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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

STANLEY F. SIDDLE and MICHAEL E. LIPSON, individually and on behalf of all those similarly situated,

Plaintiffs,

v.

THE DURACELL COMPANY,
COSTCO WHOLESALE CORPORATION,
TECHNOMATE MANUFACTORY, LTD.,
PRO-TEK INDUSTRIES, LLC.

Defendants,

Case No. 4:19-cv-00568-JD (LB)

**ORDER RE PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

After review and oral argument, plaintiff’s unopposed motion for preliminary approval of a class action settlement is approved. Fed. R. Civ. Proc. 23(e). Plaintiffs Stanley F. Siddle and Michael E. Lipson, on behalf of themselves and a class of similarly situated persons (“Plaintiff”), and Defendants The Duracell Company, Costco Wholesale Corporation, Technomate Manufactory, Ltd. and Pro-Tek Industries, LLC, (“Defendants”), have agreed to settle this Action pursuant to the terms and conditions in an executed Settlement Agreement (“Settlement Agreement” or “Agreement”). The Parties reached the Settlement through arm’s-length negotiations and with the assistance of Magistrate Judge Laurel Beeler.

The Court has revised plaintiffs’ proposed order, and orders as follows.

1. As used here, unless otherwise noted, capitalized terms shall have the definitions and meanings accorded to them in the Settlement Agreement.
2. The Court has jurisdiction over the subject matter and Parties to this proceeding pursuant to 28 U.S.C. § 1332.
3. Venue is proper in this District.

1 4. The Court preliminarily finds that the proposed Settlement is fair, reasonable and
2 adequate, and sufficient to warrant providing notice to the Settlement Class.

3 5. Pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and
4 for purposes of settlement only, the Court provisionally certifies this action as a class action on
5 behalf of the following Settlement Class:

6 All persons in the United States who, on or before October 23, 2015,
7 purchased from Costco a three-pack of Duracell 350L flashlights bearing the
8 date code 1533, 1534, or 1535 on the flashlight end cap.

9 The Settlement Class excludes all person in the United States who have received three
10 Replacement Flashlights from Pro-Tek. Also excluded from the Settlement Class is any individual
11 who timely and validly opts out of the Settlement Class, as well as any retailers, wholesalers, and
12 other individuals or entities that purchased the Product for resale, as well as Defendants' current
13 and former officers and directors, members of the immediate families of Defendants' officers and
14 directors, Defendants' legal representatives, heirs, successors, and assigns, any entity in which any
15 Defendant has a controlling interest, and the judicial officers to whom this Action is assigned.
16 Also excluded from the Settlement Class are any individuals to whom the Notice disseminated
17 was returned undeliverable (RUM) by mail to the Settlement Administrator and for whom there is
18 no valid email address, after reasonable efforts including skip tracing have been employed to
19 acquire a valid current physical and/or email address, and in the absence of a Claim being
20 otherwise received from such individuals by the Settlement Administrator.

21 6. The Court finds, for settlement purposes and conditioned on final certification of
22 the proposed class and on the entry of the Final Approval Order, that the Settlement Class satisfies
23 the following factors of Federal Rule of Civil Procedure 23(a):

24 (a) Numerosity: Approximately 192,000 individuals are members of the proposed
25 Settlement Class. The proposed Settlement Class is sufficiently numerous that joinder of
26 all members is impracticable.

27 (b) Commonality: Multiple questions of law and fact centering on the Flashlights at
28 issue are common to the Plaintiffs and the Settlement Class, are alleged to have injured all

1 members of the Settlement Class in the same way, and would generate common answers
2 central to the viability of the claims were this case to proceed to trial.

3 (c) Typicality: The Plaintiffs' claims are typical of the Settlement Class because they
4 concern the same alleged practices, arise from the same legal theories, and allege the same
5 types of harm and entitlement to relief.

6 (d) Adequacy: The named Plaintiffs, purchasers of the Flashlights at issue, share the
7 same interest as the Settlement Class in seeing that Flashlight purchasers receive relief for
8 any battery drain issues they may have experienced with their Flashlights. Plaintiffs are
9 also represented by competent counsel with experience representing plaintiffs in class
10 litigation.

11 7. The Court further finds, for settlement purposes and conditioned on final
12 certification of the proposed class and on the entry of the Final Approval Order, that the
13 Settlement Class satisfies Federal Rule of Civil Procedure 23(b)(3). Common legal and factual
14 issues predominate over individualized issues, and resolution of the common issues for the
15 members of the Settlement Class in a single, coordinated proceeding is superior to thousands of
16 individual lawsuits addressing the same legal and factual issues. The central issues are common to
17 the Settlement Class and are amendable to proof by common evidence.

