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20 Attorneys for Plaintiff KENDALL BRASCH,
21 on behalf of himself and all others similarly situated

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **FOR THE COUNTY OF ORANGE**

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

27 Plaintiffs,

28 vs.

29 K. HOVNANIAN ENTERPRISES, INC., a
30 Corporation; K. HOVNANIAN
31 COMPANIES OF CALIFORNIA, INC., a
32 Corporation; PLUMBING CONCEPTS,
33 INC., a Corporation; MUELLER
34 INDUSTRIES, INC., a Corporation; and
35 DOES 1-100,

36 Defendants.

37 **AND RELATED CROSS-CLAIM.**

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

**CLASS ACTION SETTLEMENT AND RELEASE
BETWEEN PLAINTIFF AND DEFENDANTS FOR
SETTLEMENT PURPOSES ONLY**

Judge: Hon. Peter Wilson
Dept: CX-101
Complaint Filed: 5/9/13

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STIPULATION OF SETTLEMENT AND RELEASE

1
2 Plaintiff and Class Representative Kendall Brasch (“Plaintiff”) and Defendants K. Hovnanian
3 Enterprises, Inc. and K. Hovnanian Companies of California, Inc., which is currently known as K.
4 Hovnanian California Operations, Inc., collectively hereinafter referred to as the “Parties,” by and
5 through their respective counsel of record, agree to resolve the above-captioned case through this Class
6 Action Settlement and Release Agreement, dated April 11, 2023, which is being entered into by the
7 Parties for settlement purposes only.

8 **I. DEFINITIONS**

9 **1.1 Action.** “Action” means the lawsuit captioned *Kendall Brasch v. K. Hovnanian*
10 *Enterprises, Inc., et al.*, originally filed on May 9, 2013 in the Superior Court of California for the
11 County of Orange, Case No. 30-2013-00649417-CU-CD-CXC.

12 **1.2 Administrative Costs.** “Administrative Costs” means the costs of administering
13 the settlement by the Settlement Administrator, including, but not limited to, the costs of mailing the
14 Settlement Class Notice and related documents to Settlement Class Members, and the Settlement
15 Administrator’s costs in administering the portion of the Settlement Fund to be distributed to Settlement
16 Class Members.

17 **1.3 Agreement.** “Agreement” means this Class Action Settlement Agreement and
18 Release, including all exhibits attached hereto.

19 **1.4 Attorney Fee Award.** “Attorney Fee Award” means the amount awarded by the
20 Court to Plaintiff’s Counsel as attorneys’ fees, costs, expenses, disbursements or other compensation,
21 such amount to be in full and complete satisfaction of Plaintiff’s Counsel’s claim or request (and any
22 claim or request made by any other attorneys) for payment of attorneys’ fees, costs, disbursements and
23 compensation in the Action.

24 **1.5 Award.** “Award” means the *pro rata* benefit to be paid on behalf of each
25 Settlement Class Member from the “Net Settlement Fund.”

26 **1.6 Class.** “Class” shall mean:

27 *(1) All present owners of residential homes in the Class Area whose copper*
28 *pipe systems have not been replaced by prior owners of the homes; or (2) prior*
owners of homes in the Class Area who replaced their copper pipe system;

provided that with regard to (1) and (2); (a) the homes were constructed by K. Hovnanian ("Builder") and the homes were substantially completed within (10) years of the filing of the original complaint in this action; and (b) the original purchase agreements were signed by the Builder on or after 01/01/2003, and (c) the SB 800 claims were not released, and (d) the original-purchaser class members were not compelled to arbitration by the Court or have not stipulated to arbitration by agreement of the parties as approved by the Court.

1.7 Settlement Administrator. "Settlement Administrator" shall mean ILYM Group, Inc., 14751 Plaza Dr., Suite J, Tustin, CA 92780. The Settlement Administrator shall receive and administer the Settlement Funds.

