

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

**ELISABETH CLEVELAND, AMY
LARCHUK, CHRISTOPHER
REDMON, DHAVAL SHAH, and
THOMAS MCCORMICK,**
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

WHIRLPOOL CORPORATION,

Defendant.

CASE NO. 20-cv-1906-WMW-KMM

**MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs Elisabeth Cleveland, Amy Larchuk, Christopher Redmon, Dhaval Shah and Thomas McCormick (collectively “Plaintiffs”) respectfully move, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for preliminary approval of a proposed Settlement with Whirlpool Corporation (“Whirlpool”), preliminary certification of the Settlement Class defined in the Settlement Agreement, and approval of the proposed notice to the Settlement Class.¹ This Settlement, reached after substantial expert investigation, active litigation, confirmatory discovery, and lengthy and hard-fought negotiations in this case

¹ The Settlement Agreement and its Exhibits are attached hereto as Exhibit 1. Capitalized terms not defined herein shall have the same definitions and meanings ascribed to them in the Settlement Agreement.

and three (3) other associated cases, will resolve all of Plaintiffs' and Settlement Class Members' claims against Whirlpool in the above-captioned action and the related litigation.²

I. INTRODUCTION

Plaintiffs, individually and on behalf of all others similarly situated, and Defendant Whirlpool Corporation ("Whirlpool" or "Defendant") have entered into a Class Action Settlement Agreement (the "Settlement," "Agreement," or "Settlement Agreement"), attached hereto as Exhibit 1, to resolve Plaintiffs' claims that certain Dishwashers, identified and defined in the Settlement Agreement, have an alleged defect which may cause the Dishwashers to leak. Whirlpool has provided documentation that it distributed more than 6,700,000 of the Dishwashers into the United States consumer marketplace.

For its part, Whirlpool maintains that it produces quality consumer products, including the Dishwashers. Whirlpool further asserts that the Dishwashers are not defective, uniformly or otherwise. Accordingly, Whirlpool denies Plaintiffs' allegations in this litigation.

Notwithstanding the Parties' disagreement regarding the substantive allegations, they have been able to reach an agreement to resolve the litigation. Accordingly, Plaintiffs

² As discussed below, similar putative class actions were filed by the undersigned proposed Class Counsel against Whirlpool in the United States District Courts for the Northern District of Illinois, Eastern District of Pennsylvania, and Northern District of California. For purposes of settlement, proposed Class Counsel filed a Consolidated Amended Complaint ("CAC") in the present action (Doc. No. 63) to include the Plaintiffs in those cases in this action, effectively consolidating the cases for the purpose of settlement. Pursuant to the request for relief in this Motion, litigation of the Consolidated Amended Complaint is stayed pending the process to approve the Settlement.

respectfully submit this Memorandum of Law in support of the unopposed motion for entry of an order that will: (1) grant Preliminary Approval to the Settlement; (2) certify for settlement purposes the proposed Settlement Class, pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure; (3) appoint Plaintiffs Cleveland, Larchuk, Redmon, Shah and McCormick as Class Representatives; (4) approve the Notice Plan set forth in the Agreement, including the form and content of the Notices; (5) approve and order the opt-out and objection procedures set forth in the Agreement; (6) stay all deadlines in this litigation pending Final Approval of the Settlement; (7) appoint as Class Counsel the attorneys and their law firm identified herein; and (8) schedule a Final Approval Hearing.

The Court should grant Preliminary Approval because the Settlement provides substantial relief for the Settlement Class, including multiple options for relief; the terms of the Settlement are well within the range of reasonableness; and the terms of the Settlement are consistent with applicable case law. Given the significant risks inherent in this litigation, the Settlement is an outstanding result for the Settlement Class. The Settlement satisfies all Eighth Circuit criteria for settlement approval, as it is fair, reasonable, adequate, and in the best interests of the Settlement Class Members. It provides substantial and immediate benefits to Settlement Class Members, which, although uncapped, are collectively valued by proposed Class Counsel at approximately \$15.71 to \$21.33 million. *See* Exhibit 2, Expert Report from Frank Bernatowicz.

As described in further detail below, these extended service plan benefits include the ability to make claims for seven years beyond the one-year warranty accompanying the purchase of a Dishwasher for either past or future diverter seal leaks, including

reimbursement for Paid Qualifying Repairs or Paid Qualifying Replacements of the Dishwashers³. Although *not* included in the estimated value of the settlement, the Settlement also provides the Settlement Class with the ability to elect a cash rebate of up to \$200.00 towards other Whirlpool manufactured dishwashers, instead of reimbursement of out-of-pocket expenses.

In addition, Whirlpool shall pay all Notice and Administration Costs directly to the Settlement Administrator as such costs and expenses are invoiced, and Whirlpool shall pay the Attorney Fee and Expense Award and all Service Payments to the Class Representatives.

This Settlement is the product of hard-fought litigation and arm's-length negotiations, which included: (1) the retention of knowledgeable and qualified experts who performed critical analyses regarding the alleged defect and damages at various stages of litigation, and who also assisted with discovery; (2) adjudication of Whirlpool's motion to dismiss in the present action, and also in associated litigation in the United States District Court for the Northern District of Illinois; (3) briefing Whirlpool's motion to dismiss in associated litigation in the United States District Court for the Eastern District of Pennsylvania; (4) negotiating a protective order, order governing electronically stored information, and other case management orders involving coordination of litigation and schedules across all cases; (5) attending regular case management conferences with

³ Each Dishwasher is sold with a one-year warranty. This settlement includes an extended service benefits plan that allows class members to make claims for past and future diverter shaft leaks that occur within eight years after the date of manufacture, which is seven years beyond the original Dishwasher warranty.

Magistrate Judge Menendez in this litigation and judges in the Northern District of Illinois, Northern District of California and Eastern District of Pennsylvania; (6) significant fact discovery, which aided the resolution of this action, and included serving and responding to interrogatories, requests for production, and third-party retailer discovery; (7) two-full day mediation sessions (on April 27, 2021 and April 29, 2021), and subsequent months of arm's-length negotiations between experienced class-action counsel for both Whirlpool and Plaintiffs, all led by a mediator with substantial experience in class action litigation.

In evaluating the terms of the Settlement, counsel for the Plaintiffs and the putative Settlement Class have concluded that the Settlement is in the best interest of Settlement Class Members due to: (1) the substantial relief afforded to the Settlement Class Members; (2) the risks and uncertainties of this complex litigation; (3) the expense and length of time necessary to prosecute this action through class certification, trial, and any subsequent appeals; and (4) the desirability of consummating the Settlement to provide prompt and effective relief to the Settlement Class Members. Considering these factors, as discussed below, Plaintiffs and Plaintiffs' counsel believe that the fair and reasonable Settlement merits preliminary approval.

The benefits of this proposed nationwide Settlement must be considered in the context of the risk that protracted litigation in four (4) separate districts, as this litigation was originally situated, might lead to no recovery, or to a smaller recovery for Plaintiffs and/or proposed Settlement Class Members. Further, Whirlpool has vehemently denied any liability and mounted a vigorous defense at every stage of this litigation, and Plaintiffs

expect that Whirlpool would have continued to do so through class certification, a trial on the merits in each separate action, and even proceeding to appeal.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Summary of Allegations in the Consolidated Amended Complaint

On August 20, 2021, with Whirlpool's consent, Plaintiffs Cleveland, Larchuk, Redmon, Shah and McCormick filed a Consolidated Amended Complaint in this litigation for the purpose of settlement. (Minnesota Action, ECF No. 63) ("CAC"). The CAC involves the same alleged defect as was alleged in the complaints filed in the Northern District of Illinois, Eastern District of Pennsylvania, and Northern District of California, discussed below, and each included multiple claims made on behalf of consumers in the states in which the complaints were filed.

As alleged in the CAC, in addition to a bevy of other home appliances, Whirlpool has designed and manufactured dishwashers for decades. CAC at ¶2. From 2010-2020, Whirlpool designed and manufactured the Dishwashers in a substantially similar manner, which were sold under the various brand names and models identified in the Settlement Agreement. *Id.* The Dishwashers were and are marketed as "high-quality" products, with base retail prices ranging from \$500-\$700. *Id.* at ¶4.

As alleged by Plaintiffs, based on industry standards, the average service life of a dishwasher is typically seven to twelve years (or 9.5 years on average), and Whirlpool boasted in at least one article that the expected lifespan of its dishwashers is ten years. *Id.* at ¶5. However, as alleged in the CAC, Whirlpool designed, manufactured, distributed,

marketed, and sold the Dishwashers with a uniform defect that can and has caused the Dishwashers to leak prior to expiration of their expected life span. *Id.* at ¶6.

The Dishwashers were and are equipped with a pump motor diverter shaft seal (“Diverter Shaft Seal”). *Id.* at ¶6. A Diverter Shaft Seal is part of a dishwasher’s sump assembly, which is located at the bottom of the dishwasher’s tub and is responsible for collecting and distributing the water throughout the dishwasher during cleaning. *Id.* at ¶8. The sump collects and holds water below the dishwasher tub and the diverter shaft directs the collected water into the spray arms, while the Diverter Shaft Seal prevents leaks between the sump and the tub. *Id.* In other words, the Diverter Shaft Seal’s main purpose is to prevent the dishwasher from leaking and causing damage to consumers’ homes. *Id.*

However, as alleged, the Diverter Shaft Seal in the Dishwashers is uniformly defective in its design and/or manufacture in that it is incorrectly oriented, accelerating degradation of the seal and creating a buildup of debris that prevents the shaft seal spring from properly sealing the diverter shaft and sump (“Diverter Shaft Seal Defect” or “Defect”). *Id.* at ¶7. As a result of the uniform Diverter Shaft Seal Defect, Plaintiffs and Class Members’ Dishwashers can and have experienced significant leakage through the Diverter Shaft Seal, flowing out of the dishwasher to areas below and surrounding the dishwasher, and exposing consumers to unexpected water leaks. *Id.*

Whirlpool’s Major Appliance Limited Warranty (“Warranty”) states that within one year of the purchase date, Whirlpool “will pay for Factory Specified Replacement Parts and repair labor to correct defects in materials or workmanship that existed when this major appliance was purchased, or at its sole discretion replace the product.” *Id.* at ¶14. Thus,

while the Defect existed at the time of manufacture, prior to this litigation and settlement, any Class Dishwashers with the Diverter Shaft Seal Defect that experienced a leak following this one-year period would not be covered under Whirlpool's one year Warranty. For Class Members whose Dishwashers experience the Defect, which is not covered under the Warranty, the cost associated with labor and replacing the defective Diverter Shaft Seal is approximately \$200.00 or more. *Id.* at ¶16.

As discussed herein, through the Settlement Agreement, Class Members with paid qualifying repairs or replacements of the Diverter Shaft Seal Defect are receiving an extended service plan benefits that allows them to receive up to \$225.00 for a diverter seal leak that occurs within eight years of manufacture of their Class Dishwasher, which is seven (7) years longer than the factory warranty accompanying the purchase of the Dishwashers.

B. Relevant Procedural Background

On September 4, 2020, Plaintiff Cleveland filed her class action Complaint alleging that Whirlpool designed, manufactured, distributed, marketed, and sold the Dishwashers with the uniform Diverter Shaft Seal Defect, described *supra*, that can and has caused the Dishwashers to leak. Related actions were filed by the undersigned proposed Class Counsel on September 10, 2020, in the United States District Court for the Eastern District of Pennsylvania (*Larchuk v. Whirlpool Corp.*, No. 2:20-cv-04442-BMS (E.D. Pa.)) ("Pennsylvania Action"); on November 6, 2020, in the United States District Court for the Northern District of Illinois (*Redmon v. Whirlpool Corp.*, No. 1:20-cv-06626 (N.D. Ill.)) ("Illinois Action"); and on April 16, 2021, in the United States District Court for the

Northern District of California (*Shah v. Whirlpool Corp.*, No. 3:21-cv-02739 (N.D. Cal)) (“California Action”).

For effective and efficient coordination and scheduling, the Parties entered into a stipulated Joint Case Management Plan. The Parties spent considerable time developing the Joint Case Management Plan to be applied across all four (4) coordinated actions. Settlement Class Counsel and Whirlpool’s Counsel engaged in numerous meet and confer discussions, both via telephone and in writing, regarding the Joint Case Management Plan to be proposed in each of the actions. The Joint Case Management Plan provided each of the Courts with, *inter alia*, the agreed upon (1) coordinated schedules, (2) number of discovery requests permitted by each side; (3) number of depositions that could be taken, (4) deposition protocols, (5) methodology for coordinating and designating discovery across all coordinated actions, and (6) methodology for seeking resolution of discovery disputes. On April 23, 2021, the Joint Case Management Plan was submitted to the Court (Minnesota Action, ECF. No. 44), and on April 29, 2021, this Court granted the parties Joint Discovery Plan. (Minnesota Action, ECF No. 46). Likewise, the Joint Case Management Plan was submitted in the Illinois and Pennsylvania Actions, and subsequently adopted by those courts.

On October 29, 2020, Whirlpool filed a motion to dismiss in this action (Minnesota Action, ECF Nos. 16 and 18), and Plaintiff Cleveland filed an Amended Complaint on November 25, 2020 (Minnesota Action, ECF No. 25). On December 15, 2020, Whirlpool renewed its motion to dismiss in the Minnesota Action, seeking to dismiss Plaintiff Cleveland’s claims in their entirety and with prejudice for failure to state a claim upon

which relief can be granted. (Minnesota Action, ECF Nos. 27 and 29). On January 15, 2021, Plaintiff Cleveland filed her response in opposition to Whirlpool's motion to dismiss (Minnesota Action, ECF No. 32) and Whirlpool filed its reply in support of its motion to dismiss on February 1, 2021 (Minnesota Action, ECF No. 35). On February 26, 2021, this Court heard oral argument from both parties on Whirlpool's motion to dismiss. On July 27, 2021, this Court entered an Order Granting in Part and Denying in Part Defendant's Motion to dismiss, granting without prejudice Whirlpool's motion to dismiss Plaintiff Cleveland's claims for Breach of Contract and Unjust Enrichment, and denying the motion to dismiss for Plaintiff Cleveland's claims alleging breach of express and implied warranty, violations of the Minnesota Consumer Fraud Act (MCFA), the Minnesota Uniform Deceptive Trade Practices Act (MDTPA), and the Minnesota Unlawful Trade Practices Act (MUTPA). In the Minnesota Action, the Parties also attended several status conferences with Magistrate Judge Menendez by telephone, including for the discussion of the submitted Joint Case Management Plan.

Whirlpool also filed a motion to dismiss in the Illinois Action on February 3, 2021, seeking to dismiss Plaintiff Redmon's claims in their entirety. (Illinois Action, ECF No. 11 and 12). Plaintiff Redmond responded to the motion to dismiss on March 10, 2021 (Illinois ECF No. 22), and Whirlpool filed its reply on March 6, 2021 (Illinois Action, ECF No. 24). On April 28, 2021, the court granted in part and denied in part Whirlpool's motion to dismiss, granting Whirlpool's motion to dismiss without prejudice as to Plaintiff Redmon's express warranty claim beyond the actual written product warranty, breach of implied warranty and fraudulent concealment, and with prejudice as to Plaintiff Redmon's

claims for negligence and injunctive relief. The court denied the motion to dismiss Plaintiff Redmon's claim for breach of the express warranty as to the product warranty, and for the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq., unjust enrichment, and breach of contract. (Illinois Action, ECF No. 31). The Parties also attended multiple status conferences with the Illinois court by telephone, including for the discussion of discovery, case scheduling, and coordination of the litigation among all the courts, including the submitted Joint Case Management Plan. Plaintiff Redmon voluntarily dismissed his action on August 20, 2021, as a result of the settlement. (Illinois Action, ECF No. 48).

Whirlpool also filed a motion to dismiss in the Pennsylvania Action on January 7, 2021 (Pennsylvania Action, ECF No. 20). Plaintiff Larchuk responded in opposition on February 8, 2021 (Pennsylvania Action, ECF No. 21), and Whirlpool filed its reply in support of its motion to dismiss on February 22, 2021 (Pennsylvania Action, ECF No. 22). Plaintiff Larchuk voluntarily dismissed her action on August 23, 2021, as a result of the settlement. (Pennsylvania Action, ECF No. 32). The Parties also submitted the Joint Case Management Plan utilized in this action.

Whirlpool also filed a motion to dismiss in the California Action on June 28, 2021. (California Action, ECF No. 21). The Parties subsequently appeared via Zoom for a Case Management Conference to discuss coordination of the case and other preliminary matters. After the court expressed concern over the number of actions filed, Plaintiff Shah dismissed the California Action without prejudice on July 29, 2021 (California Action, ECF No. 29) prior to filing a response to Whirlpool's motion to dismiss, so the Parties could incorporate

Plaintiff Shah's claims into one of the other pending cases. Plaintiff Shah's claims were ultimately incorporated into the CAC in the Minnesota Action (Minnesota Action, ECF No. 63).

In addition to aforementioned litigation, the Parties engaged in significant discovery. Specifically, the Parties served and responded to written discovery requests, and Whirlpool produced voluminous data and documents, which ultimately aided the parties in resolving this action. Plaintiffs also served eleven third-party subpoenas to retailers of the Dishwashers, as well as serving both a subpoena for documents and subpoena for the Fed. R. Civ. P. 30(b)(6) deposition of the manufacturer of the Diverter Shaft Seal. As indicated *supra*, Plaintiffs engaged their experts during the various discovery stages in order to ensure discovery was thorough and would aid them in producing substantive expert reports.

As described more fully, *infra*, the Parties began preliminary settlement discussions in March of 2021. To aid in settlement discussions prior to mediation, the Parties requested and exchanged discovery pursuant to Rule 408 of the Federal Rules of Evidence.

As discussed *supra*, on August 20, 2021, Plaintiffs filed their Consolidated Amended Complaint (for the purposes of settlement). (Minnesota Action, ECF No. 63). If the Parties had not negotiated this Settlement, Whirlpool undoubtedly would have contested class certification and moved for summary judgment on any potentially remaining claims in each of the four (4) actions.

C. Class Counsel's Investigation

Class Counsel spent many hours investigating the claims of several potential plaintiffs against Whirlpool. *See* Joint Declaration of Class Counsel. ("Joint Decl."),

attached as Exhibit 3, at ¶3-5. Class Counsel performed hours of research on Whirlpool, its Dishwashers, the warranties, care and use manuals that pertained to the Dishwashers, and consumer complaints. Additionally, numerous consumers were interviewed, and various documents were collected to gather information about the Dishwashers, the alleged defect, and Whirlpool's actions regarding the alleged defect and its knowledge of the same. *Id.*

Further, Class Counsel worked closely with multiple well-qualified engineering experts who spent many hours investigating the Dishwashers, including, *inter alia*, research of the product, specifications, industry standards, Diverter Shaft Seal manufacturer's installation instructions, and alternative feasible designs. *Id.* As part of their investigation, the engineers collectively performed leakage testing and disassembly of the sump assembly parts, which included the Diverter Shaft Seal. One engineer procured a current dishwasher to determine if Whirlpool had altered the design and fixed the Defect. The engineers also provided ongoing assistance to Class Counsel during litigation, including formulation of discovery questions. *Id.*

The foregoing information was essential to Class Counsel's ability to identify the Defect and analyze the nature of Whirlpool's conduct and potential claims and remedies. *Id.* Class Counsel expended significant resources researching and developing the legal claims at issue. *Id.* Class Counsel is familiar with the claims as they have litigated and resolved cases with similar factual and legal issues. *Id.* Class Counsel has experience in understanding the remedies and damages at issue, as well as what information is critical in determining class membership. *Id.* Class Counsel spent a significant amount of time analyzing information regarding the alleged Defect. *Id.* at ¶3-5, 19, 32, 43-49.

Class Counsel entered the mediation fully informed of the merits of Settlement Class Members' claims and negotiated the proposed Settlement, without staying any pending action and thus, while zealously advancing the position of Plaintiffs and Settlement Class Members. Class Counsel had already provided dates for the inspection of certain Plaintiffs' Dishwashers and for their depositions, had begun scheduling depositions of Whirlpool's employees, noticed the deposition of the Diverter Shaft Seal manufacturer, and were fully prepared to continue to litigate rather than accept a settlement that was not in the best interest of Plaintiffs and the Settlement Class. *Id.* Atlanta based mediator, Hunter R. Hughes, III, mediated the case over two days and stayed actively engaged in settlement discussions following conclusion of the mediation in order to help the Parties reach an acceptable compromise. *Id.* at ¶¶17, 18, 20.

Prior to negotiating the Settlement, Class Counsel spent significant time communicating with Plaintiffs, working with the expert consultants, investigating facts, researching the law, preparing well-pleaded complaints and amended complaints, engaging in discovery, briefing motions to dismiss, and reviewing important documents and data. *Id.* at ¶¶4-5, 16, 19, 32. This resulted in the Settlement for which Preliminary Approval is respectfully requested.

D. Mediation and Subsequent Settlement Discussions

As shown herein, the Parties' settlement negotiations are the product of hard-fought, arm's-length negotiations, which took place over the course of approximately five (5) months. Specifically, the Parties entered into preliminary settlement negotiations in March of 2021. Prior to mediation, the Parties exchanged requests for information pursuant to

Fed. R. Evid. 408 and the Plaintiffs' made a detailed settlement demand. Joint Decl. at ¶¶15, 18, 48. The Parties also provided detailed mediation statements to Mr. Hughes, which were exchanged among the parties on April 26, 2021. *Id.* at ¶18.

