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17 **UNITED STATES DISTRICT COURT**

18 **NORTHERN DISTRICT OF CALIFORNIA**

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

21 Plaintiff,

22 vs.

23 WHIRLPOOL CORPORATION, a Delaware
24 corporation; and DOES 1 through 50,
25 inclusive,

26 Defendants.

Case No.: 5:15-cv-05764-BLF

**THE CLASS' MOTION FOR ATTORNEY
FEES, COSTS REIMBURSEMENT, AND
INCENTIVE AWARD; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF; DECLARATIONS
OF GRAHAM B. LIPPSMITH AND
JASON BASS, CPA, CFA IN SUPPORT
THEREOF**

Date: November 22, 2019
Time: 10:00 a.m.
Courtroom: 3
Hon. Beth Labson Freeman

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through hard work, dedication, and substantial contingent risk over years, Class
4 Counsel achieved the Settlement in this case which, if granted final approval, will require
5 Whirlpool to pay uncapped sums to Class Members to completely remedy known refrigerator
6 defects. Through what is effectively an extended warranty program, Whirlpool has committed
7 to paying uncapped claims for owners of nearly 2.2 million defective refrigerators, hundreds of
8 thousands of dollars to administer the Settlement notice and benefits, up to \$1,850,000 in
9 attorney fees and costs reimbursements, and up to \$5,000 for a service award to the proposed
10 Class Representative. Immediately upon final approval, the Settlement will provide lengthy
11 protection and peace of mind to the Class Members whose only recourse prior to this Settlement
12 was a short 1-year warranty and, thereafter, perhaps a small \$15 reimbursement in Whirlpool's
13 Special Program it was free to shut down at any time.

14 In stark contrast to the limited recourse the Class once had for this known defect, the
15 Settlement extends comprehensive protection for parts and labor costs for years after the 1-year
16 warranties have expired, extending through 2026 for the most recent purchasers of defective
17 refrigerators. This is a tremendous and measurable benefit to the Class notwithstanding the long
18 claims period. As is set forth in more detail in the Declaration of Jason Bass, CPA, CFA in
19 Support of the Class' Motion for Attorney Fees, Costs Reimbursement, and Incentive Award
20 filed herewith ("Bass Dec."), the Settlement is estimated to cost Defendant more than \$16
21 million by the time its lengthy benefit period closes. More importantly, though, Mr. Bass also
22 concluded that the fair market value of the extended warranty that *all* class members will realize
23 upon final approval regardless of the number of claims over time amounts to a floor benefit of
24 \$11,302,446.

25 Based on Class Counsel's extensive efforts, experience, qualifications, knowledge, and
26 understanding of all of the issues presented over the many years this case was pursued, Class
27 Counsel believe that the Settlement, including its provision of attorney fees, costs
28 reimbursement, and a modest incentive award, is indisputably fair, reasonable, adequate, and far

1 exceeds the standards for granting final approval of its terms. Based on the approval briefing to
2 date, this Motion and supporting filings, any supplemental briefing on this motion, and the final
3 approval briefing, the Class respectfully requests that the Court award: (1) \$1,818,937 in
4 attorney fees to Class Counsel; (2) \$31,063 in costs reimbursements to Class Counsel; and (3) a
5 \$5,000 incentive award to the Class Representative, all of which are to be paid by Whirlpool
6 separate from and in addition to the uncapped Settlement benefits for the Class.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 On November 13, 2015, Plaintiff filed this class action in Santa Clara Superior Court on
9 behalf of a class of California consumers against Defendants Maytag Corporation and
10 Whirlpool Corporation (“Lawsuit”).¹ The Lawsuit alleges a key defect in certain Whirlpool-
11 manufactured refrigerators; namely, that the Drain Tubes freeze, overflow with water, and
12 eventually leak water from the bottom of nearly 2.2 million Whirlpool refrigerators (“Class
13 Refrigerators”). Drain Tubes feature a rubber grommet component resembling a duckbill that is
14 prone to clogging with debris, which dams the flow of defrosted water from the freezer.
15 Trapped water then freezes, forming a solid plug of ice. Over time, large quantities of water and
16 ice accumulate, eventually resulting in water leaking out of the freezer, into the refrigerator
17 compartment, and, at times, onto the ground near the refrigerator (“Freezing Event”).

18 Whirlpool removed the Lawsuit to this Court, and Plaintiff then filed her First Amended
19 Complaint on December 31, 2015, removing Maytag Corporation as a defendant because
20 Maytag is a Whirlpool brand and adding a claim for negligence for Whirlpool’s alleged failure
21 to repair or retrofit the Class Refrigerators. Whirlpool then filed a Motion to Dismiss that was
22 granted with leave to amend.

23 On June 9, 2016, Plaintiff filed her Second Amended Complaint, adding a claim for
24 violations of the California Consumers Legal Remedies Act (“CLRA”). Whirlpool again made a
25 Motion to Dismiss and simultaneously moved for a stay in discovery pending the outcome of
26

27 ¹ Unless otherwise noted, all capitalized terms herein have the same definitions as those terms are defined in the
28 First Amended Class Action Settlement Agreement and Release of Claims entered as of August 19, 2019 and
attached as Exhibit A to the Supplemental Declaration of Graham B. LippSmith in Support of Joint Motion for
Preliminary Approval of Class Action Settlement (ECF. No. 125-1).

1 that motion. Plaintiff opposed both, and the Motion to Dismiss was granted, in part. The Court
2 granted Whirlpool's motion to dismiss without leave to amend with respect to claims 1–5 (strict
3 liability and negligence), claim 6 (breach of express warranty), claim 7 (breach of implied
4 warranty of fitness for a particular purpose), and denied with respect to claim 8 (breach of
5 implied warranty of merchantability), claim 9 (violation of the Song-Beverly Act), claim 10
6 (violation of UCL), and claim 11 (violation of the CLRA). In partially denying Whirlpool's
7 second Motion to Dismiss, the Court found that Plaintiff sufficiently pled that Whirlpool's
8 product failed to perform the basic purpose of “properly channeling defrosted water so as to
9 avoid leakage,” and that the fraudulent concealment allegations were sufficient to toll the four-
10 year status of limitations. (11/2/16 Order, ECF No. 64). Absent these findings and Class
11 Counsel's work to present available facts and sound arguments in the pleadings and through
12 motion practice, the Lawsuit would have been dismissed fairly early on in the litigation.
13 Whirlpool's Motion to Stay Discovery was terminated as moot.

14 On August 30, 2016, the matter of *Chambers, et al. v. Whirlpool Corporation*, Northern
15 District of California Case No. 4:17-cv-01664-JSW was filed, making claims for the same
16 defect alleged in the Lawsuit. Whirlpool filed an administrative motion to have the Lawsuit
17 deemed related to the *Chambers* action, and the Court ordered the cases related pursuant to
18 Civil Local Rule 3-12 on May 1, 2017 (ECF No. 75).

19 By early December 2016, Whirlpool produced thousands of pages of documents
20 following the Court's rulings. These documents included investigation worksheets concerning
21 the duckbill part going back to March 2010, customer inquiry records, warranty inquiry and
22 claims documents, repair orders, parts testing records, replacement part sales data, and other
23 internal sources and aggregated information about the claimed defect.

24 **The Parties Engaged in Arm's-Length Negotiations**

25 Settling Parties reached the settlement through arm's-length negotiations over a year-
26 and-a-half period. Numerous informal settlement discussions included efforts to resolve class
27 claims related to the Drain Tubes while also navigating the related *Chambers* case. With the
28 Lawsuit at issue and Whirlpool's having produced a fair amount of documents, the Settling

1 Parties first participated in mediation with Justice Howard B. Wiener (Ret.) in San Diego on
2 February 8, 2016. 7/8/19 Declaration of Graham B. LippSmith (ECF No. 113-1) (“7/8/19
3 LippSmith Dec.”) ¶ 18. Under Justice Wiener’s supervision and guidance, Settling Parties
4 agreed on material terms of settlement and entered into a Term Sheet for Proposed Class
5 Settlement that would benefit Class Members throughout the United States, not just in
6 California, and would resolve any and all claims for implied warranties and general product
7 defects. *Id.* Settling Parties did not discuss attorney fees or an incentive award for Plaintiff at
8 this first mediation. *Id.*

9 Settling Parties mediated again with Justice Edward Wallin (Ret.) in Los Angeles on
10 August 1, 2017 to separately resolve the attorney fees, costs reimbursement, and incentive
11 award issues. *Id.* ¶ 19. The parties agreed to maximum amounts Plaintiff and her counsel would
12 seek for fees, costs, and an incentive payment during approval proceedings without opposition
13 from Whirlpool. *Id.* Settling Parties executed the Addendum to the Term Sheet that same day,
14 agreeing that Whirlpool would pay Plaintiff an incentive award of \$5,000 and Plaintiff’s
15 counsel would request, and Whirlpool would not oppose, up to \$1,850,000 in fees and costs to
16 be paid by Whirlpool. *Id.*

17 The Settling Parties then exchanged numerous drafts of the final settlement terms over a
18 period of more than six months that involved many teleconferences and written exchanges. *Id.* ¶
19 20. The result of these efforts, including prior mediations, was an agreement that would resolve
20 claims and provide benefits on a nationwide scale for defects alleged in hundreds of Whirlpool-
21 manufactured refrigerator models, excluding personal injury and damage to property other than
22 damage to the Class Refrigerator. *Id.*; Amended Settlement Agreement (“ASA”) § IX.B.

23 After the Settling Parties reached agreement as to final settlement terms, the Court
24 stayed further proceedings pending the Ninth Circuit’s *en banc* review of its decision in *In re*
25 *Hyundai and Kia Fuel Economy Litigation*, 881 F.3d 679 (9th Cir. Jan. 23, 2018), regarding the
26 appropriate choice-of-law analysis as part of preliminary approval of a nationwide class
27 settlement of consumer protection claims. *See* ECF No. 100. The Ninth Circuit decided and
28 published its *en banc* opinion on June 6, 2019, so the Settling Parties swiftly made their Motion

1 for Preliminary Approval of the Settlement on July 8, 2019. The Court issued its Order Granting
2 Preliminary Approval of the Settlement on August 21, 2019.

3 Notwithstanding all of this work, heavily contested issues of liability and remedies and
4 the uncertainty of recovery remain to this date. 7/8/19 LippSmith Dec. ¶ 22. There are risks
5 associated with trial proceedings and potential appeals by the Settling Parties. *Id.* Accordingly,
6 this Settlement represents an important victory for Class Members.

7 **Whirlpool’s Special Project for Replacement Parts**

8 Prior to this Lawsuit, Whirlpool had a voluntary Special Project whereby it covered \$15
9 replacement parts for certain Class Refrigerators that experienced a Freezing Event within five
10 years of purchase as reported to Whirlpool by a Service Technician. This Special Project
11 applied to 1,705,000 Class Refrigerators and provided replacement parts beyond the limited
12 one-year warranty for certain Class Refrigerators, but it did not compensate most consumers for
13 labor costs associated with repairing or replacing their Drain Tubes and Whirlpool was free to
14 cancel the Special Project whenever it pleased.

15 The Settlement ensures the Special Project remains ongoing for multiple years going
16 forward and expands its scope to include an additional 472,502 Class Refrigerators and include
17 reimbursement for labor costs. See 8/20/19 Supplemental Graham B. LippSmith Declaration
18 (ECF No. 125-1) (“8/20/19 Supp. LippSmith Dec.”) ¶¶ 2-3, 7-8. The Amended Settlement
19 Agreement lists the model numbers of the refrigerators subject to the Settlement in two groups:
20 Group A and Group B. Group A consists of the refrigerator models manufactured between 2009
21 and 2013 and which were originally listed as subject to the Settlement and which were already
22 eligible for some redress as part of Whirlpool’s Special Project. Class Members with
23 refrigerator models in Group A will be eligible for benefits through December 31, 2021. Group
24 B consists of refrigerator models newly added to the Settlement and manufactured between
25 2011 and 2018. Group B Class Refrigerators will now be eligible for replacement parts and
26 labor costs as part of Whirlpool’s Special Project through December 31, 2026. *Id.* at ¶ 7.

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III. CLASS COUNSEL’S REQUESTED FEES ARE REASONABLE AND FAIR

The Court has inherent authority to ensure that the amount and mode of payment of attorney fees in class actions are fair and proper. *Zucker v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1328-29 (9th Cir. 1999). “In class action litigation, a district court ‘may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” *Stetson v. Grissom*, 821 F.3d 1157, 1165 (9th Cir. 2016) (citing *Rodriguez v. Disner (Rodriguez II)*, 688 F.3d 645, 653 (9th Cir. 2012) (quoting Fed. R. Civ. P. 23(h))). The Court should “carefully assess the reasonableness of a fee amount spelled out in a class action settlement agreement.” *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003).

Both California state and federal courts recognize two methods for evaluating attorney fees: (1) lodestar plus multiplier method; and (2) the percentage of recovery method. *Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 254 (2001) (disapproved on other grounds in *Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th 260, 269-70 (2018)); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).

Because the Settlement does not establish a common fund and any fees or costs reimbursement award would be paid to Class Counsel separate from any Settlement Benefit paid to a Class Member, Class Counsel is not in conflict with the Class in seeking attorney fee and cost reimbursement awards. *See Vizcaino*, 290 F.3d at 1051-52.

“The award of attorneys’ fees in a class action settlement is often justified by the common fund or statutory fee-shifting exceptions to the American Rule, and sometimes by both.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011). The Lodestar method is appropriate where, as here, the class action is brought under fee-shifting statutes like the Magnuson-Moss Warranty Act. *In re Bluetooth*, 654 F.3d at 941; *Gauchet-Hargis v. Forest River, Inc.*, 2013 U.S. Dist. LEXIS 128508 *3 (E.D. Cal. Sept. 9, 2013). Courts routinely acknowledge that parties may settle claims for attorney fees in a class action by entering into an agreement requiring a defendant to pay the plaintiff’s attorney fees. *See Wing v. Asarco Inc.*, 114 F.3d 986, 988 (9th Cir. 1997); *Weinberger v. Great N. Nekoosa Corp.*, 925 F.2d 518, 523

1 (1st Cir. 1991).

2 **A. The Requested Attorney Fee Award is Reasonable Under the Lodestar**
3 **Analysis**

4 “The ‘lodestar’ is calculated by multiplying the number of hours the prevailing party
5 reasonably expended on the litigation by a reasonable hourly rate.” *Morales v. City of San*
6 *Rafael*, 96 F.3d 359, 363 (9th Cir. 1996). “The hours expended and the rate should be supported
7 by adequate documentation and other evidence...” *Foos v. Ann, Inc.*, 2013 U.S. Dist. LEXIS
8 136918, *12 (S.D. Cal. 2013).

9 1. Class Counsel expended significant time and resources to resolve the
10 Lawsuit.

