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

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

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

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MADLEN DYE, an individual; GRANT CAIN, an individual; DEBORAH 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. 30-2013-00649415-CU-CD-CXC

Assigned for all purposes to:
Judge: Hon. Peter Wilson
Dept.: CX-101

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR ATTORNEYS' FEES AND COSTS, CLASS ADMINISTRATOR FEES AND COSTS, AND CLASS REPRESENTATIVE ENHANCEMENT

Hearing Date: February 23, 2023
Time: 2:00 p.m.
Dept.: CX-101

Complaint Filed: 05/09/201

[Notice of Motion, Memorandum of Points and Authorities in Support of Final Approval, Declarations of Richard Kellner, Michael Artinian, Patrick McNicholas, Grant Cain, Deborah Cain, and Makenna Snow filed concurrently herewith.]

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs DEBORAH and GRANT CAIN ("Plaintiffs") submit this motion seeking approval of Class Counsel's application for attorneys' fees and costs, the Class Administrator's fees and costs, and Class Representative enhancement. [1]

The substantial relief provided in the Settlement was achieved through Class Counsel extraordinary legal work over 9+ years of litigation. For all practical purposes, the 17 related OC Pipe cases were collectively litigated as one action – with the common issues being litigated before the same judge and adjudicated on appeals (while the other actions were stayed pending the determination of the appeals). (Declaration of Richard Kellner ["Kellner Decl."], ¶ 15.) These efforts eventually resulted in the proposed $1.932 million Settlement in this case that provides class members with at least 98.69% of the gross recovery that would be sought at trial. (*Id.*, ¶ 26-29.)

Pursuant to sections 3.1.6 and 7.1 of the Settlement Agreement, Class Counsel seeks Court approval of an attorney fee award of $644,000.00 that represents 33 1/3% of the Settlement Fund. Plaintiffs respectfully submit that this request is fair, reasonable and should be approved. Class Counsel's fee request is fully supported by the requirements of *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480. Under *Laffitte*, the percentage method for the primary calculation of class counsel fees is recognized as an acceptable method to determine class counsel fees. To the extent this Court wants to engage in a lodestar cross-check – the legal services Class Counsel has provided for the benefit of the Class will far exceed the $644,000 fee request – *i.e.*, resulting in a negative multiplier.

This litigation involved some of the most complicated and hotly fought legal battles in construction defect and class litigation. The issues were novel, and Class Counsel faced a formidable team of experienced law firms. At various junctures of the case, it was quite possible that the

---

[1] The Settlement and Class Counsel Fee request in this action is substantively similar to that sought and finally approved in *Foti, et al. v. John Laing Homes (California) Inc., et al.*, Orange County Superior Court, Case No. 30-2013-00649415-CU-CD-CS, at ROA # 451. Accordingly, this application for Class Counsel fees is largely identical to the one submitted in the *Foti* case, with minor differences that reflect the class size, settlement amount and fees sought in this action. (Kellner Decl., ¶ 25.)

defendant developers would prevail – and Class Counsel would receive nothing for their efforts. Fortunately, Class Counsel ultimately prevailed on all legal issues (including two trips to the Court of Appeal) and obtained class certification.

As a result, Class Counsel was able to obtain substantial relief for the Class – here, exceeding 98% of the relief that the Class could obtain at trial. Plaintiffs submit that Class Counsel's request for attorneys' fees and costs are fair, reasonable and should be granted.

Further, Plaintiffs request the Court to grant the application for Class Administrator fees and a Class Representative enhancement.

I. This Court Should Approve Class Counsel's Request For Fees Under the "Percentage of Common Fund" Approach Under *Laffitte*.

California Courts have long recognized the "common fund" or "common benefit" doctrine, under which attorneys who create a common fund or benefit for a group of persons may be awarded their fees and costs to be paid out of the fund. *Serrano v. Priest ("Serrano III")* (1977) 20 Cal.3d 25, 34, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995) 15 Cal.3d 162, 167. This is based upon the Courts universal recognition that "one who expends attorneys' fees in winning a suit [that] creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of litigation costs." *21st Century Ins. Co. v. Superior Court* (2009) 47 Cal.4th 511, 520, quoting *Quinn v. State of California* (1995) 15 Cal.3d 162, 167; *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.* (2005) 127 Cal.App.4th 387, 397.

A common fund fee award is often referred to as "fee spreading," because it distributes the cost of hiring an attorney among all the parties benefitted. *Laffitte*, 1 Cal.5th at 489. In *Laffitte,* the Supreme Court recognized that the utility of the "percentage of fund" method is that it more accurately reflects the results achieved. *Id.* Specifically, the Supreme Court outlined how the "percentage of common fund" basis for determining class counsel fees can be properly applied as follows:

> . . . We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of class members, and the trial court in its equitable powers awards class counsel a fee out of

> that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method – including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of the market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.

(*Laffitte*, 1 Cal.5th at 503 (citations omitted).)

While the concept of a "lodestar cross-check" is not required by the Court in *Laffitte* in evaluating the class counsel fees based upon the "percentage of common fund" method (*Id.* at p. 505), Class Counsel fully appreciates this Court's diligence in examining the lodestar in all of its class counsel fee award determination. Here, under any analysis, Class Counsel's fee request is fair and reasonable.

A. <u>Class Counsel's Legal Services And The Results They Achieved Fully Justify The Requested Fee.</u>

For over nine years, Class Counsel has litigated this and all of the other OC Pipe class actions against well-financed and experienced defense firms. Throughout, Class Counsel devoted their full resources for the benefit of the class. (Kellner Decl., ¶ 47.) Indeed, the extent of the work done on this case alone is reflected in the Docket that has over 500 entries. (Artinian Decl. ¶ 67 & **Compendium Exh. L**.) For all of the OC Pipe cases, there are literally thousands of entries collectively on the dockets. (*Id*.)

It must also be stressed that even though the OC Pipe cases were not officially "coordinated," they were commonly litigated for the benefit of all the putative class members in all of the OC Pipe cases. That is because the cases involved common legal issues and defenses, common expert witnesses and motions/appeals before the same jurists. (Kellner Decl., ¶ 49.) In fact, when common issues went on appeal involving one or two defendants – ***the entire action was stayed as to the other cases until the common issues were resolved by the Court of Appeal.*** (*Id*.) Consistent with the foregoing, defendants largely used the same primary water chemist expert so that Class Counsel's successful deposition of the defense experts in the first deposition was used to devastating effect in support of ***all the class certification motions.*** (*Id.*, ¶ 50.) Indeed, the depositions of defense experts Howitt and Reiber largely provided Judge Colaw and Sanders with support to defeat the *Sargon*

attacks on Plaintiffs' primary expert (Dr. Brian Dempsey). (*Id.*, ¶ 51.) For example, in denying the first round of *Sargon* attacks on Dr. Dempsey, Judge Colaw noted how Class Counsel got the defense experts to agree with material portions of Dr. Dempsey's opinions:

> . . . This is especially true when the defendants' expert *themselves* give credibility to the Dempsey opinions. Professor Howitt, the Defendants' expert/consultant who opined that Dempsey's opinions are without foundation in the scientific community ["voodoo science"] was himself impeached because he was ignorant of the declaration of Defendants Centex/Pulte's non-testifying consultant Larry Russell who had given testimony before this very court that Dempsey's theories that systemic chemical reaction between copper pipes in Orange County residential homes and the water supplied by the MWD are causing *corrosion* and *pinhole leaks.* Howitt's deposition of 3/22/17 essentially confirms the Dempsey opinions.

