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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JULIE CORZINE, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

WHIRLPOOL CORPORATION, a Delaware corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 5:15-cv-05764-BLF

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT, CERTIFYING PROVISIONAL SETTLEMENT CLASS, APPOINTING SETTLEMENT CLASS COUNSEL, SETTING HEARING ON FINAL APPROVAL OF SETTLEMENT, AND DIRECTING NOTICE TO THE CLASS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hon. Beth Labson Freeman
Courtroom 3

[STIPULATION AND PROPOSED ORDER TO SHORTEN TIME TO HEAR MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT FILED CONCURRENTLY HEREWITH]

PLAINTIFF'S NOTICE OF MOTION FOR

ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT

TO THE COURT, ALL PARTIES AND THEIR COUNSEL:

PLEASE TAKE NOTICE THAT pursuant to Federal Rule of Civil Procedure 23(e), Plaintiff Julie Corzine ("Plaintiff"), on behalf of herself and the Settlement Class,[1] hereby submits the instant Motion for Order Granting Preliminary Approval of Settlement ("Motion") after having reached a settlement with Defendant Whirlpool Corporation. Plaintiff hereby moves for an order: (1) granting preliminary approval of the class action settlement reached by the parties ("Settlement"); (2) approving the Notice Plan and ordering distribution of the proposed notices to Settlement Class Members; and (3) appointing Kenneth S. Kasdan and Graham B. LippSmith as Class Counsel. While the Court and parties have anticipated the filing of this Motion, the Court has not yet set the matter for hearing. Plaintiff will provide formal notice of the hearing date, time and location once scheduled.

This Motion is supported by the Memorandum of Points and Authorities and all additional filings in support of preliminary approval. Based on these documents and any additional arguments that the Settlement Class and Plaintiff may make prior to or at the hearing of this Motion, the Settlement Class and Plaintiff respectfully request that the Court grant the relief requested in the [Proposed] Order Granting Preliminary Approval of Settlement, Certifying Provisional Settlement Class, Appointing Settlement Class Counsel, Setting Hearing on Final ///

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[1] Capitalized terms not defined in this Motion shall have the definitions ascribed to them in the Settlement Agreement attached as Exhibit A to the Declaration of Graham B. LippSmith.

Approval of Settlement, and Directing Notice to the Class filed herewith.

Dated: July 8, 2019

KASDAN LIPPSMITH WEBER TURNER LLP

By: */s/ Graham B. LippSmith*
KENNETH S. KASDAN
GRAHAM B. LIPPSMITH
CELENE CHAN ANDREWS
JACLYN L. ANDERSON
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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Julie Corzine filed this putative class action on November 13, 2015 alleging defects in Drain Tubes manufactured by Defendant Whirlpool Corporation used in its bottom-freezer refrigerators. Plaintiff alleged that the Drain Tubes are defective because they are prone to ice blockage, resulting in water overflow and water leaks from the bottom of the refrigerators.

Following three rounds of motions to dismiss, formal and informal discovery, and two sessions with different mediators followed by months of negotiations as to the final terms, the parties reached a settlement in May 2018. At that time, the Court stayed proceedings pending the Ninth Circuit's *en banc* review of its decision in *In re Hyundai and Kia Fuel Economy Litigation*, 881 F.3d 679 (9th Cir. Jan. 23, 2018) regarding the appropriate choice-of-law analysis as part of preliminary approval of a nationwide class settlement of consumer protection claims. *See* ECF No. 100. On June 6, 2019, the Ninth Circuit decided and published its *en banc* opinion. Accordingly, Settling Parties now bring the instant Motion for Preliminary Approval of Settlement over one year after the parties originally reached their settlement.

If approved, the Settlement will provide the Class with non-defective replacement parts and reimbursement for costs of repair for past and future leaks as described herein. With over 1.7 million refrigerators at issue, the Settlement presents tangible benefits to the proposed Class. This Settlement far exceeds threshold minimums required for both preliminary and final approval of a class action settlement and is the product of the parties' extensive work over three and a half years of litigation. Defendant does not oppose the relief sought in this motion. Accordingly, Settling Parties respectfully request that the Court grant this motion in its entirety.

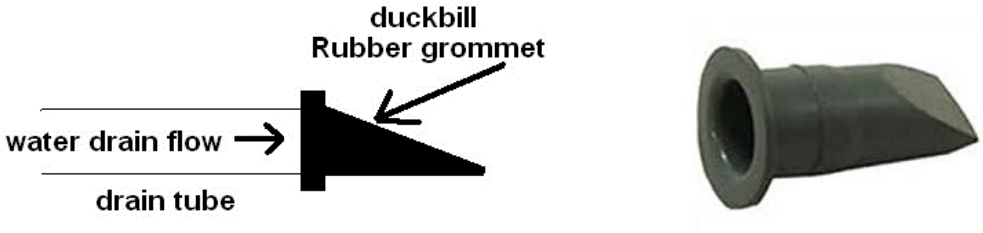
I. FACTUAL AND PROCEDURAL BACKGROUND

A. The Claimed Defect

On November 13, 2015, Plaintiff filed this class action in Santa Clara Superior Court on behalf of a class of California consumers. The Lawsuit alleges a key defect in certain Whirlpool-

manufactured refrigerators; namely, that the Drain Tubes tend to become blocked with ice, overflow with water, and, in certain cases, leak from the bottom of refrigerators.

In late 2009 and early 2010, Whirlpool began selling combination refrigerator-freezers ("Class Refrigerators") featuring a newly-designed freezer Drain Tube to achieve a "cost reduced machine compartment." The Drain Tubes are hidden deep within the components of the Class Refrigerators, out of sight and inaccessible to consumers without disassembling the refrigerator. Whirlpool designed, intended, and warranted the Drain Tubes to channel defrosted water from the freezer into a drain pan at the base of Class Refrigerators as part of the daily defrost cycle.



Drain Tubes feature a rubber grommet component resembling a duckbill that is prone to clogging with debris, which dams the flow of defrosted water from the freezer. Trapped water then freezes, forming a solid plug of ice. Over time, large quantities of water and ice accumulate, eventually resulting in water leaking out of the freezer, into the refrigerator compartment, and onto the ground near the refrigerator.

