UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

STACY COSTA, RYAN BUTLER, MARK GANDARA, NATHANIEL GUERRERO, DAVID HAYDEN, PATRICK KEMPF, WALLACE MCDUFFEY, TIMOTHY MIDDLEBROOKS, MISSY ROBINSON, MISTY ROMBACH, KRISTEN TATA, MELANIE FIORUCCI, LAMONT KINCAID, and LESLIE LAMANNA individually and on behalf of all others similarly situated, Plaintiffs, v. WHIRLPOOL CORPORATION, Defendant.	Case No. 1:24-cv-00188-MN

PLAINTIFFS' BRIEF IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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Dated: February 27, 2026

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THE NATURE AND STAGE OF THE PROCEEDINGS

Pursuant to Rule 23(e), Plaintiffs respectfully submit this memorandum of law in support of the Parties' Joint Motion for Preliminary Approval of Class Action Settlement.[1]

This action alleges that certain Whirlpool-manufactured refrigerators ("Class Refrigerators") contain defective wire harnesses running to the freezer door that break with normal use, often within just a few years, causing certain in-door functions of Class Refrigerators to fail, including the ice maker, ice dispenser, filtered water dispenser, and/or control panel. Repair requires replacing the entire freezer door, which typically costs more than $1,000.

More than three years after serving their initial pre-suit demand and after two years of litigation, the parties have reached agreement, with the assistance of a renowned mediator, on a proposed nationwide class action settlement that provides outstanding benefits covering nearly 1 million Class Refrigerators. The benefits include: free repairs, free replacement doors, or, if they choose, cash payments for Settlement Class Members who have an existing Wire Harness Issue; reimbursement of a substantial portion of prior repair costs for Settlement Class Members who previously paid for repairs; reimbursement of a substantial portion of the original purchase price for Settlement Class Members who replaced, rather than repaired, their refrigerator; and future coverage through seven years after each Class Refrigerator's In-Service Date. The claim and proof requirements are reasonable, and Whirlpool has searched its own records to identify Prequalified Settlement Class Members who will not be required to submit proof of the failure. Whirlpool will also pay for direct notice to all Class Members for whom Whirlpool has contact information, plus a robust nationwide digital media notice campaign, costs of settlement administration, and

[1] Unless otherwise stated or defined, all capitalized terms used herein have the definitions provided in the Class Action Settlement Agreement ("SA §"), which is attached to the concurrently filed Declaration of Timothy N. Mathews ("Mathews Decl.") as Exhibit A.

attorneys' fees and expenses and Plaintiff Service Awards, subject to Court approval.

SUMMARY OF THE ARGUMENT

Pursuant to Rule 23(e), Plaintiffs respectfully request that the Court:

1. Preliminarily approve the Settlement and direct Notice to the Class under Rule 23(e)(1) because the Court will likely be able to grant final approval to the Settlement as being fair, reasonable, and adequate, and because the Settlement's notice plan (SA § V (the "Notice Plan")) constitutes the best notice practicable under Rule 23(c)(B) and satisfies due process.

2. Preliminarily approve certification of the Settlement Class because the Court will likely be able to grant final certification of the class for purposes of settlement. The Class is sufficiently numerous, shares common, predominating questions of fact and law, the claims of Plaintiffs are typical of the Class, and a class action is superior to other methods of adjudication.

3. Preliminarily appoint named Plaintiffs as Class Representatives and preliminarily appoint Chimicles Schwartz Kriner & Donaldson-Smith LLP ("CSK&D" or "Lead Counsel") as Lead Class Counsel and deLeeuw Law LLC, Levin Sedran & Berman, Robert Pierce & Associates, and Migliaccio & Rathod LLP as additional Class Counsel because they have and will continue to fairly and adequately represent the Class.

4. Appoint Angeion Group ("Angeion") as the Settlement Administrator.

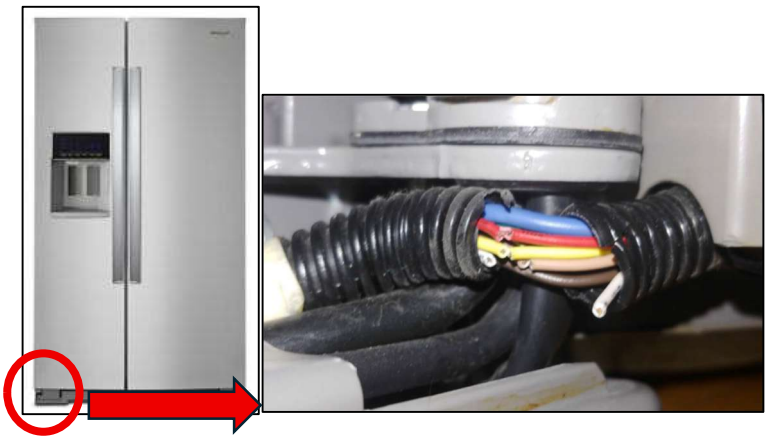
5. Schedule the date and time of the Final Fairness Hearing on a date 126 or more days from the date of an Order granting Preliminary Approval and enter the parties' proposed schedule for interim deadlines, including the deadlines for Class Member objections and requests for exclusion from the Settlement, the Motion for Final Approval, Class Counsel's Fee Petition, and the Parties' submissions in response to any objections and/or opt-out requests.

STATEMENT OF FACTS

I. Factual Background

A viral tweet says, "My wife grew up thinking that having water/ice dispensers IN THE FRIDGE DOOR was a life goal."[2] There is more than a grain of truth to this sentiment. Studies show that American consumers pay significantly more for refrigerators with icemakers and in-door ice and water dispensers. Second Am. Compl. ("SAC"), D.I. 39 ¶ 2.

Plaintiffs allege that Whirlpool manufactured nearly one million refrigerators between 2018–2022 with defective wire harnesses running to the door that break under normal use (often within 2–4 years) rendering useless the in-door ice maker, ice dispenser, water dispenser, and/or control panel. *See id.* ¶ 1.[3] The Class Refrigerators typically cost between $1,500 and $3,000. *Id.* ¶¶ 27, 53.



Repairing a broken wire harness requires replacing the entire freezer door, which typically costs over $1,000. *See id.* ¶¶ 13, 36, 49, 65, 80, 87, 113, 120. While some consumers purchase new doors to repair their failed wire harness, many do not due to the high repair cost. *Id.* ¶¶ 13, 36.

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[2] Cheezburger.com, *'My wife grew up thinking that having water/ice dispenser IN THE FRIDGE DOOR was a life goal': Millennials Reveal What They Thought Made You "Rich" in the 2000s*, https://cheezburger.com/19130629/my-wife-grew-up-thinking-that-having-waterice-dispenser-in-the-fridge-door-was-a-life-goal (last visited February 10, 2026).

[3] Whirlpool's brand names include Whirlpool, Maytag, KitchenAid, and Jenn-Air. SA § I.I.

