

COPY

COURT FILE NUMBER 1603-10241

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF KRISTINA ESSA as REPRESENTATIVE PLAINTIFF

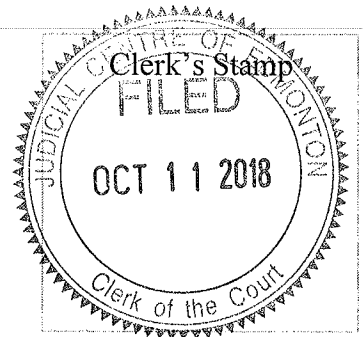
DEFENDANTS WHIRLPOOL CORPORATION, SEARS HOLDINGS MANAGEMENT CORPORATION, SEARS ROEBUCK AND CO., INC., SEARS CANADA INC., WHIRLPOOL CANADA CO. and WHIRLPOOL CANADA LP

DOCUMENT **APPLICATION FOR PRELIMINARY APPROVAL**

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Application for Preliminary Approval  
Court File Number 1603-10241

**NOTICE TO RESPONDENT: WHIRLPOOL CORPORATION  
SEARS HOLDINGS MANAGEMENT CORPORATION  
SEARS ROEBUCK AND CO., INC.  
SEARS CANADA INC.  
WHIRLPOOL CANADA CO.  
WHIRLPOOL CANADA LP**

This application is made against you. You are a Respondent. You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date:	<b>October 25, 2018</b>
Time:	<b>8:45 a.m.</b>
Where:	<b>Court of Queen's Bench of Alberta, Judicial Centre of Edmonton, 1A Sir Winston Churchill Square Edmonton, AB T5J 0R2</b>
Before Whom:	<b>The Honourable Mr. Justice P. Michalyszyn</b>

**REMEDY CLAIMED OR SOUGHT:**

1. Except to the extent that they are set out in or modified by this Order, the definitions set out in the Settlement Agreement, as attached at **Schedule "A"**, apply to and are incorporation into this Order;
2. An Order that the "Settlement Class" is defined as:

Application for Preliminary Approval  
Court File Number 1603-10241

Settlement Class Members: All residents in Canada who (a) purchased a new KitchenAid®, Kenmore® or Whirlpool® brand automatic dishwasher manufactured by Whirlpool between October 2000 and January 2006 that contained either a Rushmore or Rush electronic control board (“**Class Dishwasher**”), (b) acquired a new 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. Excluded from the Settlement Class are:

(i) officers, directors and employees of the Defendants or their parents or subsidiaries,

(ii) insurers of Settlement Class Members,

(iii) subrogees or all entities claiming to be subrogated to the rights of Settlement Class Members, and

(iv) issuers or providers of extended warranties or service contracts for Class Dishwashers;

3. An Order that the Settlement Class subclasses are defined as:

(a) Past Overheating Subclass: All Settlement Class Members whose Class Dishwashers’ electronic control boards overheated within 12 years after the Purchase of their Class Dishwasher but before the Notice Date; and

(b) Future Overheating Subclass: All Settlement Class Members whose Class Dishwashers’ electronic control boards overheat within 10 years after the

Application for Preliminary Approval  
Court File Number 1603-10241

Purchase of their Class Dishwasher or within 2 years after the Notice Date, whichever is later;

4. The claims made on behalf of Settlement Class Members in respect of Released Claims in the within proceeding are certified as a national class proceeding against the Defendants, for settlement purposes only;
5. An order that Kristina Essa is appointed as the representative plaintiff for the Settlement Class, the Past Overheating Subclass, and the Future Overheating Subclass;
6. An order that Klein Lawyers LLP, Guardian Law, and James H. Brown & Associates are appointed as Class Counsel;
7. An order confirming that the representative plaintiff alleges, on behalf of the Settlement Class, that the Defendants were negligent and in breach of the *Fair Trading Act*, R.S.A. 200, c. F-2, and the *Sale of Goods Act*, R.S.A. 200, c. S-2, and comparable legislation in other jurisdictions;
8. An order confirming that the Settlement Class claims damages from the Defendants and statutory remedies pursuant to the *Fair Trading Act*, and the *Sale of Goods Act*, and comparable legislation in other jurisdictions;
9. An order that the claims made on behalf of Settlement Class Members in respect of Released Claims in the within proceeding are certified on the basis that the following issue is common to the Settlement Class:

(a) Are the Defendants liable to the Settlement Class?

