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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

KIRAN SHAH and HEMANGINI PATEL; ANTHONY GODFREY and NAOMI GODFREY; VICTOR GUDZUNAS and JULIE GUDZUNAS; EYNALD DUARTE and MADELEINE DUARTE, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

PULTE HOME CORPORATION, a Corporation; MUELLER INDUSTRIES, INC., a Corporation, and DOES 1-100,

Defendants.

AND RELATED CROSS-CLAIMS.

CASE # 30-2014-00731604-CU-CD-CXC

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Judge: Hon. Peter Wilson
Dept: CX-101
Complaint Filed: 6/30/14

Hearing Date: March 2, 2023
[Specially Reserved by Courtroom]

Time: 2:00 p.m.
Dept.: CX-101

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on **March 2, 2023, at 2:00 p.m.**, or as soon thereafter as the matter may be heard in Department CX-101 of the above-entitled Court, located at 751 West Santa Ana Blvd., Santa Ana, California 92701, Plaintiffs and Class Representatives Kiran

Shah, Hemangini Patel, Joseph Michel and Patricia Michel ("Plaintiffs") hereby move this Court for an order, pursuant to Rule 3.769 of the California Rules of Court, as follows:

1. Granting preliminary approval of the class action settlement between Plaintiff/Class Representatives ("Plaintiffs") and Defendant Pulte Home Corporation ("Defendant");

2. For purposes of the proposed Settlement only, and conditioned upon the Agreement receiving final approval following the final approval hearing and that order becoming final, the Court certifies the Settlement Class comprised of two subclasses as follows:

   - The Arbitration Owner Subclass is comprised of the 39 homes of homeowners who purchased their homes directly from Defendant – and are listed in **Exhibit A** to the Settlement Agreement.
   - The Non-Arbitration Owner Subclass is comprised of the 112 homes listed in **Exhibit B** to the Settlement Agreement, owned by (a) the subsequent current owner(s) of a home, unless (i) the prior owner(s) re-piped the entire home with PEX or an epoxy coating and submits the Prior Owner Re-Piping Form as provided in Section 4.4 of this Agreement, subject to the dispute procedures set forth therein, **OR** (b) the prior owner(s) who re-piped the entire home with PEX or an epoxy coating and submits the Prior Owner Re-Piping Form as provided in Section 4.4 of this Agreement, subject to the dispute procedures set forth therein. The Non-Arbitration Owner Subclass List of 112 homes is attached as **Exhibit B** to the Settlement Agreement.

3. Approving the proposed form and manner of notice to be provided to the settlement class and directing that notice be effectuated to the settlement class (the two proposed forms of Notice are attached to the Settlement Agreement as **Exhibits C & D** thereto);

4. Requiring that Class Counsel provide the Class Administrator and Class Counsel with an electronic version of the two Subclass Lists, identifying the homes and

original owners of the homes to be included in the Settlement Class from whom the Class Administrator can determine individuals in the chain of title who may be a Settlement Class Member and should receive the Settlement and Class Notices (the two Subclass Lists are attached to the Settlement Agreement as **Exhibits A & B** thereto);

5. Approving ILYM Group Inc. as Class Administrator to administer the notice and claims procedures;

6. Appointing Bridgford, Gleason & Artinian; Kabateck LLP; and McNicholas & McNicholas as counsel for the proposed Settlement Class;

7. Appointing Plaintiffs Kiran Shah, Hemangini Patel, Joseph Michel and Patricia Michel as Class Representatives of the proposed Settlement Class;

8. Setting a hearing for final review of the proposed settlement in Department CX-101 of the above-entitled Court.

Good cause exists for the granting of this Motion because the proposed settlement is fair, reasonable, and adequate. This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of Richard Kellner, Richard Bridgford, Patrick McNicholas, the Class Representatives, and Lisa Mullins, the Class Action Settlement Agreement (**Exhibit A** to the Kellner Declaration), and the attached exhibits thereto, files and documents filed with this Court, and upon such further oral and/or documentary evidence and argument as may properly be presented to the Court at the time of the hearing on this matter.

Dated: February 3, 2023

KABATECK LLP
BRIDGFORD, GLEASON & ARTINIAN
McNICHOLAS & McNICHOLAS LLP

By:/s/ *Richard L. Kellner /s/Michael Artinian*
Richard L. Kellner
Michael H. Artinian
Attorneys for the Certified Class

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MEMORANDUM OF POINTS AND AUTHORITIES

By this motion, Plaintiffs Kiran Shah, Hemangini Patel, Joseph Michel and Patricia Michel ("Plaintiffs") seek preliminary approval of a class action settlement entered between the certified class (by the class representatives) and Defendant Pulte Home Corporation ("Defendant").

This motion is being filed concurrently with two other motions seeking preliminary approval of class settlements involving the Centex/Pulte developers in these related actions for *Del Rivero, et al. v. v. Centex Homes of California LLC, et al.,* Orange County Superior Court Case No. 30-2013-00649338; and *Smith v. Pulte Home Corporation*, Orange County Superior Court Case No. 30-2015-0080812. All three settlements were negotiated under the auspices of the Hon. Stephen J. Sundvold (ret.) of JAMS ADR. (Kellner Decl., ¶¶ 22-23.)

This case and the other related OC Copper Pipe cases have been hotly litigated for over 9 years. However, Class Counsel have achieved some recent (and significant) legal victories that Class Counsel maintains have prompted a number of the developers agreeing to Settlements that are extremely favorable to the Class. These recent litigation events include: (a) the latest round of Orders from Judge Glenda Sanders certifying a number of the related actions as class actions and rejecting *Sargon* attacks on Plaintiffs' primary expert witness; and (b) the Court of Appeal's rulings in August 2020 (in the *Brasch v. K. Hovnanian* and *Smith v. Pulte* appeals) held that the alleged SB 800 claims may proceed as class actions, consistent with *Kohler Co. v. Superior Court* (2018) 29 Cal.App.5th 55. To date, the Court has not considered a class certification motion in this case (although substantial discovery has occurred in this case.((Kellner Decl., ¶¶ 15-20.) With the trial in *Del Rivero* approaching, Centex/Pulte stated an interest in a global resolution. Against this backdrop, the parties agreed to mediation.

The Parties engaged in arms-length negotiations before Stephen J. Sundvold (ret.) from JAMS ADR. As a result of this mediation, the parties were able to reach agreement on settlement. The terms of that negotiated settlement are reflected in this Agreement. (Kellner Decl., ¶¶ 22-24; **Exhibit A**.)

