

IN THE CIRCUIT COURT FOR THE  
11<sup>TH</sup> 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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This agreement ("Settlement Agreement") is made and entered into this 4 day of May, 2014, between Plaintiff Stuart Bornstein, on behalf of himself and the Settlement Class, as defined below, and Defendant Whirlpool Corporation ("Whirlpool") to settle, fully and finally, all of the claims that have been or could have been brought on behalf of the Settlement Class against Whirlpool relating to the KitchenAid Stand Mixers as described below (hereinafter referred to individually and collectively as "the Mixer" or "the Mixers").

Whereas Plaintiff has alleged in this class-action lawsuit ("Lawsuit") against Whirlpool claims for violation of the Florida Deceptive and Unfair Trade Practices Act, breach of warranty, and violation of consumer protection statutes based on alleged misstatements and defects that allegedly caused perception and performance problems in or in connection with the Mixer;

Whereas Whirlpool denies the allegations in this Lawsuit and asserts numerous defenses to the claims alleged in this Lawsuit;

Whereas the parties to this Settlement Agreement ("the Parties"), after having engaged in discovery in this Lawsuit and having engaged in settlement negotiations, have now reached an

agreement providing for a resolution of all claims that have been or could have been brought on behalf of the Settlement Class against Whirlpool relating to the Mixer;

Whereas Plaintiff and Plaintiff's counsel have examined and considered the benefits to be provided to Settlement Class Members under the settlement provided for in this Settlement Agreement ("the Settlement"); have considered the laws of the state of Florida and other states, and the claims that could be asserted under those laws regarding the Mixer; and believe the Settlement to be in the best interest of Settlement Class Members, taking into account the substantial benefits already provided to Settlement Class Members by Whirlpool, the risks of litigation, and the length of time that would be required to complete the litigation and any appeals; and

Whereas Whirlpool has at all times disputed, and continues to dispute, Plaintiff's allegations in the Lawsuit and has denied, and continues to deny, any liability for any of the claims that have or could have been raised regarding the Mixers by Plaintiff or Settlement Class Members, but believes that the comprehensive resolution of the issues relating to the Mixer as provided in this Settlement Agreement will avoid the substantial expense and disruption of continued litigation;

Now, therefore, the Parties agree as follows:

## **I. DEFINITIONS**

As used in this Settlement Agreement, the following definitions shall apply:

A. "Administration Expenses" means reasonable fees and expenses incurred by the Settlement Administrator for all tasks the Settlement Administrator performs, including (1) preparation and distribution of the Settlement Notice, and (2) preparation of status reports to the Parties.

B. “Application” means the application to be filed by Class Counsel in this Lawsuit by which they will seek an award of attorneys’ fees and reimbursement of costs they incurred prosecuting this Lawsuit, as well as an incentive award to be paid to Plaintiff.

C. “Class Counsel” means Jon Herskowitz of the law firm Baron & Herskowitz, Sanford P. Dumain and Jennifer Czeisler of the law firm Milberg LLP, and Robert I. Lax of the law firm Lax LLP.

D. “Court” means the circuit court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

E. “Defendant” means Whirlpool.

F. “Effective Date” means the first date after all the following have occurred: (i) the Court has entered an order granting final approval of the Settlement in accordance with the terms of this Settlement Agreement; (ii) the time for any challenge to the Settlement, both in the Court and on appeal, has elapsed; and (iii) the Settlement has become final, either because no timely challenge was made to it or because any timely challenge has been finally adjudicated and rejected.

G. “Fairness Hearing” means the final hearing, to be held after notice has been provided to the Settlement Class in accordance with this Settlement Agreement, (1) to determine whether to grant final approval to (a) the certification of the Settlement Class, (b) the designation of Plaintiff as the representative of the Settlement Class, (c) the designation of Class Counsel as counsel for the Settlement Class, and (d) the Settlement; (2) to rule on Class Counsel’s Application for an award of attorneys’ fees and reimbursement of costs and for an incentive award to Plaintiff; and (3) to consider whether to enter the Final Approval Order.

