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28 and NAOMI GODFREY; VICTOR GUDZUNAS and JULIE GUDZUNAS; EYNALD
DUARTE and MADELEINE DUARTE, on behalf of themselves and all others similarly
situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

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

Plaintiffs,

Case No.: 30-2014-00731604-CU-OR-CXC

Assigned for all purposes to:
Judge Thierry Patrick Colaw
Dept. CX-105

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

02/01/2016 at 08:08:00 PM

Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

1 vs.

2 PULTE HOME CORPORATION; and
3 DOES 1-100, inclusive,
4 Defendants.

Complaint Filed: 06/30/14

5 Plaintiffs KIRAN SHAH, HEMANGINI PATEL, ANTHONY GODFREY, NAOMI
6 GODFREY, VICTOR GUDZUNAS, JULIE GUDZUNAS, EYNALD DUARTE and
7 MADELEINE DUARTE, on behalf of themselves and all others similarly situated ("Plaintiffs"),
8 are informed, believe and allege as follows:

9 **INTRODUCTION**

10 1. This is a class action addressing solely the incorporation of a single defective
11 component (copper pipe) into a residence, thus exempting Plaintiffs (and the named and unnamed
12 class members) pursuant to Civil Code section 931 from complying with the pre-litigation
13 procedures specified in Division 2, Part 2, Title 7, Chapter 4. Plaintiffs seek damages and other
14 relief on behalf of all similarly-situated homeowners in the Kerrigan Ranch area in Yorba Linda,
15 California, whose homes were built by Defendants PULTE HOME CORPORATION (hereinafter
16 "Pulte"), who have suffered damage because of owning homes with a defective component, to wit,
17 copper pipe. The copper pipe at issue is defective, and damages Plaintiffs' and class members'
18 homes in violation of the standards of residential construction set forth in California Civil Code
19 §895, et seq.

20 2. The homes at issue are located in Kerrigan Ranch area located in Yorba Linda,
21 Orange County, including but not limited to, homes in the 92886 zip code (the "Class Area").
22 Plaintiffs are informed and believe, and on that basis allege, that the copper pipe utilized was
23 defective for the water conditions in the Class Area.

24 3. The homes have in common a serious defect, namely the incorporation of defective
25 copper pipe instead of stronger resistive pipe.

26 4. Plaintiffs bring this action to seek redress on behalf of the following class:

27 All homeowners in the Class Area whose residences contain
28 copper pipe, were constructed by Pulte and substantially
completed within ten (10) years of the filing of the original
complaint in this action, and the original purchase agreements

1 were signed by the builder on or after January 1, 2003.

2 **THE PARTIES**

3 5. Plaintiff Kiran Shah and Hemangini Patel are individuals and residents of the
4 Kerrigan Ranch area in Yorba Linda, California, whose principal residence is located at 4041 Paso
5 Fino Way, Yorba Linda, California 92886.

6 6. Plaintiff Vic and Julie Gudzunus are individuals and residents of the Kerrigan
7 Ranch area in Yorba Linda, California, whose principal residence is located at 19703 Morgan
8 Court, Yorba Linda, California 92886.

9 7. Plaintiff Anthony and Naomi Godfrey are individuals and residents of the Kerrigan
10 Ranch area in Yorba Linda, California, whose principal residence is located at 19696 Morgan
11 Court, Yorba Linda, California 92886.

12 8. Plaintiff Eynald and Madeleine are individuals and residents of the Kerrigan Ranch
13 area in Yorba Linda, California, whose principal residence is located at 3981 Paso Fino Way,
14 Yorba Linda, California 92886.

15 9. Plaintiffs' and the class members' homes at issue in this action are all residences in
16 the Kerrigan Ranch area in Yorba Linda, California, including but not limited to, homes in the
17 92886 zip code, that contain or contained copper pipe, were substantially completed within ten
18 (10) years of the filing of the original complaint in this action, whose original purchase agreements
19 were signed by the builder on or after January 1, 2003, and are collectively referred to herein as the
20 "Subject Homes."

21 10. Plaintiffs are informed and believe and based thereon allege that at all times
22 relevant, defendant Pulte Home Corporation was or is a business entity engaged in business in the
23 State of California.

