

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**MARCIA NESSLE, etc,**

**Plaintiff,**

**vs.**

**WHIRLPOOL CORPORATION,**

**Defendant.**

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**CASE NO. 1:07CV3009**

**JUDGE CHRISTOPHER A. BOYKO**

**ORDER**

**CHRISTOPHER A. BOYKO, J.:**

This matter comes before the Court upon a Telephone Conference conducted on August 6, 2008. The above-captioned Class Action Complaint, filed October 2, 2007, was brought pursuant to the Class Action Fairness Act (“CAFA”). Plaintiff, Marcia Nessle, an Ohio resident, purchased a side-by-side stainless steel “Gold” Whirlpool refrigerator (Model No. GD5SHAXNS01) for \$1,269.58 on May 10, 2006. She brings this action on behalf of consumers in Ohio who, between 2000 and the present, have purchased allegedly defective side-by-side refrigerators manufactured by Whirlpool. In particular, she alleges the ice chutes in these refrigerators suffer from a design flaw and/or manufacturing defect. After discussion with counsel, and consideration of the status of pending matters, the Court orders the case to proceed

as follows:

I. Defendant, Whirlpool Corporation, consents to the withdrawal of its Motion to Strike Plaintiff's Class Allegations (ECF DKT #19), subject to re-filing at the conclusion of limited discovery.

II. Fact discovery shall proceed on a limited basis and with a narrow focus:

A. Plaintiff shall demonstrate the relevance of January 1, 2000 as a starting point for purchases of Whirlpool refrigerators in Ohio, especially in light of the fact that her alleged purchase was made on May 10, 2006.

B. Consistent with the allegations in Plaintiff's Class Action Complaint, and as defended in opposition to the Motion to Dismiss, discovery shall focus upon the ice chutes in the Whirlpool side-by-side refrigerators, sharing the design of the ice chute in the refrigerator purchased by Plaintiff, the proposed class representative.

C. The parties shall investigate which models manufactured by Whirlpool contain that design of ice chute, and of those models, which were distributed in the state of Ohio, and during what time period.

D. If Defendant agrees to voluntarily produce relevant documents, without formal discovery requests, the documents must be verified, i.e., supported by the affidavit of a Rule 30(b)(6) representative. That individual or individuals shall be made available for deposition; and Defendant shall be permitted to depose Plaintiff, Marcia Nettle.

It is anticipated, by the Court and the parties, the outlined discovery can be completed in ninety days, i.e., by November 6, 2008. Before re-filing the dispositive motion, a Telephone Conference is scheduled for November 10, 2008 at 2:00 p.m. Plaintiff's counsel shall initiate

and join defense counsel and the Court in a conference call to 216-357-7151. In the event Defendant elects to re-file, the Motion to Strike Class Allegations is due by December 10, 2008; and the Motion shall also address the Court's jurisdiction under CAFA (requiring 100 or more class members and an aggregate amount in controversy of at least \$5,000,000). Plaintiff's Opposition Brief is due by January 20, 2009. Any Reply shall be filed by January 30, 2009.

**IT IS SO ORDERED.**

**DATE: August 7, 2008**

S/Christopher A. Boyko  
**CHRISTOPHER A. BOYKO**  
**United States District Judge**