H. “Final Approval Order” means the proposed Order Granting Final Approval to the Class Action Settlement Agreement and Entry of Final Judgment, to be entered by the Court with the provisions and in the form of Exhibit B attached to this Settlement Agreement.

I. “Lawsuit” means the putative class action lawsuit pending, as of the date of this Settlement Agreement, in the Court as Case No. 12-1532 CA 42.

J. “Mixer” and “Mixers” means all 6-qt., 7-qt., and 8-qt. KitchenAid Stand Mixers marketed with a horsepower designation manufactured and sold by Whirlpool before the entry of the Preliminary Approval Order.

K. “Settlement Notice” means the proposed form of written notice attached to the Preliminary Approval Order as Exhibit A, to be approved by the Court and to be sent to those Settlement Class Members whose e-mail or mailing addresses are known to and readily identifiable by Whirlpool in accordance with paragraph V of this Settlement Agreement.<sup>1</sup>

L. “Person” means any natural person, corporation, partnership, business organization or association, or other type of legal entity.

M. “Plaintiff” means Stuart Bornstein, the named plaintiff in this Lawsuit.

N. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval to Class Action Settlement, to be entered by the Court with the terms and form of Exhibit A attached to this Settlement Agreement.

O. “Publication Notice” means the proposed notice, with the terms and form of the document attached to the Preliminary Approval Order as Exhibit B, to be approved by the Court and to be published in accordance with paragraph V of this Settlement Agreement.

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<sup>1</sup> All references to “paragraph V of this Settlement Agreement” are to the portion of this Settlement Agreement that begins on page 12 below, not to subparagraph V of paragraph I.

P. “Released Claims” means all claims, actions, causes of action, administrative claims, demands, debts, damages, costs, attorney’s fees, obligations, judgments, expenses, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, other than claims for personal injury, that Plaintiff or any member of the Settlement Class now has or, absent this Settlement Agreement, may in the future have had, against Releasees, or any of them, by reason of any act, omission, harm, matter, cause, or event whatsoever that has occurred at any time up to and including the entry of the Preliminary Approval Order, that has been alleged in this Lawsuit or could have been alleged in the Lawsuit or in another court action, and relates (i) to any of the alleged inadequacies, misstatements, or issues of or associated with the Mixers alleged in this Lawsuit or (ii) 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.

Q. “Releasees” means (a) Defendant, together with its respective predecessors and successors in interest, parents, subsidiaries, affiliates, and assigns; (b) each of their respective past, present, and future officers, directors, agents, representatives, servants, employees, attorneys, and insurers; and (c) all suppliers, distributors, dealers, retailers, trade partners, licensors, licensees, franchisees, public relations firms, advertising and production agencies, and other entities, whether foreign or domestic, who were or are in the chain of, or played any role in, the design, testing, manufacture, assembly, distribution, marketing, sale, lease, installation, or servicing of the Mixers or their component parts..

R. “Settlement” means the settlement provided for in this Settlement Agreement.

S. “Settlement Administrator” means Rust Consulting, Inc., the entity selected by the Parties to administer the Settlement.

T. “Settlement Agreement” or “Agreement” means this Settlement Agreement and the exhibits attached hereto.

U. “Settlement Class” means each person in the United States and its territories who either (1) purchased a Mixer before entry of the Preliminary Approval Order or (2) received as a gift a Mixer before entry of the Preliminary Approval Order, or (3) acquired possession of a Mixer through other lawful means before entry of the 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.

V. “Settlement Class Members” means all Persons who are members of the Settlement Class and do not exclude themselves from the Settlement Class in the manner and time prescribed by the Court in the proposed Preliminary Approval Order attached hereto as Exhibit A.

## **II. CONDITIONAL CERTIFICATION OF NATIONWIDE CLASS SETTLEMENT**

For the purposes of implementing this Settlement Agreement, and for no other purpose, Defendant stipulates to the conditional certification of the nationwide Settlement Class in this Lawsuit and set forth in the Preliminary Approval Order. If for any reason this Settlement Agreement should fail to become effective, Defendant’s stipulation to certification of the Settlement Class provided for in this paragraph II, 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 Defendant, 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 Defendant's non-opposition to the filing of any new amended complaint filed on or after April 23, 2013, shall be deemed null and void. Nothing stated in this Settlement Agreement 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.

