

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

MARY SANBROOK, on behalf of herself  
and all others similarly situated,

Plaintiff,

vs.

OFFICE DEPOT, INC., a corporation and DOES  
1-20,

Defendants.

Case No. C 07-05938 RMW

Judge: Hon. Ronald M. Whyte

**NOTICE OF PROPOSED CLASS  
ACTION SETTLEMENT AND  
FAIRNESS HEARING**

**TO: ALL PERSONS WHO PURCHASED A PERFORMANCE PROTECTION PLAN (PPP) FROM AN OFFICE DEPOT STORE LOCATED IN THE STATE OF CALIFORNIA BETWEEN OCTOBER 13, 2004, THROUGH OCTOBER 11, 2007.**

YOU MAY BE ELIGIBLE TO RECEIVE COMPENSATION UNDER THE TERMS OF A CLASS ACTION SETTLEMENT. IF YOU ARE ELIGIBLE AND WISH TO RECEIVE COMPENSATION, YOU MUST RETURN A CLAIM FORM (ENCLOSED ALONG WITH THIS NOTICE) NO LATER THAN AUGUST 9, 2010.

YOU MUST READ THIS NOTICE CAREFULLY TO DETERMINE WHETHER YOU MAY BE ELIGIBLE FOR COMPENSATION.

**PURPOSE OF THIS NOTICE**

This notice explains the nature of the lawsuit and the terms of the settlement and informs you of your legal rights and obligations. IN ORDER TO OBTAIN THE BENEFITS OF THIS SETTLEMENT, YOU MUST FIRST DETERMINE WHETHER YOU ARE A CLASS MEMBER ENTITLED TO RELIEF, AND, IF SO, THEN FILL OUT AND TIMELY RETURN THE FORM ATTACHED TO THIS NOTICE TO THE SETTLEMENT ADMINISTRATOR.

**NO ADMISSION OF LIABILITY**

By settling this lawsuit, Office Depot, Inc. ("Office Depot") is not admitting that it has done anything wrong. Office Depot expressly denies that it did anything wrong and denies liability to the Named Plaintiff or to class members for any claims.

**DESCRIPTION OF THE LITIGATION**

Named Plaintiff Mary Sanbrook filed this action on October 12, 2007. Named Plaintiff contends that during the class period, from October 13, 2004 through October 11, 2007, Office Depot stores located in California did not make the terms and conditions of Performance Protection Plans (PPPs) available to customers prior to purchase, or deliver the terms and conditions at the time of purchase, in violation of the requirements of the Song-Beverly Consumer Warranty Act, Cal. Civil Code § 1794.41 ("Song-Beverly Act"). On October 11, 2007, Office Depot began a series of material changes to its marketing of PPPs that were such that Plaintiff determined that that date is an appropriate cut-off date for the class period relating to liability under the Song-Beverly Act. Named

Plaintiff's lawsuit was a contributing cause of the material changes that occurred in the PPP brochure in October 2007 and thereafter, including, but not limited to, the decision to include the actual terms and conditions in a fold-out section of the PPP brochure.

On March 30, 2009, the United States District Court for the Northern District of California ruled that Named Plaintiff's Song-Beverly Act claim may be maintained as a class action by Plaintiff on behalf of the class.

Pretrial discovery has been conducted by both parties in this case. Discovery was in the form of interrogatories, production of documents and deposition testimony.

In November 2008, and again on October 21, 2009, the parties engaged in mediation with a third-party mediator. In addition, Warranty Corporation of America, Inc. ("WaCA"), the company that Office Depot retained to administer the PPPs, also participated in the mediation. The proposed settlement is the result of arm's-length negotiations as well as the substantial investigation and discovery conducted by Plaintiff's Counsel. Counsel for all parties to the proposed settlement have fully explored the facts of this case. Although Plaintiff and Office Depot disagree as to the legal effect of the facts that form the basis of this action, the parties have determined that it is desirable to settle this action to avoid the further expense, burden and uncertainty of litigation, and to put to rest all claims asserted or which could have been asserted in the case.