Plaintiffs and Class Counsel submit that the proposed Class Settlement is fair, reasonable and should be preliminarily approved. The proposed settlement provides as follows:

- The Settlement Fund is $1,457,250.00, which for purposes of the settlement will be apportioned as follows: (1) $1,155,483.00 to the 112 eligible Non-Arbitration Owner

Subclass members on a *pro rata* basis; and (2) $301,767.00 to the 39 eligible Arbitration Owner Subclass Members (*i.e.*, putative class members whose claims will be subject to arbitration).

- The *pro rata* gross settlement for each of the potential **112 members of the Non-Arbitration Owner Subclass** is $10,316.81.
- The *pro rata* gross settlement for each of the potential **39 members of the Arbitration Owner Subclass is $7,737.61**.
  - The proposed settlement for putative class members whose claims are subject to arbitration were negotiated at a 25% discount for the following reasons: (i) their claims will not benefit from the favorable rulings obtained in the Superior Court actions; (ii) the arbitration forum does not provide the same procedural and review protections as Superior Court; and (iii) the arbitrations can only be individually prosecuted, are costlier and will not necessarily have the same economies of scale as the class actions.

- The gross *pro rata* recovery for the Class represents a significant percentage of the damages that will likely be sought at trial:
  - The *pro rata* gross settlement amount for Non-Arbitration Owner Subclass members constitutes approximately 55.31% of the average costs for future replacements of the copper pipe systems with PEX (approximately $18,649.66 per home) based upon a bid provided by AMA Repiping – the contractor who provided the replacement of PEX piping in two other class actions settlements.
    - The gross settlement for Arbitration Owner Subclass members has been discounted by 25% (on a *pro rata* basis) relative to the Non-Arbitration Owner Subclass, for the distinguishing reasons set forth below.
  - As further demonstrated below, the *pro rata* gross recovery is greater than 55.31% of the damages that might be obtained at trial because the Defendant will argue that – for homes that have already effectuated PEX pipe replacements (at a lower cost than the present $18,649.66 per home bid) – the damages should be based on the lower

replacement costs that were actually incurred by those class members.

- The proposed settlement is a "claims paid" settlement.

(Kellner Decl., ¶ 9-11.)

Subject to approval by this Court, Plaintiffs and proposed Class Representatives Kiran Shah, Hemangini Patel, Joseph Michel and Patricia Michel ("Plaintiffs") have agreed to and support the proposed settlement of this action in accordance with the terms and conditions set forth in the Settlement Agreement. (Shah, Patel, and J. & P. Michel Decls., ¶ 8.) As described herein and considering the strengths and weaknesses of the Class claims, and the time, expense and risks associated with litigation, the parties believe the settlement will result in benefits to the class members on terms that are fair, reasonable and adequate for the proposed settlement class. (*See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801-02.) For these reasons, as discussed more fully below, the proposed class settlement merits preliminary approval pursuant to California Rule of Court 3.769(c).

Accordingly, Plaintiffs request that the Court preliminarily approve this Settlement.

I. PROCEDURAL HISTORY

The original plaintiffs filed this action on June 30, 2014 on behalf on themselves and other similarly situated individuals who own homes in the class area (Yorba Linda) that (i) were constructed by Defendant, (ii) contained copper pipes installed by the Defendant, and (iii) had purchase agreements signed by Defendant on or after January 1, 2003. The operative complaint alleges a cause of action against Defendant for violations of standards of residential construction (Civ. Code § 895 *et seq.*, including § 896(a)(14) and (15)). (Kellner Decl., ¶ 13.)

This case was related to a number of the other similar pinhole leak cases early in this action. Ultimately, a total of 15 Orange County Pipe Cases were deemed related before the same judge in the Orange County Superior Court – of which 10 cases have now been settled. (Kellner Decl., ¶ 14.) Even though all these cases were related (and not coordinated), the putative class members for ***all*** of the cases obtained a common benefit from efforts in the other related cases because: (a) all of the class actions have been litigated before the same assigned judge; and (b) the factual and legal issues were largely identical in all of the 15 Orange County Pipe cases. (Kellner Decl., ¶ 15.)

The first area of major litigation (common to all of these related actions) involved the developer

defendants' attacks on the complaint and their assertion that individual issues prevented class treatment. The trial judge (Judge Steven L. Perk) issued rulings that dismissed the class allegations. Those orders were appealed in two cases – *Brasch v. K. Hovnanian, et al.* (Case No. 30-2013-00649417) and *Chiang v. D.R. Horton, et al.* (Case No. 30-2013-00649435) – and the Court of Appeal ultimately reversed Judge Perk's ruling that had dismissed the class allegations. (Kellner Decl., ¶ 16.)

The second area of major common litigation involved the defendant developers' contention that SB 800 did not permit litigation of class claims.

- At first, Judge Thierry Patrick Colaw (who replaced Judge Perk in these related cases), denied numerous motions to dismiss by the developer defendants based upon their claim that the language of SB 800 prohibited class actions. (Kellner Decl., ¶ 17(a).)
- Writs were filed by the developer defendants on these Orders – which were all ultimately denied by the Court of Appeal. (Kellner Decl., ¶ 17(b).)
- Thereafter, similar motions to dismiss were filed by the developer defendants (some of whom claimed that there was a change in law) and those motions were denied by Judge Sanders (who had replaced Judge Colaw in these related cases). (Kellner Decl., ¶ 17(c).)
- Writs again were filed (on Judge Sanders' Orders) and – this time – the Court of Appeal issued an Order to Show Cause re dismissal based upon the subsequent ruling in the case entitled *Kohler Co. v. Superior Court* (2018) 29 Cal.App.5th 55. (Kellner Decl., ¶ 17(d).)
- The matter was remanded to Judge Sanders, who conducted extensive hearings and briefings on the issue. Judge Sanders issued Orders on February 7, 2019 dismissing the class allegations based upon perceived constraints of *Kohler* and the Court of Appeal's Order to Show Cause. (Kellner Decl., ¶ 17(e).)
- Plaintiffs then appealed that Order. Following full briefing and argument on two of the related cases, the Court of Appeal reversed Judge Sanders' Order (largely consistent with Judge Sanders' prior orders denying the defendant-developers' attempts to dismiss the class allegations), and ruled that class actions are permitted under SB 800 based on the allegations in the related cases. (Kellner Decl., ¶ 17(f).)