The Settlement ensures that consumers who received replacement parts but were not reimbursed for labor have opportunities to recoup that cost and the majority of Class Refrigerator owners can replace defective Drain Tubes without paying for this problematic component.

B. Pre-Settlement and Settlement Efforts

Settling Parties diligently litigated this case for over three and a half years. Such efforts include initial removal of the matter to federal court, three rounds of motions to dismiss, relation of a 2017-filed case, *Chambers, et al. v. Whirlpool*, No. 17-cv-01664-JSW, and both formal and informal discovery exchanges. The parties and their counsel participated in two private mediations before two retired justices serving as mediators, followed by months of exchanging

drafts of final settlement terms, notice documents, and claims administration documents.

Since filing this Lawsuit, Class Counsel spent hundreds of hours and advanced thousands in costs litigating this matter. Declaration of Graham B. LippSmith ("LippSmith Dec.") ¶ 10.

II. THE PROPOSED SETTLEMENT

The Settlement Class consists of all persons in the United States and its territories who: (a) purchased a new Whirlpool-manufactured, Amana, Jenn-Air, KitchenAid, or Whirlpool brand French-door, bottom-mount refrigerator identified in Exhibit 1 to the Settlement Agreement ("Class Refrigerators"); (b) acquired a Class Refrigerator as part of the purchase or remodel of a home; or (c) received as a gift from a donor meeting those requirements, a new Class Refrigerator not used by the donor or by anyone else after the donor purchased the Class Refrigerator and before the donor gave the Class Refrigerator to the Settlement Class Member. Whirlpool manufactured the refrigerators at issue between 2009 and 2013.

Plaintiff concurrently files a Motion for Leave to File Third Amended Complaint ("TAC") herewith. Plaintiff's proposed TAC asserts claims on behalf of a putative nationwide class, rather than a putative California-only class, and ensures that the operative Complaint reflects the terms of the proposed nationwide settlement.

As part of the settlement, Whirlpool agrees to maintain its Special Project for Freezing Events, without alteration, through 12/3121. The Special Project provides free replacement P-trap parts (Whirlpool Part No. W10619951) for Class Members who experience, within five years of purchase, ice buildup on floors of their Class Refrigerator freezers due to freezer drain obstruction, which may have resulted in water leaking out of the bottom of the freezer door ("Freezing Event"), as reported to Whirlpool by a Service Technician. Whirlpool also agrees to reimburse Class Members for out-of-pocket expenses to repair or replace Drain Tubes resulting from Freezing Events occurring within five years of purchase, subject to some limitations.

A. Benefits for *Past* Freezing Events

The Settlement Administrator will complete the initial mailing of Summary Notices to the Class on the Notice Date. Class Members who experience a Freezing Event prior to the Notice Date must submit a completed Claim Form within 90 days of the Notice Date with:

- Class Membership. A valid Class Refrigerator model and serial number combination.
- Proof of Purchase. Documentary proof of date of purchase, *e.g.*, purchase receipts, entries on credit card statements, and warranty registrations. If no such proof is available, then the claimant shall provide a claim-form declaration, under oath, that the claimant cannot locate sufficient documentary proof. Whirlpool will then attempt to determine the date of purchase by searching its own product registration data for claimants who provide this declaration.
- Freezing Event. Documentary proof that claimant experienced a Freezing Event, *e.g.*, service tickets, service estimates, and service receipts. If no such proof is available, claimant shall provide a claim-form declaration, under oath, attesting that claimant experienced a Freezing Event within five years after purchase.
- Paid Qualifying Repair. Documentary proof that the claimant paid for repair of a Class Refrigerator necessitated by a Freezing Event and consisting of the replacement of a duckbill drain tube with the installation of a P-trap part (Whirlpool Part No. W10619951) by a Service Technician within five years after purchase, *e.g.*, service tickets, service receipts, copies of checks, and entries from credit card statements. If no such proof is available, the Settlement Administrator will analyze Whirlpool's warranty claims data to attempt to determine whether a Qualifying Repair was made (*e.g.*, if replacement P-trap part was provided or cost of replacement part reimbursed).

If a Class Member does not provide sufficient documentary proof or equivalent, pursuant to the Settlement terms summarized above, that person will not be entitled to compensation.

B. Reimbursement of Out-of-Pocket Expenses

Class Members satisfying the above requirements may receive up to $150 reimbursement for Paid Qualified Repairs incurred within five years of the Refrigerator purchase as follows:

- 1 – 3 Years After Purchase. 100% Reimbursement for Paid Qualified Repairs.
- Year 4 After Purchase. 100% reimbursement for parts and 65% reimbursement for labor costs of Paid Qualified Repairs.
- Year 5 After Purchase. 100% reimbursement for parts and 50% reimbursement for labor costs of Paid Qualified Repairs.

C. Reduction for Previous Compensation by Whirlpool

A Class Member's compensation will be reduced if s/he previously received any form of compensation for the Freezing Event from Whirlpool such as those listed below. Depending on the form of compensation, such claimants' compensation will be reduced as follows by the:

- amount of any policy-adjust cash payment, cash refund, or other cash payment;
- specified dollar amount of any specified dollar-discount deducted from the price of any new refrigerator;
- dollar amount determined by applying the specified percentage to the regular, then-prevailing price of the new refrigerator for any specified percentage-discount deducted from the price of any new refrigerator; and
- dollar amount specified on any coupon given and redeemed toward purchase of a new refrigerator.

D. Benefits for Future Freezing Events

Generally, Class Members who experience a Freezing Event *on* or *after* the Notice Date are entitled to the same benefits available to claimants for Past Freezing Events. Such claimants will be directed to contact Whirlpool through a dedicated toll-free number no later than 90 days after first experiencing a Freezing Event to report it and request repair service. Whirlpool will schedule service with a Service Technician and pay parts and labor costs to repair the Freezing

Event per the schedule described in §§ II.B *supra*. Any claimant who fails to notify Whirlpool of the Freezing Event via the toll-free number or fails to do so within 90 days of the Freezing Event will not be entitled to compensation. Class Members making claims for Future Freezing Events must submit the same documentary proof of qualifying Class Refrigerator and purchase date, or declaration of inability to provide such proof to prompt a search of Whirlpool's product registration database, as Class Members who are making claims for Past Freezing Events.

