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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 – CIVIL COMPLEX CENTER

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. 30-2013-00649460-CU-CD-CXC
Assigned for all purposes to:
Judge Peter Wilson
Dept. CX-101

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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

Complaint Filed: 05/09/2013

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

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs DEBORAH and GRANT CAIN ("Plaintiffs") submit this motion seeking final approval of a proposed class settlement ("Settlement"). This is a good settlement that warrants final approval.

By way of background, this case is part of a litigation involving 17 other related class actions – commonly referred to as the OC Pipe class actions. All these cases allege that standardized copper pipes installed by various developers in certain parts of Orange County California violate the standards set forth in Civil Code § 896(a)(15). Plaintiffs allege (with the support of expert, scientific testimony) that there is a chemical reaction between the particular water supplied to the class homes and the standardized copper pipe systems that causes corrosion that shortens their useful life. (Declaration of Richard Kellner ["Kellner Decl."], ¶ 11-12.)

This Settlement is substantively identical to the one for which this Court granted final approval on December 23, 2022 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. (Kellner Decl., ¶ 25.)

These class actions have been heavily litigated, with Plaintiffs' attorneys expending over 23,000 hours of attorney time against well-financed defense law firms. The hard work has resulted in a number of significant legal victories (documented below and in the supporting declarations). Nine of the OC Pipe cases have settled upon favorable terms – with others in active settlement discussions:

- In August 2020, the Court of Appeal (in the related *Brasch v. K. Hovnanian* and *Smith v. Pulte* actions) held that the alleged SB 800 claims may proceed as class actions, consistent with *Kohler Co. v. Superior Court* (2018) 29 Cal.App.5th 55.
    - Up until this point, most of the developer defendants were reluctant to enter any settlement negotiations until the resolution of the key issue of whether SB 800 claims could be adjudicated by class actions. In fact, the defendants maintained that *Kohler* prohibited the litigation of SB 800 cases by class actions.

- Then, Judge Glenda Sanders certified three related class action cases (similar to Judge Colaw's prior rulings granting class certification) and – most significantly - rejected developer defendants' *Sargon* motions attacking Plaintiffs' primary expert witness.

The proposed Settlement provides the Class with a gross recovery of **over 98% of the amount that would be sought at trial**. Under the terms of the Proposed Settlement, a Settlement Fund of $1.932 million will be created for the 184 participating class members. The class members will receive the Net Proceeds of the Settlement Fund on a *pro rata* basis, after payment of Court approved attorneys' fees/costs, class administration fees/costs and class representative enhancements.

- The *pro rata* gross settlement for each class member is $10,500.00.
    - This represents 98.69% of the of the average costs for replacing the 184 class member homes with PEX. [1] (Kellner Decl., ¶ 29.)
- Subject to Court approval of attorneys' fees/costs, class administrator fees/costs and class representative enhancements, the owners of each class home will receive at least $6,594.73 per home.
- This is a "claims paid" settlement.

This Settlement fully satisfies the analysis under *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116 – with the class receiving at least 98% of the gross relief that they could obtain at trial. On this basis alone, the Settlement warrants final approval.

The Class Administrator has provided Class Notice pursuant to the terms of the Court's order granting Preliminary Approval. Given the relief obtained for the benefit of the Class under the proposed Settlement, it is not surprising that there are no objections or opt-outs by individuals covered by the Class Definition. [2]

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[1] In settlement discussion, the parties used the actual costs for replacing the affected copper pipe systems with PEX based upon a competitive bid that Plaintiffs obtained from AMA Repiping, LLC. ("AMA"). Further, AMA is the major re-piping company that was engaged to repipe the homes in other class action settlements in these related OC Copper Pipe class actions. Thus, the over 98% percent figure is based upon actual repiping costs. (Kellner Decl., ¶¶ 26-29.)

