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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ROBERT A. DOUGLAS,  
\_\_\_\_\_ /

NO. 5:11-cv-02911 EJD (PSG)  
NO. 5:11-cv-02950 EJD (PSG)

CHRISTOPHER COLLINS,  
Plaintiff(s),

**ORDER GRANTING STIPULATION TO  
CONSOLIDATE; APPOINTING CO-LEAD  
INTERIM CLASS COUNSEL**

v.

HAIER AMERICA TRADING, LLC, et. al.,  
Defendant(s).  
\_\_\_\_\_ /

[Docket Item Nos. 12, 27]

Plaintiffs Christopher Collins and Robert A. Douglas (collectively, “Plaintiffs”) filed separate actions in this court on behalf of themselves and all others similarly situated against Defendants Haier America Trading, LLC and General Electric Company (collectively, “Defendants”) for selling freezers in violation fo the energy efficiency standards established by the National Appliance Energy Conservation Act, 42 U.S.C. § 6291 et. seq. On June 24, 2011, Collins and Douglas filed a joint motion to consolidate the actions and to appoint their respective attorneys as co-lead interim class counsel for the putative class (the “Motion”). See Docket Item No. 12.<sup>1</sup> The court related the cases on June 29, 2011. See Docket Item No. 13. Thereafter, Plaintiffs and Defendants submitted a stipulation to consolidate the actions and advance the hearing on the Motion (the “Stipulation”). See Docket Item No. 27. In light of the parties’ agreement, the court will grant

<sup>1</sup> All docket references are the to record in Collins v. Haier America Trading, LLC, 5:11-cv-02911 EJD (PSG).

1 the Stipulation with modifications as stated below. In addition, the court finds Plaintiffs' unopposed  
2 Motion appropriate for decision without oral argument pursuant to Civil Local Rule 7-1(b). As  
3 such, the hearing scheduled for January 13, 2012, will be vacated and, as discussed below, the  
4 Motion will be granted.<sup>2</sup>

5 **I. APPOINTMENT OF CO-LEAD INTERIM CLASS COUNSEL**

6 Pursuant to Federal Rule of Civil Procedure 23(g)(3), the court "may designate interim  
7 counsel to act on behalf of a putative class before determining whether to certify the action as a class  
8 action." "Instances in which interim class counsel is appointed are those in which overlapping,  
9 duplicative, or competing class suits are pending before a court, so that appointment of interim  
10 counsel is necessary to protect the interests of class members." White v. TransUnion, LLC, 239  
11 F.R.D. 681, 683 (C.D. Cal. 2006) (citing Manual for Complex Litigation (Fourth) § 21.11 (2004)).  
12 Although Rule 23(g)(3) does not provide a standard for appointment of interim counsel, the court  
13 may consider the factors contained in Federal Rule of Civil Procedure 23(g)(1). Under that section,  
14 the court considers: "(I) the work counsel has done in identifying or investigating potential claims in  
15 the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types  
16 of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the  
17 resources that counsel will commit to representing the class." Fed. R. Civ. Proc. 23(g)(1)(A). The  
18 court may also "consider any other matter pertinent to counsel's ability to fairly and adequately  
19 represent the interests of the class." Fed. R. Civ. Proc. 23(g)(1)(B).

20 Here, Collins is represented by Bursor & Fisher, P.A. and Douglas is represented by Faruqi  
21 & Faruqi, LLP. As is evident from their papers, both Bursor & Fisher, P.A. and Faruqi & Faruqi,  
22 LLP are experienced class action firms. See Declaration of Scott Bursor ("Bursor Decl."), Docket  
23 Item No. 12, at ¶ 2; see also Declaration of Vahn Alexander ("Alexander Decl."), Docket Item No.  
24 12, at ¶¶ 2, 3. Bursor & Fisher, P.A. have been previously appointed to represent customers of LG  
25 Electronics USA, Inc. ("LG") and Sears Holdings Corporation ("Sears") in another class action suit  
26 similar to the instant action. See Bursor Decl. at ¶ 4. Faruqi & Faruqi, LLP have also served as lead

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28 <sup>2</sup> This disposition is not intended for publication in the official reports.

1 or co-lead counsel in numerous high-profile class action cases, and are involved with Bursor &  
2 Fisher, P.A. in the class action against LG and Sears. See Alexander Decl. at ¶ 3; see also Bursor  
3 Decl. at ¶ 4. For this case, the firms have conducted extensive investigation of the potential class  
4 action claims through document review, research, interviews with potential class members, and have  
5 retained an independent expert to review the energy efficiency of the products at issue. See Bursor  
6 Decl. at ¶¶ 5, 6; see also Alexander Decl. at ¶ 4.

7 Having reviewed the papers filed for this motion in the context of Rule 23, the court finds  
8 that Bursor & Fisher, P.A. and Faruqi & Faruqi, LLP are qualified to represent the putative class.  
9 Accordingly, the court appoints the firms as Co-Lead Interim Class Counsel.

## 10 II. ORDER

11 Based on the foregoing discussion:

- 12 1. The parties' stipulation to consolidate is GRANTED. The court consolidates case  
13 numbers 5:11-cv-02911 EJD and 5:11-cv-02950 EJD into one action. The Clerk of  
14 the Court shall consolidate these actions such that the earliest-filed action, 5:11-cv-  
15 02911 EJD, is the lead case. All future filings shall be in 5:11-cv-02911 EJD and  
16 shall bear the caption: "In re Haier Freezer Consumer Litigation." All future related  
17 cases shall be automatically consolidated and administratively closed. Since the later  
18 action is now subsumed by the first-filed action, the Clerk shall administratively close  
19 5:11-cv-02950 EJD. Counsel may identify for the Clerk the filing or transfer or any  
20 case which can be properly consolidated into this action.
- 21 2. Plaintiffs' Motion for Appointment of Co-Lead Interim Class Counsel is GRANTED.  
22 The court appoints Bursor & Fisher, P.A. and Faruqi & Faruqi, LLP as Co-Lead  
23 Interim Class Counsel for the putative class. The request for consolidation included  
24 in that motion is MOOT due to the parties' Stipulation. The hearing on the Motion  
25 currently scheduled for January 13, 2012, is VACATED.
- 26 3. On or before September 1, 2011, Plaintiffs in In re Haier Freezer Consumer  
27 Litigation shall file a Consolidated Amended Class Action Complaint.

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4. Based on the parties' agreement, Defendants shall have no obligation to answer or otherwise respond to the initial complaints filed in the separate actions. Defendants shall answer, move or otherwise respond to the Consolidated Amended Class Action Complaint on or before October 21, 2011. The filing of the Consolidated Amended Class Action Complaint shall not constitute a waiver of the parties' right to make any argument based on choice of law or any other applicable principles with respect to any underlying complaints.
5. The Case Management Conference previously scheduled in the separate actions for September 9, 2011, is reset for the consolidated action In re Haier Freezer Consumer Litigation for December 9, 2011, at 10:00 a.m. in Courtroom 1, 5th Floor of the United States District Courthouse in San Jose. The parties shall file a Joint Case Management Statement on or before November 29, 2011.

**IT IS SO ORDERED.**

Dated: August 17, 2011

  
EDWARD J. DAVILA  
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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16 **Dated: August 17, 2011**

**Richard W. Wieking, Clerk**

17 **By:           /s/ EJD Chambers**  
18 **Elizabeth Garcia**  
19 **Courtroom Deputy**

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