

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

AUG 31 2022

DAVID H. YAMASAKI, Clerk of the Court

BY: LM DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE**

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

Plaintiffs,

vs.

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

Defendants.

**AND RELATED CROSS-CLAIMS.**

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

Assigned for all purposes to:  
Hon. Glenda Sanders  
Dept: CX-101

**ORDER GRANTING PRELIMINARY  
APPROVAL OF SETTLEMENT**

**Hearing Dates: July 29, and August 19,  
2022**

**Time: 1:30 p.m.  
Dept.: CX-101**

Complaint Filed: May 9, 2013

WHEREAS, Plaintiffs Deborah and Grant Cain ("Plaintiff"), and Defendants Richmond American Homes of Maryland, Inc. (as successors by merger with Richmond American Homes of California, Inc.), Richmond American Homes of California, Inc. and M.D.C. Holdings, Inc. (collectively hereinafter "Defendants") have reached a proposed settlement and compromise of the disputes between them in the above actions, which is embodied in the Settlement Agreement, as amended, filed with the Court;

WHEREAS, the Court has previously granted Plaintiff's motion for class certification on August 19, 2021 (ROA # 455), and duly appointed Bridgford, Gleason & Artinian, Kabateck LLP,

1 and McNicholas & McNicholas as Class Counsel;

2 WHEREAS, the Parties have applied to the Court for preliminary approval of a proposed  
3 Settlement of the Action, the terms and conditions of which are set forth in the Settlement  
4 Agreement, as amended (the "Settlement Agreement");

5 WHEREAS, the Court has preliminarily considered the Settlement to determine, among  
6 other things, whether the Settlement is sufficient to warrant the issuance of notice to members of  
7 the Settlement Class (as defined below);

8 AND NOW, the Court, having read and considered the Settlement Agreement and  
9 accompanying documents and the motion for preliminary settlement approval and supporting  
10 papers, and the Parties to the Settlement Agreement having appeared in this Court for hearings on  
11 Preliminary approval of the Settlement (as amended) on July 29, 2022, IT IS HEREBY  
12 ORDERED AS FOLLOWS:

13 1. The Court has jurisdiction over the subject matter of the Action, the Settling  
14 Parties, and all Settlement Class Members.

15 2. The Court grants preliminary approval of the terms and conditions  
16 contained in the Settlement Agreement (Exh. A to Kellner Decl., ROA 533), as amended on  
17 August 9, 2022 (Exh. A to Kellner Decl., ROA 557) (hereinafter referred to as "Settlement  
18 Agreement"). The Court preliminarily finds that the terms of the Settlement Agreement are within  
19 the range of settlements that might reasonably be finally approved by the Court. .  
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21 3. The Court preliminarily approves Deborah and Grant Cain as class  
22 representatives, for settlement purposes only.

23 4. Subject to further consideration by the Court at the time of the Final  
24 Approval Hearing, the Court preliminarily finds that the Settlement Agreement was the product of  
25 serious, informed, non-collusive negotiations conducted at arms' length by the parties. In making  
26 this preliminary finding, the Court considered the nature of the claims, the amounts and kinds of  
27 benefits paid in settlement, the allocation of settlement proceeds among the class members, and  
28 the fact that a settlement represents a compromise of the Parties' respective positions rather than

1 the result of a finding of liability at trial.

2 5. The Court further preliminarily finds that the terms of the Settlement  
3 Agreement have no obvious deficiencies and do not improperly grant preferential treatment to any  
4 individual class member.

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6 6. The parties have identified the homes included within the class definition  
7 of the class that this Court certified on August 19, 2021 and thus, for purposes of the proposed  
8 Settlement, and conditioned upon the Agreement receiving final approval following the final  
9 approval hearing and that order becoming final, the certified class shall be further defined as  
10 follows:

11 *(1) All present owners of residential homes constructed by Richmond*  
12 *American of California, Inc. in Ladera Ranch, California as set forth in the*  
13 *Class Home List attached as Exhibit A to the Settlement Agreement (ROA*  
14 *533), whose copper pipes have not been replaced with PEX or epoxy*  
15 *coating by prior owners of the homes; or (2) prior owners of homes*  
16 *constructed by Richmond American of California, Inc. in Ladera Ranch,*  
17 *California as set forth in the Class Home List, who replaced their copper*  
18 *pipes with PEX or epoxy coating.*

19  
20 7. Plaintiff and Class Counsel are authorized to enter into the Settlement  
21 Agreement on behalf of the Settlement Class, subject to final approval by this Court of the  
22 Settlement. Plaintiffs and Class Counsel are authorized to act on behalf of the Settlement Class  
23 with respect to all acts required by the Settlement Agreement or such other acts which are  
24 reasonably necessary to consummate the proposed Settlement set forth in the Settlement  
25 Agreement.

26 8. The Court approves ILYM Group Inc. ("ILYM") as Class Administrator to  
27 administer the notice and claims procedures of the Settlement for the purpose of administering the  
28 proposed Settlement and performing all other duties and obligations of the Settlement

1 Administrator as defined in the Settlement, this Preliminary Approval Order, and/or as may  
2 otherwise be ordered by the Court, with the understanding that ILYM's compensation will be  
3 capped at \$15,000.00.