## Application for Preliminary Approval

Court File Number 1603-10241

10. Subject to further Order of this Court upon the Final Approval Hearing, an Order that the Settlement Agreement, including its Appendices, are granted preliminary approval as fair and reasonable and in the best interests of the Settlement Class Members.
11. An Order that Rice Point Administration Inc. is appointed as the Settlement Administrator to administer the Settlement and fulfill its functions in accordance with and as required by the Settlement Agreement and this Order;
12. An order that the form of Notice of Certification and Settlement (the “Notice of Certification and Settlement”) is hereby approved substantially in the form attached hereto as **Schedule “B”**;
13. An order that the form of Publication Notice (the “Publication Notice”) is hereby approved substantially in the form attached hereto as **Schedule “C”**;
14. An order that the form of Prequalified Notice (the “Prequalified Notice”) is hereby approved substantially in the form attached hereto as **Schedule “D”**;
15. An order that the form of TCO Repair Notice (the “TCO Notice”) is hereby approved substantially in the form attached hereto as **Schedule “E”**;
16. An order that the plan of dissemination for the Notice of Certification and Settlement, and the Publication Notice (the “Notice Plan”), is hereby approved substantially in the form attached hereto as **Schedule “F”**;

Application for Preliminary Approval  
Court File Number 1603-10241

17. An order that the Notice of Certification and Settlement, and the Publication Notice, are to be distributed by the Settlement Administrator substantially in the manner set out in the Notice Plan;
18. An order that the Prequalified Notice is to be sent with the Notice of Certification and Settlement to Prequalified Settlement Class Members substantially in the manner set out in the Notice Plan;
19. An order that the TCO Notice is to be sent with the Notice of Certification and Settlement to Settlement Class Members whom the Defendants identify as having experienced a TCO repair;
20. An order that the Defendants will pay the amounts required under the Settlement Agreement in respect of the cost of publication of the Publication Notice and the mailing of the Notice of Certification and Settlement, the Prequalified Notice, and the TCO Notice, in accordance with the Notice Plan;
21. A declaration that the Order be binding upon each member of the Settlement Class who has not validly opted-out of this proceeding, including those persons who are minors or mentally incapable;
22. An order that the form to Opt-Out (the "Opt-Out Form") is approved substantially in the form attached hereto as **Schedule "G"**;
23. An order that the period to opt-out of the within proceeding will expire 105 days after the date of the granting of the Preliminary Approval Order (being the Notice Date which is

45 days after the grant of the Preliminary Approval Order plus the Opt-out period of 60 days following the Notice Date) and that any Settlement Class Member who has validly opted-out of this proceeding is not bound by the Settlement Agreement, and will not be entitled to receive any portion of the benefits available in connection with the Settlement Agreement;

24. An order that to validly opt-out, Settlement Class Members must complete, sign and deliver the Opt-Out Form to the Settlement Administrator during the Opt Out Period;
25. An order that the Parties to the Settlement Agreement may make non-substantive amendments to the Settlement Agreement including its Appendices, provided that each Party to the Settlement Agreement agrees in writing to any such amendment;
26. An order that in the event final approval of the Settlement Agreement is not granted in accordance with its terms at the Final Approval Hearing, or final approval is reversed on appeal, the certification for settlement purposes granted in this Order shall be of no force and effect and this proceeding shall be decertified by consent;
27. An order that in the event final approval of the Settlement Agreement is not granted in accordance with its terms at the Final Approval Hearing, or final approval is reversed on appeal, the Plaintiff will be at liberty to continue this proceeding and the Defendants retain the right to oppose certification and defend the claims made in this proceeding;
28. Such further and other relief as this Honourable Court may deem just.

