

1 Richard K. Bridgford, Esq., SBN: 119554
2 Michael H. Artinian, Esq., SBN: 203443
3 **BRIDGFORD, GLEASON & ARTINIAN**
4 26 Corporate Plaza, Suite 250
5 Newport Beach, CA 92660
6 Telephone: (949) 831-6611
7 Facsimile: (949) 831-6622

8 Richard L. Kellner, Esq., SBN: 171416
9 **KABATECK LLP**
10 633 West Fifth Street, Suite 3200
11 Los Angeles, CA 90017
12 Telephone: (213) 217-5000
13 Facsimile: (213) 217-5010

14 John Patrick McNicholas, IV, Esq., SBN: 125868
15 **McNICHOLAS & McNICHOLAS, LLP**
16 10866 Wilshire Blvd., Suite 1400
17 Los Angeles, CA 90024
18 Telephone: (310) 474-1582
19 Facsimile: (310) 475-7871

20 Attorneys for Plaintiffs DEBORAH and GRANT CAIN
21 on behalf of themselves and all others similarly situated

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **FOR THE COUNTY OF ORANGE**

24 MADLEN DYE, an individual; DEBORAH CAIN,
25 an individual; GRANT CAIN, an individual, on
26 behalf of themselves and all others similarly
27 situated,

28 Plaintiffs,

vs.

29 RICHMOND AMERICAN HOMES OF
30 CALIFORNIA, INC., a Corporation; M.D.C.
31 HOLDINGS, INC., a Corporation; PLUMBING
32 CONCEPTS, INC., a Corporation; MUELLER
33 INDUSTRIES, INC., a Corporation; and DOES 1-
34 100,

Defendants.

AND RELATED CROSS-CLAIMS.

Case No. 30-2013-00649460-CU-CD-CXC

**CLASS ACTION SETTLEMENT AND
RELEASE BETWEEN PLAINTIFFS AND
DEFENDANTS FOR SETTLEMENT
PURPOSES ONLY**

Judge: Hon. Glenda Sanders
Dept: CX-101
Complaint Filed: May 9, 2013

1 **STIPULATION OF SETTLEMENT AND RELEASE**

2 Plaintiffs Deborah and Grant Cain (“Plaintiffs”) individually and on behalf of the certified Class
3 described below, and defendants Richmond American Homes of Maryland, Inc. (as successors by
4 merger with Richmond American Homes of California, Inc.), Richmond American Homes of California,
5 Inc. and M.D.C. Holdings, Inc. (“Defendants”), by and through their respective counsel of record, agree
6 to resolve the above-captioned case through this Class Action Settlement and Release Agreement, dated
7 May 4, 2022, which is being entered into by the Parties for settlement purposes only.

8 **I. DEFINITIONS**

9 **1.1 Action.** “Action” shall mean the above-captioned lawsuit.

10 **1.2 Administrative Costs.** “Administration Costs” means the costs of administering the
11 settlement by the Class Administrator, including, but not limited to, the costs of mailing the Class Notice
12 and related documents to Class Members, and administering the portion of the Settlement Fund by the
13 Class Administrator.

14 **1.3 Agreement.** “Agreement” means this Class Settlement Agreement and Release,
15 including all exhibits hereto.

16 **1.4 Attorney Fee Award.** “Attorney Fee Award” means the amount awarded by the Court
17 to Plaintiffs’ Counsel as attorneys’ fees, such amount to be in full and complete satisfaction of Plaintiff’s
18 Counsel’s claim or request (and any request made by any other attorneys) for payment of attorneys’
19 fees, costs, disbursements and compensation in the Action.

20 **1.5 Award.** “Award” means the *pro rata* benefit to be paid on behalf of each Class
21 Member from the “Net Settlement Fund.”

22 **1.6 Certified Class.** “Certified Class” means the class that was certified by this Court in
23 this action on August 19, 2021.

24 **1.7 Class Administrator.** “Class Administrator” shall mean ILYM Group, Inc. The Class
25 Administrator shall receive and administer the Settlement Funds.

26 **1.8 Class Counsel.** “Class Counsel” shall mean the attorneys duly appointed by this Court
27 as class counsel in this action: Bridgford, Gleason & Artinian, Kabateck LLP, and McNicholas &
28 McNicholas.

1 **1.9 Class Home List.** “Class Home List” shall mean the complete list of the addresses of
2 the homes that counsel for the parties have determined are covered under the definition of the Certified
3 Class and is comprised of those 184 homes developed by Defendants in the Chesapeake and Arborage
4 developments located in Ladera Ranch, California identified on Exhibit A hereto.

5 **1.10 Class Members.** “Class Members” shall mean:

6 *(1) All present owners of residential homes constructed by Richmond American of California,*
7 *Inc. in Ladera Ranch, California as set forth in the Class Home List attached hereto as Exhibit A*
8 *whose copper pipes have not been replaced with PEX or epoxy coating by prior owners of the*
9 *homes; or (2) prior owners of homes in the PROJECTS who replaced their copper pipes with*
10 *PEX or epoxy coating.*

11 **1.11 Class Notice.** “Class Notice” means the notice of this settlement contemplated by this
12 Agreement, substantially in the forms attached hereto collectively as Exhibit B, or as otherwise
13 approved by the Court.

14 **1.12 Court.** “Court” means the Superior Court of California for the County of Orange,
15 Complex Division.

