

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

NANCY PAPERNO, et al.,

Plaintiffs,

v.

WHIRLPOOL CORPORATION,

Defendant.

Case No. 3:23-cv-05114-RFL

**ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Judge: Hon. Rita F. Lin

Before the Court is the Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, including the parties' Settlement Agreement and Release (the "Settlement Agreement") and all exhibits thereto, and having been fully advised in the premises, it is HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. The Court has carefully reviewed the Settlement Agreement, as well as the files and proceedings to date in this matter. The terms and conditions in the Settlement Agreement are hereby incorporated as though fully set forth in this Order, and, unless otherwise indicated, capitalized terms in this Order shall have the meanings attributed to them in the Settlement Agreement.

2. The Court has conducted an evaluation of the settlement set forth in the Settlement Agreement for fairness, adequacy, and reasonableness. Based on this preliminary evaluation, the Court finds that the Settlement Agreement meets all applicable requirements of Fed. R. Civ. P. 23(e) for

settlement purposes only. The Court incorporates its findings made orally on the record at the hearing on the Motion for Preliminary Approval on December 10, 2024. The Court further finds that: (i) there is good cause to believe that the settlement is fair, reasonable, and adequate, (ii) the Named Plaintiffs and Plaintiffs' Counsel have adequately represented the Classes; (iii) the Settlement Agreement has been negotiated at arm's length between experienced attorneys familiar with the legal and factual issues of this case and was reached with the assistance of mediator Hunter R. Hughes III, (iv) the relief provided for the Settlement Class is adequate; and (v) the Settlement Agreement warrants notice of its material terms to the Settlement Class Members for their consideration and reaction. Therefore, the Court GRANTS preliminary approval of the Settlement Agreement.

3. The Court finds that it will likely be able to certify the Settlement Class for purposes of settlement only after the Final Approval Hearing. The Court preliminarily finds that the class action prerequisites of Fed. R. Civ. P. 23(a) have been satisfied. Specifically, the Court preliminarily finds that: (i) the Settlement Class is so numerous that joinder would be impractical, (ii) common questions of law and fact exist as to the class, (iii) the claims or defenses of the representative parties, Named Plaintiffs Nancy Paperno and Robert Gibbany, are typical of the claims or defenses of the class, (iv) Named Plaintiffs and Class Counsel will fairly and adequately protect the interests of the class, (v) common questions of law and fact predominate over questions affecting only individual members of the Settlement Class, and (vi) resolution of the claims in this Litigation by way of a settlement is superior to other available methods for the fair and efficient resolution of the claims of the Settlement Class. Accordingly, the Court preliminarily finds that it will likely be able to certify the Settlement Class, which is defined as "all persons who purchased (other than from resale) or otherwise obtained a Class Refrigerator within the United States and its territories from Defendant or its authorized resellers."

Excluded from the Settlement Class are (i) officers, directors, and employees of Whirlpool or its parents, subsidiaries, or affiliates, (ii) attorneys appearing in this case and their household members, (iii) insurers of Settlement Class Members, (iv) subrogees or all entities claiming to be subrogated to the rights of a Class Refrigerator purchaser, a Class Refrigerator owner, or a Settlement Class Member, (v) issuers or providers of extended warranties or service contracts for Class

Refrigerators, (vii) persons who timely and validly exercise their right to be removed from the Settlement Class, and (viii) the Judge presiding over the Action, any members of the Judge's staff, and immediate members of the Judge's family.

4. For settlement purposes only, the Court hereby preliminarily approves the appointment of Named Plaintiffs Nancy Paperno and Robert Gibbany as representatives of the Settlement Class.

5. For settlement purposes only, the Court hereby preliminarily approves the appointment of the following attorneys as Class Counsel: Keller Rohrback L.L.P., Rogers, Patrick, Westbrook & Brickman, LLC, and Kenneth Behrman.

