

BURSOR & FISHER, P.A.

Scott A. Bursor (State Bar No. 276006)
L. Timothy Fisher (State Bar No. 191626)
Annick M. Persinger (State Bar No. 272996)
1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-Mail: scott@bursor.com
ltfisher@bursor.com
apersinger@bursor.com

FARUQI & FARUQI, LLP

David Bower (State Bar No. 119546)
10866 Wilshire Boulevard, Suite 1470
Los Angeles, CA 90024
Telephone: (424) 256-2884
Facsimile: (424) 256-2885
E-Mail: dbower@faruqilaw.com

*Attorneys for Plaintiffs and Co-Lead Class Counsel
(Additional Counsel on Signature Page)*

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KYLE DEI ROSSI and MARK LINTHICUM,
on behalf of themselves and those similarly
situated,

Plaintiffs,

v.

WHIRLPOOL CORPORATION,

Defendant.

Case No. 2:12-CV-00125-TLN-CKD

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
LAW IN SUPPORT; DECLARATION OF
L. TIMOTHY FISHER FILED
HEREWITH**

Date: March 24, 2016

Time: 2:00 p.m.

Courtroom: 2 - 15th Floor

Judge: Honorable Troy L. Nunley

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on March 24, 2016 at 2:00 p.m. before the Honorable Troy L. Nunley, United States District Court Judge for the Eastern District of California, 501 I Street, Sacramento, California 95814, Plaintiffs Kyle Dei Rossi and Mark Linthicum, by and through the undersigned counsel of record, will move and hereby do move, pursuant to Fed. R. Civ. P. 23(e), for entry of the [Proposed] Order Preliminarily Approving Class Action Settlement (“Preliminary Approval Order”).

This motion is based on: (1) this Notice of Motion, Motion and Memorandum in support thereof, (2) the Declaration of L. Timothy Fisher in Support of Motion for Preliminary Approval of Class Action Settlement (the “Fisher Decl.,” filed herewith), (3) the Class Action Settlement Agreement and Release of All Claims, (4) the papers and pleadings on file, and (5) the papers filed by Defendant in support of this motion, and the arguments of counsel at the hearing on the Motion.

Dated: February 5, 2016

Respectfully Submitted,

BURSOR & FISHER, P.A.

By: /s/ L. Timothy Fisher
L. Timothy Fisher

BURSOR & FISHER, P.A.

Scott A. Bursor (State Bar No. 276006)
L. Timothy Fisher (State Bar No. 191626)
Annick M. Persinger (State Bar No. 272996)
1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
Email: scott@bursor.com
ltfisher@bursor.com
apersinger@bursor.com

FARUQI & FARUQI, LLP

David E. Bower (State Bar No. 119546)
10866 Wilshire Blvd., Suite 1470
Los Angeles, CA 90067
Telephone: (424) 256-2884
Facsimile: (424) 256-2885

Attorneys for Plaintiffs and Class Counsel

VOZZOLO LLC

Antonio Vozzolo (*pro hac vice*)

345 Route 17 South

Upper Saddle River, NJ 074578

Tel: 201-630-8820

Fax: 201-604-8400

Email: avozzolo@vozzolo.com

Additional Counsel for Plaintiffs

TABLE OF CONTENTS

	PAGE(S)
I. INTRODUCTION	1
II. PROCEDURAL BACKGROUND	2
A. Pleadings And Motions	2
B. Discovery.....	4
C. Class Certification	5
D. Settlement	5
III. THE STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS	6
IV. TERMS OF THE PROPOSED SETTLEMENT.....	8
A. Relief For Class Members	8
B. Release And Discharge Of Claims	9
C. Payment Of Attorneys’ Fees And Expenses	9
D. Compensation For The Class Representatives	9
E. Payment Of Notice And Administrative Fees	10
V. THIS COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, PROVISIONALLY CERTIFY THE CLASS, AND ENTER THE PROPOSED PRELIMINARY APPROVAL ORDER	10
A. The Settlement Should Be Preliminarily Approved Because It Satisfies Accepted Criteria	10
B. The Proposed Settlement Class Should Be Certified	11
C. The Proposed Notice Program Constitutes Adequate Notice And Should Be Approved	12
VI. CONCLUSION	14

TABLE OF AUTHORITIES

PAGE(S)

CASES

<i>Adoma v. Univ. of Phoenix, Inc.</i> , 913 F. Supp. 2d 964 (E.D. Cal. 2012)	11
<i>Alaniz v. California Processors, Inc.</i> , 73 F.R.D. 269 (N.D. Cal. 1976)	6, 11
<i>Boyd v. Bechtel Corp.</i> , 485 F. Supp. 610 (N.D. Cal. 1979).....	8
<i>Churchill Vill., L.L.C. v. GE</i> , 361 F.3d 566 (9th Cir. 2004)	10
<i>Class Plaintiffs v. Seattle</i> , 955 F.2d 1268 (9th Cir. 1992)	10
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	7, 10
<i>Harris v. Vector Mktg. Corp.</i> , 2012 WL 381202 (N.D. Cal. Feb. 6, 2012)	12
<i>In re Apollo Group Inc. Securities Litigation</i> , 2012 WL 1378677 (D.Ariz. Apr. 20, 2012)	12
<i>In re Ferrero Litig.</i> , 583 F. App'x 665 (9th Cir. 2014)	8
<i>In re Netflix Privacy Litig.</i> , 2013 WL 1120801 (N.D. Cal. Mar. 18, 2013)	7
<i>In re Pac. Enters. Sec. Litig.</i> , 47 F.3d 373 (9th Cir. 1995)	7
<i>In re Syncor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008)	6, 7
<i>In re Tableware Antitrust Litig.</i> , 484 F. Supp. 2d 1078 (N.D. Cal. 2007).....	6
<i>In re Veritas Software Corp. Sec. Litig.</i> , 496 F.3d 962 (9th Cir. 2007)	10
<i>Livingston v. Toyota Motor Sales USA</i> , 1995 U.S. Dist. LEXIS 21757 (N.D. Cal. 1995)	10
<i>Lounibos v. Keypoint Government Solutions Inc.</i> , 2014 WL 558675 (N.D. Cal. 2014)	6

1	<i>Officers for Justice v. Civil Serv. Comm’n</i> ,	
2	688 F.2d 615 (9th Cir. 1982)	6, 7
3	<i>Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson</i> ,	
4	390 U.S. 414 (1968)	7

STATUTES

5	28 U.S.C. § 1715(b).....	10
6	42 U.S.C. § 6295(b).....	2

RULES

8	Fed. R. Civ. P. 23	12, 13
9	Fed. R. Civ. P. 23(b)(3)	11, 12
10	Fed. R. Civ. P. 23(c)(2)(B)	12
11	Fed. R. Civ. P. 23(e)	10, 12
12	Fed. R. Civ. P. 23(f)	4

REGULATIONS

14	10 C.F.R. § 430.32(a)	2
----	-----------------------------	---

OTHER AUTHORITIES

16	Manual for Complex Litigation, § 21.632 (4th ed. 2004)	6, 11
17	Newberg on Class Actions § 11.25 (2002).....	6, 11

MEMORANDUM OF LAW

I. INTRODUCTION

Plaintiffs Kyle Dei Rossi and Marc Linthicum (collectively, “Plaintiffs”), and Class Counsel, Bursor & Fisher, P.A. and Faruqi & Faruqi, LLP, (collectively “Class Counsel”), respectfully submit this memorandum in support of Plaintiffs’ Motion for Preliminary Approval of Class Settlement (the “Motion”). As detailed below, the proposed settlement is unquestionably fair, achieves meaningful relief for the Class, and should be preliminarily approved by the Court.

This is a class action suit brought by Plaintiffs on behalf of themselves and all others similarly situated against Defendant Whirlpool Corporation (“Whirlpool” or “Defendant”) for selling KitchenAid-brand KSRG25FV** and KSRS25RV** model refrigerators that Plaintiffs allege were mislabeled with the Energy Star logo. On April 28, 2015, this Court certified a class defined as all persons in California who purchased KitchenAid KSRG25FV** and KSRS25RV** model refrigerators that were mislabeled as Energy Star qualified. 4/28/15 Order Granting In Part And Denying In Part Plaintiffs’ Motion For Class Certification, Dkt. No. 160.

Plaintiffs have now entered into a settlement with Whirlpool (the “Settlement”) and executed a Class Action Settlement Agreement and Release of All Claims (the “Settlement Agreement”) that encompasses Whirlpool’s KSRG25FV** and KSRS25RV** model refrigerators purchased by California residents in the state of California. Under the terms of the Settlement Agreement, Whirlpool has agreed to pay claimants, at the claimant’s election, either (1) a \$55 cash payment, or (2) a 10% rebate applicable towards the purchase price of a new KitchenAid-brand major appliance.

As in any class action, the Settlement is subject initially to preliminary approval and then to final approval by the Court after notice to the class and a hearing. Plaintiffs now request this Court to enter an order in the form of the accompanying [Proposed] Order Preliminarily Approving Class Action Settlement, which will:

- (1) Grant preliminary approval of the proposed Settlement;
- (2) Establish procedures for giving notice to members of the Settlement Class;
- (3) Approve forms of notice to Settlement Class Members;

(4) Mandate procedures and deadlines for exclusion requests and objections; and

(5) Set a date, time and place for a final approval hearing.

The proposed Settlement is fair and reasonable, and it falls within the range of approval. Class Counsel has vigorously litigated this action for over four years, engaging in extensive motion practice and discovery. Specifically, during that time, Plaintiffs defeated a motion to dismiss, obtained certification of a California class of purchasers of the refrigerators at issue, (Dkt. No. 160), reviewed over 17,624 pages of documents, and hundreds of additional pages of spreadsheet data concerning Defendant's refrigerators, conducted depositions of Defendant's experts, including Dr. John R. Fessler, Dr. Carol Scott, and Dr. Laurentius Marais. Furthermore, the Settlement was only reached after extended arms-length negotiations between experienced attorneys familiar with the legal and factual issues in this case. As a result of these efforts, Class Counsel is fully informed of the merits of this action and the proposed settlement. Accordingly, this Court should enter the proposed order granting preliminary approval.

II. PROCEDURAL BACKGROUND

A. Pleadings And Motions

On January 17, 2012, Plaintiffs filed their Class Action Complaint, which alleged that Whirlpool's KSRG25FV** and KSRS25RV** model refrigerators were mislabeled as Energy Star qualified in violation of the federal standard for energy efficiency under the National Appliance Energy Conservation Act of 1987 ("NAECA"). *See* 42 U.S.C. § 6295(b); 10 C.F.R. § 430.32(a). Plaintiffs alleged that, although the refrigerators were advertised and marketed as Energy Star qualified, the refrigerators consumed significantly more energy than stated on the labels and in advertising. Plaintiffs brought claims for breach of express warranty, breach of the implied warranty of merchantability, unjust enrichment, violation of the California Consumer Legal Remedies Act ("CLRA"), violation of the California Unfair Competition Law ("UCL"), and violation of the California False Advertising Law ("FAL").

On March 23, 2012, Defendant moved to dismiss Plaintiffs' complaint and to strike Plaintiffs' claim for unjust enrichment. Dkt. Nos. 17, 18. On July 11, 2012, Plaintiffs opposed both motions (Dkt. Nos. 36, 38), and on August 3, 2012, Defendants submitted its replies in

1 support of both motions (Dkt. Nos. 43, 44). On September 14, 2012, the Court granted the motion
2 to dismiss with leave to amend, except for Plaintiffs' claim for unjust enrichment, which was
3 dismissed with prejudice. Dkt. No. 55. The Order on the motion to dismiss also rendered the
4 motion to strike moot. *Id.*

5 On September 25, 2012, Plaintiffs filed their First Amended Class Action Complaint. Dkt.
6 No. 56. On October 15, 2012, Defendant filed its second motion to dismiss. Dkt. No. 59. On
7 December 5, 2012, Plaintiffs opposed (Dkt. No. 62), and on January 9, 2013, Defendant submitted
8 its reply in support of the motion (Dkt. No. 63). On March 28, 2013, the Court again granted
9 Defendant's motion to dismiss with leave to amend. Dkt. No. 67.

10 On April 24, 2013, Plaintiffs filed their Second Amended Complaint. Dkt. No. 71. On
11 May 21, 2013, Defendant moved to dismiss the Second Amended Complaint. Dkt. No. 72. On
12 August 5, 2013, Plaintiffs filed their opposition to the motion to dismiss. Dkt. No. 77. On August
13 28, 2013, Defendant submitted its reply in support of the motion to dismiss. Dkt. No. 79. On
14 October 25, 2013, the Court granted in part and denied in part the motion to dismiss. Dkt. No. 81.
15 Specifically, the Court dismissed Plaintiffs' Breach of Implied Warranty of Merchantability claim
16 and their Magnuson Moss Warranty claim with prejudice.

17 On July 31, 2014, Plaintiffs filed their Motion for Class Certification. Dkt. No. 105.
18 Plaintiffs moved to certify a 32-state and District of Columbia class defined as all persons who
19 purchased KitchenAid KSRG25FV** and KSRS25RV** model refrigerators that were mislabeled
20 as Energy Star qualified (collectively "Refrigerators").¹ Plaintiffs also sought certification of a
21 subclass defined as all members of the class who purchased the Refrigerators in California. On
22 September 18, 2014, Defendant opposed Plaintiff's Motion for Class Certification and filed a
23 Motion to Strike the Declaration of Colin B. Weir, Plaintiffs' expert on damages. Dkt. Nos. 111
24 and 113. On November 24, 2014, Plaintiffs submitted a reply in support of their motion for class
25 certification (Dkt. No. 124) and an opposition to Defendant's motion to strike the expert report of
26

27
28 ¹ The last two digits of KitchenAid models KSRG25FV** and KSRS25RV**, indicated by **, merely describe their color, *e.g.*, KSRG25FVMS (monochromatic stainless steel), KSRG25FVMT (monochromatic satina), KSRG25FVBL (black), and KSRG25FVWH (white-on-white).

Colin B. Weir (Dkt. No. 125). On January 8, 2015, Defendant submitted a reply in support of its motion to strike the Weir report. Dkt. No. 146.

On December 17, 2014, Defendant also moved to strike the rebuttal expert report of Elizabeth Howlett. Dkt. Nos. 136, 138. On January 2, 2015, Plaintiffs opposed Defendants' Motion to Strike the Rebuttal Expert Report of Elizabeth Howlett. Dkt. No. 140. On January 8, 2015, Defendant submitted a reply in support of the motion to strike Dr. Howlett's report. Dkt. No. 147.

On April 28, 2015, the Court granted in part and denied in part Plaintiffs' Motion for Class Certification. Dkt. No. 160. The Court denied Plaintiffs' request to certify a nationwide class but granted their request to certify the California subclass. *Id.* In the same order, the Court denied Defendant's motions to strike the expert reports of Colin B. Weir and Dr. Elizabeth Howlett. *Id.*

On May 12, 2015, Defendant filed a Petition for Permission to Appeal under Fed. R. Civ. P. 23(f). Plaintiffs opposed Defendant's 23(f) petition on May 22, 2015. The Ninth Circuit denied Defendant's petition on July 29, 2015. Dkt. No. 163.

On October 28, 2015, after extensive negotiations, the Parties executed a binding term sheet, and all pending motions were stayed in anticipation of this motion.

B. Discovery

Plaintiffs served their first set of interrogatories and document requests on September 4, 2012. Plaintiffs served a second set of document requests on December 23, 2013. Defendant served its interrogatories and requests for production on January 10, 2014. In connection with these requests, the Parties produced documents on a rolling basis, which was substantially completed as of August 19, 2014. In total, Whirlpool produced more than 17,000 pages of documents, and hundreds of additional pages of spreadsheet data.

Plaintiffs' counsel also deposed three of Defendant's experts. On October 9, 2014, Plaintiffs' counsel deposed Defendant's expert, Dr. Marthinus Laurentius Marais. On October 15, 2014, Plaintiffs' counsel deposed Defendant's expert, Dr. Carol A. Scott. On October 17, 2014, Plaintiffs' counsel deposed Defendant's expert, John R. Fessler. On June 9, 2014, Defendant Whirlpool deposed Plaintiff Linthicum. On June 10, 2014, Defendant also deposed Plaintiff Dei

1 Rossi. On August 20, 2014, Defendant deposed Plaintiffs' damages expert, Colin B. Weir. As a
2 result of this discovery, both Parties are informed about the strengths and weaknesses of their
3 claims and defenses.

4 **C. Class Certification**

5 As stated above, a class of California purchasers has already been certified in this action.
6 For the purposes of the Settlement, Whirlpool recognizes that the Settlement Class has been
7 certified by the Court and stipulates that it will not challenge, appeal, or otherwise oppose the
8 Court's prior order certifying the Settlement Class. Settlement Agreement, Exh. A to Fisher Decl.
9 § II.

10 **D. Settlement**

11 On October 8, 2015, the Parties had an in-person settlement meeting in the New York
12 offices of Bursor & Fisher. Fisher Decl. ¶ 2. Although the Parties were able to assemble
13 preliminary drafts of a binding Term Sheet during the meeting, the Parties were unable to reach
14 any final agreement. *Id.* Following continued discussions on the content of the term sheet over the
15 subsequent weeks, on October 28, 2015, the Parties executed a binding Term Sheet for Class
16 Settlement. *Id.*

17 On October 29, 2015, the Parties filed a Joint Status Report notifying the Court that they
18 had executed a binding settlement term sheet. Dkt. No. 167. Accordingly, the Court ordered that
19 the motion for preliminary approval of class action settlement be filed by December 15, 2015. Dkt.
20 No. 168. On December 8, 2015, the Parties requested additional time to file a motion for
21 preliminary approval of the settlement on the grounds that the Parties were continuing to negotiate
22 certain terms of the settlement. Dkt. No. 160. On December 11, 2015, the Court granted the
23 request and set the new deadline to file the motion as January 15, 2016. Dkt. No. 170. On January
24 12, 2016, the Parties requested an additional brief extension to finalize the Settlement Agreement.
25 Dkt. No. 171. On January 14, 2016, the Court granted the request and set February 5, 2016 as the
26 deadline to file a motion for preliminary approval.

27 The Parties finalized the Settlement Agreement on February 1, 2016.
28

III. THE STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

Approval of class action settlements involves a two-step process. First, the Court must make a preliminary determination whether the proposed settlement appears to be fair and is “within the range of possible approval.” *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008); *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007); *Alaniz v. California Processors, Inc.*, 73 F.R.D. 269, 273 (N.D. Cal. 1976), *cert. denied sub nom. Beaver v. Alaniz*, 439 U.S. 837 (1978). If so, notice can be sent to class members and the Court can schedule a final approval hearing where a more in-depth review of the settlement terms will take place. *See Manual for Complex Litigation, 3d Edition*, § 30.41 at 236-38 (hereafter, the “Manual”). *See also Lounibos v. Keypoint Government Solutions Inc.*, 2014 WL 558675, *5 (N.D. Cal. 2014) (“Preliminary approval of a settlement and notice to the proposed class is appropriate if the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls with the range of possible approval.”) (citations omitted).

The purpose of preliminary approval is for the Court to determine whether the Parties should notify the putative class members of the proposed settlement and proceed with a fairness hearing. *See In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1079. *See also Lounibos*, 2014 WL 558675, at *5. Notice of a settlement should be disseminated where “the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.” *Id.* (quoting NEWBERG ON CLASS ACTIONS § 11.25 (1992)).

Nevertheless, a review of the standards applied in determining whether a settlement should be given *final* approval is helpful to the determination of preliminary approval. One such standard is the strong judicial policy of encouraging compromises, particularly in class actions. *See In re Syncor*, 516 F.3d at 1101 (citing *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615 (9th Cir. 1982), *cert. denied*, 459 U.S. 1217 (1983)).

Beginning with the first [pretrial] conference, and from time to time throughout the litigation, the court should encourage the settlement process. The judge should raise the issue of settlement at the first opportunity, inquiring whether any discussions have taken place or might be scheduled. As the case progresses, and the judge and counsel become better informed, the judge should continue to urge the parties to consider and reconsider their positions on settlement in light of current and anticipated developments.

Manual, § 23.11 at 166.

While the district court has discretion regarding the approval of a proposed settlement, it should give “proper deference to the private consensual decision of the parties.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). In fact, when a settlement is negotiated at arm’s-length by experienced counsel, there is a presumption that it is fair and reasonable. *See In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Ultimately, however, the Court’s role is to ensure that the settlement is fundamentally fair, reasonable, and adequate. *See In re Syncor*, 516 F.3d at 1100.

Beyond the public policy favoring settlements, the principal consideration in evaluating the fairness and adequacy of a proposed settlement is the likelihood of recovery balanced against the benefits of settlement. “[B]asic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.” *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968). That said, “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice*, 688 F.2d at 625.

In evaluating preliminarily the adequacy of a proposed settlement, particular attention should be paid to the process of settlement negotiations. Here, the negotiations were conducted by experienced class-action counsel over an extended period of time after extensive motion practice and discovery. Thus, counsel’s assessment and judgment are entitled to a presumption of reasonableness, and the court is entitled to rely heavily upon their opinion. *See In re Netflix Privacy Litig.*, 2013 WL 1120801, at *4 (N.D. Cal. Mar. 18, 2013) (holding that “[c]ourts have

1 afforded a presumption of fairness and reasonableness of a settlement agreement where that
 2 agreement was the product of non-collusive, arms' length negotiations conducted by capable and
 3 experienced counsel"). *Accord Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622-23 (N.D. Cal. 1979).