16 **1.13 Defendants.** “Defendants” means Richmond American Homes of Maryland, Inc. (as
17 successors by merger with Richmond American Homes of California, Inc.), Richmond American Homes
18 of California, Inc. and M.D.C. Holdings, Inc.

19 **1.14 Defendants’ Counsel.** “Defendants’ Counsel” means Keith E. Smith and Courtney
20 Jakofsky from Wood, Smith, Henning & Berman LLP.

21 **1.15 Eligible Share.** “Eligible Share” shall mean each individual Class Member’s share of
22 the Net Settlement Fund, which will be determined by dividing the Net Settlement Fund by the 184
23 homes included in the Class.

24 **1.16 Final Approval Hearing.** “Final Approval Hearing” shall mean the hearing conducted
25 by the Court in connection with the determination of the fairness, adequacy and reasonableness of this
26 Agreement and the proposed settlement of the Action, including Plaintiff’s Counsel’s application for the
27 Attorney Fee Award and the Representative Plaintiff’s Award.

28 **1.17 Final Approval Order.** “Final Approval Order” means the Court’s Order approving

1 this Agreement, finding the settlement is fair, adequate and reasonable.

2 **1.18 Final Approval Order and Judgment.** “Final Approval Order and Judgment” shall
3 mean the Order pursuant to Rule of Court 3.769 that gives final approval of this Settlement Agreement
4 and provides for the orderly performance and enforcement of the terms and conditions of this Settlement
5 Agreement, as well as the Judgment rendered by the Court pursuant to Rule of Court 3.769(h). The
6 Order shall be in substantially the same form as is agreed by the Parties.

7 **1.19 Motion for Preliminary Approval.** “Motion for Preliminary Approval” shall mean
8 the Motion for Preliminary Approval of the Settlement to be filed in this Action pursuant to California
9 Rule of Court 3.769(c).

10 **1.20 Net Settlement Fund.** “Net Settlement Fund” means the Settlement Fund (including
11 accrued interest) minus (a) Administrative Fees and Costs, (b) the total attorneys’ fees and costs
12 awarded to Class Counsel by the Court; and (c) any incentive payments awarded to the Class
13 Representatives by the Court.

14 **1.21 Notice Date.** “Notice Date” shall mean the date on which the Class Administrator shall
15 send the Class Notice. The Notice Date shall be no more than thirty (30) business days after entry of the
16 Preliminary Approval Order.

17 **1.22 Objection Deadline.** “Objection Deadline” means sixty (60) calendar days from the
18 Notice Date.

19 **1.23 Opt Out or Opted Out.** “Opt Out” or “Opted Out” shall mean to the process by which
20 a Class Member can opt out and exclude themselves from the Settlement and the Class Action by filling
21 out and signing the Request for Exclusion From Class Action form and mailing it to the Class
22 Administrator with a postmark prior to 60 days after the Class Notice is served on that Class Member or
23 such other date as is set by the Court.

24 **1.24 Opt-Out Period.** The “Opt-Out Period” shall mean the time within which a Class
25 Member may exclude themselves from the Settlement and Class Action by mailing the Request for
26 Exclusion From Class Action form and mailing it to the Class Administrator with a postmark prior to 60
27 days after the Class Notice is served on that Class Member, or such other date as set by the Court.

28 **1.25 Opted-Out.** “Opted-Out” shall mean the Class Members who have followed and

1 complied with the opt out procedure, and thus have opted out of the Class Action and Settlement, by
2 filling out and signing the Request for Exclusion From Class Action form and mailing it to the Class
3 Administrator with a postmark prior to 60 days after the Class Notice is served on that Class Member or
4 such other date as is set by the Court.

5 **1.26 Participating Class Member.** “Participating Class Member” shall mean the Class
6 Member who was sent Notice that was not returned as undeliverable (after all reasonable attempts have
7 been made by the Class Administrator) who have not Opted Out.

8 **1.27 Parties.** “Parties” shall mean the Plaintiffs and Defendants.

9 **1.28 Plaintiffs.** “Plaintiffs” shall mean Deborah Cain, Grant Cain and the Participating
10 Class Members.

11 **1.29 Plaintiffs’ Released Parties.** “Plaintiffs’ Released Parties” shall mean Defendants,
12 and each and all of their past, present, and future parent companies, subsidiary companies, affiliated
13 companies and corporations, and each and all of their respective past, present, and future directors,
14 officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers,
15 shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint ventures,
16 assigns, or related entities, and each and all of their respective executors, successors, assigns, and legal
17 representatives, and any subcontractors hired by Defendants to construct or work on the Class Members’
18 homes, as well as any vendors, supplier manufacturer or distributor of copper pipe and components for
19 potable water systems in the Class Members’ homes.

20 **1.30 Potential Class Members.** “Potential Class Members” shall be all individuals in the
21 “chain of title” for the Class Home List.

22 **1.31 Preliminary Approval.** “Preliminary Approval” shall mean that the Court has entered
23 the Preliminary Approval Order.

24 **1.32 Preliminary Approval Date.** “Preliminary Approval Date” means the date on which
25 the Preliminary Approval Order is entered by the Court.

