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

STEVE CHAMBERS, *et al.*, all of  
whom sue in their individual capacities  
and for all others similarly situated,

Plaintiff,

vs.

WHIRLPOOL CORPORATION, *et al.*,

Defendants.

Case No: 8:11-cv-01733-FMO (ANx)

**CLASS ACTION SETTLEMENT  
AGREEMENT AND RELEASE OF ALL  
CLAIMS**

The Honorable Fernando M. Olguin

Date:  
Time:  
Courtroom:

This Settlement Agreement (“Agreement”) is made and entered into as of this 11th day of September, 2015, by and among (i) Plaintiffs Steve Chambers, Lynn Van Der Veer, Kevin O’Donnell, Joseph Cicchelli, Kurt Himler, Susan Milicia, Gary LeBlanc, George Bliss, Shirl Mederlet, Lyndee Walker, Linda Sample, Susan Bathon, Maureen Meneghetti, W. David Beal, Zila Koswener, Pamela Walchli, Raymond Paolini, Jr., and Jackie Steffes (collectively, “Plaintiffs”), on behalf of themselves and the Settlement Class, as defined below, and (ii) Defendants Whirlpool Corporation (“Whirlpool”), Sears Holdings Corporation (“Sears Holdings”), and Sears, Roebuck and Co. (“Sears”) (collectively, “Defendants”), to settle, fully and finally, all of the claims that have been or could have been brought in this class-action lawsuit on behalf

1 of the Settlement Class against Defendants relating to certain dishwashers described  
2 below. Plaintiffs and Defendants are collectively referred to as the “Parties.”

3 WHEREAS a dispute has arisen between the Parties concerning certain  
4 KitchenAid<sup>®</sup>, Kenmore<sup>®</sup> and Whirlpool<sup>®</sup> brand dishwashers specifically defined  
5 below (hereinafter referred to as the “Dishwashers”);

6 WHEREAS Plaintiffs filed a putative class-action lawsuit alleging, among other  
7 things, that the Dishwashers contain a design defect, in that certain high-current  
8 electrical connections at the control boards were designed in a manner that is  
9 insufficiently robust, and that the electrical pathway has a propensity to degrade over  
10 time with ordinary use, which causes electrical resistance heating that can burn or set  
11 fire to the Dishwashers’ electronic control boards or other nearby components;

12 WHEREAS Plaintiffs allege that flames from such fires occasionally escape or  
13 spread outside the machine despite Whirlpool’s use of thermal cut-off devices and  
14 other built-in safety features, such as heat shields and flame-resistant plastics;

15 WHEREAS Plaintiffs allege that Whirlpool’s thermal cut-off devices suffered  
16 from nuisance tripping and Whirlpool has become aware of instances in which service  
17 personnel have bypassed thermal cut-off devices, increasing the risk of fire escaping  
18 or spreading outside the Dishwashers;

19 WHEREAS Plaintiffs filed their putative class action lawsuit asserting claims  
20 for breach of express warranty, breach of implied warranty, tortious breach of  
21 warranty, strict product liability, strict product liability for the failure to warn,  
22 violations of various states’ consumer protection statutes, fraudulent  
23 concealment/nondisclosure, negligence, negligent failure to warn, unjust enrichment,  
24 and declaratory relief;

25 WHEREAS Defendants deny Plaintiffs’ allegations, deny that they have  
26 committed or engaged in any misconduct, wrongdoing, or other actionable conduct,  
27 and assert numerous defenses to the claims alleged by Plaintiffs;

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1 WHEREAS Defendants maintain that the Dishwashers are safe and reliable, not  
2 prone to an excessive rate of overheating events, and designed and tested to include  
3 multiple built-in safety features to prevent the rare overheating events from causing  
4 heat damage outside the Dishwasher itself;

5 WHEREAS Defendants contend that they have complied with all applicable  
6 voluntary safety standards and U.S. government product safety regulations, have  
7 reported in detail to the U.S. Consumer Product Safety Commission (the “Safety  
8 Commission”) the results of Whirlpool’s investigation into the field safety of the  
9 Dishwashers’ electronic control boards, and that the Safety Commission has closed its  
10 own investigation without asking or requiring Whirlpool to implement any corrective  
11 action program;

12 WHEREAS Defendants further contend that only a miniscule fraction of  
13 Dishwashers have experienced any control board overheating during the full lifetime  
14 of the Dishwasher and that the Dishwashers safely contained virtually all of those  
15 overheating events inside the Dishwasher itself;

16 WHEREAS the Parties to this Agreement, after engaging in significant  
17 discovery in this Lawsuit—including written discovery, the production of hundreds of  
18 thousands of pages of documents by both Defendants and Plaintiffs, 22 depositions  
19 taken in various parts of the United States, and the submission of reports prepared by  
20 Plaintiffs’ experts—and engaging in settlement negotiations in six full days of  
21 mediation sessions with one of the nation’s most esteemed mediators, now wish to  
22 resolve all claims, disputes, and differences among them;

23 WHEREAS Plaintiffs and Plaintiffs’ counsel have reviewed and analyzed the  
24 documents produced by Defendants and those obtained via their own investigation;  
25 consulted with experts; examined and considered the benefits to be provided to the  
26 Settlement Class Members under the settlement provided for in this Settlement  
27 Agreement, as well as the benefits to owners of New Gen and Raptor dishwashers  
28 pursuant to the Settlement, as described below; considered the laws of the State of

1 California and other states, and the claims that could be asserted under those laws  
2 regarding Dishwashers; considered the risks, costs, and time associated with  
3 prosecuting this case through one or more trials and appeals; and believe the  
4 Agreement to be in the best interest of the Settlement Class Members, taking into  
5 account the risks and costs of continued litigation, and the length of time that would  
6 be required to complete the litigation and any appeals;

7 WHEREAS Defendants have at all times disputed, and continue to dispute,  
8 Plaintiffs' allegations in the Lawsuit and denied any liability for any of the claims that  
9 have or could have been raised regarding the Dishwashers by Plaintiffs or Settlement  
10 Class Members, but believe that the comprehensive resolution of the issues in this  
11 Lawsuit as provided in this Agreement will avoid the substantial costs and disruptions  
12 of continued litigation, is in the best interest of the Settlement Class, and is in the best  
13 interests of Whirlpool and Sears, their employees, and their trade partners, and is the  
14 most effective and least costly resolution of the Lawsuit;

15 WHEREAS the Parties understand, acknowledge, and agree that this  
16 Agreement constitutes the compromise of disputed claims and that it is their mutual  
17 desire and intention that the Action be settled and dismissed, on the merits and with  
18 prejudice, and that the Released Claims be finally and fully settled and dismissed,  
19 subject to and according to the below terms and conditions.

20 NOW, THEREFORE, the Parties agree and covenant as follows:

21 **I. DEFINITIONS**

22 As used in this Agreement, the following definitions shall apply:

23 A. "Action" or "Lawsuit" means the putative class-action lawsuit pending,  
24 as of the date of this Agreement, in the United States District Court for  
25 the Central District of California, Case No. 8:11-cv-01733, entitled  
26 *Chambers et al. v. Whirlpool Corp. et al.*

27 B. "Administration and Notice Expenses" means reasonable fees and  
28 expenses incurred for the (1) preparation, mailing, and emailing of the

1 Summary Notice, TCO Repair Notice, and Prequalified Notice, including  
2 the identification of Prequalified Class Members and Prequalified  
3 NewGen/Raptor owners, and compilation of related information with  
4 respect to those Prequalified claimants, (2) costs of Publication Notice,  
5 (3) receipt and adjudication of claims submitted by Settlement Class  
6 Members and NewGen/Raptor owners for compensation under this  
7 Settlement, including the costs of administering a Settlement Website for  
8 the review of the Settlement Notice and submission of claims, (4) receipt  
9 and processing of Objections to the Settlement and Opt-Out Forms  
10 submitted by Settlement Class Members who wish to exclude themselves  
11 from the Class, (5) preparation of status reports to the Parties and the  
12 Court, (6) preparation of tax returns for any settlement bank accounts, (7)  
13 distribution of settlement payments or other benefits to Dishwasher  
14 Owners or Class Members who timely submit Valid Claims, and (8)  
15 other costs of notice and administration of the Settlement.

16 C. “Agreement” or “Settlement Agreement” means this settlement  
17 agreement and exhibits attached hereto.

18 D. “Attorneys’ Fees and Expenses” means the amount of any attorneys’ fees  
19 and reimbursement of litigation expenses awarded to Class Counsel  
20 pursuant to their Fee Petition.

21 E. “Chambers Websites” or “Websites” means two websites owned and  
22 controlled by named Plaintiff Steve Chambers: [www.kitchaidfire.com](http://www.kitchaidfire.com)  
23 and [www.Whirlpoolsafetydefects.com](http://www.Whirlpoolsafetydefects.com).

24 F. “Claims Deadline” means 120 days after the Notice Date.

25 G. “Claim Form” means the proposed form attached hereto as Exhibit 1, to  
26 be approved by the Court and to be submitted to the Settlement  
27 Administrator by Settlement Class Members who wish to make a claim.  
28

- 1 H. “Class Counsel” or “Plaintiffs’ Counsel” means Charles Fax of the law  
2 firm Rifkin, Weiner, Livingston, Levitan & Silver LLC; Robert  
3 Kitchenoff of the law firm Weinstein Kitchenoff & Asher LLC; Steven  
4 Schwartz and Timothy Mathews of the law firm Chimicles & Tikellis  
5 LLP; Nicole Sugnet of the law firm Lief Cabraser Heimann & Bernstein,  
6 LLP; and Jeff Cohon of the law firm Cohon & Pollak, LLP.
- 7 I. “Class Dishwashers” means all KitchenAid, Kenmore, and Whirlpool-  
8 brand automatic dishwashers manufactured by Whirlpool between  
9 October 2000 and January 2006 that contained either a “Rushmore” or  
10 “Rush” electronic control board. A list of model and serial numbers by  
11 which Rushmore and Rush Dishwashers can be identified is attached  
12 hereto as Exhibit 2, and will be published on the Settlement Website.  
13 Dishwashers equipped with “NewGen” or “Raptor” electronic control  
14 boards are not Class Dishwashers.
- 15 J. “Class Member” or “Settlement Class Member” means all Persons who  
16 are members of the Settlement Class and do not exclude themselves from  
17 the Settlement Class in the manner and time prescribed by the Court in  
18 the Preliminary Approval Order.
- 19 K. “Class Representative” or “Plaintiff”: Each of the following persons is a  
20 Class Representative and Plaintiff: Steve Chambers, Lynn Van Der Veer,  
21 Kevin O’Donnell, Joseph Cicchelli, Kurt Himler, Gary LeBlanc, George  
22 Bliss, Lyndee Walker, Linda Sample, W. David Beal, Zila Koswener,  
23 Pamela Walchli, Raymond Paolini, Jr., and Jackie Steffes. Each of the  
24 following persons is a Plaintiff: Susan Milicia, Shirl Mederlet, Linda  
25 Sample, Susan Bathon and Maureen Meneghetti.
- 26 L. “Co-Lead Class Counsel” means Charles Fax of the law firm Rifkin,  
27 Weiner, Livingston, Levitan & Silver LLC, and Steven Schwartz and  
28 Timothy Mathews of the law firm Chimicles & Tikellis LLP;

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M. “Court” means the United States District Court for the Central District of California.

N. “Defendants” means Whirlpool Corporation, Sears Holding Corporation, and Sears, Roebuck and Co.

O. “Dishwasher” means all KitchenAid®, Kenmore®, and Whirlpool® brand automatic dishwashers manufactured by Whirlpool between February 1998 and March 2012 with full electronic controls and an electronic control board, as opposed to any dishwasher manufactured with electromechanical controls. As opposed to Class Dishwashers, which refers only to dishwashers that contain a Rushmore or Rush electronic control board, a Dishwasher also could refer to a dishwasher with a NewGen or Raptor electronic control board.

