

IN THE CIRCUIT COURT FOR THE  
11th JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 12-1532 CA 42

STUART BORNSTEIN, on behalf of  
himself and all others similarly situated,

Plaintiff,

v.

WHIRLPOOL CORPORATION, a  
Delaware Corporation



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**[PROPOSED] ORDER GRANTING PRELIMINARY  
APPROVAL TO CLASS ACTION SETTLEMENT**

On June 4, 2014, Plaintiff Stuart Bornstein ("Plaintiff"), on behalf of himself and a putative nationwide class, and Defendant Whirlpool Corporation ("Whirlpool") (collectively, the "Parties"), executed a proposed Settlement Agreement (the "Agreement"). Pursuant to the Agreement, the Parties have jointly moved for entry of an order granting preliminary approval to the settlement provided for in the Agreement (the "Settlement"). Having reviewed the Agreement and considered the Parties' submissions in support of preliminary approval of the Settlement, the Court now finds, concludes, and orders as follows:

**I. CERTIFICATION OF A NATIONWIDE SETTLEMENT CLASS**

The Agreement provides for a nationwide class settlement of the claims that are the subject of this litigation. As part of the Agreement, Whirlpool has conditionally withdrawn its objections to the certification of a class.

A. The Court has considered the (1) allegations, information, arguments, and authorities provided by the Parties in connection with pleadings previously filed in this case; (2) information, arguments, and authorities provided by the Parties in their memoranda of points

and authorities submitted in support of their joint motion for entry of an order granting preliminary approval to the Settlement; (3) Whirlpool's conditional withdrawal, for the purpose of the Settlement, of its objections to certification of the Settlement Class specified in the Agreement; (4) the terms of the Agreement, including, but not limited to, the definition of the Settlement Class and the benefits to be provided to the Settlement Class; and (5) the Settlement's elimination of any potential manageability issue, ascertainability issue, and individualized issues of fact and law that could have had a bearing on the certification of a nationwide class for trial in this case. Based on those considerations, the Court hereby finds as follows:

1. Persons and entities throughout the nation purchased, from entities authorized to sell new KitchenAid® Stand Mixers, approximately 30,000 Mixers that were manufactured by Whirlpool. This number readily satisfies the numerosity requirement of Rule 1.220 of the Florida Rules of Civil Procedure and would, if the lawsuit had been brought in a federal court, satisfy the numerosity requirement of Rule 23 of the Federal Rules of Civil Procedure. Whirlpool does not contest this numerosity.

2. There are questions of law and fact common to all members of the Settlement Class based on Whirlpool's manufacture and sale of the Mixers. Such questions include, but are not necessarily limited to, the following:

a. Whether the horsepower of the Mixers was overstated in marketing materials and on the Mixers themselves;

b. Whether these horsepower representations violated FDUTPA or other state consumer protection acts;

c. Whether these horsepower representations breached the express warranties which accompanied the Mixers;

d. Whether Plaintiff and the members of the Settlement Class are entitled to damages and associated injunctive relief.

3. Plaintiff's claims are typical of the claims of the Settlement Class. Plaintiff is a member of the Settlement Class and alleges that he has been damaged by the

same conduct of Whirlpool that he alleges has damaged other members of the Settlement Class. Plaintiff's claims are not in conflict with or antagonistic to the claims of the Settlement Class as a whole. The claims of Plaintiff and other members of the Settlement Class are based upon corresponding theories.

4. The Settlement Class is ascertainable. The unnamed members of the Settlement Class have in common that each of them purchased or received as a gift or otherwise lawfully acquired a new KitchenAid® Stand Mixer.

5. Plaintiff can fairly, fully, and adequately protect the interests of the Settlement Class. Plaintiff's counsel are experienced in prosecuting complex class action litigation, and Plaintiff and his counsel have no interest that conflicts with, or is adverse to, the interests of the Settlement Class.

6. Questions of law and fact common to all members of the Settlement Class predominate over any questions affecting only individual members for settlement purposes.

7. A nationwide class action for settlement purposes is superior to other available methods for the fair and efficient adjudication of this controversy.

B. Pursuant to Florida Rule of Civil Procedure 1.220 and Federal Rule of Procedure 23, the Court hereby provisionally certifies the following Settlement Class for settlement purposes only:

Each person in the United States and its territories who either (1) purchased a Mixer on or before entry of this Preliminary Approval Order or (2) received as a gift a Mixer on or before entry of this Preliminary Approval Order, or (3) acquired possession of a Mixer through other lawful means on or before entry of this Preliminary Approval Order. Excluded from the Settlement Class are officers, directors, and employees of Whirlpool and their parents and subsidiaries, as well as judicial officers and employees of the Court.