26 **1.33 Preliminary Approval Order.** “Preliminary Approval Order” shall mean the order
27 entered by the Court that grants Preliminary Approval of this Settlement including, among other things,
28 preliminary approval of the terms of the settlement, and approval of the form and method of Class

1 Notice. The Preliminary Approval Order shall be in substantially the form attached hereto as Exhibit C,
2 subject to non-material modifications made by the Court.

3 **1.34 Release.** “Release” means the release set forth in Paragraph 5.1 of this Agreement.

4 **1.35 Released Claims.** “Released Claims” means upon Final Approval and Judgment,
5 Entry of Judgment, the release, discharge and satisfaction of all Participating Class Member claims,
6 demands, rights, liabilities, suits, matters, obligations, damages, losses, costs, actions and causes of
7 action of every nature and description whatsoever, in law or equity, known or unknown, by the
8 Releasing Parties against Plaintiffs' Released Parties, including claims for penalties, attorneys’ fees and
9 costs of such, that arise from the installation or use of the copper pipes and components for potable
10 water systems in the in the Homes and any alleged violations of California Civil Code § 895 et seq.
11 arising from the installation of copper pipes. Without limiting the foregoing, and for clarification,
12 excluded from the Settled Class Claims are any *other* construction defects or *other* claims relating to the
13 construction of the homes identified in Exhibit A, against any parties, including Defendants, which are
14 not alleged in the Action.

15 **1.36 Releasing Parties.** “Releasing Parties” shall mean the Plaintiffs and all Class Members
16 who did not opt out during the Opt-Out Period.

17 **1.37 Representative Plaintiff’s Award.** “Representative Plaintiff’s Award” means the
18 amount, if any, that is approved by the Court for payment to Plaintiffs Deborah and Grant Cain for
19 acting as class representative in the Action.

20 **1.38 Request for Exclusion.** “Request for Exclusion” means the submission by Class
21 Members to the Class Administrator requesting to opt out of the settlement. A form Request for
22 Exclusion is Exhibit D.

23 **1.39 Settled Class Claims.** “Settled Class Claims” means collectively any and all claims,
24 demands, rights, liabilities, suits, matters, obligations, damages, losses, costs, actions and causes of
25 action of every nature and description whatsoever, in law or equity, known or unknown, by the
26 Releasing Parties against Plaintiffs' Released Parties, including claims for penalties, attorneys’ fees and
27 costs of such, that arise from the installation or use of the copper pipes and components for potable
28 water systems in the in the Homes and any alleged violations of California Civil Code § 895 et seq.

1 arising from the installation of copper pipes. Without limiting the foregoing, and for clarification,
2 excluded from the Settled Class Claims are any *other* construction defects or *other* claims relating to the
3 construction of the homes identified in Exhibit A, against any parties, including Defendants, which are
4 not alleged in the Action.

5 **1.40 Settlement or Settlement Agreement.** “Settlement” or “Settlement Agreement” shall
6 mean the terms and conditions of this Class Action Settlement and Release Agreement, June __, 2022,
7 which is being entered into by the Parties for settlement purposes only.

8 **1.41 Settlement Fund.** “Settlement Fund” shall mean the total amount of \$1,932,000.00
9 that shall be funded by Defendant and wired to Class Administrator’s account within 30 days of Final
10 Approval Order. The Settlement Fund shall be the exclusive source for: (a) the benefits to the Class
11 Members (*i.e.*, the Award); (b) the Attorney Fee Award; (c) Class Administration costs; and (d) the
12 Representative Plaintiff’s Award, such that the total sums to be paid by Defendants shall never exceed
13 \$1,932,000.00.

14 **1.42 Settlement Effective Date.** “Settlement Effective Date” shall mean the first day
15 following the last of the following occurrences:

16 (a) The time to appeal or seek permission to appeal or seek other judicial
17 review of the Final Approval Order and Judgment has expired with no appeal or other judicial review
18 having been taken or sought; or

19 (b) If an appeal or other judicial review of the Final Approval Order and
20 Judgment has been taken or sought, the date the Final Approval Order and Judgment is finally affirmed
21 by an appellate court with no possibility of subsequent appeal or other judicial review therefrom, or the
22 date the appeal(s) or other judicial review therefrom are finally dismissed with no possibility of
23 subsequent appeal or other judicial review.

24 **II. RECITALS**

25 **2.1 Description of the Action.** Plaintiffs filed this Action on May 9, 2013 on behalf of
26 themselves and other allegedly similarly situated persons whose homes were built by Defendants and
27 contained copper plumbing and piping lines and components that allegedly were inadequate and
28 defective for the water conditions in Ladera Ranch, California.

1 **2.1.0** For close to nine (9) years, Class Counsel have vigorously litigated this Action
2 and the other related actions against other developers for the same claim that the chemical interaction
3 between the water supplied in Ladera Ranch and the copper pipes installed by developers lessened the
4 reasonably-expected useful life of the copper pipes and results in pinhole leaks.

5 **2.1.1 Discovery in the Action.** The Parties have engaged in discovery, including
6 taking the depositions of corporate representatives from the applicable governmental water districts and
7 Defendants, propounding and/or responding to document requests, special interrogatories and requests
8 for admission, defending the deposition of Madlen Dye, and reviewing all of the documents produced in
9 this action.

10 **2.2 Class Certification and Initial Notice of the Certified Class.** On August 19, 2021,
11 the Court granted class certification in this action. During the period in which Class Notice was served
12 and prior to the deadline to “opt-out,” the parties reached this proposed, tentative settlement agreement.