4           9.       The Court approves, as to form and content, the Full Notice (attached as  
5 Exh. C to Kellner Decl. (ROA 557) and as Exhibit "A hereto. The Court hereby instructs the  
6 Settling Parties to proceed with Class Notice in the manner and on the schedule set forth in the  
7 Settlement Agreement as follows:

8                   a.       The Class Administrator shall serve by U.S. Mail the Class Notice, Opt-  
9                   Out Form and Prior Owner Verification Form on all individuals within  
10                   the chain of title of the Class Homes listed on Exhibit "A" to the  
11                   Settlement Agreement;

12                   b.       For a Prior Owner of a home in the Class List to be included as a Class  
13                   Member, that Prior Owner must submit by mail or electronic means a  
14                   Prior Owner Verification Form to the Class Administrator by November  
15                   7, 2022 (Exhibit "E" to Settlement Agreement) that verifies that the  
16                   Prior Owner replaced the copper pipes in the Class Home with PEX or  
17                   epoxy coating of the pipes.

18                           i.       In the event a prior owner submits a Prior Owner Verification  
19                           Form stating that the prior owner has replaced the homes' copper  
20                           pipes with PEX or epoxy coating, then the Class Administrator  
21                           shall provide the present owner with written notice: (a) that a  
22                           prior owner has submitted a Prior Owner Verification stating  
23                           that the prior owner replaced the homes' copper pipes with PEX  
24                           or epoxy coating; and (b) the present owner has 30 days within  
25                           which to submit a written verification to the Class Administrator  
26                           that the home had copper pipes (without any epoxy coating) at  
27                           the time the present owner obtained title to the home. In the  
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1 event that there is a dispute between a prior and present owner  
2 as to whether a prior owner had replaced the copper pipes with  
3 PEX or epoxy coating, then the two homeowners shall submit  
4 proof supporting their claims to the Class Administrator who  
5 will forward such documentation to Ross Feinberg, Esq. of  
6 JAMS who: (a) shall serve as arbitrator of the dispute; and (b)  
7 whose determination of those competing claims shall be  
8 binding. The costs for Ross Feinberg's services shall be deemed  
9 a "cost" that shall be deductible from the Settlement Fund.

- 10 c. For a Present Owner of a home in the Class List to be included as a Class  
11 Member, the Present Owner must not submit an Opt-Out Form and there  
12 must not be a Prior Owner Verification Form submitted by a Prior  
13 Owner for the subject Class Home.
- 14 d. For all Notice papers returned as undeliverable or changed address, the  
15 Class Administrator shall re-send the Notice documents after a skip-  
16 trace.

17  
18 10. With respect to Melinda & Todd Bebbe (6 Eton Place), May Taylor  
19 (formerly at 5 Cayton Court) and Carol Teaghe (formerly at 7 Duffield Land) who received  
20 notice of the certification of the Class in this case and Opted-Out of the certified class while the  
21 parties were negotiating the Proposed Settlement,

- 22 a. the Court Orders that these individuals be given the opportunity to  
23 Opt-Back-In to the Class Action and the Proposed Settlement because  
24 they made their decision to Opt-Out without information of the  
25 Proposed Settlement that was then being negotiated; and
- 26 b. these individuals shall have the right to Opt-Back-In to this Class  
27 Action and the Proposed Settlement by submitting a fully executed  
28 Opt-Back-In Form attached as Exhibit F to the Settlement Agreement;  
and

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c. if these individuals Opt-Back-In to this Class Action, they can be included as a Class Member under the same rules as the other individuals in the chain of title for the Class Homes:

i. If they are a Prior Owner of a Class Home, they can be included as a Class Member if they submit by mail or electronic means a Prior Owner Verification Form to the Class Administrator by November 7, 2022 that verifies that the Prior Owner replaced the copper pipes in the Class Home with PEX or epoxy coating of the pipes.

ii. If they are a Present Owner, they will be included as a Class Member if a Prior Owner Verification Form submitted by a Prior Owner for the subject Class Home.

a. 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 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

1 Administrator who will forward such documentation to Ross  
2 Feinberg, Esq. of JAMS who: (a) shall serve as arbitrator of  
3 the dispute; and (b) whose determination of those competing  
4 claims shall be binding. The costs for Ross Feinberg's  
5 services shall be deemed a "cost" that shall be deductible  
6 from the Settlement Fund.

7 11. In order to facilitate printing and dissemination of the Settlement Notice,  
8 the Settlement Administrator and Parties may change the format, but not the content, of the  
9 Settlement Notice, without further Court order, so long as the legibility is not adversely  
10 impacted. The Settlement Administrator and Parties may also, without further Court order,  
11 insert the information specified in the blank places provided in the Settlement Notice.

12 12. Within ten (10) business days of Preliminary Approval, the Parties shall  
13 provide the Class Administrator with the addresses of all homes that are included within the  
14 definition of the Settlement Class.

15 13. The Class Administrator must complete the notice mailing within thirty (30)  
16 calendar days of preliminary approval being granted, in envelopes marked "Personal and  
17 Confidential."