C. Plaintiff is appointed as the representative of the Settlement Class, and the law firms Baron & Herskowitz, by Jon Herskowitz, Milberg LLP, by Sanford P. Dumain, and Lax LLP, by Robert I. Lax, are appointed as Class Counsel for the Settlement Class.

D. If for any reason the Agreement ultimately does not become effective, Whirlpool's conditional stipulation to certification of the Settlement Class provided for in this paragraph D, or to any other class or subclass, shall be null and void, and the Parties shall return to their respective positions in this Lawsuit as those positions existed as of April 23, 2013. As a part of the Parties' return to their respective positions if this Settlement Agreement should fail to become effective, any amended complaint filed on or after April 23, 2013, pursuant to a motion for leave to amend not opposed by Defendants, shall, without further order of the Court, be replaced *nunc pro tunc* by the Class Representation Complaint filed in this Lawsuit on or about April 18, 2012, and Defendants' non-opposition to the filing of any new amended complaint filed on or after after April 23, 2013, shall be deemed null and void. Nothing stated in the Agreement or in this Order shall be deemed an admission or waiver of any kind by either of the Parties or used as evidence against, or over the objection of, either of the Parties for any purpose in this action or in any other action or proceeding of any kind.

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## **II. PRELIMINARY APPROVAL OF THE TERMS OF THE SETTLEMENT**

Whirlpool has at all times disputed, and continues to dispute, Plaintiff's allegations in this lawsuit and to deny any liability for any of the claims that have or could have been alleged by Plaintiff or other members of the Settlement Class.

A. The Settlement requires Whirlpool to provide specified benefits to each member of the Settlement Class. The Settlement provides prospective injunctive relief in the form of changes to Whirlpool's marketing practices with respect to horsepower claims, an extended two-year warranty for each Mixer's motor beyond the original written warranty term for all Mixers as defined in the Agreement and an incentive award to Plaintiff in the amount of \$5,000.

B. On a preliminary basis, therefore, taking into account (1) the value of the benefits provided by the Settlement to the eligible members of the Settlement Class; (2) the defenses asserted by Whirlpool in pleadings before this Court, (3) the risks to the members of the Settlement Class that Whirlpool would successfully defend against claims arising out of the facts and legal theories pled and asserted in this case, whether litigated by members of the Settlement

Class themselves or on their behalf in a class action, and (4) the length of time that would be required for members of the Settlement Class, or any group of members of the Settlement Class, to obtain a final judgment through one or more trials and appeals, the Settlement appears fair, reasonable, and adequate. Moreover, the parties have reached the Settlement after vigorous litigation, significant investigation and discovery conducted by Plaintiff, Class Counsel, and Whirlpool, and a protracted, arm's-length negotiation process facilitated by a mediator. For all these reasons, the Settlement falls within the appropriate range of possible approval and does not appear in any way to be the product of collusion.

C. Accordingly, the Agreement and corresponding Settlement are hereby preliminarily approved.

### **III. APPROVAL OF THE SETTLEMENT NOTICE, THE PUBLICATION NOTICE, AND THE PLANS FOR DISTRIBUTING THE NOTICES**

~~As provided for in the Agreement, the Parties have submitted a proposed Settlement Notice, a copy of which is attached to this Order as Exhibit A; a proposed Publication Notice, a copy of which is attached to this Order as Exhibit B; and a plan for distributing the Settlement Notice to the Settlement Class.~~

A. The proposed plan for distributing the Settlement Notice and Publication Notice appears reasonably likely to notify members of the Settlement Class of the Settlement, and there appears to be no additional mode of distribution that would be reasonably likely to notify members of the Settlement Class who will not receive notice pursuant to the proposed distribution plan. The proposed plan satisfies the notice requirements of Rule 1.220 and applicable Florida law, as well as, Rule 23 of the Federal Rules of Civil Procedure.

B. The Settlement Notice and Publication Notice fairly, accurately, and reasonably inform members of the Settlement Class of (1) appropriate information about the nature of this litigation and the essential terms of the Agreement; (2) appropriate information about how to obtain additional information regarding this matter and the Agreement; and (3) appropriate information about how to challenge, or exclude themselves from, the Settlement, if they wish to

do so. The Settlement Notice and Publication Notice also fairly and adequately inform members of the Settlement Class that if they do not comply with the specified procedures and the deadline for objections, they will lose any opportunity to have any objection considered at the Fairness Hearing (as that term is defined in the Agreement) or otherwise to contest approval of the Settlement or to appeal from any order or judgment entered by the Court in connection with the Settlement.