Some consumers attempt to repair a failed harness by splicing in new sections of wire, but these typically fail again. *Id.* ¶¶ 30, 174, 285. Other consumers elect to purchase a new refrigerator. *Id.* ¶ 180 at n.36. And others simply live without a fully functioning refrigerator. *Id.* ¶¶ 30, 55. The Settlement provides benefits to Class Members in each of these situations, and it also provides compensation or repairs for future failures that occur within seven years of the In-Service Date.

II. Procedural Background

A. Case Inception, Consolidation, and Early History

Plaintiffs are 14 individuals from 11 states, whose ice makers, ice dispensers, and/or control panels failed within 19 to 45 months of the purchase of their Whirlpool-manufactured refrigerator. *See id.* ¶¶ 26–123.

After serving pre-suit demand letters in 2023, CSK&D filed the first complaint in this Court on February 12, 2024. Mathews Decl. ¶ 13; D.I. 1. On March 27, 2024, the Court entered an Order pursuant to Rule 23(g) appointing CSK&D as Interim Lead Counsel. D.I. 13.

Additional class counsel—the law firms of deLeeuw Law LLC, Levin Sedran & Berman, Robert Peirce & Associates, and Migliaccio & Rathod LLP (collectively, "Additional Class Counsel")—filed a related complaint captioned *LaManna v. Whirpool Corp.*, No. 1:24-cv-00310, on March 7, 2024. D.I. 21. Thereafter, Lead Counsel and Additional Class Counsel began coordinating their efforts and stipulated to consolidate the *LaManna* action into the *Costa* action under the Rule 23(g) Order in *Costa*. D.I. 11, 13, 21–22.

In April 2024, Plaintiffs filed a 145-page consolidated amended complaint with 14 class representatives from 11 states. D.I. 23. Whirlpool filed a motion to dismiss in May 2024, arguing in significant part that Plaintiffs failed to allege Whirlpool's pre-sale knowledge of the defect. D.I. 27–29. Rather than respond to that motion, Plaintiffs conducted substantial additional fact research to file a 316-page, 32-count SAC, which included reference to hundreds of consumer complaints,

dozens of safety-related reports to the CPSC, and allegations about industry standard electrical testing, among other things. Mathews Decl. ¶ 19; D.I. 39.

B. Motion Practice and Discovery

Whirlpool moved to dismiss the SAC in August 2024. D.I. 42–44. After holding argument, the Court entered an order granting in part and denying in part Whirlpool's motion on March 21, 2025. D.I. 55. The Court upheld most of the Plaintiffs' implied warranty claims. *Id.* at 17–21. The Court, however, dismissed Plaintiffs' express warranty claims, misrepresentation, and fraud-by-omission claims without prejudice. *Id.* at 6–17. Lead Counsel filed a motion for reargument on the fraud-by-omission claims, which the Court denied. D.I. 58–59; D.I. 66.

Discovery commenced in June 2025. D.I. 77. The parties exchanged Rule 26(a)(1) disclosures, and Plaintiffs served a comprehensive set of requests for production of documents on Whirlpool. D.I. 78; D.I. 70–71. Each Plaintiff produced documents to Whirlpool, and Whirlpool produced a large volume of data, including data derived from its Customer Information Databases, and produced design drawings and reliability test records for the wire harnesses at issue in the Refrigerators. Mathews Decl. ¶¶ 22–24.

C. Settlement Negotiations, Mediation, and Confirmatory Discovery

The parties engaged in extensive and vigorous arm's-length settlement negotiations over a four-month period including two full day mediations with Hunter Hughes, Esq. of JAMS, who is widely recognized as one of the leading mediators in the United States and has conducted over 1,000 successful mediations including numerous nationwide class actions like this one. *Id.* ¶¶ 26–33. To inform their negotiations, Lead Counsel conducted a survey of hundreds of consumers who contacted them. *Id.* ¶ 29.

During first full-day, in-person mediation with Mr. Hughes on July 17, 2025, the parties

made progress on certain parameters of a classwide settlement, but they remained far apart. *Id.* ¶ 27. Over the next two months, the parties continued to exchange information and engage in negotiations with the participation of the mediator. *Id.* ¶ 28. On September 16, 2025, the Parties finally reached agreement in principle on all terms relating to the relief to Class Members and parameters of class notice, which were memorialized in a term sheet. *Id.* ¶ 30.

The parties did not begin to negotiate, or even discuss, amounts for attorneys' fees, expenses, and costs, or Plaintiff Service Awards until after they had negotiated the term sheet. *Id.* ¶ 31. On November 3, 2025, the parties participated in another full-day, in-person mediation session with Mr. Hughes but did not reach agreement. *Id.* ¶ 32. The following week, pursuant to a double-blind mediator's proposal, the parties reached an agreement on amounts for attorneys' fees, expenses, and costs, and Plaintiff Service Awards, subject to Court approval. *Id.* Throughout the entire process, all settlement negotiations were conducted at arm's length, in good faith, free of any collusion, and with the participation of Mr. Hughes. *Id.* ¶ 33.

Since reaching agreement on all terms, the parties drafted the Settlement and all related documents. *Id.* ¶ 34. Lead Class Counsel also engaged in confirmatory discovery, which, among others, verified that the wire harness routing in the Refrigerators' replacement doors has been updated and confirmed the fairness, reasonableness, and adequacy of the Settlement. *Id.* ¶ 35. As of February 27, 2026, all parties executed the Settlement Agreement. *Id.* ¶ 34.

III. Settlement Terms

A. The Settlement Class Definition

The Settlement Class includes: "all persons who purchased (other than for resale) or [acquired as part of the purchase or remodel of a home or received as a gift from a donor meeting those requirements], a Class Refrigerator for residential use within the United States and its

territories from Defendant or its authorized resellers."[4] SA § I.QQ. The "Class Refrigerators" are Whirlpool-, Maytag-, KitchenAid-, and Jenn-Air-branded refrigerators manufactured by Whirlpool with in-door ice makers and dispensers and bearing the model numbers set out on the attached Exhibit 2 and within a specified serial number range.[5] SA § I.I. This serial range translates to refrigerators built from the first week of May 2018 through the last week of September 2021. Mathews Decl. ¶ 36. There are approximately 850,000 Class Refrigerators. *Id.*

B. Benefits to Class Members

The Settlement benefits are tailored to the nature of the defect and fall into three main buckets: (1) cash payment and repair options for Class Members who have existing wire harness failures; (2) cash reimbursements for Class Members who previously paid to repair or replace their Class Refrigerator; and (3) future coverage providing cash payment and repair options for Class Members who experience future failures within seven years of the In-Service Date.

1. Existing Wire Harness Failures - Repair and Cash Options: Class Members who have an existing Wire Harness Issue can choose between repair or cash payment options as follows (SA § IV.B.):

a. Repair Option:

i. If the Settlement Class Member demonstrates that the failure

[4] Excluded from the Settlement Class are: (i) officers, directors, and employees of Whirlpool or its parents, subsidiaries, or affiliates, (ii) attorneys appearing in this case and their household members, (iii) insurers of Settlement Class Members, (iv) subrogees or all entities claiming to be subrogated to the rights of a Class Refrigerator purchaser, a Class Refrigerator owner, or a Settlement Class Member, (v) issuers or providers of extended warranties or service contracts for Class Refrigerators, and (vi) persons who timely and validly exercise their right to be removed from the Settlement Class. SA § I.QQ.

