

CLASS ACTION SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this ___th day of July, 2015, among Plaintiffs Kevin Barnes, John Bettua, Alfred Blair, Martin Champion, Lauren Crane, Alan Jarashow, Lawrence L’Hommedieu, Victor Matos, and Victoria Poulsen, on behalf of themselves and the Settlement Class, as defined below, and Defendants Whirlpool Corporation and Sears, Roebuck and Co. (all parties are collectively referred to as the “Parties”), to settle, fully and finally, all of the CCU Claims, as defined below, that have been or could have been brought in three class-action lawsuits against Sears and in one putative class-action lawsuit against Whirlpool, on behalf of the Settlement Class against Defendants relating to the Washers, as defined below.

WHEREAS Plaintiffs have alleged in the Lawsuits against Defendants claims for breach of express warranty, breach of implied warranty, violation of the Magnuson Moss Warranty Act, and violation of the Song-Beverly Consumer Warranty Act based on an alleged design defect in the Washers’ main electronic control board or central control unit (“CCU”);

WHEREAS Defendants deny the allegations in the Lawsuits and assert numerous defenses to the claims alleged by Plaintiffs;

WHEREAS Defendants deny that their conduct or alleged Washer defect caused the losses alleged by Plaintiffs and assert that Defendants have meritorious defenses to the claims asserted by Plaintiffs, including that the Washers’ CCUs were not defective in design;

WHEREAS the Parties to this Agreement, after engaging in significant discovery in the Lawsuits—including written discovery, the production of hundreds of thousands of pages of documents by Defendants, numerous depositions being taken in various parts of the country and in Milan, Italy, preparation of comprehensive expert reports, conducting multiple Court hearings

in Illinois and Court conferences in Ohio, briefing and receiving rulings on motions to dismiss and for class certification, appeal of the class certification ruling to the Seventh Circuit, and engaging in arms-length settlement negotiations, have now reached an agreement providing for a resolution of all CCU Claims that have been or could have been brought in the Lawsuits against Defendants on behalf of the Settlement Class;

WHEREAS Plaintiffs and Plaintiffs' Counsel have examined and considered the benefits to be provided to the Settlement Class Members under the Settlement provided for in this Agreement; have considered the laws of the several States and the claims that could be asserted under those laws regarding the Washers; and believe the Settlement is fair, adequate, reasonable and in the best interests of the Settlement Class Members, taking into account the benefits provided to the Settlement Class Members through the terms of the Settlement, the risks of continued litigation and possibly multiple trials and possible multiple additional appeals, and the length of time that would be required to complete the litigation and any appeals; and

WHEREAS Defendants have at all times disputed, and continue to dispute, Plaintiffs' allegations in the Lawsuits and deny any liability for any of the claims that have or could have been raised in the Lawsuits by Plaintiffs or the Settlement Class, but believe that the comprehensive resolution of the CCU Claims as provided in this Agreement will avoid the substantial costs and disruptions of continued litigation and one or more certified class-action trials, is in the best interest of Settlement Class Members, and is in the best interests of Defendants, their employees, and their customers, and is the most effective and efficient resolution of the Lawsuits.

Now, therefore, the Parties agree as follows:

I. DEFINITIONS

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

- A. “Administration Expenses” means reasonable fees and expenses incurred by the Settlement Administrator for the: (1) preparation, mailing, and emailing of the Class Notice, including the identification of Prequalified Class Members and compilation of related information with respect to Prequalified Class Members, (2) receipt and adjudication of claims submitted by Settlement Class Members for compensation under this Settlement, including the costs of administering a Settlement website for the review of the Class Notice and submission of claims, (3) preparation of status reports to the Parties and the Court, (4) distribution of settlement payments to eligible Settlement Class Members who timely submit Valid Claims, and (5) other costs of notice and claims administration.
- B. “CCU” means the Washer’s Central Control Unit, which is the Washer’s main electronic control board and which is connected by wires to the Washer’s motor control unit or “MCU,” door lock assembly, and user interface or “UI” board.
- C. “CCU Claims” means all allegations, claims, and causes of action that arise from or relate to the use and performance of the electronic and electrical components and systems of the Washers related to Performance Problems.
- D. “Claim Form” means the proposed form attached hereto 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 in accordance with Section IV of this Agreement.
- E. “Class Counsel” means Steven A. Schwartz of Chimicles & Tikellis LLP and James J. Rosemergy of Carey, Danis & Lowe.

- F. “Class Members” or “Settlement Class Members” means all Persons who are members of the Settlement Classes and who do not exclude themselves from the Settlement Classes in the manner and time prescribed by the Court in the proposed Preliminary Approval Order.
- G. “Class Notice” means the proposed Kenmore-brand and Whirlpool-brand written notices attached hereto, collectively, as Exhibit 2, to be approved by the Court and to be sent to Settlement Class Members in accordance with Section V¹ of this Agreement.
- H. “Class Representatives” or “Plaintiffs” means Kevin Barnes, John Bettua, Alfred Blair, Martin Champion, Lauren Crane, Alan Jarashow, Lawrence L’Hommedieu, Victor Matos, and Victoria Poulsen, the named Plaintiffs asserting CCU Claims in the Lawsuits.
- I. “Court” means the United States District Court, Northern District of Illinois.
- J. “Defendants” means Whirlpool Corporation and Sears, Roebuck and Co.
- K. “Effective Date” means the first date that is three business days after all the following have occurred: (i) the Court has entered an order granting final approval of the Settlement in accordance with the terms of this 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 paragraph, an “appeal” shall not include any appeal that concerns solely the issue of Class Counsel’s attorneys’ fees and

¹ All references to “Section V of this Agreement” are to the portion of this Settlement Agreement that begins on page ___ below, not to subparagraph V of this Section I.

reimbursement of expenses or service payments to the Class Representatives.

- L. “Fairness Hearing” means the final hearing, to be held after notice has been provided to the Settlement Classes in accordance with Section V of this Agreement, (1) to determine whether to grant final approval to (a) the certification of the Settlement Classes, (b) the designation of Plaintiffs as the representatives of the Settlement Classes, (c) the designation of Class Counsel as counsel for the Settlement Classes, and (d) the Settlement; (2) to rule on Class Counsel’s request for an award of attorneys’ fees and reimbursement of costs and for Service Awards to certain named Plaintiffs; and (3) to consider whether to enter the Final Approval Order.
- M. “FAQ” means the proposed Frequently Asked Questions and Answers form attached hereto as Exhibit 3, to be approved by the Court and posted on the Settlement Administrator’s Internet website in accordance with Section V of this Agreement. In addition, the FAQ form will be mailed to Settlement Class Members who contact the Settlement Administrator by telephone or email and request a Claim Form in hard copy.
- N. “Fee Application” means the application to be filed by Class Counsel by which they will seek an award of attorneys’ fees and reimbursement of costs incurred by them in prosecuting the Lawsuits, as well as Service Awards to be paid to certain named Plaintiffs.
- O. “Final Approval Order” means the proposed Order Granting Final Approval to the Class Action Settlement Agreement and Entry of Final Judgment, a proposed order to be submitted contemporaneously with the parties’ joint motion for final

approval of the Settlement.