Compendium Exhibit D: July 6, 2017 Order Denying Motion to Strike Dr. Dempsey Testimony.

The devastating cross-examination of the key water chemistry expert ***used for every defendant developer*** was further noted by Judge Colaw:

> Howitt corroborates Dempsey's opinions on pit propagation, and that concentrations of sulfates and pH have been documented for years by the water district which concentrations will continue unchanged in the future, and that sulfate induced corrosion will result in failures . . . In other words, one of the defendant's own consultants *agrees with* significant portions of Dempsey's opinions. At the very least the jury or judge trying the case should hear such testimony and give it whatever weight it deserves.

Compendium Exhibit D: July 6, 2017 Order Denying Motion to Strike Dr. Dempsey Testimony.

Beyond laying the groundwork for ***each and every class certification motion***, these early depositions made it extremely unlikely that the defendant developers would be able to materially attack Dr. Dempsey's underlying scientific theories – since the defendant developer experts actually bolstered material parts of Dr. Dempsey's opinion. (Kellner Decl., ¶ 53.)

Throughout the nine years of litigation, every aspect of these cases was hotly contested by the developer defendants' defense team – a team that was comprised of the following law firms:

- Downey Brand
- Koeller, Nebeker, Carlson & Haluck LLP
- Lorber, Greenfield & Polito
- Newmeyer & Dillion LLP

- Plante Lebovic LLP
- Quinn Emanuel Urquhart & Sullivan LLP
- Sheppard Mullin LLP
- Sellar Hazard & Lucia LLP
- Wood, Smith, Henning & Berman LLP

(Kellner Decl., ¶ 54.)

In order to litigate against so many law firms, Class Counsel was compelled to divide their tasks amongst the capable Plaintiffs law firms of Bridgford Gleason & Artinian ("BGA"), Kabateck LLP, formally known as Kabateck Brown Kellner LLP ("KABETECK") and McNicholas & McNicholas ("M&M"). As demonstrated by the lodestar work descriptions below, this case was largely driven by complex legal and expert issues that required the concentrated work at a partner level, with substantial necessary support from associate-level attorneys from the three law firms. (*Id.*, ¶ 55.)

The law firms have devoted over 23,000 hours of attorney time on these cases over 9.5 years of heavy litigation – with a lodestar in excess of $16 million. (*Id.*, ¶¶ 56-58.) As a result, it is impossible to provide details regarding the particular tasks in a generic sense, such as conferences, preparation of briefs, court appearances, etc. in this motion. (*Id.*, ¶ 58.) However, if the Court desires to see the detailed contemporaneous billings, they are available for the Court's review at the Final Approval hearing. (*Id.*, ¶ 57.) It should be noted that such billings cannot be made publicly available at this time because they contain attorney work product that could potentially prejudice the conduct of the ongoing OC Pipe cases. (*Id.*)

1. The First Phase of the Litigation – Pre-Filing Through Adjudication of the First Appeals Attacking the Pleadings. [May 2012 – December 31, 2015]

Prior to filing the complaint in this action (and the related actions) in May 2013, Class Counsel expended significant time to research the potentially novel litigation approach of applying SB 800 to a class action seeking recovery for copper pipes that its experts had opined were corroding as a result of the combination of unique water supplied to the homes and the copper pipes. (Kellner Decl., ¶ 60.) Again, Class Counsel in the OC Pipe class actions are comprised of three law firms – Bridgford Gleason

& Artinian ("BGA"), Kabateck LLP ("Kabateck") and McNicholas & McNicholas LLP ("M&M"). The three firms bring to the table extensive combined experience in class action litigation, construction defect litigation, and trial work. (Kellner Decl., ¶ 61; Artinian Decl., ¶ 11-27; McNicholas Decl., ¶ 3-6.)

During this initial phase, Class Counsel had to communicate with literally hundreds of homeowners in various areas of Orange County as part of their due diligence prior to (and subsequent to) the filing of these class actions. Once the class actions were filed, there was publicity which resulted in an avalanche of calls and other communications with putative class members. (Kellner Decl., ¶ 63.)

Class Counsel approached and evaluated potential experts who could credibly evaluate the potential cause of the prolific corrosion and leaking of copper pipes in Ladera Ranch. (*Id.*, ¶ 64.) Once the expert consultants were identified and retained, the work began for them to provide an initial evaluation of the potential causes of the prolific corrosion and leaks and whether the causes would support SB 800 violations. (*Id.*)

Substantial time was also expended to develop legal theories since there had not previously been a successful class litigation of SB 800 claims in California. (*Id.*, ¶ 65.) At the same time, Class Counsel had to investigate the facts and law regarding potential arguments that certain putative class members' claims might be subject to binding arbitration clauses. (*Id.*, ¶ 66.)

Following the filing of the initial wave of complaints, the defendants initiated their first wave of motions as part of an apparent strategy to strike the class allegations in the complaints – since they undoubtedly knew that it was not economically feasible for homeowners to litigate this expert-driven case on an individual basis. This first round of motions to strike class allegations were based upon the assertion that "construction defect actions are not suited for class actions." Class Counsel spent significant time opposing these motions – including legal research performed by partners and associates, research of Legislative materials relating to the enactment of SB 800, and the drafting of papers opposing the motions to strike. (*Id.*, ¶ 67.) All of the legal arguments that Class Counsel made in opposition to the initial wave of motions to strike class allegations were largely identical for all OC Pipe cases because they were in response to substantively similar defendant developers' motions –

but still required individualized oppositions for each case, consuming additional time and resources. (*Id.*, ¶ 68.)

At the same time, the defendant developers sought pre-litigation site inspections and other SB 800 remedies that Class Counsel and the plaintiffs did not believe were required for SB 800 class actions. (*Id.*, ¶ 69.) As the Court can imagine, all of this was extremely time-consuming for the Class Counsel team. (*Id.*)

Unfortunately, Judge Perk granted the motions to strike in a number of the cases in late 2013/early 2014; and this matter (along with all the other OC Pipe cases) was stayed pending the appeal that was filed on July 10, 2014. [ROA 96.]