24 11. The term "Pulte" refers to defendant Pulte Home Corporation. Plaintiffs are
25 informed and believe, and on that basis allege, that defendant Pulte constructed the Subject Homes,
26 and supplied and/or distributed the copper pipe at issue used in class members' homes.

27 12. As used herein, the term "defendants" refers collectively to all defendants named
28 herein.

1 13. Plaintiffs are informed, believe, and thereupon allege that defendants, including
2 DOES, are/were involved in the planning, development, design, construction, warranting, repair,
3 selection of materials, supply of materials, installation of materials and/or sale of the Subject
4 Homes, and/or were responsible for the design, development, testing, manufacture, distribution,
5 supply, marketing, sale, and warranting of the Subject Homes in the Kerrigan Ranch area of Yorba
6 Linda, California that contain the copper pipe at issue.

7 14. Plaintiffs are currently ignorant of the true names and capacities, whether
8 individual, corporate, associate, or otherwise, of the defendants sued herein under the fictitious
9 names Does 1 through 100, inclusive, and therefore, sue such defendants by such fictitious names.
10 Plaintiffs will seek leave to amend this complaint to allege the true names and capacities of said
11 fictitiously named defendants when their true names and capacities have been ascertained.
12 Plaintiffs are informed and believe and thereon allege that each of the fictitiously named Doe
13 Defendants legally responsible in some manner for the events and occurrences alleged herein, and
14 for the damages suffered by the class.

15 15. Plaintiffs are informed and believe and thereon allege that all defendants, including
16 the fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators,
17 ostensible agents, alter egos, partners and/or joint venturers and/or employees of all other
18 defendants, and that all acts alleged herein occurred within the course and scope of said agency,
19 employment, partnership, alter ego relationship, and joint venture, conspiracy or enterprise, and
20 with the express and/or implied permission, knowledge, consent, authorization and ratification of
21 their co-defendants; however, each of these allegations are deemed "alternative" theories whenever
22 not doing so would result in a contradiction with other allegations.

23 16. Does 1-50, whose identities are presently unknown, are the subject of ongoing
24 discovery and therefore are sued under fictitious names. Does 1-50 were involved in the planning,
25 development, design, construction, warranting, repair, selection of materials, supply of materials,
26 installation of materials and/or sale of the Subject Homes, which contain the defective copper pipe
27 at issue, and proximately caused the injuries and damages herein alleged. Plaintiffs will seek leave
28 to amend this Complaint to allege their true names and capacities as they are ascertained.

1 construction set forth in California Civil Code §895, et seq.

2 23. The homes have in common a serious defect, namely the incorporation of defective
3 copper pipe instead of stronger resistive pipe.

4 24. Plaintiffs Kiran Shah and Hemangini Patel, Vic and Julie Gudzunas, Anthony and
5 Naomi Godfrey, and Eynald and Madeline Duarte, purchased four of the Subject Homes,
6 containing the defective copper pipe, which has caused damage to their homes.

7 25. Plaintiffs are informed, believe, and thereupon allege that the above-referenced
8 defective condition violates the standards of residential construction set forth in California Civil
9 Code §895, et seq. and has proximately caused damage to homeowners who are members of the
10 class.

11 26. Plaintiffs are informed, believe and thereupon allege that the Builders' contractors
12 are agents of the builders. One such contractor has confirmed in sworn deposition testimony that it
13 has known about pinhole leaks in copper pipe in Orange County for years prior to building the
14 Subject Homes. Despite this clear notice, they failed to warn the homeowners of possible defects,
15 neglected to select proper pipe for the water type, and incorporated a defective component pipe
16 into the residences.

17 27. Plaintiffs are informed, believe, and thereupon allege that the builders and/or their
18 contractors received reports of numerous complaints that gave them notice of the defect inherent in
19 the copper pipe incorporated into residences in the class area, including complaints of pinhole
20 leaks, for homes in Orange County, prior to building the subject homes.

