

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**WARREN BURCH, JAMES BODLEY, \*  
KYLE MATSON, RONALD \*  
McCALLUM, \***

**Plaintiffs, \***

**v. \***

**WHIRLPOOL CORPORATION, \***

**Defendant. \***

**Case No.: 1:17-cv-18  
Honorable Paul L. Maloney**

**ORDER GRANTING PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT**

On April 15, 2019, Plaintiffs Warren Burch, James Bodley, Kyle Matson and Ronald McCallum (collectively “Plaintiffs”), on behalf of themselves and the Settlement Class, as defined below, and Defendant Whirlpool Corporation (“Whirlpool” or “Defendant”) (collectively, “the Parties”) executed a Class Action Settlement Agreement (“Settlement Agreement” or “Agreement”). Pursuant to the Agreement, the Parties have moved for entry of an order granting preliminary approval to the Settlement provided for in the Settlement Agreement (the “Settlement”). All defined terms in this Order (i.e., all capitalized words or phrases) shall have the same definitions and meanings as those set forth in the Parties’ Settlement Agreement.

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

**I. CERTIFICATION OF THE SETTLEMENT CLASS**

The Agreement settles all Released Claims, as defined below, that have been or could have been brought in the putative class-action Lawsuits. The Agreement provides for a nationwide class settlement of the Released Claims concerning certain models of Whirlpool-manufactured dishwashing machines that are the subject of the Lawsuits. As a part of the Agreement, Defendant has conditionally consented to the certification of the Settlement Class.

A. The Court has considered (1) allegations, information, arguments, and authorities provided by the Parties in connection with pleadings and motions previously filed by each of them in this case; (2) information, arguments, and authorities provided by parties in their memoranda submitted in support of the motion for entry of an order granting preliminary approval to the Settlement; (3) Defendant's conditional consent, for the purpose of the Settlement, to certification of the Settlement Class specified in the Settlement Agreement; (4) the terms of the Settlement Agreement including, but not limited to, the definition of the Settlement Class and the benefits to be provided to the Settlement Class; and (5) the Settlement's elimination of any potential manageability issues, ascertainability issues, and individualized issues of fact and law that could have had a bearing on the certification of a nationwide class for trial. Based on those considerations, the Court hereby finds as follows:

1. The Settlement Class is ascertainable. The class is defined solely with reference to objective criteria. It is administratively feasible to determine class membership.

2. From 2014 through August 214, Whirlpool manufactured approximately 799,599 dishwashers containing the plastic axel design at issue ("Class Dishwashers") that were sold to, acquired by, or received as a gift by persons nationwide.

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

a. Whether the Class Dishwashers are defective in that the plastic axels on the wheels of the upper rack adjusters break, making the upper dish rack unusable; and

b. Whether Plaintiffs and the members of the Settlement Class can recover damages based on the alleged plastic axel defect.

4. The Class Representatives' claims are typical of the Settlement Class. Class Representatives are members of the Settlement Class and allege that they have been damaged by the same conduct of Defendant that they allege has damaged other members of the Settlement Class. Class Representatives' claims are not in conflict with or antagonistic to the claims of the Settlement Class as a whole. The claims of Class Representatives and other members of the Settlement Class are based upon corresponding theories.

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

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

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

B. For the purpose of determining whether the terms of the Settlement are fair, reasonable, and adequate, the Court hereby certifies the following Settlement Class for settlement purposes only:

All persons in the United States and its territories who (i) purchased a new Class Dishwasher, (ii) acquired a Class Dishwasher as part of the purchase of a home, residence, or structure, or (iii) 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.

\* \* \*

“Class Dishwasher” means a Whirlpool-manufactured, KitchenAid-brand dishwasher manufactured with a Plastic Premium Adjuster in combination with a V-Rail System between October 2010 and the Notice Date.

C. The Court appoints Plaintiffs Warren Burch, James Bodley, Kyle Matson, and Ronald McCallum as the Class Representatives of the Settlement Class.

D. The Court appoints R. Brent Irby and Edward Wallace as Lead Class Counsel for the Settlement Class. The Court also appoints Nathan Carpenter and Rebecca Bell-Stanton as Class Counsel for the Settlement Class.