- P. “Service Award” means a reasonable payment made to each Class Representative to compensate for his or her efforts in pursuing the Lawsuits on behalf of the Settlement Classes.
- Q. “Kenmore Washer” means a Kenmore-brand front-loading washing machine manufactured by Whirlpool between June 8, 2004, and February 28, 2006, with a Bitron-manufactured Matador 1 CCU and the new-washer warranty package provided by Sears with all new Kenmore-brand Matador 1 front-loading clothes washers. The Kenmore Washers are identifiable to Class Members by specific combinations of model and serial numbers, with the model numbers beginning with the numbers 110.45* and serial numbers beginning with digits in the range CSR24 through CSR53 (for Kenmore Washers manufactured in 2004), CSS01 through CSS53 (for Kenmore Washers manufactured in 2005), and CST01 through CST08 (for Kenmore Washers manufactured in 2006).
- R. “Kenmore Settlement Class” means all Persons who, while living in the United States, either (a) bought from Sears a new Kenmore Washer or (b) received as a gift, from a donor meeting those requirements, a new Kenmore Washer, not used by the donor or by anyone else after the donor purchased the Washer and before the donor gave the Washer to the Person.
- S. “Lawsuits” means the Sears Actions and the Whirlpool Action, collectively.
- T. “MCU” means the Washer’s motor control unit, which is the electronic control board that directly controls the operation of the Washer’s motor.
- U. “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 not to be a Valid Claim, subject to review and approval by Class Counsel.

- V. “Person” means any natural person.
- W. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval to Class Action Settlement, to be entered by the Court with the terms and substantially in the form of Exhibit 4 attached to this Agreement.
- X. “Performance Problem” means that, within three years after the Purchase Date, the Washer manifested a problem with the Washer’s CCU, including as shown by one or more of the following: (a) failure of the Washer to complete a cycle or interruption of the cycle; (b) failure of the door to lock at the start of the wash cycle or display of an Fdl error code on the control console, or both; (c) failure of the door to unlock at the end of the wash cycle or display of an Fdu error code on the control console, or both; (d) display of an F11 error code; and (e) service calls to repair or replace the CCU, the door lock assembly, the wire harness between the CCU and the MCU, the wire harness between the CCU and the door lock, or the MCU.
- Y. “Prequalified Class Member” means Settlement Class Members who can be identified in Whirlpool’s or Sears’s databases as having paid for a Qualifying Repair or as having paid for a Qualifying Service Contract. Defendants shall provide the Settlement Administrator with all information and assistance necessary to identify Prequalified Class Members and compile information to process their claims.

- Z. “Qualifying Repair” means that within three years after the Purchase Date: (1) a Service Technician repaired or replaced the Washer’s CCU, or (2) a Settlement Class Member otherwise incurred documented out of pocket costs to repair the Washer due to the Washer’s Performance Problem (e.g., paid for repair or replacement of the door lock assembly, the wire harness between the CCU and MCU, the wire harness between the CCU and door lock, the MCU, or replacement parts that the Class Member installed himself or herself), or (3) a Settlement Class Member replaced the Washer or otherwise took it out of service after contacting Whirlpool, Sears, an authorized Whirlpool or Sears retailer, or a Service Technician about a Performance Problem as evidenced by the Washer’s display of error codes, including F11, Fdl, or Fdu error codes. A Qualifying Repair does not include repairs or replacements of the door lock assembly, the MCU, the wire harness between the CCU and the MCU, or the wire harness between the CCU and door lock that are unrelated to a Performance Problem (i.e., a problem with the Washer’s CCU) as defined herein.
- AA. “Qualifying Service Contract” means a service contract that a Class Member bought from Sears or Whirlpool or an authorized Whirlpool or Sears retailer or Service Technician, within 30 days before a Qualifying Repair (i.e., the Class Member bought the service contract to cover the cost of the Qualifying Repair) and for which the Settlement Class Member in fact paid some out-of-pocket cost.
- BB. “Released Claims” means all claims, actions, causes of action, administrative claims, demands, debts, damages, costs, attorneys’ fees, obligations, judgments, expenses, or liabilities, including all claims for diminution-in-value, benefit-of-

the-bargain, cost-of-repair, cost-of-replacement, or premium-price damages, in law or in equity, whether now known or unknown, contingent or absolute, including but not limited to all claims that Plaintiffs 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 the design, manufacture, use, performance, and warranties of the electronic and electrical components and systems of the Washers or resulting Performance Problems and that are alleged or could have been alleged in the Lawsuits, as well as 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. The Released Claims, however, specifically exclude claims for (i) personal injury, (ii) damage to property other than the Washer itself, or (iii) claims unrelated to Performance Problems, such as the economic losses claimed in the related actions pending in the Court under this same case number or in MDL No. 6500 alleging that the Washers accumulate mold, bacteria, fungi and/or emit bad odors, due to the buildup of excessive laundry residue and biofilm.

CC. “Releasees” means (a) Sears and Whirlpool, together with their respective predecessors and successors in interest, parents, subsidiaries, affiliates, and assigns; (b) each of their respective past, present, and future officers, directors, agents, representatives, servants, employees, attorneys, and insurers; and (c) all 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 Washers or the Washers' CCUs.

- DD. "Sears" means Sears, Roebuck and Co., its parent Sears Holdings Corporation, and Sears Holdings Corporation's consolidated subsidiaries, including, without limitation, Kmart Corporation, and their successors, predecessors, assigns, affiliates, parent companies, subsidiaries, shareholders, officers, directors, agents, insurers, attorneys, and employees.
- EE. "Sears Actions" means the putative class-action lawsuits pending, as of the date of this Agreement, in the Court, Case Nos. 06-CV-7023, 07-CV-0412, and 08-CV-1832, United States District Court, Northern District of Illinois, Eastern Division.
- FF. "Service Technician" means a Sears-authorized, Whirlpool-authorized, Maytag-authorized, GE-authorized, or other manufacturer-authorized or other factory service technician authorized to perform repairs on the Washers.
- GG. "Settlement" means the settlement provided for in this Agreement.
- HH. "Settlement Administrator" means Kurtzman Carson Consultants ("KCC"), or a similarly qualified firm selected by Defendants, approved by Class Counsel, and appointed by the Court to administer the Settlement.
- II. "Settlement Agreement" or "Agreement" means this Settlement Agreement and the exhibits attached hereto.
- JJ. "Settlement Classes" means the Kenmore Settlement Class together with the Whirlpool Settlement Class. Excluded from the Settlement Classes are (a) officers, directors, and employees of Sears and Whirlpool, (b) insurers of

Settlement Class Members, (c) subrogees or all entities claiming to be subrogated to the rights of a Washer purchaser, Washer owner, or a Settlement Class Member, and (d) all third-party issuers or providers of extended warranties or service contracts for the Washers.

