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7 [Additional Counsel Listed on Signature Page]

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

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

13 Plaintiffs,

14 vs.

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

19 Defendants.

Case No. 2:12-cv-06878 SJO (SHx)

**REPLY MEMORANDUM 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: 10C

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. Il)

1 **I. INTRODUCTION**

2 This Reply Memorandum is respectfully submitted in further support of the Joint
3 Motion for Final Approval of Modifications of Settlement Agreement and Plan of
4 Allocation (“Joint Motion for Final Approval”), filed on June 30, 2017 (ECF No 167.)

5 In accordance with the Court's April 10, 2017 Amended Order Conditionally
6 Approving Modifications of Settlement Agreement and Plan of Allocation (“Amended
7 Order”) (ECF No. 164), the Notice Provider and Claims Administrator completed the
8 Court-approved Notice Program. (*See generally*, Declaration of Shannon R. Wheatman,
9 PH.D. on Implementation of the Notice Program (“Wheatman Decl.”) (ECF No.
10 167-4.) Specifically, notice was disseminated by direct mail to approximately 215,000
11 Settlement Class Members¹, and by e-mail to approximately 80,000 Settlement Class
12 Members. (Wheatman Decl., ¶ 13; Declaration of Arnold Rodio In Support of Joint
13 Motion for Final Approval of Modifications of Settlement Agreement and Plan of
14 Allocation (“Rodio Decl.”), ¶ 8 (ECF No. 167-3.)) In addition, notice was disseminated
15 by direct mail to approximately 105,793 plumbing and general contractors nationwide.
16 (Wheatman Decl., ¶¶ 30, 31; Supplemental Declaration of Arnold Rodio in Support of
17 Joint Motion for Final Approval of Modifications of Settlement Agreement and Plan of
18 Allocation, (“Rodio Supp. Decl.”) ¶ 2.) The Settlement notice was also published in
19 dozens of media outlets, including People and Parade, as well as local newspapers in
20 U.S. territories, on the Internet, in numerous online trade publications, and on the
21 dedicated interactive settlement website.² (Wheatman Decl., ¶¶ 19-26, 32.) In addition,
22 the Joint Motion for Final Approval and supporting exhibits were publicly posted on the
23 settlement website. (Rodio Supp. Decl., ¶ 2.)

24 _____
25 ¹ Initial capitalized terms utilized herein have the same definitions as set forth in the
26 Class Action Settlement Agreement and Release filed January 31, 2014 (ECF No.
27 119-1) unless otherwise indicated.

28 ² www.flushmateclaims.com.

1 Pursuant to the Court's Amended Order (ECF No. 164), Settlement Class
2 Members could submit written comments on the proposed modifications in advance of
3 the September 18, 2017 final hearing so long as they were postmarked by August 21,
4 2017 and addressed to Class Counsel at the Birka-White Law Offices, 65 Oak Court,
5 Danville, CA 94526, Attn: David M. Birka-White, and Defense Counsel, Dentons US
6 LLP, 1999 Harrison Street, Suite 1300, Oakland, CA 94612, Attn: Steven H. Frankel.
7 The parties are pleased to report to this Court that no written comments have been
8 submitted regarding any of the proposed modifications by any Settlement Class
9 Member. (Supplemental Declaration of David M. Birka-White in Support of Joint
10 Motion for Final Approval of Modifications of Settlement Agreement and Plan of
11 Allocation, at ¶ 2; Supplemental Declaration of Steven H. Frankel in Support of Joint
12 Motion for Final Approval of Modifications of Settlement Agreement and Plan of
13 Allocation, at ¶ 2.)

14 Additionally, the supplemental distributions to those Settlement Class Members
15 who submitted Non-Property Damage claims prior to the close of the original Claims
16 Period will be completed in accordance with the January 27, 2017 amendments to the
17 Plan of Allocation prior to the Final Approval hearing.³ (Rodio Supp. Decl., ¶ 4.) After
18 payment of all initial and supplemental distributions to Settlement Class Members,
19 payment of Class Counsel's attorneys' fees and expenses and payment of notice and
20 administrative costs, there will still be a remaining balance of approximately \$6 million
21 in the original \$18 million settlement fund. (Rodio Supp. Decl., ¶ 5.) The Claims
22 Administrator continues to fully expect that the settlement fund balance will be more
23 than sufficient to pay all timely submitted claims of UDC Settlement Class Members

24 _____
25 ³ Specifically, those claimants will be fully reimbursed for their out-of-pocket
26 installation expenses in amounts up to \$127.50 for the first Flushmate Toilet, and up
27 to \$30.00 for each additional Flushmate Toilet repaired or replaced at the same
28 property address (unless they receive higher supplemental distributions based on their
claims submission, and the review and recommendation of the Claims Administrator
and Special Circumstances Committee). (Rodio Decl., ¶ 4.)

1 during the Extended Claims Period and to pay all timely submitted claims of Mergens
 2 Settlement Class Members⁴ during the Mergens Claims Period. (Rodio Supp. Decl.,
 3 ¶ 5.)