18 8. There is no indication that any individual class members seek to separately control
19 their cases, or that individual litigation is already pending in other forums, or that this particular
20 forum is undesirable for any reason. Individual Class Members are likely lack the resources to
21 secure experienced, qualified counsel to prosecute their cases individually, or the desire to
22 individually prosecute their cases given the modest value of individual claims.

23 9. Named Plaintiffs Stanley F. Siddle and Michael E. Lipson are appointed as Class
24 Representatives of the Settlement Class.

25 10. Plaintiffs' counsel, Timothy P. Rumberger, will fairly and adequately represent the
26 interests of the Settlement Class. Rumberger and the Law Offices of Timothy P. Rumberger are
27 appointed as Class Counsel to represent the Settlement Class.
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1 11. Defendants reserve their defenses and objections against and rights to oppose any
2 request for class certification in the event that the proposed Settlement does not become Final for
3 any reason. Defendants also reserve their defenses to the merits of the claims asserted in the event
4 the Settlement does not become Final for any reason.

5 12. The Court preliminarily approves the Settlement, together with all exhibits thereto,
6 as fair, reasonable, and adequate. The Court finds that the Settlement was reached in the absence
7 of collusion, is the product of informed, good-faith, arm's-length negotiations between the Parties
8 and their capable and experienced counsel. The Court further finds that the Settlement, including
9 the exhibits thereto, is within the range of reasonableness and possible judicial approval, such that:
10 (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval;
11 and (b) it is appropriate to effectuate notice to the Settlement Class, as set forth below and in the
12 Settlement, and schedule a Final Approval Hearing to assist the Court in determining whether to
13 grant Final Approval to the Settlement and enter a Final Approval Order.

14 13. Pursuant to the Settlement Agreement, Postlethwaite & Netterville is appointed as
15 Settlement Administrator and shall be required to perform all the duties of the Settlement
16 Administrator as set forth in the Settlement Agreement and this Order. A declaration in support of
17 its claim for costs of administration will be filed no later than February 4, 2021.

18 14. The Court approves the Notice, Notice Plan and Claim Form accompanying the
19 Settlement Agreement and directs the Settlement Administrator to disseminate the Notice in
20 accordance with the Notice Plan. Specifically, the Court approves the form and content of the
21 Notices, substantially in the forms of Exhibits B and C to the Settlement Agreement, and Claim
22 Form, substantially in the form of Exhibit A to the Settlement Agreement.

23 15. The Court finds that the Notice Plan (i) is the best practicable notice; (ii) is
24 reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of
25 the litigation and of their right to object to or to exclude themselves from the proposed Settlement;
26 (iii) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to
27 receive notice; and (iv) meets all requirements of applicable law.

1 16. The Settlement Administrator will, prior to the Notice date, establish (i) a post
2 office box in its name to be used for receiving Requests for Exclusion, Claim Forms and any other
3 communications, (ii) a toll-free interactive voice response (“IVR”) telephone number through
4 which Settlement Class Members can obtain information about the Settlement and Claim Form,
5 and (iii) a Settlement Website through which Settlement Class Members can access and download
6 copies of the Settlement Agreement, Notices and Preliminary Approval Order and submit a
7 Request for Exclusion or Claim Form.

8 17. The Settlement Administrator is ordered to cause the Notice to be disseminated and
9 Notice Plan to be implemented on or before October 15, 2020, and will constitute the “Notice
10 Date” pursuant to the Settlement Agreement and for purposes of this Order.

11 18. The Settlement Administrator will provide the list of Settlement Class Members
12 who timely submitted Requests for Exclusion to Class Counsel and counsel for Defendants no
13 later than five (5) Days after the Objection/Exclusion Deadline and Claims Deadline.

14 19. The Settlement Administrator will, through Plaintiffs’ counsel, file with the Court
15 the list of Settlement Class Members who timely submitted Requests for Exclusion with an
16 affidavit attesting to (i) the completeness and accuracy of the list and (ii) compliance with the
17 Notice Plan no later than 15 Days before the Final Approval Hearing.