[5] The Settlement Website will include a lookup tool where potential Class members can check their serial number for inclusion in the class. *See* SA Ex. 1.

occurred within years 2–4 after the In-Service Date,[6] they may claim a completely free repair, including all parts and labor (worth over $1,000).[7] SA § IV.B.4.a.

ii. Any Settlement Class Member who has an existing failure at the time of notice, regardless of when it occurred, may claim a free replacement door (worth around $800 or more) excluding labor. SA §§ IV.B.2.b., IV.B.4.b.

b. Cash Option: In the alternative, Class Members who have an existing failure and can demonstrate that the failure occurred within 2–7 years after the In-Service Date may elect to claim a cash payment equal to a portion of the original purchase price of their Class Refrigerator. SA §§ IV.B.4.c–e. The percentages are:

In-Service Year of Failure	Percentage Reimbursement
2	50%
3	50%
4	40%
5	40%
6	30%
7	30%

2. Past Repairs and Replacements - Cash Reimbursement: Settlement Class Members who experienced a Wire Harness Issue within 2–7 years after the In-Service Date and previously paid for repair or to replace their Class Refrigerator are entitled to claim the following (SA § IV.A.):

a. Past Repairs: Class Members who paid for repairs are entitled to claim reimbursement of a portion of repair costs, which percentage varies by (1) when the failure

[6] Class Members may but are not required to submit documentary proof of the date of purchase of their Class Refrigerator, which will establish the In-Service Date. If they do not submit proof of the date of purchase, the date of manufacture will serve as the In-Service Date. SA § I.T.
[7] The benefits begin in year 2 after the In-Service date because failures that occur within the first year are already covered under Whirlpool's limited warranty. *See* SAC ¶ 6.

occurred and (2) whether the Settlement Class Member contacted Whirlpool or their retailer prior to incurring the cost. SA §§ IV.A.5.a–b. Whirlpool will search its records to identify and pre-qualify Settlement Class Members who contacted it about a failure, "Prequalified Settlement Class Members." SA § I.HH. The percentages are (SA §§ IV.A.5.a–b):

Year after In-Service Date in which Cost was Incurred	Percent Reimbursement of Actual Repair Costs (With Pre-Repair Notice)	Percent Reimbursement of Actual Repair Costs (No Pre-Repair Notice)
2	75%	65%
3	75%	65%
4	75%	65%
5	60%	50%
6	45%	35%
7	45%	35%

In addition to repair reimbursement, if the past repair consisted of splicing in new sections of wire, the Class Member is also entitled to claim a free replacement door, including parts and labor if the repair occurred in years 2–4 or a free door if the repair occurred in years 5–7. SA § IV.A.6.

b. Past Replacements: Class Members who previously replaced their Class Refrigerator due to a Wire Harness Issue are entitled to claim cash reimbursement of a portion of the original purchase price of the Class Refrigerator, which again varies by (1) when the failure occurred and (2) whether the Settlement Class Member contacted Whirlpool or their retailer prior to incurring the cost. SA §§ IV.A.5.c–d. The percentages are as follows (SA §§ IV.A.5.c–d):

Year after In-Service Date in Which Cost Incurred	Percent Reimbursement of Original Refrigerator Cost (Pre-Replacement Notice)	Percent Reimbursement of Original Refrigerator Cost (No Pre-Replacement Notice)
2	50%	45%
3	50%	45%
4	50%	45%
5	40%	35%
6	30%	25%
7	30%	25%

3. Future Coverage - Cash and Repair Options: The Settlement also provides future coverage through seven years after the In-Service Date. SA § IV.C. If a Settlement Class Member experiences a future failure after the Notice Date and within years 2–7 after the In-Service Date, they can elect repair or cash, as follows:

a. Repair Option:

i. If the failure occurred within years 2–4 after the In-Service Date, they can elect to receive a completely free repair, including parts and labor (worth over $1,000). SA § IV.C.4.a.

ii. If the failure occurred within years 5–7 after the In-Service Date, they can claim a free replacement door (worth around $800 or more) excluding labor. SA § IV.C.4.b.

b. Cash Option: In the alternative, Class Members can elect a cash payment equal to a portion of the original purchase price of their Class Refrigerator. SA § IV.C.4.c–e. The percentages are:

In-Service Year of Failure	Percentage Reimbursement
2	50%
3	50%
4	40%
5	40%
6	30%
7	30%

C. Claims Submission and Proof Requirements

Class Members will submit claims for Past Wire Harness Issues either online through the Settlement Website or via mail. SA §§ IV.A., V.B., V.K. For Future Coverage, Class Members who elect a repair will contact Whirlpool at a dedicated 1-800 number or email address, and Class Members who elect a cash payment will submit a claim to the Settlement Administrator. SA §§

I.S., IV.C., V.B.

Proof of Class Membership: Class Members will establish Class membership simply by submitting a Claim Form (SA Ex. 1) with a valid model- and serial-number combination and either submitting documentary proof of purchase/acquisition (e.g., purchase receipts, credit card statements, and warranty registrations), or, if they are unable to provide such documentation, by signing a claim form declaration under oath that the claimant meets the Settlement Class definition. SA §§ IV.A.1., IV.B.1, IV.C.1.

Proof of a Wire Harness Issue: Whirlpool has searched its records to identify Settlement Class Members who previously contacted it to report a Wire Harness Issue and has identified approximately 16,000 Prequalified Settlement Class Members who will not be required to submit additional evidence that they contacted Whirlpool or of the existence or date of their Wire Harness Failure. SA § I.HH; Mathews Decl. ¶ 36. Non-Prequalified Settlement Class Members must submit evidence that they experienced a wire harness failure and, to qualify for certain benefits, when it occurred. SA §§ IV.A.2., IV.B.2., IV.C.2. Such evidence can include, but is not limited to, service tickets, service estimates, service receipts, communications with Whirlpool or their retailer about a Wire Harness Issue, and/or original photographs with metadata and a declaration of authenticity.[8] SA §§ IV.A.2.a–b., IV.B.2.a–b., IV.C.2.a.

Proof of Amount Paid for Reimbursements: Class Members who seek cash reimbursements of repair costs or a portion of their original purchase price must also submit proof of their out-of-pocket cost. SA §§ IV.A.3., IV.B.3., IV.C.3.

[8] If a Settlement Class Member submits adequate documentation of that a Past Wire Harness Issue occurred but insufficient documentation of the date it occurred, their benefits shall be determined as if the Wire Harness Issue occurred as of: (a) the seventh In-Service Year if they have an existing failure, SA § V.B.2.b.; or (b) the Notice Date if they are seeking reimbursement for past repairs or replacements, SA § V.A.2.b.

