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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

STEVE CHAMBERS, *et al.*, on behalf
of themselves and all others similarly
situated,

Plaintiffs,

v.

WHIRLPOOL CORPORATION, *et al.*,

Defendants.

Case No. 8:11-cv-01733-FMO-AN

**DECLARATION OF CHARLES S.
FAX IN SUPPORT OF JOINT
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

I, Charles S. Fax, declare as follows:

1. I am a partner in the Maryland law firm of Rifkin, Weiner, Livingston, Levitan & Silver, and I am co-lead counsel for the putative plaintiff class in this case.

2. I submit this Declaration in Support of the Parties’ Joint Motion for Preliminary Approval of Class Action Settlement. A copy of the Settlement Agreement negotiated among the Parties, and its accompanying exhibits, is attached hereto as **Exhibit A**.

3. Attached hereto, as **Exhibits B-S**, are the Declarations of the 18 Named Plaintiffs in this case, relating their experiences with their Whirlpool-manufactured dishwashers (“Dishwasher” or “Dishwashers”); reviewing their extensive participation in the prosecution of this action and in discovery; and recommending the settlement that the parties have achieved. The Named Plaintiffs’ Declarations are marked as follows:

Lead Plaintiff Steve Chambers – Exh. B

Lynn Van der Veer – Exh. C

- 1 Kevin O'Donnell – Exh. D
- 2 Joseph Cicchelli – Exh. E
- 3 Kurt Himler – Exh. F
- 4 Susan Milicia – Exh. G
- 5 Gary LeBlanc – Exh. H
- 6 George Bliss – Exh. I
- 7 Shirl Mederlet – Exh. J
- 8 LynDee Walker – Exh. K
- 9 Linda Sample – Exh. L
- 10 Susan Bathon – Exh. M
- 11 Maureen Meneghetti – Exh. N
- 12 W. David Beal – Exh. O
- 13 Zila Koswener – Exh. P
- 14 Pamela Walchli – Exh. Q
- 15 Raymond Paolini, Jr. – Exh. R
- 16 Jackie Steffes – Exh. S

17 4. This suit has its origins in the early spring of 2009, when the
18 Dishwasher owned by Lead Plaintiff Steve Chambers (“Chambers”), and his wife,
19 Plaintiff Lynn Van der Veer, combusted, as recounted in their Declarations,
20 Chambers Decl., Exh. B, at 6 and Van der Veer Decl., Exh. C, at 7. Chambers
21 sought to alert Whirlpool to the problem, but did not receive a satisfactory response.
22 He then developed a website, www.KitchenAidFire.com, to collect consumer data
23 to ascertain the extent of the problem. He heard from numerous consumers – and
24 again tried to alert Whirlpool to the magnitude of the problem, but again felt that he
25 was not receiving a satisfactory response. Chambers Decl., Exh. B at 9-12.

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1 5. Over the course of the ensuing year and a half, Chambers' website
2 received approximately 500 posted reports of fire incidents caused by Whirlpool-
3 manufactured dishwashers. At that point, Chambers decided to retain counsel, and
4 he approached my law firm. Chambers Decl., Exh. B at 13-15. I met with
5 Chambers and Van der Veer and commenced an investigation of the matter. My
6 firm and I reviewed the material that Chambers had gathered, including physical
7 remains and photographs of subject circuit boards that had combusted. I located
8 and retained as a consultant a highly regarded engineering expert on dishwasher
9 design and operation – Jerry Ferguson, in Pink Hill, North Carolina – who had
10 recently retired from a long career designing dishwashers for major manufacturers
11 and managing dishwasher design and fabrication plants. Mr. Ferguson quickly
12 isolated the cause of the Dishwasher fires – a design defect in the connections to the
13 circuit board that promoted combustion and could propagate outside the
14 dishwasher. Throughout the course of the litigation over the ensuing years, Mr.
15 Ferguson examined a number of Dishwashers and scores of circuit board remains
16 and photographic evidence, and continued to develop and refine his engineering
17 analysis, which never varied as to causation.