Thereafter, the Parties attended two full-day mediation sessions (on April 27, 2021, and April 29, 2021) with Mr. Hughes, a neutral mediator who has substantial experience mediating class actions. While the Parties were able to make substantial progress toward settlement of this Action pending against Whirlpool, the Parties were unable to fully resolve this matter at the first day of mediation. Following the second day of mediation, the Parties agreed to most of the material terms of the Settlement and exchanged a term sheet. On July 29, 2021, the Parties reached full resolution of the terms of the Settlement and continued their discussions of the finer details of the Settlement through October 2021. Joint Decl. at ¶ 18-23. The Parties did not agree to attorneys' fees and costs, or service awards for Class Representatives during either mediation session, or prior to resolution of the material terms of the Settlement, all of which was the subject of numerous follow-up discussions among the Parties, with the assistance of Mr. Hughes. *Id.*

III. MATERIAL TERMS OF THE SETTLEMENT AGREEMENT

The Settlement's details are contained in the Agreement signed by the Parties, a copy of which is attached as Exhibit 1. Below is a summary of the key terms of the Settlement.⁴

⁴ To the extent of any inconsistency between the description of the Settlement herein and the terms of the Settlement Agreement, the express terms of the Settlement Agreement shall control.

The Settlement Class is defined as follows:

All persons in the United States and its territories who either (a) purchased a new Class Dishwasher⁵, or (b) acquired a new Class Dishwasher as part of the purchase or remodel of a home, or (c) received as a gift, from a donor meeting those requirements, a new Class Dishwasher not used by the donor or by anyone else after the donor purchased the Class Dishwasher and before the donor gave the Class Dishwasher to the Settlement Class Member.

Excluded from the Settlement Class are (i) officers, directors, and employees of Whirlpool or its parents, subsidiaries, or affiliates, (ii) insurers of Settlement Class Members, (iii) subrogees or all entities claiming to be subrogated to the rights of a Class Dishwasher purchaser, a Class Dishwasher owner, or a Settlement Class Member, (iv) issuers or providers of extended warranties or service contracts for Class Dishwashers, (v) persons who timely and validly exercise their right to be removed from the Settlement class.

Pursuant to the Settlement Agreement, for any Settlement Class Member who can provide sufficient documentary proof that (1) within eight years after manufacture, the Settlement Class Member's Dishwasher experienced a Diverter Seal Leak, and (2) the Settlement Class Member incurred out-of-pocket expenses for either (i) a Paid Qualifying Repair, or (ii) a Paid Qualifying Replacement within six weeks of the Diverter Seal Leak,

⁵ As defined in the Settlement Agreement, "Class Dishwashers" or "Dishwashers" means Whirlpool-manufactured Amana, Ikea, Jenn-Air, Kenmore, KitchenAid, or Whirlpool-branded dishwashers manufactured with a hydraulic rotation diverter system from January 1, 2010, through December 31, 2017, and bearing a model number and serial number within the range on the list attached as Exhibit 2 to the Settlement Agreement.

rather than a repair of their Dishwasher, Whirlpool will partially reimburse those out-of-pocket expenses subject to the limitations set forth below.

Settlement Class Members will have the ability to make a claim for either Past Diverter Seal Leaks or Future Diverter Seal Leaks which occur within eight years of manufacture of their Dishwasher. As defined in the Settlement Agreement, “Future Diverter Seal Leak” is a Diverter Seal Leak that occurs on or after the Notice Date, and “Past Diverter Seal Leak” means a Diverter Seal Leak that occurred prior to the Notice Date⁶. Further, “Paid Qualifying Repair” means where a Settlement Class Member actually paid some out-of-pocket cost for a repair of his or her Dishwasher that included the replacement of either the diverter motor, sump, or sump assembly in response to a Diverter Seal Leak. “Paid Qualifying Replacement” means where a Settlement Class Member actually paid some out-of-pocket cost to replace, rather than repair, their Dishwasher in response to a Diverter Seal Leak.

The compensation structure is set forth below for ***Paid Qualifying Repairs or Replacements for Past or Future Diverter Seal Leaks:***

i. for Paid Qualifying Repairs or Replacements in year two (2) after manufacture, 100% of the Average Cost of Repair (\$225.00), or a cash rebate of \$200 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$150 for the purchase of a new Whirlpool-brand or Maytag-brand dishwasher;

⁶ Settlement Class Members who have experienced a Past Diverter Seal Leak within eight years after manufacture must submit a valid claim to the Settlement Administrator within 180 days of the Notice Date.

ii. for Paid Qualifying Repairs or Replacements in year three (3) after manufacture, 90% of the Average Cost of Repair (\$202.50), or a cash rebate of \$200 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$150 for the purchase of a new Whirlpool-brand or Maytag-brand dishwasher;

iii. for Paid Qualifying Repairs or Replacements in years four (4) or five (5) after manufacture, 80% of the Average Cost of Repair (\$180.00), or a cash rebate of \$200 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$150 for the purchase of a new Whirlpool-brand, or Maytag-brand dishwasher;

iv. for Paid Qualifying Repairs or Replacements in year six (6) after manufacture, 60% of the Average Cost of Repair (\$135), or a cash rebate of \$175 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$125 for the purchase of a new Whirlpool-brand, or Maytag-brand dishwasher;

v. for Paid Qualifying Repairs or Replacements in year seven (7) after manufacture, 30% of the Average Cost of Repair (67.50), or a cash rebate of \$100 for the purchase of a new KitchenAid-brand, Whirlpool-brand, or Maytag-brand dishwasher; or

vi. for Paid Qualifying Repairs or Replacements in year eight (8) after manufacture, a cash rebate of \$100 for the purchase of a new KitchenAid-brand, Whirlpool-brand, or Maytag-brand dishwasher.

Settlement Class Members who have experienced a Past Diverter Seal Leak within eight years after manufacture, and who submit a valid claim to the Settlement Administrator within 180 days of the Notice Date, will be entitled to reimbursement for a Paid Qualifying Repair or Replacement based on the above schedule. Settlement Class

Members who experience a Future Diverter Seal Leak, which is a leak that occurs after the Notice Date, but within eight years of manufacture of their Dishwasher, and who submit a valid claim to the Settlement Administrator within 180 days of the Notice Date, will be entitled to reimbursement for a Paid Qualifying Repair or Replacement based on the above schedule.

IV. LEGAL STANDARD

“Court approval of a class action settlement is within the sound discretion of the district court.” *Phillips v. Caliber Home Loans, Inc.*, No. 19-cv-2711 (WMW/LIB), 2021 WL 3030648, at *5 (D. Minn. July 19, 2021). The procedure for approval of a class action settlement occurs in two stages. In the first stage, “before scheduling the fairness hearing, the court makes preliminary determinations with respect to the fairness of the settlement terms, approves the means of notice to class members, and sets the date for that final hearing.” *Id.*, (quoting *Schoenbaum v. E.I. Dupont De Nemours & Co.*, No. 4:05CV01108, 2009 WL 4782082, at *2 (E.D. Mo. Dec. 8, 2009)); *See also Liles v. Del Campo*, 350 F.3d 742 (8th Cir. 2003). “Because class members will subsequently receive notice and have an opportunity to be heard on the settlement, [a] Court need not review the settlement in detail at [the preliminary approval stage]; instead, preliminary approval is appropriate so long as the proposed settlement falls within the range of possible judicial approval.” *Phillips*, 2021 WL 3030648, at *5 (quoting *In re M.L. Stern Overtime Litig.*, No. 07-CV-0118, 2009 WL 995864, at *3 (S.D. Cal. April 13, 2009) (internal quotation marks omitted)); *Id.* (quoting *Martin v. Cargill, Inc.*, 295 F.R.D. 380, 383 (D. Minn. 2013) (“At the preliminary-approval stage, the fair, reasonable, and adequate standard is lowered, with emphasis only

on whether the settlement is within the range of possible approval due to an absence of any glaring substantive or procedural deficiencies.") (internal quotation marks omitted).

To grant preliminary approval, the district court must conclude that the proposed Settlement is "within the range of possible approval" and "does not disclose grounds to doubt its fairness." *Phillips*, 2021 WL 3030648, at *6, citing Manual for Complex Litigation § 30.41, at 237 (3d ed. 1975). This finding "is at most a determination that there is what might be termed 'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness." *Phillips*, 2021 WL 3030648, at *6 (quoting *In re Traffic Executive Assoc.--Eastern Railroads*, 627 F.2d 631, 634 (2d Cir. 1980); *See also In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08-MDL-1958 ADM/AJB, 2012 WL 5055810, at *5 (D. Minn. Oct. 18, 2012).

In addition, the parties must also show that the Court "will likely be able to ... certify the class for purposes of judgment on the proposal," pursuant to Fed. R. Civ. P. 23(e)(1)(B)(ii), and meet the requirements of Federal Rules of Civil Procedure 23(a) and (b). Further, in the class action context, in the Eighth Circuit, "[a] settlement agreement is 'presumptively valid.'" *In re Uponor*, 716 F.3d at 1063 (quoting *Little Rock Sch. Dist. v. Pulaski Cnty. Special Sch. Dist. No. 1*, 921 F.2d 1371, 1391 (8th Cir.1990)). The court's role in reviewing a negotiated class settlement is to "to ensure that the agreement is not the product of fraud or collusion and that, taken as a whole, it is fair, adequate, and reasonable to all concerned." *Id.*

II. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL.

“In the class action context in particular, there is an overriding public interest in favor of settlement.” *Yarrington v. Solvay Pharms., Inc.*, No. 09-CV-2261 (RHK/RLE), 2010 WL 11453553, at *6 (D. Minn. Mar. 16, 2010) (internal quotations and citation omitted). Applying the established standards noted above, preliminary approval should be granted because the proposed Settlement and the proposed form and program of providing notice satisfy the requirements for preliminary approval in all respects. *See Schoenbaum*, 2009 WL 4782082, at *3 (“a proposed settlement is presumptively reasonable at the preliminary approval stage, and there is an accordingly heavy burden of demonstrating otherwise.”).

A. The Proposed Settlement is Fair, Reasonable and Adequate and the Settlement Falls Within the Range of Reasonableness for Possible Approval.

Here, a preliminary review of the Settlement reveals the fairness, reasonableness, and adequacy of its terms. The Settlement Class will receive substantial extended service plan benefits, which allows Settlement Class Members to make a claim for the alleged Defect for seven-years beyond the one-year warranty accompanying the purchase of a Dishwasher. With the extended service plan benefits, Settlement Class Members will be entitled to reimbursement of out-of-pocket costs in an amount up to the average cost of repair of the Defect of \$225.00, as described in Section III above, which details the tiered relief offered to Settlement Class Members depending on the age of their Dishwasher. Further, as described in Section III above, consumers have the option to choose between this cash reimbursement or a cash rebate of up to \$200.00 for the purchase of a new KitchenAid-brand dishwasher, or a cash rebate of up to \$150 for the purchase of a new

Whirlpool-brand or Maytag-brand dishwasher, again depending upon the age of the Dishwasher at the time of the repair or replacement.

As detailed in the Expert Report of Frank Bernatowicz, attached hereto as Exhibit 2, the value of the proposed settlement is approximately \$15.71 to \$21.33 million. This falls well within the range of a reasonable settlement. *See Fath v. American Honda Motor Co.*, 2019 WL 6799796, at *5 (D. Minn. 2019) (preliminarily approving class action settlement in action involving alleged automobile defect, where Honda extended the limited vehicle warranty an additional year, providing for the reimbursement of certain towing expenses, oil change costs and diagnostic costs, and a software update); *Lipuma v. Am. Express Co.* 406 F. Supp. 2d 1298, 1323 (S.D. Fla. 2005) (in evaluating a class settlement, “the Court’s role is not to engage in a claim-by-claim, dollar-by-dollar evaluation, but rather, to evaluate the proposed settlement in its totality.”)

Although Class Counsel are confident in the merits of Plaintiffs’ claims, the certification of a consumer class action is challenging and strongly contested throughout the country and specifically within the Eighth Circuit. Here, continued litigation involved serious risks. While Plaintiffs prevailed on many important issues in their motions to dismiss, with continued litigation, Whirlpool undoubtedly would challenge Plaintiffs’ liability and damages experts, contest class certification and move for summary judgment on any potentially remaining claims in each of the four (4) actions. *Id.* Indeed, Whirlpool disclosed data in discovery that showed (a) varying rates of repair over time and within subpopulations of the Class Dishwashers, and (b) a decreasing rate of repairs that coincided with Whirlpool’s introduction of updates to the diverter system, which Whirlpool would

have argued defeated commonality and predominance. When balanced against the risks of litigation, this Settlement is a significant achievement for the Class, which provides Settlement Class Members with substantial costs for parts and labor, up to the average cost of repair of \$225.00, and also provides immediate benefits to the class. *See Phillips*, 2021 WL 3030648, at *6 (“Although litigation presents serious risks at many stages, as well as substantial expense and delay without any guarantee of additional benefit to the Settlement Class, the Settlement provides immediate and substantial benefits to more than one million Settlement Class Members.”)

As described above, according to Plaintiffs’ expert analysis of Whirlpool’s warranty documentation and independent research of the cost of extended warranties for dishwashers, the value of the extended service plan benefits to the Settlement Class is approximately \$15.71 to \$21.33 million, including an analysis of the extended service plan benefits to the class and the out-of-pocket reimbursement benefits. *See Exhibit 2, Expert Report from Frank Bernatowicz.*

In particular, as noted by Mr. Bernatowicz, “all Settlement Class Members will receive extended service plan benefits for the Class Dishwashers for an additional seven (7) years from the expiration of the original manufacturer’s warranty relating to a “Diverter Seal Leak,” which is defined in the Settlement Agreement as a water leak that originated at the location of the diverter motor shaft and diverter seal found in the sump assembly parts listed in Exhibit 3 to the Settlement Agreement.” Ex. 2, Bernatowicz Dec. at ¶12. “Prior to the subject Settlement, if a consumer experienced a Diverter Seal Leak beyond this one-year warranty, Whirlpool did not cover the costs of parts or labor under the

Dishwasher warranty. As a result of the Settlement, Whirlpool has agreed to cover Past Diverter Seal Leaks and Future Diverter Seal Leaks for an additional seven (7) years from the expiration of the original manufacturer's warranty, or within eight years of manufacture of the Dishwasher." *Id.* at ¶13.

For purposes of his warranty valuation analysis specific to this litigation, Mr. Bernatowicz's calculation was based on following evaluation: (1) every Settlement Class member receives an extension of warranty benefit under the proposed settlement, excluding those who have previously received compensation under the original one-year warranty or otherwise; and (2) the number of Class Dishwashers units with a Remaining Warranty Life as of the Notice Date is estimated to be 5,230,198⁷. *Id.* at ¶¶14-15. For those Settlement Class Member who have a Remaining Warranty Life after the Notice Date, as detailed in his declaration, Mr. Bernatowicz calculated the value of the warranty benefits coverage as \$13,831,171. *Id.* at ¶¶12-21.

Based on sales and warranty data provided by Whirlpool during discovery, Mr. Bernatowicz also calculated the out-of-pocket cost benefit to the Settlement Class, using

⁷ As discussed above, and in the Settlement Agreement, the Settlement Class period runs from January 1, 2010 through December 31, 2017. Thus, as of the Claims Deadline (180 days after the Notice Date, as defined in the Settlement Agreement, or April 2014, as estimated by the Parties), Whirlpool's sales data revealed that the number of Settlement Class Members whose extended eight year warranty will have expired by the Claim Deadline is approximately 1,500,000 Settlement Class Members. Those class members are eligible for identical benefits to those whose Dishwasher warranties will not have expired by the Claim Deadline, but they must make a claim by that deadline in order to be eligible for benefits. The remaining number of Settlement Class Members whose warranty benefits will not expire by the claim deadline, and who will have a Remaining Warranty Life, is approximately 5,230,198.

(1) the number of Class Dishwasher units subject to the Settlement, based on the tiered reimbursements; (2) a reasonable estimate of the diverter system repair cost of \$225; (3) and a reasonable estimate for diverter system failure percent represented by Whirlpool to be in the range of 1% to 4%, which includes all sump assembly repairs, including diverter system repairs. On this basis, Mr. Bernatowicz opined that the total out-of-pocket reimbursement benefit amounted to a range of \$1,8754.157 (based on a 1% failure rate) to \$7,496,629 (based on a 4% failure rate). *Id.* at ¶27.

Thus, based on the aforementioned benefits illustrated above, the range of Total Benefits (#1 and #2) for the Settlement Class amounts to \$15.71 to \$21.33 million. *Id.* at ¶28.

This is a substantial benefit to the class, particularly considering that continued litigation likely would take several years to resolve and involve expensive discovery, *Phillips*, 2021 WL 3030648, at *6, citing *Holden v. Burlington N., Inc.*, 665 F. Supp. 1398, 1414 (D. Minn. 1987) (observing that “many of the immediate and tangible benefits” of settlement would be lost through continued litigation, making the proposed settlement “an attractive resolution” of the case). “This is especially true when, as here, the defendant vigorously denies the Plaintiffs’ allegations.” *Phillips*, 2021 WL 3030648, at *6.

Here, given the risks associated with continued litigation, the benefits of the Settlement Agreement are substantial. Further, regardless of the option they choose, Settlement Class Members will be able to receive the remuneration described above by submitting a simple Claim Form. The Settlement thus directly addresses the claimed harm.

B. The Settlement Was the Result of Arm’s Length Negotiations Between the Parties, Has No Obvious Deficiencies, and Treats Settlement Class Members Equally.

Where a settlement is negotiated at arm’s length between experienced class counsel, it is afforded the presumption that it falls within the range of reasonableness for possible approval. *Phillips*, 2021 WL 3030648, at *6 (“Based on the vigorous litigation of the issues, the exchange of informal discovery, and the rigorous negotiations described in Plaintiffs’ submission, it appears to the Court that the Settlement was negotiated at arms’ length and under circumstances demonstrating a lack of collusion.”). Further, settlement of this action will conserve judicial resources and well as resources of the Parties, who have vigorously litigated this action, reviewed substantive discovery and retained knowledgeable and qualified experts, all allowing the Parties to “intelligently evaluate the Settlement offered against the risks and benefits of continued litigation.” *Id.*

This Settlement is the product of fact intensive investigation regarding the Defect, hard-fought litigation and arm’s-length negotiations, along with substantive motion practice and litigation, which included the retention of knowledgeable and qualified experts who performed critical analyses regarding the alleged defect and damages at various stages of litigation, including assisting with discovery; adjudication of Whirlpool’s motion to dismiss in the present action, and also in associated litigation in the United States District Court for the Northern District of Illinois; briefing Whirlpool’s motion to dismiss in associated litigation in the United States District Court for the Eastern District of Pennsylvania; negotiating a protective order, order governing electronically stored information, and other case management orders involving coordination of litigation and

schedules across all scheduling; attending regular case management conferences with Magistrate Judge Menendez in this litigation and judges in the Northern District of Illinois; fact discovery, which included serving and responding to interrogatories, requests for production, supplemental interrogatories, third-party retailer discovery, review of substantial documents; two-full day mediation sessions (on April 27, 2021 and April 29, 2021), and subsequent months of arm's-length negotiations between experienced class-action counsel for both Whirlpool and Plaintiffs, all led by a mediator with substantial experience in class action litigation. Thus, Plaintiffs' Counsel had ample information before entering into settlement negotiations, and they were able to effectively assess the strengths and weaknesses of Plaintiffs' case and balance the benefits of settlement against the risks of further litigation.

In addition, there are no obvious deficiencies in the Settlement Agreement. *See Risch v. Natoli Eng'g Co., LLC*, No. 4:11CV1621 AGF, 2012 WL 4357953, at *3 (E.D. Mo. Sept. 24, 2012) (finding no obvious deficiencies in settlement agreement that was fair, adequate, and reasonable). Here, the Settlement clearly meets the critical test of gauging its fairness and reasonableness because it provides significant, concrete relief to Settlement Class Members and directly remedies the injury alleged in the action. The gravamen of Plaintiffs' Complaint is that Plaintiffs and Settlement Class Members purchased Dishwashers which had a defect that can and has caused certain Dishwashers to leak, requiring consumers to assume the cost of repair. Accordingly, the proposed Settlement provides the exact relief to consumers that this action was filed to achieve – benefits specific to the alleged Defect, allowing consumers to claim up to \$225.00 for the cost of repairing

or replacing their Dishwasher as a result of the alleged Defect. Further, regardless of the option they choose, Settlement Class Members will be able to receive the remuneration described above by submitting a simple Claim Form. The Settlement thus directly addresses the claimed harm.

Further, there is no unfair or preferential treatment of any Settlement Class Member. *See Corona v. United Bank Card, Inc.*, No. 8:12CV89, 2015 WL 13849231, at *2 (D. Neb. Aug. 26, 2015) (granting preliminary approval after initial evaluation showed, *inter alia*, there was no improperly preferential treatment to Plaintiff or Settlement Class Members). Each Settlement Class Member is entitled to make a claim for a Paid Qualifying Repair or a Paid Qualifying Reimbursement under the extended period of eight years following their purchase of the Dishwasher.

In sum, the Settlement was achieved following substantial investigation and litigation, and hard-fought, arm's-length negotiations conducted by informed counsel, contains no obvious deficiencies, and treats Settlement Class Members equally. Accordingly, there are no grounds to doubt the Settlement's fairness.

C. Notice and Administration

All notice, publication and claims administration activities shall be carried out exclusively by the Settlement Administrator, including the evaluation of documentary proof submitted by Settlement Class Members. Whirlpool has agreed to pay for reasonable Administration and Notice expenses.

