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DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

KENDALL BRASCH, an individual; on
behalf of himself and all others similarly
situated,

Plaintiffs,

vs.

K. HOVNANIAN ENTERPRISES, INC., a
Corporation; K. HOVNANIAN
COMPANIES OF CALIFORNIA, INC., a
Corporation; PLUMBING CONCEPTS,
INC., a Corporation; MUELLER
INDUSTRIES, INC., a Corporation; and
DOES 1-100,

Defendants.

CASE NO. 30-2013-00649417-CU-CD-CXC

Assigned for all purposes to:
Hon. Peter Wilson
Dept: CX-101

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

Hearing Date: June 29, 2023
Time: 2:00 p.m.
Dept.: CX-101

Complaint Filed: May 9, 2013

AND RELATED CROSS-CLAIM.

WHEREAS, Plaintiff and Class Representative Kendall Brasch ("Plaintiff"), Defendants K. Hovnanian Enterprises, Inc. and K. Hovnanian Companies of California, Inc. ("Defendants") have reached a proposed settlement and compromise of the disputes between them in the above actions, which is embodied in the Settlement Agreement filed with the Court (attached hereto as Exhibit "A");

1 WHEREAS, the Court by Hon. Glenda Sanders (ret.) previously granted Plaintiff's
2 motion for class certification on August 19, 2021, and duly appointed Bridgford, Gleason &
3 Artinian, Kabateck LLP, and McNicholas & McNicholas as Class Counsel, and duly appointed
4 Kendall Brasch as class representative.

5 WHEREAS, the Parties have applied to the Court for preliminary approval of a proposed
6 Settlement of the Action, the terms and conditions of which are set forth in the Settlement
7 Agreement;

8 WHEREAS, the Court has considered the Settlement to determine, among other things,
9 whether the Settlement is sufficient to warrant the issuance of notice to members of the Class (as
10 defined below);

11 AND NOW, the Court, having read and considered the Settlement Agreement and
12 accompanying documents and the motion for preliminary settlement approval and supporting
13 papers, and the Parties to the Settlement Agreement having appeared in this Court for hearing on
14 Preliminary approval of the Settlement,

15 IT IS HEREBY ORDERED AS FOLLOWS:

- 16 1. The Court has jurisdiction over the subject matter of the Action, the Class
17 Representative, Defendants and all Class Members.
- 18 2. The Court grants preliminary approval of the terms and conditions
19 contained in the Settlement Agreement (attached as Exhibit "A" hereto). The Court
20 preliminarily finds that the terms of the Settlement Agreement are within the range of possible
21 approval at the Final Approval Hearing.
- 22 3. The Court preliminarily finds that the Settlement Agreement was the
23 product of serious, informed, non-collusive negotiations conducted at arms' length by the
24 Parties. In making this preliminary finding, the Court considered the nature of the claims, the
25 amounts and kinds of benefits paid in settlement, the allocation of settlement proceeds among the
26 class members, and the fact that a settlement represents a compromise of the Parties' respective
27 positions rather than the result of a finding of liability at trial.

1 4. The Court further preliminarily finds that the terms of the Settlement
2 Agreement have no obvious deficiencies and do not improperly grant preferential treatment to
3 any individual class member.

4 5. Subject to further consideration by the Court at the time of the Final
5 Approval Hearing, the Court preliminarily approves the Settlement as fair, reasonable and
6 adequate to the Class, as falling within the range of possible final approval, as being the product
7 of informed, arm's length negotiation by counsel, as meriting submission to the Class for its
8 consideration.

