

APR 03 2023

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

KAMAL ALI, an individual; and ZAINAB ALI, an individual; JOHN TORPHY, an individual, and ELIZABETH TORPHY, an individual (as Trustees of the JOHN C. TORPHY AND ELIZABETH M. TORPHY TRUST DATED 5/5/2004); on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

WARMINGTON RESIDENTIAL CALIFORNIA, INC., a Corporation; REBCO COMMUNITIES, INC. f/k/a WARMINGTON HOMES CALIFORNIA, INC., a Corporation; PLUMBING CONCEPTS, INC., a Corporation; MUELLER INDUSTRIES, INC., a Corporation; and DOES 1-100,

Defendants.

CASE NO. 30-2013-00689593-CU-CD-CXC

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

ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT

Hearing Date: March 30, 2023
Time: 2:00 p.m.
Dept.: CX-101

Complaint Filed: November 21, 2013

AND RELATED CROSS-CLAIMS.

WHEREAS, Plaintiffs and Class Representatives Kamal Ali and Zainab Ali, and John Torphy and Elizabeth Torphy (as Trustees of the John C. Torphy and Elizabeth M. Torphy Trust Dated 5/5/2004 ("Plaintiffs")) and Defendants Warmington Residential California, Inc. and REBCO Communities, Inc. f/k/a Warmington Homes California, Inc. ("Defendants"), have reached a proposed settlement and compromise of the disputes between them in the above action, which is embodied in the Settlement Agreement, filed with the Court, including modifications thereto (collectively attached hereto as Exhibit A, and hereinafter referred to as the "Settlement

1 Agreement”);

2 WHEREAS, the Court by Hon. Glenda Sanders previously granted Plaintiff’s motion for
3 class certification on July 26, 2022, and duly appointed Bridgford, Gleason & Artinian, Kabateck
4 LLP, and McNicholas & McNicholas as Class Counsel, and duly appointed Kamal Ali and
5 Zainab Ali, and John Torphy and Elizabeth Torphy (as Trustees of the John C. Torphy and
6 Elizabeth M. Torphy Trust Dated 5/5/2004 as class representatives;

7 WHEREAS, the Parties have applied to the Court for preliminary approval of a proposed
8 Settlement of the Action, the terms and conditions of which are set forth in the Settlement
9 Agreement;

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

13 AND NOW, the Court, having read and considered the Settlement Agreement and
14 accompanying documents and the motion for preliminary settlement approval and supporting
15 papers, IT IS HEREBY ORDERED AS FOLLOWS:

16 1. The Court has jurisdiction over the subject matter of the Action, the
17 Settling Parties, and all Class Members.

18 2. The Court grants preliminary approval of the terms and conditions
19 contained in the Settlement Agreement. The Court preliminarily finds that the terms of the
20 Settlement Agreement are within the range of possible approval at the Final Approval Hearing.

21 3. The Court preliminarily finds that the Settlement Agreement was the
22 product of serious, informed, non-collusive negotiations conducted at arms’ length by the parties.
23 In making this preliminary finding, the Court considered the nature of the claims, the amounts
24 and kinds of benefits paid in settlement, the allocation of settlement proceeds among the class
25 members, and the fact that a settlement represents a compromise of the Parties’ respective
26 positions rather than the result of a finding of liability at trial.

27 4. The Court further preliminarily finds that the terms of the Settlement
28 Agreement have no obvious deficiencies and do not improperly grant preferential treatment to

1 any individual class member.

2 5. Subject to further consideration by the Court at the time of the Final
3 Approval Hearing, the Court preliminarily approves the Settlement as fair, reasonable and
4 adequate to the Class, as falling within the range of possible final approval, as being the product
5 of informed, arm's length negotiation by counsel, as meriting submission to the Class for its
6 consideration.

