

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KYLE DEI ROSSI and MARK
LINTHICUM, on behalf of themselves and
those similarly situated,

Plaintiffs,

v.

WHIRLPOOL CORPORATION,

Defendant.

No. 2:12-cv-00125-TLN-CKD

**ORDER 1) GRANTING MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; (2) GRANTING
UNOPPOSED AMENDED MOTION FOR
AWARD OF CLASS REPRESENTATIVE
SERVICE PAYMENTS, SETTLEMENT
ADMINISTRATION EXPENSES, AND
ATTORNEYS' FEES, EXPENSES, AND
COSTS; AND (3) ENTERING JUDGMENT
OF DISMISSAL**

On May 18, 2017, the Court conducted a hearing regarding final approval of the settlement and release of claims in this matter, Plaintiffs' motion for attorneys' fees and costs, class representative payments, and settlement administration expenses. (*See* ECF Nos. 180 & 184.) The Court having considered the Settlement Agreement and Release ("Agreement"), as well as both motions, and all exhibits and declarations, all papers and proceedings, all oral and written comments regarding the proposed Agreement, and having reviewed the record, and for good cause appearing, GRANTS Plaintiffs' Motion for Final Approval of Class Action Settlement (ECF No. 180) and GRANTS Plaintiffs' Amended Motion for Award of Attorneys' Fees, Costs, and Expenses, and Class Representative Service Awards (ECF No. 184), as follows.

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

2 1. To the extent defined in the Agreement, the terms in this Order shall have the
3 meanings set forth therein.

4 2. The Court has jurisdiction over the subject matter of this litigation and over all
5 parties to this litigation, including the Class Representatives, the Class Members, and Defendant.

6 3. The Court hereby GRANTS the Plaintiffs' Motion for Final Approval of the Class
7 Action Settlement, approves the terms of the settlement as outlined in the Agreement as, in all
8 respects, fair, adequate, reasonable, in the best interest of the Class and each Class Member,
9 based on the following factors:

- 10 a. The estimated loss for each Class Member in relation to the amount offered
11 in settlement;
- 12 b. The risk, expense, complexity, and likely duration of continued litigation;
- 13 c. The risk of maintaining class action status;
- 14 d. The extent of discovery completed and the stage of the proceedings;
- 15 e. The extensive motions practice by the parties;
- 16 f. The experience and views of counsel;
- 17 g. The lack of opposition or opt outs by Class Members to the proposed
18 settlement; and
- 19 h. The fact that the settlement was reached after serious, extensive, non-
20 collusive, arm's-length negotiations by experienced counsel.

21 4. As the Court previously found in the Court's Order Granting Preliminary
22 Approval, the Class, for settlement purposes only, satisfies the requirements for a Rule 23
23 settlement class, and is defined as follows:

24 All residents of the State of California who (a) bought a new Class Refrigerator,
25 (b) acquired a Class Refrigerator as part of the purchase or remodel of a home, or
26 (c) received as a gift, from a donor meeting the requirements of either
subsection(a) or subsection (b), a new Class Refrigerator not used by the donor or
by anyone else after the donor bought or acquired the Class Refrigerator and
before the donor gave the Class Refrigerator to the California resident.

27 ///

28 ///

1 5. The Court finds that distribution of the Notice to Class Members in the manner
2 and form required has been completed in accordance with this Court's Order Granting
3 Preliminary Approval and the terms of the Agreement, constituted the best notice practicable
4 under the circumstances, provided due and adequate notice of the proceedings and the matters
5 herein, including the proposed settlement, to all persons entitled to such notice, and the Notice
6 fully satisfied the requirements of due process, the Constitution of the United States of America,
7 and Rules 23(d) and (e) of the Federal Rules of Civil Procedure.

8 6. No Class Members objected to the Agreement or opted out of it, as of the last
9 reporting by the Settlement Administrator on March 3, 2017.

10 7. In compliance with the requirements of 28 U.S.C. § 1715(b), Defendant provided
11 notice of the settlement to (a) the Attorney General of the United States of America and (b) to the
12 appropriate state office in California (as that term is defined in 28 U.S.C. § 1715(a)(2)). As
13 further required under 28 U.S.C. § 1715(d), more than 90 days have elapsed since the service of
14 such notices. Neither the Attorney General of the United States nor any appropriate California
15 state official has served written objection to the settlement or appeared at the Final Approval and
16 Fairness hearing to object to the settlement.

17 8. Due to adequate notice of the proceedings having been provided to Class
18 Members, and a full opportunity having been offered to participate in the Final Approval and
19 Fairness Hearing, it is hereby determined that they are bound by this Order of Final Approval of
20 Class Action Settlement, including without limitation, the Released Claims.

21 9. Upon entry of this Order of Final Approval and Judgment of Dismissal, and by
22 operation of this Order of Final Approval and Judgment of Dismissal, the Released Claims, as set
23 forth in the Agreement, of each Class Member against Defendant, are fully, finally and forever
24 released, relinquished and discharged pursuant to the terms of the Agreement, and all Class
25 Members shall be barred and permanently enjoined from participating in any other lawsuit against
26 Defendant, concerning the claims settled and released in this suit.

27 ///
28 ///
3

1 10. The plan of distribution set forth in the Agreement providing for distribution of
2 monetary relief to the Class Members is approved as being fair, reasonable and adequate pursuant
3 to Rule 23 of the Federal Rules of Civil Procedure.

4 11. The Court hereby awards Class Counsel reasonable attorneys' fees, expenses, and
5 costs in the amount of \$735,000, to be paid in addition to the monetary relief for Class Members.

6 12. The Court hereby awards service payments in the amount of \$4,000 each to Class
7 Representatives, Kyle Dei Rossi and Mark Linthicum, to be paid in addition to the monetary
8 relief for Class Members.

9 13. The Court hereby approves the payment of fees and costs to the Settlement
10 Administrator, to be paid in addition to the monetary relief for Class Members.

11 14. The Court hereby directs the parties to effectuate the settlement according to the
12 terms set forth in the Agreement and this Order.

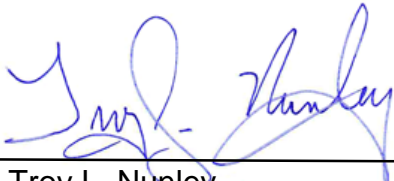
13 15. The Court hereby enters judgment approving the terms of the Agreement and
14 dismissing this suit on the merits with prejudice in accordance with the Agreement. The Second
15 Amended Complaint is dismissed on the merits with prejudice on a class-wide basis. This
16 document shall constitute a final judgment for purposes of Federal Rule of Civil Procedure 58.

17 16. Without further order of this Court, the parties may jointly agree to reasonable
18 extensions of time to carry out any provisions of the Agreement.

19 17. If the settlement does not become final and effective in accordance with the terms
20 set forth in the Agreement, then this Order Granting Final Approval and Judgment of Dismissal
21 and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

22 18. Without affecting the finality of this Order and Judgment of Dismissal, the Court
23 hereby retains continuing jurisdiction over the settlement fund, the settling parties, the Class
24 Members and distribution of the monetary relief, and any other matters involving the
25 implementation of the terms in the Agreement.

26 Dated: May 23, 2017

27
28 
Troy L. Nunley
United States District Judge