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11 Attorney for Defendant,
12 Whirlpool Corporation

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15
16 JULIE CORZINE, individually and on behalf of
all others similarly situated,

17 Plaintiff,

18 vs.

19 MAYTAG CORPORATION, a Delaware
20 corporation; WHIRLPOOL CORPORATION, a
Delaware corporation; and DOES 1 through 50,
21 inclusive,

22 Defendants.

Case No.: 5:15-cv-05764

**DEFENDANT WHIRLPOOL
CORPORATION'S ANSWER TO
SECOND AMENDED
COMPLAINT**

23
24
25 Defendant Whirlpool Corporation ("Whirlpool") hereby answers Plaintiff's Second
26 Amended Complaint (the "Complaint"). Except as specifically and expressly admitted, Whirlpool
27 denies each and every allegation in the Complaint.
28

1 As an initial matter, Whirlpool states that Plaintiff and Plaintiff's counsel lack any good-faith
2 basis for alleging defects in refrigerator-freezers that Plaintiff does not own and has never owned.
3 Whirlpool will respond only to Plaintiff's allegations that the Whirlpool-manufactured and Maytag-
4 branded 22 cubic-foot Bottom-Freezer Refrigerator purchased by Plaintiff (model MBR2256KES) is
5 defective. To the extent Plaintiff claims to have a good-faith basis for alleging that all refrigerator-
6 freezers in the putative class are defective, Whirlpool denies those allegations.

7 Further, Whirlpool answers only on behalf of itself and not on behalf of the unidentified
8 defendants DOES 1 through 50.

9 **THE PARTIES**

10 1. Whirlpool is without information sufficient to form a belief as to the truth of, and on
11 that basis denies, the allegations in Paragraph 1.

12 2. Whirlpool admits the allegations in Paragraph 2.

13 3. Whirlpool admits the allegations in Paragraph 3.

14 4. Whirlpool admits the allegations in Paragraph 4.

15 5. Whirlpool denies that Whirlpool has ever designed, sold, manufactured, or distributed
16 refrigerator-freezers with defective drain tubes. Whirlpool is without information sufficient to form a
17 belief as to the truth of, and on that basis denies, the remaining allegations in Paragraph 5.

18 6. Whirlpool denies that Whirlpool has ever manufactured or distributed defective drain
19 tubes. Whirlpool is without information sufficient to form a belief as to the truth of, and on that basis
20 denies, the remaining allegations in Paragraph 6.

21 7. Whirlpool denies that Whirlpool caused injuries and damages to Plaintiff and the
22 Class, whether through its own conduct or through the authorized and/or ratified conduct of its
23 agents, servants, or employees, or in any other manner. Whirlpool is without information sufficient
24 to form a belief as to the truth of, and on that basis denies, the remaining allegations in Paragraph 7.

25 8. Whirlpool admits the allegations in Paragraph 8.

26 9. Whirlpool denies the allegations in Paragraph 9.

JURISDICTION AND VENUE

1
2 10. Whirlpool admits that this Court has subject-matter jurisdiction over this action
3 because Plaintiff is a citizen of a different state from Whirlpool and because this is a putative class
4 action with a claimed amount in controversy exceeding \$5,000,000. Whirlpool denies that Plaintiff
5 can maintain their case on behalf of any class and denies that Plaintiff is entitled to the claimed
6 damages or equitable relief. Whirlpool denies the remaining allegations in Paragraph 10, if any.

7 11. Whirlpool admits that venue is proper in this District pursuant to 28 U.S.C. § 1391.
8 Whirlpool denies the remaining allegations in Paragraph 11, if any.

CLASS ACTION ALLEGATIONS

9
10 12. Whirlpool admits that Plaintiff purports to bring this action as a class action, pursuant
11 to California Code of Civil Procedure § 382. Whirlpool denies that Plaintiff's action is properly
12 maintainable as a class action. Whirlpool denies that Plaintiff can satisfy the requirements of Federal
13 Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3). Whirlpool denies the remaining allegations in
14 Paragraph 12, and states that the class definition is vague and overbroad.

15 13. Whirlpool admits the allegations in Paragraph 13.

16 14. Paragraph 14 contains legal conclusions to which no response is required. To the
17 extent these allegations require a response, Whirlpool denies them. Whirlpool denies the remaining
18 allegations in Paragraph 14.

19 15. Paragraph 15 contains legal conclusions to which no response is required. To the
20 extent these allegations require a response, Whirlpool denies them. Whirlpool denies the remaining
21 allegations in Paragraph 15.

22 16. Paragraph 16 contains legal conclusions to which no response is required. To the
23 extent these allegations require a response, Whirlpool denies them. Whirlpool denies the remaining
24 allegations in Paragraph 16.

25 17. Paragraph 17 contains legal conclusions to which no response is required. To the
26 extent these allegations require a response, Whirlpool denies them. Whirlpool denies the remaining
27 allegations in Paragraph 17.

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1 18. Paragraph 18 contains legal conclusions to which no response is required. To the
2 extent these allegations require a response, Whirlpool denies them. Whirlpool denies the remaining
3 allegations in Paragraph 18.

4 19. Paragraph 19 contains legal conclusions to which no response is required. To the
5 extent these allegations require a response, Whirlpool denies them. Whirlpool denies the remaining
6 allegations in Paragraph 19.