6. A hearing regarding final approval of the Settlement ("Final Approval Hearing") will be held at 1:30 p.m. on May 13, 2025 before the Honorable Rita F. Lin, United States District Judge for the Northern District of California, at the United States Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102 and on Zoom at <https://cand-uscourts.zoomgov.com/j/1615482105?pwd=cTZiSVdXelllSXpjQ1p0Nm5HaXRYUT09>, to determine, among other things whether (i) final approval of the Settlement Agreement should be granted and (ii) Class Counsel's application for attorneys' fees and expenses and a Service Award to each of the Named Plaintiffs should be granted. No later than February 14, 2025, Plaintiffs must file their papers in support of Class Counsel's application for attorneys' fees and expenses, which shall be posted on the Settlement Website. No later than April 4, 2025, the Settlement Administrator must file a list of all exclusions from the Class, and Plaintiffs must file the papers in support of Final Approval, including the memorandum in support of Final Approval and response to any objections, as well as their reply, if any, in support of the Fee Application.

7. The Court approves the Class Notice in the Settlement Agreement, as modified in the Postcard Notice, Publication Notice and Long-Form Notice attached as Exhibits A, B, and C to this Order and the creation of the Settlement Website, as more fully described in the Settlement Agreement. The Court finds that this is the best practicable Class Notice under the circumstances and is reasonably calculated, under all the circumstances, to apprise the Settlement Class Members of the pendency of this litigation, the terms of the Settlement Agreement, and their right to object to the Settlement Agreement or exclude themselves from the Settlement Class. The Court further finds that the forms of

Class Notice in the Settlement Agreement are reasonable, constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and meet the requirements of due process and Fed. R. Civ. P. 23. The Court also approves the Repair Claim Form, Replacement Claim Form, and Technical Service Pointer attached as exhibits D, E, and F to this Order.

8. Pursuant to the Settlement Agreement, the parties have selected Angeion Group, LLC as Settlement Administrator to perform all of the duties of the Settlement Administrator as set forth in the Settlement Agreement and this Order. Whirlpool shall provide the Settlement Administrator with all known model number and serial number combinations associated with each known owner in Whirlpool's customer databases, such that the Settlement Administrator will be able to respond to potential class member inquiries concerning this information. The Settlement Administrator shall use the data regarding the Settlement Class Members solely for the purposes of meeting its obligations as Settlement Administrator and for no other purpose. The Settlement Administrator shall maintain a settlement website that includes an interactive online claim form and online Request for Exclusion form that users can submit directly through the website. The website shall also include an interactive feature that allows class members to enter their refrigerator serial number to find the date of the manufacture. As part of the notice plan, the Settlement Administrator shall include all of the following brand names in its social media notices: Whirlpool, KitchenAid, and Maytag. The Settlement Administrator shall also distribute the class notice in a Spanish translation, and provide translations into other languages upon request.

9. Section IV(A)(2)(d) of the Settlement Agreement is modified per agreement of the Parties to reflect that claims for repairs occurring after the Notice Date must be made within 90 days of the completion of service on the Frost Clog Issue.

10. Section IV(A)(2)(h) of the Settlement Agreement is modified per agreement of the Parties to reflect that the Settlement Administrator shall continue to administer claims for Post-Notice Frost Clog Issues on a rolling basis through the last qualifying date of December 31, 2028.

11. Any Settlement Class Member who wishes to be excluded from the Settlement Class must send a written or online Request for Exclusion to the Settlement Administrator to the address provided in the Class Notice and Settlement Website. Any such Request for Exclusion must be

postmarked or electronically submitted no later than March 21, 2025. Each Settlement Class Member wishing to be excluded must request from the Settlement Administrator a Request for Exclusion where the Settlement Class Member shall include their name, email address, mailing address, and mobile phone number. To be valid, the Request for Exclusion must include all of the information listed above, must be individually submitted and signed by each Settlement Class Member wishing to be excluded and must be submitted to the Settlement Administrator individually. Mass or class opt out forms that purport to be submitted on behalf of Settlement Class Members and have not been individually signed and submitted by the Settlement Class Member at issue shall not be allowed. If Final Approval is granted, any Settlement Class Member who has not submitted a timely-written Request for Exclusion from the Class shall be bound by all subsequent proceedings, orders, and judgments in this Litigation.