[2] The prior owners of one home filed an opt-out (Nolan and Dianna Hoffman), but they are not eligible class members because they are prior homeowners who did not re-pipe their homes. As this Court has suggested in connection with the *Foti* settlement, Class Counsel has mailed a letter to the Hoffmans explaining that they are not covered by the class definition – even though

Finally, as fully documented below, Class Counsel seeks its attorneys' fees based upon a one third (33 1/3%) contingency of the relief actually obtain for the class – which is also fully supported by the attorney time attributable for the benefit of this class – under the controlling case of *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480. **Plaintiffs are submitting a separate Memorandum of Points and Authorities in support of their request for approval of Class Counsel attorneys' fees and costs, Class Administrator fees and costs, and the Class Representative enhancements.**

Because the Settlement achieves extremely good results for the Settlement Class members, Plaintiffs respectfully request that the Court enter an Order and Judgment approving the Settlement as fair, adequate, and reasonable, and such other Order as the Court deems just and proper.

I. PROCEDURAL BACKGROUND AND SUMMARY OF CLAIMS

The original plaintiffs in this action filed this case on May 9, 2013 on behalf on themselves and other similarly situated individuals who own homes in the class area (Ladera Ranch) that (i) were constructed by Defendants, (ii) that contained copper pipes installed by the Defendants, and (iii) had purchase agreements signed by Defendant on or after January 1, 2003. The operative complaint alleges a cause of action against Defendants for violations of standards of residential construction (Civ. Code § 895 *et seq.*, including § 896[a][14] and [15]). (Kellner Decl., ¶ 11.)

In addition, there were 16 other class actions filed by the same attorneys relating to other construction projects and developers in Orange County – all containing the same core contentions that the standardized copper pipes installed in the homes violate the Right to Repair Act in that when combined with the unique chemical composition of the water supplied to this area, the copper pipes corrode so as to lessen the useful life of the copper pipes. (*Id.*, ¶ 12.) In fact, shortly after the operative complaints were filed, the cases were all related before the same Orange County Superior Court judge in the Complex Civil Court. (*Id.*, ¶ 13.) Now, **nine** of these related OC Pipe class actions have settled and/or are the subject of motions for preliminary/final approval of settlements. (*Id.*, ¶ 14.)

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they have ostensibly submitted a Notice of Exclusion form. (Kellner Decl., ¶ 33.)

A. The Litigation of This Case and the Related Class Actions.

The Orange County Copper Pipe litigation cases have been heavily litigated over the past 9½ years. For all practical purposes, the parties litigated issues that are common to all the related OC Pipe actions – while the remaining actions were either stayed or held in abeyance while the underlying fundamental issues could be resolved before the trial or appellate courts. (*Id*., ¶ 15.)

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

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

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

- Plaintiffs then appealed that Order. Following full briefing and argument before the Court of Appeal on two of the related cases, the Court of Appeal reversed Judge Sanders' Order (largely consistent with Judge Sanders' prior orders denying the attempts to dismiss the class allegations), and ruled that class actions are permitted under SB 800 based on the allegations in the related cases. (*Id*., ¶ 21(f).)

The third major area of litigation involved motions relating to expert testimony. Each of the related OC Pipe class actions were largely predicated upon the same underlying expert opinion – *i.e.*, that the combination of the common water in this area supplied by the Santa Margarita Water District and the copper pipes resulted in a common chemical reaction that has resulted in corrosion that lessens the useful life of the pipes. As a result, tremendous discovery and motion practice revolved around this expert testimony. (*Id.*, ¶ 18.) Multiple defendants filed motions to strike Plaintiffs' expert's opinions based upon *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747 and its progeny. Ultimately, plaintiffs' counsel prevailed in such motions before BOTH Judge Colaw and Judge Sanders. (*Id*., ¶ 19.)

The fourth major area of litigation involved substantive determination of motions for class certification. Again, there was extensive discovery and motion practice involving class certification – which was largely identical in each of the related Orange County Copper Pipe actions. Following multiple rounds of briefing in multiple cases – as well as multiple hearings – Judge Colaw granted class certification in the lead related class action (*Del Rivero v. Centex*), and Judge Sanders later granted class certification in six additional related class actions. (*Id*., ¶ 20.)