7 20. Paragraph 20 contains legal conclusions to which no response is required. To the
8 extent these allegations require a response, Whirlpool denies them. Whirlpool denies the remaining
9 allegations in Paragraph 20.

10 21. Paragraph 21 contains legal conclusions to which no response is required. To the
11 extent these allegations require a response, Whirlpool denies them. Whirlpool denies the remaining
12 allegations in Paragraph 21.

13 22. Paragraph 22 contains legal conclusions to which no response is required. To the
14 extent these allegations require a response, Whirlpool denies them. Whirlpool denies the remaining
15 allegations in Paragraph 22.

16 23. Paragraph 23 contains legal conclusions to which no response is required. To the
17 extent these allegations require a response, Whirlpool denies them. Whirlpool denies the remaining
18 allegations in Paragraph 23.

19 24. Paragraph 24 contains legal conclusions to which no response is required. To the
20 extent these allegations require a response, Whirlpool denies the allegations in Paragraph 24.
21 Whirlpool is without information sufficient to form a belief as to the truth of, and on that basis
22 denies, the allegation that Plaintiff has incurred and will incur expenses for attorneys' fees and costs.
23 Whirlpool denies the remaining allegations in Paragraph 24.

24 **FACTUAL BACKGROUND**

25 **A. Defendants' Defective Drain Tubes, Knowledge of the Defects and Fraudulent**
26 **Concealment of the Defects**

27 25. Whirlpool admits that in late 2009 and early 2010, it sold refrigerator-freezers that
28 contained a system designed to drain water away from the evaporator coils and into a drain pan

1 within the machine compartment. Whirlpool denies the remaining allegations in Paragraph 25, and
2 avers that this system, like many other systems and components that support the functions of a
3 refrigerator-freezer, was located inside each unit.

4 26. Whirlpool denies the allegations in Paragraph 26, and avers that all refrigerator-
5 freezers may experience internal moisture or ice build-up in many different locations within each
6 unit. Through its ongoing continuous-improvement processes, including its monitoring of warranty-
7 repair data and customer contacts, Whirlpool has identified many different reasons why moisture or
8 ice may be present in a refrigerator-freezer, including a poor door seal due to a misaligned or
9 deformed gasket, or a door that was left partially open. Among the many reasons why a particular
10 unit might experience moisture or ice build-up, Whirlpool has identified certain instances where the
11 drain system intended to drain water away from the evaporator and into the drain pan could become
12 clogged. These reasons include debris from food or packaging inside the freezer compartment
13 settling in the drain system, debris and dust from the environment in a particular owner's home, and
14 in some instances from water freezing inside the drain system.

15 27. Whirlpool admits that there always has been and will be the potential for water to
16 leak from any product that uses evaporative cooling technology, including the refrigerator-freezers at
17 issue in this case. Whirlpool denies the remaining allegations in Paragraph 27.

18 28. Whirlpool denies the allegations in Paragraph 28.

19 29. Whirlpool denies the allegations in Paragraph 29. Whirlpool avers that, as part of its
20 commitment to continuous product improvement, it introduced a second-generation duckbill in late
21 2010 as one of several efforts to further improve moisture and ice management and promote fewer
22 service calls for the already low rate of its customers experiencing drain issues.

23 30. Whirlpool denies the allegations in Paragraph 30. Whirlpool avers that, as part of its
24 commitment to continuous product improvement, it analyzed its warranty-repair and customer
25 contact data to identify opportunities to further improve its refrigerator-freezer products to drive
26 customer satisfaction. As part of this process, among other improvements, it introduced a second-
27 generation duckbill in late 2010 as one of several efforts to further improve moisture and ice
28

1 management and promote fewer service calls for the already low rate of its customers experiencing
2 drain issues.

3 31. Whirlpool denies the allegations in Paragraph 31.

4 32. Whirlpool denies the allegations in Paragraph 32. Whirlpool avers that it strives to
5 manufacture products meeting the highest standards of safety and quality. Whirlpool conducts
6 extensive testing on its products, including its refrigerator-freezers, prior to sale to ensure that they
7 meet industry standards for safety and quality. Indeed, in many areas, Whirlpool goes above and
8 beyond the requirements of safety agencies such as Underwriters Laboratories (“UL”) and holds
9 itself to even higher standards. Whirlpool also monitors the performance of its products in the field
10 to identify opportunities to optimize quality and performance and to guard against hazards that were
11 unforeseen in its pre-release safety testing. Whirlpool’s commitment to quality and safety is intended
12 to meet and exceed its customers’ expectations, and to win their and their families’ respect and
13 business for generations.

14 33. Whirlpool denies the allegations in Paragraph 33.

15 34. Whirlpool admits that, as part of its commitment to continuous product improvement,
16 it introduced new components in its drain system to replace the duckbill in early 2013. Whirlpool
17 denies the remaining allegations in Paragraph 34.

