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

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

25 MADLEN DYE, an individual; GRANT CAIN,
26 an individual; DEBORAH CAIN, an individual,
27 on behalf of themselves and all others similarly
28 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

**DECLARATION OF RICHARD L.
KELLNER IN SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT,
ATTORNEYS' FEES & COSTS, AND
INCENTIVE AWARDS**

Hearing Date: February 23, 2023

Time: 2:00 p.m.

Dept.: CX-101

Complaint Filed: 05/09/2013

[Memoranda of Points and Authorities,
Declarations of Richard Bridgford, Patrick
McNicholas, Deborah Cain, Grant Cain, and
Makenna Snow filed concurrently herewith.]

1 **DECLARATION OF RICHARD L. KELLNER**

2 I, Richard L. Kellner, declare as follows:

3 1. I am an attorney at law duly licensed to practice before all of the courts of the
4 State of California and am a founder of Kabateck LLP (“KBK”) and presently of-counsel to the
5 firm. KBK is co-counsel of record for Plaintiffs in this action. I have personal knowledge of the
6 proceedings in this matter, including those facts and circumstances stated herein. If called upon
7 to do so, I could and would competently testify under oath as to those matters set forth in this
8 Declaration.

9 2. KBK, along with its co-counsel Bridgford Gleason & Artinian and McNicholas &
10 McNicholas have been jointly prosecuting this class action and other pinhole leak class actions
11 before this Court. To date, three of these cases (in addition to the present one) have settled on a
12 class-wide basis, and Class Counsel is in the process of documenting three additional class-wide
13 settlements of the OC Pipe cases.

14 3. KBK was brought into these cases because of our expertise and reputation in
15 handling class actions and complex litigation matters.

16 4. KBK is one of the leading plaintiff-only law firms in the United States, having
17 recovered over \$1 billion for its clients. My partner (Brian Kabateck) and I have established a
18 strong reputation throughout the nation for our litigation skills.

19 5. Brian Kabateck is the former President of the Consumer Attorneys of California
20 and the Beverly Hills Bar Association. He has been recognized by the Daily Journal as among
21 the Top 100 attorneys in California every year since 2010, and in 2010 shared the NAACP’s
22 Champion of Civil Rights award with me in connection with our representation of the
23 organization in historic predatory lending litigation. Mr. Kabateck has been practicing law for
24 over 28 years.

25 6. I have been practicing law for over 36 years. I have been lead or co-lead counsel
26 on some of the largest class action in this country and – along with Mr. Kabateck – have
27 recovered more than \$1 billion for our clients. I have tried more than 20 cases to verdict, and
28 handled more than 100 appeals throughout this nation. For more than five years, I served as chair

1 of the Complex Court Committee for the Los Angeles County Bar Association, and have served
2 on the Executive Committee of Bet Tzedek and the National Trial Lawyers. I have also served as
3 a Trustee for the Los Angeles County Bar Association for two years, and have been named one
4 of the top 100 trial lawyers by the National Trial Lawyers Association for the past 8 years.

5 7. Our law firm is staffed by excellent attorneys with a tremendous amount of
6 experience handling class actions

7 8. The following is a very small sampling of the class actions in which KBK has
8 acted as lead or co-lead counsel:

9 (a) KBK was selected as class counsel in *Jones v. City of Los Angeles* (L.A.
10 Superior Court, Case No. BC577267) which involves a lawsuit against the
11 City of Los Angeles in a water dispute. Significantly, it was the Court that
12 appointed the firm to investigate a collusive settlement agreement that was
13 reached between former class counsel and the firm.

14 (b) KBK's attorneys obtained a \$20,000,000 settlement of the action entitled
15 *Marootian, et al. v. New York Life Insurance Company*, Case No. C99-
16 12073 CAS (MCx) (U.S.D.C., Central Dist. CA), in which the plaintiffs
17 alleged that New York Life Insurance Company failed to pay benefits
18 under life insurance policies it issued in and following 1875 in the Turkish
19 Ottoman Empire on the lives of persons of Armenian descent;

20 (c) In *Epson Ink Cartridge Cases*, L.A.S.C. Case No. BC293641 & S.F.S.C.
21 Case No. CGC-03-425588, KBK obtained a settlement on behalf of a
22 Nationwide class of consumers whose Epson printer cartridges were
23 defined by printer software as being empty when, in fact, they contain a
24 substantial amount of ink and may continue to print. The settlement is
25 conservatively valued at over \$300 million;

26 (d) KBK was co-lead counsel in *Checkmate v. Yahoo!, Inc.*, U.S. District
27 Court, Case No. 05-cv-4588 (U.S.D.C., Central Dist. CA), which alleged
28 that defendants improperly charged its pay-per-click internet advertising

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clients for fraudulent website "clicks" by third parties. This class action was settled and finally approved;

- (e) KBK was lead counsel in *Marisol Balandran, et. al. v. Labor Read, Inc., et. al.*, L.A.S.C. Case No. BC 278551, an employment discrimination case involving more than 200 women, which was settled and finally approved;
- (f) KBK was lead counsel in *Washington v. Key Health Medical Solutions*, L.A.S.C. Case No. BC473716, a consumer class action involving improper medical billing practices by a third party lien company, that was settled and finally approved;
- (g) KBK was co-lead counsel in *Alba v. Papa John's USA, Inc. et al.*, U.S. District Court, Case No. 05-cv-7487 (U.S.D.C., Central Dist. CA), a wage and hour suit involving more than 900 possible plaintiffs who worked at Papa John's pizzerias, which was certified by the United States District Court and then settled;
- (h) KBK was co-lead counsel in *Hurtado v. TEG/L V, Environmental Services Inc.*, LASC Case No. BC276468, a class action for unpaid wages that was settled and finally approved;
- (i) KBK was co-lead counsel in *Harrison, et al. v. Pacific Bay Properties, et al.*, L.A.S.C. Case No. BC285320, a construction defect class action that was settled and finally approved;
- (j) KBK was lead counsel in *Largo Cargo Co., v. Google, Inc.* U.S. District Court, Case No. 10-CV-00241 (U.S.D.C., Northern District, CA), a click-fraud case against Google related to its AdWords program. The court finally approved the settlement in 2011;
- (k) KBK was co-lead counsel in *Lockette v. Ross Stores, Inc.*, U.S. District Court, Civil No. 07-cv-3430 MMC, an FLSA collective action for unpaid overtime based on the misclassification of assistant managers. Final settlement approval was granted;