C. The Court, having reviewed the proposed Settlement Notice, the proposed Publication Notice, and the proposed plan for disseminating each of them, finds and concludes that the proposed plan for distributing each of them will provide the best notice practicable under the circumstances and satisfies all requirements of the laws of this State and due process. Accordingly, the Court hereby Orders as follows:

1. The form and content of the proposed Settlement Notice and Publication Notice are hereby approved.

2. Promptly following the entry of this Order, the Parties shall prepare final versions of the Settlement Notice and the Publication Notice, and incorporate into each of them the Fairness Hearing date and deadlines set forth in paragraph IV of this Order.

3. Within 60 days after the Court's entry of this Preliminary Approval Order, Whirlpool, through its Settlement Administrator, KCC LLC, shall cause the Publication Notice to be posted on the Settlement Administrator's website, and on Class Counsel's website, [www.bhfloridalaw.com](http://www.bhfloridalaw.com), and linked to Whirlpool's website, [www.whirlpool.com](http://www.whirlpool.com).

4. Within 60 days of the entry of this Order, Whirlpool shall send, cause to be sent, or ensure that the Settlement Administrator provided for below has sent, by e-mail or first-class United States mail, to all members of the Settlement Class whose addresses reasonably can be identified in Whirlpool's records of purchasers and owners of the Mixers, a copy of the Settlement Notice.

5. Within 90 days of the entry of this Order, Whirlpool shall file with this Court a declaration of compliance with paragraphs 3 and 4 above.

6. KCC LLC is hereby approved as the Settlement Administrator, whose reasonable costs in administering the Settlement are to be paid by Whirlpool.

7. The Settlement Administrator<sup>1</sup> shall perform the following functions in accordance with the Agreement, this Order, and subsequent orders that may be entered by this Court in this case:

a. Mail, to all members of the Settlement Class whose addresses reasonably can be identified by Whirlpool, a copy of the Settlement Notice incorporating the Fairness Hearing date and deadlines set forth in paragraph IV of this Order;

i. Before mailing the Settlement Notice, Whirlpool will obtain or cause to be obtained address updates utilizing a National Change of Address database. In mailing the Settlement Notice, the Settlement Administrator will use any updated addresses thus obtained. If any Settlement Notice is returned to the Settlement Administrator bearing a forwarding address for a member of the Settlement Class, the Settlement Administrator shall make one attempt to mail the Settlement Notice to that class member's forwarding address.

ii. Before mailing the Settlement Notice, the Settlement Administrator shall establish an Internet website that Settlement Class Members can visit to review the Settlement Notice and to obtain additional information regarding the Settlement.

iii. Before mailing the Settlement Notice, the Settlement Administrator shall utilize or establish a postal address to which

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<sup>1</sup> Notice to individuals in the Settlement Class who purchased Mixers from Costco shall be disseminated, in the first instance, by Costco.

Settlement Class Members can request to be excluded from the Settlement Class.

b. E-mail, to all members of the Settlement Class whose e-mail addresses reasonably can be identified by Whirlpool, an electronic copy of the Settlement Notice;

c. Process Requests for Exclusion from the Settlement Class in accordance with Section IV.B of the Agreement;

d. Not later than 10 business days after the deadline for submission of Requests for Exclusion, provide to Class Counsel and Whirlpool's counsel copies of the Requests for Exclusion and a list of the names of all persons who submitted Requests for Exclusion. Class Counsel and Whirlpool shall jointly report in writing to the Court, no less than 10 days before the Fairness Hearing, the names of all such persons;

e. Provide to Class Counsel and Whirlpool's counsel, in the time and manner specified in the Agreement, all information and materials that the Agreement specifies are to be provided to them by the Settlement Administrator; and

#### IV. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT

##### A. Fairness Hearing

NOVEMBER 13, 2014 AT 9:30 AM

The Court hereby schedules on \_\_\_\_\_, 2014, which date is 180 days or more after the entry of this Order, a Fairness Hearing to determine whether the certification of the Settlement Class, the designation of Plaintiff as class representative, the appointment of Class Counsel, the Settlement Agreement, and the Settlement should receive final approval. At that time, the Court also will consider an application for an award of attorneys' fees and costs to Class Counsel and for an incentive award to Plaintiff, all in accordance with the terms of the Agreement (the "Application").



