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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

vs.

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

Defendants.

Case No.: 5:15-cv-05764

~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

Plaintiff Julie Corzine (“Plaintiff”) and Whirlpool Corporation (“Whirlpool” or “Defendant”) executed a Class Action Settlement Agreement and Release on May 7, 2018, which the Parties amended on August 14, 2019 (“Settlement Agreement” or “Agreement”). Pursuant to the Agreement, the Parties have moved for entry of an order granting preliminary approval of the settlement provided for in the Settlement Agreement (the “Settlement”). All defined terms in this Order (i.e., all capitalized words or phrases) shall have the same definitions and meanings as those set forth in the Settlement Agreement.

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

~~PROPOSED~~ ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT

1 **I. CERTIFICATION OF THE SETTLEMENT CLASS**

2 The Agreement settles all Released Claims, as defined below, that have been or could have
3 been brought in the putative class-action Lawsuit. The Agreement provides for a nationwide class
4 settlement of the Released Claims concerning certain models of Whirlpool-manufactured
5 refrigerators with bottom freezers that are the subject of the Lawsuit. As part of the Settlement,
6 Defendant has conditionally withdrawn its objections to certification of the Settlement Class.

7 A. The Court has considered (a) allegations, information, arguments, and authorities
8 provided by the Parties in connection with pleadings and motions previously filed by each of them in
9 this case; (b) information, arguments, and authorities provided by Plaintiff and Defendant in their
10 memoranda of points and authorities submitted in support of the Parties' joint motion for entry of an
11 order granting preliminary approval to the Settlement; (c) the First Amendment to Class Action
12 Settlement Agreement and Release of Claims; (d) Defendant's conditional withdrawal, for the
13 purpose of the Settlement, of its objections to certification of the Settlement Class specified in the
14 Settlement Agreement; (e) the terms of the Settlement Agreement including, but not limited to, the
15 definition of the Settlement Class and the benefits to be provided to the Settlement Class; and (f) the
16 Settlement's elimination of any potential manageability issues, ascertainability issues, and
17 individualized issues of fact and law that could have had a bearing on the certification of a
18 nationwide class for trial. Based on those considerations, the Court makes the following findings:

19 1. From 2009 through 2018, Whirlpool manufactured hundreds of thousands of
20 refrigerators with bottom freezers, identified by model number in Exhibit 2 to the Settlement
21 Agreement ("Class Refrigerators") that were sold to, acquired by, or received as a gift by persons
22 nationwide. The number of appliances at issue readily satisfies Federal Rule of Civil Procedure
23 23(a)(1)'s numerosity requirement.

24 2. There are questions of fact and law common to all members of the Settlement
25 Class based on Whirlpool's manufacture of Class Refrigerators. Such questions include, but are not
26 limited to, the following:
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1 a. Whether the Class Refrigerators contain one or more design defects
2 that caused the Class Refrigerators to accumulate ice buildup in the freezer drain tube, sometimes
3 resulting in water leaking out from under the freezer door; and

4 b. Whether Plaintiff and the members of the Settlement Class can recover
5 damages based on the alleged freezer drain tube defects.

6 3. Plaintiff's claims are typical of the Settlement Class. Plaintiff is a member of
7 the Settlement Class and alleges that she has been damaged by the same conduct of Defendant that
8 she alleges has damaged other members of the Settlement Class. Plaintiff's claims are not in conflict
9 with or antagonistic to the claims of the Settlement Class as a whole. Plaintiff's claims and those of
10 other members of the Settlement Class are based upon corresponding theories.

11 4. The Settlement Class is ascertainable. The unnamed members of the
12 Settlement Class each of them purchased, acquired, or received as a gift a Class Refrigerator.

13 5. Plaintiff can fully, fairly, and adequately protect the interests of the Settlement
14 Class. Class Counsel is experienced in prosecuting complex class-action litigation, and Plaintiff and
15 Class Counsel have no interest that conflicts with, or is adverse to, the interests of the Settlement
16 Class.