4 Lastly, whereas here, the settlement was reached after the class was certified by the court,
 5 concerns over potential for collusion are ameliorated and heightened scrutiny of the settlement is
 6 not required. *In re Ferrero Litig.*, 583 F. App'x 665, 668 (9th Cir. 2014).

7 **IV. TERMS OF THE PROPOSED SETTLEMENT**

8 The proposed settlement class ("Settlement Class" or "Class") consists of all California
 9 residents who purchased for household use (not for resale) a new KitchenAid model KSRG25FV**
 10 or KSRS25RV** refrigerator in the State of California Settlement Agreement, Exh. A to Fisher
 11 Decl. §§ I.OO, II. Each Class Member must submit a single proof of claim for each Refrigerator
 12 she is making a claim on. *Id.* § IV.A. The proof of claim shall be signed under penalty of perjury.
 13 *Id.*

14 **A. Relief For Class Members**

15 If the proposed Settlement is approved by the Court, Whirlpool has agreed to pay each
 16 member of the Settlement Class who submits a valid claim either (1) a \$55 cash payment, less any
 17 voluntary payment paid by Whirlpool through Whirlpool's Voluntary Customer Satisfaction
 18 Program, or (2) a 10% rebate of the purchase price of a new KitchenAid-brand major appliance.

19 Whirlpool will permit Class Members to choose one of the following Settlement benefits:

20 **(1) Cash Option:** Whirlpool will provide one cash payment of \$55, less any voluntary
 21 payment paid by Whirlpool through Whirlpool's Voluntary Customer Satisfaction
 22 Program. Each Class Member is entitled to one cash payment of \$55 for each Class
 23 Refrigerator that he or she purchased. For example, if a Class Member bought two
 24 Class Refrigerators, then that Class Member would be eligible to receive two cash
 25 payments of \$55 each, less any voluntary payment paid by Whirlpool through
 26 Whirlpool's Voluntary Customer Satisfaction Program;² or, in the alternative,

27 ² If a Class Member has already received compensation through Whirlpool's Voluntary Customer
 28 Satisfaction Program, and if that compensation exceeded \$55, then such Class Member is not
 entitled to any cash payment from Whirlpool.

(2) **Rebate Option:** Whirlpool will provide a 10% rebate of the purchase price of a New KitchenAid-brand Major Appliance, without any cap as to the maximum amount of the rebate, to any member of the Class who submits a valid claim. The rebate for the purchase of a New KitchenAid-brand Major Appliance will be 10% off the retail purchase price (not to include sales taxes, delivery fees, and installation charges). Such rebate shall be in addition to any other sales promotion that Whirlpool or any retailer or seller offers towards a New KitchenAid-brand Major Appliance. Each Class Member shall be entitled to one rebate for each Class Refrigerator that he or she purchased. If a Class Member bought two Class Refrigerators, for example, then that Settlement Class Member would be eligible to receive two rebates.

See id. §§ IV. B-C.

B. Release And Discharge Of Claims

The Settlement Agreement provides for a specific release of all claims or causes of action that relate to any of the alleged defects, malfunctions, or inadequacies of the Refrigerators that are described and/or alleged in the Second Amended Class Action Complaint in this Action or that could have been alleged in this Action. *See also* Settlement Agreement, Exh. A to Fisher Decl. § IX. The release will forever terminate this litigation involving Whirlpool and the Plaintiffs in this Action, once the Settlement becomes effective as defined in the Settlement Agreement.

C. Payment Of Attorneys' Fees And Expenses

The Parties have agreed to negotiate in good faith concerning the award of attorneys' fees and costs to be paid by Whirlpool to Class Counsel. *Id.* § VIII. If the Parties are unable to reach an agreement on an amount of attorneys' fees and costs, Plaintiffs will move for an award of attorney's fees, and Whirlpool will then have the opportunity to oppose that motion. In any event, the amount of attorneys' fees and costs to be paid to Class Counsel will be subject to Court approval and will be paid separate and apart from any amounts to be paid to the Class.

D. Compensation For The Class Representatives

In addition to the individual relief discussed above, Whirlpool has also agreed to pay incentive awards to the Class Representatives, Marc Linthicum and Kyle Dei Rossi, in the amount

1 of \$4,000 each. *Id.* § VIII.D.

2 **E. Payment Of Notice And Administrative Fees**

3 Whirlpool shall pay directly to the administrator handling the administration of the
4 Settlement the reasonable costs and expenses of providing notice to the Class in accordance with
5 the Settlement Agreement.³ *Id.* § V.

6 **V. THIS COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT,
7 PROVISIONALLY CERTIFY THE CLASS, AND ENTER THE PROPOSED
8 PRELIMINARY APPROVAL ORDER**

8 **A. The Settlement Should Be Preliminarily Approved Because It
9 Satisfies Accepted Criteria**

10 It is well established that the law favors the compromise and settlement of class action
11 suits: “[S]trong judicial policy favors settlements ...” *Churchill Vill., L.L.C. v. GE*, 361 F.3d 566
12 (9th Cir. 2004) (original ellipsis omitted). This is particularly true where “class action litigation is
13 concerned.” *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

14 The approval of a proposed settlement of a class action is a matter of discretion for the trial
15 court. *In re Veritas Software Corp. Sec. Litig.*, 496 F.3d 962, 972 (9th Cir. 2007) (“[T]he district
16 court has substantial discretion in approving the details of a class action settlement.”). Courts,
17 however, must give “proper deference to the private consensual decision of the parties” since “the
18 court’s intrusion upon what is otherwise a private consensual agreement negotiated between the
19 parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the
20 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
21 parties, and the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
22 *Hanlon*, 150 F.3d at 1027. *Accord*, Fed. R. Civ. P. 23(e)(2) (stating that a settlement must be “fair,
23 reasonable, and adequate”).

24 To grant preliminary approval of this class action Settlement, the Court need only find that
25 the Settlement falls within the range of possible approval. *See, e.g., Livingston v. Toyota Motor*
26 *Sales USA*, 1995 U.S. Dist. LEXIS 21757, at *24 (N.D. Cal. 1995) (“The proposed settlement must

27 ³ Notice costs also include notification of the Attorney General of the United States and the
28 attorney general of each state where Class Members reside in accordance with the Class Action
Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715(b).

1 fall within the range of possible approval.”); *see also* Alba Conte and Herbert Newberg, 4
 2 NEWBERG ON CLASS ACTIONS § 11.25 (4th ed. 2002). The *Manual for Complex Litigation*,
 3 § 21.632 (4th ed. 2004) characterizes the preliminary approval stage as an “initial evaluation” of
 4 the fairness of the proposed settlement made by the court on the basis of written submissions and
 5 informal presentation from the settling Parties.

6 Here, as shown below, the Settlement should be preliminarily approved. It falls “within the
 7 range of possible approval” because it is non-collusive, fair, and reasonable. *Alaniz*, 73 F.R.D. at
 8 273. As detailed above, the Settlement will provide Settlement Class Members with either (1) a
 9 \$55 cash payment, or (2) a 10% rebate of the purchase price of a new KitchenAid-brand major
 10 appliance. At the same time, the Settlement eliminates the substantial risk and delay of litigation.
 11 Although Plaintiffs believe their claims have merit, they recognize that Whirlpool will present a
 12 vigorous defense, and that there is no assurance that the class would prevail at trial. By settling,
 13 Plaintiffs and the Class avoid the risk that they will not recover at all, as well as the delays and
 14 perils of a lengthy trial and appellate process. The Settlement will provide Class Members with
 15 certain benefits, and it will avoid the obstacles that might have prevented them from obtaining
 16 relief.

17 In light of the relief obtained, the magnitude and risks of the litigation and the legal
 18 standards set forth above, the Court should allow notice of the settlement to be sent to the
 19 Settlement Class so that Class Members can express their views on it. The Court should conclude
 20 that the Settlement’s terms are “within the range of possible approval.” *Id.*

21 **B. The Proposed Settlement Class Should Be Certified**

22 The Settlement Class consists of all end-user California residents who purchased for
 23 household use (not for resale) a new KitchenAid model KSRG25FV** or KSRS25RV**
 24 refrigerator in the State of California. April 28, 2015 Order Granting In Part And Denying In Part
 25 Plaintiffs’ Motion For Class Certification, Dkt. No. 160. Where the court has previously certified a
 26 class under Fed. R. Civ. P. 23(b)(3), the court need not analyze whether the requirements for
 27 certification have been met and may focus instead on whether the proposed settlement is fair,
 28 adequate and reasonable. *See Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 974 (E.D. Cal.

2012); *Harris v. Vector Mktg. Corp.*, 2012 WL 381202, at *3 (N.D. Cal. Feb. 6, 2012) (“As a preliminary matter, the Court notes that it previously certified . . . a Rule 23(b)(3) class . . . [and thus] need not analyze whether the requirements for certification have been met and may focus instead on whether the proposed settlement is fair, adequate, and reasonable.”); *In re Apollo Group Inc. Securities Litigation*, 2012 WL 1378677 at *4 (D.Ariz. Apr. 20, 2012) (“The Court has previously certified, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and hereby reconfirms its order certifying a class.”). As this Court has already certified a class (April 28, 2015 Order Granting In Part And Denying In Part Plaintiffs’ Motion For Class Certification, Dkt. No. 160), the Court need not again assess whether the requirements for class certification have been met for purposes of preliminary approval.⁴ *See id.* Accordingly, the Court need not again assess whether the requirements for class certification have been met for purposes of preliminary approval. *See id.*

C. The Proposed Notice Program Constitutes Adequate Notice And Should Be Approved

Once preliminary approval of a class action settlement is granted, notice must be directed to class members. For class actions certified under Rule 23(b)(3), “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). In addition, Rule 23(e)(1) applies to any class settlement and requires the Court to “direct notice in a reasonable manner to all class members who would be bound by a proposal.” Fed. R. Civ. P. 23(e)(1).

The proposed notice program here, which informs the Settlement Class of their rights and includes a comprehensive plan for delivery of notice by U.S. postal mail, e-mail, and Internet

⁴ The Settlement Class is defined to mean all residents of the State of California who (a) bought a new Class Refrigerator, (b) acquired a Class Refrigerator as part of the purchase or remodel of a home, or (c) received as a gift, from a donor meeting the requirements of either subsection (a) or subsection (b), a new Class Refrigerator not used by the donor or by anyone else after the donor bought or acquired the Class Refrigerator and before the donor gave the Class Refrigerator to the California resident. This slightly modifies the class definition set forth in the Court’s order to include people who acquired a Class Refrigerator as part of the purchase or remodel of a home or received a Class Refrigerator as a gift.

1 publication, constitutes the best notice practicable under the circumstances of this case. By the
2 terms of the Settlement, there are both “Prequalified Class Members” and “Non-Prequalified Class
3 Members.” Settlement Agreement, Exh. A to Fisher Decl. at §§ I.U, I.BB; *id.* at Exh. 2 to
4 Settlement Agreement (“Prequalified Notice”). “Prequalified Class Members” are defined as
5 “Class Members who can be identified in Whirlpool’s or the Retailers’ databases as having bought
6 a Class Refrigerator.” *Id.* at § I.BB. “Non-Prequalified Class Members” are defined as “Class
7 Members who cannot be identified in Whirlpool’s or the Retailers’ databases as having bought a
8 Class Refrigerator.” *Id.* at § I.U. The Parties expect that they will be able to identify more than
9 80% of the Class Members and provide direct mail or email notice to those Class Members. Fisher
10 Decl. ¶ 3.

11 Furthermore, the Notices accurately inform Class Members of the salient terms of the
12 Settlement Agreement, the Settlement Class to be certified, the final approval hearing and the
13 rights of all parties, including the rights to file objections and to opt out of the class. The Parties in
14 this case have created and agreed to perform the following forms of notice, which will satisfy both
15 the substantive and manner of distribution requirements of Rule 23 and Due Process. *See* Exhs. 1-
16 4 to the Settlement Agreement.

17 **U.S. Mail Notice:** A notice substantially in the form attached as Exhibit 2 to the Settlement
18 Agreement shall be sent to any Prequalified Class Member. For any such notice returned by the
19 U.S. Postal Service as undeliverable, Class Counsel shall update such Class Member’s address
20 using available U.S. Postal Service change-of-address information and shall re-mail any such
21 returned notice within ten (10) days of return, to any updated address.

22 **E-mail Notice:** A notice substantially in the form attached as Exhibit 2 to the Settlement
23 Agreement, shall be e-mailed to the last known e-mail address of any Prequalified Class Member.

24 **Internet Notice:** The Parties will post a copy of the Notice on a website to be maintained
25 by a settlement administrator that will contain the settlement documents, an online proof of claim
26 form, a list of important dates, and any other information to which the Parties may agree. *See* Exh.
27 1 to Settlement Agreement (claim form).

Publication Notice: To the extent necessary, the Parties shall supplement the direct notice by developing a proposal for publication notice. Because Defendant will be able to obtain well over 80% of the Class Members' direct contact information from its retailers, Defendant will consult with the Settlement Administrator to determine if additional publication notice is necessary.

This proposed method of giving notice (similar if not identical to the method used in countless other class actions) is appropriate because it provides a fair opportunity for members of the Settlement Class to learn about the Settlement Agreement and to make an informed decision regarding the proposed Settlement. Thus, the notices and the procedures embodied in the notices amply satisfy the requirements of due process. Defendant shall pay directly to a settlement administrator the reasonable costs and expenses of providing notice to the Class in accordance with the Settlement Agreement.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval to the Settlement Agreement, approve the proposed notice plan and enter the Preliminary Approval Order in the form submitted herewith.

Dated: February 5, 2016

BURSOR & FISHER, P.A.

By: /s/ L. Timothy Fisher
L. Timothy Fisher

Scott A. Bursor (State Bar No. 276006)
L. Timothy Fisher (State Bar No. 191626)
Annick M. Persinger (State Bar No. 272996)
1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-Mail: scott@bursor.com
ltfisher@bursor.com
apersinger@bursor.com

FARUQI & FARUQI, LLP

David Bower (State Bar No. 119546)
10866 Wilshire Boulevard, Suite 1470
Los Angeles, CA 90024

Telephone: (424) 256-2884
Facsimile: (424) 256-2885
E-Mail: dbower@faruqilaw.com

Co-Lead Class Counsel

VOZZOLO LLC
Antonio Vozzolo (*pro hac vice*)
345 Route 17 South
Upper Saddle River, NJ 074578
Tel: 201-630-8820
Fax: 201-604-8400
Email: avozzolo@vozzolo.com

Additional Counsel for Plaintiffs

BURSOR & FISHER, P.A.

Scott A. Bursor (State Bar No. 276006)
L. Timothy Fisher (State Bar No. 191626)
Annick M. Persinger (State Bar No. 272996)
1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-Mail: scott@bursor.com
ltfisher@bursor.com
apersinger@bursor.com

FARUQI & FARUQI, LLP

David Bower (State Bar No. 119546)
10866 Wilshire Boulevard, Suite 1470
Los Angeles, CA 90024
Telephone: (424) 256-2884
Facsimile: (424) 256-2885
E-Mail: dbower@faruqilaw.com

Attorneys for Plaintiffs and Co-Lead Class Counsel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KYLE DEI ROSSI and MARK
LINTHICUM, on behalf of themselves and
those similarly situated,

Plaintiffs,

v.

WHIRLPOOL CORPORATION, PACIFIC
SALES KITCHEN AND BATH
CENTERS, INC. and BEST BUY
COMPANY, INC.,

Defendants.

Case No. 2:12-cv-00125- TLN-CKD

**DECLARATION OF L. TIMOTHY FISHER
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: March 24, 2016
Time: 2:00 p.m.
Courtroom: 2 - 15th Floor

Judge: Honorable Troy L. Nunley

1 I, L. Timothy Fisher, declare:

2 1. I am an attorney with the law firm of Bursor & Fisher, P.A., counsel to Plaintiffs
3 Kyle Dei Rossi and Mark Linthicum ("Plaintiffs"). I make this declaration in support of Plaintiffs'
4 Motion For Preliminary Approval Of Class Action Settlement. I have personal knowledge of the
5 facts set forth in this declaration and, if called as a witness, I could and would testify competently
6 thereto.

7 2. On October 8, 2015, the Parties had an in-person settlement meeting at my firm's
8 New York office. Although the Parties were able to assemble preliminary drafts of a binding Term
9 Sheet during the meeting, we were unable to reach any final agreement. Following continued
10 discussions on the content of the term sheet over the subsequent weeks, on October 28, 2015, the
11 Parties executed a binding Term Sheet for Class Settlement.

12 3. Based on my conversations with counsel for Defendants, the Parties expect that they
13 will be able to identify more than 80% of the Class Members and provide direct mail or email
14 notice to those Class Members.

15 4. Attached hereto as **Exhibit A** is a true and correct copy of the fully executed
16 Settlement Agreement.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct to the best of my knowledge. Executed this 5th day of February 2016,
19 at Walnut Creek, California.

20
21 /s/ L. Timothy Fisher

22 L. Timothy Fisher
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

KYLE DEI ROSSI and MARK
LINTHICUM, on behalf of themselves
and those similarly situated,

Plaintiffs,

vs.

WHIRLPOOL CORPORATION,

Defendant.

Case No: 2:12-CV-00125-TLN-CKD

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE OF ALL
CLAIMS**

Date:

Time:

Courtroom: 2, 15th Floor

Judge: The Honorable Troy L. Nunley

This settlement agreement (“Agreement”) is made and entered into as of February 5, 2016, between Plaintiffs Kyle Dei Rossi and Mark Linthicum, on behalf of themselves 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 in this class action lawsuit on behalf of the Settlement Class against Whirlpool relating to certain refrigerators described below. Plaintiffs and Whirlpool are collectively referred to as the “Parties.”

1 WHEREAS a dispute has arisen between the Parties concerning certain KitchenAid®-brand
2 refrigerators defined below (“Refrigerators”);

3 WHEREAS Plaintiffs filed this Action alleging that Whirlpool misrepresented the
4 Refrigerators’ energy efficiency by labeling them with the Energy Star logo when, in fact, they did
5 not meet the Energy Star program’s standards for energy efficiency;

6 WHEREAS Plaintiffs allege that they suffered damages from Whirlpool’s alleged
7 misrepresentations;

8 WHEREAS Plaintiffs filed this Action asserting claims for violation of the Magnuson-Moss
9 Warranty Act, breach of express warranty, breach of implied warranty, violation of California’s
10 Consumers Legal Remedies Act, violation of California’s Unfair Competition Law, and violation of
11 California’s False Advertising Law;

12 WHEREAS Whirlpool denies Plaintiffs’ allegations, denies that it has committed or engaged
13 in any misconduct, wrongdoing, or other actionable conduct, and asserts numerous defenses to the
14 claims alleged by Plaintiffs;

15 WHEREAS Whirlpool maintains that the Refrigerators were, at all relevant times, compliant
16 with the Energy Star program’s standards for energy efficiency and marketed in accordance with the
17 Energy Star program’s requirements;

18 WHEREAS Whirlpool maintains that Plaintiffs suffered no damages;

19 WHEREAS the Parties to this Agreement, after engaging in significant discovery in this
20 Action—including written discovery, the production of tens of thousands of pages of documents by
21 both Plaintiffs and Whirlpool, several depositions taken in various parts of the United States, and the
22 submission of reports prepared by Plaintiffs’ and Whirlpool’s experts, and fully briefing the issue of
23 class certification, which was granted in part for a California-only class but denied as to the other 32
24 jurisdictions for which Plaintiffs sought certification, and having engaged in settlement negotiations,
25 now wish to resolve all claims, disputes, and differences among them;

26 WHEREAS Plaintiffs and Plaintiffs’ counsel have reviewed and analyzed the documents
27 produced by Whirlpool and those obtained via their own investigation; consulted with experts;
28 examined and considered the benefits to be provided to the Settlement Class Members under the

1 settlement provided for in this Agreement; considered the laws of the State of California and other
2 states, and the claims that could be asserted under those laws regarding Refrigerators; considered the
3 risks, costs, and time associated with prosecuting this case through one or more trials and appeals;
4 and believe the Agreement to be in the best interest of the Settlement Class Members, taking into
5 account the risks and costs of continued litigation, and the length of time that would be required to
6 complete the litigation and any appeals;

7 WHEREAS Whirlpool has at all times disputed, and continues to dispute, Plaintiffs'
8 allegations in the Action and denied any liability for any of the claims that have or could have been
9 raised regarding the Refrigerators by Plaintiffs or Settlement Class Members, but believe that the
10 comprehensive resolution of the issues in this Action as provided in this Agreement will avoid the
11 substantial costs and disruptions of continued litigation, is in the best interest of the Settlement
12 Class, and is in the best interests of Whirlpool, its employees, and its trade partners, and is the most
13 effective and least costly resolution of the Action;

14 WHEREAS the Parties understand, acknowledge, and agree that this Agreement constitutes
15 the compromise of disputed claims and that it is their mutual desire and intention that the Action be
16 settled and dismissed, on the merits and with prejudice, and that the Released Claims be finally and
17 fully settled and dismissed, subject to and according to the below terms and conditions.