The Court granted preliminary approval of the settlement, subject to a full Fairness Hearing, which is scheduled to take place on July 9, 2010 at 9:00 a.m., in the United States District Court for the Northern District of California, 280 South 1st Street San Jose, CA 95113. Class members may refer to the Court file in the United States District Court for the Northern District of California for a full description of the history of the litigation conducted in this class action.

## **THE PROPOSED SETTLEMENT**

Named Plaintiff and Office Depot have agreed to the settlement described below. IF YOU WISH TO RECEIVE COMPENSATION UNDER THE TERMS OF THE SETTLEMENT, YOU MUST SUBMIT THE ENCLOSED CLAIM FORM BY AUGUST 9, 2010. If you are a member of the Settlement Class but do not wish to be part of the Settlement, you must timely opt out. For additional information regarding opting out of the settlement, see the section below entitled "Your Options." If you return your Claim Form and the settlement is finally approved, you will be sent a check for any relief for which you qualify.

## **THE SETTLEMENT CLASS**

The Settlement Class is defined as:

All persons who purchased a PPP from an Office Depot store in the State of California from October 13, 2004, through October 11, 2007, as to whom: (i) the terms and conditions of the PPP were not made available before purchase and/or were not delivered at the time of purchase; and (ii) the PPP was not returned for a refund, and no other reimbursement for the PPP was received from Office Depot.

## **SETTLEMENT CLASS BENEFITS**

Office Depot has agreed that it will instruct any third party with whom it contracts to administer the PPP program in compliance with the Song-Beverly Consumer Warranty Act, and has instructed its current third-party administrator to take any steps necessary to comply with the Act.

In addition, Office Depot has agreed to reimburse eligible Class Members for a percentage of the PPP purchase

price in an amount based on the type of PPP purchased:

1. Repair PPPs purchased from October 13, 2004, through August 14, 2006:
  - a. One-year PPP: 60% of purchase price;
  - b. Two-year PPP: 30% of purchase price;
  - c. Three-year PPP: 20% of purchase price.
2. Repair PPPs purchased from August 15, 2006, through October 11, 2007:
  - a. Two-year PPP: 21% of purchase price;
  - b. Three-year PPP: 14% of purchase price.
3. Replacement PPPs purchased from October 13, 2004, through October 11, 2007: 15% of purchase price.

These benefits will be distributed to those qualifying Class Members who: (i) do not timely opt out; and (ii) TIMELY RETURN A FULLY AND ACCURATELY COMPLETED CLAIM FORM (ENCLOSED WITH THIS NOTICE), INCLUDING ANY REQUIRED DOCUMENTATION, INDICATING THEY WANT TO PARTICIPATE IN THE BENEFITS OF THE SETTLEMENT.

### **GENERAL RULES FOR ELIGIBILITY**

In order to participate in the Settlement, each Class Member must timely execute and return a fully completed and accurate Claim Form in accordance with the instructions on the Form. The Claim Form will be effective as of the Settlement Effective Date (when the Settlement as a whole becomes final and effective) and is conditioned upon final approval of the Settlement by the Court. The Claim Form is invalid unless all applicable parts are completed. The Claim Form must be returned to the Settlement Administrator by August 9, 2010, the Claims Deadline.

Persons whom Office Depot's or WaCA's records indicate made qualifying PPP purchases will receive a Claim Form for Known Purchasers. All other potential class members will receive a Claim Form for Unknown Purchasers. Both versions of the Claim Form require claimants to provide contact information, to certify that they meet the conditions for membership in the Settlement Class, and to acknowledge a general release of claims against Office Depot, WaCA, and related entities. The Claim Form for Unknown Purchasers further requires that claimants provide information establishing proof of a qualifying PPP purchase. Claim Forms will be considered submitted when postmarked, if mailed postage prepaid and addressed in accordance with the instructions set forth in the form itself.

In the event that a claimant submits a mailing to the Settlement Administrator indicating an intent to participate in the Settlement but which is deficient on its face in one or more respects, the Settlement Administrator will notify the claimant of the deficiency, unless that claimant received a previous deficiency notice from the Settlement Administrator. Regardless of the Claims Deadline provided above, any such claimant will have fourteen (14) days after mailing of the deficiency letter to resubmit (one time only) a proper Proof of Claim and Release.

