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9 **UNITED STATES DISTRICT COURT**  
 10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11  
 12 UNITED DESERT CHARITIES,  
 13 FRED EDE, III, EMILY WILLIAMS,  
 14 BRUCE PRITCHARD, and JEAN  
 STEINER, on behalf of themselves and  
 all others similarly situated,

15 Plaintiffs,

16 v.

17 SLOAN VALVE COMPANY,  
 18 AMERICAN STANDARD BRANDS  
 AS AMERICA, INC., KOHLER CO.,  
 19 GERBER PLUMBING FIXTURES,  
 20 LLC, MANSFIELD PLUMBING  
 PRODUCTS, LLC, and HOME  
 DEPOT, U.S.A., INC.,

21 Defendants.

Case No. CV12-06878 SJO (SHx)

**PLAINTIFFS' MOTION FOR  
 FINAL APPROVAL OF CLASS  
 ACTION SETTLEMENT;  
 MEMORANDUM OF POINTS  
 AND AUTHORITIES IN  
 SUPPORT THEREOF**

Action Filed: August 9, 2012

*The Honorable S. James Otero*

Hearing Date: August 25, 2014  
 Time: 10:00 a.m.  
 Dept.: Courtroom 1

Consolidated Cases:

- Berube v. Flushmate*  
2:13-cv-02372-SJO-SH
- Brettler v. Flushmate*  
2:13-cv-02499-SJO-SH
- Kubat, et. al. v. Flushmate*  
2:13-cv-02425-SJO-SH
- Patel v. Flushmate*  
2:13-cv-02428-SJO-SH

Related Case:

*Dimov, et. al. v. Sloan Valve Co.*  
1:12-cv-09700 (N.D. Ill.)

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**NOTICE OF MOTION AND MOTION**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on August 25, 2014, at 10:00 a.m., in the Courtroom of the Honorable S. James Otero, United States District Judge for the Central District of California, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiffs, on behalf of themselves and all others similarly situated, will and hereby do move the Court, pursuant to Federal Rule of Civil Procedure 23(e), for entry of a Final Order and Judgment approving the proposed Settlement Agreement (“Settlement”) entered into between the parties. This motion is made following the conference of counsel pursuant to L.R. 7-3, and the Defendants in this action do not object to the motion in the context of the parties’ proposed settlement.

This Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Kristen Law Sagafi, David M. Birka-White, William M. Audet, and Katherine Kinsella and all documents attached thereto, Plaintiffs’ Unopposed Motion for Preliminary Approval and the accompanying Memorandum of Points and Authorities, any reply papers, the argument of counsel, and all papers and records on file in this matter.

Dated: June 30, 2014

By: /s/ Kristen Law Sagafi  
Kristen Law Sagafi

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs United Desert Charities, Fred Ede, III, Emily Williams, Bruce Pritchard, Jean Steiner, Daniel Berube, Jeffrey Brettler, Randy Kubat, John Snyder, Milen Dimov, Trigona Dimova, Scott Iver, Neal Olderman, and Pankaj Patel (“Plaintiffs”), individually and as representatives of the Class, submit this Memorandum in support of their Motion for Final Approval of the Class Action Settlement (“Settlement”) with Defendants Sloan Valve Company (“Sloan”), AS America, Inc., doing business as American Standard Brands (“American Standard”), Kohler Co. (“Kohler”), Gerber Plumbing Fixtures, LLC (“Gerber”), Mansfield Plumbing Products, LLC (“Mansfield”), and Home Depot, U.S.A., Inc. (“Home Depot”) (collectively, “Defendants”).

The proposed Settlement<sup>1</sup> resolves the consolidated and all pending related class action cases arising from the Recall associated with the Flushmate System. Plaintiffs alleged that the Flushmate Systems have a defect, causing leaks and/or bursts at or near the weld seam of the Flushmate System’s vessel. Plaintiffs allege that, due to the nature of the Flushmate System, any leaks or bursts may release stored pressure, and that in addition to the need to replace the System, the leak or burst can cause not only property damage but potential personal injury as well. The first class action complaint was filed in this Court on August 9, 2012. Other class cases were filed elsewhere and, after extensive efforts by the parties in all of the consolidated and related actions, the parties reached the global Settlement now before the Court.

On February 21, 2014, after consideration of the parties’ respective submissions, the Court granted preliminary approval to the Settlement, finding that

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<sup>1</sup> Capitalized terms utilized herein have the same definitions as set forth in the Class Action Settlement Agreement and Release (“Settlement”), filed January 28, 2014 (ECF No.116-1), unless otherwise specified.



1 it “confers substantial benefits upon the Settlement class” and appeared to be “fair,  
2 reasonable, and adequate.” (ECF No. 135, ¶¶ 2, 3.) The proposed Settlement  
3 provides significant cash relief to Class members, among other benefits. The cash  
4 payments available under the Settlement will fairly and substantially reimburse  
5 Class members for out-of-pocket expenses related to the repair or replacement of  
6 their Flushmate Toilets, and will also reimburse Class members for property  
7 damage resulting from a Flushmate System that leaked or burst.

8 Under the Settlement, Defendants will pay a minimum of eighteen million  
9 dollars (\$18,000,000) into a common fund to reimburse Class members for  
10 unreimbursed out-of-pocket repair and replacement costs as well as property  
11 damage. To the extent Property Damage claims of the Class members exceed \$1.5  
12 million and certain other conditions are met, Defendants will be obligated to make  
13 additional payments into the Settlement fund for the benefit of the Class.

14 Furthermore, unlike most common fund settlements, the Settlement here provides  
15 for an extended, two-year claims period to maximize the ability of Class members  
16 to obtain relief under the Settlement. Significantly, too, if a sufficient sum remains  
17 in the Settlement fund after the Claims Period, Class members will receive  
18 additional funds on a *pro rata* basis if it is feasible to do so. In no event will any  
19 Settlement funds revert to the Defendants.

20 This comprehensive Settlement is the result of a series of five in-person  
21 mediation sessions before the Honorable William J. Cahill (Ret.), numerous in-  
22 person sessions with the parties, and countless telephonic mediation and settlement-  
23 related calls. The hard-fought negotiations lasted more than nine months. The  
24 Settlement constitutes a significant achievement in terms of the completeness of  
25 available relief and the public safety benefit from creating a monetary incentive for  
26 consumers to repair or replace their Flushmate Toilets. Judge Cahill will continue  
27 to contribute his expertise and knowledge of the case as Special Master, ensuring  
28 that the Settlement is efficiently and fairly implemented.

1 As detailed below (and as noted in the parties' prior submissions to this  
2 Court), the Settlement now before this Court is fair, reasonable, and adequate, and  
3 satisfies all the requirements of Fed. R. Civ. P. 23 and due process. Plaintiffs  
4 therefore respectfully request that the Court approve the Settlement and enter the  
5 proposed Final Order and Judgment submitted herewith.

## 6 **II. LITIGATION HISTORY**

### 7 **A. The UDC Filing.**

8 Plaintiffs United Desert Charities, Fred Ede III, Bruce Pritchard, Emily  
9 Williams, and Jean Steiner filed their First Amended Class Action Complaint  
10 ("FAC") in this Court on October 5, 2012, against the Sloan Defendants and others  
11 ("UDC Action").<sup>2</sup> (ECF No. 20.) On October 22, 2012, Defendants filed a transfer  
12 motion pursuant to 28 U.S.C. § 1404, which the Court ultimately denied. (See ECF  
13 Nos. 43, 48, 51, 54, 64.)

14 While that motion was pending, on November 5, 2012, Defendants also  
15 moved to dismiss the FAC. (ECF Nos. 52, 53, 55, 60.) Plaintiffs filed a  
16 consolidated opposition on November 19, 2012, to which Defendants replied. (ECF  
17 Nos. 57, 61, 62.) On January 4, 2013, this Court denied in part and granted in part  
18 the motion to dismiss. The Court's detailed memorandum opinion guided the  
19 subsequent litigation and settlement negotiations. (ECF No. 65.)

20 Plaintiffs filed their Third Amended Complaint ("TAC") on February 7, 2013  
21 (ECF No. 75), and Defendants moved to dismiss it on March 4, 2013. (ECF No. 76  
22 (Flushmate and Defendant Toilet Manufacturers' Motion to Dismiss); ECF No. 77

---

23 <sup>2</sup> Federal courts in the Eastern and Northern Districts of California dismissed  
24 related actions in favor of the first-filed *United Desert Charities* action. Plaintiff  
25 UDC filed its original complaint in this District on August 9, 2012, naming Sloan  
26 and American Standard as Defendants. (ECF No. 1.) Plaintiff Fred Ede, III filed his  
27 original complaint in the Eastern District of California on August 23, 2012, naming  
28 Sloan and Kohler as Defendants. (E.D. Cal. Case No. 1:12-cv-01391-LJO-DLB,  
ECF No. 1.) Plaintiff Emily Williams filed her original complaint in the Northern  
District of California on September 12, 2012, naming Sloan and Gerber as  
Defendants. (N.D. Cal. Case No. 3:12-cv-04757-EMC, ECF No. 1.)

1 (Home Depot’s Motion to Dismiss.) Upon stipulation of the parties, the Court on  
 2 March 25, 2013, stayed further proceedings related to the motions to dismiss to  
 3 allow the parties to focus on mediation and settlement negotiations. (ECF No. 81.)