1. The Proposed Notice Provides Adequate Notice to The Class and Satisfies Due Process.

Due process under Rule 23 requires that class members receive notice of the settlement and an opportunity to be heard and participate in the litigation. Fed. R. Civ. P. 23(c)(2)(B); *See Phillips*, 2021 WL 3030648, at *5; *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175–76 (1974) (“[I]ndividual notice must be provided to those class members who are identifiable through reasonable effort.”). “The mechanics of the notice process are left to the discretion of the district court, subject only to the broad “reasonableness” standards imposed by due process.” *Phillips*, 2021 WL 3030648, at *7; *See also Tapia v. Zale Del. Inc.*, No. 13cv1565-PCL, 2017 WL 1399987, at *4 (S.D. Cal. April 18, 2017); *Rosenburg v. I.B.M.*, No. CV06–00430PJH, 2007 WL 128232, *5 (N.D. Cal. Jan. 11, 2007) (providing that notice should inform class members of essential terms of settlement, including claims procedures and the right to accept, object or opt-out of settlement).

Here, the Settlement Agreement requires the parties to notify Settlement Class Members of the Settlement by (a) emailing the notice to all members of the Settlement Class for whom valid email addresses are known to Whirlpool, (b) mailing, by first class US mail, Postcard Notice to all Settlement Class Members for whom Whirlpool only has a physical mailing address, and (c) mailing, by first-class US mail, the Long Form Notice to those Settlement Class Members requesting a copy thereof. The Settlement Administrator will also utilize a reverse look-up service to obtain additional email addresses and email the Summary Notice to all members of the Settlement Class for whom an email can be identified through the reverse look-up service. The Settlement

Administrator will also perform a national change of address search and forward notice packages that are returned by the U.S. Postal Service with a forwarding address.

In addition, the Settlement Administrator will create a Settlement Website that will include all necessary and pertinent information for Settlement Class Members, including the (1) Long Form Notice in downloadable PDF format in both English and Spanish; (2) a claim form allowing Settlement Class members to submit claims online, including uploading any necessary documentation, (3) a contact information page with contact information for the Settlement Administrator, and addresses and telephone numbers for Class Counsel and Defendant's Counsel, (4) the Settlement Agreement, (5) the signed Preliminary Approval Order and publicly filed motion papers and declarations in support thereof, (6) the Consolidated Amended Complaint, (7) upon filing, the Fee and Service Award Application, the motion for entry of the Final Approval Order, and any motion papers and declarations filed publicly in support thereof, and (8) relevant deadlines, including deadlines to opt-out or object to the settlement agreement.

Among other items, the Class Notice will include the following information: (1) a plain and concise description of the Action and the proposed Settlement, (2) the right of Settlement Class Members to request exclusion from the Settlement Class or to object to the Settlement, (3) specifics on the date, time and place of the Final Approval Hearing, and (4) information regarding Class Counsel's anticipated fee application and the anticipated request for the Class Representatives' service award.

The Notice Plan will include notices substantially in the form of Exhibit 4-6 to the Settlement Agreement. Prior to the dissemination of the Class Notice, the Settlement

Administrator also shall establish a toll-free telephone number, through which Class Members may obtain information about the Litigation, obtain answers to frequently asked questions, and request a mailed copy of the Long Form version of the Class Notice and Claim Form, pursuant to the terms and conditions of the Settlement Agreement. Agreement at ¶ IV.4.7.

Thus, the Notice program provides the necessary information for Settlement Class Members to make an informed decision regarding the proposed Settlement. Accordingly, the form and manner of notice proposed here fulfills all of the requirements of Rule 23 and due process.

2. Settlement Administration

The Settlement Administrator shall process all claims made by Settlement Class Members who experienced a Diverter Seal Leak before or after the Notice Date, including the evaluation of the documentary proof submitted by such Settlement Class Members to substantiate a Qualifying Repair or Qualifying Replacement subject to relief as set forth in this Agreement.

III. THE SETTLEMENT CLASS SHOULD BE CONDITIONALLY CERTIFIED.

A. The Rule 23(a) Requirements are Satisfied

As set forth more fully below, it is Plaintiffs' position that each of the Rule 23(a) prerequisites is satisfied with respect to the proposed Class.

1. The Settlement Class is so numerous that joinder is impracticable.

“Generally, a putative class size of forty or more will support a finding of numerosity, although smaller classes have been found acceptable in this circuit.” *Hoekman v. Educ. Minn.*, 335 F.R.D. 219, 242 (D. Minn. 2020). Here, Plaintiffs have determined, based on Defendant’s review of its internal records, that there are more than 6,700,000 class dishwashers. Moreover, as this is a nationwide settlement, the Settlement Class Members are geographically dispersed making joinder impracticable. Thus, the Settlement Class readily satisfies the numerosity requirement.

2. There are questions of law and fact common to the Settlement Class.

The second prerequisite to class certification is that “there are questions of law or fact common to the class.” Rule 23(a)(2) (emphasis added). “As a general rule, the commonality requirement imposes a very light burden on a plaintiff seeking to certify a class and is easily satisfied.” *Hartley v. Suburban Radiologic Consultants, Ltd.*, 295 F.R.D. 357, 376 *D. Minn. 2013) (citation omitted). Indeed, “even a single common question will do.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (citation omitted).

In this case, the questions of law or fact common to the Class include, *inter alia*, the following:

- (a) whether the Class Dishwashers suffer from a uniform design or manufacturing Defect that causes them to leak;
- (b) whether Whirlpool had a duty to disclose the alleged Defect to consumers;

- (c) Whether Whirlpool’s warranty limitations on Settlement class Dishwashers were unconscionable or otherwise unenforceable;
- (d) whether the alleged Defect in the Class Dishwashers is material to a reasonable consumer;
- (e) whether, as a result of Whirlpool’s concealment or failure to disclose material facts, Plaintiffs and Class Members acted to their detriment by purchasing Class Dishwashers manufactured by Whirlpool;
- (f) whether Whirlpool was aware of the Defect;
- (g) whether Whirlpool breached express warranties with respect to the Class Dishwashers;
- (h) whether Whirlpool has a duty to disclose the defective nature of the Class Dishwashers to Plaintiffs and Class Members; and
- (i) whether Plaintiffs and Class Members are entitled to equitable relief.

Consequently, there are fundamental, common issues of law and fact and, in this case, a “classwide proceeding [will] generate common *answers* apt to drive the resolution of the litigation.” *Dukes*, 564 U.S. at 350 (2011) (emphasis in original). *See Fath*, 2019 WL 6799796, at *5 (finding requirement of commonality satisfied “as the resolution of various common questions of law and fact—such as whether the Class Vehicles are predisposed to exhibit oil dilution and subsequent costly wear and tear to their engines—would potentially resolve issues central to the claims asserted in the FAC.”).

3. Plaintiffs’ claims are typical of the claims of the Settlement Class.

The third prerequisite for class certification is “typicality” set forth in Rule 23(a)(3), which provides that a class action can be maintained only if “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed.R.Civ.P. 23(a)(3). “Typicality is fairly easily met so long as other class members have claims similar to the named plaintiff.” *Custom Hair Designs by Sandy v. Central Payment co., LLC*. 984 F.3d 595, 604 (8th Cir. 2020) (quoting *Postawko v. Missouri Dep’t of Corr.*, 910 F.3d 1030, 1039 (8th Cir. 2018)). “Factual variations in the individual claims will not normally preclude class certification if the claim arises from the same event or course of conduct as the class claims, and gives rise to the same legal or remedial theory.” *Id.*

Here, Plaintiffs contend that their claims arise from the same common alleged Defect in the Dishwashers, and from the same legal theories as the Settlement Class Members’ claims. Although Plaintiffs may own a different model of the Dishwasher than other Settlement Class Members, Plaintiffs contend that all of the Dishwasher models contain an identical defect. Thus, Plaintiffs seek redress—on behalf of the Settlement Class Members—for alleged damages arising out of a similar alleged Defect, and Plaintiffs and Settlement Class Members have an identical interest in recovering their alleged losses sustained as a result of the same course of conduct. *See Fath*, 2019 WL 6799796, at *5 (in action involving alleged automobile defect, finding typicality requirement satisfied where “it appears that the claims of the other members of the proposed settlement class are similar to those of Named Plaintiffs.”).

4. Plaintiffs will fairly and adequately represent the Settlement Class.

The fourth and final prerequisite under Rule 23(a) is the “adequacy of representation” requirement contained in Rule 23(a)(4). The inquiry under Rule 23(a)(4) has two components: (1) the Class Representatives must not have interests that conflict with other class members, and (2) will vigorously prosecute the interests of the other class members through qualified counsel. *Fath*, 2019 WL 6799796, at *5; *See also Swinton v. SquareTrade, Inc.*, No. 18-CV-144 (SMR/SBJ), 2019 WL 617791, at *5 (S.D. Iowa Feb. 14, 2019) (finding representation adequate where named plaintiffs “share the same objectives, and their claims arise from the same general factual position” as other class members and where named plaintiffs were represented by experienced and accomplished litigators who had negotiated an adequate settlement); *Phillips*, 2021 WL 3030648, at * 7 (finding adequacy requirement satisfied where “Class Counsel [we]re experienced and sophisticated, with years of experience in complex class action litigation...[and] [t]he Class Representatives... supervised the litigation by reviewing pleadings, reviewing the Settlement and communicating with Class Counsel regarding the litigation.”).

Here, the proposed Class Representatives purchased Dishwashers containing the alleged Defect and thus allegedly suffered injury or loss. The proposed Class Representatives seek to maximize the recovery to the Settlement Class through this litigation. None of the proposed Class Representatives have any interest that is antagonistic to the claims of any Settlement Class Member. The proposed Class Representatives’ interests are aligned with the interests of Settlement Class Members. Moreover, proposed Class Representatives have vigorously prosecuted the actions in the interests of the Settlement Class. Proposed Class Representatives understand their duties as

representatives of the Settlement Class and will dutifully execute their responsibilities. Their active participation is strong evidence that Plaintiffs are adequate representatives of the Settlement Class.

Likewise, Class Counsel have vigorously represented the proposed Class Representatives and putative Settlement Class Members in this Action. They represent that they will continue to do so and have submitted evidence showing that they are qualified, experienced, and generally able to conduct the litigation as detailed herein. *See* Joint Decl., at Ex. A (Firm resume of Class Counsel).

B. The Requirements of Rule 23(b)(3) are Satisfied

Before certifying a class under Rule 23(b)(3), a district court must find ‘that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.’ *Fath*, 2019 WL 6799796, at *5 (quoting *Stuart v. State Farm Fire & Cas. Co.*, 910 F.3d 371, 374 (8th Cir. 2018)); *See also Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 591-594 (1997). In the settlement context, the district court “need not inquire whether the case, if tried, would present intractable management problems.” *Fath*, 2019 WL 6799796, at *5 (quoting *Amchem*, 521 U.S. at 620). The predominance and superiority elements are both met here.

1. Common Questions of Law and Fact Predominate

“The ‘predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.’” *Stuart*, 910 F.3d at 374–75 (quoting *Amchem*, 521 U.S. at 623). It is not necessary to illustrate that all questions of

fact or law are common. *See Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1178 (11th Cir. 2010). Further, in the settlement context, “the predominance inquiry will sometimes be easier to satisfy” because settlement eliminates manageability problems related to trial. *In re Am. Int’l Grp., Inc. Sec.Litig.*, 689 F.3d 229, 240 (2d Cir. 2012).

Here, Plaintiffs contend that they satisfy the predominance requirement because liability questions common to all Settlement Class Members substantially outweigh any possible issues that are individual to each Settlement Class Member. The salient evidence necessary to establish Plaintiffs’ claims are common to all the Class Representatives and all members of the Settlement Class – Plaintiffs have alleged that the manufacture and design of the Dishwashers, the alleged Defect, and Whirlpool’s knowledge of the alleged Defect and its effects are all subject to common proof. The evidentiary presentation changes little whether there are 100 Settlement Class Members or as many as 6,700,000 Settlement Class Members. In either instance, Plaintiffs would present the same evidence of Whirlpool’s marketing and warranties, and the same evidence of the Dishwasher’s alleged Defect. *See Fath*, 2019 WL 6799796, at *5. To be sure, Plaintiffs faced risks in establishing predominance where Whirlpool was laying the groundwork to vigorously contest the issues of injury, causation, and damages, and this Settlement is a fair compromise balanced against those risks.

2. Class Treatment of Plaintiffs’ Claims is Superior

“The superiority requirement asks whether the class action is the best available method for resolving the controversy.” *Fath*, 2019 WL 6799796, at *5 (finding superiority

requirement satisfied where “the values of the individual proposed settlement class members’ claims are so small that there is minimal incentive for any individual member of the proposed settlement class to pursue her claim in federal court.”) (quoting *Cullan & Cullan LLC v. M-Qube, Inc.*, No. 8:13CV172, 2016 WL 5394684, at *6 (D. Neb. Sept. 27, 2016)). See also *Custom Hair Designs by Sandy*, 984 F.3d at 605 (finding superiority requirement satisfied, stating “Plaintiffs’ individual claims are for tens or hundreds of dollars. Absent a class action, no plaintiff is likely to pursue their claim individually.”).

Plaintiffs contend that a class action is the superior method for adjudicating Plaintiffs’ and Settlement Class Members’ claims. Here, individual Settlement Class Members have little incentive to control the prosecution of separate individual actions because the time and expense associated with such litigation would easily exceed the potential individual recovery. And, as the Supreme Court explained in *Amchem*, “[t]he policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.” *Amchem Prods.*, 521 U.S. at 617. The potential recovery on the economic damage claims sought to be certified in this action—the cost of repair or replacement—is too small to warrant individuals taking on the cost and burden of litigating individual lawsuits against these large corporate defendants.

Moreover, no putative Settlement Class Members have expressed an interest in prosecuting their actions separately, no other litigation regarding Plaintiffs’ claims have been initiated, and efficiency weighs in favor of resolving the claims of all Settlement Class Members in this forum. Fed. R. Civ. P. 23(b)(3)(A)-(C). The proposed Settlement Class

therefore meets the requirements of Rule 23(b)(3) and should be conditionally certified for purposes of settlement only.

C. Class Counsel's Applications for (i) Attorneys' Fees and Costs and (ii) Service Awards.

Class Counsel has not been paid for their extensive efforts or reimbursed for litigation costs and expenses incurred. The Parties negotiated and agreed upon attorneys' fees and costs only after agreeing on all other material terms of the Settlement. Whirlpool has agreed to pay an attorney fee and expense award of one and one-half million dollars (\$1,500,000.00), subject to approval by the Court. Such award will serve to compensate for the time, risk and expense Plaintiffs' counsel incurred pursuing claims on behalf of Settlement Class Members. This amount represents approximately only 7% to 9.5% of the \$15.71 to \$21.33 million value of the Settlement as estimated by Mr. Bernatowicz. However, Class Counsel is not seeking an award of attorneys' fees at this time and will file a motion and supporting memoranda prior to the Final Approval Hearing. Class Counsel have agreed not to seek an award of more than the above amount in the aggregate for attorneys' fees and expenses. Whirlpool's payment of fees and costs to Class Counsel is entirely separate and apart from the benefits provided to the Settlement Class and will have no impact on the recovery received by Settlement Class Members. Further, the effectiveness of the Settlement and the releases are not contingent on the Court's approval of the Fee and Expense Award, nor is it determined by the amount of the Fee and Expense Award approved by the Court.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant the Motion for Preliminary Approval of the Settlement and for certification of the proposed Settlement Class for settlement purposes only and enter the proposed Preliminary Approval Order.

Dated: October 29, 2021

/s/ Harper T. Segui
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CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing was served upon all counsel of record via this Court's CM/ECF system.

This 29th day of October, 2021.

Respectfully submitted,

/s/ Harper T. Segui

Harper T. Segui

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CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (“Agreement”) is made and entered into as of this ~~29th~~ day of October, 2021, by Elizabeth Cleveland, Christopher Redmon, Amy Larchuk, Dhaval Shah, and Thomas McCormick (“Plaintiffs”), 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 the four putative class-action Lawsuits (defined in Section I.A. herein) against Whirlpool relating to certain dishwashers described below.

1. A dispute has arisen between the Parties concerning certain Whirlpool-manufactured dishwashers specifically defined in Section I(I);

2. Plaintiffs filed four putative class-action Lawsuits alleging, among other things, that the Class Dishwashers are defective, in that the diverter shaft seal in the Class Dishwashers’ sump assembly could allow a leak to develop;

3. Whirlpool categorically denies Plaintiffs’ allegations, denies that it has committed or engaged in any misconduct, wrongdoing, or other actionable conduct, denies that the Class Dishwashers are defective, denies that the diverter shaft seal regularly develops leaks during normal use, denies all liability, and asserts numerous defenses to Plaintiffs’ allegations;

4. The Parties to this Agreement, after engaging in extensive motion practice across the four cases, and after engaging in confirmatory discovery—which included collecting and analyzing thousands of pages of documents; conducting extensive interviews with Whirlpool witnesses, the named plaintiffs, and putative class members; producing highly relevant, targeted, and sufficient documents and data by both Whirlpool and Plaintiffs; and consulting with various experts—and after conducting a formal mediation, engaging in substantial settlement negotiations

over a period of four months with the help and oversight of a highly experienced mediator, now wish to resolve all claims, disputes, and differences among them;

5. Class Counsel has reviewed and analyzed the data and documents produced by Whirlpool and those obtained via their own investigation; consulted with experts; examined and considered the benefits to be provided to the Settlement Class Members under the Settlement provided for in this Agreement; considered the applicable laws of the several states potentially at issue, including California, Minnesota, Illinois, Pennsylvania, and others, and the claims that could be asserted under those laws regarding Class Dishwashers; considered the risks, costs, and time associated with prosecuting this case through one or more trials and appeals; and believe the Agreement to be in the best interest of the Settlement Class Members, taking into account the risks and costs of continued litigation, and the length of time that would be required to complete the litigation and any appeals;

6. Whirlpool has at all times disputed, and continues to dispute, Plaintiffs' allegations in the Lawsuits and denied any liability for any of the claims that have or could have been raised regarding the Class Dishwashers by Plaintiffs or Settlement Class Members, but believes that the comprehensive resolution of the issues in the Lawsuits as provided in this Agreement will avoid the substantial costs and disruptions of continued litigation, is in the best interest of the Settlement Class, and is in the best interests of Whirlpool, its employees, and its trade partners, and is the most effective and least costly resolution of the Lawsuits;

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

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

I. DEFINITIONS

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

- A. “Actions” or “Lawsuits” means the following four putative class-action lawsuits: (1) *Cleveland v. Whirlpool Corp.*, Case No. 0:20-cv-01906-WMW-KMM (D. Minn.), (2) *Larchuk v. Whirlpool Corp.*, Case. No. 2:20-cv-04442-BMS (E.D. Pa.), (3) *Redmon v. Whirlpool Corp.*, Case No. 1:20-cv-06626 (N.D. Ill.), and (4) *Shah v. Whirlpool Corp.*, Case No. 3:21-cv-02739-JD (N.D. Cal.). The Lawsuits have been consolidated in *Cleveland* through a First Amended Consolidated Class Action Complaint, filed on August 20, 2021 (Doc 63).
- B. “Administration and Notice Expenses” means reasonable fees and expenses incurred for (1) preparing, mailing, and emailing the Summary Notice and FAQ; (2) the costs of Publication Notice; (3) receiving and adjudicating claims submitted by Settlement Class Members for compensation under this Settlement, including the costs of administering a Settlement Website for the review of the Settlement Notice and submission of claims; (4) receiving and processing Objections to the Settlement and Opt-Out Forms submitted by Settlement Class Members who wish to exclude themselves from the Class; (5) preparing status reports to the Parties and the Court; (6) preparing tax returns for any Settlement bank accounts; (7) distributing Settlement payments or other benefits to Settlement Class Members who timely submit Valid Claims; and (8) other costs of notice and administration of the Settlement that may be mutually-agreed upon by Whirlpool and Class Counsel, including administration of claims made for Future Diverter Seal Leaks defined herein.

- C. “Agreement” or “Settlement Agreement” means this Class Action Settlement Agreement and Release and the exhibits attached hereto.
- D. “Attorney Fees and Expenses” means the amount of any attorney fees and reimbursement of litigation expenses awarded to Class Counsel pursuant to their Fee Petitions.
- E. “Average Cost of Repair” is the average cost to repair a Diverter Seal Leak, which the Parties agree is \$225.
- F. “Claims Deadline” means 180 days after the Notice Date.
- G. “Claim Form” means the forms attached as Exhibit 1, to be approved by the Court and to be submitted to the Settlement Administrator by Settlement Class Members who wish to make a claim.
- H. “Class Counsel” means Harper Segui and Rachel Soffin of Milberg Coleman Bryson Phillips Grossman.
- I. “Class Dishwashers” or “Dishwashers” means Whirlpool-manufactured Amana, Ikea, Jenn-Air, Kenmore, KitchenAid, or Whirlpool-branded dishwashers manufactured with a hydraulic rotation diverter system from January 1, 2010 through December 31, 2017, and bearing a model number and serial number within the range on the list attached as Exhibit 2.
- J. “Class Representatives” or “Plaintiffs” means Elizabeth Cleveland, Christopher Redmon, Amy Larchuk, Dhaval Shah, and Thomas McCormick.
- K. “Court” means the United States District Court for the District of Minnesota.
- L. “Customer Information Databases” means Whirlpool’s Siebel, eCRM, Sensus, and Service Bench databases, which contain production registration data (i.e., owner-warranty registrations and consumer contact records), and no others.