Class Counsel then turned their attention to the appeals. Two cases were selected to proceed on the appeals (*Brasch v. K. Hovnanian* and *Chiang v. D.R. Horton*), with all the other OC Pipe cases (including this action) being stayed during the pendency of the appeals. Class Counsel researched and drafted the appellate briefs, and argued the appeals, which resulted in reversals by unpublished opinions from the Fourth District on August 19, 2015 in *Brasch v. K. Hovnanian Enterprises, Inc.* (Cal. App., 4th Dist., August 19, 2015) 2015 WL 4940632 and *Chiang v. D.R. Horton Los Angeles Holding Company, Inc.* (Cal. App., 4th Dist., August 19, 2015) 2015 WL 4940630. The defendants also sought writs to the Supreme Court. A remittitur issued on October 19, 2015, and the case litigation resumed upon remand at the Joint Status Conference before the new judge – Hon. Thierry Patrick Colaw – on December 7, 2015. [*See,* ROA 152.] (Kellner Decl., ¶ 71.)

At the December 7, 2015 status conference, Judge Colaw granted Plaintiffs' oral request to file an amendment to the complaint, and discovery was stayed. (Kellner Decl., ¶ 74.)

Throughout this initial litigation period (and through the present date), Class Counsel has spent significant time gathering and assembling client documents, propounding and responding to the initial waves of discovery in these cases, and maintaining ongoing client contact. (Artinian Decl. ¶ 29.) There were also numerous status conferences, discussions and conferences with the various defense counsel regarding motions and discovery issues, and also some preliminary settlement discussions. (Artinian Decl., ¶ 29; Kellner Decl., ¶ 75.)

It must be emphasized that if the Court of Appeal affirmed Judge Perk's initial rulings at issue

in the *Brasch* and *Chiang* appeals, ***all of the cases – including this one –*** would have effectively been defeated because it was not economically feasible to litigate these cases on an individual basis. As a result, the appeals were litigation determinative for ***all of the cases***, as were the attempts to enforce pre-litigation SB 800 procedures on an individual basis. (Kellner Decl., ¶ 76.)

Notwithstanding all of the appeals, Class Counsel was able to negotiate a settlement agreement for two of the class actions. This later became significant since these settlements established part of the framework for future settlements – once all of the issues on the appeals described in this section and below were completed. (Kellner Decl., ¶ 77.)

For this initial period of approximately 2.5 years of the litigation, Class Counsel's lodestar for the legal services described above were as follows:

Bridgford Gleason & Artinian

Name	Position	Years Practice	Hours	Rate	Total
Richard Bridgford	Partner	37	423.25	$925	$391,506.25
Michael Artinian	Partner	23	985.45	$850	$837,632.50
Brian Donoghue	Associate	14	2,777.40	$495	$1,374,813.00
		Subtotal	4,186.10		$2,603,951.75

Kabateck LLP

Name	Position	Years Practice	Hours	Rate	Total
Brian Kabateck	Partner	32	93.50	$925	$86,487.50
Richard Kellner	Partner	34	46.70	$925	$43,197.50
Terry Bailey	Associate	32	266.32	$750	$199,740.00
Joshua Haffner	Associate	25	181.30	$750	$135,975.00
Tsolik Kazandjian	Associate	10	322.80	$350	$112,875.00
David Riley	Associate	9	178.60	$350	$62,510.00
Levi Plesset	Associate	8	60.50	$350	$21,175.00
		Subtotal	1,149.72		$661,960.00

McNicholas & McNicholas LLP

Name	Position	Years Practice	Hours	Rate	Total
Patrick McNicholas	Partner	36	940	$1,100	$1,034,000.00
Philip Shakhnis	Associate	24	250	$750	$187,500.00
David Angelof	Associate	12	300	$550	$165,000.00
		Subtotal	1,490		$1,386,500.00

(Kellner Decl., ¶ 78; Artinian Decl., ¶ 33; McNicholas Decl., ¶12.)

The accompanying declarations from Class Counsel set forth the qualifications of the attorney

billers, the support for their hourly rates and more details of the particular roles that they had in the litigation. (Kellner Decl., Artinian Decl. and McNicholas Decl.) Further, the attorneys' contemporaneous time records will be available at the hearing for the Court's confidential review.

2. The Second Phase of the Case – January 1, 2016 – First Class Certification in July 2017 (1/1/2016 – 7/30/2017)

During this next phase of the litigation, Judge Colaw agreed to have three of the OC Pipe litigation cases take the lead for class certification purposes – with *Del Rivero v. Centex* class certification motion being heard first on April 28, 2017, *Brasch v. K. Hovnanian* to be heard second and *Williams v. Shea* to be heard third. (Kellner Decl., ¶ 81.) During this time period, there was extensive work done by the law firms, including:

- Continued contact with putative class members and the Plaintiffs.
- Extensive interactions with defense counsel on the coordination of these related actions, including status conferences and other proceedings.
- The preparation of discovery requests and responses to discovery with respect to individual class members. This included extensive individual inquiries regarding completion dates for the construction of homes (for statute of limitations and repose purposes), the history of leaks and the construction materials (and subcontractors) at each of the projects.
- The preparation and defense of dozens of plaintiffs for their individual depositions.
- The preparation for and conduct of corporate representative depositions.
- The development of the primary expert opinion of Dr. Brian Dempsey – whose opinion has been used in every OC Pipe case by the Plaintiffs.
    - This included not only his opinion, but all of the support materials – including those from the various water districts.
    - Research regarding other experts used by the developers – including those in an unsuccessful action that certain developers brought against the water districts on claims that were similar to those raised by the plaintiffs in these actions.

- Development of other common experts, including a plumbing expert and a damages/cost of repair expert.
- The critical preparation for and taking of the deposition of defendants' experts.
    - This included the critical deposition of David Howitt and Steven Reiber – the defendants' water chemist experts. The admissions adduced during cross-examination of Dr. Howitt and Mr. Reiber were critical to plaintiffs' victories in all of the class certification motions.
    - There were also statistics experts and other key defense witnesses that were deposed by Class Counsel.

(Kellner Decl., ¶ 82 (a-h).)

The defendant developers also continued to file various motions attacking the plaintiffs' rights to bring SB 800 class actions – repeatedly seeking reargument whenever a new appellate opinion was issued that conceivably affected their arguments. (*Id.,* ¶ 83.) Class Counsel spent significant time drafting the Oppositions to these motions, as well as responses to repeated (and unsuccessful) writs that were filed by the developer defendants to the Court of Appeal (and the California Supreme Court). (Kellner Decl., ¶ 84.)