18 6. I, together with my colleague, Liesel Schopler, interviewed a number
19 of consumers who had registered their complaints on Chambers' website, and
20 developed a substantial data base of persons who had experienced Dishwasher fires.
21 A number of these consumers expressed interest in participating in a class action
22 against Whirlpool (and Sears, which co-marketed the Dishwashers and sold them in
23 its retail outlets), and eventually, we assembled a group of 16 Plaintiffs from
24 around the country – soon joined by 2 additional Plaintiffs represented by co-
25 counsel. Named Plaintiffs, a total of 18 persons from 11 states, owned one or more
26 Whirlpool-manufactured dishwashers branded as Whirlpool®, KitchenAid® or
27 Kenmore®, and had an Overheating Event. ECF 98, ¶¶ 25-147.

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1 7. We filed suit on November 9, 2011, on behalf of the Named Plaintiffs
2 and a putative class consisting of millions of consumers who had owned
3 Dishwashers, whether or not they had experienced an Overheating Event (as Mr.
4 Ferguson’s analysis indicated that all such machines were vulnerable to combustion
5 due to the design defect common to all of them).

6 8. During the course of the litigation my law firm retained three
7 testimonial experts, including two highly acclaimed electrical engineers, Michael
8 Pecht, Ph.D, and James Martin, P.E. Their resumes are attached hereto as **Exhibit**
9 **T** (Dr. Pecht) and **Exhibit U** (Mr. Martin).¹ Each of them submitted a
10 comprehensive expert report identifying the design defect that proximately caused
11 combustion at the high-current connections to the Dishwasher circuit board, which
12 could propagate outside the unit and erupt into flames.

13 9. Discovery in the case was extensive, and included 3 sets of document
14 requests (over 80 in number) and interrogatories to Whirlpool and Sears; 2 sets of
15 document requests (over 80 in number) and 1 set of interrogatories to Plaintiffs;
16 production of over 350,000 pages of documents by Defendants and third parties
17 (including numerous detailed and lengthy spreadsheets, engineering drawings, and
18 other complex documents); Plaintiffs’ experts’ inspections of over 40 burned ECBs
19 and numerous damaged dishwashers; depositions of all 18 Plaintiffs; 5 days of
20 depositions of Defendants’ 30(b)(6) engineer-designees and employees; 1 non-party
21 deposition; document productions in response to subpoenas served on Whirlpool’s
22 component part suppliers; and document productions in response to over 40
23 subpoenas served on insurance carriers that paid claims to Whirlpool-manufactured
24 dishwasher owners.

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27 ¹ The third testimonial expert was Peter Salomon, CPA, CFF, a member of the firm
28 of Hemming Morse, LLP, in Los Angeles, which specializes in certified public
accounting, and litigation and forensic consultancy. Mr. Salomon, himself certified
in financial forensics, served as Plaintiffs’ damages consultant.

1 10. In the autumn of 2013, the litigation having progressed over several
2 years, counsel for Whirlpool and Sears, and my co-counsel and I, felt that the time
3 might be ripe for productive settlement discussions. We quickly agreed on a choice
4 of mediator – nationally renowned mediator Eric Green, based in Boston – and we
5 jointly retained him. Over the course of the ensuing year and half we participated
6 in 6 full-day mediation sessions before Professor Eric Green – on November 7, 8
7 and 22, 2013, March 20, 2014, and May 4-5, 2015. The parties exchanged 3 sets of
8 primary mediation briefs, as well as rebuttal briefs. I made a presentation at the first
9 mediation session, as did Whirlpool’s head of global product safety and its lead
10 dishwasher division engineer. Lead Plaintiff Chambers attended and participated in
11 all sessions except the one on March 20, 2014.

12 11. The mediation was prolonged because the parties had difficulty finding
13 common ground. Despite that difficulty, we did make substantial progress in our
14 sessions leading up to the session on March 20, 2014. Lead Plaintiff Chambers and
15 I kept Plaintiffs informed of our progress at every stage, seeking their input as the
16 negotiations continued.

17 12. Unfortunately, at the March 20, 2014 mediation session the Parties
18 reached an impasse, and concluded that a settlement could not be reached. The
19 Parties and Professor Green parted ways, and we resumed litigating intensively –
20 principally, reciprocal discovery including depositions, further production of
21 documents, and, for the Plaintiffs, intensive work with our testimonial experts,
22 culminating in the production of their expert reports and submission of same to
23 Defendants.