**B. Deadline for Requests for Exclusion from the Settlement Class**

Members of the Settlement Class who wish to be excluded from the Settlement Class must mail their requests for exclusion to the Settlement Administrator by first-class United States mail, postmarked by the United States Postal Service no later than ~~120~~<sup>90</sup> days after entry of this Order.

**C. Deadline for Class Counsel to File Fee Application**

No later than ~~90~~<sup>45</sup> days after entry of this Order, Class Counsel shall file with this Court, and serve on Whirlpool either electronically or by first class U.S. mail, Class Counsel's Application, pursuant to the Agreement, for an award of attorneys' fees and reimbursement of costs incurred in the lawsuit and for an incentive award to Plaintiff. Whirlpool may file a response to Class Counsel's Application no later than ~~120~~<sup>20</sup> days ~~after entry of this Order~~ PRIOR TO THE FAIRNESS HEARING in accordance with paragraph IV.D below. ~~No later than 150 days after entry of this Order, Class Counsel may file their reply in support of their Application.~~

**D. Deadline for Filing Objections and Requests to Appear**

All objections to certification of the Settlement Class, the designation of Plaintiff as class representative, the appointment of Class Counsel, the Settlement, the Agreement, or Class Counsel's Application, shall be made in writing and, no later than ~~120~~<sup>90</sup> days after entry of this Order, filed with this Court and mailed to Class Counsel and Whirlpool's counsel, by first-class United States Mail, at the following addresses:

To Whirlpool's Counsel:

Michael T. Williams  
Andrew M. Unthank  
Wheeler Trigg O'Donnell LLP  
370 Seventeenth St., Suite 4500  
Denver, CO 80202

To Class Counsel:

Jon Herskowitz  
Baron & Herskowitz  
9100 S. Dadeland Blvd.  
PH-1, Suite 1704  
Miami, FL 33156

Any written objection must include (1) the name of this lawsuit, *Stuart Bornstein v. Whirlpool Corporation*, Case No. 12-1532 CA 40; (2) the objector's name and current address; (3) a statement whether the objector (a) purchased a new Mixer, or (b) received as a gift a new Mixer purchased by a donor, or (c) acquired a Mixer through other lawful means; (4) the serial number and model number of the objector's Mixer; (5) each specific reason for the objection; (6) all evidence and supporting papers (including, but not limited to, all briefs, written evidence, and declarations) that the objector wants the Court to consider in support of the objection; (7) the objector's signature; and (8) the date of the objector's signature. Any papers not filed and served in the prescribed manner and time will not be considered at the Fairness Hearing, and all objections not made in the prescribed manner and time shall be deemed waived.

Any memorandum or other material the parties wish to submit in response to any objections to the certification of the Settlement Class, the designation of Plaintiff as representative of the Settlement Class, the appointment of Class Counsel, the Settlement, the Agreement, or Class Counsel's Application, or otherwise in support of the Settlement Class, the Settlement, the Agreement, or Class Counsel's Application, shall be made in writing and, no later than ~~120~~<sup>90</sup> days after entry of this Order, filed with this Court and served on each other.

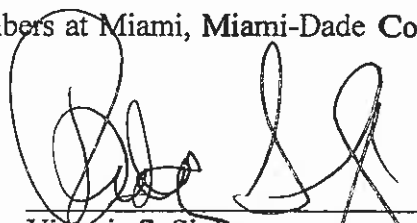
All persons wishing to appear at the Fairness Hearing, either in person or by counsel, for the purpose of objecting to any aspect of the certification of the Settlement Class, the designation of Plaintiff as representative of the Settlement Class, the appointment of Class Counsel, the Settlement, the Agreement, or Class Counsel's Application, must file with the Court and serve, on Class Counsel and Whirlpool's counsel, ~~120~~<sup>90</sup> days after the entry of this Order, a notice of their intention to appear setting forth the basis of their objections and summarizing the nature and source of any evidence they intend to present at the Fairness Hearing.

#### V. CLASS COUNSEL'S APPLICATION FOR FEES AND COSTS

A. Whirlpool will pay attorneys' fees and costs to Class Counsel as set forth and agreed upon in Section VIII of the Agreement. The agreed amount will be subject to Court

approval, which approval shall be stated in an order of the Court upon Class Counsel's Application. Whirlpool will not object to the amount of Class Counsel's application up to the amount set forth in the Agreement.