13 **2.3 Settlement Efforts.** Subsequent to certification of this class action, the Parties have
14 engaged in arms-length negotiations before Ross W. Feinberg, Esq. from JAMS ADR, and thereafter
15 continued those discussions under the auspices of Mr. Feinberg. As a result of this mediation, the
16 parties were able to reach agreement on settlement. The terms of that negotiated settlement are reflected
17 in this Agreement.

18 **2.4 Plaintiffs’ Reasons for Entering Into Settlement.** Class Counsel and Plaintiffs
19 believe that the claims asserted in this Action have merit. Class Counsel and Plaintiffs, however,
20 recognize the uncertain outcome and the risk of any litigation, especially in complex actions such as this,
21 as well as the difficulties and delays inherent in such litigation. Class Counsel and Plaintiffs are also
22 mindful of the inherent problems of proof and defenses to the claims asserted in this Action. In light of
23 the above, Class Counsel and Plaintiffs believe that the Settlement set forth in this Settlement
24 Agreement confers substantial benefits upon the Class, and its and each of the Class Members and is
25 fair, just, equitable, reasonable, adequate and in the best interests of all Class Members.

26 **2.5 Defendants’ Reasons for Entering into Settlement.** Defendants have denied, and
27 continue to deny, liability for any of the claims asserted in this Action. Defendants, however, desire to
28 settle the Action, on the terms and conditions set forth in this Settlement Agreement, in order to:

1 (a) avoid the burden, expense, and uncertainty of continuing the Action; (b) avoid the diversion of its
2 resources and personnel required by continuing the Action; and (c) put to rest any and all claims that are,
3 or could have been, brought or asserted in this Action, or any similar litigation, in this or any other
4 court's jurisdiction, which are based upon any of the facts, circumstances or conduct alleged in the
5 Action. Defendants have therefore determined that it is desirable and beneficial that the Action be
6 settled upon the terms and conditions set forth in this Settlement Agreement. This Settlement
7 Agreement is based on the express understanding that Defendants that nothing contained in this
8 Settlement Agreement shall be construed or deemed an admission of liability, culpability, negligence, or
9 wrongdoing on the part of any of Defendants or any of Plaintiffs' Released Parties, all of whom deny
10 liability therefor.

11 **2.6 Conditional Settlement.** Subject to Court approval as provided herein, the Parties
12 stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and
13 upon the entry by the Court of a Final Approval Order and the occurrence of the Effective Date, the
14 Action shall be fully settled and compromised as to the Class Members upon the terms and conditions
15 set forth below.

16 **NOW, THEREFORE,** in consideration of the mutual covenants and promises set forth in this
17 Settlement Agreement, as well as the good and valuable consideration provided for herein, the Parties
18 hereby agree to a full and complete settlement of the Action on the following terms and conditions:

19 **III. TERMS OF SETTLEMENT**

20 **3.1 Contributions to the Settlement Fund.** Defendants shall pay the sum of \$1,932,000
21 to fund the Settlement. Any Net Settlement Funds allocated to Class Homes that Opt-Out of this
22 Settlement shall revert back to Defendants.

23 **3.1.0 Funding of The Settlement Fund.** Within 30 days of the Court's entry of the
24 Final Approval of the Settlement, Defendants shall wire to the Class Administrator's account to be
25 established the amounts listed in Section 3.1 to be used as the Settlement Fund, consistent with the terms
26 of this Settlement Agreement, and shall be maintained in the Class Administrator's account until
27 distributions are made.

28 **3.1.1 Calculation of Net Settlement Fund.** Within five (5) business days of the

1 Settlement Effective Date, the Class Administrator shall calculate the Net Settlement Fund by deducting
2 from the Settlement Fund the anticipated Administrative Costs for the Settlement, attorneys' fees and
3 costs awarded by the Court, any incentive payments awarded to the Class Representative by the Court,
4 and any other payments agreed to by the Parties and approved by the Court.

5 **3.1.2 Calculation of Eligible Shares to each Class Member.** Within five (5) business
6 days of the Settlement Effective Date, the Class Administrator shall calculate the Eligible Share of the
7 Net Settlement Fund owed to each Class Member by dividing the Net Settlement Fund by 184 (*i.e.*, the
8 number of potential Participating Class Members).

9 **3.1.3 Claims Paid.** This is a claims-paid settlement, and no Participating Class
10 Member shall be required to submit any claim form in order to obtain an Eligible Share. Every
11 Participating Class Member who does not file a valid Request for Exclusion shall automatically be
12 entitled to an Eligible Share.

13 **3.1.4 Payment of Claims to the Participating Class Members.** Within (30) days
14 after the Settlement Effective Date, the Class Administrator shall mail individual Settlement Checks to
15 each Participating Class Member who is not an Opt-Out.

16 **3.1.5 Disposition of Uncashed Settlement Checks.** Each Settlement Check mailed by
17 the Class Administrator to Class Members shall be valid for 180 days from the date shown on the
18 Settlement Check. Any checks not cashed within that time shall be treated as uncashed checks under
19 California's Unclaimed Property Law and forwarded to the appropriate government authority.