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

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

22 B. The Court preliminarily certifies a class for settlement purposes only, consisting of
23 persons who meet the following criteria:

24 All residents of the United States and its territories who (a) purchased a new Class
25 Refrigerator, (b) acquired a Class Refrigerator as part of the purchase or remodel of a
26 home, or (c) received as a gift, from a donor meeting those requirements, a new Class
27 Refrigerator not used by the donor or by anyone else after the donor purchased the
28 Class Refrigerator and before the donor gave the Class Refrigerator to the Class

1 Member. Excluded from the Settlement Class are (a) officers, directors, and
2 employees of Whirlpool, or its parents or subsidiaries, (b) insurers of Class Members,
3 (c) subrogees or all entities claiming to be subrogated to the rights of a Class
4 Refrigerator purchaser, a Class Refrigerator owner, or a Class Member, and (d)
5 issuers or providers of extended warranties or service contracts for Class
6 Refrigerators.

7 C. The Court appoints Plaintiff Julie Corzine as the Class Representative for the
8 Settlement Class. The Court appoints Graham B. LippSmith and Jaelyn L. Anderson of the law firm
9 Kasdan LippSmith Weber Turner LLP as Class Counsel for the Settlement Class.

10 D. If for any reason the Settlement Agreement ultimately does not become effective, the
11 Settlement and any order certifying a settlement class shall be vacated *nunc pro tunc*, Defendant's
12 conditional withdrawal of its objections to certifying the Settlement Class shall be null and void, The
13 Lawsuit shall proceed as though the Settlement Class had never been certified, and nothing stated in
14 the Settlement Agreement or in this Order shall be deemed an admission or waiver of any kind by
15 any of the Parties or used as evidence against, or over the objection of, any of the Parties for any
16 purpose in this action or in any other action or proceeding of any kind.

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

18 A. Defendant has at all times disputed, and continues to dispute, Plaintiff's allegations in
19 the Lawsuit, denies all liability for any of the claims that have, or could have, been alleged by
20 Plaintiff or other members of the Settlement Class, and maintains that the Class Refrigerators are
21 free of defects.

22 B. The Settlement requires that Defendant provide specified compensation to each Class
23 Member who meets certain eligibility requirements and who timely submits a valid, complete Claim
24 Form, with specified supporting documentation, all as defined and set forth in the Settlement
25 Agreement. All Class Members who within five years of acquiring their Class Refrigerator (a)
26 experienced a buildup of ice due to blockage of their freezer drain tube, which may have resulted in
27 water leaking from the freezer door (a "Freezing Event"), (b) experienced a repair of that problem
28 consisting of the unclogging or replacement of the freezer drain tube, and (c) paid money out of

1 pocket for that repair, are eligible to receive a cash reimbursement payment, up to \$150, for the
2 amount of out-of-pocket qualifying repair expenses established through documentary proof as
3 follows: (1) one hundred percent of parts and labor in years one through three of ownership; (2) one
4 hundred percent of parts and sixty-five percent of labor in year four of ownership; and (3) one
5 hundred percent of parts and fifty-percent of labor in year five of ownership. Further, members of
6 the Settlement Class who experience a Freezing Event after the Settlement Notice Date and within
7 five years of ownership are eligible for repair service subject to the above-described limitations
8 applicable to out-of-pocket expense reimbursement claims. Finally, Whirlpool agrees to keep in
9 place and not alter its special service project concerning Freezing Events, which provides a free
10 replacement drain tube to persons who experience a Freezing Event as reported to Whirlpool by a
11 Service Technician through December 31, 2021, for Class Refrigerator models in Exhibit 2, Group
12 A or through December 31, 2026, for Class Refrigerator models in Group B.

13 C. On a preliminary basis, the Settlement appears fair, reasonable, and adequate,
14 considering the following: (1) the defenses on the merits and a contested class certification asserted
15 by Defendant, (2) the risks to the members of the Settlement Class that Defendant could successfully
16 defend against claims arising out of the facts and legal theories pled and asserted in this case,
17 whether litigated by Settlement Class Members themselves or on their behalf in a class action, and
18 (3) the length of time that would be required for Settlement Class Members, or any group of
19 Settlement Class Members, to obtain a final judgment through one or more trials and appeals.
20 Moreover, the Parties have reached the Settlement after extensive motion practice, exchange of
21 initial disclosures, the collection and analysis of hundreds of thousands of pages of documents by
22 Defendants, interviews of clients and client employees, consultation with experts, and engaging in
23 extensive arms-length settlement negotiations over the course of six months—first as to the benefit
24 to the Settlement Class and then as to Class Counsel’s attorney fees and costs and the Class
25 Representative Service Award. For these reasons, the Settlement falls within the appropriate range of
26 possible approval and does not appear in any way to be the product of collusion.