1.8 Class Counsel. "Class Counsel" shall mean: Bridgford, Gleason & Artinian, Kabateck LLP, and McNicholas & McNicholas.

1.9 Class Home List. "Class Home List" shall mean the complete list of the addresses of the homes that are covered by this Settlement and is comprised of those 151 homes developed by Defendants in Ladera Ranch, California identified on Exhibit A attached hereto.

1.10 Class Representative. "Class Representative" means named plaintiff and duly appointed class representative Kendall Brasch.

1.11 Court. "Court" means the Superior Court of California for the County of Orange, Complex Division.

1.12 Cross-Defendants. "Cross-Defendants" means Trilogy Plumbing, Inc., Cambridge-Lee Industries, LLC, Nacobre USA LLC, RCR Plumbing & Mechanical, Inc., Santa Margarita Water District, Mueller Streamline Co., and Intervenor Ace American Insurance Company, insurer for RCR Plumbing & Mechanical, Inc.

1.13 Defendants. "Defendants" means K. Hovnanian Enterprises, Inc. and K. Hovnanian Companies of California, Inc., which is currently known as K. Hovnanian California Operations, Inc., and their respective predecessors and successors in interest.

1.14 Defendants' Counsel. "Defendants' Counsel" means William R. Warne and Meghan M. Baker of Downey Brand LLP.

1.15 Eligible Share. "Eligible Share" shall mean each individual Settlement Class Member's share of the Net Settlement Fund, which will be determined by dividing the Net Settlement

1 Fund by the 151 homes included in the Settlement Class.

2 **1.16 Final Approval Hearing.** "Final Approval Hearing" shall mean the hearing
3 conducted by the Court to determine the fairness, adequacy and reasonableness of this Agreement and
4 the settlement of the Action, including Plaintiff's Counsel's application for the Attorney Fee Award and
5 the Representative Plaintiff's Award, and to enter the Final Approval Order and Judgment.

6 **1.17 Final Approval Order and Judgment.** "Final Approval Order and Judgment"
7 shall mean the Court's Order pursuant to Rule of Court 3.769 granting final approval of this Settlement
8 Agreement and providing for the orderly performance and enforcement of the terms and conditions of
9 this Settlement Agreement, as well as the Judgment rendered by the Court pursuant to Rule of Court
10 3.769(h).

11 **1.18 Motion for Preliminary Approval.** "Motion for Preliminary Approval" shall
12 mean the Motion for Preliminary Approval of the Settlement to be filed in this Action pursuant to
13 California Rule of Court 3.769(c).

14 **1.19 Net Settlement Fund.** "Net Settlement Fund" means the Settlement Fund
15 (including accrued interest) minus (a) Administrative Costs, (b) the total attorneys' fees and costs
16 awarded to Settlement Class Counsel by the Court; and (c) any incentive payments awarded to the Class
17 Representative by the Court.

18 **1.20 Notice Date.** "Notice Date" shall mean the date on which the Settlement
19 Administrator shall send the Settlement Class Notice to all members of the Settlement Class who are not
20 Original Class Members. The Notice Date shall be no more than ten (10) business days after entry of
21 the Preliminary Approval Order.

22 **1.21 Objection Deadline.** "Objection Deadline" means sixty (60) calendar days from
23 the Settlement Class Notice Date to file written objections.

24 **1.22 Opt-Out.** "Opt-Out" means a Settlement Class Member who timely submits a
25 properly completed and executed Request for Exclusion.

26 **1.23 Opt-Out Period.** "Opt-Out Period" means the period commencing on the
27 Settlement Class Notice Date and ending sixty (60) calendar days thereafter during which Settlement
28 Class Members may submit a timely Request for Exclusion. The last day of the Opt-Out Period shall be

1 specifically set forth in the Settlement Class Notice.

2 **1.24 Original Class Members.** All members of the Class to whom Class Notice was
3 sent in or around February 2022.