18 20. A member of the Settlement Class who wishes to be excluded from the Settlement
19 Class must submit a timely Request for Exclusion, postmarked or submitted electronically no later
20 than the Objection/Exclusion Deadline in compliance with the provisions of the Settlement
21 Agreement, to the Settlement Administrator at the address or Settlement Website on the Notice.
22 To be valid, a Request for Exclusion must contain the Settlement Class member’s name, Costco
23 membership number, current address, and telephone number. The Request for Exclusion must be
24 either: (a) signed by the Settlement Class Member and dated, mailed, and postmarked to the
25 Settlement Administrator on or before the Objection/Exclusion Deadline; or (b) electronically
26 signed by the Settlement Class member and submitted to the Settlement Administrator through the
27 Settlement Website.
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1 21. Any member of the Settlement Class who does not submit a timely, written
2 Request for Exclusion from the Settlement Class will be bound by all proceedings, orders and
3 judgments in the Litigation.

4 22. A Settlement Class Member who wishes to object to the fairness, reasonableness or
5 adequacy of the Settlement, or the requested Fee & Expenses or Incentive Awards, must timely
6 mail to the Court, by no later than the Objection/Exclusion Deadline, a statement of the objection
7 signed by the Settlement Class Member containing all of the information required in the
8 Settlement Agreement.

9 23. Objections must be in writing and must state with specificity the grounds for the
10 objection. The objecting Class Member should also indicate whether he or she intends to appear
11 at the Final Approval Hearing, and whether the Class Member is represented by an attorney, and if
12 so, who.

13 24. Any Objection that is not properly or timely raised is waived.

14 25. Any responses by the Parties to timely-filed objections shall be included in the
15 Motion for Final Approval briefing.

16 26. A Final Fairness Hearing is set for March 18, 2021 at 10:00 a.m. at the United
17 States District Court for the Northern District of California, 450 Golden Gate Avenue, San
18 Francisco, CA, Courtroom 11, to consider the fairness, reasonableness and adequacy of the
19 Settlement and whether it should be finally approved by the Court, and to determine the
20 reasonableness of Class Counsel's Fees & Expenses and the Plaintiffs' requested Incentive
21 Awards. The Final Approval Hearing may be postponed, adjourned, held telephonically, or
22 continued by further order of this Court, without further notice to the parties or members of the
23 Class.

24 27. No later than December 14, 2020, which is thirty (30) days before the
25 Objection/Exclusion Deadline, Class Counsel shall file a motion for Class Counsel's Fees and
26 Expenses and any Incentive Awards.

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1 28. No later than February 4, 2021, which is 35 days before the Fairness Hearing, the
2 Parties, together with the Settlement Administrator, must file any papers in support of final
3 approval of the Settlement and respond to any written objections.

4 29. Members of the Settlement Class are preliminarily enjoined, unless and until they
5 have timely and properly excluded themselves from the Settlement Class, from (i) filing,
6 commencing, prosecuting, intervening or participating in (as class members or otherwise), or
7 receiving any benefit or other relief from another lawsuit or arbitration (as well as a motion or
8 complaint in intervention in this Litigation if the person or entity filing such motion or complaint
9 in intervention purports to be acting as, on behalf of, for the benefit of, or derivatively for any of
10 the above persons or entities) or order, in any jurisdiction or forum, that is based upon, arises out
11 of, or relates to any Released Claim as to any Released Parties; and (ii) filing, commencing, or
12 prosecuting any other lawsuit as a class action (including seeking to amend a pending complaint to
13 include class allegations or by seeking class certification in a pending action) or other proceeding
14 on behalf of any Settlement Class member as to the Released Parties, if such other lawsuit is based
15 upon, arises out of, or relates to any Released Claim, including any claim that is based upon, arises
16 out of, or relates to the Litigation or the transactions or occurrences referred to therein.

17 30. Counsel are authorized to use all reasonable procedures in connection with
18 approval and administration of the Settlement that are not materially inconsistent with this Order
19 or the Agreement, including making, without further approval of the Court, insubstantial changes
20 to the form or content of the Notice and Claim Forms and other exhibits that they jointly agree are
21 reasonable and necessary. The Court reserves the right to approve the Settlement Agreement with
22 such modifications (including as to any dates or deadlines), if any, as may be agreed to by the
23 Parties without further notice to the Settlement Class members.