12. Any Settlement Class Member who wishes to appear to oppose the reasonableness or fairness of the Settlement at the Fairness Hearing must file with the Court an objection in writing, stating the basis of the objection, no later than March 21, 2025. Any objections must include (i) the Settlement Class Member's full name and current address and telephone number; (ii) the model number and serial number of the Class Refrigerator the Settlement Class Member owns or owned; (iii) a description of all of the Settlement Class Member's objections, the specific reasons therefore, and any and all supporting papers, including, without limitation, all briefs, written evidence, and declarations; (iv) whether the objecting Class Member and/or their counsel intends to appear at the Final Approval Hearing; and (v) the Class Member's signature. The Court will require only substantial compliance with the foregoing requirements and may excuse noncompliance for good cause.

13. Absent good cause, Settlement Class Members submitting objections who wish to appear either personally or through counsel at the Fairness Hearing and present their objections to the Court orally must indicate their intent in their written objection. Only Settlement Class Members who specify in their objections that they intend to appear personally or through counsel at the Fairness Hearing will have the right to present their objections orally at the Fairness Hearing unless the Court excuses the failure to do so for good cause. Settlement Class Members who do not submit timely written objections will not be permitted to present their objections at the Fairness Hearing, subject to the Court's discretion.

14. Any Settlement Class Member who does not object by the timely filing and delivery of an objection (pursuant to the procedures set forth in the Notice) to the Court, shall be deemed to have waived, and shall forever be foreclosed from raising, any objection to the Settlement, subject to the Court's discretion to excuse the requirement of filing a written objection upon a showing of good cause.

15. If Final Approval is granted, all Settlement Class Members who do not timely exclude themselves from the Settlement Class do forever release, acquit, and discharge Releasees from all manner of actions, causes of action, administrative claims, demands, debts, damages, costs, attorney fees, obligations, judgments, expenses, or liabilities for economic loss, in law or in equity, whether now known or unknown, contingent or absolute, including all claims that Plaintiffs or Settlement Class Members now have or, absent this Agreement, may in the future have had, against Releasees, by reason of any acts, omissions, harms, matters, causes, or events whatsoever that have occurred from the beginning of time up to and including October 29, 2024, and that arise from or relate to any of the defects, malfunctions, or inadequacies of the Class Refrigerators that are alleged or could have been alleged in the Lawsuit arising out of or relating to a Frost Clog Issue, including without limitation all claims for out-of-pocket expense, diminution-in-value, benefit-of-the-bargain, cost-of-repair, cost-of-replacement, statutory, or premium-price damages or restitution.

16. Counsel for the Settlement Class shall file Post-Distribution Accounting within twenty-one days after the pre-Notice claims have been paid, using the Court's Post-Distribution Accounting Form (available at <https://cand.uscourts.gov/forms/civil-forms/>) and file it as ECF event "Post-Distribution Accounting" under Civil Events > Other Filings > Other Documents. The Court will order ninety percent of Class Counsel's awarded attorneys' fees to be paid upon Final Approval, and ten percent of Class Counsel's awarded attorneys' fees shall remain in the trust fund until after Class Counsel files the necessary Post-Distribution Accounting, as described herein, and the Court authorizes the release to Class Counsel of the attorneys' fees remaining in the Settlement Fund.

17. To the extent the Court awards less than the amount allocated between the parties as the reasonable amount of attorney fees, costs, and service awards to be paid by Defendant to Plaintiffs, the unused funds will be awarded to the Consumer Federation of America.