The class certification motions were "bet-the-litigation" affairs – with the defendants proffering every conceivable defense and argument in opposition to certification. Each motion had extensive legal arguments, factual evidence and evidentiary objections. Further, and no less significant, the defendant developers focused their arguments on the admissibility of Dr. Dempsey's expert opinion based upon *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747 and its progeny. (Kellner Decl., ¶ 85; Artinian Decl., ¶ 35.) The motions also entailed various attacks from the defendants as to whether SB 800 claims could be litigated as class actions. (Kellner Decl., ¶ 86; Artinian Decl. ¶ 36.)

Repeated hearings were conducted on the class certification motion for *Del Rivero* – simultaneously while Class Counsel prepared the discovery, experts and motions for the *Shea* and *Brasch* matters. (Kellner Decl., ¶ 87.) Not surprisingly, at every hearing – including the *Del Rivero* class certification hearing – all of the defendant developers' counsel attended because that initial

class certification would ultimately form the framework for the class certification orders that were eventually entered in all of the other cases that were certified. (Kellner Decl., ¶ 88.)

On July 17, 2017, Judge Colaw granted plaintiffs' motion for class certification and denied the defendants' motion to strike Dr. Dempsey's expert opinions under *Sargon.* This was a critical victory for all of the Plaintiffs – since Judge Colaw's rationale in granting class certification and denying the *Sargon* attacks on Dr. Dempsey has been adopted in ***every*** class certification motion thereafter. (Kellner Decl., ¶ 89.)

Thereafter, the defendants continued to file motions contending that class actions are not permitted under SB 800, including their arguments that the Court of Appeal in *Acqua Vista Homeowners Assn. v. MWI, Inc.* (2017) Cal.App.5th 1129 and *McMillin Albany LLC v. Superior Court* (2018) 4 Cal.5th 241 constituted new law. Those motions were denied repeatedly at the trial court level, as well as on writs. Nonetheless, the legal work opposing such motions, and appearing for oral arguments in several cases given defendants' repeated attacks, was extremely time consuming. (Kellner Decl., ¶ 90; Artinian Decl., ¶ 36.)

For this 19-month phase of the litigation, Class Counsel's lodestar for the legal services described above were as follows:

Bridgford Gleason & Artinian

Name	Position	Years Practice	Hours	Rate	Total
Richard Bridgford	Partner	37	411.00	$925	$380,175.00
Michael Artinian	Partner	23	1,155.40	$850	$928,090.00
Brian Donoghue	Associate	14	2,006.60	$495	$993,267.00
		Subtotal	3,573		$2,301,532.00

Kabateck LLP

Name	Position	Years Practice	Hours	Rate	Total
Brian Kabateck	Partner	32	69.30	$925	$64,102.50
Richard Kellner	Partner	34	915.50	$925	$846,837.50
Joshua Haffner	Associate	25	9.00	$750	$6,750.00
Terry Bailey	Associate	22	7.82	$750	$5,865.00
Joel Weinberg	Associate	16	101.56	$600	$60,936.00
Natalie Pang	Associate	7	114.60	$400	$45,840.00
Drew Ferrandini	Associate	10	151.15	$400	$60,460.00
		Subtotal	1,368.93		$1,090,791.00

McNicholas & McNicholas LLP

Name	Position	Years Practice	Hours	Rate	Total
Patrick McNicholas	Partner	36	1,170	$1,100	$1,287,000.00
Philip Shakhnis	Associate	24	250	$750	$187,500.00
David Angelof	Associate	12	280	$550	$154,000.00
		Subtotal	**1,700 Hrs**		**$1,628,500.00**

(Kellner Decl., ¶ 91; Artinian Decl., ¶ 37; McNicholas Decl., ¶12.)

The accompanying declarations from Class Counsel set forth the qualifications of the attorney billers, the support for their hourly rates and more details of the particular roles that they had in the litigation. (Kellner Decl., Artinian Decl., McNicholas Decl.) Further, the attorneys' contemporaneous time records will be available at the hearing for the Court's confidential review.

3. The Third Phase of the Litigation – Judge Sanders' Assignment, Additional Orders Granting Class Certification, and the Second Appeal Relating to *Kohler* (8/1/17 to the present).

In January 2018, Judge Glenda Sanders was assigned all of the OC Pipe class actions upon the retirement of Judge Colaw. (Kellner Decl., ¶ 93.) In order to get up to speed on the case, Judge Sanders directed the parties to make PowerPoint presentations regarding all aspects of the case for a full court day (which extended far beyond that). (*Id.*)

Class Counsel prepared the detailed PowerPoints for the multi-day presentations, which included the various scientific, statutory, legal and procedural aspects of the related class cases – including certification and expert issues. Needless to say, this was extremely time consuming – yet essential since Judge Sanders would be presiding over all of the OC Pipe class actions. (Kellner Decl., ¶ 94; Artinian Decl., ¶ 38.)

Meanwhile, the parties continued to conduct discovery, take/defend expert depositions and prepare/oppose class certification motions and motions to strike Dr. Dempsey's expert opinions. (Kellner Decl., ¶ 95; Artinian Decl., ¶ 39.) Class Counsel worked together to accomplish the following ongoing litigation activities: (a) the class action/expert related legal activities; (b) the construction defect and statutory legal activities; and (c) litigation support consisting of research, document management, discovery work, and maintaining ongoing client communications. Further, Class Counsel reviewed and revised drafts of legal briefs – which required significant coordination

and discussion among Class Counsel concerning legal issues, strategy and procedure. (Kellner Decl., ¶ 96; Artinian Decl., ¶ 39.) Again, all of this legal work was against approximately eight well-funded and motivated defense firms representing multiple developers. (Kellner Decl., ¶ 97; Artinian Decl., ¶ 39.)

On July 18, 2018, Judge Sanders denied – ostensibly for the final time – multiple defendants' motions to strike the class allegations based upon their argument that RORA prohibits class actions. In her Order, Judge Sanders also certified her decision under Code of Civil Procedure § 166.1 for immediate writ or appeal. Judge Sanders' intent was to have this matter finally resolved so that all of the OC Pipe litigations could proceed. (Kellner Decl., ¶ 98; Artinian Decl., ¶ 40.) Further, Judge Sanders stayed the litigation of all of the OC Pipe cases until the writ was determined by the Court of Appeal. (Kellner Decl., ¶ 99; Artinian Decl., ¶ 40.) Defendants filed their writs in the *K. Hovnanian* and *Del Rivero* actions in September 2018. (Kellner Decl., ¶ 99.)

While the writs were pending, the Court of Appeal, Second Appellate District, issued an opinion in *Kohler Co. v. Superior Court* (2018) 29 Cal.App.5th 55 which held that the class action device was not permitted for that particular SB 800 case. In November 2018, the Court of Appeal invited the parties to submit letter briefs regarding the impact of *Kohler* on the appeal. On December 13, 2018, the Court of Appeal issued an Alternative Writ and Order to Show Cause to the trial court in these matters (Sanders, J.) to either dismiss the class allegations or set forth the ground upon which such dismissal would not be granted. (Kellner Decl., ¶ 100.)