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida this 18 day of June, 2014.

  
Victoria S. Sigler  
Judge, Circuit Court  
*Judge Victoria Sigler*

Copies furnished to:  
All Counsel of Record

QUESTIONS? VISIT WWW. \_\_\_\_\_ .COM.

MIAMI-DADE COUNTY, FLORIDA, 11TH JUDICIAL CIRCUIT COURT

IF YOU PURCHASED, RECEIVED AS A GIFT, OR OTHERWISE ACQUIRED A KITCHENAID®-BRAND STAND MIXER MARKETED WITH A HORSEPOWER DESIGNATION, YOU MAY QUALIFY FOR BENEFITS FROM A NATIONWIDE CLASS-ACTION SETTLEMENT

Please Read This Notice Carefully  
Your Legal Rights May Be Affected By The Settlement

*A court authorized this notice. This is not a solicitation from a lawyer.*

- A settlement has been proposed in a class action lawsuit involving 6-qt., 7-qt., and 8-qt. KitchenAid®-brand stand mixers manufactured by Whirlpool Corporation (“Whirlpool”) that were marketed with a horsepower designation. These mixers are referred to throughout this Notice as the “Mixers”.
- The settlement provides that the written warranty for the motor in all Mixers will be extended for two years beyond its original written term. The settlement further provides for changes to Whirlpool’s use of horsepower designations in its marketing of the Mixers.
- ~~Your legal rights are affected whether you act or not. Read this notice carefully.~~

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:**

What Are Your Options?

- |                       |   |
|-----------------------|---|
| DO NOTHING.....       | Get a warranty extension and be bound by the terms of the settlement.     |
| OBJECT .....          | Write to the Court about why you don’t like the settlement.               |
| GO TO A HEARING ..... | Ask to speak in Court about the fairness of the settlement.               |
| OPT OUT .....         | Do not get warranty extension or be bound by the terms of the settlement. |

- \* These legal rights and options—and the deadlines to exercise them—are explained in this notice.
- \* The Court still has to decide whether to approve the settlement. If the settlement is approved and becomes final, warranty extensions will automatically be provided to those Settlement Class Members who do not timely opt out, and all Settlement Class Members who do not timely opt out of the Settlement Class will be bound by the terms of the settlement.

Si usted desea obtener una copia de este documento legal en Español, favor de actuar inmediatamente y visite la página web www. \_\_\_\_\_ .com o escribe al Administrador de Reclamos: \_\_\_\_\_ Settlement Administrator, P.O. Box \_\_\_\_\_, \_\_\_\_\_.

### **1. Why Did I Receive This Notice?**

You received this Notice because Whirlpool's records indicate that you may have purchased, received as a gift, or otherwise acquired a Mixer that is the subject of this settlement.

### **2. Why Did the Court Issue This Notice?**

The Court issued this Notice because you have a right to know about a proposed settlement in this class action lawsuit about certain KitchenAid®-brand stand mixers manufactured by Whirlpool that were marketed with a horsepower designation, including those sold through various small appliance retailers, and the Pro Line and NSF Commercial lines. You also have a right to know about all of your options before the Court decides whether to approve the settlement.

This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. Judge \_\_\_\_\_ of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, is in charge of this case, called *Stuart Bornstein v. Whirlpool Corporation*, Case No. 12-1532 CA 42. The person who sued is called the "Plaintiff," and the company that was sued is called the "Defendant."

### **3. What Is the Lawsuit About?**

Plaintiff alleges that Whirlpool overstated the horsepower of the Mixers in its marketing materials and on the Mixers themselves, and therefore violated various consumer protection statutes and the express written warranties which accompanied the Mixers.

Whirlpool denies Plaintiff's allegations of wrongdoing and asserts defenses to Plaintiff's claims.

The Court has made no determination about the strengths or weaknesses of either Plaintiff's contentions or Whirlpool's defenses. Instead, Plaintiff and Whirlpool, with the assistance of a mediator, agreed to a settlement and have entered into a Settlement Agreement.

### **4. Why Is This a Class Action?**

In a class action, one or more people called "Class Representatives" sue on behalf of a group of people who have similar legal claims. This group of people is called the "class," and the people in the class are called "class members." One court resolves the issues for all class members. In this case, Stuart Bornstein is the Class Representative.

### **5. How Do I Know Whether I Am Part of the Settlement?**

The Court has decided that everyone who fits the following description is a member of the Settlement Class: each person in the United States and its territories who before \_\_\_\_\_, 2014 either (1) purchased a Mixer or (2) received a Mixer as a gift or (3) acquired possession of a Mixer through other lawful means.