18 35. Whirlpool denies the allegations in Paragraph 35. Whirlpool avers that it introduced
19 the revised P-Trap design in early 2013, as described in Paragraph 34 above. Whirlpool further avers
20 that it issued a Technical Service Pointer relating to the P-Trap (“TSP”) in November 2013, to third-
21 party, non-Whirlpool appliance technicians, and that the TSP was made available to a wider
22 audience on do-it-yourself repair websites shortly after November 2013. Whirlpool strives to provide
23 the broader service community the technical information necessary to effectively diagnose and repair
24 its products, and in this way to drive customer satisfaction not just for Whirlpool but also for the
25 service community which is empowered to communicate service issues to owners and provide
26 solutions. To the extent certain allegations contained in Paragraph 35 purport to interpret,
27 paraphrase, or restate the contents of the TSP, Whirlpool denies all allegations in Paragraph 35 that
28 are inconsistent with the content of the document.

1 36. Whirlpool denies that its refrigerator-freezers pose a risk of electric shock when
2 installed and operated according to Whirlpool's instructions. Whirlpool admits that its installation
3 instructions that accompany the P-Trap service kit contain an effective warning about the risk of
4 electric shock when disassembling a refrigerator-freezer in order to install the P-Trap. Certain
5 allegations contained in Paragraph 36 purport to interpret, paraphrase, or restate the contents of the
6 TSP. Whirlpool denies all allegations in Paragraph 36 that are inconsistent with the content of the
7 document. Whirlpool denies the remaining allegations in Paragraph 36.

8 37. Whirlpool admits that it issued a TSP as described in Paragraph 35 above. Whirlpool
9 denies the remaining allegations in Paragraph 37.

10 38. Whirlpool admits that it issued a TSP as described in Paragraph 35 above. Whirlpool
11 denies the remaining allegations in Paragraph 38.

12 39. Whirlpool denies the allegations in Paragraph 39.

13 **B. Plaintiff's Defective Class Refrigerator**

14 40. Whirlpool admits that Plaintiff purchased a refrigerator-freezer, model no.
15 MBR2256KES, in California. Whirlpool is without information sufficient to form a belief as to the
16 truth of, and on that basis denies, the allegation that Plaintiff installed the refrigerator-freezer in her
17 home. Whirlpool denies the remaining allegations in Paragraph 40.

18 41. Whirlpool is without information sufficient to form a belief as to the truth of, and on
19 that basis denies, the allegations in Paragraph 41.

20 42. Whirlpool is without information sufficient to form a belief as to the truth of, and on
21 that basis denies, the allegations in Paragraph 42.

22 43. Whirlpool admits that Plaintiff contacted Whirlpool customer service on June 8, 2015
23 regarding ice build-up in her refrigerator-freezer, and that Whirlpool arranged for a technician to
24 repair the refrigerator-freezer on June 16, 2015. Whirlpool denies the remaining allegations in
25 Paragraph 43.

26 44. Whirlpool admits that the technician diagnosed the refrigerator-freezer and installed a
27 P-Trap. Whirlpool is without information sufficient to form a belief as to the truth of, and on that
28 basis denies, the remaining allegations in Paragraph 44.

1 45. Whirlpool admits that it paid for the cost of the P-Trap, which was a payment in
2 excess of Whirlpool's express-warranty obligations. Whirlpool is without information sufficient to
3 form a belief as to the truth of, and on that basis denies, the allegation that Plaintiff incurred labor
4 and installation costs. Whirlpool denies the remaining allegations in Paragraph 45.

5 46. Whirlpool denies that the duckbill was defective, and that the duckbill posed safety
6 risks and future financial burdens. Whirlpool is without information sufficient to form a belief as to
7 the truth of, and on that basis denies, the remaining allegations in Paragraph 46.

8 **FIRST CAUSE OF ACTION—STRICT LIABILITY: FAILURE TO WARN**

9 47. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
10 answer and on that basis denies the allegations in Paragraph 47. *See* Nov. 2, 2016 Order (ECF No.
11 64). To the extent an answer is required, Whirlpool incorporates by reference all preceding
12 admissions, denials, and averments as if set forth in full herein.

13 48. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
14 answer and on that basis denies the allegations in Paragraph 48. *See* Nov. 2, 2016 Order (ECF No.
15 64). To the extent an answer is required, Whirlpool admits that Whirlpool distributed and/or sold
16 duckbills, and denies the remaining allegations in Paragraph 48, if any.

17 49. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
18 answer and on that basis denies the allegations in Paragraph 49. *See* Nov. 2, 2016 Order (ECF No.
19 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 49.

20 50. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
21 answer and on that basis denies the allegations in Paragraph 50. *See* Nov. 2, 2016 Order (ECF No.
22 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 50.

23 51. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
24 answer and on that basis denies the allegations in Paragraph 51. *See* Nov. 2, 2016 Order (ECF No.
25 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 51.

26 52. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
27 answer and on that basis denies the allegations in Paragraph 52. *See* Nov. 2, 2016 Order (ECF No.
28 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 52.

1 53. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
2 answer and on that basis denies the allegations in Paragraph 53. *See* Nov. 2, 2016 Order (ECF No.
3 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 53.

4 54. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
5 answer and on that basis denies the allegations in Paragraph 54. *See* Nov. 2, 2016 Order (ECF No.
6 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 54.

7 55. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
8 answer and on that basis denies the allegations in Paragraph 55. *See* Nov. 2, 2016 Order (ECF No.
9 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 55.

10 56. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
11 answer and on that basis denies the allegations in Paragraph 56. *See* Nov. 2, 2016 Order (ECF No.
12 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 56.

13 57. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
14 answer and on that basis denies the allegations in Paragraph 57. *See* Nov. 2, 2016 Order (ECF No.
15 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 57.

