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

10 UNITED DESERT CHARITIES, *et al.*,  
11 Plaintiffs,  
12 vs.  
13 SLOAN VALVE COMPANY, *et al.*,  
14 Defendants

Case No. 2:12-cv-06878 SJO (SHx)  
**DECLARATION OF ARNOLD  
RODIO IN SUPPORT OF JOINT  
MOTION FOR FINAL  
APPROVAL OF  
MODIFICATIONS OF  
SETTLEMENT AGREEMENT  
AND PLAN OF ALLOCATION**

*The Honorable S. James Otero*

Date: September 18, 2017  
Time: 10:00 a.m.  
Courtroom: 10 C

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 Cases:  
*Mergens v. Sloan Valve Co.*  
2:16-cv-05255-SJO-SK  
*Dimov v. Sloan Valve Co.*  
1:12-cv-09700 (N.D. Ill)

1 I, ARNOLD RODIO, declare as follows:

2 1. I am the owner of Class Litigation Administration Support Services  
3 (“C.L.A.S.S.”), which has served as the Court-appointed Claims Administrator<sup>1</sup> in  
4 this case, performing all tasks required by the Settlement Agreement, Plan of  
5 Allocation, and Orders of the Court. A detailed description of my background and  
6 qualifications is set forth in my Declaration in Support of the Joint Motion for  
7 Conditional Approval of Modifications of Settlement Agreement and Plan of  
8 Allocation (ECF 154-4), which is incorporated herein by reference.

9 2. As of June 15, 2017, the Settlement Fund Trust Account has paid  
10 **\$1,545,559.25** to claimants with non-Property Damage claims.

11 3. As of June 15, 2017, the Settlement Fund Trust Account has paid  
12 **\$576,921.07** to claimants with Property Damage claims. Class members who  
13 submitted valid Property Damage claims during the Claims Period were paid all  
14 reasonable and necessary unreimbursed out-of-pocket expenses incurred in repairing  
15 the damaged Property to its pre-damage condition (including the cost to replace the  
16 toilet fixture itself and/or to repair Property Damage in the area surrounding the  
17 Flushmate Toilet).

18 4. On January 27, 2017, the Special Master issued an Order amending the  
19 Plan of Allocation to allow for supplemental payments to UDC Settlement Class  
20 Members to fully reimburse them for reasonable unreimbursed out-of-pocket  
21 installation costs incurred for installing a Repair Kit, replacement pressure vessel,  
22 or replacement toilet. Under the amended Plan of Allocation, UDC Settlement  
23 Class Members were to receive up to \$127.50 per Flushmate Toilet repaired or  
24 replaced, plus an additional \$30 for each additional Flushmate Toilet repaired or  
25 replaced at the same Property address. In the event that Settlement Class Members

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27 <sup>1</sup> Initial capitalized terms utilized herein have the same definitions as set forth in  
28 the Class Action Settlement Agreement and Release, filed January 31, 2014  
(ECF No. 119-1) unless otherwise specified.

1 claimed to have incurred in excess of \$127.50/\$30 in unreimbursed out-of-pocket  
2 installation expenses, I would review such claims in the first instance, and would  
3 then make recommendations regarding their disposition to the Special  
4 Circumstances Committee for final determination. Further, claimants who  
5 expended their own labor to repair or replace their Flushmate System would receive  
6 \$25 per Flushmate Toilet.

7 5. As of June 15, 2017, additional payments have been made totaling  
8 \$443,296.82 pursuant to the January 27, 2017 Order. This includes payment for  
9 9,071 non-Property Damage claims. An additional 14,717 claims remain to be  
10 reviewed. The remaining claims will be resolved before the Fairness Hearing. I  
11 will update the totals at that time. However, it remains my estimate that a total of  
12 **\$1,091,695** in supplemental distributions will be made to Class members who filed  
13 non-Property Damage claims during the Claims Period, including claimants who  
14 expended their own labor to install a Repair Kit, replacement pressure vessel or  
15 replacement toilet.

16 6. To date, Settlement Class Members have received payments totaling  
17 \$2,122,480.32. Upon completion of all supplemental distributions to Class  
18 Members pursuant to the Amended Plan of Allocation, I estimate approximately  
19 **\$2,770,878.50** will have been paid to UDC Settlement Class Members on the  
20 claims submitted prior to the close of the Claims Period on September 25, 2016.

21 7. Additionally, pursuant to this Court's April 10, 2017 Amended Order  
22 Conditionally Approving Modifications of Settlement Agreement and Plan of  
23 Allocation, \$1,096,273.89 have been expended from the Settlement Fund Trust  
24 Account to cover the costs of the publication notice and direct mail notice to UDC  
25 and class members in *Mergens v. Sloan Valve Co.*, U.S. District Court, C.D. Cal.,  
26 Case No. 2:16-cv-05255-SJO-SK (the "Mergens Action").

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1           8.     Direct postcard notice was sent to 231,254 unique addresses as follows:  
2 203,041 Settlement Class Members, 16,350 Mergens settlement class members, and  
3 11,863 to persons who are members of both the Settlement Class and the Mergens  
4 settlement class. After all mailings were completed, 370 notices are currently  
5 undeliverable. Additionally, 85,661 potential class members received e-mail notice  
6 as follows: 73,998 Settlement Class Members, 6,312 Mergens class members and  
7 5,351 persons who are members of both the Settlement Class and the Mergens class.  
8 Notice was also sent to 72,603 third-party contractors who may have installed  
9 Flushmate Toilets.<sup>2</sup>

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

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

19           11.    There are approximately 2.7 million Flushmate Systems at issue in this  
20 action. The Settlement Fund Trust Account paid non-Property Damage and  
21 Property Damage claims relating to approximately 31,544 units. Accordingly, the  
22 claims rate during the two year Claims Period was approximately 1.2%. It is my  
23 experience that the bulk of claims are filed at the very beginning of the Claims  
24 Period. Assuming C.L.A.S.S. receives claims representing one-half (50%) of the  
25 number of units submitted during the one year extended claims period (15,772 units)  
26 as it did during the full two year Claims Period, the cost to resolve those claims

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28 <sup>2</sup> Notice will also be sent to an additional 33,190 third-party contractors who  
may have installed Flushmate Toilets by July 10, 2017.

1 under the modified Plan of Allocation should not exceed **\$2,300,000**. This includes  
2 **\$2,010,930** (\$127.50 x 15,772 units) for Non-Property Damage Claims and  
3 **\$250,000** for Property Damage Claims (based upon the **\$576,921.07** paid for claims  
4 submitted during the initial two-year Claims Period). Again, I believe this scenario  
5 is highly unlikely and expect the actual claims rate during the extended claims  
6 period to be much lower given my experience during the initial two year Claims  
7 Period. Further, it has been my experience that approximately 75% of the claims  
8 involve properties with a single Flushmate Toilet installed.

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

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

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