- M. “Defendant” means Whirlpool Corporation.
- N. “Diverter Seal Leak” means a water leak that originated at the location of the diverter motor shaft and diverter seal found in the sump assembly parts listed in Exhibit 3.
- O. “Effective Date” means the first date that is three business days after all of the following have occurred: (i) the Court has entered an order granting final approval of the Settlement Agreement in accordance with the terms of this Agreement; (ii) the time for any challenge to the Settlement, both in the Court and on appeal, has elapsed; and (iii) the Settlement has become final, either because no timely challenge was made to it or because any timely challenge has been finally adjudicated and rejected. For purposes of this Section, an “appeal” shall not include any appeal that concerns solely the issue of Class Counsel’s Attorney Fees and Expenses or the Service Awards to the Class Representatives.
- P. “Fairness Hearing” means the final hearing, to be held after notice has been provided to the Settlement Class in accordance with this Agreement to: (1) determine whether to grant final approval, and (a) re-affirm certification of the Settlement Class, (b) designate Class Representatives, (c) designate Class Counsel as counsel for the Settlement Class, and the Settlement; (2) consider whether to enter the Final Approval Order; and (3) to rule on Class Counsel’s Fee Petitions and Class Representative Service Awards.
- Q. “FAQ” means the long-form notice to the Settlement Class in the form of Frequently Asked Questions and Answers attached as Exhibit 4, to be approved by the Court and posted on the Settlement Website in accordance with this Agreement.

- R. “Fee Petition” means the application to be filed by Class Counsel by which they will seek an award of attorney fees and reimbursement of litigation expenses incurred by them in prosecuting the Lawsuits, and all aspects of the settlement of them, as well as a Service Award to be paid to Plaintiffs.
- S. “Final Approval Order” means the proposed Order Granting Final Approval to the Settlement, to be entered by the Court with terms to be agreed upon by the Parties and consistent with this Agreement.
- T. “Future Diverter Seal Leak” is a Diverter Seal Leak that occurs on or after the Notice Date.
- U. “Notice Date” means the date on which the Settlement Administrator completes the initial mailing of Summary Notices to Class Members.
- V. “Notice of Claim Denial” means the form that the Settlement Administrator will send, by first-class United States Mail, to each Person who has submitted a Claim Form that the Settlement Administrator has determined, subject to review and approval by Class Counsel, to not be a Valid Claim.
- W. “Opt-Out” means the process by which a member of the Settlement Class may submit a request for exclusion in the manner and time prescribed by the Court in the Preliminary Approval Order.
- X. “Paid Qualifying Repair” means where a Settlement Class Member actually paid some out-of-pocket cost for a repair of his or her Dishwasher that included the replacement of either the diverter motor, diverter seal, sump, or sump assembly parts listed in Exhibit 3 in response to a Diverter Seal Leak.

- Y. “Paid Qualifying Replacement” means where a Settlement Class Member actually paid some out-of-pocket cost to replace, rather than repair, their Dishwasher in response to a Diverter Seal Leak.
- Z. “Parties” means Plaintiffs and Whirlpool, collectively.
- AA. “Past Diverter Seal Leak” means a Diverter Seal Leak that occurred prior to the Notice Date.
- BB. “Person” means any natural person.
- CC. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval to Class Action Settlement, to be entered by the Court with terms to be agreed upon by the Parties and consistent with this Agreement.
- DD. “Publication Notice” means the proposed notice attached as Exhibit 5, with the terms and form to be approved by the Court and to be published in accordance with the notice plan set forth in Section V of this Agreement.
- EE. “Released Claims” means all claims released by Plaintiffs and all Settlement Class Members pursuant to the release and waiver set forth in Section IX of this Agreement.
- FF. “Releasees” means (i) Defendant, together with its predecessors and successors in interest, parents, subsidiaries, affiliates, and assigns; (ii) each of Defendant’s past, present, and future officers, directors, agents, representatives, servants, employees, attorneys, and insurers; and (iii) all distributors, retailers, suppliers, and other entities who were or are in the chain of design, testing, manufacture, assembly, distribution, marketing, sale, installation, or servicing of the Class Dishwashers, all of whom will be parties to the releases set forth in Sections IX and X.

- GG. “Service Award” means a reasonable payment, subject to Court approval, made to a Plaintiff as compensation for his or her efforts in pursuing these Actions.
- HH. “Settlement” means the settlement provided for in this Agreement.
- II. “Settlement Administrator” means Angeion Group.
- JJ. “Settlement Class” means all persons in the United States and its territories who either (a) purchased a new Class Dishwasher, or (b) acquired a new Class Dishwasher as part of the purchase or remodel of a home, or (c) received as a gift, from a donor meeting those requirements, a new Class Dishwasher not used by the donor or by anyone else after the donor purchased the Class Dishwasher and before the donor gave the Class Dishwasher to the Settlement Class Member. Excluded from the Settlement Class are (i) officers, directors, and employees of Whirlpool or its parents, subsidiaries, or affiliates, (ii) insurers of Settlement Class Members, (iii) subrogees or all entities claiming to be subrogated to the rights of a Class Dishwasher purchaser, a Class Dishwasher owner, or a Settlement Class Member, (iv) persons who acquired an other-than-new Class Dishwasher, (v) issuers or providers of extended warranties or service contracts for Class Dishwashers, and (vi) persons who timely and validly exercise their right to be removed from the Settlement class, as described below.
- KK. “Settlement Class Member” means all Persons who are members of the Settlement Class who do not Opt-Out.
- LL. “Settlement Website” means a website created by the Settlement Administrator to facilitate notice and claims administration, as detailed in Section V(J) of this Agreement.

- MM. “Summary Notice” means the proposed postcard and email notice attached as Exhibit 6, to be approved by the Court and to be mailed by the Settlement Administrator to each address of record in Whirlpool’s databases (after being run through the National Change of Address database), and emailed to Settlement Class Members for whom valid email addresses are known to Whirlpool.
- NN. “Valid Claim” means a Claim Form that (i) is timely submitted by a Settlement Class Member in accordance with the requirements of this Agreement and the Preliminary Approval Order, (ii) is signed with a certification that the information is true and correct to the best of the claimant’s knowledge and recollection, and (iii) contains all of the attestations, certifications, information, and documentation required for that Settlement Class Member to be eligible to receive one or more of the benefits provided in Section IV of this Agreement.
- OO. “Whirlpool” means Whirlpool Corporation and its consolidated subsidiaries, including their successors, predecessors, assigns, affiliates, subsidiaries, shareholders, officers, directors, agents, insurers, attorneys, and employees.

II. CONDITIONAL CERTIFICATION OF NATIONWIDE SETTLEMENT CLASS

For purposes of implementing this Agreement, and for no other purpose, Whirlpool stipulates to the conditional certification of the nationwide Settlement Class. If, for any reason, this Agreement should fail to become effective, Whirlpool’s stipulation to certifying the nationwide Settlement Class shall be null and void, and the Parties shall return to their prior positions in the Lawsuits.

III. REQUIRED EVENTS

- A. As soon as practicable after executing this Agreement, Plaintiffs shall take all necessary steps to file with the Court in *Cleveland* a 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. Conditionally certify the Settlement Class as a nationwide class for purposes of effectuating the Settlement;
3. Designate Plaintiffs as the Class Representatives;
4. Designate Class Counsel as counsel for the Settlement Class;
5. Designate Angeion Group as the Settlement Administrator and instruct the Settlement Administrator to perform the following functions in accordance with the terms of this Agreement and the Preliminary Approval Order:
 - a. Disseminate the Summary Notice by email if available or first-class United States Mail if email is not available;
 - b. Establish the Settlement Website with the Settlement Agreement, FAQ, and other information that Whirlpool and Class Counsel jointly agree to post concerning the nature of the case and the status of the Settlement, including relevant pleadings such as the operative Complaint, papers in support of preliminary and final approval of the Settlement, and Class Counsel's Fee Petition, plus relevant orders of the Court;
 - c. Prior to mailing the Settlement Notice or publishing Publication Notice, establish a toll-free telephone number that Class Members can call to request hard copies of the Claim Forms and FAQ be sent

to them by mail and obtain additional information regarding the Settlement;

- d. Receive, evaluate, and either approve completed Claim Forms sent by Persons seeking to receive compensation as meeting the requirements of the Agreement or disapprove as failing to meet those requirements, including claims for Past Diverter Seal Leaks and claims for Future Diverter Seal Leaks;
- e. Subject to the provisions of Section V(D) of this Agreement, 35 days before mailing Notices of Claim Denial, provide to Whirlpool and Class Counsel (i) a list of the names and addresses of all Settlement Class Members who have submitted Claim Forms and whose Claim Forms the Settlement Administrator has determined to be Valid Claims; 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. Whirlpool and Class Counsel shall then have an opportunity to review the Valid Claims and the Notices of Claim Denial and request a meet and confer should they decide to challenge any Valid Claims or Notices of Claim Denial. In the event Class Counsel challenges a Notice of Claim Denial, that Notice shall not be sent to the Class Member until Class Counsel and counsel for Defendant meet and confer to arrive at a resolution, which must occur within at least 28 days of the Settlement Administrator's provision of the lists described above to Class Counsel and counsel

for Defendant. Legitimate grounds for Whirlpool and Class Counsel to challenge a claim shall include, but are not limited to, inadequate documentation and inconsistency with Whirlpool's records, all of which is subject to Section V(D) below discussing the Class Member's opportunity to cure a deficiency with their claim;

- f. Effect Publication Notice through appropriate media for the Settlement Class;
- g. Send, by email if available or first-class United States Mail if email is not available, 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 or a notice of claim deficiency;
- h. Process requests for exclusion from the Settlement in accordance with this Agreement;
- i. Process objections to the Settlement in accordance with this Agreement;
- j. Within 35 days after the payment of all Valid Claims for monetary compensation by the Settlement Administrator, provide to Whirlpool and Class Counsel, under penalty of perjury, a statement of the total number of claims submitted (in total and by category of benefit), the total number of claims adjudicated as Valid Claims (in total and by category of benefit), and the total dollar amount paid to Settlement Class Members (in total and by category of benefit); and

- k. Process Future Diverter Seal Leak claims following the same procedures as set forth in (d) and (e) above, and providing the reports and related information set forth in those provisions to Whirlpool every 35 days to address Future Diverter Seal Leaks on a rolling basis through the last qualifying date on December 31, 2025.
 6. 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;
 7. Establish procedures and schedule deadlines for Settlement Class Members to object to the Settlement or certification of the Settlement Class, to exclude themselves from the Settlement, and to submit Claim Forms to the Settlement Administrator, all consistent with the terms of this Agreement;
 8. Schedule the Fairness Hearing; and
 9. Schedule deadlines for the filing of (a) papers in support of final approval of the certification of the Settlement Class, the designation of Plaintiffs as representatives of the Settlement Class, the appointment of Class Counsel as counsel for the Settlement Class, and the Settlement; (b) Class Counsel's Petition for Fees and Service Awards for Class Representatives; and (c) objections to certification of the Settlement Class, to the designation of Plaintiffs as the representatives of the Settlement Class, to the appointment of Class Counsel as counsel for the Settlement Class, or to the Settlement.
- B. At the Fairness Hearing, Whirlpool and Class Counsel will jointly request the Court to enter a Final Approval Order that (1) certifies the Settlement Class, designates

Plaintiffs as Class Representatives, and designates Class Counsel as counsel for the Settlement Class; (2) grants final approval of the Settlement and this Agreement as fair, reasonable, and adequate to the Settlement Class Members; (3) finds that the Class Notice complied with all laws, including, but not limited to Federal Rule of Civil Procedure 23 and the due Process Clause of the United States Constitution; (4) provides for the release of all Released Claims and enjoins Settlement Class Members from asserting, filing, maintaining, or prosecuting any of the Released Claims in the future; (5) orders the dismissal with prejudice of all claims, causes of action, and counts alleged in the Lawsuits, and incorporates the releases and covenant not to sue stated in this Agreement, with each of the Parties to bear its, his, or her own costs and attorney fees, except as provided in Section VIII, below; (6) authorizes the payment by Whirlpool of Valid Claims approved by the Settlement Administrator as Valid Claims, and otherwise reviewed by Class Counsel and Counsel for Whirlpool and determined to be Valid Claims, in accordance with the terms of the Agreement; and (7) preserves the Court's continuing jurisdiction over the administration of the Settlement and enforcement of this Agreement. In addition, Class Counsel will move the Court for entry of a separate order approving the following: (1) Service Awards to Plaintiffs as described in this Agreement, and (2) attorney fees and costs to Class Counsel in an amount as approved by the Court and consistent with the terms of this Agreement.

C. Whirlpool, Plaintiffs, and Class Counsel will cooperate and take all reasonable actions to accomplish the above. If the Court fails to enter either the Preliminary Approval Order or the Final Approval Order, Whirlpool, Plaintiffs, and Class Counsel will use all reasonable efforts that are consistent with this Agreement to

cure any defect identified by the Court. If, despite such efforts, the Court does not enter the Preliminary Approval Order and Final Approval Order, the Parties will return to their positions in the Lawsuits as they were immediately before the execution of the Settlement Agreement.

IV. SETTLEMENT BENEFITS

For any Settlement Class Member who can provide sufficient documentary proof that (1) within eight years after manufacture, the Settlement Class Member's Dishwasher experienced a Diverter Seal Leak, and (2) the Settlement Class Member incurred out-of-pocket expenses for either (i) a Paid Qualifying Repair, or (ii) a Paid Qualifying Replacement within six weeks of the Diverter Seal Leak, rather than a repair of their Dishwasher, Whirlpool will partially reimburse those out-of-pocket expenses subject to the limitations set forth below.

A. Compensation to Settlement Class Members for Past Diverter Seal Leaks.

Settlement Class Members who have experienced a documented Past Diverter Seal Leak within eight years after manufacture of their Dishwasher will be entitled to reimbursement of certain out-of-pocket expenses incurred as a result of that Past Diverter Seal Leak. To be eligible for compensation for a Past Diverter Seal Leak, a Settlement Class Member must submit to the Settlement Administrator within 180 days of the Notice Date:

1. A properly completed claim form showing a valid Dishwasher model and serial-number combination, together with documentary proof showing that the Settlement Class Member either purchased a Dishwasher new, or acquired a Dishwasher as part of the purchase or remodel of a home, or received as a gift, from a donor meeting those requirements, a new Dishwasher not used by the donor or by anyone else after the donor

purchased the Dishwasher and before the donor gave the Dishwasher to the Settlement Class Member. Sufficient documentary proof includes, but is not limited to, purchase receipts, credit card statements, and warranty registrations. If no such documentary proof is available, then the claimant shall provide a claim-form declaration, signed under oath, that the claimant cannot locate sufficient documentary proof, and that the claimant meets the Settlement Class definition in Section I(JJ), above. If the Settlement Class Member does not provide a valid model and serial number, the Settlement Class Member will not be entitled to compensation. Additionally, if the Settlement Class Member does not provide documentary proof, or does not provide a claim-form declaration, signed under oath, proving that the Settlement Class Member is a member of the Settlement Class, the Settlement Class Member will not be entitled to compensation.

2. The following are forms of sufficient documentary proof that (a) within eight years of manufacture, (b) the Settlement Class Member's Dishwasher experienced a Diverter Seal Leak, and either (c) the Settlement Class Member actually made a Paid Qualifying Repair, or (d) the Settlement Class Member made a Paid Qualifying Replacement, rather than repair, of their Dishwasher in response to a Diverter Seal Leak:
 - a. The submission of a valid model and serial number is sufficient documentary proof of the date of manufacture.
 - b. For purposes of claims to receive reimbursements for Paid Qualifying Repairs, sufficient documentary proof that the claimant actually experienced a Diverter Seal Leak includes, but is not

limited to, service tickets, service estimates, and service receipts. If no such documentary proof is available, then the claimant shall provide a claim-form declaration, signed under oath, that the claimant experienced, within eight years after manufacture, a Diverter Seal Leak. If the Settlement Class Member does not provide documentary proof or a declaration, the Settlement Class Member will not be entitled to compensation.

- c. For purposes of claims to receive reimbursements for Paid Qualifying Repairs, sufficient documentary proof that the claimant experienced a Paid Qualifying Repair includes, but is not limited to, service tickets, service receipts, cancelled checks, and/or credit card statements. If the documentary proof is insufficient to demonstrate that (1) a Qualifying Repair occurred and (2) the Settlement Class Member paid some amount out of pocket for the Qualifying Repair, the Settlement Class Member will not be entitled to compensation.
- d. For purposes of claims to receive reimbursements for Paid Qualifying Replacements, sufficient documentary proof that the claimant actually experienced a Diverter Seal Leak before the Qualifying Replacement includes, but is not limited to, service tickets, service estimates, and/or service receipts. If the Settlement Class Member does not provide documentary proof, the Settlement Class Member will not be entitled to compensation. A claim form declaration of a Diverter Seal Leak is not sufficient documentary

proof of a Diverter Seal Leak for purposes of a Paid Qualifying Replacement claim.

- e. For purposes of claims to receive reimbursements for Paid Qualifying Replacements, sufficient documentary proof that the claimant experienced a Paid Qualifying Replacement includes, but is not limited to, purchase receipts, credit card statements, and warranty registrations. If the documentary proof is insufficient to demonstrate that a Qualifying Replacement occurred, including that it occurred within six weeks of the Diverter Seal Leak, the Settlement Class Member will not be entitled to compensation.

3. Settlement Class Members who meet and satisfy the threshold requirements of Section IV(A)(1)-(2) above will be entitled to reimbursement of certain out-of-pocket expenses constituting a Paid Qualifying Repair or Paid Qualifying Replacement, as follows:

- a. For purposes of claims to receive reimbursements for Paid Qualifying Repairs, the claimant will be entitled to a cash payment equivalent to a percentage of the Average Cost of Repair, as follows:
 - i. for Paid Qualifying Repairs in years one (1) or two (2) after manufacture, 100% of the Average Cost of Repair, or a cash rebate of \$200 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$150 for the purchase of a new Whirlpool-brand or Maytag-brand dishwasher;
 - ii. for Paid Qualifying Repairs in year three (3) after manufacture, 90% of the Average Cost of Repair, or a cash

- rebate of \$200 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$150 for the purchase of a new Whirlpool-brand or Maytag-brand dishwasher;
- iii. for Paid Qualifying Repairs in years four (4) or five (5) after manufacture, 80% of the Average Cost of Repair, or a cash rebate of \$200 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$150 for the purchase of a new Whirlpool-brand, or Maytag-brand dishwasher;
 - iv. for Paid Qualifying Repairs in year six (6) after manufacture, 60% of the Average Cost of Repair, or a cash rebate of \$175 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$125 for the purchase of a new Whirlpool-brand, or Maytag-brand dishwasher;
 - v. for Paid Qualifying Repairs in year seven (7) after manufacture, 30% of the Average Cost of Repair, or a cash rebate of \$100 for the purchase of a new KitchenAid-brand, Whirlpool-brand, or Maytag-brand dishwasher; or
 - vi. for Paid Qualifying Repairs in year eight (8) after manufacture, a cash rebate of \$100 for the purchase of a new KitchenAid-brand, Whirlpool-brand, or Maytag-brand dishwasher.
- b. For purposes of claims for Paid Qualifying Replacements, the claimant will be entitled to a cash payment equivalent to a percentage of the Average Cost of Repair, as follows:

- i. for Paid Qualifying Replacements in years one (1) or two (2) after manufacture, 100% of the Average Cost of Repair, or a cash rebate of \$200 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$150 for the purchase a new Whirlpool-brand or Maytag-brand dishwasher;
- ii. for Paid Qualifying Replacements in year three (3) after manufacture, 90% of the Average Cost of Repair, or a cash rebate of \$200 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$150 for the purchase a new Whirlpool-brand or Maytag-brand dishwasher;
- iii. for Paid Qualifying Replacements in years four (4) or five (5) after manufacture, 80% of the Average Cost of Repair, or a cash rebate of \$200 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$150 for the purchase a new Whirlpool-brand, or Maytag-brand dishwasher;
- iv. for Paid Qualifying Replacements in year six (6) after manufacture, 60% of the Average Cost of Repair, or a cash rebate of \$175 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$125 for the purchase a new Whirlpool-brand, or Maytag-brand dishwasher;
- v. for Paid Qualifying Replacements in year seven (7) after manufacture, 30% of the Average Cost of Repair, or a cash rebate of \$100 for the purchase a new KitchenAid-brand, Whirlpool-brand, or Maytag-brand dishwasher; or

- vi. for Paid Qualifying Replacements in year eight (8) after manufacture, a cash rebate of \$100 for the purchase a new KitchenAid-brand, Whirlpool-brand, or Maytag-brand dishwasher.

B. Compensation to Settlement Class Members for Future Diverter Seal Leaks.

Settlement Class Members who experience a documented Diverter Seal Leak after the Notice Date but within eight years after manufacture of their Dishwasher will be entitled reimbursement of certain out-of-pocket expenses incurred as a result of that Future Diverter Seal Leak. To be eligible for compensation for a Future Diverter Seal Leak, a Settlement Class Member must submit to the Settlement Administrator within 90 days of the Diverter Seal Leak:

1. A properly completed claim form showing a valid Dishwasher model and serial-number combination, together with documentary proof showing that the Settlement Class Member either purchased a Dishwasher new, or acquired a Dishwasher as part of the purchase or remodel of a home, or received as a gift, from a donor meeting those requirements, a new Dishwasher not used by the donor or by anyone else after the donor purchased the Dishwasher and before the donor gave the Dishwasher to the Settlement Class Member. Sufficient documentary proof includes, but is not limited to, purchase receipts, credit card statements, and warranty registrations. If no such documentary proof is available, then the claimant shall provide a claim-form declaration, signed under oath, that the claimant cannot locate sufficient documentary proof, and that the claimant meets the Settlement Class definition in Section I(JJ), above. If the Settlement Class

Member does not provide a valid model and serial number, the Settlement Class Member will not be entitled to compensation. Additionally, if the Settlement Class Member does not provide documentary proof, or does not provide a claim-form declaration, signed under oath, proving that the Settlement Class Member is a member of the Settlement Class, the Settlement Class Member will not be entitled to compensation.