18 NOW, THEREFORE, the Parties agree and covenant as follows:

19 **I. DEFINITIONS**

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

- 21 A. "Action" means the putative class-action lawsuit pending, as of the date of this
22 Agreement, in the United States District Court for the Eastern District of California,
23 Case No. 2:12-cv-00125-TLN-CKD, titled *Dei Rossi et al. v. Whirlpool Corp.*
- 24 B. "Administration and Notice Expenses" means reasonable fees and expenses incurred
25 for (1) preparing, mailing, and emailing the Prequalified Notice, including the
26 identification of Prequalified Class Members, and compilation of related information
27 with respect to those Prequalified Class Members, (2) costs of Publication Notice, (3)
28 receipt and adjudication of claims submitted by Class Members for compensation

1 under this Settlement, including the costs of administering a Settlement Website for
2 the review of the Settlement Notice and submission of claims, (4) receipt and
3 processing of Opt-Out Forms submitted by Class Members who wish to exclude
4 themselves from the Class, (5) preparing status reports to the Parties and the Court,
5 (6) preparing tax returns for any settlement bank accounts, (7) distributing settlement
6 payments or other benefits to those Class Members who timely submit a Valid Claim,
7 and (8) other costs of notice and administration of the Settlement.

8 C. "Agreement" means this settlement agreement and exhibits attached to it.

9 D. "Attorney Fees and Expenses" means the amount of any attorney fees and
10 reimbursement of litigation expenses awarded to Class Counsel under their Fee
11 Application.

12 E. "Cash Option" means a \$55 cash payment, less any voluntary payment paid by
13 Whirlpool through Whirlpool's Voluntary Customer Satisfaction Program.

14 F. "Claimant" means a Person who has submitted a Claim Form.

15 G. "Claims Deadline" means 180 days after the Notice Date.

16 H. "Claim Form" means the proposed form attached as Exhibit 1, to be approved by the
17 Court and to be submitted to the Settlement Administrator by Class Members who
18 wish to make a claim.

19 I. "Class Counsel" means Scott A. Bursor, L. Timothy Fisher, and Annick M. Persinger
20 of the law firm Bursor & Fisher, P.A.; and Anthony Vozzolo of the law firm Faruqi &
21 Faruqi, LLP.

22 J. "Class Refrigerators" means all KitchenAid -brand refrigerators manufactured by
23 Whirlpool bearing model numbers KSRG25FV** or KSRS25RV**.

24 K. "Class Member" means any Person who is a member of the Settlement Class and
25 does not exclude himself or herself from the Settlement Class in the manner and time
26 prescribed by the Court in the Preliminary Approval Order.

27 L. "Class Representative" means Kyle Dei Rossi or Mark Linthicum.

28 M. "Court" means the United States District Court for the Eastern District of California.

- 1 N. "Effective Date" means the first date that is three business days after all of the
2 following have occurred: (i) the Court has entered an order granting final approval of
3 the Agreement in accordance with the terms of this Agreement; (ii) the time for any
4 challenge to the Settlement, both in the Court and on appeal, has elapsed; and (iii) the
5 Settlement has become final, either because no timely challenge was made to it or
6 because any timely challenge has been finally adjudicated and rejected. For purposes
7 of this paragraph, an "appeal" shall not include any appeal that concerns solely the
8 issue of Class Counsel's request for attorney fees and costs and for Service Awards to
9 the Class Representatives.
- 10 O. "Fairness Hearing" means the final hearing, to be held after notice has been provided
11 to the Settlement Class in accordance with this Agreement (1) to determine whether
12 to grant final approval to (a) the certification of the Settlement Class, (b) the
13 designation of Class Representatives as the representatives of the Settlement Class,
14 (c) the designation of Class Counsel as counsel for the Settlement Class, and (d) the
15 Settlement; (2) to consider whether to enter the Final Approval Order; and (3) to rule
16 on Class Counsel's Fee Application.
- 17 P. "FAQ" means the full notice and in the form of Frequently Asked Questions and
18 Answers attached as Exhibit 4, to be approved by the Court and posted on the
19 Settlement Website in accordance with this Agreement. In addition, the FAQ form
20 will be mailed to Class Members who contact the Settlement Administrator by
21 telephone or email and request a Claim Form in hard copy.
- 22 Q. "Fee Application" means the application that Class Counsel will file seeking an
23 award of attorney fees and costs in prosecuting the Action, as well as Service Awards
24 to be paid to Plaintiffs. Whirlpool agrees that Class Counsel may seek an award of
25 attorney fees based on their work prosecuting the Action and creating the benefits of
26 this Settlement. Whirlpool reserves all rights to object to the amount of (but not the
27 entitlement to) fees and costs requested by Class Counsel.
- 28

- 1 R. "Final Approval Order" means the proposed Order Granting Final Approval to the
2 Class Action Settlement and Entry of Final Judgment, to be entered by the Court with
3 the terms and substantially in the form of Exhibit 6 attached to this Agreement.
- 4 S. "New KitchenAid-brand Major Appliance" means any new, KitchenAid-brand
5 appliance in the following categories: (i) cooktops; (ii) wall ovens; (iii) refrigerators;
6 (iv) under-counter refrigerators; (v) ranges; (vi) microwaves; (vii) dishwashers; (viii)
7 disposers and compactors; (ix) warming drawers; (x) hoods and vents; (xi) grills; and
8 (xii) water filters.
- 9 T. "Notice Date" means the date on which the Settlement Administrator completes the
10 initial mailing of Prequalified Notices to class members.
- 11 U. "Non-Prequalified Class Member" means Class Members who cannot be identified in
12 Whirlpool's or the Retailers' databases as having bought a Class Refrigerator.
- 13 V. "Notice of Claim Denial" means the form that the Settlement Administrator will send,
14 by first-class United States Mail, to each Person who has submitted a Claim Form
15 that the Settlement Administrator has determined, subject to review and approval by
16 Class Counsel, to not be a Valid Claim.
- 17 W. "Opt-Out" means a Class Member who submits a request for exclusion by the
18 deadline for submitting a request for exclusion contained in the FAQ, Prequalified
19 Notice, and Publication Notice.
- 20 X. "Parties" means Plaintiffs and Whirlpool.
- 21 Y. "Person" means any natural person, and the term includes Class Members as well as
22 all Persons entitled to benefits under the Settlement.
- 23 Z. "Plaintiffs" means Kyle Dei Rossi and Mark Linthicum.
- 24 AA. "Preliminary Approval Order" means the proposed Order Granting Preliminary
25 Approval to Class Action Settlement, to be entered by the Court with the terms and
26 substantially in the form of Exhibit 5 attached to this Agreement.
- 27 BB. "Prequalified Class Members" means Class Members who can be identified in
28 Whirlpool's or the Retailers' databases as having bought a Class Refrigerator.

- 1 CC. "Prequalified Notice" means the proposed postcard and email notice to be provided to
2 Prequalified Class Members in the form of Exhibit 2 attached to this Agreement.
- 3 DD. "Publication Notice" means the proposed notice, with the terms and form of Exhibit 3
4 attached to this Agreement, to be approved by the Court and to be published in
5 accordance with the notice plan set forth in Section V of this Agreement.
- 6 EE. "Rebate Option" means a 10% rebate of the purchase price of a New KitchenAid-
7 brand Major Appliance, without any cap as to the maximum amount of the rebate.
- 8 FF. "Rebate Redemption Deadline" means 120 days after the Claims Deadline.
- 9 GG. "Rebate Vendor" means the firm selected by Whirlpool in consultation with Class
10 Counsel and paid by Whirlpool to administer the Rebate Program in accordance with
11 this Agreement. The Rebate Vendor may, but need not, be the Settlement
12 Administrator.
- 13 HH. "Released Claims," as to Plaintiffs and all Class Members, means all claims released
14 under the release and waiver set forth in Section IX of this Agreement.
- 15 II. "Releasees" means (a) Whirlpool, together with its respective predecessors and
16 successors in interest, parents, subsidiaries, affiliates, and assigns; (b) each of
17 Whirlpool's respective past, present, and future officers, directors, agents,
18 representatives, servants, employees, attorneys, and insurers; and (c) all distributors,
19 retailers, suppliers, and other entities who were or are in the chain of design, testing,
20 manufacture, assembly, distribution, marketing, sale, installation, or servicing of the
21 Class Refrigerators.
- 22 JJ. "Retailers" means the top 20 retailers of the Class Refrigerators in the State of
23 California.
- 24 KK. "Service Award" means a reasonable payment, subject to Court approval, made to
25 Plaintiffs as compensation for their efforts in pursuing this Action.
- 26 LL. "Settlement" means the settlement provided for in this Agreement.
- 27 MM. "Settlement Administrator" means a sufficiently qualified firm selected by Whirlpool,
28 approved by Class Counsel, and appointed by the Court to administer the Settlement.

- 1 NN. "Settlement Website" means a website created by the Settlement Administrator to
2 facilitate notice, the making of claims, and for other administrative purposes related
3 to the Settlement, as detailed in Section V.G of this Agreement.
- 4 OO. "Settlement Class" means all residents of the State of California who (a) bought a
5 new Class Refrigerator, (b) acquired a Class Refrigerator as part of the purchase or
6 remodel of a home, or (c) received as a gift, from a donor meeting the requirements of
7 either subsection (a) or subsection (b), a new Class Refrigerator not used by the donor
8 or by anyone else after the donor bought or acquired the Class Refrigerator and before
9 the donor gave the Class Refrigerator to the California resident.
- 10 PP. "Valid Claim" means a Claim Form that (i) is timely submitted by a Class Member in
11 accordance with the requirements of the Preliminary Approval Order, (ii) is signed
12 with a certification that the information is true and correct to the best of the Class
13 Member's knowledge and recollection, and (iii) contains all of the information and
14 documentation required for that Class Member to be eligible to receive a benefit of
15 this Agreement.
- 16 QQ. "Whirlpool" means Whirlpool Corporation and its consolidated subsidiaries,
17 including their successors, predecessors, assigns, affiliates, subsidiaries, shareholders,
18 officers, directors, agents, insurers, attorneys, and employees.
- 19 RR. "Whirlpool's Cash or New KitchenAid-Brand Appliance Rebate Program" means the
20 program by which Whirlpool will offer Class Members cash or a 10% rebate on the
21 purchase of new KitchenAid-brand major appliance as described in this Agreement.
- 22 SS. "Whirlpool's Voluntary Customer Satisfaction Program" means the program by
23 which Whirlpool voluntarily paid cash to customers who bought a KitchenAid-brand
24 refrigerator bearing model number KSRS25RV** as an energy adjustment credit.

25 **II. CERTIFICATION OF THE SETTLEMENT CLASS**

26 For purposes of implementing this Agreement, and for no other purpose, Whirlpool
27 recognizes that the Settlement Class has been certified by the Court and stipulates that it will not
28 challenge, appeal, or otherwise oppose the Court's prior order certifying the Settlement Class. If, for

any reason, this Agreement should fail to become effective, Whirlpool's stipulation shall be null and void, and the Parties will return to their prior positions in the Action.

III. REQUIRED EVENTS

- A. As soon as practicable after the execution of this Agreement, the Parties shall file in this Action this 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 Agreement as fair and reasonable to the Settlement Class;
 2. Designate Plaintiffs as the representatives of the Settlement Class;
 3. Designate Class Counsel as counsel for the Settlement Class;
 4. Designate an appropriately qualified firm as the Settlement Administrator and instruct the Settlement Administrator to perform the following functions in accordance with the terms of this Agreement, the Preliminary Approval Order, and the Final Approval Order:
 - a. Disseminate the Prequalified Notice and, if necessary or as required by law, the Publication Notice;
 - b. Establish the Settlement Website with information that the Parties agree to post concerning the nature of the case and the status of the Settlement, including relevant pleadings such as the operative Second Amended Class Action Complaint, papers in support of preliminary and final approval of the Settlement, the Claim Form, and Class Counsel's Fee Application, plus relevant orders of the Court;
 - c. Receive, evaluate, and either approve completed Claim Forms submitted by Claimants as meeting the requirements of the Agreement or disapprove as failing to meet those requirements;
 - d. Thirty days before mailing Notices of Claim Denial, provide to Whirlpool and Class Counsel (i) a list of the names and addresses of all Claimants whose Claim Forms the Settlement Administrator has

determined to contain Valid Claims, by category of benefit; and (ii) a separate list of the names and addresses of all Claimants whose Claim Forms the Settlement Administrator has determined not to contain Valid Claims, by category of benefit. Class Counsel shall then have an opportunity to review the Notices of Claim Denial and request to meet and confer with Whirlpool's counsel should they decide to challenge any of the Notices of Claim Denial. If Class Counsel challenges a Notice of Claim Denial, then that Notice of Claim Denial shall not be sent until Whirlpool's counsel and Class Counsel meet and confer;

e. Send, by first-class United States Mail, to each Claimant whose Claim Form the Settlement Administrator has determined not to contain a Valid Claim, and which has not been challenged by Class Counsel, a Notice of Claim Denial;

f. Process requests for exclusion from the Settlement;

g. Process objections to the Settlement;

h. Within 30 days after satisfying all Valid Claims under either the Cash Option or the Rebate Option, provide to Whirlpool and Class Counsel, under penalty of perjury, a statement of the total number of Claim Forms submitted (in total and by category of benefit), the total number of Claim Forms adjudicated as containing Valid Claims (in total and by category of benefit), and the total dollar amount paid and rebates provided to Class Members (in total and by category of benefit);

5. Approve the form, contents, and methods of notice to be given to the Settlement Class and direct the Settlement Administrator to provide and cause to be provided such notices and to file with the Court a declaration detailing the scope, methods, and results of the notice program;

6. Establish procedures and schedule deadlines for Class Members to object to the Settlement or certification of the Settlement Class, to exclude themselves

1 from the Settlement, and to submit Claim Forms to the Settlement
2 Administrator, all consistent with the terms of this Agreement;

3 7. Schedule the Fairness Hearing; and

4 8. Schedule deadlines for filing (a) papers in support of appointing Class
5 Counsel as counsel for the Settlement Class and the Settlement, and (b) Class
6 Counsel's Fee Application.

7 B. At the Fairness hearing the Parties will jointly request the Court to enter a Final
8 Approval Order that (1) designates Plaintiffs as the representatives of the Settlement
9 Class and designates Class Counsel as counsel for the Settlement Class; (2) grants
10 final approval of the Settlement and this Agreement as fair, reasonable, and adequate
11 to the Settlement Class; (3) provides for the release of all Released Claims and
12 enjoins Class Members from asserting, filing, maintaining, or prosecuting any of the
13 Released Claims in the future; (4) orders the dismissal with prejudice of all claims,
14 causes of action, and counts alleged in the Action, and incorporates the releases and
15 covenant not to sue stated in this Agreement, with each of the Parties to bear its, his,
16 or her own costs and attorney fees, except as provided in Section VIII below; (5)
17 authorizes the payment by Whirlpool of Valid Claims approved by the Settlement
18 Administrator as Valid Claims, or otherwise reviewed by Class Counsel and
19 Whirlpool's counsel and determined to be Valid Claims, in accordance with the terms
20 of the Agreement; and (6) preserves the Court's continuing jurisdiction over the
21 administration of the Settlement and enforcement of this Agreement. In addition,
22 Class Counsel will move the Court for entry of a separate order approving the
23 following: (1) Service Awards as described in this Agreement, and (2) attorney fees
24 and costs to Class Counsel in an amount to be determined by the Court consistent
25 with the terms of this Agreement.

26 C. Plaintiffs, Class Counsel, and Whirlpool will cooperate and take all reasonable
27 actions to accomplish the above. If the Court fails to enter either the Preliminary
28 Approval Order or the Final Approval Order, Plaintiffs, Class Counsel, and Whirlpool

1 will use all reasonable efforts that are consistent with this Agreement to cure any
2 defect identified by the Court. If, despite such efforts, the Court does not enter the
3 Preliminary Approval Order and Final Approval Order, the Parties will return to their
4 positions in the Action as they were immediately before the execution of the
5 Settlement Agreement.

6 **IV. SETTLEMENT BENEFITS**

7 **A. Overview of Whirlpool's Cash or New KitchenAid-Brand Appliance Rebate**
8 **Program**

- 9 1. To qualify for any compensation under this section, a Claimant must timely
10 submit to the Settlement Administrator, through the Settlement Website or by
11 mail, a properly completed Claim Form attesting that the Claimant is a
12 member of the Settlement Class because he or she bought a Class
13 Refrigerator.
- 14 2. The Claim Forms will include a pre-printed unique claim identification
15 number that the Settlement Administrator will use to determine whether the
16 Claimant is a Prequalified Class Member or a Non-Prequalified Class
17 Member.
- 18 3. Prequalified Class Members will be required to confirm their names,
19 addresses, and email addresses; check several eligibility boxes on the Claim
20 Form; and sign (or electronically sign) the Claim Form attesting that the
21 statements are true and correct.
- 22 4. Non-Prequalified Class Members will be required to provide sufficient proof
23 that they bought a Class Refrigerator with their Claim Form. To do so, they
24 must provide their Class Refrigerators' model and serial numbers, or an
25 alternate proof of purchase; check several eligibility boxes on the Claim
26 Form; and sign (or electronically sign) the Claim Form attesting that the
27 statements are true and correct.
- 28

5. Class Members will be able to electronically submit claims through the Settlement Website. Each Class Member will be required to register his or her name, address, telephone number, and email address, as well as his or her Class Refrigerator's model and serial number to establish eligibility. For Prequalified Class Members, that information shall automatically prepopulate the online Claim Form completed by such Class Member. Non-Prequalified Class Members must provide that information to the Settlement Administrator.
6. Class Members who are found by the Settlement Administrator to have presented a Valid Claim have two options. They may elect to receive either (1) the Cash Option or (2) the Rebate Option.
7. Class Members shall make their election on the Claim Form, and their election shall be final.

B. Cash Option

1. Class Members who are found by the Settlement Administrator to have presented a Valid Claim and who elect the Cash Option will receive a \$55 cash payment, less any voluntary payment paid by Whirlpool through Whirlpool's Voluntary Customer Satisfaction Program.
2. Each Class Member is entitled to one cash payment of \$55, less any voluntary payment paid by Whirlpool through Whirlpool's Voluntary Customer Satisfaction Program, for each Class Refrigerator that he or she purchased. If a Class Member bought two Class Refrigerators, then that Class Member would be eligible to receive two cash payments of \$55 each, less any voluntary payment paid by Whirlpool through Whirlpool's Voluntary Customer Satisfaction Program.
3. If a Class Member has already received compensation through Whirlpool's Voluntary Customer Satisfaction Program, and if that compensation exceeded

1 \$55, then such Class Member is not entitled to any cash payment from
2 Whirlpool.

- 3 4. Deadline to submit claims for the Cash Option: Class Members shall be
4 required to submit a Claim Form for the cash payment by the Claims
5 Deadline.
- 6 5. Payment of cash payments: The Settlement Administrator or the Rebate
7 Vendor shall mail cash payments, in the form of checks, to qualifying Class
8 Members within 12 weeks after receiving the Claim Form.
- 9 6. Rebate Vendor: Whirlpool shall hire the Rebate Vendor to establish a website
10 to promote and administer Whirlpool's Cash or New KitchenAid-Brand
11 Appliance Rebate Program, to allow Settlement Class Members to file Claim
12 Forms for cash payments, and to disseminate cash payments to eligible Class
13 Members who submitted Valid Claims. The Rebate Vendor may be, but is not
14 required to be, the Settlement Administrator. The Rebate Vendor shall provide
15 Class Counsel and Whirlpool periodic status reports regarding claims, cash
16 payments made, and any cash claims that have been rejected.

17 C. **Rebate Option**

- 18 1. Class Members who are found by the Settlement Administrator to have
19 presented a Valid Claim and who elect the Rebate Option will receive a 10%
20 rebate of the purchase price of a New KitchenAid-brand Major Appliance,
21 without any cap as to the maximum amount of the rebate.
- 22 2. The rebate for the purchase of a New KitchenAid-brand Major Appliance will
23 be 10% off the retail purchase price (not to include sales taxes, delivery fees,
24 and installation charges). Such rebate shall be in addition to any other sales
25 promotion that Whirlpool or any retailer or seller offers towards a New
26 KitchenAid-brand Major Appliance.

3. Each Class Member shall be entitled to one rebate for each Class Refrigerator that he or she purchased. If a Class Member bought two Class Refrigerators, then that Settlement Class member would be eligible to receive two rebates.
4. Deadline to submit claims for the Rebate Option: Class Members shall be required to submit a Claim Form for a rebate by the Claims Deadline.
5. Deadline to redeem rebates: Class Members shall be required to mail or email to the Settlement Administrator or the Rebate Vendor their completed rebate form and proof of purchase by the Rebate Redemption Deadline.
6. Payment of redeemed rebates: The Settlement Administrator or the Rebate Vendor shall mail rebate checks to qualifying Class Members within 12 weeks after the completed and valid rebate form has been submitted.
7. Rebate Vendor: Whirlpool shall hire the Rebate Vendor to establish a website to promote and administer Whirlpool's Cash or New KitchenAid-Brand Appliance Rebate Program, to allow Settlement Class Members to file Claim Forms for rebates, and to disseminate rebate forms to eligible Class Members who submitted Valid Claims. The Rebate Vendor may be, but is not required to be, the Settlement Administrator. The Rebate Vendor shall provide Class Counsel and Whirlpool periodic status reports regarding claims, rebates paid, and any rebate claims that have been rejected.

