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10 Attorneys for Plaintiff
KELLY MERGENS and Settlement Class
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13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 KELLY MERGENS, on behalf of herself
16 and all others similarly situated,

17 Plaintiff,

18 v.

19 SLOAN VALVE COMPANY, and
DOES 1-10, inclusive,

20 Defendants.
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Case No. 2:16-cv-05255-SJO-SK

The Honorable S. James Otero

**DECLARATION OF ARNOLD
RODIO IN SUPPORT OF JOINT
MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: September 18, 2017

Time: 10:00 a.m.

Dept.: Courtroom 10C

Action Filed: July 15, 2016

Related Case:

*United Desert Charities, et al. v.
Sloan Valve Company, et al.*
Case No. 2:12-cv-06878-SJO-SH

1 I, ARNOLD RODIO, declare as follows:

2 1. I am the owner of Class Litigation Administration Support Services
3 (“C.L.A.S.S.”), the Court-appointed Claims Administrator¹ in this case and the
4 related action, *United Desert Charities, et. al. v. Sloan Valve Company, et. al.*, No.
5 CV12-06878 (“UDC Action”), performing all tasks required by the settlement
6 agreements, plans of allocation, and Orders of the Court. A detailed description of
7 my background and qualifications is set forth in my Declaration in Support of the
8 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (ECF 33-2),
9 which is incorporated herein by reference.

10 2. As of June 15, 2017, the UDC Settlement Fund has paid **\$1,545,559.25**
11 to claimants with non-property damage claims in the UDC Action.

12 3. As of June 15, 2017, the UDC Settlement Fund has paid **\$576,921.07** to
13 claimants with property damage claims in the UDC Action. UDC class members who
14 submitted valid property damage claims during the claims period were paid all
15 reasonable and necessary unreimbursed out-of-pocket expenses incurred in repairing
16 the damaged property to its pre-damage condition (including the cost to replace the
17 toilet fixture itself and/or to repair property damage in the area surrounding the toilet
18 containing the toilet equipped with the Series 503 Flushmate III Pressure-Assist
19 Flushing System (“Flushmate Toilet”).

20 4. On January 27, 2017, in the UDC Action, the Special Master issued an
21 Order amending the UDC plan of allocation to allow for supplemental payments to
22 UDC settlement class members to fully reimburse them for reasonable
23 unreimbursed out-of-pocket installation costs incurred for installing a repair kit,
24 replacement pressure vessel, or replacement toilet. Under the amended plan of
25 allocation, UDC settlement class members were to receive up to \$127.50 per
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27 ¹ Initial capitalized terms utilized herein have the same definitions as set forth in
28 the Class Action Settlement Agreement and Release filed March 1, 2017 (ECF
No. 33-1, **Exhibit A**) unless otherwise indicated.

1 Flushmate Toilet repaired or replaced, plus an additional \$30 for each additional
2 Flushmate Toilet repaired or replaced at the same property address. In the event
3 that UDC settlement class members claimed to have incurred in excess of
4 \$127.50/\$30 in unreimbursed out-of-pocket installation expenses, I would review
5 such claims in the first instance, and would then make recommendations regarding
6 their disposition to the Special Circumstances Committee for final determination.
7 Further, claimants who expended their own labor to repair or replace their Series
8 503 Flushmate III Pressure-Assist Flushing System (“Flushmate System”) would
9 receive \$25 per Flushmate Toilet.

10 5. As of June 15, 2017, additional payments have been made totaling
11 \$443,296.82 pursuant to the January 27, 2017 Order in the UDC Action. This
12 includes payment for 9,071 non-property damage claims. An additional 14,717
13 claims remain to be reviewed. The remaining claims will be resolved before the
14 Fairness Hearing. I will update the totals at that time. However, it remains my
15 estimate that a total of **\$1,091,695** in supplemental distributions will be made to
16 UDC class members who filed non-property damage claims during the claims
17 period, including claimants who expended their own labor to install a repair kit,
18 replacement pressure vessel or replacement toilet.

19 6. To date, UDC settlement class members have received payments
20 totaling \$2,122,480.32. Upon completion of all supplemental distributions to UDC
21 class members pursuant to the amended plan of allocation, I estimate approximately
22 **\$2,770,878.50** will have been paid to UDC settlement class members on the claims
23 submitted prior to the close of the claims period on September 25, 2016.

24 7. Additionally, pursuant to this Court’s April 10, 2017 Order
25 Preliminarily Approving Class Action Settlement Agreement, \$1,096,273.89 has
26 been expended from the UDC Settlement Fund to cover the costs of the publication
27 notice and direct mail notice to class members in this Action and class members in
28 the UDC Action.

