 773 F.3d 859 (7th Cir. 2014). The recent amendments to Rule 23(e)(2) require a court to consider several factors relevant to fairness, reasonableness, and adequacy, including: (1) the adequacy of class counsel and class representatives; (2) whether the proposed settlement was negotiated at arms' length; (3) the adequacy of the relief provided (considering the costs, risks, and delay of trial and/or appeal; the effectiveness of the proposed method of distributing relief, the terms of any proposed award of attorneys' fees, and any agreement required to be identified under Rule 23(e)(3)); and (4) whether class members are treated equitably relative to each other. *Id.* These considerations overlap with the factors articulated by the Seventh Circuit, which include: "(1) the strength of the case for plaintiffs on the merits,

balanced against the extent of the settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed.” *Wong*, 773 F.3d at 863; *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 U.S. Dist. LEXIS 210368, at *12 (S.D. Ill. Dec. 13, 2018) (the newly amended Rule 23 “considerations overlap with the factors previously articulated by the Seventh Circuit...”).

10. Following the Court’s evaluation of the enumerated factors referenced above as described below, the Court finds that the Proposed Settlement is fair, reasonable and adequate. In particular, the Court finds that:

Adequacy of Class Counsel and Class Representatives

This Court previously appointed the law firms of Berger Montague PC, Wexler Wallace LLP, and Greg Coleman Law PC as Class Counsel and Plaintiffs Rebecca Rysewyk, Katie Smith, and Brian Van Vooren as Class Representatives for the Settlement Class; finding that “Class Counsel are competent and capable of exercising their responsibilities, and that proposed Class Counsel and the Proposed Class Representatives have fairly and adequately represented the interests of the Settlement Class.” This remains true. The Class representatives have no conflicts of interest and have invested significant time and resources in this litigation. Class Counsel have extensive experience in prosecuting consumer class action claims and have litigated this case intensively and successfully for several years. Adequacy of representation is uncontested and favors approval.

Adequacy of the Relief Provided

The relief provided to Settlement Class Members is meaningful, equitable among class members, and fits the alleged problem. The free inspections and repairs for Settlement Class Members who observe upon their own inspection a Fuel Leak or Loose Fuel Line Connection provide meaningful and practical relief to the Settlement Class. Although Settlement Class Members who request that repairs be made at their homes will be charged \$35, that amount is a significant discount from the usual charge that Sears imposes on customers to make service calls (approximately \$65 to \$130). Settlement Class Members who bring their CRLTs to an authorized service technician for repairs incur no costs. The cash reimbursement of costs for prior repair work also has real

tangible value. Settlement Class Members who previously paid out-of-pocket for repairs for a Covered Condition on their CRLT may receive up to \$125 in reimbursement. These Settlement Class Members are outside of the CRLTs' express two-year limited warranty.

The parties have not identified, nor is the Court aware of, any agreement – other than the Settlement itself – that must now be considered pursuant to Rule 23(e)(3).

Strength of Plaintiffs' Case in Light of Settlement Offered

Plaintiffs face significant difficulties in proving their claims, including that the CRLTs contain any defects at all, and whether they sustained actual harm as a result of the alleged product defect. This difficulty, balanced against the relatively assured recovery under the Proposed Settlement, weighs in favor of the fairness and adequacy of the compromise. Plaintiffs' ability to prevail on the merits of this litigation, as in all contested matters, is uncertain. The Proposed Settlement, however, confers relatively assured and substantial benefits for Class Members' claims, including Inspection and Repair of their CRLT and/or claims for reimbursement of out-of-pocket repair costs incurred prior to the date of the settlement.

Assessment of Complexity

Plaintiffs' claims would require substantial evidence and expert testimony, including in engineering, to prove liability, causation, and damages. The Proposed Settlement and its Inspection and Repair request procedure and its reimbursement claims procedure simplifies what is required of Class Members to make a claim and obtain a recovery.

The Proposed Settlement offers relatively assured, prompt and fair compensation. The balance between the uncertainty of litigated claims and the assuredness of settled claims convinces the Court of the fairness and adequacy of the Proposed Settlement.

The Length and Expense of Further Litigation

The complexity, expense, and duration of further litigation weigh heavily in favor of the Proposed Settlement as well. There is no doubt that the time and expense of continuing the litigation would be substantial. Avoiding that unnecessary and unwarranted expenditure of resources and time would benefit all parties and the Court.

The Substance and Amount of Opposition to the Settlement

The Court finds that the few objections to the Proposed Settlement do not outweigh the substantial evidence of the fairness, adequacy, and reasonableness of the Proposed Settlement, and the Court hereby overrules all such objections. The opinions of class counsel, class representatives and absent members indicate the fairness and adequacy of the compromise.

Stage of Proceedings at which Settlement was Achieved

This factor focuses on whether the parties are in a position to assess the strength and weaknesses of their respective positions. Notably, the parties have engaged in extensive fact and expert discovery over the lengthy history of this case. Thus, the Court concludes that this factor militates in favor of finding the Proposed Settlement fair, reasonable and adequate.

Equitable Treatment of Class Members

The Court finds that the proposed Settlement treats class members equitably relative to each other.