4 **B. Consolidated and Related Class Actions.**

5 After Plaintiffs in the UDC Action filed suit in this Court, five other civil  
 6 class actions were filed around the United States. Counsel for Plaintiffs in those  
 7 actions participated in the global mediation sessions and settlement discussions  
 8 with the Defendants. The Settlement before this Court efficiently resolves all the  
 9 claims asserted in the consolidated and related cases.<sup>3</sup> Notwithstanding the number  
 10 of class actions filed by different Plaintiffs and law firms, Plaintiffs’ counsel in all  
 11 the actions worked together to secure a global Settlement that would benefit all  
 12 Plaintiffs, the Class, and the public at large.

13 Plaintiffs in *Berube*, *Brettler*, *Patel*, and *Kubat* stipulated to transferring their  
 14 actions to this Court for consolidation with the first-filed UDC Action.<sup>4</sup> With leave  
 15 of the Court, Plaintiffs in the *UDC*, *Berube*, *Brettler*, *Patel*, and *Kubat* matters filed  
 16 an amended and consolidated complaint on February 7, 2014 (the Conditional  
 17 Fourth Amended and Consolidated Complaint (“CFACC”) (ECF No. 129)). *See*  
 18 Settlement, § I (Definition of “Complaint”) (ECF No. 119-1 at 10).

19 The *Dimov* action is not consolidated herewith and remains pending as a  
 20 “related” action in the United States District Court for the Northern District of  
 21

22 <sup>3</sup> *Daniel E. Berube v. Flushmate, a Division of Sloan Valve Company*, Northern  
 23 District of Florida, Case No. 3:12-CV-00531 (filed 11/2/12); *Jeffrey Brettler v.*  
 24 *Flushmate, a Division of Sloan Valve Company*, District of New Jersey, Case No.  
 25 1:12-CV-07077 (filed 11/14/12); *Milen Dimov, et al. v. Sloan Valve Company*,  
 26 Northern District of Illinois, Case No. 1:12-cv-09700 (filed 12/5/12); *Pankaj Patel*  
 27 *v. Flushmate, a Division of Sloan Valve Company*, Northern District of California,  
 28 Case No. 4:13-cv-00736 (filed 2/19/13); and *Randy Kubat, et al. v. Flushmate, a*  
*Division of Sloan Valve Company*, District Court of Colorado, Case No. 1:13-cv-  
 00520 (filed 2/28/13).

<sup>4</sup> *Berube*, N.D. Fla. Case No. 3:12-CV-00531, ECF No. 14; *Brettler*, D.N.J. Case  
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 No. 18; *Kubat*, D. Colo. Case No. 1:13-cv-00520, ECF No. 6.

1 Illinois. However, after initial motion practice, that case was stayed by agreement  
 2 of the *Dimov* plaintiffs and the Sloan Defendants in deference to the global  
 3 settlement discussions. (N.D. Ill. Case No. 1:12-cv-09700, Dkt. No. 39.) *Dimov*  
 4 remains stayed while this Court considers the Settlement, and will be voluntarily  
 5 dismissed with prejudice if and when the Settlement becomes effective and final.  
 6 *See* Settlement, § II(I) (ECF No. 119-1 at 22).

7 **C. Plaintiffs' Factual Allegations and Claims.**

8 Plaintiffs' complaint initially centered on the Series 503 Flushmate® III  
 9 Pressure-Assist Flushing System manufactured by Sloan between October 14, 1997  
 10 and February 29, 2008.<sup>5</sup> (*See generally* First Amended Complaint, filed Oct. 5,  
 11 2012; ECF No. 20.) As alleged therein and in the operative CFACC, the Flushmate  
 12 System differs from traditional gravity flushing systems in that the water flushed is  
 13 under constant pressure. The Flushmate System includes a pressurized tank made of  
 14 two plastic halves welded together that is placed inside a traditional porcelain toilet  
 15 fixture, and that forces water into the toilet bowl upon flushing. The compressed air  
 16 inside this plastic tank sometimes exerts such pressure that the weld separates,  
 17 causing leaks and bursts that can rupture the porcelain fixture, potentially resulting  
 18 in other property damage and physical harm. (CFACC ¶¶ 32, 34; ECF No. 129.)

19 Plaintiffs allege that Flushmate Toilets were marketed as a premium product  
 20 and sold at higher prices than gravity-based toilets. Distributors, contractors and  
 21 plumbers ("Advisors") advised Class members to pay a premium based on their  
 22 belief that the Flushmate System was more effective than traditional toilets and  
 23 saved water. (CFACC ¶ 33.) These Advisors, however, would have recommended  
 24 that consumers not purchase Flushmate Toilets had Sloan disclosed the safety  
 25 hazard, and Plaintiffs and the members of the proposed litigation Class would not

26 \_\_\_\_\_  
 27 <sup>5</sup> For Settlement purposes, the group of covered Flushmate Toilets has been  
 28 expanded to those manufactured between October 14, 1997, and June 30, 2009. The  
 Settlement and CFACC provisions reflect the expanded range of Class members.

1 have purchased these toilets had they known that the Flushmate System “had a  
2 propensity to burst and fail.” (CFACC ¶¶ 78–79.)

3 According to the CFACC and other class complaints, Sloan misrepresented  
4 in its written warranty (which it knew toilet Advisors would see and rely upon) that  
5 the Flushmate System was “free of defects in material and workmanship.” (CFACC  
6 ¶¶ 57–65.) Sloan promoted Flushmate as “more reliable” than other toilets as part  
7 of its stated strategy to “dispel myths about the undependability of low-  
8 consumption toilets.” (CFACC ¶¶ 66–79 & Ex. I thereto.) Plaintiffs allege that  
9 Sloan failed to disclose the defect until June 2012, despite knowing of the defect  
10 when it issued product advisories in 2000 and 2003. (CFACC ¶¶ 39–41 & Exs. B &  
11 C thereto.)

12 Plaintiffs in the consolidated actions assert seventeen claims on behalf of the  
13 proposed nationwide Class, including fraudulent concealment, violation of the  
14 Unfair Competition Law, and breach of warranty. (CFACC ¶¶ 141–305.) These  
15 causes of action arise out of the same facts as the *Dimov* action still pending in the  
16 Northern District of Illinois, which asserts different causes of action. The CFACC  
17 prays for damages corresponding to the loss in value of the toilets due to the defect,  
18 or the cost of replacing the Flushmate Systems. (CFACC ¶ 128.)

19 **D. Settlement Negotiations, Related Proceedings in This Court,**  
20 **Discovery, and Preliminary Approval.**

21 In addition to ongoing settlement discussions before and after the “official”  
22 mediations, the parties participated in four all-day mediation sessions on April 18  
23 and 19, 2013, and May 13 and 14, 2013. (Declaration of Kristen Law Sagafi in  
24 Support of Final Approval of Class Action Settlement and Class Counsel’s  
25 Application for Attorneys’ Fees and Expenses (“Sagafi Decl.”), ¶ 12(a);  
26 Declaration of David M. Birka-White (“Birka-White Decl.”), ¶ 13; Declaration of  
27 William M. Audet (“Audet Decl.”), ¶ 19.) As the record reflects, during the  
28 sessions and at all times, the parties’ negotiations were hard-fought, contested, and

1 at arms' length. (Sagafi Decl., ¶¶ 12(a)-(i); Birka-White Decl., ¶ 12; Audet Decl.,  
 2 ¶¶ 19, 22.) As part of the settlement discussions, the parties retained as mediator the  
 3 Honorable William J. Cahill of JAMS, a retired Superior Court Judge with  
 4 significant prior experience and skill with complex class action settlements. (Sagafi  
 5 Decl., ¶ 12(a); Birka-White Decl., ¶ 13.)

6 After much deliberation, and after the negotiations appeared on the verge of  
 7 breaking down, the parties came to an agreement regarding core settlement terms  
 8 on May 17, 2013. (Sagafi Decl., ¶ 12(b).) The parties promptly informed this Court,  
 9 which on May 28, 2013, stayed this action for 60 days so the parties could work  
 10 towards a final settlement agreement. (ECF Nos. 91–92.)

11 Painstaking negotiations on a host of issues followed. (Sagafi Decl., ¶ 12(b);  
 12 Audet Decl., ¶¶ 19, 21.) The parties' initial exchange of drafts in June 2013 brought  
 13 to light a number of issues that needed resolution. (Sagafi Decl., ¶ 12(c).) The  
 14 parties' divergent views necessitated further negotiations and another full-day  
 15 mediation session before Judge Cahill on July 25, 2013. (Sagafi Decl., ¶ 12(c).)  
 16 With the assistance of Judge Cahill, the parties thereafter continued to negotiate and  
 17 reached an agreement in principle on July 29, 2013. (Sagafi Decl., ¶ 12(d); Birka-  
 18 White Decl., ¶¶ 14–15.)

19 In light of the complex nature of the settlement, the parties further negotiated  
 20 detailed terms, working steadily toward a finalized agreement over the next several  
 21 months. In the meantime, Plaintiffs formally requested and obtained the production  
 22 of core documents, and noticed depositions on a number of issues. (*See generally*  
 23 Birka-White Decl., ¶¶ 16(k)–(l); Audet Decl., ¶ 17; Sagafi Decl., ¶¶ 12(f), (k).)<sup>6</sup> At

24 <sup>6</sup> On August 27, 2013, Plaintiffs' counsel prepared a revised draft settlement  
 25 agreement incorporating the agreement in principle reached on July 29, 2013.  
 26 (Sagafi Decl., ¶ 12(g).) On September 9, 2013, Plaintiffs' counsel provided  
 27 Defendants' counsel with a separate, detailed proposed claims protocol. (Sagafi  
 28 Decl., ¶ 12(g).) Defendants' counsel provided comments to both drafts at an in-  
 person meeting on September 18, 2013. (Sagafi Decl., ¶ 12(g).) After further  
 negotiations, the parties met again in person on October 8, 2013, to discuss a host  
 of issues, with the focus on a streamlined claims process for Class members.