Optional Proof that Class Member Contacted Whirlpool or their retailer: To receive the marginally higher reimbursement amounts, non-Prequalified Settlement Class Members may also submit documentary proof that they contacted Whirlpool or their retailer prior to incurring repair/replacement costs, which includes dated reviews posted on retailers' websites. SA § IV.A.4.

D. The Settlement Administrator

In addition to all other benefits of the Settlement, Whirlpool will pay the costs of notice and administration of the Settlement. SA § V.A. The Parties request that the Court approve Angeion Group to serve as the Settlement Administrator to provide notice and administer the Settlement. SA § V. Angeion has extensive experience in class actions like this one. Mathews Decl. Ex. G.

E. Notice to the Class

Notice will be provided to the Settlement Class through a variety of means. First, the Settlement Administrator will distribute the Summary Notice (SA Exs. 4, 6) via email to all Class Members for whom Whirlpool has valid email addresses, with at least one follow-up reminder email within 30 days thereafter. SA § V.G. Second, if an email address is unavailable, or the emailed notice is returned as undeliverable, but a mailing address is available, the Settlement Administrator will mail the Summary Notice to those Class Members. SA § V.H. The Settlement Administrator will also perform a national change-of-address search and forward notices returned by the U.S. Postal Service with a forwarding address. *Id.* Third, the Settlement Administrator will also provide notice through a broad digital media campaign. SA § V.I.1. Fourth, the Settlement Administrator will publish notice via a PR Press Release. SA § V.I.2. & Ex. 5. Fifth, the Settlement Administrator will publish and maintain the Settlement Website.[9] SA § V.K. Sixth, Lead Counsel

[9] The Settlement Website will include: (1) instructions on how to submit a Claim online—through the website itself—or by mail; (2) copies of the Claim Forms, the Settlement, and when granted or filed, the Preliminary Approval Order, the Motion for Final Approval, Class Counsel's Fee

will also provide notice of the Settlement on its website and social media and send direct email notice to the nearly 1,000 Class Members who have contacted Lead Counsel to date. SA § V.J. Seventh, Whirlpool will issue a Technical Service Pointer ("TSP") to notify service personnel of the future benefits available to Class Members. SA § I.UU.

F. Settlement Class Release

The class-wide release under the Settlement is fair and appropriately tailored to claims against the Released Parties that were or could have been asserted related to the Wire Harness Issue in the Class Refrigerators, and the release expressly excludes any claims for personal injury and damage to property other than the Class Refrigerators. SA § IX.A–B.

G. Settlement Class Members' Ability to Opt-Out or Object

The Settlement also provides for Settlement Class Members to: (a) opt-out or exclude themselves from the Class and Settlement, or (b) object to the Settlement or to Class Counsel's Fee Petition. SA § VII. These procedures and deadlines are set forth in detail and summary form in the Summary Notice and FAQ (SA Exs. 3–4, 6) and will also appear on the Settlement Website. Plaintiffs' motion in support of final approval of the Settlement and Fee Petition will be filed with the Court and published on the Settlement Website in advance of the opt-out and objection deadline. SA §§ VI.B.2.g–h.

H. Named Plaintiff Service Awards and Attorneys' Fees and Litigation Expenses

In addition to all the other Settlement benefits, Whirlpool also agrees to pay, subject to Court approval: Plaintiff incentive awards of $5,000 to each named Plaintiff; attorneys' fees of

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Petition, and other pertinent orders or documents agreed upon by counsel for the parties; (3) instructions on how to contact the Settlement Administrator, Defense Counsel, and/or Lead Class Counsel; (4) deadlines for any claims, objections, and requests for exclusions; (5) date, time, and location of the Final Fairness Hearing; and (6) any other relevant information agreed upon by counsel for the parties. SA § V.K. & Ex. 3 (FAQ).

$2,750,000; and reasonable costs and expenses up to $60,000. SA § VIII.A–C. As noted, these amounts were not discussed or negotiated until after all material terms of the relief to Class Members were agreed and set forth in a term sheet, and the parties agreed on the fee and expense amounts in double-blind mediator proposal. Mathews Decl. ¶¶ 31–32.

Lead Class Counsel's forthcoming Fee Petition will set forth all facts supporting their application under the relevant legal standards. *See* SA § I.Q. Suffice to say here, the requested award represents less than a 1.3x multiplier of Class Counsel's current lodestar and a small fraction of the total economic value of the Settlement. Finally, the Settlement is not conditioned upon an award of attorneys' fees, costs, expenses, or Service Awards. SA § VIII.F.

ARGUMENT

Under Rule 23(e), approval of a class settlement occurs in two steps: preliminary approval and final approval. *See In re NFL Players Concussion Injury Litig.*, 775 F.3d 570, 581 (3d Cir. 2014). After the court grants preliminary approval, notice of the proposed settlement and its terms are provided to class members who are then given an opportunity to object to the settlement or opt-out of the class and settlement. Final approval follows.

The Third Circuit applies a "strong presumption in favor of voluntary settlement agreements that promote the amicable resolution of disputes, conserve judicial resources, and benefit the parties by avoiding the costs and risks of a lengthy and complex trial… [which] is especially strong in class actions." *Rescigno v. Statoil USA Onshore Props., Inc.*, 2024 U.S. App. LEXIS 23952, at *12-13 (3d Cir. Sept. 20, 2024) (cleaned up).

Here, at the preliminary approval stage, the Court must determine whether "giving notice [to the class] is justified by the parties' showing that the court will *likely* be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal."

Fed. R. Civ. P. 23(e)(1)(B) (emphasis added). Plaintiffs respectfully submit that all the requirements for preliminary approval are met.

I. The Court Should Preliminarily Find that the Settlement is Fair, Reasonable, and Adequate Pursuant to Rule 23(e)(2).

For purposes of determining whether a proposed class action settlement is fair, reasonable, and adequate, Rule 23(e)(2) directs the Court to consider whether "the class representatives and class counsel have adequately represented the class"; "the proposal was negotiated at arm's length"; "the relief provided for the class is adequate"; and "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2). These Rule 23(e)(2) factors "focus … on the core concerns of procedure and substance that should guide the decision whether to approve the proposal," but do not displace other factors courts have traditionally applied to assess proposed class settlements. Fed. R. Civ. P. 23(e)(2) (advisory committee's note to 2018 amendment) (hereinafter "2018 Ad. Comm. Notes"). The Third Circuit's traditional "*Girsh*" factors include:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) stage of the proceedings and the amount of discovery completed; (4) risks of establishing liability; (5) risks of establishing damages; (6) risks of maintaining the class action through the trial; (7) ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975). Application of the Rule 23(e)(2) and the *Girsh* factors, which overlap to an extent, demonstrate that the settlement here is fair, reasonable, and adequate, and in the best interests of the class.

A. Plaintiffs and Class Counsel Have Adequately Represented the Class.

Determining whether "the class representatives and class counsel have adequately represented the class," Rule 23(e)(2)(A), focuses on "the actual performance of counsel acting on behalf of the class," including whether plaintiff and class counsel "had an adequate information

base" before entering the settlement.[10] 2018 Adv. Comm. Notes; *In re NFL Players Concussion Injury Litig.*, 821 F.3d 410, 439 (3d Cir. 2016) ("What matters is not the amount or type of discovery class counsel pursued, but whether they had developed enough information about the case to appreciate sufficiently the value of the claims.").