2. The following forms of sufficient documentary proof that (a) after the Notice Date but within eight years of manufacture, (b) the Settlement Class Member's Dishwasher experienced a Diverter Seal Leak, and either (c) the Settlement Class Member actually paid some out-of-pocket cost for a Paid Qualifying Repair, or (d) the Settlement Class Member actually paid some out-of-pocket cost for a Paid Qualifying Replacement:

- a. The submission of a valid model and serial number is sufficient documentary proof of the date of manufacture.
- b. For purposes of claims to receive reimbursements for Paid Qualifying Repairs, sufficient documentary proof that the claimant actually experienced a Diverter Seal Leak includes, but is not limited to, service tickets, service estimates, and service receipts. If no such documentary proof is available, then the claimant shall provide a claim-form declaration, signed under oath, that the claimant experienced, after the Notice Date but within eight (8) years after manufacture, a Diverter Seal Leak. If the Settlement Class Member does not provide documentary proof or a declaration, the Settlement Class Member will not be entitled to compensation.

- c. For purposes of claims to receive reimbursements for Paid Qualifying Repairs, sufficient documentary proof that the claimant experienced a Paid Qualifying Repair includes, but is not limited to, service tickets, service receipts, cancelled checks, and credit card statements. If the documentary proof is insufficient to demonstrate that a Qualifying Repair occurred and the Settlement Class Member paid some amount out of pocket for the Qualifying Repair, the Settlement Class Member will not be entitled to compensation.
- d. For purposes of claims to receive reimbursements for Paid Qualifying Replacements, sufficient documentary proof that the claimant actually experienced a Diverter Seal Leak before the Qualifying Replacement includes, but is not limited to, service tickets, service estimates, and service receipts. If the Settlement Class Member does not provide documentary proof, the Settlement Class Member will not be entitled to compensation.
- e. For purposes of claims to receive reimbursements for Paid Qualifying Replacements, sufficient documentary proof that the claimant experienced a Paid Qualifying Replacement includes, but is not limited to, purchase receipts, credit card statements, and warranty registrations. If the documentary proof is insufficient to demonstrate that a Qualifying Replacement occurred, or occurred within six weeks of the Diverter Seal Leak, the Settlement Class Member will not be entitled to compensation.

3. Settlement Class Members who meet and satisfy the threshold requirements of Section IV(B)(1)-(2) above will be entitled to reimbursement of certain out-of-pocket expenses incurred as a result of the Future Diverter Seal Leak¹ and Paid Qualifying Repair or Paid Qualifying Replacement, as follows:
 - a. For purposes of claims to receive reimbursements for Paid Qualifying Repairs, the claimant will be entitled to a cash payment equivalent to a percentage of the Average Cost of Repair, or a cash rebate, as follows:
 - i. for Paid Qualifying Repairs in years one (1) or two (2) after manufacture, 100% of the Average Cost of Repair, or a cash rebate of \$200 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$150 for the purchase of a new Whirlpool-brand or Maytag-brand dishwasher;
 - ii. for Paid Qualifying Repairs in year three (3) after manufacture, 90% of the Average Cost of Repair, or a cash rebate of \$200 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$150 for the purchase of a new Whirlpool-brand or Maytag-brand dishwasher;
 - iii. for Paid Qualifying Repairs in years four (4) or five (5) after manufacture, 80% of the Average Cost of Repair, or a cash rebate of \$200 for the purchase a new KitchenAid-brand

¹ Because the class period ends with Dishwasher production through December 31, 2017, the most recently-manufactured Dishwashers will be at least four (4) years old as of the anticipated notice date in 2021.

- dishwasher, or a cash rebate of \$150 for the purchase a new Whirlpool-brand, or Maytag-brand dishwasher;
- iv. for Paid Qualifying Repairs in year six (6) after manufacture, 60% of the Average Cost of Repair, or a cash rebate of \$175 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$125 for the purchase a new Whirlpool-brand, or Maytag-brand dishwasher;
 - v. for Paid Qualifying Repairs in year seven (7) after manufacture, 30% of the Average Cost of Repair, or a cash rebate of \$100 for the purchase a new KitchenAid-brand, Whirlpool-brand, or Maytag-brand dishwasher; or
 - vi. for Paid Qualifying Repairs in year eight (8) after manufacture, a cash rebate of \$100 for the purchase a new KitchenAid-brand, Whirlpool-brand, or Maytag-brand dishwasher.
- b. For purposes of claims to receive reimbursements for Paid Qualifying Replacements, the claimant will be entitled to a cash payment equivalent to a percentage of the Average Cost of Repair, as follows:
- i. for Paid Qualifying Replacements in years one (1) or two (2) after manufacture, 100% of the Average Cost of Repair, or a cash rebate of \$200 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$150 for the purchase a new Whirlpool-brand or Maytag-brand dishwasher;

- ii. for Paid Qualifying Replacements in year three (3) after manufacture, 90% of the Average Cost of Repair, or a cash rebate of \$200 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$150 for the purchase a new Whirlpool-brand or Maytag-brand dishwasher;
- iii. for Paid Qualifying Replacements in years four (4) or five (5) after manufacture, 80% of the Average Cost of Repair, or a cash rebate of \$200 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$150 for the purchase a new Whirlpool-brand, or Maytag-brand dishwasher;
- iv. for Paid Qualifying Replacements in year six (6) after manufacture, 60% of the Average Cost of Repair, or a cash rebate of \$175 for the purchase a new KitchenAid-brand dishwasher, or a cash rebate of \$125 for the purchase a new Whirlpool-brand, or Maytag-brand dishwasher;
- v. for Paid Qualifying Replacements in year seven (7) after manufacture, 30% of the Average Cost of Repair, or a cash rebate of \$100 for the purchase a new KitchenAid-brand, Whirlpool-brand, or Maytag-brand dishwasher; or
- vi. for Paid Qualifying Replacements in year eight (8) after manufacture, a cash rebate of \$100 for the purchase a new KitchenAid-brand, Whirlpool-brand, or Maytag-brand dishwasher.

4. If any Settlement Class Member previously has received from Whirlpool any form of compensation for a Diverter Seal Leak with the claimant's Dishwasher (*e.g.*, a policy-adjust cash payment, a partial refund, a discount off the regular price of a new dishwasher, a coupon applicable to the purchase of a new dishwasher that was redeemed), any compensation to which the claimant would otherwise be entitled shall be reduced as follows: (i) for any policy-adjust cash payment, cash refund, or other cash payment, the amount of that payment; (ii) for any specified dollar-discount off the price of any new dishwasher, the specified dollar amount; (iii) for any specified percentage-discount off the price of any new dishwasher, the dollar amount determined by applying that percentage to the regular, then-prevailing price of that product; and (iv) for any coupon redeemed for the purchase of a new dishwasher, the dollar amount specified on the face of the coupon redeemed. Claimants who did not receive such compensation will be required to check an eligibility box on their claim form attesting that they did not receive any of these customer-satisfaction benefits from Whirlpool related to a Diverter Seal Leak with their Dishwasher.
5. No claimant who received from Whirlpool either a full refund of the purchase price he or she paid for the Dishwasher or a free exchange of the Dishwasher for a new dishwasher of any model will be entitled to any payment or other compensation under the terms of this Term Sheet, unless the claimant paid for a Qualifying Repair in either the original or new Dishwasher.

6. Settlement Class Members will have up to 180 days after the Notice Date to submit a claim form for a settlement payment for a Diverter Seal Leak that occurred prior to the Notice Date. Settlement Class members who elect a rebate benefit shall be required to register for the rebate program within 180 days after the Notice Date. The Settlement Administrator shall then issue a validly-requested rebate form.
7. All claims for Future Diverter Seal Leaks, i.e., those that occur on or after the Notice Date, must be submitted within 90 days after the claimant's first experience of a Diverter Seal Leak. Settlement Class members who elect a rebate benefit shall be required to register for the rebate program within 90 days after the claimant's first experience of a Diverter Seal Leak. The Settlement Administrator shall then issue a validly-requested rebate form.
8. Settlement Class Members shall be required to mail or email to the Settlement Administrator their completed rebate form and proof of purchase no later than 120 days after receipt of the rebate form.
9. The rebate relief provided for in this Agreement shall apply only to purchases of eligible products made on or after the date the Settlement Class Member makes a claim for rebate benefits under this Agreement. The rebate amount shall be calculated on the best negotiated retail purchase price (not including sales taxes, delivery fees, or installation charges) of eligible products. The rebate form to be provided to Settlement Class Members who file Valid Claims is transferable, stackable, and will be redeemable by mail. All rebate forms provided to Settlement Class Members shall contain a unique authorization code, which code the Settlement Administrator shall

honor only one time to prevent fraudulent claims that seek to re-use the same authorization code.

V. SETTLEMENT ADMINISTRATION AND NOTICE EXPENSES

- A. All notice, publication and claims administration activities shall be carried out exclusively by the Settlement Administrator, including the evaluation of documentary proof submitted by Settlement Class Members.
- B. Whirlpool agrees to pay for reasonable Administration and Notice Expenses, and shall enter into a separate agreement with the Settlement Administrator to pay those expenses. Whirlpool shall not be responsible for any additional administration expenses that may be incurred by Plaintiffs or Class Counsel in (a) responding to inquiries about the Agreement, the Settlement, or the Lawsuits; (b) defending the Agreement or the Settlement against any challenge to it; or (c) defending against any challenge to any order or judgment entered pursuant to the Agreement, unless otherwise specifically agreed.
- C. The Settlement Administrator shall process all claims made by Settlement Class Members who experienced a Diverter Seal Leak before or after the Notice Date, including the evaluation of the documentary proof submitted by such Settlement Class Members to substantiate a Qualifying Repair or Qualifying Replacement subject to relief as set forth in this Agreement.
- D. Before denying any claim on the basis of insufficient documentary proof, the Settlement Administrator shall send by email if available or first-class United States Mail if email is not available a written notice of deficiency to the Settlement Class Member identifying the insufficient proof that may cause the claim to be denied and giving the Settlement Class Member no more than 30 days to cure the

deficiency. Insufficient documentary proof shall be the only claim deficiency for which an opportunity to cure will be provided. Examples of insufficient documentary proof include illegible or incomplete documents. The absence of required documentary proof or incomplete or disqualifying claim form responses are not deficiencies for which an opportunity to cure will be provided.

- E. If any Settlement Class Member disputes the Settlement Administrator's denial of a claim for any reason, the Settlement Administrator shall send the claim to Whirlpool for Whirlpool to determine the claim's validity. Whirlpool's determination shall be final and binding unless Class Counsel, within 30 days of notification of Whirlpool's determination, contests Whirlpool's determination by first attempting to resolve the claim in dispute directly with Defendant's counsel and, if those efforts are unsuccessful, by presenting the matter for determination by the Court within 30 days of the completion of Whirlpool's and Class Counsel's conferral.
- F. The Parties agree that Angeion Group will serve as the Settlement Administrator, subject to the Court's approval.
- G. With the exception of decisions regarding claims adjudication, for which the respective rights and responsibilities of Whirlpool, Class Counsel, the Settlement Administrator, and the Court are addressed elsewhere in this Agreement, all decisions regarding notice and settlement administration shall be made jointly between Whirlpool and Class Counsel. Class Counsel and counsel for Whirlpool shall have the ability to communicate with the Settlement Administrator without the need to include each other in each of those communications. Disputes, if any, shall be resolved by the Court.

- H. The Settlement Administrator will provide the Summary Notice by email to all members of the Settlement Class for whom valid email addresses are known to Whirlpool. Subject to approval by the Settlement Administrator, for all Settlement Class Members for whom Whirlpool only has a physical mailing address, or whose email notice bounced back from an undeliverable address, the Settlement Administrator will utilize a reverse look-up service to obtain additional email addresses, and email the Summary Notice to all members of the Settlement Class for whom an email can be identified through the reverse look-up service. The Settlement Administrator will mail a Summary Notice to each member of the Settlement Class for whom an address can be found in Whirlpool's databases but who do not have an identifiable email address. The Settlement Administrator will perform a national change of address search and forward notice packages that are returned by the U.S. Postal Service with a forwarding address.
- I. The Settlement Administrator also will provide publication notice to the Settlement Class using appropriate media outlets, and media notices shall be approved by Whirlpool and Plaintiff's counsel before the notices are published.
- J. The Settlement Administrator will create a Settlement Website that will include all necessary and pertinent information for Settlement Class Members, including the Claim Form, the FAQ, and information relating to relevant deadlines. The Settlement Website will also permit Settlement Class Members to submit claims online, including uploading any necessary documentation. The Settlement Website will also include information that Whirlpool and Class Counsel jointly agree to post concerning the nature of the case and the status of the Settlement, including relevant pleadings such as the operative Complaint, papers in support of preliminary and

final approval of the Settlement, Class Counsel's Fee Petition, plus relevant orders of the Court.

- K. The Settlement Administrator will provide to Class Counsel and Whirlpool periodic status reports regarding claims.
- L. The Parties agree that the Summary Notice, FAQ, Publication Notice, Claim Form, and Settlement Website provide information sufficient to inform Settlement Class Members of the essential terms of this Agreement, appropriate means for obtaining additional information regarding the Agreement and the Lawsuits, appropriate information about the procedure for challenging or excluding themselves from the Settlement, if they should wish to do so, and appropriate means for and information about submitting a claim for compensation pursuant to the Settlement. The Parties also agree that the dissemination of notice of the Settlement in the manner specified in this Agreement and on the Settlement Website satisfies the notice requirements of due process and Rule 23 of the Federal Rules of Civil Procedure, subject to Court approval.
- M. The Parties will jointly request the Court to approve, in the Preliminary Approval Order, the method of notice described in this Agreement.
- N. As soon as practicable, but no later than 10 days after the Parties file this Agreement with the Court, Whirlpool shall comply with the notice provisions of the Class Action Fairness Act, 28 U.S.C. section 1715.

VI. PROCEDURES FOR SETTLEMENT APPROVAL

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

B. Preliminary Approval

1. As soon as practicable, the Parties shall jointly move the Court for preliminary approval of the Settlement; for authorization to publish the Publication Notice and to disseminate the Summary Notice contemplated by this Agreement to all members of the Settlement Class; and for a stay of all proceedings in the consolidated Lawsuits, except in connection with this Agreement as set forth herein (the “Motion”). The Motion shall include the proposed Preliminary Approval Order, proposed forms of the Summary Notice, Publication Notice, and Claim Form, and the methods and proposed dates of their dissemination to the Settlement Class, and the proposed schedule through final approval of the Agreement.
2. The deadlines established in the proposed Preliminary Approval Order are as follows:
 - a. 42 days after entry of the Preliminary Approval Order: The Settlement Administrator shall mail and email the Summary Notice.
 - b. 49 days after entry of the Preliminary Approval Order: The Settlement Administrator shall publish the Publication Notice.
 - c. 63 days after entry of the Preliminary Approval Order: The Settlement Administrator shall file with the Court a declaration of compliance with the notice requirements, including a statement of the number of persons to whom the Summary Notice was emailed and mailed.

- d. 70 days after entry of the Preliminary Approval Order: Class Counsel shall file their Fee Petition, which shall also be posted on the settlement website.
- e. 91 days after entry of the Preliminary Approval Order: Any objectors shall file objections, together with all supporting memoranda and other material, with the Court, and serve that filing on Class Counsel and counsel for Defendant. This includes objections to: certification of the Settlement Class, the designation of Plaintiffs as Class Representatives, the appointment of Class Counsel, the Settlement, the Agreement, and Class Counsel's Fee Petition. Objections must comply with Section VII of this Agreement to be valid.
- f. 91 days after entry of the Preliminary Approval Order: Requests by Class Members to be excluded from the Settlement must be either postmarked by the U.S. Postal Service (in the case of mailed exclusions) or actually received by the Settlement Administrator (in the case of electronically submitted exclusions). Exclusion requests must comply with Section VII of this Agreement to be valid.
- g. 91 days after entry of the Preliminary Approval Order: Any Person or attorney seeking to appear at the Fairness Hearing must file with the Court and serve on Class Counsel and counsel for Defendant an entry of appearance in the consolidated Lawsuits and notice of intention to appear at the Fairness Hearing. This includes any person objecting to any or all of the certification of the Settlement Class,

designation of Plaintiffs as Class Representatives, appointment of Class Counsel, the Settlement, the Agreement, or Class Counsel's Fee Application. This notice of intention to appear must comply with Section VII of this Agreement to be valid.

- h. 105 days after entry of the Preliminary Approval Order: The Settlement Administrator must file a list of all exclusions with the Court.
- i. 105 days after entry of the Preliminary Approval Order: Class Counsel shall file their reply, if any, in support of their Fee Application.
- j. 105 days after entry of the Preliminary Approval Order: Class Counsel shall file the proposed Final Approval Order and memorandum in support of Final Approval. Defendant may separately file a memorandum in support of Final Approval by this deadline.
- k. 140 days after entry of the Preliminary Approval Order: The Court, at its convenience, will hold the Fairness Hearing.
- l. 180 days after entry of the Preliminary Approval Order: Claims Deadline: All claims by Settlement Class Members to the Settlement Administrator for benefits, except as otherwise provided in Section IV(B) of this Agreement, shall be postmarked by the U.S. Postal Service (in the case of mailed Claim Forms) or received (in the case of electronic Claim Forms). Claims received after this date shall not be Valid Claims. The Claims Deadline is a material term of the

Settlement, without which Defendant would not have entered into this Agreement.

- m. For the purpose of computing deadlines, the Parties incorporate Federal Rule of Civil Procedure 6(a)(1).

C. Final Approval

1. At the Fairness Hearing, the Parties will jointly request the Court to enter the Final Approval Order, which (i) grants final approval of the certification of the Settlement Class, designation of the Class Representatives, and designation of Class Counsel, all as conditionally approved in the Preliminary Approval Order; (ii) grants final approval to the Settlement and this Agreement as fair, reasonable, and adequate to the Settlement Class; (iii) provides for the release of all Released Claims and enjoins Settlement Class Members from asserting, filing, maintaining, or prosecuting any of the Released Claims in the future; (iv) orders the dismissal with prejudice of all claims, causes of action, and counts alleged in the Lawsuits, and incorporates the releases and covenant not to sue stated in this Agreement; (v) authorizes the payment by Whirlpool of claims approved by the Settlement Administrator as Valid Claims in accordance with the terms of the Agreement; and (vi) 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) Service Awards as set forth herein; and (2) attorney fees and costs to Class Counsel consistent with this Agreement.

VII. REQUESTS FOR EXCLUSION & OBJECTIONS

- A. Any Class Member shall have the right to be excluded by providing a written request postmarked no later than 91 days following the entry of the Preliminary Approval Order, which deadline shall be set forth in the Summary Notice, FAQ, and Publication Notice. These Notices shall provide instructions to Class Members who wish to exclude themselves from the Settlement Class regarding the Exclusion Procedure that must be followed to be excluded from the Settlement Class. Each Class Member wishing to be excluded from the settlement shall request from the Settlement Administrator a Request for Exclusion where the Class Member shall include their name, email address, and mailing address together with the model number and serial number of their Class Dishwasher. To be valid, Requests for Exclusion must include all of the information listed above, must be individually signed by each Class Member wishing to be excluded, and must be submitted to the Settlement Administrator individually. The Settlement Administrator shall assign a unique identifier to each properly-submitted Request for Exclusion to individually track those individuals who shall be reported to the Court as having been excluded from the Settlement Class.
- B. Within 7 days after the Court-ordered Exclusion deadline, the Settlement Administrator shall provide to counsel for Defendant and Class Counsel a list of the names and addresses of the members of the Settlement Class who have requested to be excluded.
- C. If the number of Class Members who properly request exclusion totals 10,000 or more, Whirlpool, in its sole option, shall have the right to withdraw from the settlement and terminate this Agreement.

- D. The Notices also shall state that any Class Member who wishes to appear to oppose the reasonableness and fairness of the Settlement at the Fairness Hearing must file with the Court an objection in writing, stating the basis of the objection. Objections must also be served on Class Counsel and counsel for Whirlpool by the stated deadline. Any objections must include (i) the Class Member's full name and current address and telephone number; (ii) the model number and serial number of the Class Dishwasher the Class Member owns or owned; (iii) a description of all of the Class Member's objections, the specific reasons therefore, and any and all supporting papers, including, without limitation, all briefs, written evidence, and declarations; and (iv) the Class Member's signature.
- E. Class Members submitting objections who wish to appear either personally or through counsel at the Fairness Hearing and present their objections to the Court orally must include a written statement of intent to appear at the Fairness Hearing in the manner prescribed by the Notice. Only Class Members who specify in their objections that they intend to appear personally or through counsel at the Fairness Hearing will have the right to present their objections orally at the Fairness Hearing. Settlement Class Members who do not submit timely written objections will not be permitted to present their objections at the Fairness Hearing.
- F. Any Class Member who does not so object by the timely filing and delivery of an objection (pursuant to the procedures set forth in the Notice) to the Court and to counsel for the Parties, shall be deemed to have waived, and shall forever be foreclosed from raising, any objection to the Settlement.

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

- A. As part of this Settlement, Defendant has agreed to pay Class Counsel reasonable attorney fees and costs together with service awards to Plaintiffs, without reducing the amount of money available to pay Valid Claims submitted by Settlement Class Members or the amount of money to be paid for work performed by the Settlement Administrator.
- B. The amount of attorney fees and costs to be paid to Class Counsel shall be determined by the Court. After the Court preliminarily approves the Settlement, Class Counsel may submit a Fee Application to the Court. Class Counsel agree to request, and Defendant agrees not to oppose, up to \$1,500,000.00 as the reasonable amount of attorney fees and costs and service awards to be paid by Defendant to Class Counsel and Plaintiffs, subject to Court approval. Class Counsel shall not seek and Defendant shall not pay supplemental attorney fees or costs for any work performed in the Lawsuits, the settlement of them, the administration of the Settlement, or in any appeal, after the date of the Fee Application.
- C. Defendant shall pay the Court-approved amount of attorney fees and costs and service awards, up to \$1,500,000.00, in the form of one or more checks or wire transfers delivered into trust accounts to be identified by Class Counsel, within 7 days after the Effective Date. Class Counsel shall provide to Defendant's counsel in a timely manner all wiring and account information necessary to enable Whirlpool to make such deposits within the time required. Under no circumstances will Defendant pay more than \$1,500,000.00 to Class Counsel and Plaintiffs for attorney fees and costs and service awards.