P. “Effective Date” means the first date that is three business days after all of the following have occurred: (i) the Court has entered an order granting final approval of the Settlement Agreement in accordance with the terms of this Agreement; (ii) the time for any challenge to the Settlement, both in the Court and on appeal, has elapsed; and (iii) the Settlement has become final, either because no timely challenge was made to it or because any timely challenge has been finally adjudicated and rejected. For purposes of this paragraph, an “appeal” shall not include any appeal that concerns solely the issue of Class Counsel’s attorneys’ fees and reimbursement of expenses or Service Awards to the Class Representatives.

Q. “Electronic Control Board” or “ECB” means the electronic control board of a Dishwasher. The relevant ECBs were built on four different engineering platforms: the Rushmore, Rush, New Gen, and Raptor platforms.

- 1 R. “Fairness Hearing” means the final hearing, to be held after notice has  
2 been provided to the Settlement Class in accordance with this  
3 Agreement, (1) to determine whether to grant final approval to (a) the  
4 certification of the Settlement Class and Subclasses, (b) the designation  
5 of Plaintiffs as the representatives of the Settlement Class, (c) the  
6 designation of Co-Lead Class Counsel and Class Counsel as counsel for  
7 the Settlement Class, and (d) the Settlement; (2) to consider whether to  
8 enter the Final Approval Order, and (3) to rule on Class Counsel’s  
9 request for an award of attorneys’ fees and reimbursement of costs and  
10 for Service Awards to certain named Plaintiffs.
- 11 S. “FAQ” means the full notice and in the form of Frequently Asked  
12 Questions and Answers attached hereto as Exhibit 3, to be approved by  
13 the Court and posted on the Settlement Website in accordance with this  
14 Agreement. In addition, the FAQ form will be mailed to Settlement Class  
15 Members who contact the Settlement Administrator by telephone or  
16 email and request a Claim Form in hard copy.
- 17 T. “Fee Application” means the application to be filed by Class Counsel by  
18 which they will seek an award of attorneys’ fees and reimbursement of  
19 litigation expenses incurred by them in prosecuting the Lawsuits, as well  
20 as Service Awards to be paid to Plaintiffs. Defendants agree that Class  
21 Counsel may seek an award of fees based on their work in prosecuting  
22 the Lawsuits, including on behalf of New Gen and Raptor Dishwasher  
23 owners as well as Rush and Rushmore owners, and based on both the  
24 Class and non-Class benefits created by this Settlement. Defendants  
25 reserve all rights to object to the amount of (but not the entitlement to)  
26 fees and costs requested by Class Counsel.
- 27 U. “Final Approval Order” means the proposed Order Granting Final  
28 Approval to the Class Action Settlement and Entry of Final Judgment, to

1 be entered by the Court with the terms and substantially in the form of  
2 Exhibit 4 attached to this Agreement.

3 V. “Future Overheating Subclass” means all Settlement Class Members  
4 who, within 10 years after the purchase date of their Class Dishwasher or  
5 within 2 years after the Notice Date, whichever is later, experience an  
6 Overheating Event.

7 W. “Lawsuit” or “Action” means the putative class-action lawsuit pending,  
8 as of the date of this Agreement, in the United States District Court for  
9 the Central District of California, Case No. 8:11-cv-01733, entitled  
10 *Chambers et al. v. Whirlpool Corp. et al.*

11 X. “NewGen/Raptor Owners” means Dishwasher owners who own or  
12 owned Dishwashers equipped with either a “NewGen” or a “Raptor”  
13 platform electronic control board. A list of model and serial numbers by  
14 which New Gen and Raptor Dishwashers can be identified is attached  
15 hereto as Exhibit 5, and will be published on the Settlement Website.

16 Y. “Notice Date” means the date on which the Settlement Administrator  
17 completes the initial mailing of Summary Notices to class members.

18 Z. “Notice of Claim Denial” means the form that the Settlement  
19 Administrator will send, by first-class United States Mail, to each Person  
20 who has submitted a Claim Form that the Settlement Administrator has  
21 determined, subject to review and approval by Class Counsel, to not be a  
22 Valid Claim.

23 AA. “Opt-Out” means a Class Member who submits a request for exclusion  
24 by the deadline for submitting a request for exclusion contained in the  
25 FAQ, Summary Notice, Prequalified Notice, TCO Repair Notice, and  
26 Publication Notice.

27 BB. “Overheating Event” means the overheating of the Dishwasher’s  
28 Electronic Control Board such that the class member or another person

1 observed or experienced smoke, flames, fumes, sparks, or electrical  
2 arcing from the control console area of their Dishwasher.

3 CC. “Paid Qualifying Repair” means a Qualifying Repair for which the Class  
4 Member paid some amount out of pocket, *e.g.*, for parts or labor, or both.

5 DD. “Paid Qualifying Replacement” means a Qualifying Replacement for  
6 which the Class Member paid some amount out of pocket for a  
7 replacement dishwasher.

8 EE. “Parties” means Plaintiffs and Defendants, collectively.

9 FF. “Past Overheating Subclass” means all Settlement Class Members who  
10 experienced an Overheating Event within 12 years after the purchase date  
11 of their Class Dishwasher but before the Notice Date.

12 GG. “Person” means any natural person, and includes Class Members as well  
13 as all Persons entitled to benefits pursuant to the terms of this Settlement.

14 HH. “Plaintiffs” or “Class Representatives” means Steve Chambers, Lynn  
15 Van Der Veer, Kevin O’Donnell, Joseph Cicchelli, Kurt Himler, Gary  
16 LeBlanc, George Bliss, Lyndee Walker, W. David Beal, Zila Koswener,  
17 Pamela Walchli, Raymond Paolini, Jr., and Jackie Steffes, collectively.  
18 “Plaintiffs” also means Susan Milicia, Shirl Mederlet, Linda Sample,  
19 Susan Bathon and Maureen Meneghetti.

20 II. “Plaintiffs’ Counsel” or “Class Counsel” means Charles Fax of the law  
21 firm Rifkin, Weiner, Livingston, Levitan & Silver LLC; Robert  
22 Kitchenoff of the law firm Weinstein Kitchenoff & Asher LLC; Timothy  
23 Matthews and Steven Schwartz of the law firm Chimicles & Tikellis  
24 LLP; Nicole Sugnet of the law firm Lieff Cabraser Heimann & Bernstein,  
25 LLP; and Jeff Cohon of the law firm Cohon & Pollak, LLP.

26 JJ. “Preliminary Approval Order” means the proposed Order Granting  
27 Preliminary Approval to Class Action Settlement, to be entered by the  
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1 Court with the terms and substantially in the form of Exhibit 6 attached  
2 to this Agreement.

3 KK. "Prequalified Settlement Class Members" means Settlement Class  
4 Members who can be identified in Whirlpool's, Sears's, or the CPSC's  
5 databases as having paid some amount for a Qualifying Repair or  
6 Qualifying Service Contract. The search methodology to identify  
7 Prequalified Settlement Class Members will be consistent with the  
8 methodology used in the 2007-2008 PHM by Whirlpool. Defendants  
9 shall provide the Settlement Administrator with all information and  
10 assistance necessary to identify Prequalified Settlement Class Members  
11 and compile information to process their claims.

12 LL. "Prequalified Notice" means the proposed postcard and email summary  
13 notice to be provided to Prequalified Settlement Class members in the  
14 form of Exhibit 7, attached to this Agreement.

15 MM. "Publication Notice" means the proposed notice, with the terms and form  
16 of Exhibit 8 attached to this Agreement, to be approved by the Court and  
17 to be published in accordance with the notice plan set forth in Section V  
18 of this Agreement.

19 NN. "Qualifying Repair" means within 12 years after purchase (1) an ECB  
20 repair or replacement by a Service Technician, or (2) otherwise incurred  
21 documented out-of-pocket costs, *e.g.*, for parts or labor, or both, to repair  
22 the Dishwasher due to an Overheating Event.

23 OO. "Qualifying Service Contract" means a service contract that a Class  
24 Member bought from Sears or Whirlpool or an authorized Whirlpool or  
25 Sears retailer or Service Technician, within 30 days before a Qualifying  
26 Repair (i.e., the Class Member bought the service contract to cover the  
27 cost of the Qualifying Repair) and for which the Settlement Class  
28 Member in fact paid some out-of-pocket cost.

- 1 PP. "Qualifying Replacement" means within 12 years after purchase, the  
2 replacement of a Dishwasher or otherwise taking a Dishwasher out of  
3 service, rather than repairing the Dishwasher, after contacting Whirlpool,  
4 Sears, or a Service Technician about an Overheating Event.
- 5 QQ. "Rebate Vendor" means the firm selected by Whirlpool in consultation  
6 with Plaintiffs' counsel and paid by Whirlpool to administer the  
7 Whirlpool-Sponsored Rebate Program in accordance with this  
8 Agreement. The Rebate Vendor may, but need not, be the Settlement  
9 Administrator.
- 10 RR. "Released Claims," as to Plaintiffs and all Settlement Class Members  
11 means all claims released pursuant to the release and waiver set forth in  
12 Section X of this Agreement.
- 13 SS. "Releasees" means (a) Defendants, together with their respective  
14 predecessors and successors in interest, parents, subsidiaries, affiliates,  
15 and assigns; (b) each of Defendants' respective past, present, and future  
16 officers, directors, agents, representatives, servants, employees,  
17 attorneys, and insurers; and (c) all distributors, retailers, suppliers, and  
18 other entities who were or are in the chain of design, testing,  
19 manufacture, assembly, distribution, marketing, sale, installation, or  
20 servicing of the Dishwashers.
- 21 TT. "Sears Holdings" or "Sears" means Sears Holdings Corporation and its  
22 consolidated subsidiaries, including, without limitation, Sears, Roebuck  
23 and Co. and Kmart Corporation, and their successors, predecessors,  
24 assigns, affiliates, parent companies, subsidiaries, shareholders, officers,  
25 directors, agents, insurers, attorneys, and employees.
- 26 UU. "Service Award" means a reasonable payment, subject to Court approval,  
27 made to a Plaintiff as compensation for his or her efforts in pursuing this  
28 Action on behalf of Dishwasher purchasers.

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VV. “Service Technician” means a Sears-Authorized, Whirlpool-Authorized, other manufacturer-authorized, or other factory service technician..

WW. “Settlement” means the settlement provided for in this Agreement.

XX. “Settlement Administrator” means a sufficiently qualified firm selected by Whirlpool, approved by Class Counsel, and appointed by the Court to administer the Settlement.

YY. “Settlement Website” means a website created by the Settlement Administrator to facilitate notice, the making of claims, and for other administration of the Settlement, as detailed in Section VI.G of this Agreement.

ZZ. “Settlement Class” means all residents in the United States and its territories who (a) purchased a new Class Dishwasher, (b) acquired a Class Dishwasher as part of the purchase or remodel of a home, or (c) received as a gift, from a donor meeting those requirements, a new Class Dishwasher not used by the donor or by anyone else after the donor purchased the Class Dishwasher and before the donor gave the Class Dishwasher to the claimant. The Settlement Class consists of two subclasses, the Past Overheating Subclass and the Future Overheating Subclass (defined above). Excluded from the Settlement Class are (a) officers, directors, and employees of Whirlpool, Sears, or their parents or subsidiaries, (b) insurers of Settlement Class Members, (c) subrogees or all entities claiming to be subrogated to the rights of a Class Dishwasher purchaser, a Class Dishwasher owner, or a Settlement Class Member, and (d) issuers or providers of extended warranties or service contracts for Class Dishwashers.

AAA. “Settlement Class Member” or “Class Member” means all Persons who are members of the Settlement Class and do not exclude themselves from

1 the Settlement Class in the manner and time prescribed by the Court in  
2 the Preliminary Approval Order.

3 BBB. "Summary Notice" means the proposed postcard and email notice  
4 attached hereto as Exhibit 9, to be approved by the Court and to be  
5 mailed by the Settlement Administrator to each address of record,  
6 including, but not limited to, addresses in Whirlpool's, Sears's, CPSC's,  
7 or Chambers/Plaintiffs' databases, for Settlement Class Members (after  
8 being run through the NCOA database), and emailed to Settlement Class  
9 Members for whom valid email addresses are known to Whirlpool or  
10 Sears, with the exception of those Class Members who will receive the  
11 TCO Repair Notice or the Prequalified Notice.