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

1 **III. APPROVAL OF THE SUMMARY SETTLEMENT NOTICES, THE LONG-FORM**
2 **NOTICE OR “FAQ,” THE PUBLICATION NOTICE, THE CLAIM FORM, AND**
3 **THE PLANS FOR DISTRIBUTION AND DISSEMINATION OF THE**
4 **SETTLEMENT NOTICES**

5 A. As provided for in the Settlement Agreement, the Parties have submitted: (a) a
6 proposed summary settlement notice to be mailed and emailed to identifiable potential Class
7 Members (the “Summary Notice”), a copy of which is attached to the Settlement Agreement as
8 Exhibit 7; (b) a plan for distributing the Summary Notice to the Settlement Class; (c) a proposed
9 long-form settlement notice in the form of Frequently Asked Questions and Answers, or an “FAQ,”
10 a copy of which is attached to the Settlement Agreement as Exhibit 3 and which will be published on
11 the Settlement Website and mailed to those members of the Settlement Class who request a hard
12 copy; (d) a proposed Publication Notice, a copy of which is attached to the Settlement Agreement as
13 Exhibit 6; (e) a plan for the Publication Notice’s publication in print periodicals, on websites, and
14 social media to provide adequate notice to the Settlement Class; (f) a proposed Claim Form for cash
15 reimbursement Settlement benefits; (g) a plan for allowing Settlement Class Members to file the
16 Claim Form through the Settlement Website, by email, or by U.S. Mail, and for mailing a Claim
17 Form to Settlement Class Members who contact the Settlement Administrator by telephone, U.S.
18 Mail, or email requesting that a Claim Form be sent by mail; and (h) a plan for establishing the
19 Settlement Website, with the information and documents that the Parties jointly agree to post
20 concerning the nature of the case and status of the Settlement, including the Claim Form, the FAQ,
21 information relating to relevant deadlines, a complete copy of the Settlement Agreement, and orders
22 of the Court referring or related to the Settlement.

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

1 C. The Summary Notice, FAQ, Publication Notice, and Settlement Website will fairly,
2 accurately, and reasonably inform Settlement Class Members of: (a) appropriate information about
3 the nature of the Lawsuit and the essential terms of the Settlement Agreement; (b) appropriate
4 information about how to obtain additional information regarding this matter and the Settlement
5 Agreement; (c) appropriate information about, and means for obtaining, a Claim Form; (d)
6 appropriate information about, and means for submitting, a Claim Form for benefits under the
7 Settlement; and (e) appropriate information about how to challenge, or exclude themselves from, the
8 Settlement, if they wish to do so. The Settlement notices and Settlement Website also fairly and
9 adequately inform Settlement Class Members that failure to complete and submit a claim in the
10 manner and time specified in the notices, on the Settlement Website, and in the Claim Form shall
11 constitute a waiver of any right to obtain any compensation under the Settlement. The notices and
12 Settlement Website also fairly and adequately inform Settlement Class Members that if they do not
13 comply with the specified procedures and the deadline for objections, they will lose any opportunity
14 to have any objection considered at the Fairness Hearing or to otherwise contest certification of the
15 Settlement Class or approval of the Settlement, or to appeal from any order or judgment entered by
16 the Court in connection with the Settlement.

17 D. The proposed Claim Form provided in the Settlement Agreement fairly, accurately,
18 and reasonably informs Settlement Class Members of (1) appropriate information about the nature of
19 the Lawsuit and the essential terms of the Settlement Agreement; (2) appropriate information about,
20 and means for, submitting a claim for benefits under the Settlement; and (3) the fact that failure to
21 complete and submit a Claim Form, in the manner and time specified in the notices, Settlement
22 Website, and Claim Form, shall constitute a waiver of any right to obtain any compensation under
23 the Settlement. The proposed plan for publishing the Claim Form on the Settlement Website and for
24 mailing or emailing the Claim Form to Settlement Class Members who request a Claim Form by
25 contacting the Settlement Administrator is fair and reasonable.