11 Settling Parties diligently litigated this case since 2015. Such efforts include initial
12 removal of the matter to federal court, three rounds of motions to dismiss, relation of a 2016-
13 filed case, *Chambers, et al. v. Whirlpool*, No. 17-cv-01664-JSW, and both formal and informal
14 discovery exchanges. Specifically, Class Counsel’s team of partners, associates, paralegals, and
15 legal assistants worked together with Ms. Corzine to diligently represent the Class, which
16 required vigorous litigation including pleading challenges, discovery, extensive settlement
17 negotiations, and now settlement proceedings. LippSmith Dec. ¶ 6. Class Counsel reviewed
18 documents, including consumer complaints, product redesign documents, marketing materials,
19 quality control documents, product testing documents, product manuals, investigation
20 worksheets, product engineering documents, and warranty claims data obtained through
21 discovery and investigation efforts. *Id.* This work also required substantial investigation into the
22 defect in and history of the Drain Tube component that lies at the heart of this case.

23 To successfully pursue the claims at issue in this case and to achieve the results to date,
24 Class Counsel has far expended more than 1,500 hours of partner, associate, and paralegal time.
25 LippSmith Dec. ¶ 5. In addition, Class Counsel estimates they will expend at least another at
26 least 400 hours of partner, associate, and paralegal time to work through both final approval and
27 to manage, if approved, the Settlement’s claims process. *Id.* The Settlement will require
28 substantial work by Class Counsel for its entire, lengthy benefits period through 2026. Not only

1 will the Settlement require Class Counsel's time commitment for its long duration, but it will
 2 also entail Class Counsel's time commitment to assist in making its benefits available to a large
 3 population of owners of nearly 2.2 million refrigerators nationwide. Of course, Class Counsel
 4 will commit whatever time it takes above and beyond this estimated 400 hours to perform its
 5 obligations to the Class. *Id.*

6 The parties and their counsel participated in two private mediations before two retired
 7 justices serving as mediators, followed by months of exchanging drafts of final settlement
 8 terms, notice documents, and claims administration documents.

9 All totaled, Class Counsel incurred and estimate to incur nearly 2,000 hours in time and
 10 have advanced at least \$31,063 in costs. Class Counsel's hours on each category of work on this
 11 case generally break down as follows:

12 **CASE WORKFLOW SUMMARY**

13 Tasks	Period	Hours
14 Investigation & Filing	6/2015-12/2015	74.70
15 Pleadings Law & Motion	12/2015-11/2016	470.80
16 Discovery & Mediation	11/2016-8/2017	189.50
17 Settlement Drafting	8/2017-4/2018	335.00
18 Settlement Approval Research & Drafting	4/2018-8/2019	450.60
19 Final Approval & Claims (Est.)	9/2019-2026	400
	Total:	1920.60

20 *Id.* ¶ 8. For Final Approval proceedings, Class Counsel will be prepared to provide the updated
 21 Case Workflow Summary accounting for hours and individual timekeeper data up to the date of
 22 the Final Approval should the Court request an update. *Id.* ¶ 9.

23 Applying attorney fee rates Class Counsel has provided in other class action cases and
 24 that are in line with plaintiff and defense rates in major class action cases, Class Counsel
 25 calculates its total lodestar through the claims process to be \$968,213.03. The fees set forth
 26 herein are supported by the Declaration of Graham B. LippSmith submitted in support of this
 27 Motion, identifying attorneys and staff who worked on the case, their hourly rates, time spent
 28

1 and time estimates by each attorney, the estimated future time to be incurred, and the costs
 2 incurred by Class Counsel. *Id.* at ¶¶ 4-8. All of Class Counsel’s services on this matter were
 3 incurred on a contingent basis. *Id.* ¶ 10. Class Counsel devoted substantial resources to this
 4 matter, and has not yet received any payment for any of its time. By devoting time to this matter
 5 without any guarantee of recovery for that time, Class Counsel forewent other opportunities that
 6 may have compensated them far sooner. *Id.* Class Counsel incurred more than \$30,000 in costs
 7 litigating this matter, taking a financial risk in the event of a loss given the contingency nature
 8 of the representation. Class Counsel’s costs incurred are summarized below:

9
 10 **COSTS SUMMARY**

Category	Amount
Travel Expenses	\$ 5,284.96
Court Reporting	\$ 181.65
Filing Fees	\$ 1,108.00
Experts and Testing	\$ 13,667.50
Professional and Research Services	\$ 1,620.89
Mediation	\$ 9,200.00
Total:	\$ 31,063.00

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 17 *Id.* ¶ 18.

18 2. Class Counsel’s hourly rates are reasonable.

19 First, prior court approvals of fee applications based on Class Counsel’s same or
 20 similar rates in the consumer class action context offers one basis to conclude that Class
 21 Counsel’s hourly rates are reasonable for similar work. *United Steelworkers of Am. v. Phelps*
 22 *Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990) (“Affidavits of the plaintiffs’ attorney and
 23 other attorneys regarding prevailing fees in the community, and rate determinations in other
 24 cases, particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of
 25 the prevailing market rate.”). “District courts have the discretion to compensate plaintiff’s
 26 attorneys for a delay in payment by either applying the attorneys’ current rates to all hours
 27 billed during the course of the litigation or using the attorneys’ historical rates and adding a
 28

1 prime rate enhancement.” *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 947 (9th Cir. 2007);
2 see also *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 900 (C.D. Cal. Oct. 11, 2016).

3 As outlined in the accompanying Declaration of Graham B. LippSmith (“LippSmith
4 Dec.”), Class Counsel’s current hourly rates range from \$300 to \$800 for attorneys with 4 –
5 43 years of experience, and between \$150 and \$200 for paralegals with 3 and 18 years of
6 experience. LippSmith Dec. ¶ 11. Class Counsel have made multiple prior attorney fee
7 applications in the regions where they primarily practice (the greater Los Angeles/Orange
8 County region and Honolulu, Hawaii), setting forth contingency rates similar to those
9 provided herein. LippSmith Dec. ¶ 13. Courts have routinely approved these applications for
10 attorney fees in full without reduction or criticism of these rates. *Id.* The most recent example
11 of another court considering similar KLWT rates for many of the same timekeepers in the
12 Los Angeles region occurred in *Houze v. Brasscraft Manufacturing Company*, Superior
13 Court of the State of California, County of Los Angeles Case No. BC493276, where the court
14 applied similar KLWT rates for many of the same timekeepers here. *Id.* ¶ 14, Ex. 1.

15 In considering whether a fee award is reasonable, courts may consider other awards
16 made in similar cases. *See Vizcaino*, 290 F.3d at 1050, n.4. Class Counsel’s hourly rates are
17 similar to, or lower than, rates approved and awarded in other cases of comparable
18 complexity. The following list provides examples of hourly rates found to be reasonable by
19 other California district courts for comparable services:

- 20 • *State Compensation Insurance Fund v. Khan et al*, C.D. Cal. Case No. SACV
21 12-01072-CJC(JCGx), Order Granting in Part and Denying in Part the Zaks
22 Defendants’ Motion for Attorneys’ Fees, filed July 6, 2016 (ECF No. 408), a
23 multi-defendant RICO action, in which the court found hourly rates to be
24 reasonable that were between \$560 and \$890 for attorneys with 4 – 22 years
25 of experience, \$325-340 for paralegals, \$220-230 for case assistants, and \$230
26 for a docket clerk.
- 27 • *Perfect 10, Inc. v. Giganews, Inc.*, 2015 U.S. Dist. LEXIS 54063 (C.D. Cal.
28 2015), a copyright infringement action, in which the court found hourly rates

1 to be reasonable that were between \$360 and \$930 for attorneys with 1 – 29
2 years of experience, \$240-345 for paralegals, and \$245-290 for discovery
3 support staff.

- 4 • *Anderson v. County of Ventura*, C.D. Cal. No. CV 13-03517 SJO (VBKx),
5 Fee Order filed March 5, 2015, a multi-plaintiff Fair Labor Standards Act
6 case, in which the court found hourly rates to be reasonable that were between
7 \$330 and \$690 for attorneys with 2 – 19 years of experience and \$140-190 for
8 paralegals.
- 9 • *Rodriguez v. County of Los Angeles*, C.D. Cal. No. 2:10-cv-06342- CBM-
10 AJW, Order Granting Plaintiffs’ Motion for Attorneys’ Fees, filed December
11 29, 2014, a civil rights action on behalf of five county jail prisoners, in which
12 the court found hourly rates to be reasonable that were between \$500 and
13 \$975 for attorneys with 6 – 45 years of experience, \$295 for a senior
14 paralegal, \$175-235 for other paralegals, and \$250 for a law clerk, plus a 2.0
15 lodestar multiplier for merits work performed on the plaintiffs’ California
16 cause of action.
- 17 • *Doe v. United Healthcare Insurance Co., et al.*, C.D. Cal. No. SACV 13-
18 0864-DOC(JPRx), Order Granting Attorney’s Fees and Costs, filed October
19 15, 2014, a multi-plaintiff consumer action, in which the court found hourly
20 rates to be reasonable that were between \$375 and \$950 for attorneys with 2 –
21 36 years of experience and \$225 for a paralegal.
- 22 • *Pierce v. County of Orange*, 905 F.Supp.2d 1017 (C.D. Cal. 2012), a civil
23 rights class action brought by pre-trial detainees, in which the court found
24 2011 hourly rates to be reasonable that were between \$625 and \$850 for
25 attorneys with 18 – 42 years of experience, \$250 for law clerks, and \$250 for
26 paralegals.

1 Not only are Class Counsel's hourly rates commensurate with those of other,
2 approved fee applications, they are actually below those of other, nationally prominent firms
3 performing similar work for plaintiffs and defendants. LippSmith Dec. ¶ 15.

4 3. A Lodestar multiplier is justified.

5 Class Counsel is requesting a modest multiplier of 1.88 to arrive at the maximum fee
6 award of \$1,818,937. *Id.* ¶ 16. "Though the lodestar figure is 'presumptively reasonable,' the
7 court may adjust it upward or downward by an appropriate positive or negative multiplier
8 reflecting a host of 'reasonableness' factors, including the quality of representation, the benefit
9 obtained for the class, the complexity and novelty of the issues presented, and the risk of
10 nonpayment." *In re Bluetooth*, 654 F.3d at 941-42 (quotation marks omitted); *Kerr v. Screen*
11 *Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), *abrogated on other grounds by City of*
12 *Burlington v. Dague*, 505 U.S. 557, 112 S. Ct. 2638, 120 L. Ed. 2d 449 (1992). "Foremost
13 among these considerations, however, is the benefit obtained for the class." *In re Bluetooth*, 654
14 F.3d at 942.

15 a. *Class Counsel achieved significant benefits for the Class.*

16 The benefit to the Class is sizeable. Though the number of claims expected over the
17 entirety of Settlement period is difficult to predict, the Class' expert economist provides a range
18 of value that the Settlement confers to Class Members, based on a very conservative claims rate,
19 by calculating (1) the monetary value of the Settlement measured as a warranty that Class
20 Members realize immediately upon final approval and independent of the number of claims
21 made over time; and (2) estimating Whirlpool's exposure by determining what Whirlpool will
22 likely pay for claims made over time. Declaration of Jason Bass ("Bass Dec.") ¶¶ 3, 15-18.

23 The floor market value of the Settlement is \$11,302,446, representing the fair market
24 value of the retroactive and extended warranty offered and realized by Class Members
25 immediately upon final approval of the Settlement. Bass Dec. ¶ 16. This amount accounts for
26 the owners of Class Refrigerators who have already had the full costs of the drain tube
27 replacement or repair covered by Whirlpool and the 39,315 owners who received only the
28 replacement part without being reimbursed for labor costs who would now be eligible for

1 compensation because of the Settlement. This minimum value is independent of the actual
2 claims rate because it is the fair market value of the warranty made available to the Class
3 immediately upon Court approval, which is conferred without any cost to the Class. *Id.* ¶ 18.

4 Measuring the value of the Settlement as the likely cost to Whirlpool for paying claims
5 represents the higher range of the Settlement value at \$16,239,382, but it is also a conservative
6 valuation. *Id.* ¶ 15. This figure is based on failures occurring during or before the fifth year from
7 manufacturing date, which is when all but 1.1% of the previous claims were made. This
8 estimated cost to Whirlpool is also based on an annual failure rate of 0.56%, which is arrived at
9 using Whirlpool's data of claims made for Group A Class Refrigerators through March 2017.
10 Those claims were made absent the robust direct notice and media campaign that is being
11 employed to inform Class Members about the available Settlement benefits, which is likely to
12 greatly increase awareness and, thus, the claims rate. In addition, it is unlikely that owners of
13 Group A Class Refrigerators knew about available compensation, or would even try to obtain
14 compensation, for product failures occurring after Whirlpool's standard, one-year limited
15 warranty expired.

16 Moreover, these calculations do not include the value of recovering attorney fees, costs,
17 and the incentive award, and do not account for the hundreds of thousands of dollars Whirlpool
18 is spending to provide Notice to the Class, all of which are real and valuable benefits to the
19 Class. *See* LippSmith Dec. ¶ 17.

20 Under both analyses, the Settlement benefit value is significant, reasonable, and fair,
21 ranging from at least \$11,302,446 to \$16,239,382.

22 *b. There is a significant risk of non-payment for Class Counsel.*

23 The requested multiplier is further justified because the Lawsuit presented a significant
24 risk of non-payment. *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2007);
25 *Vizcaino*, 290 F.3d at 1048. "The district court *must* apply a risk multiplier to the lodestar 'when
26 (1) attorneys take a case with the expectation they will receive a risk enhancement if they
27 prevail, (2) their hourly rate does not reflect that risk, and (3) there is evidence the case was
28 risky.' Failure to apply a risk multiplier in cases that meet these criteria is an abuse of

1 discretion.” *Stetson*, 821 F.3d at 1166 (emphasis in original) (citing *Stanger v. China Elec.*
2 *Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) (quoting *Fischel v. Equitable Life Assur. Soc’y of*
3 *the United States*, 307 F.3d 997, 1008 (9th Cir. 2002)). In addition, “since the proper amount of
4 fees is often open to dispute and the parties are compromising precisely to avoid litigation, the
5 court need not inquire into the reasonableness of the fees even at the high end with precisely the
6 same level of scrutiny as when the fee amount is litigated.” *Staton, supra*, 327 F.3d at 966.

