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10 *Class Counsel*

11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA
13

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

16 Plaintiffs,

17 v.

18 WHIRLPOOL CORPORATION,
19 Defendant.

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

**DECLARATION OF L. TIMOTHY
FISHER IN SUPPORT OF PLAINTIFFS'
AMENDED MOTION FOR AN AWARD
OF ATTORNEYS' FEES, COSTS AND
EXPENSES, AND SERVICE AWARDS**

Date: May 18, 2017

Time: 2:00 p.m.

Courtroom: 2 - 15th Floor

Honorable Troy L. Nunley

1 I, L. Timothy Fisher, declare:

2 1. I am a partner in the law firm of Bursor & Fisher, P.A., counsel to Plaintiffs Kyle
3 Dei Rossi and Mark Linthicum (“Plaintiffs”) and Co-Lead Class Counsel in this case. I make this
4 declaration in support of Plaintiffs’ Amended Motion for an Award of Attorneys’ Fees, Costs and
5 Expenses.¹ I have personal knowledge of the facts set forth in this declaration and, if called as a
6 witness, I could and would testify competently thereto.

7 2. On March 3, 2017, Plaintiffs Kyle Dei Rossi and Mark Linthicum (“Plaintiffs”)
8 filed their Motion for Final Approval of Class Action Settlement and their Motion for an Award of
9 Attorneys’ Fees, Costs and Expenses and Service Awards. *See* Dkt. Nos. 180 and 181,
10 *respectively*. I hereby incorporate the 3/3/2017 Declaration of L. Timothy Fisher in Support of
11 Motion for an Award of Attorneys’ Fees, Costs and Expenses (the “3/3/2017 Fisher Decl.”) (Dkt.
12 No. 180-1), and the exhibits attached thereto.

13 3. On March 31, 2017, the Parties reached agreement on the amount of attorneys’ fees,
14 costs and expenses to be paid to Class Counsel, subject to the Court’s approval. This Addendum to
15 the Settlement Agreement (“Addendum”) is attached hereto as **Exhibit A**. The Addendum
16 provides that Plaintiffs will not seek a fee and expense award greater than \$735,000 and that
17 Defendant will not oppose a fee award of \$735,000. In accordance with the Addendum, Plaintiffs
18 withdrew their March 3, 2017 Motion for an Award of Attorneys’ Fees, Costs and Expenses, and
19 Service Awards (Dkt. No. 181). *See* Dkt. Nos. 182 and 183. The Addendum provides Class
20 Counsel with a fee and expense award that constitutes a reduction of more than a \$1,000,000
21 dollars from Class Counsel’s calculated lodestar (\$1,712,709.50) and expenses (\$72,754.31).
22 3/3/2017 Fisher Decl., ¶¶ 43-49, Ex. B, Ex. C; Declaration of Antonio Vozzolo in Support of
23 Amended Motion for an Award of Attorneys’ Fees, Costs and Expenses, ¶¶ 12-17, 21-24, Ex. C,
24 Ex. D, Ex. E.

25 4. The Parties agreed to the substantive terms of the settlement on February 5, 2016. It
26 was not until March 31, 2017, more than a year later, that the Parties agreed to the requested fee

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28 ¹ All capitalized terms herein that are not otherwise defined have the definitions set forth in the Settlement Agreement. *See* Dkt. No. 130-2, Ex. A.

EXHIBIT A

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

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

Plaintiffs,

vs.

WHIRLPOOL CORPORATION,

Defendant.

Case No: 2:12-CV-00125-TLN-CKD

**ADDENDUM TO CLASS ACTION
SETTLEMENT AND RELEASE OF ALL
CLAIMS**

Date: May 18, 2017
Time: 2:00 p.m.
Courtroom: 2, 15th Floor
Judge: The Honorable Troy L. Nunley

This Addendum to the Class Action Settlement Agreement and Release of All Claims (“Addendum”) is made and entered into as of March 31, 2017, between Plaintiffs Kyle Dei Rossi and Mark Linthicum, on behalf of themselves and the Settlement Class, and Defendant Whirlpool Corporation (“Whirlpool”). All capitalized terms in this Addendum have the same meaning as the capitalized terms in the Class Action Settlement Agreement and Release of All Claims entered into as of February 5, 2016 (“Agreement”). Plaintiffs and Whirlpool are collectively referred to as the

1 “Parties.”