(Footnote continues on next page.)  
 PLAINTIFFS' MOTION FOR FINAL APPROVAL  
 OF CLASS ACTION SETTLEMENT  
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1 the request of the parties, the Court again extended the stay until January 28, 2014.  
2 (ECF Nos. 106, 110, 114.) On December 9 and 10, 2013, Class Counsel deposed  
3 two key Sloan witnesses pursuant to Fed. R. Civ. P. 30(b)(6) regarding the  
4 engineering details and efficacy of the Repair Kit, warranty claims, and Sloan's  
5 finances. (Birka-White Decl., ¶ 16(l); Audet Decl., ¶ 17; Sagafi Decl., ¶ 12(k).)  
6 Following months of extensive due diligence and coordination with other pending  
7 actions, the parties finalized the details of their agreement and finally executed the  
8 Settlement between January 18 and January 22, 2014. (Sagafi Decl., ¶ 14; Birka-  
9 White Decl., ¶ 15; Audet Decl., ¶ 21.)

10 As provided for under the Settlement, on January 31, 2014, Plaintiffs and  
11 Class Counsel in all the consolidated and related actions submitted the proposed  
12 Settlement to this Court, together with a request that the Court grant preliminary  
13 approval and provide for Rule 23 and due process notice to the Class. (ECF Nos.  
14 118–124). The Court conducted a preliminary approval hearing on February 10,  
15 2014. (ECF No. 132.) The Court requested certain modifications during the  
16 hearing, and consistent with the Court's suggestions, Class Counsel thereafter  
17 submitted amended forms of notice and a revised proposed order on February 14,  
18 2014. (ECF No. 134).

19 The Court preliminarily approved the Settlement on February 21, 2014. (ECF  
20 No. 135.) The Court found that Plaintiffs “have investigated the pertinent facts and  
21 law, have engaged in motion practice and discovery, and have evaluated the risks  
22 associated with continued litigation, trial, and/or appeal,” and that the Settlement  
23 appears “fair, reasonable, and adequate.” (ECF No. 135, ¶ 2.) The Court further  
24 found that “the Settlement was reached in the absence of collusion, is the product of  
25  
26 (Sagafi Decl., ¶ 12(h).) Counsel also met with the proposed Claims Administrator  
27 on October 25, 2013, in Lancaster, California (the operational headquarters of the  
28 proposed Claims Administrator) to conduct an informal site inspection of the  
claims facilities and to discuss claims processing logistics and implementation of  
the settlement. (Sagafi Decl., ¶ 12(i) Birka-White Decl., ¶ 16(j).)



1 informed, good-faith, arms-length negotiations between the parties and their  
 2 capable and experienced counsel, and was reached with the assistance of a well-  
 3 qualified and experienced mediator . . . .” (ECF No. 135, ¶ 2.) The Court also  
 4 conditionally certified the Class for settlement purposes, appointed the named  
 5 Plaintiffs as Class representatives, appointed Class Counsel, and scheduled a  
 6 Fairness Hearing for August 25, 2014. (ECF No. 135, ¶¶ 2, 5, 12.) Additionally, the  
 7 Court approved the form and content of the Class Notices and the Notice Plan,  
 8 appointed the Notice Provider and Claims Administrator, and ordered that Notice  
 9 be completed by June 30, 2014. (ECF No. 135, ¶¶ 6–9, 16–17.) Finally, the Court  
 10 preliminarily appointed Judge Cahill as Special Master. (ECF No. 135, ¶ 17.)

### 11 **III. SUMMARY OF THE SETTLEMENT TERMS**

12 The Settlement terms were described in detail in the Plaintiffs’ preliminary  
 13 approval papers, are available for review in the Settlement (ECF No. 119–1), and  
 14 are briefly summarized again here.

#### 15 **A. The Class of Flushmate Toilet Owners.**

16 The Settlement provides cash reimbursement to members of the Class,  
 17 defined to include “any Person who owns or owned a Flushmate System or  
 18 Flushmate Toilet installed in the United States.”<sup>7</sup> Settlement, § I (Definition

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19 <sup>7</sup> Excluded from the Class are (1) Defendants, any entity in which Defendants have  
 20 a controlling interest, or which has a controlling interest in Defendants and  
 21 Defendants’ legal representatives, assigns, and successors, and any retailers or  
 22 wholesalers of the Flushmate System or Flushmate Toilets, and (2) the judges to  
 23 whom this case is or was assigned and any members of the judges’ immediate  
 24 families. Also excluded from the Class are (3) all Persons who have obtained a  
 25 judgment against Defendants with regard to the Released Claims on or before the  
 26 date of Preliminary Approval by the Court; (4) all Persons who, prior to  
 27 Preliminary Approval, received cash reimbursement from Flushmate for property  
 28 damage resulting from a Burst or Leak in their Flushmate System; (5) all Persons  
 who have incurred damages as a result of a Leak or Burst of a Flushmate System  
 that occurred on or before August 9, 2008, but who have not brought any civil  
 action relating thereto on or before August 9, 2012; (6) all Persons whose Property  
 previously contained, but no longer contains, a Flushmate System or Flushmate  
 Toilet, and have not experienced a Leak or Burst of a Flushmate System or  
 Flushmate Toilet, except Persons who replaced their Flushmate Toilets in response  
 to the Recall; and (7) all Persons who formerly owned Property that contained a

1 of “Class”) (ECF No. 119-1 at 9).<sup>8</sup>

2 **B. Settlement Consideration.**

3 Defendants agree to pay a minimum of \$18 million in cash for the benefit of  
4 the Class. Specifically, Class members who have (1) paid to install a Repair Kit, (2)  
5 paid to install a replacement pressure vessel, (3) paid to install a replacement toilet,  
6 and/or (4) sustained direct Property Damage as a result of a Leak or Burst of a  
7 Flushmate System at any time prior to the close of the Claims Period, will be  
8 eligible to submit a claim during the Claims Period. Each type of relief is addressed  
9 below.

10 **1. Reimbursement for Unreimbursed Out-of-Pocket**  
11 **Installation Costs.**

12 Under the terms of the Recall, Flushmate will provide a free Repair Kit to  
13 each Claimant. The Repair Kit (*see* Exhibit A to the Settlement; ECF No. 119-1 at  
14 80-82) comprises a metal U-band that encircles the Flushmate System within the  
15 Flushmate Toilet, with an external pressure regulator to be installed between the  
16 water supply line and the toilet fixture.<sup>9</sup> While the Repair Kit was designed for ease  
17 of installation, the parties have provided under the Settlement that any Class

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18 Flushmate System, and did not experience a Leak or Burst of a Flushmate System  
19 or Flushmate Toilet during their ownership. (ECF No. 119-1 at 9.)

20 <sup>8</sup> Under the Settlement, a Flushmate Toilet means any toilet equipped with a  
21 Flushmate System. The Flushmate System is defined as any Series 503 Flushmate  
22 III Pressure-Assist Flushing System manufactured by Flushmate between October  
23 14, 1997 and June 30, 2009. The manufacturing date code/serial number is up to 16  
24 characters long and is located on the label on the top of the Flushmate System’s  
25 polypropylene vessel. The first six numerals of the serial number are the  
26 manufacturing date code. The manufacturing date code range for the Settlement  
27 begins with 101497 (October 14, 1997) and continues through 063009 (June 30,  
28 2009). *See* Settlement, § 1 (Definitions of “Flushmate Toilet” and “Flushmate  
System”) (ECF No. 119-1 at 11). The serial number is easily visible upon lifting the  
lid of the porcelain tank on any Flushmate Toilet, making it simple and easy for  
consumers to ascertain whether they are members of the Class.

<sup>9</sup> The U-band is designed to contain the pressure vessel in the event of a weld seam  
separation, thereby reducing the likelihood of a burst forceful enough to shatter the  
porcelain fixture. The external regulator further reduces the likelihood and severity  
of a weld seam separation by reducing the pressure within the Flushmate System.

1 member may choose to engage a plumber or third-party technician to install the  
2 Repair Kit. (Sagafi Decl., ¶ 12(k).) Class members who submit qualified claims for  
3 reimbursement of costs associated with hiring a plumber or third-party technician to  
4 install the Repair Kit will be paid an initial amount in accordance with proof and  
5 claims volume. *See* Plan of Allocation, § I.B.1 (ECF No. 134-7 at 2). Based on  
6 currently available data, and claims rate calculations over the next two years, Class  
7 Counsel anticipate that Claimants will receive approximately \$50.00 per Flushmate  
8 Toilet plus another \$25.00 for each additional Flushmate Toilet located at the same  
9 property address. (Sagafi Decl., ¶ 14.)

10 It should be noted that under the Settlement, claims will be made on an  
11 ongoing basis, and thus Claimants will be paid shortly after their claim is  
12 submitted. In addition, the Class members will potentially receive a *pro rata*  
13 second-round distribution of any unclaimed funds at the end of the two-year Claims  
14 Period. Further, as provided in the Settlement, Class members who paid to replace a  
15 Flushmate System or Flushmate Toilet will receive an initial distribution from the  
16 Settlement Fund for their unreimbursed out-of-pocket replacement expenses in  
17 accordance with proof and claims volume. These Claimants will also receive  
18 approximately \$50.00 per Flushmate Toilet, with \$25.00 for each additional  
19 Flushmate Toilet located at the same property address. (Sagafi Decl., ¶ 14.) As is  
20 true for the other Claimants, these Class members will potentially receive an  
21 additional *pro rata* distribution based on the overall claims rate, at the end of the  
22 two-year Claims Period.

