

Court File No. 2762-16CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

The Honourable

)

Wednesday, the 12<sup>th</sup> day

)

Justice Leitch

)

of December, 2018

**BETWEEN:**

**KARSTEN HENRIKSON**

**Plaintiff**

- and -

**SAMSUNG ELECTRONICS CANADA INC.**

**Defendant**

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

(CERTIFICATION FOR SETTLEMENT AND NOTICE APPROVAL)

**THIS MOTION** made by the Plaintiff for an order that this action be certified pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6 and for notice approval, all for settlement purposes only, was heard on December 12, 2018 at the Court House, 80 Dundas Street, London, Ontario N6A 6K1.

**ON READING** the materials filed by the parties including the Settlement Agreement between them dated December 11, 2018, and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

1. **THIS COURT ORDERS** that capitalized terms herein have the same meaning as in the Settlement Agreement filed unless otherwise defined herein.
2. **THIS COURT ORDERS** that the within action is certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, s 5(1), for settlement purposes only.
3. **THIS COURT ORDERS** that the Settlement Class is defined as:

Every resident of Canada, other than Quebec, who was the original or subsequent purchaser of a Washer for household use. Excluded from the Settlement Class are (1) officers, directors, and employees of the Defendant, and (2) any person who filed and settled a claim against the Defendant in small claims court, or who made an informal claim against the Defendant that was settled with a release.
4. **THIS COURT ORDERS** that Karsten Henrikson is appointed as representative plaintiff for the Settlement Class.
5. **THIS COURT ORDERS** that McKenzie Lake Lawyers LLP is appointed as Class Counsel for the Settlement Class.
6. **THIS COURT DECLARES** that the nature of the claims asserted on behalf of the Settlement Class are set forth in the statement of claim herein, and include claims for negligence, breaches of the *Competition Act* and provincial consumer protection and sale of goods legislation, waiver of tort and unjust enrichment; the relief sought by the Settlement Class includes statutory damages pursuant to the *Consumer Protection Act*,

2002, pecuniary and special damages, non-pecuniary and general damages for damage to personal property and pain and suffering, punitive damages for reckless and unlawful conduct, and disgorgement of revenues and/or profits from sale of the Washers.

7. **THIS COURT ORDERS** that the proceeding is certified on behalf of the Settlement Class in respect of the following common issues, for settlement purposes only:

- (i) Does the Defendant owe a duty of care to the Settlement Class Members for the damages claimed?
- (ii) Did the Defendant meet its duty of care to the Settlement Class Members in responding to the potential risk of Top Separation?

8. **THIS COURT ORDERS** that Settlement Class Members who wish to exclude themselves from the Settlement must timely submit an Opt-out Form to the Settlement Administrator. To be timely, the Opt-out Form must be either postmarked by Canada Post (in the case of mailed Opt-out Forms) or actually received by the Settlement Administrator (in the case of Opt-out Forms submitted through the Settlement Website) within sixty (60) days after the Certification Notice is first published.

9. **THIS COURT ORDERS** that the Opt-out Form substantially in the form attached hereto as Schedule "A" is hereby approved.

10. **THIS COURT ORDERS** that the motion for approval of the Settlement Agreement will be heard at 10:00 am on March 27, 2019 at 80 Dundas Street, London,

Ontario (the "Approval Hearing"). At the Approval Hearing, the Representative Plaintiff will seek the following Orders:

- (a) Approval of the Settlement Agreement, of the content and manner of notice to the Settlement Class of such approval, and of the Claim Forms;
- (b) Approval of Class Counsel's Lawyers' Fees and Expenses; and
- (c) Any other Order that the Court may deem appropriate.

11. **THIS COURT ORDERS** that the Certification Notice in the form attached as Schedule "B" to this Order, or in form substantially similar, is hereby approved.

12. **THIS COURT ORDERS** that the Certification Notice be disseminated in the following manner, consistent with section V of the Settlement Agreement:

***Direct Notice***

- (a) No later than thirty (30) days after this Order is made, the Certification Notice will be delivered by email to all Settlement Class Members for whom the Defendant has a valid email address.
- (b) In the event that an email is determined to be undeliverable, or an email address is otherwise determined to be invalid, and the Defendant has a mailing address for that Settlement Class Member, the Certification Notice will be sent to that Settlement Class Member via Canada Post regular ground mail in accordance with s. 12(c) below as soon as possible after the mailing address can be identified.
- (c) For all Settlement Class Members for whom the Defendant does not have a valid email address, but for whom the Defendant has a mailing address:

- (1) the mailing address will first be checked against the Canadian National Change of Address (NCOA) database maintained by Canada Post;
  - (2) the Certification Notice will be sent to the verified mailing address via Canada Post regular ground mail no later than thirty (30) days after this Order is made;
  - (3) Regular ground mail Certification Notices returned as undeliverable will be returned to the settlement administrator and tracked. The Certification Notice will be promptly re-mailed as soon as new address data is discovered.
- (d) Should the Defendant have a record of whether a class member's preferred language is French or English, the Certification Notice will be delivered in the preferred language. Where no preference is stated, the Certification Notice will be delivered in English.