7 6. The parties have identified the homes included within the class definition
8 of the class that this Court certified on July 26, 2022 and thus, for purposes of the proposed
9 Settlement, and conditioned upon the Agreement receiving final approval following the fairness
10 hearing and that order becoming final, the certified class shall be further defined as follows:

11 *1) All present owners of residential homes in the Class Area whose copper*
12 *pipe systems have not been replaced with PEX or epoxy coating by prior*
13 *owners of the homes, or (2) prior owners of homes in the Class Area who*
14 *replaced their copper pipe systems with PEX or epoxy coating, provided*
15 *that: (a) the homes were constructed by Warmington and substantially*
16 *completed within ten (10) years of the filing of the original complaint in this*
17 *action, (b) the original purchase agreements were signed by the builder on*
18 *or after January 1, 2003, and (c) their SB 800 claims were not released.*

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

24 8. The Court approves ILYM Group Inc. ("ILYM") as Settlement
25 Administrator to administer the notice and claims procedures of the Settlement for the purpose of
26 administering the proposed Settlement and performing all other duties and obligations of the
27 Settlement Administrator as defined in the Settlement, this Preliminary Approval Order, and/or
28 as may otherwise be ordered by the Court, with the understanding that ILYM's compensation

1 will be capped at \$27,000.00.

2 9. The Court approves, as to form and content, the Full Notice (attached
3 hereto as Exhibit "B"). The Court hereby instructs the Settling Parties to proceed with Class
4 Notice in the manner and on the schedule set forth in the Settlement Agreement as follows:

5 a. The Settlement Administrator shall serve by U.S. Mail the Class
6 Notice, Opt-Out Form and Prior Owner Verification Form on all
7 individuals within the chain of title of the Class Homes listed on
8 Exhibit "A" to the Settlement Agreement (attached as Exhibits "B",
9 "C" and "D" hereto, respectively);

10 b. For a Prior Owner of a home in the Class List to be included as a Class
11 Member, that Prior Owner must submit by mail a Prior Owner
12 Verification Form to the Settlement Administrator by within sixty (60)
13 days of mailing by the Settlement Administrator (Exhibit "D" hereto)
14 that verifies that the Prior Owner replaced the copper pipes in the
15 Class Home with PEX or epoxy coating of the pipes.

16 i. In the event a prior owner submits a Prior Owner Verification
17 Form stating that the prior owner has replaced the homes'
18 copper pipes with PEX or epoxy coating, then the Settlement
19 Administrator shall provide the present owner with written
20 notice: (a) that a prior owner has submitted a Prior Owner
21 Verification stating that the prior owner replaced the homes'
22 copper pipes with PEX or epoxy coating; and (b) the present
23 owner has 30 days within which to submit a written
24 verification to the Settlement Administrator that the home had
25 copper pipes (without any epoxy coating) at the time the
26 present owner obtained title to the home. In the event that
27 there is a dispute between a prior and present owner as to
28 whether a prior owner had replaced the copper pipes with PEX

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

8 c. For a Present Owner of a home in the Class List to be included as a
9 Class Member, the Present Owner must not submit an Opt-Out Form
10 and there must not be a Prior Owner Verification Form submitted by a
11 Prior Owner for the subject Class Home unless that Prior Owner
12 Verification Form was withdrawn or determined by Mr. Feinberg to be
13 invalid for purposes of this settlement.

14 d. For all Notice papers returned as undeliverable or changed address, the
15 Settlement Administrator shall re-send the Notice documents after a
16 skip-trace, and the time frame for a potential class member to return
17 any forms shall re-commence from the date of that re-mailing.

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

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

26 12. The Settlement Administrator must complete the notice mailing within
27 thirty (30) calendar days of preliminary approval being granted, in envelopes marked "Personal
28 and Confidential."

1 13. By the time of filing of the final settlement approval motion, the
2 Settlement Administrator shall provide, and Plaintiff shall file proof, by affidavit or declaration,
3 of the mailing of the Settlement Notice in the form and manner provided in the Agreement and in
4 this Preliminary Approval Order.

5 14. The Settlement Administrator must also create a dedicated website for this
6 Settlement, which will make available the Settlement Agreement, the operative complaint, the
7 pleadings submitted in support of preliminary approval, approval of attorneys' fees, costs and
8 class representative enhancements, and final approval and all orders continuing or re-setting any
9 hearing dates. The dedicated website shall also make available all Orders by this Court with
10 respect to aforesaid motions.

11 15. The Court finds that the Parties' plan for providing notice to the Class
12 described in the Settlement Agreement complies fully with the requirements of due process and
13 all other applicable provisions of law.

14 16. Any member of the Class who desires to be excluded from the Class, and
15 therefore not be bound by the terms of the Settlement Agreement, must submit to the Settlement
16 Administrator, pursuant to the instructions set forth in the Notice, a timely and valid written Opt-
17 Out Form (attached as Exhibit "C" hereto).

