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Fred Ede, III, Emily Williams,  
7 Bruce Pritchard, Jean Steiner and the Settlement Class

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

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

14 Plaintiffs,

15 v.

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

20 Defendants.

Case No. CV12-06878 SJO (SHx)

**ORDER GRANTING  
AMENDMENT TO PLAN OF  
ALLOCATION**

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 On August 25, 2014, this Court entered the Final Order and Judgment in the  
2 above-referenced consolidated class action. The case involved allegedly defective  
3 Flushmate Systems manufactured from October 14, 1997 through June 30, 2009.<sup>1</sup>  
4 The Flushmate Systems were installed in certain toilets manufactured by various  
5 toilet manufacturers ("Flushmate Toilets"). Under the terms of the Settlement,  
6 Defendants agreed to pay \$18,000,000 into a common fund benefitting owners of  
7 the Flushmate Toilets at issue. The Court appointed the Honorable William J.  
8 Cahill (Ret.) as Special Master. (ECF Docket No. 147.)

9 The Claims Period ended on September 24, 2016. As of the close of the  
10 Claims Period, the Settlement Fund Trust Account had a balance of \$6,817,020.24.<sup>2</sup>

11 Because there are sufficient unclaimed settlement funds available, an  
12 adjustment in the Plan of Allocation is necessary and desired with respect to those  
13 Settlement Class Members who timely filed Eligible Non-Property Damage Claims  
14 during the Claims Period so that supplemental distributions from the Settlement  
15 Fund Trust Account can be made.

16 The Plan of Allocation provides as follows:

17 Class Counsel in conjunction with the Claims Administrator may  
18 modify payments made to Settlement Class Members at any time  
19 based upon the anticipated claims rate in order to fairly distribute the  
20 Net Settlement Fund among Settlement Class Members. Should Class  
21 Counsel and the Claims Administrator determine an adjustment in the  
22 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.

23 *See*, Plan of Allocation, Section I.B.1.

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24  
25 <sup>1</sup> Initial capitalized terms that are used herein are defined in Section I of the Class  
26 Action Settlement Agreement and Release ("Settlement") and in the Plan of  
Allocation. (ECF Docket Nos. 116-1 and 134-7.)

27 <sup>2</sup> As of January 17, 2017, the Settlement Fund Trust Account had a balance of  
28 \$7,044,106.75. Defendants are scheduled to make two additional payments of  
\$750,000 each (\$1.5 million total) in February and May 2017, for a grand total of  
\$18 million.

1 On January 12, 2017, Class Counsel notified Flushmate of their intention to  
2 modify the payments made to Settlement Class Members and the matter was  
3 submitted to the Special Circumstances Committee for further consideration. On  
4 January 25, 2017, the Special Circumstances Committee unanimously approved the  
5 proposed amendment to the Plan of Allocation.

6 Pursuant to the recommendation of the Special Circumstances Committee,  
7 and good cause appearing therefore, IT IS HEREBY ORDERED THAT, the Plan  
8 of Allocation finally approved by the Court on August 25, 2014, is amended,  
9 effective as of January 27, 2017, with respect to the Non-Property Damage Claims  
10 of Settlement Class Members submitted prior to the expiration of the Claims Period  
11 on September 24, 2016, as follows:

- 12 1. For those Settlement Class Members who submitted valid Non-  
13 Property Damage claims prior to expiration of the Claims Period, the  
14 Claims Administrator shall review their claims and provide those  
15 claimants with up to \$127.50 for the first Flushmate Toilet, and up to  
16 \$30.00 for each additional Flushmate Toilet repaired or replaced at the  
17 same Property address (“\$127.50/\$30.00”) (less amounts previously  
18 paid to such Settlement Class Members on their Non-Property Damage  
19 claims).
- 20 2. For those Settlement Class Members who timely filed a claim attesting  
21 that they expended their own labor to repair or replace their Flushmate  
22 System during the Claims Period, the Claims Administrator shall pay  
23 such claimants \$25.00 per Flushmate Toilet repaired or replaced at the  
24 same Property address.<sup>3</sup>
- 25 3. In the event that Settlement Class Members claim to have incurred in  
26 excess of \$127.50/\$30.00 in unreimbursed out-of-pocket installation  
27

28 <sup>3</sup> The requirements set forth in Section V.1 of the Plan of Allocation remain unchanged.

1 expenses during the Claims Period, such Non-Property Damage claims  
2 will be reviewed by the Claims Administrator in the first instance, who  
3 will make recommendations regarding their disposition to the Special  
4 Circumstances Committee for final determination.

5 4. To the extent not previously fully reimbursed from credits against  
6 settlement payments due under the Settlement, Defendants will also be  
7 reimbursed in the amounts of up to \$127.50 for the first Flushmate  
8 Toilet, and up to \$30.00 for each additional Flushmate Toilet repaired  
9 or replaced at the same Property address for those Non-Property  
10 Damage claims Defendants elected to resolve themselves prior to  
11 expiration of the Claims Period (less amounts previously credited  
12 against Defendants' settlement payments due).

13 5. In the event that Defendants claim to have resolved Non-Property  
14 Damage claims for in excess of \$127.50/\$30.00 in unreimbursed out-  
15 of-pocket installation expenses during the Claims Period, such Non-  
16 Property Damage claims will be reviewed by the Claims Administrator  
17 in the first instance, who will make recommendations regarding their  
18 disposition to the Special Circumstances Committee for final  
19 determination.  
20

21 IT IS SO ORDERED.

22  
23 Dated: January 27, 2017



24 HON. WILLIAM J. CAHILL (RET.)  
25 SPECIAL MASTER  
26  
27  
28

**PROOF OF SERVICE BY E-Mail**

Re: United Desert Charities, et al vs. Sloan Valve Co. et al  
Reference No. 1100072873

I, Jessica Nixon, not a party to the within action, hereby declare that on January 27, 2017, I served the attached ORDER GRANTING AMENDMENT OF ALLOCATION on the parties in the within action by electronic mail at San Francisco, CALIFORNIA, addressed as follows:

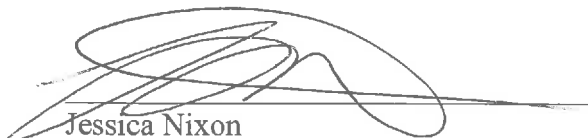
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Parties Represented:

I declare under penalty of perjury the foregoing to be true and correct. Executed at San Francisco, CALIFORNIA on January 27, 2017.



Jessica Nixon  
JAMS  
jnixon@jamsadr.com