Here, Lead Class Counsel have a deep understanding of the strengths and weaknesses of the Class's claims developed by, e.g.: their extensive investigation of the alleged defect and claims prior to and after filing the initial complaint, which included physical inspections; their communications with nearly 1,000 Class Members; their analysis of the legal claims informed by their own legal research and experience; motion practice in this case, and the Court's decisions on those motions; substantial discovery into wiring and door design and Whirlpool data; a survey of hundreds of putative class members conducted by Lead Class Counsel for purposes of informing negotiations; consultation with experts; and confirmatory discovery. Mathews Decl. ¶¶ 8, 13–20, 22–25, 29, 35; *see, e.g.*, *O'Hern v. Vida Longevity Fund, LP*, 2023 U.S. Dist. LEXIS 76789, at *21 (D. Del. May 2, 2023) (holding adequately informed where class counsel conducted "informal, pre-suit discovery," which included communicating with class members and reviewing publicly available information, plus confirmatory discovery)*; Rose v. Travelers Home & Marine Ins. Co.*, 2020 U.S. Dist. LEXIS 126761, at *3, 16 (E.D. Pa. July 20, 2020) (adequately informed where no formal discovery before settlement negotiations but during negotiations "exchanged relevant data" and "substantial information").

Lead Class Counsel—who not only have extensive class-action experience but have successfully litigated and resolved several class cases against Whirlpool—had sufficient

[10] This factor overlaps with the third *Girsh* factor: "the stage of proceedings at which the settlement was achieved."

information to evaluate the merits of the case and the risks of continued litigation and they negotiated outstanding relief for the Class. Mathews Decl. ¶¶ 8, 13–20, 22–25, 29, 35 & Ex. B (Firm Resume). As discussed below, the named Plaintiffs also actively participated in the litigation and settlement of this case. *See infra* § II.A.4.

B. The Proposed Settlement is the Product of Arm's-Length Negotiations Among Experienced Counsel.

Rule 23(e)(2)(B) focuses on whether the proposal was negotiated at arm's length and "in a manner that would protect and further the class interests." 2018 Adv. Comm. Notes. "The assistance of a professional mediator reinforces that the Settlement Agreement is non-collusive." *Bennett v. Schnader Harrison Segal & Lewis LLP*, 2026 U.S. Dist. LEXIS 15483, at *8 (E.D. Pa. Jan. 22, 2026); *see also In re Wawa, Inc. Data Sec. Litig.*, 141 F.4th 456, 467 (3d Cir. 2025).

Here, the Settlement was reached after four months of vigorous, arm's-length negotiations where both sides were represented by reputable and experienced counsel, and two all-day sessions with a renowned independent mediator with substantial class action experience. Mathews Decl. ¶¶ 26–33; *see, e.g.*, *O'Hern*, 2023 U.S. Dist. LEXIS 76789, at *16 (holding that mediation with neutral, experienced mediator followed by three months of negotiation weighed in favor of approval); *In re Healthcare Servs. Grp., Inc. Derivative Litig.*, 2022 U.S. Dist. LEXIS 134005, at *22 (E.D. Pa. July 27, 2022) (collecting cases, noting that the "assistance of a well-regarded Mediator" weighs in favor of approval). The excellent relief to Class Members also evidences that the Settlement is not collusive.

C. The Relief Provided for the Class is Adequate.

Rule 23(e)(C) instructs the Court to consider "whether the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-

member claims; and (iii) the terms of any proposed award of attorney's fees, including timing of payment."[11] This subsection subsumes six of the *Girsh* factors: (1) the complexity, expense and likely duration of the litigation; (4) risks of establishing liability; (5) risks of establishing damages; (6) risks of maintaining the class action through the trial; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *O'Hern*, 2023 U.S. Dist. LEXIS 76789, at *17; *Payment Card Interchange Fee*, 330 F.R.D. at 36.[12]

The relief here is outstanding and readily satisfies Rule 23(e)(2)(C) and the *Girsh* factors. Lead Class Counsel negotiated significant payments and/or repairs for Class Members who have experienced Wire Harness Issues. Many Class Members will be entitled to claim free doors, and many will be entitled to receive free labor to install it as well. SA § IV.B.4. Other Class Members will be entitled to claim cash payments equal to a significant percentage of their original purchase price, which will be hundreds of dollars. For example, a Class Member who purchased a Class Refrigerator for $2,000, experienced a Wire Harness Issue in year 4, and replaced the refrigerator can claim $1,000 reimbursement. *See* SA § IV.A.5.c.i. Other Class Members will be entitled to claim a significant portion of previously incurred repair costs. SA § IV.A.5.a–b. The Settlement also includes future coverage for many Class Members. SA § IV.C.

1. The Settlement Accounts for the Costs, Risks, and Delay of Trial and Appeals.

Rule 23(e)(C)(i) instructs the Court to take into account the costs, risks, and delay of trial

[11] Here, there are no additional agreements to be identified under Rule 23(e)(3).

[12] The second *Girsh* factor, the reaction to the class, is premature at the preliminary approval stage but Lead Class Counsel will address it in their papers in support of Final Approval. *See Gibbs v. Carney*, 2025 U.S. Dist. LEXIS, at *4 (D. Del. Aug. 22, 2025). The seventh *Girsh* factor is neutral here as there is no evidence that Whirlpool would not be able to pay a greater judgment. *O'Hern*, 2023 U.S. Dist. LEXIS at *22–23.

and appeal. Similarly, the eighth and ninth *Girsh* factors direct the court to consider whether the Settlement is in the range of reasonableness in light of the best possible recovery and all the attendant risks of continued litigation. *In re NFL Players*, 821 F.3d at 440 (cleaned up) ("In evaluating the eighth and ninth *Girsh* factors, we ask whether the settlement represents a good value for a weak case or a poor value for a strong case.").

Plaintiffs believe their claims are strong, and this is reflected in the relief they negotiated. Nevertheless, absent settlement, Plaintiffs would face significant litigation risks, as well as time-consuming and expensive litigation. *Gibbs v. Carney*, 2025 U.S. Dist. LEXIS 163464, at *4 (D. Del. Aug. 22, 2025) ("Further litigation would be protracted and expensive [because it] could require further discovery, and might not be resolvable on summary judgment."). Achieving class certification against Whirlpool's opposition would present challenges and require significant expert analysis. Further, while Plaintiffs believe that discovery would justify amendment to revitalize their consumer fraud claims, the Court's decision on the motion to dismiss left them with only implied warranty claims thereby limiting potential avenues to success at trial. *See, e.g.*, *O'Hern*, 2023 U.S. Dist. LEXIS 76789, at *17 (finding "the hurdles [Plaintiffs] would face" in continued litigation weighed in favor of approval). And Whirlpool would have contested liability at every step. *Powell v. Subaru of Am., Inc.*, 2024 U.S. Dist. LEXIS 180805, at *24 (D.N.J. Oct. 3, 2024) (finding that defendant's denial of liability and class certification with regard to class claims weighed in favor of preliminary approval).

