

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement Agreement and Release (“Agreement”) is made and entered into as of this ~~29th~~ day of October, 2021, by Elizabeth Cleveland, Christopher Redmon, Amy Larchuk, Dhaval Shah, and Thomas McCormick (“Plaintiffs”), on behalf of themselves and the Settlement Class, as defined below, and Defendant Whirlpool Corporation (“Whirlpool”), to settle, fully and finally, all of the claims that have been or could have been brought in the four putative class-action Lawsuits (defined in Section I.A. herein) against Whirlpool relating to certain dishwashers described below.

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

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

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

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

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

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

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

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

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

## I. DEFINITIONS

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

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

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

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

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

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

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

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

## **II. CONDITIONAL CERTIFICATION OF NATIONWIDE SETTLEMENT CLASS**

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

## **III. REQUIRED EVENTS**

- A. As soon as practicable after executing this Agreement, Plaintiffs shall take all necessary steps to file with the Court in *Cleveland* a motion seeking entry of the

Preliminary Approval Order, which by its terms shall accomplish all of the following:

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

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

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

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

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

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

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

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

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

#### **IV. SETTLEMENT BENEFITS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**V. SETTLEMENT ADMINISTRATION AND NOTICE EXPENSES**

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

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

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

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

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

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

#### **VI. PROCEDURES FOR SETTLEMENT APPROVAL**

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

B. Preliminary Approval

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

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

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

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

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

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

C. Final Approval

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

**VII. REQUESTS FOR EXCLUSION & OBJECTIONS**

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

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

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

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

- D. Defendant shall not oppose a Service Award of \$2,500.00 each to Elizabeth Cleveland, Amy Larchuk, Thomas McCormick, Christopher Redmon, and Dhaval Shah in recognition of their representation of the Settlement Class. This agreed amount will be subject to Court approval and will be included in Class Counsel's Fee Petitions.
- E. Class Counsel shall have the authority to determine and make an allocation of their respective awards of attorney fees and costs to any counsel representing any of the Settlement Class who claim an entitlement to share in any fees or costs approved by the Court and paid by Whirlpool. Such allocations shall be made consistent with any agreements between and among those counsel. Any disputes regarding such allocations shall be resolved by the Court.
- F. Any issues relating to attorney fees and costs or to any Service Award are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of this Agreement and the Settlement. The Court's or an appellate court's failure to approve, in whole or in part, any award of attorney fees and costs to Class Counsel, or any Service Award, shall not affect the validity or finality of the Settlement, nor shall such non-approval be grounds for rescission of the Agreement, as such matters are not the subject of any agreement among the Parties other than as set forth above. In the event the Court declines to approve, in whole or in part, the payment of attorney fees or costs to Class Counsel or the payment of any Service Award in the amount sought by Class Counsel, the remaining provisions of this Agreement shall remain in full force and effect.

**IX. RELEASES**

- A. Plaintiffs and all Settlement Class Members who do not timely exclude themselves from the Settlement do forever release, acquit, and discharge Releasees from all manner of actions, causes of action, administrative claims, demands, debts, damages, costs, attorney fees, obligations, judgments, expenses, or liabilities for economic loss, in law or in equity, whether now known or unknown, contingent or absolute, including all claims that Plaintiffs or Settlement Class Members now have or, absent this Agreement, may in the future have had, against Releasees, by reason of any act, omission, harm, matter, cause, or event whatsoever that has occurred from the beginning of time up to and including the Effective Date of this Agreement, and that arise from or relate to any of the defects, malfunctions, or inadequacies of the Class Dishwashers that are alleged or could have been alleged in the Lawsuits arising out of or relating to the diverter motors, diverter shafts, diverter shaft seals, and sump assemblies featuring those parts that are alleged to have the potential to result in a leak, or to any act, omission, damage, matter, cause, or event whatsoever arising out of the initiation, defense, or settlement of the Lawsuits or the claims or defenses asserted in the Lawsuits, including without limitation all claims for out-of-pocket expense, diminution-in-value, benefit-of-the-bargain, cost-of-repair, cost-of-replacement, statutory, or premium-price damages or restitution (the “Released Claims”).
- B. This release, however, will not extinguish, and the Released Claims do not include, claims for personal injury or for damage to property other than to the Class Dishwasher itself.

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

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

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

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

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

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

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

suspected, claimed or concealed, pertaining to the Released Claims of this Agreement.

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

#### **X. COVENANT NOT TO SUE**

Plaintiffs (i) covenant and agree that neither they, nor anyone authorized to act on their behalf, will commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in this Agreement, against the Releasees, or any of them, in either their personal or corporate capacity, with respect to any claim, matter, or issue that in any way arises from, is based on, or relates to any alleged loss, harm, or damages allegedly caused by the Releasees, or any of them, in connection with the Released Claims; (ii) waive and disclaim any right to any form of recovery, compensation, or other remedy in any such action or proceeding brought by or on behalf of them or any putative class of Class Dishwasher owners arising out of or relating to the diverter motors, diverter shafts, diverter shaft seals, and sump assemblies featuring those parts that are alleged to have the potential to result in a leak; and (iii) agrees that this Agreement shall be a complete bar to any such action by Plaintiffs.