The third major area of litigation involved motions relating to expert testimony. The class claims

in each of the related class actions were largely predicated upon the same underlying expert opinion – *i.e.*, that the combination of the common water in this area supplied by the Santa Margarita Water District and the copper pipes resulted in a common chemical reaction that resulted in corrosion that lessens the useful life of the pipes. As a result, tremendous discovery and motion practice revolved around this expert testimony. Multiple defendants filed motions to strike Plaintiffs' expert's opinions based upon *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747 and its progeny. Ultimately, plaintiffs' counsel prevailed in such motions before BOTH Judge Colaw and Judge Sanders. (Kellner Decl., ¶ 18.)

The fourth major area of litigation involved substantive determination of motions for class certification. Again, there was extensive discovery and motion practice involving class certification – which was largely identical in each of the related Orange County Copper Pipe actions. Following extensive rounds of briefing on multiple cases – as well as multiple hearings – Judge Colaw first granted class certification in *Del Rivero v. Centex*, and Judge Sanders later granted class certification 8 additional related class actions. (Kellner Decl., ¶ 19.)

While a class certification motion has not been filed or considered by the Court with respect to this action, Plaintiffs anticipate that their motion for class certification would be substantively identical to the other class certification motions that have been repeatedly granted by Judge Colaw and Judge Sanders. (Kellner Decl., ¶ 20.) This is based upon Class Counsel's review of the law, the substantial discovery that has been conducted in this action, and consultations with their primary expert witness. (Kellner Decl., ¶ 21.)

II. SETTLEMENT DISCUSSIONS IN THIS CLASS ACTION

In late 2022, the Parties engaged in arms-length negotiations before Hon. Stephen Sundvold (ret.) from JAMS ADR. (Kellner Decl., ¶ 22.) The negotiations – albeit separate – were conducted at the same time for the two other related Centex/Pulte class actions - *Del Rivero, et al. v. v. Centex Homes of California LLC, et al.,* Orange County Superior Court Case No. 30-2013-00649338; *Smith v. Pulte Home Corporation*, Orange County Superior Court Case No. 30-2015-0080812. As a result of this mediation, the parties were able to reach agreement on settlement. (Kellner Decl., ¶¶ 22-24.)

Through due diligence, Plaintiffs and Class Counsel were able to verify the identity of the homes constructed by Defendant in Yorba Linda (*i.e.*, covered by the class definition in the complaint) that are not time barred (*i.e.*, the subject home was substantially completed within 10 years of the filing of the complaint – or June 30, 2004). (Kellner Decl., ¶ 25.)

A. <u>The Putative Class Members Whose Claims Are Subject To Arbitration.</u>

Throughout this litigation, and continuing through settlement discussions, the defendant-developers have taken the position that the claims that are subject to arbitration are distinct in many material respects. First, in post-certification motions to compel arbitration in related actions, the defendants have universally succeeded in compelling class members **whose homes were originally purchased from the defendant developer** to arbitration based upon contractual privity and mandatory arbitration provisions in their purchase agreements. Plaintiffs and Class Counsel have reviewed the form arbitration provisions in the purchase agreements with the developer in the subject communities and there are no facts that could distinguish this matter from the Court's ruling compelling arbitration in the related matters. (Kellner Decl., ¶¶ 26-27.)

Second, there has been a tremendous amount of attrition in the list of post-certification homes subject to arbitration in that: (a) upon certification, the Court has issued Orders to Show Cause compelling original owners to file for arbitration; (b) approximately 50% of the affected homes have failed to file for private arbitration by the deadline set by the Court; and (c) as a result, it must be anticipated that a significant percentage of the arbitration-related homes will not proceed to adjudication if this action is not globally settled. (Kellner Decl., ¶ 28.) This was a necessary distinction/factor to consider during settlement discussions. (Kellner Decl., ¶ 29.)

Third, for the cases that do proceed to arbitration, those homeowners: (1) will not necessarily be able to take advantage of all of the favorable rulings that the class members obtained in the Orange County Superior Court actions; (2) will not have the same protections of appellate review from an adverse ruling made by an Arbitrator; and (3) will incur individual expenses in arbitration that would otherwise be distributed amongst members of the class. (Kellner Decl., ¶ 30.) Indeed, the economies of scale for an efficient litigation are much more difficult to achieve in individual arbitrations, in comparison with a certified class action. (Kellner Decl., ¶ 31.)

As a result, the negotiated *pro rata* gross recovery for the Arbitration Owner Subclass constitutes 75% of the Non-Arbitration Owner Subclass amount. (Kellner Decl., ¶ 32.)

B. <u>The Determination of Putative Class Members Who Would Be Subject To Arbitration And Those Who Would Not Be Subject To Arbitration.</u>

Through due diligence, the parties were able to determine the homes constructed by Defendant in Yorba Linda that are not time barred (*i.e.*, within the 10-year statute of limitations and/or repose), as well as those that are not subject to a complete release that covers the class claims. (Kellner Decl., ¶ 33.)

From that list, the parties were able to determine the putative class members whose claims would be subject to arbitration. That process was relatively simple because all subsequent purchasers of the homes (*i.e.*, someone who did not directly purchase the home from Defendant) was not subject to arbitration because there is no privity of contract that binds them to the purchase agreement arbitration clause. (Kellner Decl., ¶ 34.) Consequently, for purposes of the proposed Settlement, there were two Subclass Lists created:

- The list of 39 homes where the original purchaser still owned the home covered by the original class definition. (**Exhibit A** to the Settlement Agreement).
- The list of 112 homes where there are subsequent purchasers in the chain of title to the homes covered by the original class definition. (**Exhibit B** to the Settlement Agreement).

(Kellner Decl., ¶ 34 (a,b).)

C. <u>The Terms of the Proposed Settlement.</u>

The terms of the negotiated class settlement are reflected in the attached Settlement Agreement, which Plaintiffs and their counsel contend are fair and reasonable under the circumstances.

The proposed settlement provides for the establishment of a $1,457,250.00, which under the terms of the settlement equates on a gross *pro rata* basis to:

- $10,316.81 for each eligible Non-Arbitration Owner Subclass (*i.e.*, those cases that would be litigated in Superior Court), which equates to approximately 55.31% of the gross damages that would be sought at trial.
- $7,737.61 for each eligible Arbitration Owner Subclass (*i.e.*, those cases that would be litigated in arbitration), which equates to approximately 41.48% of the gross damages that

would be sought at the arbitration.

(Kellner Decl., ¶ 36.)