E. If for any reason the Settlement Agreement ultimately does not become effective, Defendant’s conditional consent to the certification of the Settlement Class shall be null and void in its entirety; this Order certifying a nationwide class shall be vacated; the Parties shall return to their respective positions in the Lawsuits as those positions existed immediately before the Parties executed the Settlement Agreement; and nothing stated in the Settlement Agreement or in this Order shall be deemed an admission or waiver of any kind by any of the Parties or used as evidence against, or over the objection of, any of the Parties for any purpose in this action or in any other action or proceeding of any kind.

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

A. Defendant has at all times disputed, and continues to dispute, Plaintiffs' allegations in the Lawsuits, denies any liability for any of the claims that have or could have been alleged by Plaintiffs or other members of the Settlement Class, and maintain that the Class Dishwashers are free of defects.

B. The Settlement requires Whirlpool to provide specified compensation to each Class Member who meets certain eligibility requirements and who timely submits a valid, complete Claim Form, with or without specified supporting documentation depending on the Class Members' claimed out-of-pocket repair costs, all as defined and set forth in the Settlement Agreement. The Settlement provides retroactive cash and rebate benefits for those Class Members who incurred past damages in paying out-of-pocket for a repair of their upper rack adjuster, as well as prospective relief for Class Members whose dishwashers still contains the plastic upper rack adjuster at issue. The Settlement also provides benefits for Class Members who previously received a free repair of their dishwasher with the stainless steel replacement adjuster.

C. On a preliminary basis, therefore, taking into account (1) the defenses asserted by Defendant and the dismissal of several claims already, (2) the risks to the members of the Settlement Class that Whirlpool would continue to successfully defend against claims arising out of the facts and legal theories pled and asserted in this case, whether litigated by members of the Settlement Class themselves or on their behalf in a class action, and (3) the length of time that would be required for members of the Settlement Class, or any group of members of the Settlement Class, to obtain a final judgment through one or more additional trials and appeals, the Settlement appears fair, reasonable, and adequate. Moreover, the Parties have reached the

Settlement after the exchange of voluminous documents and information before, during, and following settlement negotiations; briefing and rulings on Whirlpool's Motion to Dismiss; and engaging in arm's-length settlement negotiations over a sixteen (16) month period with the assistance of a respected mediator. For all these reasons, the Settlement falls within the appropriate range of possible approval and does not appear in any way to be the product of collusion.

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

**III. APPROVAL OF THE SUMMARY SETTLEMENT NOTICE, THE LONG-FORM NOTICE OR "FAQ," THE PUBLICATION NOTICE, THE CLAIM FORMS, AND THE PLANS FOR DISTRIBUTION AND DISSEMINATION OF THE SETTLEMENT NOTICES**

A. As provided for in the Settlement Agreement, the Parties have submitted: (i) a proposed summary settlement notice to be mailed and emailed to identifiable Class Members (the "Summary Notice"), a copy is attached to the Irby Declaration; (ii) a plan for distributing the Summary Notice to the Settlement Class; (iii) a proposed long-form settlement notice in the form of Frequently Asked Questions and Answers or a "FAQ," a copy of which is attached to the Settlement Agreement and which will be published on the Settlement Website and mailed to those Class Members who request a hardcopy; (iv) a proposed Publication Notice, a copy of which is attached to the Irby Declaration; (v) a plan for the Publication Notice's publication in print periodicals and on websites and social media to provide additional notice to the Settlement Class; (vi) proposed Claim Forms for the cash payment, cash rebate options, and cash reimbursement Settlement benefits; (vii) a plan for allowing Class Members to file Claim Forms by email, U.S. Mail, or the Settlement Website and for mailing a Claim Form to Class Members who contact the Settlement Administrator by telephone, mail, or email requesting a Claim Form

be sent to them; and (viii) a plan for establishing a Settlement Website, with the FAQ and other information and documents that the Parties jointly agree to post concerning the nature of the case and the status of the Settlement, including Claim Forms, a copy of the FAQ, information relating to relevant deadlines, a complete copy of the Settlement Agreement, and orders of the Court.