23 **2. Reimbursement for Property Damage Caused by a**  
24 **Flushmate System Leak or Burst.**

25 As Class Counsel learned during the course of the investigation and  
26 confirmed through discovery, some Class members have experienced leak- or burst-  
27 related failures of the Flushmate Systems that resulted in shattered fixtures and/or  
28 associated property damage. For those Class members the Settlement provides

1 recovery of all reasonable and documented unreimbursed out-of-pocket expenses  
2 incurred to restore the affected Property to its pre-damage condition, including the  
3 cost to replace the toilet fixture itself. *See* Plan of Allocation, § I.B.2 (ECF No. 134-  
4 7 at 2). If any reasonable and documented Property Damage claims remain unpaid  
5 after Defendants' guaranteed payments totaling \$18 million have been exhausted,  
6 and the total amount of paid-for Property Damage claims exceeds \$1.5 million,  
7 Defendants will be required to pay such remaining Property Damage claims in full  
8 to the Settlement fund for allocation to those Claimants. *See* Settlement, § IV.A.4  
9 (ECF No. 119-1 at 28). As agreed by the parties, any Property Damage claims  
10 arising after the Claims Period are not included in the Settlement, will not be paid  
11 out of the Settlement fund, and are not released under the Settlement.

12 **C. Settlement Funding Schedule.**

13 The Settlement obligates Defendants to contribute a guaranteed total of  
14 eighteen million dollars (\$18,000,000) to the Settlement fund over the course of the  
15 next two-plus years. *See* Settlement, § IV.A (ECF No. 119-1 at 27–28). Following  
16 preliminary approval, Defendants have already transferred \$2 million into the  
17 Settlement Fund Trust Account, with an additional tranche of \$4.5 million to be  
18 transferred within ten (10) days after the Effective Date; a final transfer of \$2.5  
19 million will be made no later than six (6) months after the Effective Date. *See*  
20 Settlement, § IV.A.1 (ECF No. 119-1 at 27). Accordingly, the total Settlement  
21 payments during the first year of funding will be \$9 million. In Year Two,  
22 Defendants will pay a total of \$6 million in two installments, of \$4 million and \$2  
23 million. *See* Settlement, § IV.A.2 (ECF No. 119-1 at 28). In Year Three,  
24 Defendants will pay another \$3 million in four equal installments. *See* Settlement, §  
25 IV.A.3 (ECF No. 119-1 at 28).

26 As indicated above, should any reasonable and documented Property  
27 Damage claims remain unpaid after Defendants' guaranteed payments have been  
28 exhausted, and should the total amount of paid Property Damage claims exceed

1 \$1.5 million, then Defendants will be responsible for paying the remaining unpaid  
2 qualified Property Damage claims. *See* Settlement, § IV.A.4 (ECF No. 119-1 at 28).  
3 In this regard, the Settlement Agreement is effectively “uncapped” as to Property  
4 Damage claims for the Class members. After all Eligible Claims for reimbursement  
5 have been paid, any funds remaining in the Settlement Fund Trust Account will be  
6 distributed to the Claimants on a *pro rata* basis as “supplemental” payments if  
7 feasible (or, if not practical, the amount will be distributed *cy pres* subject to the  
8 Court’s approval). *See* Settlement, § V.C (ECF No. 119-1 at 32); Plan of  
9 Allocation, § I.B.3 (ECF No. 134-7 at 2).

10 **D. Claims Process.**

11 Section V of the Settlement, in conjunction with the more detailed Plan of  
12 Allocation, sets forth the claims process. Claimants whose property contains more  
13 than one Flushmate Toilet can file multiple claims, one for each toilet. *See*  
14 Settlement, § V.B (ECF No. 119-1 at 31–32). The costs associated with  
15 administering the Settlement will be paid out of the Settlement Fund Trust Account.  
16 *See* Settlement, §§ IV.B, V.E (ECF No. 119-1 at 31–32). For purposes of  
17 Settlement administration, Claimants are sorted into two groups: economic loss  
18 Claimants and property damage Claimants.

- 19 • **Economic loss Claimants.** Owners of Flushmate Toilets can submit claims  
20 for unreimbursed, out-of-pocket expenses associated with having installed a  
21 Repair Kit, replacement pressure vessel, or replacement toilet. It  
22 is anticipated that these Claimants will receive a minimum \$50 cash  
23 payment. For properties with multiple Flushmate Toilets, Claimants will  
24 receive additional compensation for each subsequent installation. *See* Plan of  
25 Allocation, I.B.1 (ECF No. 134-7 at 1–2). It is requested that Claimants  
26 submit copies of their invoices or receipts with their claims. If they do not  
27 have invoices or receipts, they can still submit the claim listing the serial  
28 number or providing other proof of ownership of the Flushmate System(s)

1 for which they are seeking reimbursement.

- 2 • **Property damage Claimants.** Owners of Flushmate Toilets whose Property  
3 was damaged directly as a result of a leak or a burst are entitled to  
4 reimbursement for the reasonable and necessary documented expense to  
5 restore the Property to its pre-damage condition. *See* Plan of Allocation, I.B.2  
6 (ECF No. 134-7 at 2).

7 Claimants whose Flushmate Toilets have already been repaired or replaced at  
8 Sloan's expense, or whose Property Damage claims relating to Flushmate Toilets  
9 have already been paid or resolved by Sloan, are not eligible for relief. *See* Plan of  
10 Allocation, n. 2 (ECF No. 134-7 at 1 n. 2).

11 The parties proposed, and the Court preliminarily approved, the appointment  
12 of Class Litigation Administration and Support Services ("CLASS") to implement  
13 the Plan of Allocation. The founder and president of CLASS is Arnold Rodio, an  
14 experienced claims administrator and plumbing expert who is the former president  
15 of the largest California plumbing trade group and a member of various committees  
16 of the international plumbing trade group responsible for promulgating uniform  
17 plumbing standards. Mr. Rodio has administered property damage claims arising  
18 from numerous civil actions, and is well-qualified to administer the claims under  
19 this Settlement. (Declaration of Arnold Rodio in Support of Plaintiffs' Unopposed  
20 Motion for Preliminary Approval of Class Action Settlement, and Exhibits A & B  
21 thereto; ECF Nos. 121, 121-1, 121-2.)

22 The Settlement provides for the appointment of a Special Master who will  
23 resolve certain disputes that may arise during Settlement administration. Pursuant  
24 to the suggestion of the Court, and by agreement of the parties, Judge Cahill (Ret.)  
25 will serve as the Special Master. *See* Settlement, § I (Definition of "Special  
26 Master") (ECF No. 119-1 at 16); Plan of Allocation, §§ IV.D, VI (ECF No. 134-7  
27 at 5-6, 7); Stipulation Following February 10, 2014 Hearing on Plaintiff's  
28 Unopposed Motion for Preliminary Settlement Approval (ECF No. 134). The



1 Settlement also provides for the appointment of a Special Circumstances  
2 Committee, consisting of the Claims Administrator and representatives of Plaintiffs  
3 and Defendants, to resolve any and all large, disputed, or unusual claims in the first  
4 instance. *See* Plan of Allocation, § V (ECF No. 134-7 at 6-7). Any disputes arising  
5 from the Special Circumstances Committee, including disputes among the members  
6 of the Committee and objections to decisions of the Committee, will be referred to  
7 the Special Master for resolution. *See* Plan of Allocation, § V (ECF No. 134-7 at 7).  
8 The parties respectfully request that the Court finally approve Judge Cahill’s  
9 appointment as Special Master.

10 During the Claims Period, Class Counsel will submit an annual report to the  
11 Court detailing the work performed by the Claims Administrator and the amounts  
12 paid to the Class during the prior year. *See* Settlement, § V.E (ECF No. 119-1 at  
13 32–33). At the end of the Claims Period, the Class members will revert to their  
14 remaining warranty rights, which the Settlement preserves. *See* Settlement, § VI.D  
15 (ECF No. 119-1 at 35).

16 **E. Settlement Release.**

17 In exchange for the valuable consideration summarized above and set forth in  
18 greater detail in the Settlement, Plaintiffs agree to an appropriately tailored Release  
19 of Defendants from liability. *See* Settlement, § VI.A (ECF No. 119-1 at 33). This  
20 Release will preclude future claims “to the extent such claims are alleged to be  
21 caused by, arise out of, or relate to any claim asserted, or that could have been  
22 asserted, in the Action relating to the Flushmate System and/or Flushmate Toilets.”  
23 Settlement, § I (Definition of “Released Claims”) (ECF No. 119-1 at 14-15). The  
24 Release does not prevent Class members from exercising their rights under any  
25 applicable written express warranties offered with Flushmate Systems and  
26 Flushmate Toilets during or after the Claims Period. *See* Settlement, § VI.D (ECF  
27 No. 119-1 at 35). Moreover, the Release does not extinguish any wrongful death,  
28 personal injury, or emotional distress claims, or any claims for property damage



1 arising after the end of the Claims Period. *See* Settlement, § I (Definition of  
2 “Released Claims”) (ECF No. 119-1 at 14–15).

3 **IV. THE APPROVED CLASS NOTICE HAS BEEN DISSEMINATED,**  
4 **AND SATISFIES RULE 23 AND DUE PROCESS.**

5 The Notice Plan approved by the Court (ECF No. 135, ¶¶ 7–9) has been fully  
6 implemented by the Parties and the Court-approved Claims Administrator and  
7 Notice Provider in accordance with the Court’s directives. (Sagafi Decl., ¶ 17;  
8 Declaration of Katherine Kinsella, ¶¶ 5–23 (“Kinsella Decl.”).)