7 In addition, “[i]t is an established practice in the private legal market to reward attorneys
8 for taking the risk of non-payment by paying them a premium over their normal hourly rates for
9 winning contingency cases.” *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291,
10 1299 (9th Cir. 1994); see also *Vizcaino*, 290 F.3d at 1051. The considerable risks undertaken by
11 Class Counsel on an entirely contingent basis further justifies a multiplier, here. *Vizcaino*, 290
12 F.3d at 1050. “The importance of assuring adequate representation for plaintiffs who could not
13 otherwise afford competent attorneys justifies providing those attorneys who do accept matters
14 on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee.” *In re*
15 *Omnivision*, 559 F. Supp. 2d at 1047. The requested multiplier finds further support where, as
16 here, counsel has expended “substantial outlay” in time and resources while “there is a risk that
17 none of it will be recovered.” *Id.*

18 The risks presented here are underscored by the number of claims dismissed due to
19 Defendant’s effective motions to dismiss. The Court’s rulings on Defendant’s motions
20 significantly reduced the number of claims Plaintiff could pursue, demonstrating that favorable
21 results were far from guaranteed for Plaintiff. In addition, because the Court found that the
22 applicable four-year statute of limitations was tolled by Plaintiff’s fraudulent concealment
23 allegations, Plaintiff would be held to the task of proving those claims before the substance and
24 merits of her claims could even be considered for resolution. Moreover, Plaintiff had yet to file
25 a motion for class certification, so there was a risk that the Class would not be certified. *See*
26 *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 888 (C.D. Cal. 2016); *Gardner v. GC*
27 *Servs., LP*, 2012 U.S. Dist. LEXIS 47034, *4 (S.D. Cal. 2012).

28

1 c. *Class Counsel has provided high-quality representation for the*
2 *Class.*

3 The Court has previously considered and scrutinized the qualifications of Class Counsel
4 in making its determinations necessary to issue its Order Granting Preliminary Approval of
5 Class Action Settlement. In addition, Class Counsel worked ably and diligently to surpass
6 multiple motions to dismiss and reviewed thousands of pages of documents produced in
7 discovery, including consumer complaints, product redesign documents, marketing materials,
8 quality control documents, product testing documents, product manuals, investigation
9 worksheets, product engineering documents, and warranty claims data obtained through
10 discovery and investigation efforts. LippSmith Dec. ¶ 6. Further, Class Counsel attended
11 multiple mediations with experienced mediators to arrive at terms agreeable to Whirlpool that
12 would confer a significant benefit to the nationwide Class, followed by months of drafting final
13 settlement terms. *See id.* ¶ 8.

14 d. *The requested multiplier of 1.88 is modest and reasonable.*

15 “Multipliers in the 3-4 range are common in Iodestar awards for lengthy and complex
16 class action litigation.” *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal.
17 Aug. 15, 1995). As discussed above, a multiplier is appropriate, here, given the excellent results
18 obtained and the risk of non-payment borne by Class Counsel. To arrive at a total fee award of
19 \$1,818,937, Class Counsel would have been awarded a multiplier of 1.88, which is modest
20 when compared with other multipliers approved in complex cases. See, e.g., *Craft v. County of*
21 *San Bernardino*, 624 F. Supp. 2d 1113, 1125 (C.D. Cal. 1995) (upholding an award of 25% of
22 the fund that resulted in a multiplier of approximately 5.2, citing precedence for awards “in this
23 range or higher”); *Wershba*, 91 Cal. App. 4th at 255 (“Multipliers can range from 2 to 4 or even
24 higher”); *Vizcaino*, 290 F.3d at 1051 & Appendix (approving a multiplier of 3.65 and citing
25 multipliers up to 19.6); *In re Nasdaq Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 489
26 (S.D.N.Y. 1998) (“In recent years multipliers of between 3 and 4.5 have become common”)
27 (citation omitted); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002)
28 (finding that “a modest multiplier of 4.65 is fair and reasonable”).

1 **B. The Fee Award Requested is Reasonable Under a Percentage of Recovery**
 2 **Analysis**

3 The percentage of recovery analysis can be a valuable cross-check to test the
 4 reasonableness of a fee based on a lodestar multiplier and provides further support for the
 5 requested fee. “The Ninth Circuit has set 25% of the fund as a ‘benchmark’ award under the
 6 percentage-of-fund method.” *Stanger*, 812 F.3d at 738, citing *Powers v. Eichen*, 229 F.3d 1249,
 7 1256 (9th Cir. 2000); *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir.
 8 1989). “Ninth Circuit precedent requires courts to award class counsel fees based on the total
 9 benefits being made available to class members rather than the actual amount that is ultimately
 10 claimed.” *Sung v. Schurman Fine Papers*, 2018 U.S. Dist. LEXIS *19 (N.D. Cal. 2018), citing
 11 *Young v. Polo Retail, LLC*, 2007 U.S. Dist. LEXIS 27269 *5-6 (N.D. Cal. Mar. 28, 2007).

12 Class Counsel’s requested fee award is well below the 25% benchmark by any measure.
 13 Jason Bass, the Class’ expert economist, estimates that the minimum, present value of the
 14 retroactive and extended warranty conferred to the Class is \$11,302,446. Bass Dec. ¶¶ 16, 18.
 15 Mr. Bass also estimates that Whirlpool will spend \$16,239,382 on claims through the benefit
 16 period, based on a very conservative claims rate. *Id.* ¶ 9, 15, 17. Applying these figures, adding
 17 in the maximum recovery of attorney fees, costs, and the incentive award, and *excluding* the
 18 hundreds of thousands of dollars Whirlpool is spending on the Notice Plan, the percentage of
 19 benefit percentages for each of Mr. Bass’ calculations are 10.1% of Whirlpool’s expected
 20 payout and 13.8% of the fair market value of the extended warranty. LippSmith Dec. ¶ 17.

21 Accordingly, the requested fee award of \$1,818,937 is well below the benchmark
 22 approved in the Ninth Circuit, and it is fair, reasonable, and justified.

23 **C. The Absence of Collusion Between the Settling Parties Further Supports the**
 24 **Requested Attorney Fee Award**

25 The Court has previously scrutinized the settlement during preliminary approval
 26 proceedings and determined that Class Counsel engaged in arms’-length negotiations with
 27 the assistance of multiple, experienced mediators to arrive at the Settlement terms, supporting
 28 a finding that the Settlement is not the product of collusion. *See Chambers*, 214 F. Supp. 3d

1 at 892. In addition, the Settlement provides that any reasonable attorney fees and costs
2 awarded to Class Counsel will not reduce “the amount of money available to pay Valid
3 Claims submitted by Class Members or the amount of money to be paid for work performed
4 by the Settlement Administrator,” so there is no conflict between Class Counsel and the
5 Class created by the fee award request. ASA § VIII.A.

6 **IV. THE COST REIMBURSEMENT REQUEST IS REASONABLE**

7 Expense reimbursement awards “should be limited to typical out-of-pocket expenses
8 that are charged to a fee paying client and should be reasonable and necessary.” *In re Immune*
9 *Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007). Such reasonable and
10 necessary expenses can include travel expenses, postage, telephone, fax, and notice expenses,
11 filing fees, photocopies, messenger services, computerized legal research expenses, expert fees,
12 and mediation fees. *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d at 1177-78; *Rutti v.*
13 *Lojack Corp., Inc.*, 2012 U.S. Dist. LEXIS 107677 (C.D. Cal. July 31, 2012).

14 To date, Class Counsel has incurred \$31,063 in unreimbursed litigation costs on a
15 contingency basis. LippSmith Dec. ¶ 18. The Declaration of Graham B. LippSmith in Support
16 of Class Counsel’s Motion for Attorney Fees, Costs Reimbursement, and Incentive Award sets
17 forth detailed information of costs incurred by categories. *Id.* ¶ 18. These costs were incurred
18 without any certainty that they would ever be reimbursed, and they were reasonably necessary
19 to advance the case through resolution to benefit the Class. *Id.* ¶¶ 10, 19.

20 **V. JULIE CORZINE SHOULD BE AWARDED AN INCENTIVE PAYMENT**

21 Class Counsel respectfully requests that the Court award an incentive payment to the
22 Class Representative, Julie Corzine, in the amount of \$5,000 to be paid by Whirlpool separate
23 from any Settlement benefits or other awards for costs and fees and *at no cost to the Class*.
24 “Incentive awards are fairly typical in class action cases.” *Rodriguez v. West Publ’g Corp.*, 563
25 F.3d 948, 958 (9th Cir. 2009) (emphasis in original). “District courts must evaluate proposed
26 incentive awards individually, using relevant factors that include ‘the actions the plaintiff has
27 taken to protect the interests of the class, the degree to which the class has benefitted from those
28 actions, ... [and] the amount of time and effort the plaintiff expended in pursuing the

1 litigation.” *Sung*, 2018 U.S. Dist. LEXIS at *22, quoting *Staton*, 327 F.3d at 977. In addition,
2 incentive awards must not be unfair to other Class Members. *Lusby v. Gamestop, Inc.*, 2015
3 U.S. Dist. LEXIS 42637 *15 (N.D. Cal. 2015). Incentive awards are discretionary “and are
4 intended to compensate class representatives for work done on behalf of the class, to make up
5 for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize
6 their willingness to act as a private attorney general.” *Rodriguez*, 563 F.3d at 958-59.

7 Ms. Corzine has diligently participated in and monitored the Lawsuit since before its
8 filing in November 2015. Ms. Corzine has spent hours working with Class Counsel to
9 understand the claims and their potential remedies, reviewing pleadings and law and motion
10 papers, locating and providing records and photographs for discovery, reviewing hundreds of
11 pages of documents, including the Settlement Agreement, and attending hearings when she was
12 available. Ms. Corzine has worked hard to become readily familiar with the Lawsuit and to
13 assist in every phase of the case, including settlement negotiations. Moreover, Ms. Corzine is a
14 member of the Class she represents, having purchased a Class Refrigerator and having
15 experienced multiple Freezing Events prior to filing the Lawsuit. Declaration of Julie Corzine
16 (Dckt. No. 113-2) ¶¶ 2-6; Third Amended Complaint ¶¶ 41-42. Further, the incentive award is
17 not contingent on Ms. Corzine’s participation in or non-objection to the Settlement, so she is not
18 in conflict with the Class.

19 Accordingly, Class Counsel requests that the Court find that a single payment of \$5,000
20 to the sole Class Representative is fair and reasonable and to make such an award to Julie
21 Corzine.

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1 **VI. CONCLUSION**

2 For all of the foregoing reasons, Plaintiff and the Class respectfully request that the
3 Court award an incentive payment to the Class Representative in the amount of \$5,000, attorney
4 fees in the amount of \$1,818,937, and litigation costs in the amount of \$31,063.

5

6 Dated: September 4, 2019

KASDAN LIPPSMITH WEBER TURNER LLP

7

8 By: /s/ Graham B. LippSmith

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Graham B. LippSmith

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Celene Chan Andrews

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Jaclyn L. Anderson

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Frank A. Perez

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Attorneys for Plaintiff and the Class

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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2019, I electronically filed **THE CLASS' MOTION FOR ATTORNEY FEES, COSTS REIMBURSEMENT, AND INCENTIVE AWARD; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATIONS OF GRAHAM B. LIPPSMITH AND JASON BASS, CPA, CFA IN SUPPORT THEREOF** with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system to receive service.

/s/ Graham B. LippSmith
Graham B. LippSmith

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12 Attorneys for Plaintiff and the Class

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

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

17 Plaintiff,

18 vs.

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

21 Defendants.

Case No.: 5:15-cv-05764-BLF

**DECLARATION OF GRAHAM B.
LIPPSMITH IN SUPPORT OF THE
CLASS' MOTION FOR ATTORNEY
FEES, COSTS REIMBURSEMENT,
AND INCENTIVE AWARD**

Date: November 22, 2019
Time: 10:00 a.m.
Courtroom: 3
Hon. Beth Labson Freeman

DECLARATION OF GRAHAM B. LIPPSMITH

I, Graham B. LippSmith, hereby declare:

1. I am a partner in the law firm of Kasdan LippSmith Weber Turner LLP (“KLWT”). I am an attorney licensed to practice in the State of California and the State of Hawai‘i. I am admitted to practice before this Court. I am counsel of record for Plaintiff and the Class, and I make this declaration in support of the Class’ Motion for Attorney Fees, Costs Reimbursement, and Incentive Award. Except as expressly stated, I have personal knowledge of the facts set forth below and, if called as a witness, could and would testify accurately to their veracity.

2. I incorporate herein by reference and hereby supplement the information previously provided in my July 8, 2019 Declaration in Support of Preliminary Approval of Settlement, Certifying Provisional Settlement Class, Appointing Settlement Class Counsel, Setting Hearing on Final Approval of Settlement, and Directing Notice to the Class (“7/8/2019 LippSmith Dec.”). In particular, I incorporate herein by reference my firm’s background, qualifications, and work performed to date, all of which supported our application to serve as Class Counsel herein.

3. Whirlpool has agreed to pay an uncapped sum to Settlement Class Members, the costs associated with administering the settlement, up to \$1,850,000 to pay attorney fees and costs reimbursements, and up to \$5,000 for a service award to the proposed Class Representative. As is set forth in more detail in the Declaration of Jason Bass, CPA, CFA in Support of the Class’ Motion for Attorney Fees, Costs Reimbursement, and Incentive Award filed herewith, the Settlement is estimated to cost Defendant more than \$16 million by the time its lengthy benefit period closes. Mr. Bass also concluded that the fair market value of the extended warranty that *all* class members will realize upon final approval regardless of the number of claims over time amounts to a floor benefit of \$11,302,446. Based on Class

1 Counsel's extensive efforts, experience, qualifications, and knowledge, and understanding of all
2 of the issues presented over the many years we pursued this case, Class Counsel believe that the
3 Settlement, including its provision of attorney fees, costs reimbursement, and a modest
4 incentive award, is indisputably fair, reasonable, adequate, and far exceeds the standards for
5 granting final approval of its terms.

6 4. I am the attorney at KLWT who managed our day-to-day efforts on this case.
7 The timekeepers at KLWT and I vigorously and tenaciously prosecuted this litigation as KLWT
8 has vigorously and tenaciously prosecuted several other successful class actions.

9 5. To successfully pursue the claims at issue in this case and to achieve the results
10 to date, KLWT has far expended more than 1,500 hours of partner, associate, and paralegal
11 time. I also conservatively estimate that KLWT will expend at least another at least 400 hours
12 of partner, associate, and paralegal time to work through both final approval and to manage, if
13 approved, the Settlement's claims process. The Settlement will require substantial work by
14 Class Counsel for its entire, lengthy benefits period through 2026. Not only will the Settlement
15 require Class Counsel's time commitment for its long duration, but it will also entail Class
16 Counsel's time commitment to assist in making its benefits available to a large population of
17 owners of nearly 2.2 million refrigerators nationwide. Of course, Class Counsel will commit
18 whatever time it takes above and beyond this estimated 400 hours to perform its obligations to
19 the Class.

20 6. Since this Lawsuit was filed, our team of partners, associates, paralegals, and
21 legal assistants worked together with Ms. Corzine to diligently represent the Class. To date, our
22 work in this case required vigorous litigation including pleading challenges, discovery,
23 extensive settlement negotiations, and now settlement proceedings. We reviewed documents,
24 including consumer complaints, product redesign documents, marketing materials, quality
25 control documents, product testing documents, product manuals, investigation worksheets,

1 product engineering documents, and warranty claims data obtained through discovery and
2 investigation efforts. Our work also required substantial investigation into the defect in and
3 history of the Drain Tube component that lies at the heart of this case.