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

C. The Summary Notice, FAQ, Publication Notice, and Settlement Website will fairly, accurately, and reasonably inform members of the Settlement Class of (1) appropriate information about the nature of this litigation and the essential terms of the Settlement Agreement; (2) appropriate information about how to obtain additional information regarding this matter and the Settlement Agreement; (3) appropriate information about, and means for obtaining, a Claim Form; (4) appropriate information about, and means for submitting, a Claim Form for compensation under the Settlement; and (5) appropriate information about how to challenge, or exclude themselves from, the Settlement, if they wish to do so. The Settlement notices and Settlement Website also fairly and adequately inform members of the Settlement Class that failure to complete and submit a claim in the manner and time specified in the notices, Settlement Website, and Claim Form shall constitute a waiver of any right to obtain any compensation under the Settlement. The notices and Settlement Website also fairly and

adequately inform members of the Settlement Class that if they do not comply with the specified procedures and the deadline for objections, they will lose any opportunity to have any objection considered at the Fairness Hearing or otherwise to contest certification of the Settlement Class or approval of the Settlement or to appeal from any order or judgment entered by the Court in connection with the Settlement.

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

E. The Court, having reviewed the proposed Summary Notice, the proposed FAQ, the proposed Publication Notice, the proposed Claim Forms, and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan for distributing and disseminating each of them will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process. Accordingly, the Court hereby ORDERS as follows:



1. The form and content of the proposed Summary Notice, FAQ, Publication Notice, and Claim Forms are hereby approved.

2. Promptly following the entry of this Order, the Parties and Settlement Administrator shall prepare final versions of (i) the Summary Notice, (ii) FAQ, (iii) Publication Notice, and (iv) Claim Forms, incorporating into each of them the Fairness Hearing date and deadlines set forth in Part IV of this Order.

3. Within fifty (50) days after the Court's entry of this Order, the Settlement Administrator shall file or cause to be filed with the Court a declaration of compliance with this plan of notice.

4. The Court appoints Epiq as Settlement Administrator.

5. The Settlement Administrator shall perform the following functions in accordance with the Settlement Agreement, this Order, and subsequent orders that may be entered by this Court in this case:

a. Within thirty (30) days after entry of this Order, mail or email the appropriate Summary Notice to each address of record for identifiable members of the Settlement Class and to all members of the Settlement Class for whom valid email addresses are known to Whirlpool;

b. Perform a national change of address search and forward notices that are returned by the U.S. Postal Service with a forwarding address;

c. Create a Settlement Website that will include all necessary and pertinent information for Settlement Class Members, including Claim Forms, a copy of the FAQ, and information relating to relevant deadlines;

d. No later than ten (10) days after the Settlement Administrator mails and emails the initial round of Settlement Notice, cause to be published the Publication Notice according to the proposed notice plan, including through the use of social media;

e. Accept online/electronic, as well as paper, Claim Forms;

f. Allow Settlement Class Members to electronically submit documents supporting their Claim Forms;

g. Receive, evaluate, and either approve completed Claim Forms as meeting the requirements of the Settlement Agreement or disapprove as failing to meet those requirements sent by Persons seeking to receive compensation;

h. No later than thirty (30) days before mailing Notices of Claim Denial, provide to Defendant's lead counsel and Lead 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, by category of benefit; and (ii) a separate list of the names and addresses of all Persons who have submitted Claim Forms and whose Claim Forms the Settlement Administrator has determined not to be Valid Claims, by category of benefit. Lead Class Counsel and Whirlpool shall then have an opportunity to review the Notices of Claim Denial and Valid Claims and request a meet and confer should they decide to challenge any of the Notices of Claim Denial and Valid Claims; in the event Class Counsel challenges a Notice of Claim Denial, that Notice shall not be sent to the claimant until Lead Class Counsel and Defendant's counsel meet and confer to arrive at a resolution;

i. Send, by first class United States Mail, to each Person who has submitted a Claim Form that the Settlement Administrator has determined not to be a Valid Claim, and which has not been challenged by Lead Class Counsel, a Notice of Claim Denial;

- j. Process requests for exclusion from the Settlement;
- k. Process objections to the Settlement;
- l. Provide to Class Counsel and Defendant's counsel periodic status reports regarding claims; and
- m. Within thirty (30) days after the payment of all Valid Claims by the Settlement Administrator, provide to Defendant's counsel and Lead Class Counsel 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 Class Members (in total and by category of benefit).