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

At preliminary approval, "a court determines whether a proposed settlement is 'within the range of possible approval' and whether or not notice should be sent to class members." *True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1063 (C.D. Cal. 2010) (citation omitted); *see also* Federal Judicial Center, *Manual for Complex Litigation* § 21.632 (4th ed. 2004)). The inquiry addresses whether the settlement is likely to meet requirements to be fair, adequate, and reasonable. *See Manual for Complex Litigation* § 21.632 (4th ed. 2004); 4 William B. Rubenstein et al., *Newberg on Class Actions* § 11:25 (4th ed. 2008). Preliminary approval and notice are appropriate "'if the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval…" *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

A. Pre-Settlement Investigation and Discovery

Plaintiff filed the original complaint on November 13, 2015, alleging a California putative class action for strict tort liability, negligence, breach of warranties, and violations of the California Business and Professions Code against Maytag Corporation ("Maytag") and Whirlpool for defective Drain Tubes in bottom-freezer refrigerators. Whirlpool removed the case to this Court on December 16, 2015, stating that it purchased Maytag in 2006, Maytag was subsequently dissolved, and "Maytag is now solely a brand of Whirlpool and is not a separate

legal entity that can be sued." ECF No. 1. Whirlpool filed its first Motion to Dismiss on December 23, 2015. *See* ECF No. 15. The parties then engaged in significant law and motion, with Plaintiff amending her complaint to add statutory claims and Defendant filing motions to dismiss in response to each amended pleading.

Plaintiff filed her Second Amended Complaint ("SAC") on July 8, 2016, adding a claim for violations of the California Consumers Legal Remedies Act. Cal. Civ. C. §§ 1750, *et seq*. ECF No. 56. Whirlpool moved to dismiss the SAC (ECF No. 57), which the Court granted in part and denied in part (ECF No. 64). The Court denied the motion as to Plaintiff's implied warranty of merchantability cause of action, finding that Plaintiff sufficiently pled that Whirlpool's product failed to perform the basic purpose of "properly channeling defrosted water so as to avoid leakage," and that the fraudulent concealment allegations are sufficient to toll the four-year statute of limitations. *Id*. The Court ruled that the economic loss rule barred Plaintiff's tort claims and similarly dismissed Plaintiff's express warranty and implied warranty of fitness claims. *Id*. The Court did not dismiss Plaintiff's implied warranty of merchantability claim, finding that Plaintiff sufficiently pled that Whirlpool's product failed to perform the basic purpose of "properly channeling defrosted water so as to avoid leakage" and that Plaintiff's allegations of fraudulent concealment sufficient tolled the four-year limitations period. *Id*. Plaintiff's UCL, CLRA, and Song-Beverly Act claims also proceeded as they were predicated on Whirlpool's breach of the implied warranty of merchantability and failure to disclose the defects.

When Whirlpool filed its Motion to Dismiss the SAC, it also filed a Motion to Stay Discovery (ECF No. 58) that Plaintiffs opposed (ECF No. 59) and the Court denied (ECF No. 64). Discovery proceeded and proposed Class Counsel has since reviewed thousands of pages of documents, including consumer complaints, product redesign documents, marketing materials, quality control documents, product testing documents, product manuals, investigation worksheets, product engineering documents, and warranty claims data obtained through

discovery and investigation efforts. LippSmith Dec. ¶ 11.

While the parties engaged in law and motion during the pleading stage, other plaintiffs filed an action in the Central District of California, alleging damages from the same defect articulated in this action. *Chambers, et al. v. Whirlpool*, No. 17-cv-01664-JSW. On May 1, 2017, this Court deemed *Chambers* to be related to this case. ECF No. 75. On January 12, 2018, the *Chambers* case was voluntarily dismissed with prejudice.

B. The Parties Engaged in Arm's-Length Negotiations

Settling Parties reached the settlement through arm's-length negotiations over a year-and-a-half period. Numerous informal settlement discussions included efforts to resolve class claims related to the Drain Tubes while also navigating concerns posed by the related *Chambers* case.

Settling Parties first participated in mediation with Justice Howard B. Wiener (Ret.) in San Diego on February 8, 2016. LippSmith Dec. ¶ 17. Under Justice Wiener's supervision and guidance, Settling Parties agreed on materials terms of settlement and entered into a Term Sheet for Proposed Class Settlement that would benefit Class Members throughout the United States, not just in California. *Id*. Settling Parties did not discuss attorney fees or an incentive award for Plaintiff at this first mediation. *Id*.

Settling Parties mediated again with Justice Edward Wallin (Ret.) in Los Angeles on August 1, 2017. LippSmith Dec. ¶ 18. The parties agreed to maximum amounts Plaintiff and her counsel would seek for fees, costs, and an incentive payment during approval proceedings without opposition from Whirlpool. *Id.* Settling Parties executed the Addendum to the Term Sheet that same day, agreeing Whirlpool will pay Plaintiff an incentive award of $5,000 and Plaintiff's counsel would request, and Whirlpool would not oppose, up to $1,850,000 in fees and costs to be paid by Whirlpool. *Id.*

The Settling Parties then exchanged numerous drafts of the final settlement terms over a period of over six months that involved many teleconferences and written exchanges. LippSmith

¶ 19. The result of these efforts, including prior mediations, was an agreement that would resolve claims and provide benefits on a nationwide scale for defects alleged in hundreds of Whirlpool-manufactured refrigerator models, excluding personal injury and damage to property other than damage to the Class Refrigerator. *Id.*; Settlement Agreement § IX.B.

Notwithstanding all of this work, heavily contested issues of liability and remedies and the uncertainty of recovery remain to this date. LippSmith ¶ 21. There are risks associated with trial proceedings and potential appeals by both Settling Parties. *Id.* Accordingly, this Settlement represents an important victory for Class Members.