20 **3.1.6 Attorneys' Fees, Costs and Expenses.** Defendants take no position as to the
21 proper amount of any attorneys' fee award to Class Counsel, and agree that they will not oppose an
22 application by Class Counsel for attorneys' fees. Class Counsel represent and warrant that they will not
23 seek an attorneys' fees award of more than thirty percent (33 1/3%) of the Settlement Fund, which
24 equates to Six Hundred Forty-Four Thousand Dollars (\$644,000.00) and reimbursement of legal costs
25 up to \$90,000.00, and that these amounts are inclusive of all fees, costs, and expenses of Class Counsel,
26 past and future, in connection with the Action. The fees shall be divided amongst Class Counsel based
27 upon their agreement. The attorneys' fees and costs in the amount awarded by the Court shall be paid
28 directly to Class Counsel from the Settlement Fund within two court days after the Settlement Effective

1 Date. The effectiveness of this Settlement will not be conditioned upon or delayed by the Court's failure
2 to approve Class Counsel's request for attorneys' fees and costs, or the Court's award to Class Counsel
3 of attorneys' fees and costs in an amount less than that sought by Class Counsel. Defendants shall have
4 no obligation to pay any attorneys' fees or costs to Class Counsel, separate from any amount awarded by
5 the Court to Class Counsel from the Settlement Fund only. Any fees not awarded shall be included
6 within the Net Settlement Fund for distribution to the Participating Class Members. Plaintiffs have
7 reviewed and approved the aforesaid division of attorneys' fees.

8 **3.1.7 Incentive Payments to the Class Representatives.** Plaintiffs intend to apply to
9 the Court for an incentive payment of \$5,000.00 collectively for Deborah and Grant Cain for there
10 services as class representatives ("Class Representatives"). Defendants take no position as to the proper
11 amount of any Incentive Payment to the Class Representatives, and agree that they will not oppose an
12 application by Class Counsel for the Class Representative's Incentive Payments. The effectiveness of
13 this Settlement will not be conditioned upon or delayed by the Court's failure to approve any incentive
14 payments to the Class Representative, and/or the Court's award of incentive payments in an amount less
15 than that sought by the Class Representative. Defendants shall have no obligation to pay any incentive
16 payments to the Class Representative, separate from any amount awarded by the Court to the Class
17 Representative from the Settlement Fund. Any fees not awarded shall be included within the Net
18 Settlement Fund for distribution to the Participating Class Members.

19 **3.1.8 Costs of Notice and Claims Administration.** Within ten (10) business days of
20 the Settlement Effective Date, the Class Administrator shall be reimbursed from the Settlement Fund
21 for its costs associated with the preparation and mailing of the Notice described in Section 4.2, and the
22 costs for distributing settlement checks to Class Members.

23 **IV. NOTICE TO THE CLASS**

24 **4.1 Notice.** The Notice shall be substantially in the form attached as Exhibit B, subject to
25 approval by the Court. The Notice shall be mailed to the last known address for all Potential Class
26 Members.

27 **4.2 Notice by Mail is the Best, Most Fair and Most Reasonable Form of Notice**
28 **Practicable under the Circumstances.** The Parties agree that providing direct mailed notice to all

1 Potential Class Members is the best, most fair and most reasonable form of notice practicable under the
2 circumstances.

3 **4.2.0** The Notice shall be mailed to all Potential Class Members by the Class
4 Administrator within thirty (30) days of Preliminary Approval, in envelopes marked “Personal and
5 Confidential.”

6 **4.2.1** Any Class Notices that are returned as non-deliverable with a forwarding address
7 shall promptly be re-mailed by the Class Administrator to such forwarding address. To the extent that
8 any Class Notices are returned as non-deliverable without a forwarding address, the Class Administrator
9 shall conduct a reasonable research to locate valid address information for the intended recipients of
10 such Class Notices, and shall promptly re-mail the Class Notice, as applicable, to any Potential Class
11 Members for whom new address information is identified.

12 **4.3 Prior Homeowners.** Under the terms of the Settlement, the current owner of any of
13 the Homes shall be deemed to have the right to payment from the Net Settlement Fund, unless a prior
14 owner had re-piped the home with PEX or an epoxy coating. The Parties have determined that it is
15 impracticable to inspect every home in the class to determine whether there has been a replacement of
16 the copper pipes by prior owners with PEX or an epoxy coating. Accordingly, a term of this Settlement
17 is that prior to the Final Approval of the Settlement, a prior owner must submit a verification that the
18 prior owner had re-piped the home with PEX or an epoxy coating. A Prior Owner Re-Piping Form shall
19 be served with the Class Notice and be available on a Class Settlement website maintained by the Class
20 Administrator, in the form attached hereto as Exhibit E. Absent a submission of a Prior Owner Re-
21 Piping Form within sixty (60) days after the Class Notice is served, then the current owner shall be
22 deemed the proper party to receive the settlement payment.

23 **4.4 Requests for Exclusion.** In order to request exclusion from the Class, the Class
24 Member must mail a written Request for Exclusion to the Class Administrator. The Request for
25 Exclusion must be signed by the Class Member, and postmarked no later than the deadline for filing a
26 Request for Exclusion set forth in the Preliminary Approval Order entered by the Court. The Parties
27 agree that they will propose to the Court that the deadline for filing a Request for Exclusion set forth in
28 the Preliminary Approval Order be sixty (60) days after the date Notice was mailed. All Class Members

1 who do not timely and properly file a Request for Exclusion from the Class shall be bound by all
2 proceedings, orders, and judgments in the Action, even if the Class Member has pending, or
3 subsequently initiates, litigation against any of the Defendants relating to the Released Claims. A Class
4 Member who chooses to be excluded from the Class will be excluded entirely from the Class and,
5 therefore, from participation in the Settlement.