- 1 (l) KBK was co-lead counsel in *Springer v. Stanford Hospital and Clinics, et*
2 *al.*, L.A.S.C, case number BC470522, a class action involving violations of
3 the Confidential Medical Information Act (“CMIA”) on behalf of over
4 19,000 patients. Final approval was granted following class certification;
5 (m) KBK as co-lead counsel in another CMIA class action in *Rice v. Cottage*
6 *Health Systems*, O.C.S.C., case number 30-2014-00701147 involving over
7 50,000 patients. Final settlement approval was granted.

8 9. As noted above, KBK also successfully represented the National Association for
9 the Advancement of Colored People in a class action based on the racially discriminatory lending
10 practices of 18 national mortgage lenders. *NAACP v. Ameriquest Mortgage Company et al.*, U.S.
11 District Court, Case No. 07-cv-0794 (U.S.D.C. Central Dist. CA). This resulted in Mr. Kabateck
12 and myself being awarded the Champion of Civil Rights award from the NAACP.

13 10. Indeed, Mr. Kabateck and I are recognized as two of the leading class action
14 and complex litigation attorneys in the United States.

15 **FACTUAL AND PROCEDURAL BACKGROUND OF THIS CASE**

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

- 22 a. Specifically, Plaintiffs allege (with the support of expert, scientific testimony)
23 that there is a chemical reaction between the particular water supplied to the
24 class homes and the standardized copper pipe systems that causes corrosion
25 that will eventually result in a leak of the copper pipes so as to shorten their
26 useful life.

27 12. In addition, there were 17 other class actions filed by the same attorneys relating
28 to other construction projects and developers in Orange County – all containing the same core

1 contentions that the standardized copper pipes installed in the homes violate the Right to Repair
2 Act in that when combined with the unique chemical composition of the water supplied to this
3 area, the copper pipes corrode so as to lessen the useful life of the copper pipe systems.

4 13. In fact, shortly after the operative complaints were filed, the cases were all
5 related before the same Orange County Superior Court judge in the Complex Civil Court.

6 14. Now, nine of these related OC Pipe class actions have settled and/or are the
7 subject of motions for preliminary/final approval of settlements.

8 **The Litigation of This Case and the Related Class Actions.**

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

14 16. The first area of major common litigation involved the developer defendants’
15 attacks on the complaint and their assertion that individual issues prevented class treatment.
16 The trial judge (Judge Steven L. Perk) issued rulings that dismissed the class allegations. Those
17 orders were appealed in two cases – *Brasch v. K. Hovnanian, et al.* (Case No. 30-2013-
18 00649417) and *Chiang v. D.R. Horton, et al.* (Case No. 30-2013-00649435) – and the Court of
19 Appeal ultimately reversed Judge Perk’s ruling that had dismissed the class allegations.

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

- 22 a. At first, Judge Thierry Patrick Colaw (who replaced Judge Perk in these
23 related cases), denied numerous motions to dismiss by the developer
24 defendants based upon their claim that the language of SB 800 prohibited
25 class actions.
- 26 b. Writs were filed by the developer defendants on these Orders – which were
27 all ultimately denied by the Court of Appeal.
- 28 c. Thereafter, similar motions to dismiss were filed by the developer defendants

1 (some of whom claimed that there was a change in law) and those motions
2 were denied by Judge Sanders (who had replaced Judge Colaw in these
3 related cases).

4 d. Writs again were filed (on Judge Sanders' Orders) and – this time – the Court
5 of Appeal issued an Order to Show Cause re dismissal based upon the
6 subsequent ruling in the case entitled *Kohler Co. v. Superior Court* (2018) 29
7 Cal.App.5th 55.

8 e. The matter was remanded to Judge Sanders, who conducted extensive
9 hearings and briefings on the issue. Judge Sanders issued Orders on
10 February 7, 2019 dismissing the class allegations based upon perceived
11 constraints of *Kohler* and the Court of Appeal's Order to Show Cause.

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

18 18. The third major area of litigation involved motions relating to expert testimony.
19 Plaintiffs' cases in each of the related class actions were largely predicated upon the same
20 underlying expert opinion – *i.e.*, that the combination of the common water in this area supplied
21 by the Santa Margarita Water District and the copper pipes resulted in a common chemical
22 reaction that has resulted in corrosion that lessens the useful life of the pipes. As a result,
23 tremendous discovery and motion practice revolved around this expert testimony.

24 19. Multiple defendants filed motions to strike Plaintiffs' expert's opinions based
25 upon *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747 and its
26 progeny. Ultimately, plaintiffs' counsel prevailed in such motions before BOTH Judge Colaw
27 and Judge Sanders.

28 20. The fourth major area of litigation involved substantive determination of motions

1 for class certification. Again, there was extensive discovery and motion practice involving class
2 certification – which was largely identical in each of the related Orange County Copper Pipe
3 actions. Following extensive rounds of briefing on multiple cases – as well as multiple hearings
4 – Judge Colaw first granted class certification in the lead related class action (*Del Rivero v.*
5 *Centex*), and Judge Sanders later granted class certification in six additional related class actions.