## THE GROUNDS FOR MAKING THIS APPLICATION

1. On September 6, 2013, Natalie Bickert commenced British Columbia Supreme Court Action No. VLC-S-S-136688 against the defendants Whirlpool Corporation, Whirlpool Canada Co., Whirlpool Canada LP, Sears Canada Inc., Sears, Roebuck and Co. and Sears Holdings Management Corporation (collectively the “Defendants”) alleging negligence and breaches of the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 and the *Sale of Goods Act*, RSBC 1996, c 410;
2. On June 8, 2016, the plaintiff Kristina Essa commenced Alberta Court of Queen’s Bench Action No. 1603-10241 against the Defendants and an Amended Statement of Claim was filed on June 21, 2018 alleging negligence and breaches of the *Fair Trading Act*, RSA 2000, c F-2 and the *Sale of Goods Act*, RSA 2000, c S-2;
3. Ms. Bickert and Ms. Essa (“the Plaintiffs”) allege that certain KitchenAid®, Kenmore® and Whirlpool® brand dishwashers (collectively the “Dishwashers”) contain defectively designed electronic control boards that are insufficiently robust and have an unreasonable propensity to overheat, causing the Dishwashers to emit smoke, fumes, sparks and flames, with the resultant smoke and fire causing the Dishwashers’ electronic control boards or other nearby components to burn or catch fire;
4. The Parties have entered into a Settlement Agreement;
5. The Plaintiffs and their counsel have examined and considered the benefits to be provided to the Settlement Class Members under this Agreement, as well as the benefits to be provided to owners of New Gen and Raptor Dishwashers pursuant to the Settlement, considered the laws of the provinces of British Columbia and Alberta and other provinces and territories, and the claims that could be asserted under those laws regarding the Dishwashers; considered the risks, costs and time associated with prosecuting the BC and Alberta Actions through one or more trials and appeals; and



Application for Preliminary Approval  
Court File Number 1603-10241

believe the Settlement Agreement to be in the best interests of the Settlement Class Members, taking into account the risks and costs of continued litigation and the length of time that would be required to complete the litigation and any appeals;

6. The Defendants have at all times disputed, and continue to dispute, the Plaintiffs' allegations in the Actions and deny any liability for any of the claims that have or could have been raised regarding the Dishwashers by the Plaintiffs or the Settlement Class Members, but believe that the comprehensive resolution of the issues in these Actions, as provided in the Settlement Agreement, will avoid the substantial costs and disruptions of continued litigation.
7. The plan for dissemination of Notice of Certification and the Settlement and the Public Notice are fair and reasonable.
8. Such further and other grounds as counsel may advise.

#### **MATERIAL EVIDENCE TO BE RELIED UPON**

- a. The Affidavit of Kristina Essa;
- b. The pleadings and proceedings herein; and
- c. Such further and other material as counsel may advise and this Honourable Court may permit.

#### **APPLICABLE RULES**

9. Rule 1.2, 1.3, 1.4 and Rule 2.9 of the *Alberta Rules of Court*.

Application for Preliminary Approval  
Court File Number 1603-10241

**APPLICABLE ACTS AND REGULATIONS**

10. *The Class Proceedings Act*, SA 2003, c C-16.5.

**ANY IRREGULARITY COMPLAINED OF OR OBJECTION RELIED ON**

11. None.

**HOW THE APPLICATION IS PROPOSED TO BE HEARD OR CONSIDERED**

12. In person before The Honourable Mr. Justice P. Michalyshyn on October 25, 2018 at 8:45 a.m..

**WARNING:**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to be applicant.