V. SETTLEMENT ADMINISTRATION AND NOTICE EXPENSES

- A. Whirlpool agrees to pay for all Notice and Administration Expenses. Whirlpool shall not be responsible for any cost that may be incurred by Plaintiffs or Class Counsel in (a) responding to inquiries about the Agreement, the Settlement, or the Action; (b) defending the Agreement or the Settlement against any challenge to it; or (c) defending against any challenge to any order or judgment entered under the Agreement, unless otherwise specifically agreed, except for the costs incurred by the Settlement Administrator to prepare declarations, affidavits, or status reports at the request of the Parties or the Court for the purpose of obtaining preliminary or final

1 approval of the settlement or for staying informed about developments in the
2 Settlement. Whirlpool shall be required to pay the reasonable costs, if any, billed by
3 the Settlement Administrator concerning the work performed by the Settlement
4 Administrator to provide information to the Court regarding the notice and settlement
5 administration process related to challenges or objections to the Agreement or the
6 Settlement.

7 B. Whirlpool, subject to Class Counsel's approval, will choose a Settlement
8 Administrator.

9 C. All decisions regarding notice and settlement administration shall be made jointly by
10 Whirlpool and Class Counsel. Class Counsel and Whirlpool's counsel shall have the
11 ability to communicate with the Settlement Administrator without the need to include
12 each other in those communications. Disputes, if any, shall be resolved by the Court.

13 D. The Settlement Administrator will mail the Prequalified Notice to each mailing
14 address of record for members of the Settlement Class and will email the Prequalified
15 Notice to all members of the Settlement Class for whom valid email addresses are
16 known to Whirlpool. Whirlpool shall search its warranty registration databases, call
17 center databases, and other relevant databases to identify Class Members. Such
18 postcard and email notices shall advise Class Members that they are Prequalified
19 Class Members and shall state that Prequalified Class Members are entitled to elect
20 between the Cash Option and the Rebate Option if they enter or confirm their current
21 name and address, check the necessary eligibility boxes on the Claim Form for
22 Prequalified Class Members, and sign (or electronically sign) the Claim Form
23 certifying that the statements are true and correct.

24 E. If some paid publication notice is required (i.e., other than publication of notices on
25 the Settlement Administrator's website), the Parties will solicit the Settlement
26 Administrator for a proposal for publication notice and approve a reasonable
27 publication notice plan.
28

- 1 F. The Settlement Administrator will mail a copy of the Claim Form only to Class
2 Members who request a hardcopy form.
- 3 G. The Settlement Administrator also will perform a national change of address search
4 and forward notice packages that are returned by the U.S. Postal Service with a
5 forwarding address.
- 6 H. The Settlement Administrator will create a Settlement Website that will include all
7 necessary and pertinent information for Class Members, including the Claim Form,
8 the FAQ, and information relating to relevant deadlines. The Settlement Website will
9 also permit Class Members to submit claims online, including uploading any
10 necessary documentation. The Settlement Website will also include information that
11 the Parties jointly agree to post concerning the nature of the case and the status of the
12 Settlement, including relevant pleadings such as the operative Second Amended Class
13 Action Complaint, papers in support of preliminary and final approval of the
14 Settlement, and Class Counsel's Fee Application, plus relevant orders of the Court.
15 The Settlement Administrator shall take steps to ensure that the Settlement Website is
16 optimized for searching and that it is mobile-friendly. The Settlement Website shall
17 remain active until at least 90 days after the last date on which a claim for any
18 benefits under the Settlement may be submitted.
- 19 I. The Settlement Administrator will accept online as well as paper Claim Forms.
- 20 J. The Settlement Administrator will allow Class Members to electronically submit
21 documents supporting their Claim Forms.
- 22 K. The Settlement Administrator will provide to Class Counsel and Whirlpool periodic
23 status reports regarding claims.
- 24 L. The Parties agree that the Prequalified Notice, FAQ, Publication Notice, Claim Form,
25 and Settlement Website provide information sufficient to inform Class Members of
26 the essential terms of this Agreement; appropriate means for obtaining additional
27 information regarding the Agreement and the Action; appropriate information about
28 the procedure for challenging or excluding themselves from the Settlement, if they

1 should wish to do so; and appropriate means for and information about submitting a
2 claim for compensation under the Settlement. The Parties also agree that the
3 dissemination of notice of the Settlement in the manner specified in this Agreement
4 and on the Settlement Website satisfies the notice requirements of due process and
5 Rule 23 of the Federal Rules of Civil Procedure.

6 M. The Parties will jointly request the Court to approve, in the Preliminary Approval
7 Order, the method of notice described in this Agreement.

8 N. As soon as practicable, but no later than 10 days after the Court's entry of the
9 Preliminary Approval Order, Whirlpool shall comply with the notice provisions of the
10 Class Action Fairness Act, 28 U.S.C. section 1715.

11 O. Within 50 days after the Court's entry of the Preliminary Approval Order, the
12 Settlement Administrator will file with the Court a declaration of compliance with
13 this plan of notice, including a statement of the number of persons to whom the
14 Prequalified Notice was mailed and emailed.

15 **VI. PROCEDURES FOR SETTLEMENT APPROVAL**

16 A. The Parties shall use their best efforts to effectuate this Agreement, including
17 cooperating in drafting the preliminary approval documents and securing the prompt,
18 complete, and final dismissal, with prejudice, of the Action.

19 B. Preliminary Approval

20 1. Not later than February 5, 2016, the Parties shall jointly move the Court for
21 preliminary approval of the Settlement; for authorization to publish the
22 Publication Notice and to disseminate the Prequalified Notice contemplated
23 by this Agreement to all members of the Settlement Class; and for a stay of all
24 proceedings in the Action, except for proceedings provided for by, or in
25 connection with, this Agreement (the "Motion"). The Motion shall include the
26 proposed Preliminary Approval Order, proposed Final Approval Order and
27 Judgment, proposed forms of the Prequalified Notice, FAQ, Publication
28 Notice, and Claim Form, and the methods and proposed dates of their

1 dissemination to the Settlement Class, and the proposed schedule through
2 final approval of the Agreement.

3 2. The deadlines established in the proposed Preliminary Approval Order are as
4 follows, all as measured from the date on which the Court enters the
5 Preliminary Approval Order:

- 6 a. Ten (10) days after entry of the Preliminary Approval Order: Date on
7 or before which Whirlpool shall comply with the notice provisions of
8 the Class Action Fairness Act, 28 U.S.C. § 1715.
- 9 b. Sixty (60) days after entry of the Preliminary Approval Order: Date on
10 or before which the Settlement Administrator shall mail and email the
11 Prequalified Notice.
- 12 c. Sixty-five (65) days after entry of the Preliminary Approval Order:
13 Date on or before which the Settlement Administrator shall publish the
14 Publication Notice.
- 15 d. Seventy (70) days after entry of the Preliminary Approval Order: Date
16 on or before which Whirlpool shall file with the Court a declaration of
17 compliance with the notice requirements.
- 18 e. Two hundred twenty (220) days after entry of the Preliminary
19 Approval Order: Date on or before which Class Counsel shall file their
20 Fee Application.
- 21 f. Two hundred forty (240) days after entry of the Preliminary Approval
22 Order: Date on or before which all claims for the Cash Option or the
23 Rebate Option shall be postmarked or received by the Settlement
24 Administrator. Any claims that are not postmarked or received by the
25 Settlement Administrator by that deadline shall not be Valid Claims.
- 26 g. Two hundred fifty (250) days after entry of the Preliminary Approval
27 Order: Date on or before which Whirlpool shall file their opposition, if
28 any, to Class Counsel's Fee Application.

- 1 h. Two hundred fifty five (255) days after entry of the Preliminary
2 Approval Order: Date on or before which requests by members of the
3 Settlement Class to be excluded from the Settlement must be either
4 postmarked by the United States Postal Service or actually received by
5 the Settlement Administrator.
- 6 i. Two hundred fifty five (255) days after entry of the Preliminary
7 Approval Order: Date on or before which objections to the designation
8 of Plaintiffs as class representatives, the appointment of Class
9 Counsel, the Settlement, the Agreement, or the amount of fees and
10 expenses that Class Counsel may apply for at the Fairness Hearing,
11 together with all supporting memoranda and other material, must be
12 filed with the Court and served on Class Counsel and Whirlpool.
- 13 j. Two hundred fifty five (255) days after entry of the Preliminary
14 Approval Order: Date on or before which any Person or attorney
15 seeking to appear at the Fairness Hearing, for the purpose of objecting
16 to the designation of Plaintiffs as representatives of the Settlement
17 Class, the appointment of Class Counsel, the Settlement, the
18 Agreement, or the amount of fees and expenses requested by Class
19 Counsel, must file with the Court and serve on Class Counsel and
20 Whirlpool an entry of appearance in the Action and notice of intention
21 to appear at the Fairness Hearing.
- 22 k. Two hundred seventy (270) days after entry of the Preliminary
23 Approval Order: Date on or before which Class Counsel shall file their
24 reply, if any, in support of their Fee Application.
- 25 l. Two hundred ninety (290) days after entry of the Preliminary
26 Approval Order: Date on or before which the Plaintiffs will file their
27 responses to any objections by Class Members to the amount of fees
28 and expenses requested by Class Counsel as well as the proposed

Service Awards.

- m. Two hundred ninety (290) days after entry of the Preliminary Approval Order: Date on or before which the Parties will file their joint motion in support of final approval of the Settlement, their proposed Final Approval Order, and any memoranda in support of final approval.
- n. Three hundred ten (310) days after entry of the Preliminary Approval Order: Date on or about which the Court, at its convenience, will hold the Fairness Hearing.

C. Final Approval

- 1. At the Fairness Hearing, the Parties will jointly request the Court to enter the Final Approval Order, which (1) grants final approval of the designation of the Class Representatives, and designation of Class Counsel, all as conditionally approved in the Preliminary Approval Order; (2) grants final approval to the Settlement and this Agreement as fair, reasonable, and adequate to the Settlement Class; (3) provides for the release of all Released Claims and enjoins 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 Action, and incorporates the releases and covenant not to sue stated in this Agreement; (5) authorizes the payment by Whirlpool of claims approved by the Settlement Administrator as Valid Claims, in accordance with the terms of the Agreement; (6) preserves the Court's continuing jurisdiction over the administration of the Settlement and enforcement of the Agreement.
- 2. In addition, Class Counsel will move the Court for entry of a separate order approving: (1) attorney fees and costs to Class Counsel in an amount to be agreed by the Parties or, absent agreement, determined by the Court; and (2) the Service Awards to Plaintiffs.

VII. REQUESTS FOR EXCLUSION

- A. Any member of the Settlement Class shall have the right to opt out of the Settlement Class. To exercise this right, a Class Member must timely complete and mail a written request for exclusion to the Settlement Administrator's address listed in the Prequalified Notice, FAQ, and Publication Notice. The written request for exclusion must be postmarked no later than a deadline to be set by the Court, which deadline shall be set forth in the Prequalified Notice, FAQ, and Publication Notice.
- B. Within 10 days after the Court-ordered deadline for timely and properly opting out from the Settlement Class, the Settlement Administrator shall provide to counsel for Whirlpool and Class Counsel a list of the names and addresses of any Persons who have opted out.

VIII. PLAINTIFFS' COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEY FEES AND COSTS, AND SERVICE AWARDS TO PLAINTIFFS

- A. As part of this Settlement, Whirlpool has agreed that, in addition to the amount of money that Whirlpool has agreed to make available to pay Valid Claims submitted by Class Members, and the amount of money to be paid for work performed by the Settlement Administrator, Whirlpool will also pay Class Counsel's reasonable attorney fees and costs awarded by the Court (or, if the amount of the award is appealed, as affirmed or modified after the appeal). Whirlpool, however, reserves all rights to object to the amount (but not the entitlement) of the attorney fees and litigation expenses requested by Class Counsel.
- B. The Parties will negotiate in good faith the award of attorney fees and costs to be paid by Whirlpool to Class Counsel, subject to Court approval. If the parties are unable to agree on a stipulated amount of attorney fees and costs to be awarded to Class Counsel, the parties will submit their dispute regarding the award of attorney fees and costs to the Court. In any event, the amount of attorney fees and expenses to be paid to Class Counsel will be subject to Court approval.

- 1 C. After the Court preliminarily approves the Settlement, Class Counsel will submit a
2 Fee Application to the Court.
- 3 D. Whirlpool shall not oppose a Service Award of \$4,000.00 to each Plaintiff to
4 compensate them for their efforts in pursuing litigation on behalf of the Settlement
5 Class. This agreed amount will be subject to Court approval and will be included in
6 Class Counsel's Fee Application.
- 7 E. No later than 30 days after the entry of the Court's order on Class Counsel's Fee
8 Application, regardless of any appeal that may be filed or taken by Whirlpool, any
9 class member or third party, Whirlpool shall pay or cause to be paid only the amount
10 of attorney fees and costs that Whirlpool did not object to pay (i.e., the amount that
11 Whirlpool asked the Court to award in Whirlpool's opposition to Class Counsel's Fee
12 Application). To the extent that the court awards a sum of attorney fees and costs that
13 exceeds the amount of attorney fees and costs that Whirlpool agreed in its opposition
14 to pay, then Whirlpool shall pay or cause to be paid the difference between the
15 amount of attorney fees and costs that Whirlpool did not object to pay and the court-
16 awarded sum within 30 days after the Court's order on Class Counsel's Fee
17 Application becomes final, either because no timely challenge to it, both in the
18 District Court and on appeal, was made, or because any timely challenge to it, both in
19 the District Court and on appeal, has been finally adjudicated. Whirlpool shall pay or
20 cause to be paid the attorney fees and costs by wire transfer delivered into a trust
21 account to be identified by Bursor & Fisher, P.A. Class Counsel shall provide a
22 reasonable and appropriate undertaking and security for repayment in the event the
23 District Court's order approving the Settlement and fee award does not become final
24 following appeal. Class Counsel shall provide to Whirlpool's counsel in a timely
25 manner all wiring and account information necessary to enable Whirlpool to make
26 such a deposit within the time required.
- 27 F. Class Counsel shall have the authority to determine and make an allocation of
28 attorney fees and costs to any counsel representing any of Plaintiffs who claim an

entitlement to share in any fees or costs approved by the Court and paid by Whirlpool. Such allocations shall be made consistent with any agreements between and among Class Counsel. Any disputes regarding such allocations shall be resolved by the Court.

G. Any issues relating to attorney fees and costs or to any Service Award are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of this Agreement and the Settlement, especially because the Parties agreed to the material terms of this Settlement without having reached any agreement regarding the amount of attorney fees and costs to be paid to Class Counsel. The Court's or an appellate court's failure to approve, in whole or in part, any award of attorney fees and costs to Class Counsel, or any Service Award, shall not affect the validity or finality of the Settlement, nor shall such non-approval be grounds for rescission of the Agreement, as such matters are not the subject of any agreement among the Parties other than as set forth above. In the event the Court declines to approve, in whole or in part, the payment of attorney fees or costs to Class Counsel or the payment of any Service Award in the amount(s) sought by Class Counsel, the remaining provisions of this Agreement shall remain in full force and effect.

IX. RELEASES

A. Plaintiffs and all Class Members who do not timely exclude themselves from the Settlement do forever release, acquit, and discharge Releasees from all manner of actions, causes of action, administrative claims, demands, debts, damages, costs, attorney fees, obligations, judgments, expenses, or liabilities for economic loss, in law or in equity, whether now known or unknown, contingent or absolute, that Plaintiffs or Class Members now have or, absent this Agreement, may in the future have had, against Releasees, by reason of any act, omission, harm, matter, cause, or event whatsoever that has occurred at any time up to and including the Effective Date of this Agreement, that relates to any of the defects, malfunctions, or inadequacies of the

1 Class Refrigerators that are alleged or could have been alleged in this Action or to
2 any act, omission, damage, matter, cause, or event whatsoever arising out of the
3 initiation, defense, or settlement of the Action or the claims or defenses asserted in
4 the Action, including all claims for diminution-in-value, benefit-of-the-bargain, cost-
5 of-repair, cost-of-replacement, or premium-price damages (the “Released Claims”).

6 B. This release, however, will not extinguish, and the Released Claims do not include,
7 claims for personal injury or for damage to property other than to the Class
8 Refrigerator itself, or economic loss claimed in any unrelated litigation.

9 C. On the Effective Date, all Released Claims shall thereby be conclusively settled,
10 compromised, satisfied, and released as to Releasees.

11 D. As additional consideration for the Settlement and benefits provided by this
12 Agreement, each Plaintiff agrees to take all reasonable actions to support any of the
13 Releasees’ efforts to obtain dismissal of any claims or causes of action brought
14 against them, including any action for contribution or indemnity, that may at any time
15 be asserted against any of the Releasees by any of Plaintiffs, or by anyone subrogated
16 to any of the Plaintiffs’ rights in any capacity, and that arise from any loss, injury,
17 property damage, or expense, including, but not limited to, all incidental and
18 consequential damages, lost wages, lost income, lost profits, loss of use, and loss of
19 or damage to any items that resulted from or that might have, or are alleged to have,
20 resulted from the sale of Class Refrigerators to Plaintiffs.

21 E. Future or Unknown Harm and Waiver of Statutory Rights: It is possible, although
22 unlikely, that other injuries, damages, losses, or future consequences or results of the
23 sale, purchase, use, non-use, need for repair, or repair of the Class Refrigerators are
24 not currently known by Plaintiffs and Class Members and will develop or be
25 discovered. The Release in this Agreement, and the compromise on which it is based,
26 are expressly intended to and do cover and include a release by each Plaintiff and
27 Class Member of all such future injuries, damages, losses, or future consequences or
28 results, excluding any future injury to person or to property other than the Class

1 Refrigerator itself, and including a release and waiver of all rights, causes of actions,
2 claims, and lawsuits against the Releasees that may exist or arise in the future because
3 of such future injuries, damages, losses, or future consequences or results of known or
4 unknown injuries that relate to or arise out of the sale of the Class Dishwasher to or
5 its use by each Plaintiff and Class Member.

6 F. Each Plaintiff and Settlement Class Member expressly waives any right conferred on
7 him or her by Section 1542 of the California Civil Code and expressly consents that
8 this Agreement shall be given full force and effect according to all of its terms,
9 including those terms relating to unknown and unsuspected claims, if any. Section
10 1542 provides as follows:

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

16 G. Each Plaintiff and Class Member expressly consents that this release shall be given
17 full force and effect according to each of its terms and provisions, including those
18 relating to unknown and unspecified claims, injuries, demands, rights, lawsuits, or
19 causes of action as referenced above. Each Plaintiff and Class Member acknowledges
20 and agrees that this waiver is an essential and material term of this release and the
21 compromise settlement that led to it, and that without this waiver the compromise
22 settlement would not have been accomplished. Each Plaintiff has been advised by his
23 or her attorney with respect to this waiver and, being of competent mind, understands
24 and acknowledges its significance.

25 H. Each Party expressly accepts and assumes the risk that if facts with respect to matters
26 covered by this Agreement are found to be other than or different from the facts now
27 believed or assumed to be true, this Agreement shall nevertheless remain effective. It
28 is understood and agreed that this Agreement shall constitute a general release and
shall be effective as a full and final accord and satisfaction and is a bar to all actions,

causes of action, costs, expenses, attorney fees, damages, claims, and liabilities whatsoever, whether or not now known, suspected, claimed or concealed, pertaining to the Released Claims of this Agreement.

X. COVENANT NOT TO SUE

Each Plaintiff (i) covenants and agrees that neither he nor anyone authorized to act on his behalf will commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in this Agreement, against the 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 the Releasees, or any of them, in connection with the Released Claims; (ii) 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 him or her or any putative class of Refrigerator owners; and (iii) agrees that this Agreement shall be a complete bar to any such action by any Plaintiff.

XI. REPRESENTATIONS AND WARRANTIES

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

- A. Plaintiffs represent and warrant that no portion of any claim, right, or cause of action against any of the Releasees that Plaintiffs, in any capacity has or may have, and no portion of any recovery or settlement to which Plaintiffs, in any capacity may be entitled, has been assigned or transferred by or for Plaintiffs, in any capacity, in any manner, except for such portion of the settlement sum that has been assigned, transferred, or conveyed by Plaintiffs to Class Counsel to pay litigation fees and costs.
- B. To the extent permitted by law and the applicable rules of professional conduct, Class Counsel represent and warrant that they do not have any intention to file any class-action lawsuit in any jurisdiction, including other states or countries, related to the Class Refrigerators. Class Counsel further represent and warrant that they will not contact any other attorney or law firm to discuss or encourage pursuing litigation

1 related to the Class Refrigerators. The foregoing shall not restrict the ability of Class
2 Counsel to fulfill their responsibilities to absent class members in connection with
3 settlement proceedings in this case.

4 C. Each of the Parties to this Agreement further represents and warrants to, and agrees
5 with, each other Party as follows:

- 6 1. Each Party has received legal advice from his, her, or its attorneys on the
7 advisability of making this Settlement and the advisability of executing this
8 Agreement.
- 9 2. No Party relies or has relied on any statement, representation, omission,
10 inducement, or promise of or by any other Party (or any officer, agent,
11 employee, representative, or attorney of any other Party) in executing this
12 Agreement, or in making this Settlement, except as expressly stated in this
13 Agreement.
- 14 3. Each Party to this Agreement has investigated the facts pertaining to this
15 Settlement, this Agreement, and all matters pertaining to them, to the full
16 extent that the Party deems necessary.
- 17 4. Each Party has carefully read and reviewed with his, her, or its attorneys, and
18 knows and understands, the full contents of this Agreement, and is voluntarily
19 entering into this Agreement upon the advice of his, her, or its attorneys.
- 20 5. Each term of this Agreement is contractual and not merely a recital.