6 **4.4.1. Opportunity to Opt-Back-Into The Class.** Because the parties reached this Settlement
7 Agreement at the same time that Class Notice was being provided to the Potential Class Members and
8 were unable to provide this material information to the three individuals who to date have “opted-out”,
9 those individuals made their decision to Opt-Out of the Class without material information (*i.e.*, the
10 terms of this Settlement). Accordingly, these individuals will be separately given an opportunity to
11 “Opt-In” to the Settlement in the event that they qualify as Class Members, and submit a form attached
12 hereto as Exhibit F.

13 **4.5 Objections to Settlement.** Any member of the Class other than Opt-Outs may object to
14 the Settlement, motions for attorneys’ fees, costs and/or the proposed incentive awards, and/or the
15 proposed Final Approval Order and Judgment. Any member of the Class who is not an Opt-Out and
16 who wishes to file such an objection shall, by the date set forth in the Preliminary Approval Order
17 approved by the Court, mail to the Class Administrator a writing containing a clear and specific
18 statement of the objection, as well as the specific reason(s), if any, for each objection, including any
19 legal support the Class Member wishes to bring to the Court’s attention and any evidence the Class
20 Member wishes to introduce in support of the objection. Any member of the Class who is not an Opt-
21 Out may file and serve a written objection either on his or her own or through an attorney hired at his or
22 her own expense. Any member of the Class who is not an Opt-Out intending to make an appearance at
23 the Fairness Hearing must: (a) file a notice of appearance with the Court no later than the date set in the
24 Preliminary Approval Order approved by the Court or as the Court may otherwise direct; and (b) mail a
25 copy of the notice of appearance postmarked by the date set in the Preliminary Approval Order approved
26 by the Court to the Class Administrator.

27 **4.5.0** Opt-Outs shall have no standing to object to the Settlement, motions for
28 attorneys’ fees, costs and/or the proposed incentive awards, and/or the proposed Final Approval Order

1 and Judgment. As soon as possible after receipt of an objection, the Class Administrator shall provide a
2 copy of the objection and supporting papers (and the accompanying envelope or other packaging) to
3 Class Counsel and Defense Counsel. Any Class Member who fails to comply with the provisions of this
4 Section shall waive and forfeit any and all rights the Class Member may have to appear separately
5 and/or to object to the Settlement, motions for attorneys' fees, costs and/or the proposed incentive
6 awards, and/or the proposed Final Approval Order and Judgment, and shall be bound by all the terms of
7 the Settlement Agreement and by all proceedings, orders, and judgments in the Action.

8 **4.6 Proof of Payment.** Within ninety (90) days after the Settlement Effective Date, the
9 Class Administrator will certify to the Court that checks have been mailed to the applicable Class
10 Members. The certification required by this Section shall be by declaration(s), based on the personal
11 knowledge of the declarant(s), filed with the Court and served on Class Counsel and Counsel for
12 Defendants.

13 **V. RELEASE OF CLAIMS**

14 **5.1 Plaintiffs' Release of Released Parties.** Upon the Settlement Effective Date,
15 Plaintiffs, on their own behalf, and on behalf of the Releasing Parties, and all of their respective heirs,
16 executors, administrators, predecessors, successors and assigns, shall and hereby do release and forever
17 discharge Plaintiffs' Released Parties from the Settled Class Claims.

18 **5.2 Complete Defense.** The Parties shall be deemed to have agreed that the releases set
19 forth herein will be and may be raised as a complete defense to, and will preclude any action or
20 proceeding based on, Plaintiffs' Released Claims and Defendants' Released Claims.

21 **5.3 Effectuation of Settlement.** None of the release set forth herein includes releases of
22 claims to enforce the terms of the Settlement.

23 **5.4 Recordation of Release.** The Release contemplated by this Settlement shall be
24 recorded on the title to the properties for all Class Homes that have not had an Opt-Out to the Class
25 Member, in a form attached hereto as Exhibit G, which cost of recordation shall be separately paid by
26 Defendants in addition to the Settlement Fund.

27 **VI. PRELIMINARY COURT APPROVAL OF THE SETTLEMENT**

28 **6.1 Motion for Preliminary Approval.** The Parties shall submit this Settlement to the

1 Court in support of the Motion for Preliminary Approval and determination by the Court as to its
2 fairness, adequacy, and reasonableness. Promptly upon execution of this Settlement, the Parties shall
3 apply to the Court for the entry of the Preliminary Approval Order, which shall:

4 (a) Preliminarily approve the Settlement as fair, reasonable, and adequate;

5 (b) Preliminarily approve Deborah and Grant Cain as Class Representatives
6 for settlement purposes only;

7 (c) Approve as to form and content the proposed Notice substantially in the
8 form attached hereto as Exhibit B;

9 (d) Approve the manner of providing Notice to the Class Members as
10 described in Section IV of this Settlement Agreement and find that this manner of notice constitutes the
11 best notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all
12 Class Members in accordance with California and federal laws and the Constitution of the U.S.;

13 (e) Approve ILYM Group, Inc. as the Class Administrator, or another
14 administrator mutually agreed to by the Parties;

15 (f) Schedule the Fairness Hearing to be held by the Court to determine:

16 (1) Whether the proposed Settlement should be finally approved as
17 fair, reasonable, and adequate;

18 (2) Whether the Final Approval Order and Judgment should be
19 entered;

20 (3) Whether Class Counsel's application for an award of attorneys'
21 fees and costs should be approved; and

22 (4) Whether the incentive awards to the Class Representatives should
23 be approved.

