

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

Plaintiffs,

vs.

WHIRLPOOL CORPORATION,

Defendant.

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

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

Date: May 18, 2017
Time: 2:00 p.m.
Courtroom: 2, 15th Floor
Judge: The Honorable Troy L. Nunley

Plaintiffs Kyle Dei Rossi and Mark Linthicum (“Plaintiffs”), on behalf of themselves and the Settlement Class, as defined below, and Defendant Whirlpool Corporation (“Whirlpool”) (together, the “Parties”) executed a Settlement Agreement and Release of All Claims (“Agreement”). The Parties previously submitted the Agreement to this Court for preliminary approval of the class action settlement (the “Settlement”) pertaining to a California class of purchasers of KitchenAid-brand KSRG25FV** and KSRS25RV** model refrigerators (“Settlement Class”). On June 28, 2016, this Court entered an Order Granting Joint Motion for Preliminary Approval of Class Action Settlement

1 (“Preliminary Approval Order”). Now, the matter having come before the Court for hearing on May
2 18, 2017, on the Parties’ request for entry of an order granting final approval of the proposed
3 Settlement and for entry of final judgment in this matter, the Court FINDS, CONCLUDES, AND
4 ADJUDGES as follows:

5 **I. JURISDICTION OF THE COURT**

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

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

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

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

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

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

3 **III. NOTICE**

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

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

26 **IV. FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT**

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

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

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

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

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

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

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

4 **VI. IMPLEMENTATION OF THE SETTLEMENT**

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

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

10 **A. Release**

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

1 itself.

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

6 **B. Covenant Not to Sue**

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

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

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

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

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

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

9 **VIII. NO ADMISSION OF LIABILITY**

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

19 **IX. ENTRY OF FINAL JUDGMENT**

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

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

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

5 IT IS SO ORDERED.

6
7 Dated: _____, 2017

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