4 **1.25 Participating Settlement Class Member.** “Participating Settlement Class
5 Member” shall mean the Settlement Class Member who is the current owner(s) of each home on the
6 Class Home List, unless (a) a prior owner re-piped the home with PEX or an epoxy coating and submits
7 a Prior Owner Re-Piping Form as provided in Section 4.4 of this Settlement Agreement; or (b) the
8 Settlement Class Member opted out.

9 **1.26 Parties.** “Parties” shall mean the Class Representative, the Settlement Class
10 Members, and Defendants.

11 **1.27 Plaintiffs.** “Plaintiffs” shall mean the Class Representative and the Settlement
12 Class Members.

13 **1.28 Plaintiffs’ Released Parties.** “Plaintiffs’ Released Parties” shall mean
14 Defendants, Cross-Defendants, and each and all of their past, present, and future parents, subsidiaries,
15 subcontractors, affiliated companies and corporations, and each and all of their respective past, present,
16 and future directors, officers, managers, employees, general partners, limited partners, principals, agents,
17 insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors,
18 divisions, joint ventures, assigns, or related entities, and each and all of their respective executors,
19 successors, assigns, and legal representatives, and any subcontractors hired by Defendants to construct
20 or work on the homes listed on the Class Home List and each and all of their past, present, and future
21 parents, subsidiaries, subcontractors, affiliated companies and corporations, and each and all of their
22 respective past, present, and future directors, officers, managers, employees, general partners, limited
23 partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives,
24 predecessors, successors, divisions, joint ventures, assigns, or related entities, and each and all of their
25 respective executors, successors, assigns, and legal representatives, as well as any supplier,
26 manufacturer or distributor of copper pipe for potable water systems in the Settlement Class Members’
27 homes and each and all of their past, present, and future parents, subsidiaries, subcontractors, affiliated
28 companies and corporations, and each and all of their respective past, present, and future directors,

1 officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers,
2 shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint ventures,
3 assigns, or related entities, and each and all of their respective executors, successors, assigns, and legal
4 representatives.

5 **1.29 Preliminary Approval.** "Preliminary Approval" shall mean that the Court has
6 entered the Preliminary Approval Order.

7 **1.30 Preliminary Approval Date.** "Preliminary Approval Date" means the date on
8 which the Preliminary Approval Order is entered by the Court.

9 **1.31 Preliminary Approval Order.** "Preliminary Approval Order" shall mean the
10 order entered by the Court that grants Preliminary Approval of this Settlement including, among other
11 things, preliminary approval of the terms of the settlement, provisional certification of the Settlement
12 Class, and approval of the form and method of Settlement Class Notice. The Preliminary Approval
13 Order shall be in substantially the form attached hereto as Exhibit D, subject to non-material
14 modifications made by the Court.

15 **1.32 Release by Class Representative.** "Release by Class Representative" means the
16 release set forth in Paragraph 5.1 of this Agreement.

17 **1.33 Release by Settlement Class Members.** "Release by Settlement Class
18 Members" means the release set forth in Paragraph 5.2 of this Agreement.

19 **1.34 Representative Plaintiff's Award.** "Representative Plaintiff's Award" means
20 the amount, if any, that is approved by the Court for payment to the Class Representative for acting as
21 class representative in the Action.

22 **1.35 Request for Exclusion.** "Request for Exclusion" means the submission of the
23 requisite form by Settlement Class Members to the Settlement Administrator requesting to opt out of the
24 settlement. A form Request for Exclusion is attached hereto as Exhibit E.