Upon remand, Judge Sanders ordered the parties to provide Supplemental Briefing on the issue and held a hearing on the matter on January 19, 2019. Class Counsel drafted the briefs and all responsive papers – again coordinating their efforts as they have throughout the 9.5 years of litigating these 17 related cases. Class Counsel also argued at the January 2019 hearing. Needless to say, this was critical to all of the OC Pipe cases because, if the defendants prevailed, the class members' ability to recover anything from the defendants would be severely compromised – if not eliminated altogether. (Kellner Decl., ¶ 101; Artinian Decl., ¶ 42.) On February 7, 2019, Judge Sanders issued her opinion granting the motion to strike class allegations under *Kohler*, while setting forth her analysis of why class actions are permitted under RORA. (Kellner Decl., ¶ 102.)

Class Counsel was then required to prepare the appeal from Judge Sanders' February 7, 2019 Order, which included critical review and authorship on the complex and unprecedented statutory issues. (Kellner Decl., ¶ 103.) Plaintiffs' highly detailed brief was 48 pages in length – and the Court is invited to review the high quality of the submissions. (**Compendium Exh. E**.) Again, Class Counsel was extremely careful to avoid duplication of work and have their primary attorneys with knowledge work on this critical part of the litigation. (Kellner Decl., ¶ 104; Artinian Decl., ¶ 43.)

Following the Reply briefing, the Court of Appeal heard oral argument by Class Counsel. On August 27, 2020, the Court of Appeal issued its unpublished opinion – reversing the trial court and ruling that class actions are permitted under RORA and the facts of these cases, consistent with the Second District's ruling in *Kohler.* (*See Brasch v. K. Hovnanian* (Court of Appeal, Fourth Appellate District, August 27, 2020) 2020 WL 505108, and *Smith v. Pulte* (Court of Appeal, Fourth Appellate District, August 27, 2020) 2020 WL 5088096. The remitter for the cases issued on December 10, 2020. (Kellner Decl., ¶ 105.) Needless to say, this was a case-making event in the case. (*Id.*, ¶ 106.)

Upon remand, the universal stay was lifted by Judge Sanders, and the parties continued to fully litigate the related OC Pipe cases – with class certification motions (and related discovery) taking place on each of the related cases. Ultimately, after time-consuming briefing and litigation, Judge Sanders granted class certification (and rejected all attacks on Dr. Dempsey's opinion under *Sargon*) in this case, and in the related cases of *Brasch v. K. Hovnanian, Smith v. Pulte, Lindgren v. Shea Homes, Chiang v. D.R. Horton, Sun v. Pardee Homes, Ali v. Warmington Residential California, Inc.* and *Fish v. Standard Pacific* (*Id*., ¶ 107.)

Finally, the parties engaged in substantial post-certification litigation and discovery. This included extensive litigation regarding an appropriate Trial Plan – which was litigated in this case as well as in *Del Rivero v. Centex, Brasch v. K. Hovnanian* and *Smith v. Pulte* matters. Further, destructive testing and questionnaires were sent out to homeowners in the *Del Rivero v. Centex* matter – and questionnaires were also litigated and sent out in the *Brasch* and *Smith* cases. The details of class notice were also extensively litigated. On this phase of the case, Class Counsel was

engaged in substantial briefing and attended numerous hearings regarding class ascertainability issues and the Trial Plans – while continuing to provide extensive (and incredibly time consuming) efforts with ongoing client contact, depositions and responses to continuing discovery. (Kellner Decl., ¶ 108.)

Fortunately, as a result of years of litigation, the majority of the defendants have agreed to mediations and/or settlements. This includes Richmond American – the subject of this motion for final approval. (Kellner Decl., ¶ 109.)

For this 5+ year phase of the litigation, Class Counsel's efforts were largely performed by fewer billing attorneys – because the nature of this work was the higher-level appeals, class certification motions and settlement discussions. The lodestar for the legal services described above were as follows:

Bridgford Gleason & Artinian

Name	Position	Years Practice	Hours	Rate	Total
Richard Bridgford	Partner	37	723.65	$925	$669,376.25
Michael Artinian	Partner	23	2,651.50	$850	$2,253,775.00
Brian Donoghue	Associate	14	3,537.20	$495	$1,750,914.00
		Subtotal	6,912.35		$4,674,065.25

Kabateck LLP

Name	Position	Years Practice	Hours	Rate	Total
Brian Kabateck	Partner	32	66.40	$925	$61,420.00
Richard Kellner	Partner	34	2,223.40	$925	$2,056,645.00
		Subtotal	2,289.80		$2,118,065.00

McNicholas & McNicholas LLP

Name	Position	Years Practice	Hours	Rate	Total
Patrick McNicholas	Partner	36	245	$1,100	$269,500.00
David Angelof	Associate	12	20	$550	$11,000.00
Jeffrey Lamb	Associate	14	110	$550.00	$60,500.00
Michael Kent	Associate	8	35	$500.00	$17,500.00
		Subtotal	**410 Hrs**		**$358,500.00**

(Kellner Decl., ¶ 110; Artinian Decl., ¶ 44; McNicholas Decl., ¶12.)

The accompanying declarations from Class Counsel set forth the qualifications of the attorney billers, the support for their hourly rates and more details of the particular roles that they had in the litigation. (Kellner Decl., Artinian Decl., McNicholas Decl.) Further, the attorneys'

contemporaneous time records will be available at the hearing for the Court's confidential review.

B. Class Counsel's Lodestar

Through October 2022, the total lodestar for all of the firms totals 23,079.4 hours and $16,823,865.00 that can be summarized as follows:

Phase I **[May 2012 – December 31, 2015]**

• Bridgford Gleason & Artinian	$2,603,951.75
• Kabateck LLP	$661,960.00
• McNicholas & McNicholas LLP	$1,386,500.00
Subtotal	**$4,652,411.75**

Phase II **[January 1, 2015 – July 31, 2017]**

• Bridgford Gleason & Artinian	$2,301,532.00
• Kabateck LLP	$1,090,791.00
• McNicholas & McNicholas LLP	$1,628,500.00
Subtotal	**$5,020,823.00**

Phase III **[August 1, 2017 - present]**

• Bridgford Gleason & Artinian	$4,674,065.25
• Kabateck LLP	$2,118,065.0
• McNicholas & McNicholas LLP	$358,500.00
Subtotal	**$7,150,630.25**

Grand Total $16,823,865.00

(Kellner Decl., ¶ 112.)

It must be stressed that even though there were separate plaintiff law firms working on these cases, the work was divided amongst the attorneys such that associate work was largely performed by the lower priced associates and partner work was primarily done by three attorneys during this 9+ years of litigation. (Kellner Decl., ¶ 113.) As further documented in the time sheets and the accompanying declarations, everything was done in order to eliminate redundancies and duplication of work.

