

PLAN OF ALLOCATION

The purpose of this proposed Plan of Allocation (the “Plan”)¹ is to provide a reasonable and equitable method for the distribution of the settlement proceeds to Settlement Class Members, as defined in the Class Action Settlement Agreement (“Settlement Agreement”) and the Court’s Preliminary Approval Order, following the Effective Date. The Plan may only be modified by written agreement of the Parties, subject to approval by the Court and/or Special Master.

I. THE SETTLEMENT FUND

As set forth in Section IV of the Settlement Agreement, Defendants shall pay into the Settlement Fund the sum of \$18,000,000, plus additional amounts if aggregate Property Damage claims exceed \$1,500,000 and the entire \$18,000,000 has been exhausted (the “Gross Settlement Fund”). The amount remaining after deducting all appropriate taxes, approved costs, attorneys’ fees, reimbursement of litigation expenses, costs of class administration and notice, and any Incentive Awards to the named Plaintiffs that the District Court may approve (the “Net Settlement Fund”) will be set aside for payments to Settlement Class Members.

A. Eligible Settlement Class Members

Settlement Class Members who have (1) installed a Repair Kit, (2) installed a replacement pressure vessel, (3) installed a replacement toilet, and/or (4) sustained direct Property Damage as a result of a Leak or Burst of a Flushmate System at any time prior to the close of the Claims Period shall be eligible to submit a claim during the Claims Period.

To the extent reasonably available, and subject to the terms of the Settlement Agreement, Flushmate will supply to the Claims Administrator a list of the serial numbers and addresses for the Flushmate Systems that are subject to the Recall, including designation of the serial numbers for Flushmate Systems which have already received a Repair Kit or a replacement pressure vessel, or have been removed from service. Flushmate shall also supply to the Claims Administrator this information as determined by the parties from time to time throughout the Claims Period in Microsoft Excel format or other format acceptable to the Claims Administrator.

B. Distribution Among Settlement Class Members²

1. Non-Property Damage Claims

Settlement Class Members who submit claims for unreimbursed out-of-pocket expenses associated with the installation of a (a) Repair Kit, (b) replacement pressure vessel, or (c) replacement toilet during the Claims Period shall receive a pro rata distribution from the Net

¹ Initial capitalized terms have the same definitions as set forth in the Settlement Agreement or as otherwise set forth herein.

² Settlement Class Members making Non-Property Damage Claims who have previously had a Repair Kit installed on their Flushmate Toilet at Flushmate’s expense, a replacement vessel installed in their Flushmate Toilet at Flushmate’s expense, or a Flushmate Toilet replaced because of a Leak or Burst at Flushmate’s expense are not eligible to receive reimbursement for installation expenses. Settlement Class Members making Property Damage claims which have been previously paid and/or resolved by Flushmate are not eligible to receive reimbursement for Property Damage expenses.

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Settlement Fund based upon the anticipated claims rate from Settlement Class Members. The amount a Settlement Class Member will receive for Non-Property Damage Claims under the Settlement shall depend on a number of factors, including but not limited to, anticipated and actual claims rates. Class Counsel anticipate that Claimants will receive approximately \$50.00 per Flushmate Toilet, with \$25.00 for each additional Flushmate Toilet located at the same property address. This amount does not include Property Damage reimbursements which are based upon documented losses submitted by the Claimant.

Class Counsel in conjunction with the Claims Administrator may modify payments made to Settlement Class Members at any time based upon the anticipated claims rate in order to fairly distribute the Net Settlement Fund among Settlement Class Members. Should Class Counsel and the Claims Administrator determine an adjustment in the Plan of Allocation is necessary, they shall notify Flushmate regarding the proposed adjustment. The matter will be submitted to the Special Circumstances Committee, and then to the Special Master, whose decision will be binding on all parties. The Special Master shall then issue an order outlining the terms of the new Plan of Allocation.

To the extent there are sufficient funds available after all reimbursement claims submitted during the Claims Period have been paid, a supplemental distribution may be made to Settlement Class Members who timely filed a claim attesting that they expended their own labor and/or resources to repair or replace their Flushmate System.