### **III. REQUIRED EVENTS**

A. As soon as practicable after the execution of this Settlement Agreement, the Parties shall file in this Lawsuit this Settlement Agreement and a joint motion seeking entry of the Preliminary Approval Order, which by its terms shall accomplish all of the following:

1. Preliminarily approve the Settlement and this Settlement Agreement as fair and reasonable to the Settlement Class;
2. Conditionally certify the Settlement Class for the purpose of effecting the Settlement;
3. Designate Plaintiff as the representative of the Settlement Class;
4. Designate Class Counsel as counsel for the Settlement Class;
5. Designate KCC LLC, as the Settlement Administrator and instruct the Settlement Administrator to perform the following functions in accordance with the terms of this Settlement Agreement, the Preliminary Approval Order, and the Final Approval Order:
  - a. Disseminate the Settlement Notice by e-mail where an e-mail address is known and readily available to Whirlpool,

and by mail where a mailing address is known and readily available to Whirlpool, but an e-mail address is not.<sup>2</sup>

- b. Process requests for exclusion from the Settlement in accordance with paragraph IV of this Settlement Agreement.
  - c. Process objections to the Class Settlement in accordance with paragraph IV of this Settlement Agreement.
  - d. Before disseminating the Settlement Notice, establish a website that Settlement Class Members can visit to read or request additional information regarding the Settlement.
6. Approve the form, contents, and method of notice to be given to the Settlement Class as set forth in paragraph V of this Settlement Agreement, and direct Whirlpool to provide, and cause to be provided, such notice and to file with the Court a declaration of compliance with those notice requirements, as set forth in paragraph V of this Settlement Agreement.
7. Establish procedures and schedule deadlines for Persons in the Settlement Class to object to the Settlement or certification of the Settlement Class, and to exclude themselves from the Settlement, all consistent with the terms of this Settlement Agreement.
8. Schedule the Fairness Hearing for a date approximately, but no fewer than, 180 days after the date of the entry of the Preliminary Approval Order; and

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<sup>2</sup> Notice to individuals in the Settlement Class who purchased Mixers from Costco shall be disseminated, in the first instance, by Costco.



9. Schedule deadlines for the filing of (a) papers in support of final approval of the certification of the Settlement Class, the designation of Plaintiff as the representative of the Settlement Class, the appointment of Class Counsel as counsel for the Settlement Class, and the Settlement; (b) Class Counsel's Application; and (c) objections to certification of the Settlement Class, to the designation of Plaintiff as the representative of the Settlement Class, to the appointment of Class Counsel as counsel for the Settlement Class, or to the Settlement.

B. At the Fairness Hearing the Parties will jointly request the Court to enter the Final Approval Order, which (1) grants final approval of the certification of the Settlement Class, designation of Plaintiff as the representative of the Settlement Class, and designation of Class Counsel as counsel for the Settlement Class, all as conditionally approved in the Preliminary Approval Order; (2) grants final approval of the Settlement and this Settlement Agreement as fair, reasonable, and adequate to the Settlement Class; (3) provides for the release of all Released Claims and enjoins Settlement Class Members from asserting, filing, maintaining, or prosecuting any of the Released Claims in the future; (4) orders the dismissal with prejudice of all claims, causes of action, and counts alleged in the Lawsuit, and incorporates the releases and covenant not to sue stated in this Settlement Agreement, with each of the Parties to bear its or his own costs and attorney's fees, except as provided in paragraph VIII below; and (5) preserves the Court's continuing jurisdiction over the administration of the Settlement and enforcement of this Agreement.

C. Plaintiff, Class Counsel, and Defendant will cooperate and take all reasonable actions to accomplish the above. If the Court fails or refuses to enter either the Preliminary

Approval Order or the Final Approval Order, Plaintiff, Class Counsel, and Defendant will use all reasonable efforts that are consistent with this Settlement Agreement to cure any defect identified by the Court. If, despite such efforts, the Court does not enter the Preliminary Approval Order and the Final Approval Order, the Parties will return to their prior positions in the Lawsuit, in accordance with paragraph II of this Agreement.