C. Other Factors Favor Preliminary Approval of the Settlement

Class Counsel's experience and success in litigating similar class actions also weigh in favor of preliminary approval. LippSmith Dec. ¶¶ 3-7. Class Counsel have worked on large, complex cases for decades, with a particular focus on antitrust and consumer protection claims. *See id.* ¶ 7. Class Counsel have a track record of success in similar cases, obtaining verdicts and negotiating settlement terms that provided substantial benefits to numerous consumer classes. Based in part on such experience, Class Counsel executed the Settlement Agreement, confident that it constituted a fair and adequate outcome to meaningfully benefit the Class.

Attorney's fees and expenses, any incentive payment awarded to Plaintiff, claims administration costs, and the cost of providing Notice to the Class will be borne by Whirlpool. Ex. 1 §§ V, VIII. These costs will be paid separate from, and will not reduce, Class Members' recoveries. In addition, because the settlement does not have a limited fund, all Class Members eligible to receive settlement benefits will receive the same benefits regardless of the order in which claims are received and regardless of other claims paid pursuant to the settlement. The Settlement, by any measure, provides an excellent result for Class Members.

D. The Settlement Is Valuable

The Settlement is valuable. The total payout is uncapped, meaning that every Settlement

Class Member is entitled to make a claim for the full benefits available. The maximum benefit for out-of-pocket parts and labor costs to replace Class Refrigerator's Drain Tubes is $150 per claim. According to Whirlpool, its data show that the parts and labor costs it paid on claims to replace a duckbill drain tube with a P-Trap kit averaged approximately $95 per claim. Thus, the Class Members here are eligible to receive up to 50% more than the average repair cost reflected in Whirlpool's data.

The owners of approximately 1,705,000 total Class Refrigerators are potentially eligible for benefits. Whirlpool possesses the majority of the Class Members' either email or physical mail addresses. Declaration of Steven Weisbrot ("Administrator Dec.") ¶¶ 10-12. Thus, for a consumer products settlement, the direct mail and direct email portions of the Notice Plan are uncommonly robust here, making it difficult to accurately predict a claims rate. *Id.*

To date and *with no settlement, no notice of a settlement, and no settlement benefits offered*, owners of 94,648 (or 5.5%) of the Class Refrigerators have already made pre-Settlement claims to Whirlpool to replace their duckbill drain tube with a P-Trap kit. Of those pre-Settlement claims, Whirlpool paid for parts and labor costs to repair 55,333 Class Refrigerators, and paid parts costs (but not labor) to repair an additional 39,315 Class Refrigerators. For those 39,315 claims for which Whirlpool paid the part cost alone and applying a blended average labor benefit of $80 (based on the average repair cost less the $15 P-Trap part cost), the estimated settlement benefit value is $3,145,200. Accounting for the balance of 1,610,352 Class Refrigerators for which Whirlpool had not paid any portion of a repair claim, assuming a blended average parts and labor benefit of $95, and assuming claims for an additional 5.5% of the units in the field—which is very conservative considering the warranty rate was with no settlement, no notice of a settlement, and no settlement benefits offered—the Settlement provides an additional estimated settlement benefit value of $8,414,089.20 for the Class Members who experienced qualifying Freezing Events and paid for their full repair cost out of pocket. These estimates

reflect a total settlement benefit value of $11,559,289.20, and they still do not account for Whirlpool's further commitment to provide a free replacement part for certain future repairs.

Finally, although one measure of the maximum theoretical value of this case—if Plaintiff achieved class certification and prevailed completely on all claims—is upwards of $160,000,000 (1,700,000 units multiplied by the average repair cost of $95), it is appropriate to settle this case for less given the various risk factors. Specifically, Plaintiff faces the following risks among others: (1) not achieving a contested class certification; (2) not being able to prove the fraud components of her claims resulting from the Court's resolution of Whirlpool's motions to dismiss; and (3) the fact that not every class member (particularly those who have not experienced a manifestation of the defect) would be likely to recover a full cost-of-repair measure of damages. In sum, this settlement delivers real value to the Class and should be approved accordingly.

IV. THE COURT SHOULD PROVISIONALLY CERTIFY THE CLASS

A Court may certify a class where the "question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable" to bring every individual claimant before the court. Fed. R. Civ. P. 23(a). Class certification serves a critical function in cases like this one where "few potential class members could afford to undertake individual litigation…to recover the relatively modest damages at issue." *See Chamberlan v. Ford Motor Co.*, 223 F.R.D. 524, 527 (N.D. Cal. 2004). By carefully crafting a reasonable settlement, parties can better realize the class action's benefits of encouraging efficient dispute resolution and opening courts to parties once intimidated by daunting litigation costs. Such advantages have led the Ninth Circuit to declare "a strong judicial policy" in favor of settling class action lawsuits. *See Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878, at *2 (E.D. Cal. 2017); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

Where, as here, the parties to a class action negotiate a tentative settlement before class certification, the Court "must peruse the proposed compromise" to ensure "the propriety of the

[proposed] certification and the fairness of the settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). Only a proposed class that is '"precise, objective, and presently ascertainable"' is eligible for certification. *Dearaujo v. Regis Corp.*, 2016 U.S. Dist. LEXIS 85689, at *15 (E.D. Cal. 2016). As the party requesting provisional certification, Plaintiff must show that the proposed class satisfies Rule 23(a)'s "threshold requirements" of numerosity, commonality, typicality, and adequacy of representation. *See Amchem Prods. V. Windsor*, 521 U.S. 591, 613 (1997). The proposed class must also meet the "strictures" of Rule 23(b)(3): "the court must find 'that 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." Fed. R. Civ. P. 23(b)(3); *In re Haier Freezer Consumer Litig.*, 2013 U.S. Dist. LEXIS 72132, at *11-12 (N.D. Cal. 2013).

A. The Proposed Class is Precise, Objective, and Ascertainable

A settlement class must be ascertainable so the court will be able to efficiently and objectively determine who should receive notice of the settlement. *Pena v. Taylor Farms Pac., Inc.*, 305 F.R.D. 197, 206 (E.D. Cal. 2015). A proposed class definition must specify a "distinct group of plaintiffs whose members [can] be identified with particularity." *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978).