21 **XII. NO ADMISSION OF LIABILITY**

22 It is understood and agreed that the Settlement sums and the benefits provided in this
23 Agreement, and this Settlement and release, are for the compromise of disputed claims and are not to
24 be construed as or deemed to be an admission of any liability, fault, or responsibility on the part of
25 any of the Releasees, by whom liability and fault are, and always have been, expressly and
26 completely denied.

1 **XIII. NON-DISPARAGEMENT**

- 2 A. The Parties and their respective counsel agree not to disparage any other Party with
3 respect to the Refrigerators, this litigation, or this Settlement.
- 4 B. The Class Representatives and Class Counsel agree not to create, establish, or assist
5 in the development of any website or “gripe” site that criticizes Whirlpool with
6 respect to this litigation, this Settlement, or the Refrigerators.

7 **XIV. ADDITIONAL TERMS**

- 8 A. Extensions of Time: Unless otherwise ordered by the Court, the Parties may agree to
9 reasonable extensions of time to carry out any of the terms of this Agreement and
10 Settlement.
- 11 B. Cooperation: The Parties agree that they will abide by this Agreement and do all such
12 acts, and prepare, execute, and deliver all such documents, as may reasonably be
13 required to carry out the stated objectives of this Agreement.
- 14 C. Confirmatory Discovery: The Parties agree that certain confirmatory discovery
15 concerning the number of class members and related matters may be necessary.
- 16 D. Interpretation and Construction: Each Party has participated in the negotiation and
17 drafting of all provisions of this Agreement, has had an adequate opportunity to read,
18 review, and consider with his, her, or its own counsel the effect of the language of
19 this Agreement, and has agreed to its terms. Accordingly, the legal maxim that
20 “ambiguity shall be interpreted against the drafter” has no relevance to the
21 interpretation or construction of this Agreement.
- 22 E. Conditional Nature of Agreement: At Plaintiffs’ option, expressed in written notice to
23 Whirlpool’s counsel, this Agreement shall become null and void, and no obligation
24 on the part of any of the Parties will accrue, if the Court materially alters any of the
25 terms of this Agreement to the detriment of Plaintiffs or the Settlement Class, or fails
26 to enter the Preliminary Approval Order or the Final Approval Order in substantially
27 the form submitted by the Parties. At Whirlpool’s option, expressed in written notice
28 to Class Counsel, this Agreement shall become null and void, and no obligation on

1 the part of any of the Parties will accrue, if the Court materially alters any of the
2 terms of this Agreement to the detriment of Whirlpool, or fails to enter the
3 Preliminary Approval Order or the Final Approval Order in substantially the form
4 submitted by the Parties.

5 F. Severance/Severability: With the exception of the provision for attorney fees and
6 costs to Class Counsel and Service Awards to Plaintiffs, none of the terms of this
7 Agreement is severable from the others. If the Court or a court of appeals should rule
8 that any term is void, illegal, or unenforceable for any reason, however, Whirlpool, in
9 its sole discretion, and Plaintiffs, in their sole discretion (but acting in accord with
10 their duties and obligations as representatives of the Settlement Class), may elect to
11 waive any such deficiency and proceed with the Settlement under the terms and
12 conditions ultimately approved by the Court.

13 G. Return or Destruction of Confidential Documents: The Parties agree to return to the
14 producing Party or destroy (with written confirmation of such destruction) all
15 documents marked confidential under the Parties' Agreement for the Discovery of
16 Confidential Information entered in the Action within 30 days after the Effective
17 Date.

18 H. Governing Law: This Agreement has been, and shall for all purposes be deemed to
19 have been, negotiated, executed, and delivered within the State of California, and the
20 rights and obligations of the Parties shall be construed and enforced in accordance
21 with, and governed by, the laws of the State of California.

22 I. Entire Agreement of the Parties: This Agreement constitutes and comprises the entire
23 agreement between the Parties concerning the subject matter hereof. It supersedes all
24 prior and contemporaneous oral and written agreements and discussions. It may be
25 amended only by an agreement in writing, signed by the Parties.

26 J. Binding on Agents, Successors, and Assigns: This Agreement is binding on, and shall
27 inure to the benefit of, the Parties and their respective agents, employees,
28

1 representatives, officers, directors, subsidiaries, assigns, heirs, executors,
2 administrators, insurers, and predecessors and successors in interest.

3 K. Draft by All Parties: Each Party has participated in, and in any construction to be
4 made of this Agreement shall be deemed to have equally participated in, the
5 negotiating, drafting, and execution of this Agreement.

6 L. No Extension of Whirlpool's Written Warranties: In connection with this Agreement
7 and Settlement, Whirlpool has not agreed to any extension of its written warranties
8 for the Class Refrigerators. The only settlement benefits are those payments or
9 rebates to eligible Claimants described in this Agreement.

10 M. Court Approval: The Parties agree to seek approval of this proposed class settlement
11 in the United States District Court for the Eastern District of California.

1 Dated: February 5, 2016
2

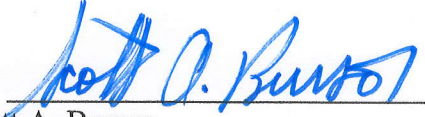
3 PLAINTIFF KYLE DEI ROSSI
4

PLAINTIFF MARK LINTHICUM

5
6 WHIRLPOOL CORPORATION
7


8 By: _____
9 Authorized Representative

10 READ AND APPROVED:

11 By: 
12 Scott A. Bursor
13 Class Counsel for Plaintiffs

By: _____
Michael T. Williams
Lead Counsel for Whirlpool

1 Dated: February 1, 2016

2 

3 PLAINTIFF KYLE DEI ROSSI

PLAINTIFF MARK LINTHICUM

WHIRLPOOL CORPORATION

By: _____

Authorized Representative

11 READ AND APPROVED:

12 By: _____

13 Scott A. Bursor
14 Class Counsel for Plaintiffs

By: _____

15 Michael T. Williams
16 Lead Counsel for Whirlpool

1 Dated: February 2/3, 2016

2
3 _____
4 PLAINTIFF KYLE DEI ROSSI


5
6 _____
7 PLAINTIFF MARK LINTHICUM

8
9
10 WHIRLPOOL CORPORATION

11 By: _____
12
13 Authorized Representative

14
15
16 READ AND APPROVED:

17 By: _____
18 Scott A. Bursor
19 Class Counsel for Plaintiffs

20 By: _____
21 Michael T. Williams
22 Lead Counsel for Whirlpool

1 Dated: February 5, 2016

2

3 PLAINTIFF KYLE DEI ROSSI

PLAINTIFF MARK LINTHICUM

4

5

6 WHIRLPOOL CORPORATION

7

8

By: 
Authorized Representative

9

10 READ AND APPROVED:

11

12 By: _____
13 Scott A. Bursor
Class Counsel for Plaintiffs

By: _____
Michael T. Williams
Lead Counsel for Whirlpool

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Dated: February 5, 2016

2
3 PLAINTIFF KYLE DEI ROSSI

PLAINTIFF MARK LINTHICUM

4
5
6 WHIRLPOOL CORPORATION

7
8 By: _____
9 Authorized Representative

10 READ AND APPROVED:

11
12 By: _____
13 Scott A. Bursor
14 Class Counsel for Plaintiffs

12 By: Michael Williams
13 Michael T. Williams
14 Lead Counsel for Whirlpool

REFRIGERATOR SETTLEMENT CLAIM FORM

First1 Last 1
Address1 Address2
City, ST ZIP

|||||
Claim #: XXXXXXXXXX

This Claim Form is to be used by California purchasers or owners of certain KitchenAid-brand refrigerators manufactured by Whirlpool with model numbers KSRG25FV** and KSRS25RV** ("Refrigerators") to apply for one of these settlement benefits:

- (1) a \$55 cash payment, less any voluntary payment paid by Whirlpool through Whirlpool's Voluntary Customer Satisfaction Program; or
- (2) a 10% rebate of the purchase price of a new KitchenAid-brand major appliance.

The model number and serial number should be on a label inside the refrigerator, on the left wall.

Before completing this Claim Form, please read the responses to Questions 6-7 and 9-14 in the Frequently Asked Questions ("FAQ") to determine whether you are eligible for one or more of the settlement benefits.

If you meet the settlement's eligibility requirements and wish to submit a claim for a \$55 cash payment, less any voluntary payment paid by Whirlpool through Whirlpool's Voluntary Customer Satisfaction Program, or a 10% rebate of the purchase price of a new KitchenAid-brand major appliance, you must (1) complete this Claim Form, and (2) attach copies of any documents required by the Claim Form. If you receive a settlement notice in the U.S. Mail or by email stating that you are a Prequalified Class Member, you do not need to submit any additional information to receive reimbursement.

You must return your completed Claim Form and, if you do not have the model number and serial number of your refrigerator, an alternate proof of purchase, by first-class United States Mail *postmarked no later than* _____, 2016, to the Settlement Administrator at the following address:

[Settlement Administrator]
ADDRESS
ADDRESS

Alternatively, you may electronically fill out this Claim Form at the settlement website, www.RefrigeratorSettlement.com.

Important: If you have questions regarding this Claim Form or the settlement, please visit www.RefrigeratorSettlement.com, email questions@refrigeratorsettlement.com, write to the Settlement Administrator at the address above, or call _____.

REFRIGERATOR SETTLEMENT CLAIM FORM

Important: To determine if you own a Refrigerator and are eligible for benefits under this settlement, you may need to look at your refrigerator's model number and serial number. The model number and serial number should be on a label inside the refrigerator, on the left wall.

Eligibility Requirements to Make a Claim

Question 1	Yes	No
Did you buy, or otherwise acquire as part of the purchase or remodeling of a home, or as a gift, a new KitchenAid-brand Refrigerator bearing model number KSRG25FV** or KSRS25RV**?	<input type="checkbox"/>	<input type="checkbox"/>
<i>Note: The model number and serial number should be inside the refrigerator, on the left wall.</i>		

If you were unable to answer "Yes" to Question 1 above, **STOP**: You are not entitled to any compensation or benefit under this settlement.

If you answered "YES" to Question 1, please move on to Question 2.

Question 2	Yes	No
At the time that you bought or otherwise acquired the new KitchenAid-brand Refrigerator bearing model number KSRG25FV** or KSRS25RV**, were you a resident of the State of California?	<input type="checkbox"/>	<input type="checkbox"/>

If you were unable to answer "Yes" to Question 2 above, **STOP**: You are not entitled to any compensation or benefit under this settlement.

If you answered "YES" to Question 2, please fill out the Claimant Information.

Claimant Information

A. Please provide your name and address:

First name	Middle initial	Last name
City	State	Zip code

B. Provide your contact information:

() Daytime telephone number	() Evening telephone number
Email address (if applicable)	

C. Model Number of your Refrigerator: _____

D. Serial Number of your Refrigerator: _____

Important: In order to verify your eligibility, the Settlement Administrator needs your Refrigerator's model and serial number. If you still own the Refrigerator, the model number and serial number should be inside the refrigerator, on the left wall. If you no longer possess the Refrigerator, then you may be able to find the model number and serial number through purchase records or warranty records.

Even if you cannot find the model number and serial number, you should still complete the Claim Form. If you cannot find the model number and serial number, then you must submit an alternate proof of purchase with this Claim Form, such as a receipt. The Settlement Administrator will try to locate your model number and serial number through Whirlpool's records.

If the Settlement Administrator cannot locate your model number and serial number or if you do not submit an alternate proof of purchase, you may receive a deficiency notice and/or your claim may be denied.

Elect Your Benefit

Question 3. Which benefit are you seeking under this settlement?

Note: You are entitled to only one benefit. Once you elect your chosen benefit, your election is final.

<input type="checkbox"/>	\$55 cash payment, less any voluntary payment paid by Whirlpool through Whirlpool's Voluntary Customer Satisfaction Program.
<input type="checkbox"/>	10% rebate of the purchase price of a new KitchenAid-brand major appliance.

Important: If you elect the \$55 cash payment, you may receive less than the full amount depending on whether and to what extent you have already received compensation through Whirlpool's Voluntary Customer Satisfaction Program. Whirlpool's Voluntary Customer Satisfaction program is a program by which Whirlpool voluntarily paid cash to certain customers who bought a Kitchen-Aid brand refrigerator bearing model number KSRS25RV** as an energy adjustment credit. To the extent that you may have already received an amount equal to or more than \$55 in compensation through Whirlpool's Voluntary Customer Satisfaction Program, you are not entitled to any further cash payment.

After you have completed this Claim Form in full, please sign the Certification below.

CERTIFICATION STATEMENT (Please note that you will not be eligible to receive any benefit unless you sign and date this statement): I affirm that all information provided in this Claim Form is true and accurate.

Signature

Date

GZJ EDK'4''

A Court authorized this notice because a proposed settlement has been reached in a class action called *Dei Rossi v. Whirlpool* involving KitchenAid-brand refrigerators bearing model numbers KSRG25FV** and KSRS25RV** (the “Refrigerators”). This notice summarizes your legal rights. You should visit www.RefrigeratorSettlement.com to obtain more information about the proposed settlement and your rights. You also can write to the Settlement Administrator at info@refrigeratorsettlement.com or _____, or call 1-888-000-0000, to have a Claim Form mailed to you.

Whirlpool’s records show that you bought a Refrigerator and are a resident of the State of California. Therefore, you are prequalified to receive a settlement benefit. Prequalified Class Members who complete the claims process will be entitled to elect between a \$55 cash payment, less any less any voluntary payment paid by Whirlpool through Whirlpool’s Voluntary Customer Satisfaction Program, or a 10% rebate of the purchase price of a new KitchenAid-brand major appliance (rebate amount depends on model purchased and other factors) if you purchase one within certain time limits. This notice contains a pre-printed claim ID number on the front side above your name and address. Please enter your claim ID number when you visit www.RefrigeratorSettlement.com to complete a Claim Form electronically or request a Claim Form by mail to the Settlement Administrator at the address on the reverse side. To be eligible for compensation, you must submit a Claim Form **no later than** _____, 2016.

What is the class action about? Plaintiffs assert claims against Whirlpool based on Whirlpool allegedly misrepresenting the Refrigerators’ energy efficiency by labeling them with the Energy Star logo.

Who is included? The settlement class includes California residents who bought or acquired a Refrigerator.

How to request exclusion from the class. If you wish to exclude yourself from this class action, complete an Opt-Out Form online at www.RefrigeratorSettlement.com or mail a written request for exclusion to the Settlement Administrator at the address on the reverse side postmarked **no later than** _____, 2016. Your request must state “Exclude me from the settlement class in the Whirlpool Refrigerator Litigation,” and you must include your name, address, and the case name listed above. If you do not exclude yourself, you will lose your right to sue Whirlpool and obtain any compensation other than through this settlement.

How to file objections. If you remain in the class, you can object to the proposed settlement or Class Counsel’s request for attorney fees by filing an objection with the U.S. District Court for the Eastern District of California, 501 I Street, Sacramento, CA 95814. The fairness hearing will be held **no later than** _____, 2016, at _____. You or your attorney (if you choose to hire one) may appear at the hearing by filing a notice and entry of appearance with the Court. Objections and appearances must be filed with the Court **no later than** _____, 2016.

Class Counsel’s attorney fees and contact information. Plaintiffs and Whirlpool have agreed that Class Counsel should be paid a reasonable fee for their work on behalf of the Class. Plaintiffs and Whirlpool have not agreed on the specific amount of the fee to be paid to Class Counsel. If the settlement is approved, Class Counsel will request up to \$____ in attorney fees and reimbursement of costs. Class Counsel will also request a service award of \$4,000 to be paid to each Class Representative. If approved, all of these amounts will be paid by Whirlpool separately from and in addition to the cash benefits to the Class. You can write to Class Counsel at: Scott A. Bursor of the law firm Bursor & Fisher, P.A., 888 Seventh Avenue, New York, NY 10019.

GZJ 10K'5"

If you purchased or acquired a new Kitchen-Aid brand refrigerator bearing model numbers KSRG25FV or KSRS25RV**, you may be entitled to benefits from a class action settlement.**

Si usted más información o desea obtener una copia de este documento legal en Español, visite el sitio www.RefrigeratorSettlement.com.

A settlement has been reached with Whirlpool Corporation (“Whirlpool”) in a class action lawsuit alleging that Whirlpool misrepresented the refrigerators’ energy efficiency by labeling them with the Energy Star logo when, in fact, they did not meet the Energy Star program’s standards for energy efficiency. Whirlpool denies these allegations and all claims in the lawsuit and maintains that the refrigerators were, at all relevant times, compliant with the Energy Star program’s standards for energy efficiency and marketed in accordance with the Energy Star program’s requirements. The Court has not decided who is right. Instead, the parties have agreed to settle the case.

WHO IS INCLUDED?

KitchenAid-brand refrigerators bearing model numbers KSRG25FV** or KSRS25RV** are covered by this settlement (“Class Refrigerators”). Those included in the class action, together called a “Settlement Class” or “Class Members,” include all residents of the State of California who either: (a) purchased a new Class Refrigerator; (b) acquired a new Class Refrigerator as part of the purchase or remodel of a home; or (c) received as a gift, from a donor meeting the requirements of either subsection (a) or subsection (b), a new Class Refrigerator, not used by the donor or by anyone else after the donor purchased the Class Refrigerator and before the donor gave the Class Refrigerator to the California resident. Go to www.RefrigeratorSettlement.com and use your model number and serial number to see if you own one of the Class Refrigerators.

WHAT DOES THE SETTLEMENT PROVIDE?

The Settlement permits eligible claimants to elect to receive either a \$55 cash payment, less any voluntary payment paid by Whirlpool through Whirlpool’s Voluntary Customer Satisfaction Program, by which Whirlpool voluntarily paid cash to customers who bought a Kitchen-Aid-brand refrigerator bearing model number KSRS25RV** as an energy adjustment credit, or a 10% rebate of the purchase price of a new KitchenAid-brand major appliance, without any cap as to the maximum amount of the rebate.

HOW DO YOU ASK FOR BENEFITS?

You must complete and submit a Claim Form by _____, 2016. You can complete and submit your Claim Form online at www.RefrigeratorSettlement.com or print one from the website and mail it to the address on the form. Claim Forms are also available by calling 1-800-xxx-xxxx, sending an email to info@refrigeratorsettlement.com, or writing to the Settlement Administrator at the address listed below.

YOUR OTHER OPTIONS.

If you do nothing, your rights will be affected but you will not get any settlement benefits. If you do not want to be legally bound by the Settlement, you must exclude yourself from it. The deadline to exclude yourself is _____, 2016. Unless you exclude yourself, you will not be able to sue or continue to sue Whirlpool for any claim resolved by this Settlement or released by the Settlement Agreement. If you exclude yourself, you cannot get any benefits from the settlement but are free to pursue claims that you may have against Whirlpool individually. If you stay in the Settlement (that is, you don’t exclude yourself), you may object to it by _____, 2016. More information can be found in the detailed Frequently Asked Questions document and complete Settlement Agreement, which are available at www.RefrigeratorSettlement.com.

THE COURT’S FAIRNESS HEARING.

The U.S. District Court for the Eastern District of California, located at 501 I Street, Sacramento, CA 95814, will hold a hearing in this case (*Dei Rossi et al. v. Whirlpool Corp.*, Case No. 2:12-CV-00125) on _____, 2016, at _____ (PST) in Courtroom _____. At the fairness hearing the Court will decide whether to approve the settlement; a request for \$4,000 service awards to each of the Class Representatives; and Class Counsel’s request for up to \$_____ in attorney fees and reimbursement of costs to Class Counsel. If approved, these fees, expenses, and awards will be paid separately by Whirlpool and will not reduce the benefits available to Class Members. You may appear at the hearing, but you do not have to. You may also hire your own attorney, at your own expense, to appear or speak for you at the hearing.

WANT MORE INFORMATION?

Visit www.RefrigeratorSettlement.com, send an email to info@refrigeratorsettlement.com, call 800-xxx-xxxx, or write to Refrigerator Settlement Claims Administrator, _____.

GZJ EDK'6

If you purchased or acquired a KitchenAid-brand refrigerator bearing model numbers KSRG25FV** or KSRS25RV**, you may be entitled to benefits from a class action settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

Si usted desea obtener una copia de este documento en Español, visite el sitio www.RefrigeratorSettlement.com.

- A Settlement has been reached in a class action lawsuit against Whirlpool Corporation (“Whirlpool”), regarding KitchenAid-brand refrigerators bearing model numbers KSRG25FV** and KSRS25RV**.
- If you are included in the Settlement, you may qualify for benefits including a \$55 cash payment or a 10% rebate of the purchase price of a new KitchenAid-brand major appliance.
- Your legal rights are affected whether you act or not. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM Earliest Deadline: [DATE]	This is the only way to obtain benefits under the Settlement.
EXCLUDE YOURSELF Deadline: [DATE]	This is the only option that allows you to ever be part of another lawsuit against Whirlpool about the legal claims resolved by this Settlement. If you exclude yourself from this Settlement, you will not be able to get benefits from it.
OBJECT Deadline: [DATE]	This is the only way to tell the Court that you do not like something about the Settlement.
ATTEND THE HEARING _____ at _____	This is your opportunity to ask to speak in the Court about the fairness of the Settlement.
DO NOTHING	If you do nothing, you will not receive benefits under the Settlement, and you will give up your right to ever be part of another lawsuit against Whirlpool about the legal claims resolved by this Settlement.