25 **1.36 Settled Claims of the Class Representative.** "Settled Claims of the Class
26 Representative" means collectively any and all claims, demands, rights, liabilities, suits, matters,
27 obligations, damages, losses, costs, actions and causes of action of every nature and description
28 whatsoever, in law or equity, known or unknown, that the Class Representative ever had against

1 Plaintiffs' Released Parties, as well as any other supplier, manufacturer, distributor, or installer of
2 copper plumbing lines or systems in the Class Representative's homes and their insurers, including
3 claims for penalties, attorneys' fees and costs of such, that arise from the design, installation, repair, or
4 use of copper plumbing lines and systems in the homes and any alleged violations of California Civil
5 Code section 895 et seq. arising from the design, installation, repair, or use of copper plumbing lines and
6 systems. The Settled Claims of the Class Representative specifically extend to claims that the Class
7 Representative does not know or suspect to exist in his favor at the time of settlement. The foregoing
8 releases constitute a waiver of, without limitation, section 1542 of the California Civil Code, which
9 provides:

10 A general release does not extend to claims that the creditor or releasing
11 party does not know or suspect to exist in his or her favor at the time of
12 executing the release and that, if known by him or her, would have
13 materially affected his or her settlement with the debtor or released party.

14 The Class Representative understands and acknowledges the significance of these waivers of
15 Civil Code section 1542 and/or of any other applicable law relating to limitations on releases. In
16 connection with such waivers and relinquishments, the Class Representative acknowledges that he is
17 aware that he may hereafter discover facts in addition to, or different from, those facts he now knows or
18 believes to be true with respect to the subject matter of the Settlement, but that it is his intention to
19 release finally, fully, and forever, all Settled Claims of the Class Representative, and in furtherance of
20 such intention, the release of the Settled Claims of the Class Representative will be and remain in effect
21 notwithstanding the discovery or existence of any such additional or different facts.

22 **1.37 Settled Class Claims.** "Settled Class Claims" means collectively any and all
23 claims, demands, rights, liabilities, suits, matters, obligations, damages, losses, costs, actions and causes
24 of action of every nature and description whatsoever, in law or equity, known or unknown, that the
25 Settlement Class Members ever had against Plaintiffs' Released Parties, or any other supplier,
26 manufacturer, distributor, or installer of copper plumbing lines or systems in the Settlement Class
27 Members' homes and their insurers, including claims for penalties, attorneys' fees and costs of such, that
28 arise from or in any way relate to the design, installation, repair, or use of copper plumbing lines and
systems in the homes and any alleged violations of California Civil Code section 895 et seq. arising

1 from or in any way relating to the design, installation, repair, or use of copper plumbing lines and
2 systems in the Settlement Class Members' homes.

3 Without limiting the foregoing, and for clarification, excluded from the Settled Class Claims are
4 any *other* alleged construction defects or *other* claims relating to the construction of the homes identified
5 in Exhibit A, against any parties, including Defendants, which are not alleged in the Action.

6 **1.38 Settlement or Settlement Agreement.** "Settlement" or "Settlement Agreement"
7 shall mean the terms and conditions of this Class Action Settlement and Release Agreement, which is
8 being entered into by the Parties for settlement purposes only.

9 **1.39 Settlement Class Members.** "Settlement Class Members" shall mean (1) the
10 Original Class Members, and (2) either the present homeowner(s) of the 151 homes listed on Exhibit A,
11 or the former owners of such homes who have provided information acceptable to the Parties that they
12 repiped the home with PEX or an epoxy coating before selling by submitting a Prior Owner Re-Piping
13 Form as provided in Section 4.4 of this Settlement Agreement. Settlement Class Members shall exclude
14 Opt-Outs. The Settlement Class Members comprise the "Settlement Class." To be clear, there is only
15 one owner in the chain of title of the 151 homes listed on Exhibit A who will qualify as a Settlement
16 Class Member.

17 **1.40 Settlement Class Notices.** "Settlement Class Notices" means the notices of
18 provisional certification of a Settlement Class and proposed settlement contemplated by this Agreement,
19 substantially in the forms attached hereto collectively as Exhibit B and Exhibit C, more fully described
20 in Section IV of this Agreement. The operative date for the mailing of the Settlement Class Notice shall
21 be recommenced for any individual for whom Settlement Class Notice has been re-mailed.