16 58. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
17 answer and on that basis denies the allegations in Paragraph 58. *See* Nov. 2, 2016 Order (ECF No.
18 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 58.

19 **SECOND CAUSE OF ACTION—STRICT LIABILITY: MANUFACTURING DEFECT**

20 59. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
21 answer and on that basis denies the allegations in Paragraph 59. *See* Nov. 2, 2016 Order (ECF No.
22 64). To the extent an answer is required, Whirlpool incorporates by reference all preceding
23 admissions, denials, and averments as if set forth in full herein.

24 60. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
25 answer and on that basis denies the allegations in Paragraph 60. *See* Nov. 2, 2016 Order (ECF No.
26 64). To the extent an answer is required, Whirlpool admits that Whirlpool distributed and/or sold
27 duckbills, and denies the remaining allegations in Paragraph 60, if any.

28

1 61. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
2 answer and on that basis denies the allegations in Paragraph 61. *See* Nov. 2, 2016 Order (ECF No.
3 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 61.

4 62. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
5 answer and on that basis denies the allegations in Paragraph 62. *See* Nov. 2, 2016 Order (ECF No.
6 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 62.

7 63. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
8 answer and on that basis denies the allegations in Paragraph 63. *See* Nov. 2, 2016 Order (ECF No.
9 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 63.

10 64. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
11 answer and on that basis denies the allegations in Paragraph 64. *See* Nov. 2, 2016 Order (ECF No.
12 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 64.

13 65. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
14 answer and on that basis denies the allegations in Paragraph 65. *See* Nov. 2, 2016 Order (ECF No.
15 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 65.

16 66. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
17 answer and on that basis denies the allegations in Paragraph 66. *See* Nov. 2, 2016 Order (ECF No.
18 64). To the extent an answer is required, Whirlpool admits that Whirlpool distributed and/or sold
19 duckbills, and denies the remaining allegations in Paragraph 66, if any.

20 67. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
21 answer and on that basis denies the allegations in Paragraph 67. *See* Nov. 2, 2016 Order (ECF No.
22 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 67.

23 68. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
24 answer and on that basis denies the allegations in Paragraph 68. *See* Nov. 2, 2016 Order (ECF No.
25 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 68.

26 69. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
27 answer and on that basis denies the allegations in Paragraph 69. *See* Nov. 2, 2016 Order (ECF No.
28 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 69.

THIRD CAUSE OF ACTION—STRICT LIABILITY: DESIGN DEFECT

1
2 70. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
3 answer and on that basis denies the allegations in Paragraph 70. *See* Nov. 2, 2016 Order (ECF No.
4 64). To the extent an answer is required, Whirlpool incorporates by reference all preceding
5 admissions, denials, and averments as if set forth in full herein.

6 71. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
7 answer and on that basis denies the allegations in Paragraph 71. *See* Nov. 2, 2016 Order (ECF No.
8 64). To the extent an answer is required, Whirlpool admits that Whirlpool distributed and/or sold
9 duckbills, and denies the remaining allegations in Paragraph 71, if any.

10 72. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
11 answer and on that basis denies the allegations in Paragraph 72. *See* Nov. 2, 2016 Order (ECF No.
12 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 72.

13 73. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
14 answer and on that basis denies the allegations in Paragraph 73. *See* Nov. 2, 2016 Order (ECF No.
15 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 73.

16 74. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
17 answer and on that basis denies the allegations in Paragraph 74. *See* Nov. 2, 2016 Order (ECF No.
18 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 74.

19 75. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
20 answer and on that basis denies the allegations in Paragraph 75. *See* Nov. 2, 2016 Order (ECF No.
21 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 75.

22 76. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
23 answer and on that basis denies the allegations in Paragraph 76. *See* Nov. 2, 2016 Order (ECF No.
24 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 76.

25 77. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
26 answer and on that basis denies the allegations in Paragraph 77. *See* Nov. 2, 2016 Order (ECF No.
27 64). To the extent an answer is required, Whirlpool admits that Whirlpool distributed and/or sold
28 duckbills, and denies the remaining allegations in Paragraph 77, if any.

1 86. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
2 answer and on that basis denies the allegations in Paragraph 86. *See* Nov. 2, 2016 Order (ECF No.
3 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 86.

4 87. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
5 answer and on that basis denies the allegations in Paragraph 87. *See* Nov. 2, 2016 Order (ECF No.
6 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 87.

7 88. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
8 answer and on that basis denies the allegations in Paragraph 88. *See* Nov. 2, 2016 Order (ECF No.
9 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 88.

10 **FIFTH CAUSE OF ACTION—NEGLIGENCE: FAILURE TO RECALL/RETROFIT**

11 89. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
12 answer and on that basis denies the allegations in Paragraph 89. *See* Nov. 2, 2016 Order (ECF No.
13 64). To the extent an answer is required, Whirlpool incorporates by reference all preceding
14 admissions, denials, and averments as if set forth in full herein.

15 90. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
16 answer and on that basis denies the allegations in Paragraph 90. *See* Nov. 2, 2016 Order (ECF No.
17 64). To the extent an answer is required, Whirlpool admits that Whirlpool distributed and/or sold
18 duckbills, and denies the remaining allegations in Paragraph 90, if any.