Here, the Settlement Agreement precisely defines "Settlement Class" as all persons in the United States and its territories who: (a) *purchased* a new Class Refrigerator; (b) *acquired* a Class Refrigerator as part of a home purchase or remodel; or (c) *received as a gift*, from a donor meeting those requirements, a new Class Refrigerator. LippSmith Dec. Ex. 1 at p. 8 (emphasis added). In addition, the list of products, including brand names and serial numbers, will be published and available on the Settlement Website, so any potential Class Member will be able to reference that list to determine whether they have a Class Refrigerator.

The Agreement also specifies an objective basis for identifying class members: summary

notices will be mailed to individuals whose address can be found in Whirlpool's databases, including product registration and warranty databases and e-mailed to all Settlement Members for whom valid email addresses are known to Whirlpool. LippSmith Dec. Ex. 1 at p. 23. Furthermore, the Administrator shall "provide Publication Notice to the Settlement Class using appropriate media outlets" and create a "Settlement Website" detailing the requirements that individuals must meet to submit a valid claim. *See id.* As such, the Settlement Class definition and notice requirements together provide the Court with an objectively ascertainable group of individuals entitled to receive notice and convey sufficient meaning to those informed of the settlement of information needed to determine whether they are potential Class Members.

Upon determining that Plaintiff has met the threshold requirement of proposing an ascertainable class, the Court may consider whether the proposed settlement class satisfies the separate certification requirements specified in Rules 23(a) and (b). *See Campbell v, PricewaterhouseCoopers LLP*, 253 F.R.D. 586, 593 (E.D. Cal. 2008).

B. The Proposed Class Meets Rule 23(a)'s "Numerosity" Requirement

To be certified, the proposed Settlement Class must meet each of Rule 23(a)'s four "threshold requirements applicable to all class actions." *Amchem*, 521 U.S. at 613. The first of these requires that a putative class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Courts find joinder "impracticable" where "the difficulty or inconvenience of joining all members of the class makes class litigation desirable." *In re Itel Sec. Litigation*, 89 F.R.D. 104, 112 (N.D. Cal. 1981). It is generally accepted that "forty or more members will satisfy the numerosity requirement." *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878, at *7 (E.D. Cal. 2017) (putative class of 87 members satisfied numerosity); *see also Sullivan v. Chase Inv. Services, Inc.*, 79 F.R.D. 246, 257 (N.D. Cal. 1978) ("a class of 1000 clearly satisfies the numerosity requirement…").

The proposed Settlement Class encompasses, at a minimum, 39,315 claims for which

Whirlpool failed to pay the labor costs associated with repairing defective Class Refrigerators. This figure, however, only factors in customers who *already requested a repair* due to a Freezing Event. Whirlpool's own customer database indicates at least 1,705,000 Class Refrigerators nationwide, each manufactured with the same defective part. Subtracting the claims satisfied at the time of this suit (including those for which Whirlpool paid labor costs) leaves 1,610,352 units with potential claims for reimbursement for replacement parts and labor costs. Thus, the proposed Class easily satisfies the numerosity requirement.

C. The Proposed Settlement Class Satisfies the Commonality Requirement

The proposed Settlement Class must also be rooted in "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). A "common" question is one that, once settled in a legal forum, resolves "an issue that is central to the validity of each one of the claims at one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). The rule does *not* require that all questions of law or fact be common; "[t]he existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Alternatively, commonality may exist despite some variation among the class members' legal claims—where "the same conduct defendant allegedly engaged in 'would form the basis of each of the plaintiff's claims.'" *Goodwin v. Winn Mgmt. Group, LLC*, 2017 U.S. Dist. LEXIS 117133, *13-14 (E.D. Cal. 2017) (citation omitted)). Furthermore, Plaintiff "need not show that every question in the case…is capable of classwide resolution." *Wang v. Chinese Daily News*, 737 F.3d 538, 544 (9th Cir. 2013). In fact, a class may meet the commonality requirement with "a single common question" shared amongst class members. *See Dukes*, 564 U.S. at 359.

Plaintiff's proposed Third Amended Complaint identifies six common questions of fact and four common questions of law. *See* TAC ¶ 17. Common questions of fact ask whether Defendant's Drain Tubes (1) are defective, (2) have an impeded useful life, (3) serve their

intended purposes, (4) impede the useful life of the Class Refrigerators, and (5) cause damage to Class Refrigerator components and/or to other parts of the putative class members' homes. *See id.* The common questions of fact also include whether Whirlpool continued to install defective Drain Tubes in Class Refrigerators despite knowledge of the defects. *See id*. ¶ 33. These factual questions clearly demonstrate that the "same conduct defendant allegedly engaged in" forms the "basis of" each putative class member's claim. *See Acosta v. Equifax Info. Servs., L.L.C.*, 243 F.R.D. 377, 384 (C.D. Cal. 2007).

The common legal questions are whether Defendant (1) had a duty to disclose any defects in its Drain Tubes, (2) breached the implied warranty of merchantability, (3) must pay plaintiffs' repair and labor costs, and (4) engaged in unfair, unlawful, or fraudulent acts. *See* TAC ¶ 17. Determining "the truth or falsity" of even one of these claims will "resolve an issue that is central to the validity of each" of them. *See Dukes*, 564 U.S. at 350.

As the proposed Class rests upon a substantial number of common legal and factual questions, it meets Rule 23(a)'s commonality requirement.

D. The Class Representative Has Claims Typical of the Class

A class representative's claims "are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). This ensures that "interests of the named representatives align with the interests of the class." *Wolin v. Jaguar Land Rover N. Am. L.L.C.*, 617 F.3d 1168, 1175 (9th Cir. 2010) (internal citation omitted). Typicality may be satisfied despite "specific" factual differences between the representative's claims and those of the class. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). Where evidence needed "to establish [the representative's] claims would also prove the claims of the proposed Class," typicality is satisfied. *See In re Wireless Facilities, Inc.*, 2008 WL 4146126, at *4 (S.D. Cal. 2008).