### **6. Are There Exceptions to Being Included?**

Yes. The following people are excluded from the Settlement Class: officers, directors, and employees of Whirlpool and their parents and subsidiaries, as well as judicial officers and employees of the Court.

### **7. Who Represents the Settlement Class?**

The Court designated Stuart Bornstein as the representative of the Settlement Class. The Court designated the law firms Baron & Herskowitz, Milberg LLP, and Lax LLP as Class Counsel.

You will not be charged for Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense to represent you in Court.

**8. What Are the Benefits Available Under the Settlement?**

Whirlpool has agreed to provide the following benefits to members of the Settlement Class who do not opt out on or before the deadline of \_\_\_\_\_, 2014:

- (a) Whirlpool will change its records to reflect that the written warranty for all Mixers is, with respect to the motor in such Mixers, extended for two years beyond its original written term; and
- (b) Whirlpool will provide on its websites that reference horsepower of the Mixers or their motors, and in marketing materials that reference horsepower of the Mixers or their motors, information that is materially consistent with the following statement:

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Motor horsepower for our mixer motors was measured using a dynamometer, a machine laboratories routinely use to measure the mechanical power of motors. Our 1.3 horsepower (HP) motor reference reflects the horsepower rating of the motor itself and not the mixer's horsepower output to the mixer bowl. This robust motor, the backbone of our new mixer, delivers .44 HP to the bowl enabling your mixer to deliver consistent power to small and large loads with less heat build-up; resulting in years of dependable mixing. When combined with and guided by our new advanced motor control board, this is our longest lasting and most efficient motor yet. Simply put, our new, highly efficient, special purpose motor delivers the power you need when you need it.

- (c) Whirlpool will exclude from all Mixers thereafter manufactured, and all associated Mixer packaging or Mixer marketing materials thereafter created, references to horsepower without qualification materially consistent with the information set forth in the paragraph immediately above.

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You do not need to do anything in order to qualify for the benefits described above. The warranty extension will be automatically updated in Whirlpool's database.

**10. I'm Still Not Sure I'm included.**

If you are not sure whether you are included, you can get help by visiting [www.\\_\\_\\_\\_\\_.com](http://www._____.com), or writing with questions to the Settlement Administrator at \_\_\_\_\_ Settlement Administrator, P.O. Box \_\_\_\_\_.

**11. How Will the Plaintiff's Lawyers Be Paid?**

After agreeing on the terms of the Settlement described above, the parties through the mediator negotiated the amount of attorneys' fees, costs and expenses that Class Counsel would request, and to which Whirlpool would not object. Class Counsel will ask the Court to approve an award of attorneys' fees of \$486,000 and costs of \$30,000, in a total amount not to exceed \$516,000 for their work on behalf of the Settlement Class. The attorneys' fees and costs will be paid by Whirlpool. Whirlpool is also paying the costs to notify the Settlement Class and to administer the settlement. These attorneys' fees and costs and notice costs will not reduce the benefits available to Settlement Class.

**12. Why Is Class Counsel Recommending the Class Settlement?**

Class Counsel reached this settlement after weighing the risks and benefits to the Settlement Class of this settlement compared with those of continuing the litigation. The factors that Class Counsel considered included the uncertainty and delay associated with continued litigation, a trial, and appeals, and the uncertainty of particular legal issues that have been, or are yet to be, determined by the Court. Class Counsel balanced these and other substantial risks in determining that the settlement is fair, reasonable, and adequate in light of all circumstances and in the best interests of members of the Settlement Class.

**13. If the Court Approves the Class Settlement, What Will Happen to Any Claims I May Have Against Whirlpool?**

If the settlement receives final judicial approval, it will result in a release by Plaintiff and all members of the Settlement Class (other than those members who timely request to be excluded from the Settlement Class in the manner described below in response to Question 20) of all claims that Plaintiff or any member of the Settlement Class has alleged or could have alleged in this lawsuit or in another court action, other than personal injury claims, that relate to any of the alleged inadequacies, misstatements, or issues of or associated with the Mixers alleged in the lawsuit or to any act, omission, damage, matter, cause, or event whatsoever arising out of or related to the initiation, defense, or settlement of the Lawsuit or the claims or defenses asserted or that could have been asserted in the lawsuit.