11. The Court further finds that any indication or evidence of fraud or collusion in connection with this settlement is entirely absent. The facts and circumstances of the litigation as well as of the negotiations set forth in the submitted papers in support of the settlement demonstrate that there has been considerable arm's-length bargaining following extensive discovery and litigation. A proposed class action settlement is considered presumptively fair where, as here, there is no evidence of collusion and the parties, through capable counsel, have engaged in arm's-length negotiations. *See* Manual for Complex Litigation, Third, § 30.42 (West 1995) (“A ‘presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.’”).
12. Here, there is no evidence that the parties engaged in anything other than arm's-length negotiations through qualified counsel. Moreover, the Court also is satisfied that Class Counsel was sufficiently informed to vigorously advocate on the Class' behalf and did so. Therefore, the Court finds that the Proposed Settlement is presumptively fair, reasonably, and adequate.

13. Consequently, for all of the reasons stated above, the Court approves the Proposed Settlement dated as of July 20, 2018, together with all of its Exhibits, on file with the Court as Exhibit A to Plaintiffs' Memorandum of Law in Support of Their Motion for Preliminary Approval of the Proposed Settlement and Related Matters (Dkt. No. 185) and Revised and Updated Exhibit A to the Settlement Agreement (193-1), as being fair, reasonable and adequate, and in the best interests of the Class, satisfying Rule 23(e) and the fairness and adequacy factors of this Circuit.²
14. The Court holds that the Notice and notice plan as carried out satisfy the requirements of Rule 23(e) and due process. This Court has previously held the Notice and notice plan to be reasonable and the best practicable under the circumstances in its Preliminary Approval Order dated August 6, 2018. (Dkt. 191) Based on the declaration of Steven Weisbrot, Esq. of Angeion Group (Dkt. No. 209-2), which sets forth compliance with the Notice Plan and related matters, the Court finds that the multi-pronged notice strategy as implemented has successfully reached the putative Settlement Class, thus constituting the best practicable notice and satisfying due process.
15. The Court holds that the notice provisions set forth under the Class Action Fairness Act, 28 U.S.C. § 1715, were complied with in this case.
16. The Court appoints the firms of Wexler Wallace LLP; Greg Coleman Law PC; and Berger Montague PC as Class Counsel and appoints Gregory F. Coleman of Greg Coleman Law PC, Shanon J. Carson and Michael T. Fantini of Berger Montague PC, and Edward Wallace and Andrew Welker of Wexler Wallace LLP, as Co-Lead Class Counsel for the Settlement Class.

² The Court will address the requested attorneys' fees, costs, and service awards in a separate order.

17. The Court reconfirms the appointment of Angeion Group as the Settlement Administrator.
18. The “Released Claims” (as defined above) of any and all Class Members are HEREBY DISMISSED WITH PREJUDICE against all “Released Persons” (as defined above).
19. Further, the “Released Claims of Named Plaintiffs” (as defined above) of Plaintiffs Rebecca Rysewyk, Katie Smith, and Brian Van Vooren, and former Plaintiff Mary Rood are HEREBY DISMISSED WITH PREJUDICE against all “Released Persons” (as defined above).
20. By entry of this Final Order and Judgment, each Class Member, and all other persons and entities claiming by, through, or on behalf of, a Class Member, are hereby forever barred and enjoined from commencing, filing, initiating, instituting, prosecuting, maintaining, or consenting to any action against the Released Persons with respect to the Released Claims and forever discharge and hold harmless the Released Persons of and from any and all Released Claims which the Class Member has or may hereafter have.
21. By entry of this Final Order and Judgment, Plaintiffs Rebecca Rysewyk, Katie Smith, and Brian Van Vooren, and former Plaintiff Mary Rood, and all other persons and entities claiming by, through, or on behalf of any of them, are hereby forever barred and enjoined from commencing, filing, initiating, instituting, prosecuting, maintaining, or consenting to any action against the Released Persons with respect to the Released Claims of Named Plaintiffs and forever discharge and hold harmless the Released Persons of and from any and all Released Claims of Named Plaintiffs, which any of the above named has or may hereafter have.

22. This Final Order and Judgment notwithstanding, this Court retains continuing jurisdiction over the case, the Settlement, this Final Order and Judgment, the Class Members, the Settlement Administrator, the Settlement Escrow Account, the Plaintiffs, Class Counsel, and Sears for the purpose of administering, supervising, construing and enforcing this Settlement and the Final Order and Judgment, supervising the management and disbursement of funds under the Settlement, and addressing the application for an award of Class Counsel fees, expenses, and service awards.
23. Pursuant to the All Writs Act, 28 U.S.C. §1651, this Court shall retain the authority to issue any order necessary to protect its jurisdiction from any action, whether in state or federal court, that threatens to undermine the Settlement in this case and this Final Order and Judgment.
24. FINAL JUDGMENT is hereby ENTERED dismissing with prejudice all Released Claims of the Class against all Released Persons as herein described.
25. Pursuant to Fed. R. Civ. P. 54(b), the Court determines that there is no just cause for delay and expressly DIRECTS the ENTRY OF JUDGMENT on all issues contained in this Order.

IT IS SO ORDERED.

Dated: January 29, 2019



Manish S. Shah, Judge
United States District Court
Northern District of Illinois