18 14. By the time of filing of the final settlement approval motion, the Settlement  
19 Administrator shall provide, and Plaintiff shall file proof, by affidavit or declaration, of the mailing  
20 of the Settlement Notice in the form and manner provided in the Agreement and in this Preliminary  
21 Approval Order.

22 15. The Class Administrator must also create a dedicated website for this  
23 Settlement, which will provide a portal for electronic submission of Opt-Out Forms, Prior Owner  
24 Verification Forms and any Objections to the Settlement. The dedicated website shall also make  
25 available the Settlement Agreement, the pleadings submitted in support of preliminary approval,  
26 approval of attorneys' fees, costs and class representative enhancements, and final approval. The  
27 dedicated website shall also make available all Orders by this Court with respect to aforesaid  
28 motions.

1           16.     The Court finds that the Parties' plan for providing notice to the Settlement  
2 Class described in the Settlement Agreement is the best notice practicable in the circumstances  
3 and complies with the requirements of due process and all other applicable provisions of law,  
4 including *California Code of Civil Procedure* §382, *California Civil Code* §1781, *California Rules*  
5 *of Court*, Rules 3.766 and 3.769, and the California and United States Constitutions.

6           17.     Any member of the Settlement Class who desires to be excluded from the  
7 Settlement Class, and therefore not be bound by the terms of the Settlement Agreement, must  
8 submit to the Class Administrator, pursuant to the instructions set forth in the Notice, a timely and  
9 valid written Request for Exclusion (attached as Exhibit "D" to the Settlement Agreement).

10           18.     Members of the settlement class shall have sixty (60) days from the Notice  
11 Date to submit objections and/or requests for exclusion. The Class Administrator shall prepare and  
12 deliver to Class Counsel, who shall file with the Court, a final report stating the total number of  
13 Class members who have submitted timely and valid Requests for Exclusion from the Settlement  
14 Class, and the names of such individuals. The final report regarding the Claims Period shall be  
15 filed with the Court within seven (7) business days of the expiration of the deadline to submit  
16 objections and/or requests for exclusion.

17           19.     The deadline to file the motion for final approval of the Settlement and Class  
18 Counsel's fee application shall be twenty-four (24) calendar days prior to the Final Approval  
19 Hearing date of December 16, 2022.

20           20.     Responses to any objections received shall be filed with the Court no later  
21 than twenty-four (24) calendar days prior to the Final Approval Hearing, and Plaintiffs' responses  
22 may be included in their motion for final approval.

23           21.     Any member of the Settlement Class who elects to be excluded shall not be  
24 entitled to receive any of the benefits of the Settlement Agreement, shall not be bound by the  
25 release of any claims pursuant to the Settlement Agreement, and shall not be entitled to object to  
26 the Settlement Agreement or appear at the Final Approval Hearing. The names of all persons  
27 timely submitting valid Requests for Exclusion shall be provided to the Court.  
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1           22. Any member of the Settlement Class may appear at the Final Approval  
2 Hearing, in person or by counsel, and may be heard, to the extent allowed by the Court, in support  
3 of or in opposition to, the fairness, reasonableness, and adequacy of the Settlement, the application  
4 for an award of attorneys' fees, cost, and expenses to Class Counsel, and any compensation to be  
5 awarded to the Settlement Class Representatives.

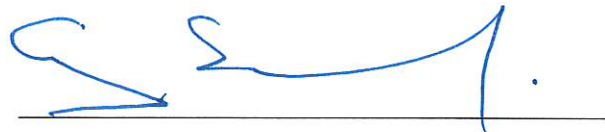
6           23. Pending the final determination of whether the Settlement should be  
7 approved, all pre-trial proceedings in the instant case are stayed. If the Settlement is terminated or  
8 final approval does not for any reason occur, the stay shall be immediately terminated.

9           24. A Final Approval Hearing shall be held before this Court at **1:30 p.m. on**  
10 **December 16, 2022** in Dept. CX-101 of the Orange County Superior Court, to address: (a) whether  
11 the proposed Settlement should be finally approved as fair, reasonable and adequate, and whether  
12 the Final Approval Order and Judgment should be entered; and (b) whether Class Counsel's  
13 application for attorneys' fees, costs, expenses and incentive awards should be approved. The date  
14 and time of the Final Approval Hearing shall be set forth in the Class Notice. The Court retains  
15 jurisdiction to consider all further applications arising out of or in connection with the Settlement  
16 Agreement.

17           25. If the Settlement is finally approved by the Court, the Court shall retain  
18 jurisdiction over the Settling Parties, the Settlement Class Members, and this Action, only with  
19 respect to matters arising out of, or in connection with, the Settlement, and may issue such orders  
20 as necessary to implement the terms of the Settlement. The Court may approve the Settlement,  
21 with such modifications as may be agreed to by the Settling Parties, without further notice to the  
22 Settlement Class Members.

23  
24           **IT IS SO ORDERED.**

25 Dated: *August 31, 2022*



Hon. Glenda Sanders

JUDGE OF THE ORANGE COUNTY SUPERIOR COURT