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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

APR 03 2023

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

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

Plaintiffs,

vs.

PULTE HOME CORPORATION; and DOES 1-100,

Defendants.

AND RELATED CROSS-CLAIM.

CASE NO. 30-2015-00808112-CU-CD-CXC

Assigned for all purposes to:
Hon. Peter 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: September 14, 2015

WHEREAS, Plaintiffs and Class Representatives Jeff and Julie Smith (“Plaintiffs”), Defendant Pulte Home Corporation (“Defendant”) 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 Agreement”);

WHEREAS, the Court by Hon. Glenda Sanders previously granted Plaintiff’s motion for class certification on August 19, 2021, and duly appointed Bridgford, Gleason & Artinian, Kabateck LLP, and McNicholas & McNicholas as Class Counsel, and duly appointed Jeff and Julie Smith as class representatives;

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

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

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

10 1. The Court has jurisdiction over the subject matter of the Action, the Class
11 Representatives, Defendants, and all Class Members.

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

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

21 4. The Court further preliminarily finds that the terms of the Settlement
22 Agreement have no obvious deficiencies and do not improperly grant preferential treatment to
23 any individual class member.

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

2 6. The parties have identified the homes included within the class definition
3 certified by this Court on October 14, 2021, which are listed on Exhibit A to the Settlement
4 Agreement (the "Class Area"). For purposes of the proposed Settlement, and conditioned upon
5 the Agreement receiving final approval following the Final Approval hearing and that order
6 becoming final, the certified class shall be further defined as follows:

7 *(1) All present owners of residential homes in Talega whose copper pipe systems*
8 *have not been replaced with PEX or epoxy coating by prior owners of the homes,*
9 *or (2) prior owners of homes in Talega, California Class Area who replaced their*
10 *copper pipe systems with PEX or epoxy coating, provided that: (a) the homes*
11 *were constructed by Pulte Home Corporation and substantially completed within*
12 *ten (10) years of the filing of the original complaint in this action (or September*
13 *4, 2005), (b) the original purchase agreements were signed by the builder on or*
14 *after January 1, 2003, and (c) their SB 800 claims were not released.*

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

20 8. The Court approves ILYM Group Inc. ("ILYM") as Settlement
21 Administrator to administer the notice and claims procedures of the Settlement for the purpose of
22 administering the proposed Settlement and performing all other duties and obligations of the
23 Settlement Administrator as defined in the Settlement, this Preliminary Approval Order, and/or
24 as may otherwise be ordered by the Court, with the understanding that ILYM's compensation
25 will be capped at \$13,550.00.

26 9. The Court approves, as to form and content, of two different Settlement
27 Notices: (a) the first for the Original Class Members who were served with the Class Notice in
28 July 2022 (attached hereto as Exhibit "B"); and (b) the second for all subsequent purchasers of
the homes listed on Exhibit A to the Settlement Agreement who were not sent Class Notice in
July 2022 (attached hereto as Exhibit "C"). The Court hereby instructs the Parties to proceed

1 with Settlement Notice in the manner and on the schedule set forth in the Settlement Agreement
2 as follows:

3 a. The Settlement Administrator shall serve by U.S. Mail:

4 i. To those individuals who were mailed Class Notice in July
5 2022:

6 1. The Settlement Notice version attached as Exhibit "B"
7 hereto; and

8 2. The Prior Owner Verification Form (Exhibit "F"
9 hereto);

10 ii. To those individuals in the chain of title for the class homes
11 listed in Exhibit "A" to the Settlement Agreement who were
12 NOT mailed Class Notice in July 2022:

13 1. The Settlement Notice version attached as Exhibit "C"
14 hereto;

15 2. The Request for Exclusion Form (Exhibit "D" hereto);
16 and

17 3. The Prior Owner Verification Form (Exhibit "E"
18 hereto);

19
20 b. For a Prior Owner of a home in the Class List to be included as a Class
21 Member, that Prior Owner must submit by mail a Prior Owner
22 Verification Form to the Settlement Administrator within sixty (60)
23 days of mailing by the Settlement Administrator (Exhibit "E" hereto)
24 that verifies that the Prior Owner replaced the copper pipes in the
25 Class Home with PEX or epoxy coating of the pipes.

26 i. In the event a prior owner submits a Prior Owner Verification
27 Form stating that the prior owner has replaced the home's
28 copper pipes with PEX or epoxy coating, then the Settlement

1 Administrator shall provide the present owner with written
2 notice: (a) that a prior owner has submitted a Prior Owner
3 Verification Form stating that the prior owner replaced the
4 homes' copper pipes with PEX or epoxy coating; and (b) the
5 present owner has 30 days within which to submit a written
6 verification to the Settlement Administrator that the home had
7 copper pipes (without any epoxy coating) at the time the
8 present owner obtained title to the home. In the event that
9 there is a dispute between a prior and present owner as to
10 whether a prior owner had replaced the copper pipes with PEX
11 or epoxy coating, then the two homeowners shall submit proof
12 supporting their claims to the Settlement Administrator who
13 will forward such documentation to Ross Feinberg, Esq. of
14 JAMS who: (a) shall serve as arbitrator of the dispute; and (b)
15 whose determination of those competing claims shall be
16 binding. The costs for Mr. Feinberg's services shall be deemed
17 a "cost" that shall be deductible from the Settlement Fund.

