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14 Attorneys for Plaintiffs,
15 JEFF SMITH and JULIE SMITH,
16 on behalf of themselves and all others similarly situated

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

19 JEFF SMITH, an individual; JULIE
20 SMITH, an individual; on behalf of
21 themselves and all others similarly situated,

22 Plaintiffs,

23 vs.

24 PULTE HOME CORPORATION; and
25 DOES 1-100,

26 Defendants.

CASE NO. 30-2015-00808112
Assigned for all purposes to:
Judge Thierry Patrick Colaw
Dept. CX-105

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

Complaint Filed: 09/04/15

27 Plaintiffs JEFF SMITH and JULIE SMITH on behalf of themselves and all others similarly
28 situated (“Plaintiffs”), are informed, believe and allege as follows:

INTRODUCTION

1. This is a class action addressing solely the incorporation of a single defective component (copper pipe) into a residence, thus exempting Plaintiffs (and the named and unnamed class members) pursuant to Civil Code section 931 from complying with the pre-litigation procedures specified in Division 2, Part 2, Title 7, Chapter 4. Plaintiffs seek damages and other relief on behalf of all similarly-situated homeowners in the Talega area of San Clemente,

1 California, whose homes were built by Defendants PULTE HOME CORPORATION (hereinafter
2 “Pulte”), who have suffered damage because of owning homes with a defective component, to wit,
3 copper pipe. The copper pipe at issue is defective, and damages Plaintiffs’ and class members’
4 homes in violation of the standards of residential construction set forth in California Civil Code
5 §895, et seq.

6 2. The homes at issue are located in Talega area of San Clemente, Orange County,
7 including but not limited to, homes in the 92673 zip code (the “Class Area”). Plaintiffs are
8 informed and believe, and on that basis allege, that the copper pipe utilized was defective for the
9 water conditions in the Class Area.

10 3. The homes have in common a serious defect, namely the incorporation of defective
11 copper pipe instead of stronger resistive pipe.

12 4. Plaintiffs bring this action to seek redress on behalf of the following class:

13 All homeowners in the Class Area whose residences contain
14 copper pipe, were constructed by Pulte and substantially
15 completed within ten (10) years of the filing of the original
16 complaint in this action, and the original purchase agreements
17 were signed by the builder on or after January 1, 2003.

16 THE PARTIES

17 5. Plaintiffs Jeff and Julie Smith are individuals and residents of Talega area of San
18 Clemente, California, whose principal residence is located at 21 Via Cristobal, San Clemente,
19 California 92673.

20 6. Plaintiffs’ and the class members’ homes at issue in this action are all residences in
21 Talega area of San Clemente, California, including but not limited to, homes in the 92673 zip
22 code, that contain or contained copper pipe, were substantially completed within ten (10) years of
23 the filing of the original complaint in this action, whose original purchase agreements were signed
24 by the builder on or after January 1, 2003, and are collectively referred to herein as the “Subject
25 Homes.”

26 7. Plaintiffs are informed and believe and based thereon allege that at all times
27 relevant, defendant Pulte Home Corporation was or is a business entity engaged in business in the
28 State of California.

1 8. The term "Pulte" refers to defendants Pulte Home Corporation. Plaintiffs are
2 informed and believe, and on that basis allege, that defendant Pulte constructed the Subject Homes,
3 and supplied and/or distributed the copper pipe at issue used in class members' homes.

4 9. As used herein, the term "defendants" refers collectively to all defendants named
5 herein.

6 10. Plaintiffs are informed, believe, and thereupon allege that defendants, including
7 DOES, are/were involved in the planning, development, design, construction, warranting, repair,
8 selection of materials, supply of materials, installation of materials and/or sale of the Subject
9 Homes, and/or were responsible for the design, development, testing, manufacture, distribution,
10 supply, marketing, sale, and warranting of the Subject Homes in the Talega area of San Clemente,
11 California that contain the copper pipe at issue.

12 11. Plaintiffs are currently ignorant of the true names and capacities, whether
13 individual, corporate, associate, or otherwise, of the defendants sued herein under the fictitious
14 names Does 1 through 100, inclusive, and therefore, sue such defendants by such fictitious names.
15 Plaintiffs will seek leave to amend this complaint to allege the true names and capacities of said
16 fictitiously named defendants when their true names and capacities have been ascertained.
17 Plaintiffs are informed and believe and thereon allege that each of the fictitiously named Doe
18 Defendants legally responsible in some manner for the events and occurrences alleged herein, and
19 for the damages suffered by the class.