4 7. Since 2015, Class Counsel employed, managed, coordinated, and dedicated a
5 team of seven partner, associate, and paralegal timekeepers, all of whose efforts at various times
6 over the last more than four years of investigation, litigation, and settlement proceedings were
7 required to achieve the results here. I personally oversaw, supervised, approved, obtained,
8 reviewed, compiled, formatted (*e.g.*, timekeeper, date, hours, amounts, and detailed
9 descriptions), synthesized, and sorted all the hours incurred by Class Counsel’s timekeepers and
10 rate information therefor. This timekeeper data is based on detailed timekeeping records that
11 Class Counsel’s timekeepers maintained to account for their work on this case in a minimum of
12 six-minute increments. Because of the duration of this case and multiple timekeepers involved,
13 the timekeeper entries are voluminous, totaling more than 1,000 time entries to date, many of
14 which include additional time increment breakdowns nested in the detail.

15 8. Analyzing and synthesizing Class Counsel’s large data set of timekeeper entries,
16 I personally prepared the below Case Workflow Summary to show the broad phases of,
17 approximate dates for, and time that partners, associates, and paralegal timekeepers incurred for
18 the entire litigation from the investigation through present. This Case Workflow Summary does
19 not include the additional dozens if not hundreds of hours dedicated by our legal assistants. The
20 Workflow Summary also includes my conservative estimate of the additional hours Class
21 Counsel will spend working through Final Approval and the lengthy claims process if the Court
22 approved the Settlement. The Case Workflow Summary’s right column shows the amount of
23 hours Class Counsel’s timekeepers collectively spent working on each phase of the case:

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CASE WORKFLOW SUMMARY		
Tasks	Period	Hours
Investigation & Filing	6/2015-12/2015	74.70
Pleadings Law & Motion	12/2015-11/2016	470.80
Discovery & Mediation	11/2016-8/2017	189.50
Settlement Drafting	8/2017-4/2018	335.00
Settlement Approval Research & Drafting	4/2018-8/2019	450.60
Final Approval & Claims (Est.)	9/2019-2026	400
Total:		1920.60

9. For the Final Approval proceedings, Class Counsel will be prepared to provide the updated Case Workflow Summary accounting for hours and individual timekeeper data up to the date of the Final Approval should the Court request an update.

10. All of KLWT’s services on this matter were incurred on a contingent basis. KLWT devoted substantial resources to this matter, and has not yet received any payment for any of its time. By devoting its time to this matter and with no guarantee of recovery for that time, KLWT forewent other opportunities that may have compensated them far sooner.

11. Out of the Class Counsel timekeeper data, I also personally prepared the below Timekeeper Summary showing each timekeeper’s name, title, years of experience, hours, and rates as of the last year s/he performed services on this matter. I also included calculations of each timekeeper’s lodestar fees applying the rates from her/his last year of service on this case to the total number of hours s/he worked on the case. Finally, I also included the lodestar fee calculation by multiplying the estimated 400 hours of future work by the blended average rate of lodestar fees for total hours incurred to date:

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TIMEKEEPER SUMMARY

Timekeeper	Title	Exp	Hours	Rate	Amount
Kenneth S. Kasdan	Senior Partner	43	20.50	\$800.00	\$ 16,400.00
Graham B. LippSmith	Partner	17	403.30	\$750.00	\$ 302,475.00
Celene Chan Andrews	Partner	11	72.20	\$500.00	\$ 36,100.00
Jaclyn L. Anderson	Associate	11	563.90	\$500.00	\$ 281,950.00
Frank A. Perez	Associate	4	384.00	\$300.00	\$ 115,200.00
Laura Evans	Paralegal	18	58.70	\$200.00	\$ 11,740.00
Niki Smith	Paralegal	3	18.00	\$150.00	\$ 2,700.00
Final Approval & Claims (Est)			400	\$504.12	\$ 201,648.03
Totals:			1920.60		\$ 968,213.03

12. Class Counsel's above lodestar calculation applies Class Counsel's contingency hourly rates, which are generally higher than prevailing billable hourly rates because "[l]awyers operating in the marketplace can be expected to charge a higher hourly rate when their compensation is contingent on success than when they will be promptly paid, irrespective of whether they win or lose." *Blum v. Stenson*, 465 U.S. 886, 903 (1984). However, these rates are distinct from and fall short of representing the full value Class Counsel would realize here under its pure contingency fee contract with the Class Representative. *See Chalmers v. Los Angeles*, 796 F.2d 1205, 1212 n.4 (9th Cir. 1986) (discussing the differences between contingency fee contracts and contingency adjustments to hourly rates).

13. Class Counsel have made multiple prior attorney fee applications in the regions where they primarily practice (the greater Los Angeles/Orange County region and Honolulu, Hawaii), setting forth contingency rates similar to those provided herein. Courts have routinely approved these applications for attorney fees in full without reduction or criticism of these rates.

14. The most recent example of another court considering similar KLWT rates for many of the same timekeepers in the Los Angeles region occurred in *Houze v. Brasscraft Manufacturing Company*, Superior Court of the State of California, County of Los Angeles Case No. BC493276. I attached hereto as **Exhibit 1** a true and correct copy of that court's Tentative Order dated April 8, 2019 in that case where the court applied similar KLWT rates for

1 many of the same timekeepers here. I also attached hereto as **Exhibit 2** a true and correct copy
2 of the court's Minute Order dated April 8, 2019 adopting the Tentative Order, which ultimately
3 became a final order in that case.

4 15. Based on my 17 years of experience, during most of which I managed and
5 succeeded in dozens of class action cases, I believe that the rates set forth herein are not only
6 commensurate with and but are actually below the hourly rates of other nationally prominent
7 firms performing similar work for both plaintiffs and defendants. I have determined that the
8 billing rates set forth herein are reasonable for each of the professionals who worked on this
9 matter. In addition, although the rates herein have applied in attorney fee applications we have
10 made and that were granted in the Los Angeles/Orange County region and in Honolulu, Hawaii,
11 I am aware that the attorney rates for the Bay Area region are at least commensurate with those
12 in Los Angeles, if not higher.

13 16. Applying KLWT's rates for the last period that each timekeeper performed
14 services here and including the conservative estimated future time Class Counsel anticipates
15 final approval and the lengthy claims process will entail, Class Counsel's timekeeper lodestar
16 for this case is \$968,213.03. If the Court were to award Class Counsel the maximum attorney
17 fees provided in the Settlement after the costs reimbursements are subtracted, or \$1,818,937.00,
18 that award would equal Class Counsel's lodestar with a 1.88 multiplier. Given Class Counsel's
19 time committed, costs incurred, risks taken, and outstanding results achieved here, awarding
20 Class Counsel its lodestar with a 1.88 multiplier is justified, reasonable, and fair.

21 17. Although this Settlement is not a pure common fund recovery, the percentage of
22 benefit analysis does still represent a useful measuring stick for the reasonableness and fairness
23 of the Settlement and serves to crosscheck the lodestar plus multiplier analysis. Mr. Bass
24 estimates that Whirlpool will spend \$16,239,382 on claims through the benefit period. Mr. Bass
25 also concluded that the fair market value of the extended warranty that *all* class members will

1 realize upon final approval regardless of the number of claims over time amounts to a floor
 2 benefit of \$11,302,446. Applying these figures, adding in the maximum recovery of attorney
 3 fees, costs, and the incentive award, and *excluding* the hundreds of thousands of dollars
 4 Whirlpool is spending on the Notice Plan, I calculated the percentages of benefits for each of
 5 Mr. Bass' calculations as follows:

6 **PERCENTAGE OF BENEFIT**

7 Category	Benefit	w/ Fees, Costs, IA	Percentage
8 Whirlpool Expected Payout	\$ 16,239,382.00	\$ 18,094,382.00	10.1%
Extended Warranty FMV	\$ 11,302,446.00	\$ 13,157,446.00	13.8%

9 Based on my experience and qualifications, I believe awarding attorney fees that range between
 10 10.1% and 13.8% of the Settlement benefits is fair, reasonable, and justified here.

11 18. In addition to incurring substantial partner, associate, paralegal, and legal
 12 assistant time in this case, Class Counsel incurred more than \$30,000 in litigation costs to
 13 investigate and prosecute this case. I personally reviewed summaries and the nearly all of the
 14 individual invoices setting forth costs incurred by each of Class Counsel to verify the costs were
 15 reasonable for advancing the litigation and accurate. Based on our analysis of the costs in the
 16 case, I prepared the following Costs Summary of the major categories of costs incurred by Class
 17 Counsel and that we reasonably anticipate incurring through Final Approval:

18 **COSTS SUMMARY**

19 Category	Amount
20 Travel Expenses	\$ 5,284.96
Court Reporting	\$ 181.65
21 Filing Fees	\$ 1,108.00
Experts and Testing	\$ 13,667.50
Professional and Research Services	\$ 1,620.89
22 Mediation	\$ 9,200.00
23 Total:	\$ 31,063.00

1 19. The costs incurred here were vital to our successful work on this case, and I
2 believe all were reasonable and necessary for effectively representing the Class on its claims.

3 20. Since she first encountered the freezer defect at issue in this case, the Class
4 Representative Julie Corzine, spent significant time researching the issues at hand, locating
5 Class Counsel, and assisting Class Counsel with the litigation. At every step of the way, Ms.
6 Corzine provided vital information and input to Class Counsel. Ms. Corzine maintained and
7 provided all pertinent records, met with Class Counsel in person several times, worked with
8 Class Counsel by telephone and email several times, and personally attended and observed most
9 of the Court's hearings on this matter. In my experience, Ms. Corzine took far more interest in
10 every stage of this case than most other plaintiffs, particularly in cases concerning defects in
11 consumer products. Ms. Corzine helped Class Counsel shape and direct the course of the
12 litigation, including working with Class Counsel on settlement discussions and decisions.
13 Based on my experience in class action litigation, I believe the proposed Class Representative
14 incentive award of \$5,000 here is fair and justified for the effort and dedication Ms. Corzine had
15 for this case and on behalf of the Class.

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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2019, I electronically filed the **DECLARATION OF GRAHAM B. LIPPSMITH IN SUPPORT OF THE CLASS' MOTION FOR ATTORNEY FEES, COSTS REIMBURSEMENT, AND INCENTIVE AWARD** with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system to receive service.

/s/ Graham B. LippSmith
Graham B. LippSmith

EXHIBIT 1

MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Houze v. Brasscraft Manufacturing Company et al.

Date of Hearing: April 8, 2019
Department: SSC-11
Case No.: BC493276

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

APR 08 2019

Sherri R. Carter, Executive Officer/Clerk of Court
By: Dejane Wortham, Deputy
Dejane Wortham

GRANT Final Approval.

- (1) The Court certifies the class for purposes of settlement;
- (2) The Court finds that the settlement is fair, adequate, and reasonable;
- (3) Class counsel, Kasdan Lippsmith Weber Turner, LLP is awarded **\$2,000,000** in attorney fees and costs;
- (4) Class representatives are awarded an enhancement payment of **\$3,000** total (\$1,000 each); and
- (5) The claims administrator, KCC, LLC is awarded **\$30,870.49 plus tax** in costs.

FINAL APPROVAL OF CLASS ACTION SETTLEMENT

California Rules of Court, rule 3.769(g), provides for an inquiry into the fairness of the proposed settlement prior to the final approval hearing. After this, the court must make and enter judgment, including a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. (See California Rules of Court, rule 3.769(h).) The class action may not be dismissed once judgment is entered. (See California Rules of Court, rule 3.770.) All class settlements are subject to a settlement hearing and court approval before entry of judgment or final order.

The trial court has broad powers to determine whether a proposed settlement is fair. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) The California standard for approval of class settlements is similar to the federal requirement that the settlement be fair, reasonable, and adequate for class members overall. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

CLASS NOTICE AND CLASS RESPONSE

- 1. How was notice given? KCC, LLC ("KCC") is acting as claims administrator for this settlement. (Declaration of Carla Peak ("Peak Decl."), ¶12.) The Summary Notice appeared in the national editions and digital consumer publications of December issue of Housekeeping (on Sale November 13, 2018) and the October 22, 2018 issue of People Magazine (On Sale October 12, 2018.) (*Id.* at ¶16.) In addition to the consumer publications, 210 million internet banner impressions were purchased and distributed over the Google Display Network (GDN) and Yahoo! Ad Network, as well as the social media site Facebook. The impressions appeared on both mobile and desktop devices,

broadly targeted U.S. adults 25 years of age or older (Adults 25+), and included an embedded link to the case website. (*Id.* at ¶8.) A total of 269,246,295 impressions were delivered from September 11, 2018 through November 10, 2018, resulting in an additional 59,246,295 impressions at no extra charge. (*Id.* at ¶9 and Exhibit 2 thereto.)

KCC established the case-dedicated Settlement Website at www.EZ7FloSettlement.com on September 7, 2018. This website will remain active throughout the course of the duration of the EZ-Flo Settlement claims process. The website was developed to be a source of reliable and accurate information for Settlement Class Members and the general public. All paid media efforts directed individuals to the case website, Additional Court orders and important dates and deadlines will continue to be updated on the Settlement Website, when available. (Supplemental Declaration of Julie Swanson (“Swanson Decl.”), ¶7.) As of February 20, 2019, the case-dedicated website had received 147,033 unique visitors. (*Id.* at ¶8.) 14. Beginning on September 7, 2015, KCC established and continues to maintain a toll-free telephone number (1466-798-2031) to address questions about the EZ-Flo Settlement from potential Settlement Class Members, The telephone hotline allows callers to connect to a live operator on weekdays between 9am and 8pm ET. As of February 20, 2019, KCC has received a total of 56 calls to the telephone hotline. (*Id.* at ¶14.) The deadline for Settlement Class Members to submit requests for exclusion or written objection to the Settlement was February 11, 2019. (*Id.* at ¶¶5-6.) The deadline for Settlement Class Members to file a Claim Form for claims based on Exterior Meringue Deposits is one year after the Effective Date of the Settlement Agreement. (Peak Decl., ¶17.) The deadline for Settlement Class Members to file a Claim Form for claims based on Occlusions or Inoperable Valves is three years after the Effective Date of the Settlement Agreement. (*Ibid.*) The deadline for Settlement Class Members to file a Claim Form for claims based on Leaks that occur before the Effective Date is three years from the Effective Date or seven years from the Date of Manufacture, whichever is later. (*Ibid.*) In addition, for claims based on Leaks that occur after the Effective Date, Settlement Class Members must complete and submit a Claim Form within one year from the date of the Leak. (*Ibid.*)

2. How many opted-out? 0. (*Id.* at ¶15; Swanson Supp. Decl., ¶5)
3. How many objected? 0. (Peak Decl., ¶16; Swanson Supp. Decl., ¶6.)
4. How many submitted a claim form? 44. (Peak Decl., ¶17; Swanson Supp. Decl., ¶15.)
5. Estimate of recovery to each class member? While the Settlement does not provide replacement products for all EZ-Flo yellow brass products regardless of their condition, it provides replacement product for all EZFlo yellow brass products that exhibit dezincification properties, subject to high limitations of parts per home. All class members with this issue are entitled to be reimbursed for all property damage costs up to \$3,500, while preserving Class Members' ability to separately pursue property damage claims worth more than \$3,500.