- These rights and options are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Benefits will be issued if the Court approves the Settlement and after any appeals are resolved. Please be patient.

BASIC INFORMATION

1. Why was this notice issued?

A federal court authorized this notice because you have a right to know about the proposed Settlement of this class action lawsuit and about all of your options, before it decides whether to approve the Settlement. This notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, and who may qualify for them.

Judge Troy L. Nunley of the United States District Court for the Eastern District of California is overseeing this class action and the Settlement. The case is known as *Dei Rossi et al. v. Whirlpool Corp.*, Case No. 2:12-CV-00125. The people who sued are called “the Plaintiffs” and the company they sued, Whirlpool, is called “the Defendant.”

2. Why did I receive this notice?

If you received a Postcard Notice in the mail, Whirlpool’s records indicate that you may have purchased or acquired a KitchenAid-brand refrigerator bearing model number KSRG25FV** or KSRS25RV**. These specific refrigerators are referred to as the “Class Refrigerators” throughout this Notice.

3. What is the lawsuit about?

Plaintiffs claim that Whirlpool misrepresented the Class Refrigerators’ energy efficiency by labeling them with the Energy Star logo when, in fact, they did not meet the Energy Star program’s standards for energy efficiency. Plaintiffs further claim that Whirlpool breached warranties and violated California’s various consumer protection statutes in connection with the manufacture and sale of the Class Refrigerators.

Whirlpool denies these allegations and all claims in the lawsuit and maintains that the refrigerators were, at all relevant times, compliant with the Energy Star program’s standards for energy efficiency and marketed in accordance with the Energy Star program’s requirements. Whirlpool also denies that it violated any law or engaged in any wrongdoing.

The Settlement does not include personal injury or property damage claims other than damages made to the Class Refrigerator itself. The Settlement does not release any of these claims.

4. Why is this a class action?

In a class action, one or more people called “Class Representatives” (in this case, Kyle Dei Rossi and Mark Linthicum) sue for all people who have similar claims. Together, these people are called a “Settlement Class” or “Class Members.” One court resolves the legal issues for all Class Members, except for those who exclude themselves from the Settlement Class.

5. Why is there a Settlement?

The Court did not decide which side was right or whether Whirlpool misrepresented the Class Refrigerators’ energy efficiency. Instead, both sides agreed to a Settlement to avoid the costs and risks of further litigation and provide benefits to Class Members. The Settlement does not mean that a Court found that Whirlpool broke any laws or did anything wrong. The Class Representatives and the lawyers representing them (called “Class Counsel”) believe that the Settlement is in the best interests of all Class Members.

THE SETTLEMENT CLASS—WHO IS INCLUDED

6. Who is included in the Settlement?

The Settlement Class includes all residents of the State of California who either: (a) purchased a new Class Refrigerator; (b) acquired a new Class Refrigerator as part of the purchase or remodel of a home; or (c) received as a gift, from a donor meeting the requirements of either subsection (a) or subsection (b), a new Class Refrigerator, not used by the donor or by anyone else after the donor purchased the Class Refrigerator and before the donor gave the Class Refrigerator to the California resident.

7. How do I know if I am a Class Member?

To determine if you are a Class Member, you need to verify that your Class Refrigerator model number is included in the Settlement. The model numbers included in the settlement are KSRG25FV** and KSRS25RV**. The model number and serial number should be inside the refrigerator, on the left wall.

8. Who isn't included in the Settlement Class?

The following are not included in the Settlement Class: (1) officers, directors, and employees of Whirlpool and its parents and subsidiaries; (2) insurers of Class Members; and (3) subrogees (someone who has assumed the rights of another person) or all entities that claim to be subrogated to the rights of a Refrigerator purchaser, a Refrigerator owner, or a Class Member.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

9. What benefits does the Settlement provide?

The Settlement provides Class Members with the option to elect one of two settlement benefits, the Cash Option or the Rebate Option: (1) a \$55 cash payment, less any voluntary payment paid by Whirlpool through Whirlpool's Voluntary Customer Satisfaction Program, or (2) a 10% rebate of the purchase price of a new KitchenAid-brand major appliance.

10. Tell me more about the cash option and the rebate option.

Cash Option: All Class Members are eligible to receive a \$55 cash payment, less any payment paid by Whirlpool through Whirlpool's Voluntary Customer Satisfaction Program. Whirlpool's Voluntary Customer Satisfaction Program was a program by which Whirlpool voluntarily paid cash to some customers who bought a KitchenAid-brand refrigerator bearing model number KSRS25RV**. Customers who bought a KitchenAid-brand refrigerator bearing model number KSRG25FV** did not receive compensation as part of Whirlpool's Voluntary Customer Satisfaction Program. For those Class Members who bought a refrigerator bearing model number KSRS25RV**, who did receive compensation as part of Whirlpool's Voluntary Customer Satisfaction Program, and who elect the cash option, any cash payment will be reduced by the amount of compensation already paid by Whirlpool through Whirlpool's Voluntary Customer Satisfaction Program. To the extent that a Class Member received any payment paid by Whirlpool through Whirlpool's Voluntary Customer Satisfaction Program that is equal to or more than \$55, that Class Member is not entitled to any further cash payment from Whirlpool.

Rebate Option: All Class Members are eligible to receive a 10% rebate of the purchase price of a new KitchenAid-brand major appliance. The rebate is 10% off the retail purchase price, and it does not include sales taxes, delivery fees, and installation charges. The rebate is in addition to any other sales promotion that Whirlpool or any retailer or seller offers towards a new KitchenAid-brand major appliance. A "new KitchenAid-brand major appliance" means any new, KitchenAid brand appliance in the following categories: (i) cooktops; (ii) wall ovens; (iii) refrigerators; (iv) under-counter refrigerators; (v) ranges; (vi) microwaves; (vii) dishwashers; (viii) disposers and compactors; (ix) warming drawers; (x) hoods and vents; (xi) grills; and (xii) water filters.

11. What is the deadline to qualify for and receive the Cash Option?

To be eligible to receive the Cash Option, you must mail your completed Claim Form (and if you do not have your Refrigerator's model and serial numbers, an alternate proof of purchase) to the Settlement Administrator or submit it online at Settlement Administrator's website, www.RefrigeratorSettlement.com, no later than 180 days after the Settlement Administrator sends you notice of your possible status as a Class Member.

12. What is the deadline to qualify for and receive the Rebate Option?

To be eligible to receive the Rebate Option, you must mail your completed Claim Form (and if you do not have your Refrigerator's model and serial numbers, an alternate proof of purchase) to the Settlement Administrator or submit it online at Settlement Administrator's website, www.RefrigeratorSettlement.com, no later than 180 days after the Settlement Administrator sends you notice of your possible status as a Class Member.

HOW TO GET BENEFITS—SUBMITTING A CLAIM FORM

13. How many benefits can I receive?

Class Members are entitled to either the Cash Option or the Rebate Option, not both. Once you elect either the Cash Option or the Rebate Option, your election is final. A Class Member is entitled to elect either the Cash Option or the Rebate Option for each Class Refrigerator that he or she bought. That is, if a Class Member bought two Class Refrigerators, he or she would be entitled to receive two cash payments of \$55 each, less any voluntary payment paid by Whirlpool through Whirlpool's Voluntary Customer Satisfaction program, two rebates of 10% of the purchase price of two new KitchenAid-brand major appliances, or one Cash Option and one Rebate Option.

14. How do I get a benefit to which I may be entitled?

You must complete and submit a Claim Form by [DATE] either on-line or via U.S. Mail. Claim Forms are available for download and submission at www.RefrigeratorSettlement.com. They also are available by contacting the Settlement Administrator at [Phone Number] or [email address] or by writing a letter to Refrigerator Settlement Claims Administrator, [ADDRESS].

15. What rights am I giving up by getting benefits and staying in the Settlement Class?

Unless you exclude yourself, you are staying in the Settlement Class. If the Settlement is approved and becomes final, all of the Court's orders will apply to you and legally bind you. Generally, that means that you won't be able to sue, continue to sue, or be part of any other lawsuit against Whirlpool or other released parties ("Releasees") for the legal issues and claims resolved by this Settlement. **Personal injury claims or claims for damage to property other than to the Refrigerator itself are not affected or released by this Settlement.** The specific rights you are giving up are called Released Claims (see Question 16).

16. What are the Released Claims?

The claims that you are releasing, the "Released Claims," are all claims for economic loss relating to the use and performance of the Class Refrigerators, including all claims for diminution-in-value, benefit-of-the-bargain, cost-of-repair, cost-of-replacement, or premium-price damages, arising out of the Class Members' purchases or uses of the Class Refrigerators. The released parties, also called "the Releasees," are Whirlpool, together with its respective predecessors and successors in interest, parents, subsidiaries, affiliates, and assigns; (b) each of its respective past, present, and future officers, directors, agents, representatives, servants, employees, attorneys, and insurers; and (c) all distributors, retailers, and other entities who were or are in the chain of design, testing, manufacture, assembly, distribution, marketing, sale, installation, or servicing of the Class Refrigerators. The Settlement is expressly intended to cover and include all such claims, actions, and causes of action for economic losses or damages (including, but not limited to, claims for diminution-in-value, benefit-of-the-bargain, cost-of-repair, cost-of-replacement, or premium-price damages), dealing whatsoever with the Class Refrigerators. **However, the Released Claims do not include any claims for property damage or personal injury.**

The complete Settlement Agreement describes the Released Claims in necessary legal terminology. Please read it carefully. A copy of the Settlement Agreement is available at www.RefrigeratorSettlement.com. You can talk to one of the lawyers listed below for free or you can, of course, talk to your own lawyer at your own expense if you have questions about the Released Claims or what they mean.

THE LAWYERS REPRESENTING YOU AND THE SETTLEMENT CLASS

17. Do I have a lawyer in this case?

Yes. The Court appointed Scott A. Bursor, L. Timothy Fisher, and Annick M. Persinger of the law firm Bursor & Fisher, P.A., and Antonio Vozzolo of the law firm Faruqi & Faruqi, LLP as Class Counsel, to represent you and other Class Members. Together these lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

18. How will these lawyers be paid?

Plaintiffs and Whirlpool have agreed that Class Counsel should be paid a reasonable fee. Plaintiffs and Whirlpool have not agreed on the specific amount of the fee to be paid to Class Counsel. Class Counsel will ask the Court to award them up to \$_____ for attorney fees reimbursement of the litigation expenses and costs they incurred. Class Counsel will also ask for a service award of \$4,000 to be paid to each Class Representative. If approved, Whirlpool will *separately* pay these fees, costs, expenses, and service awards. These amounts will *not* reduce the

amount of benefits available to Class Members. In addition, Defendants also have agreed to pay the Settlement Administrator's expenses, including the costs of mailing the Settlement Notices and distributing any payments owed to Settlement Class Members as part of the Settlement.

EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS

If you want to keep the right to sue or continue to sue Whirlpool about the legal claims in this lawsuit, and you don't want to receive benefits from this Settlement, you must take steps to exclude yourself from the Settlement. This is sometimes called "opting out" of the Settlement Class.

19. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must complete and send to the Settlement Administrator an Opt-Out Form available at www.RefrigeratorSettlement.com or a letter stating: "I want to be excluded from the Settlement Class in *Dei Rossi et al. v. Whirlpool Corp.*, Case No. 2:12-CV-00125." Your Opt-Out Form or letter must include your full name, current address, your signature, and the date you signed it. To be valid, your Opt-Out Form or request for exclusion must be sent to the Settlement Administrator at the address below with a postmark no later than **[insert date 255 days after entry of the Preliminary Approval Order]**.

Settlement Administrator
P.O. Box [ADDRESS]
_____-XXXX

20. If I exclude myself, can I still get benefits from this Settlement?

No. If you exclude yourself, you are telling the Court that you don't want to be part of the Settlement Class in this Settlement. You can only get Settlement benefits if you stay in the Settlement Class and submit a valid Claim Form for benefits as described above.

21. If I don't exclude myself, can I sue Whirlpool for the same claims later?

No. Unless you exclude yourself, you are giving up the right to sue Whirlpool for the claims that this Settlement resolves and releases (see Question 16). You must exclude yourself from *this* Settlement Class to start or continue with your own lawsuit or be part of any other lawsuit.

OBJECTING TO THE SETTLEMENT

You can tell the Court if you don't agree with the Settlement or any part of it.

22. How do I tell the Court if I don't like the Settlement?

If you do not exclude yourself from the Settlement, you may object to it. You can give reasons why you think the Court should not approve it. The Court will consider your views before making a decision. To do so, you or your attorney must file with the Court a written objection and supporting papers. Your objection must contain: (1) the name of this lawsuit (*Dei Rossi et al. v. Whirlpool Corp.*, Case No. 2:12-CV-00125); (2) your full name and current address; (3) whether, on the date of your written objection, you bought or currently own a KitchenAid-brand refrigerator bearing model numbers KSRG25FV** and KSRS25RV**; (4) the serial number and model number of your refrigerator; (5) the specific reasons for your objection; (6) any evidence and supporting papers (including, but not limited to, all briefs, written evidence, and declarations) that you want the Court to consider in support of your objection; (6) your signature; (7) the date of your signature; and (8) if you plan to appear and speak at the Fairness Hearing, on your own or through your own lawyer, a statement indicating that it is your "Notice of Intent to Appear" at the Fairness Hearing.

You must mail your written objection to, or file it with, the Court at the following address:

Court
Clerk of the Court Robert T. Matsui United States Courthouse 501 I Street Sacramento, CA 95814

Your written objection must be mailed with a postmark no later than **[insert date 255 days after entry of the Preliminary Approval Order]** or filed with the Court on or before **[insert date]**.

23. What is the difference between objecting and asking to be excluded from the Settlement?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class (that is, you do not exclude yourself). Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you cannot object because the Settlement no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak at the hearing, but you don't have to.

24. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing on [DATE], at [TIME] PST, at the U.S. District Court for the Eastern District of California, located at the Robert T. Matsui United States Courthouse, 501 I Street, Courtroom 2, 15th Floor, Sacramento, California 95814, to consider whether the Settlement is fair, adequate, and reasonable, and whether it should be finally approved. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing (see Question 22). The Court may also decide the amount of fees, costs and expenses to award Class Counsel and the payment amount to the Class Representatives. This hearing may be continued or rescheduled by the Court without further notice to the Settlement Class.

25. Do I have to come to the hearing?

No. Class Counsel is working on your behalf and will answer any questions the Court may have about the Settlement. But you are welcome 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 filed your written objection on time, signed it and provided all of the required information (see Question 22) the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

26. May I speak at the hearing?

Yes. You may ask the Court to speak at the Fairness Hearing. To do so, you must file a written request with the Court saying that it is your "Notice of Intent to Appear at the Fairness Hearing in *Dei Rossi et al. v. Whirlpool Corp.*" You must include your name, address, telephone number, and signature. If you plan to have your own attorney speak for you at the hearing, you must also include the name, address and telephone number of the attorney who will appear. Your written request must be filed with the Court by **[insert date that is 255 days after entry of the Preliminary Approval Order]**.

IF YOU DO NOTHING

27. What happens if I don't do anything?

If you do nothing, you won't get any benefits from this Settlement. If the Court approves the Settlement, you will be bound by its terms, and you will give up your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Whirlpool and the other Releasees about the legal issues or claims resolved and released by this Settlement.

GETTING MORE INFORMATION

28. What if I feel like I need more information about what I should or should not do?

This Notice summarizes the Settlement. More details are in the Settlement Agreement, available at www.RefrigeratorSettlement.com. If you have questions, you may contact the Settlement Administrator at [ADDRESS], info@refrigeratorsettlement.com, or [PHONE], or visit Class Counsel's websites. If you wish to

communicate directly with Class Counsel, you may contact them at the address or phone number listed on their website.

DO NOT WRITE OR CALL THE COURT, WHIRLPOOL, OR ANY APPLIANCE RETAILER, DEALER, OR AGENT FOR INFORMATION ABOUT THE SETTLEMENT OR THIS LAWSUIT.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

KYLE DEI ROSSI and MARK
LINTHICUM, on behalf of themselves
and those similarly situated,

Plaintiffs,

vs.

WHIRLPOOL CORPORATION,

Defendant.

Case No: 2:12-CV-00125-TLN-CKD

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

Date:

Time:

Courtroom: 2, 15th Floor

Judge: The Honorable Troy L. Nunley

On February 5, 2016, Plaintiffs Kyle Dei Rossi and Mark Linthicum (“Plaintiffs”), on behalf of themselves and the Settlement Class, as defined below, and Defendant Whirlpool Corporation (“Whirlpool”) (together, the “Parties”) executed a Settlement Agreement and Release of All Claims (“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 Settlement Agreement (the “Settlement”). All defined terms in this Order (that is, all capitalized words or phrases) shall have the same definitions and meanings as those set forth in the Agreement.

1 Having reviewed the Agreement and having considered the Parties' submissions in support
2 of preliminary approval of the Settlement, the Court now FINDS, CONCLUDES, AND ORDERS as
3 follows:

4 **I. CERTIFICATION OF THE SETTLEMENT CLASS**

5 This Court takes note of its prior certification order of April 28, 2015, in which this Court
6 certified a class of all persons who purchased KitchenAid-brand KSRG25FV** and KSRS25RV**
7 model refrigerators in California. In doing so, this Court considered the allegations, information,
8 arguments, and authorities provided by the Parties, found that the requirements of numerosity,
9 commonality, typicality, and adequacy had been established for a California class, that the California
10 class was ascertainable, and that questions of law and fact common to all Class Members
11 predominated over questions affecting only individual members. For purposes of implementing this
12 Agreement, and for no other purpose, this Court notes that Whirlpool has conditionally withdrawn
13 its objections to my order of April 28, 2015, and it has stipulated that it will not challenge, appeal, or
14 otherwise oppose that prior order certifying the California class.

15 The Agreement settles all Released Claims, as defined below, that have been or could have
16 been brought on behalf of that class, here called the Settlement Class, defined to mean all residents
17 of the State of California who (a) bought a new Class Refrigerator, (b) acquired a Class Refrigerator
18 as part of the purchase or remodel of a home, or (c) received as a gift, from a donor meeting the
19 requirements of either subsection (a) or subsection (b), a new Class Refrigerator not used by the
20 donor or by anyone else after the donor bought or acquired the Class Refrigerator and before the
21 donor gave the Class Refrigerator to the California resident.

22 The Court appoints Plaintiffs Kyle Dei Rossi and Mark Linthicum as the Class
23 Representatives of the Settlement Class. The Court appoints Scott A. Bursor, L. Timothy Fisher, and
24 Annick M. Persinger of the law firm Bursor & Fisher, P.A.; and Antonio Vozzolo of the law firm
25 Faruqi & Faruqi, LLP as Class Counsel for the Settlement Class. The Court also appoints Kurtzman
26 Carson Consultants, LLC ("KCC") as Settlement Administrator.

27 If for any reason the Agreement does not become effective, Whirlpool's conditional
28 withdrawal of its objections shall be null and void in its entirety, the Parties shall return to their

1 respective positions in this Action as those positions existed immediately before the Parties executed
2 the Agreement, and nothing stated in the Agreement or in this Order shall be deemed an admission
3 or waiver of any kind by any of the Parties or used as evidence against, or over the objection of, any
4 of the Parties for any purpose in this Action or in any other action or proceeding of any kind.

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

6 Whirlpool has at all times disputed, and continues to dispute, Plaintiffs' allegations in this
7 Action, denies any liability for any of the claims that have or could have been alleged by Plaintiffs or
8 other members of the Settlement Class, and maintains that the Class Refrigerators were, at all
9 relevant times, compliant with the Energy Star program's standards for energy efficiency and
10 marketed in accordance with the Energy Star program's requirements.

11 The Settlement requires Whirlpool to provide specified compensation to each Class Member
12 who meets certain eligibility requirements and who timely submits a valid, completed Claim Form,
13 with or without specified supporting documentation depending on whether the Class Member is a
14 Prequalified Class Member or a Non-Prequalified Class Member, as set forth in the Agreement. All
15 Class Members are entitled to elect to receive either a \$55 cash payment, less any voluntary payment
16 paid by Whirlpool through Whirlpool's Voluntary Customer Satisfaction Program, or a 10% rebate
17 of the purchase price of a New KitchenAid-brand Major Appliance, without any cap as to the
18 maximum amount of the rebate.

19 On a preliminary basis, therefore, taking into account (1) the defenses asserted by Whirlpool,
20 (2) the risks to the members of the Settlement Class that Whirlpool would successfully defend
21 against claims arising out of the facts and legal theories pled and asserted in this case, whether
22 litigated by members of the Settlement Class themselves or on their behalf in a class action, and (3)
23 the length of time that would be required for members of the Settlement Class, or any group of
24 members of the Settlement Class, to obtain a final judgment through one or more trials and appeals,
25 the Settlement appears fair, reasonable, and adequate. Further, the Parties reached the Settlement
26 Agreement without reaching any agreement regarding the reasonable amount of attorneys' fees and
27 costs to be awarded to Class Counsel, which helps to confirm that the Settlement is the product of an
28 arms-length negotiation process. For all these reasons, the Settlement falls within the appropriate

1 range of possible approval and does not appear in any way to be the product of collusion.

2 Accordingly, it is ORDERED and ADJUDGED that the Agreement and corresponding
3 Settlement are hereby preliminarily approved.