6 21. These major litigation efforts were hotly contested and time-consuming.
7 Plaintiffs’ counsel devoted substantial resources to this litigation, even though there remained a
8 very real risk that the case could result in dismissal or a defense judgement at multiple junctures
9 of the litigation. The litigation involved some of the most complex and hotly litigated issues
10 relating to class action litigation under the Right to Repair Act – as well as highly technical and
11 scientific expert testimony (for which Defendants have proffered contrary experts).

12 **Settlement Discussions in This Class Action**

13 22. Counsel for the parties in this Action engaged in extensive settlement negotiations
14 following years of extensive litigation regarding the pivotal and key issues relating to: (a)
15 whether the case can proceed as a class action; (b) whether the scientific evidence that Plaintiffs
16 intended to use to prove their case was admissible under *Sargon* and its progeny; and (c) whether
17 the case was amenable to class treatment.

18 23. Subsequent to certification of this class action, the Parties engaged in arms-length
19 negotiations before Ross W. Feinberg, Esq. from JAMS ADR. Mr. Feinberg has acted as a
20 mediator in a number of these Orange County Copper Pipe actions. Further, Mr. Feinberg is
21 considered one of the leading mediators of construction defect actions, including those venued in
22 Orange County, California.

23 24. As a result of this mediation and subsequent settlement discussions, the parties
24 were able to reach agreement on settlement.

25 25. This Settlement in this case is substantively identical to the one for which this
26 Court granted final approval on December 23, 2022 in *Foti, et al. v. John Laing Homes*
27 (*California*) *Inc., et al.*, Orange County Superior Court, Case No. 30-2013-00649415-CU-CD-
28 CS, at ROA # 451.

1 26. With respect to the amounts actually negotiated, Class Counsel engaged in
2 substantial due diligence by obtaining (prior to engaging in settlement discussions) a real-life bid
3 for the actual costs of replacing the copper pipes for the homes. We decided to use AMA
4 Repiping, LLC (“AMA”) to provide the bids because: (a) AMA was the contractor who actually
5 repiped homes as part of the settlement of two of the OC Pipe class actions; and (b) AMA was
6 one of the major players for PEX repiping throughout Southern California.

7 27. To prepare its bids, AMA obtained the floor plans for the homes included in this
8 class action. With those plans, AMA provided not only a “price”, but an actual bid that is valid
9 for one year for the homeowners to re-pipe their homes – if they elect to use AMA. A true and
10 correct copy of the AMA email containing the pricing proposal is attached to the Compendium of
11 Exhibits as **Exhibit G**.

12 28. AMA’s bid for the homes ranged from \$10,421 to \$10,944 based upon the various
13 Floor Plans for the homes in the class – to an average of \$10,639.86 per home to replace the
14 copper pipes in the homes.

15 29. Thus, the \$10,500.00 average gross settlement amount for each class member (a
16 \$1.932 million common fund for 184 class members) represents approximately 98.69% of the
17 costs *today* to replace their copper pipe systems with PEX for the 184 class members.

18 30. Once the size of the Settlement Fund and the settlement class definition was
19 agreed upon by the parties, negotiations were conducted regarding the amount of attorneys’
20 fees/costs, class administrator fees/costs and class representative enhancements for which
21 Defendants will not provide any objections.

22 31. Plaintiffs’ counsel agreed to a 1/3 contingency fee calculation in this case which –
23 as demonstrated below – represents less than any apportionable lodestar for the work done that
24 benefitted the settlement class.

25 32. The settlement is a “claims-paid” settlement – and the only reason that payment
26 would not be made from the Settlement Fund is if a class member “opts-out” of the settlement.
27 Further, Plaintiffs and Class Counsel were careful to limit the release to the claims actually
28 asserted in this action related to any alleged violations of Civil Code § 895 *et seq.* arising from

1 the installation of copper pipes. The release expressly excludes any *other* construction defects or
2 *other* claims relating to the construction of the homes.

3 33. To date, there are no opt-outs who are actual class members. There was one set
4 of prior owners (husband and wife Nolan and Dianna Hoffman) who submitted an opt-out form,
5 but they are not eligible class members because they are prior homeowners who did not re-pipe
6 their homes. As this Court has suggested in connection with the *Foti* settlement, Class Counsel
7 has mailed a letter to the Hoffmans explaining that they are not covered by the class definition –
8 even though they have ostensibly submitted a Notice of Exclusion form..

9 **Judge Sanders’ Preliminary Approval of the Proposed Class Settlement**

10 34. On August 31, 2022, Judge Sanders granted Plaintiffs’ motion for preliminary
11 approval of the class settlement, subject to some changes relating to the mechanics of resolving
12 any potential dispute by potential class members in the chain of title for the same home. [ROA
13 563.)

14 35. On November 21, 2022, this Court issued an Order re-setting the hearing date on
15 this Motion for Final Approval to February 22, 2023. [ROA 588].) This re-setting was pursuant
16 to Stipulation and Proposed Order, based upon the fact that in their due diligence, the Class
17 Administrator discovered that the chain of title information was incomplete for the Notice of
18 Class Settlement mailed to 27 individuals in the chain of title for the class homes.

19 36. The Settlement Notice packets for those homeowners were mailed on November
20 18, 2022. There have been no objections or opt-outs filed with respect to these homeowners.

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

28 38. Because it is impractical and cost-prohibitive to physically inspect each home to

1 determine the individual in the chain of title who has a right to redress, the preliminarily
2 approved Settlement provides the following process that determine the individual (in the chain of
3 title) who has the right to redress:

4 a. First, the class administrator determined and mailed the Class Notice and other
5 documents to the individuals in the chain of title for the homes included in the
6 Class.

7 i. For the present owners of the subject homes to receive any benefits
8 from this Settlement, **they do not have to do anything.**

9 ii. For prior owners who paid for a repipe/epoxy to receive the benefits
10 from this Settlement, they must fill out a simple Prior Owner
11 Verification Form that attests to their replacement of the copper pipes
12 in the home that is included in the Class.