6. EVALUATION OF THE SETTLEMENT

The Court must determine if the settlement is fair, adequate, and reasonable. The settlement is entitled to a presumption of fairness where: " (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1802 ("*Dunk*").) As *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 250, further notes:

A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. (See *Rebney v. Wells Fargo Bank, supra*, 220 Cal.App.3d at p. 1139 [settlements found to be fair and reasonable even though monetary relief provided was "relatively paltry"]; *City of Detroit v. Grinnell Corp., supra*, 495 F.2d at p. 455 [settlement amounted to only "a fraction of the potential recovery"].) Compromise is inherent and necessary in the settlement process. Thus, even if "the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated," this is no bar to a class settlement because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." (*Air Line Stewards, etc., Loc. 550 v. American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109.)

The Court finds that the settlement is fair, adequate, and reasonable based on the following:

- Settlement was reached through arms'-length negotiations. Following years of work on the case, Plaintiffs and EZ-Flo engaged in several formal mediation sessions and/or informal settlement discussions in an effort to resolve the claims related to Covered Products. On October 29, 2015, Plaintiffs and EZ-Flo mediated with Hon. Howard B. Wiener (Ret.). The parties mediated in a similar fashion four more times on April 7, 2016; March 13, 2017; and July 25, 2017. During the July 25, 2017 mediation, Justice Wiener successfully steered the parties to an agreement on the core terms for the settlement benefits that would be afforded to class members located throughout the United States. The parties agreed in principal on the key class benefit terms before negotiating and agreeing on the amount of attorney's fees and costs reimbursements that EZ-Flo would agree to pay in the settlement. For the rest of the summer and into early 2018, the parties exchanged more than several draft documents to effectuate the settlement terms. (Declaration of Graham Lippsmith ISO Preliminary Approval, ¶¶18-19.)
- Investigation and discovery were sufficient to allow counsel and the court to act intelligently. Plaintiffs and their counsel first began their efforts on this case beginning in 2012. Since then, the parties have conducted discovery and engaged in motion practice. The discovery included, among other items, expert investigations and testing, written discovery, and document production and review. Defendant EZ-Flo produced several thousands of pages of documents, and Class Plaintiffs

exchanged thousands of pages of documents and photographs. Class Counsel's discovery efforts included home inspections and the extraction of EZ-Flo yellow brass products ("Covered Products") from a number of those homes. Class Counsel's experts tested extracted Covered Products to confirm the presence and extent of the dezincification. Class Counsel maintained an evidence warehouse containing various exemplar extracted Covered Products. Class Counsel retained experts in the necessary disciplines to prosecute this action, including a metallurgist and master plumber. (*Id.* at ¶¶11-13.)

- Counsel is experienced in similar litigation. Yes. (*Id.* at ¶¶3-10.)
- The percentage of objectors is small. There were no objectors. (Peak Decl., ¶16; Swanson Supp. Decl., ¶6.)

As noted in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408:

...a trial court's approval of a class action settlement will be vacated if the court "is not provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Kullar, supra*, 168 Cal.App.4th at p. 130.) In short, the trial court may not determine the adequacy of a class action settlement "without independently satisfying itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Id.* at p. 129.)

The single claim at issue here on behalf of a putative California class is EZ-Flo's violation of California Civil Code §§ 896(a) (14)-(15), i.e., EZ-Flo yellow brass plumbing products violate these provisions which require that "[t]he lines and components of the plumbing system ... shall not leak" and "[p]lumbing lines ... shall not corrode as to impede the useful life of the systems."

As to the case merits, Plaintiffs' best case scenario is if EZ-Flo is found to violate Civil Code § 896 because the EZ-Flo product installed in their new homes was prone to corrosion. Plaintiffs' worst case scenario is that the Court agrees with EZ-Flo on any number of arguments, including but not limited to arguments that EZ-Flo yellow brass products are not defective and that § 896 violations require leaks.

The remedy for violations of Civil Code §§ 896(a) (14)-(15) is costs of repairing violations caused by the product. *Greystone Homes, Inc. v. Midtec, Inc.*, 168 Cal.App.4th 1194, 1213 (2008). In Plaintiffs' best case scenario—e.g., EZ-Flo products inherently violate § 896 because they corrode—each class member would be entitled to recover (1) replacement costs for EZ-Flo yellow brass products and (2) labor and property damage costs for EZ-Flo yellow brass products that caused other property damage. Worst case scenario, Plaintiffs get nothing because the Court or a jury sides with EZ-Flo on its defenses.

The EZ-Flo Settlement does not provide class members with their best case scenario remedy, but the benefits are closer to Plaintiffs' best case scenario remedies than their worst case scenario remedies. While the Settlement does not provide replacement products for all EZ-Flo yellow brass products regardless of their condition, it provides replacement product for all EZFlo yellow brass products that exhibit dezincification properties, subject to high limitations of parts per home. Similarly, the Settlement does not pay for all property damage, but reimburses all property damage costs up to \$3,500 while narrowly tailoring the release to preserve Class Members' ability to separately pursue property damage claims worth more than \$3,500.

The moving papers, declarations and exhibits attached thereto, have provided this Court with "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise" such that this Court is satisfied "that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (See *Dunk, supra* at p. 1802 ["So long as the record is adequate to reach 'an intelligent and objective opinion of the probabilities of success should the claim be litigated' and 'form' an educated estimate of the complexity, expense and likely duration of such litigation...it is sufficient."].)

COSTS AND FEES

1. How much is requested for fees and costs? In determining the appropriate amount of a fee award, courts may use the lodestar method, applying a multiplier where appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-96.) Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable. (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

Here, Class Counsel is requesting **\$2,000,000 in costs and fees** (\$1,806,968.40 in fees and \$193,031.60 in costs) pursuant to the lodestar method. (Motion ISO Fees 5:20-28.)

Counsel has provided the following lodestar information:

Biller	Hourly Fee	Hours	Total
<i>KLWT Los Angeles</i>		<i>1073.50</i>	<i>\$568,612</i>
Lippsmith	\$675-750	406.9	\$295,060.00
Anderson	\$450-500	344.20	\$167,955.00
Andrews	\$450-500	48.40	\$72,410.00
Perez	\$250-300	16.40	\$4,475.00

Evans (Paralegal)	\$150-200	145.00	\$27,200.00
Smith (Paralegal)	\$150	12.60	\$1,512.00
KLWT Irvine		291.1	\$129,580.50
Kasdan	\$850	92.7	\$78,795
Turner	\$700	22.3	\$15,610
Weber	\$700	.7	\$490
Zutel	\$450	32.6	\$14,670
Mahoney	\$450	5.5	\$2,475
Scott	\$450	20.7	\$9,315
Bell (Paralegal)	\$85-120	30.5	\$3,170
Plager (Paralegal)	\$85-120	9.6	\$837
Bondy (Paralegal)	\$85-120	53.8	\$4,828.50
Servas (Paralegal)	\$85-120	6.1	\$518.50
D'Alessandro (Paralegal)	\$85	3.7	\$314.50
Obel (Paralegal)	\$100	12.9	\$1,032.00
KLWT Estimated Future		100	\$51,164.63
Total		1,464.60	\$749,357.13

(Lippsmith Decl. ISO Final, ¶¶12-13 and Exhibits 1-2 thereto.).

Therefore, counsel's total loadstar in this matter is \$749,357.13, which requires a multiplier of 2.4 to get to the requested fees.

Here, the following factors should be considered in determining the reasonableness of the requested fee amount:

- The number of hours worked, over the nearly seven years since this case was filed, is above average, however this case has been litigated for seven years, which in and of itself can be viewed as above average.
- A reasonable hourly rate depends on the market for legal services in which counsel operates. Class Counsel practices exclusively in consumer class actions, which do not bill clients on an hourly basis.
- Counsel took this case on a contingency, and should share in the risk with the class as to available recovery. In contingency work, sometimes counsel is unable to recover for his or her expenditure of resources and sometimes counsel is able to recover more than the resources expended. It is the nature of the risk undertaken.
- This court feels it is of substantial importance to incentivize class counsel who agrees to recommend a settlement on a claims-made basis to take all possible action to encourage class members to submit claims. If counsel receives an award based on the total potential benefit to the class, there is no such incentive.

Further, Class Counsel is requesting \$193,031.60 for litigation costs. (Motion ISO Final, 8:15-16.) The Settlement Agreement provides for a \$2,000,000 settlement cap for costs and fees (Settlement Agreement, ¶10.1.)

Actual costs were incurred in the amount of \$193,031.60 (Lippsmith Decl., ¶14 and Exhibit 3 thereto.) Costs include but are not limited to, court reporting (\$1,120.60), testing services (\$16,988.75), laboratory services (\$35,012.50), professional services (\$2,153), mediation (\$20,000), expert fees (\$115,542.80), and travel expenses (\$1,587.83.) (Ibid.)

Based on all of the above factors, the court determines that an award of **\$2,000,000** in attorneys' fees is appropriate. This amount based on the lodestar, the effort expended by counsel to produce benefit for the class in this case. It also recognizes the number of class members who submitted claim forms, which at this time is only 44, but is ongoing.

2. Incentive payment to class representative? An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 [“[C]riteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citations.],”] [citing *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294, 299.]

Class Counsel requests that the Court award incentive payments of \$1,000 to each of the remaining Class Representative households to be paid by EZ-Flo in addition to the attorney fees and costs, for a total of **\$3,000**.

Counsel contends that by every measure, these incentive awards are conservative given the effort, and cites to the February 6, 2019 Declaration of Kevin Ngai ¶¶3-5, the February 11, 2019 Declaration of Miles Houze ¶¶3-5; and the February 11, 2019 Declaration of Susan Houze §§ 3-5.

The Court finds that Class Representative Enhancement awards of **\$1,000** to each of the named plaintiffs, for a total of \$3,000 is reasonable under these circumstances.

3. Claims Administration Costs? The claims administrator, KCC, LLC requests **\$365,767.49** cost of settlement administration. (Swanson Supp. Decl., ¶16.) As of January 31, 2019, KCC has incurred \$365,767.49 in fees and costs for the notice and claims administration. (Ibid.) EZ-Flo has paid \$334,897.00 and \$30,870.49 plus sales tax remains outstanding. (Ibid.) At the time of preliminary approval, costs for settlement administration were

estimated at \$425,784. (Settlement Agreement, ¶16.12.) The class received notice of costs in the amount of \$425,784, and no member objected. (Swanson Supp. Decl., ¶15 and Exhibit B thereto.) However, the costs seem reasonable and necessary to administration, thus Court approves claims administration costs in the amount of **\$30,870.49 plus sales tax.**

FINAL REPORT:

The Court orders class counsel to file a final report summarizing all distributions made pursuant to the approved settlement, supported by declaration.

The Court will set a non-appearance date for submission of a final report for July 8, 2019 at 8:30 a.m.

EXHIBIT 2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 11

BC493276

**MILES HOUZE ET AL VS BRASSCRAFT
MANUFACTURING COMPANY**

April 8, 2019

10:00 AM

Judge: Honorable Ann I. Jones
Judicial Assistant: D. Wortham
Courtroom Assistant: C. Concepcion

CSR: Marco Neilly, CSR # 13564
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Graham B. LippSmith

For Defendant(s): No Appearances

Other Appearance Notes: For Plaintiff(s): Jaclyn L. Anderson;

For Defendant(s): Katie A. Stricklin

NATURE OF PROCEEDINGS: Fairness Hearing; Hearing on Motion for Attorney Fees Costs Reimbursement and Incentive Awards

The Court issues its tentative ruling.

The matters are called for hearing.

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, Marco Neilly, CSR # 13564, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

Counsel acknowledge receipt of the Court's tentative ruling, and submit to the tentative ruling.

Accordingly, the Court adopts its tentative ruling as the Order of the Court and rules as follows:

The Motion for Final Approval of Settlement filed by Susan Houze, Miles Houze on 02/21/2019 and The Class' Motion for Attorney Fees, Costs Reimbursement and Incentive Awards filed by Susan Houze, Miles Houze on 02/21/2019 are Granted.

- (1) The Court certifies the class for purposes of settlement;
 - (2) The Court finds that the settlement is fair, adequate, and reasonable;
 - (3) Class counsel, Kasdan Lippsmith Weber Turner, LLP is awarded \$2,000,000 in attorney fees and costs;
 - (4) Class representatives are awarded an enhancement payment of \$3,000 total (\$1,000 each);
- and

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 11

BC493276

**MILES HOUZE ET AL VS BRASSCRAFT
MANUFACTURING COMPANY**

April 8, 2019

10:00 AM

Judge: Honorable Ann I. Jones
Judicial Assistant: D. Wortham
Courtroom Assistant: C. Concepcion

CSR: Marco Neilly, CSR # 13564
ERM: None
Deputy Sheriff: None

(5) The claims administrator, KCC, LLC is awarded \$30,870.49 plus tax in costs.

FINAL REPORT:

The Court orders class counsel to file a final report summarizing all distributions made pursuant to the approved settlement, supported by declaration.

Non-Appearance Case Review Re Filing of Final Report is scheduled for 07/08/19 at 08:30 AM in Department 11 at Spring Street Courthouse.

Further findings of the Court are more fully reflected in the Court's Ruling Re Motion for Final Approval of Class Action Settlement, which is filed this date, and incorporated herein by reference to the court file.

The "Order Granting Final Approval of EZ-FLO Settlement," and "Judgment" are signed and filed this date, and incorporated herein by reference to the court file. Counsel for Plaintiff are given conformed copies of the order and judgment in open court this date.

A copy of the Court's Ruling is posted in the electronic service website Case Anywhere.

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14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT OF CALIFORNIA**

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

18 Plaintiff,

19 vs.

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

23 Defendants.

Case No.: 5:15-cv-05764-BLF

**DECLARATION OF JASON BASS, CPA,
CFA IN SUPPORT OF THE CLASS'
MOTION FOR ATTORNEY FEES,
COSTS REIMBURSEMENT, AND
INCENTIVE AWARDS**

Date: November 22, 2019

Time: 10:00 a.m.

Courtroom: 3

Hon. Beth Labson Freeman

1 **DECLARATION OF JASON BASS, CPA, CFA IN SUPPORT OF THE CLASS'**
2 **MOTION FOR ATTORNEY FEES, COSTS REIMBURSEMENT, AND INCENTIVE**
3 **AWARDS**

4 I, Jason Bass, declare as follows:

5 1. I am the President of AREconBass and have been a financial and economic
6 advisor for over 25 years. I have spoken at industry and investor conferences and have authored
7 various articles. I am a Certified Public Accountant (CPA) licensed in the State of California
8 and hold the Chartered Financial Analyst (CFA) credential from the CFA Institute. I have
9 bachelor's and master's degrees in economics with an emphasis on quantitative methods,
10 including statistical/econometric analysis. I advise clients on business, real estate and natural
11 resources development planning and financing, market feasibility, asset valuation, deal
12 structuring, fiscal and economic impact analysis, lost profits and settlement values (in
13 litigation), and other financial and economic considerations related to business, real estate and
14 natural resource development, investment, negotiation and litigation. My current curriculum
15 vitae is attached as Exhibit 1.