2. Property Damage Claims

Settlement Class Members who submit claims for unreimbursed out-of-pocket expenses associated with Property Damage caused by a Flushmate System or Flushmate Toilet that Leaked or Burst shall receive a pro rata distribution from the Net Settlement Fund for the reasonable and necessary out-of-pocket expenses incurred for repairing or replacing direct Property Damage.

3. Supplemental Distribution/Cy Pres

To the extent that there are any funds remaining in the Net Settlement Fund after distributions to Settlement Class Members, such funds shall be distributed on a *pro rata* or other equitable basis as set forth in Section V.C of the Settlement Agreement. In the event that *pro rata* distribution would be impracticable, Class Counsel will seek the Court's approval for *cy pres* distribution.

II. ADMINISTRATION OF NET SETTLEMENT FUND

The parties propose that Class Litigation Administration Support Services ("C.L.A.S.S.") be appointed as the Claims Administrator which will handle the distribution of the Net Settlement Fund to Settlement Class Members. Additional information about the Claims Administrator's background and fees for services is available at www.FlushmateClaims.com.

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The Claims Administrator shall be delegated the authority to administer and process Eligible Claims during the Claims Period and to disburse Settlement Benefits to Claimants who submit timely Eligible Claims. The Claims Administrator shall carry out its duties in strict accordance with this Plan. With good cause, Class Counsel and/or Defense Counsel may move the Court to replace the Claims Administrator.

All reasonable and necessary fees, costs and expenses associated with the implementation of this Plan by the Claims Administrator shall be paid from the Settlement Fund Trust Account maintained by Class Counsel as these costs are incurred. The Claims Administrator will submit invoices to Class Counsel for payment in intervals of approximately thirty (30) days. Class Counsel will review all invoices and, if necessary and appropriate, approve them for payment. The Claims Administrator shall provide to Class Counsel and Defense Counsel a report of all invoices paid on a quarterly basis as set forth in Section V.E. of the Settlement Agreement.

Any disputes regarding payment of invoices shall be resolved among the Parties and the Claims Administrator, or submitted for determination to the Special Master.

III. CATEGORY OF CLAIMS

A. Category 1 (Non-Property Damage Claims)

Subject to the limitations and qualifications stated herein, the Claims Administrator shall review all Category 1 claims to insure that the Claimants establish by their Claim Forms and supporting documentation that they owned a Flushmate Toilet and either:

1. Installed a Repair Kit;
2. Installed a replacement pressure vessel; or
3. Installed a replacement toilet.

If the Claims Administrator's review concludes that a claim clearly establishes (1), (2) or (3) above, and that the claim is otherwise an Eligible Claim, the Claims Administrator shall approve the claim and process it in accordance with the Plan.

B. Category 2 (Property Damage Claims)

Subject to the limitations and qualifications stated herein, the Claims Administrator shall review all Category 2 claims using the following criteria:

1. Is the scope of the claimed Property Damage a direct result of a Flushmate System that has Leaked or Burst?

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2. Are the claimed amounts to repair or replace the Property Damage reasonably necessary to repair or replace property damaged directly as a result of a Flushmate System that has Leaked or Burst?
3. Are the claimed labor and material costs reasonably necessary to repair or replace materials of like kind and quality in the geographic location where the Property Damage was sustained and at the time when the repair or replacement was completed?

The Claims Administrator shall make its determination using pricing guides (e.g., Building Construction Cost Data 2013 Book, 2013 National Repair & Remodeling Estimator, Residential Remodeling Cost Estimator, 2013 Edition, and 2013 National Renovation & Insurance Repair Estimator) from R.S. Means or the Craftsman National Repair and Remodeling Estimator.

Any Property Damage Claim shall be reduced if the Claims Administrator makes any of the following determinations:

1. The amount claimed is in excess of the amount required to reasonably repair or replace the claimed direct Property Damage;
2. The amount claimed is for work unrelated to the direct Property Damage caused by a Flushmate System that has Burst or Leaked; or
3. Portions of the claimed amount are for upgrades, remodeling work or other costs that are not directly related to repair or replacement of direct Property Damage caused by a Flushmate System that has Burst or Leaked.