#### **IV. BENEFITS TO SETTLEMENT CLASS MEMBERS, AND PROCEDURES FOR PROVIDING BENEFITS TO SETTLEMENT CLASS MEMBERS**

##### **A. Benefits to Settlement Class Members**

After the Effective Date, and in accordance with the terms of this Settlement Agreement and its exhibits, Whirlpool will provide benefits as follows:

1. Not later than 60 days after the Effective Date, 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.
2. Not later than 60 days after the Effective Date, 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:

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.

3. Not later than 60 days after the Effective Date, 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.
4. Not later than 60 days after the Effective Date, Whirlpool shall pay an incentive award to Plaintiff in the amount of \$5,000.

**B. Procedures for Providing Benefits to Settlement Class Members**

The Parties shall jointly ask the Court to approve KCC LLC as the Settlement Administrator. The Settlement Administrator shall perform the following functions in accordance with the terms of this Settlement Agreement, the Preliminary Approval Order, and the Final Approval Order:

1. Disseminating the Settlement Notice to members of the Settlement Class by e-mail where an e-mail address is known and readily available to Whirlpool, and by mail where a mailing address is known and readily available to Whirlpool, but an e-mail address is not. The Notice will incorporate the Fairness Hearing date and deadlines established by the Court in the Preliminary Approval Order.<sup>3</sup>
2. Process requests for exclusion from the Settlement.

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<sup>3</sup> Notice to individuals in the Settlement Class who purchased Mixers from Costco shall be disseminated, in the first instance, by Costco.

3. Process objections to the Class Settlement.
4. Before disseminating the Settlement Notice, establish a website that Settlement Class Members can visit to read or request additional information regarding the Settlement.

The Parties further agree that Whirlpool shall self-administer the dissemination of benefits specified above in paragraphs IV.A.1 to IV.A.4.

## **V. NOTICE**

### **A. Settlement Notice**

The Parties agree that the Settlement Notice provides the Settlement Class and Settlement Class Members information sufficient to inform them of: the essential terms of this Settlement Agreement; appropriate means for obtaining additional information regarding the Settlement Agreement and the Lawsuit; and, appropriate information concerning the procedure for challenging or excluding themselves from the Settlement, if they should wish to do so. To facilitate the efficient administration of this Settlement, and to ensure appropriate notice regarding the Settlement, the Parties have drafted the Settlement Notice. The Parties will request the Court to approve the Settlement Notice in the Preliminary Approval Order.

Similarly, the Parties agree that the Publication Notice provides to the Settlement Class and Settlement Class Members information sufficient to inform them of: the essential terms of this Settlement Agreement; appropriate means for obtaining additional information regarding the Settlement Agreement and the Lawsuit; and, appropriate information about the procedure for challenging or excluding themselves from the Settlement, if they should wish to do so. The Parties will request the Court to approve the Publication Notice in the Preliminary Approval Order.

**B. Methods for Dissemination of Notice**

**1. Dissemination of the Settlement Notice and Publication Notice**

As soon as practicable, but no later than 60 days after the Court's entry of the Preliminary Approval Order, the Court-approved Settlement Administrator shall disseminate to every member of the Settlement Class who reasonably can be identified in Whirlpool's records of original purchasers and current owners of the Mixer, and for whom Whirlpool knows and has readily available a mailing address or an e-mail address, a copy of the Settlement Notice. The Settlement Administrator will disseminate the Settlement Notice to members of the Settlement Class by email where an email address is known and readily available to Whirlpool, and by mail where a mailing address is known and readily available to Whirlpool, but an email address is not. In addition, the Settlement Notice will be posted on the Settlement Administrator's website, and on Class Counsel's websites, [www.bhfloridalaw.com](http://www.bhfloridalaw.com), and linked to Whirlpool's website, [www.whirlpool.com](http://www.whirlpool.com).

The Parties agree that the dissemination of the Settlement Notice and the Publication Notice in the manner specified in this paragraph V satisfies the notice requirements of due process and Rule 1.220(d) of the Florida Rules of Civil Procedure and would, if the Lawsuit had been brought in a federal court, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure. The Parties will jointly request the Court to approve, in the Preliminary Approval Order, the dissemination of notice as set forth above in this paragraph V.