12 CCC. "TCO" means the thermal cut-off device found on certain Dishwasher  
13 Electronic Control Boards.

14 DDD. "TCO Repair Notice" means the proposed postcard and email notice  
15 attached hereto as Exhibit 10, to be approved by the Court and to be  
16 mailed by the Settlement Administrator to those Settlement Class  
17 Members who Defendants identify as having experienced a TCO repair.

18 EEE. "Valid Claim" means a Claim Form that (i) is timely submitted by a  
19 Settlement Class Member in accordance with the requirements of the  
20 Preliminary Approval Order, (ii) is signed with a certification that the  
21 information is true and correct to the best of the claimant's knowledge  
22 and recollection , and (iii) contains all of the information and  
23 documentation required for that Settlement Class Member to be eligible  
24 to receive one or more of the benefits provided in this Agreement.

25 FFF. "Websites" or "Chambers Websites" means two websites owned and  
26 controlled by named Plaintiff Steve Chambers: [www.KitchAidFire.com](http://www.KitchAidFire.com)  
27 and [www.WhirlpoolSafetyDefects.com](http://www.WhirlpoolSafetyDefects.com)  
28

1 GGG. “Whirlpool” means Whirlpool Corporation and its consolidated  
2 subsidiaries, including their successors, predecessors, assigns, affiliates,  
3 subsidiaries, shareholders, officers, directors, agents, insurers, attorneys,  
4 and employees.

5 HHH. “Whirlpool-sponsored Rebate Program” or “Rebate Program” means the  
6 cash rebate program that is being offered to all Settlement Class  
7 Members as described in this Agreement.

8 **II. CONDITIONAL CERTIFICATION OF NATIONWIDE SETTLEMENT**  
9 **CLASS**

10 For purposes of implementing this Agreement, and for no other purpose,  
11 Defendants stipulate to the conditional certification of the nationwide Settlement  
12 Class, the Past Overheating Subclass, and the Future Overheating Subclass. If, for  
13 any reason, this Agreement should fail to become effective, Defendants’ stipulation to  
14 certification of the nationwide Settlement Class, the Past Overheating Subclass, and  
15 the Future Overheating Subclass shall be null and void, and the Parties shall return to  
16 their prior positions in the Lawsuit.

17 **III. REQUIRED EVENTS**

18 A. As soon as practicable after the execution of this Agreement, the Parties  
19 shall file in this Lawsuit this Agreement and a joint motion seeking entry  
20 of the Preliminary Approval Order, which by its terms shall accomplish  
21 all of the following:

- 22 1. Preliminarily approve the Settlement and this Agreement as fair  
23 and reasonable to the Settlement Class;
- 24 2. Conditionally certify the Settlement Class as a nationwide class for  
25 purposes of effecting the Settlement;
- 26 3. Conditionally certify the Past Overheating Subclass and Future  
27 Overheating Subclass for purposes of effecting the Settlement;
- 28 4. Designate Plaintiffs as the representatives of the Settlement Class;

- 1                   5.     Designate Co-Lead Class Counsel and Class Counsel as counsel  
2                   for the Settlement Class;
- 3                   6.     Designate an appropriately qualified firm as the Settlement  
4                   Administrator and instruct the Settlement Administrator to perform  
5                   the following functions in accordance with the terms of this  
6                   Agreement, the Preliminary Approval Order, and the Final  
7                   Approval Order;
- 8                   a.     Disseminate the Summary Notice, Prequalified Notice, and  
9                   the TCO Repair Notice;
- 10                  b.     Establish the Settlement Website with the Settlement Notice  
11                  and information that the Parties jointly agree to post  
12                  concerning the nature of the case and the status of the  
13                  Settlement, including relevant pleadings such as the  
14                  operative Amended Complaint, papers in support of  
15                  preliminary and final approval of the Settlement, and Class  
16                  Counsel’s Petition for attorneys’ fees and reimbursement of  
17                  expenses and Service Awards, plus relevant orders of the  
18                  Court;
- 19                  c.     Receive, evaluate, and either approve completed Claim  
20                  Forms sent by Persons seeking to receive compensation as  
21                  meeting the requirements of the Agreement or disapprove as  
22                  failing to meet those requirements;
- 23                  d.     Thirty days before mailing Notices of Claim Denial, provide  
24                  to Whirlpool and Class Counsel (i) a list of the names and  
25                  addresses of all Settlement Class Members who have  
26                  submitted Claim Forms and whose Claim Forms the  
27                  Settlement Administrator has determined to be Valid  
28                  Claims, by category of benefit; and (ii) a separate list of the

1 names and addresses of all Persons who have submitted  
2 Claim Forms and whose Claim Forms the Settlement  
3 Administrator has determined not to be Valid Claims, by  
4 category of benefit. Class Counsel shall then have an  
5 opportunity to review the Notices of Claim Denial and  
6 request a meet and confer with Counsel for Whirlpool  
7 should they decide to challenge any of the Notices of Claim  
8 Denial. In the event Class Counsel challenges a Notice of  
9 Claim Denial, that Notice shall not be sent to the Claimant  
10 until Counsel for the Class and Whirlpool meet and confer  
11 and arrive at a resolution.

12 e. Send, by first-class United States Mail, to each Person who  
13 has submitted a Claim Form that the Settlement  
14 Administrator has determined not to be a Valid Claim, and  
15 which has not been challenged by Class Counsel, a Notice of  
16 Claim Denial.

17 f. Process requests for exclusion from the Settlement;

18 g. Process objections to the Class Settlement;

19 h. Within 30 days after the payment of all Valid Claims for  
20 monetary compensation by the Settlement Administrator,  
21 provide to Whirlpool and Class Counsel, under penalty of  
22 perjury, a statement of the total number of claims submitted  
23 (in total and by category of benefit), the total number of  
24 claims adjudicated as Valid Claims (in total and by category  
25 of benefit), and the total dollar amount paid to Class  
26 Members (in total and by category of benefit).

27 7. Approve the form, contents, and methods of notice to be given to  
28 the Settlement Class and direct the Settlement Administrator to

1 provide and cause to be provided such notices and to file with the  
2 Court a declaration detailing the scope, methods, and results of the  
3 notice program.

4 8. Establish procedures and schedule deadlines for Settlement Class  
5 Members to object to the Settlement or certification of the  
6 Settlement Class, to exclude themselves from the Settlement, and  
7 to submit Claim Forms to the Settlement Administrator, all  
8 consistent with the terms of this Agreement.

9 9. Schedule the Fairness Hearing; and

10 10. Schedule deadlines for the filing of (a) papers in support of final  
11 approval of the certification of the Settlement Class (and  
12 Subclasses), the appointment of Co-Lead Class Counsel and Class  
13 Counsel as counsel for the Settlement Class, and the Settlement;  
14 and (b) Class Counsel's Fee Application.

15 B. At the Fairness hearing the Parties will jointly request the Court to enter a  
16 Final Approval Order that (1) certifies the Settlement Class, designates  
17 Plaintiffs as the representatives of the Settlement Class, and designates  
18 Co-Lead Class Counsel and Class Counsel as counsel for the Settlement  
19 Class; (2) grants final approval of the Settlement and this Agreement as  
20 fair, reasonable, and adequate to the Settlement Class; (3) provides for  
21 the release of all Released Claims and enjoins Settlement Class Members  
22 from asserting, filing, maintaining, or prosecuting any of the Released  
23 Claims in the future; (4) orders the dismissal with prejudice of all claims,  
24 causes of action, and counts alleged in the Lawsuit, and incorporates the  
25 releases and covenant not to sue stated in this Agreement, with each of  
26 the Parties to bear its, his, or her own costs and attorneys' fees, except as  
27 provided in Section IX. below; (5) authorizes the payment by Whirlpool  
28 of Valid Claims approved by the Settlement Administrator as Valid

1 Claims, or otherwise reviewed by Class Counsel and Counsel for  
2 Whirlpool and determined to be Valid Claims, in accordance with the  
3 terms of the Agreement; and (6) preserves the Court's continuing  
4 jurisdiction over the administration of the Settlement and enforcement of  
5 this Agreement. In addition, Class Counsel will move the Court for entry  
6 of a separate order approving the following: (1) Service Awards as  
7 described in this Agreement, (2) the purchase of the Chambers Websites  
8 as described in this Agreement, and (3) attorneys' fees and costs to Class  
9 Counsel in an amount to be determined by the Court consistent with the  
10 terms of this Agreement.

11 C. Plaintiffs, Class Counsel, and Defendants will cooperate and take all  
12 reasonable actions to accomplish the above. If the Court fails to enter  
13 either the Preliminary Approval Order or the Final Approval Order,  
14 Plaintiffs, Class Counsel, and Defendants will use all reasonable efforts  
15 that are consistent with this Agreement to cure any defect identified by  
16 the Court. If, despite such efforts, the Court does not enter the  
17 Preliminary Approval Order and Final Approval Order, the Parties will  
18 return to their positions in the Lawsuit as they were immediately before  
19 the execution of the Settlement Agreement.

#### 20 **IV. SETTLEMENT BENEFITS**

##### 21 **A. Benefits Available to All Settlement Class Members**

22 1. Whirlpool-sponsored New Dishwasher Rebate Program: All  
23 members of the Settlement Class who do not request to be  
24 excluded from the Settlement will be eligible to receive a cash  
25 rebate from Whirlpool on the purchase of a new Whirlpool-  
26 manufactured KitchenAid-brand, Kenmore-brand, or Whirlpool-  
27 brand dishwasher of that Settlement Class member's choice. The  
28 rebate for the purchase of new Kenmore-brand and Whirlpool-

1 brand dishwashers will be 10% off the retail purchase price (not to  
2 include sales taxes, delivery fees, and installation charges). The  
3 rebate for the purchase of new KitchenAid-brand dishwashers will  
4 be 15% off the retail purchase price (not to include sales taxes,  
5 delivery fees, and installation charges). Such rebate shall be in  
6 addition to any other sales promotion that Whirlpool, Sears, or any  
7 retailer or seller offers towards a new dishwasher. Settlement Class  
8 Members will be able to electronically submit claims for the  
9 rebates through the Settlement Website. Each Settlement Class  
10 member will be required to register his or her name, address,  
11 telephone number, and email address as well as his or her Class  
12 Dishwasher's model and serial number to establish eligibility for  
13 this rebate; provided, however, that if Whirlpool or Sears has such  
14 Settlement Class member's model and serial number in one of their  
15 databases, that information shall automatically prepopulate any on-  
16 line claim form completed by such Settlement Class member. Each  
17 Settlement Class Member shall be entitled to a single rebate for  
18 each subject Class Dishwasher he or she purchased. Each  
19 Settlement Class member shall be entitled to a single rebate for  
20 each subject Class Dishwasher he or she purchased. For example,  
21 if a Settlement Class member bought and registered two Class  
22 Dishwashers, that Settlement Class member would be eligible to  
23 receive two rebates. This rebate is available to all qualified  
24 Settlement Class Members who ever owned a Class Dishwasher,  
25 and they need not currently own their Dishwasher to qualify for the  
26 rebate.