Prior to engaging in settlement negotiations, Class Counsel engaged in substantial "due diligence" to determine the actual damages that will be sought at trial by:

- obtaining a bid from AMA Repiping – the company that engaged in the actual repiping of homes in classes that were settled in these related actions – for the prospective costs for replacing the copper pipe systems. The per home "bid" for such PEX repiping for these homes averaged $18,649.66 and was based upon the size of the homes.
- reviewing the responses to Questionnaire surveys from homeowners in the related class actions regarding the actual costs already incurred by many in replacing the class home copper pipe systems with PEX.
- obtaining an excel spreadsheet from the applicable government entity for the homes in nearby Ladera Ranch that contains: (a) the plumbing permit history for each home in Ladera Ranch by address; and (b) the details of the plumbing work that was being permitted. This provided a good comparator because the homes in Yorba Linda were supplied with a similar chemical water content as those in Ladera Ranch.
    - Accordingly, Class Counsel then reasoned that a significant portion (about 50%) of the homes in the class probably replaced their copper pipe systems with PEX already – at a lower price than the AMA Repiping bid of $18,649.66.
    - This makes sense given the extensive history of pinhole leaks attributable to the combination of copper pipes and the water supplied to this geographic area.

(Kellner Decl., ¶ 37-39.)

As a result, there were two damage models that Class Counsel considered in connection with the settlement negotiations. If only the AMA Repiping bid for all class homes was considered, the average actual "bid" for prospective repiping averaged approximately $18,649.66 per home. (Kellner Decl., ¶ 40.)[1] The *pro rata* gross settlement of $10,316.81 for each home equates to 55.31% of the upper-end

[1] Class Counsel also obtained AMA Repiping's contractual commitment to keep these prices for one year for each homeowner. (Kellner Decl., ¶ 40.)

damages under this damage model. (Kellner Decl., ¶ 41.) But it should be noted that at trial, Defendant would likely contend the repair could be done for less than the AMA bid. (Kellner Decl. ¶ 41.)

The second damage model incorporates the additional fact that class damages would also have to consider the costs ***actual incurred*** by class members who already paid for PEX pipe replacements (i.e. presumably at a lower pre-inflation cost). From the responses to Class Questionnaires from a portion of the class members in the related cases, Class Counsel determined that the average cost for the replacement of copper pipes was likely less than AMA Repiping's bid for those homes. Thus, if damages are calculated at trial by totaling: (a) the amount actually paid by class members for PEX pipe replacements; and (b) the AMA Repiping costs for PEX pipe replacement for those class homes that still have original copper pipes – the total class damages would be less than the first damage model based upon only the $18,649.66 per home AMA Repiping bid. (Kellner Decl., ¶ 42.) As a result, the *pro rata* gross settlement of $10,316.81 for each home equates to **substantially more than 55.31%** of the upper-end damages under the first damage model. (Kellner Decl., ¶ 43.)

For the class members subject to arbitration (*i.e.*, the Arbitration Owner Subclass), the 25% reduction amount negotiated in the settlement resulted in a $7,737.61 *pro rata* gross settlement amount. That represents 41.48% of the upper-end damages under the higher damage model. (Kellner Decl., ¶ 44.)

As demonstrated below, both of these settlement figures represent settlement relief for the class that is fair and reasonable under the circumstances.

1. Attorneys' Fees/Costs, Class Representative Enhancements and Other Issues.

Once the size of the Settlement Fund and the settlement class definition was agreed upon by the parties, negotiations were conducted regarding the amount of attorneys' fees/costs, class administrator fees/costs and class representative enhancements for which Defendant will not provide any objections. (Kellner Decl., ¶ 46.) Class Counsel agreed to a 1/3 contingency fee calculation which – as will be demonstrated in the motion for approval of attorneys' fees – represents less than any apportionable lodestar for the actual legal work performed over 9+ years that benefitted the settlement class. (Kellner Decl., ¶ 47.) The Plaintiffs and Proposed Class Representatives are seeking $13,000.00 as an enhancement fee for the Shah/Patel plaintiffs (from the same household) and $7,000.00 for the Michel Plaintiffs. It must be noted that the difference in amount is based upon the different amount of time

these respective class representatives participated in this class action, while the contributions of both have been significant toward resolving this case for the class. (Kellner Decl., ¶ 48.) ILYM Group, Inc., who has successfully served as Settlement and/or Class Administrators in these cases, agreed to provide settlement services outlined below under a "cap" of $29,000.00 for its services. (Kellner Decl., ¶ 49; Mullins Decl., ¶ 9.)

Significantly, the settlement is a "claims-paid" settlement – and the only reason that payment would not be made from the Settlement Fund would be if a class member "opts-out" of the settlement. (Kellner Decl., ¶ 50.) The only potential "reversion" will be the net class member portion that would have been due to any opt-outs. (Kellner Decl., ¶ 50.)

Finally, the Settlement is conditioned on all of the related OC Pipe class actions being "final" – which should be concurrently determined by the concurrent filing (and hearing) of the motions for preliminary and final approval. (Kellner Decl., ¶ 51.)

The Plaintiffs and Class Representatives participated in the settlement negotiations, and fully support the settlement. (Shah, Patel, and J. & P. Michel Decls., ¶ 8.)

2. Settlement Notice.

The Settlement Notice for this case was specifically designed for the two subclasses: (a) the Arbitration Owner Subclass (original owners who are subject to arbitration) and (b) the Non-Arbitration Owner Subclass (subsequent owners who are not subject to arbitration). Both have slightly different rights in connection with opt-outs (the arbitration class members could litigate their claims through arbitration and not Court proceedings) and have different relief. A copy of the Settlement Notice for the Arbitration Owner Subclass is attached as **Exhibit C** to the Settlement Agreement, and the Settlement Notice for the Non-Arbitration Owner Subclass is attached as **Exhibit D** to the Settlement Agreement.

As set forth below, both Notices provide the putative class members all of the information required by California Rule of Court 3.769(f) and case law. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251 (the "notice … must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.") The proposed notices readily meet these requirements.

III. COURT APPROVAL IS REQUIRED FOR A CLASS SETTLEMENT

Any settlement of class litigation is subject to Court review and approval. Pursuant to Rule 3.769(a) of the California Rules of Court: "[a] settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing." Moreover, Rule 3.769(e) provides that "[i]f the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing."

The structure of this Settlement is virtually identical to those that have been preliminarily approved by Judge Glenda Sanders in the *Dye v. Richmond American* (Case No. 30-2013-00649460-CU-CD-CXS) and finally approved by this Court in *Foti v. John Laing Homes (California), Inc.* (Case No. 30-2013-00649415-CU-CD-CXC) actions. (Kellner Decl., ¶55.)