Given the results achieved (here, more than 98% of the damages that would be sought at trial), and the amount of work done in over 9 years of litigation, the lodestar is eminently fair and reasonable. Further, the attorneys' contemporaneous time records will be available at the hearing for the Court's confidential review.

1. The Hourly Rates are Reasonable.

The hourly rates sought here are rates comparable with the skill and experience level of the billing attorneys, represent rates within the range that have been previously approved for attorneys' at this level of experience, and are consistent with the 2015 National Law Journal survey of hourly rates for California. (**Compendium Exh F**; *see also* Kellner Decl., ¶¶ 117-126; Artinian Decl., ¶ 11-27, 59-64; McNicholas Decl., ¶ 3-6, 13-17.) The accompanying declarations from Class Counsel set forth the qualifications of the attorney billers, the support for their hourly rates and more details of the particular roles that they had in the litigation. (*Id.*) Indeed, Class Counsel are comprised of some of the leading plaintiff attorneys in California. Nonetheless, no partner has submitted a billing rate in excess of $1,100/hour.

C. Division of Fees – CRC 3.769(b)

There is a written fee-sharing agreement among Class Counsel of record in this action (Artinian Decl. ¶ 66), containing the following percentage splits: Bridgford Gleason & Artinian (41.8%); Kabateck LLP (28.2%); and McNicholas & McNicholas LLP (30%), to be distributed pursuant to the terms of that agreement. (Artinian Decl. ¶ 66, **Compendium Exhibit K**). The division of attorneys' fee agreement has been disclosed to and approved by the Class Representatives, as indicated in the Attorney Fee Split Agreements pursuant to Rule of Professional Conduct 1.5.1. (Artinian Decl. ¶ 66).

D. Class Counsel's Attorney Fee Request Should be Granted.

As noted above, Class Counsel's fee request is fully supported by the requirements of *Laffitte*, *supra,* where the percentage method for the primary calculation of class counsel fees is recognized under California law. This is a classic "common fund" situation, where Class Counsel's efforts in these OC Pipe class actions were for the benefit of all class members. *See also "Serrano III,* 20 Cal.3d at 34.

Since the purpose of the "percentage of benefit method" is to approximate the real-world compensation that a plaintiff attorney would get, the one-third (33 1/3%) contingency is entirely in line with the going rate. As the Court explained in *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58:

> Regardless of whether attorneys' fees are determined using the lodestar method or awarded based on a "percentage-of-the-benefit" analysis under the common fund doctrine, the ultimate goal is the award of a reasonable fee to compensate counsel for their efforts, irrespective of the method of calculation. It is not an abuse of discretion to choose one method over another as long as the method chosen is applied consistently using percentage figures that accurately reflect the marketplace.

Consumer Privacy, 175 Cal.App.4th at 557-58.

The "most important factor for deciding if the negotiated fee is fair, is whether the fees bear a reasonable relationship to the value of the attorneys' work. Attorneys are entitled to fair compensation for the work they have done." *Robbins v. Alibrandi* (2005) 127 Cal.App.4th 438, 448. So long as the proper factors are applied, the trial court possesses a great deal of discretion in determining an appropriate multiplier. *Serrano III*, 20 Cal.3d. at 49. The purely contingent nature of class counsel's fee, very high contingency risk confronted, delay in compensation, and preclusion of other employment are all properly considered factors. *Id.*; *Horsford v. Bd. of Trustees of California State Univ.* (2005) 132 Cal.App.4th 359, 399-400; *Ketchum*, 24 Cal.4th at 1136; *Lealao v. Beneficial California, Inc.* (2000), 82 Cal.App.4th 19, 42-50.

As one California Court has specifically recognized, percentage of recovery fee awards in class actions generally average around one-third of the recovery. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11, ("Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery"). California state courts commonly award fees equivalent to 35% of the gross settlement amount in wage and hour class actions. *See*, *Newberg*, §14.03; *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F. Supp. 1373, 1378. This range is consistent with contingency fee rates in the Southern California legal market where rates of 30-40% of gross recovery are typical. (Kellner Decl., ¶ 127.) Thus, the one-third (33 1/3%) requested contingency rate is one that is consistent with California law.

While the concept of a "lodestar cross-check" is not required by the Court in *Laffitte* in evaluating the class counsel fees based upon the "percentage of common fund" method (*Id.* at p. 505), Class Counsel has proffered its substantial lodestar. Unfortunately for Class Counsel, this nine-year litigation war (with the defendant developers' unrelenting motion and appellate tactics) has resulted in a situation in which Class Counsel cannot obtain relief that will fully compensate them for

their time – notwithstanding the excellent results.

The present lodestar in the OC Pipe cases is over $16 million. As demonstrated above, the litigation of these cases collectively was for the benefit of each and every OC Pipe class action because of the commonality of evidence, legal issues, experts, facts and – beyond everything else – the fact that the same jurist would likely be making decisions regarding class certification and other critical motions. (Kellner Decl., ¶ 129.) There are many ways to fairly apportion Class Counsel's work amongst these cases, all of which would result in a lodestar substantially larger than the $644,000 sought in this motion.

First, the cases could be divided equally amongst the 17 OC Pipe class actions. That would result in an average lodestar of $989,639.11 ($16,823,865 ÷ 17) ***and*** a resulting negative multiplier of .52 lodestar for the $644,000 in fees sought (*i.e.*, a 48% reduction from the lodestar) (Kellner Decl., ¶ 133.)

Second, the cases could be divided based upon the relative sizes of the class actions as follows:

Case Name	Number of Class Members	Percentage of Class Members Relative to All OC Pipe Cases
Del Rivero v. Centex/Pulte	150	6.021678%
Smith v. Pulte	65	2.609394%
Shah v. Pulte	141	5.660377%
Lindgren v. Shea	198	7.948615%
Ali v. Warmington	123	4.937776%
Fish v. Standard Pacific	475	19.068647%
Chiang v. D.R. Horton	87	3.492573%
Brasch v. K. Hovnanian	198	7.948615%
Sun v. Pardee	65	2.609393%
Dye v. Richmond American	**184**	**7.386592%**
Foti v. John Laing	138	5.539944%
Cheung v. William Lyon	444	17.824167%
Constabilleo v. MBK	38	1.525492%
Wang v. Woodbridge	40	1.605781%
Sheehy (then Specter) v. Standard	80 (class claims	3.211562%
Chow v. WL Homes	40	1.605781%
Liang v. Pardee	25 (certification denied)	1.003613%
Total	**2491**	100.000000%

(Kellner Decl., ¶ 133.)