4 **II. THE COURT SHOULD FINALLY APPROVE THE MODIFICATIONS**
 5 **OF THE SETTLEMENT AND PLAN OF ALLOCATION.**

6 The Joint Motion for Final Approval provides the detail as to why the Court
 7 should approve the modifications of the Settlement and the Plan of Allocation. As
 8 noted in the Joint Motion for Final Approval, which is fully incorporated by reference
 9 herein, the proposed modifications of the Settlement and Plan of Allocation provide for
 10 the best possible use of the unclaimed settlement funds.

11 The lack of any comments by Settlement Class Members regarding the
 12 modifications also weighs heavily in favor of granting final approval. *See, e.g., Ruiz v.*
 13 *JCP Logistics, Inc.*, 2016 WL 6156212, at *6-7 (C.D. Cal. Aug. 12, 2016) (granting
 14 final approval of a class action settlement in light of, among other things, the absence of
 15 any objections and minimal number of opt-outs); *In re Toys “R” Us-Del., Inc. Fair &*
 16 *Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 456 (C.D. Cal.
 17 2014) (“The negligible number of opt-outs and objections indicates that the class
 18 generally approves of the settlement.”); *Katz v. China Century Dragon Media, Inc.*,
 19 2013 WL 11237202, at *6 (C.D. Cal. Oct. 10, 2013) (“Although every single class
 20 member did not approve the settlement, ‘the fact that the overwhelming majority of the
 21 class willingly approved the offer and stayed in the class presents at least some
 22 objective positive commentary as to its fairness.’”) (internal citations omitted); *Schaffer*
 23 *v. Litton Loan Servicing, LP*, 2012 WL 10274679, at *13 (C.D. Cal. Nov. 13, 2012)

24 _____
 25 ⁴ The proposed modifications to the Settlement contain some newly defined terms, as
 26 set forth in **Exhibit A** to the Declaration of David M. Birka-White in Support of Joint
 27 Motion for Final Approval of Modifications of Settlement Agreement and Plan of
 28 Allocation (ECF No. 167-1). As used herein, those newly defined terms (shown with
 initial capitalization) have the same meaning as set forth in the proposed
 modifications to the Settlement.

1 (“Here, 231 class members opted out of the settlement; no class member submitted a
2 timely objection. The objections and opt-outs amount to 0.00089% of the individuals
3 receiving notice. The comparatively low number of opt-outs and objectors indicates
4 that generally, class members favor the proposed settlement and find it fair.”); *Nat’l*
5 *Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“It
6 is established that the absence of a large number of objections to a proposed class action
7 settlement raises a strong presumption that the terms of a proposed class settlement
8 action are favorable.”).

9 The Class’s overall approval should be considered a strong fact in support of the
10 request for final approval of the modifications to the Settlement and Plan of Allocation.

11 **III. CONCLUSION**

12 Therefore, for all the reasons articulated in the parties’ prior submissions, the
13 Court should grant the Joint Motion for Final Approval of Modifications of Settlement
14 Agreement and Plan of Allocation, and finally approve the proposed modifications.

15 Dated: September 1, 2017

Respectfully submitted,

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CERTIFICATION

Pursuant to Civil Local Rule 5–4.3.4(a)(2)(i), David M. Birka-White, the ECF User whose identification and password are being used to file the foregoing REPLY MEMORANDUM IN SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF MODIFICATIONS OF SETTLEMENT AGREEMENT AND PLAN OF ALLOCATION attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing’s content and have authorized the filing.

Dated: September 1, 2017

/s/ David M. Birka-White

DAVID M. BIRKA-WHITE

From: cacd_ecfmail@cacd.uscourts.gov
To: ecfnf@cacd.uscourts.gov
Subject: Activity in Case 2:12-cv-06878-SJO-SH United Desert Charities et al v. Flushmate et al Reply (Motion related)
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CENTRAL DISTRICT OF CALIFORNIA**

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Case Name: United Desert Charities et al v. Flushmate et al
Case Number: [2:12-cv-06878-SJO-SH](#)
Filer: Fred Ede, III
Bruce Pritchard
Jean Steiner
United Desert Charities
Emily Williams

WARNING: CASE CLOSED on 08/25/2014

Document Number: [168](#)

Docket Text:

[REPLY](#) in support of Joint NOTICE OF MOTION AND MOTION for Settlement Approval of FINAL APPROVAL OF MODIFICATIONS OF SETTLEMENT AGREEMENT AND PLAN OF ALLOCATION [167] filed by Plaintiffs Fred Ede, III, Bruce Pritchard, Jean Steiner, United Desert Charities, Emily Williams. (Attachments: # (1) Declaration of David Birka-White, # (2) Declaration of Steven Frankel, # (3) Declaration of Arnold Rodio)(Wong, Mindy)

2:12-cv-06878-SJO-SH Notice has been electronically mailed to:

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3dd5cd96213c553bdf3cfd627ac0d2f9df5c40b763808957be54dc76c695]]

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