26 E. The Court, having reviewed the proposed Summary Notice, the proposed FAQ, the
27 proposed Publication Notice, the proposed Claim Form, and the proposed plan for distributing and
28 disseminating each of them, finds and concludes that the proposed plan will provide the best notice

1 practicable under the circumstances and satisfies all requirements of federal and state laws and due
2 process. Accordingly, the Court hereby ORDERS as follows:

3 1. The form and content of the proposed Summary Notice, FAQ, Publication
4 Notice, and Claim Form are hereby approved;

5 2. Promptly following the oral or written entry (“entry”) of this Order, the
6 Parties and Settlement Administrator shall prepare final versions of the (a) Summary Notice, (b)
7 FAQ, (c) Publication Notice, and (d) Claim Form, incorporating into each of them the Fairness
8 Hearing date and deadlines set forth in Part IV of this Order.

9 3. Within 18 days after the Court’s entry of this Order, Defendant will file or
10 cause to be filed with the Court a declaration of compliance with the notice plan, including a
11 statement of the number of persons to whom the Summary Notice was mailed and emailed.

12 4. Angeion Group is hereby appointed as the Settlement Administrator, whose
13 costs of administering the Settlement are to be paid by Defendant.

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

17 a. Send the Summary Notice by mail and email, if a valid mailing
18 address and/or email address is known, to each known, potential Settlement Class Member within 15
19 days after entry of this Order;

20 b. For notices returned by the U.S. Postal Service, forward notices that
21 are returned with a forwarding address and perform a national change of address search for those
22 returned without a forwarding address;

23 c. Create a Settlement Website that will include all necessary and
24 pertinent information for Settlement Class Members, including the Claim Form, the FAQ, and
25 information relating to relevant deadlines;

26 d. Reserve the Publication Notice according to the proposed notice plan,
27 including through social media, within 5 days after entry of this Order;

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- 1 e. Complete the Publication Notice according to the proposed notice
2 plan, including through social media, within 35 days after entry of this Order;
- 3 f. Accept Claim Forms submitted online, by other electronic means, or
4 by U.S. Mail;
- 5 g. Allow Settlement Class Members to electronically submit documents
6 supporting their Claim Form;
- 7 h. Receive, evaluate, and decide whether to approve completed Claim
8 Forms as satisfying the requirements of the Settlement Agreement, all in accordance with the terms
9 of the Settlement Agreement;
- 10 i. Provide the following to Defendant's counsel and Class Counsel no
11 later than 30 days prior to mailing Notices of Claim Denial: (i) a list of the names and addresses of
12 all Settlement Class Members whose Claim Forms the Settlement Administrator has determined to
13 be Valid; and (ii) a separate list of the names and addresses of all Persons whose Claim Forms the
14 Settlement Administrator has determined were not Valid, by category of benefit. The Parties shall
15 then have an opportunity to review the Valid Claims and the Notices of Claim Denial and request a
16 meet and confer with each other should they decide to challenge any of the Valid Claims or Notices
17 of Claim Denial;
- 18 j. Send, by first class U.S. Mail, to each Person who has submitted a
19 Claim Form that the Settlement Administrator has determined not to be a Valid Claim, and which
20 has not been challenged by Class Counsel, a Notice of Claim Denial;
- 21 k. Process requests for exclusion from the Settlement;
- 22 l. Process objections to the Settlement;
- 23 m. Provide to Class Counsel and Defendant's counsel periodic status
24 reports regarding claims; and
- 25 n. Within 30 days after the payment of all Valid Claims by the Settlement
26 Administrator, provide to Defendant's counsel and Class Counsel a statement of the total number of
27 claims submitted (in total and by category of benefit), the total number of claims adjudicated as
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1 Valid Claims (in total and by category of benefit), and the total dollar amount paid to Settlement
2 Class Members (in total and by category of benefit), under penalty of perjury.

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

4 **A. Fairness Hearing**

5 The Court will hold the Fairness Hearing on November 22, 2019, at 10:00 a.m. PST at the
6 Robert F. Peckham Federal Building, 280 South 1st Street, Courtroom 3, San Jose, California 95113,
7 to determine whether certification of the Settlement Class, appointment of the Class Representative,
8 appointment of Class Counsel, the Settlement Agreement, and the Settlement should receive final
9 approval. At that time, the Court will also consider any request by Class Counsel for an award of
10 attorney fees and reimbursement of litigation expenses and for a Service Award to Class
11 Representative, all in accordance with the terms of the Settlement Agreement. The Parties will have
12 up to and including November 9, 2019, to file their motion for final approval of the Settlement as
13 well as any briefs in support of such motion and/or in opposition to any objections to the Settlement.