13 b. In the event a prior owner submits a Prior Owner Verification Form, the
14 present owner is sent a letter from the Class Administrator advising that owner
15 that a Prior Owner Verification Form was submitted with respect to the home
16 – and the present owner is then given the opportunity to contest that assertion
17 in the Prior Owner Verification Form that the prior owner replaced the copper
18 pipe system. (See A, Settlement Agreement (modified), § 4.4.1.)

19 39. Finally, with respect to any dispute between the homeowners in the chain of title,
20 Ross Feinberg has been designated as the final arbiter of all such disputes. (the Compendium of
21 Exhibits, **Exh A**, Settlement Agreement (modified), § 4.4.1.)

22 40. There are presently two homes that potentially require Mr. Feinberg's adjudication
23 of disputes – with respect to the homes located at 1 Duffield Lane and 4 Earthen Court. The
24 present homeowner for both of those homes – in response to notice of submission of the Prior
25 Owner Verification Form – have submitted documentation that they have re-piped their homes
26 with PEX. The prior owners have been provided with a copy of this documentation, and the
27 parties await the Prior Owners determination to submit documentation of their claim and
28 submission to Ross Feinberg for final arbitration.

1 41. With respect to Class Notice, a true and correct sample of which is attached to the
2 Compendium of Exhibits as **Exhibit B**, it describes in plain language the background of the
3 litigation, the benefits that Defendant will be providing to the Class Members, the meaning and
4 effect of opting out, the right to object and the procedure to do so, the legal effect of not
5 objecting, and the timing of other important events during the settlement process. Indeed, we
6 were extremely careful to model the Notice after the Federal Judicial Center’s forms, as
7 suggested by the Court on its website.

8 42. We are extremely pleased that, to date, there have been **no opt-outs** from any
9 Class Member covered by this Settlement and **no objections** to this Settlement. As noted above,
10 one homeowner household submitted an Opt-Out Notice, but they do not qualify as class
11 members because: (1) they are not present owners of the subject homes; and (2) there is no proof
12 of indication that they paid for the replacement of copper pipes. (As per the Court’s direction in
13 the *Foti* matter, Class Counsel sent them a letter (the Hoffmans) stating that they do not fit within
14 the class definition even though they submitted an Opt-Out Notice for the above reasons.

15 43. Thirteen individuals have submitted Prior Owner Verification Forms, stating
16 under penalty of perjury that they have paid for the replacement of copper pipes. Pursuant
17 to the terms of the Settlement and the Court’s August 31, 2022 Order, the Class
18 Administrator sent to the present owner of the subject homes a letter advising them of the
19 fact that a Prior Owner Verification Form had been filed and providing them with an
20 opportunity to submit their own evidence if they allege their replacement of the home’s
21 copper pipes. (Compendium of Exhibits, **Exh A**, § 4.4.1.)

22 44. Again, there are presently two homes that potentially require Mr. Feinberg’s
23 adjudication of disputes – with respect to the homes located at 1 Duffield Lane and 4
24 Earthen Court. The present homeowner for both of those homes – in response to notice of
25 submission of the Prior Owner Verification Form – have submitted documentation that
26 they have re-piped their homes with PEX. The prior owners have been provided with a
27 copy of this documentation, and the parties await the Prior Owners determination to submit
28 documentation of their claim and submission to Ross Feinberg for final arbitration..

1 portions of Dr. Dempsey’s opinions:

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

13 See 7/6/17 Order Denying Motion to Strike Dr. Dempsey Testimony, a true and correct
14 copy of which is attached to the Compendium of Exhibits as **Exhibit D**.

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

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

24 (Compendium of Exhibits, **Exhibit D**, 7/6/17 Order Denying Motion to Strike Dr.
25 Dempsey Testimony).

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

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

- Downey Brand
- Koeller, Nebeker, Carlson & Haluck LLP

- 1 • Lorber, Greenfield & Polito
- 2 • Newmeyer & Dillion LLP
- 3 • Plante Lebovic LLP
- 4 • Quinn Emanuel Urquhart & Sullivan LLP
- 5 • Sheppard Mullin LLP
- 6 • Sellar Hazard & Lucia LLP
- 7 • Wood, Smith, Henning & Berman LLP

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

15 56. I have undertaken the task of collecting the time records from KABATECK, BGA
16 and M&M. I spent approximately 25 hours not only going through the time records in
17 connection with the *Foti* fee application to document the tasks and legal work performed, I have
18 also de-duplicated entries from KABATECK and BGA where one task was inadvertently entered
19 in multiple files. KBK’s time records are based upon contemporaneously entered time on the
20 firm’s time management program called Timeslips.

21 57. All of the time records are available for the Court’s confidential review.
22 Unfortunately, we cannot publicly produce these time records because they contain attorney work
23 product for ongoing cases.

24 58. The law firms have provided around 23,000 hours of attorney time on these cases
25 over 9.5 years of heavy litigation – with a lodestar in excess of \$16 million. Given this volume,
26 it is impossible to provide details regarding the particular tasks in a generic sense, such as
27 conferences, preparation of briefs, court appearances, etc. in this motion.

28 59. In the next sections of my Declaration, I shall set forth the particular legal work

1 that was done in three significant phases of this case: (a) Phase I – the filing of the complaints
2 through the first appeals attacking the pleadings [May 2012 – December 31, 2015]; (b) Phase II
3 January 1, 2016 through the First Order Granting Class Certification [January 1, 2016 – July 30,
4 2017]; and (c) Phase III – Judge Sanders’ Assignment, Additional Orders Granting Class
5 Certification, and the Second Appeal Relating to *Kohler* [8/1/17 to the present]. This is all based
6 upon my personal knowledge, as well as my review of Class Counsel’s time records. I have also
7 personally reviewed all of this with my co-lead counsel – Michael Artinian.