***Indirect Notice***

- (e) The Certification Notice will be published once in the newspapers identified below, in English, on the same day, in a ¼ page format of 3 col x 10", in the first Saturday editions that are to be published at least thirty (30) days after this Order is made:

*The Globe and Mail*

*The Toronto Star*

*Edmonton Sun*

*Vancouver Sun*

*Saskatoon Star Phoenix*

- (f) No later than thirty (30) days after this Order is made, the Certification Notice will be published, in French and English, on a dedicated settlement website of [www.canadatoploadwashersettlement.ca](http://www.canadatoploadwashersettlement.ca)
- (g) No later than thirty (30) days after this Order is made, a Canadian toll free phone number will be established allowing class members to call and request that, among other things, a Certification Notice be sent to them.

13. **THIS COURT ORDERS** that dissemination of the Certification Notice in this manner is the best notice practicable under the circumstances, constitutes sufficient notice to all Settlement Class Members entitled to notice, and satisfies the requirements of notice under sections 17 through 22, inclusive, of the *Class Proceedings Act* 1992, S.O. 1992, c.6.

14. **THIS COURT ORDERS** that the date and time of the Approval Hearing set forth in the Certification Notice is subject to adjournment by the Court without further notice to Settlement Class Members other than by posting any new date and time for that hearing on the Settlement Website at [www.canadatoploadwashersettlement.ca](http://www.canadatoploadwashersettlement.ca)

15. **THIS COURT ORDERS** that each Settlement Class Member (who does not opt out of this Class Action) who objects to the Settlement Agreement shall submit a timely written notice of objection. Such notice shall set out all objections, including objections to the Settlement, the Settlement Agreement or the Lawyers' Fees and Expenses. To be timely, written notice of objection must be filed with the Court and received by the Settlement Administrator, with copies to counsel for the Parties, no less than ten (10) days before the Approval Hearing. Any lawyer seeking to appear at the Settlement Approval Hearing for an objector must file with the Court and contemporaneously serve

on Class Counsel and the Defendant, at least ten (10) days before the Settlement Approval Hearing date in the Certification Notice, a notice of intention to appear at the Settlement Approval Hearing, setting forth the basis of their objections and summarizing the nature and source of any evidence that they intend to present at the Settlement Approval Hearing. Any objector not represented by a lawyer seeking to appear at the Settlement Approval Hearing must state the same in the objection that they file with the Court or submit to the Settlement Administrator or Class Counsel, as provided above.

### **Approval of Settlement Administrator**

16. **THIS COURT ORDERS** that either Epiq Class Action Services Canada Inc. or RicePoint Administration Inc. is approved as Settlement Administrator and will perform the duties and responsibilities set out in the Settlement Agreement and any other related duty or responsibility as ordered by this Court.

17. **THIS COURT ORDERS** that the Settlement Administrator must (i) disseminate the Certification Notice; (ii) establish the Settlement Website, which should have the functionality to accept online submissions by Settlement Class Members of Opt-out Forms, objections, Claim Forms (once the settlement is approved), and any accompanying documentation, and post information that the Parties jointly agree to post concerning the nature of the case and the status of the Settlement, including relevant pleadings, such as the Statement of Claim in the Lawsuit and materials in support of certification and notice approval and, when granted, approval of the Settlement, plus relevant orders of the Court; (iii) establish a toll-free telephone number that Settlement Class Members can call to request that a hard copy of the Opt-out Form be sent to them by mail with Canada Post, and also to obtain additional information regarding the

Settlement prior to publishing the Certification Notice; (iv) provide to the Defendant and Class Counsel: (a) a separate list of the names and addresses of Opt-out Forms received by the Settlement Administrator; and (b) a separate list of the names and addresses of any objectors whose objections were received by the Settlement Administrator; and (v) process requests for exclusion from the Settlement in accordance with Section VII of the Settlement Agreement.

18. **THIS COURT ORDERS AND AUTHORIZES** the Defendant to provide the Settlement Administrator with the names and email and/or mailing addresses of the Settlement Class Members who can reasonably be identified for the purpose of disseminating the Certification Notice and otherwise implementing this Settlement Agreement, at no expense to the Settlement Class or Class Counsel.