**14. Can I Get Out of the Settlement?**

Yes. If you are a Settlement Class Member, you may exclude yourself from the Settlement Class by sending a letter, **postmarked no later than \_\_\_\_\_, 2014**, stating your name, address, telephone number, and the model and serial numbers of your Mixer to the following address:

ATTN: \_\_\_\_\_ Settlement Administrator  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

Your letter must identify this class action and clearly state that you wish to be excluded from the Settlement Class. If you exclude yourself from the Settlement Class, you will not be eligible to participate in any aspect of the settlement.

**15. How Do I Tell the Court That I Don't Like the Settlement?**

If you're a Settlement Class Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must mail your objection to the Court and to Class Counsel and Whirlpool's counsel at the addresses listed below. Be sure to include the full name of the case and the case number (*Stuart Bornstein v. Whirlpool Corporation*, Case No. 12-1532 CA 42), your name, address, telephone number, signature, and the reasons why you object to the settlement. Your objection must be postmarked or received **no later than \_\_\_\_\_, 2014**.

**To the Court:**

Clerk of the Court  
Eleventh Judicial Circuit of Florida  
Dade County Courthouse  
73 West Flagler Street  
Miami, Florida 33130

**To Whirlpool's Counsel:**

Michael T. Williams  
Andrew M. Unthank  
Wheeler Trigg O'Donnell LLP  
370 Seventeenth Street  
Suite 4500  
Denver, CO 80202

**To Class Counsel:**

Jon Herskowitz  
Baron & Herskowitz  
9100 S. Dadeland Blvd.  
Suite 1704  
Miami, FL 33156

**16. When and Where Will the Court Decide Whether to Approve the Settlement?**

The Court has scheduled a Fairness Hearing on \_\_\_\_\_, 2014, at \_\_\_\_\_ at the Eleventh Judicial Circuit in and for Miami-Dade County, located at 73 West Flagler Street, Miami, Florida 33130. At the Fairness Hearing,

the Court will consider whether the settlement is fair, adequate, and reasonable to the Settlement Class. If there are any objections, the Court will consider them. The Court will listen to people who have timely asked to speak at the hearing. After the hearing, the Court will make its decision. We do not know how long this will take.

**17. What Else Will Be Decided at the Fairness Hearing?**

At the Fairness Hearing, Class Counsel will ask the Court to award them attorneys' fees and costs, as described in Question 11 above. The Court will consider whether and how much to pay Class Counsel. Also, the Court will consider whether to make an award to the Class Representative in the amount of \$5,000 for his representation and efforts on behalf of the Settlement Class.

**18. Do I Have to Come to the Fairness Hearing?**

No. Class Counsel will answer any questions that the Court may have. You are welcome, however, to come at your own expense. If you file an objection to the settlement, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. If you so desire, you also may pay your own lawyer to attend and represent you at the hearing, but that is not necessary for your objection to be considered by the Court.

**19. May I Speak at the Hearing?**

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a "Notice of Intention to Appear" to the Clerk of the Court and to Class Counsel and Whirlpool's counsel at the addresses listed above in response to Question 15. Be sure to include the case name and the case number (*Stuart Bornstein v. Whirlpool Corporation*, Case No. 12-1532 CA 42), your name, address, telephone number, and signature. Your Notice of Intention to Appear must be postmarked or actually received by the Court **no later than \_\_\_\_\_, 2014**. You cannot speak at the hearing if you excluded yourself.

**20. What Happens If I Do Nothing At All?**

If you do nothing, and if you don't opt out by the deadline in response to Question 14, you will receive the warranty extension described in response to Question 8. If you do not exclude yourself from the Settlement Class, you will be legally bound by the settlement and release, and cannot sue Whirlpool about the legal claims released in this settlement.

**21. How Do I Get More Information About the Settlement?**

If you have questions, visit [www.\\_\\_\\_\\_\\_.com](http://www._____.com), or write to \_\_\_\_\_ Settlement Administrator, P.O. Box \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

**22. Are There More Details About the Settlement?**

This Notice only summarizes the proposed settlement. More details are in the Settlement Agreement, which you can read or print at [www.\\_\\_\\_\\_\\_.com](http://www._____.com). You also can get a copy of the Settlement Agreement by writing to the \_\_\_\_\_ Settlement Administrator, P.O. Box \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ or to Class Counsel.