4 **III. APPROVAL OF THE PREQUALIFIED NOTICE, THE “FAQ,” THE**
5 **PUBLICATION NOTICE, THE CLAIM FORM, AND THE PLANS FOR**
6 **DISTRIBUTION AND DISSEMINATION OF THE SETTLEMENT NOTICES**

7 As provided for in the Agreement, the Parties have submitted: (i) a proposed Prequalified
8 Notice to be mailed and emailed to Prequalified Class Members; (ii) a plan for distributing the
9 Prequalified Notice to Prequalified Class Members; (iii) a proposed long-form settlement notice in
10 the form of Frequently Asked Questions or “FAQ,” which will be published on the Settlement
11 Website and mailed to those Class Members who request a hardcopy of the Claim Form; (iv) a
12 proposed Publication Notice; (v) a plan for the Publication Notice’s publication to provide additional
13 notice to the Settlement Class, if necessary; (vi) a proposed Claim Form; (vii) a plan for allowing
14 Class Members to file Claim Forms by email, U.S. Mail, or through the Settlement Website and for
15 mailing a Claim Form to Class Members who contact the Settlement Administrator by telephone,
16 mail, or email requesting a Claim Form be sent to them; and (viii) a plan for establishing a
17 Settlement Website, with the FAQ and other information and documents that the Parties jointly
18 agree to post concerning the nature of the case and the status of the Settlement, including a copy of
19 the Claim Form, information relating to relevant deadlines, and a copy of the Settlement Agreement
20 and orders of the Court.

21 The proposed plan for distributing and publishing the Prequalified Notice, FAQ, Publication
22 Notice, Claim Form, and Settlement Website appears reasonably likely to notify members of the
23 Settlement Class of the Settlement, and there appears to be no additional mode of distribution that
24 would be reasonably likely to notify members of the Settlement Class who will not receive notice
25 pursuant to the proposed distribution plans. The proposed plan also satisfies the notice requirements
26 of Federal Rule of Civil Procedure 23(e) and all applicable federal law.

27 The Prequalified Notice, FAQ, Publication Notice, and Settlement Website will fairly,
28 accurately, and reasonably inform members of the Settlement Class of (1) appropriate information

1 about the nature of this litigation and the essential terms of the Agreement; (2) appropriate
2 information about how to obtain additional information regarding this matter and the Agreement; (3)
3 appropriate information about, and means for obtaining, a Claim Form; (4) appropriate information
4 about, and means for submitting, a Claim Form for compensation under the Settlement; and (5)
5 appropriate information about how to challenge, or exclude themselves from, the Settlement, if they
6 wish to do so. The notices and Settlement Website also fairly and adequately inform members of the
7 Settlement Class that failure to complete and submit a claim in the manner and time specified in the
8 notices, Settlement Website, and Claim Form shall constitute a waiver of any right to obtain any
9 compensation under the Settlement. The notices and Settlement Website also fairly and adequately
10 inform members of the Settlement Class that if they do not comply with the specified procedures and
11 the deadline for objections, they will lose any opportunity to have any objection considered at the
12 Fairness Hearing or otherwise to contest certification of the Settlement Class or approval of the
13 Settlement or to appeal from any order or judgment entered by the Court in connection with the
14 Settlement.

15 The proposed Claim Form provided for in the Agreement fairly, accurately, and reasonably
16 informs members of the Settlement Class of (1) appropriate information about the nature of the
17 litigation and the essential terms of the Agreement; (2) appropriate information about, and means
18 for, submitting a claim for compensation under the Settlement; and (3) the fact that failure to
19 complete and submit a Claim Form, in the manner and time specified in the notices, Settlement
20 Website, and Claim Form, shall constitute a waiver of any right to obtain any compensation under
21 the Settlement. The proposed plan for publishing the Claim Form on the Settlement Website and for
22 mailing or emailing the Claim Form to Class Members who contact the Settlement Administrator by
23 telephone, mail, or email requesting a Claim Form be sent to them is fair and reasonable.

24 The Court, having reviewed the proposed Prequalified Notice, FAQ, Publication Notice,
25 Claim Form, and the proposed plan for distributing and disseminating each of them, finds and
26 concludes that the proposed plan for distributing and disseminating each of them will provide the
27 best notice practicable under the circumstances and satisfies all requirements of federal and
28 California laws and due process. Accordingly, the Court hereby ORDERS as follows:

- 1 A. The form and content of the proposed Prequalified Notice, FAQ, Publication Notice,
2 and Claim Form are hereby approved.
- 3 B. Promptly following the entry of this Order, the Parties and Settlement Administrator
4 shall prepare final versions of (i) the Prequalified Notice, (ii) FAQ, (iii) Publication
5 Notice, and (iv) Claim Form, incorporating into each of them the Fairness Hearing
6 date and deadlines set forth in paragraph IV of this Order.
- 7 C. Within 10 days of the entry of this Order, Whirlpool shall comply with the notice
8 requirements of the Class Action Fairness Act, 28 U.S.C. § 1715.
- 9 D. Within 70 days after the Court's entry of this Order, Whirlpool will file with the
10 Court a declaration of compliance with this plan of notice, including a statement on
11 the number of persons to whom the Prequalified Notice was mailed.
- 12 E. Kurtzman Carson Consultants, LLC is appointed as the Settlement Administrator.
- 13 F. The Settlement Administrator shall perform the following functions in accordance
14 with the Settlement Agreement, this Order, and subsequent orders that may be entered
15 by this Court in this case:
 - 16 1. Within 60 days after entry of this Order, mail or email the Prequalified
17 Notices to each address of record for identifiable members of the Settlement
18 Class and to all members of the Settlement Class for whom valid email
19 addresses are known to Whirlpool;
 - 20 2. Perform a national change of address search and forward notices that are
21 returned by the U.S. Postal Service with a forwarding address;
 - 22 3. Create a Settlement Website that will include all necessary and pertinent
23 information for Class Members, including Claim Forms, a copy of the FAQ,
24 and information relating to relevant deadlines;
 - 25 4. Within 65 days after entry of this Order, cause to be published the Publication
26 Notice according to the proposed notice plan;
 - 27 5. Accept online/electronic as well as paper Claim Forms;
- 28

6. Allow Class Members to electronically submit documents supporting their Claim Forms;
7. Receive, evaluate, and either approve completed Claim Forms as meeting the requirements of the Settlement Agreement or disapprove as failing to meet those requirements sent by Persons seeking to receive compensation;
8. 30 days before mailing Notices of Claim Denial, provide to Whirlpool's counsel and Class Counsel (i) a list of the names and addresses of all Class Members who have submitted Claim Forms and whose Claim Forms the Settlement Administrator has determined to be Valid Claims, by category of benefit; and (ii) a separate list of the names and addresses of all Persons who have submitted Claim Forms and whose Claim Forms the Settlement Administrator has determined not to be Valid Claims, by category of benefit. Class Counsel shall then have an opportunity to review the Notices of Claim Denial and request a meet and confer with Whirlpool's counsel should they decide to challenge any of the Notices of Claim Denial; in the event Class Counsel challenges a Notice of Claim Denial, that Notice shall not be sent to the Claimant until Class Counsel and Whirlpool's counsel meet and confer to arrive at a resolution;
9. Send, by first-class United States Mail, to each Person who has submitted a Claim Form that the Settlement Administrator has determined not to be a Valid Claim, and which has not been challenged by Class Counsel, a Notice of Claim Denial;
10. Process requests for exclusion from the Settlement;
11. Process objections to the Settlement;
12. Provide to Class Counsel and Whirlpool's counsel periodic status reports regarding claims; and

1 13. Within 30 days after the payment of all Valid Claims by the Settlement
2 Administrator, provide to Whirlpool's counsel and Class Counsel a statement
3 of the total number of claims submitted (in total and by category of benefit),
4 the total number of claims adjudicated as Valid Claims (in total and by
5 category of benefit), and the total dollar amount paid to Class Members (in
6 total and by category of benefit).

7 **IV. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT**

8 **A. Fairness Hearing**

9 The Court hereby schedules, for _____, 2016, at ____, which date is approximately 310
10 days after the entry of this Order, a Fairness Hearing at the Robert T. Matsui United States
11 Courthouse, 501 I Street, Sacramento, California 95814, Courtroom 2, 15th Floor, to determine
12 whether the appointments of Class Representatives, the appointment of Class Counsel, the
13 Agreement, and the Settlement should receive final approval. At that time, the Court also will
14 consider any request that may be made by Class Counsel for an award of attorneys' fees and
15 reimbursement of litigation expenses to Class Counsel and for service awards to each Plaintiff, all in
16 accordance with the terms of the Agreement.

17 **B. Deadline for Members of the Settlement Class to Request Exclusion from the**
18 **Settlement**

19 Members of the Settlement Class who wish to be excluded from the Settlement must mail by
20 first-class United States Mail or email their requests for exclusion to the Settlement Administrator,
21 postmarked or timestamped by no later than 255 days after entry of this Order.

22 **C. Deadline for Filing Objections to Matters to be Heard at the Fairness Hearing**
23 **and for Filing Requests to Appear and Present Argument or Evidence**

24 All objections to designating Plaintiffs as Class Representatives, the appointment of Class
25 Counsel, the Settlement, the Agreement, or the amount of fees and expenses that Class Counsel may
26 apply for at the Fairness Hearing, shall be made in writing and, no later than 255 days after entry of
27 this Order, filed with this Court, Hon. Troy L. Nunley, Robert T. Matsui United States Courthouse,
28 501 I Street, Sacramento, California 95814, Courtroom 2, 15th Floor. Any papers not filed and

1 served in the prescribed manner and time will not be considered at the Fairness Hearing, and all
2 objections not made in the prescribed manner and time shall be deemed waived.

3 All persons wishing to appear at the Fairness Hearing, either in person or by counsel, for the
4 purpose of objecting to any aspect of the designation of Class Representatives as representatives of
5 the Settlement Class, the appointment of Class Counsel, the Settlement, the Agreement, or the
6 amount of fees and expenses or service awards that Class Counsel apply for, must file with the
7 Court, no later than 255 days after entry of this Order, a notice of their intention to appear setting
8 forth the basis of their objections and summarizing the nature and source of any evidence they intend
9 to present at the Fairness Hearing.

10 **D. Deadline for Submitting Claim Forms**

11 Class members will have up to 180 days after the Notice Date to submit a Claim Form for
12 benefits.

13 **V. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES**
14 **AND COSTS AND FOR SERVICE AWARDS TO PLAINTIFFS**

15 Class Counsel will move the Court for entry of a separate order approving attorneys' fees and
16 reimbursement of litigation expenses to Class Counsel in an amount to be agreed by the Parties or,
17 absent agreement, to be determined by the Court. Class Counsel also will move the Court to approve
18 service awards to each Class Representative. Whirlpool shall pay any final awards to Class Counsel
19 and Plaintiffs separate from the benefits to Class Members and in accordance with the Settlement
20 Agreement.

21 **VI. ABSENCE OF ANY ADMISSION; DENIAL OF ANY WRONGFUL ACT OR**
22 **OMISSION AND OF ANY LIABILITY**

23 The Parties entered into the Settlement Agreement solely for the purpose of settling disputed
24 claims. Whirlpool has at all times denied, and continues to deny, any wrongful act or omission
25 alleged by Plaintiffs in this action and any liability of any sort to Plaintiffs or any member of the
26 Settlement Class. Nothing contained in the Settlement Agreement, in the documents relating to the
27 Settlement Agreement, or in this Order, shall be construed, deemed, or offered as an admission by
28 any of the Parties, or by any member of the Settlement Class, for any purpose in any judicial or

1 administrative action or proceeding, whether in law or in equity. In entering this Order with this
2 provision and other limiting provisions, this Court specifically refers to and invokes the Full Faith
3 and Credit Clause of the United States Constitution and the doctrine of comity and requests that any
4 court in any other jurisdiction reviewing, construing, or applying this Order implement and enforce
5 each such limiting provision.

6 IT IS SO ORDERED.

7
8 Dated: _____, 2016

The Honorable Troy L. Nunley
United States District Judge

GZJ EDK'8

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

KYLE DEI ROSSI and MARK
LINTHICUM, on behalf of themselves
and those similarly situated,

Plaintiffs,

vs.

WHIRLPOOL CORPORATION,

Defendant.

Case No: 2:12-CV-00125-TLN-CKD

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTRY OF FINAL
JUDGMENT**

Date:

Time:

Courtroom: 2, 15th Floor

Judge: The Honorable Troy L. Nunley

Plaintiffs Kyle Dei Rossi and Mark Linthicum ("Plaintiffs"), on behalf of themselves and the Settlement Class, as defined below, and Defendant Whirlpool Corporation ("Whirlpool") (together, the "Parties") executed a Settlement Agreement and Release of All Claims ("Agreement"). The Parties previously submitted the Agreement to this Court for preliminary approval of the class action settlement (the "Settlement") pertaining to a California class of purchasers of KitchenAid-brand KSRG25FV** and KSRS25RV** model refrigerators ("Settlement Class"). On _____, this Court entered an Order Granting Joint Motion for Preliminary Approval of Class Action Settlement

1 (“Preliminary Approval Order”). Now, the matter having come before the Court for hearing on
2 _____, 2016, on the Parties’ request for entry of an order granting final approval of the
3 proposed Settlement and for entry of final judgment in this matter, the Court FINDS, CONCLUDES,
4 AND ADJUDGES as follows:

5 **I. JURISDICTION OF THE COURT**

6 The Parties and the members of the Settlement Class (“Class Members”) have submitted to
7 the jurisdiction of this Court for purposes of the Settlement; the Court has personal jurisdiction over
8 the Parties and the Class Members; the Court has subject matter jurisdiction to release all claims and
9 causes of action released in the Settlement; and the Court has subject matter jurisdiction to approve
10 the Settlement.

11 **II. CERTIFICATION OF THE SETTLEMENT CLASS**

12 In the Preliminary Approval Order, this Court took note of its prior certification order of
13 April 28, 2015, in which this Court certified a class of all persons who purchased KitchenAid-brand
14 KSRG25FV** and KSRS25RV** model refrigerators in California. In certifying a California class,
15 this Court considered the allegations, information, arguments, and authorities provided by the
16 Parties, found that the requirements of numerosity, commonality, typicality, and adequacy had been
17 established for a California class, that the California class was ascertainable, and that questions of
18 law and fact common to all Class Members predominated over questions affecting only individual
19 members.

20 The Court also made several decisions relating to the Settlement Class. First, the Court
21 appointed Plaintiffs Kyle Dei Rossi and Mark Linthicum as the Class Representatives of the
22 Settlement Class. Second, the Court appointed Scott A. Bursor, L. Timothy Fisher, and Annick M.
23 Persinger of the law firm Bursor & Fisher, P.A.; and Antonio Vozzolo of the law firm Faruqi &
24 Faruqi, LLP as Class Counsel for the Settlement Class. Third, the Court appointed Kurtzman Carson
25 Consultants, LLC (“KCC”) as Settlement Administrator.

26 Having considered all submissions timely filed with the Court under the Preliminary
27 Approval Order, the Court now finds and concludes that those provisional findings and conclusions
28

are confirmed in all respects for the purposes of implementing the California class action settlement in the Agreement and entering final judgment in this action.

III. NOTICE

The Preliminary Approval Order approved (1) the form and content of settlement notices to be mailed, emailed, and published to members of the Settlement Class (the “Settlement Notices”); (2) the form and content of the Claim Form; (3) the content of the Settlement Website, with the FAQ and other information and documents that the Parties jointly agreed to post concerning the nature of the case and status of the Settlement; and (4) the plan specified in the Settlement Agreement for distributing and publishing the Settlement Notices. The Settlement Notices, Claim Form, and Settlement Website fairly, accurately, and reasonably informed members of the Settlement Class of (1) appropriate information about the nature of this litigation and the essential terms of the Settlement Agreement; (2) appropriate information about, and means for obtaining, additional information regarding this litigation and the Settlement Agreement; (3) appropriate information about, and means for obtaining and submitting, a Claim Form; (4) appropriate information about the rights of members of the Settlement Class to exclude themselves from the Settlement, object to the terms of the Settlement Agreement, or object to Class Counsel’s request for an award of attorneys’ fees and costs, and the procedures to do so; and (5) appropriate information about the consequences of failing to submit a Claim Form or failing to comply with the procedures and deadline for opting out of, or objecting to, the Settlement.

Based on the foregoing, the Court finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of federal and California laws and due process. The Court also finds that notice to appropriate federal and state officials pursuant to the federal Class Action Fairness Act has been timely sent and that such notice satisfies the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715.

IV. FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT

In the Preliminary Approval Order, the Court found that the Agreement appeared to be fair, reasonable, and adequate and fell within the appropriate range of possible approval. In essence, the

1 Settlement allows Class Members, upon submission of a valid Claim Form, to elect to receive one of
2 two benefits: (1) a \$55 cash payment, less any voluntary payment paid by Whirlpool through
3 Whirlpool's Voluntary Customer Satisfaction Program, or (2) a 10% rebate of the purchase price of
4 a new KitchenAid-brand major appliance, without any cap as to the maximum amount of the rebate.

5 Having considered (1) the benefits offered to Class Members; (2) the strength of Plaintiffs'
6 case on the merits, and the defenses that may be asserted by Whirlpool; (3) the risks to members of
7 the Settlement Class that Whirlpool would successfully defend some or all of the claims asserted by
8 Plaintiffs, whether litigated on a classwide basis or by members of the Settlement Class themselves;
9 (4) the expense and complexity of continued litigation; (5) the length of time that would be required
10 for members of the Settlement Class to obtain a final judgment through one or more trials and
11 appeals; (6) the experience and views of Class Counsel and Whirlpool's counsel; and (7) the number
12 of members of the Settlement Class who have elected to be excluded from the Settlement, the Court
13 finds that the Settlement is fair, reasonable, and adequate. The Court also finds that the Settlement is
14 the result of extended, arms-length negotiations and is non-collusive.

15 In consideration of the foregoing, the Court grants final approval of the Settlement
16 Agreement and enters this Final Order and Judgment implementing its terms, including but not
17 limited to the releases in the Settlement Agreement. All timely objections filed by members of the
18 Settlement Class have been considered by the Court and are overruled. The Court finds that the
19 Settlement Agreement is in all respects fair, reasonable, adequate, and in the best interest of the
20 Settlement Class and hereby adopts and incorporates the terms of the Settlement Agreement for
21 purposes of this Final Order and Judgment, including the definitions set forth in the Agreement. The
22 Parties are directed to consummate the Settlement Agreement in accordance with its terms.

23 **V. EXCLUSIONS FROM THE SETTLEMENT CLASS**

24 The Settlement Administrator has received, from certain members of the Settlement Class,
25 requests for exclusion from the Settlement Class and has provided Class Counsel and Whirlpool's
26 counsel copies of those requests. Class Counsel and Whirlpool's counsel have jointly filed with the
27 Court a list of those persons who have timely elected to be excluded. All persons named in the list on
28 file with the Court as having filed timely exclusions with the Settlement Administrator are excluded

1 from the Settlement Class and will not be bound by the terms of the Settlement. Each individual or
2 entity that falls within the definition of the Settlement Class shall be bound by the terms of the
3 Settlement.

4 **VI. IMPLEMENTATION OF THE SETTLEMENT**

5 Consistent with the Agreement, Whirlpool shall make the payments described in the
6 Agreement pursuant to applicable terms and documentation requirements set forth in the Settlement
7 Agreement. The Parties shall carry out their respective obligations as stated in the Settlement
8 Agreement.

9 **VII. RELEASE, COVENANT NOT TO SUE, AND EFFECT OF SETTLEMENT**

10 **A. Release**

11 In consideration of the terms of the Agreement, as to Plaintiffs and Class Members, they are
12 found, deemed, and adjudged to have fully, finally, and forever released and discharged Releasees
13 from all manner of actions, causes of action, administrative claims, demands, debts, damages, costs,
14 attorneys' fees, obligations, judgments, expenses, or liabilities for economic loss, in law or in equity,
15 whether now known or unknown, contingent or absolute, that Plaintiffs or Class Members now have
16 or, absent this Agreement, may in the future have had, against Releasees, by reason of any act,
17 omission, harm, matter, cause, or event whatsoever that has occurred at any time up to and including
18 the Effective Date of this Agreement, that relates to any of the defects, malfunctions, or inadequacies
19 of the Class Refrigerators that are alleged or could have been alleged in this Action, or to any act,
20 omission, damage, matter, cause, or event whatsoever arising out of the initiation, defense, or
21 settlement of the Action or the claims or defenses asserted in the Action, including all claims for
22 diminution-in-value, benefit-of-the-bargain, cost-of-repair, cost-of-replacement, or premium-price
23 damages (the "Released Claims"). Plaintiffs have expressly, knowingly, and voluntarily waived the
24 provisions of Section 1542 of the California Civil Code, which provides as follows, "A general
25 release does not extend to claims which the creditor does not know or suspect to exist in his favor at
26 the time of executing the release, which if known by him must have materially affected his
27 settlement with the debtor." This release, however, will not extinguish, and the Released Claims do
28 not include, claims for personal injury or for damage to property other than to the Class Refrigerator

1 itself.

2 Plaintiffs and Class Members have waived and relinquished all rights and benefits that they
3 may have under, or that may be conferred upon them by, the provisions of Section 1542 of the
4 California Civil Code and of all similar laws of other States, to the fullest extent that they may
5 lawfully waive such rights or benefits pertaining to their released claims.