19 91. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
20 answer and on that basis denies the allegations in Paragraph 91. *See* Nov. 2, 2016 Order (ECF No.
21 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
22 91.

23 92. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
24 answer and on that basis denies the allegations in Paragraph 92. *See* Nov. 2, 2016 Order (ECF No.
25 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
26 92.

1 93. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
2 answer and on that basis denies the allegations in Paragraph 93. *See* Nov. 2, 2016 Order (ECF No.
3 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 93.

4 94. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
5 answer and on that basis denies the allegations in Paragraph 94. *See* Nov. 2, 2016 Order (ECF No.
6 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 94.

7 95. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
8 answer and on that basis denies the allegations in Paragraph 95. *See* Nov. 2, 2016 Order (ECF No.
9 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 95.

10 96. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
11 answer and on that basis denies the allegations in Paragraph 96. *See* Nov. 2, 2016 Order (ECF No.
12 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 96.

13 97. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
14 answer and on that basis denies the allegations in Paragraph 97. *See* Nov. 2, 2016 Order (ECF No.
15 64). To the extent an answer is required, Whirlpool denies the allegations in Paragraph 97.

16 **SIXTH CAUSE OF ACTION—BREACH OF EXPRESS WARRANTY**

17 98. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
18 answer and on that basis denies the allegations in Paragraph 98. *See* Nov. 2, 2016 Order (ECF No.
19 64). To the extent an answer is required, Whirlpool incorporates by reference all preceding
20 admissions, denials, and averments as if set forth in full herein.

21 99. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
22 answer and on that basis denies the allegations in Paragraph 99. *See* Nov. 2, 2016 Order (ECF No.
23 64). To the extent an answer is required, Whirlpool admits that it made an express warranty as set
24 forth within the Maytag Major Appliance Warranty, and denies the remaining allegations in
25 Paragraph 99, if any.

26 100. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
27 answer and on that basis denies the allegations in Paragraph 100. *See* Nov. 2, 2016 Order (ECF No.
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1 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
2 100.

3 101. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
4 answer and on that basis denies the allegations in Paragraph 101. *See* Nov. 2, 2016 Order (ECF No.
5 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
6 101.

7 102. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
8 answer and on that basis denies the allegations in Paragraph 102. *See* Nov. 2, 2016 Order (ECF No.
9 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
10 102.

11 103. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
12 answer and on that basis denies the allegations in Paragraph 103. *See* Nov. 2, 2016 Order (ECF No.
13 64). To the extent these allegations require a response, Whirlpool denies that the duckbill was
14 defective, and notes that it is without information sufficient to form a belief as to the truth of, and on
15 that basis denies, the remaining allegations in Paragraph 103.

16 104. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
17 answer and on that basis denies the allegations in Paragraph 104. *See* Nov. 2, 2016 Order (ECF No.
18 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
19 104.

20 105. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
21 answer and on that basis denies the allegations in Paragraph 105. *See* Nov. 2, 2016 Order (ECF No.
22 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
23 105.

24 106. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
25 answer and on that basis denies the allegations in Paragraph 106. *See* Nov. 2, 2016 Order (ECF No.
26 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
27 106.

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1 107. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
2 answer and on that basis denies the allegations in Paragraph 107. *See* Nov. 2, 2016 Order (ECF No.
3 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
4 107.

5 **SEVENTH CAUSE OF ACTION—BREACH OF IMPLIED WARRANTY OF FITNESS**

6 108. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
7 answer and on that basis denies the allegations in Paragraph 108. *See* Nov. 2, 2016 Order (ECF No.
8 64). To the extent an answer is required, Whirlpool incorporates by reference all preceding
9 admissions, denials, and averments as if set forth in full herein.

10 109. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
11 answer and on that basis denies the allegations in Paragraph 109. *See* Nov. 2, 2016 Order (ECF No.
12 64). Further, Paragraph 109 contains legal conclusions to which no response is required. To the
13 extent these allegations require a response, Whirlpool denies the allegations in Paragraph 109.

14 110. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
15 answer and on that basis denies the allegations in Paragraph 110. *See* Nov. 2, 2016 Order (ECF No.
16 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
17 110.

18 111. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
19 answer and on that basis denies the allegations in Paragraph 111. *See* Nov. 2, 2016 Order (ECF No.
20 64). To the extent these allegations require a response, Whirlpool denies that the duckbill was
21 defective, and notes that it is without information sufficient to form a belief as to the truth of, and on
22 that basis denies, the remaining allegations in Paragraph 111.

23 112. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
24 answer and on that basis denies the allegations in Paragraph 112. *See* Nov. 2, 2016 Order (ECF No.
25 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
26 112.

27 113. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
28 answer and on that basis denies the allegations in Paragraph 113. *See* Nov. 2, 2016 Order (ECF No.

1 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
2 113.

3 114. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
4 answer and on that basis denies the allegations in Paragraph 114. *See* Nov. 2, 2016 Order (ECF No.

5 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
6 114.

7 115. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
8 answer and on that basis denies the allegations in Paragraph 115. *See* Nov. 2, 2016 Order (ECF No.

9 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
10 115.

11 116. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
12 answer and on that basis denies the allegations in Paragraph 116. *See* Nov. 2, 2016 Order (ECF No.

13 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
14 116.

15 117. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
16 answer and on that basis denies the allegations in Paragraph 117. *See* Nov. 2, 2016 Order (ECF No.