The Claims Administrator may request in writing additional documentation and information it deems necessary and appropriate regarding any Property Damage Claim and will consult with Flushmate, plumbing professionals or other construction professionals if necessary to determine the reasonableness of the repair work performed.

IV. CLAIMS REVIEW PROTOCOL

All information provided in the Claim Forms and supporting documentation submitted by the participating Claimant shall be entered into a database. Each Claim shall be marked as either **Category 1** (Non-Property Damage Claim) or **Category 2** (Property Damage Claim). Subject to the limitations and qualifications stated below, the Claims Administrator shall review all claims to ensure that all information required for an Eligible Claim is presented on or with the Claim Forms.

If the Claims Administrator determines that any portion of the claim is not eligible for reimbursement, the Claims Administrator shall notify the Claimant in writing stating the reason(s) why the claim was rejected (e.g., duplicate claim, previously reimbursed claim, not a Flushmate System, etc.).

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The Claims Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the Claim Process.

A. Claim Form Deficiencies

The Claims Administrator shall advise the Claimant in writing of any deficiencies in submission of the Claim Form. The Claimant shall have thirty (30) days from the date of notice of the deficiencies to respond to the Claims Administrator and remedy such deficiencies. If the Claims Administrator receives no response from Claimant within thirty (30) days, the Claims Administrator shall send a second notice. If the Claims Administrator receives no response within thirty (30) days from the date of the second notice, the claim shall be considered closed. The claim may be reopened upon a showing of good cause to the Special Circumstances Committee.

B. Notification of Allowance or Disallowance of Property Damage Claims

The Claims Administrator shall provide to the Claimant a written notice (“Notice of Claims Decision”) allowing, modifying, or disallowing any Property Damage Claim. If the Claims Administrator determines that any portion of the Property Damage Claim is not eligible for reimbursement, the Notice of Claims Decision shall state the reason(s) why that portion of the Property Damage Claim has been disallowed. The Claims Administrator shall disallow all Property Damage Claims which were settled, adjudicated, dismissed with prejudice, paid by Flushmate pursuant to a warranty claim made prior to Preliminary Approval, or paid by Flushmate after Preliminary Approval and prior to the Effective Date.

C. Objections To The Proposed Property Damage Payment

Claimants shall have fifteen (15) business days from the date of mailing of the Notice of Claims Decision to notify the Claims Administrator in writing of any objections to the allowance or disallowance of the Property Damage Claim and the reason(s) therefor (the “Claimant Objection”). To be valid, a Claimant Objection must be postmarked not later than 15 business days after the date of mailing of the Notice of Claims Decision. The Claims Administrator shall provide copies of the Claimant’s Objection, if any, to Class Counsel and Defense Counsel. If no timely objection is made, the Claims Administrator shall send the Claimant a check for the approved Settlement Benefit. Property Damage Claims valued at less than \$1,000 by the Claims Administrator are final and not subject to objection, review, appeal or reversal.

D. Resolution of Objections

Within ten (10) business days of receipt of a Claimant's Objection, the Claims Administrator will attempt to resolve the Objection. If the Claimant’s Objection cannot be resolved informally, the Claims Administrator shall submit the Claimant's Objection to the Special Master and notify the Claimant of Claimant's right to supplement the claim within twenty (20) business days. Promptly following submission of the Claimant's Objection and any supplemental documentation from the Claimant, the Special Master shall either issue a decision

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or conduct a hearing with the Claimant and the Claims Administrator. All hearings shall be conducted by telephone, and shall not exceed one (1) hour in length. The Special Master shall render his ruling in writing no later than ten (10) business days thereafter. The Special Master's ruling shall be final. Claims which are the subject of a Claimant's Objection shall be paid consistent with the Claims Administrator's Amended Notice of Allowance of Claim or the ruling of the Special Master.

E. Timing of Payment

Settlement Benefit payments shall be made in a timely manner consistent with this Protocol following the Effective Date. If there is more than one Claimant with respect to a Property, apportionment, if any, of the Settlement Benefits between or among those Claimants will be made by agreement in writing by the Claimants to the Claims Administrator or, if necessary, the allocation may be determined by the Claims Administrator, which decision may be appealed to the Special Master pursuant to the procedures set forth herein.