9 6. The parties have identified the homes included within the class definition
10 certified by this Court on August 19, 2021, which are listed on Exhibit A to the Settlement
11 Agreement (the "Class Area"). For purposes of the proposed Settlement, and conditioned upon
12 the Agreement receiving final approval following the Final Approval hearing and that order
13 becoming final, the certified class shall be further defined as follows:

14 *(1) All present owners of residential homes in the Class Area whose copper pipe*
15 *systems have not been replaced by prior owners of the homes; or (2) prior owners of*
16 *homes in the Class Area who replaced their copper pipe system; provided that with*
17 *regard to (1) and (2); (a) the homes were constructed by K. Hovnanian ("Builder")*
18 *and the homes were substantially completed within (10) years of the filing of the*
19 *original complaint in this action; and (b) the original purchase agreements were*
20 *signed by the Builder on or after 01/01/2003, and (c) the SB 800 claims were not*
21 *released, and (d) the original-purchaser class members were not compelled to*
22 *arbitration by the Court or have not stipulated to arbitration by agreement of the*
23 *parties as approved by the Court.*

24 7. Plaintiffs and Class Counsel are authorized to enter into the Settlement
25 Agreement on behalf of the Class, subject to final approval by this Court of the Settlement.
26 Plaintiffs and Class Counsel are authorized to act on behalf of the Class with respect to all acts
27 required by the Settlement Agreement or such other acts which are reasonably necessary to
28 consummate the proposed Settlement set forth in the Settlement Agreement.

 8. The Court approves ILYM Group Inc. ("ILYM") as Settlement
Administrator to administer the notice and claims procedures of the Settlement for the purpose of
administering the proposed Settlement and performing all other duties and obligations of the

1 Settlement Administrator as defined in the Settlement, this Preliminary Approval Order, and/or
2 as may otherwise be ordered by the Court, with the understanding that ILYM's compensation
3 will be capped at \$19,550.00.

4 9. The Court approves, as to form and content, the two different Settlement
5 Notices: (a) the first for the Original Class Members who were served with the Class Notice in
6 February 2022 (attached as Exhibit "B" hereto); and (b) the second for all subsequent purchasers
7 of the homes listed on Exhibit A to the Settlement Agreement who were not sent Class Notice in
8 February 2022 (attached as Exhibit "C" hereto). The Court hereby instructs the Settling Parties
9 to proceed with Class Notice in the manner and on the schedule set forth in the Settlement
10 Agreement as follows:

11 a. The Settlement Administrator shall serve by U.S. Mail:

12 i. To those individuals who were mailed Class Notice in
13 February 2022:

14 1. The Settlement Notice version attached as Exhibit "B"
15 hereto; and

16 2. The Prior Owner Re-Pipe Form (Exhibit "E" hereto);

17 ii. To those individuals in the chain of title for the class homes
18 listed in Exhibit "A" to the Settlement Agreement who were
19 NOT mailed Class Notice in February 2022:

20 1. The Settlement Notice version attached as Exhibit "C"
21 hereto;

22 2. The Request for Exclusion Form (Exhibit "D" hereto);
23 and

24 3. The Prior Owner Re-Pipe Form (Exhibit "E" hereto).

25 b. For a Prior Owner of a home in the Class List to be included as a Class
26 Member, that Prior Owner must submit by mail a Prior Owner Re-Pipe
27 Form to the Settlement Administrator within sixty (60) days of mailing
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1 by the Settlement Administrator (which form is attached as Exhibit
2 “E” hereto) that verifies that the Prior Owner replaced the copper pipes
3 in the Class Home with PEX or paid for epoxy coating of the copper
4 pipes.

5 i. In the event a prior owner submits a Prior Owner Re-Pipe
6 Form stating that the prior owner has replaced the homes’
7 copper pipes with PEX or epoxy coating, then the Settlement
8 Administrator shall provide the present owner with written
9 notice: (a) that a prior owner has submitted a Prior Owner Re-
10 Pipe Form stating that the prior owner replaced the homes’
11 copper pipes with PEX or epoxy coating; and (b) the present
12 owner has 30 days within which to submit a written
13 verification to the Settlement Administrator that the home had
14 copper pipes (without any epoxy coating) at the time the
15 present owner obtained title to the home. In the event that
16 there is a dispute between a prior and present owner as to
17 whether a prior owner had replaced the copper pipes with PEX
18 or epoxy coating, then the two homeowners shall submit proof
19 supporting their claims to the Settlement Administrator who
20 will forward such documentation to Ross Feinberg of JAMS
21 who: (a) shall serve as arbitrator of the dispute; and (b) whose
22 determination of those competing claims shall be binding. The
23 costs for Mr. Feinberg’s services shall be deemed a “cost” that
24 shall be deductible from the Settlement Fund.