17 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
18 117.

19 118. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
20 answer and on that basis denies the allegations in Paragraph 118. *See* Nov. 2, 2016 Order (ECF No.

21 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
22 118.

23 119. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
24 answer and on that basis denies the allegations in Paragraph 119. *See* Nov. 2, 2016 Order (ECF No.

25 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
26 119.

27 120. This claim has been dismissed with prejudice, and Whirlpool has no obligation to
28 answer and on that basis denies the allegations in Paragraph 120. *See* Nov. 2, 2016 Order (ECF No.

1 64). To the extent these allegations require a response, Whirlpool denies the allegations in Paragraph
2 120.

3 **EIGHTH CAUSE OF ACTION—BREACH OF IMPLIED WARRANTY OF**
4 **MERCHANTABILITY**

5 121. Whirlpool incorporates by reference all preceding admissions, denials, and averments
6 as if set forth in full herein.

7 122. Paragraph 122 contains legal conclusions to which no response is required. To the
8 extent these allegations require a response, Whirlpool denies the allegations in Paragraph 122.

9 123. Whirlpool denies the allegations in Paragraph 123.

10 124. Whirlpool denies that the duckbill was defective, and notes that it is without
11 information sufficient to form a belief as to the truth of, and on that basis denies, the remaining
12 allegations in Paragraph 124.

13 125. Whirlpool admits that it sold refrigerator-freezers containing duckbills and denies the
14 remaining allegations in Paragraph 125, if any.

15 126. Whirlpool denies the allegations in Paragraph 126.

16 127. Whirlpool denies the allegations in Paragraph 127.

17 128. Whirlpool denies the allegations in Paragraph 128.

18 129. Whirlpool denies the allegations in Paragraph 129.

19 130. Whirlpool denies the allegations in Paragraph 130.

20 131. Whirlpool denies the allegations in Paragraph 131.

21 132. Whirlpool denies the allegations in Paragraph 132.

22 **NINTH CAUSE OF ACTION—VIOLATIONS OF SONG-BEVERLY CONSUMER**
23 **WARRANTY ACT**

24 133. Whirlpool incorporates by reference all preceding admissions, denials, and averments
25 as if set forth in full herein.

26 134. Whirlpool denies that the duckbill was defective, and notes that it is without
27 information sufficient to form a belief as to the truth of, and on that basis denies, the remaining
28 allegations in Paragraph 134.

1 135. Whirlpool admits that Whirlpool distributed and/or sold duckbills, and denies the
2 remaining allegations in Paragraph 135, if any.

3 136. Whirlpool is without information sufficient to form a belief as to the truth of, and on
4 that basis denies, the allegations in Paragraph 136.

5 137. Whirlpool admits that it made an express warranty as set forth within the Maytag
6 Major Appliance Warranty. Whirlpool denies the remaining allegations in Paragraph 137.

7 138. Whirlpool denies the allegations in Paragraph 138.

8 139. Whirlpool denies the allegations in Paragraph 139.

9 140. Whirlpool denies the allegations in Paragraph 140.

10 141. Whirlpool denies the allegations in Paragraph 141.

11 142. Whirlpool denies the allegations in Paragraph 142.

12 143. Whirlpool denies the allegations in Paragraph 143.

13 144. Whirlpool denies the allegations in Paragraph 144.

14 145. Whirlpool denies the allegations in Paragraph 145.

15 **TENTH CAUSE OF ACTION—VIOLATIONS OF CAL. BUS. & PROF.**

16 **CODE § 17200 et seq.¹**

17 138. Whirlpool incorporates by reference all preceding admissions, denials, and
18 averments as if set forth in full herein.

19 139. Whirlpool denies the allegations in Paragraph 139.

20 140. Whirlpool denies the allegations in Paragraph 140.

21 141. Whirlpool denies the allegations in Paragraph 141.

22 142. Whirlpool denies the allegations in Paragraph 142.

23 143. Whirlpool denies the allegations in Paragraph 143.

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28 ¹ The Second Amended Complaint repeats paragraph numbers 138-145. To avoid additional
confusion, Whirlpool uses the same numbering convention as Plaintiff.

ELEVENTH CAUSE OF ACTION—VIOLATIONS OF CALIFORNIA CONSUMER

LEGAL REMEDIES ACT, CAL. CIV. § 1750, ET SEQ.

144. Whirlpool incorporates by reference all preceding admissions, denials, and averments as if set forth in full herein.

145. Certain allegations contained in Paragraph 145 purport to interpret, paraphrase, or restate California’s Consumer Legal Remedies Act (“CLRA”). Whirlpool denies all allegations in Paragraph 145 that are inconsistent with the statute.

146. Paragraph 146 contains legal conclusions to which no response is required. To the extent these allegations require a response, Whirlpool denies them.

147. Paragraph 147 contains legal conclusions to which no response is required. To the extent these allegations require a response, Whirlpool denies them.

148. Paragraph 148 contains legal conclusions to which no response is required. To the extent these allegations require a response, Whirlpool denies them.