- KK. “Valid Claim” means a Claim Form that (i) is timely submitted by a Settlement Class Member proving that the Class Member experienced one or more Performance Problems and Qualifying Repairs in accordance with the requirements of the Preliminary Approval Order, (ii) is signed by that Settlement Class Member, and (iii) after addition by the Settlement Administrator of the information described in Section V(A)(5) below, contains all of the 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.
- LL. “Washer” or “Washers” means the Kenmore Washers and the Whirlpool Washers.
- MM. “Whirlpool” means Whirlpool Corporation and its subsidiaries and affiliates, including their successors, predecessors, assigns, affiliates, parents, subsidiaries, shareholders, officers, directors, agents, insurers, attorneys, and employees.
- NN. “Whirlpool Action” means the putative class-action lawsuit captioned *Victoria Poulsen v. Whirlpool Corp.*, Case No. 1:09-wp-65003-CAB, pending in the United States District Court, Northern District of Ohio, Eastern Division.
- OO. “Whirlpool Washer” means a Whirlpool-brand front-loading washing machine manufactured by Whirlpool between May 25, 2004, and February 28, 2006, with

a Bitron-manufactured Matador 1 CCU and with the new-washer warranty package provided by Whirlpool with all new Whirlpool-brand Matador 1 washing machines. The Whirlpool Washers are identifiable to Class Members by specific combinations of model and serial numbers, with the model numbers beginning with the letters GHW* and serial numbers beginning with digits in the range CSR22 through CSR53 (for Whirlpool Washers manufactured in 2004), CSS01 through CSS53 (for Whirlpool Washers manufactured in 2005), and CST01 through CST08 (for Whirlpool Washers manufactured in 2006).

PP. “Whirlpool Settlement Class” means all Persons who, while in the State of California, either (a) bought a new Whirlpool Washer or (b) received as a gift, from a donor meeting those requirements, a new Whirlpool Washer, not used by the donor or by anyone else after the donor purchased the Washer and before the donor gave the Washer to the Person.

II. CONDITIONAL CERTIFICATION OF SETTLEMENT CLASSES

For the purposes of implementing this Agreement, and for no other purpose, Defendants stipulate to the conditional certification of the Kenmore Settlement Class on a nationwide basis, and the Whirlpool Settlement Class for the State of California. If for any reason this Agreement should fail to become effective, Defendants’ stipulation to certification of the nationwide Kenmore Settlement Class and the California statewide Whirlpool Settlement Class, or to any other class or subclass, shall be null and void, and the Parties shall return to their respective positions in the Lawsuits as those positions existed immediately before the execution of this Agreement.

III. REQUIRED EVENTS

A. As soon as practicable after the execution of this Agreement, the Parties shall file in the Kenmore Actions a stipulated Order to amend the Complaint to add Victoria Poulsen as a Plaintiff and representative of the Whirlpool Settlement Class, this Agreement, and a joint motion seeking entry of the Preliminary Approval Order, substantially in the form of Exhibit 4 hereto, which by its terms shall accomplish all of the following:

1. Preliminarily approves the Settlement and this Agreement as fair and reasonable to the Settlement Classes;
2. Conditionally certifies the Kenmore Settlement Class as a nationwide class for the purpose of effecting the Settlement;
3. Conditionally certifies the Whirlpool Settlement Class as a California statewide class for the purpose of effecting the Settlement;
4. Designates Plaintiff Victoria Poulsen as the Class Representative of the Whirlpool Settlement Class and all other Plaintiffs as the Class Representatives of the Kenmore Settlement Class;
5. Designates Class Counsel as counsel for the Settlement Classes;
6. Designates KCC, or a similarly qualified and cost-effective firm, as the Settlement Administrator and instructs the Settlement Administrator to perform the following functions in accordance with the terms of this Agreement, the Preliminary Approval Order, and the Final Approval Order:
 - a. Disseminate the Class Notice, including publication notice for the Whirlpool California Class;

- b. Establish an Internet website with the Class Notice, FAQ, an online Claim Form, and information that the Parties jointly agree to post concerning the nature of the case and the status of the Settlement, including relevant pleadings such as the operative Amended Complaint, papers in support of preliminary and final approval of the Settlement, and Class Counsel's Petition for attorneys' fees and reimbursement of expenses and Service Awards, plus relevant orders of the Court.;
- c. Before mailing the Class Notice, establish a toll-free telephone number that Settlement Class Members can call to request hard copies of the Claim Form and FAQ be sent to them by mail and obtain additional information regarding the Settlement;
- d. Receive, evaluate, and either approve as meeting the requirements of this Agreement or disapprove as failing to meet those requirements Claim Forms sent by Persons seeking to receive compensation, all in accordance with Sections I and IV of this Agreement.
- e. Thirty days before mailing Notices of Claim Denial, provide to Defendants 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, separately identified by category of settlement benefit to be paid; 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. Class Counsel shall then have an opportunity to review the Notices of Claim Denial and request a meet and confer with counsel for Defendants and the Settlement Administrator should Class Counsel or a Settlement Class Member decide to challenge any of the Notices of Claim Denial. In the event Class Counsel challenges a Notice of Claim Denial, that Notice shall not be sent to the Settlement Class Member until Class Counsel and counsel for Defendants meet and confer to arrive at a resolution.

- f. Send, by first-class United States Mail, to each Person who has submitted a Claim Form that the Settlement Administrator has determined not to be a Valid Claim, and which has not been challenged by Class Counsel, a Notice of Claim Denial.
- g. Effect publication notice for the Whirlpool California Class in the form attached as Exhibit 5
- h. Process requests for exclusion from the Settlement in accordance with Sections VIII and IX of this Agreement.
- i. Process objections to the Settlement in accordance with Section VIII of this Agreement.
- j. Within 30 days after the payment of all Valid Claims for monetary compensation by the Settlement Administrator, provide to

Defendants and Class Counsel a statement under penalty of perjury, 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).

6. Approve the form, contents, and methods of notice to be given to the Settlement Class as set forth in Section V of this Agreement, and direct Defendants to provide, and cause to be provided, such notices and to file with the Court a declaration of compliance with those notice requirements, as set forth in Section V of this Agreement.
7. Establish procedures and schedule deadlines for Settlement Class Members to object to the Settlement or certification of the Settlement Classes, to exclude themselves from the Settlement, and to submit Claim Forms to the Settlement Administrator, all consistent with Sections IV, V, VIII, and IX 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 Classes, the designation of Plaintiffs as representatives of the Settlement Classes, the appointment of Class Counsel as counsel for the Settlement Classes, and the Settlement; (b) Class Counsel's Fee Application; and (c) objections to certification of the Settlement Classes, to the designation of Plaintiffs as the representative of

the Settlement Classes, to the appointment of Class Counsel as counsel for the Settlement Classes, or to the Settlement.