21 28. Plaintiffs are informed, believe and based thereupon allege that the builder and/or
22 their contractors have tested the water and/or pipe installed in the homes prior to installing copper
23 pipe into the subject homes, and had information prior to incorporating the copper pipe into the
24 residences confirming that the copper pipe installed in the homes was defective.

25 29. Each of the named Plaintiffs and class members have a contract and/or are in privity
26 with defendants and/or are third party beneficiaries of contracts. Plaintiffs reserve the right to
27 amend their complaint to attach a copy of the contracts and warranties at issue after an appropriate
28 opportunity for discovery.

1 30. Plaintiffs and the class members' homes have an actionable defect which violates
2 the standards set forth in California Civil Code §895, et seq. Individual product manufacturers,
3 material suppliers, builders, general contractors, and subcontractors are subject to an action for
4 recovery of damages for the violation of the standards enumerated in California Civil Code section
5 895, et seq.

6 31. Plaintiffs and class members will be required to retain the services of experts and
7 consultants to investigate the nature and extent of the defect, and seek damages for those
8 investigative costs pursuant to California Civil Code section 944.

9 32. Plaintiffs have incurred, and will incur during the pendency of this action,
10 attorney's fees and costs, which are necessary for the prosecution of this action and will result in a
11 benefit to members of the class. This action will result in the enforcement of important rights
12 supported by a strong public policy affecting the public interest which will confer a significant
13 benefit on the general public and a large class of persons, where the necessity and burden of
14 private enforcement are such as to make an award appropriate pursuant to California Code of Civil
15 Procedure section 1021.5.

16 33. Plaintiffs allege and assert that its claims and this legal action have all been brought
17 in a timely manner and within the statute of limitations and repose periods, if applicable. The
18 defect in the copper pipe, as alleged herein, is latent in nature. Plaintiffs and class members did
19 not discover, and could not reasonably have discovered, its defective nature until a date within the
20 statute of limitations for each cause of action alleged.

21 34. To the fullest extent of the law, Plaintiffs seek recovery for injuries and/or damages
22 to property.

23 **CLASS ALLEGATIONS**

24 35. The class consists of:

25 All homeowners in the Class Area whose residences contain
26 copper pipe, were constructed by Pulte and substantially
27 completed within ten (10) years of the filing of the original
28 complaint in this action, and the original purchase agreements
were signed by the builder on or after January 1, 2003.

36. The class is so numerous that joinder would be impractical and disposition of the

1 class members' claims in a class action is in the best interests of the parties and judicial economy.

2 37. This action involves questions of law and fact common to each member of the class,
3 in that all members of the proposed class have suffered damages as a result of the installation of
4 defective copper pipe in their homes. The common questions of law and fact include, but are not
5 limited to, the following:

- 6 a. Whether the copper pipe was defective for the water conditions in the Class Area;
- 7 b. Whether Defendants had notice, and the degree of notice that they had, of the water
8 conditions in the Class Area;
- 9 c. Whether California Civil Code sections 896(a)(14) and/or (15) were violated by the
10 incorporation, selection, design, manufacture, supply and/or utilization of the pipe at
11 issue herein.
- 12 d. Whether defendants violated the "unlawful" prong of the UCL;
- 13 e. Whether defendants violated the "fraudulent" prong of the UCL;
- 14 f. Whether any defenses raised are meritorious;
- 15 g. Whether the copper pipe at issue has corroded; and
- 16 h. Whether the copper pipe at issue needs to be removed and replaced.

17 38. The claims of the Plaintiffs and relief herein sought are typical of the claims and
18 relief that could generally be sought by each member of this proposed class.

19 39. Plaintiffs can fairly and adequately protect the interests of all members of the
20 proposed class. The Subject Homes all contain defective copper pipe at issue herein.

21 40. Prosecution of separate actions by individual members of the proposed class would
22 create a risk of inconsistent or varying adjudications with respect to individual members of the
23 class and thus establish incompatible standards of conduct for the party or parties opposing the
24 class. Further, the relatively small amounts of the individual claims mean that class treatment is the
25 superior manner to address the defect at issue herein.

26 41. Plaintiffs' attorneys have the experience, knowledge, and resources to adequately
27 and properly represent the interests of the proposed class.