Even if Plaintiffs succeeded at every stage, it would take several years. By comparison, the proposed settlement provides valuable, certain, and prompt relief to the Class Members. *See, e.g.*, *Doe v. Int'l Fin. Corp.*, 2024 U.S. Dist. LEXIS 181584, at *18-19 (D. Del. Oct. 3, 2024) (citation omitted) (policy favoring settlement of class actions "that otherwise could linger for years").

The Settlement here speaks for itself. The excellent results easily satisfy the eighth and ninth *Girsh* factors. *Compare, e.g.*, *Cleveland v. Whirlpool Corp.*, 2021 U.S. Dist. LEXIS 240411, at *7 (D. Minn. Dec. 16, 2021) (approving dishwasher settlement that included sliding scale of reimbursements for out-of-pocket repair costs between $67.50 and $225 or a cash rebate ranging between $100 and $200 for the purchase of a replacement dishwasher depending on the age of the original dishwasher); *Corzine v. Whirlpool Corp.*, 2019 U.S. Dist. LEXIS 223341, at *5–7 (N.D. Cal. Dec. 31, 2019) (approving as reasonable a refrigerator settlement that included extended service program and reimbursement of up to $150); *McLennan v. LG Elecs. USA, Inc.*, 2012 U.S. Dist. LEXIS 27703, at *19 (D.N.J. Mar. 2, 2012) (finding a settlement that provided for out-of-pocket reimbursements and warranty extensions on refrigerators to be reasonable); *Saini v. BMW of N. Am., LLC*, 2015 U.S. Dist. LEXIS 66242, at *3, 27-28 (D.N.J. May 21, 2015) (out-of-pocket reimbursements and warranty extensions for defective vehicles found reasonable).

2. The Settlement Provides for an Effective Method of Processing Claims and Distributing Relief to the Settlement Class Members.

Rule 23(e)(C)(i) instructs the Court to consider the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims. Under this factor, the Court "scrutinize[s] the method of claims processing to ensure that it facilitates filing legitimate claims" and "should be alert to whether the claims process is unduly demanding." 2018 Adv. Comm. Notes. The claims process here is designed to ensure that Class Members with valid claims can receive the benefits of the Settlement and the proof requirements are intended only to prevent fraudulent or invalid claims.

First, the broad notice program and ability of Class Members to submit claims online or via mail is intended to encourage Clas Members with valid claim to submit them. For future repair coverage, Class Members need only contact Whirlpool at its dedicated 1-800 number or email

address. *See supra* at pp. 10–11.

Second, the proof requirements are only such as are necessary to ensure claims are valid. Notably, Whirlpool will pre-qualify many Settlement Class Members, minimizing the proof they must submit. SA § I.HH. In addition, several of the proof requirements are optional. For example, Class Members may but are not required to: (1) submit evidence that they previously contacted Whirlpool or their retailer to benefit from marginally higher reimbursements; and (2) submit evidence of the purchase date to benefit from a later In-Service Date than the date of manufacture. *See, e.g.*, SA §§ VI.A.1.a., VI.A.2. Lead Class Counsel also negotiated that original photographs with metadata will qualify as evidence of a Past Wire Harness because they learned from conducting a survey of hundreds of Class Members that many of Class Members self-diagnosed broken wires and the only documentary evidence they possess is photographs. *See* SA § IV.A.2.b.; Mathews Decl. ¶ 29. In short, Lead Class Counsel negotiated conscientiously to ensure that the proof requirements are no more than necessary.

Given that many payments will be several hundred dollars, the claim requisites are not unduly burdensome. *See Corzine*, 2019 U.S. Dist. LEXIS 223341, at *5 (approving settlement requiring documentation of "(1) a valid Class Refrigerator model and serial number combination, (2) proof of purchase, (3) proof that claimant experienced a Freezing Event, and (4) poof that claimant paid for repair of a Class Refrigerator necessitated by a Freezing Event"); *Yaeger v. Subaru of Am., Inc.*, 2016 U.S. Dist. LEXIS 117193, at *41 (D.N.J. Aug. 31, 2016) (approving settlement requiring proof of purchase and rejecting objections that documentary proof was onerous); *Dickerson v. York Int'l Corp.*, 2017 U.S. Dist. LEXIS 133587, at *26 (M.D. Pa. Aug. 22, 2017) (rejecting objector's argument that requiring documentation of out-of-pocket expenses to obtain reimbursement was unduly burdensome).

3. The Terms of the Proposed Award of Attorneys' Fees are Reasonable.

Rule 23(e)(C)(i) instructs the Court to consider whether the relief is adequate taking into account the proposed fee award, and timing of payment. At this preliminary stage the Court does not finally approve the fees or expenses. Rather, it needs only to determine that providing notice to the Settlement Class Members is justified. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii).

As Class Counsel will demonstrate in their Fee Petition, the negotiated fee amount—agreed to after a double-blind mediator proposal—is a small fraction of the total economic value of the Settlement, which provides substantial benefits to nearly 1 million Class Members, and it represents less than a 1.3x multiple of Class Counsel's current lodestar, which is well within the range of reasonableness in the Third Circuit, and Class Counsel will continue expending time and resources into, e.g., the claims process and seeking final approval. *See, e.g.*, *Tavares v. S-L Distribution Co.*, 2016 U.S. Dist. LEXIS 57689, at *54 (M.D. Pa. May 2, 2016) (noting that multiples up to and including 3 are approved and approving a 2.29 multiple). Lead Class Counsel will file the Fee Petition prior to the Objection deadline and post it on the Settlement Website, meaning Class Members will have an opportunity to object if they wish to do so. SA § VI.B.2.g. Class Counsel will not receive any fees or expenses until after the Court grants the Fee Petition, and approval of the Settlement is not conditioned upon an award of attorneys' fees, expenses, or Service Awards. SA § VIII.F.