Here, Plaintiff's injuries and those of the proposed Class stem from the same conduct — Whirlpool's decision to include defective Drain Tubes in Class Refrigerators despite knowing of

the defects. Plaintiff's Class Refrigerator suffered its first Freezing Event in 2014, which resulted in a leak that coated Plaintiff's kitchen floor in water. TAC ¶ 41. Plaintiff did not realize that her Class Refrigerator was the source of the leaks until she struggled to open the freezer door and noticed that the bottom of the freezer cabinet was covered in ice. *Id.* Plaintiff contacted Whirlpool's customer service about the problem and a customer service representative scheduled a service call with an authorized service provider. *Id.* ¶ 43. Whirlpool paid for the replacement part, but not labor costs incurred during the repair. *Id.* ¶ 45.

Plaintiff's experience with her Class Refrigerator closely tracks the claims made and alleged injuries sustained by members of the proposed settlement class, and the success or failure of her case turns on the same fundamental factual and legal questions common to the Settlement Class, including but not limited to whether the Drain Tubes were defective, whether they rendered the Class Refrigerators unmerchantable, and whether Whirlpool should pay labor costs associated with repairing the defect. Plaintiff owned the same product as the Class, the same defect manifested in the Class Refrigerators of both Plaintiff and the Class, and Plaintiff incurred repair costs due to the defect. Accordingly, establishing the facts that give rise Plaintiff's claims would also establish the claims of putative class members.

E. Class Counsel and the Class Representative Are Adequate

The Court must assess whether "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This inquiry applies to both class representatives and class counsel who must be free of "conflicts of interest with other class members;" class counsel must "prosecute the action vigorously on behalf of the class." *Hanlon*, 150 F.3d at 1020. "Adequacy of representation depends on the qualifications of counsel for the representatives, an absence of antagonism, a sharing of interests between representatives and absentees, and the unlikelihood that the suit is collusive." *Dalkon Shield IUD Prods. Liab. Litig.*, 693 F.2d 847, 855 (9th Cir. 1982) (citing 7 Wright and Miller, *Federal Practice and Procedure*

§§ 1765-1769 at 615-57). In appointing class counsel, the Court must consider the following: (i) counsel's work in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. *Ellsworth,* 2014 U.S. Dist. LEXIS 81646, at *57-58. Relevant expertise is also considered, such as whether "proposed Class Counsel have regularly engaged in major complex litigation and have extensive experience in consumer class action lawsuits that are similar in size, scope, and complexity to the present case." *In re Netflix Privacy Litig.*, 2012 U.S. Dist. LEXIS 93284, at *11 (N.D. Cal. Jul. 5, 2012).

Proposed Class Counsel, Kasdan LippSmith Weber Turner LLP ("KLWT"), are competent, have provided vigorous representation, and will continue to do so throughout the remainder of this litigation. Class Counsel specializes in plaintiff-side litigation and has successfully recovered hundreds of millions in complex cases against various large companies, maintains significant resources for prosecuting such actions, and has experience litigating large-scale produce defect class actions. LippSmith Dec. ¶¶ 3-7. Courts throughout California and Hawai'i have found counsel to be adequate class and MDL counsel on numerous occasions. *Id.*

KLWT has managed this action from the time of filing in November 2015 to present. In doing so, KLWT has directed and managed the discovery process, filed numerous briefs and motions, and diligently worked toward framing and finalizing a settlement resolution that provides a substantial benefit to the Class—a process that spanned more than two years, consisting of two mediation sessions, numerous draft agreements, and countless telephone calls and emails. Proposed Class Counsel has incurred attorney's fees and will seek reimbursement of no more than $30,000 in costs on a contingency basis in pursuing claims on behalf of Plaintiff and the Settlement Class. Thus, Plaintiffs respectfully request that the Court appoint Kenneth S. Kasdan and Graham B. LippSmith of Kasdan LippSmith Weber Turner LLP as Class Counsel.

As for class representatives, where '"certain named persons purport to represent others without their knowledge or consent,"' courts ought to conduct a careful inquiry to ensure that the '"named parties are qualified and capable of fully pursuing the common goals of the class without...conflicts of interests."' *Farms v. Calcot, Ltd.*, 2010 U.S. Dist. LEXIS 93548, at *17 (E.D. Cal. Aug. 23, 2010) (citation omitted)).

The proposed Class Representative is adequate. Ms. Corzine's interests are identical to those of the proposed Settlement Class in that she stands in the same factual and legal shoes—and seeks the same form of relief—as every other Class Member. Further, Ms. Corzine has demonstrated a commitment to prosecuting this matter by supplying essential, factual information concerning the legal claims made in this lawsuit, actively participating in efforts to resolve the matter out of concern that any settlement should provide an adequate benefit to other Class Members, and committing to testifying at deposition and trial. Declaration of Julie Corzine ("Corzine Dec.") ¶ 5-6. Ms. Corzine has, and will continue to, fairly and adequately represent interests of the proposed Settlement Class. Accordingly, Plaintiff respectfully requests that the Court appoint her to serve as Class Representative for the Settlement Class.

District courts should also "scrutinize carefully the [incentive] awards so that they do not undermine the adequacy of the class representatives." *Radcliffe v. Experian Info. Sols.*, 715 F.3d 1157, 1163 (9th Cir. 2013). Incentive awards should not create "'an unacceptable disconnect between the interests of the contracting representatives and class counsel, on the one hand, and members of the class on the other.'" *Id*. at 1164 (quoting *Rodriguez v. W. Pub. Corp. (Rodriguez I)*, 563 F.3d 948, 960 (9th Cir. 2009)).

The proposed Settlement provides the class representative with a $5,000 Service Award "to compensate her for her efforts in pursuing litigation on behalf of the Settlement Class." Settlement Agreement at p. 29. Ms. Corzine will not receive any other separate payment or compensation as a result of participating in the litigation. A $5,000 incentive award is "within

the range that courts have found reasonable." *See Morales v. Conopco, Inc.*, 2016 U.S. Dist. LEXIS 90424, at *10 (E.D. Cal. Jul. 11, 2016) ("Courts have generally found that $5,000 incentive payments are reasonable."); *see also Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, at *27-29 (N.D. Cal. 2009) (approving $5,000 incentive payment); *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 669 (E.D. Cal. 2008) (same).