8 **The First Phase of the Litigation – Filing Through Adjudication of the First Appeals**
9 **Attacking the Pleadings. [May 2012 – December 31, 2015]**

10 60. Prior to filing the complaint in this action in May 2013 (and all of the other OC
11 Pipe cases), Class Counsel expended significant time to research the potentially novel litigation
12 approach of applying SB 800 to a class action seeking recovery for copper pipes that its experts
13 had opined were corroding as a result of the combination of unique water supplied to the homes
14 and the copper pipes.

15 61. The three class counsel firms are Bridgford Gleason & Artinian (“BGA”),
16 Kabateck LLP (“Kabateck”) and McNicholas & McNicholas LLP (“M&M”), all of which bring
17 to the table extensive combined experience in class action litigation, construction defect
18 litigation, and trial work.

19 62. Kabateck was included in this case because of our extensive class action
20 experience, as well as our litigation skills in handling complex legal actions.

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

26 64. Class Counsel approached and evaluated potential experts who could credibly
27 evaluate the potential cause of the prolific corrosion and leaking of copper pipes in Ladera
28 Ranch. Once the expert consultants were identified and retained, the work began for them to

1 provide an initial evaluation of the potential causes of the prolific corrosion and leaks and
2 whether the causes would support SB 800 violations.

3 65. Substantial time was also expended to develop legal theories since there had not
4 previously been a successful class litigation of SB 800 claims in California.

5 66. At the same time, Class Counsel had to investigate the facts and law regarding
6 potential arguments that certain putative class members' claims might be subject to binding
7 arbitration clauses.

8 67. Following the filing of the initial wave of complaints, the defendants initiated their
9 first wave of motions as part of an apparent strategy to strike the class allegations in the
10 complaints – since they undoubtedly knew that it was not economically feasible for homeowners
11 to litigate this expert-driven case on an individual basis. This first round of motions to strike
12 class allegations were based upon the assertion that “construction defect actions are not suited for
13 class actions.” Class Counsel spent significant time opposing these motions – including legal
14 research performed by partners and associates, research of Legislative materials relating to the
15 enactment of SB 800, and the drafting of papers opposing the motions to strike.

16 68. All of the legal arguments that Class Counsel made in opposition to the initial
17 wave of motions to strike class allegations were largely identical for all the OC Pipe cases
18 because they were in response to substantively similar defendant developers motions – but still
19 required individualized oppositions for each case, consuming additional time and resources.

20 69. At the same time, the defendant developers sought pre-litigation site inspections
21 and other SB 800 remedies that Class Counsel and the plaintiffs did not believe were required for
22 SB 800 class actions. This was all extremely time-consuming for the Class Counsel team.

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

26 71. Class Counsel then turned their attention to the appeals. Two cases were selected
27 to proceed on the appeals (*Brasch v. K. Hovnanian* and *Chiang v. D.R. Horton*), with all the other
28 OC Pipe cases (including this action) being stayed during the pendency of the appeals. Class

1 Counsel researched and drafted the appellate briefs, and argued the appeals, which resulted in
2 reversals by unpublished opinions from the Fourth District on August 19, 2015 in *Brasch v. K.*
3 *Hovnanian Enterprises, Inc.* (Cal. App., 4th Dist., August 19, 2015) 2015 WL 4940632 and
4 *Chiang v. D.R. Horton Los Angeles Holding Company, Inc.* (Cal. App., 4th Dist., August 19,
5 2015) 2015 WL 4940630. The defendants also sought writs to the Supreme Court. A remittitur
6 issued on October 19, 2015, and the case litigation resumed upon remand at the Joint Status
7 Conference before the new judge – Hon. Thierry Patrick Colaw – on December 7, 2015. [*See*,
8 ROA 152.]

9 72. KBK and BGA were the primary law firms working on the appeals – and I was
10 asked to orally argue the case. From this point forward, I took a leadership role in all legal
11 writing, all appeals and all major depositions and oral argument.

12 73. Effectively, Mr. Artinian (from BGA) and myself (from KBK) served as co-lead
13 counsel for all of the OC Pipe cases.

14 74. At the December 7, 2015 status conference, Judge Colaw granted Plaintiffs’ oral
15 request to file an amendment to the complaint, and discovery was stayed.

16 75. Throughout this initial litigation period (and through the present date), Class
17 Counsel has spent significant time gathering and assembling client documents, propounding and
18 responding to the initial waves of discovery in these cases, and maintaining ongoing client
19 contact. To a great extent BGA took the lead on this and most of the time entries are from BGA
20 for these tasks. There were also numerous status conferences, discussions and conferences with
21 the various defense counsel regarding motions and discovery issues, and also some preliminary
22 settlement discussions. Attorneys from BGA and KBK primarily made all court appearances,
23 worked on all motions and M&M participated in discovery work (along with primarily BGA).

24 76. If the Court of Appeal affirmed Judge Perk’s initial rulings at issue in the *Brasch*
25 and *Chiang* appeals, ***all of the cases – including this one*** – would have effectively been defeated
26 because it was not economically feasible to litigate these cases on an individual basis. As a
27 result, the appeals were litigation determinative for ***all of the cases***, as were the attempts to
28 enforce pre-litigation SB 800 procedures on an individual basis.