27 a. Enhanced Rebate Offer for Class Members Who  
28 Experienced TCO Repairs: Whirlpool and Sears will search

1 their databases to identify all Settlement Class members who  
2 experienced a TCO repair and provide such information to  
3 the Settlement Administrator. The Settlement Administrator  
4 shall thereafter mail or email, or both if both forms of  
5 address are available, a TCO Repair Notice to these  
6 Settlement Class members offering them an enhanced rebate  
7 of 15% off the retail purchase price (not to include sales  
8 taxes, delivery fees, and installation charges) of a new  
9 Whirlpool-brand dishwasher or a 20% discount off the retail  
10 purchase price (not to include sales taxes, delivery fees, and  
11 installation changes) of a new KitchenAid-brand  
12 dishwasher. Each Settlement Class member will be required  
13 to register his or her name, address, telephone number, and  
14 email address as well as his or her Class Dishwasher's  
15 model and serial number to establish eligibility for this  
16 enhanced rebate; provided, however, that if Whirlpool or  
17 Sears has such Settlement Class member's model and serial  
18 number in one of their data bases, that information shall  
19 automatically prepopulate any on-line claim form completed  
20 by such Settlement Class member.. Each Settlement Class  
21 Member shall be entitled to a single rebate for each subject  
22 Class Dishwasher he or she purchased. Each such Settlement  
23 Class member shall be entitled to a single rebate for each  
24 subject Class Dishwasher he or she purchased that  
25 experienced a TCO repair regardless of the number of TCO  
26 repairs experienced. For example, if a Settlement Class  
27 member bought and registered two Class Dishwashers each  
28 of which experienced a TCO repair, that Settlement Class

1 member would be eligible to receive two enhanced rebates.  
2 If a Class Member experienced a TCO repair but such repair  
3 is not reflected in Sears or Whirlpool's databases, the Class  
4 Member may qualify for the enhanced rebate by providing  
5 documentary evidence of the TCO repair.

6 2. Deadline to Submit Claims for Rebate Program: Settlement Class  
7 Members shall be required to submit a claim for the rebate  
8 program by the Claims Deadline, *i.e.* 120 days after the Notice  
9 Date.

10 3. Deadline to Redeem Rebates: Settlement Class Members shall be  
11 required to mail or email to the Settlement Administrator or the  
12 Rebate Vendor their completed rebate form and proof of purchase  
13 no later than 120 days after the Claims Deadline, thereby allowing  
14 Settlement Class members up to eight months to make an eligible  
15 purchase and submit the rebate form to the Settlement  
16 Administrator or the Rebate Vendor.

17 4. Payment of Redeemed Rebates: The Settlement Administrator or  
18 the Rebate Vendor shall mail rebate checks to qualifying Class  
19 Members within 12 weeks after the completed and valid rebate  
20 form has been submitted.

21 5. Rebate Vendor: Whirlpool shall hire the Rebate Vendor to  
22 establish a website to promote and administer the Rebate Program,  
23 to allow Settlement Class Members to file Claim Forms for  
24 rebates, and to disseminate rebate forms to eligible Settlement  
25 Class Members who submitted Valid Claims. The Rebate Vendor  
26 may be, but is not required to be, the Settlement Administrator.  
27 The Rebate Vendor shall provide Class Counsel and Whirlpool  
28

1 periodic status reports regarding claims, rebates paid, and any  
2 rebate claims that have been rejected.

3 **B. Compensation to Past Overheating Subclass Members**

- 4 1. To qualify for any compensation described in this section, a  
5 claimant must either be a Prequalified Settlement Class Member or  
6 must provide sufficient documentary proof that within 12 years  
7 after purchase but before the Notice Date: (a) the claimant's Class  
8 Dishwasher experienced an Overheating Event, and (b) the  
9 claimant had a Qualifying Repair or Qualifying Replacement of  
10 the Class Dishwasher.
- 11 2. Sufficient documentary proof of an Overheating Events includes,  
12 but is not limited to, the following:
- 13 a. For claims to receive reimbursements for Paid Qualifying  
14 Repairs, a claim-form declaration that the claimant  
15 experienced, within 12 years after purchase, an Overheating  
16 Event.
- 17 b. For claims to receive reimbursements for Paid Qualifying  
18 Replacements, service tickets, service receipts, entries in  
19 Whirlpool's or Sears's databases, or service company  
20 records.
- 21 3. Sufficient documentary proof that the claimant experienced a  
22 Qualifying Repair or Qualifying Replacement includes, but is not  
23 limited to, cancelled checks, credit card statements, invoices,  
24 receipts, identification in Whirlpool's or Sears's databases, reports  
25 to the CPSC of class members who have experienced an  
26 Overheating Event or have paid for a Qualifying Repair, and  
27 service company records.
- 28

1 4. Prequalified Settlement Class Members will not be required to  
2 submit documentation to support their claim, unless they dispute  
3 the prequalified amount to be paid in satisfaction of their claim.  
4 The search methodology to identify Prequalified Settlement Class  
5 Members will be consistent with the methodology used in the  
6 2007-2008 PHM by Whirlpool. The Prequalified Notice will be  
7 sent via mail and also email (if an email address is available)  
8 include a pre-printed unique claim identification number for each  
9 Settlement Class Member that the Settlement Class Members will  
10 enter into the online Claim Form or print on their hardcopy Claim  
11 Form. The unique claim identification number will be used by the  
12 Settlement Administrator to identify and differentiate between  
13 those Settlement Class Members who have not been identified in  
14 Whirlpool's, Sears's, or CPSC's databases as a Prequalified  
15 Settlement Class Member and those who have not been identified  
16 as Prequalified Settlement Class Members. Prequalified Settlement  
17 Class Members will be required only to enter or confirm their  
18 current name and address, check the eligibility boxes on the online  
19 Claim Form, and electronically sign the Claim Form certifying that  
20 the statements are true and correct. If Whirlpool's, Sears's, or  
21 CPSC's database reflects that the Prequalified Class Member  
22 experienced an Overheating Event, and if the database records also  
23 reflect that the Prequalified Class Member received a repair or  
24 replacement that was not paid for in its entirety by Whirlpool or  
25 Sears but the amount paid for a Qualifying Repair or Qualifying  
26 Replacement is not reflected, the amount offered shall be \$200. If  
27 Whirlpool's, Sears's, or CPSC's database reflects that the  
28 Prequalified Class Member experienced an Overheating Event, and

1 if the database records further reflect a likelihood that a free repair  
2 or replacement occurred, the Prequalified Settlement Class  
3 Member shall be mailed or emailed (or both) a tailored notice in  
4 the form attached hereto as Exhibit 11. If a Prequalified  
5 Settlement Class Member wishes to dispute the prequalified  
6 amount of their claim payment that is determined from  
7 Whirlpool's, Sears', or the CPSC's database, however, the  
8 Prequalified Settlement Class Member must submit supporting  
9 documentation showing the amount that he or she paid for the  
10 Qualifying Repair.

11 5. If a claimant cannot provide the qualifying documentation  
12 described above, the Settlement Administrator will search Sears',  
13 Whirlpool's, and the CPSC's service databases for proof of the  
14 claimed Qualifying Repair. To the extent that the databases  
15 provide such proof, the qualifying documentation requirement will  
16 be satisfied.

17 6. No Settlement Class Member who received from Whirlpool or  
18 Sears either a full refund of the purchase price he or she paid for  
19 the Class Dishwasher or a free exchange of the Class Dishwasher  
20 for a new dishwasher of any model will be entitled to any payment  
21 or other compensation, unless (i) the claimant received a free  
22 exchange of the Class Dishwasher for a new Dishwasher and (ii)  
23 the claimant's experiences with the second Dishwasher qualifies  
24 the claimant for compensation for that second Dishwasher under  
25 the terms of this Agreement. To establish eligibility for a cash  
26 settlement payment, claimants will be required to check an  
27 eligibility box on the Claim Form stating that they did not receive  
28 either a full refund of the purchase price paid for the Class

1 Dishwasher or a free exchange of the Class Dishwasher for a new  
2 dishwasher.

3 7. The compensation to be paid to claimants who satisfy the  
4 foregoing requirements will be as follows:

5 a. Reimbursement for Paid Qualifying Repairs: If the claimant  
6 is a Prequalified Settlement Class Member, or if the  
7 claimant provides sufficient documentary proof that the  
8 claimant meets the threshold requirements described above  
9 and that the claimant actually paid some out-of-pocket cost  
10 for a Qualifying Repair, the claimant will be reimbursed for  
11 the amount that sufficient documentary proof shows the  
12 claimant actually paid for parts and labor, up to the full cost  
13 of the Qualifying Repair. If the claimant can provide  
14 sufficient documentary proof of the Qualifying Repair but  
15 that documentary proof does not show the amount paid for  
16 the Qualifying Repair, the claimant's settlement payment  
17 will be \$200.00.

18 b. Reimbursement for Paid Qualifying Replacements: If the  
19 claimant provides sufficient documentary proof that the  
20 claimant meets the threshold requirements described above  
21 and that the claimant paid for a Qualifying Replacement,  
22 Whirlpool will reimburse the out-of-pocket costs paid by the  
23 customer for the new dishwasher up to \$300 for a  
24 Whirlpool-built replacement dishwasher (including a  
25 Whirlpool-built KitchenAid or Kenmore brand dishwasher)  
26 and up to \$200 for a non-Whirlpool replacement dishwasher.

27 c. All Settlement Class Members who can be identified as  
28 having experienced Overheating Events will be sent notice

1 of the proposed class settlement and an opportunity to  
2 submit a Claim Form, regardless of what Whirlpool's or  
3 Sears's databases show regarding voluntary benefits  
4 previously provided to those class members. If the claimant  
5 provides sufficient documentary proof that the claimant  
6 meets the threshold requirements described above and that  
7 the claimant actually paid some out-of-pocket cost for a  
8 Qualifying Repair or Qualifying Replacement, the claimant  
9 will be reimbursed for the amount of any previously  
10 unreimbursed expenses as described above. Settlement Class  
11 members who already received compensation or received a  
12 voluntary benefit will not receive double payment; only  
13 previously unreimbursed expenses will be reimbursed.

14 d. If the claimant previously has received from Sears or  
15 Whirlpool any form of compensation for an Overheating  
16 Event with the claimant's Class Dishwasher (e.g., a policy-  
17 adjust cash payment, a partial refund, a discount off the  
18 regular price of a new dishwasher, a coupon applicable to  
19 the purchase of a new dishwasher that was redeemed), any  
20 compensation to which the claimant would otherwise be  
21 entitled under this section shall be reduced as follows:

- 22 i. For any policy-adjust cash payment, cash refund, or  
23 other cash payment, the amount of that payment.
- 24 ii. For any specified dollar-discount off the price of any  
25 new dishwasher, the specified dollar amount.
- 26 iii. For any specified percentage-discount off the price of  
27 any new dishwasher, the dollar amount determined by  
28

1 applying that percentage to the regular, then-  
2 prevailing price of that product.

3 iv. For any coupon redeemed for the purchase of a new  
4 dishwasher, the dollar amount specified on the face of  
5 the coupon redeemed.

6 v. All other claimants will be required to simply check  
7 an eligibility box on their Claim Form stating that  
8 they did not receive any of these customer-satisfaction  
9 benefits from Whirlpool or Sears related to an  
10 Overheating Event with their Class Dishwasher.

11 8. Deadline to Submit a Claim Form for Reimbursement for a Past  
12 Overheating Event: Settlement Class members will have up to 120  
13 days after the Notice Date to submit a Claim Form for a settlement  
14 payment for a past Overheating Event.

15 **C. Compensation to Future Overheating Subclass Members**

16 1. Cash or Rebates to Future Overheating Subclass Members: Future  
17 Overheating Subclass Members who contact the Settlement  
18 Administrator, Whirlpool, or Sears to report an Overheating Event  
19 that occurs within 2 years after the Notice Date will be eligible to  
20 receive either a \$100 cash payment or a 30% rebate off the  
21 purchase price of a new Whirlpool-brand, Kenmore-brand, or  
22 KitchenAid-brand dishwasher, at their option. If a Future  
23 Overheating Subclass Member contacts Sears directly, the Sears  
24 call centers will be instructed to forward the Future Overheating  
25 Subclass Member to the Settlement Administrator or to Whirlpool.

26 2. Future Overheating Subclass Members will be required to sign a  
27 short, one-page release before they receive their cash payment or  
28 rebate form, a copy of which is attached hereto as Exhibit 12.

1 3. For Future Overheating Subclass Members who desire a cash  
2 payment or to purchase a new dishwasher using the rebate, the  
3 Settlement Administrator or Sears will refer the subclass member  
4 to a designated Whirlpool telephone number to discuss the  
5 subclass member's options. At its sole discretion, Whirlpool also  
6 has the option to buy back or replace the Dishwasher for an  
7 appropriate price so that Whirlpool can obtain the Class  
8 Dishwasher as part of its ongoing field safety monitoring  
9 processes.