9 Pursuant to the Court-approved Notice Plan, direct individual notice of the  
10 Settlement has been disseminated by mail to approximately 203,885 Class  
11 Members, and to approximately 105,166 plumbing and general contractors  
12 nationwide. (Kinsella Decl., ¶¶ 7, 19.) The Settlement notice has also been  
13 published in more than 25 media outlets, including *People*, *Time*, *Parade*, and  
14 *Better Homes & Gardens*, as well as on the Internet,<sup>10</sup> and in 10 publications likely  
15 to be read by commercial, public, and other owners of Flushmate Toilets. (ECF  
16 120-3 at 31, 37; Sagafi Decl., ¶ 17; Kinsella Decl., ¶¶ 9–18, 20–23.)

17 At the preliminary approval hearing, the Court stated: “I was impressed with  
18 the declaration of Kinsella and the various avenues for notice, direct notice, and  
19 then notice to paid media, notice through press release, notice through third-party  
20 outreach, notice to the plumbing contractors and the interactive website are all I  
21 think as good as one can expect.” (ECF No. 132 at 49.) The Notice Plan as executed  
22 complies with the Court’s Order, satisfies Rules 23(c) and (e), and meets the  
23 requirements of due process. (Kinsella Decl., ¶¶ 2, 24.) *Cf. Simpao v. Gov’t of*  
24 *Guam*, 369 F. App’x 837, 838 (9th Cir. 2010) (notice published by radio, television,  
25 and newspaper, and mailed directly to 49,000 class members, satisfied due process).

26  
27 \_\_\_\_\_  
28 <sup>10</sup> *See* Flushmate Class Action Settlement Fund, <http://www.flushmateclaims.com/>  
(last visited June 21, 2014).

1 **V. FINAL APPROVAL IS WARRANTED**

2 **A. Summary of Argument.**

3 The *Manual for Complex Litigation* (Fourth) § 21.63 (2004) (“*Manual*”) describes the three-step procedure for approval of class action settlements pursuant to Fed. R. Civ. P. 23:

- 4 1. Preliminary approval of the proposed settlement at a hearing
- 5 after submission to the Court of a written motion for preliminary
- 6 approval;
- 7 2. Dissemination of notice of the proposed settlement to the affected
- 8 class members; and
- 9 3. A “formal fairness hearing” or final settlement approval hearing, at
- 10 which class members may be heard regarding the settlement, and at
- 11 which evidence and argument concerning the fairness, adequacy,
- 12 and reasonableness of the settlement may be presented.

13 This procedure, regularly used by courts in this Circuit, safeguards class members’ due process rights and enables the Court to fulfill its role as the guardian of class interests. See 4 *Newberg on Class Actions*, § 11:22, et seq. (4th ed. 2002) (“*Newberg*”). The first two steps in this process have now occurred. With this motion, Plaintiffs respectfully request that the Court take the third and last step in the process by granting final approval to the Settlement agreed upon by the parties.

14 **B. The Settlement is Fair, Reasonable, and Adequate, and the Relevant Factors Weigh in Favor of Approval.**

15 “[V]oluntary conciliation and settlement are the preferred means of dispute resolution.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). “This is especially true in complex class action litigation . . . .” *Id.*; see also *Churchill Village, LLC v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004). To safeguard the interests of the Class, the Court has the duty to ensure that a proposed settlement is “fair, reasonable, and adequate” before granting approval. See Fed. R.

1 Civ. P. 23(e)(2). In performing that duty the Court’s scrutiny “must be limited to  
2 the extent necessary to reach a reasoned judgment that the agreement is not the  
3 product of fraud or overreaching by, or collusion between, the negotiating parties,  
4 and the settlement, taken as a whole, is fair, reasonable and adequate to all  
5 concerned.” *Officers for Justice*, 688 F.2d at 625.

6 The Ninth Circuit has laid out a set of factors courts should consider in  
7 evaluating class settlements: (1) the strength of the plaintiffs’ case; (2) the risk,  
8 expense, complexity, and likely duration of further litigation; (3) the risk of  
9 maintaining class action status throughout the trial; (4) the amount offered in  
10 settlement; (5) the extent of discovery completed and the stage of the proceedings;  
11 (6) the experience and views of counsel; (7) the presence of a governmental  
12 participant; and (8) the reaction of the class members to the proposed settlement.  
13 *Churchill Village*, 361 F.3d at 575; *Torrisi v. Tuscon Elec. Power Co.*, 8 F.3d 1370,  
14 1375 (9th Cir. 1993). This list is non-exclusive, *Churchill Village*, 361 F.3d at 576  
15 n.7, and “it is the settlement taken as a whole, rather than the individual component  
16 parts, that must be examined for overall fairness,” *Staton v. Boeing Co.*, 327 F.3d  
17 938, 952 (9th Cir. 2003).

18 Application of the pertinent factors and consideration of the Settlement as a  
19 whole demonstrates that the Settlement is fair, reasonable, and adequate.

20 **1. The Strengths of the Case and the Risk, Expense,**  
21 **Complexity, and Likely Duration of Further Litigation**  
22 **Favor Final Settlement Approval Here.**

23 Plaintiffs and Class Counsel believe the claims against Defendants have  
24 merit and would present a compelling case at trial. Defendants deny that the  
25 Plaintiffs’ claims have any merit. It is clear that Plaintiffs and the Class would face  
26 difficult and lengthy challenges if the litigation were to continue.

27 As noted above, the Parties reached agreement on the Settlement terms  
28 during the pendency of Defendants’ Motion to Dismiss the TAC. (ECF No. 76.)  
Defendants therein challenged the legal sufficiency of Plaintiffs’ fraud-based claims

1 in tort and under California’s Unfair Competition Law, Cal. Bus. & Prof. Code  
2 § 17200, and Consumer Legal Remedies Act, Cal. Civil Code § 1770, *et seq.* In  
3 particular, Defendants argued that Plaintiffs had not adequately pled reliance on  
4 Defendants’ alleged misrepresentations, and that relief could not be granted on any  
5 of Plaintiffs’ fraud claims. (ECF No. 76.) Plaintiffs argued in response that the  
6 reliance element was sufficiently pled under an “indirect reliance” theory, because  
7 the Advisors who recommended Defendants’ toilets to them relied on Defendants’  
8 alleged misrepresentations, and would not have recommended purchasing the  
9 defective Flushmate Toilets but for those misrepresentations. (ECF No. 78 at 2–9.)

10 Plaintiffs believe their arguments opposing Defendants’ Motion to Dismiss  
11 the TAC are meritorious, and that they would have defeated the Motion absent the  
12 Court’s stay. Nevertheless, there could be no guarantee that Plaintiffs’ theory of  
13 indirect reliance through “Advisors” and the distribution chain would have been  
14 found legally viable. *Cf. Mirkin v. Wasserman*, 5 Cal. 4th 1082, 23 Cal. Rptr. 2d  
15 101 (Cal. 1993). To recover for fraud, Plaintiffs also would have needed to  
16 establish that Sloan knew or should have known of the defect but failed to disclose  
17 it until the Recall Notice. Additionally, because the Court had previously granted  
18 Defendants’ Motion to Dismiss the FAC in a detailed order (ECF No. 65), there  
19 remained a significant risk of the Court again dismissing Plaintiffs’ fraud claims for  
20 failure to remedy the Court’s expressed concerns. Dismissal of the fraud claims  
21 would have greatly reduced the damages available to Plaintiffs at trial.

22 Defendants further asserted that Plaintiffs’ warranty claims were  
23 insufficiently pled. With respect to any purported warranty, Defendants would have  
24 argued, *inter alia*, that any limited warranty covering “defects in materials and  
25 workmanship” does not extend to the alleged design defect. They would have  
26 argued that the warranty claim lacks merit because Plaintiffs allegedly did not  
27 satisfy all the conditions precedent, *i.e.*, contacting Flushmate to request warranty  
28 service and making their toilets available for inspection. Additionally, Defendants

1 would have attacked the warranty claims on the grounds that the defect did not  
2 manifest and/or was not substantially certain to manifest in most of the Flushmate  
3 Toilets owned by Plaintiffs and the putative Class. Defendants also argued that the  
4 economic loss doctrine bars Plaintiffs' negligent recall claim under California law.

5 Even if Plaintiffs could have prevailed against experienced defense counsel  
6 to overcome these and other obstacles, years of expensive litigation would likely  
7 have followed. Plaintiffs would have needed to litigate certification, the propriety of  
8 the proposed Class under Rule 23, and the appointment of the Class representatives  
9 and Class Counsel for litigation purposes. *See* Fed. R. Civ. P. 23(a)–(c), (g).<sup>11</sup> After  
10 any class certification order and interlocutory Rule 23(f) appeal, the parties would  
11 have needed to litigate motions for summary judgment, to conduct additional and  
12 potentially extensive fact and expert discovery, to prepare the case for trial, and  
13 potentially to bring or defend appeals of any verdict or summary judgment.

14 Even assuming Plaintiffs could have prevailed at every remaining stage of  
15 the litigation, bringing this nationwide class action to trial would have entailed  
16 years of additional effort and cost. As the Court has already found, this Settlement  
17 “avoids the costs, uncertainty, delays, and other risks associated with continued  
18 litigation, trial, and/or appeal” while benefiting the Class and “advance[ing] public  
19 safety” by “maximiz[ing] Class members’ incentive to repair or replace their  
20 Flushmate Toilets.” (ECF No. 135 at ¶ 3.) This factor thus strongly favors approval.  
21 *See Churchill Village*, 361 F.3d at 575.<sup>12</sup> (Audet Decl., ¶¶ 26, 27, 31.)