16 2. In the performance of my advisory engagements, I often apply a range of
17 accounting, statistical and other research and quantitative methods to reach my analysis
18 conclusions. On numerous occasions, this has included the compilation, error checking, and the
19 simple and complex analysis of a broad range of financial data. Additionally, I have been
20 designated a subject matter expert in a number of legal proceedings through the course of my
21 career and, in that context, have testified in deposition, arbitration, and court proceedings. Most
22 recently I testified in Federal Court on behalf of the United States Department of Justice on a
23 property and sales tax matter involving a large, mixed-use commercial development in the State
24 of Washington.

25 3. I have been retained by Class Counsel¹ to assist in the calculation of the expected
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27 ¹ Unless otherwise noted, all capitalized terms herein have the same definitions as those terms are defined in the
28 First Amended Class Action Settlement Agreement and Release of Claims entered as of August 19, 2019 and
attached as Exhibit A to the Supplemental Declaration of Graham B. LippSmith in Support of Joint Motion for
Preliminary Approval of Class Action Settlement (ECF. No. 125-1) provided to me by Class Counsel.

1 cost (to Whirlpool) and expected value (to the Class) of a proposed settlement of the present
2 matter negotiated by the Settling Parties (“Settlement”).

3 4. It is my understanding that Class Members purchased certain refrigerators
4 manufactured by Whirlpool from 2009 through 2013 (“Group A” refrigerators) and certain
5 other refrigerators manufactured from 2011 through 2018 (“Group B” refrigerators) that have
6 defective drain tubes (“Defect”) (collectively, “Class Refrigerators”). The Defect results in the
7 premature failure of the Group A and Group B refrigerators’ drain tubes that are prone to
8 clogging with debris which dams the flow of defrosted water from the freezer, causing trapped
9 water to freeze and accumulate, eventually causing water to leak from the freezer. The intent of
10 the Settlement is to compensate the Class for such past and future Freezing Events.

11 5. The period covered by my investigation is January 1, 2009 through December
12 31, 2033. (2009, is the first year per Plaintiff’s claim that Whirlpool manufactured refrigerators
13 that included the Defect. 2033 is the assumed last year that Whirlpool will potentially be
14 compensating members under the Settlement based on the assumption that households on
15 average keep their refrigerators for 15 years.)

16 6. Prior to the Lawsuit, Whirlpool provided owners of Group A refrigerators what
17 is essentially an extended warranty, at no cost, that covers some or all of the cost to
18 repair/replace their refrigerators’ drain tubes in the event a Freezing Event occurs within five
19 years of the refrigerators’ purchase (four additional years of coverage for the drain tube in
20 addition to coverage provided by the normal one-year manufacturer’s warranty). This extended
21 warranty program was referred to by Whirlpool as the “Special Project”. It is my understanding
22 that the proposed Settlement will not only extend this program but will provide the additional
23 opportunity for: A) Class Members who previously experienced a Freezing Event within five
24 years of their refrigerator purchase, to submit a claim to Whirlpool for retroactive
25 reimbursement of the associated replacement/repair costs they incurred (net the compensation,
26 if any, already provided by Whirlpool), and B) Class Members who experience a Freezing
27 Event in the future as of the Effective Date of the settlement, assumed for my analysis to be
28 January 24, 2020, to submit a claim to Whirlpool for reimbursement of the associated

1 replacement/repair costs they incurred.

2 7. At the direction of counsel, the specific focus of my work at this juncture is to
 3 derive a reasonable estimate of the total cost that Whirlpool is expected to incur under the terms
 4 of the Settlement and, correspondingly, the effective monetary, market value of the warranty
 5 provided by the Settlement to the Class as of the Effective Date.

6 8. To perform my calculations, I relied on the following information that was
 7 provided to me by Class Counsel.

- 8 • Group A includes 1,705,000 refrigerators manufactured from 2009 through 2013.
- 9 • Group B includes 472,502 refrigerators manufactured from 2011 through 2018.
- 10 • Of the 94,648 Group A refrigerators for which claims have been submitted by
 11 Class Members to pay for repair/replacement of their refrigerators’ drain tubes
 12 through March 2017 following a Freezing Event.
 - 13 ○ 55,333 have had the full costs of the drain tube repair/replacement
 14 covered by Whirlpool (both parts and labor), while the remainder, 39,315
 15 only had the cost of the part for their drain tube repair/replacement
 16 covered.
 - 17 ○ For the that portion whose Freezing Events occurred in years 2 through
 18 6+ after purchasing their Class Refrigerators, the claims were distributed
 19 as shown in Table 1.

20 Table 1

Year 2	33.40%
Year 3	32.50%
Year 4	23.70%
Year 5	9.30%
Year 6	1.10%

- 25 • Under the Settlement, the Special Project for Group A will be extended to
 26 December 31, 2021 and for Group B will be extended to December 31, 2026
 27 (which has no material impact on the Settlement whose terms effectively
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supersede the terms of the Special Project).

- Under the Settlement, compensation will be provided to Group A and Group B claimants whose Freezing Event will have occurred before the Effective Date as follows:
 - If the Freezing Event occurred within the first three years following purchase of the refrigerator, 100% of the cost of both parts & labor (first year covered by manufacturers standard one-year warranty regardless).
 - If the Freezing Event occurred in the fourth year following purchase of the refrigerator, 100% the cost of parts and 65% the cost of labor.
 - If the Freezing Event occurred in the fifth year following purchase of the refrigerator, 100% the cost of parts and 50% the cost of labor.
- Under the Settlement, compensation will be provided to Class Members who experience a Freezing Event after the Effective Date at 100% of both parts and labor costs if the claim is submitted to Defendants within 90 days of experiencing a Freezing Event, or no compensation will be available to said claimants.
- The average baseline cost of the drain tube part requiring replacement to cure the Defect reflected in the Group A claims through March 2017 is \$15.
- The average baseline cost of the labor required to repair/replace the drain tube to cure the Defect reflected in the Group A claims through March 2017 is \$80.

9. To perform my analysis required that I make a number of assumptions. They are as follows:

- Both Group A and Group B refrigerators manufactured each year were on average sold in the subsequent year (Example: Each Group A refrigerator manufactured in 2009 is assumed to have been sold in 2010). Accordingly, for Group A, the refrigerators manufactured from 2009 through 2013 were presumed sold from 2010 through 2014; for Group B the refrigerators manufactured from 2011 through 2018, were presumed sold from 2012 through 2019.)

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- The \$15 and \$80 average parts and labor cost estimates, respectively, are in 2014 dollar-terms (both costs are averages reported by Whirlpool and reflect the average cost of claims for Group A from 2010 through March 2017 (2014 is the approximate midpoint between 2010 and 2017)).
- Annual average inflation in the cost of the part and labor to repair/replace the subject drain tubes has historically tracked with general national price inflation, which recently has averaged about 2.5% and will presumably continue to average 2.5% in the future.
- The total Group A claims submitted through March 2017 was ~5.55% of the total Group A refrigerators (calculated by dividing 1,705,000 divided by 94,648).
- The average time that Class Members will keep the subject refrigerators is 15-years from purchase. This assumption establishes the amount of time after the Effective Date that claims are projected to continue to be made by Class Members to determine the cost of future claims.
- Of the 94,648 Group A claims reported by Whirlpool through March 2017, the 1.1% identified to be claims submitted for Freezing Events six years and after purchase of the associated refrigerators will not be eligible to receive any compensation under the Settlement.
- Of the 94,648 Group A claims reported by Whirlpool through March 2017, 30% of those claims were for drain tube failure within the first year following purchase and thus, were/are covered for full parts and labor costs under Whirlpool’s base, one-year warranty regardless of the settlement. The cost of these claims is excluded from my analysis since they are costs that Whirlpool has either already incurred or, if its incurs them in the future, they would have been incurred regardless of the Settlement.
- Future Freezing Events after the Effective Date and the associated claims submitted under the Settlement for both Group A and Group B Class Refrigerators will occur at a pace of 0.56% per year. This assumption is based on

1 the percentage of total Group A Claims for the fifth year after purchase through
2 March, 2017 of 9.3% as shown in Table 1. The rationale is that the 6+ year
3 claims prior to March 2017 at 1.1% as shown in Table 1 cannot be assumed
4 representative of future claims for Freezing Events that occur after the Effective
5 Date because the 6+ year Group A claimants through March 2017 did not
6 actually have any warranty coverage at the time they made their claims.
7 Accordingly, the 1.1% of Group A claims for Freezing Events in years 6+ of
8 purchase through March 2017 likely substantially underrepresents the amount of
9 Freezing Events actually experienced by those individuals. Instead, under
10 Defendants' Special Project, Group A refrigerator owners could make claims for
11 Freezing Events that occurred during the fifth year after purchase, so the 9.3%
12 for that year is a reasonable, albeit conservatively low, basis for estimating future
13 rates of failure and associated claims. It is conservatively low because not all
14 Group A owners likely knew about the ability to receive compensation for
15 Freezing Events occurring five years after the original manufacturer's warranty
16 had expired or, if they did know, didn't take the necessary action to submit a
17 claim. The 9.3% translates to a rate of claims per year of 0.56% based on the
18 distribution of claims shown in Table 1 and the assumption that 30% of the
19 Group A claims related to the claimed defect through March 2017 occurred the
20 first year after purchase and, thus, would have been covered by Whirlpool's
21 base, one year warranty regardless of the Special Project or Settlement terms.

- 22 • For Group A, the 1,705,000 Class Refrigerators were sold in equal increments
23 over the five years from 2010 through 2014 (341,000 annually).
- 24 • For Group B, the 472,502 Class Refrigerators were sold in equal increments over
25 eight years from 2012 through 2019 (59,063 annually).

26 10. Table 2 below summarizes my estimates of the historical defect-related claims
27 for Group A by year sold and year manufactured through March 2017. The historical claims
28 estimates reflect the assumption that 30% of the Freezing Events and associated claims occurred

1 the first year following purchase and that the subsequent claims in years 2 through a part of 7
2 (up to March 2017) conform to the distribution in table 1 above.

Table 2

	Units	341,000	341,000	341,000	341,000	341,000
	Yr Manufactured	2009	2010	2011	2012	2013
Yr Sold	2010	5,679				
	2011	4,426	5,679			
	2012	4,306	4,426	5,679		
	2013	3,695	4,306	4,426	5,679	
	2014	1,896	3,695	4,306	4,426	5,679
Remainder Historical Period	2015	194	1,896	3,695	4,306	4,426
	2016	194	194	1,896	3,695	4,306
	2017 (Jan - Mar)	49	49	49	474	924

11 The sum of units shown in the table is the 94,648 Freezing Event and associated claims
12 reported by Whirlpool prior to March 2017 (including those crossed out), of which 30%, or
13 28,394 (highlighted in grey, the first year following purchase of each year's refrigerators), are
14 presumed to have been covered under the base warranty with full parts and labor coverage. The
15 sum of the green cells in the table represent the estimated Freezing Events (and associated
16 claims) during the second and third year following refrigerator purchase, which under the
17 Settlement are to receive 100% coverage of parts and labor costs. The sum of the orange cells in
18 the table represent the estimated claims for Group A Freezing Events that occurred the fourth
19 year following purchase with 100% parts cost coverage and 65% labor cost coverage under the
20 Settlement. The blue cells represent the estimated Group A Freezing Events that occurred the
21 fifth year following purchase with 100% parts cost coverage and 50% labor cost coverage. The
22 estimated claims in the table crossed out represent Group A Freezing Events and associated
23 claims made after five years of purchase and, thus, are presumed ineligible for any
24 compensation under the Settlement.

25 11. Table 3 below summarizes my estimates of the historical Freezing Events and
26 associated claims for Group A Class Refrigerators by year sold and year manufactured from
27 April 2017 through September 2019 (present) and future projected claims through 2028 when
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1 the portion of Group A Class Refrigerators presumed purchased in 2014 (the presumed last year
 2 of Group A purchases) will reach the end of their average assumed fifteen-year life. The orange
 3 cell in this table represents the remaining Group A Class Refrigerators that are estimated to
 4 have experienced or will experience a Freezing Event since March 31, 2017 but before the
 5 Effective Date and four years after purchase and, thus, are covered by the Settlement. The blue
 6 cells represent the remaining Group A Class Refrigerators that are estimated to have
 7 experienced or will experience a Freezing Event since March 31, 2017 but before the Effective
 8 Date that would have occurred in the fifth year following purchase and, thus, are covered by the
 9 Settlement. These include Group A Class Refrigerators estimated to have been sold in 2013 and
 10 2014. The yellow cells are the projected future failure-related claims for the Group A Class
 11 Members assuming a 0.56% annual rate of failure.

Table 3

	Units	341,000	341,000	341,000	341,000	341,000
	Yr Manufactured	2009	2010	2011	2012	2013
Remainder through Effective Date	2017 (Apr - Dec)	146	146	146	1,422	2,771
	2018	194	194	194	194	1,896
	2019	194	194	194	194	194
	2020 (Jan)	16	16	16	16	16
Remainder of Extended Warranty Special Project	2020 (Feb - Dec)	1,738	1,738	1,738	1,738	1,738
	2021	1,896	1,896	1,896	1,896	1,896
Remainder Of Life	2022	1,896	1,896	1,896	1,896	1,896
	2023	1,896	1,896	1,896	1,896	1,896
	2024	1,896	1,896	1,896	1,896	1,896
	2025		1,896	1,896	1,896	1,896
	2026			1,896	1,896	1,896
	2027				1,896	1,896
	2028					1,896

12. Table 4 below summarizes my estimates of the historical claims of the subject
 refrigerators for Group B by year sold and year manufactured through September 30, 2019
 (present). The historical claims estimates reflect the assumption that 30% of claims are in the
 first year following purchase and that the subsequent claims in years 2 through a part of 7
 (through the end of September 2019) will trend as estimated for Group A’s claims based on
 Table 1.

Table 4

Units		59,063	59,063	59,063	59,063	59,063	59,063	59,063	59,063
Yr Manufactured		2011	2012	2013	2014	2015	2016	2017	2018
Yr Sold	2012	984							
	2013	767	984						
	2014	746	767	984					
	2015	640	746	767	984				
	2016	328	640	746	767	984			
	2017	34	328	640	746	767	984		
	2018	34	34	328	640	746	767	984	
	2019 (Jan - Sep)	25	25	25	246	480	559	575	738

The sum of all the refrigerator units in the table is 21,534, of which 30%, or 6,460 (highlighted in grey, the first year following purchase of each year's refrigerator Group B sales), are presumed covered under the base warranty with full parts and labor coverage regardless of the Settlement. The sum of the green cells represents estimated Freezing Events and associated claims the second year and third year following refrigerator purchase, which receive 100% coverage of parts and labor costs under the Settlement. The sum of the orange cells represents the estimated Freezing Events and associated claims the fourth year following purchase with 100% parts cost coverage and 65% labor cost coverage under the Settlement. The blue cells represent estimated Freezing Events and associated claims the fifth year following purchase with 100% parts cost coverage and 50% labor cost coverage under the Settlement. The estimated claims in the table crossed out represent Freezing Event and associated claims made after five years of purchase and, thus, are presumed ineligible for any compensation under the Settlement.