- B. At the Fairness Hearing the Parties will jointly request the Court to enter the Final Approval Order, which (1) grants final approval of the certification of the Settlement Classes, designation of Plaintiffs as the representative of the Settlement Classes, and designation of Class Counsel as counsel for the Settlement Classes, all as conditionally approved in the Preliminary Approval Order; (2) grants final approval of the Settlement and this Agreement as fair, reasonable, and adequate to the Settlement Classes; (3) provides for the release of all Released Claims and enjoins Settlement Class Members from asserting, filing, maintaining, or prosecuting any of the Released Claims in the future; (4) orders the dismissal with prejudice of all CCU Claims alleged in the Sears Actions and Whirlpool Action, 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 attorneys' fees, except as provided in Section X below; (5) authorizes the payment by Defendants of Valid Claims approved by the Settlement Administrator as Valid Claims, or otherwise reviewed by Class Counsel and counsel for Defendants and determined to be Valid Claims, in accordance with the terms of the Agreement; and (6) 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) a Service Award to Plaintiffs Joseph Leonard, Kevin Barnes, Victor Matos, Alfred Blair, Martin Champion, Alan Jarashow, Lauren

Crane, Lawrence L'Hommedieu, and Victoria Poulsen in the amount of \$4,000.00 each; and (2) attorneys' fees and costs to Class Counsel.

- C. As soon as practicable after execution of this Agreement, the Parties shall file in the Whirlpool Action a stipulated motion, proposed stipulated order or other filing to (i) stay the Whirlpool Action upon the issuance of an order that approves the amendment of the Complaint in the Sears Actions to add Victoria Poulsen as a named Plaintiff and Class Representative for the Whirlpool Settlement Class, and (ii) provide for its automatic dismissal after the Effective Date of the Settlement.
- D. Plaintiffs, Class Counsel, and Defendants 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, Plaintiffs, Class Counsel, and Defendants 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 or Final Approval Order, the Parties will return to their positions in the Lawsuits as they were immediately prior to the execution of this Settlement Agreement. Specifically, but without limitation, any amended complaint concerning CCU Claims accepted by the Court shall be null and void and the Amended Consolidated Class Action Complaint (Doc #162) as amended by interlineation as set forth in Plaintiffs' Motion to Amend Complaint by Interlineation (Doc #467) shall be the operative pleading.

IV. BENEFITS AVAILABLE TO SETTLEMENT CLASS MEMBERS

- A. To qualify for any compensation described in Paragraph IV.C below, a Settlement Class Member must provide sufficient documentary proof that within three years

after purchase of a Washer the Settlement Class Member experienced (a) a Performance Problem, and (b) a Qualifying Repair.

1. The Class Notice and Claim Form will set out examples of Performance Problems with the Washer such as, but not limited to:
 - a. Failure of the Washer to complete a cycle or interruption of the cycle;
 - b. Failure of the door to lock at the start of the wash cycle or display of an Fdl error code on the control console, or both;
 - c. Failure of the door to unlock at the end of the wash cycle or display of an Fdu error code on the control console, or both;
 - d. Display of an F11 error code; and
 - e. Service calls to repair or replace the CCU, the door lock assembly, the wire harness between the CCU and the MCU, the wire harness between the CCU and the door lock, or MCU.
2. Sufficient documentary proof that the Settlement Class Member actually experienced a Performance Problem includes, but is not limited to, a Claim Form declaration that the Settlement Class Member experienced, within three years after purchase, one or more of the above Performance Problems.
3. Examples of sufficient documentary proof that the Settlement Class Member experienced a Qualifying Repair include, but are not limited to, cancelled checks, invoices, receipts, entries in Whirlpool's or Sears's databases, and service company records.

4. Prequalified Class Members will not be required to submit documentation to support their claims. The mailed postcards and email notices will include a pre-printed unique claim identification number for each Settlement Class Member that the Settlement Class Members will enter into the online Claim Form or print on their hardcopy Claim Form. The unique claim identification number will be used by the Settlement Administrator to identify and differentiate between those Settlement Class Members who have not been identified in Whirlpool's and Sears's databases as a Prequalified Class Member and those who have been identified as Prequalified Class Members. Prequalified Class Members will be required only to enter or confirm their current name and address, check the eligibility boxes on the online Claim Form, and electronically sign the Claim Form certifying that the statements are true and correct. If a Prequalified Class Member wishes to dispute the amount of their claim payment that is determined from Whirlpool's or Sears's database, however, the Prequalified Class Member must submit supporting documentation showing the amount that he or she paid for the Qualifying Repair or Qualifying Service Contract. Defendants shall provide the Settlement Administrator with the information necessary to identify Prequalified Class Members and compile information related to their claims. The Notices will advise Prequalified Class Members of their Prequalified status and shall state that most Prequalified Class Members will receive at least \$100 if they enter or confirm their current name and

address, check the necessary eligibility boxes on the online Claim Form for Prequalified Class Members, and electronically sign the Claim Form certifying that the statements are true and correct.

5. If a Settlement Class Member who is not a Prequalified Class Member cannot provide the qualifying documentation described in Paragraph IV.A.3, the Settlement Administrator will search Sears's and Whirlpool's service databases for proof of the claimed Qualifying Repair. To the extent that the databases provide such proof, the qualifying documentation requirement will be satisfied.

B. No Settlement Class Member who received from Sears or Whirlpool either a full refund of the purchase price he or she paid for a Washer or a free exchange of a Washer for a new clothes washer of any model on account of a Performance Problem will be entitled to any payment or other compensation, unless (a) the Settlement Class Member received a free exchange of a Washer for a new Washer on account of a Performance Problem and (b) the Settlement Class Member's experiences with the second Washer qualifies the Settlement Class Member for compensation for that second Washer under the terms of this Agreement.

Settlement Class Members will be required to check an eligibility box stating that they did not receive either a full refund of the purchase price paid for the Washer or a free exchange of the Washer for a new clothes washer of any model on account of a Performance Problem.

C. The compensation to be paid to Settlement Class Members who satisfy the foregoing requirements will be as follows:

1. Reimbursement for Paid Qualifying Repairs. If the Settlement Class Member is a Prequalified Class Member or if the Settlement Class Member provides sufficient documentary proof that the Settlement Class Member meets the threshold requirements of Paragraphs IV.A and IV.B above and that the Settlement Class Member actually paid some out-of-pocket cost for a Qualifying Repair by a Service Technician or by the owner within three years after purchase due to the Washer's Performance Problem ("First Paid Repair"), the Settlement Class Member will be reimbursed for the amount that sufficient documentary proof shows the Settlement Class Member actually paid for the First Paid Repair. If the Settlement Class Member can provide sufficient documentary proof of the First Paid Repair but that documentary proof does not show the amount paid for the First Paid Repair, the Settlement Class Member's settlement payment will be \$150.00.

2. Reimbursement for Replacement. If the Settlement Class Member chose to replace, rather than repair, the Washer or otherwise took it out of service after contacting Whirlpool, Sears, or an Authorized Service Technician about a Performance Problem due to the Washer's display of error codes, including F11, Fdl, or Fdu error codes, the Settlement Class Member will be reimbursed for the amount that sufficient documentary proof shows the Settlement Class Member actually paid for the replacement clothes washer up to a maximum total claim value of \$300.00.