22  
23 <sup>11</sup> To the extent that the Settlement might be viewed as “early” because class  
24 certification issues have not yet been litigated, this is “an early resolution [that]  
25 demonstrate[s] that the parties and their counsel are well prepared and well aware  
26 of the strength and weaknesses of their positions and of the interests to be served by  
27 an amicable end . . . .” *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*,  
28 MDL No. 2147, 2011 WL 2204584 (N.D. Ill. June 2, 2011) (citations omitted).

<sup>12</sup> *See also Bruno v. Quten Research Inst., LLC*, No. SACV 11-00173 DOC (Ex),  
2013 U.S. Dist. LEXIS 35066, at \*6–7 (C.D. Cal. Mar. 13, 2013) (finding that this  
factor militated in favor of approval in part because the proposed settlement  
advanced the public interest “without the challenges and risks of trial”).

1                   **2. The Settlement Confers a Meaningful Benefit Upon**  
 2                   **the Class.**

3                   The amount of the Settlement is more than adequate, providing meaningful  
 4 cash relief to the Class that augments the relief available under the voluntary  
 5 Recall. As described above, Defendants will pay a minimum of \$18,000,000 into a  
 6 common fund for the benefit of the Class. Class Counsel anticipate that Claimants  
 7 will receive approximately \$50.00 per Flushmate Toilet, with \$25.00 for each  
 8 additional Flushmate Toilet located at the same property address, to offset  
 9 unreimbursed, out-of-pocket costs to install a Repair Kit, replacement pressure  
 10 vessel, or replacement toilet. If any sums remain in the Settlement Fund after  
 11 payment of claims, Class members may receive an additional *pro rata* distribution.

12                   Cash reimbursement at this level supplements the relief available to Class  
 13 members well beyond what is available under the Recall, and allows for the fair *pro*  
 14 *rata* distribution of the Settlement funds to the Class. Claims by Class members  
 15 who have suffered property damage are effectively uncapped, while claims for  
 16 wrongful death, personal injury, or emotional distress are not being released.

17                   The relief provided under the Settlement supports final approval—as this  
 18 Court has previously recognized, the Settlement “confers substantial benefits . . . .”  
 19 (ECF No. 135, ¶ 2.)

20                   **3. Investigation and Discovery Prior to the Settlement Weigh**  
 21                   **in Favor of Approval.**

22                   By the time the parties reached the Settlement, after months of intensive  
 23 negotiation, Class Counsel had conducted substantial investigation as well as  
 24 document and deposition discovery that informed Plaintiffs’ claims. Prior to filing  
 25 their initial complaint, and continuing throughout the litigation, Plaintiffs in the  
 26 UDC Action and in the other actions investigated the problems with the Flushmate  
 27 System, including by conducting interviews and independent research into the  
 28 Flushmate System and supply chain. (Sagafi Decl., ¶ 7; Birka-White Decl., ¶ 15.)



1 Beyond their own investigation, Plaintiffs' counsel retained plumbing, engineering,  
2 and plumbing-code experts to investigate the facts and assess the viability and  
3 strength of the claims. *Id.* This investigation informed the settlement negotiations,  
4 as did the discovery that Defendants provided both before and during those  
5 negotiations. (Sagafi Decl., ¶ 8.) Indeed, Class Counsel noticed and took two  
6 depositions of Sloan representatives under Fed. R. Civ. P. 30(b)(6) while  
7 negotiations were ongoing, to resolve a number of issues related to the Settlement.  
8 (Sagafi Decl., ¶ 12(k).) This Court's order resolving Defendants' motions to  
9 dismiss the FAC was also invaluable in helping the parties assess the strengths and  
10 weaknesses of their respective positions. (Sagafi Decl., ¶ 11.)

11 Plaintiffs' counsel thus had a sound basis for evaluating the benefits of this  
12 Settlement against the risks attending continued litigation. The final terms of  
13 Settlement were agreed to only after Class Counsel had thoroughly vetted the  
14 claims and potential damages through the exchange of both informal and formal  
15 discovery, participated in arm's length negotiations with Defendants, and  
16 vigorously litigated the case over nearly two years. (Sagafi Decl., ¶¶ 6–12; Audet  
17 Decl., ¶¶ 29–31; Birka-White Decl., ¶ 15.) In short, the stage of the proceedings and  
18 the well-informed nature of the negotiations that produced this Settlement favor  
19 approval.

20 **4. The Views of Experienced Class Counsel and the Positive**  
21 **Reaction of the Class Support Approval.**

22 Class Counsel unreservedly support this Settlement and believe it is the best  
23 result for the Class that could have been achieved given all the circumstances. Class  
24 Counsel have extensive experience litigating nationwide class actions involving  
25 allegedly defective products like those at issue here, and had a keen understanding  
26 of the legal and factual issues in this case. (Sagafi Decl., ¶¶ 3, 7, 9 19; Birka-White  
27 Decl., ¶ 3, 19; Audet Decl., ¶¶ 13–25.) That qualified and well-informed counsel  
28 endorse the Settlement as fair, reasonable, and adequate weighs in favor of



1 approval.<sup>13</sup>

2 The Class's reaction to the Settlement to date also supports its approval.  
 3 Because the Claims Period will remain open for at least two years, and because the  
 4 deadline to opt out of or object to the Settlement has not yet arrived, the absent  
 5 Class members' reaction cannot be fully evaluated as of this filing. Thus far, the  
 6 reaction has been overwhelmingly positive. A toll-free telephone number was set  
 7 up to assist consumer and third-party notice recipients; as of June 26, 2014, the  
 8 number had received 9,154 calls. (Kinsella Decl., ¶¶ 22, 23.) As of that same date,  
 9 the FlushmateClaims.com website had received 154,641 unique visits. (Kinsella  
 10 Decl., ¶¶ 20, 21.) As against these large numbers, there have been only 15 opt-outs  
 11 to date, and zero objections, which favors approval. (Sagafi Decl., ¶ 18.)<sup>14</sup>

12 A court may appropriately infer that a class action settlement is fair,  
 13 adequate, and reasonable when few class members object to it.<sup>15</sup> Here, the Court  
 14 has determined that the Notice Plan "constitutes the best notice practicable under  
 15 the circumstances" and is "reasonably calculated under the circumstances to apprise  
 16 the Class members" of all necessary information for them to determine their rights  
 17 and assess their options under the Settlement. (ECF No. 135 at ¶ 7.) *See* Fed. R.  
 18 Civ. P. 23(c)(2); *Churchill Village*, 361 F.3d at 575. Particularly given the  
 19 extensive Notice and the large amount of Class members, the positive reaction of

20 \_\_\_\_\_  
 21 <sup>13</sup> *See In re Toys "R" Us-Del., Inc. Fair & Accurate Credit Transactions Act*  
 22 (*FACTA*) *Litig.*, 295 F.R.D. 438, 455 (C.D. Cal. Jan. 17, 2014) ("The  
 23 recommendations of plaintiffs' counsel should be given a presumption of  
 24 reasonableness.") (quoting *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal.  
 25 1979)); *see also McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx),  
 26 2012 U.S. Dist. LEXIS 103666, at \*8 (C.D. Cal. July 2, 2012).

27 <sup>14</sup> In accordance with the Court's preliminary approval order, requests for exclusion  
 28 must be postmarked by July 25, 2014, and any comments on or objections to the  
 Settlement and/or to Class Counsel's request for attorneys' fees and costs must be  
 submitted by July 30, 2014. (ECF No. 135, ¶ 10.) Plaintiffs' and Defendants'  
 responses to any such comments or objections are to be filed by August 8, 2014.  
 (ECF No. 135, ¶ 10.)

<sup>15</sup> *See, e.g., Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977);  
*Churchill*, 361 F.3d at 577.

1 the Class heavily favors approval.

2 **5. No Governmental Entity Has Raised Any Concern About**  
 3 **the Settlement.**

4 On February 7, 2014, Defendants provided notice of the Settlement to the  
 5 governmental officials designated to receive such notice under the Class Action  
 6 Fairness Act, 28 U.S.C. § 1715. (ECF No. 138.) To date no governmental entity has  
 7 raised any objection or concern about any aspect of the Settlement. This factor  
 8 points to its fairness, reasonableness, and adequacy. *See, e.g., In re Toyota Motor*  
 9 *Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, No.  
 10 8:10ML 02151 JVS (FMOx), 2013 U.S. Dist. LEXIS 123298 (C.D. Cal. July 24,  
 11 2013) (“Although no governmental entity is a party to this action, the proposed  
 12 settlement nevertheless bears the silent imprimatur of government approval because  
 13 despite receiving notice, no state or federal official has filed an objection to the  
 14 proposed settlement.”) (Selna, J.).

15 **6. The Settlement Is the Product of Months of Robust**  
 16 **Negotiations.**

17 Finally, to ensure that the interests of Class Counsel and Defendants in the  
 18 Settlement align with those of the absent Class members, the Court “must be  
 19 particularly vigilant” for signs of collusion, whether “explicit” or “more subtle.”  
 20 *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011).  
 21 There are no such warning signs here.

22 When a settlement like this one has resulted from arms’ length negotiations  
 23 conducted by capable and experienced counsel, the Court begins its analysis with a  
 24 presumption that the settlement is fair and reasonable.<sup>16</sup> This presumption applies

25 \_\_\_\_\_  
 26 <sup>16</sup> *See* 4 *Newberg* § 11:41; *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS  
 27 13555, at \*9 (C.D. Cal. June 10, 2005) (“A presumption of correctness is said to  
 28 ‘attach to a class settlement reached in arm’s-length negotiations between  
 experienced capable counsel after meaningful discovery.’”) (quoting *Manual for  
 Complex Litigation* (Third) § 30.42 (1995)).