Within 90 days of the Court's entry of the Preliminary Approval Order, Whirlpool will file with the Court a declaration of compliance with this plan of notice, including a statement of the number of addresses to which the Settlement Notice was e-mailed or mailed.

## **VI. COSTS OF NOTICE AND ADMINISTRATION**

In addition to providing to Settlement Class Members the benefits described in paragraph IV above, Whirlpool will pay (A) the costs of preparing and disseminating the notices provided for in paragraph V above (other than the cost, if any, of posting the Publication Notice on Plaintiff's counsel's website and linking it to Whirlpool's website) and (B) the other Administration Expenses, including payments made for the services of the Settlement Administrator. Notwithstanding the foregoing, Whirlpool shall not be responsible for any cost that may be incurred by, on behalf of, or at the direction of Plaintiff, Plaintiff's Counsel, or Class Counsel in (A) responding to inquiries about the Settlement Agreement, the Settlement, or the Lawsuit; (B) defending the Settlement Agreement or the Settlement against any challenge to it; or (C) defending against any challenge to any order or judgment entered pursuant to the Settlement Agreement.

## **VII. PROCEDURES FOR SETTLEMENT APPROVAL**

### **A. Preliminary Approval**

The Parties shall use their best efforts to, within 30 days of the execution of this Settlement Agreement, jointly move the Court to enter the Preliminary Approval Order and to set the following deadlines and Fairness Hearing date, all as measured from the date on which the Court enters the Preliminary Approval Order:

- 120 days after entry of the Preliminary Approval Order: Date on or before which requests by members of the Settlement Class to be excluded from the Settlement must be either postmarked by the United States Postal Service or actually received by the Settlement Administrator.
- 120 days after entry of the Preliminary Approval Order: Date on or before which objections to certification of the Settlement Class, the designation of Plaintiff as class representative, the appointment of Class Counsel, the Settlement, the Settlement Agreement, or Class Counsel's Application,

together with all supporting memoranda and other material, must be filed with the Court and served on Class Counsel and Defendants.

- 120 days after entry of the Preliminary Approval Order: Date on or before which any Person or attorney seeking to appear at the Fairness Hearing, for the purpose of objecting to certification of the Settlement Class, the designation of Plaintiff as representative of the Settlement Class, the appointment of Class Counsel, the Settlement, or the Settlement Agreement, must file with the Court and serve on Class Counsel and Defendants an entry of appearance in the Lawsuit and notice of intention to appear at the Fairness Hearing.
- 90 days after entry of the Preliminary Approval Order: Date on or before which Class Counsel must file with the Court, and serve on Defendants, both by first-class United States Mail and by e-mail, Class Counsel's Application, pursuant to paragraph VIII below, for an award of attorneys' fees and reimbursement of costs incurred in the Lawsuit and for an incentive award to Plaintiff.
- 120 days after entry of the Preliminary Approval Order: Date on or before which any objection to Class Counsel's Application must be filed with the Court and served on Class Counsel and Defendants. Any objection filed by Defendants must be served on Class Counsel both by first-class United States Mail and e-mail.
- 150 days after entry of the Preliminary Approval Order: Date on or before which the Parties and any other Persons must file with the Court and serve on each other any memorandum or other material they wish to submit in response to any objections to certification of the Settlement Class, the designation of Plaintiff as representatives of the Settlement Class, the appointment of Class Counsel, the Settlement, the Settlement Agreement, or Class Counsel's Application, or otherwise in support of certification of the Settlement Class, the Settlement, or the Settlement Agreement.
- 150 days after entry of the Preliminary Approval Order: Date on or before which Class Counsel must file with the Court and serve on Defendant's counsel, both by first-class United States Mail and e-mail, any memorandum or additional material they wish to submit in support of Class Counsel's Application.
- 180 days or more after entry of the Preliminary Approval Order: Date of Fairness Hearing.