These major litigation efforts were hotly contested and time-consuming. Class Counsel devoted substantial resources to the litigation, even though there was a very real risk that the cases could be dismissed or result in a defense judgement at multiple junctures of the litigation. (*Id.*, ¶ 21.)

B. <u>Settlement Discussions in This Class Action.</u>

Counsel for the parties in this Action engaged in extensive settlement negotiations following years of extensive litigation regarding the pivotal and key issues relating to: (a) whether the case can proceed as a class action; (b) whether the scientific evidence that Plaintiffs intended to use to prove

their case was admissible under *Sargon* and its progeny; and (c) whether the case was amenable to class treatment. (*Id.*, at ¶ 22.) Subsequent to certification of this class action, the Parties engaged in arms-length negotiations before Ross W. Feinberg, Esq. from JAMS ADR. Mr. Feinberg has acted as a mediator in a number of these Orange County Copper Pipe actions. Further, Mr. Feinberg is considered one of the leading mediators of construction defect actions, including those venued in Orange County, California. (Kellner Decl., ¶ 23.) As a result of this mediation and subsequent settlement discussions, the parties were able to reach agreement on settlement. (Id., at ¶ 24.)

The terms of that negotiated settlement are reflected in this Agreement, which Plaintiffs and their counsel contend are fair and reasonable under the circumstances. Indeed, Class Counsel engaged in substantial "due diligence" to determine the actual costs for replacing the Class copper pipe systems with PEX by obtaining a bid from AMA Repiping – the company that engaged in the actual repiping of homes in classes that were settled in these related actions. While not recommending that any class member utilize AMA Repiping, Class Counsel was able to obtain a bid from AMA Repiping that is attached as **Exhibit G** to the Compendium of Exhibits, for each home in the class based upon the floor plans for those homes (by address). (Kellner Decl., ¶ 27, Compendium **Exh. G**.) The range of prices is from $10,421 to $10,944 based upon the size of the homes. (Kellner Decl., ¶ 23; Compendium **Exh. G**.) This averages $10,639.86 per home. (Kellner Decl., ¶ 28.)

Class Counsel also obtained AMA Repiping's contractual commitment to keep these prices for one year. (Kellner Decl., ¶ 27.)

Once the size of the Settlement Fund and the settlement class definition were agreed upon by the parties, negotiations were conducted regarding the amount of attorneys' fees/costs, class administrator fees/costs and class representative enhancements for which Defendants will not provide any objections. (*Id*., ¶ 30.) Plaintiffs' counsel agreed to a 1/3 contingency fee calculation in this case which – as demonstrated below – represents less than any apportionable lodestar for the work done that benefitted the settlement class. (*Id.*, ¶ 31.)

The settlement is a "claims-paid" settlement – and the only reason that payment would not be made from the Settlement Fund is if a class member "opts-out" of the settlement. (*Id.*, ¶ 32.) There are no opt-outs who are actual class members. (*Id.,* ¶ 33.) As noted in fn 2, *supra,* the prior owners of

one home filed an opt-out (Nolan and Dianna Hoffman), but they are not eligible class members because they are prior homeowners who did not re-pipe their homes. As this Court has suggested in connection with the *Foti* settlement, Class Counsel has mailed a letter to the Hoffmans explaining that they are not covered by the class definition – even though they have ostensibly submitted a Notice of Exclusion form. (Kellner Decl., ¶ 33.)

On August 31, 2022, Judge Sanders granted Plaintiffs' motion for preliminary approval of the class settlement, subject to some changes relating to the mechanics of resolving any potential dispute by potential class members in the chain of title for the same home. (*Id.*, ¶ 34; [ROA 563].)