19. **THIS COURT ORDERS** that all information provided to the Settlement Administrator by or about Settlement Class Members as part of the settlement claims process shall be collected, used and retained by the Settlement Administrator and its agents pursuant to the applicable privacy laws for the purposes of administering the Settlement Agreement; the information provided shall be treated as private and confidential and shall not be disclosed without the express written consent of the relevant Settlement Class Member, except in accordance with the Settlement Agreement and/or orders of this Court.

20. **THIS COURT ORDERS** that, if the Settlement Agreement fails to become effective on its terms, or this order is not entered or is vacated, reversed or materially modified on appeal (and, in the event of material modification, one of the Parties elects to terminate the Agreement), then this order shall become null and void, the Settlement



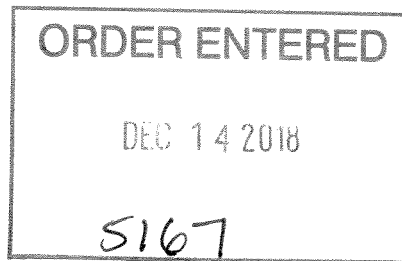
Agreement shall be deemed terminated (except for any paragraphs that the said Agreement says survive termination) and the Parties shall return to their positions without prejudice in any way, as provided in the said Agreement.

21. **THIS COURT ORDERS** that Class Counsel are to file their motion materials in support of approval of the Settlement Agreement and corresponding Settlement, and their motion materials in support of their fees and expenses claimed pursuant to Section VIII of this Agreement, no less than 15 days before the Settlement Approval Hearing.



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The Honourable Justice Leitch





**Samsung Top-Load Washing Machine Class Action in Canada (excluding Quebec)**

**Opt-out Form**

**Section A – Name and Contact Information**

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First Name

Last Name

--	--

Street Address

--	--

City

Province

--	--

Postal Code

--	--

Telephone Number

--	--

Email

**Section B – Information About Your Washer**

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Provide the Model # of your Washer

Provide the Serial # of your Washer

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Purchase Date (Month/Year)

**Note:** To locate the Model # and Serial #, refer to the top of the back panel of your Washer.

**Section C – Opt-Out Declaration**

I, \_\_\_\_\_, was the original or subsequent purchaser for household use of a Samsung-brand top-load Washer that is the subject of the Voluntary Recall announced on October 4, 2016 and updated on November 4, 2016, and am a resident of a province other than Quebec. I hereby opt out of the Ontario Class Action and the related Settlement in *Karsten Henriksen v. Samsung Electronics Canada Inc.*, Court File No. 2762-16 CPL (London, Ontario). I understand that by opting out I am permanently and irrevocably forsaking any and all benefits and/or compensation provided by the Settlement Agreement, but I am retaining my right (if any) to start or continue with a lawsuit against the Defendant for any of the claims made in the Ontario Class Action.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Your Opt-out Form must be either submitted to the Settlement Administrator (in the case of online submissions) or postmarked by Canada Post (in the case of mailed exclusions) no later than **[Insert date that is 60 days after Certification Notice is first published]**, 2019. Submitting an executed Opt-out Form is the only way a Settlement Class Member may exclude themselves from the Ontario Class Action and Settlement. You may complete and submit your Opt-out Form online at [www.\[xxxx\].com](http://www.[xxxx].com). It also can be sent by mail to:

*Karsten Henrikson v Samsung Electronics Canada Inc.*  
Settlement Administrator  
Street, Unit No.  
City, Province  
Postal Code



# Samsung-Brand Top-Loading Washer Litigation in Canada (excluding Quebec)

## Notice of Class Certification and Settlement Approval Hearing

### CANADA CLASS ACTION SETTLEMENT (EXCLUDING QUEBEC)

## **You may be eligible for compensation and other benefits from a class-action settlement involving certain Samsung top-loading washing machines.**

A Settlement has been reached in a class action lawsuit in Ontario against Samsung Electronics Canada Inc. (“SECA”) regarding alleged defects in certain Samsung-brand top-loading washing machines (“Washers”) that were the subject of voluntary recall announced on October 4, 2016 and updated on November 4, 2016 (the “Voluntary Recall”). The Plaintiff alleges that one or more of the Washers’ top fasteners can detach from the Washers’ chassis during operation (“Top Separation”). SECA denies the allegations in the lawsuit, and the Court has not decided who is right.

**Class Action Certified for Settlement Approval:** The proceeding is styled *Henriksen v. Samsung Electronics Canada Inc.*, filed in the London office of the Ontario Superior Court of Justice. The Court has, at the request of the Parties, certified this class action for the purposes of considering approval of the Settlement.