- D. Defendant shall not oppose a Service Award of \$2,500.00 each to Elizabeth Cleveland, Amy Larchuk, Thomas McCormick, Christopher Redmon, and Dhaval Shah in recognition of their representation of the Settlement Class. This agreed amount will be subject to Court approval and will be included in Class Counsel's Fee Petitions.
- E. Class Counsel shall have the authority to determine and make an allocation of their respective awards of attorney fees and costs to any counsel representing any of the Settlement Class 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 those counsel. Any disputes regarding such allocations shall be resolved by the Court.
- F. 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. 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 sought by Class Counsel, the remaining provisions of this Agreement shall remain in full force and effect.

IX. RELEASES

- A. Plaintiffs and all Settlement 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, including all claims that Plaintiffs or Settlement 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 from the beginning of time up to and including the Effective Date of this Agreement, and that arise from or relate to any of the defects, malfunctions, or inadequacies of the Class Dishwashers that are alleged or could have been alleged in the Lawsuits arising out of or relating to the diverter motors, diverter shafts, diverter shaft seals, and sump assemblies featuring those parts that are alleged to have the potential to result in a leak, or to any act, omission, damage, matter, cause, or event whatsoever arising out of the initiation, defense, or settlement of the Lawsuits or the claims or defenses asserted in the Lawsuits, including without limitation all claims for out-of-pocket expense, diminution-in-value, benefit-of-the-bargain, cost-of-repair, cost-of-replacement, statutory, or premium-price damages or restitution (the “Released Claims”).
- B. This release, however, will not extinguish, and the Released Claims do not include, claims for personal injury or for damage to property other than to the Class Dishwasher itself.

- C. By executing this Agreement, the Parties acknowledge that, upon entry of the Final Approval Order by the Court, the Lawsuits shall be dismissed with prejudice, an order of dismissal with prejudice shall be entered, and all Released Claims shall thereby be conclusively settled, compromised, satisfied, and released as to the Releasees. The Final Approval Order shall provide for and effect the full and final release, by Plaintiffs and all Settlement Class Members, of all Released Claims.
- D. Plaintiffs (and not other Settlement Class members) also agree to participate in good faith, to the extent possible, to support any of the Releasees' efforts to resolve (whether by a negotiated settlement or otherwise) any claims or causes of action brought against Releasees, including any action for contribution or indemnity, that may hereafter at any time be asserted against any of the Releasees by Plaintiffs, or by anyone subrogated to the Plaintiffs' rights in any capacity, and that arise from any loss, injury, property damage, or expense, including, but not limited to, all incidental and consequential damages, lost wages, lost income, lost profits, loss of use, and loss of or damage to any items in the Class Dishwasher arising out of or relating to the diverter motors, diverter shafts, diverter shaft seals, and sump assemblies featuring those parts that are alleged to have the potential to result in a leak.
- E. Future or Unknown Harm and Waiver of Statutory Rights: It is possible, although unlikely, that other injuries, damages, losses, or future consequences or results of the sale, purchase, use, non-use, need for repair, or repair of the Class Dishwashers are not currently known by Plaintiffs and Settlement Class Members and will develop or be discovered. The Release in this Agreement, and the compromise on which it is based, is expressly intended to cover and include a release by Plaintiffs

and each Settlement Class Member of all such future injuries, damages, losses, or future consequences or results, excluding any future injury to person or to property other than the Class Dishwasher itself, and including a release and waiver of all rights, causes of actions, claims, and lawsuits against the Releasees that may exist or arise in the future because of such future injuries, damages, losses, or future consequences or results of known or unknown injuries arising out of or relating to the diverter motors, diverter shafts, diverter shaft seals, and sump assemblies featuring those parts that are alleged to have the potential to result in a leak.

- F. Plaintiffs and each Settlement Class Member hereby expressly, knowingly, and voluntarily, waive any right conferred on him or her by Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Plaintiffs and Settlement Class Members expressly waive and relinquish all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code and of all similar laws of other States, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, Plaintiffs and the Settlement Class Members hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims, known or

unknown, suspected or unsuspected, that they have against Releasees. In furtherance of such intention, the release herein given by Plaintiffs and the Settlement Class Members to the Releasees shall be and remain in effect as a full and complete general release of all claims arising out of or relating to the diverter motors, diverter shafts, diverter shaft seals, and sump assemblies featuring those parts that are alleged to have the potential to result in a leak notwithstanding the discovery of existence of any such additional or different claims or facts.

- G. Plaintiffs and the Settlement Class Members expressly consent that this release shall be given full force and effect according to each of its terms and provisions, including those relating to unknown and unspecified claims, injuries, demands, rights, lawsuits, or causes of action as referenced above. Plaintiffs and the Settlement Class Members acknowledge and agree that this waiver is an essential and material term of this release and the compromise settlement that led to it, and that without this waiver the compromise settlement would not have been accomplished. Plaintiffs have been advised by their attorneys with respect to this waiver and, being of competent mind, understand and acknowledge its significance.
- H. Each Party hereto expressly accepts and assumes the risk that if facts with respect to matters covered by this Agreement are found hereafter to be other than or different from the facts now believed or assumed to be true, this Agreement shall nevertheless remain effective. It 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.

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

X. COVENANT NOT TO SUE

Plaintiffs (i) covenant and agree that neither they, nor anyone authorized to act on their 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) waive and disclaim any right to any form of recovery, compensation, or other remedy in any such action or proceeding brought by or on behalf of them or any putative class of Class Dishwasher owners arising out of or relating to the diverter motors, diverter shafts, diverter shaft seals, and sump assemblies featuring those parts that are alleged to have the potential to result in a leak; and (iii) agrees that this Agreement shall be a complete bar to any such action by Plaintiffs.

XI. REPRESENTATIONS AND WARRANTIES

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

- A. To the extent permitted by law and the applicable rules of professional conduct, Class Counsel represent and warrant that they do not have any present intention to file any class action lawsuit in any jurisdiction, including other states or countries,

relating to the claims released in this case. Class Counsel further represent and warrant that they will not contact any other attorney or law firm to discuss or encourage pursuing litigation related to the claims released in this case. The foregoing shall not restrict the ability of Class Counsel to fulfill their responsibilities to absent Settlement Class Members in connection with the settlement proceedings in the Lawsuits.

- B. To the extent permitted by law and the applicable rules of professional conduct, the Settlement is conditioned on the Class Representatives' and Class Counsel's agreement not to cooperate with any other lawyers who are litigating or who wish to litigate the claims released in this case. The foregoing shall not restrict the ability of Class Counsel to fulfill their responsibilities to absent Settlement Class Members in connection with the Settlement proceedings, nor shall it restrict Class Counsel's responsibility to respond to orders of any court or other legal obligation.
- C. Each Party has had the opportunity to receive, and has received, independent legal advice from his, her, or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income-tax consequences of this Agreement, and fully understands and accepts the terms of this Agreement.
- D. Plaintiffs represent and warrant that no portion of any claim, right, demand, action, or cause of action against any of the Releasees that Plaintiffs have or may have arising out of the Lawsuits or pertaining to the design, manufacture, testing, marketing, purchase, use, sale, servicing, or disposal of the Class Dishwashers or otherwise referred to in this Agreement, and no portion of any recovery or settlement to which Plaintiffs may be entitled, have been assigned, transferred, or

conveyed by or for Plaintiffs in any manner; and no Person or entity other than Plaintiffs has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those of Plaintiffs themselves.

- E. None of the Parties relies or has relied on any statement, representation, omission, inducement, or promise of the other Party (or any officer, agent, employee, representative, or attorney for the other Party) in executing this Agreement, or in making the Settlement provided for herein, except as expressly stated in this Agreement.
- F. Each of the Parties has investigated the facts pertaining to the Settlement and this Agreement, and all matters pertaining thereto, to the full extent deemed necessary by that Party and his, her, or its attorneys.
- G. Each of the Parties has carefully read, knows, and understands the full contents of this Agreement and is voluntarily entering into this Agreement after having had the opportunity to consult with, and having in fact consulted with, his, her, or its attorneys.
- H. Each term of this Agreement is contractual and not merely a recital.

XII. NO ADMISSION OF LIABILITY

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

XIII. ADDITIONAL TERMS

- A. Extensions of Time: Unless otherwise ordered by the Court, the Parties may agree to reasonable extensions of time to carry out any of the terms of this Agreement and Settlement without needing Court approval, so long as all actions required by this Agreement are concluded prior to the close of the claims period 180 days after entry of the Preliminary Approval Order.
- B. Cooperation: The Parties agree that they will abide by this Agreement and do all such acts, and prepare, execute, and deliver all such documents, as may reasonably be required to carry out the stated objectives of this Agreement.
- C. Interpretation and Construction: Each Party has participated in the negotiation and drafting of all provisions of this Agreement, has had an adequate opportunity to read, review, and consider with his, her, or its own counsel the effect of the language of this Agreement, and has agreed to its terms. Accordingly, the legal maxim that “ambiguity shall be interpreted against the drafter” has no relevance to the interpretation or construction of this Agreement.
- D. Conditional Nature of Agreement:
1. At Plaintiffs’ option, expressed in written notice to Defendant’s counsel, this Agreement shall become null and void, and no obligation on the part of any of the Parties will accrue, if the Court materially alters any of the terms of this Agreement to the detriment of Plaintiffs or the Settlement Class, or fails to enter the Preliminary Approval Order or the Final Approval Order in substantially the form submitted by the Parties.
 2. At Defendant’s option, expressed in written notice to Class Counsel, this Agreement shall become null and void, and no obligation on the part of any

of the Parties will accrue, if (a) the Court declines to certify the Settlement Class as provided in the Preliminary Approval Order; or (b) the Court materially alters any of the terms of this Agreement to the detriment of Defendant, or fails to enter the Preliminary Approval Order or the Final Approval Order in substantially the form submitted by the Parties.

- E. Severance/Severability: With the exception of the provision for attorney fees and costs to Class Counsel and Service Awards to Plaintiffs, none of the terms of this Agreement is severable from the others. If the Court or an appellate court should rule that any term is void, illegal, or unenforceable for any reason, however, Defendant, in its sole discretion, and Plaintiffs, in their sole discretion (but acting in accord with their duties and obligations as Class Representatives), may elect to waive any such deficiency and proceed with the Settlement under the terms and conditions ultimately approved by the Court.
- F. Return or Destruction of Confidential Documents: Within thirty (30) days of the Effective Date, the Parties agree to return to the producing Party or destroy (with written confirmation of such destruction) all documents marked confidential pursuant to the Protective Order entered in the Lawsuits.
- G. Governing Law: With the exception of the Court's determination of a reasonable award of attorney fees and costs to Class Counsel, which the Parties agree shall be governed by federal law, this Agreement has been, and shall for all purposes be deemed to have been, negotiated, executed, and delivered within the State of Michigan, and the rights and obligations of the Parties shall be construed and enforced in accordance with, and governed by, the laws of the State of Michigan.

- H. Entire Agreement of the Parties: This Agreement constitutes and comprises the entire agreement between the Parties with respect to the subject matter hereof. It supersedes all prior and contemporaneous oral and written agreements and discussions. It may be amended only by an agreement in writing, signed by the Parties.
- I. Binding on Agents, Successors, and Assigns: This Agreement is binding on, and shall inure to the benefit of, the Parties and their respective agents, employees, representatives, officers, directors, subsidiaries, assigns, heirs, executors, administrators, insurers, and predecessors and successors in interest.
- J. Draft by All Parties: Each Party has participated in, and in any construction to be made of this Agreement shall be deemed to have equally participated in, the negotiating, drafting, and execution of this Agreement.
- K. No Extension of Whirlpool's Written Warranties: In connection with this Agreement and Settlement, Whirlpool has not agreed to any extension of its written warranties for the Class Dishwashers. The only Settlement benefits are those expressly described in this Agreement.
- L. Court Approval: The parties agree to seek approval of this proposed Settlement in the United States District Court for the District of Minnesota in *Cleveland v. Whirlpool Corp.*, Case No. 0:20-cv-01906-WMW-KMM (D. Minn.).

Dated: September ___, 2021

PLAINTIFF ELIZABETH CLEVELAND

PLAINTIFF AMY LARCHUK

PLAINTIFF THOMAS MCCORMICK

PLAINTIFF CHRISTOPHER REDMON

PLAINTIFF DHAVAL SHAH

WHIRLPOOL CORPORATION

By: _____
Authorized Representative

READ AND APPROVED:

By: Harper Segui
Harper Segui
Class Counsel

By: Rachel Soffin
Rachel Soffin
Class Counsel

By: Galen Bellamy
Galen Bellamy
Counsel for Defendant

Dated: September ___, 2021

PLAINTIFF ELIZABETH CLEVELAND

PLAINTIFF AMY LARCHUK

PLAINTIFF THOMAS MCCORMICK

PLAINTIFF CHRISTOPHER REDMON

PLAINTIFF DHAVAL SHAH

WHIRLPOOL CORPORATION

By: *Emily Maki-Rusk*
Authorized Representative

Dated: October __, 2021

Elisabeth Cleveland

PLAINTIFF ELIZABETH CLEVELAND

PLAINTIFF AMY LARCHUK

PLAINTIFF THOMAS MCCORMICK

PLAINTIFF CHRISTOPHER REDMON

PLAINTIFF DHAVAL SHAH

WHIRLPOOL CORPORATION

By: _____
Authorized Representative

READ AND APPROVED:

By: _____
Harper Segui
Class Counsel

By: _____
Rachel Soffin
Class Counsel

By: _____
Galen Bellamy
Counsel for Defendant

Signature: Elisabeth Cleveland
Elisabeth Cleveland (Oct 26, 2021 22:40 CDT)

Email: emcleveland2@hotmail.com

Dated: October __, 2021

PLAINTIFF ELIZABETH CLEVELAND

Amy Larchuk

Amey Larchuk (001) 202 1511 4111

PLAINTIFF AMY LARCHUK

PLAINTIFF THOMAS MCCORMICK

PLAINTIFF CHRISTOPHER REDMON

PLAINTIFF DHAVAL SHAH

WHIRLPOOL CORPORATION

By: _____
Authorized Representative

Dated: October ___, 2021

PLAINTIFF ELIZABETH CLEVELAND

PLAINTIFF AMY LARCHUK

Thomas McCormick

PLAINTIFF THOMAS MCCORMICK

PLAINTIFF CHRISTOPHER REDMON

PLAINTIFF DHAVAL SHAH

WHIRLPOOL CORPORATION

By: _____
Authorized Representative

READ AND APPROVED:

By: _____
Harper Segui
Class Counsel

By: _____
Rachel Soffin
Class Counsel

By: _____
Galen Bellamy
Counsel for Defendant

Signature:  _____
Thomas McCormick (Oct 22, 2021 12:16 PDT)
Email: tmccormick8612@gmail.com

Dated: October __, 2021

PLAINTIFF ELIZABETH CLEVELAND

PLAINTIFF AMY LARCHUK

PLAINTIFF THOMAS MCCORMICK

Christopher Redmon

PLAINTIFF CHRISTOPHER REDMON

PLAINTIFF DHAVAL SHAH

WHIRLPOOL CORPORATION

By: _____
Authorized Representative

READ AND APPROVED:

By: _____
Harper Segui
Class Counsel

By: _____
Rachel Soffin
Class Counsel

By: _____
Galen Bellamy
Counsel for Defendant

Signature:  _____
Christopher Redmon (Oct 26, 2021 12:53 CDT)

Email: redmonct@gmail.com

Dated: October __, 2021

PLAINTIFF ELIZABETH CLEVELAND

PLAINTIFF AMY LARCHUK

PLAINTIFF THOMAS MCCORMICK

PLAINTIFF CHRISTOPHER REDMON

Dhaival Shah

PLAINTIFF DHAIVAL SHAH

WHIRLPOOL CORPORATION

By: _____
Authorized Representative

READ AND APPROVED:

By: _____
Harper Segui
Class Counsel

By: _____
Rachel Soffin
Class Counsel

By: _____
Galen Bellamy
Counsel for Defendant

Signature: B. D. Shah
B.D.Shah (Oct 29, 2021 10:01 PDT)

Email: supermom650@gmail.com

Litigation Settlement

WPL-GN

Instructions

Claim Form - Instructions**Instructions for Completing the Enclosed Claim Form**

The Parties have reached a settlement agreement in a class action lawsuit concerning Plaintiffs' allegations that certain Whirlpool-manufactured dishwashers built from 2010-2017 can be susceptible to diverter shaft seal leaks, which may cause the diverter motor to malfunction and in some instances result in water leaking onto the floor (a "Diverter Seal Leak"). If you believe you are a member of this Class, you must complete and submit the enclosed Claim Form online or by U.S. Mail at the addresses provided below. Detailed information about qualifying "Class Dishwashers," as well as benefits available under the terms of the settlement, can be found at [www.WEBSITE.com].

WEB: [www.WEBSITE.com]

MAIL: *Cleveland v. Whirlpool Corp.*
Class Action Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

Important Deadlines: Claim Forms for Past Diverter Seal Leaks must be submitted online or postmarked [180 DAYS FROM ORDER OF PRELIM APPROVAL]. Claim Forms for Future Diverter Seal Leaks, for repairs or replacements occurring **after** [DATE], must be submitted online or postmarked **within 90 days** of any Future Diverter Seal Leak occurring.

Potential Benefit: If you experienced or experience a Diverter Seal Leak within eight years of your Class Dishwasher's date of manufacture and you incurred documented, out-of-pocket expenses to repair or replace your Class Dishwasher due to the Diverter Seal Leak, you may be eligible for a rebate or reimbursement up to \$225 as follows:

- \$225.00 cash reimbursement, or \$200 cash rebated on a KitchenAid dishwasher or \$150 cash rebated on a Maytag or Whirlpool dishwasher, for a Diverter Seal Leak occurring within the second (2nd) years following the date of manufacture;
- \$202.50 cash reimbursement, or \$200 cash rebated on a KitchenAid dishwasher or \$150 cash rebated on a Maytag or Whirlpool dishwasher, for a Diverter Seal Leak occurring within the third (3rd) year following the date of manufacture;
- \$180.00 cash reimbursement, or \$200 cash rebated on a KitchenAid dishwasher or \$150 cash rebated on a Maytag or Whirlpool dishwasher, for a Diverter Seal Leak occurring within the fourth (4th) or fifth (5th) years following the date of manufacture;
- \$135.00 cash reimbursement, or \$175 cash rebated on a KitchenAid dishwasher or \$125 cash rebated on a Maytag or Whirlpool dishwasher, for a Diverter Seal Leak occurring within the sixth (6th) year following the date of manufacture;
- \$67.50 cash reimbursement, or \$100 cash rebated on a KitchenAid, Maytag or Whirlpool dishwasher, for a Diverter Seal Leak occurring within the seventh (7th) year following the date of manufacture; or
- \$100 cash rebated on a KitchenAid, Maytag or Whirlpool dishwasher for a Diverter Seal Leak occurring within the eighth (8th) year following the date of manufacture.

Making a Claim: To make a claim for a Past Diverter Seal Leak you must (1) complete this entire Claim Form (pages 2 through 5), (2) attach copies of all required documentary proof, and (3) submit the completed Claim Form and attached documentation by U.S. Mail or online at [www.WEBSITE.com] [180 DAYS FROM ORDER OF PRELIM APPROVAL]. To make a claim for a Future Diverter Seal Leak you must (1) complete this entire Claim Form (pages 2 through 5), (2) attach copies of all required documentary proof, and (3) submit the completed Claim Form and attached documentation by U.S. Mail or online at [www.WEBSITE.com] **within 90 days** of the Future Diverter Seal Leak occurring.

*If you are making claims for more than one Class Dishwasher, please complete a separate Claim Form for each Class Dishwasher.

**If you have questions about completing the Claim Form, please visit [www.WEBSITE.com], or contact the Claims Administrator at [EMAIL] or [PHONE].

CLAIM FORM CHECKLIST

Before submitting this Claim Form, check that you have done the following:

- Completed all fields in Section A (Name and Contact Information).
- Provided the Model Number and Serial Number of your Dishwasher and answered every question in Section B, including by providing documentation where required.
- Signed the Certification in Section C.

Please keep a copy of your completed Claim Form for your records.

**Your claim must
be submitted
online or
postmarked by:
XXXX XX, XXXX**

**Whirlpool-Manufactured Dishwasher Diverter Seal
Class Action Litigation Settlement**

**WPL-GN
PART ONE**

Claim Form

SECTION A: NAME AND CONTACT INFORMATION

Provide your name and contact information below. It is your responsibility to notify the Claims Administrator of any changes to your contact information after submitting your Claim Form.

First Name

Last Name

Street Address

City

State

Zip Code

Phone Number

E-Mail Address

SECTION B: INFORMATION ABOUT YOUR CLASS DISHWASHER

Model Number of Class Dishwasher

Serial Number of Class Dishwasher

Note: To locate the model and serial #, look for the tag on the inside frame of your dishwasher door. If you cannot provide a valid model and serial number you are not entitled to any benefit.