On November 21, 2022, this Court issued an Order re-setting the hearing date on this Motion for Final Approval to February 22, 2023. (*Id.*, ¶ 35; [ROA 588].) This re-setting was pursuant to Stipulation and Proposed Order, based upon the fact that in their due diligence, the Class Administrator discovered that the chain of title information was incomplete for the Notice of Class Settlement mailed to 27 individuals in the chain of title for the class homes. (Kellner Decl., ¶ 35; Snow Decl., ¶ 8.) The Settlement Notice packets for those homeowners were mailed on November 18, 2022. (Kellner Decl., ¶ 36; Snow Decl., ¶ 9.) There have been no objections or opt-outs filed with respect to these or any other homeowners – and the time for such submissions has expired. (Kellner Decl., ¶ 36; Snow Decl., ¶ 10.)

II. THE CLASS SETTLEMENT SHOULD BE FINALLY APPROVED BY THE COURT

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

A. <u>The Settlement Class.</u>

The Settlement Class is defined as:

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

B. The Mechanism For Determining Class Members.

The Settlement Agreement that was preliminarily approved identifies the Class Members in the most cost-effective and efficient means possible. Under SB 800, the relief sought in this class action is the cost of replacing the copper pipes that fail to conform with the standards of Civil Code § 896(a)(15) – *i.e.*, copper pipes that leak and/or corrode so as to lessen their useful life. As a result, in the chain of title for each home, the individual who has a right to redress will be either: (a) a prior homeowner who replaced the copper pipes; or (b) the present homeowner. (Kellner Decl., ¶ 37.)

Because it is impractical and cost-prohibitive to physically inspect each home to determine the individual in the chain of title who has a right to redress, the preliminarily approved Settlement provides the following process to determine the individual (in the chain of title) who has the right to redress:

1) First, the class administrator determined and mailed the Class Notice and other documents to the individuals in the chain of title for the homes included in the Class.
    a. For the present owners of the subject homes to receive any benefits from this Settlement, **they do not have to do anything.**
    b. For prior owners who paid for a repipe/epoxy to receive the benefits from this Settlement, they must fill out a simple Prior Owner Verification Form that attests to their replacement of the copper pipes in the home that is included in the Class.
2) In the event a prior owner submits a Prior Owner Verification Form, the present owner is sent a letter from the Class Administrator advising that owner that a Prior Owner Verification Form was submitted with respect to the home – and the present owner is then

given the opportunity to contest that assertion in the Prior Owner Verification Form that the prior owner replaced the copper pipe system. (Compendium **Exh A**, Settlement Agreement (modified), § 4.4.1.)

(Kellner Decl., ¶ 38.)

Finally, with respect to any dispute between the homeowners in the chain of title, Ross Feinberg has been designated as the final arbiter of all such disputes. (Compendium **Exh A**, Settlement Agreement (modified), § 4.4.1.) There are presently two homes that potentially require Mr. Feinberg's adjudication of disputes – with respect to the homes located at 1 Duffield Lane and 4 Earthen Court. The present homeowner for both of those homes – in response to notice of submission of the Prior Owner Verification Form – have submitted documentation that they have re-piped their homes with PEX. The prior owners have been provided with a copy of this documentation, and the parties await the Prior Owners determination to submit documentation of their claim and submission to Ross Feinberg for final arbitration. (Kellner Decl., ¶¶ 39-40.)

C. The Class Notice Comports With The Class's Rights And California Law.

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

Here, the Class Notice is appropriate under California law and is the best notice practicable for this Class of approximately 184 class members. The Notice describes in plain language the

background of the litigation, the benefits that Defendant will be providing to the Class Members, the meaning and effect of opting out, the right to object and the procedure to do so, the legal effect of not objecting, and the timing of other important events during the settlement process. *(*See Notice attached as **Exh. B** to the Compendium). Class Counsel was careful to model the Notice after the Federal Judicial Center's forms, as suggested by the Court on its website. (Kellner Decl., ¶ 41.)

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

1. <u>The Effective Administration of Class Notice Approved By The Court.</u>

The California Supreme Court has held that notice is appropriate if it has a "reasonable chance of reaching a substantial percentage of the class members." *Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 860, citing *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. Pursuant to the terms of the Settlement and the Court's August 31, 2022 Order preliminarily approving the Settlement, settlement administrator ILYM Group, Inc. received the addresses of the 184 homes covered by the Class definition and proceeded to obtain the chain of title information - *i.e.*, the identity of all owners of the subject homes from the date of the construction through the present date based upon its own research and that provided by the prior administrator who had provided the initial notice of the certification of the class action. Snow Decl., ¶¶ 5-6.)