**B. Final Approval**

At the Fairness Hearing, the Parties will jointly request the Court to enter the Final Approval Order, which (1) grants final approval of the certification of the Settlement Class, designation of the class representative, and designation of Class Counsel conditionally approved in the Preliminary Approval Order; (2) grants final approval to the Settlement and this Settlement Agreement as fair, reasonable, and adequate to the Settlement Class; (3) provides for the release of all Released Claims and enjoins Settlement Class Members from asserting, filing, maintaining, or prosecuting any of the Released Claims in the future; (4) orders the entry of judgment for Defendants on all claims, causes of action, and counts alleged in the Lawsuit, and incorporates the releases and covenant not to sue stated in this Settlement Agreement, with each of the Parties to bear its or his own costs and attorneys' fees, except as provided in paragraph VIII below; (5) authorizes the payment by Whirlpool of Class Counsel's attorneys' fees and expenses in accordance with paragraph VIII below and the terms of the Settlement Agreement; and (6) preserves the Court's continuing jurisdiction over the administration of the Settlement and enforcement of the Settlement Agreement.

**VIII. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF COSTS, AND FOR AN INCENTIVE AWARD TO PLAINTIFF**

A. Plaintiff's Counsel will submit to the Court an application seeking an award of not more than \$486,000 in attorneys' fees, \$30,000 in costs, and an incentive award to Plaintiff in the amount of \$5,000. Plaintiff's counsel will not request and will not accept more than these amounts.

B. Whirlpool agrees that it will not object to the amount of Plaintiff's counsel's application up to the amounts set forth in the preceding paragraph, and agrees that it will,



contingent on entry of the Final Approval Order, and subject to the conditions set forth in the next two paragraphs, pay the amounts approved by the Court up to the amounts set forth in the preceding paragraph.

C. If, after 45 days from the entry by the Court of the Final Approval Order and the judgment therein, no notice of appeal of the judgment or any order in the Lawsuit has been filed, the time provided for in the Florida Rules of Civil Appellate Procedure to take any such appeal has expired, and any right to take any such appeal has been waived or otherwise lost, or if each such appeal that has been taken has been finally adjudicated and the judgment and Final Approval Order have been upheld in all respects by each such final adjudication, Whirlpool shall, as soon as practicable, but within no more than 30 additional days, pay to Class Counsel, in accordance with the terms of the Court's order granting Class Counsel's Application, the sum so awarded and approved by the Court. Whirlpool shall make this payment by depositing through a wire exchange, into a joint trust account to be identified by Class Counsel, the sum so awarded and approved by the Court. Class Counsel shall provide to Whirlpool in a timely manner all wiring and account information necessary to enable Whirlpool to make such a deposit within the time required.

D. If any notice of an appeal from the Final Approval Order or from the judgment therein is timely filed, the Settlement shall not be or become final or effective, and Whirlpool shall not be obliged to make any payment to Class Counsel or to Plaintiff, until 30 days after each such appeal has been finally adjudicated and the Final Approval Order and the judgment therein have been upheld in all respects by each such final adjudication.

## **IX. RELEASES**

A. By executing this Settlement Agreement, the Parties acknowledge that, upon both the entry of the Final Approval Order by the Court, and the passing of the Effective Date, the Lawsuit shall be dismissed with prejudice, an order of dismissal with prejudice shall be entered, and all Released Claims shall thereby be conclusively settled, compromised, satisfied, and released as to the Releasees. The Final Approval Order shall provide for and effect the full and final release, by Plaintiff and all Settlement Class Members, of all Released Claims.

B. The Released Claims include all known and unknown claims, actions, and causes of action relating to the Mixers, other than claims for personal injury, and this Settlement Agreement is expressly intended to cover and include all such claims, actions, and causes of action, for losses or damages of any type. Settlement Class Members hereby expressly, knowingly, and voluntarily waive any provision of any state or federal statutory or case law that provide that a general release does not extend to claims that the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by the creditor must have materially affected his or her settlement with the debtor. Settlement Class Members hereby expressly, knowingly, and voluntarily waive the provisions of Section 1542 of the California Civil Code, which provides as follows:

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.

Settlement Class Members expressly waive and relinquish all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code and of all similar laws of other States, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Claims.