14 **B. Deadline for Requests to be Excluded from the Class**

15 Settlement Class Members who wish to be excluded from the Settlement must mail or e-mail
16 their requests for exclusion to the Settlement Administrator by first-class U.S. Mail, postmarked or
17 received no later than 60 days after the entry of this Order.

18 **C. Deadlines for Objecting to Matters to be Considered at the Fairness Hearing and**
19 **for Filing Requests to Appear at the Fairness Hearing**

20 Objections to certifying the Settlement Class, designating Plaintiff as Class Representative,
21 appointing Class Counsel, the Settlement, the Settlement Agreement, the amount of the Service
22 Award to the Class Representative, and/or the amount of attorney fees and expenses that Class
23 Counsel may apply for at the Fairness Hearing, shall be made in writing and caused to be
24 postmarked no later than 60 days after entry of this Order, and mailed to the Settlement
25 Administrator, Class Counsel, and counsel for Defendant. Class Counsel shall include all objections
26 as exhibits to its brief in support of final approval. Any papers not mailed and caused to be
27 postmarked in the prescribed manner and time will not be considered at the Fairness Hearing, and all
28 objections not made in the prescribed manner and time shall be deemed waived.

1 All persons wishing to appear at the Fairness Hearing, either in person or through counsel,
2 for the purpose of objecting to certifying of the Settlement Class, designating Plaintiff as Class
3 Representative for the Settlement Class, appointing Class Counsel, the Settlement, the Settlement
4 Agreement, the Service Award to the Class Representative, and/or the amount of attorney fees and
5 expenses that Class Counsel apply for, must file with the Court, and serve on Class Counsel and
6 counsel for Defendant, a notice of their intention to appear setting forth the basis of their objections
7 and summarizing the nature and source of any evidence they intend to present at the Fairness
8 Hearing no later than 60 days after entry of this Order.

9 **D. Deadline for Submitting Claim Forms**

10 In accordance with the terms of the Settlement Agreement, Settlement Class Members who
11 have experienced Past Freezing Events will have up to 154 days after the entry of this Order to
12 submit a Claim Form for benefits available under the Settlement.

13 **V. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEY FEES AND**
14 **COSTS, AND FOR SERVICE AWARD TO PLAINTIFF**

15 Class Counsel will move the Court for entry of a separate order approving attorney fees and
16 reimbursement of litigation expenses to Class Counsel in an amount not to exceed \$1,850,000. Class
17 Counsel also will move the Court to approve a Service Award to the Class Representative in the
18 amount of \$5,000. Defendant shall pay any attorney fee, expense award, and Service Award within
19 30 days after the Effective Date. Defendant's payment of attorney fees, expenses, and the Service
20 Award to Class Counsel and the Class Representative shall be separate and in addition to
21 Defendant's payment of Settlement benefits to Settlement Class Members.

22 **VI. DENIAL OF ANY WRONGFUL ACT OR OMISSION, DENIAL OF LIABILITY,**
23 **AND ABSENCE OF ANY ADMISSION**

24 The Parties entered into the Settlement Agreement for the purpose of compromising and
25 settling disputed claims. Defendant has at all times denied, and continues to deny, any wrongful act
26 or omission alleged by Plaintiff in this action and denies any liability of any sort to Plaintiff or any
27 member of the Settlement Class. Nothing contained in the Settlement Agreement, in the documents
28 relating to the Settlement Agreement, or in this Order shall be construed, deemed, or offered as an

1 admission by any of the Parties, or by any member of the Settlement Class, for any purpose in any
2 judicial or administrative action or proceeding, whether in law or in equity. In entering this Order
3 with this provision and other limiting provisions, this Court specifically refers to and invokes the
4 Full Faith and Credit Clause of the United States Constitution and the doctrine of comity and
5 requests that any court in any other jurisdiction reviewing, construing, or applying this Order
6 implement and enforce each such limiting provision.

7 IT IS SO ORDERED.

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9 Dated: August 21, 2019



The Honorable Beth L. Freeman

United States District Judge

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