IV. THE PROPOSED SETTLEMENT AND ITS PRINCIPLE TERMS

A. The Proposed Settlement Agreement

The Settlement Agreement describes in detail the terms of the proposed settlement reached by the Parties and the details of the recovery for the Class. (Kellner Decl., **Exhibit A**.) The material terms of the Settlement Agreement are as follows:

1. Within 30 days of final approval of the proposed Settlement, Defendant shall establish the Settlement Fund of $1,457,250.00 for the benefit of the Settlement Class. (**Exhibit A**, § 3.1 and 3.1.0.)
2. The class definition for this settlement can be more particularly stated than in the original description in the operative complaint because the parties have been able to identify the homes that are included in the class – and distinguish those in which the original purchaser is still an owner of the home. The 39 homes that are presently owned by original purchasers are listed in **Exhibit A** to the Settlement Agreement, and the 112 homes that are not presently owned by original purchasers are listed in **Exhibit B** to the Settlement Agreement.

a. The Arbitration Owner Subclass is defined as "*the person who owns the home on the Arbitration Owner Subclass List*" – which is **Exhibit A** to the Settlement Agreement. (*See* **Exhibit A** [Settlement Agreement] §§ 1.4 and 1.5.)

b. The Non-Arbitration Owner Subclass is defined as:

(1) *the current owner(s) of a home on the Non-Arbitration Owner Subclass List, unless (a) the prior owner(s) re-piped the entire home with PEX or an epoxy coating and submits the Prior Owner Re-Piping Form as provided in Section 4.4 of this Agreement, subject to the dispute procedures set forth therein, or*

(2) *the prior owner(s) who re-piped the entire home with PEX or an epoxy coating and submits the Prior Owner Re-Piping Form as provided in Section 4.4 of this Agreement, subject to the dispute procedures set forth therein.*

(Kellner Decl., ¶ 56.)

With respect to Settlement Notice, the Class Administrator shall serve by U.S. Mail the notice packets applicable to the Arbitration Owner Subclass (Notice attached as **Exhibit C** to Settlement Agreement) and the Non-Arbitration Owner Subclass (Notice attached as **Exhibit D** to Settlement Agreement.) Since the members of the Arbitration Owner Subclass are present owners, they are the only individuals in the chain of title and the only ones who will receive the Arbitration Owner Subclass Notice packets. The Non-Arbitration Owner Subclass will be sent to every homeowner in the chain of title for the homes on the Non-Arbitration Owner Subclass List. (Kellner Decl., ¶ 57.)

1. The Determination of Who is a Class Member.

All current homeowners will be deemed a Participating Class Member unless a prior owner had re-piped the home with PEX or an epoxy coating. This is because it is impracticable to inspect every home in the class to determine whether there has been a replacement of the copper pipes by prior owners with PEX or an epoxy coating. As a result, in order for a prior owner to be a participating settlement class member, that prior owner must submit a verification that the prior owner had re-piped the home with PEX or an epoxy coating. (Kellner Decl., ¶ 58; (**Exhibit A**, Proposed Settlement, § 4.4.)

The proposed Settlement also contains a dispute resolution provision if there is a "dispute" between homeowners in the chain of title for a class home regarding class members.

- Under the terms of the proposed Settlement, for a Prior Owner to be included as a Class Member, that Prior Owner must submit by mail or electronic means a Prior Owner Verification Form to the Class Administrator within sixty (60) days of mailing that verifies that the Prior Owner replaced the copper pipes in the Class Home with PEX or epoxy coating of the pipes.
- In the event a prior owner submits a Prior Owner Verification Form stating that the prior owner has replaced the homes' copper pipes with PEX or epoxy coating, then the Class Administrator shall provide the present owner with written notice: (a) that a prior owner has submitted a Prior Owner Verification stating that the prior owner replaced the homes' copper pipes with PEX or epoxy coating; and (b) the present owner has 30 days within which to submit a written verification to the Class Administrator disputing the prior owner's claim, and state that the home had copper pipes (without any epoxy coating) at the time the present owner obtained title to the home.
- If a dispute arises between a prior and present owner as to whether a prior owner had replaced the copper pipes with PEX or epoxy coating, then the two homeowners shall submit proof supporting their claims to the Class Administrator who will forward such documentation to Hon. Nancy Wieben-Stock (Ret.) of JAMS who: (a) shall serve as arbitrator of the dispute; and (b) whose determination of those competing claims shall be binding. The costs for Judge Stock's services shall be deemed a "cost" that shall be deductible from the Settlement Fund.

(**Exhibit A**, Proposed Settlement, § 4.4; Kellner Decl., ¶ 59.)

For a Present Owner to be included as a Class Member, the Present Owner must not submit an Opt-Out Form and there must not be a Prior Owner Verification Form submitted by a Prior Owner for the subject Class Home. (Kellner Decl., ¶ 60.) [2]

For all Notice papers returned as undeliverable or changed address, the Class Administrator shall re-send the Notice documents after a skip-trace. The Class Administrator must also create a dedicated

[2] The prior owner situation is not pertinent to the Arbitration Owner Subclass because there is only one owner in the chain of title.

website for this Settlement, which will provide a portal for electronic submission of Opt-Out Forms, Prior Owner Verification Forms and any Objections to the Settlement. The dedicated website shall also make available the Settlement Agreement, the pleadings submitted in support of preliminary approval, approval of attorneys' fees, costs and class representative enhancements, and final approval. The dedicated website shall also make available all Orders by this Court with respect to the aforesaid motions, and the Final Approval (if granted) shall remain on the website for 6 months thereafter. (**Exhibit A**, Proposed Settlement, §4.4, Class Notices at Exhs. C & D, and Proposed Order at ¶16; Kellner Decl. ¶ 61.)

Finally, the proposed Settlement provides that Plaintiffs and Class Counsel shall separately file motions for approval by this Court at the time of final approval of the following: (a) Attorneys' fees not to exceed one-third (1/3) of the Settlement Fund ($485,750.00), plus costs not to exceed $20,000.00; [3] (b) Class administrator costs for this settlement not to exceed $29,000.00; and (c) Class representative incentive payment totaling $20,000.00 (or $13,000.00 for Shah/Patel and $7,000.00 for the Michels). To the extent any class member opts-out of the Settlement, the *pro rata* net settlement payment that would have otherwise been due to that opt-out class member shall be paid back to Defendant. (**Exhibit A**, Proposed Settlement, § 3.1; Kellner Decl., ¶¶ 62-63.)