28

1 **FIRST CAUSE OF ACTION**

2 **(Violation of Standards of Residential Construction)**

3 **(By Plaintiffs Against All Defendants)**

4 42. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
5 the preceding paragraphs of this complaint, as though fully set forth herein.

6 43. Defendants are subject to an action for recovery of damages for the violation of the
7 standards enumerated in California Civil Code §895, et seq.

8 44. Defendants are liable for damages arising out of and related to the incorporation, at
9 the time of original construction, of defective copper pipe into Plaintiffs' and class members'
10 residences, which is leaking and/or corroding so as to impede the useful life of the system.

11 45. As a direct and proximate result of defendants' violations of standards for
12 residential construction, Plaintiffs and class members have been damaged and are entitled to
13 recover the cost of remedying the incorporation of the defective copper pipe in addition to all other
14 damages permitted under Section 944 and/or that the court deems just and proper.

15 **SECOND CAUSE OF ACTION**

16 **(Unfair Business Practices, Business & Professions Code §§17200, et seq.)**

17 **(By Plaintiffs Against All Defendants)**

18 46. Plaintiffs re-allege and incorporate by reference all preceding paragraphs of this
19 Complaint as though fully set forth herein.

20 47. Business & Professions Code section 17200 prohibits any unfair competition,
21 including any unlawful, unfair or fraudulent business act or practice.

22 48. The conduct of defendants, as set forth in the allegations in this complaint,
23 constitutes unlawful, unfair or fraudulent business practices.

24 49. Defendants' unlawful conduct includes, but is not limited to, violation of California
25 Civil Code § 896, et seq. Specifically, the building standards set forth at sections 896(a)(14)
26 and/or (15) were violated by Defendants' incorporation, selection, design, manufacture, supply
27 and/or utilization of the defective pipe at issue herein that has leaked and/or corroded so as to
28 impede the useful life of the system – a statutory violation of law.

1 be caused by the defects and/or deficiencies as set forth herein;

2 4. Economic losses associated with the defects and/or deficiencies, including loss of
3 use, diminution in value, relocation, and alternative housing;

4 5. For equitable entitlement to attorney's fees and costs from the common fund;

5 6. For attorney's fees and costs pursuant to California Code of Civil Procedure section
6 1021.5;

7 7. For investigative costs and other damages recoverable pursuant to California Civil
8 Code section 944;

9 8. For a preliminary and permanent injunction prohibiting defendants from engaging
10 in the unlawful or fraudulent conduct, or unfair methods of competition, alleged
11 herein;

12 9. For any and all other relief available under Business and Professions Code sections
13 17200 *et. seq.*, including but not limited to restitution and disgorgement of monies
14 received through defendants' unlawful or fraudulent business practices;

15 10. For an award of pre-judgment interest on all monetary damages, fees, and costs
16 awarded in this action;

17 11. For a declaratory judgment adjudicating the relative rights and duties of the parties;

18 12. For such other and further relief as the Court deems just and proper.

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DATED: February 1, 2016

BRIDGFORD, GLEASON & ARTINIAN
KABATECK BROWN KELLNER LLP
McNICHOLAS & McNICHOLAS
THE MANSHIP LAW FIRM

By: 

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Attorneys for Plaintiffs and Class
Representatives, on behalf of themselves and
all others similarly situated

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all claims and causes of action in this lawsuit.

DATED: February 1, 2016

BRIDGFORD, GLEASON & ARTINIAN
KABATECK BROWN KELLNER LLP
McNICHOLAS & McNICHOLAS
THE MANSHIP LAW FIRM

By: 

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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): **FIRST AMENDED COMPLAINT** on the interested party(s):

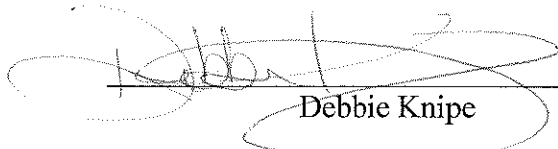
SEE ATTACHED SERVICE LIST

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 1, 2016



Debbie Knipe

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SERVICE LIST

Shah v. Pulte Homes, et al.

Orange County Superior Court Case No.: 30-2014-00731604

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