**PLEASE DO NOT WRITE OR TELEPHONE THE COURT, WHIRLPOOL CORPORATION, OR ANY WHIRLPOOL DEALER OR AGENT FOR INFORMATION ABOUT THE CLASS SETTLEMENT OR THIS LAWSUIT.**



**KEY DATES**

Deadline to request exclusion from the Class	Must be postmarked or received by _____, 2014
Deadline to object to the settlement	Must be postmarked or received by _____, 2014
Deadline to send your Notice of Intention to Appear at the Fairness Hearing	Must be postmarked or received by _____, 2014
Court's Fairness Hearing.	_____, 2014, at _____

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

A proposed settlement has been reached in a class action, *Stuart Bornstein v. Whirlpool Corp.*, Case No. 12-1532 CA 42, which concerns 6-qt., 7-qt., and 8-qt. KitchenAid®-brand stand mixers (the "Mixers") manufactured by Whirlpool Corporation ("Whirlpool") that were marketed with a horsepower designation. These mixers are referred to throughout this Notice as the "Mixers". **This notice is only a summary of your legal rights.** You should visit [www.\\_\\_\\_\\_.com](http://www.____.com) to obtain more complete information about the proposed settlement and the procedures described below. If you do not have Internet access, you can write to the Settlement Administrator at P.O. Box \_\_, [CITY], [STATE] [ZIP], to have a more detailed Notice mailed to you.

**What is the class action about?** Plaintiff alleges that Whirlpool overstated the horsepower of the Mixers in its marketing materials and on the Mixers themselves, and thereby violated various consumer protection statutes and the express written warranties which accompanied the Mixers. Whirlpool denies Plaintiff's allegations of wrongdoing and asserted defenses to Plaintiff's claims.

**What are my rights?** The settlement class includes all persons in the United States and its territories who, before [insert date of Preliminary Approval Order] either (1) purchased a Mixer or (2) received a Mixer as a gift, or (3) acquired possession of a Mixer through other lawful means. The settlement provides that the written warranty for all Mixers is, with respect to the motor in such Mixers, extended for two years beyond its original written term. The settlement further provides for certain prospective relief in that Whirlpool must change its marketing practices with respect to the use of horsepower designations in relation to the marketing of the Mixers. Your legal rights as a Mixer owner, thus, are affected.

**How to Request Exclusion from the Class.** If you do not wish to participate in this class action and proposed settlement, the Court will exclude you from the class if you send a letter, postmarked no later than [MONTH AND DAY], 2014, stating your name, address, telephone number, and the model and serial numbers of your Mixer to the following address: \_\_\_\_\_ . Your letter must identify this settlement and clearly state that you wish to be excluded from the Settlement Class. If you exclude yourself from the Class, you will not be eligible to participate in any aspect of the settlement.

**How to Object to the Settlement.** If you remain in the class, you can object to all or part of the proposed settlement by mailing a written objection to the Clerk of the Court, Eleventh Judicial Circuit of Florida, Dade County Courthouse, 73 West Flagler Street, Miami, Florida 33130 and to Whirlpool's counsel Michael T. Williams, Andrew M. Unthank, Wheeler Trigg O'Donnell LLP, 370 Seventeenth Street, Suite 4500, Denver, Colorado 80202. You will need to include the case name and number (*Stuart Bornstein v. Whirlpool Corp.*, Case No. 12-1532 CA 42), your name, address, telephone number, signature, and the reasons why you object to the settlement. Your objection must be postmarked or received no later than [MONTH AND DAY], 2014.

**Class Counsel's Attorneys' Fees and Contact Information.** If the settlement is approved, the lawyers for Plaintiff and the class ("Class Counsel") will request from the Court attorneys' fees and costs in a total amount not to exceed \$516,000, to be paid by Whirlpool. Class members will not be responsible for the payment to Class Counsel. You can write to Class Counsel at Jon Herskowitz, Baron & Herskowitz, 9100 S. Dadeland Blvd., PH-1, Suite 1704, Miami, Florida 33156, Sanford P. Dumain, Milberg LLP, One Penn Plaza, New York, New York 10119-0165, or Robert I. Lax, Lax LLP, 380 Lexington Ave., 31st Floor, New York, New York 10168. You do not have to pay Class Counsel. If you want to be represented by your own attorney, you may hire one at your own expense to represent you in court.

\*\*\*\*[ON THE FRONT OF THE POSTCARD:] For more information on the proposed settlement, excluding yourself, or filing objections visit [www.\\_\\_\\_\\_.com](http://www.____.com) or contact the Settlement Administrator or Class Counsel. **Do not contact the Court, Whirlpool, or any appliance retailer or dealer for information about the settlement.**