Settlement class members will release Defendant from claims **asserted in the Action** (and expressly no other construction defect claims). (**Exhibit A**, Proposed Settlement, § V.)

B. Value of Settlement to The Class: Duties, Obligations And Benefits.

The proposed Settlement Agreement provides for the most cost-effective administration of the settlement, which imposes minimal burdens on the Class. Under SB 800, the relief sought in this class action is the cost of replacing the copper pipes that fail to conform with the standards of Civil Code § 896(a)(14) and (15) – *i.e.*, copper pipes that leak and/or corrode so as to lessen their useful life. As a result, in the chain of title for each home, the individual who has a right to redress will be either: (a) a homeowner who replaced the copper pipes; or (b) the present homeowner. (Kellner Decl., ¶ 66.)

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[3] It should be noted that at the Final Approval Hearing, Class Counsel will be seeking reimbursement of pre-settlement costs on a *pro rata* basis from all class members ***and*** arbitration plaintiffs (including largely expert fees and related costs, and appellate costs), as well as specific costs incurred for only this action. (Kellner Decl., ¶ 63.)

Because it would be cost-prohibitive to physically inspect each home to determine the individual in the chain of title who has a right to redress, the parties have agreed to the following process that can expeditiously determine the individual who has the right to redress:

1) First, the class administrator will determine and then mail the Settlement Notices and other documents to all the individuals in the chain of title for the homes in the Class Home List.
2) Second, for the present owners on the Class List to receive any benefits from this Settlement, **they do not have to do anything.**
3) Third, for prior owners who paid for a repipe/epoxy to receive the benefits from this Settlement, they must fill out a simple Prior Owner Re-Piping Form (attached as **Exhibit F** to Kellner Decl.) that attests to their replacement of the copper pipes in the home that is included in the Class.
    a. In the event a prior owner submits a Prior Owner Re-Piping Form stating that the prior owner has replaced the homes' copper pipes with PEX or epoxy coating, then the Class Administrator shall provide the present owner with written notice: (a) that a prior owner has submitted a Prior Owner Re-Piping Form stating that the prior owner replaced the homes' copper pipes with PEX or epoxy coating; and (b) the present owner has 30 days within which to submit a written verification to the Class Administrator disputing the prior owner's claim, and state that the home had copper pipes (without any epoxy coating) at the time the present owner obtained title to the home. In the event that there is a dispute between a prior and present owner as to whether a prior owner had replaced the copper pipes with PEX or epoxy coating, then the two homeowners shall submit proof supporting their claims to the Class Administrator who will forward such documentation to Hon. Nancy Wieben-Stock (Ret.) of JAMS who: (a) shall serve as arbitrator of the dispute; and (b) whose determination of those competing claims shall be binding. The costs for Judge Stock's services shall be deemed a "cost" that shall be deductible from the Settlement Fund.

(Kellner Decl., ¶ 67.)

With respect to the *pro rata* relief provided, it compares favorably with the potential relief that the class members could receive at trial if they prevail. As noted above, Class Counsel engaged in substantial "due diligence" before settlement negotiations to determine the actual costs for replacing the Class copper pipe systems with PEX by: (1) reviewing the responses to Questionnaire surveys from homeowners in these related OC Pipe cases regarding the actual costs incurred by those owners who replaced the class home copper pipe systems with PEX in areas that were supplied with similar water as the homes in this action; and (2) obtaining a bid from AMA Repiping – the company that engaged in the actual repiping of homes in other classes that were settled in these related actions – for the prospective costs for replacing the copper pipe systems. (Kellner Decl., ¶¶ 68-69.)

Further, Class Counsel obtained an excel spreadsheet from the applicable government entity for the homes in Ladera Ranch that contain: (a) the plumbing permit history for each home in Ladera Ranch by address; and (b) the details of the plumbing work that was being permitted. (Kellner Decl., ¶ 70.) Thus, Class Counsel obtained substantial information that a large percentage of the class members likely paid less than the AMA Repiping Bid to replace their pipes – albeit, many years ago. (Kellner Decl., ¶ 71.)

The proposed settlement provides for the establishment of a $1,457,250.00 Settlement Fund, which represents on a gross *pro rata* basis a total of $10,316.81 for the Non-Arbitration Subclass members and $7,737.61 for the Arbitration Subclass Members. That equates to 55.31% of the gross damages for the Non-Arbitration Subclass members and 41.48% of the Arbitration Subclass Members – based upon the damages sought at trial based upon the AMA Repiping Bid. (Kellner Decl., ¶ 72(a).) If the lower damage figure that incorporates the lower actual damages for the homes that have already been re-piped by class members is incorporated into the analysis – the actual percentage recovery will be increased. (Kellner Decl., ¶ 72(b).)

By any measure, this is an extremely good result for the class – given the risks that: (a) normally attend any class trial; (b) the possibility that the jury will not credit Plaintiffs' experts' opinions regarding general and individual causation; (c) the potential evidentiary issues relating to class damages set forth above; and (d) the possibility of a change in the law. (Kellner Decl., ¶ 73.) Indeed, at this juncture, the Court has yet to even consider a motion for class certification in this case. (Kellner Decl., ¶

74.)

As explained in the Settlement Notices, the distribution to the class members will be net of attorneys' fees and costs, calculated on a percentage of the recovery for each class member. Based upon the relative portion of the settlement, the Arbitration Subclass Members represent 20.707977% of the recovery and the Non-Arbitration Subclass Members represent 79.292023% of the recovery. Thus, in the event the Court approves the maximum application for attorneys' fees, costs, class representative enhancements and class administration costs, the net settlement fund for the 151 class members will be $902,500.00 calculated as follows:

Gross Settlement Fund	$1,457,250.00
Attorneys' Fees (Max)	- $485,750.00
Attorney Costs (Max)	- $20,000.00
Class Representative Enhancement	- $20,000.00
Class Administration Costs	- $29,000.00
Subtotal for Distribution	$902,500.00

(Kellner Decl., ¶ 75.)

The *pro rata* net payments are calculated as follows: For the Non-Arbitration Subclass Members, who have 79.292023% of the recovery, the total amount for distribution will be $715,610.50 in total for the 112 Non-Arbitration Owner Subclass members – or $6,389.37 each. For the Arbitration Subclass Members, who have a 20.707977% of the recovery, the total amount for distribution will be $186,889.50 in total for the 39 Arbitration Owner Subclass members – or $4,792.04 each. (Kellner Decl,. ¶ 76.)