149. Whirlpool denies the allegations in Paragraph 149.

150. Whirlpool denies the allegations in Paragraph 150.

151. Whirlpool denies the allegations in Paragraph 151.

152. Whirlpool denies the allegations in Paragraph 152.

153. Whirlpool denies the allegations in Paragraph 153.

154. Whirlpool denies the allegations in Paragraph 154.

155. Whirlpool denies the allegations in Paragraph 155.

156. Whirlpool denies the allegations in Paragraph 156, and further avers that Plaintiff failed to provide the notice required by the CLRA in order to obtain an entitlement to monetary relief.

PRAYER FOR RELIEF

Whirlpool denies that Plaintiff is entitled to any of the relief requested in the Prayer for Relief or the Complaint.

1 **WHIRLPOOL’S DEFENSES**

2 The following defenses are set forth for the purpose of providing Plaintiff notice of those
3 defenses Whirlpool may assert against their claims for relief and are detailed here without regard to
4 the party that bears the burden of proof or persuasion on any particular defense.

5 **FIRST DEFENSE**

6 1. Whirlpool designates all of its denials of material allegations as defenses to the extent
7 necessary to provide a complete defense.

8 **SECOND DEFENSE**

9 2. Plaintiff’s Complaint fails to allege facts sufficient to state any claim for which relief
10 can be granted.

11 **THIRD DEFENSE**

12 3. The Complaint does not satisfy the requirements of Rule 23 of the Federal Rules of
13 Civil Procedure, and therefore the putative class claims should be dismissed.

14 **FOURTH DEFENSE**

15 4. Upon information and belief, Plaintiff has not suffered any damages or any injury in
16 fact.

17 **FIFTH DEFENSE**

18 5. Whirlpool asserts that the refrigerator-freezers have not been shown to have any
19 alleged design or manufacturing defect. In the alternative, Whirlpool did not know and should not
20 reasonably have known of the alleged defect in design, manufacturing, material, or workmanship at
21 the time the products at issue were manufactured and sold.

22 **SIXTH DEFENSE**

23 6. Whirlpool’s actions have not caused Plaintiff any damages or injury in fact.

24 **SEVENTH DEFENSE**

25 7. Upon information and belief, Plaintiff has not relied to her detriment on any
26 representation or statement that she contends in the Complaint to be untrue or misleading.

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EIGHTH DEFENSE

8. Plaintiff and members of the putative class have failed to mitigate their damages, if any.

NINTH DEFENSE

9. Plaintiff's claims, and those of members of the putative class, are barred, in whole or in part, by the defenses of estoppel, laches, and waiver.

TENTH DEFENSE

10. Subject to discovery, Plaintiff's claims may be barred by the doctrine of unclean hands.

ELEVENTH DEFENSE

11. Plaintiff's claims for damages are barred, in whole or in part, because of the economic loss rule.

TWELFTH DEFENSE

12. Upon information and belief, any damages sustained by Plaintiff were proximately caused and occasioned by the actions and omissions of Plaintiff or others, and these acts and omissions were the sole causes of Plaintiff's alleged damages. Therefore, Whirlpool pleads independent, intervening, or suspending acts and omissions of Plaintiff and others as a complete bar to this action.

THIRTEENTH DEFENSE

13. Any alleged damages were caused by and arose out of risks known to and assumed by Plaintiff and members of the putative class.

FOURTEENTH DEFENSE

14. At least some of the claims alleged in the Complaint are barred, in whole or in part, by applicable statutes of limitations or repose. The warranty claims of Plaintiff Corzine are barred, in whole or in part, by the applicable statutes of limitations or repose.

1 **FIFTEENTH DEFENSE**

2 15. Plaintiff and members of the putative class failed to afford Whirlpool adequate pre-
3 suit notice of an alleged breach of any warranty, express or implied, or a reasonable opportunity to
4 cure the alleged breach of any warranty.

5 **SIXTEENTH DEFENSE**

6 16. Plaintiff and members of the putative class failed to afford Whirlpool with the notice
7 and demand required by California's Consumer Legal Remedies Act.

8 **SEVENTEENTH DEFENSE**

9 17. Plaintiff and members of the putative class failed to afford Whirlpool a reasonable
10 opportunity to cure the alleged breach of express or implied warranties.

11 **EIGHTEENTH DEFENSE**

12 18. Plaintiff's claims may be barred, in whole or in part, pursuant to California Civil
13 Code § 1784 in that the alleged conduct was not intentional and constituted a bona fide error, if any,
14 notwithstanding Whirlpool's adoption of reasonable procedures and in that Whirlpool has made (or
15 will make) an appropriate correction, repair, or replacement in compliance with Civil Code § 1782
16 for those consumers who have presented or will present a legitimate claim.

17 **NINETEENTH DEFENSE**

18 19. The product in question was covered by a written warranty that Plaintiff accepted,
19 that is limited in scope and time, and that does not cover the acts, omissions, or other matters
20 complained of by Plaintiff. Plaintiff accepted the limited warranty in lieu of any other warranty or
21 representation, express or implied. Therefore, Whirlpool pleads the written warranty is a complete
22 bar to Plaintiff's claims.

23 **TWENTIETH DEFENSE**

24 20. Plaintiff's claims, and those of the putative class members are or may be barred, in
25 whole or part, because the damages alleged may have resulted from a substantial change in or
26 improper installation, maintenance, abnormal use, misuse, or care of their refrigerator-freezers.