2 WHEREAS, Section VIII.B of the Agreement provided that the Parties would negotiate in
3 good faith the award of attorneys’ fees and costs to be paid by Whirlpool to Class Counsel, subject
4 to Court approval. The Agreement further provided that if the Parties were unable to agree on an
5 amount of attorneys’ fees and costs to be awarded to Class Counsel, the Parties would submit their
6 dispute regarding the award of attorneys’ fees and costs to the Court;

7 WHEREAS, the Parties negotiated in good faith regarding the award of attorneys’ fees and
8 costs to be paid by Whirlpool to Class Counsel, but they were unable to reach agreement before
9 Plaintiffs’ Notice of Motion and Motion for an Award of Attorneys’ Fees, Costs and Expenses, and
10 Service Awards, ECF No. 181 (“Fee Application”) was filed with the Court on March 3, 2017;

11 WHEREAS, the Parties have since agreed to an award of attorneys’ fees and costs to be paid
12 by Whirlpool to Class Counsel in the amount of \$735,000;

13 WHEREAS, Plaintiffs will withdraw the pending Fee Application and resubmit a new fee
14 application seeking an award of attorneys’ fees and costs in an amount not to exceed \$735,000.00,
15 and they will attach this Addendum as an exhibit to that new application;

16 WHEREAS, Whirlpool shall not oppose Class Counsel’s Fee Application so long as the
17 request does not exceed \$735,000.00;

18 WHEREAS, the Parties wish to enter into this Addendum to the Agreement to reflect this
19 and to otherwise preserve the Agreement in all other respects;

20 NOW, THEREFORE, the Parties agree and covenant that Section VIII of the Agreement is
21 replaced in its entirety with new Section VIII, as follows:

22 **VIII. PLAINTIFFS’ COUNSEL’S APPLICATION FOR AN AWARD OF ATTORNEYS’**
23 **FEES AND COSTS, AND SERVICE AWARDS TO PLAINTIFFS**

24 A. As part of this Settlement, Whirlpool has agreed that, in addition to the amount of
25 money that Whirlpool has agreed to make available to pay Valid Claims submitted by
26 Class Members, and the amount of money to be paid for work performed by the
27 Settlement Administrator, Whirlpool will also pay Class Counsel’s reasonable
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1 attorneys' fees and costs awarded by the Court (or, if the amount of the award is
2 appealed, as affirmed or modified after the appeal).

3 B. Class Counsel will withdraw their Fee Application filed on March 3, 2017.

4 C. Class Counsel will submit a new motion for attorneys' fees and costs to the Court for
5 an award of attorneys' fees and costs in an amount not to exceed \$735,000.00 ("New
6 Fee Application").

7 D. Whirlpool has indicated that it will not oppose the New Fee Application.

8 E. Whirlpool shall not oppose a Service Award of \$4,000.00 to each Plaintiff to
9 compensate them for their efforts in pursuing litigation on behalf of the Settlement
10 Class. This agreed amount will be subject to Court approval and will be included in
11 Class Counsel's New Fee Application.

12 F. The payment of attorneys' fees and costs and Service Awards will be paid by
13 Whirlpool over and above the benefits provided in Section IV of the Agreement and
14 will not reduce the amount of any benefits paid to the Settlement Class.

15 G. No later than 30 days after the entry of the Court's order on Class Counsel's New Fee
16 Application, regardless of any appeal that may be filed or taken by Whirlpool, any
17 class member or third party, so long as the award on the Fee Application is not
18 greater than \$735,000.00, Whirlpool shall pay the sum so awarded to Class Counsel.
19 Whirlpool shall pay or cause to be paid the attorneys' fees and costs by wire transfer
20 delivered into a trust account to be identified by Bursor & Fisher, P.A. Class Counsel
21 shall provide a reasonable and appropriate undertaking and security for repayment in
22 the event the District Court's order approving the Settlement and fee award does not
23 become final following any appeal. Class Counsel shall provide to Whirlpool's
24 counsel in a timely manner all wiring and account information necessary to enable
25 Whirlpool to make such a deposit within the time required.

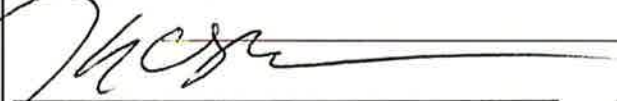
26 H. Class Counsel shall have the authority to determine and make an allocation of
27 attorneys' fees and costs to any counsel representing any of Plaintiffs who claim an
28 entitlement to share in any fees or costs approved by the Court and paid by

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Whirlpool. Such allocations shall be made consistent with any agreements between and among Class Counsel. Any disputes regarding such allocations shall be resolved by the Court.

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

1 Dated: March 31, 2017

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3 PLAINTIFF KYLE DEI ROSSI

4 PLAINTIFF MARK LINTHICUM

5
6 WHIRLPOOL CORPORATION

7
8 By: 
9 Authorized Representative

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11 READ AND APPROVED:

12 By: 
13 L. Timothy Fisher
14 Class Counsel for Plaintiffs

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16 By: _____
17 Michael T. Williams
18 Lead Counsel for Whirlpool

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Dated: March 31, 2017

PLAINTIFF KYLE DEI ROSSI





PLAINTIFF MARK LINTHICUM

WHIRLPOOL CORPORATION

By: 
Authorized Representative

READ AND APPROVED:

By: 
L. Timothy Fisher
Class Counsel for Plaintiffs

By: 
Michael T. Williams
Lead Counsel for Whirlpool