10 4. Sticker Program for Replacement Rushmore and Rush ECB Parts:  
11 Whirlpool will affix a sticker to the individual parts boxes  
12 containing replacement service parts for Rushmore and Rush  
13 control boards, excluding replacement parts in the inventories of  
14 Service Technicians as of the Effective Date. Whirlpool also will  
15 undertake to have such stickers affixed to subject parts sold by  
16 CoreCentric, if practicable. The sticker will advise Whirlpool-  
17 authorized and Sears-authorized Service Technicians and  
18 Settlement Class Members who have experienced an Overheating  
19 Event that he or she may be entitled to a cash payment or rebate  
20 upon verification, and that the Service Technician should contact  
21 Whirlpool in that regard for authorization. A copy of the sticker is  
22 attached hereto as Exhibit 13. The Service Technician must take  
23 custody of the part and return it to Whirlpool for confirmation that  
24 the reimbursement terms of this Settlement apply to that  
25 Settlement Class Member.

26 5. Deadline to Submit a Claim for Future Overheating Events: All  
27 claims for future Overheating Events must be submitted by 120  
28

1 days after the Overheating Event, and the Overheating Event must  
2 itself occur within two years of the Notice Date.

3 **D. Non-Class Compensation to NewGen and Raptor Owners for Paid**  
4 **Qualifying Repairs or Paid Qualifying Replacements<sup>1</sup>**

5 1. For NewGen and Raptor Owners for whom there is documentation  
6 as described below, Whirlpool agrees to reimburse certain out-of-  
7 pocket expenses incurred as a result of an Overheating Event,  
8 including the amount of any Paid Qualifying Repair or Paid  
9 Qualifying Replacement in consideration for their individual  
10 execution of a one-page release, a copy of which is attached hereto  
11 as Exhibit 11, releasing their claims against Whirlpool, Sears, and  
12 any other entity in the chain of manufacture or distribution of their  
13 Dishwashers.

14 2. NewGen and Raptor Owners Are Not Included in Class  
15 Settlement: For avoidance of all doubt, the Class Settlement  
16 releases only the claims of Settlement Class Members and  
17 Plaintiffs who own Class Dishwashers with Rushmore and Rush  
18 ECBs. The Class Settlement does not release the claims of  
19 NewGen and Raptor Owners.

20 3. Postcard and Email Notice Mailings to NewGen and Raptor  
21 Owners Who Reported an Overheating Event: Whirlpool or the  
22 Settlement Administrator will mail a postcard notice of this offer  
23 and send email notice, a copy of which is attached hereto as  
24 Exhibit 14, to any NewGen or Raptor Owner identified in  
25

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26 <sup>1</sup> For purposes of this agreement, “NewGen and Raptor Owners” includes named  
27 Plaintiffs Susan Bathon, W. David Beal, Maureen Mengeghetti, Susan Milicia and  
28 Linda Sample. Named Plaintiff Shirl Mederlet will also be entitled to the relief  
afforded NewGen and Raptor Owners, although the release that she must sign to  
obtain such relief will be in a form attached here as Exhibit 14.

1 Whirlpool's, Sears's, CPSC's databases (consistent with the search  
2 methodology used in Whirlpool's 2007-2008 PHM analysis), the  
3 Chambers' Websites, or who contacted Plaintiffs' counsel, where  
4 the documentation shows that within 12 years after purchase, the  
5 claimant's Dishwasher's NewGen or Raptor ECB experienced an  
6 Overheating Event.

- 7 4. Compensation to NewGen and Raptor Owners who Experienced  
8 Past Overheating Events: NewGen and Raptor Owners who have  
9 experienced a documented Overheating Event within 12 years after  
10 purchase of their Dishwasher but before the Notice Date will be  
11 entitled reimbursement of certain out-of-pocket expenses incurred  
12 as a result of that Overheating Event. For purposes of claims to  
13 receive reimbursements for Paid Qualifying Repairs or Paid  
14 Qualifying Replacements, the requirements of paragraph IV.B and  
15 its subparagraphs above shall apply to the NewGen and Raptor  
16 Owners. NewGen and Raptor Owners who can be identified in  
17 Whirlpool's, Sears', or the CPSC's databases as having paid for a  
18 Qualifying Repair will not be required to submit documentation to  
19 support their claim ("Prequalified Owners"). The search  
20 methodology to identify Prequalified Owners will be consistent  
21 with the methodology used in the 2007-2008 PHM by Whirlpool.  
22 The mailed postcards and email notice will include a pre-printed  
23 unique claim identification number for each Prequalified Owner  
24 that the owner will enter into the online claim form or print on  
25 their hardcopy claim form. The unique claim identification number  
26 will be used by the Settlement Administrator to identify those  
27 owners who have been identified as Prequalified Owners.  
28 Prequalified Owners will be required only to enter or confirm their

1 current name and address, check the eligibility boxes on the online  
2 claim form, and electronically sign the claim form certifying that  
3 the statements are true and correct. If Whirlpool's, Sears's, or  
4 CPSC's database reflects that the Prequalified Owner experienced  
5 an Overheating Event, and if the database records also reflect that  
6 the Prequalified Owner received a repair or replacement that was  
7 not paid for in its entirety by Whirlpool or Sears but the amount  
8 paid for a Qualifying Repair or Qualifying Replacement is not  
9 reflected, the amount offered shall be \$200. If Whirlpool's,  
10 Sears's, or CPSC's database reflects that the Prequalified Owner  
11 experienced an Overheating Event, and if the database records  
12 further reflect a likelihood that a free repair or replacement  
13 occurred, the Prequalified Settlement Class Member shall be  
14 mailed or emailed (or both) a tailored notice in the form attached  
15 hereto as Exhibit 15. If a Prequalified Owner wishes to dispute the  
16 amount of their claim payment that is determined from  
17 Whirlpool's, Sears's, or the CPSC's database, however, the  
18 Prequalified Owner must submit supporting documentation  
19 showing the amount that he or she paid for the Qualifying Repair.

- 20 a. Reimbursement for Paid Qualifying Repairs: If the  
21 claimant is a Prequalified Owner, or if the claimant  
22 provides sufficient documentary proof that the  
23 claimant meets the threshold requirements described  
24 above and that the claimant actually paid some out-  
25 of-pocket cost for a Qualifying Repair by a service  
26 technician or by the owner within 12 years after  
27 purchase due to the Dishwasher's Overheating Event,  
28 the claimant will be reimbursed for the amount that

1 sufficient documentary proof shows the claimant  
2 actually paid for parts and labor, up to the full cost of  
3 the Qualifying Repair. If the claimant can provide  
4 sufficient documentary proof of the Qualifying  
5 Repair but that documentary proof does not show the  
6 amount paid for the Qualifying Repair, the claimant's  
7 settlement payment will be \$200.00.

8 b. Reimbursement for Paid Qualifying Replacements: If  
9 the claimant provides sufficient documentary proof  
10 that the claimant meets the threshold requirements  
11 described above in paragraph IV.B and that the  
12 claimant paid to replace, rather than repair, their  
13 Dishwasher in response to an Overheating Event  
14 within 12 years after purchase (i.e., a Qualifying  
15 Replacement), Whirlpool will reimburse the out-of-  
16 pocket costs paid by the customer for the new  
17 dishwasher up to \$300 for a Whirlpool-built  
18 replacement dishwasher (including KitchenAid and  
19 Kenmore brand dishwashers built by Whirlpool) and  
20 up to \$200 for a non-Whirlpool replacement  
21 dishwasher.

22 5. No NewGen or Raptor Owner who received from Whirlpool or  
23 Sears either a full refund of the purchase price he or she paid for  
24 the Dishwasher or a free exchange of the Dishwasher for a new  
25 dishwasher of any model will be entitled to any payment or other  
26 compensation, unless (i) the claimant received a free exchange of  
27 the Dishwasher for a new Dishwasher and (ii) the claimant's  
28 experiences with the second Dishwasher qualifies the claimant for

1 compensation for that second Dishwasher under the terms of this  
2 agreement. To establish their eligibility for a cash settlement  
3 payment, claimants will be required to check an eligibility box on  
4 the Claim Form stating that they did not receive either a full refund  
5 of the purchase price paid for the dishwasher or a free exchange of  
6 the Dishwasher for a new dishwasher.

- 7 6. Deadline to Submit a Claim Form for Reimbursement for a Past  
8 Overheating Event in a NewGen or Raptor Dishwasher: NewGen  
9 and Raptor Owners will have up to 120 days after the Notice Date  
10 to submit a claim form for a settlement payment for a Past  
11 Overheating Event.

12 **E. Non-Class Compensation for NewGen and Raptor Owners Who**  
13 **Experience a Future Overheating Event**

14 NewGen and Raptor Owners who contact the Settlement Administrator,  
15 Whirlpool, or Sears to report a Future Overheating Event that occurs within 10 years  
16 after purchase or within 2 years after the Notice Date, whichever is later, in  
17 consideration of execution of the release attached as Exhibit 11, will be offered and  
18 eligible for a 30% rebate off the purchase price of a new Whirlpool-brand or  
19 KitchenAid-brand dishwasher or a \$100 cash payment, at the Owner's election. At its  
20 sole discretion, Whirlpool will retain the option to offer to buy back or replace the  
21 Dishwasher for an appropriate price so that Whirlpool can obtain the Dishwasher as  
22 part of its ongoing field safety monitoring processes. All rebate claims for Future  
23 Overheating Events must be submitted within 120 days after the Overheating Event.

24 **V. OTHER SETTLEMENT BENEFITS**

- 25 **A. Revisions to Service Kit Pointers or Training Bulletins Regarding**  
26 **TCOs:** Whirlpool will revise its ECB and TCO service kit pointers or  
27 training bulletins, or both to the extent applicable, to emphasize the  
28 important safety function of the subject Dishwashers' TCOs, to instruct

1 technicians and customers not to bypass or disable the TCO, and to  
2 inspect the TCO when servicing the ECB to ensure that the TCO is  
3 properly installed.

4 **B. Sticker Program for Replacement NewGen and Raptor ECB Parts:**

5 For two years after the Notice Date, Whirlpool will affix a sticker to the  
6 individual parts boxes containing replacement service parts for NewGen  
7 and Raptor ECBs, excluding replacement parts in the inventories of  
8 Service Technicians as of the Effective Date of the Settlement. Whirlpool  
9 also will undertake to have such stickers affixed to subject parts sold by  
10 CoreCentric, if practicable. The sticker will advise Whirlpool-authorized  
11 and Sears-authorized Service Technicians and class members who have  
12 experienced an Overheating Event that he or she may be entitled to a  
13 Settlement benefit upon verification, and that the Service Technician  
14 should contact Whirlpool in that regard for authorization. The Service  
15 Technician must take custody of the part and return it to Whirlpool for  
16 confirmation that the NewGen or Raptor Owner qualifies for a Settlement  
17 benefit.

18 **C. Purchase by Whirlpool of KitchenAidFire.com and**  
19 **WhirlpoolSafetyDefects.com (the “Chambers Websites”)**

20 1. As a material term of this Agreement, Plaintiff Steve Chambers  
21 agrees to sell to Whirlpool, and Whirlpool agrees to buy, all right,  
22 title, and interest to the Chambers Websites for the sum of  
23 \$100,000, which sum is based on Whirlpool’s and Mr. Chambers’  
24 respective valuations of the website, and taking into account the  
25 significant investment by Mr. Chambers into the creation and  
26 maintenance of the website, the amount of traffic generated, and  
27 other factors relevant to the valuation of a website. No later than  
28 five business days after the Effective Date, Mr. Chambers shall

1 remove from any other websites or Internet pages that he controls  
2 or has the ability to modify (such as his Facebook.com pages) any  
3 and all information or material that is derogatory toward Whirlpool  
4 or Dishwashers or other appliances that Whirlpool manufactures.  
5 Mr. Chambers further agrees not to create, control or contribute to  
6 any other existing or new websites (or “gripe sites”) that criticizes  
7 Whirlpool .Plaintiff Steve Chambers warrants that he owns and  
8 controls all rights, titles, and interests in the Chambers Websites  
9 and has not transferred any right or interest in either Website to  
10 any third party.