C. Attorneys' Fees and Costs.

Pursuant to sections 3.1.6 and 7.1 of the Settlement Agreement, at the final approval hearing Class Counsel will apply to the Court for an award of attorneys' fees not to exceed one third (1/3) of the Settlement Fund (or $485,750.00) and costs (not to exceed $20,000.00). This application will be supported with attorney declarations providing a cross-check of the lodestar attributable to the legal work over 9+ years that benefitted the Settlement Class. Defendant has agreed that it will not oppose such a request for fees and costs consistent with these amounts, and anticipates filing a statement of non-opposition to Class Counsel's application for attorneys' fees. (Kellner Decl., ¶¶ 77-78.)

D. Incentive Payments to Named Plaintiffs

Pursuant to Section 3.1.7 of the Settlement Agreement, Plaintiffs intend to apply to the Court for two (2) incentive payments (one for each household of Class Representatives) totaling $20,000.00 ($13,000.00 for the Shah/Patel plaintiffs (same household), and $7,000.00 for the Michel Plaintiffs – the differences in amount primarily based upon the different amount of time that they participated in this class action. (Kellner Decl., ¶ 79.)

V. THE SETTLEMENT AGREEMENT MEETS ALL CRITERIA FOR COURT APPROVAL

At the preliminary approval stage, the Court need only "make a preliminary determination on the fairness, reasonableness and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement and date of the final fairness hearing." MANUAL FOR COMPLEX LITIGATION (Fourth), § 21.633 at 321 (2004); *see also Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389. The Court should consider factors including "the strength of [p]laintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (citing *Dunk*, 38 Cal.App.4th at 1801).

Although recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account – particularly if they have been involved in litigation for some period of time, appear to be competent, have experience with this type of litigation, and discovery has commenced. *See* 2 H. Newberg, *Newberg on Class Actions* § 11.47 (2d ed. 1985). Indeed, courts do not substitute their judgment for that of the proponents, particularly when experienced counsel familiar with the litigation have reached a settlement. *See, e.g.*, *Hammon v. Barry*, (D.D.C. 1990) 752 F.Supp. 1087 (citing *Newberg on Class Actions*, § 11.44). Rather, courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered.

This settlement was reached only after arms-length negotiations during and after a mediation session. (Kellner Decl, ¶¶22-24.)

Further, the litigation in this and related copper pipe cases has been extensive and extraordinarily time-consuming during the past 9+ years. It is safe to say that virtually no aspect of this case has not been extensively researched, evaluated and litigated by counsel for the parties. Finally, counsel for the Parties are experienced in similar litigation. The law firms of Bridgford, Gleason & Artinian, Kabateck LLP, and McNicholas & McNicholas LLP are each counsel in numerous related "pinhole leak" cases in Orange County – 10 of which have now settled on a class-wide basis. (Bridgford Decl. ¶2-3,15; McNicholas Decl. ¶2-5).

A. <u>The Settlement Agreement Is "Fair, Adequate And Reasonable"</u>

Beyond any presumption of fairness, the Settlement is "fair, adequate and reasonable" under any standard. In making a fairness determination, courts consider a number of factors, including: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the benefits conferred by settlement; (5) the experience and views of counsel; (6) the extent of discovery completed and the state of the proceedings; and (7) the reaction of Class members to the proposed settlement. *See Dunk*, 48 Cal.App.4th at 1802.

The Settlement Class provides approximately 55.31% of the higher damage model of relief to be sought that the class members could receive if they prevail at trial for the Non-Arbitration Owner Subclass, and 41.48% for the Arbitration Owner Subclass. *See Kullar, supra* (Court should be provided with information regarding any discounts provided for settlement purposes). Nonetheless, there are significant risks to Plaintiffs and the class if this case were not to be settled.

All trials have inherent risks – and there always remains the potential that law could change between the present date and trial. Here, the case is particularly subject to risk because it is based upon conflicting expert opinions by individuals with established credentials. The parties further acknowledge that further discovery and trial preparation will be time consuming and expensive, and a trial would be protracted and costly. (Kellner Decl., ¶¶ 80-83.) Indeed, there are further potential issues relating to the damage models that the jury would or would not accept at trial.

As noted at length above, the Arbitration Owner Subclass has additional potential risks relating to not only the prosecution of the action as an arbitration – but also the number of class members who

actually will apply for arbitration.

For these reasons, Class Counsel and Plaintiffs recognize the risks involved in further litigation. In light of the foregoing, Class Counsel maintain that the gross recovery sought for the Class is fair, reasonable, and adequate, and in the best interest of the Class in light of all known facts and circumstances. (Kellner Decl., ¶ 84.) Indeed, if this matter were to proceed to trial, Class Counsel would be within their right to: (a) incur additional expert and trial-related costs; and (b) seek a 40% contingency fee – all of which would further dilute the net recovery to the Class. (*Id.* at ¶ 85.)

B. The Proposed Release

The class release proposed by the Settlement is specifically limited to claims of participating Settlement Class members (who do not choose to opt out); and is further limited to only the claims actually asserted in this action related to any alleged violations of Civil Code § 895 *et seq.* arising from the installation of copper pipes. The release expressly excludes any *other* construction defects or *other* claims relating to the construction of the homes. (Kellner Decl., ¶ 86.)

VI. THE PROPOSED NOTICE TO THE CERTIFIED CLASS IS APPROPRIATE

"When the court approves the settlement or compromise of a class action, it must give notice to the class of its preliminary approval and the opportunity for class members to object and, in appropriate cases, opt out of the class." *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal.App.4th 734, 746 (citing Cal. Rules of Court 3.769). California Rule of Court 3.769(f) provides that "notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." The rules also specify the content of the notice to class members. Cal. Rules of Court 3.766. The "notice … must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251. The proposed notice readily meets these requirements.

Plaintiffs submit that the proposed Notice is appropriate under California law and is the best notice practicable for this Class of approximately 151 class members. The Notice describes in plain language the background of the litigation, the benefits that Defendant will be providing to the Class

Members, the meaning and effect of opting out (where applicable), the right to object and the procedure to do so, the legal effect of not objecting, and the timing of other important events during the settlement process. (See Settlement Notices attached as **Exhibit B** and **Exhibit C** to the Kellner Decl.) Indeed, the Notice is modeled after the Federal Judicial Center's forms, as suggested by the Court on its website, and is substantively identical to the Class Notice that Judge Sanders has approved in these other related actions. (Kellner Decl., ¶ 87-88.)