Quite frankly, this methodology will understate the lodestar attributable to this action because:

(a) it provides equal weight to cases that have been resolved years ago (even though common work continued); and (b) it provides a class member amount for unresolved cases for which further attrition of class membership is possible, largely through cases that are compelled to arbitration that are ultimately dismissed. (Kellner Decl., ¶¶ 133-134.) Nonetheless, based upon the 7.386592% apportionment, Class Counsel's lodestar apportioned for this case would be $1,242,710.22. Again, this would be a negative .518 multiplier (*i.e.*, a 48.2% reduction from the lodestar). (Kellner Decl., ¶ 134.)

Ironically, given the results provided here, Class Counsel would be entitled to a positive multiplier. That would normally occur if the Court were to apply the usual *Serrano* factors to determine if a positive multiplier was warranted under the circumstances. The *Serrano* test was cogently set forth by the California Supreme Court in *Graham v. Daimler Chrysler Corp.* (2004) 34 Cal.4th 553 as follows:

> Under *Serrano III*, the lodestar is the basic fee for comparable legal services in the community; it may be adjusted by the court based on factors including … (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award. [Citation] The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services …. One of the most common fee enhancers, and one used by the trial court in the present case, is for contingency risk. We reaffirmed the propriety of a contingency risk enhancement in *Ketchum*: "The economic rationale for fee enhancement in contingency cases has been explained as follows: 'A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.' (Posner, Economic Analysis of Law (4th ed. 1992) pp. 534, 567) 'A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.'

Graham v. Daimler Chrysler Corp., 34 Cal.4th at 579-80 (internal citations and quotations omitted), *citing Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33.

The inquiry whether the hours expended were "reasonable" is made in view of the ultimate result of the litigation, and not a hindsight examination of each discrete step along the way. So long as the hours expended were reasonably incurred in pursuit of that ultimate result, and are the type of work which would be billed to a paying client, they are properly included in the lodestar. *Hensely v. Eckerhart* (1983) 461 U.S. 424, 431 and 434.

There can be no dispute that Class Counsel satisfies each of the factors for a positive multiplier. This case presented multiple issues of first impression that required a high level of legal skills in order for the Class to prevail (both at the appellate level and at trial). The litigation was a massive undertaking over 9 years – that precluded Class Counsel for engaging in other litigation work. (Kellner Decl., ¶ 137.) While all three Class Counsel firms have very active and well-established litigation practices, the law firm sizes (ranging from 5 – 15 attorneys) are not law firms that can litigate many cases of this size and scope. (Kellner Decl., ¶ 138.)

This was also highly risky litigation – where all of Class Counsel's efforts could result in a total loss at multiple juncture of the case – including: (a) at the first phase when the trial court granted the defendant developers' motions to strike class allegations; (b) at the second phase when the plaintiffs could have lost class certification motions; (c) at the third phase when (on appeal) the Court of Appeal initially ruled that SB 800 class actions might not be permitted by the statute; (d) upon remand, when the class certification motions were considered by new judges; and (e) even after all of the challenges to SB 800 and class certification motions were resolved in the Class' favor, it is possible that the plaintiffs could have lost at trial. (Kellner Decl., ¶ 139.) Such risk factors have always been considered as supportive of a contingency fee award. *E.g.*, *See Vizcaino v. Microsoft Corp* (9th Cir. 2002) 290 F.3d 1043, 1048-49 .

During all of this litigation, Class Counsel funded the costs of the litigation – again, under risk that they could lose the case and not recover any of their costs. (Kellner Decl., ¶ 140.)

Plus, Class Counsel has provided the class in this case with approximately the relief that they could have received at trial. (Kellner Decl., ¶ 136.)

Under such circumstances – if the recovery was greater – Class Counsel would undoubtedly be entitled to a positive multiplier of 1.5 or more. *E.g.*, *Coalition for Los Angeles County Planning v.*

Board of Supervisors (1977) 76 Cal.App.3d 241, 251 (multiplier of 2+ approved). Indeed, in federal courts that have engaged in cross-checks for a 1/3 contingency award, the lodestar multiplier of 1.5 has been deemed to be reasonable. *See e.g., Martin v. FedEx Ground Package System, Inc*., 2008 WL 5478576, at *8 (N.D. Cal. Dec. 31, 2008) (federal district court approved attorneys' fees of 1/3 of common fund stating, *inter alia*, "[b]ecause the lodestar cross check revealed a relatively low multiplier of 1.48, the court is satisfied that counsel's requested fee award is not unreasonable"). [2]

Again – everything that Class Counsel did in these related OC Pipe cases was for the benefit of all putative class members in all the cases. Class Counsel's attorney fee request based upon a 30% contingency is fair, reasonable and should be granted by this Court.

E. Class Counsel's Request for Costs is Reasonable

Class Counsel also requests reimbursement from the common fund for out-of-pocket expenses incurred during this litigation totaling $54,569.04. Class Counsel is permitted to recover their litigation costs and expenses under the common fund doctrine. *See Serrano III*, 20 Cal.3d at 35 (common fund doctrine permits recovery of fees and costs from the fund); *Rider v. County of San Diego*, 11 Cal.App.4th 1410, 1424 n.6 (1992) (costs are recoverable from the common fund "[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of attorneys' fees by . . . [Plaintiffs'] attorneys"). Furthermore, whatever method is chosen by the Court to calculate attorneys' fees, Plaintiff's Counsel is entitled to recover "those out-of-pocket expenses that would normally be charged to a fee paying client." *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

---

[2] In *Sternwest Corp. v. Ash* (1986) 183 Cal.App.3d 74, the Court of Appeal remanded for a lodestar enhancement of "two, three, four or otherwise." *Id*. at 76; *see also Wershba*, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); *City of Oakland v. Oakland Raiders*, 203 Cal.App.3d 78, 83 (1988) (affirming 2.34 multiplier); *Glendora Community Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465, 479–80 (approving fee award representing multiplier of 12); *Coalition for Los Angeles County Planning in the Pub. Interest v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251 (affirming multiplier of approximately 2). "The range of lodestar multipliers in large and complicated class actions runs from a low of 2.26 to a high of 4.5." *Behrens v. Wometco Enters., Inc*. (S.D. Fla. 1988) 118 F.R.D. 534, 549 (citations omitted), *aff'd without op*. 899 F.2d 21 (11th Cir. 1990). "Most lodestar multiples awarded in cases like this are between 3 and 4." *Id.* (collecting cases).

Here, Class Counsel has incurred documented litigation costs and expenses in the amount of $54,560.04. The costs consist of (1) case-specific costs incurred by class counsel in the instant action, and (2) an allocation of "general" OC Copper Pipe costs incurred by class counsel that benefited each of the related cases. These costs also include the $25,000.00 invoice from JND Legal for its services in connection with the initial class notice sent following class certification. The details of the costs incurred are set forth in the supporting Declarations (Artinian Decl., ¶ 55-58 & **Compendium Exhs. I, J and C**; McNicholas Decl., ¶ 18.)