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

5 78. For this initial period of approximately 2.5 years of the litigation, I have compiled
6 Class Counsel’s lodestar for the legal services described above were as follows:

7 **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	<u>2,777.40</u>	<u>\$495</u>	<u>\$1,374,813.00</u>
		Subtotal			\$2,603,951.75

11 **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
Joshua Haffner	Associate	25	181.30	\$750	\$135,975.00
Terry Bailey	Associate	22	266.32	\$750	\$199,740.00
Tsolik Kazandjian	Associate	10	322.80	\$350	\$112,875.00
David Riley	Associate	9	178.60	\$350	\$62,510.00
Levi Plesset	Associate	9	<u>60.50</u>	<u>\$350</u>	<u>\$21,175.00</u>
		Subtotal			\$661,960.00

18 **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	<u>300</u>	<u>\$550</u>	<u>\$165,000.00</u>
		Subtotal	1,490		\$1,386,500.0

23 79. Below, in the last section, I will set forth the experience of all KBK billers and the
24 support for their hourly rates.

25 80. Again, for the extended period of time for this legal work, the number of billers is
26 reasonable given the circumstances. For KBK, Mr. Haffner was primarily responsible for the
27 legal writing, court appearances and overall strategy (in a role I took over at the end of this phase
28 of the litigation). Mr. Kabateck was involved in global strategy and settlement

1 discussions/mediations. Mr. Bailey provided his expertise in construction defect issues. And the
2 remainder of the associates provided litigation and discovery support.

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

5 81. During this next phase of the litigation, Judge Colaw agreed to have three of the
6 OC Pipe litigation cases take the lead for class certification purposes – with *Del Rivero v. Centex*
7 class certification motion being heard first on April 28, 2017, *Brasch v. K. Hovnanian* to be heard
8 second and *Williams v. Shea* to be heard third.

9 82. During this time period, there was extensive work done by the law firms,
10 including:

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

1 plaintiffs in these actions.

- 2 g. Development of other common experts, including a plumbing expert and a
3 damages/cost of repair expert.
- 4 h. The critical preparation for and taking of the deposition of defendants' experts.
 - 5 i. This included the critical deposition of David Howitt and Steven
6 Reiber – the defendants' water chemist experts. The admissions
7 adduced during cross-examination of Dr. Howitt and Mr. Reiber were
8 critical to plaintiffs' victories in all of the class certification motions
9 (as I describe above).
 - 10 ii. There were also statistics experts and other key defense witnesses that
11 were deposed by Class Counsel.

12 83. The defendant developers also continued to file various motions attacking the
13 plaintiffs' rights to bring SB 800 class actions – repeatedly seeking reargument whenever a new
14 appellate opinion was issued that conceivably affected their arguments.

15 84. Class Counsel spent significant time drafting the Oppositions to these motions, as
16 well as responses to repeated (and unsuccessful) writs that were filed by the developer defendants
17 to the Court of Appeal (and the California Supreme Court). Again, Mr. Artinian and I were the
18 primary attorneys working on all of this, with Associate assistance from Mr. Donoghue.

19 85. The class certification motions were “bet-the-litigation” affairs – with the
20 defendants proffering every conceivable defense and argument in opposition to certification.
21 Each motion had extensive legal arguments, factual evidence and evidentiary objections.
22 Further, and no less significant, the defendant developers focused their arguments on the
23 admissibility of Dr. Dempsey's expert opinion based upon *Sargon Enterprises, Inc. v. University*
24 *of Southern California* (2012) 55 Cal.4th 747 and its progeny.

25 86. The motions also entailed various attacks from the defendants as to whether SB
26 800 claims could be litigated as class actions.

27 87. Repeated hearings were conducted on the class certification motion for *Del Rivero*
28 – simultaneously while Class Counsel prepared the discovery, experts and motions for the *Shea*

1 and *Brasch* matters.

2 88. Not surprisingly, at every hearing – including the *Del Rivero* class certification
3 hearing – all of the defendant developers’ counsel attended because that initial class certification
4 would ultimately form the framework for the class certification orders that were eventually
5 entered in all of the other cases that were certified.

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

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

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

20 **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	<u>2,006.60</u>	<u>\$495</u>	<u>\$993,267.00</u>
		Subtotal			\$2,301,532.00

24 **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
Terry Bailey	Associate	32	7.82	\$750	\$5,865.00
Joshua Haffner	Associate	25	9.00	\$750	\$6,750.00
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					\$1,090,791.00

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

92. For KBK, the lion’s share of billable time was for myself, since I had taken a lead on the critical class certification motion, the writs and expert depositions that were all case-dispositive. Similarly, BGA’s time was primarily attributed to Mr. Artinian (who worked along with me on the critical class certification and expert depositions, as well as his specialty in construction defect related issues (including statutory issues). Mr. Donoghue provided tremendous associate support (along with the other associates at my firm) for discovery and client contact.

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).

93. In January 2018, Judge Glenda Sanders was assigned all of the OC Pipe class actions upon the retirement of Judge Colaw. 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).

94. 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

95. 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.

96. Class Counsel worked together to accomplish the following ongoing litigation activities: (a) the class action/expert related legal activities; (b) the construction defect and

1 statutory legal activities; and (c) litigation support consisting of research, document management,
2 discovery work, and maintaining ongoing client communications. Further, Class Counsel
3 reviewed and revised drafts of legal briefs – which required significant coordination and
4 discussion among Class Counsel concerning legal issues, strategy and procedure.

5 97. Again, all of this legal work was against approximately eight well-funded and
6 motivated defense firms representing multiple developers.

7 98. On July 18, 2018, Judge Sanders denied – ostensibly for the final time – multiple
8 defendants’ motions to strike the class allegations based upon their argument that RORA
9 prohibits class actions. In her Order, Judge Sanders also certified her decision under Code of
10 Civil Procedure § 166.1 for immediate writ or appeal. Judge Sanders’ intent was to have this
11 matter finally resolved so that all of the OC Pipe litigations could proceed.

12 99. Further, Judge Sanders stayed the litigation of all of the OC Pipe cases until the
13 writ was determined by the Court of Appeal. Defendants filed their writs in the *K. Hovnanian*
14 and *Del Rivero* actions in September 2018.