18
19 c. For a Present Owner of a home in the Class List to be included as a
20 Class Member:

21 i. With respect to those individuals who were served with Class
22 Notice in July 2022, there must not be a Prior Owner
23 Verification Form submitted by a Prior Owner for the subject
24 Class Home unless that Prior Owner Verification Form was
25 withdrawn or determined by Mr. Feinberg to be invalid for
26 purposes of this settlement.

27 ii. With respect to those individuals who were NOT served with
28 Class Notice in July 2022, that individual must not submit a

1 Request for Exclusion Form and there must not be a Prior
2 Owner Verification Form submitted by a Prior Owner for the
3 subject Class Home unless that Prior Owner Verification Form
4 was withdrawn or determined by Mr. Feinberg to be invalid for
5 purposes of this settlement.

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

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

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

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

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

25 14. The Settlement Administrator must also create a dedicated website for this
26 Settlement, which will make available the Settlement Agreement, the operative complaint, the
27 pleadings submitted in support of preliminary approval, approval of attorneys' fees, costs and
28 class representative enhancements, and final approval, and all orders continuing or re-setting any

1 hearing dates. The dedicated website shall also make available all Orders by this Court with
2 respect to aforesaid motions.

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

6 16. All potential members of the Class who were sent Class Notice in July
7 2022 shall not have the right to be excluded from the Class because the time for such right to be
8 excluded has expired. With respect to any potential member of the Settlement Class who was
9 NOT sent Class Notice in July 2022 AND who desires to be excluded from the Class and
10 therefore not be bound by the terms of the Settlement Agreement, he/she must submit to the
11 Settlement Administrator, pursuant to the instructions set forth in the Notice, a timely and valid
12 written Request for Exclusion (attached as Exhibit "E" to the Settlement Agreement).

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

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

23 19. Responses to any objections received shall be filed with the Court no later
24 than twenty-four (24) calendar days prior to the Final Approval Hearing, and Plaintiffs'
25 responses may be included in their motion for final approval.

26 20. Any member of the Settlement Class who is eligible to (and so chooses) to
27 be excluded shall not be entitled to receive any of the benefits of the Settlement Agreement, shall
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1 not be bound by the release of any claims pursuant to the Settlement Agreement, and shall not be
2 entitled to object to the Settlement Agreement or appear at the Final Approval Hearing. The
3 names of all persons timely submitting valid Requests for Exclusion shall be provided to the
4 Court.

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

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

- 12 a. \$10,000.00 for Plaintiffs' enhancement award (not to exceed);
- 13 b. \$125,066.00 for attorney's fees (not to exceed 1/3 of the gross
14 settlement amount);
- 15 c. \$25,000.00 for reimbursement of litigation costs (not to exceed); and
- 16 d. \$13,550.00 for Settlement Administrator's fees and costs (not to
17 exceed).

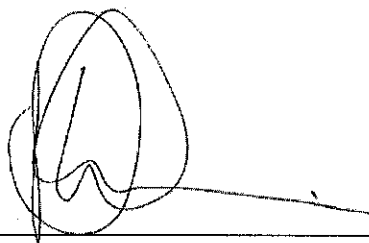
18 23. Pending the final determination of whether the Settlement should be
19 approved, all pre-trial proceedings in the instant case are stayed. If the Settlement is terminated
20 or final approval does not for any reason occur, the stay shall be immediately terminated.

21 24. A Final Approval Hearing shall be held before this Court at **2:00 p.m. on**
22 **August 17, 2023** in Dept. CX-101 of the Orange County Superior Court, to address: (a) whether
23 the proposed Settlement should be finally approved as fair, reasonable and adequate, and
24 whether the Final Approval Order and Judgment should be entered; and (b) whether Class
25 Counsel's application for attorneys' fees, costs, expenses and incentive awards should be
26 approved. The date and time of the Final Approval Hearing shall be set forth in the Class Notice.
27 The Court retains jurisdiction to consider all further applications arising out of or in connection
28 with the Settlement Agreement.

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

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9 **IT IS SO ORDERED.**

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11 Dated: April 3, 2023



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

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16 **APPROVED AS TO FORM AND CONTENT:**

17 By: /s/Michael H. Artinian
18 Michael H. Artinian, Esq.
19 Bridgford, Gleason & Artinian
20 *Counsel for Plaintiffs*

21 By: /s/Anna McLean
22 Anna McLean, Esq.
23 Sheppard Mullin Richter & Hampton LLP
24 *Counsel for Defendants*

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