22 **1.41 Settlement Fund.** "Settlement Fund" shall mean the total amount of
23 \$1,428,007.00 that shall be funded by Defendants and wired to Settlement Administrator's account
24 within 30 days of Final Approval. The Settlement Fund shall be the exclusive source for: (a) the
25 benefits to the Settlement Class Members (*i.e.*, the Award); (b) the Attorney Fee Award; (c)
26 Administrator's Costs; and (d) the Class Representative's Awards.

27 **1.42 Settlement Effective Date.** "Settlement Effective Date" shall mean the first day
28 following the last of the following occurrences:

1 (a) The time to appeal or seek permission to appeal or seek other judicial
2 review of the Final Approval Order and Judgment has expired with no appeal or other judicial review
3 having been taken or sought in this Action; or

4 (b) If an appeal or other judicial review of the Final Approval Order and
5 Judgment has been taken or sought in this Action, the date the Final Approval Order and Judgment in
6 this Action is finally affirmed by an appellate court with no possibility of subsequent appeal or other
7 judicial review therefrom, or the date the appeal(s) or other judicial review therefrom are finally
8 dismissed with no possibility of subsequent appeal or other judicial review in this Action.

9 II. RECITALS

10 **2.1 Description of the Action.** Plaintiff filed this Action on May 9, 2013 on behalf
11 of himself and other allegedly similarly situated persons whose homes were built by Defendants and
12 contained copper plumbing lines and systems that purportedly were inadequate and defective for the
13 water conditions in Ladera Ranch, California.

14 **2.1.0 Litigation of the Action.** Class Counsel assert that they have, for close to
15 nine years, vigorously litigated this Action and the other related actions against other developers for the
16 same claim that the chemical interaction between the water supplied in Ladera Ranch and the copper
17 pipes installed by developers lessened the reasonably-expected useful life of the copper pipes and
18 resulted or would result in pinhole leaks. This has included extensive motion practice on the issue of
19 whether the cases can proceed as class actions (which were litigated on two separate occasions before
20 the Fourth District Court of Appeal) and extensive work with a common water chemist expert.

21 **2.1.1 Discovery in the Action.** The Parties have engaged in extensive
22 discovery and motion practice in connection with this Action.

23 **2.2 Class Certification.** On August 19, 2021, the Court certified the Class. On
24 November 4, 2022, the Court re-defined the certified Class as defined in Section 1.6 of this Settlement
25 Agreement.

26 **2.3 Settlement Efforts.** Subsequent to certification of this class action and extensive
27 litigation of this case, the Parties have engaged in arms-length negotiations before Hon. Nancy Wieben
28 Stock of JAMS ADR. As a result of these negotiations, the parties were able to reach agreement on

1 settlement. The terms of that negotiated settlement are reflected in this Agreement.

2 **2.4 Plaintiffs' Reasons for Entering Into Settlement.** Class Counsel and Plaintiffs
3 believe that the claims asserted in this Action have merit. Class Counsel and Plaintiffs, however,
4 recognize the uncertain outcome and the risk of any litigation, especially in complex actions such as this,
5 as well as the difficulties and delays inherent in such litigation. Class Counsel and Plaintiffs are also
6 mindful of the inherent problems of proof and defenses to the claims asserted in this Action. In light of
7 the above, Class Counsel and Plaintiffs believe that the Settlement set forth in this Settlement
8 Agreement confers substantial benefits upon the Settlement Class and each of the Class Members and is
9 fair, just, equitable, reasonable, adequate and in the best interests of all Settlement Class Members.