1.	<p>Are you a resident of the United States or its territories who purchased, received as a gift, or acquired as part of the purchase or remodeling of a home, a new Class Dishwasher (i.e., a Whirlpool-manufactured dishwasher with a model and serial number listed as eligible for settlement benefits on [www.WEBSITE.com])?</p> <p>(If you answered “No” to this question, STOP; you are not entitled to any compensation or benefit under this Settlement.)</p>	<p style="text-align: center;">Question 1:</p> <p style="text-align: center;">Yes <input type="radio"/> No <input type="radio"/></p>
2.	<p>Do you have documentation showing that you purchased a Class Dishwasher new, or acquired a new Class Dishwasher as part of a purchase or remodel of a home, or received a new Class Dishwasher as a gift?</p> <p>(If you answered “Yes” to this question, gather and prepare to upload or mail your documents, and skip to Question 4. If you answered “No” to this question, proceed to Question 3.)</p> <p>If you answered “Yes” you MUST gather and upload or mail your documents or you will not be entitled to any compensation or benefit under this Settlement.</p>	<p style="text-align: center;">Question 2:</p> <p style="text-align: center;">Yes <input type="radio"/> No <input type="radio"/></p>
3.	<p>DECLARATION: I declare under penalty of perjury of the laws of the United States that I have searched for but am unable to find documentary proof, but that I qualify for membership in the class because I either purchased a Class Dishwasher new, acquired a new Class Dishwasher as part of a purchase or remodel of a home, or received a new Class Dishwasher as a gift.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Signature Date</p>	<p>If you were unable to sign the Declaration to the left, STOP; you are not entitled to any benefit. If you signed the Declaration, PROCEED TO QUESTION 4.</p>
4.	<p>Was your Class Dishwasher for personal or household use?</p> <p>(If you answered No to this question, STOP; you are not entitled to any compensation or benefit under this Settlement.)</p>	<p style="text-align: center;">Question 4:</p> <p style="text-align: center;">Yes <input type="radio"/> No <input type="radio"/></p>
5.	<p>Have you previously received from Whirlpool any form of compensation or customer-satisfaction benefit or other goodwill for problems with your Class Dishwasher (e.g., a free or discounted out-of-warranty repair, a free gift card, a cash payment, a partial refund of the Dishwasher’s purchase price, a gift of a new product, a discount off the regular price of a new dishwasher, or any other product that you redeemed)?</p>	<p style="text-align: center;">Question 5:</p> <p style="text-align: center;">Yes <input type="radio"/> No <input type="radio"/></p> <p>If yes, provide the dollar amount of the benefit already received:</p> <p style="text-align: center;">\$ _____</p>
6.	<p>Do you have documentation showing that within eight years of the date of manufacture you paid out-of-pocket to repair or replace your Class Dishwasher in response to a Diverter Seal Leak, i.e., a leak through the diverter shaft seal and onto the diverter motor or onto the floor to the rear of the dishwasher?</p> <p>Examples of sufficient documentation for Question 6 include, but are not limited to, service tickets, service estimates, and service receipts that show you experienced this problem.</p>	<p style="text-align: center;">Question 6:</p> <p style="text-align: center;">Yes <input type="radio"/> No <input type="radio"/></p>

(If you answered "Yes" to this question, gather and prepare to upload or mail your documents. If you answered "No" to this question, **STOP**; you are not entitled to any compensation or benefit under this Settlement.)

If you answered "Yes" you MUST gather and upload or mail your documents or you will not be entitled to any compensation or benefit under this Settlement.

7. Of the potential benefits described above, do you wish to request cash reimbursed for eligible amounts you paid out-of-pocket to repair a Diverter Seal Leak, or do you wish to request cash rebated on the purchase of a new dishwasher? Select only one option or the other. If you select to have cash rebated on the purchase of a new dishwasher you will receive a rebate form with further instructions.

Question 7:
 Cash Reimbursement

 Cash Rebate

SECTION C: PAYMENT SELECTION

Please select **one** of the following payment options:

- PayPal** - Enter your PayPal email address: _____
- Venmo** - Enter the mobile number associated with your Venmo account: _____ - _____ - _____
- Zelle** - Enter the mobile number or email address associated with your Zelle account: _____
- Physical Check** - Payment will be mailed to the address provided above.

Final Instructions: Once you have completed this Claim Form and gathered all required documentary proof, **sign and date the Certification Statement**, below. You may then submit your completed Claim Form, including a copy of your documentary proof, online by email to [claims@WEBSITE.com], or U.S. Mail to the Settlement Administrator at the address printed on the Claim Form-Instructions. You may also complete your Claim Form online at [www.WEBSITE.com] and upload any supporting documentation, there. Please keep your original documentary proof, and send only copies to the Settlement Administrator. **If you fail to provide the requested information or if you do not upload or mail your documentary proof, then you will not be entitled to any compensation or benefit under this Settlement.**

SECTION D: CERTIFICATION STATEMENT

CERTIFICATION STATEMENT (*Please note that you will not be eligible to receive any settlement benefit unless you sign and date this statement.*): I declare under penalty of perjury of the laws of the United States that all information provided in this Claim Form is true and accurate.

Signature

Date

Print Name

Exhibit 2 -- Engineering Models in Production through 12/31/2017

Engineering Model

12093K210	13223N412	13699N410	IUD8010DS2	KDTE104DBL0	KUDE20FBBL0	WDF775SAYM3
12413N410	13223N413	13699N411	IUD8010DS3	KDTE104DBL1	KUDE20FBBL1	WDF775SAYW0
12413N411	13223N414	13699N412	IUD8500BX0	KDTE104DBL2	KUDE20FBSS0	WDF775SAYW1
12413N412	13229N410	14522N610	IUD8500BX1	KDTE104DSS0	KUDE20FBSS1	WDF775SAYW2
12723K310	13229N411	14522N611	IUD8555DX0	KDTE104DSS1	KUDE20FBWH0	WDF775SAYW3
12762K310	13229N412	14523N610	IUD8555DX1	KDTE104DSS2	KUDE20FBWH1	WDF780SLYB0
12762K311	13229N413	14523N611	IUD8555DX2	KDTE104DWH0	KUDE20IXBL9	WDF780SLYB1
12762K312	13229N414	14529N610	IUD8555DX3	KDTE104DWH1	KUDE20IXSS9	WDF780SLYB2
12762K313	13252K110	14529N611	IUD8555DX4	KDTE104DWH2	KUDE20IXSSA	WDF780SLYB3
12762K314	13252K111	14542N710	JDB8000AWB1	KDTE104EBL0	KUDE20IXWH9	WDF780SLYM0
12763K310	13252K113	14543N710	JDB8000AWB2	KDTE104EBL1	KUDE40FXPA6	WDF780SLYM1
12763K311	13252K115	14543N711	JDB8000AWB3	KDTE104EBL2	KUDE40FXSP0	WDF780SLYM2
12763K312	13255K110	14545N710	JDB8000AWC2	KDTE104EBL3	KUDE40FXSP1	WDF780SLYM3
12763K313	13255K111	14545N711	JDB8000AWS1	KDTE104EBL4	KUDE40FXSP2	WDF780SLYW3
12763K314	13255K113	14549N710	JDB8000AWS2	KDTE104EBS1	KUDE40FXSP3	WDL785SAAM1
12769K310	13255K115	14549N711	JDB8000AWS3	KDTE104EBS2	KUDE40FXSP4	WDL785SAAM3
12769K311	13259K110	14562N610	JDB8200AWP1	KDTE104EBS3	KUDE40FXSP5	WDT710PAHB0
12769K312	13259K111	14562N611	JDB8200AWP2	KDTE104EBS4	KUDE40FXSS6	WDT710PAHB1
12769K313	13259K113	14563N610	JDB8200AWP3	KDTE104ESS0	KUDE48FXBL5	WDT710PAHW0
12772K310	13259K115	14563N611	JDB8200AWP5	KDTE104ESS1	KUDE48FXBL6	WDT710PAHW1
12772K311	13262K110	14565N610	JDB8200AWS1	KDTE104ESS2	KUDE48FXPA5	WDT710PAHZ0
12772K312	13262K111	14565N611	JDB8200AWS2	KDTE104ESS3	KUDE48FXPA6	WDT710PAHZ1
12772K313	13262K112	14569N610	JDB8200AWS3	KDTE104ESS4	KUDE48FXSP5	WDT720PADB0
12772K314	13262K114	14569N611	JDB8200AWS4	KDTE104EWHO	KUDE48FXSP6	WDT720PADB1
12773K310	13263K110	14572N610	JDB8200AWS5	KDTE104EWH1	KUDE48FXSS5	WDT720PADB2
12773K311	13263K111	14572N611	JDB8500AWF1	KDTE104EWH2	KUDE48FXSS6	WDT720PADB3
12773K312	13263K112	14572N612	JDB8500AWF2	KDTE104EWH3	KUDE48FXWH5	WDT720PADE0
12773K313	13263K114	14573N610	JDB8500AWF3	KDTE104EWH4	KUDE48FXWH6	WDT720PADE1
12773K314	13269K110	14573N611	JDB8500AWX1	KDTE204DBL0	KUDE50CXSS9	WDT720PADE2
12774K310	13269K111	14573N612	JDB8500AWX2	KDTE204DBL1	KUDE50FBSS0	WDT720PADE3
12774K311	13269K112	14579N610	JDB8500AWX3	KDTE204DBL2	KUDE60FXPA1	WDT720PADH0
12774K312	13269K113	14579N611	JDB8500AWY1	KDTE204DSS0	KUDE60FXPA2	WDT720PADH1
12774K313	13269K114	14579N612	JDB8500AWY2	KDTE204DSS1	KUDE60FXPA3	WDT720PADH2
12774K314	13272K110	14703N510	JDB8500AWY3	KDTE204DSS2	KUDE60FXSS5	WDT720PADH3
12776K310	13272K113	14703N511	JDB8700AWP1	KDTE204DWH0	KUDE60HXSS5	WDT720PADM0
12776K311	13272K115	14703N512	JDB8700AWP2	KDTE204DWH1	KUDE60HXSS6	WDT720PADM1
12776K312	13272K117	14712N710	JDB8700AWP3	KDTE204EBL0	KUDE70FXBL5	WDT720PADM2
12776K314	13272K118	14715N710	JDB8700AWS1	KDTE204EBL1	KUDE70FXBL6	WDT720PADM3
12779K310	13273K110	14719N710	JDB8700AWS2	KDTE204EBL2	KUDE70FXPA5	WDT720PADW0
12779K311	13273K113	14742N510	JDB8700AWS3	KDTE204EBL3	KUDE70FXPA6	WDT720PADW1
12779K312	13273K115	14742N511	JDB8700AWS4	KDTE204EBL4	KUDE70FXSS5	WDT720PADW2
12779K313	13273K116	14742N512	JDB8700AWS5	KDTE204EPA0	KUDE70FXSS6	WDT720PADW3
12779K314	13273K117	14742N513	JDB9000CWB1	KDTE204EPA1	KUDE70FXWH5	WDT730PAHB0
12782K310	13273K118	14743N510	JDB9000CWB2	KDTE204EPA2	KUDE70FXWH6	WDT730PAHV0
12782K311	13279K110	14743N511	JDB9000CWB3	KDTE204EPA3	KUDL15FXSS6	WDT730PAHW0
12782K312	13279K113	14743N512	JDB9000CWP1	KDTE204EPA4	KUDL15FXSS7	WDT730PAHZ0
12782K313	13279K115	14743N513	JDB9000CWP2	KDTE204ESS0	WDF560SAFB0	WDT750SAHB0
12783K310	13279K117	14749N510	JDB9000CWP3	KDTE204ESS1	WDF560SAFB1	WDT750SAHV0
12783K311	13279K118	14749N511	JDB9000CWS1	KDTE204ESS2	WDF560SAFB2	WDT750SAHW0
12783K312	13282K110	14749N512	JDB9000CWS2	KDTE204ESS3	WDF560SAFM0	WDT750SAHZ0
12783K313	13282K113	14749N513	JDB9000CWS3	KDTE204ESS4	WDF560SAFM1	WDT770PAYB0
12789K310	13282K115	14752N510	JDB9200CWP1	KDTE204EWHO	WDF560SAFM2	WDT770PAYB1
12789K311	13282K116	14752N511	JDB9200CWP2	KDTE204EWH1	WDF560SAFT1	WDT770PAYB2
12789K312	13282K117	14752N512	JDB9200CWS1	KDTE204EWH2	WDF560SAFT2	WDT770PAYM0
12789K313	13282K118	14753N510	JDB9200CWS2	KDTE204EWH3	WDF560SAFW0	WDT770PAYM2
12813K310	13283K110	14753N511	JDB9200CWS3	KDTE204EWH4	WDF560SAFW1	WDT770PAYM3
12813K311	13283K113	14753N512	JDB9200CWX2	KDTE204GPS0	WDF560SAFW2	WDT770PAYW0
12813K313	13283K115	14754N510	JDB9200CWX3	KDTE234GBL0	WDF730PAYB0	WDT770PAYW1

Exhibit 2 -- Engineering Models in Production through 12/31/2017

13032K110	13283K116	14754N511	JDB9200CWX4	KDTE234GBS0	WDF730PAYB1	WDT770PAYW2
13032K112	13283K117	14754N512	JDB9200CWY1	KDTE234GPS0	WDF730PAYB2	WDT780SAEM0
13032K113	13283K118	14759N510	JDB9200CWY2	KDTE234GWH0	WDF730PAYB3	WDT780SAEM1
13032K115	13289K110	14759N511	JDB9800CWP1	KDTE254EBL0	WDF730PAYB4	WDT780SAEM2
13032K116	13289K113	14759N512	JDB9800CWP2	KDTE254EBL1	WDF730PAYB5	WDT790SAYB0
13033K110	13289K115	14762N510	JDB9800CWP3	KDTE254EBL2	WDF730PAYB6	WDT790SAYB1
13033K112	13289K117	14763N510	JDB9800CWS1	KDTE254EBL3	WDF730PAYB7	WDT790SAYB2
13033K113	13289K118	14769N510	JDB9800CWS2	KDTE254ESS0	WDF730PAYM0	WDT790SAYB3
13033K114	13292K110	14792N510	JDB9800CWS3	KDTE254ESS1	WDF730PAYM1	WDT790SAYM0
13033K115	13292K112	14792N511	JDB9800CWX1	KDTE254ESS2	WDF730PAYM2	WDT790SAYM1
13033K116	13292K114	14792N512	JDB9800CWX2	KDTE254ESS3	WDF730PAYM3	WDT790SAYM2
13039K110	13292K116	14793N510	JDTSS243GX0	KDTE254EWHO	WDF730PAYM4	WDT790SAYM3
13039K112	13293K110	14793N511	JDTSS244GP0	KDTE254EWH1	WDF730PAYM5	WDT790SAYW0
13039K113	13293K112	14793N512	JDTSS244GS0	KDTE254EWH2	WDF730PAYM6	WDT790SAYW1
13039K114	13293K114	14799N510	JDTSS245GX0	KDTE254EWH3	WDF730PAYM7	WDT790SAYW2
13039K115	13293K116	14799N511	JDTSS246GP0	KDTE304DBL0	WDF730PAYT0	WDT790SAYW3
13039K116	13299K110	14799N512	JDTSS246GS0	KDTE304DBL2	WDF730PAYT1	WDT790SLYM0
13042K110	13299K112	14812N610	KDFE104DBL0	KDTE304DPA0	WDF730PAYT2	WDT790SLYM1
13042K112	13299K114	14812N611	KDFE104DBL1	KDTE304DPA2	WDF730PAYT3	WDT790SLYM2
13042K113	13299K116	14812N612	KDFE104DBL2	KDTE304DSS0	WDF730PAYT4	WDT790SLYM3
13042K114	13402N410	14813N610	KDFE104DBL3	KDTE304DSS1	WDF730PAYT5	WDT790SLYW2
13042K115	13402N411	14813N611	KDFE104DBL4	KDTE304DSS2	WDF730PAYT6	WDT790SLYW3
13042K116	13402N412	14813N612	KDFE104DBL5	KDTE304DWHO	WDF730PAYT7	WDT910SAYE0
13043K110	13403N410	14815N610	KDFE104DSS0	KDTE304DWH2	WDF730PAYW0	WDT910SAYE1
13043K112	13403N411	14815N611	KDFE104DSS1	KDTE304GPS0	WDF730PAYW1	WDT910SAYE2
13043K113	13403N412	14815N612	KDFE104DSS2	KDTE334DBL0	WDF730PAYW2	WDT910SAYE3
13043K114	13409N410	14819N610	KDFE104DSS3	KDTE334DBL2	WDF730PAYW3	WDT910SAYH0
13043K115	13409N411	14819N611	KDFE104DSS4	KDTE334DSS0	WDF730PAYW4	WDT910SAYH1
13043K116	13409N412	14819N612	KDFE104DSS5	KDTE334DSS1	WDF730PAYW5	WDT910SAYH2
13044K110	13472N410	15692K210	KDFE104DWHO	KDTE334DSS2	WDF730PAYW6	WDT910SAYH3
13044K112	13472N411	15692K212	KDFE104DWH1	KDTE334DWHO	WDF730PAYW7	WDT910SAYM0
13044K113	13472N412	15693K210	KDFE104DWH2	KDTE334GBS0	WDF735PABB0	WDT910SAYM1
13044K114	13472N413	15693K212	KDFE104DWH3	KDTE334GPS0	WDF750SAYB0	WDT910SAYM2
13044K115	13473N410	15699K210	KDFE104DWH4	KDTE404DBL0	WDF750SAYB1	WDT910SAYM3
13044K116	13473N411	15699K212	KDFE104DWH5	KDTE404DBL2	WDF750SAYB2	WDT910SSYB0
13049K110	13473N412	7WDT950SAYM1	KDFE204EBL0	KDTE404DSP0	WDF750SAYB3	WDT910SSYB1
13049K112	13473N413	ADB1500ADB1	KDFE204EBL1	KDTE404DSS0	WDF750SAYM0	WDT910SSYB2
13049K113	13479N410	ADB1500ADB2	KDFE204EBL2	KDTE404DSS1	WDF750SAYM1	WDT910SSYB3
13049K115	13479N411	ADB1500ADB3	KDFE204EBL3	KDTE404DSS2	WDF750SAYM2	WDT910SSYM0
13049K116	13479N412	ADB1500ADB4	KDFE204EBL4	KDTE404DWHO	WDF750SAYM3	WDT910SSYM1
13092N410	13479N413	ADB1500ADS1	KDFE204ESS0	KDTE504DSS0	WDF750SAYT3	WDT910SSYM2
13092N411	13492N410	ADB1500ADS2	KDFE204ESS1	KDTE504DSS2	WDF750SAYW0	WDT910SSYM3
13092N412	13492N411	ADB1500ADS3	KDFE204ESS2	KDTE554CSS0	WDF750SAYW1	WDT910SSYW0
13092N413	13492N412	ADB1500ADS4	KDFE204ESS3	KDTE554CSS1	WDF750SAYW2	WDT910SSYW1
13093N410	13493N410	ADB1500ADW1	KDFE204ESS4	KDTE554CSS2	WDF750SAYW3	WDT910SSYW2
13093N411	13493N411	ADB1500ADW2	KDFE204EWHO	KDTE554CSS3	WDF760SADB0	WDT910SSYW3
13093N412	13493N412	ADB1500ADW3	KDFE204EWH1	KDTE704DBL0	WDF760SADB1	WDT920SADE0
13093N413	13499N410	ADB1500ADW4	KDFE204EWH2	KDTE704DBL1	WDF760SADB2	WDT920SADE1
13099N410	13499N411	ADB1700ADB1	KDFE204EWH3	KDTE704DBL2	WDF760SADB3	WDT920SADE2
13099N411	13499N412	ADB1700ADB2	KDFE204EWH4	KDTE704DPA0	WDF760SADM0	WDT920SADE3
13099N412	13542N410	ADB1700ADB3	KDFE304DBL0	KDTE704DPA2	WDF760SADM1	WDT920SADH0
13099N413	13542N411	ADB1700ADS1	KDFE304DBL1	KDTE704DSS0	WDF760SADM2	WDT920SADH1
13202N410	13542N412	ADB1700ADS2	KDFE304DBL2	KDTE704DSS1	WDF760SADM3	WDT920SADH2
13202N411	13542N413	ADB1700ADS3	KDFE304DSS0	KDTE704DSS2	WDF760SADT0	WDT920SADH3
13202N412	13542N414	ADB1700ADS4	KDFE304DSS1	KDTE704DWHO	WDF760SADT1	WDT920SADM0
13203N410	13543N410	ADB1700ADW1	KDFE304DSS2	KDTM354DSS0	WDF760SADT2	WDT920SADM1
13203N411	13543N411	ADB1700ADW2	KDFE304DWHO	KDTM354DSS1	WDF760SADT3	WDT920SADM2
13203N412	13543N412	ADB1700ADW3	KDFE304DWH2	KDTM354DSS3	WDF760SADW0	WDT920SADM3
13204N410	13543N413	ADB1700ADW4	KDFE454CSS0	KDTM354DSS4	WDF760SADW1	WDT970SAHB0
13204N411	13543N414	BLB14DRANA2	KDFE454CSS1	KDTM354DSS5	WDF760SADW2	WDT970SAHV0

Exhibit 2 -- Engineering Models in Production through 12/31/2017

13204N412	13549N410	BLB14DRANA5	KDFE454CSS3	KDTM354EBS1	WDF760SADW3	WDT970SAHW0
13209N410	13549N411	IDT830SAGS0	KDFE454CSS4	KDTM354EBS2	WDF770SAFZ0	WDT970SAHZ0
13209N411	13549N412	IUD7500BS0	KDFE454CSS5	KDTM354ESS0	WDF770SAFZ1	WDT975SAHV0
13209N412	13549N413	IUD7500BS1	KDHE404DSS0	KDTM354ESS1	WDF770SAFZ2	WDT995SAFM0
13222N410	13549N414	IUD7500BS2	KDHE704DSS0	KDTM354ESS2	WDF775SAYB0	WDTA50SAHB0
13222N411	13692N410	IUD7555DS0	KDPE234GBS0	KDTM384EBS0	WDF775SAYB1	WDTA50SAHN0
13222N412	13692N411	IUD7555DS1	KDPE234GPS0	KDTM384EBS1	WDF775SAYB2	WDTA50SAHV0
13222N413	13692N412	IUD7555DS2	KDPE334GBS0	KDTM384EBS2	WDF775SAYB3	WDTA50SAHW0
13222N414	13693N410	IUD7555DS3	KDPE334GPS0	KDTM384ESS0	WDF775SAYM0	WDTA50SAHZ0
13223N410	13693N411	IUD8010DS0	KDPM354GBS0	KDTM384ESS1	WDF775SAYM1	WDTA75SAHZ0
13223N411	13693N412	IUD8010DS1	KDPM354GPS0	KDTM384ESS2	WDF775SAYM2	

Diverter Motor	Diverter Seal	Sump/Seal Assy	Sump/Motor Assy	Pump/Motor Assy
W10195076	W10195677	W10195067	W10455260	W10300740
W10476222	WPW10195677	W10195643	W10500283	W10300748
W10537869		W10300747	W10605058	W10418331
		W10455268	W10620220	W10455261
		W10456967	W10620221	W10456966
		W10465328	W10671941	W10464691
		W10584463	W10671942	W10482482
		W10647213	W10902323	W10482502
		W10832796	W11230103	W10500284
		W10832800	WPW10455260	W10500285
		W11183675	WPW10605058	W10500286
		WPW10195643	WPW10671941	W10554963
		WPW10455268	WPW10671942	W10584461
				W10605057
				W10671873
				W10733484
				W10733486
				W10772940
				W10805015
				W10899563
				W10902307
				W10902314
				W10902326
				W10902330
				W10902372
				W10904995
				W10907620
				W11024424
				W11084657
				W11085683
				W11087376
				W11105853
				W11121727
				W11124371
				W11124384
				W11178672
				W11219382
				W11309335
				W11319349
				WPW10455261
				WPW10482482
				WPW10482502
				WPW10554963
				WPW10605057

If you purchased a Whirlpool-manufactured dishwasher, 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.