### **VERIFICATION OF CLAIMS**

The Settlement Administrator shall make a determination as to the timeliness of submission of a claim, whether the claimant is a Class Member entitled to relief, and, if so, the amount of relief to which the Class Member is entitled. Any claim may be denied by the Settlement Administrator if it is inconsistent with the documentation that the claimant submitted or that is or maintained by Office Depot or WaCA. The Settlement Administrator

will mail to each claimant who timely and in the proper manner submits a valid Claim Form the relief to which the claimant is entitled along with a notice stating that the claimant has thirty (30) days to file with the Settlement Administrator a written statement setting forth the grounds of any objection to the relief provided and that the claimant has the burden of proving entitlement to any further relief. The Settlement Administrator's decision with respect to any such objection shall be final.

Office Depot also has the right to audit any claims made for accuracy, completeness, or entitlement to relief.

#### **ATTORNEYS' FEES**

Counsel for the proposed class, including the firm of Maddox Hargett & Caruso and associated counsel, will petition the Court for, and Office Depot has agreed not to oppose, an award of \$2,275,000 for attorneys' fees and costs, to be paid by Office Depot. Plaintiff's counsel will not request additional fees and costs from Office Depot or from members of the Class.

#### **NAMED PLAINTIFF'S RECOVERY**

Named Plaintiff will further seek from Office Depot an incentive award for serving as the class representative in the amount of \$10,000. Class Counsel will ask that an additional \$20,000 be paid to Named Plaintiff from any attorneys' fees awarded by the Court.

#### **COSTS**

Office Depot has agreed to pay reasonable costs for notice of the settlement and for administration of the settlement.

#### **RELEASE AND WAIVER**

Named Plaintiff and all Settlement Class members (other than those who opt out of the Settlement) will grant Office Depot, WaCA, and related entities the following release:

I understand and agree that if I am determined to be a member of the Settlement Class, I will fully and forever release, acquit, and discharge Office Depot, Inc., Warranty Corporation of America, Inc., and their affiliates, parents, and subsidiaries, and all their respective owners, shareholders, parents, affiliates, subsidiaries, divisions, predecessors, successors, assigns, attorneys, agents, officers, directors, principals, law firms, and legal representatives, as well as the heirs, personal representatives, executors, administrators, predecessors, successors, and assigns of each of the foregoing, in each case past and present (collectively, "Released Parties"), from any and all manner of claims relating to PPPs sold from Office Depot stores located in California from October 13, 2004, through October 11, 2007 (except for any claims I may have for product repair or replacement pursuant to the terms of PPPs that are still in force), and/or any claims raised in this litigation, grievances, controversies, allegations, accusations, demands, judgments, causes of action, demands, actions, suits, whether class, representative, individual or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever as well as all forms of relief, including all remedies, costs, losses, liabilities, damages, debts, expenses, penalties, interest, and attorneys' and other professionals' fees and related disbursements, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, whether (a) claiming compensation, money damages, equitable or other type of relief; (b) based on any federal, state, municipal statute, law, ordinance, or regulation; (c) based on common law or

public policy; or (d) sounding in tort or contract, whether oral or written, express or implied, law or equity, statutory or common law, or any other causes of action that I, whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have against the Released Parties.

I further understand that under certain principles of law applicable in some states, a general release does not extend to claims that a creditor does not know or suspect exist in his or her favor at the time of executing the release, which if known by him or her could have materially affected his or her settlement with the debtor, which statute or law is similar, comparable or equivalent to Section 1542 of the Civil Code of the State of California, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

TO THE EXTENT THAT CALIFORNIA OR OTHER LAW MAY BE APPLICABLE, I HEREBY AGREE THAT THE PROVISIONS OF SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA AND ALL SIMILAR, COMPARABLE OR EQUIVALENT FEDERAL OR STATE LAWS, RIGHTS, RULES, OR LEGAL PRINCIPLES OF ANY OTHER JURISDICTION THAT MAY BE APPLICABLE, ARE HEREBY KNOWINGLY AND VOLUNTARILY WAIVED AND RELINQUISHED.