11 2. Transfer of ownership and control of the Chambers Websites to  
12 Whirlpool shall occur on the Effective Date. Within 5 days after  
13 such time, Whirlpool will keep active only its own dishwasher  
14 safety website with information concerning overheating control  
15 boards, Whirlpool’s dishwasher safety technology designed to  
16 contain such events, and information regarding how to contact  
17 Whirlpool if a customer has experienced such an event and would  
18 like to discuss the repair or other customer-satisfaction options  
19 available to such customers.

20 3. Payment to Plaintiff Steve Chambers of the sum set forth in this  
21 section shall be made by wire transfer to a designated trust account  
22 identified by Charles S. Fax, Esq., of Rifkin, Weiner, Livingston,  
23 Levitan & Silver, LLC, within 15 days after the Effective Date.

24 **D. Settlement Publicity and KitchenAidFire.com Website**

25 1. As more fully detailed in the Settlement Administrator’s Notice  
26 Plan, the Settlement Administrator shall cause the Publication  
27 Notice to be published in various publications on one or more  
28 occasions, and shall place banner advertisements online.

- 1                   2.     Between the Preliminary Approval Date and the Effective Date,  
2                   the Chambers Websites may be used to communicate the fact of  
3                   the Settlement and include a link to the Settlement Administration  
4                   Website. The Chambers Websites also may be used to  
5                   communicate the fact of the relief available to NewGen and Raptor  
6                   Owners who have experienced, or who will in the future  
7                   experience, an Overheating Event. Any written statement about  
8                   proposed class or non-class settlement, however, must be reviewed  
9                   and approved by Plaintiffs' Co-Lead counsel Charles Fax and  
10                  Whirlpool before such statement is published on either of the  
11                  Chambers Websites or any other website owned, operated,  
12                  controlled, managed, or published by any named Plaintiff.
- 13                 3.     No later than five business days after the Effective Date, Plaintiff  
14                 Steve Chambers will cooperate with Whirlpool to take down and  
15                 render inoperative the Chambers Websites, and any and all of other  
16                 sites he may own or control relating to alleged hazardous  
17                 conditions in Whirlpool Electronic Control Boards (ECBs) or  
18                 Dishwashers manufactured or sold by Whirlpool or Sears or  
19                 containing derogatory information regarding Whirlpool.
- 20                 4.     Mr. Chambers will direct Settlement Class Members and NewGen  
21                 and Raptor Owners who contact him to contact Whirlpool directly  
22                 at a designated telephone number or email address to be provided  
23                 by Whirlpool.
- 24                 5.     Plaintiffs and Class Counsel agree to direct to Plaintiffs' Co-Lead  
25                 counsel Charles Fax all media inquiries regarding the Lawsuit or  
26                 the Settlement.
- 27  
28

1           6.     Class Counsel may publish information concerning the Settlement  
2                     and a link to the Settlement Website on their respective law firm  
3                     websites

4 **VI.   SETTLEMENT ADMINISTRATION AND NOTICE EXPENSES**

5           A.     Whirlpool agrees to pay for all Notice and Administration Expenses.  
6                     Whirlpool shall not be responsible for any cost that may be incurred by  
7                     Plaintiffs or Class Counsel in (a) responding to inquiries about the  
8                     Agreement, the Settlement, or the Lawsuit; (b) defending the Agreement  
9                     or the Settlement against any challenge to it; or (c) defending against any  
10                    challenge to any order or judgment entered pursuant to the Agreement,  
11                    unless otherwise specifically agreed, except for the costs incurred by the  
12                    Settlement Administrator to prepare declarations, affidavits, or status  
13                    reports at the request of the Parties or the Court for the purpose of  
14                    obtaining preliminary or final approval of the settlement or for staying  
15                    informed of developments in the Settlement. Whirlpool shall be required  
16                    to pay the reasonable costs, if any, billed by the Settlement Administrator  
17                    with respect to work performed by the Settlement Administrator to  
18                    provide information to the Court regarding the notice and settlement  
19                    administration process related to challenges or objections to the  
20                    Agreement or the Settlement.

21           B.     Whirlpool, subject to the approval of Plaintiffs' Counsel, will choose a  
22                     Settlement Administrator.

23           C.     All decisions regarding notice and settlement administration shall be  
24                     made jointly between Defendants and Class Counsel. Class Counsel and  
25                     counsel for Defendants shall have the ability to communicate with the  
26                     Settlement Administrator without the need to include each other in each  
27                     of those communications. Disputes, if any, shall be resolved by the  
28                     Court.

- 1 D. The Settlement Administrator will mail the Summary Notice,  
2 Prequalified Notice, or the TCO Repair Notice to each mailing address of  
3 record for members of the Settlement Class and will email the Summary  
4 Notice, Prequalified Notice, or the TCO Repair Notice to all members of  
5 the Settlement Class for whom valid email addresses are known to  
6 Whirlpool or Sears. Whirlpool and Sears shall search their respective  
7 warranty registration databases, call center databases, and other relevant  
8 databases to identify Settlement Class Members. Such postcard and email  
9 notices shall advise Class Members if they are Prequalified Settlement  
10 Class Members and, if so, shall state that most Prequalified Settlement  
11 Class Members will receive at least \$100 if they enter or confirm their  
12 current name and address, check the necessary eligibility boxes on the  
13 online Claim Form for Prequalified Settlement Class Members, and  
14 electronically sign the Claim Form certifying that the statements are true  
15 and correct.
- 16 E. The Settlement Administrator will mail a copy of the Claim Form to  
17 Settlement Class Members who request a hardcopy form.
- 18 F. The Settlement Administrator also will perform a national change of  
19 address search and forward notice packages that are returned by the U.S.  
20 Postal Service with a forwarding address.
- 21 G. The Settlement Administrator will create a Settlement Website that will  
22 include all necessary and pertinent information for Settlement Class  
23 Members and NewGen and Raptor Owners, including the Claim Form,  
24 the FAQ, and information relating to relevant deadlines, and a link to  
25 Whirlpool's own website relating to dishwasher safety. The Settlement  
26 Website will also permit Settlement Class Members to submit claims  
27 online, including uploading any necessary documentation. The  
28 Settlement Website will also include information that the Parties jointly

1 agree to post concerning the nature of the case and the status of the  
2 Settlement, including relevant pleadings such as the operative Amended  
3 Complaint, papers in support of preliminary and final approval of the  
4 Settlement, and Class Counsel's Petition for attorneys' fees and  
5 reimbursement of expenses and Service Awards, plus relevant orders of  
6 the Court. The Settlement Administrator shall takes steps to ensure that  
7 the Settlement Administration Website is optimized for searching and  
8 that it is mobile-friendly. The Settlement Website shall remain active at  
9 least until 90 days after the last date on which a claim for any benefits  
10 under the Settlement may be submitted.

11 H. The Settlement Administrator will accept online as well as paper Claim  
12 Forms.

13 I. The Settlement Administrator will allow Settlement Class Members to  
14 electronically submit documents supporting their Claim Forms.

15 J. The Settlement Administrator will provide to Class Counsel and  
16 Whirlpool periodic status reports regarding claims.

17 K. The Parties agree that the Summary Notice, Prequalified Notice, TCO  
18 Repair Notice, FAQ, Publication Notice, Claim Form, and Settlement  
19 Website provide information sufficient to inform Settlement Class  
20 Members of the essential terms of this Agreement, appropriate means for  
21 obtaining additional information regarding the Agreement and the  
22 Lawsuit, appropriate information about the procedure for challenging or  
23 excluding themselves from the Settlement, if they should wish to do so,  
24 and appropriate means for and information about submitting a claim for  
25 compensation pursuant to the Settlement. The Parties also agree that the  
26 dissemination of notice of the Settlement in the manner specified in this  
27 Agreement and on the Settlement Website satisfies the notice  
28

1 requirements of due process and Rule 23 of the Federal Rules of Civil  
2 Procedure.

3 L. The Parties will jointly request the Court to approve, in the Preliminary  
4 Approval Order, the method of notice described in this Agreement.

5 M. As soon as practicable, but no later than 10 days after the Court's entry of  
6 the Preliminary Approval Order, Whirlpool shall comply with the notice  
7 provisions of the Class Action Fairness Act, 28 U.S.C. section 1715.

8 N. Within 50 days after the Court's entry of the Preliminary Approval  
9 Order, the Settlement Administrator will file with the Court a declaration  
10 of compliance with this plan of notice, including a statement of the  
11 number of persons to whom the Summary Notice, Prequalified Notice,  
12 and the TCO Repair Notice was mailed and emailed.

13 **VII. PROCEDURES FOR SETTLEMENT APPROVAL**

14 A. The Parties shall use their best efforts to effectuate this Agreement,  
15 including cooperating in drafting the preliminary approval documents  
16 and securing the prompt, complete, and final dismissal, with prejudice, of  
17 the Lawsuit.

18 B. Preliminary Approval

19 1. Not later than September 11, 2015, the Parties shall jointly move  
20 the Court for preliminary approval of the Settlement; for  
21 authorization to publish the Publication Notice and to disseminate  
22 the Summary Notice, Prequalified Notice, and the TCO Repair  
23 Notice contemplated by this Agreement to all members of the  
24 Settlement Class; and for a stay of all proceedings in the Lawsuit,  
25 except for proceedings provided for by, or in connection with, this  
26 Agreement as set forth herein (the "Motion"). The Motion shall  
27 include the proposed Preliminary Approval Order, proposed Final  
28 Approval Order and Judgment, proposed forms of the Summary

1 Notice, Prequalified Notice, TCO Repair Notice, FAQ, Publication  
2 Notice, and Claim Form, and the methods and proposed dates of  
3 their dissemination to the Settlement Class, and the proposed  
4 schedule through final approval of the Agreement.

5 2. The deadlines established in the proposed Preliminary Approval  
6 Order are as follows, all as measured from the date on which the  
7 Court enters the Preliminary Approval Order:

8 a. Ten (10) days after entry of the Preliminary Approval Order:  
9 Date on or before which Defendant shall comply with the  
10 notice provisions of the Class Action Fairness Act, 28  
11 U.S.C. § 1715.

12 b. Forty (40) days after entry of the Preliminary Approval  
13 Order: Date on or before which the Settlement  
14 Administrator shall mail and email the Summary Notices,  
15 Prequalified Notices, and TCO Repair Notices.

16 c. Forty-five (45) days after entry of the Preliminary Approval  
17 Order: Date on or before which the Settlement  
18 Administrator shall publish the Publication Notice.

19 d. Fifty (50) days after entry of the Preliminary Approval  
20 Order: Date on or before which the Settlement  
21 Administrator shall file with the Court a declaration of  
22 compliance with the notice requirements.

23 e. Ninety (90) days after entry of the Preliminary Approval  
24 Order: Date on or before which the Parties will file their  
25 joint motion in support of final approval of the Settlement,  
26 their proposed Final Approval Order, and any memoranda in  
27 support of final approval.  
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- f. One hundred five (105) days after entry of the Preliminary Approval Order: Date on or before which Class Counsel shall file their motion for attorneys’ fees and reimbursement of expenses and request for Service Awards.
- g. One hundred thirty-five (135) days after entry of the Preliminary Approval Order: Date on or before which Defendants shall file their opposition, if any, to Class Counsel’s motion for attorneys’ fees and reimbursement of expenses.
- h. One hundred forty (140) days after entry of the Preliminary Approval Order: Date on or before which requests by members of the Settlement Class to be excluded from the Settlement must be either postmarked by the United States Postal Service or actually received by the Settlement Administrator.
- i. One hundred forty (140) days after entry of the Preliminary Approval Order: Date on or before which objections to certification of the Settlement Class, the designation of Plaintiffs as class representatives, the appointment of Class Counsel, the Settlement, the Agreement, or the amount of fees and expenses that Class Counsel may apply for at the Fairness Hearing, together with all supporting memoranda and other material, must be filed with the Court and served on Class Counsel and Defendants.
- j. One hundred forty (140) days after entry of the Preliminary Approval Order: Date on or before which any Person or attorney seeking to appear at the Fairness Hearing, for the purpose of objecting to certification of the Settlement Class,

1 the designation of Plaintiffs as representatives of the  
2 Settlement Class, the appointment of Class Counsel, the  
3 Settlement, the Agreement, or the amount of fees and  
4 expenses requested by Class Counsel, must file with the  
5 Court and serve on Class Counsel and Defendants an entry  
6 of appearance in the Lawsuit and notice of intention to  
7 appear at the Fairness Hearing.