24 (g) Provide that the Fairness Hearing may be continued and adjourned by the
25 Court without further notice to the Class Members;

26 (h) Order that Notice to the Class Members, in the manner described in
27 Section IV of this Settlement Agreement, be disseminated;

28 (i) Approve the procedure for Class Members to file Requests for Exclusion,

1 substantially in the manner set forth in Section 4.4 of this Settlement Agreement, and setting a deadline
2 for Class Members to exclude themselves from the Class;

3 (j) Provide that Class Members who do not file valid and timely Requests for
4 Exclusion will be bound by the Final Approval Order and Judgment and the releases set forth in Section
5 VI of the Settlement; and

6 (k) Declare the date on which the Court preliminarily approves the Settlement
7 as the date that the Settlement is deemed filed.

8 VII. FINAL COURT APPROVAL OF THE SETTLEMENT

9 **7.1 Entry of Final Approval Order and Judgment.** At the Fairness Hearing, the Parties
10 will request that the Court, among other things, enter the Final Approval Order and Judgment, in which
11 the Court will: (a) approve the Settlement Agreement as fair, reasonable, adequate, and binding on all
12 members of the Class; (b) enter the Final Approval Order and Judgment in accordance with the terms of
13 this Settlement Agreement; (c) determine the amount and approve the payment of attorneys' fees and
14 costs; (d) determine the amount of any incentive payments to award to the Class Representatives; and
15 (e) provide for the entry of judgment in the Action and for the Release of all Released Claims against the
16 Released Parties by the Class Representatives and all Class Members who have not submitted valid and
17 timely Requests for Exclusion from the Class.

18 **7.1.0 Final Judgment.** The Final Approval Order and Judgment shall include a final
19 judgment, which shall:

20 (a) Approve the Settlement, adjudging the terms thereof to be fair, reasonable,
21 and adequate, and directing consummation of its terms and provisions;

22 (b) Approve Class Counsel's application for an award of attorneys' fees and
23 reimbursement of costs, insofar as said application has been granted by the Court;

24 (c) Approve the Class Representative incentive award, insofar as said
25 incentive awards have been granted by the Court;

26 (d) Permanently bar all Class Members (other than Opt-Outs) from
27 prosecuting against Plaintiffs' Released Parties any and all of Plaintiffs' Released Claims; and

28 (e) Permanently bar the Class Representatives from prosecuting against

1 Plaintiffs' Released Parties any and all of Plaintiffs' Released Claims.

2 **VIII. MISCELLANEOUS PROVISIONS**

3 **8.1 Voiding the Agreement.** If the Court denies the Motion for Preliminary Approval or
4 does not enter the Final Approval Order and Judgment, or if the Court's entry of the Final Approval
5 Order and Judgment is reversed on appeal, the Settlement and all related papers including the Motion for
6 Preliminary Approval shall not be used nor be admissible in any subsequent proceedings either in this
7 Court or in any other Court or forum, and the \$1,932,000 Settlement Fund shall be returned to
8 Defendants, minus any actual Class Administrative costs in connection with this Settlement.

9 **8.2 Signatories' Authority.** The signatories to the Settlement represent that they are
10 authorized to enter into this Settlement and bind their respective Parties to its terms and conditions.

11 **8.3 Mutual Full Cooperation.** The Parties agree to cooperate fully with each other to
12 accomplish the terms of this Settlement, including, but not limited to, execution of such documents and
13 to take such other action as may reasonably be necessary to implement the terms of this Settlement. The
14 Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and
15 any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the terms
16 of this Settlement. As soon as practicable after execution of this Settlement, Class Counsel shall, with
17 the assistance and cooperation of Defendants and their counsel, take all necessary steps to secure the
18 Court's Final Judgment.

19 **8.4 No Prior Assignments.** The Parties represent, covenant, and warrant that they have
20 not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
21 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or
22 right released and discharged in this Settlement.

23 **8.5 Notices.** Unless otherwise provided herein, all notices, demands, or other
24 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
25 the third business day after emailing and mailing by U.S. registered or certified mail, return receipt
26 requested, addressed as follows:

1 (a) To the Class:

2 Richard K. Bridgford, Esq.
3 Michael H. Artinian, Esq.
4 Bridgford, Gleason & Artinian
5 26 Corporate Plaza, Suite 250
6 Newport Beach, CA 92660
7 mike.artinian@bridgfordlaw.com

8 Richard L. Kellner, Esq.
9 Kabateck LLP
633 West Fifth Street, Suite 3200
Los Angeles, CA 90017
rlk@kbklawyers.com

10 (b) To Defendants:

11 Keith E. Smith, Esq.
12 Wood Smith Henning & Berman LLP
21804 Cactus Avenue, Suite 200
Riverside, CA 92518
kesmith@wshlaw.com

13
14 **8.6 Construction.** The Parties agree that the terms and conditions of this Settlement are
15 the result of lengthy, intensive arm's-length negotiations between the Parties' counsel, and that the terms
16 of this Settlement shall not be construed in favor of or against any Party.