- a. If a Settlement Class Member provides sufficient documentary proof of having paid for one or more additional repairs or replacements of the CCU by a Service Technician or by the owner due to the Washer's Performance Problem within one year after the First Paid Repair or within six months after a Qualifying Service Contract has expired (a "Second Paid Repair"), the compensation paid to the Settlement Class Member shall be the sum of (i) the amount paid by the Settlement Class Member for the First Paid Repair and (ii) the amount paid by the Settlement Class Member for the Second Paid Repair, to the extent that the Settlement Class Member provides documentary proof of each such payment. If the Settlement Class Member can provide sufficient documentary proof of the Second Paid Repair but that documentary proof does not show the amount paid for the Second Paid Repair, the Settlement Class Member's settlement payment will be \$150.00 for that Second Paid Repair. No payment for a claimed Second Paid Repair shall be made in the absence of some documentary proof that the Settlement Class Member actually received a First Paid Repair or a Qualifying Service Contract.
3. Under this Paragraph IV.C.1, a Settlement Class Member shall not be entitled to reimbursement for any amount paid by the Settlement Class Member for a repair or replacement that occurred more than 54 months after the purchase of the Settlement Class Member's Washer.

4. Compensation for Qualifying Service Contracts. If the Settlement Class Member is a Prequalified Class Member or if the Settlement Class Member provides sufficient documentary proof that he or she meets the threshold requirements of Paragraphs IV.A and IV.B above and that the Settlement Class Member bought a Qualifying Service Contract, the Settlement Class Member will be reimbursed \$100 to partially offset the cost of the Qualifying Service Contract. Settlement Class Members who paid for a Qualifying Service Contract will not receive a full refund of the cost of the Qualifying Service Contract because the service contract provided value to that Settlement Class Member in addition to covering the cost of the Qualifying Repair (e.g., peace of mind derived from service coverage, a free preventative maintenance service call once per year, and possibly additional free service calls or repairs unrelated to the CCU or Performance Problems).
5. Compensation for Excessive Repairs. If the Settlement Class Member provides sufficient documentary proof that (i) the Settlement Class Member meets the threshold requirements of Paragraphs IV.A and IV.B above; and (ii) the Settlement Class Member has had the CCU replaced by a Service Technician on three occasions within four years after the Settlement Class Member bought his or her Washer, but the Settlement Class Member did not cease using the Washer, the Settlement Class Member may choose to receive as compensation the greater of either (i) a payment equal to the purchase price the Settlement Class Member paid for

the Washer (to the extent that the Settlement Class Member provides sufficient documentary proof of that purchase price) or (ii) reimbursement payments for first, second, and third paid repairs (to the extent that the Settlement Class Member provides sufficient documentary proof of each of those paid repairs). Examples of sufficient documentary proof include, but are not limited to, cancelled checks, invoices, receipts, entries in Whirlpool's or Sears' databases, and service-company records.

6. All reimbursement payments under this Section IV.C for First Paid Repairs, Second Paid Repairs, and Third Paid Repairs shall additionally include all amounts sufficient documentary proof, including Whirlpool's and Sears' records for Prequalified Class Members, shows a Settlement Class Member paid for repairs or replacements of the door lock assembly, the MCU, the wire harness between the CCU and MCU, or the wire harness between the CCU and door lock in connection with a Performance Problem or Qualifying Repair.

- D. If the Settlement Class Member previously has received from Sears or Whirlpool any form of compensation for Performance Problems with the Settlement Class Member's Washer (*e.g.*, a policy-adjust cash payment, a partial refund, a discount off the regular price of a new clothes washer, a coupon applicable to the purchase of a new clothes washer that was redeemed), any compensation to which the Settlement Class Member would otherwise be entitled under Section IV shall be reduced as follows:

1. For any policy-adjust cash payment, cash refund, or other cash payment,

the amount of that payment.

2. For any specified dollar-discount off the price of any new clothes washer, the specified dollar amount.
3. For any specified percentage-discount off the price of any new clothes washer, the dollar amount determined by applying that percentage to the regular, then-prevailing price of that product.
4. For any coupon redeemed for the purchase of a new clothes washer, the dollar amount specified on the face of the coupon redeemed.

All other Settlement Class Members will be required to check a box on the Claim Form stating that they did not receive any of these customer-satisfaction benefits from Whirlpool or Sears related to the Performance Problems with their Washers.

V. SETTLEMENT NOTICE AND ADMINISTRATION

- A. All decisions regarding notice and settlement administration shall be made jointly between Defendants and Class Counsel. Class Counsel and counsel for Defendants 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.
- B. As soon as practicable, but no later than 30 days after the Court's entry of the Preliminary Approval Order, the Settlement Administrator shall send or cause to be sent, by first-class United States Mail, to every member of the Settlement Classes who reasonably can be identified in Sears's and Whirlpool's records, a copy of the Class Notice. The Settlement Administrator also shall send or cause to be sent, via electronic mail, to every member of the Settlement Class whose e-

mail address Sears and Whirlpool can reasonably identify, a copy of the Class Notice. Such electronic mail notices shall advise Class Members if they are Pre-Qualified Class Members and, if so, shall state that most Prequalified Class Members will receive at least \$100 if they enter or confirm their current name and address, check the necessary eligibility boxes on the online Claim Form for Prequalified Class Members, and electronically sign the Claim Form certifying that the statements are true and correct. Before the mailing of such Class Notices, Sears and Whirlpool will obtain or cause to be obtained address updates utilizing a National Change of Address database. In mailing such Class Notices, the Settlement Administrator will use any updated addresses thus obtained. The Settlement Administrator will forward Class Notices that are returned by the U.S. Postal Service with a forwarding address.

- C. To facilitate the efficient administration of this Settlement, and to promote compensation pursuant to this Settlement, the Settlement Administrator will establish an Internet website that enables Settlement Class Members to read the Class Notice (including the long-form Class Notice) and FAQ, determine if they are a Pre-Qualified Class Member and the amount of compensation they will receive as a Pre-Qualified Class Member, complete a Claim Form online, review the completed Claim Form online, and print the completed Claim Form for signature by the Settlement Class Member and mailing to the Settlement Administrator along with any required documentary proof. The Settlement Administrator will allow Settlement Class Members to electronically sign the claim form and electronically upload and submit documents supporting their

Claim Form.

- D. The Class Notice will include a toll-free telephone number that the Settlement Class Members can use to request that the Settlement Administrator mail them a hardcopy Claim Form and FAQ and to obtain additional information regarding the Settlement and Settlement procedures.
- E. The Parties agree that the Class Notice, FAQ, Claim Form, and Internet website will 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 objecting to 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 the Class Notice and the FAQ in the manner specified in this Section V satisfies the notice requirements of due process and Rule 23 of the Federal Rules of Civil Procedure.
- F. The Parties will jointly request the Court to approve, in the Preliminary Approval Order, the direct mailing and emailing of the Class Notice, the Internet publication of the Class Notice and FAQ, and the Internet publication of the Claim Form, all as set forth above in this Section V.
- G. As soon as practicable, but no later than 10 days after the Court's entry of the Preliminary Approval Order, Whirlpool and Sears shall comply with the notice provisions of the Class Action Fairness Act, 28 U.S.C. section 1715.
- H. Within 45 days after the Court's entry of the Preliminary Approval Order,

Whirlpool and Sears will file with the Court a declaration of compliance with this plan of notice, including a statement of the number of persons to whom the Class Notice was mailed.