F. The Proposed Class Satisfies the Predominance and Superiority Requirements of Rule 23(b)(3)

After satisfying Rule 23(a)'s prerequisites, a proposed settlement class must meet the requirements of one of Rule 23(b)'s three subsections. *Amchem*, 521 U.S. at 614. Here, the proposed Settlement Class must satisfy Rule 23(b)(3), which governs certification of class actions "for damages designed to secure judgments binding all class members save those who affirmatively elected to be excluded." *Id.* at 614-15. "To qualify for certification under Rule 23(b)(3), a class must meet two requirements beyond the Rule 23(a) prerequisites: Common questions must 'predominate over any questions affecting only individual members'; and class resolution must be 'superior to other available methods for the fair and efficient adjudication of the controversy.'" *Id*. at 615 (quoting Fed. R. Civ. P. 23(b)(3)).

1. Predominance: Common Claims of Fraud Predominate

Plaintiff alleges that Whirlpool fraudulently concealed the defect in its Drain Tubes, and those allegations are common and central to the class claims. The predominance inquiry "calls upon courts to give careful scrutiny to the relation between common and individual questions in a case." *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016). An "individual" question is one which requires class members to "present evidence that varies from member to member," while a "common question" is one for which "the same evidence" enables each class member "to make a prima facie showing" or "is susceptible to generalized, class-wide proof." *Id*.

Predominance is met where the "common, aggregation-enabling, issues in the case are

more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods,* 136 S. Ct. at 1045. Therefore, predominance may be satisfied even where some "important matters…such as damages or some affirmative defenses peculiar to individual class members" must be tried separately. *Id.* Where the important individual issues concern "damages and not liability, [they] do not present an impediment to class certification." *Senne v. Kan. City Royals Baseball Corp.*, 2017 U.S. Dist. LEXIS 32949, at *151 (N.D. Cal. Mar. 7, 2017) (citing *Vaquero v. Ashley Furniture Indus., Inc.*, 824 F.3d 1150, 1155 (9th Cir. 2016)).

The proposed Settlement Class satisfies the predominance requirement through common, generalized proof, and individual issues limited to damages. If this action proceeded to trial, Plaintiff would carry the burden of proving that: (1) the Drain Tubes have a design defect; (2) the defect causes(d) "Freezing Events" in Class Refrigerators; (3) Whirlpool was aware of the defect; and (4) Whirlpool intentionally continued to install defective Drain Tubes deep into the componentry of Class Refrigerators despite its knowledge of the defects. Plaintiff's class definition encompasses *only* those individuals who purchased, acquired, or received as a gift a Class Refrigerator, which all contain a defective Drain Tube. Thus, each Class Member will have endured the same conduct by Whirlpool that resulted in being sold Class Refrigerators with defective Drain Tubes, and each will be able to point to the same facts and evidence of Whirlpool's knowledge about the defect, its continuing to place the defective Drain Tubes in Class Refrigerators, and its failure to inform consumers about the defect.

By combining a narrow class definition with claims focused on alleged fraudulent concealment and breach of implied warranties, Plaintiff's suit hinges on whether Whirlpool "engaged in the same fraud in the same manner against all Class Members." *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 2016 U.S. Dist. LEXIS 145701 at *738 (N.D. Cal. Oct. 18, 2016) (finding predominance satisfied where class fraud claims alleged that each plaintiff suffered similar harm from "defeat device" used during testing).

This Court found that allegations that Defendant engaged in the same conduct constituting the breach of warranty, including facts that, if true, show fraudulent concealment of the defect. *See* ECF No. 64. These allegations of Whirlpool's conduct are not unique to any particular Class Member. This conduct culminated in each Class Member's purchase of a Class Refrigerator equipped with a defective Drain Tube that will eventually fail in the same manner.

Furthermore, Class Members are confined to causes of action that do not involve wildly distinct individual inquiries or interests by state. *See* Proposed TAC. The Magnuson-Moss Warranty Act is a federal statute invoked on behalf of Class Members nationwide, and claims for fraudulent concealment do not substantially vary from state to state. Importantly, any claims for personal injury are excluded from the proposed Settlement. Exhibit 1 at p. 31, § IV.B. Possible variations in individual damages available to class members "do not present an impediment to class certification." *Senne*, 2017 U.S. Dist. LEXIS 32949 at *151. In fact, "[s]ettlement benefits cannot form part of a Rule 23(b)(3) analysis; rather the examination must rest on 'legal or factual questions that qualify each class member's case as a genuine controversy, questions that preexist any settlement.'" *Hanlon*, 150 F.3d at 1022 (quoting *Amchem*, 521 U.S. at 623).

2. Superiority: The Proposed Class Action Is Superior to Other Adjudicative Methods

A proposed settlement class satisfies Rule 23(b)(3)'s superiority requirement where "the objectives of the particular class action procedure will be achieved in the particular case." Wright & Miller, *Federal Practice and Procedure* § 1779 (2d ed. 1986). The test for superiority involves: "(1) the interest of each class member in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against the class; (3) the desirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action." *Cuzick v. Zodiac U.S. Seat Shells, LLC*, 2017 U.S. Dist. LEXIS

168290, at *11-12 (N.D. Cal. Oct. 11, 2017). As the Court is considering class certification for settlement purposes only, it need not consider whether the matter would pose manageability challenges at trial. *See Amchem*, 521 U.S. at 619.

The first factor in determining superiority, Class Members' interest in individually prosecuting their own separate actions, strongly compels that the proposed class action is the superior method of adjudicating Plaintiff's and the Class' claims against Whirlpool. As in *Hanlon*, the maximum potential recovery of any individual Class Member for the cost of a replacement part and installation of said part would be dwarfed by litigation costs of any individual action. Controlling their individual actions would confer no advantage upon Class Members because doing so would result in less litigation or settlement leverage, significantly reduced resources, and no greater prospect for recovery. In contrast, the proposed Class allows Class Members to pool their individual damages, increasing their collective leverage and raising their prospects for recovery against Whirlpool accordingly.