18 17. Members of the Class shall have sixty (60) days from the Notice Date to
19 submit objections and/or requests for exclusion. The Settlement Administrator shall prepare and
20 deliver to Class Counsel, who shall file with the Court, a final report stating the total number of
21 Class members who have submitted timely and valid Requests for Exclusion from the Class, and
22 the names of such individuals. The final report regarding the Claims Period shall be filed with
23 the Court within seven (7) business days of the expiration of the deadline to submit objections
24 and/or requests for exclusion.

25 18. The deadline to file the motion for final approval of the Settlement and
26 Class Counsel's fee application shall be twenty-four (24) calendar days prior to the Final
27 Approval Hearing date of **August 17, 2023**.

28 19. Responses to any objections received shall be filed with the Court no later

1 than twenty-four (24) calendar days prior to the Final Approval Hearing, and Plaintiffs'
2 responses may be included in their motion for final approval.

3 20. Any member of the Class who elects to be excluded shall not be entitled to
4 receive any of the benefits of the Settlement Agreement, shall not be bound by the release of any
5 claims pursuant to the Settlement Agreement, and shall not be entitled to object to the Settlement
6 Agreement or appear at the Final Approval Hearing. The names of all persons timely submitting
7 valid Requests for Exclusion shall be provided to the Court.

8 21. Any member of the Class may appear at the Final Approval Hearing, in
9 person or by counsel, and may be heard to orally object to the settlement and, to the extent
10 allowed by the Court, in support of or in opposition to, the fairness, reasonableness, and
11 adequacy of the Settlement, the application for an award of attorneys' fees, cost, and expenses to
12 Class Counsel, and any compensation to be awarded to the Class Representatives.

13 22. The Court preliminarily approves the following disbursements, subject to
14 Court approval of the final approval motion and application for attorneys' fees and costs:

- 15 a. \$20,000.00 for Plaintiffs' enhancement awards (not to exceed
16 \$10,000.00 for each household);
17 b. \$512,500.00 for attorney's fees (not to exceed 1/3 of the gross
18 settlement amount);
19 c. \$35,000.00 for reimbursement of litigation costs (not to exceed); and
20 d. \$27,000.00 for Settlement Administrator's fees and costs (not to
21 exceed).

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

25 24. A Final Approval Hearing shall be held before this Court at **2:00 p.m. on**
26 **August 17, 2023** in Dept. CX-101 of the Orange County Superior Court, to address: (a) whether
27 the proposed Settlement should be finally approved as fair, reasonable and adequate, and
28 whether the Final Approval Order and Judgment should be entered; and (b) whether Class

1 Counsel's application for attorneys' fees, costs, expenses and incentive awards should be
2 approved. The date and time of the Fairness Hearing shall be set forth in the Class Notice. The
3 Court retains jurisdiction to consider all further applications arising out of or in connection with
4 the Settlement Agreement.

5 25. If the Settlement is finally approved by the Court, the Court shall retain
6 jurisdiction over the Settling Parties, the Class Members, and this Action in accordance with
7 CCP § 664.6 and CRC Rule 3.769(h), with respect to matters arising out of, or in connection
8 with, the Settlement, and may issue such orders as necessary to implement the terms of the
9 Settlement. The Court may approve the Settlement, with such modifications as may be agreed to
10 by the Settling Parties, without further notice to the Class Members.

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12 **IT IS SO ORDERED.**

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16 Dated: April 3, 2023

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APPROVED AS TO FORM AND CONTENT:

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By: /s/Michael H. Artinian

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Michael H. Artinian, Esq.
Bridgford, Gleason & Artinian
Counsel for Plaintiffs

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By: /s/Corey Timpson

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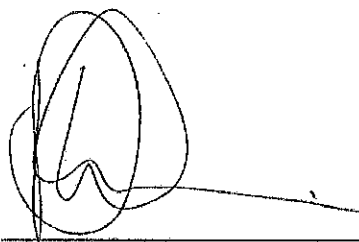
Corey Timpson, Esq.
Sellar Hazard, LLP
Counsel for Defendants

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Honorable Peter J. Wilson
Judge of the Orange County Superior Court