ILYM then conducted the research required to determine the present address of all individuals in the chain of title, and then mailed the Class Notice, Opt-Out Form and Prior Owner Verification Form – consistent with the Court's August 31, 2022 Order – to 596 of these individuals on or before November 18, 2022 (including a second round for notices with forwarded notices or undeliverable [for which new addresses were obtained], as well as for the 27 individuals in the chain of title who were not initially provided with the Settlement Notice packets). (*Id.*, ¶¶ 6-9.) To date:

- One homeowner household submitted an Opt-Out Notice (*Id.*, ¶ 14), but they do not qualify as class members because: (1) they are not present owners of the subject homes; and (2) there is no proof of indication that they paid for the replacement of copper pipes. (Kellner Decl., ¶ 42; Snow Decl., ¶ 11.)) As per the Court's direction in the *Foti* matter, Class Counsel sent them a letter (the Hoffmans) stating that they do not fit within the class definition even though they submitted an Opt-Out Notice for the above reasons. (Kellner Decl., at ¶ 42.)
- 13 individuals have submitted Prior Owner Verification Forms, stating under penalty of perjury that they have paid for the replacement of copper pipes. (Snow Decl., ¶ 13.)
    - Pursuant to the terms of the Settlement and the Court's August 31, 2022 Order, the Class Administrator sent to the present owner of the subject homes a letter advising them of the fact that a Prior Owner Verification Form had been filed and providing them with an opportunity to submit their own evidence if they allege their replacement of the home's copper pipes. (*Id.*, ¶ 13: Compendium **Exh A**, § 4.4.1.)
    - There are presently two homes that potentially require Mr. Feinberg's adjudication of disputes – with respect to the homes located at 1 Duffield Lane and 4 Earthen Court. The present homeowner for both of those homes – in response to notice of submission of the Prior Owner Verification Form – have submitted documentation that they have re-piped their homes with PEX. The prior owners have been provided with a copy of this documentation, and the parties await the Prior Owners determination to submit documentation of their claim and submission to Ross Feinberg for final arbitration. (Kellner Decl., ¶ 40; Snow Decl., ¶ 17.)

The deadline for objections and opt-outs was November 29, 2022 (and January 17, 2023 for the 27 individuals provided with the second round of notice, as described above). Remarkably, there are **no opt-outs** from any Class Member covered by this Settlement and **no objections** to this Settlement. (Kellner Decl., ¶ 45; Snow Decl., ¶¶ 14-15.)

D. The Class Relief Is At Least 98% Of The Relief The Class Could Obtain At Trial.

With respect to the *pro rata* relief provided, it compares favorably with the relief that the class members could receive at trial. Plaintiffs' counsel has consulted with AMA – the company that replaced the copper pipes with PEX in two of the settlements in the related actions - to obtain the average cost of replacing the copper pipes in the Settlement Class homes. The average cost for replacement of the copper pipes (based upon house size and configuration) is $10,639.86. As a result, the gross *pro rata* recovery of $10,500.00 for each home (the $1.932 million Settlement Fund divided by 184 homes) represents approximately 98.69% of the damages that would be likely sought at trial. (Kellner Decl., ¶¶ 26-29; Compendium **Exh. G**.)

In the event that this Court approves the maximum application for attorneys' fees, costs, class representative enhancements and class administration costs, the *pro rata* net payments to each of the 184 class members will be $6,594.73, calculated as follows:

Gross Settlement Fund	$1,932,000.00
Attorneys' Fees (Max)	- $644,000.00
Attorney Costs (Max)	- $54,569.04
Class Representative Enhancement	- $5,000.00
Class Administration Costs	- $15,000.00
Subtotal for Distribution	$1,213,430.96
Per Class Member (÷ 184)	**$6,594.73**

E. Final Settlement Approval Is Appropriate

The Settlement is fair, adequate, and reasonable because it provides substantial benefits to Class Members. Under the legal standards used by California courts to determine whether class action settlements should be approved, this settlement warrants approval.