F. Non-Property and Property Damage Claims Between Preliminary Approval and Effective Date

To the extent Eligible Claims are submitted after Preliminary Approval and prior to the Effective Date, Flushmate, consistent with its ongoing obligations with the CPSC in connection with the Recall, may resolve those Eligible Claims. Flushmate shall provide reports to the Claims Administrator reflecting the payment of such claims. Further, prior to payment by Flushmate, Class Counsel and the Claims Administrator shall be provided notice by Flushmate of any Property Damage Claim in excess of \$7,500, and shall have fifteen (15) days to review and object. To the extent that Flushmate, the Claims Administrator and Class Counsel cannot resolve the objection among themselves, the objection shall be referred to the Special Master for resolution.

Amounts paid by Flushmate to resolve Non-Property and Property Damage Claims after Preliminary Approval and prior to the Effective Date shall be credited against, and reduce the \$4.5 million Settlement Payment due ten (10) days after the Effective Date, as set forth in Section IV.A.1 of the Settlement Agreement.

V. SPECIAL CIRCUMSTANCES COMMITTEE

A Special Circumstances Committee consisting of the Claims Administrator, a representative of Class Counsel, and an individual to be appointed by Flushmate shall be established to address the following issues:

1. Claims which involve more than twenty-five (25) Flushmate Toilets at a single Property address (*i.e.*, hotel, motel, apartment/condominium, office building, housing subdivision, etc.);
2. Property Damage claims in excess of \$7,500;

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3. Any other complex, previously reimbursed or unusual claims which may require additional input; and
4. Modification of the Plan of Allocation.

Any disputes which may arise from the Special Circumstances Committee, including, without limitation, disputes among or between the members of the Special Circumstances Committee and objections to any action taken by the Special Circumstances Committee, shall be referred to the Special Master for resolution.

VI. SPECIAL MASTER

The parties propose that Hon. William J. Cahill (Ret.) be appointed as the Special Master who will oversee implementation of the Settlement Agreement and resolve any disputes relating to this Plan:

Hon. William J. Cahill (Ret.)
JAMS
Two Embarcadero Center, Suite 1500
San Francisco, CA 94111
415-982-5267
wcahill@jamsadr.com

The Special Master shall submit monthly invoices to the Claims Administrator for the Special Master's fees and expenses. All reasonable and necessary fees and expenses of the Special Master shall be paid from the Claims Administration Trust Account maintained by the Claims Administrator. Additional information about the Special Master's fees and services is available at www.FlushmateClaims.com.

VII. MAINTENANCE OF RECORDS

The Claims Administrator shall maintain complete and accurate records regarding the administration of this Plan, including any claim submitted and any evidence submitted in connection with the claim, all Statements, Notices of Claims Decision, Objections and other documents specified in the Plan or the Exhibits thereto, the resolution of any Objections and the dates and amounts of payments to Claimants. The Claims Administrator shall make such records available to Claimants, Flushmate, Class Counsel, and Defense Counsel or their designees upon reasonable request and at reasonable times. The Claims Administrator shall prepare and provide to Class Counsel and Defense Counsel quarterly accountings showing all receipts and disbursements made unless required more frequently for Flushmate's regulatory compliance and business operations. The Claims Administrator shall maintain all records for a period of not less than five (5) years following the date of the last payment of an Eligible Claim, the cost of which shall be reimbursed by the Settlement Fund Trust Account. Thereafter, all records shall be destroyed unless Class Counsel, Defense Counsel, Flushmate and/or the Court otherwise directs.

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Class Counsel, in conjunction with the Claims Administrator, shall submit an Annual Report to the Court, unless otherwise ordered, summarizing the work performed for the Settlement Class, including a report of all amounts disbursed during the prior year.

VIII. JURISDICTION

The Court has, and shall continue to have, jurisdiction to make any orders necessary or appropriate to effectuate, consummate and enforce the terms of this Plan and to supervise the administration and distribution of Settlement Benefits to Settlement Class Members who have timely submitted Eligible Claims.