The costs sought for reimbursement are more than reasonable over a 9.5 year litigation period.

F. <u>This Court Should Approve the Class Administrator's Costs – Including the Capped Amount for Distribution of Settlement Proceeds.</u>

Pursuant to the Settlement, Plaintiff requests approval of payment of $15,000 in settlement administration fees and expenses from the common fund to the Settlement Administrator ILYM, consistent with ILYM's "not to exceed" estimate submitted and approved on our Motion for Preliminary Approval. ILYM has capably performed the administration of the settlement to date, and provided a detailed estimate of the fees and costs to be incurred in concluding its administration responsibilities. (*See* Declaration of Makenna Snow ["Snow Decl.].)

The Settlement Administrator's efforts were particularly important because it had to determine the individuals in the chain of title for the 184 homes in order to provide class notice to all potential class members. The Settlement Administrator's services included: (a) performing a title search on the 184 properties applicable to this settlement (b) printing and mailing the *Notice of Proposed Class Action Settlement and Final Hearing, Prior Owner Verification Form, and Opt- Out Form.* (referred to as "Notice Packet"); (c) receiving and processing requests for exclusion; (d) receiving and processing Prior Owner Verification Forms, and mailing a letter to the current owner; (e) calculating individual settlement award amounts; (f) processing and mailing settlement award checks; (g) handling tax withholdings as required by the Settlement and the law; (h) preparing, issuing and filing tax returns and other applicable tax forms; (i) handling the distribution of any unclaimed funds pursuant to the terms of the Settlement; and (j) performing other tasks as the Parties mutually agree to and/or the Court orders ILYM Group to perform. ILYM Group's work in

connection with this matter will continue with the calculation of the settlement award payments, issuance and mailing of the settlement award checks, the necessary tax filing and reporting on such payments, and any other tasks that the Parties mutually agree to and/or the Court orders ILYM Group to perform. (See Accompanying Snow Decl. and Exhibit A thereto.)

With the benefit of fair and highly effective notice and support program, described herein, not a single Settlement Class member objected to the Settlement on any basis, including the payment of these administration costs.

Upon final approval, the Settlement Administrator's responsibilities will include the distribution of settlement checks and reporting back to the Court. Plaintiffs respectfully request that the Settlement Administrator's fees be approved.

G. <u>This Court Should Approve the Incentive Payment to the Named Plaintiffs.</u>

Pursuant to Section 3.1.7 of the Settlement Agreement, the Named Plaintiffs seek the total sum of $5,000 total for the class representatives (Grant and Deborah Cain), in order to compensate them for their participation as class representatives, subject to approval from this Court. (Kellner Decl., **Compendium Exh A**, § 3.1.7.) California's courts are in accord, routinely affording incentives as a matter of public policy to ensure that meritorious class action litigation is prosecuted. *See, e.g.*, *Clark v. American Residential Services, Inc.* (2009) 175 Cal.App.4th 785, 804 This sum shall be paid from the Settlement Fund.

While the Cains were only formally brought into the case as representatives to assist in consummating the class settlement, they signed a retainer agreement to participate in the case and be named if needed. That need arose in 2022 to consummate the settlement due to issues that arose with Madlen Dye serving as the class representative (requiring her to be dismissed). Nonetheless, the Class Representatives have been unfailingly dedicated and loyal to the Settlement Class during this litigation, and have devoted their time to see this litigation through. (Deborah and Grant Cain Decls., ¶¶ 4-9.) These individuals have not attempted to leverage a class action for personal gain, and have foregone any potential individuals claims for the benefit of the class as a whole. They have actively participated in and kept informed of the progress of this litigation and settlement, and at all times remained cognizant of their obligations to the class. By serving in this representative capacity, for

the benefit of others and without expectation of significant individual gain, they have conferred an undeniable benefit on the Settlement Class members.

Given the commitment and time devoted by these Class Representatives, the collective incentive fee of $5,000.00 is fair and reasonable.

II. CONCLUSION

For all the foregoing reasons, Plaintiffs request that this Court: (a) approve the award of Class Counsel's requested attorneys' fees in the amount of $644,000.00 and reimbursement of costs in the amount of $54,569.04; (b) approve the requested Class Representative incentive payments in the amount of $5,000.00; (c) authorize the Settlement Administrator to perform its post-approval responsibilities pursuant to the terms of the Settlement; (d) approve the Settlement Administrator's request for fees of $15,000.00; and (e) schedule a status conference in 60 days after the Settlement is Final (*i.e.*, the time for appeals have expired) for a final report from the Settlement Administrator regarding the distribution of settlement proceeds under this Settlement.

By separate Memorandum, Plaintiffs also provide the support for the Final Approval of this proposed Class Settlement.

Dated: January 27, 2023

BRIDGFORD, GLEASON & ARTINIAN
KABATECK LLP
McNICHOLAS & McNICHOLAS LLP

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

Richard L. Kellner & Michael H. Artinian
Attorneys for Plaintiffs

PROOF OF SERVICE
Dye v. Richmond American Homes, et al.
Orange County Superior Court Case No.: 30-2013-00649460

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): **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR ATTORNEYS' FEES AND COSTS, CLASS ADMINISTRATOR FEES AND COSTS, AND CLASS REPRESENTATIVE ENHANCEMENT** 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: January 30, 2023

/s/Debbie Knipe
Debbie Knipe

SERVICE LIST
Dye v. Richmond American Homes, et al.
Orange County Superior Court Case No.: 30-2013-00649460

Keith E. Smith, Esq. Courtney Jakofsky, Esq. Jonathan J. Grisham, Esq. WOOD SMITH, ET AL. 21804 Cactus Avenue, Suite 200 Riverside, CA 92518	Counsel for Defendants RICHMOND AMERICAN HOMES and M.D.C. HOLDINGS, INC. Telephone: (951) 779-5000 Facsimile: (951) 755-1650 kesmith@wshblaw.com cjakofsky@wshblaw.com jgrisham@wshblaw.com jcarlin@wshblaw.com aphelpscharles@wshblaw.com twhitaker@wshblaw.com
Brian S. Kabateck, Esq. Richard L. Kellner, Esq. KABATECK LLP 633 West Fifth Street, Suite 3200 Los Angeles, CA 90017	Co-Counsel for Plaintiffs Telephone: (213) 217-5000 Facsimile: (213) 217-5010 bsk@kbklawyers.com rlk@kellnerlaw.com
John Patrick McNicholas, IV, Esq. Michael J. Kent, Esq. McNICHOLAS & McNICHOLAS, LLP 10866 Wilshire Blvd., Suite 1400 Los Angeles, CA 90024	Co-Counsel for Plaintiffs Telephone: (310) 474-1582 Facsimile: (310) 475-7871 pmc@mcnicholaslaw.com mjk@mcnicholaslaw.com