10 **2.5 Defendants' Reasons for Entering into Settlement.** Defendants have denied,
11 and continue to deny, liability for any of the claims asserted in this Action. Defendants, however, desire
12 to settle the Action, on the terms and conditions set forth in this Settlement Agreement, in order to:
13 (a) avoid the burden, expense, and uncertainty of continuing the Action; (b) avoid the diversion of their
14 resources and personnel required by continuing the Action; and (c) put to rest any and all claims that are,
15 or could have been, brought or asserted in this Action, or any similar litigation, in this or any other
16 court's jurisdiction, which are based upon any of the facts, circumstances or conduct alleged in the
17 Action. Defendants have therefore determined that it is desirable and beneficial that the Action be
18 settled upon the terms and conditions set forth in this Settlement Agreement. This Settlement
19 Agreement is based on the express understanding that nothing contained in this Settlement Agreement
20 shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the
21 part of any of Defendants or any of Plaintiffs' Released Parties, all of whom deny any liability.

22 **2.6 Conditional Settlement.** Subject to Court approval as provided herein, the
23 Parties stipulate and agree that, in consideration of the promises and covenants set forth in this
24 Agreement and upon the entry by the Court of a Final Approval Order and the occurrence of the
25 Effective Date, the Action shall be fully settled and compromised as to the Settlement Class Members
26 upon the terms and conditions set forth below.

27 **NOW, THEREFORE,** in consideration of the mutual covenants and promises set forth in this
28 Agreement, as well as the good and valuable consideration provided for herein, the Parties hereby agree

1 to a full and complete settlement of the Action on the following terms and conditions:

2 **III. TERMS OF SETTLEMENT**

3 **3.1 Contributions to the Settlement Fund.** Defendants and Cross-Defendants shall
4 pay the total sum of \$1,428,007.00 to fund the Settlement Fund. Allocation of the payment of this sum
5 among Defendants and Cross-Defendants is set forth in separate settlement agreements between them.
6 Defendants and Cross-Defendants shall be responsible only for their agreed-upon shares of the total
7 Settlement Fund. Any Net Settlement Funds allocated to homes on the Class Home List whose eligible
8 Settlement Class Member Opts-Out of this Settlement shall revert back to Defendants and Cross-
9 Defendants according to their agreements.

10 **3.1.0 Funding of the Settlement Fund.** Within thirty (30) days of the Court's
11 entry of the Final Approval of the Settlement, Defendant shall wire to the Settlement Administrator's
12 account to be established the amounts listed in Section 3.1 to be used as the Settlement Fund, consistent
13 with the terms of this Settlement Agreement, which shall be maintained in the Settlement
14 Administrator's account until distributions are made.

15 **3.1.1 Calculation of Net Settlement Fund.** Within five (5) business days of
16 the Settlement Effective Date, the Settlement Administrator shall calculate the Net Settlement Fund by
17 deducting from the Settlement Fund the anticipated Administrative Costs for the Settlement, attorneys'
18 fees and costs awarded by the Court, any incentive payments awarded to the Class Representative by the
19 Court, and any other payments agreed to by the Parties and approved by the Court.

20 **3.1.2 Calculation of Eligible Shares to each Class Member.** Within five (5)
21 business days of the Settlement Effective Date, the Settlement Administrator shall calculate the Eligible
22 Share of the Net Settlement Fund attributable to each Settlement Class Member by dividing the Net
23 Settlement Fund by 151 (*i.e.*, the number of homes on the Class Homes List).

24 **3.1.3 Claims Paid.** This is a claims-paid settlement, and, except for prior
25 owners as provided in Section 4.4 of this Settlement, no Participating Settlement Class Member shall be
26 required to submit any claim form in order to be eligible to obtain an Eligible Share. Every Participating
27 Settlement Class Member who does not file a valid Request for Exclusion shall automatically be eligible
28 for an Eligible Share.

1 **3.1.4 Payment of Claims to the Participating Settlement Class Members.**

2 Within thirty (30) days after the Settlement Effective Date, the Settlement Administrator shall mail
3 individual Settlement Checks to each Participating Settlement Class Member.