20 12. Plaintiffs are informed and believe and thereon allege that all defendants, including
21 the fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators,
22 ostensible agents, alter egos, partners and/or joint venturers and/or employees of all other
23 defendants, and that all acts alleged herein occurred within the course and scope of said agency,
24 employment, partnership, alter ego relationship, and joint venture, conspiracy or enterprise, and
25 with the express and/or implied permission, knowledge, consent, authorization and ratification of
26 their co-defendants; however, each of these allegations are deemed "alternative" theories whenever
27 not doing so would result in a contradiction with other allegations.

28 13. Does 1-50, whose identities are presently unknown, are the subject of ongoing

1 discovery and therefore are sued under fictitious names. Does 1-50 were involved in the planning,
2 development, design, construction, warranting, repair, selection of materials, supply of materials,
3 installation of materials and/or sale of the Subject Homes, which contain the defective copper pipe
4 at issue, and proximately caused the injuries and damages herein alleged. Plaintiffs will seek leave
5 to amend this Complaint to allege their true names and capacities as they are ascertained.

6 14. Does 51-100, whose identities are presently unknown, are the subject of ongoing
7 discovery and therefore are sued under fictitious names. Does 51-100 were responsible for and
8 engaged in the design, development, testing, manufacture, distribution, supply, marketing, sale,
9 and warranting of the defective copper pipe at issue. Plaintiffs will seek leave to amend this
10 Complaint to allege their true names and capacities as they are ascertained.

11 15. All allegations in this complaint are based on information and belief and/or are
12 likely to have evidentiary support after a reasonable opportunity for further investigation or
13 discovery. Whenever allegations in this complaint are contrary or inconsistent, such allegations
14 shall be deemed alternative.

15 **JURISDICTION AND VENUE**

16 16. The contracts at issue in this case were entered into, approved and/or ratified within
17 the venue of this Court. Venue as to each defendant is proper in this judicial district pursuant to
18 Business & Professions Code section 17203, and Code of Civil Procedure sections 395(a) and
19 395.5.

20 17. Jurisdiction is proper in this Court. Federal jurisdiction over this action does not
21 exist. The amount in controversy as to the representative plaintiffs does not exceed \$75,000.00,
22 including interest and any pro rata award of attorneys' fees and costs. The damages, attorneys' fees
23 and costs of individual class members may not be aggregated to meet the federal jurisdictional
24 amount.

25 **GENERAL ALLEGATIONS**

26 18. Defendants installed and used defective copper pipe in the Subject Homes.
27 Defendants manufactured, designed, supplied, distributed, warranted, the copper pipe at issue,
28 and/or constructed numerous homes utilizing it.

1 19. These Subject Homes are located in a number of subdivisions throughout the
2 Talega area of San Clemente in Orange County, including but not limited to, homes in the 926973
3 zip code (the "Class Area"). Plaintiffs are informed and believe, and on that basis allege, that the
4 copper pipe utilized in the Subject Homes was defective for the water conditions in the Class Area,
5 and damages Plaintiffs' and class members' homes in violation of the standards of residential
6 construction set forth in California Civil Code §895, et seq.

7 20. The homes have in common a serious defect, namely the incorporation of defective
8 copper pipe instead of stronger resistive pipe.

9 21. Plaintiffs Jeff and Julie Smith, purchased one of the Subject Homes, containing the
10 defective copper pipe, which has caused damage to their homes.

11 22. Plaintiffs are informed, believe, and thereupon allege that the above-referenced
12 defective condition violates the standards of residential construction set forth in California Civil
13 Code §895, et seq. and has proximately caused damage to homeowners who are members of the
14 class.

15 23. Plaintiffs are informed, believe and thereupon allege that the Builders' contractors
16 are agents of the builders. One such contractor has confirmed in sworn deposition testimony that it
17 has known about pinhole leaks in copper pipe in South Orange County for years prior to building
18 the Subject Homes. Despite this clear notice, they failed to warn the homeowners of possible
19 defects, neglected to select proper pipe for the water type, and incorporated a defective component
20 pipe into the residences.