1 with full force and effect in this situation: as this Court has already found, the  
2 present Settlement stems from robust and painstaking negotiations between the  
3 parties, including five full days of mediation before Judge Cahill. ECF No. 135, ¶ 2  
4 (finding the “Settlement was reached in the absence of collusion, is the product of  
5 informed, good-faith, arms-length negotiations between the parties . . .”).

6 **VI. CONCLUSION**

7 For all of the foregoing reasons, Class Counsel respectfully ask the Court to  
8 enter a Final Order and Judgment approving the proposed Settlement Agreement.

9  
10 Dated: June 30, 2014

Respectfully submitted,

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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

UNITED DESERT CHARITIES,  
FRED EDE, III, EMILY  
WILLIAMS, BRUCE  
PRITCHARD and JEAN  
STEINER on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

SLOAN VALVE COMPANY,  
AMERICAN STANDARD  
BRANDS AS AMERICA, INC.,  
KOHLER CO., GERBER  
PLUMBING FIXTURES, LLC,  
MANSFIELD PLUMBING  
PRODUCTS, LLC, HOME  
DEPOT, U.S.A., INC., and DOES  
1-10, inclusive,

Defendants.

Case No. CV12-06878 SJO (SHx)

**[PROPOSED] FINAL ORDER  
AND JUDGMENT APPROVING  
CLASS ACTION SETTLEMENT**

Action Filed: August 9, 2012

*The Honorable S. James Otero*

Consolidated Cases:

- Berube v. Flushmate*  
2:13-cv-02372-SJO-SH
- Brettler v. Flushmate*  
2:13-cv-02499-SJO-SH
- Kubat, et. al. v. Flushmate*  
2:13-cv-02425-SJO-SH
- Patel v. Flushmate*  
2:13-cv-02428-SJO-SH

Related Case:

- Dimov, et. al., Sloan Valve Co.,*  
1:12-cv-09700 (N.D. Ill.)

1 Following a hearing on February 10, 2014 (“Preliminary Approval Hearing”),  
2 this Court entered its Order on February 21, 2014 (ECF No. 135) (1) preliminarily  
3 approving class action settlement; (2) certifying settlement class; (3) approving  
4 proposed class notices; and (4) scheduling a final fairness hearing to determine (a)  
5 whether the terms and conditions of the Class Action Settlement Agreement and  
6 Release (“Settlement”) in these consolidated and related cases (collectively, the  
7 “Action”), filed with this Court on January 28, 2014 (ECF No. 116-1), are fair,  
8 reasonable, adequate, free from collusion, and in the best interests of the Class; (b)  
9 whether the Settlement should be finally approved by the Court; and (c) to consider  
10 an application by Class Counsel for an award of attorneys’ fees and expenses, and  
11 incentive awards for the Class representatives (“Preliminary Approval Order”).

12 After due process notice to the Class, the Court held the Final Fairness Hearing  
13 on August 25, 2014 (“Fairness Hearing”). The Court has considered: (1) the  
14 memorandum submitted in support of Plaintiffs’ Motion for Final Approval of Class  
15 Action Settlement (“Final Approval Motion”); (2) the declarations and exhibits  
16 submitted in support of the Final Approval Motion; (3) the memorandum submitted  
17 in support of Class Counsel’s Application for Attorneys’ Fees and Expenses and for  
18 Service Awards (“Fee Application”); (4) the Settlement, the Plan of Allocation, the  
19 Notice Plan, the Class Notices and the Claim Forms; (5) the entire record in this  
20 proceeding, including but not limited to the memorandum in support of preliminary  
21 approval of the Settlement; (6) the oral presentations of Class Counsel and Counsel  
22 for Defendants at the Preliminary Approval and Fairness Hearings; (7) the Court’s  
23 findings and conclusions set forth in its Preliminary Approval Order; (8) this Court’s  
24 observations while presiding over this matter; and (9) the relevant law.

25 Based upon these considerations, it is **HEREBY ORDERED, ADJUDGED,**  
26 **and DECREED** as follows:

27 1. This Final Order and Judgment (“Final Order”) incorporates and makes a  
28 part hereof: (a) the Settlement, including the Plan of Allocation, the Notice Plan, the

1 Class Notices, and the Claim Forms and all exhibits thereto; and (b) the Court's  
2 findings and conclusions in the Preliminary Approval Order. All capitalized terms in  
3 this Final Order shall have the same meanings as in the Settlement, unless separately  
4 defined herein.

5 2. All preliminary findings and conclusions in the Court's Preliminary  
6 Approval Order are hereby made final.

7 3. This Court has jurisdiction over the subject matter and parties to the  
8 Action pursuant to 28 U.S.C. §1332(d)(2) and 28 U.S.C. §1453. This jurisdiction  
9 includes, without limitation, jurisdiction to finally certify the Class for settlement  
10 purposes under Fed R. Civ. P. 23(a) and (b)(3), finally approve the Settlement under  
11 Fed R. Civ. P. 23(e), and dismiss the Action with prejudice.

12 4. The Class meets the requirements of Fed R. Civ. P. 23(a) and 23(b)(3).  
13 The Class consists of any Person who owns or owned a Flushmate System or  
14 Flushmate Toilet installed in the United States. Excluded from the Class are (a)  
15 Defendants; any entity in which a Defendant has a controlling interest, or which has a  
16 controlling interest in a Defendant; Defendants' legal representatives, assigns, and  
17 successors; and any retailers or wholesalers of the Flushmate System or Flushmate  
18 Toilets; and (b) the Judges to whom this case is or was assigned and any members of  
19 their immediate families. Also excluded from the Class are (c) all Persons who have  
20 obtained a judgment against Defendants with regard to the Released Claims on or  
21 before the date of Preliminary Approval; (d) all Persons who, prior to Preliminary  
22 Approval, received cash reimbursement from Flushmate for property damage resulting  
23 from a Burst or Leak in their Flushmate System; (e) all Persons who have incurred  
24 damages as a result of a Leak or Burst of a Flushmate System that occurred on or  
25 before August 9, 2008, but who have not brought any civil action relating thereto on or  
26 before August 9, 2012; (f) all Persons whose Property previously contained, but no  
27 longer contains, a Flushmate System or Flushmate Toilet, and have not experienced a  
28 Leak or Burst of a Flushmate System or Flushmate Toilet, except Persons who

1 replaced their Flushmate Toilets in response to the Recall; and (g) all Persons who  
2 formerly owned Property that contained a Flushmate System, and did not experience a  
3 Leak or Burst of a Flushmate System or Flushmate Toilet during their ownership.

4 5. Based upon Plaintiffs' submissions and the record before this Court,  
5 which Defendants controvert but do not contest for settlement purposes, the  
6 prerequisites for a class action under Fed R. Civ. P. 23(a) and (b)(3) have been  
7 satisfied, in that:

8 a. The members of the Class are so numerous that joinder of all  
9 members is impractical. Fed. R. Civ. P. 23(a).

10 b. This litigation involves common class-wide issues that would drive  
11 the resolution of the claims absent the Settlement. Fed. R. Civ. P. 23(b);  
12 *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). Several  
13 disputed issues are common to Plaintiffs and the Class, including whether  
14 the Flushmate System is subject to failure; whether the Flushmate System  
15 creates an unreasonable safety risk; and whether Sloan knew or should  
16 have known that the Flushmate System was allegedly defective.

17 c. The claims of the named Plaintiffs are typical of the claims of the  
18 Class. Fed. R. Civ. P. 23(c). Typicality is satisfied because the conduct at  
19 issue is alleged to have caused similar harm at the point of purchase to  
20 Plaintiffs and the Class.

21 d. The named Plaintiffs are adequate Class representatives and  
22 possess the same interests in the outcome of this case as the other Class  
23 members. Fed. R. Civ. P. 23(d). The named Plaintiffs—like all Class  
24 members—own one or more Flushmate Toilets. Accordingly, the Court  
25 finally appoints as Class representatives Plaintiffs United Desert  
26 Charities, Fred Ede, III, Emily Williams, Bruce Pritchard, Jean Steiner,  
27 Daniel Berube, Jeffrey Brettler, Randy Kubat, John Snyder, Milen Dimov,  
28 Trigona Dimova, Scott Iver, Neal Olderman, and Pankaj Patel.

1 e. Additionally, having found the following firms qualified to serve as  
2 Class Counsel, the Court finally appoints as Class Counsel Birka-White  
3 Law Offices, Lieff Cabraser Heimann & Bernstein, LLP, Parker  
4 Waichman LLP, Levin Fishbein, Sedran & Berman, LLP, Audet &  
5 Partners, LLP, Wexler Wallace, LLP, Holland Groves Schneller & Stolze  
6 LLC, and Geragos & Geragos, P.C.

7 f. Class Counsel and the Class representatives have fully and  
8 adequately represented the Class in the Action, and in entering into and  
9 implementing the Settlement, and accordingly have satisfied the  
10 requirements of Fed. R. Civ. P. 23(a)(4).

11 g. The Court also finds that common issues predominate and the  
12 Settlement is a superior way to resolve this national controversy. Fed. R.  
13 Civ. P. 23(b)(3). The claims of fraudulent representations and omissions  
14 and other breaches focus primarily on Defendants' conduct, and the  
15 economic loss claims share a common damages measurement.

16 h. Therefore, the Court finally certifies the Class under Fed. R. Civ. P.  
17 23(a) and 23(b)(3) for settlement purposes only.

18 i. These findings shall be vacated and have no preclusive effect in this  
19 or any other forum in the event this Final Order is for any reason (whether  
20 as a result of reconsideration, appeal, or otherwise) vacated and the  
21 Settlement is disapproved, or if the Settlement otherwise does not become  
22 Final or Effective for any reason, including without prejudice to  
23 Defendants' rights to contest class certification.