24 31. Pending further order of the Court, all litigation activity, except that contemplated
25 in this order, is stayed and all hearings, deadlines and other proceedings in the litigation except the
26 Final Approval Hearing and any deadlines set forth in this Order, are vacated.
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1 32. If the Settlement is not finally approved by the Court, or for any reason the Parties
2 fail to obtain a Final Approval Order as contemplated in the Settlement, or the Settlement is
3 terminated pursuant to its terms for any reason, then the following provisions apply:

- 4 (a) All orders and findings entered in connection with the Settlement will be deemed
5 null and void, and have no further force and effect, may not be used or referred to for any
6 purpose whatsoever, and will not be admissible or discoverable in any other proceeding;
7 (b) The fact of this Settlement and that Defendants did not oppose certification of any
8 class under the Settlement, may not be used or cited by any person or entity, including in
9 any contested proceeding relating to certification of any proposed class;
10 (c) Nothing in this Preliminary Approval Order will be construed as an admission or
11 concession by or against Defendants on any point of fact or law; and
12 (d) Neither the Settlement terms nor any publicly disseminated information regarding
13 the Settlement, including, without limitation, the Notice, court filings, orders and public
14 statements, may be used as evidence. In addition, neither the fact of, nor any documents
15 relating to, either Party's withdrawal from the Settlement, any failure of the Court to
16 approve the Settlement and/or any objections or interventions may be used as evidence.

17 **VIII. Dates and Deadlines**

18 33. The following are the deadlines by which certain events must occur:

DATE /TRIGGERING EVENT	EVENT
August 20, 2020 (Thursday)	Motion for Preliminary Approval filed
August 31, 2020 (Monday) [10 days after MPA is filed] SA¶6.2	CAFA Notice issued by Claims Administrator
September 24, 2020 (Thursday) [10 days after MPA is filed]	Motion for Preliminary Approval hearing; Court Order granting MPA of Settlement
October 8, 2021 (Thursday) [14 days after Preliminary Approval] SA¶7.5.1	Deadline for Technomate to deposit funds to pay hard costs of notice and administration
October 15, 2020 (Thursday) [21 days after Court Approval] SA¶2.20, ¶4.1.9	Notice disseminated by Class Administrator (Class Notice Package); Website running

1	December 14, 2020 (Monday) [30 days before Objection deadline] SA¶8.1	Fees, Costs and Incentive Award motions filed
2		
3	January 13, 2021 (Wednesday) [90 days after Notice disseminated] SA¶2.5, ¶4.1.14	Deadline for Class Members to submit Requests for Exclusion, Objection and/or Claim Forms
4		
5	January 18, 2020 (Monday) [5 days after close of Notice period] SA¶6.8	Last Day for Settlement Administrator to provide a declaration attesting to completion of the Notice process
6		
7	February 4, 2021 (Thursday) [35 days before Final Approval hearing] SA¶2.15	Last Day for Class Counsel to file Motion for Final Approval
8		
9	February 26, 2021 (Friday) [21 days before Final Approval Hearing] SA¶7.5.2	Deadline for Technomate to deposit balance of first \$1.1 million in Settlement funds with Settlement Administrator
10		
11	March 18, 2021 (Thursday) [150 days after Notice disseminated] SA¶2.15	Hearing on Motion for Final Approval; Court Order granting MFA of Settlement
12		
13	April 19, 2021 (Monday) [31 days after Final Approval if no Appeal] SA¶2.13	Effective Date if no Appeal is filed
14		
15	May 10, 2021 (Monday) [21 days after Effective Date] SA¶7.5.3	Deadline for Technomate to deposit balance of \$2.2 million in Settlement funds with Settlement Administrator
16		
17	May 19, 2021 (Wednesday) [30 days after Effective Date] SA¶7.8, ¶8.2	Deadline for Settlement Administrator to make first distribution of Settlement Funds, pay fees, costs and/or incentive awards
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19		
20	August 3, 2021 (Tuesday) [75 days after 1st Distribution] SA¶7.2.1	Class Member Settlement payments expire
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22	August 6, 2021 (Friday) [3 days after 1st CM payments expire] SA¶7.8	Settlement Administrator to redistribute Settlement Funds to CMs if fund exceeds minimum \$5 threshold
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24	October 20, 2021 (Wednesday) [75 days after Redistribution] SA¶7.2.2	Second distribution CM checks expire
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26	November 3, 2021 (Wednesday) [14 days after CM payments expire] SA¶7.3.1	Settlement Administrator to distribute remaining funds to Cy Pres and report final accounting
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November 24, 2021 (Wednesday) [21 days after final distribution] SA¶6.9	Settlement Administrator to provide post-distribution accounting
December 3, 2021 (Friday)	Class Counsel to file Notice to the Court of post-distribution accounting.

IT IS SO ORDERED.

Dated: October 9, 2020 _____



JAMES DONATO
 United States District Judge