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TWENTY-FIRST DEFENSE

21. The Complaint may be barred, in whole or in part, due to Plaintiff’s spoliation of evidence.

TWENTY-SECOND DEFENSE

22. The Complaint may be barred, in whole or in part, by the preemptive effect of federal law.

TWENTY-THIRD DEFENSE

23. Plaintiff’s claims are barred, in whole or in part, by the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments and the Seventh Amendment’s guarantee of a jury trial under the United States Constitution to the extent that Plaintiff seeks to extrapolate liability, causation, or damages on a class-wide basis, instead of proving liability, causation, and damages for each individual class member.

TWENTY-FOURTH DEFENSE

24. Plaintiff’s recovery may be barred or limited by the negligence of any nonparties at fault pursuant to California law.

TWENTY-FIFTH DEFENSE

25. The Complaint and each of its causes of action are barred or limited, or Plaintiff’s recovery should be reduced, by Plaintiff’s negligence or fault, pursuant to the doctrine of comparative negligence.

TWENTY-SIXTH DEFENSE

26. The Complaint fails to meet the pleading standards of Federal Rule of Civil Procedure 9(b), requiring a plaintiff to state with particularity the circumstances constituting fraud.

TWENTY-SEVENTH DEFENSE

27. The product in question is free from defect by virtue of Whirlpool’s compliance with industry standards, the state of the art, and any applicable government codes, standards, or regulations.

1 **TWENTY-EIGHTH DEFENSE**

2 28. Whirlpool avers that the product alleged to be of its manufacture was not in the same,
3 or substantially the same, condition at the time of any alleged malfunction as at the time of
4 manufacture and sale.

5 **TWENTY-NINTH DEFENSE**

6 29. To the extent Plaintiff seeks punitive damages, Plaintiff has failed to state a claim for
7 punitive damages under the pleading standards of California.

8 **THIRTIETH DEFENSE**

9 30. To the extent any part of the Complaint may be construed as alleging or seeking
10 recovery of punitive or exemplary damages, any such claim cannot be maintained unless the trial is
11 bifurcated. Any award of punitive damages without bifurcating the trial and trying all punitive
12 damages issues only if and after liability on the merits has been found, would violate Whirlpool's
13 due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and
14 by the constitution, common law, and public policies of California.

15 **THIRTY-FIRST DEFENSE**

16 31. To the extent any part of the Complaint may be construed as alleging or seeking
17 recovery of punitive or exemplary damages, such a claim for punitive damages cannot be sustained,
18 because an award of punitive damages that is not subject to a predetermined limit on the amount of
19 punitive damages that a jury may impose, such as a maximum multiple of compensatory damages or
20 a maximum amount, would violate the Excessive Fines Clause of the Eighth Amendment to the U.S.
21 Constitution, Article 1, and the California constitution, and would be improper under the common
22 law and public policies of California.

23 **THIRTY-SECOND DEFENSE**

24 32. Plaintiff's claim for punitive damages cannot be sustained, because an award of
25 punitive damages by a jury that (a) is not provided standards of sufficient clarity for determining the
26 appropriateness, and the appropriate size, of a punitive damages award; (b) is not adequately
27 instructed on the limits on punitive damages imposed by the applicable principles of deterrence and
28 punishment; (c) is not expressly prohibited from awarding punitive damages, or determining the

1 amount of an award of punitive damages, in whole or in part, on the basis of invidiously
2 discriminatory characteristics, including the residence, wealth, and corporate status of Whirlpool; (d)
3 is permitted to award punitive damages under a standard for determining liability for punitive
4 damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental
5 state that makes punitive damages permissible; and (e) is not subject to trial court and appellate
6 judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective
7 standards, would violate due process and equal protection rights belonging to Whirlpool and
8 guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution and the California
9 constitution, and would be improper under the common law and public policies of California.

10 **THIRTY-THIRD DEFENSE**

11 33. Any award of punitive damages based on anything other than the conduct of
12 Whirlpool in connection with the sale of the product that is the subject of Plaintiff's claims would
13 violate the due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution and
14 the California constitution, and would be improper under the common law and public policies of
15 California, because any other judgment for punitive damages in this case cannot protect Whirlpool
16 against impermissible multiple punishment for the same wrong and punishment for extra-territorial
17 conduct in jurisdictions where the conduct is legally proper. In addition, any such award would
18 violate the Commerce Clause of the U.S. Constitution and principles of comity under the laws of
19 California.

20 **THIRTY-FOURTH DEFENSE**

21 34. Plaintiff's claims, and those of the putative class members, are or may be barred by a
22 valid accord and satisfaction or other settlement, including an offer and acceptance of complete
23 relief, reached with Whirlpool.

24 **THIRTY-FOURTH DEFENSE**

25 Whirlpool reserves the right to add defenses as they become known through the course of
26 discovery and further investigation.

27 **JURY DEMAND**

28 Whirlpool demands a trial by jury on all issues so triable.

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Dated: November 18, 2016

WHEELER TRIGG O'DONNELL LLP

By: s/ Andrew M. Unthank
Andrew M. Unthank (appearance *pro hac vice*)
Michael N. Mulvania (appearance *pro hac vice*)
Attorneys for Defendant, Whirlpool Corporation

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CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on November 18, 2016, I electronically filed the foregoing DEFENDANT WHIRLPOOL CORPORATION'S ANSWER TO SECOND AMENDED COMPLAINT with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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