At the outset, it is notable that this settlement was reached only after arms-length negotiations **AND** after the extraordinarily thorough and time-consuming litigation of this and related copper pipe cases during the past 9½ years. It is safe to say that virtually every aspect of this case has been extensively researched, evaluated and litigated by counsel for the parties. Finally, class counsel are experienced in similar litigation. The law firms of Bridgford, Gleason & Artinian, Kabateck LLP, and McNicholas & McNicholas LLP are each counsel in numerous related "pinhole leak" cases in Orange County – nine of which have now settled on a class-wide basis. (Kellner Decl., ¶ 2.)

In deciding whether to grant final approval to a class action settlement, the Court should consider factors including "the strength of [p]laintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128; *Wershba*, *supra*, 91 Cal.App.4th at 244-45; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. Here, each of these criteria supports final approval of the Settlement.

First, even though class certification was granted here, there remains the risk at trial that a jury might provide greater "weight" to the Defendants' experts in lieu of Plaintiffs'. All trials have inherent risks – and there always remains the potential that law could change between the present date and trial. (*See* Kellner Decl., ¶ 139).

Second, this case involved some of the most novel, complex and hotly litigated issues relating to class action litigation under the Right to Repair Act – as well as highly technical and scientific expert testimony (for which Defendants have proffered contrary experts). (*Id.*, ¶ 21.)

For these reasons, Plaintiffs recognize the risks involved in further litigation. In light of the foregoing, Plaintiffs and Class Counsel maintain that the gross recovery of over 98% of the Class's potential trial damages is fair, reasonable, and adequate, and in the best interest of the Class in light of all known facts and circumstances. (*Id*., ¶ 25-29; Deborah and Grant Cain Decls., ¶ 8.) Indeed, if this matter were to proceed to trial, Class Counsel would be well-within its right to: (a) incur additional expert and trial-related costs; and (b) a 40% contingency fee – all of which would further dilute the net recovery to the Class.

Significantly, in negotiating the Settlement, Plaintiffs and Class Counsel were careful to limit the release to the claims actually asserted in this action related to any alleged violations of Civil Code § 895 *et seq.* arising from the installation of copper pipes. The release expressly excludes any *other* construction defects or *other* claims relating to the construction of the homes. (Kellner Decl., ¶ 32.)

Thus, under all of the criteria applicable to consideration of class action settlements, Plaintiffs respectfully submit this this Settlement must be deemed fair, reasonable and should be finally approved. *Kullar,* 168 Cal.App.4th at 128; *Wershba*, *supra*, 91 Cal.App.4th at 244-45; *Dunk*, *supra*,

48 Cal.App.4th at 1801.[1]

III. CONCLUSION

For all the foregoing reasons, Plaintiffs request that this Court finally approve the Settlement as being fair and reasonable.

Further, pursuant to the reasons set forth in the accompanying Memorandum of Points and Authorities for Attorneys' Fees, Plaintiffs request that this Court 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, approve the requested Class Representative incentive payment in the amount of $5,000.00, authorize the Settlement Administrator to perform its post-approval responsibilities pursuant to the terms of the Settlement, and approve the Settlement Administrator's request for fees of $15,000.00 – all pursuant to the terms of the Proposed 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

[1] Some courts look at the reaction of class members to determine if a settlement that directly affects their interests should be approved as fair, adequate, and reasonable. Here, not a single Class Member objected and no participating Class Member opted-out of the Settlement. (Kellner Decl., ¶ 45; Snow Decl., ¶¶ 14-15.)

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 FINAL APPROVAL OF CLASS ACTION SETTLEMENT** on the interested party(s):

SEE ATTACHED SERVICE LIST

by the following means:

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

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

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

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

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

Dated: 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

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