The remaining factors also weigh in favor of the proposed class. As described above, Settling Parties engaged in over three-and-half years of active litigation, including two mediation sessions and arm's-length settlement negotiations. It is highly desirable to concentrate the litigation of Class Members' claims in this forum because requiring Class Members to bring individual claims would burden the judiciary, prove uneconomical for Plaintiffs, and gravely reduce the possibility of obtaining a favorable result for each individual Class Member. Finally, management of the proposed class action does not pose any difficulties that would render it inferior to a flood of individual actions because, as set forth above, the Class' claims are governed by common questions of law and fact that predominate over any individual issues.

G. Preliminary Justification for Attorney Fees and Costs

Pursuant to the Settlement Agreement §§ VIII.B, Class Counsel may apply for attorney

fees and costs up to $1,850,000. The Court has broad discretion to approve this amount, which was agreed upon during a second mediation session with Justice Wallin (ret.). Fee awards must be "reasonable under the circumstances." *Rodriguez I*, 563 F.3d at 967.

Plaintiff will file a formal and complete motion for attorney fees and costs prior to a hearing on final approval. As a preliminary matter, the *maximum* fees and costs provided in the Settlement are justified by the costs and comprehensive work Plaintiff's counsel expended to date. LippSmith Dec. ¶¶ 8-26. To date, Plaintiff's counsel have dedicated thousands of hours and tens of thousands in costs since filing this case in 2015. *Id*. Plaintiff's counsel spent a substantial amount of time on law and motion matters that included several rounds of motions to dismiss and a motion to stay discovery, written discovery and review of thousands of pages of documents produced by Whirlpool, investigation as to the Drain Tube defect, and extensive settlement efforts. *Id*. ¶¶ 11, 14. Settlement efforts consisted of two mediation sessions followed by countless hours of continued negotiation as to the final terms. *Id*. ¶¶ 15-26.

Prior to final approval, Plaintiff's counsel will submit complete lodestar calculations for the Court's review and determination of a justified and fair amount for attorney fees and costs not to exceed the maximum provided in the Settlement. Because the fee and costs reimbursement is for a *maximum* amount, the Court's discretion to determine fees and costs is without any risk that the settlement will fall apart because of that determination. Ex. 1 §§ VIII.B-C, VIII.F. The Court's ultimate supervision and control over fees and costs creates an additional layer of fairness for Class Members to ensure that Plaintiff's counsel will not be paid an unreasonable amount of fees or reimbursed for an unjustified amount of costs. Also, any payment of fees and costs reimbursements awarded by the Court and paid by Whirlpool will not reduce benefits to any Class Member because those amounts are paid separately from, and in addition to, the benefits provided to the Class. *Id*. § VIII.A.

Finally, the requested fees and costs are reasonable given the likely value of the

Settlement. If the claims rate remains the same as the warranty claims rate for the Drain Tubes thus far—a conservative assumption given that the Settlement involves significant outreach to notify individuals of their potential claims—the likely total value of the proposed settlement is over $21,000,000. *See supra* § IV.D. At that value, the requested fees and costs represent less than nine percent (9%) of the total settlement value. This percentage is well below the 25-percent benchmark typically employed by district courts in the Ninth Circuit. *See Jones v. GN Netcom, Inc. (In re Bluetooth Headset Prods. Liab. Litig.),* 654 F.3d 935, 942-43 (9th Cir. 2011).

V. THE COURT SHOULD APPOINT ANGEION AS ADMINISTRATOR, APPROVE THE NOTICE PLAN, AND SET A FINAL APPROVAL HEARING

Settling Parties respectfully request that the Court appoint Angeion Group, LLC ("Angeion") to author and administer the Notice Plan and manage the process for handling claims. The Notice Plan will provide information on the Settlement Agreement and how to object. The Notice Plan and Settlement Notice are attached to the Settlement Agreement. LippSmith Dec. Exhibits 3, 6-7. Angeion provided additional details regarding its qualifications, experience, and opinions of the sufficiency of the Notice Plan in support of this motion.

The notice program is the best notice practicable under the circumstances, and includes individual notice to all Class Members who can be identified through reasonable effort. Administrator Dec. ¶¶ 5-7. The notice program incorporates direct notice (via both US postal Mail and email where both are available), traditional publication notice, an informational website, and toll-free telephone line. *Id*. ¶ 6. Angeion will mail the Summary Notice to each Settlement Class Member for whom an address can be found in Whirlpool's databases, including but not limited to its product registration and warranty databases for the Class Refrigerators, and also provide email notice to all members of the Settlement Class for whom valid email addresses are known to Whirlpool. *Id*. ¶ 13. Additionally, Angeion will also email notice to each Class Member for whom the defendant has an email address, irrespective of whether they are being

sent mailed notice. *Id*. ¶ 14. This is an over inclusive effort, far in excess of what is required under Rule 23's requirement to provide individual notice to all Class Members who can be identified through reasonable effort. *Id*. ¶¶ 13-14.

Through each avenue, in addition to the website, the Class will receive information about the Settlement, how to object, by when to object, and the date the Court sets for the final approval hearing. The Notices are drafted in clear, accessible language, and in a format that satisfies due process. Administrator Dec. ¶ 27.

This notice program provides the reach and frequency evidence which courts systematically rely upon in reviewing class action notice programs for adequacy. Administrator Dec. ¶¶ 25-26. The reach percentage and the number of exposure opportunities, meet or exceed the guidelines as set forth in the Federal Judicial Center's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*. *Id*. The proposed Notice Plan meets the requirements set forth by California and federal law, satisfies due process, and provides an array of means for Class Members to participate in the Settlement. Therefore, Settling Parties respectfully request that the Court approve the Notice Plan provided in the Settlement and order distribution of the proposed Notice attached to and as set forth in the Settlement Agreement.

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant the Motion for Preliminary Approval of Settlement in its entirety.

Dated: July 8, 2019

KASDAN LIPPSMITH WEBER TURNER LLP

By: */s/ Graham B. LippSmith*
KENNETH S. KASDAN
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2019, I electronically filed **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT, CERTIFYING PROVISIONAL SETTLEMENT CLASS, APPOINTING SETTLEMENT CLASS COUNSEL, SETTING HEARING ON FINAL APPROVAL OF SETTLEMENT, AND DIRECTING NOTICE TO THE CLASS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system to receive service.

/s/ Graham B. LippSmith
Graham B. LippSmith