8 k. One hundred sixty (160) days after entry of the Preliminary  
9 Approval Order: Date on or before which all claims for  
10 replacement dishwasher cash rebates or for Past Overheating  
11 Events shall be postmarked or received by the Settlement  
12 Administrator. Cash rebate and Past Overheating Event  
13 claims received after this date shall not be Valid Claims.

14 l. One hundred sixty (160) days after entry of the Preliminary  
15 Approval Order: Date on or before which Class Counsel  
16 shall file their reply in support of their motion for attorneys'  
17 fees, costs, and Service Awards.

18 m. One hundred eighty (180) days after entry of the Preliminary  
19 Approval Order: Date on or before which the Parties will  
20 file their replies in support of final approval of the  
21 Settlement, their proposed Final Approval Order, and any  
22 memoranda in support of final approval, and any response to  
23 objections to the Settlement.

24 n. One hundred eighty (180) days after entry of the  
25 Preliminary Approval Order: Date on or before which the  
26 Plaintiffs will file their Responses to any response to  
27 objections by Class Members to the fee request or proposed  
28 service awards.

1           o.       Two hundred ten (210) days after entry of the Preliminary  
2                    Approval Order: Date on or about which the Court, at its  
3                    convenience, will hold the Fairness Hearing.

4       **C.    Final Approval**

5           1.       At the Fairness Hearing, the Parties will jointly request the Court  
6                    to enter the Final Approval Order, which (1) grants final approval  
7                    of the certification of the Settlement Class and Subclasses,  
8                    designation of the Class Representatives, and designation of Class  
9                    Counsel, all as conditionally approved in the Preliminary Approval  
10                  Order; (2) grants final approval to the Settlement and this  
11                  Agreement as fair, reasonable, and adequate to the Settlement  
12                  Class; (3) provides for the release of all Released Claims and  
13                  enjoins Settlement Class Members from asserting, filing,  
14                  maintaining, or prosecuting any of the Released Claims in the  
15                  future; (4) orders the dismissal with prejudice of all claims, causes  
16                  of action, and counts alleged in the Lawsuit, and incorporates the  
17                  releases and covenant not to sue stated in this Agreement; (5)  
18                  authorizes the payment by Whirlpool of claims approved by the  
19                  Settlement Administrator as Valid Claims, in accordance with the  
20                  terms of the Agreement; (6) authorizes the purchase of the  
21                  Chambers Websites as stated in this Agreement, and (7) preserves  
22                  the Court's continuing jurisdiction over the administration of the  
23                  Settlement and enforcement of the Agreement.

24           2.       In addition, Class Counsel will move the Court for entry of a  
25                    separate order approving: (1) attorneys' fees and costs to Class  
26                    Counsel in an amount to be agreed by the Parties or, absent  
27                    agreement, determined by the Court; and (2) the Service Awards to  
28                    Plaintiffs.

1 **VIII. REQUESTS FOR EXCLUSION**

2 A. Any member of the Settlement Class shall have the right to opt out of the  
3 Settlement Class. In order to exercise this right, a Settlement Class  
4 Member must timely complete and mail a written request for exclusion to  
5 the Settlement Administrator’s address listed in the Summary Notice,  
6 Prequalified Notice, TCO Repair Notice, FAQ, and Publication Notice.  
7 The written request for exclusion must be postmarked no later than a  
8 deadline to be set by the Court, which deadline shall be set forth in the  
9 Summary Notice, Prequalified Notice, TCO Repair Notice, FAQ, and  
10 Publication Notice.

11 B. Within 10 days after the Court-ordered deadline for timely and properly  
12 opting out from the Settlement Class, the Settlement Administrator shall  
13 provide to counsel for Defendants and Class Counsel a list of the names  
14 and addresses of the members of the Class who have opted out.

15 **IX. PLAINTIFFS’ COUNSEL’S APPLICATION FOR AN AWARD OF**  
16 **ATTORNEYS’ FEES AND COSTS, AND SERVICE AWARDS TO**  
17 **PLAINTIFFS**

18 A. As part of this Settlement, Defendants have agreed that, in addition to the  
19 amount of money that Whirlpool (on behalf of Whirlpool and Sears) has  
20 agreed to make available to pay Valid Claims submitted by Settlement  
21 Class Members and NewGen and Raptor owners, and the amount of  
22 money to be paid for work performed by the Settlement Administrator,  
23 Whirlpool (on behalf of Whirlpool and Sears) also will pay Class  
24 Counsel’s reasonable attorneys’ fees and costs awarded by the District  
25 Court (or, if the amount of the award is appealed, as affirmed or modified  
26 after the appeal), based on their work in prosecuting the Lawsuits and  
27 obtaining the benefits in this Agreement, including work for and benefits  
28 obtained on behalf of NewGen and Raptor Dishwasher Owners as well as

1 Class Dishwasher owners, and based on both the Class and non-Class  
2 benefits created by this Settlement. Defendants, however, reserve all their  
3 rights to object to the amount (but not the entitlement) of the attorneys'  
4 fees and litigation expenses requested by Class Counsel.

5 B. The Parties will negotiate in good faith the award of attorneys' fees and  
6 costs to be paid by Whirlpool (on behalf of Whirlpool and Sears) to Class  
7 Counsel, subject to Court approval. If the parties are unable to agree on a  
8 stipulated amount of attorneys' fees and costs to be awarded to Plaintiffs'  
9 counsel, the parties will submit their dispute regarding the award of  
10 attorneys' fees and costs to the Court. In any event, the amount of  
11 attorneys' fees and expenses to be paid to Class Counsel will be subject  
12 to Court approval.

13 C. After the Court preliminarily approves the Settlement, Class Counsel will  
14 submit a Fee Application to the Court.

15 D. Defendants shall not oppose a Service Award of \$4,000.00 to each of  
16 Plaintiffs to compensate them for their efforts in pursuing litigation on  
17 behalf of the Settlement Class and NewGen and Raptor Dishwasher  
18 Owners. This agreed amount will be subject to Court approval and will  
19 be included in Class Counsel's Fee Application.

20 E. No later than 30 days after the Effective Date, Whirlpool shall pay or  
21 cause to be paid the determined sum of attorneys' fees and costs to  
22 Plaintiffs' counsel, in the form of one check or wire transfer delivered  
23 into a trust account to be identified by Charles S. Fax, Esq., of Rifkin,  
24 Weiner, Livingston, Levitan & Silver, LLC. Class Counsel shall provide  
25 to Defendants' counsel in a timely manner all wiring and account  
26 information necessary to enable Whirlpool to make such a deposit within  
27 the time required.  
28

1 F. Plaintiffs' Co-Lead Class Counsel shall have the authority to determine  
2 and make an allocation of attorneys' fees and costs to any counsel  
3 representing any of Plaintiffs who claim an entitlement to share in any  
4 fees or costs approved by the Court and paid by Whirlpool. Such  
5 allocations shall be made consistent with any agreements between and  
6 among Co-Lead Class Counsel and Class Counsel. Any disputes  
7 regarding such allocations shall be resolved by the Court.

8 G. Any issues relating to attorneys' fees and costs or to any Service Award  
9 are to be considered by the Court separately from the Court's  
10 consideration of the fairness, reasonableness, and adequacy of this  
11 Agreement and the Settlement, especially because the Parties agreed to  
12 the material terms of this Settlement without having reached any  
13 agreement regarding the amount of attorneys' fees and costs to be paid to  
14 Class Counsel. The Court's or an appellate court's failure to approve, in  
15 whole or in part, any award of attorneys' fees and costs to Class Counsel,  
16 or any Service Award, shall not affect the validity or finality of the  
17 Settlement, nor shall such non-approval be grounds for rescission of the  
18 Agreement, as such matters are not the subject of any agreement among  
19 the Parties other than as set forth above. In the event the Court declines to  
20 approve, in whole or in part, the payment of attorneys' fees or costs to  
21 Class Counsel or the payment of any Service Award in the amount(s)  
22 sought by Class Counsel, the remaining provisions of this Agreement  
23 shall remain in full force and effect.

24 **X. RELEASES**

25 A. Plaintiffs and all Settlement Class Members who do not timely exclude  
26 themselves from the Settlement do forever release, acquit, and discharge  
27 Releasees from all manner of actions, causes of action, administrative  
28 claims, demands, debts, damages, costs, attorneys' fees, obligations,

1 judgments, expenses, or liabilities for economic loss, in law or in equity,  
2 whether now known or unknown, contingent or absolute, that Plaintiffs  
3 or Class Members now have or, absent this Agreement, may in the future  
4 have had, against Releasees, by reason of any act, omission, harm,  
5 matter, cause, or event whatsoever that has occurred at any time up to  
6 and including the Effective Date of this Agreement, that relates to any of  
7 the defects, malfunctions, or inadequacies of the Class Dishwashers that  
8 are alleged or could have been alleged in this Lawsuit or to any act,  
9 omission, damage, matter, cause, or event whatsoever arising out of the  
10 initiation, defense, or settlement of the Lawsuit or the claims or defenses  
11 asserted in the Lawsuit, including all claims for diminution-in-value,  
12 benefit-of-the-bargain, cost-of-repair, cost-of-replacement, or premium-  
13 price damages (the “Released Claims”).

14 B. This release, however, will not extinguish, and the Released Claims do  
15 not include, claims for personal injury or for damage to property other  
16 than to the Class Dishwasher itself. For example, if a Settlement Class  
17 Member were to experience a flood or fire related to his or her Class  
18 Dishwasher, the Settlement Class Member would retain his or her right to  
19 pursue individual, non-class claims against Releasees for damage to his  
20 or her property other than to the Class Dishwasher itself.

21 C. On the Effective Date, all Released Claims shall thereby be conclusively  
22 settled, compromised, satisfied, and released as to Releasees.

23 D. As additional consideration for the Settlement and benefits provided by  
24 this Agreement, each Plaintiff agrees to take all reasonable actions to  
25 support any of the Releasees’ efforts to obtain dismissal of any claims or  
26 causes of action brought against them, including any action for  
27 contribution or indemnity, that may hereafter at any time be asserted  
28 against any of the Releasees by any of Plaintiffs, or by anyone

1 subrogated to any of the Plaintiffs' rights in any capacity, and that arise  
2 from any loss, injury, property damage, or expense, including, but not  
3 limited to, all incidental and consequential damages, lost wages, lost  
4 income, lost profits, loss of use, and loss of or damage to any items  
5 washed in the Class Dishwasher, that resulted from or that might have, or  
6 are alleged to have, resulted from the sale of the Class Dishwasher to  
7 Plaintiffs.

8 E. Future or Unknown Harm and Waiver of Statutory Rights: It is possible,  
9 although unlikely, that other injuries, damages, losses, or future  
10 consequences or results of the sale, purchase, use, non-use, need for  
11 repair, or repair of the Class Dishwashers are not currently known by  
12 Plaintiffs and Settlement Class Members and will develop or be  
13 discovered. The Release in this Agreement, and the compromise on  
14 which it is based, are expressly intended to and do cover and include a  
15 release by each Plaintiff and Settlement Class Member of all such future  
16 injuries, damages, losses, or future consequences or results, excluding  
17 any future injury to person or to property other than the Class Dishwasher  
18 itself, and including a release and waiver of all rights, causes of actions,  
19 claims, and lawsuits against the Releasees that may exist or arise in the  
20 future because of such future injuries, damages, losses, or future  
21 consequences or results of known or unknown injuries that relate to or  
22 arise out of the sale of the Class Dishwasher to or its use by each Plaintiff  
23 and Settlement Class Member.