VI. COSTS OF NOTICE AND CLAIMS ADMINISTRATION

In addition to providing to Settlement Class Members the compensation and benefits described in Section V above, Whirlpool shall pay, separate from the compensation payments, the Administration Expenses. Defendants shall not be responsible for any cost that may be incurred by, on behalf of, or at the direction of Plaintiffs, Plaintiffs' Counsel, 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. Defendants shall, however, be required to pay the reasonable costs, if any, billed by the Settlement Administrator with respect to work performed by the Settlement Administrator to provide information to the Court regarding the notice and settlement administration process related to challenges/objections to the Agreement or the Settlement.

VII. COMPENSATION TO NAMED PLAINTIFFS

- A. Compensation as Members of the Settlement Classes. Each Plaintiff shall be entitled to participate in the claims procedures described in Section IV of this Agreement to the same extent as Settlement Class Members.
- B. Service Awards. Subject to approval by the Court, Whirlpool shall pay \$4,000.00 to each of the following Plaintiffs: Joseph Leonard, Kevin Barnes, Victor Matos, Alfred Blair, Martin Champion, Alan Jarashow, Lauren Crane, Lawrence L'Hommedieu, and Victoria Poulsen. Each of these plaintiffs have responded to

written discovery and been deposed by Defendants' counsel. Even though each of these plaintiffs has signed this Agreement and support approval of the Settlement, payment of the Service Award is not contingent on such signing and support.

VIII. 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. No later than June 26, 2015, or as soon thereafter as practicable and consistent with any further order of the Court, the Parties shall jointly move the Court for preliminary approval of the Settlement; for authorization to disseminate the Class Notice contemplated by this Agreement to all members of the Settlement Classes; and for a stay of all proceedings in the Sears Actions, except for proceedings provided for, by, or in connection with, this Agreement as set forth herein (the "Motion"). The Motion shall include the proposed Preliminary Approval Order, proposed form of the Class Notice and method for dissemination, proposed date of dissemination of the Class Notice to the Settlement Class, and proposed schedule through final approval of the Agreement.
 - 2. The deadlines established in the Preliminary Approval Order are as follows, all as measured from the date on which the Court enters the Preliminary Approval Order:
 - a. Ten (10) days after entry of the Preliminary Approval Order: Date

on or before which Defendants shall comply with the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715.

- b. Thirty (30) days after entry of the Preliminary Approval Order: Date on or before which the Settlement Administrator shall mail and email the Class Notices as required by Section V of this Agreement.
- c. Forty-five (45) days after entry of the Preliminary Approval Order: Date on or before which the Settlement Administrator shall file with the Court a declaration of compliance with the notice requirements set forth in Section V of this Agreement.
- d. Eighty-five (85) days after entry of the Preliminary Approval Order: Date on or before which Class Counsel shall file their motion for attorneys' fees and reimbursement of expenses and request for Service Awards.
- e. One-hundred-fifteen (115) days after entry of Preliminary Approval Order: Date on or before which Defendants shall file their opposition, if any, to Class Counsel's motion for attorneys' fees and reimbursement of expenses.
- f. One-hundred-twenty (120) days after entry of the Preliminary Approval Order: Date on or before which requests by members of the Settlement Class to be excluded from the Settlement must be either postmarked by the United States Postal Service or actually received by the Settlement Administrator.

- g. One-hundred-twenty (120) days after entry of the Preliminary Approval Order: Date on or before which objections to certification of the Settlement Class, the designation of Plaintiffs as Class Representatives, the appointment of Class Counsel, the Settlement, the Agreement, or the amount of fees and expenses that Class Counsel may apply for at the Fairness Hearing, together with all supporting memoranda and other material, must be filed with the Court and served on Class Counsel and Defendants.
- h. One-hundred-twenty (120) days after entry of the Preliminary Approval Order: Date on or before which all claims by Settlement Class Members to the Settlement Administrator for benefits under Section IV of this Agreement shall be postmarked or received. Claims received after this date shall not be Valid Claims.
- i. One-hundred-thirty-five (135) days after entry of the Preliminary Approval Order: Date on or before which any Person or attorney seeking to appear at the Fairness Hearing, for the purpose of objecting to certification of the Settlement Classes, the designation of Plaintiffs as representatives of the Settlement Classes, the appointment of Class Counsel, the Settlement, the Agreement, or the amount of fees and expenses requested by Class Counsel, must file with the Court and serve on Class Counsel and Defendants an entry of appearance in the Sears Actions and notice of intention to appear at the Fairness Hearing.

- j. One-hundred-sixty (160) days after entry of Preliminary Approval Order: Date on or before which Class Counsel shall file their reply in support of their motion for attorneys' fees, costs, and Service Awards.
- k. One-hundred-sixty (160) days after entry of the Preliminary Approval Order: Date on or before which the proposed Final Approval Order and memorandum in support of Final Approval shall be filed.
- l. One-hundred-eighty (180) days after entry of the Preliminary Approval Order: Date on or after which the Fairness Hearing will take place.

C. Final Approval

- 1. At the Fairness Hearing, the Parties will jointly request the Court to enter the Final Approval Order, which (1) grants final approval of the certification of the Settlement Class, designation of the Class Representatives, and designation of Class Counsel, all as conditionally approved in the Preliminary Approval Order; (2) grants final approval to the Settlement and this Agreement as fair, reasonable, and adequate to the Settlement Classes; (3) provides for the release of all Released Claims and enjoins Settlement Class Members from asserting, filing, maintaining, or prosecuting any of the Released Claims in the future; (4) orders the dismissal with prejudice of all CCU Claims alleged in the Lawsuits, and incorporates the releases and covenant not to sue stated in this Agreement,

with each Party to bear its, his, or her own costs and attorneys' fees, except as provided in Section X below; (5) authorizes the payment by Whirlpool of Valid Claims approved by the Settlement Administrator as Valid Claims, in accordance with the terms of the Agreement; and (6) preserves the Court's continuing jurisdiction over the administration of the Settlement and enforcement of the Agreement.

2. In addition, Class Counsel will move the Court for entry of a separate order approving the following: (1) Service Awards as set forth herein; and (2) attorneys' fees and costs to Class Counsel.

IX. REQUESTS FOR EXCLUSION

- A. Any member of the Settlement Class shall have the right to opt out of the Settlement Class by sending a written request for exclusion from the Settlement Class to the Settlement Administrator's address listed in the Class Notice, postmarked no later than a deadline to be set by the Court, which deadline shall be set forth in the Class Notice.
- B. Within 20 days after the Court-ordered deadline for timely and properly opting out from the Settlement Class, the Settlement Administrator shall provide to counsel for Defendants and Class Counsel a list of the names and addresses of the members of the Class who have opted out.

X. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND COSTS, AND SERVICE AWARDS TO PLAINTIFFS

- A. As part of the Settlement, Defendants have agreed to pay Class Counsel reasonable attorneys' fees and costs, without reducing the amount money available to pay Valid Claims submitted by Settlement Class Members or the

amount of money to be paid by for work performed by the Settlement Administrator.

- B. The amount of attorneys' fees and expenses 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.
- C. Defendants shall not oppose an Service Award of \$4,000.00 to each of Plaintiffs. This agreed amount will be subject to Court approval and will be included in Class Counsel's Fee Application.
- D. The payment of attorneys' fees and costs and Service Awards will be paid by Whirlpool over and above the benefits provided in Section IV of this Agreement and will not reduce the amount of any benefits paid to the Settlement Class Members.
- E. Class Counsel shall have the authority to determine and make an allocation of attorneys' fees and costs to any counsel representing any of the plaintiffs who claim an entitlement to share in any fees or costs approved by the Court and paid by Whirlpool. Any disputes regarding such allocation shall be resolved by the Court.
- F. If, after 30 days from the entry by the Court of the Final Approval Order and the judgment therein, no notice of appeal of the judgment or any order in the Lawsuits has been filed (including by Defendants), the time provided for in Rule 4 of the Federal Rules of Appellate Procedure to take any such appeal has expired, and any right to take any such appeal has been waived or otherwise lost, or if each such appeal that has been taken has been finally adjudicated and the

judgment and Final Approval Order have been upheld in all respects by each such final adjudication, Defendants shall, as soon as practicable, but no later than 15 business days, pay Class Counsel in accordance with the terms of the Court's order granting Class Counsel's fee application. Whirlpool shall make this payment by depositing through a wire exchange, into a trust account to be identified by Class Counsel, the sum so awarded and approved by the Court. Class Counsel shall provide to Defendants' counsel in a timely manner all wiring and account information necessary to enable Whirlpool to make such a deposit within the time required.

- G. If any notice of an appeal from the Final Approval Order or from the judgment therein is timely filed by any Party or Parties, objector, Settlement Class Member, or other Person, the Settlement shall not be or become final or effective, and Defendants shall not be obliged to make any payment to Class Counsel, until 15 days after each such appeal has been finally adjudicated and the Final Approval Order and the judgment therein have been upheld in all respects by each such final adjudication.
- H. Any issues relating to attorneys' 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 attorneys' 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 attorneys' fees, litigation costs and expenses to Class Counsel in the amount sought by Class Counsel or the payment of any Service Award, the remaining provisions of this Agreement shall remain in full force and effect.

XI. RELEASES

- A. 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.
- B. Plaintiffs and Settlement Class Members hereby expressly, knowingly, and voluntarily waive the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

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 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 Settlement Class Members to the Releasees shall be and remain in effect as a full and complete general release of all claims notwithstanding the discovery or existence of any such additional different claims or facts.

- C. 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.

XII. COVENANT NOT TO SUE

Plaintiffs, on behalf of themselves and the Settlement Class Members who do not timely exclude themselves from the Settlement, (a) covenant and agree that neither Plaintiffs nor any of the Settlement Class Members, nor anyone authorized to act on behalf of any of them, will commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in this Agreement, against Releasees, or any of them, in either their personal or corporate capacity, with respect to any claim, matter, or issue

that in any way arises from, is based on, or relates to any alleged loss, harm, or damages allegedly caused by Releasees, or any of them, in connection with the Released Claims; (b) 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 any of them; and (c) agree that this Agreement shall be a complete bar to any such action.

XIII. REPRESENTATIONS AND WARRANTIES

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

- A. 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.
- B. 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 Washers or otherwise referred to in this Agreement, and no portion of any recovery or settlement to which Plaintiffs may be entitled, has 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.

- C. 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.
- D. 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 her or its attorneys.
- E. Each of the Parties has carefully read, and 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, her or its attorneys.
- F. Each term of this Agreement, under the titles of the various paragraphs, is contractual and not merely a recital.

XIV. MISCELLANEOUS

- 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 provisions of this Agreement and Settlement.
- B. **Mutual Non-Disparagement and Prohibited Cooperation**

To the extent permitted by law and the applicable rules of professional conduct, the Settlement is conditioned on the Parties' and their lawyers' agreement not to disparage Defendants, Plaintiffs, or Plaintiffs' Counsel, and not to work with any party or lawyer who is litigating, or who wishes to litigate, an electronics or electrical components

class action claim concerning Performance Problems with the Washers. The foregoing shall not restrict the ability of counsel from performing their responsibilities to absent Class Members in connection with settlement approval proceedings, nor shall it restrict counsel's responsibilities to respond to orders of any court or other legal obligations.

C. No Extension of Written Warranty

In connection with this Agreement and Settlement, Defendants have not agreed to any extension of their written warranties for the Washers. The only settlement benefits are those payments described in Section IV of this Agreement.

D. Return or Destruction of Confidential Documents

Within thirty (30) days after the Effective Date, or the final termination of the related biofilm litigation, whichever is later, Plaintiffs will return and destroy (and certify in writing that they have destroyed) Sears's and Whirlpool's confidential documents and Defendants will return and destroy (and certify in writing that they have destroyed) any confidential documents produced by Plaintiffs.

E. Conditional Nature of Agreement

1. At Plaintiffs' option, expressed in written notice to Defendants' 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 Defendants' 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 Defendants, or fails to enter the Preliminary Approval Order or the Final Approval Order in substantially the form submitted by the Parties.

3. The Court's or any appellate court's failure to approve, in whole or in part, any award of attorneys' fees and costs to Class Counsel, or any Service Award, as provided in Section X of this Agreement, shall not be grounds for rescission under this Section.

B. Severability

With the exception of the provision for attorneys' fees and costs to Class Counsel and Service Awards to Plaintiffs pursuant to Section X of this Agreement, none of the terms of this Agreement is severable from the others. If the Court or a court of appeals should rule that any term is void, illegal, or unenforceable for any reason, however, Defendants, in their sole discretion, and Plaintiffs, in their sole discretion (but acting in accord with their duties and obligations as representatives of the Settlement Class), may elect to waive any such deficiency and proceed with the Settlement under the terms and conditions ultimately approved by the Court.

C. Effectiveness, Amendments, and Binding Nature

1. This Agreement may be amended only by written agreement signed by the Parties. Except as otherwise stated above, each of the Parties, including Plaintiffs on behalf of themselves and the Settlement Class, expressly accepts and assumes the risk that, if facts or laws pertinent to matters

covered by this Agreement are hereafter found to be other than as now believed or assumed by that party to be true or applicable, this Agreement shall nevertheless remain effective.

2. This Agreement is binding on, and shall inure to the benefit of, the Parties and their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, executors, administrators, insurers, and successors in interest. All Releasees other than the signatories to this Agreement are intended to be third-party beneficiaries of this Agreement.

D. Cooperation in Implementation

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

E. Governing Law

This Agreement shall be construed and governed in accordance with federal procedural law and the substantive laws of the State of Illinois, without regard to Illinois' conflict-of-laws principles.