24 13. Approximately one year later, however, in the spring of 2015, I
25 received a telephone call from defense counsel inquiring as to whether Plaintiffs
26 might be interested in resuming settlement discussions. Once my co-counsel and I
27 were satisfied that the principal issue on which we had come to an impasse was no
28 longer a stumbling block, we recommended to Plaintiffs that we accept defense

1 counsel's invitation to resume negotiations, and they authorized us to do so.
2 Professor Green readily agreed to reconvene the mediation in his office. The
3 Parties submitted supplemental memoranda discussing the events of the previous
4 year (principally, discovery, and in the case of Plaintiffs, a summary of their
5 experts' reports, together with copies thereof) and met in Professor Green's office
6 on May 4 and 5, 2015.

7 14. In the final face-to-face session, during the afternoon of May 5, 2015,
8 the Parties reached a settlement agreement in principle on all material terms,
9 embodied in a term sheet executed by counsel. Since then, we have been
10 negotiating the remaining matters embodied in the formal settlement agreement
11 with attachments, including details of Notice and Settlement Administration (Exh.
12 A hereto and attachments thereto). Final agreement was achieved this week. As
13 part of the settlement, Whirlpool has retained the nationally-prominent firm of
14 Kurtzman Carson Consultants LLC("KCC") as class action notice provider and
15 class administrator. The Declaration of Gina M. Intrepido-Bowden, Director of
16 Legal Notification Services at KCC, describing the notification services that KCC
17 will perform in this case, and the scientific bases therefor, is attached hereto as
18 **Exhibit V.**

19 15. As with the negotiations in 2013-14, Lead Plaintiff Chambers and I
20 communicated with the Named Plaintiffs throughout this final phase of the
21 negotiations. As reflected in their Declarations (Exhs. B-S hereto), each of the
22 Named Plaintiffs approves the settlement and recommends its approval by the
23 Court. Likewise, Professor Green endorses the settlement. His Declaration is
24 attached hereto as **Exhibit W.**

1 16. Plaintiffs’ counsel believe that the settlement is eminently reasonable
2 in light of the results achieved, as measured against the risks and costs of further
3 litigation. The terms of the settlement speak for themselves. Class members
4 nationwide are made whole (irrespective of whether their Dishwashers are in or out
5 of warranty, or whether they have experienced a combustion event in the past, or
6 will have one in the future). Publicity will be promulgated to foster replacement of
7 thermal cut off devices affixed to the circuit boards (a key deterrent to uncontrolled
8 combustion) where they have been damaged or removed from dishwashers. In
9 addition, class members are given a valuable incentive to acquire a dishwasher that
10 is newly manufactured and does not contain either of the subject circuit boards.
11 Thus the three objectives that motivated Lead Plaintiff Chambers to go down this
12 long road, starting in 2009 and culminating only now, are satisfied – persuading
13 Whirlpool to confront the matter of its combusting Dishwashers, making the class
14 whole, and furthering public safety.

15 17. Weighed against these results are the substantial risks of further
16 litigation, including possible denial of class certification for one or more of the 11
17 state subclasses; the potential for reversal of the trial court’s determinations in that
18 regard on interlocutory appeal; difficulties in proof of liability and damages; the
19 potential for an adverse jury verdict; the potential for judgment in a modest amount;
20 and the risk of reversal on appeal of a final judgment in Plaintiffs’ favor. Add to
21 that the substantial costs of moving forward, and the length of time between now
22 and a final judgment – and the virtues of a resolution today, that makes the class
23 whole and reduces the likelihood of any catastrophic combustion events in the
24 future (which could well happen if settlement were not reached now, and the case
25 continued for several more years), are clear.

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1 18. Class counsel includes lawyers from several of the most distinguished
2 plaintiffs' class action law firms in the country as well as counsel with vast
3 experience in complex litigation generally.² The settlement is informed by their
4 analysis of the case: Since commencement of suit, Class Counsel have become well
5 informed of the strengths and weaknesses of their case, as well as the strengths and
6 weaknesses of Defendants' case, all of which has factored into counsel's informed
7 estimation that this is a worthwhile settlement for Plaintiffs and the putative class
8 they represent.

9 In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that
10 the foregoing is true and correct.

11 Executed on September 11, 2015.

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13 Charles S. Fax

14 Charles S. Fax (*pro hac vice*)

15 *cfax@rlls.com*

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27 <http://chimicles.com/>; on Robert Kitchenoff at <http://wka-law.com/>; on Nicole Sugnet at <http://www.lieffcabraser.com/>; and on Jeffrey Cohon at
28 <http://www.cohonpollak.com/>.