C. The Settlement Class Members hereby expressly waive and relinquish all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of state and federal statutory or case law, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Claims. The Settlement Class Members hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims, known or unknown, suspected or unsuspected, that they have against Releasees. In furtherance of such intention, the release herein given by the Settlement Class Members to the Releasees shall be and remain in effect as a full and complete general release of all claims notwithstanding the discovery or existence of any such additional different claims or facts.

D. The Final Approval Order shall further provide for and effect the release of all actions, causes of action, claims, administrative claims, demands, debts, damages, costs, attorney's fees, obligations, judgments, expenses, compensation, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, that Whirlpool now has against Plaintiff, Settlement Class Members, Class Counsel, or Plaintiffs' Counsel by reason of any act, omission, harm, matter, cause, or event whatsoever arising out of the initiation, prosecution, or settlement of the Lawsuit or the claims and defenses asserted in the Lawsuit.

E. Notwithstanding the above, the Court shall retain jurisdiction over the Parties and the Settlement Agreement with respect to the future performance of the terms of the Settlement Agreement, and to assure that all payments and other actions required of any of the Parties by the Settlement are properly made or taken.

## **X. COVENANT NOT TO SUE**

Plaintiff, on behalf of himself and the Settlement Class Members, (A) covenants and agrees that neither Plaintiff nor any of the Settlement Class Members, nor anyone authorized to act on behalf of any of them, will commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in this Settlement Agreement, against Releasees, or any of them, in either their personal or corporate capacity, with respect to any claim, matter, or issue that in any way arises from, is based on, or relates to any alleged loss, harm, or damages allegedly caused by Releasees, or any of them, in connection with the Released Claims; (B) waives and disclaims any right to any form of recovery, compensation, or other remedy in any such action or proceeding brought by or on behalf of any of them; and (C) agrees that this Settlement Agreement shall be a complete bar to any such action.

## **XI. REPRESENTATIONS AND WARRANTIES**

Each of the Parties represents and warrants to, and agrees with, each of the other Parties as follows:

A. Each of the Parties has had the opportunity to receive, and has received, independent legal advice from his or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Settlement Agreement, and the legal and income-tax consequences of this Settlement Agreement, and fully understands and accepts the terms of this Settlement Agreement.

B. Plaintiff represents and warrants that no portion of any claim, right, demand, action, or cause of action against any of the Releasees that Plaintiff has or may have arising out of the Lawsuit or pertaining to the design, manufacture, testing, marketing, purchase, use, sale, servicing, or disposal of the Mixer otherwise referred to in this Settlement Agreement, and no

portion of any recovery or settlement to which Plaintiff may be entitled, has been assigned, transferred, or conveyed by or for Plaintiff in any manner; and no Person other than Plaintiff has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Settlement Agreement as those of Plaintiff himself.

C. None of the Parties relies or has relied on any statement, representation, omission, inducement, or promise of any other party (or any officer, agent, employee, representative, or attorney for any other party) in executing this Settlement Agreement, or in making the Settlement provided for herein, except as expressly stated in this Settlement Agreement.

D. Each of the Parties has investigated the facts pertaining to the Settlement and this Settlement Agreement, and all matters pertaining thereto, to the full extent deemed necessary by that party and his or its attorneys.

E. Each of the Parties has carefully read, and knows and understands, the full contents of this Settlement Agreement and is voluntarily entering into this Settlement Agreement after having had the opportunity to consult with, and having in fact consulted with, his or its attorneys.

F. Each term of this Settlement Agreement, under the titles of the various paragraphs, is contractual and not merely a recital.

## **XII. MISCELLANEOUS**

### **A. Conditional Nature of Settlement Agreement**

At Plaintiff's option, expressed in written notice to Defendants' counsel, this Settlement Agreement shall become null and void, and no obligation on the part of any of the Parties will accrue, if the Court materially alters any of the terms of this Settlement Agreement to the detriment of Plaintiff or the Settlement Class, or fails to enter the Preliminary Approval Order or

the Final Approval Order in substantially the form submitted by the Parties. At Defendants' option, expressed in written notice to Class Counsel, this Settlement Agreement shall become null and void, and no obligation on the part of any of the Parties will accrue, if (1) the Court declines to certify the Settlement Class as provided in the Preliminary Approval Order; (2) the Court materially alters any of the terms of this Settlement Agreement to the detriment of Whirlpool, or fails to enter the Preliminary Approval Order or the Final Approval Order in substantially the form submitted by the Parties; or (3) the number of members of the Settlement Class who exclude themselves from the Settlement Class exceeds 100.