1 8. Direct postcard notice was sent to 231,254 unique addresses as follows:
2 203,041 UDC settlement class members, 16,350 Settlement Class Members, and
3 11,863 to persons who are members of both the Settlement Class and the UDC
4 settlement class. After all mailings were completed, 370 notices are currently
5 undeliverable. Additionally, 85,661 potential class members received e-mail notice
6 as follows: 73,998 UDC settlement class members, 6,312 Settlement Class
7 Members and 5,351 to persons who are members of both the Settlement Class and
8 the UDC class. Notice was also sent to 72,603 third-party contractors who may
9 have installed Flushmate Toilets.² No objections or opt-outs have been received to
10 date.

11 9. After all supplemental distributions and notice costs are paid,
12 C.L.A.S.S. estimates that there will still be a remaining balance of approximately
13 **\$6,000,000** in the UDC Settlement Fund.

14 10. Based on my calculations, if the modifications proposed in the Joint
15 Motion For Final Approval of Modifications of Settlement Agreement and Plan of
16 Allocation are permitted, the remaining balance in the UDC Settlement Fund
17 should be sufficient to pay additional claims filed by UDC settlement class
18 members during the extended claims period *and* claims filed by Settlement Class
19 Members in this Action (including all costs of administration and notice).

20 11. There are approximately 2.7 million Flushmate Systems at issue in the
21 UDC Action. The UDC Settlement Fund paid non-property damage and property
22 damage claims relating to approximately 31,544 units. Accordingly, the claims rate
23 during the two year claims period was approximately 1.2%. It is my experience
24 that the bulk of claims are filed at the very beginning of the claims period.
25 Assuming C.L.A.S.S. receives claims representing one-half (50%) of the number of
26 units submitted during the one year extended claims period in the UDC Action

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28 ² Such notice will also be sent to an additional 33,190 third-party contractors
who may have installed Flushmate Toilets by July 10, 2017.

1 (15,772 units) as it did during the full two year claims period, the cost to resolve
2 those claims under the modified plan of allocation should not exceed **\$2,300,000**.
3 This includes **\$2,010,930** ($\$127.50 \times 15,772$ units) for non-property damage claims
4 and **\$250,000** for property damage claims (based upon the **\$576,921.07** paid for
5 claims submitted during the initial two-year claims period). Again, I believe this
6 scenario is highly unlikely and expect the actual claims rate during the extended
7 claims period to be much lower given my experience during the initial two year
8 claims period. Further, it has been my experience that approximately 75% of the
9 claims involve properties with a single Flushmate Toilet installed.

10 12. There are approximately 453,000 Flushmate Systems encompassed in
11 this Action. The estimated cost to resolve those claims during the Claims Period is
12 approximately **\$1,700,000**. This assumes the claims rate is twice that of the UDC
13 Action, or 2.4% (representing 10,872 units), and includes **\$1,386,180** ($\$127.50 \times$
14 $10,872$ units) for non-Property Damage claims and **\$250,000** for Property Damage
15 claims filed during the Claims Period.

16 13. The estimated cost to pay all claims filed during the extended claims
17 period in the UDC Action and Mergens Claims Period is **\$4,000,000**.

18 14. As of June 19, 2017, a total of 3,581 claim forms have been received.
19 This includes 368 claim forms in this Action, 67 claim forms that are both for this
20 Action and the UDC Action, 1,619 claim forms in the UDC Action, 1,474 claim
21 forms that require additional information and 53 claim forms that do not reflect
22 valid claims. Also, C.L.A.S.S. has received 3,419 incoming calls since the
23 commencement of the Notice Plan that was approved pursuant to this Court's
24 April 10, 2017 Order Preliminarily Approving Class Action Settlement in the
25 Mergens Action, out of 4,588 total incoming calls from October 2016 through June
26 19, 2017.

1 15. C.L.A.S.S. has incurred **\$2,052.895.69** in administration costs, which
2 includes the costs of supplemental notice sent by C.L.A.S.S. to claimants who
3 contacted Flushmate and/or filed warranty claims with Flushmate. I estimate that
4 administration costs during the extended claims period will be approximately
5 **\$1,000,000.**

6 16. As of June 15, 2017, over \$6,000,000 in unclaimed funds remain in the
7 Settlement Fund Trust Account. Based on the above calculations, it is my belief
8 that the estimated remaining balance of more than **\$6,000,000** is sufficient to pay
9 claims submitted in both actions and all administration and notice costs. In fact,
10 after payment of all administration and notice costs, and the estimated distribution
11 of settlement benefits to UDC settlement class members and Mergens Settlement
12 Class members, I estimate that there will still be a remaining balance of
13 approximately **\$1,000,000** in the UDC Settlement Fund after the conclusion of the
14 UDC extended claims period and the Claims Period.

15 I declare under penalty of perjury, under the laws of the United States of
16 America, that the foregoing is true and correct.

17 Executed this 30th day of June 2017 at Lancaster, California.

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19 _____
20 **ARNOLD RODIO**

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