24 6. This Court finds that the Claims Administrator and Notice Provider  
25 caused notice to be disseminated to the Class in accordance with the Notice Plan and  
26 the Preliminary Approval Order, and that notice was given in an adequate and  
27 sufficient manner and complies with Due Process and Fed. R. Civ. P. 23. The Court  
28 further finds that the Notice Plan was reasonable and provided due, adequate, and

1 sufficient notice to all Persons entitled to receive notice. The Notice Program  
2 complied with Fed. R. Civ. P. 23(c)(2)(B) because it constituted the best notice  
3 practicable under the circumstances and provided individual notice to all Class  
4 members who could be identified through reasonable effort and extensive published  
5 notice, as detailed in the Notice Plan. The Court specifically finds that the Class  
6 Notices:

- 7 a. Were simply written and were readily understandable;
- 8 b. Were reasonably and fairly calculated to apprise Class members of (i)  
9 the pendency of the Action and the claims asserted by the Class, (ii) the  
10 allegations that are basis for the Action, (iii) the Class definition, (iv)  
11 the terms of the proposed Settlement, including how Class members  
12 may receive benefits, (v) the maximum amount of attorneys' fees that  
13 would be sought by Class Counsel, and the proposed incentive awards  
14 for the Class representatives, (vi) the Class members' right to object to  
15 or opt out of the Settlement and the time and manner for doing so, (vii)  
16 their right to appear at the Fairness Hearing (either on their own or  
17 through counsel hired at their own expense) if they did not exclude  
18 themselves from the Class, and (viii) the binding effect of the  
19 Settlement and anticipated Final Order on all persons who did not  
20 timely and validly request exclusion from the Class;
- 21 c. Informed the Class members of the general risks of continued  
22 litigation; and
- 23 d. Identified the website address for Class members to use to submit  
24 claims and/or to obtain additional information regarding the Settlement.

25 7. In addition, based on the submissions of the parties, the Court finds that  
26 on February 7, 2014, Defendants fully satisfied their obligations of providing Notice  
27 of the proposed Settlement to the public officials designated under the Class Action  
28 Fairness Act, 28 U.S.C. § 1715, to receive such notice as set forth in the Settling



1 Defendants' Notice of Compliance with 28 U.S.C. § 1715, filed March 7, 2014. (ECF  
2 No. 138.)

3 8. Plaintiffs, by and through their counsel, have investigated the pertinent  
4 facts and law, have engaged in motion practice and discovery, and have evaluated the  
5 risks associated with continued litigation, class certification, trial, and/or appeal. The  
6 Court finds that the Settlement was reached in the absence of collusion, is the product  
7 of informed, good-faith, arms-length negotiations between the parties and their  
8 capable and experienced counsel, and was reached with the assistance of a well-  
9 qualified and experienced mediator, the Honorable William J. Cahill (Ret.). The Court  
10 further finds that this litigation is complex and that if it were to continue through trial  
11 and potential subsequent appeals, it would likely be both contentious and protracted.  
12 The Court also notes that Defendants have asserted numerous defenses to the  
13 Plaintiffs' claims and have vigorously denied any liability or damage, that Plaintiffs'  
14 ultimate success in the litigation is not guaranteed, and that the risks of establishing  
15 liability on behalf of Class members are significant.

16 9. The Court finds that the Settlement confers substantial benefits upon  
17 the Settlement Class and avoids the costs, uncertainty, delays, and other risks  
18 associated with continued litigation, trial, and/or appeal. Defendants will pay a  
19 minimum of \$18,000,000 into a common fund benefiting owners of the Flushmate  
20 Toilets at issue in this case. The cash payment may increase if the fund is  
21 insufficient to satisfy certain unpaid Eligible Property Damage claims made under  
22 the Settlement, provided that the Settlement Fund and Claims Administration Trust  
23 Accounts are exhausted and the total amount of approved Eligible Property  
24 Damage claims submitted during the Claims Period and paid from the Claims  
25 Administration Trust Account to Class members exceeds \$1,500,000 in the  
26 aggregate. The Claims Period will last for at least two years to enhance Class  
27 members' ability to obtain benefits from the Settlement. Moreover, the Settlement  
28 will advance the public safety inasmuch it is structured to maximize Class

1 members' incentive to repair or replace their Flushmate Toilets.

2 10. The Court has been informed that \_\_\_ objections to the Settlement were  
3 submitted in accordance with the requirements of the Class Notices and the  
4 Preliminary Approval Order, and has been further informed that \_\_\_ Persons have  
5 submitted timely requests to be excluded from the Class in accordance with the  
6 requirements of Class Notices and the Preliminary Approval Order. The Court has  
7 evaluated this overall reaction of the Class to the Settlement, and finds that the  
8 overall acceptance of the Settlement by Class members supports the Court's  
9 conclusion that the Settlement is in all respects fair, reasonable, adequate, and in the  
10 best interests of the Class.

11 11. Because the terms and provisions of the Settlement have been entered  
12 into in good faith and are in full compliance with all applicable requirements of the  
13 United States Constitution (including its Due Process Clause), the Federal Rules of  
14 Civil Procedure, the rules of this Court and any other applicable law, and are fair,  
15 reasonable, and adequate and in the best interests of the Class, the Court hereby finally  
16 approves the Settlement.

17 12. The parties and the Claims Administrator are directed to implement the  
18 Settlement according to its terms and conditions.

19 13. Defendants shall deposit Settlement Payments into the Settlement Fund  
20 Trust Account in accordance with Section IV of the Settlement.

21 14. Class Litigation Administration Support Services of Lancaster,  
22 California, is finally appointed to serve as the Claims Administrator as provided  
23 under the Settlement and Plan of Allocation. All reasonable fees, costs, and  
24 expenses of the Claims Administrator shall be paid as provided in the Settlement.  
25 The Claims Administrator is directed to begin processing all validly filed claims in  
26 accordance with Section V of the Settlement and the Plan of Allocation.

27 15. The Hon. William J. Cahill (Ret.) of JAMS, San Francisco, California,  
28 is finally appointed to serve as the Special Master as provided for under the

1 Settlement and Plan of Allocation. All reasonable fees, costs, and expenses of the  
2 Special Master shall be paid as provided in the Settlement.

3 16. Except as to those Persons who have timely submitted valid requests for  
4 exclusion from the Settlement, this Final Order and the Settlement shall be forever  
5 binding on Plaintiffs and each Class member, as well as their heirs, executors,  
6 administrators, and their respective predecessors, successors, representatives and  
7 assigns, or any and all of them, and those terms shall have res judicata and preclusive  
8 effect in all pending and future claims, lawsuits, or other proceedings involving the  
9 Released Claims in any state, federal, or territorial court, arbitral forum or other forum  
10 of any kind.

11 17. Plaintiffs and each Class member, as well as their respective spouses,  
12 heirs, executors, administrators, representatives, agents, attorneys, subrogees, partners,  
13 successors, predecessors, and assigns, and all those acting or purporting to act on their  
14 behalf, is conclusively deemed to have fully, finally, and forever released, relinquished  
15 and discharged Defendants and the Released Parties from and against any and all  
16 liability for the Released Claims as set forth in Section VI of the Settlement.

17 18. Plaintiffs and each Class member are barred and permanently enjoined  
18 from initiating, asserting and/or prosecuting any Released Claims which the Class  
19 member had, has or may have in the future against any Defendant or Released Party in  
20 any court, arbitration, tribunal, or forum of any kind. The Court finds that issuance of  
21 this permanent injunction is necessary and appropriate in aid of the Court's  
22 jurisdiction over this Action and to protect and effectuate this Final Order.

23 19. As set forth in the Settlement, Defendants have denied, and continue to  
24 deny, any wrongdoing or liability of any kind relating to the Action. Neither this Final  
25 Order, nor any provisions of the Settlement or any negotiations leading to its  
26 execution, may be construed as, offered as, received as, used as, or deemed to be  
27 evidence of an admission of any liability or wrongdoing of any kind on the part of  
28 Defendants and the Released Parties in the Action, or in any other judicial,

1 administrative, regulatory, or other forum of any kind.

2 20. Without affecting the finality of this Final Order, the Court reserves  
3 exclusive jurisdiction as to all matters related to administration, consummation,  
4 enforcement, and interpretation of the Settlement and this Final Order, including,  
5 without limitation, for the purpose of:

6 a. enforcing the terms and conditions of the Settlement and resolving  
7 any disputes, claims, or causes of action that, in whole or in part, are related to  
8 or arise out of the Settlement or this Final Order (including, without limitation,  
9 whether a person or entity is or is not a Class member and whether claims or  
10 causes of action allegedly related to the Action are or are not barred or released  
11 by this Final Order and the Settlement);

12 b. entering such additional orders, if any, as may be necessary or  
13 appropriate to protect or effectuate this Final Order and the Settlement, or to  
14 ensure the fair and orderly administration of the Settlement; and

15 c. entering any other necessary or appropriate orders to protect and  
16 effectuate the Court’s retention of continuing jurisdiction.

17 21. The Action is hereby dismissed with prejudice in its entirety, except to  
18 the extent that this Court has maintained continuing jurisdiction as stated in  
19 paragraph 20 above. Except as expressly granted by this Final Order and as set forth  
20 in the Settlement, it is adjudged that Plaintiffs and all Class members take nothing  
21 by reason of the Action against Defendants, and their claims are hereby dismissed  
22 with prejudice. There is no just cause to delay appeal or enforcement of this Final  
23 Order.

24 IT IS SO ORDERED.

25 Dated: \_\_\_\_\_

26  
27  
28

\_\_\_\_\_  
The Honorable S. James Otero  
United States District Judge