6 **B. Covenant Not to Sue**

7 In consideration of the terms of the Agreement, all Class Members, including Plaintiffs, are
8 found, deemed, and adjudged to have (a) covenanted and agreed that neither Plaintiffs nor anyone
9 authorized to act on behalf of any of them, will commence, authorize, or accept any benefit from any
10 judicial or administrative action or proceeding, other than as expressly provided for in the Settlement
11 Agreement, against Whirlpool, Releasees, or any of them, in either their personal or corporate
12 capacity, with respect to any claim, matter, or issue that in any way arises from, is based on, or
13 relates to any alleged loss, harm, or damages allegedly caused by Whirlpool, Releasees, or any of
14 them, in connection with the Released Claims; (b) waived and disclaimed any right to any form of
15 recovery, compensation, or other remedy in any such action or proceeding brought by or on behalf of
16 any of them; and (c) agreed that the Settlement Agreement shall be a complete bar to any such
17 action.

18 **C. Settlement Agreement as Exclusive Remedy for Released Claims**

19 Upon entry of this Final Order and Judgment, enforcement of the Settlement Agreement shall
20 be the exclusive remedy for all members of the Settlement Class, including Plaintiffs, all of whom
21 are permanently barred and enjoined from instituting, commencing, prosecuting, or continuing to
22 prosecute, either directly or indirectly, any claims released under the Settlement Agreement against
23 Whirlpool or Releasees, as the release provisions of the Settlement Agreement define these terms.
24 Class Members who are prosecuting or asserting any of the released claims are ordered to take
25 whatever measures necessary to effectuate dismissal of their claims.

26 **D. Effect of a Final Judicial Determination of Invalidity or Unenforceability**

27 If, after entry of this Final Order and Judgment by the Court, a notice of appeal of this Final
28 Order and Judgment is timely filed by any party, objector, claimant, or other person or entity, and if

1 an appellate court makes a final determination that this Final Order and Judgment is in any respect
2 invalid, contrary to law, or unenforceable (except for such determinations that are limited to the
3 attorneys' fees or incentive awards), this Order shall be automatically vacated, the Settlement
4 Agreement shall be null and void, and the Parties shall return to their respective positions in this
5 Action as they existed immediately before the Parties executed the Agreement, and nothing stated in
6 this Order or in the Settlement Agreement shall be deemed an admission or waiver of any kind by
7 any of the Parties or used as evidence against, or over the objection of, any of the Parties for any
8 purpose in this action or in any other action.

9 **VIII. NO ADMISSION OF LIABILITY**

10 The Parties entered into the Agreement solely for the purpose of settling disputed claims.
11 Nothing contained in the Agreement, any documents relating to the Settlement, the Preliminary
12 Approval Order, or this Final Order and Judgment shall be construed, deemed, or offered as an
13 admission by any of the Parties or any member of the Settlement Class for any purpose in any
14 judicial or administrative action or proceeding of any kind, whether in law or equity. In entering this
15 Order with this provision and other limiting provisions, this Court specifically refers to and invokes
16 the Full Faith and Credit Clause of the United States Constitution and the doctrine of comity and
17 requests that any court in any other jurisdiction reviewing, construing, or applying this Order
18 implement and enforce such limiting provision.

19 **IX. ENTRY OF FINAL JUDGMENT**

20 The Court dismisses with prejudice all claims alleged in this Action. The Court further orders
21 the entry of, and enters, this Final Order and Judgment on all claims, counts, and causes of action
22 alleged in this Action by Plaintiffs, on behalf of themselves, the Settlement Class, or both. In
23 entering this Final Order and Judgment, this Court specifically refers to and invokes the Full Faith
24 and Credit Clause of the United States Constitution and the doctrine of comity, and requests that any
25 court in any other jurisdiction reviewing, construing, or applying this Judgment implement and
26 enforce its terms in their entirety.

27 Without affecting the finality of this Final Order and Judgment in any way, this Court
28 reserves jurisdiction over (1) implementation of this Settlement and this action; (2) all matters

1 related to the administration and consummation of the Settlement; and (3) all Parties to this Action
2 for the purpose of implementing, enforcing, and monitoring compliance with, effectuating,
3 administering, and interpreting the provisions of the Settlement Agreement and this Final Order and
4 Judgment.

5 IT IS SO ORDERED.

6
7 Dated: _____, 2016

8 The Honorable Troy L. Nunley
9 United States District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

KYLE DEI ROSSI and MARK
LINTHICUM, on behalf of themselves
and those similarly situated,

Plaintiffs,

vs.

WHIRLPOOL CORPORATION,

Defendant.

Case No: 2:12-CV-00125-TLN-CKD

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

Date:

Time:

Courtroom: 2, 15th Floor

Judge: The Honorable Troy L. Nunley

On February 5, 2016, Plaintiffs Kyle Dei Rossi and Mark Linthicum (“Plaintiffs”), on behalf of themselves and the Settlement Class, as defined below, and Defendant Whirlpool Corporation (“Whirlpool”) (together, the “Parties”) executed a Settlement Agreement and Release of All Claims (“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 Settlement Agreement (the “Settlement”). All defined terms in this Order (that is, all capitalized words or phrases) shall have the same definitions and meanings as those set forth in the Agreement.

1 Having reviewed the Agreement and having considered the Parties' submissions in support
2 of preliminary approval of the Settlement, the Court now FINDS, CONCLUDES, AND ORDERS as
3 follows:

4 **I. CERTIFICATION OF THE SETTLEMENT CLASS**

5 This Court takes note of its prior certification order of April 28, 2015, in which this Court
6 certified a class of all persons who purchased KitchenAid-brand KSRG25FV** and KSRS25RV**
7 model refrigerators in California. In doing so, this Court considered the allegations, information,
8 arguments, and authorities provided by the Parties, found that the requirements of numerosity,
9 commonality, typicality, and adequacy had been established for a California class, that the California
10 class was ascertainable, and that questions of law and fact common to all Class Members
11 predominated over questions affecting only individual members. For purposes of implementing this
12 Agreement, and for no other purpose, this Court notes that Whirlpool has conditionally withdrawn
13 its objections to my order of April 28, 2015, and it has stipulated that it will not challenge, appeal, or
14 otherwise oppose that prior order certifying the California class.

15 The Agreement settles all Released Claims, as defined below, that have been or could have
16 been brought on behalf of that class, here called the Settlement Class, defined to mean all residents
17 of the State of California who (a) bought a new Class Refrigerator, (b) acquired a Class Refrigerator
18 as part of the purchase or remodel of a home, or (c) received as a gift, from a donor meeting the
19 requirements of either subsection (a) or subsection (b), a new Class Refrigerator not used by the
20 donor or by anyone else after the donor bought or acquired the Class Refrigerator and before the
21 donor gave the Class Refrigerator to the California resident.

22 The Court appoints Plaintiffs Kyle Dei Rossi and Mark Linthicum as the Class
23 Representatives of the Settlement Class. The Court appoints Scott A. Bursor, L. Timothy Fisher, and
24 Annick M. Persinger of the law firm Bursor & Fisher, P.A.; and Antonio Vozzolo of the law firm
25 Faruqi & Faruqi, LLP as Class Counsel for the Settlement Class. The Court also appoints Kurtzman
26 Carson Consultants, LLC ("KCC") as Settlement Administrator.

27 If for any reason the Agreement does not become effective, Whirlpool's conditional
28 withdrawal of its objections shall be null and void in its entirety, the Parties shall return to their

1 respective positions in this Action as those positions existed immediately before the Parties executed
2 the Agreement, and nothing stated in the Agreement or in this Order shall be deemed an admission
3 or waiver of any kind by any of the Parties or used as evidence against, or over the objection of, any
4 of the Parties for any purpose in this Action or in any other action or proceeding of any kind.

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

6 Whirlpool has at all times disputed, and continues to dispute, Plaintiffs' allegations in this
7 Action, denies any liability for any of the claims that have or could have been alleged by Plaintiffs or
8 other members of the Settlement Class, and maintains that the Class Refrigerators were, at all
9 relevant times, compliant with the Energy Star program's standards for energy efficiency and
10 marketed in accordance with the Energy Star program's requirements.

11 The Settlement requires Whirlpool to provide specified compensation to each Class Member
12 who meets certain eligibility requirements and who timely submits a valid, completed Claim Form,
13 with or without specified supporting documentation depending on whether the Class Member is a
14 Prequalified Class Member or a Non-Prequalified Class Member, as set forth in the Agreement. All
15 Class Members are entitled to elect to receive either a \$55 cash payment, less any voluntary payment
16 paid by Whirlpool through Whirlpool's Voluntary Customer Satisfaction Program, or a 10% rebate
17 of the purchase price of a New KitchenAid-brand Major Appliance, without any cap as to the
18 maximum amount of the rebate.

19 On a preliminary basis, therefore, taking into account (1) the defenses asserted by Whirlpool,
20 (2) the risks to the members of the Settlement Class that Whirlpool would successfully defend
21 against claims arising out of the facts and legal theories pled and asserted in this case, whether
22 litigated by members of the Settlement Class themselves or on their behalf in a class action, and (3)
23 the length of time that would be required for members of the Settlement Class, or any group of
24 members of the Settlement Class, to obtain a final judgment through one or more trials and appeals,
25 the Settlement appears fair, reasonable, and adequate. Further, the Parties reached the Settlement
26 Agreement without reaching any agreement regarding the reasonable amount of attorneys' fees and
27 costs to be awarded to Class Counsel, which helps to confirm that the Settlement is the product of an
28 arms-length negotiation process. For all these reasons, the Settlement falls within the appropriate

1 range of possible approval and does not appear in any way to be the product of collusion.

2 Accordingly, it is ORDERED and ADJUDGED that the Agreement and corresponding
3 Settlement are hereby preliminarily approved.

4 **III. APPROVAL OF THE PREQUALIFIED NOTICE, THE “FAQ,” THE**
5 **PUBLICATION NOTICE, THE CLAIM FORM, AND THE PLANS FOR**
6 **DISTRIBUTION AND DISSEMINATION OF THE SETTLEMENT NOTICES**

7 As provided for in the Agreement, the Parties have submitted: (i) a proposed Prequalified
8 Notice to be mailed and emailed to Prequalified Class Members; (ii) a plan for distributing the
9 Prequalified Notice to Prequalified Class Members; (iii) a proposed long-form settlement notice in
10 the form of Frequently Asked Questions or “FAQ,” which will be published on the Settlement
11 Website and mailed to those Class Members who request a hardcopy of the Claim Form; (iv) a
12 proposed Publication Notice; (v) a plan for the Publication Notice’s publication to provide additional
13 notice to the Settlement Class, if necessary; (vi) a proposed Claim Form; (vii) a plan for allowing
14 Class Members to file Claim Forms by email, U.S. Mail, or through the Settlement Website and for
15 mailing a Claim Form to Class Members who contact the Settlement Administrator by telephone,
16 mail, or email requesting a Claim Form be sent to them; and (viii) a plan for establishing a
17 Settlement Website, with the FAQ and other information and documents that the Parties jointly
18 agree to post concerning the nature of the case and the status of the Settlement, including a copy of
19 the Claim Form, information relating to relevant deadlines, and a copy of the Settlement Agreement
20 and orders of the Court.

21 The proposed plan for distributing and publishing the Prequalified Notice, FAQ, Publication
22 Notice, Claim Form, and Settlement Website appears reasonably likely to notify members of the
23 Settlement Class of the Settlement, and there appears to be no additional mode of distribution that
24 would be reasonably likely to notify members of the Settlement Class who will not receive notice
25 pursuant to the proposed distribution plans. The proposed plan also satisfies the notice requirements
26 of Federal Rule of Civil Procedure 23(e) and all applicable federal law.

27 The Prequalified Notice, FAQ, Publication Notice, and Settlement Website will fairly,
28 accurately, and reasonably inform members of the Settlement Class of (1) appropriate information

1 about the nature of this litigation and the essential terms of the Agreement; (2) appropriate
2 information about how to obtain additional information regarding this matter and the Agreement; (3)
3 appropriate information about, and means for obtaining, a Claim Form; (4) appropriate information
4 about, and means for submitting, a Claim Form for compensation under the Settlement; and (5)
5 appropriate information about how to challenge, or exclude themselves from, the Settlement, if they
6 wish to do so. The notices and Settlement Website also fairly and adequately inform members of the
7 Settlement Class that failure to complete and submit a claim in the manner and time specified in the
8 notices, Settlement Website, and Claim Form shall constitute a waiver of any right to obtain any
9 compensation under the Settlement. The notices and Settlement Website also fairly and adequately
10 inform members of the Settlement Class that if they do not comply with the specified procedures and
11 the deadline for objections, they will lose any opportunity to have any objection considered at the
12 Fairness Hearing or otherwise to contest certification of the Settlement Class or approval of the
13 Settlement or to appeal from any order or judgment entered by the Court in connection with the
14 Settlement.

15 The proposed Claim Form provided for in the Agreement fairly, accurately, and reasonably
16 informs members of the Settlement Class of (1) appropriate information about the nature of the
17 litigation and the essential terms of the Agreement; (2) appropriate information about, and means
18 for, submitting a claim for compensation under the Settlement; and (3) the fact that failure to
19 complete and submit a Claim Form, in the manner and time specified in the notices, Settlement
20 Website, and Claim Form, shall constitute a waiver of any right to obtain any compensation under
21 the Settlement. The proposed plan for publishing the Claim Form on the Settlement Website and for
22 mailing or emailing the Claim Form to Class Members who contact the Settlement Administrator by
23 telephone, mail, or email requesting a Claim Form be sent to them is fair and reasonable.

24 The Court, having reviewed the proposed Prequalified Notice, FAQ, Publication Notice,
25 Claim Form, and the proposed plan for distributing and disseminating each of them, finds and
26 concludes that the proposed plan for distributing and disseminating each of them will provide the
27 best notice practicable under the circumstances and satisfies all requirements of federal and
28 California laws and due process. Accordingly, the Court hereby ORDERS as follows:

- 1 A. The form and content of the proposed Prequalified Notice, FAQ, Publication Notice,
2 and Claim Form are hereby approved.
- 3 B. Promptly following the entry of this Order, the Parties and Settlement Administrator
4 shall prepare final versions of (i) the Prequalified Notice, (ii) FAQ, (iii) Publication
5 Notice, and (iv) Claim Form, incorporating into each of them the Fairness Hearing
6 date and deadlines set forth in paragraph IV of this Order.
- 7 C. Within 10 days of the entry of this Order, Whirlpool shall comply with the notice
8 requirements of the Class Action Fairness Act, 28 U.S.C. § 1715.
- 9 D. Within 70 days after the Court's entry of this Order, Whirlpool will file with the
10 Court a declaration of compliance with this plan of notice, including a statement on
11 the number of persons to whom the Prequalified Notice was mailed.
- 12 E. Kurtzman Carson Consultants, LLC is appointed as the Settlement Administrator.
- 13 F. The Settlement Administrator shall perform the following functions in accordance
14 with the Settlement Agreement, this Order, and subsequent orders that may be entered
15 by this Court in this case:
 - 16 1. Within 60 days after entry of this Order, mail or email the Prequalified
17 Notices to each address of record for identifiable members of the Settlement
18 Class and to all members of the Settlement Class for whom valid email
19 addresses are known to Whirlpool;
 - 20 2. Perform a national change of address search and forward notices that are
21 returned by the U.S. Postal Service with a forwarding address;
 - 22 3. Create a Settlement Website that will include all necessary and pertinent
23 information for Class Members, including Claim Forms, a copy of the FAQ,
24 and information relating to relevant deadlines;
 - 25 4. Within 65 days after entry of this Order, cause to be published the Publication
26 Notice according to the proposed notice plan;
 - 27 5. Accept online/electronic as well as paper Claim Forms;

6. Allow Class Members to electronically submit documents supporting their Claim Forms;
7. Receive, evaluate, and either approve completed Claim Forms as meeting the requirements of the Settlement Agreement or disapprove as failing to meet those requirements sent by Persons seeking to receive compensation;
8. 30 days before mailing Notices of Claim Denial, provide to Whirlpool's counsel and Class Counsel (i) a list of the names and addresses of all Class Members who have submitted Claim Forms and whose Claim Forms the Settlement Administrator has determined to be Valid Claims, by category of benefit; and (ii) a separate list of the names and addresses of all Persons who have submitted Claim Forms and whose Claim Forms the Settlement Administrator has determined not to be Valid Claims, by category of benefit. Class Counsel shall then have an opportunity to review the Notices of Claim Denial and request a meet and confer with Whirlpool's counsel should they decide to challenge any of the Notices of Claim Denial; in the event Class Counsel challenges a Notice of Claim Denial, that Notice shall not be sent to the Claimant until Class Counsel and Whirlpool's counsel meet and confer to arrive at a resolution;
9. Send, by first-class United States Mail, to each Person who has submitted a Claim Form that the Settlement Administrator has determined not to be a Valid Claim, and which has not been challenged by Class Counsel, a Notice of Claim Denial;
10. Process requests for exclusion from the Settlement;
11. Process objections to the Settlement;
12. Provide to Class Counsel and Whirlpool's counsel periodic status reports regarding claims; and

1 13. Within 30 days after the payment of all Valid Claims by the Settlement
2 Administrator, provide to Whirlpool's counsel and Class Counsel a statement
3 of the total number of claims submitted (in total and by category of benefit),
4 the total number of claims adjudicated as Valid Claims (in total and by
5 category of benefit), and the total dollar amount paid to Class Members (in
6 total and by category of benefit).

7 **IV. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT**

8 **A. Fairness Hearing**

9 The Court hereby schedules, for _____, 2016, at _____, which date is approximately 310
10 days after the entry of this Order, a Fairness Hearing at the Robert T. Matsui United States
11 Courthouse, 501 I Street, Sacramento, California 95814, Courtroom 2, 15th Floor, to determine
12 whether the appointments of Class Representatives, the appointment of Class Counsel, the
13 Agreement, and the Settlement should receive final approval. At that time, the Court also will
14 consider any request that may be made by Class Counsel for an award of attorneys' fees and
15 reimbursement of litigation expenses to Class Counsel and for service awards to each Plaintiff, all in
16 accordance with the terms of the Agreement.

17 **B. Deadline for Members of the Settlement Class to Request Exclusion from the**
18 **Settlement**

19 Members of the Settlement Class who wish to be excluded from the Settlement must mail by
20 first-class United States Mail or email their requests for exclusion to the Settlement Administrator,
21 postmarked or timestamped by no later than 255 days after entry of this Order.

22 **C. Deadline for Filing Objections to Matters to be Heard at the Fairness Hearing**
23 **and for Filing Requests to Appear and Present Argument or Evidence**

24 All objections to designating Plaintiffs as Class Representatives, the appointment of Class
25 Counsel, the Settlement, the Agreement, or the amount of fees and expenses that Class Counsel may
26 apply for at the Fairness Hearing, shall be made in writing and, no later than 255 days after entry of
27 this Order, filed with this Court, Hon. Troy L. Nunley, Robert T. Matsui United States Courthouse,
28 501 I Street, Sacramento, California 95814, Courtroom 2, 15th Floor. Any papers not filed and

1 served in the prescribed manner and time will not be considered at the Fairness Hearing, and all
2 objections not made in the prescribed manner and time shall be deemed waived.

3 All persons wishing to appear at the Fairness Hearing, either in person or by counsel, for the
4 purpose of objecting to any aspect of the designation of Class Representatives as representatives of
5 the Settlement Class, the appointment of Class Counsel, the Settlement, the Agreement, or the
6 amount of fees and expenses or service awards that Class Counsel apply for, must file with the
7 Court, no later than 255 days after entry of this Order, a notice of their intention to appear setting
8 forth the basis of their objections and summarizing the nature and source of any evidence they intend
9 to present at the Fairness Hearing.

10 **D. Deadline for Submitting Claim Forms**

11 Class members will have up to 180 days after the Notice Date to submit a Claim Form for
12 benefits.

13 **V. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES**
14 **AND COSTS AND FOR SERVICE AWARDS TO PLAINTIFFS**

15 Class Counsel will move the Court for entry of a separate order approving attorneys' fees and
16 reimbursement of litigation expenses to Class Counsel in an amount to be agreed by the Parties or,
17 absent agreement, to be determined by the Court. Class Counsel also will move the Court to approve
18 service awards to each Class Representative. Whirlpool shall pay any final awards to Class Counsel
19 and Plaintiffs separate from the benefits to Class Members and in accordance with the Settlement
20 Agreement.

21 **VI. ABSENCE OF ANY ADMISSION; DENIAL OF ANY WRONGFUL ACT OR**
22 **OMISSION AND OF ANY LIABILITY**

23 The Parties entered into the Settlement Agreement solely for the purpose of settling disputed
24 claims. Whirlpool has at all times denied, and continues to deny, any wrongful act or omission
25 alleged by Plaintiffs in this action and any liability of any sort to Plaintiffs or any member of the
26 Settlement Class. Nothing contained in the Settlement Agreement, in the documents relating to the
27 Settlement Agreement, or in this Order, shall be construed, deemed, or offered as an admission by
28 any of the Parties, or by any member of the Settlement Class, for any purpose in any judicial or

1 administrative action or proceeding, whether in law or in equity. In entering this Order with this
2 provision and other limiting provisions, this Court specifically refers to and invokes the Full Faith
3 and Credit Clause of the United States Constitution and the doctrine of comity and requests that any
4 court in any other jurisdiction reviewing, construing, or applying this Order implement and enforce
5 each such limiting provision.

6 IT IS SO ORDERED.

7
8 Dated: _____, 2016

The Honorable Troy L. Nunley
United States District Judge