21 24. Plaintiffs are informed, believe, and thereupon allege that the builders and/or their
22 contractors received reports of numerous complaints that gave them notice of the defect inherent in
23 the copper pipe incorporated into residences in the class area, including complaints of pinhole
24 leaks, for homes in Orange County, prior to building the subject homes.

25 25. Plaintiffs are informed, believe and based thereupon allege that the builder and/or
26 their contractors have tested the water and/or pipe installed in the homes prior to installing copper
27 pipe into the subject homes, and had information prior to incorporating the copper pipe into the
28 residences confirming that the copper pipe installed in the homes was defective.

1 All homeowners in the Class Area whose residences contain
2 copper pipe, were constructed by Pulte and substantially
3 completed within ten (10) years of the filing of the original
4 complaint in this action, and the original purchase agreements
5 were signed by the builder on or after January 1, 2003.

6 33. The class is so numerous that joinder would be impractical and disposition of the
7 class members' claims in a class action is in the best interests of the parties and judicial economy.

8 34. This action involves questions of law and fact common to each member of the class,
9 in that all members of the proposed class have suffered damages as a result of the installation of
10 defective copper pipe in their homes. The common questions of law and fact include, but are not
11 limited to, the following:

- 12 a. Whether the copper pipe was defective for the water conditions in the Class Area;
- 13 b. Whether Defendants had notice, and the degree of notice that they had, of the water
14 conditions in the Class Area;
- 15 c. Whether California Civil Code sections 896(a)(14) and/or (15) were violated by the
16 incorporation, selection, design, manufacture, supply and/or utilization of the pipe at
17 issue herein.
- 18 d. Whether defendants violated the "unlawful" prong of the UCL;
- 19 e. Whether defendants violated the "fraudulent" prong of the UCL;
- 20 f. Whether any defenses raised are meritorious;
- 21 g. Whether the copper pipe at issue has corroded; and
- 22 h. Whether the copper pipe at issue needs to be removed and replaced.

23 35. The claims of the Plaintiffs and relief herein-sought are typical of the claims and
24 relief that could generally be sought by each member of this proposed class.

25 36. Plaintiffs can fairly and adequately protect the interests of all members of the
26 proposed class. The Subject Homes all contain defective copper pipe at issue herein.

27 37. Prosecution of separate actions by individual members of the proposed class would
28 create a risk of inconsistent or varying adjudications with respect to individual members of the
class and thus establish incompatible standards of conduct for the party or parties opposing the
class. Further, the relatively small amounts of the individual claims mean that class treatment is the

1 superior manner to address the defect at issue herein.

2 38. Plaintiffs' attorneys have the experience, knowledge, and resources to adequately
3 and properly represent the interests of the proposed class.

4 **FIRST CAUSE OF ACTION**

5 **(Violation of Standards of Residential Construction)**

6 **(By Plaintiffs Against All Defendants)**

7 39. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
8 the preceding paragraphs of this complaint, as though fully set forth herein.

9 40. Defendants are subject to an action for recovery of damages for the violation of the
10 standards enumerated in California Civil Code §895, et seq.

11 41. Defendants are liable for damages arising out of and related to the incorporation, at
12 the time of original construction, of defective copper pipe into Plaintiffs' and class members'
13 residences, which is leaking and/or corroding so as to impede the useful life of the system.

14 42. As a direct and proximate result of defendants' violations of standards for
15 residential construction, Plaintiffs and class members have been damaged and are entitled to
16 recover the cost of remedying the incorporation of the defective copper pipe in addition to all other
17 damages permitted under Section 944 and/or that the court deems just and proper.

18 **SECOND CAUSE OF ACTION**

19 **(Unfair Business Practices, Business & Professions Code §§17200, et seq.)**

20 **(By Plaintiffs Against All Defendants)**

21 43. Plaintiffs re-allege and incorporate by reference all preceding paragraphs of this
22 Complaint as though fully set forth herein.

23 44. Business & Professions Code section 17200 prohibits any unfair competition,
24 including any unlawful, unfair or fraudulent business act or practice.

25 45. The conduct of defendants, as set forth in the allegations in this complaint,
26 constitutes unlawful, unfair or fraudulent business practices.