17 **8.7 Captions and Interpretations.** Section titles or captions contained in this Settlement
18 are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope
19 of this Settlement or any provision. Each term of this Settlement is contractual and not merely a recital.

20 **8.8 Modification.** This Settlement may not be changed, altered, or modified, except in a
21 writing signed by the Parties and their counsel, and approved by the Court. This Settlement may not be
22 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

23 **8.9 Integration Clause.** This Settlement contains the entire agreement between the Parties
24 relating to the resolution of the Action, and all prior or contemporaneous agreements, understandings,
25 representations, and statements, whether oral or written and whether by a Party or such Party's legal
26 counsel, are merged in this Settlement. No rights under this Settlement may be waived except in a
27 writing signed by the Party making the waiver and its counsel.

1 **8.10 Binding on Assigns.** This Settlement shall be binding upon and inure to the benefit of
2 the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns and,
3 where applicable, all of their current or former parent entities, corporations, subsidiaries, related and
4 affiliated companies and entities, officers, directors, agents, representatives, attorneys, insurers,
5 predecessors, successors, assignees, employees, and all individuals or entities acting by, through, under,
6 or in concert with any of them.

7 **8.11 Class Counsel Signatories.** It is agreed that, because the Class Members are so
8 numerous, it is impossible or impractical to have each Class Member execute this Settlement. The
9 Notice will advise all Class Members of the binding nature of the Release. Excepting only the Class
10 Members who timely submit a Request for Exclusion, the Notice shall have the same force and effect as
11 if this Settlement were executed by each Class Member with regard to the Settled Class Claims.

12 **8.12 Counterparts.** This Settlement may be executed in counterparts, and when each Party
13 has signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
14 and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be
15 binding upon and effective as to all Parties.

16 **8.13 Governing Law.** This Settlement Agreement shall be governed by the laws of the
17 State of California, without regard to choice-of-law principles.

18 **8.14 Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation
19 and implementation of this Settlement Agreement.

20 **8.15 Venue.** Any and all actions or disputes arising out of this Settlement Agreement,
21 including without limitation the enforcement, interpretation, breach, or attempted rescission of this
22 Settlement Agreement, shall be brought exclusively in this Court.

23 **8.16 Waiver.** Any failure by any Party to insist upon the strict performance by any other
24 Party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the
25 provisions of this Settlement Agreement, and such Party, notwithstanding such failure, shall have the
26 right thereafter to insist upon the specific performance of any and all of the provisions of this Settlement
27 Agreement.

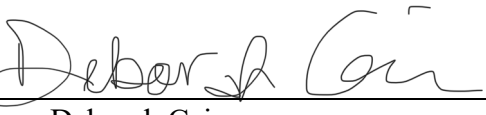
1 **8.17 Conflicts.** In the event of conflict between this Settlement Agreement and any other
2 prepared pursuant to the Settlement, other than any Court order, the terms of this Settlement Agreement
3 shall supersede and control.

4 **8.18 Singular/Plural.** The plural of any defined term includes the singular, and the singular
5 of any defined term includes the plural, as the case may be.

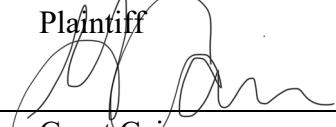
6 **8.19 Reasonable Extensions of Time.** Without further order of the Court, the Parties may
7 agree to reasonable extensions of time to carry out any of the provisions of this Settlement.

8 **IT IS SO AGREED:**

9
10 Dated: 7-6-2022

By: 
Deborah Cain
Plaintiff


11
12 Dated: 7-6-2022


By: 
Grant Cain
Plaintiff

13
14
15 Dated:

By: _____
Defendant

16
17 **APPROVED AS TO FORM AND CONTENT:**

18
19 By: 
Michael H. Artinian, Esq.
20 Bridgford, Gleason & Artinian
21 Counsel for Plaintiffs and the Certified Class

22
23 By: 
Richard L. Kellner, Esq.
24 Kabateck LLP
25 Counsel for Plaintiffs and the Certified Class

26
27 By: _____
Keith E. Smith, Esq.
28 Wood Smith Henning & Berman LLP
Counsel for Defendants

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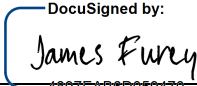
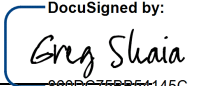
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8 **IT IS SO AGREED:**

9
10 Dated: By: _____
Deborah Cain
Plaintiff


11
12 Dated: By: _____
Grant Cain
Plaintiff

13
14 Dated: July 7, 2022 By:  _____ 
4897EAB6D059470... 800DC75BB54145C...
15
16 Defendant

17 **APPROVED AS TO FORM AND CONTENT:**

18
19 By: _____
20 Michael H. Artinian, Esq.
21 Bridgford, Gleason & Artinian
Counsel for Plaintiffs and the Certified Class

22
23 By: _____
24 Richard L. Kellner, Esq.
25 Kabateck LLP
Counsel for Plaintiffs and the Certified Class

26 
27 By: _____
Keith E. Smith, Esq.
28 Wood Smith Henning & Berman LLP
Counsel for Defendants