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

##### **A. Fairness Hearing**

The Court hereby schedules a Fairness Hearing for **October 15, 2019 at 1:30 p.m.**, at **174 Federal Building, 410 W. Michigan Avenue, Kalamazoo, Michigan**, to determine whether the certification of the Settlement Class, the appointments of Class Representatives, the appointment of Class Counsel, the Settlement Agreement, and the Settlement should receive final approval. At that time, the Court also will consider any request that may be made by Class Counsel for an award of attorney fees and reimbursement of litigation expenses to Class Counsel and for service awards to each Plaintiff, all in accordance with the terms of the Settlement Agreement. The Parties will have up to and including **August 13, 2019** (ninety (90) days after the entry of this Order) to file their motions for final approval of the Settlement and any briefs in support of such motion and in opposition to any objections.

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

Members of the Settlement Class who wish to be excluded from the Settlement must mail or email their requests for exclusion to the Settlement Administrator by first-class United States Mail, postmarked by the United States Postal Service no later than seventy-five (75) days after entry of this Order.

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

All objections to certification of the Settlement Class, the designation of Plaintiffs as Class Representatives, the appointment of Class Counsel, the Settlement, the Settlement Agreement, or the amount of fees and expenses that Class Counsel may apply for at the Fairness Hearing, shall be made in writing and, no later than seventy-five (75) days after entry of this Order, filed with this Court, **July 29, 2019**, and served on Class Counsel and counsel for Defendant. Any papers not filed and served in the prescribed manner and time will not be considered at the Fairness Hearing, and all objections not made in the prescribed manner and time shall be deemed waived.

All persons wishing to appear at the Fairness Hearing, either in person or by counsel, for the purpose of objecting to any aspect of the certification of the Settlement Class, the designation of Class Representatives as representatives of the Settlement Class, the appointment of Class Counsel, the Settlement, the Settlement Agreement, or the amount of attorney fees and expenses or service awards that Class Counsel apply for, must file with the Court, and serve on Class Counsel and counsel for Defendant, no later than seventy-five (75) days after entry of this Order, a notice of their intention to appear setting forth the basis of their objections and summarizing the nature and source of any evidence they intend to present at the Fairness Hearing.

**D. Deadline for Submitting Claim Forms**

Class members will have up to one-hundred thirty-five (135) days after the Notice Date to submit a Claim Form for any of the retroactive benefits available under the Settlement.

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

Within fifty-five (55) days after entry of this Order, Class Counsel will move the Court for entry of a separate order approving attorney fees and reimbursement of litigation expenses to Class Counsel in an amount to be agreed by the Parties or, absent agreement, to be determined by the Court. Class Counsel also will move the Court to approve service awards to certain Class Representatives. Whirlpool shall pay any attorneys' fee and expense award to Class Counsel within five (5) business days after the Effective Date. Whirlpool shall pay any service awards to Class Representatives within five (5) business days after the Effective Date. Whirlpool's payment of attorney fees, expenses, and service awards to Class Counsel and Class Representatives shall be wholly separate from, and in addition to, Whirlpool's payment of Settlement benefits to Class Members.

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

The Parties entered into the Settlement Agreement solely for the purpose of compromising and settling disputed claims. Defendant has at all times denied, and continue to deny, any wrongful act or omission alleged by Plaintiffs in this action and any liability of any sort to Plaintiffs or any member of the Settlement Class. Nothing contained in the Settlement Agreement, in the documents relating to the Settlement Agreement, or in this Order shall be construed, deemed, or offered as an admission by any of the Parties, or by any member of the Settlement Class, for any purpose in any judicial or administrative action or proceeding, whether in law or in equity. In entering this Order with this provision and other limiting provisions, this

Court specifically refers to and invokes the Full Faith and Credit Clause of the United States Constitution and the doctrine of comity and requests that any court in any other jurisdiction reviewing, construing, or applying this Order implement and enforce each such limiting provision.

IT IS SO ORDERED.

Dated: May 15, 2019

/s/ Paul L. Maloney  
Honorable Paul L. Maloney  
United States District Judge