27 46. Defendants' unlawful conduct includes, but is not limited to, violation of California
28 Civil Code § 896, et seq. Specifically, the building standards set forth at sections 896(a)(14)

1 and/or (15) were violated by Defendants' incorporation, selection, design, manufacture, supply
2 and/or utilization of the defective pipe at issue herein that has leaked and/or corroded so as to
3 impede the useful life of the system – a statutory violation of law.

4 47. Defendants' fraudulent conduct includes, but is not limited to, concealing from both
5 original and subsequent purchasers that the copper pipe installed in the Subject Homes was not
6 compatible and adequate for the water conditions in the area, which defendants knew or should
7 have known; Defendants had express knowledge that the pipe used would corrode and/or leak
8 given the water conditions in the class area, and failed to disclose the same to original and
9 subsequent purchasers of the Subject Homes. As previously herein alleged, the builders and/or
10 their contractors received reports of numerous complaints that gave them notice of the defect
11 inherent in the copper pipe incorporated into residences in the class area, including complaints of
12 pinhole leaks, for homes in Orange County, prior to building the subject homes; and the builders
13 and/or contractors have tested the water and/or pipe installed in the homes prior to installing
14 copper pipe into the subject homes, and had information prior to incorporating the copper pipe into
15 the residences evidencing that the copper pipe installed in the homes was defective. Plaintiffs
16 relied upon Defendants accurately disclosing the impact of the water on the copper pipe which did
17 not meet the building standards set forth at Civ. Code Section 896(a)(14) and/or (15).

18 48. As a direct and proximate result of Defendants' unlawful and/or fraudulent conduct
19 described hereinabove, Plaintiffs and the putative class have suffered actual injury and economic
20 loss in the form of diminution in the effective life of the copper pipe and diminution in the useful
21 life of the plumbing system on the whole, in addition to diminution in value of the Subject Homes.

22 49. On behalf of the general public, plaintiffs and members of each class request that
23 this Court order that Defendants be required to disgorge the profits they have wrongfully obtained
24 through the use of these unlawful, unfair or fraudulent practices, provide restitution, and that an
25 injunction issue to correct the wrongful business practices alleged in this complaint.

26
27 **PRAYER**

28 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For general, special, and consequential damages;
2. For the cost to repair and/or replace the defective copper pipe;
3. For costs and expenditures to correct, cure, or mitigate damages caused or that will be caused by the defects and/or deficiencies as set forth herein;
4. Economic losses associated with the defects and/or deficiencies, including loss of use, diminution in value, relocation, and alternative housing;
5. For equitable entitlement to attorney's fees and costs from the common fund;
6. For attorney's fees and costs pursuant to California Code of Civil Procedure section 1021.5;
7. For investigative costs and other damages recoverable pursuant to California Civil Code section 944;
8. For a preliminary and permanent injunction prohibiting defendants from engaging in the unlawful or fraudulent conduct, or unfair methods of competition, alleged herein;
9. For any and all other relief available under Business and Professions Code sections 17200 *et. seq.*, including but not limited to restitution and disgorgement of monies received through defendants' unlawful or fraudulent business practices;
10. For an award of pre-judgment interest on all monetary damages, fees, and costs awarded in this action;
11. For a declaratory judgment adjudicating the relative rights and duties of the parties;
12. For such other and further relief as the Court deems just and proper.

DATED: February 1, 2016

BRIDGFORD, GLEASON & ARTINIAN
McNICHOLAS & McNICHOLAS LLP

By: 

Richard K. Bridgford

Michael H. Artinian

John Patrick McNicholas, IV

Attorneys for Plaintiffs on behalf of
themselves and all others similarly situated


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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all claims and causes of action in this lawsuit.

DATED: February 1, 2016

BRIDGFORD, GLEASON & ARTINIAN
McNICHOLAS & McNICHOLAS LLP

By: 

Richard K. Bridgford
Michael H. Artinian
John Patrick McNicholas, IV
Attorneys for Plaintiffs on behalf of
themselves and all others similarly situated

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PROOF OF SERVICE
Smith v. Pulte Homes, et al.
Orange County Superior Court Case No.: 30-2015-00808112

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): **FIRST AMENDED COMPLAINT** 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: February 1, 2016



Debbie Knipe

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SERVICE LIST
Smith v. Pulte Homes, et al.
Orange County Superior Court Case No.: 30-2015-00808112

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