25
26 c. For a Present Owner of a home in the Class List to be included as a
27 Class Member:

28 i. With respect to those individuals who were served with Class

1 Notice in February 2022, there must not be a Prior Owner Re-
2 Pipe Form submitted by a Prior Owner for the subject Class
3 Home unless that Prior Owner Repipe Form was withdrawn or
4 determined by Mr. Feinberg to be invalid for purposes of this
5 settlement.

6 ii. With respect to those individuals who were NOT served with
7 Class Notice in February 2022, that individual must not submit
8 a Request for Exclusion Form and there must not be a Prior
9 Owner Re-Pipe Form submitted by a Prior Owner for the
10 subject Class Home unless that Prior Owner Repipe Form was
11 withdrawn or determined by Mr. Feinberg to be invalid for
12 purposes of this settlement.

13 d. For all Notice papers returned as undeliverable or changed address, the
14 Settlement Administrator shall re-send the Notice documents after a
15 skip-trace search is conducted to determine a suitable address for re-
16 mailing, and the 60-day time frame for a potential class member to
17 return any forms shall re-commence from the date of that re-mailing.

18 10. In order to facilitate printing and dissemination of the Settlement Notice,
19 the Settlement Administrator and Parties may change the format, but not the content, of the
20 Settlement Notice, without further Court order, so long as the legibility is not adversely
21 impacted. The Settlement Administrator and Parties may also, without further Court order,
22 insert the information specified in the blank places provided in the Settlement Notice.

23 11. Within ten (10) business days of the entry of this Order, the Parties shall
24 provide the Settlement Administrator with the addresses of all homes that are included within the
25 definition of the Class.

26 12. The Settlement Administrator must complete the notice mailing within
27 thirty (30) calendar days of this Order being entered, in envelopes marked "Personal and
28 Confidential."

1 13. By the time of filing of the final settlement approval motion, the
2 Settlement Administrator shall provide, and Plaintiff shall file proof, by affidavit or declaration,
3 of the mailing of the Settlement Notice in the form and manner provided in the Agreement and in
4 this Preliminary Approval Order.

5 14. The Settlement Administrator must also create a dedicated website for this
6 Settlement. The dedicated website shall also make available the Settlement Agreement, the
7 operative complaint, the pleadings submitted in support of preliminary approval, approval of
8 attorneys' fees, costs and class representative enhancements, and final approval, and all orders
9 continuing or re-setting any hearing dates. The dedicated website shall also make available all
10 Orders by this Court with respect to aforesaid motions.

11 15. The Court finds that the Parties' plan for providing notice to the Class
12 described in the Settlement Agreement complies fully with the requirements of due process and
13 all other applicable provisions of law, including California Code of Civil Procedure § 382,
14 California Civil Code § 1781, California Rules of Court, Rules 3.766 and 3.769, the California
15 and United States Constitutions, and any other applicable law and constitutes the best notice
16 practicable under the circumstances and shall constitute due and sufficient notice to the Class of
17 the terms of the Settlement Agreement and the Final Approval Hearing.

18 16. All potential members of the Class who were sent Class Notice in
19 February 2022 shall not have the right to be excluded from the Class because the time for such
20 right to be excluded has expired. With respect to any potential member of the Class who was
21 NOT sent Class Notice in February 2022 AND who desires to be excluded from the Class and
22 therefore not be bound by the terms of the Settlement Agreement, he/she must submit to the
23 Settlement Administrator, pursuant to the instructions set forth in the Notice, a timely and valid
24 written Request for Exclusion (attached as Exhibit "D" hereto).

