

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

GALOSKI, individually and on behalf)	CASE NO. 1: 14 CV 553
of all others situated,)	
)	
Plaintiff,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
APPLICA CONSUMER PRODUCTS,)	<u>MEMORANDUM OPINION</u>
)	<u>AND ORDER</u>
Defendants.)	

This matter is before the Court on Plaintiff’s Motion to Commence Class Notice. (ECF # 87). Defendant, Applic Consumer Products, Inc. filed a brief in opposition to the motion, and Plaintiff filed a Reply in support of her motion. (ECF #88, 90). For the reasons that follow, Plaintiff’s Motion is DENIED, at this time.

The named Plaintiff, Deborah Galoski, maintains this action on behalf of herself and other individuals who purchased ultrasonic or electronic pest repellents (“pest repellents”) marketed by Defendant, Applic Consumer Products, Inc. from February 7, 2010 to February 7, 2014. The only remaining claim in this case is a claim for breach of express warranty based on representations made on the product’s packaging. Plaintiff alleges that the products cannot,

under any circumstances, repel pests as represented on the product packaging.

Class certification was granted in this case on August 28, 2015. At that time, full fact discovery was not yet completed, and there remained disputed issues as to whether the Defendants were provided pre-suit notice of the alleged breach of warranty, and how the statute of limitations might affect certain class members. Resolution of these issues could affect whether Ms. Galoski is an adequate class representative for the certified class. The Court held, during the certification process, that if, during full discovery, Plaintiff was able to uncover evidence that Applica had actual or constructive knowledge that this product was incapable of performing as a pest repeller, the circumstances of this case would appear to justify allowing the filing of the suit to satisfy the notice requirement. Therefore, if the notice requirement is satisfied, Plaintiff would be an adequate representative. If following discovery, there is no evidence that Defendant has actual or constructive notice of the alleged defect, then this issue may be re-visited.

Now that fact discovery is complete, Defendants believe that there is insufficient evidence of pre-litigation notice, and that there may be statute of limitations issues barring Ms. Galoski's individual claims. Defendants also indicated that they will be filing a summary judgment motion addressing these issues by December 8, 2016. They ask that class notification be delayed until after this motion is decided to prevent unnecessary expenditures in the event that Ms. Galoski's individual claims are dismissed, or she is found to be an inadequate class representative on the basis of these issues.

The Court finds that delaying class notification until after resolution of the statute of limitations and pre-litigation notice issues is the fairest and most efficient way to proceed under

these circumstances. If Ms. Galoski's claims are not valid for one of these reasons, she would no longer be an adequate representative for the class, and notification would have been a waste of time and resources. On the other hand, a short delay in notification, pending resolution of these issues, will not have a detrimental impact on the rights of the class members in event Ms. Galoski's claims survive summary judgment on these issues. For these reasons, class notification shall be postponed until after the Court resolves the notice and statute of limitations issues on summary judgment.

Defendants have until December 8, 2016 to file any summary judgment motion they may have on these issues. If no such motion is filed, Plaintiff may re-submit its request for approval of the proposed notice plan. Further, if the summary judgment motion is resolved in favor of Ms. Galoski on these issues, Plaintiff may re-submit its request for approval immediately following that decision. IT IS SO ORDERED.

/s/ Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: December 5, 2016