18. This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions in the litigation existing as of October 29, 2024, if (i) the proposed Settlement is not finally approved by the Court, or does not become Final (as defined in the Settlement Agreement), pursuant to the terms of the Settlement Agreement; or (ii) the Settlement Agreement is terminated pursuant to the terms of the Settlement Agreement for any reason. In such event, and except as provided therein, the proposed Settlement and Settlement Agreement shall become null and void and be of no further force and effect; the certification of the Settlement Class for settlement purposes shall be automatically vacated; neither the Settlement Agreement nor the Court's Orders, including this Order, shall be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification.

19. This Order shall be of no force and effect if the Settlement does not become Final and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability, or by or against Plaintiffs or the Settlement Class Members that their claims lack merit or that the relief requested in the Complaint in this Litigation is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses they may have.

20. This Order incorporates by reference the findings made at the Motion Hearing held on December 10, 2024. The following chart summarizes the schedule for the final approval process:

EVENT	DEADLINE
Whirlpool shall serve or cause to be served the notice required by the Class Action Fairness Act, 28 U.S.C.	January 3, 2025
Settlement Administrator shall mail, email, and/or text the Summary Notice.	January 31, 2025
Settlement Administrator shall publish the Publication Notice.	February 7, 2025
Class Counsel shall file their Fee Petition, which shall also be posted on the Settlement Website.	February 14, 2025
Settlement Administrator shall file with the Court a declaration of compliance with the notice requirements, including a statement of the number of persons to whom the Summary Notice was emailed, texted, and mailed.	February 21, 2025
Objection Deadline: Any objectors shall file objections, together with all supporting	March 21, 2025


memoranda and other material, with the Court, and serve that filing on Class Counsel and counsel for Whirlpool. This includes objections to: certification of the Settlement Class, the designation of Plaintiffs as Class Representatives, the appointment of Class Counsel, the Settlement, the Agreement, and Class Counsel's Fee Petition.	
Opt-Out Deadline: Requests by Class Members to be excluded from the Settlement must be either postmarked by the U.S. Postal Service (in the case of mailed exclusions) or actually received by the Settlement Administrator (in the case of electronically submitted exclusions).	March 21, 2025
Any Person or attorney seeking to appear at the Fairness Hearing must file with the Court and serve on Class Counsel and counsel for Defendant an entry of appearance in the consolidated Lawsuit and notice of intention to appear at the Fairness Hearing. This includes any person objecting to any or all of the certification of the Settlement Class, designation of Plaintiffs as Class Representatives, appointment of Class Counsel, the Settlement, the Agreement, or Class Counsel's Fee Application.	March 21, 2025
Settlement Administrator must file a list of all exclusions with the Court.	April 4, 2025
Class Counsel shall file their reply, if any, in support of their Fee Application.	April 4, 2025
Class Counsel shall file the proposed Final Approval Order and memorandum in support of Final Approval. Whirlpool may separately file a memorandum in support of Final Approval by this deadline.	April 4, 2025
The Parties shall file their responses, if any, to any objections to certification of the Settlement Class, the designation of Plaintiffs as Class Representatives, the appointment of Class Counsel, the Settlement, the Agreement, and Class Counsel's Fee Petition.	April 4, 2025
Class Counsel shall file their reply, if any, in support of Final Approval	April 25, 2025
The Court will hold the Fairness Hearing.	May 13, 2025, at 1:30 p.m.
Claims Deadline: All claims by Settlement Class Members to the Settlement Administrator for benefits, except Post-Notice Claims, shall be	June 18, 2025

postmarked by the U.S. Postal Service (in the case of mailed Claim Forms) or received (in the case of electronic Claim Forms).	
--	--

21. The Court authorizes the Parties to take all necessary and appropriate steps to implement the Settlement Agreement.

IT IS SO ORDERED.

Dated: December 20, 2024



Hon. Rita F. Lin
United States District Judge