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

22 101. Upon remand, Judge Sanders ordered the parties to provide Supplemental Briefing
23 on the issue and held a hearing on the matter on January 19, 2019. Class Counsel drafted the
24 briefs and all responsive papers – again coordinating their efforts as they have throughout the 9.5
25 years of litigating these 17 related cases. Class Counsel also argued at the January 2019 hearing.
26 Needless to say, this was critical to all of the OC Pipe cases because, if the defendants prevailed,
27 the class members’ ability to recover anything from the defendants would be severely
28 compromised – if not eliminated altogether.

1 102. On February 7, 2019, Judge Sanders issued her opinion granting the motion to
2 strike class allegations under *Kohler*, while setting forth her analysis of why class actions are
3 permitted under RORA.

4 103. Class Counsel was then required to prepare the appeal from Judge Sanders’
5 February 7, 2019 Order, which included critical review and authorship on the complex and
6 unprecedented statutory issues. Plaintiffs’ highly detailed brief encompassed 48 pages in length
7 – and the Court is invited to review the high quality of the submissions. A true and correct copy
8 of this appellate brief that I prepared along with Mr. Artinian is attached to the Compendium of
9 Exhibits as **Exhibit E**.

10 104. Again, Class Counsel was extremely careful to avoid duplication of work and
11 have their primary attorneys with knowledge work on this critical part of the litigation.

12 105. Following the Reply briefing, the Court of Appeal heard oral argument by Class
13 Counsel. On August 27, 2020, the Court of Appeal issued its unpublished opinion – reversing
14 the trial court and ruling that class actions are permitted under RORA and the facts of these
15 cases, consistent with the Second District’s ruling in *Kohler*. (*See Brasch v. K. Hovnanian*
16 (Court of Appeal, Fourth Appellate District, August 27, 2020) 2020 WL 505108, and *Smith v.*
17 *Pulte* (Court of Appeal, Fourth Appellate District, August 27, 2020) 2020 WL 5088096. The
18 remitter for the cases issued on December 10, 2020.

19 106. Needless to say, this was a case-making event in the case.

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

27 108. Finally, the parties engaged in substantial post-certification litigation and
28 discovery. This included extensive litigation regarding an appropriate Trial Plan – which was

1 litigated in the *Del Rivero v. Centex*, *Dye v. Richmond American*, *Brasch v. K. Hovnanian* and
 2 *Smith v. Pulte* matters. Further, destructive testing and questionnaires were sent out to
 3 homeowners in the *Del Rivero v. Centex* matters – and questionnaires were also litigated and sent
 4 out in the *Brasch* and *Smith* cases. The details of class notice were also extensively litigated. On
 5 this phase of the case, Class Counsel was engaged in substantial briefing and attended numerous
 6 hearings regarding class ascertainability issues and the Trial Plans – while continuing to provide
 7 extensive (and incredibly time consuming) efforts with ongoing client contact, depositions and
 8 responses to continuing discovery.

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

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

16 **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	<u>3,537.20</u>	\$495	<u>\$1,750,914.00</u>
			Subtotal		\$4,674,065.25

20 **Kabateck LLP**

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

24 **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	\$550.00	\$11,000.00
Jeffrey Lamb	Associate	14	110	\$550.00	\$60,500.00
Michael Kent	Associate	8	35	<u>\$500.00</u>	<u>\$17,500.00</u>
			Subtotal		\$358,500.00

1 **KBK's Hourly Rates**

2 114. KBK's hourly rates are consistent with the market rate for attorneys of
3 comparable experience and skill.

4 115. In fact, the rates for the primary KBK attorneys have been repeatedly approved in
5 both Federal and State Court.

6 116. Further corroborating the market rate for the KBK attorneys is the 2015 National
7 Law Journal billing survey (See Compendium of Exhibits, **Exh. F**). Even though there has been
8 an increase in rates over the past 7 years, KBK attorney billings are consistent with those found
9 back in 2015 for California in the survey. For law firms of a size 1-25 attorneys, the rates in
10 California range up to \$1,080 for partners and \$950 for associates. KBK is considered one of the
11 elite law firms in California and a leader in the prosecution of high stakes class actions.

12 117. **Richard Kellner.** I am a 36-year partner, who was admitted to practice law in
13 New York in 1986, and thereafter in California, Florida, Nevada and Pennsylvania. As noted
14 above, I maintain leadership positions in the local and national bars, have received numerous
15 awards for my legal work and have handled some of the largest class actions in the United States.
16 My primary work in this case as effectively co-lead counsel involved those class actions skills,
17 the taking of key deposition and appellate work. My appellate experience (well over 100
18 appeals) and prevailing in cases that have established important precedent in California law is
19 extremely well known (and further documented above). My billing rate of \$925.00 per hour is
20 reasonable and has been approved before other Courts.

21 118. **Brian Kabateck.** Brian Kabateck is a 32 year attorney, who is recognized as one
22 of the leading trial attorneys in California. He has also taken leadership positions as the President
23 of the Los Angeles County Bar Association, President of the Beverly Hills Bar Association, and
24 President of the Consumer Attorneys of California organization. Mr. Kabateck has handled some
25 of the largest reported cases in the United States, has been appointed into positions of leadership
26 by the California Supreme Court and other juridical bodies and has some of the largest trial
27 verdicts in California. His billing rate of \$925.00 per hour is extremely reasonable.

28

1 119. **Joshua Haffer** was one of the senior associates working on this case. Mr.
2 Haffner has extensive experience in construction defect and complex litigation actions. Mr.
3 Haffner was admitted to practice law in California in June 1997. As a 25-year attorney, his
4 billing rate of \$750.00 per hour is fair, reasonable and consistent with the range of rates in
5 California for an attorney of his skill and experience.