#### FAIRNESS HEARING

A hearing will be held on the fairness of the proposed settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed settlement, including the amount of the award to Plaintiff's counsel for costs and attorneys' fees. The hearing will take place on July 9, 2010 at 9:00 am at the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113. YOU ARE NOT OBLIGATED TO ATTEND THIS HEARING UNLESS YOU PLAN TO OBJECT TO THE SETTLEMENT.

#### YOUR OPTIONS

1. **If you wish to participate in the settlement, you must return the Claim Form at the end of this notice to the Settlement Administrator on or before August 9, 2010.**
2. **You have the right to exclude yourself from membership in the class and participation in the settlement** by filing a written request for exclusion with the Settlement Administrator at the following address: Sanbrook v. Office Depot, PO Box 2730, Portland, OR 97208-2730.

The request for exclusion must be sent via U.S. regular mail, must be postmarked no later than June 30, 2010, and must refer to your name and address and the name and number of the case, and include a statement that you want to be excluded from the Settlement Class.

Please write or type the words "CLASS EXCLUSION NOTICE" on the lower left of the front of the envelope. ALL CLASS MEMBERS WHO DO NOT MAKE A WRITTEN REQUEST FOR EXCLUSION WILL BE BOUND BY THE SETTLEMENT WHETHER OR NOT THEY SUBMIT CLAIM FORMS AND PARTICIPATE IN THE SETTLEMENT, AND THEY WILL RELEASE ALL CLAIMS AS SET FORTH ABOVE.

If you choose to request exclusion from the class, you will not release those claims, but you would have to

pursue any such claims through a separate action on your own or through counsel you hire.

3. **If you object to the settlement, and wish to submit an objection rather than simply exclude yourself from the class**, you must send a written objection to: Clerk's Office, United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113; with copies to Barbara Quinn Smith, Maddox Hargett & Caruso, 9853 Johnnycake Ridge Road, Suite 302, Mentor, OH 44060; and Beth Levene, Williams & Connolly LLP, 725 12th St., N.W., Washington DC 20005.

Your objection must be post-marked on or before June 25, 2010, and must include your name, your address, and the name and number of the case at the top of the notice. The written objection must include the following: (1) the basis on which you purport to be a member of the Settlement Class as defined above; (2) a statement of the objection(s) being asserted; (3) any documentation which you believe supports your objection. If you intend to appear at the hearing, you must state that in the objection, and provide: (1) a list of witnesses, if any, who may be called to testify at the Final Hearing, whether in person, by deposition, or affidavit; and (2) a list of exhibits, and copies of same, which you may offer at the Final Fairness Hearing. Please note that it is not sufficient to simply state that you object. You must state reasons why the settlement should not be approved.

4. **You may hire your own lawyer and enter an appearance in the case.** If you choose to do so, you will be solely responsible for the fees and costs of your lawyer. You should consult with your lawyer promptly regarding this potential course of action.

#### OTHER IMPORTANT INFORMATION

If the Settlement is not approved by the Court, the case will proceed as if no settlement had been attempted. In that event, Office Depot retains the right to contest the merits of the claims being asserted against it in this action. There can be no assurance that if the Settlement is not approved, the class will recover more than is provided in the settlement, or indeed, anything.

The descriptions of the case and the Settlement Agreement in this Notice are general and do not cover all of the issues and proceedings. For more detailed information, you or your attorney may examine the Settlement Agreement and the complete case file at the office of the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113. The Clerk will make the files relating to this lawsuit available to you for inspection and copying at your own expense.

#### INQUIRIES

Any questions you or your attorney may have concerning the Settlement or this notice should be directed to Class Counsel at the address listed below. Please include the case name and number, your name, and your return address on any letters, not just the envelopes.

**Barbara Quinn Smith**  
**Maddox Hargett & Caruso**  
**9853 Johnnycake Ridge Road, Suite 302**  
**Mentor, OH 44060**  
**866-924-4010**  
**[bqsmith@mhclaw.com](mailto:bqsmith@mhclaw.com)**  
**[www.protectingtheconsumer.com](http://www.protectingtheconsumer.com)**