25 17. Members of the Class shall have sixty (60) days from the Notice Date to
26 submit written objections and/or Requests for Exclusion, but no such notice is required if the
27 Member of the Class makes an oral objection at the final approval hearing. The Settlement
28 Administrator shall prepare and deliver to Class Counsel, who shall file with the Court, a final

1 report stating the total number of Class Members who have submitted timely and valid Requests
2 for Exclusion from the Class, and the names of such individuals. The final report regarding the
3 Claims Period shall be filed with the Court within seven (7) business days of the expiration of
4 the deadline to submit objections and/or requests for exclusion.

5 18. The deadline to file the motion for final approval of the Settlement and
6 Class Counsel's fee application shall be twenty-four (24) calendar days prior to the Final
7 Approval Hearing date of December 7, 2023.

8 19. Responses to any objections received shall be filed with the Court no later
9 than twenty-four (24) calendar days prior to the Final Approval Hearing, and Plaintiffs'
10 responses may be included in their motion for final approval.

11 20. Any member of the Class who is eligible to (and so chooses) to be
12 excluded shall not be entitled to receive any of the benefits of the Settlement Agreement, shall
13 not be bound by the release of any claims pursuant to the Settlement Agreement, and shall not be
14 entitled to object to the Settlement Agreement or appear at the Final Approval Hearing. The
15 names of all persons timely submitting valid Requests for Exclusion shall be provided to the
16 Court.

17 21. Any member of the Class may appear at the Final Approval Hearing, in
18 person or by counsel, and may be heard, to the extent allowed by the Court, in support of or in
19 opposition to, the fairness, reasonableness, and adequacy of the Settlement, the application for an
20 award of attorneys' fees, cost, and expenses to Class Counsel, and any compensation to be
21 awarded to the Class Representative.

22 22. The Court preliminarily approves the following disbursements, subject to
23 Court approval of the final approval motion and application for attorneys' fees and costs:

- 24 a. \$10,000.00 for Plaintiff's enhancement award (not to exceed);
25 b. \$476,002.33.00 for attorney's fees, which is 1/3 of the gross settlement
26 amount (not to exceed);
27 c. \$100,000.00 for reimbursement of litigation costs (not to exceed); and
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d. \$19,550.00 for Settlement Administrator's fees and costs (not to exceed).

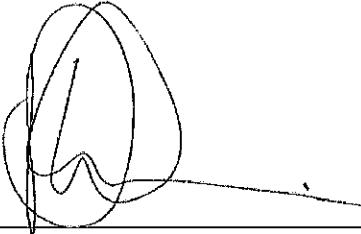
23. Pending the final determination of whether the Settlement should be approved, all pre-trial proceedings in the instant case are stayed. If the Settlement is terminated or final approval does not for any reason occur, the stay shall be immediately terminated.

24. A Final Approval Hearing shall be held before this Court at **2:00 p.m. on December 7, 2023** in Dept. CX-101 of the Orange County Superior Court, to address: (a) whether the proposed Settlement should be finally approved as fair, reasonable and adequate, and whether the Final Approval Order and Judgment should be entered; and (b) whether Class Counsel's application for attorneys' fees, costs, expenses and incentive awards should be approved. The date and time of the Fairness Hearing shall be set forth in the Class Notice. The Court retains jurisdiction to consider all further applications arising out of or in connection with the Settlement Agreement pursuant to California Code of Civil Procedure section 664.6 and California Rules of Court, Rule 3.769(h).

25. If the Settlement is finally approved by the Court, the Court shall retain jurisdiction over the Settling Parties, the Class Members, and this Action pursuant to California Code of Civil Procedure section 664.6 and California Rules of Court, Rule 3.769(h), with respect to matters arising out of, or in connection with, the Settlement, and may issue such orders as necessary to implement the terms of the Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Class Representatives, Class Counsel, and Defendant, without further notice to the Class Members.

IT IS SO ORDERED.

Dated: July 05, 2023



Hon. Peter J. Wilson
JUDGE OF THE SUPERIOR COURT