24 F. Each Plaintiff and Settlement Class Member expressly waives any right  
25 conferred on him or her by Section 1542 of the California Civil Code and  
26 expressly consents that this Agreement shall be given full force and  
27 effect according to all of its terms, including those terms relating to  
28

1 unknown and unsuspected claims, if any. Section 1542 provides as  
2 follows:

3 **A GENERAL RELEASE DOES NOT**  
4 **EXTEND TO CLAIMS WHICH THE**  
5 **CREDITOR DOES NOT KNOW OR**  
6 **SUSPECT TO EXIST IN HIS FAVOR AT**  
7 **THE TIME OF EXECUTING THE**  
8 **RELEASE, WHICH IF KNOWN BY HIM**  
9 **MUST HAVE MATERIALLY AFFECTED**  
10 **HIS SETTLEMENT WITH THE DEBTOR.**

11 G. Each Plaintiff and Settlement Class Member expressly consents that this  
12 release shall be given full force and effect according to each of its terms  
13 and provisions, including those relating to unknown and unspecified  
14 claims, injuries, demands, rights, lawsuits, or causes of action as  
15 referenced above. Each Plaintiff and Settlement Class Member  
16 acknowledges and agrees that this waiver is an essential and material  
17 term of this release and the compromise settlement that led to it, and that  
18 without this waiver the compromise settlement would not have been  
19 accomplished. Each Plaintiff has been advised by his or her attorney with  
20 respect to this waiver and, being of competent mind, understands and  
21 acknowledges its significance.

22 H. Each Party hereto expressly accepts and assumes the risk that if facts  
23 with respect to matters covered by this Agreement are found hereafter to  
24 be other than or different from the facts now believed or assumed to be  
25 true, this Agreement shall nevertheless remain effective. It is understood  
26 and agreed that this Agreement shall constitute a general release and shall  
27 be effective as a full and final accord and satisfaction and is a bar to all  
28 actions, causes of action, costs, expenses, attorneys' fees, damages,

1 claims, and liabilities whatsoever, whether or not now known, suspected,  
2 claimed or concealed, pertaining to the Released Claims of this  
3 Agreement.

4 **XI. COVENANT NOT TO SUE**

5 Each Plaintiff (i) covenants and agrees that neither he or she, nor anyone  
6 authorized to act on behalf of him or her, will commence, authorize, or accept any  
7 benefit from any judicial or administrative action or proceeding, other than as  
8 expressly provided for in this Agreement, against the Releasees, or any of them, in  
9 either their personal or corporate capacity, with respect to any claim, matter, or issue  
10 that in any way arises from, is based on, or relates to any alleged loss, harm, or  
11 damages allegedly caused by the Releasees, or any of them, in connection with the  
12 Released Claims; (ii) waives and disclaims any right to any form of recovery,  
13 compensation, or other remedy in any such action or proceeding brought by or on  
14 behalf of him or her or any putative class of Dishwasher owners; and (iii) agrees that  
15 this Agreement shall be a complete bar to any such action by any Plaintiff.

16 **XII. REPRESENTATIONS AND WARRANTIES**

17 Each of the Parties represents and warrants to, and agrees with, each of the  
18 other Parties as follows:

19 A. Plaintiffs represent and warrant that no portion of any claim, right, or  
20 cause of action against any of the Releasees that Plaintiffs, in any  
21 capacity has or may have, and no portion of any recovery or settlement to  
22 which Plaintiffs, in any capacity may be entitled, has been assigned or  
23 transferred by or for Plaintiffs, in any capacity, in any manner, except for  
24 such portion of the settlement sum that has been assigned, transferred, or  
25 conveyed by Plaintiffs to Plaintiffs' Counsel to pay litigation fees and  
26 costs.

27 B. Each of the Parties to this Agreement further represents and warrants to,  
28 and agrees with, each other Party hereto as follows:

- 1           1.     Each Party has received legal advice from his, her, or its attorneys  
2                     on the advisability of making this Settlement and the advisability  
3                     of executing this Agreement.
- 4           2.     No Party relies or has relied on any statement, representation,  
5                     omission, inducement, or promise of or by any other Party (or any  
6                     officer, agent, employee, representative, or attorney of any other  
7                     Party) in executing this Agreement, or in making this Settlement,  
8                     except as expressly stated in this Agreement.
- 9           3.     Each Party to this Agreement has investigated the facts pertaining  
10                    to this Settlement, this Agreement, and all matters pertaining to  
11                    them, to the full extent that the Party deems necessary.
- 12           4.     Each Party has carefully read and reviewed with his, her, or its  
13                    attorneys, and knows and understands, the full contents of this  
14                    Agreement, and is voluntarily entering into this Agreement upon  
15                    the advice of his, her, or its attorneys.
- 16           5.     Each term of this Agreement is contractual and not merely a  
17                    recital.

### 18 **XIII. NO ADMISSION OF LIABILITY**

19           It is understood and agreed that the Settlement sums and the benefits provided  
20 in this Agreement, and this Settlement and release, are for the compromise of disputed  
21 claims and are not to be construed as or deemed to be an admission of any liability,  
22 fault, or responsibility on the part of any of the Releasees, by whom liability and fault  
23 are, and always have been, expressly and completely denied.

### 24 **XIV. NON-DISPARAGEMENT**

- 25           A.     The Parties and their respective counsel agree not to disparage any other  
26                    Party with respect to the Dishwashers, this litigation, or this Settlement.
- 27           B.     The Class Representatives and Class Counsel agree not to create,  
28                    establish, or assist in the development of any website or “gripe” site that

1 criticizes any Defendant with respect to this litigation, this Settlement,  
2 the Dishwashers, or the ECBs.

3 **XV. ADDITIONAL TERMS**

4 A. Extensions of Time: Unless otherwise ordered by the Court, the Parties  
5 may agree to reasonable extensions of time to carry out any of the terms  
6 of this Agreement and Settlement.

7 B. Cooperation: The Parties agree that they will abide by this Agreement  
8 and do all such acts, and prepare, execute, and deliver all such  
9 documents, as may reasonably be required to carry out the stated  
10 objectives of this Agreement.

11 C. Interpretation and Construction: Each Party has participated in the  
12 negotiation and drafting of all provisions of this Agreement, has had an  
13 adequate opportunity to read, review, and consider with his, her, or its  
14 own counsel the effect of the language of this Agreement, and has agreed  
15 to its terms. Accordingly, the legal maxim that “ambiguity shall be  
16 interpreted against the drafter” has no relevance to the interpretation or  
17 construction of this Agreement.

18 D. Conditional Nature of Agreement:

19 1. At Plaintiffs’ option, expressed in written notice to Defendants’  
20 counsel, this Agreement shall become null and void, and no  
21 obligation on the part of any of the Parties will accrue, if the Court  
22 materially alters any of the terms of this Agreement to the  
23 detriment of Plaintiffs or the Settlement Class, or fails to enter the  
24 Preliminary Approval Order or the Final Approval Order in  
25 substantially the form submitted by the Parties.

26 2. At Defendants’ option, expressed in written notice to Class  
27 Counsel, this Agreement shall become null and void, and no  
28 obligation on the part of any of the Parties will accrue, if (a) the

1 Court declines to certify the Settlement Class as provided in the  
2 Preliminary Approval Order; or (b) the Court materially alters any  
3 of the terms of this Agreement to the detriment of Defendants, or  
4 fails to enter the Preliminary Approval Order or the Final Approval  
5 Order in substantially the form submitted by the Parties.

6 E. Severance/Severability: With the exception of the provision for  
7 attorneys' fees and costs to Class Counsel and Service Awards to  
8 Plaintiffs, none of the terms of this Agreement is severable from the  
9 others. If the Court or a court of appeals should rule that any term is void,  
10 illegal, or unenforceable for any reason, however, Defendants, in their  
11 sole discretion, and Plaintiffs, in their sole discretion (but acting in  
12 accord with their duties and obligations as representatives of the  
13 Settlement Class), may elect to waive any such deficiency and proceed  
14 with the Settlement under the terms and conditions ultimately approved  
15 by the Court.

16 F. Return or Destruction of Confidential Documents: The Parties agree to  
17 return to the producing Party or destroy (with written confirmation of  
18 such destruction) all documents marked confidential pursuant to the  
19 Protective Order entered in the Action within 30 days after the Effective  
20 Date.

21 G. Governing Law: This Agreement has been, and shall for all purposes be  
22 deemed to have been, negotiated, executed, and delivered within the  
23 State of California, and the rights and obligations of the Parties shall be  
24 construed and enforced in accordance with, and governed by, the laws of  
25 the State of California.

26 H. Entire Agreement of the Parties: This Agreement constitutes and  
27 comprises the entire agreement between the Parties with respect to the  
28 subject matter hereof. It supersedes all prior and contemporaneous oral

1 and written agreements and discussions. It may be amended only by an  
2 agreement in writing, signed by the Parties.

3 I. Binding on Agents, Successors, and Assigns: This Agreement is binding  
4 on, and shall inure to the benefit of, the Parties and their respective  
5 agents, employees, representatives, officers, directors, subsidiaries,  
6 assigns, heirs, executors, administrators, insurers, and predecessors and  
7 successors in interest.

8 J. Draft by All Parties: Each Party has participated in, and in any  
9 construction to be made of this Agreement shall be deemed to have  
10 equally participated in, the negotiating, drafting, and execution of this  
11 Agreement.

12 K. No Extension of Whirlpool's or Sears' Written Warranties: In connection  
13 with this Agreement and Settlement, Whirlpool and Sears have not  
14 agreed to any extension of their written warranties for the Class  
15 Dishwashers or other Dishwashers. The only settlement benefits are those  
16 payments or rebates to eligible Dishwasher owners described in this  
17 Agreement.

18 L. Amended Complaint and Court Approval: Plaintiffs will file an amended  
19 complaint reflecting the class and subclass definitions reflected in the  
20 agreement for purposes of effectuating the Settlement. The parties agree  
21 to seek approval of this proposed class settlement in the United States  
22 District Court for the Central District of California.

1 Dated: September \_\_\_\_, 2015

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3 \_\_\_\_\_  
4 PLAINTIFF STEVE CHAMBERS

\_\_\_\_\_

PLAINTIFF LYNDEE WALKER

5 \_\_\_\_\_  
6 PLAINTIFF LYNN VAN DER VEER

\_\_\_\_\_

PLAINTIFF LINDA SAMPLE

7 \_\_\_\_\_  
8 PLAINTIFF KEVIN O'DONNELL

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PLAINTIFF SUSAN BATHON

9 \_\_\_\_\_  
10 PLAINTIFF JOSEPH CICCHELLI

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PLAINTIFF MAUREEN MENEGHETTI

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12 PLAINTIFF KURT HIMLER

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PLAINTIFF W. DAVID BEAL

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14 PLAINTIFF SUSAN MILICIA

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PLAINTIFF ZILA KOSWENER

15 \_\_\_\_\_  
16 PLAINTIFF GARY LeBLANC

\_\_\_\_\_

PLAINTIFF PAMELA WALCHLI

17 \_\_\_\_\_  
18 PLAINTIFF GEORGE BLISS

\_\_\_\_\_

PLAINTIFF RAYMOND PAOLINI, JR.

19 \_\_\_\_\_  
20 PLAINTIFF SHIRL MEDERLET

\_\_\_\_\_

PLAINTIFF JACKIE STEFFES

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WHIRLPOOL CORPORATION

By: \_\_\_\_\_  
Authorized Representative

SEARS HOLDINGS CORPORATION

By: \_\_\_\_\_  
Authorized Representative

SEARS, ROEBUCK AND CO.

By: \_\_\_\_\_  
Authorized Representative

READ AND APPROVED:

By: \_\_\_\_\_  
Charles S. Fax  
Co-Lead Counsel for Plaintiffs

By: \_\_\_\_\_  
Michael T. Williams  
Lead Counsel for Defendants