6 120. **Terry Bailey** was another senior associate working on this case. Mr. Bailey also
7 provided extensive construction defect experience work for these actions. Mr. Bailey was
8 admitted to practice law in California in December 1990. As a 32-year attorney, his billing rate
9 of \$750.00 per hour is fair, reasonable and consistent with the range of rates in California for an
10 attorney of his skill and experience.

11 121. **Joel Weinberg** was an associate who provided substantial litigation associate
12 work. Mr. Weinberg was admitted to practice law in California in November 2006. As a 16-year
13 attorney, his billing rate of \$600.00 per hours is fair, reasonable and consistent with the range of
14 rates in California for an attorney of his skill and experience.

15 122. **Drew Ferrandini** was an associate who provided substantial litigation associate
16 work. Mr. Ferrandini was admitted to practice law in California in December 2012. As a 10-
17 year attorney, his billing rate of \$400 per hour is fair, reasonable and consistent with the range of
18 rates in California for an attorney of his skill and experience.

19 123. **Natalie Pang** was an associate who provided discovery and other associate related
20 tasks. Ms. Pang was admitted to practice law in California in December 2015. As a 7-year
21 attorney, her billing rate of \$400 per hour is fair, reasonable and consistent with the range of rates
22 in California for an attorney of her skill and experience.

23 124. **Tsolik Kazandjian** was an associate who provided discovery related tasks. Mr.
24 Kazandjian was admitted to practice law in California in May 2012. As a 10-year attorney, his
25 billing rate of \$350.00 per hour is fair, reasonable and consistent with the range of rates in
26 California for an attorney of his skill and experience.

27 125. **David Riley** was an associate who provided litigation support in brief writing and
28 discovery. Mr. Riley was admitted to practice law in California in December 2013. As a 9-year

1 attorney, his billing rate of \$350.00 per hour is fair, reasonable and consistent with the range of
2 rates in California for an attorney of his skill and experience.

3 126. **Levi Plesset** was an associate who provided Mr. Haffner with support in his legal
4 work. Mr. Plesset was admitted to practice law in March 2014. As an 8-year attorney, his billing
5 rate of \$350.00 per hour is fair, reasonable and consistent with the range of rates in California for
6 an attorney of his skill and experience.

7 127. Finally, with respect to the contingency rate of 1/3, this is fully consistent with the
8 market rate for large contingency fee cases that KBK works on. Indeed, our customary rate for
9 large cases is usually 40%, unless the client advances all of the client costs (and then the
10 contingency rate is in the range of 30-35%).

11 128. Unfortunately, this nine-year litigation war (with the defendant developers'
12 unrelenting motion and appellate tactics) has resulted in a situation in which Class Counsel
13 cannot obtain relief that will fully compensate them for their time – notwithstanding the excellent
14 results.

15 129. As demonstrated above, the litigation of these cases collectively was for the
16 benefit of each and every OC Pipe class action because of the commonality of evidence, legal
17 issues, experts, facts and – beyond everything else – the fact that the same jurist would likely be
18 making decisions regarding class certification and other critical motions.

19 130. Indeed, in comparable mass tort actions – the common benefit fee is customarily
20 based upon all of the work that is commonly done for the benefit of all individual plaintiffs.

21 131. While there are many ways to fairly apportion Class Counsel's work amongst
22 these cases, all of which would result in a lodestar substantially larger than the \$510,000 sought
23 in this motion.

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

28

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

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

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16 134. Quite frankly, this methodology will understate the lodestar attributable to this
17 action because: (a) it provides equal weight to cases that have been resolved years ago (even
18 though common work continued); and (b) it provides a class member amount for unresolved
19 cases for which further attrition of class membership is possible, largely through cases that are
20 compelled to arbitration that are ultimately dismissed. Nonetheless, based upon the 7.386592%
21 apportionment, Class Counsel's lodestar apportioned for this case would be \$1,242,710.22.
22 Again, this would be a negative .518 multiplier (*i.e.*, a 48.2% reduction from the lodestar).

23 135. If the Settlement Fund was larger, our collective attorneys' fees would be entitled
24 to a positive multiplier.

25 136. First, we provided the class with a substantial (if not close to full) amount of the
26 relief that they could obtain at trial.

27 137. Second, this case presented multiple issues of first impression that required a high
28 level of legal skills in order for the Class to prevail (both at the appellate level and at trial). The

1 litigation was a massive undertaking over 9 years – that precluded Class Counsel for engaging in
2 other litigation work.

3 138. Third, while all three Class Counsel firms have very active and well-established
4 litigation practices, the law firm sizes (ranging from 5 – 15 attorneys) are not law firms that can
5 litigate many cases of this size and scope.

6 139. Fourth, and no less significant, this was also highly risky litigation – where all of
7 Class Counsel’s efforts could result in a total loss at multiple juncture of the case – including: (a)
8 at the first phase when the trial court granted the defendant developers’ motions to strike class
9 allegations; (b) at the second phase when the plaintiffs could have lost class certification motions;
10 (c) at the third phase when (on appeal) the Court of Appeal initially ruled that SB 800 class
11 actions might not be permitted by the statute; (d) upon remand, when the class certification
12 motions were considered by new judges; and (e) even after all of the challenges to SB 800 and
13 class certification motions were resolved in the Class’ favor, it is possible that the plaintiffs could
14 have lost at trial.

15 140. During all of this litigation, Class Counsel funded the costs of the litigation –
16 again, under risk that they could lose the case and not recover any of their costs.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct. Executed on January 27, 2023, at Los Angeles, California.

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/s/Richard L. Kellner
Richard L. Kellner, Esq.

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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): **DECLARATION OF RICHARD L. KELLNER IN SUPPORT OF PLAINTIFFS’ MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, ATTORNEYS FEES & COSTS, AND INCENTIVE AWARD** 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.
- 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

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SERVICE LIST

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

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