**B. Severability**

None of the terms of this Settlement Agreement is severable from the others. If a court should rule that any term is void, illegal, or unenforceable for any reason, however, Defendants, in their sole discretion, and Plaintiff, in his sole discretion (but acting in accord with his duties and obligations as representative of the Settlement Class), may elect to waive any such deficiency and proceed with the Settlement under the terms and conditions ultimately approved by the Court.

**C. Effectiveness, Amendments, and Binding Nature**

This Settlement Agreement may be amended only by a written agreement signed by the Parties. Except as otherwise stated above, each of the Parties, including Plaintiff on behalf of himself and the Settlement Class, expressly accepts and assumes the risk that, if facts or laws pertinent to matters covered by this Agreement are hereafter found to be other than as now believed or assumed by that party to be true or applicable, this Settlement Agreement shall nevertheless remain effective.

This Settlement Agreement is binding on, and shall inure to the benefit of, the Parties and their respective agents, employees, representatives, officers, directors, parents, subsidiaries,

assigns, executors, administrators, insurers, and successors in interest. All Releasees other than Defendant, which is a Party, are intended to be third-party beneficiaries of this Settlement Agreement.

**D. Cooperation in Implementation**

Defendant, Plaintiff, and their respective counsel agree to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Settlement Agreement.

Plaintiff and his Counsel represent and warrant that they will not advertise for or solicit any new client to assert claims against Whirlpool that are the same as or similar to those claims that were at issue or asserted in the Lawsuit or included in the Released Claims. Plaintiff and his Counsel further represent and warrant that they each have no knowledge regarding, and will not affirmatively contact, other attorneys or individuals undertaking or planning to assert, or considering asserting, claims against Whirlpool that are the same as or similar to those claims that were at issue or asserted in the Lawsuit or included in the Released Claims, including other attorneys or individuals undertaking, planning or considering litigation relating to any objection to this Settlement or option to be excluded from this Settlement Class.

**E. Governing Law**

This Settlement Agreement shall be construed and governed in accordance with the laws of the State of Michigan, without regard to Michigan's conflict-of-laws principles.

**F. No Admission of Liability**

The Parties are entering into this Settlement Agreement for the purpose of compromising and settling disputed claims. Nothing in this Settlement Agreement or in the documents relating to this Settlement Agreement shall be construed, deemed, or offered as an admission by any of the Parties, or by any member of the Settlement Class, for any purpose in any judicial or

administrative action or proceeding, whether in law or in equity, regardless of whether this Settlement Agreement ultimately becomes effective.

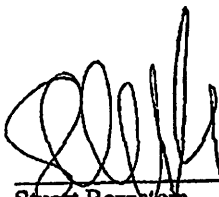
**G. Dismissal**

As soon as practicable, but no later than 15 days after the Effective Date of the Settlement, Plaintiffs' Counsel shall take all steps that are necessary to obtain the dismissal with prejudice of the Lawsuit. Plaintiff's Counsel and Defendant's counsel agree to stay all proceedings, other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement, until the Effective Date of the Settlement has occurred. If, despite the Parties' best efforts, this Settlement Agreement should fail to become effective, the parties will return to their prior positions as of April 23, 2013.

**H. Signatures**

This Settlement Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original.





Stuart Bornstein  
Dated:




For Whirlpool Corporation  
Printed  
Name: **Juan S. Ramirez**

Title: **Senior Counsel**  
Dated: **May 25, 2014**

**APPROVED AND ACCEPTED AS TO  
SECTION XII.D:**

*Counsel for Plaintiff and the Settlement  
Class:*

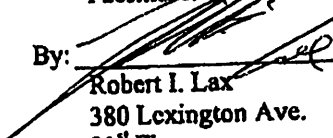
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