#### **XI. REPRESENTATIONS AND WARRANTIES**

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

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

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

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

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

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

## **XII. NO ADMISSION OF LIABILITY**

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

### **XIII. ADDITIONAL TERMS**

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

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

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

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

Dated: September \_\_\_, 2021

\_\_\_\_\_  
PLAINTIFF ELIZABETH CLEVELAND

\_\_\_\_\_  
PLAINTIFF AMY LARCHUK

\_\_\_\_\_  
PLAINTIFF THOMAS MCCORMICK

\_\_\_\_\_  
PLAINTIFF CHRISTOPHER REDMON

\_\_\_\_\_  
PLAINTIFF DHAVAL SHAH

WHIRLPOOL CORPORATION

By: \_\_\_\_\_  
Authorized Representative

READ AND APPROVED:

By: Harper Segui  
Harper Segui  
Class Counsel

By: Rachel Soffin  
Rachel Soffin  
Class Counsel

By: Galen Bellamy  
Galen Bellamy  
Counsel for Defendant

Dated: September \_\_\_, 2021

\_\_\_\_\_  
PLAINTIFF ELIZABETH CLEVELAND

\_\_\_\_\_  
PLAINTIFF AMY LARCHUK

\_\_\_\_\_  
PLAINTIFF THOMAS MCCORMICK

\_\_\_\_\_  
PLAINTIFF CHRISTOPHER REDMON

\_\_\_\_\_  
PLAINTIFF DHAVAL SHAH

WHIRLPOOL CORPORATION

By: Emily Maki-Rusk  
Authorized Representative

Dated: October \_\_, 2021

Elisabeth Cleveland

PLAINTIFF ELIZABETH CLEVELAND

PLAINTIFF AMY LARCHUK

PLAINTIFF THOMAS MCCORMICK

PLAINTIFF CHRISTOPHER REDMON

PLAINTIFF DHAVAL SHAH

WHIRLPOOL CORPORATION

By: \_\_\_\_\_  
Authorized Representative

READ AND APPROVED:

By: \_\_\_\_\_  
Harper Segui  
Class Counsel

By: \_\_\_\_\_  
Rachel Soffin  
Class Counsel

By: \_\_\_\_\_  
Galen Bellamy  
Counsel for Defendant

Signature: Elisabeth Cleveland  
Elisabeth Cleveland (Oct 26, 2021 22:40 CDT)  
Email: emcleveland2@hotmail.com

Dated: October \_\_, 2021

\_\_\_\_\_  
PLAINTIFF ELIZABETH CLEVELAND

Amy Larchuk  
Amy Larchuk (NY, No. 2017-011)

\_\_\_\_\_  
PLAINTIFF AMY LARCHUK

\_\_\_\_\_  
PLAINTIFF THOMAS MCCORMICK

\_\_\_\_\_  
PLAINTIFF CHRISTOPHER REDMON

\_\_\_\_\_  
PLAINTIFF DHAVAL SHAH

WHIRLPOOL CORPORATION

By: \_\_\_\_\_  
Authorized Representative

Dated: October \_\_\_, 2021

\_\_\_\_\_  
PLAINTIFF ELIZABETH CLEVELAND

\_\_\_\_\_  
PLAINTIFF AMY LARCHUK

Thomas McCormick  
\_\_\_\_\_  
PLAINTIFF THOMAS MCCORMICK

\_\_\_\_\_  
PLAINTIFF CHRISTOPHER REDMON

\_\_\_\_\_  
PLAINTIFF DHAVAL SHAH

WHIRLPOOL CORPORATION

By: \_\_\_\_\_  
Authorized Representative

READ AND APPROVED:

By: \_\_\_\_\_  
Harper Segui  
Class Counsel

By: \_\_\_\_\_  
Rachel Soffin  
Class Counsel

By: \_\_\_\_\_  
Galen Bellamy  
Counsel for Defendant

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

Dated: October \_\_, 2021

\_\_\_\_\_  
PLAINTIFF ELIZABETH CLEVELAND

\_\_\_\_\_  
PLAINTIFF AMY LARCHUK

\_\_\_\_\_  
PLAINTIFF THOMAS MCCORMICK

Christopher Redmon

\_\_\_\_\_  
PLAINTIFF CHRISTOPHER REDMON

\_\_\_\_\_  
PLAINTIFF DHAVAL SHAH

WHIRLPOOL CORPORATION

By: \_\_\_\_\_  
Authorized Representative

READ AND APPROVED:

By: \_\_\_\_\_  
Harper Segui  
Class Counsel

By: \_\_\_\_\_  
Rachel Soffin  
Class Counsel

By: \_\_\_\_\_  
Galen Bellamy  
Counsel for Defendant

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

Email: redmonct@gmail.com

Dated: October \_\_, 2021

\_\_\_\_\_  
PLAINTIFF ELIZABETH CLEVELAND

\_\_\_\_\_  
PLAINTIFF AMY LARCHUK

\_\_\_\_\_  
PLAINTIFF THOMAS MCCORMICK

\_\_\_\_\_  
PLAINTIFF CHRISTOPHER REDMON

*Dhaival Shah*  
(Printed Name: Dhaival Shah, DOB: 05/11/1971, SSN: 99-11-99-11)  
\_\_\_\_\_  
PLAINTIFF DHAIVAL SHAH

WHIRLPOOL CORPORATION

By: \_\_\_\_\_  
Authorized Representative

READ AND APPROVED:

By: \_\_\_\_\_  
Harper Segui  
Class Counsel

By: \_\_\_\_\_  
Rachel Soffin  
Class Counsel

By: \_\_\_\_\_  
Galen Bellamy  
Counsel for Defendant

Signature: B.D. Shah  
B.D. Shah (Oct 26, 2021 10:01 PDT)

Email: supermom650@gmail.com