13. Table 5 below summarizes my estimates of future projected Group B claims through 2033 when the portion of Group B Class Refrigerators purchased in 2019 (the last year of presumed Group A refrigerator purchases) will reach the end of their average fifteen-year life assumed. It should be noted that a portion of the projected claims for the period October 2019 through December 2019 for Group B refrigerators assumed purchased in 2019 will be covered under Whirlpool's base, one-year warranty and, thus, do not impact the settlement cost or value (246 estimated refrigerators shown in grey cell).

Table 5

	Units	59,063	59,063	59,063	59,063	59,063	59,063	59,063	59,063
	Yr Manufactured	2011	2012	2013	2014	2015	2016	2017	2018
thru Effective Date	2019 (Oct - Dec)	8	8	8	82	160	186	192	246
	2020 (Jan)	3	3	3	3	27	53	62	64
Remainder of Extended Warranty Special Project	2020 (Feb - Dec)	301	301	301	301	301	587	684	703
	2021	328	328	328	328	328	328	640	746
	2022	328	328	328	328	328	328	328	640
	2023	328	328	328	328	328	328	328	328
	2024	328	328	328	328	328	328	328	328
	2025	328	328	328	328	328	328	328	328
	2026	328	328	328	328	328	328	328	328
Remainder of Life	2027		328	328	328	328	328	328	328
	2028			328	328	328	328	328	328
	2029				328	328	328	328	328
	2030					328	328	328	328
	2031						328	328	328
	2032							328	328
	2033								328

14. Table 6 summarizes my estimates of the costs that Whirlpool is projected to incur as a result of the Settlement terms to cover claims by Group A and the value to the Class of the effective warranty coverage reflected in those estimated and projected expenditures by Whirlpool based on the estimated projected number and timing of Group A Freezing Events and associated claims as presented in Tables 2 and 3.

Table 6

Group A					Defendants	Value to Class
	2nd + 3rd Yr	4th Yr	5th Yr	Future	Estimated Payou	Members
Nominal Cost	\$ 80.00	\$ 52.00	\$ 40.00			
2011	2,606				\$ 198,452	\$ 158,906
2012	5,142				\$ 401,345	\$ 329,402
2013	5,142	2,176			\$ 524,514	\$ 441,255
2014	5,142	2,176	1,116		\$ 583,400	\$ 503,064
2015	5,142	2,176	1,116		\$ 597,985	\$ 528,532
2016	2,536	2,176	1,116		\$ 388,405	\$ 351,876
Jan - Mar 2017		544	279		\$ 43,543	\$ 40,434
Nominal Cost		\$ 67.00	\$ 55.00			
Apr - Dec 2017		2,771	1,422		\$ 291,251	\$ 270,455
2018			1,896		\$ 117,975	\$ 112,291
Nominal Cost				\$ 95.00		
Feb - Dec 2020				8,689	\$ 957,320	\$ 897,920
2021				9,479	\$ 1,097,220	\$ 894,903
2022				9,479	\$ 1,124,650	\$ 797,631
2023				9,479	\$ 1,152,766	\$ 710,932
2024				9,479	\$ 1,181,586	\$ 633,657
2025				7,583	\$ 968,900	\$ 451,825
2026				5,688	\$ 744,842	\$ 302,035
2027				3,792	\$ 508,975	\$ 179,470
2028				1,896	\$ 260,850	\$ 79,981
TOTAL (a)					\$ 11,143,981	\$ 8,131,638

The table shows the estimated dollar cost to Whirlpool under the Settlement to cover the estimated and projected claims by Class Members associated with the Group A Freezing Events and the associated present value as of the assumed Effective Date of the payout by Whirlpool of those costs to the Class as an implicit, retroactive and extended warranty coverage of the defective drain tubes. The analysis accounts for the 55,333 Group A Class Members who have already had the full costs of the drain tube repair/replacement reimbursed by Whirlpool (both parts and labor) and the remainder, 39,315, who have only been compensated for drain tube part costs following a Freezing Event and, specifically, that portion of those 39,315 claims eligible to be compensated for all or a portion of their drain tube repair/replacement labor costs under the Settlement. I distributed the latter proportionally between the claimants whose Freezing Events occurred in years 2, 3, 4 and 5 after purchase (see Table 6a).

Table 6a

Group A					
	<i>Base Year (Yr 1)</i>	Years 2 - 3	Year 4	Year 5	Year 6+
Claims	28,394	43,661	15,702	6,162	729
Compensable Per Settlement	-	25,711	9,247	3,628	-

Table 6 also shows the estimated and projected nominal cost per claim incurred by Whirlpool associated with Group A Freezing Events to date in 2013 dollars depending on the timing after purchase and whether before or after March 2017 and the assumed Effective Date. The estimates of each year's estimated cost of claims incurred by Whirlpool is adjusted for inflation at an annual rate of 2.5%. As shown in the table, the total cost of claims incurred by Whirlpool under the Settlement is, thus, estimated at \$11,143,981. The value of these expenditures by Whirlpool to the Class is calculated by adjusting the estimated and projected payout of claims by Whirlpool to present value terms as of the assumed Effective Date. This present value for the recovery of monies expended by owners of Group A refrigerators for drain pipe repairs/replacements performed prior to the Effective Date is calculated by adjusting those numbers downward based on the cumulative inflation-based reduction in the money's purchasing power from the time expended by Class Members to the Effective Date. This present value as of the Effective Date of the projected future costs incurred by Whirlpool to cover Settlement-related claims is calculated applying a discount rate of 15%, a high rate of discount that implicitly overstates the risks associated with the extended warranty coverage of the drain tubes provided under the Settlement, thereby, understating the present value of future projected costs incurred by Whirlpool to the Class. The table shows that the estimated present value of the Settlement applied to Group A is \$=8,131,638.

15. Table 7 summarizes my estimates of the costs that Whirlpool is projected to incur as a result of the Settlement to cover claims by Group B and the value to the Class of the effective warranty coverage reflected in those costs based on the estimated projected number and timing of claims by Group B as presented in Tables 4 and 5 and applying the same cost and

1 value calculation methodologies and assumptions applied to Group A.

2 Table 7

Group B						Whirlpool	Value to Class
	2nd + 3rd Yr	4th Yr	5th Yr	Future	Estimated Payout	Members	
Nominal Cost	\$ 95.00	\$ 67.00	\$ 55.00				
2013	767				\$ 71,047	\$ 59,769	
2014	1,512				\$ 147,276	\$ 126,996	
2015	1,512	640			\$ 196,003	\$ 173,238	
2016	1,512	640	328		\$ 220,353	\$ 199,629	
2017	1,512	640	328		\$ 225,861	\$ 209,735	
2018	1,512	640	328		\$ 231,508	\$ 220,353	
Jan - Sep 2019	1,134	480	246		\$ 177,972	\$ 173,631	
Nominal Cost	\$ 95.00	\$ 67.00	\$ 55.00				
Oct - Dec 2019	378	160	82		\$ 16,815	\$ 16,405	
Jan 2020	126	81			\$ 17,380	\$ 17,380	
Nominal Cost			\$ 95.00				
Feb - Dec 2020			3,478		\$ 392,732	\$ 368,364	
2021			3,356		\$ 388,459	\$ 316,831	
2022			2,939		\$ 348,634	\$ 247,260	
2023			2,627		\$ 319,463	\$ 197,019	
2024			2,627		\$ 327,450	\$ 175,604	
2025			2,627		\$ 335,636	\$ 156,516	
2026			2,627		\$ 344,027	\$ 139,504	
2027			2,299		\$ 308,549	\$ 108,798	
2028			1,970		\$ 271,082	\$ 83,119	
2029			1,642		\$ 231,549	\$ 61,737	
2030			1,313		\$ 189,871	\$ 44,021	
2031			985		\$ 145,963	\$ 29,427	
2032			657		\$ 99,741	\$ 17,486	
2033			328		\$ 51,117	\$ 7,793	
			TOTAL (b)		\$ 5,007,371	\$ 3,142,819	

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21 The table shows the estimated and projected dollar cost that Whirlpool will incur as a result of
22 the estimated and projected claims by Class Members associated with the Group B refrigerators
23 under the Settlement and the associated present value as of the assumed Effective Date of that
24 cost to the Whirlpool. As shown in the table, the total cost of claims incurred by Whirlpool
25 under the Settlement is estimated and projected at \$5,007,371. The value of these expenditures
26 to the Class is calculated by adjusting the estimated payout of claims by Whirlpool to a present
27 value terms as of the assumed Effective Date. The table shows that the estimated present value
28 to the Class of the Settlement terms applied to Group B is \$3,142,819.

1 16. Table 8 summarizes the estimated total cost of the Settlement to Whirlpool and
 2 the floor, market value of the Settlement to the Class as of the assumed Effective Date. The
 3 table indicates the former for Groups A and B together total \$16,239,382, while the latter totals
 4 \$11,302,446.

Table 8

	Defendants Cost	Plaintiffs Value
Group A	\$ 11,143,981	\$ 8,131,638
Group B	\$ 5,007,371	\$ 3,142,819
GRAND TOTAL (a) + (b)	\$ 16,239,382	\$ 11,302,446

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 9 17. To summarize, I performed two separate calculations at the direction of Class
 10 Counsel. First, I estimated and projected the estimated total cost that Whirlpool will incur as a
 11 result of the Settlement. The analysis is based directly on the terms of the Settlement and
 12 Whirlpool's actual experience with claims it has already received and processed to compensate
 13 for Freezing Events under its Special Project for Group A refrigerators. I estimate this total cost
 14 to be \$16,239,382 (see Table 8). Second, I estimated the present fair market value of what is
 15 essentially an extended warranty as of the Effective Date based on the expected costs that will
 16 be incurred by Whirlpool under the Settlement to replace/repair drain tubes due to Freezing
 17 Events. This present value represents the effective economic value conferred to the Class upon
 18 Final Approval. It is calculated by:

- 19 A. Adjusting forward the estimated costs for drain tube repair/replacement
 20 previously incurred by the Class for which the Class may obtain
 21 reimbursement under the Settlement. (The adjustment is to account for the
 22 decline in the purchasing power of the claim amounts between the time
 23 expended by the Class and the Effective Date). I added the sum of these
 24 present value estimates to the sum of:
 25 B. The projected future cost for drain tube repair/replacement that will be
 26 incurred by Whirlpool to compensate the Class for future Freezing Events
 27 discounted back to the Effective Date applying a discount rate of 15%.

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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2019, I electronically filed the **DECLARATION OF JASON BASS, CPA, CFA IN SUPPORT OF THE CLASS' MOTION FOR ATTORNEY FEES, COSTS REIMBURSEMENT, AND INCENTIVE AWARDS** with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system to receive service.

/s/ Graham B. LippSmith
Graham B. LippSmith

EXHIBIT 1

Jason Bass, CPA, CFA

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Jason Bass, CPA, CFA, has 25 years of experience providing expert real estate and natural resource asset development-, investment- and management-related accounting, economic, financial and market strategic advisory services to a broad base of private and public-sector clients. He brings an exacting level of due diligence and technical precision to every assignment and has been uniformly praised for the quality of his work, loyalty to his clients, and effective communication style. He is an expert in MS Excel-based financial modeling, the use of statistical methods for survey evaluation, cost analysis, risk assessment and business forecasting, and the application of ImPlan, an industry-standard tool for assessing regional employment and other economic multiplier effects of project development. In addition, Jason has been designated a subject matter expert on numerous occasions for which he has provided written expert opinions and affidavits, been deposed, and testified in mediation, arbitration, and in court. He is frequently designated an economics expert by the U.S. Department of Justice on a range of matters including, most recently testimony in Federal court on a tax matter. Through his work as an expert witness Jason has honed his due diligence and forensic accounting and statistical analysis skills. For the past number of years, he has been engaged on retainer by EKN Development Group to direct, as needed, the firm's financing activities associated with its ground-up development and acquisition of lodging and mixed-use real estate assets.

Jason began his professional career with the accountancy of Arthur Young & Company - AY (subsequently Ernst & Young - E&Y) as consultant in the firm's management consulting practice. During his tenure with AY/E&Y, Jason assisted with a range of strategic advisory and litigation support engagements in the banking, construction, energy, high technology, real estate, and manufacturing sectors. After several years, Jason left E&Y to join a boutique consultancy, EconomInc, where he was designated as the senior analyst in support of the firm's lead principal on all litigation support matters. (EconomInc later merged with Law & Economics Consulting Group - LECG.) EconomInc's advisory practice primarily involved the real estate, computer technology, telecommunications and transportation sectors.

As a Master student at the University of California, Davis, Jason worked extensively on a project sponsored by the U.S. Geological Survey to evaluate the potential economic and environmental impacts of stricter EPA water quality standards on agricultural irrigation and energy project drainage in California's Central Valley. He later teamed with the professors involved in the EPA work on a consulting engagement for the State's Department of Water Resources ("DWR") to design and administer a survey for Central Valley farmers to evaluate their response to constraints in water supply. Jason compiled all the survey data and prepared associated statistical analyses to be used in support of quantitative modelling for ongoing DWR water supply management planning.