**Who’s Included?** The Settlement Class includes all persons in Canada, other than Quebec residents, who purchased a Washer for household use. (There is a separate class action for Quebec residents that is not part of this settlement.) The Settlement Class does not include officers, directors or employees of SECA, and does not include any person who settled a small claims court case against SECA or who resolved an informal dispute with SECA and signed a release.

If you are a Settlement Class Member, please read this notice. **Ignoring this legal notice could affect your rights.**

### **What Washing Machines are Included?**

A list of the subject top load washing machines can be found at [www.\[XXXX\].com](http://www.[XXXX].com).

**What Are the Settlement Terms?** The Settlement establishes a number of benefits for the Class, including:

1. Settlement Class Members who, before Settlement Approval, selected and received a Recall Rebate under the Voluntary Recall that was less than 15.5% of the Estimated Purchase Price of their Washer, and who are original purchasers, can request additional payment equal to the difference between the rebate amount they received and 15.5% (“Enhanced Minimum Recall Rebate”).

2. Settlement Class Members who, after Settlement Approval and before the Claims Deadline, select a Recall Rebate under the Voluntary Recall, and who are original purchasers, may also be entitled to a comparable Enhanced Minimum Recall Rebate if their Recall Rebate is below 15.5%, or to a Settlement Recall Rebate fixed at 15.5% if they replace their Washer with a non-Samsung brand washer (and therefore do not receive a Recall Rebate).
3. Settlement Class Members who are original purchasers and received a Recall Repair under the Voluntary Recall, or who select a Recall Rebate after the Settlement Approval and before the Claims Deadline, can request a Recall Repair Additional Benefit consisting of a \$25 - \$85 cash rebate for the purchase of a new Samsung microwave or Samsung Major Home Appliance.
4. In the unlikely event that Settlement Class Members experienced or experience Top Separation within seven years after purchasing their Washer, they may receive a full refund of the Washer's purchase price and reimbursement of certain related expenses to a maximum of \$100.
5. Settlement Class Members can request a free in home repair of their Washer's top for up to one (1) year after the Claims Deadline.

See the Settlement Agreement at [www.\[XXXX\].com](http://www.[XXXX].com), particularly Part IV thereof, for the specific terms and conditions of the settlement benefits. A summary of the Settlement Agreement by way of Frequently Asked Questions (FAQ) will also be available on the website. The Settlement Agreement also includes a release of claims by Settlement Class Members against the defendant.

The Court will hold a Settlement Approval Hearing on March 27, 2019 to consider whether to approve the Settlement, a request for lawyers' fees and disbursements of up to \$443,750 and a Service Award of \$1,500 to the Class Representative. If approved, SECA will pay these amounts in addition to the Settlement benefits.

### **What Are My Options Regarding the Settlement Approval Hearing?**

**Do Nothing.** If you do nothing, your rights will be affected. If you are content with the Settlement and would like to receive benefits, you do not need to do anything at this time. Check the website below after March 27, 2019 to see if the Settlement has been approved, and/or provide the Settlement Administrator with your email address so that you can be notified if the Settlement is approved. If it is, you will need to complete and submit a Valid Claim Form and provide other documentation in order to receive one of the benefits listed above. Claim Forms will be available after approval at [www.\[XXXX\].com](http://www.[XXXX].com) or by calling 1-XXX-XXX-XXXX. The deadline to file your Claim Form will be published on the website after the Settlement is approved.

**Opt Out.** If you do not want to be legally bound by the Settlement or receive any Settlement benefits, you must exclude yourself from the Class Action by submitting an Opt-out Form by no later than **[Insert Date First Posted to Website], 2019**. Unless you opt-out, you will not be able to sue or continue to sue SECA for any claims resolved by this Settlement and released by the Settlement Agreement. The Opt-out Form and information about how and where to send it are available at [www.\[XXXX\].com](http://www.[XXXX].com).

**Object to the Settlement.** If you stay in the Settlement (i.e. you do not opt-out), you may object to it by filing a notice of objection. You may also appear at the Settlement Approval Hearing by filing a notice of intention to appear. Your notice of objection and/or notice of intention to appear must be filed with the Court and served on Counsel no later than March 17, 2019. See part III.A.7 of the Settlement Agreement at [www.\[XXXX\].com](http://www.[XXXX].com) for information regarding objections and notices of intention to appear.

For more information, on the proposed Settlement, including your rights and options, visit [www.\[XXXX\].com](http://www.[XXXX].com) or call 1-XXX-XXX-XXXX.



KARSTEN HENRIKSEN -and- SAMSUNG ELECTRONICS  
CANADA INC.

Plaintiff

Defendant

Court File No. 2762-16-CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

**ORDER  
(CERTIFICATION FOR SETTLEMENT AND  
NOTICE APPROVAL)**

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