- A Settlement has been reached in a class action lawsuit against Whirlpool Corp. (“Whirlpool” or “Defendant”) regarding certain dishwashers manufactured from 2010 through 2017.
- If you are included in the Settlement, you may qualify for a cash reimbursement or cash rebate to remedy past or future diverter seal leaks that may cause the diverter motor to malfunction and, in some instances, result in water leaking underneath your dishwasher.
- **Your legal rights are affected whether you act or don’t act. Read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM Earliest Deadline: [DATE]	Submitting a Claim Form is the only way to seek benefits relating to a Class Dishwasher with diverter seal leaks. For repairs or replacements occurring prior to [DATE] your deadline to submit a claim form is [180 DAYS FROM ORDER OF PRELIM APPROVAL]. For repairs or replacements occurring after [DATE] your deadline to submit a claim is within 90 days following the repair.
EXCLUDE YOURSELF Deadline: [DATE]	Excluding yourself, or “opting out,” is the only option that allows you to ever be part of another lawsuit against Whirlpool for the legal claims resolved by this Settlement. If you exclude yourself from this Settlement, you will not be entitled to any of the benefits provided by this Settlement.
OBJECT Deadline: [DATE]	Mailing an objection is the only way to tell the Court that you are unhappy with any aspect of the Settlement.
ATTEND THE FAIRNESS HEARING [DATE] at [TIME]	You may request an opportunity to speak in Court about the fairness of the Settlement.
DO NOTHING	If you do not object to the settlement, exclude yourself from the settlement or make a claim for a past or future diverter seal leak as part of this settlement, you will <u>not</u> receive any benefits of this Settlement, and you will give up your right to ever be part of another lawsuit against Defendant 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. If the Court approves the Settlement and you submit a valid claim, benefits will be issued after any appeals are resolved. Please be patient.

EXHIBIT 4

QUESTIONS? CALL [1-800-NUMBER] OR GO TO www.WEBSITE.COM

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 and about all of your options before it decides whether to approve the Settlement. This notice explains the Lawsuits, the Settlement, your legal rights, the benefits that are available, and who may qualify for those benefits.

Judge Wilhelmina M. Wright of the United States District Court, District of Minnesota is overseeing the Settlement, which resolves four similar cases filed by the same law firm, known as *Cleveland v. Whirlpool Corp.*, Case No. 0:20-cv-01906-WMW-KMM (D. Minn.), (2) *Larchuk v. Whirlpool Corp.*, Case No. 2:20-cv-04442-BMS (E.D. Pa.), (3) *Redmon v. Whirlpool Corp.*, Case No. 1:20-cv-06626 (N.D. Ill.), and (4) *Shah v. Whirlpool Corp.*, Case No. 3:21-cv-02739-JD (N.D. Cal.) (the “Lawsuits”). The people who sued are called the “Plaintiffs,” and the company sued, Whirlpool, is called the “Defendant.”

2. Why did I receive this notice?

If you received a notice by mail or email, the Defendant’s records indicate that you may have purchased a Whirlpool-manufactured dishwasher from 2010 through 2017 that has a model and serial number listed as eligible at [\[www.WEBSITE.com\]](http://www.WEBSITE.com). These specific dishwashers are referred to as the “Class Dishwashers” throughout this notice.

3. What is the lawsuit about?

The Lawsuits claim that the Class Dishwashers can be susceptible to diverter shaft seal leaks, which may cause the diverter motor to malfunction and in some instances result in water leaking onto the floor (a “Diverter Seal Leak”). The Lawsuits further claim that the Defendant breached warranties, was negligent, and fraudulently concealed diverter seal defects in connection with the manufacture and sale of the Class Dishwashers.

Defendant denies that there is any diverter seal defect in the Class Dishwashers. Defendant 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 for damage to the Class Dishwasher itself, and 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” sue for all people who have similar claims. Together, these people with similar claims 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 the Class Dishwashers are defective. Instead, both sides agreed to the Settlement to avoid the costs and risks of further litigation and to provide benefits to Class Members. The Settlement does not mean that the Court found that Defendant 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 United States and its territories who: (a) purchased a new Class Dishwasher; (b) acquired a Class Dishwasher as part of the purchase or remodel of a home; or (c), received a new Class Dishwasher as a gift.

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

To determine if you are a Class Member, you need to verify that the model number and serial number of your dishwasher are listed among qualifying Class Dishwashers in the Settlement. You can compare your information to a list of qualifying Class Dishwashers available at the Settlement Administrator’s website, [www.WEBSITE.com].

8. Who is not included in the Settlement Class?

The following are not included in the Settlement Class: (1) officers, directors, and employees of Defendant and its parents and subsidiaries; (2) insurers of Class Members; (3) subrogees (someone who has assumed the rights of another person) or all entities that claim to be subrogated to the rights of a Class Dishwasher purchaser, a Class Dishwasher owner, or a Class Member; and (4) all third-party issuers or providers of extended warranties or service contracts for the Class Dishwasher.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

9. What benefits does the Settlement provide?

The Settlement provides for a rebate or cash reimbursement, up to \$225 and subject to other limits, for documented out-of-pocket expenses to repair or replace your dishwasher’s diverter motor or sump assembly, or to replace your dishwasher with a new model, due to a Diverter Seal Leak occurring within eight years of your dishwasher’s date of manufacture.

10. Tell me more about the reimbursements for Past Diverter Seal Leaks.

Class Members who experienced a Diverter Seal Leak in their Class Dishwasher, and who paid out-of-pocket for either (1) a repair of their Class Dishwasher that included replacement of the diverter motor, diverter seal, sump, or sump assembly in response to a Diverter Seal Leak, or (2) replacement of their Dishwasher in response to a Diverter Seal Leak within six weeks of the leak, are entitled to their choice of (A) cash reimbursement of the actual amount the Class Member paid for repair expenses or replacement of the dishwasher, supported by documentary proof, up to up to a maximum amount determined by the age of the dishwasher, as shown in the chart below, or (B) a cash rebate toward the purchase of a new dishwasher, as shown in the chart below:

Years From Date of Manufacture When Paid Qualifying Repair Performed or Replacement Purchased	Cash Reimbursement for Paid Qualifying Repair or Replacement	Maximum Reimbursement as % of Average Cost of Repair	Alternative Cash Rebate Toward Purchase of New Dishwasher
1-2	\$225	100%	Years 1-5: \$200 toward purchase of new KitchenAid-brand dishwasher, <u>or</u> \$150 for new Whirlpool-brand or Maytag-brand dishwasher
3	\$202.50	90%	
4-5	\$157.50	80%	
6	\$135	60%	Year 6: \$175 toward new KitchenAid-brand dishwasher <u>or</u> \$125 for new Whirlpool-brand or Maytag-brand dishwasher
7	\$67.50	30%	Years 7-8: \$100 toward new KitchenAid, Whirlpool, or Maytag-brand dishwasher
8	\$0	0%	

QUESTIONS? CALL [1-800-NUMBER] OR GO TO [WWW.WEBSITE.COM]

Eligibility for this benefit requires all Class Members to submit their Class Dishwasher model and serial numbers and to prove through the submission of documentary proof or, alternatively, a declaration for some requirements, (1) that the Class Member purchased a Class Dishwasher new, or acquired a new Class Dishwasher as part of a purchase or remodel of a home, or received a new Class Dishwasher as a gift, (2) that the Class Member experienced a Diverter Seal Leak, and (3) that the Class Member paid out-of-pocket to repair or replace his or her Class Dishwasher in response to a Diverter Seal Leak;

Class Members who previously received compensation or a voluntary benefit from Whirlpool for a Diverter Seal Leak will have the amount of their reimbursement reduced by the amount of the compensation or benefit already received.

Class Members who did not incur out-of-pocket repair expenses due to a Diverter Seal Leak within eight years of the manufacture of the Class Dishwasher are not eligible for cash reimbursement or a rebate. The manufacture date is established by the serial number and will be verified by the Settlement Administrator.

11. What is the deadline to submit a Claim Form for a Past Diverter Seal Leak?

You will have until [180 DAYS FROM ORDER OF PRELIM APPROVAL] to submit a Claim Form and all required documentation for a Settlement payment for out-of-pocket expenses for a past Diverter Seal Leak.

12. Tell me more about benefits available for Future Diverter Seal Leaks.

If you are a Class Member and you experience a Diverter Seal Leak after [DATE] and within eight years of the manufacture of your Class Dishwasher, you may be eligible to receive the same benefits described for a Past Diverter Seal Leak in the response to Question 10 above.

13. What is the deadline to submit a claim form for a Future Diverter Seal Leak?

All claims for future Diverter Seal Leaks must be submitted within 90 days after you first experience the Diverter Seal Leak, and the Diverter Seal Leak must occur no later than eight years after the dishwasher was manufactured.

HOW TO GET BENEFITS—SUBMITTING A CLAIM FORM

14. How many benefits can I receive?

If you qualify, you may receive one benefit for each Class Dishwasher that you purchased or acquired. You must submit a separate Claim Form for each Class Dishwasher. You must elect the benefit you wish to receive at the time you submit your Claim Form.

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

You must complete and submit a Claim Form, including required documentation, either on-line or via U.S. Mail within [180 DAYS FROM ORDER OF PRELIM APPROVAL] for a Past Diverter Seal Leak and within 90 days of experiencing a Future Diverter Seal Leak. Claim Forms are available for download and submission at [www.WEBSITE.com]. You can also contact the Settlement Administrator by telephone at [1-800-NUMBER], by email at [EMAIL@WEBSITE.com], or by writing to Dishwasher Settlement Claims Administrator, Cleveland v. Whirlpool Corp. Dishwasher Settlement, Attn: Class Action Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103, to request a Claim Form. **If you fail to provide the information requested on the Claim Form or if you do not upload or mail your documentary proof, then you will not be entitled to any compensation or benefit under this Settlement.**

16. 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 you won’t be able to sue, continue to sue, or be part of any other lawsuit against Defendant 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 Class Dishwasher itself are not affected or released by this Settlement.** The specific rights you are giving up are called Released Claims (see Question 19).

17. 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 Dishwasher’s diverter seal, including all claims for out-of-pocket expense, diminution-in-value, benefit-of-the-bargain, cost-of-repair, cost-of-replacement, cost-of-maintenance, or premium-price damages, arising out of the Class Members’ purchases or uses of the Class Dishwashers. The released parties, also called “the Releasees,” is Defendant, together with its predecessors and successors in interest, parents, subsidiaries, affiliates, and assigns; (b) each of its 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 Dishwashers. 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 Dishwasher diverter seals, diverter motors, or sump assemblies. **The Released Claims, however, do not include any claims for damage to property other than the Class Dishwasher itself 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.WEBSITE.com]. You can also 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

18. Do I have a lawyer in this case?

Yes. The Court appointed Harper Segui and Rachel Soffin of Milberg Coleman Bryson Phillips Grossman as Class Counsel, to represent you and other Class Members. You will not be charged for the services of Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

19. How will these lawyers be paid?

Class Counsel will ask the Court to award them up to \$1,500,000 for attorney fees and reimbursement of the litigation expenses and costs they incurred and/or advanced. They will also ask for service awards of \$2,500.00 to be paid to Class Representatives Elizabeth Cleveland, Amy Larchuk, Thomas McCormick, Christopher Redmon, and Dhaval Shah out of the \$1,500,000 for fees and expenses. 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 have also agreed to pay the Settlement Administrator’s fees and expenses, including the costs of mailing the Settlement Notices and distributing any payments owed to 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 Defendant 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.

20. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must request from the Settlement Administrator a Request for Exclusion. You must provide your name, email address, mailing address, model number, and serial number of your Class Dishwasher. To be valid, your Request for Exclusion must include all of the information requested, must be individually signed, and must be individually sent to the Settlement Administrator at the address below with a postmark no later than **[DATE 91 DAYS AFTER PRELIMINARY APPROVAL ORDER]**.

Cleveland v. Whirlpool Corp. Dishwasher Settlement

Attn: Class Action Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

QUESTIONS? CALL [1-800-NUMBER] OR GO TO [WWW.WEBSITE.COM]

21. 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.

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

No. Unless you exclude yourself, you are giving up the right to sue Defendants for the claims that this Settlement resolves and releases (see Question 19). You must exclude yourself from this Settlement Class to start or continue with your own lawsuit or be part of any other lawsuit involving the same claims.

OBJECTING TO THE SETTLEMENT

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

23. 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 the Settlement. The Court will consider your views before making a decision. To object, you or your attorney must mail and cause to be postmarked a written objection and supporting papers to the Settlement Administrator, Class Counsel, and Counsel for Whirlpool. Your objection must contain: (1) the name of the Lawsuit (*Cleveland v. Whirlpool Corp.*, Case No. 0:20-cv-01906-WMW-KMM); (2) your full name and current address; (3) the serial number and model number of your Class Dishwasher; (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; and (7) the date of your signature.

You must mail your written objection to the Settlement Administrator at the address listed in response to Question 20. You must mail your written objection to Class Counsel at: [NAME / ADDRESS], and to defense counsel at: Andrew M. Unthank, Wheeler Trigg O'Donnell LLP, 370 17th Street, Suite 4500, Denver CO 80202.

Your written objection must be mailed with a postmark no later than [DATE 91 DAYS AFTER PRELIMINARY APPROVAL ORDER].

24. 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 (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.

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

The Court will hold a Fairness Hearing on [DATE] at [TIME], at the U.S. District Court for the District of Minnesota, located at the Warren E. Burger Federal Building, 316 North Robert Street, Courtroom 7A, St Paul, MN 55101, 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 29). 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.

26. 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. However, you are welcome to come at your own expense. If you mail an objection to the Settlement, you don't have to come to Court to talk about it. As long as you mail your written objection on time, sign it and provide all of the required information (see Question 25) the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

27. May I speak at the hearing?

Yes. You may ask the Court to speak at the Fairness Hearing. To do so, you must mail a written request to the Court stating that it is your "Notice of Intent to Appear at the Fairness Hearing in *Cleveland v. Whirlpool Corp.*, Case No. 0:20-cv-01906-WMW-KMM" and serve copies of that Notice on Class Counsel and Defendant using the addresses listed in Question 23. 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 on your behalf. Your written Notice of Intent to Appear must be mailed to the Court by **[DATE 91 DAYS AFTER PRELIMINARY APPROVAL ORDER]**.

IF YOU DO NOTHING

28. 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 Defendant and the other Releasees about the legal issues or claims resolved and released by this Settlement.

GETTING MORE INFORMATION

29. 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 online at [www.WEBSITE.com]. If you have questions, you may contact the Settlement Administrator at the address listed in response to Question 20, [EMAIL@WEBSITE.com], or [PHONE], or visit Class Counsel's website (www.milberg.com) for their contact information should you wish to communicate with them directly.

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

QUESTIONS? CALL [1-800-NUMBER] OR GO TO [WWW.WEBSITE.COM]

If you purchased a **Whirlpool-manufactured** dishwasher, you may be entitled to benefits from a class action settlement.

[Click Here](#)



If you purchased a **Whirlpool-manufactured** dishwasher, you may be entitled to benefits from a class action settlement.

[Click Here](#)

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**You may be eligible
for a benefit as part
of a class action
settlement about
Whirlpool-
manufactured
dishwashers.**

For more information on the proposed settlement, to file a claim or objection, or to exclude yourself, visit [www.WEBSITE.com] or contact the Settlement Administrator or Class Counsel.

Do not contact the Court, Whirlpool, or any appliance retailer or dealer for information about the settlement.

Cleveland v. Whirlpool Corp. Dishwasher Settlement
Class Action Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

«ScanString»

Postal Service: Please do not mark barcode

Claim#: PQ12345678

Random #:

«FirstName» «LastName»

«Address1»

«Address2»

«City», «StateCd» «Zip»

«CountryCd»

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

A proposed settlement has been reached in a class action against Whirlpool alleging defects in certain Whirlpool-manufactured dishwashers built from 2010-2017. This notice summarizes your legal rights. You should visit [\[www.WEBSITE.com\]](#) to obtain more complete information about covered models, the proposed settlement, and your rights. You also can write to the Settlement Administrator at the address on the reverse side, or call [1-800-NUMBER], to have a Claim Form mailed to you.

What is the class action about? Plaintiffs allege that certain Whirlpool-manufactured dishwashers can be susceptible to diverter shaft seal leaks, which may cause the diverter motor to malfunction and in some instances result in water leaking onto the floor (a "Diverter Seal Leak").

What are my rights? The settlement class includes all persons who, while living in the United States, bought, acquired, or received as a gift new Whirlpool-manufactured dishwashers built from 2010 through 2017. You can visit [\[www.WEBSITE.com\]](#) to see a complete list of the dishwasher models that are included in the settlement. Whirlpool's records show that you may be a member of the settlement class and eligible to make a claim for a rebate or cash reimbursement, up to \$225 and subject to other limits, for documented out-of-pocket expenses to repair or replace your dishwasher's diverter motor or sump assembly, or to replace your dishwasher with a new model, due to a Diverter Seal Leak occurring within eight years of your dishwasher's date of manufacture. To claim this reimbursement benefit for a Diverter Seal Leak, however, you must submit documentary proof of these out-of-pocket expenses. To be eligible for a Past Diverter Seal Leak claim (for a repair or replacement that occurred prior to [DATE]), you must submit a Claim Form to the Settlement Administrator online at [\[www.WEBSITE.com\]](#) or by mail at the address on the reverse side postmarked [180 DAYS FROM ORDER OF PRELIM APPROVAL]. If you have a Future Diverter Seal Leak on or after [DATE] and within eight years of your dishwasher's date of manufacture you can receive this same coverage for future repairs or replacements by submitting a Claim Form online or postmarked within 90 days of your Future Diverter Seal Leak. Class members who do not meet the requirements in the Claim Form are not eligible for compensation.

How to request exclusion from the class. If you do not wish to participate in this class action, visit [\[www.WEBSITE.com\]](#) to submit a Request for Exclusion. You also can write to the Settlement Administrator at the address on the reverse side, or call [1-888-000-0000], to have a Request for Exclusion mailed to you. All requests for exclusion shall be individually submitted or postmarked [90 DAYS FROM ORDER OF PRELIM APPROVAL], and must include all required information to be valid. If you do not exclude yourself, you will lose your right to sue Whirlpool and obtain any compensation from them other than through this settlement.

How to make objections. If you remain in the class, you can comment on or object to the proposed settlement or Class Counsel's fees by mailing a written objection to the Settlement Administrator at the address on the reverse side, Class Counsel, and defense Counsel. Mail objections to defense Counsel at: Andrew M. Unthank, Wheeler Trigg O'Donnell LLP, 370 17th Street, Suite 4500, Denver CO 80202, and to Class Counsel at the address below. The fairness hearing will be held at the Court on [DATE / TIME]. 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 and mailing those to Class Counsel and defense Counsel. Objections must be mailed and postmarked to the Administrator, Class

Counsel, and defense Counsel [90 DAYS FROM ORDER OF PRELIM APPROVAL]. Entries of appearance must be filed with the Court and served on Class Counsel and defense Counsel [90 DAYS FROM ORDER OF PRELIM APPROVAL].

Class Counsel's attorney fees and contact information. If the settlement is approved, the lawyers for Plaintiffs and the class (Class Counsel) will request an award of attorney fees, reimbursement of litigation expenses, and service awards not to exceed the total amount of \$1,500,000, to be paid by Whirlpool separately from and in addition to the benefits to the Class. You can write to Class Counsel at: [NAME / ADDRESS].