After completing his master's degree, Jason took a position with Dornbusch Associates (Dornbusch), an economic consultancy focused on real estate and natural resource development and management services. As a senior analyst, and subsequently a principal, with the firm, Jason directed or assisted with over 50 economic, financial, survey and market analysis engagements involving investment feasibility, asset/business valuation, monetary damage assessment, and project and policy implementation impact evaluation. Specific projects he performed while with Dornbusch included:

- ❖ The income-based valuation of the lodging, food and beverage, and retail concession facilities at Grand Canyon National Park -- South Rim (a \$70 million dollar a year operation that includes several hotels, a range of fine dining, casual serve, and fast food restaurants as well as souvenir and art retail shops);
 - ❖ Statistical analyses of residential lending data involving Countrywide to evaluate impacts of no-doc and variable rate HELOC residential loan underwriting on mortgage debt service payment reliability and rates of foreclosure. Analysis was performed to U.S. Department of Justice investigation of lender's practices.
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- ❖ Determination of the potential regional economic impacts and public tax/fee benefits of the then proposed Montage Hotel and Residences in Beverly Hills California, which opened in 2008;
- ❖ Projections of the lost profit damages due the owners of the Bacara Resort & Spa in Santa Barbara, California resulting from the anticipated interruption of the resort's operations during the planned repair of construction defects in its guest rooms. Analysis required detailed modeling of the Resort's rooms and multiple restaurant revenue generation and fixed-variable cost structures;
- ❖ Economic feasibility ability-to-pay, and water rate structuring analyses for a proposed multi-city rural M&I surface water supply system; the Eastern New Mexico Water Supply Project. Analysis included valuation of available surface water supplies to determine appropriate water rates. Participated in public meetings to address community concerns regarding water rates and examined data from community surveys to evaluate ability and willingness to pay for water;
- ❖ Franchise fee and ground lease rate analysis, opportunity prospectus development and management contract award selection for lodging, food and beverage, retail and other commercial concessions in a number of national parks and other sites administered by the National Park Service including: Crater Lake National Park (NP), Grand Canyon NP (both north and south rims), Zion NP, Channel Islands NP, Timicuan Ecological and Historic Preserve, Bryce Canyon NP, Mt. Rainier NP, Hot Springs NP, Glacier NP, Gateway National Recreation Area (NRA), and Golden Gate NRA;
- ❖ Prospective valuation, investment feasibility evaluation, market analysis and predevelopment planning for a proposed, sustainability-focused, mixed-use lodging, food and beverage, retail and entertainment complex on private land adjacent to Grand Canyon National Park -- South Rim called Canyon Forest Village;
- ❖ Evaluated the monetary value of the Cherokee Nation of Oklahoma's water resources under alternative uses including both consumptive uses such as thermo-electric power generation, irrigation and municipal water service and non-consumptive uses such as recreation, hydro-electric power generation and navigation. For recreation analysis, performed a meta-analysis of travel cost survey studies regarding Mississippi River recreation demand and values.
- ❖ Assessed the financial feasibility of converting operation of New Melones Reservoir's recreation visitor facilities from public to private management. Effort included analysis of regional travel cost survey data to evaluate visitor spending patterns and demand;
- ❖ Evaluated the relative economic values of the Lake Michigan recreational and commercial fisheries. Effort included evaluation of value indications from various travel cost and contingent valuation surveys administered by the State and academic institutions. Designated as expert. Lawsuit settled prior to completion of the analysis.
- ❖ Investment feasibility evaluation for a private operator to capitalize and manage a bus system to provide transportation in and around the National Mall in Washington D.C.; and
- ❖ General management planning associated with visitor parking, lodging, food and beverage and other guest services at Yosemite National Park.

For his valuation work at the Grand Canyon, Jason was designated an expert witness and provided several hours of direct and rebuttal testimony in an arbitration to determine the contractually required capital recovery due the concessionaire upon expiration of its contract to operate the Park's lodging, food and beverage, and concession facilities (which exceeded \$100 million). Following that effort, he co-authored a paper regarding the analysis methodology employed given the unique property rights context of the valuation assignment, which he helped to present to the Counselors of Real Estate (CRE) at their annual convention in San Francisco.

After more than ten years with Dornbusch Associates, Jason joined Warnick + Company (now CHM Warnick) a hospitality sector consultancy based in Phoenix, Arizona, with additional offices in New York, Chicago and Los Angeles. While with Warnick + Company, Jason was responsible for much of the firm's accounting, financial, and market research and analysis activities. His specific assignments included:

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- ❖ The development of a staffing and financial investment model used as a decision tool to optimize the reprogramming and repositioning of the distressed operations of the Keauhou Beach Resort on the Big Island of Hawaii;
- ❖ Pre-development planning, financial modeling and deal structuring to secure a billion dollar plus construction loan facility in support of the development of three Montage resorts including the brand's Beverly Hills, Deer Valley and Cabo San Lucas hotel and residential locations;
- ❖ The assemblage of a highly flexible model to evaluate feasibility and financing strategies and track capital spending for a proposed master-planned luxury community in the Caribbean to include several full-service hotels, a wide range of food and beverage concepts/outlets, multiple residential developments, casinos, a mega-yacht marina and two championship golf courses;
- ❖ Preparation of a market feasibility assessment and the construction of a financial model to evaluate alternative capital stack scenarios for the proposed acquisition, tear down and rebuild of a luxury hotel and residences with signature dining in New York City;
- ❖ Residential community development planning and financial evaluation for a beachfront parcel on the Baja peninsula in Mexico. Project was to include a waterside restaurant with open air lounge/night club;
- ❖ Financial modeling, market feasibility and positioning assessment, investment memorandum preparation and capital search for a proposed ski-in ski-out, Fairmont Resort and associated branded residential and timeshare development in Tamarack, Idaho;
- ❖ Compilation and analysis of guest survey data involving Fairmont Hotel's market and brand positioning;
- ❖ Market feasibility assessment and branding evaluation of a proposed four-star hotel development in New York City;
- ❖ Valuation, accounting and statistical analysis to model the fixed and variable operating cost effects of a Trump-branded condo-hotel's transition from three to four stars in Miami, Florida in support of breach of contract litigation. Jason's cost analysis facilitated the rapid settlement of the dispute in favor of Warnick's client, the management company.
- ❖ Performance of accounting and operational due diligence in support of the acquisition of a going-concern hotel, restaurant and retail operation (Hotel California) in Todos Santos, Mexico. Hotel's restaurant was primary revenue driver for property;
- ❖ Redevelopment/expansion plan, positioning, and feasibility assessment for the Wyndham Orlando Hotel in Orlando, Florida; and
- ❖ Investment and market feasibility evaluation for a proposed casino resort and residential development on the Las Vegas strip near Harmon Avenue and a lifestyle-oriented luxury condo-residential development with mixed vendor food hall concept on South Las Vegas Boulevard.

Jason left Warnick + Company at the end of 2008 to begin work as an independent advisor providing accounting, economic, financial and market technical research and analysis in support of real estate and natural resource asset development, management and litigation matters. Specific real estate engagements recently performed by Jason include but are not limited to:

- ❖ Investment analysis and deal structuring for proposed 5+ star luxury resort with residences and residential rental program on the western coast of Mexico. Effort has included development of flexible financial model to evaluate implication for sponsor and capital partner investment returns and multiples of alternative leverage, property valuation and distribution waterfall assumptions.
 - ❖ Investment modeling for proposed development of a portfolio of ten upscale select service hotels with associated branded residential at various locations in Mexico;
 - ❖ The preparation of a strategic plan for the development, leasing or disposition of each of the parcels included in a client's seven parcel portfolio of commercial properties in the greater Las Vegas area.
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(The client subsequently adopted Jason's recommendations and engaged Jason to perform a brand search and coordinate the development of an extended-stay hotel on one of the parcels.);

- ❖ Evaluated the sales, property and B&O tax generation associated with a large, mixed-use power retail center just north of Seattle. Testified in court on behalf of U.S. Department of Justice to settle dispute associated with the \$40 million plus of annual tax revenues at issue between the State, County and property owner;
 - ❖ Examined the results of several in-person and web-based surveys regarding visitor interest in and willingness to pay for access to tourism site to evaluate potential monetary damages in a condemnation proceeding. Addressed issues of non-response and other biases in how the surveys were structured;
 - ❖ Lodging real estate portfolio value and allocation analysis associated with a lawsuit involving a member of a partnership that acquired three hotels in San Francisco and that partner was wrongfully excluded from the partnership;
 - ❖ Lost profit damages analysis involving construction defects associated with the Hard Rock Hotel, San Diego. Damages analysis included allocation of lost profits between multiple parties that joint ventured the properties development and management;
 - ❖ Investment feasibility and gap analysis for a proposed select service hotel development in downtown Mason City, Iowa in support of developer efforts to secure project-associated tax incentives;
 - ❖ Estimated lost profit damages resulting from the breach of brand services contracts involving a portfolio of eleven mid-scale and up-scale select service hotel properties across the country owned by a REIT;
 - ❖ Directed effort to engage regional community in water resource needs assessment and infrastructure development decision-making within Imperial County, California. Project included a range of public outreach activities including community meetings, direct surveys administered at public events and creation and administration of a postcard survey of residents included in their water bills. Jason prepared statistical analyses of the information collected from the various information collection channels;
 - ❖ Financial feasibility assessment and assistance with RFP response for capital investment in, and operation of, lodging, food and beverage and retail commercial services operation at Kings Canyon National Park;
 - ❖ Prepared a highly flexible financial model to support pre-development planning and investment decision-making for a proposed luxury resort with multiple food and beverage outlets, and a master-planned residential community development near Punte de Este, Uruguay;
 - ❖ Evaluated the lost income money damages as a result of a hotel developer's inability to secure entitlements for the development of a timeshare project in Mammoth, California.
 - ❖ Assessed the economic and market feasibility of an Indian tribe's proposed hospitality asset development plan to include a conference-style hotel, casual serve restaurant, several golf courses and supporting employee housing;
 - ❖ Evaluated the financial feasibility of a proposed, sustainability-focused, cabin resort development with restaurant adjacent to Yosemite National Park;
 - ❖ Provided critical review of multiple appraisals prepared for over ten different master planned communities across the country (which include a mix of lodging, food and beverage, office, retail, entertainment and large-scale residential components) as part of a multi-billion-dollar predatory lending dispute. Properties included the Yellowstone Club in Montana, Westgate City Center in Glendale Arizona and Lake Las Vegas in Las Vegas;
 - ❖ Assessed the market feasibility of a proposed concert venue and entertainment center in downtown Elgin, Illinois on behalf of the City. Project was to include several restaurants including a Toby Keith's I Love This Bar & Grill and a Cheesecake Factory;
 - ❖ Performed a market and investment feasibility assessment for a proposed select service hotel development in Eastern Utah;
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- ❖ Assessed the potential regional economic impacts of a substantial proposed increase in the environmental flows in the northern San Joaquin Valley's rivers as required by the California State Water Resources Control Board. Effort included public presentation to inform the region's communities regarding the implications of the proposed flow increases and public testimony to the State's Water Quality Control Board at a hearing in Fresno.
- ❖ Assisted Navajo Nation's utility authority to develop a methodology for assessing Nation household and business ability-to-pay for water service and associated rate structure that will allow the Nation to meet its Navajo Gallup Water Supply Project cost obligations. Performance of engagement included critical assessment of Bureau of Reclamation benefits transfer methodology involving water value survey data collected on other Indian reservations;
- ❖ Evaluated prospective lost profit damages resulting from the anticipated interruption of a luxury hotel's operations in California's wine country during the planned repair of construction defects; and
- ❖ Evaluated the investment economics and deal structure for a client's acquisition of a principal stake in a downtown Los Angeles, branded, select service and extended stay lodging property.

In conjunction with his consulting practice, Jason has been engaged on a retainer basis to direct, as needed, the financing activities of the real estate development firm, EKN Development Group, which has launched a lodging-focused, mixed-use real estate development platform. The platform has an extensive pipeline of development and redevelopment projects in place. It closed on the acquisition of the 173 room Holiday Inn Downtown Rochester, Minnesota by the Mayo Clinic's headquarters in March of 2018 that is now being converted to a Hotel Indigo with an opening in August of 2019. Separately, the platform has secured entitlements and capital to implement the ground-up development of a 175 room Hyatt House in Rochester (breaking ground in April of 2019), has completed its equity raise for a dual-branded hotel development near Monterey California, is near entitlements for a dual branded, 400+ room hotel development next to San Francisco International Airport and has several other ground-up and conversion hotel projects in various stages of development throughout the country. For the platform, Jason is guiding all the platform's market analysis, joint venture partnership structuring, financial/investment feasibility evaluations and underwriting, capital raises (both equity and debt), leasing, public financing support (i.e., tax incentives, tax increment financing, etc.) and overseeing the platform's overall financial management activities. In this capacity, as examples of his work, Jason has facilitated the close of almost \$30 million in debt financing for the Holiday Inn to Indigo conversion (including \$2.5 million in PACE financing), an additional \$3 million of Tax Increment Financing for that project and \$4 million for the Hyatt House development. He has also facilitated over \$30 million of debt financing for the Hyatt House project (including approximately \$4.0 million of PACE financing) and is nearing close of an additional \$4.0 million of PACE financing to pay for utility-related building improvements for the residential and commercial owners within the HOA that the Holiday Inn/Indigo is part of while also directing preliminary underwriting and financing efforts on numerous additional of EKN's projects including hotels downtown Los Angeles, one just south of SeaTac Airport, another in Anchorage, Alaska (which includes residential development) and one in Burbank, California, among others.

Jason graduated from the University of California at Berkeley with a B.Sc. degree in Resource Economics. He completed his M.Sc. degree in Resource Economics at the University of California at Davis with an emphasis in econometrics and quantitative methods. Additionally, Jason completed a year of PhD level courses in micro-economic, econometric and information economic theory at the University of British Columbia, Vancouver, Canada. He holds the Chartered Financial Analyst (CFA) designation from the CFA Institute, and is a Certified Public Account (CPA) licensed in California. He is proficient in Spanish and French.

Publications:

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- Bass, J. “Fixed or Variable? A Methodology for Analyzing Lodging Property Operating Cost Structures” E-Hoteliers.com and hotel-online.com June 20, 2011; available at www.hotel-online.com/News/PR2011_2nd/Jun11_FixedVariable.html
- Gold, H. David and Jason Bass. “The Energy-Water Nexus: Socio-economic Considerations and Suggested Legal Reforms in the Southwest”, University of New Mexico School of Law, Natural Resources Journal, Vol. 50, No. 3, May 11, 2011
- Bass J., B. Chase, D. Dornbusch, and M. Robinson. “How to Value Commercial Improvements in a National Park,” Real Estate Issues, Winter 2001/2001
- Bass J., L. Lipper, J. Merchant and D. Zilberman. “Cost Benefit Analysis in the Context of Indigenous Water Rights: A Critique of the U.S. Water Resource Council Principles and Guidelines,” presented at Girona Development Economics Symposium. Geneva, Switzerland. June 21, 2001

Expert Witness Testimony:

Arbitration:

- National Park Service v. AmFac (mgt. contract and value dispute Grand Canyon)

Deposition:

- Aspesi v. Hyundai of America (wrongful termination suit)
- U.S. & Tulalip Tribe v. State of Washington & Skokomish County (sales and property tax dispute)
- La Mirada Restaurant v. CHA La Mirada (franchise dispute involving Red Robin restaurants)

Mediation:

- National Park Service v. YMCA (lease value contract dispute at Presidio in San Francisco)
- Advani v. Delirium (negligence and lost income dispute)

Affidavit:

- U.S. BOR v. Yakama Nation (water charges/ability-to-pay dispute)
- National Park Service v. AmFac (management contract and valuation dispute Yellowstone)

Court:

- Aspesi v. Hyundai of America (wrongful termination suit)
- Ute Tribe v. McDowell et. Al. (illegal taking of water)
- U.S. & Tulalip Tribe v. State of Washington & Skokomish County (sales and property tax dispute)

Administrative and Public Hearing:

- Menominee Indian Nation v. FERC (challenge to dam re-licensing and monetary damages for unpaid charges)
 - Stanislaus, Merced and San Joaquin Counties challenge to California State’s imposition of river flow diversion cutbacks (public hearing testimony)
-