F. No Admission of Liability

The Parties are entering into this Agreement for the purpose of compromising and settling disputed claims. Nothing in this Agreement or in the documents relating to this Agreement shall be construed, deemed, or offered as an admission by any of the Parties, or by any member of the Settlement Classes, for any purpose in any judicial or administrative action or proceeding, whether in law or in equity, regardless of whether this Agreement ultimately becomes effective. Defendants maintain they have meritorious

defenses to the CCU Claims, that the Washers are not defective, and that the alleged defects did not cause injury or loss.

G. Signatures

This Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original. Plaintiffs shall provide their signatures to this Agreement prior to the Fairness Hearing.


Plaintiff Kevin Barnes
Dated: 07-23, 2015
07/23/15

Plaintiff Alfred Blair
Dated: _____, 2015

Plaintiff Martin Champion
Dated: _____, 2015

Plaintiff Lauren Crane
Dated: _____, 2015

Plaintiff Alan Jarashow
Dated: _____, 2015

Plaintiff Joseph Leonard
Dated: _____, 2015

Plaintiff Lawrence L'Hommedieu
Dated: _____, 2015

Plaintiff Victor Matos
Dated: _____, 2015

Plaintiff Kevin Barnes
Dated: _____, 2015

Alfred R Blair

Plaintiff Alfred Blair
Dated: *July 23*, 2015

Plaintiff Martin Champion
Dated: _____, 2015

Plaintiff Lauren Crane
Dated: _____, 2015

Plaintiff Alan Jarashow
Dated: _____, 2015

Plaintiff Joseph Leonard
Dated: _____, 2015

Plaintiff Lawrence L'Hommedieu
Dated: _____, 2015

Plaintiff Victor Matos
Dated: _____, 2015

Plaintiff Kevin Barnes
Dated: _____, 2015

Plaintiff Alfred Blair
Dated: _____, 2015



Plaintiff Martin Champion
Dated: July 22, 2015

Plaintiff Lauren Crane
Dated: _____, 2015

Plaintiff Alan Jarashow
Dated: _____, 2015

Plaintiff Joseph Leonard
Dated: _____, 2015

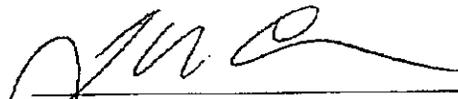
Plaintiff Lawrence L'Hommedieu
Dated: _____, 2015

Plaintiff Victor Matos
Dated: _____, 2015

Plaintiff Kevin Barnes
Dated: _____, 2015

Plaintiff Alfred Blair
Dated: _____, 2015

Plaintiff Martin Champion
Dated: _____, 2015



Plaintiff Lauren Crane
Dated: 7/22, 2015

Plaintiff Alan Jarashow
Dated: _____, 2015

Plaintiff Joseph Leonard
Dated: _____, 2015

Plaintiff Lawrence L'Hommedieu
Dated: _____, 2015

Plaintiff Victor Matos
Dated: _____, 2015

Plaintiff Kevin Barnes
Dated: _____, 2015

Plaintiff Alfred Blair
Dated: _____, 2015

Plaintiff Martin Champion
Dated: _____, 2015

Plaintiff Lauren Crane
Dated: _____, 2015



Plaintiff Alan Jarashov
Dated: July 22, 2015

Plaintiff Joseph Leonard
Dated: _____, 2015

Plaintiff Lawrence L'Hommedieu
Dated: _____, 2015

Plaintiff Victor Matos
Dated: _____, 2015

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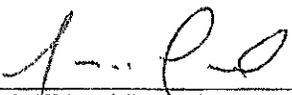
Plaintiff Kevin Barnes
Dated: _____, 2015

Plaintiff Alfred Blair
Dated: _____, 2015

Plaintiff Martin Champion
Dated: _____, 2015

Plaintiff Lauren Crane
Dated: _____, 2015

Plaintiff Alan Jarashow
Dated: _____, 2015



Plaintiff Joseph Leonard
Dated: 7-23, 2015

Plaintiff Lawrence L'Hommedieu
Dated: _____, 2015

Plaintiff Victor Matos
Dated: _____, 2015

Plaintiff Kevin Barnes
Dated: _____, 2015

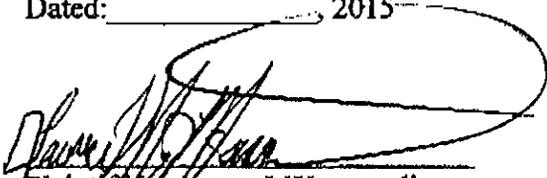
Plaintiff Alfred Blair
Dated: _____, 2015

Plaintiff Martin Champion
Dated: _____, 2015

Plaintiff Lauren Crane
Dated: _____, 2015

Plaintiff Alan Jarashow
Dated: _____, 2015

Plaintiff Joseph Leonard
Dated: _____, 2015



Plaintiff Lawrence L. Hommedieu
Dated: JULY 23RD, 2015

Plaintiff Victor Matos
Dated: _____, 2015

Plaintiff Kevin Barnes
Dated: _____, 2015

Plaintiff Alfred Blair
Dated: _____, 2015

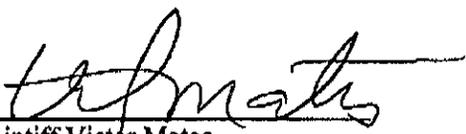
Plaintiff Martin Champion
Dated: _____, 2015

Plaintiff Lauren Crane
Dated: _____, 2015

Plaintiff Alan Jarashow
Dated: _____, 2015

Plaintiff Joseph Leonard
Dated: _____, 2015

Plaintiff Lawrence L'Hommedieu
Dated: _____, 2015

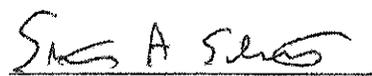


Plaintiff Victor Matos
Dated: July 22, 2015



Plaintiff Victoria Poulsen
Dated: 22 July, 2015

On Behalf of Plaintiffs and the Settlement Classes:

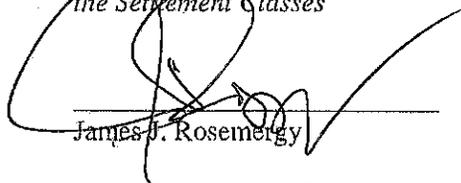


Steven A. Schwartz

7/23/15

Date

*Attorney for Plaintiffs and
the Settlement Classes*



James J. Rosemergy

7/23/15

Date

*Attorney for Plaintiffs and
the Settlement Classes*

Sears, Roebuck and Co.

Andrew M. Johnstone

Date

Associate General Counsel – Commercial Litigation
Sears Holdings Management Corp.

Whirlpool Corporation

Kyle P. De Jong

Date

Senior Counsel – Strategic Litigation
Whirlpool Corporation



FOR: Michael T. Williams 7.24.2015

Michael T. Williams Date
Counsel for Sears, Roebuck and Co. and Whirlpool Corporation

Eric R. Olson Date
Counsel for Whirlpool Corporation