4 **3.1.5 Disposition of Uncashed Settlement Checks.** Each Settlement Check

5 mailed by the Settlement Administrator to Participating Settlement Class Members shall be valid for 180
6 days from the date shown on the Settlement Check. Any checks not cashed within that time shall be
7 treated as uncashed checks under California's Unclaimed Property Law and forwarded to the
8 appropriate government authority.

9 **3.1.6 Attorneys' Fees, Costs and Expenses.** Defendants take no position as to

10 the proper amount of any attorneys' fee award to Class Counsel, and agree that they will not oppose an
11 application by Class Counsel for attorneys' fees. Class Counsel represent and warrant that they will not
12 seek an attorneys' fees award of more than one-third of the Settlement Fund, which equates to Four
13 Hundred Seventy Six Thousand and Two Dollars and Thirty-Three Cents (\$476,002.33) and
14 reimbursement of legal costs up to \$100,000.00, and that these amounts are inclusive of all fees, costs,
15 and expenses of Class Counsel, past and future, in connection with the Action. The fees shall be divided
16 among Class Counsel based upon their agreement. The attorneys' fees and costs in the amount awarded
17 by the Court shall be paid directly to Class Counsel from the Settlement Fund within two (2) court days
18 after the Settlement Effective Date. The effectiveness of this Settlement is not conditioned upon nor
19 will it be delayed in the event that the Court fails to approve Class Counsel's request for attorneys' fees
20 and costs in whole or in part. Defendants shall have no obligation to pay any attorneys' fees or costs to
21 Class Counsel other than such amount awarded by the Court to Class Counsel from the Settlement
22 Fund. Any fees not awarded shall be included within the Net Settlement Fund for distribution to the
23 Participating Settlement Class Members. The Class Representative has reviewed and approved the
24 aforesaid division of attorneys' fees.

25 **3.1.7 Incentive Payments to the Class Representative.** Plaintiffs intend to

26 apply to the Court for an incentive payment of \$10,000.00 for the Class Representative. Defendants
27 take no position as to the proper amount of any incentive payments to the Class Representative and
28 agree that they will not oppose an application by Class Counsel for the Class Representative's incentive

1 payments. The effectiveness of this Settlement will not be conditioned upon or delayed by the Court's
2 failure to approve any incentive payments to Class Representative, and/or the Court's award of incentive
3 payments in an amount less than that sought by Class Representative. Defendants shall have no
4 obligation to pay any incentive payments to the Class Representative, separate from any amount
5 awarded by the Court to the Class Representative from the Settlement Fund. Any fees not awarded shall
6 be included within the Net Settlement Fund for distribution to the Participating Settlement Class
7 Members.

8 **3.1.8 Costs of Notice and Claims Administration.** Within ten (10) business
9 days of the Settlement Effective Date, the Settlement Administrator shall be reimbursed from the
10 Settlement Fund for its Administrative Costs.

11 **IV. NOTICE TO THE CLASS**

12 **4.1 Contact Information of Potential Class Members.** Within ten (10) business
13 days of Preliminary Approval, Class Counsel shall provide the Settlement Administrator with the Class
14 Home List. The Settlement Administrator shall then determine the identity of all potential Settlement
15 Class Members by conducting a "chain of title" search for the names and addresses of all individuals
16 who had an ownership interest in the subject homes from the date of construction to the present date.
17 The "chain of title" search shall be supplemented with other information as set forth in Sections 4.3 and
18 4.4, below, to arrive at address lists for the Settlement Class Members defined in Section 1.39 of this
19 Settlement Agreement.

20 **4.2 Notice to the Settlement Class.**

21 **4.2.0** Notice to the potential Settlement Class Members who were not Original
22 Class Members shall be substantially in the form attached hereto as Exhibit B.

23 **4.2.1** Notice to the Original Class Members shall be substantially in the form
24 attached hereto as Exhibit C.