The Notice provides concise details regarding the underlying litigation and explains to Class members the options they have in exercising their rights accordingly. The Notice further explains the scope of their release of Defendant should they decide to participate in the Settlement. (*Id*.) The Proposed Notice also provides contact information for the Class Administrator and Class Counsel should Class members have further questions about the litigation or if they seek clarity of the information provided in the Notice, as well as an interactive website that also includes all pertinent pleadings. (*Id*.)

The Notice also states the difference in relief provided to the Subclasses, with an explanation of the reasons for that differing treatment. (Kellner Decl., ¶ 89.)

Plaintiffs maintain that the method of notice proposed for the class is the best notice practicable under the circumstances, *i.e.*, mail. Plaintiffs anticipate that the proposed method of providing notice information is the most reasonable method available.

VII. ILYM GROUP INC. SHOULD BE APPOINTED AS CLASS ADMINISTRATOR

The Parties have agreed on ILYM Group, Inc. ("ILYM") to handle the notice and claims administration process as outlined in the Settlement Agreement. ILYM is experienced and qualified in the area of class action administration and notice, and is currently serving as the administrator in several related cases (both pending settlements, and for purposes of class notice in active litigation).

Plaintiffs and Class Counsel do not have any financial interest in ILYM or otherwise have a relationship with ILYM Group Inc. that could create a conflict of interest. ILYM has provided a cap of $29,000.00 for its services – which are extensive considering its need to determine chain of title information. (Kellner Decl, ¶¶ 90-91; Mullins Decl., ¶ 9.)

Plaintiffs respectfully request that this Court appoint ILYM to administer the Settlement and Class Notice and the claims administration procedures as set forth in the Settlement Agreement.

VIII. CONCLUSION

For the foregoing reasons, the parties respectfully request that this Court issue an Order:

1. Granting preliminary approval of the class action settlement between the Class (by Plaintiffs Kiran Shah, Hemangini Patel, Joseph Michel and Patricia Michel) and Defendant;
2. For purposes of the proposed Settlement only, and conditioned upon the Agreement receiving final approval following the final approval hearing and that order becoming final, the Court certifies the Settlement Class comprised of two subclasses as follows:
    - The Arbitration Owner Subclass, comprised of the 39 present homeowners who purchased their homes directly from Defendant. The Arbitration Owner Subclass are owners of homes that are listed is attached as **Exhibit A** to the Settlement Agreement.
    - The Non-Arbitration Owner Subclass are 112 members of the Settlement Class defined as (a) the current owner(s) of a home on the Non-Arbitration Owner Subclass List on **Exhibit B** to the Settlement, unless (i) the prior owner(s) re-piped the entire home with PEX or an epoxy coating and submits the Prior Owner Re-Piping Form as provided in Section 4.4 of this Agreement, subject to the dispute procedures set forth therein, **OR** (b) the prior owner(s) who re-piped the entire home with PEX or an epoxy coating and submits the Prior Owner Re-Piping Form as provided in Section 4.4 of this Agreement, subject to the dispute procedures set forth therein. The Non-Arbitration Owner Subclass List is attached as **Exhibit B** to the Settlement Agreement.
3. Approving the proposed form and manner of notice to be provided to the settlement class and directing that notice be effectuated to the settlement class;
4. Approving ILYM Group Inc. as Class Administrator to administer the notice and claims procedures;

5. Appointing Bridgford, Gleason & Artinian; Kabateck LLP; and McNicholas & McNicholas as counsel for the proposed Settlement Class;
6. Appointing Plaintiffs Kiran Shah, Hemangini Patel, Joseph Michel and Patricia Michel as Class Representatives of the proposed Settlement Class; and
7. Setting a hearing for final review of the proposed settlement in Department CX-101 of the above-entitled Court.

For the Court's benefit, the chart below sets forth the calculation of key dates that needs to be included in the proposed Order Granting Preliminary Approval:

Days After Prelim. Approval	**Event**	**Date/Deadline**
Day 14	Deadline for Class Administrator Getting Addresses (note – already done)	Ten court days after Preliminary Approval.
Day 30	Settlement and Class Notice going out	Thirty days after Preliminary Approval.
Day 90	Opt-Out and Objection Deadline	Sixty days after Notice
Day 97	Class Administrator Report Due to Court	Seven days after Opt-Out & Objection deadline
Day 102	Motion for Final Approval and Fees	*Plaintiffs suggest it will be prepared within 5 days of the Class Administrator Report, if not sooner*
Day 126	Final Approval Hearing	24 days after Motion is filed

Dated: February 3, 2023

KABATECK LLP
BRIDGFORD, GLEASON & ARTINIAN
McNICHOLAS & McNICHOLAS LLP

By:/s/ *Richard L. Kellner Michael H. Artinian*

Richard L. Kellner and Michael H. Artinian
Attorneys for the Certified Class

PROOF OF SERVICE
Shah v. Pulte Homes, et al.
Orange County Superior Court Case No.: 30-2014-00731604

I, the undersigned, declare that:

I am over the age of 18 years and not a party to the within action. I am employed in the County where the Proof of Service was prepared and my business address is Law Offices of BRIDGFORD, GLEASON & ARTINIAN, 26 Corporate Plaza, Suite 250, Newport Beach, CA 92660.

On the date set forth below, I served the following document(s): **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on the interested party(s):

SEE ATTACHED SERVICE LIST

by the following means:

( ) **BY MAIL**: By placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid. I am readily familiar with the business practice for collecting and processing correspondence for mailing. On the same day that correspondence is processed for collection and mailing it is deposited in the ordinary course of business with the United States Postal Service in Newport Beach, California to the address(es) shown herein.

( ) **BY PERSONAL SERVICE**: By placing a true copy thereof, enclosed in a sealed envelope, I caused such envelope to be delivered by hand to the recipients herein shown (as set forth on the service list).

( ) **BY OVERNIGHT DELIVERY:** I served the foregoing document by Overnight Delivery as follows: I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to recipients shown herein (as set forth on the service list), with fees for overnight delivery paid or provided for.

(X) **BY ELECTRONIC MAIL (EMAIL)**: I caused a true copy thereof sent via email to the address(s) shown herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: February 3, 2023 /s/Debbie Knipe
Debbie Knipe

SERVICE LIST
Shah v. Pulte Homes, et al.
Orange County Superior Court Case No.: 30-2014-00731604

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