D. The Settlement Treats All Class Members Equitably.

Rule 23(e)(2)(D) requires the Court to evaluate whether the settlement treats class members equitably relative to one another. "A district court's 'principal obligation' in approving a plan of allocation 'is simply to ensure that the fund distribution is fair and reasonable as to all participants in the fund.'" *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 326 (3d Cir. 2011) (quoting *Walsh v. Great*

Atl. & Pac. Tea Co., Inc., 726 F.2d 956, 964 (3d Cir. 1983)). Here, all Class Members are subject to the same eligibility criteria and the same claim process. The categories of benefits make practical distinctions between Class Members: (1) who suffered a Wire Harness Failure and incurred out-of-pocket expenses repair or replace the Class refrigerator; (2) suffered a Wire Harness Failure but have not yet repaired or replaced the Class refrigerator; and (3) who may have a Wire Harness Failure in the future. SA § IV. Further, while the Settlement provides marginally greater reimbursements to Class Members who provided Whirlpool or their retailer with Pre-Repair/Replacement Notice, this distinction was insisted upon by Whirlpool based on the relative strength of each Class Member's claim because notice to the seller or Defendant is typically required for warranty-based claims. *See Canfield v. FCA US LLC*, 2019 U.S. Dist. LEXIS 3218, at *44 (D. Del. Jan. 8, 2019). A differential related to the strength of claims does not treat class members *in*equitably relative to each other. *See Moses v. N.Y. Times Co.*, 79 F.4th 235, 245 (2d Cir. 2023) ("Rule 23(e)(2)(D) requires that class members be treated equitably, not identically."); 2018 Adv. Comm. Notes (noting that "apportionment of relief among class members [should] take[] appropriate account of differences among their claims").[13]

II. The Court Should Conditionally Certify the Settlement Class.

At this stage of the case, the Court need only determine preliminarily that class treatment

[13] Nor do the proposed Service Awards of $5,000 constitute unduly preferential treatment because the proposed Service Awards will not reduce the relief to any Class Member and are in line with awards approved in comparable cases. *See, e.g., Mikolaitis v. Ward Transp. & Logistics Corp.*, 2025 U.S. Dist. LEXIS 257325, at *13 (W.D. Pa. Dec. 12, 2025); *Paperno v. Whirlpool Corp.*, No. 3:23-cv-05114-RFL (N.D. Cal. May 13, 2025), ECF No. 96 (order granting final approval, Mathews Decl. Ex. H ¶ 20, granting $5,000 service awards to plaintiffs in refrigerator-defect case); *Corzine*, 2019 U.S. Dist. LEXIS 223341, at *35 (approving $5,000 award in refrigerator-defect case); *Henderson v. Volvo Cars of N. Am., LLC*, 2013 U.S. Dist. LEXIS 46291, at *57 (D.N.J. Mar. 22, 2013) (collecting cases and approving $5,000 and $6,000 award in car case); *Shop-Vac Mktg. & Sales Practices Litig.*, 2016 U.S. Dist. LEXIS 170841, at *15 (M.D. Pa. Dec. 9, 2016) (approving $5,000 award in a case related to Shop-Vacs).

is likely appropriate under Rules 23(a) and (b)(3) to conditionally certify a Settlement Class for the purpose of giving notice.

A. The Settlement Class Satisfies the Requirements of Rule 23(a).

1. The Class is Sufficiently Numerous and Ascertainable.

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Classes of more than 40 members are sufficiently numerous. *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 595 (3d Cir. 2012). Here, the proposed Class includes approximately 850,000 Class Members. Mathews Decl. ¶ 36. Thus, numerosity is satisfied. Further, the Class is defined by "objective" and "administratively feasible." SA §§ I.I., I.QQ.; *see Byrd v. Aaron's Inc.*, 784 F.3d 154, 164 (3d Cir. 2015); *Dzielak v. Whirlpool Corp.*, 2017 U.S. Dist. LEXIS 209106, at *55 (D.N.J. Dec. 20, 2017) (holding litigation class ascertainable by reference to washer model numbers, addresses, and ordinary business records).

2. There are Common Questions of Law and Fact.

Rule 23(a)(2) requires that there are "questions of law or fact common to the class." "Meeting this requirement is easy enough," *In re NFL Players*, 821 F.3d at 427, as commonality is satisfied if "the named plaintiffs share at least one question of fact or law with the grievances of the prospective class." *Id.* at 426-27 (citation omitted).

The common questions in this case include whether the Class Refrigerators were merchantable at the time of sale and whether Whirlpool breached its implied warranties. These questions are common to the class, capable of class-wide resolution, and "will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 427 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)) Thus, the commonality requirement is met. *See Rose*, 2020 U.S. Dist. LEXIS 126761, at *12 (common issues of breach of contract claims satisfied

commonality); *Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 1192479, at *4 (D.N.J. Mar. 22, 2013) (commonality satisfied where "[s]everal common questions of law and fact exist" in similar product defect lawsuit).

3. Plaintiffs' Claims are Typical of the Class.

Rule 23(a)(3) requires that "claims or defenses of the representative parties [be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). This requirement is satisfied where there is a strong similarity of legal theories or where the claims of the class representatives and the class members arise from the same alleged course of conduct by the defendant. *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 532; *see also Doe*, 2024 U.S. Dist. LEXIS 181584, at *8 (noting that typicality is satisfied even if class claims are not identical). In this case, Plaintiffs and Settlement Class Members have the same claims stemming from the same alleged conduct related to the same alleged defect. Typicality, therefore, is established.

4. Plaintiffs and Class Counsel Will Fairly and Adequately Protect the Interests of the Class.

Rule 23(a)(4) tests whether the "representative parties will fairly and adequately protect the interests of the class." The adequacy test is two-pronged. First, the inquiry tests the qualifications of counsel to represent the class. In making this determination, the court must consider proposed Class Counsel's: (1) work in identifying or investigating potential claims; (2) experience in handling class actions or other complex litigation and the types of claims asserted in the case; (3) knowledge of the applicable law; and (4) resources committed to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv). Second, it unravels any conflicts between the Class Representatives and the class they seek to represent. *E.g.*, *In re Warfarin*, 391 F.3d at 532.

The Court previously appointed CSK&D as interim Lead Class Counsel pursuant to Rule 23(g). D.I. 13. The Court should now preliminarily approve CSK&D as Lead Class Counsel for

purposes of settlement and also appoint Class Counsel.

Lead Class Counsel and Class Counsel have committed significant time and resources into prosecuting this case, which included filing several complaints, conducting motion practice, discovery, mediation, confirmatory discovery, and drafting the Settlement and related documents, such as notices. *See* Mathews Decl. ¶¶ 13–35. They also have decades of experience in prosecuting complex class cases and a deep knowledge of applicable law. Mathews Decl. ¶¶ 5-12 & Exs. B–F.

Plaintiffs have no conflicts of interest and have diligently pursued the Action on behalf of the other Class Members. *Id.* ¶ 38. Each Plaintiff has agreed to serve in a representative capacity, communicated diligently with their attorneys, gathered and produced relevant documents in discovery, helped prepare the allegations in the different iterations of the complaint, and kept abreast of settlement negotiations and reviewed and approved the terms of the Settlement. *Id.* ¶¶ 24, 38. The adequacy requirement is met.

B. The Settlement Class Meets the Requirements of Rule 23(b)(3).

In addition to the Rule 23(a) requirements, a class must meet the predominance and superiority requirements of Rule 23(b)(3). To certify a class under Rule 23(b)(3), the Court must find that: "[T]he questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). When "[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there will be no trial." *Amchem Prods.*, 521 U.S. at 620. Indeed, the Third Circuit has noted that it is "more inclined to find the predominance test met in the settlement context." *In re NFL Players*, 821 F.3d at 434. Relatedly, in certifying a settlement class, variations in state law

do not defeat predominance. *See Alin v. Honda Motor Co.*, 2012 U.S. Dist. LEXIS 188223, at *12 (D.N.J. Apr. 12, 2012) (quoting *Sullivan*, 667 F.3d at 297) ("[C]oncerns regarding variations in state law largely dissipate when a court is considering the certification of a settlement class.").

Here, common issues regarding Whirlpool's liability sufficiently predominate. For example, whether the Refrigerators were not of merchantable quality (i.e., defective), whether Whirlpool breached its implied warranties, and whether Class Members were harmed are central to each Class Member's claims. *See, e.g.*, *Sullivan*, 667 F.3d 273, 299–300 ("[T]he focus is on whether the defendant's conduct was common as to all of the class members."); *Yaeger*, 2016 U.S. Dist. LEXIS 117193, at *21–22 (whether a defect exists, whether it is covered by warranty, and what compensation class members are due are common questions that predominate); *Alin*, 2012 U.S. Dist. LEXIS 188223, at *12 (similar).

Additionally, the proposed Settlement Class also satisfies the superiority requirement, which inquiry "asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication." *In re NFL Players*, 821 F.3d at 434; *see also* Fed. R. Civ. P. 23(b)(3)(A)–(D). Here, because an individual Class Member's claims are likely limited to a few hundred or thousand dollars, Class Members would be unlikely to pursue individual actions against Whirlpool or have any meaningful interest in controlling separate litigations, and doing so would be inefficient and waste judicial resources. *See O'Hern*, 2023 U.S. Dist. LEXIS 76789, at *12; *Lunemann v. Kooma III LLC*, 2024 U.S. Dist. LEXIS 141684, at *14 (E.D. Pa. Aug. 8, 2024) (superior where individual claims were under $5,000).

III. The Proposed Notice Plan Should be Approved.

After determining that notice is warranted because the Court is likely to approve the Settlement and certify the Settlement Class, Rule 23(e)(1)(B) instructs the Court to issue notice to

the Class, which under Rule 23(c)(2)(B), should be "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort ... may be by ... mail, electronic means, or other appropriate means."[14]

As to the content of the notice, it must contain all information listed in Rule 23(c)(2)(B), and it "should contain sufficient information to enable class members to make informed decisions on whether they should take steps to protect their rights, including objecting to the settlement or, when relevant, opting out of the class." *In re NFL Players*, 821 F.3d at 435 (citation omitted).

The proposed Notice Plan here fully complies with Rule 23 and due process, and it is the best notice practicable under the circumstances. As noted above, the Notice Plan includes: (1) Summary Notice (SA Exs. 4, 6) via email to all Class Members for whom Whirlpool has valid email addresses, with at least one follow-up reminder email within 30 days thereafter; (2) if an email address is unavailable, or the emailed notice is returned as undeliverable, but a mailing address is available, the Settlement Administrator will mail the Summary Notice to those Class Members; (3) the Settlement Administrator will also provide notice through a broad digital media campaign sufficient to achieve 70–80% of the target audience with an average frequency of not less than 2.5 times, as calculated by the Settlement Administrator based on objective industry-standard marketing data;[15] (4) the Settlement Administrator will publish notice via a PR Press Release; (5) the Settlement Administrator will publish the Settlement Website; (6) Lead Counsel will also provide notice of the Settlement on its website and social media and send direct email

[14] Neither Rule 23 nor due process require that "every class member received actual notice of the action and proposed settlement." *Brodsky v. BMW of Manhattan*, 2019 U.S. Dist. LEXIS 139162, at *20 (D.N.J. Aug. 15, 2019) (citation omitted).

[15] Federal Judicial Center, *Managing Class Action Litigation: A Pocket Guide or Judges*, at 27 (3d Ed. 2010) (noting a reach of 70% is a "high percentage" and is within the "norm"), https://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf.

notice to the nearly 1,000 Class Members who have contacted Lead Counsel to date. SA §§ V.G–K Additionally, Whirlpool will issue a TSP to notify service personnel of the future benefits available to Class Members. SA § I.UU.

All forms of notice (other than the TSP) will summarize the Settlement and direct Class Members to the Settlement Website. *See* SA Exs. 3–6; *see also, e.g.*, *In re All-Clad Metalcrafters, LLC*, 2023 U.S. Dist. LEXIS 27868, at *14 (W.D. Pa. Feb. 17, 2023) (approving similar notice plan that included direct emails, mailing for those without known/valid emails, and a digital notice campaign); *Cleveland*, 2021 U.S. Dist. LEXIS 240411, at *10–11 (approving similar notice plan in Whirlpool case).

Further, the forms of Notice comply with Rule 23(c)(2). In plain language, the Summary Notice and the FAQ, which will be available on the Settlement Website, collectively inform the Class Members of: (i) the nature of the action; (ii) the class definition; (iii) the class claims and issues; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion or submitting an objection; and (vii) the binding effect of a class judgment. *See* Fed. R. Civ. P. 23(c)(2); SA Exs. 3–6.

Finally, the notices comply with Rule 23(h)(1) by informing Class Members that Class Counsel intends to seek attorneys' fees of up to $2,750,000, reimbursement of costs and expenses not to exceed $60,000, to be paid separately from Class benefits, and that the Fee Petition will be available on the Settlement Website. *See* SA § VI.B.2.g., VIII.A–B., & Ex. 3 (FAQ).

IV. Settlement Deadlines and Schedule for Final Approval.

In connection with preliminary approval, the Court must also set a Final Fairness Hearing and other relevant Settlement deadlines. Plaintiffs propose the following schedule, which the

parties believe will provide ample opportunity for Settlement Class Members to decide whether to request exclusion or object (SA § V.B.2):

Event	Deadline Pursuant to the Settlement
Settlement Website Established	_____ [21 days after issuance of PAO]
Emailed/Mailed and Publication Notice to Commence	_____ [21 days after issuance of PAO]
Notice Date (substantial completion of notice)	_____ [63 days after issuance of PAO]
Publication of TSP	_____ [63 days after issuance of PAO]
Settlement Administrator to Provide Lead Class Counsel with Declaration of Substantial Completion of Notice Plan	_____ [70 days after issuance of PAO]
Class Counsel to File Fee Petition	_____ [70 days after issuance of PAO]
Final Approval Motion Filed	_____ [70 days after issuance of PAO]
Objection and Opt-Out Deadline	_____ [91 days after issuance of PAO]
Settlement Administrator to Provide Lead Class Counsel with a List of Opt-Outs	_____ [98 days after issuance of PAO]
Deadline for any Person Seeking to Appear at the Final Approval Hearing Must File Notice of Appearance	_____ [98 days after issuance of PAO]
Reply Brief in Support of Final Approval	_____ [105 days after issuance of PAO]
Reply Brief in Support of Fee Petition	_____ [105 days after issuance of PAO]
Final Fairness Hearing	_____ [a date on or after 126 days after issuance of PAO]
Claims Deadline	_____ [243 days after issuance of PAO]

CONCLUSION

Plaintiffs respectfully request that the Court grant preliminary approval of the Class Action Settlement in substantially the similar form as the proposed order submitted herewith.

Dated: February 27, 2026

Respectfully submitted,
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