25 **4.3 Notice by Mail is the Best, Most Fair and Most Reasonable Form of Notice**
26 **Practicable under the Circumstances.** The Parties agree that providing direct mailed notice to all
27 potential Settlement Class Members is the best, most fair and most reasonable form of notice practicable
28 under the circumstances.

1 **4.3.0** The Notices shall be mailed to all Settlement Class Members by the
2 Settlement Administrator within thirty (30) days of Preliminary Approval, in envelopes marked
3 “Personal and Confidential.”

4 **4.3.1** Any Notices that are returned as non-deliverable with a forwarding
5 address shall promptly be re-mailed by the Settlement Administrator to such forwarding address. To the
6 extent that any Settlement Class Notices are returned as non-deliverable without a forwarding address,
7 the Settlement Administrator shall conduct a reasonable search to locate valid address information for
8 the intended recipients of such Settlement Class Notices, and shall promptly re-mail the Settlement
9 Class Notice, as applicable, to any Settlement Class Members for whom new address information is
10 identified. If a Class Notice is re-mailed, the time within which a potential Settlement Class Member
11 has to provide any responses required by this Settlement Agreement shall recommence from the date of
12 that re-mailing.

13 **4.4 Prior Homeowners.** Under the terms of the Settlement, the current owner of the
14 151 homes listed on Exhibit A shall be deemed to have the right to payment from the Net Settlement
15 Fund, unless a prior owner had re-piped the home with PEX or an epoxy coating. Class Counsel have
16 determined that it is impracticable to inspect every home in the class to determine whether there has
17 been a replacement of the copper pipes by prior owners with PEX or an epoxy coating. Accordingly, a
18 term of this Settlement is that prior to the Final Approval of the Settlement, a prior owner must submit a
19 verification that the prior owner had re-piped the home with PEX or an epoxy coating in order to have
20 the right to payment from the Net Settlement Fund. A Prior Owner Re-Piping Form shall be served with
21 the Settlement Class Notices and be available on a Class Settlement website maintained by the
22 Settlement Administrator, in the form attached hereto as Exhibit F.

23 **4.4.1. Procedure upon Prior Homeowner Submission of Prior Owners Re-Piping**
24 **Form.** In the event a prior owner submits a Prior Owner Re-Piping Form stating that the prior owner
25 has replaced the home’s copper pipes with PEX or epoxy coating, then the Settlement Administrator
26 shall provide the present owner with written notice: (a) that a prior owner has submitted a Prior Owner
27 Re-Piping Form stating that the prior owner replaced the home’s copper pipes with PEX or epoxy
28 coating; and (b) the present owner has thirty (30) days within which to submit a written verification that

1 the home had original copper pipes (without any epoxy coating) at the time the present owner obtained
2 title to the home. In the event that there is a dispute between a prior and present owner as to whether a
3 prior owner had replaced the copper pipes with PEX or epoxy coating, then the two homeowners shall
4 submit proof supporting their claims to Ross Feinberg of JAMS who: (a) shall serve as arbitrator of the
5 dispute; and (b) whose determination of those competing claims shall be binding. The costs for Mr.
6 Feinberg's services shall be deemed a "cost" that shall be deductible from the Settlement Fund.

7 **4.5 Requests for Exclusion.** The Notice attached hereto as Exhibit B shall provide
8 Settlement Class Members who were not Original Class Members an opportunity to Opt-Out. In order
9 to request exclusion, such Settlement Class Members must mail a written Request for Exclusion to the
10 Settlement Administrator. The Request for Exclusion must be signed by the Settlement Class Member,
11 and postmarked no later than the deadline for filing a Request for Exclusion set forth in the Preliminary
12 Approval Order entered by the Court. The Parties agree that they will propose to the Court that the
13 deadline for submitting a Request for Exclusion set forth in the Preliminary Approval Order be sixty
14 (60) days after the date Notice was last mailed. All Settlement Class Members who do not timely and
15 properly file a Request for Exclusion from the Settlement Class shall be bound by all proceedings,
16 orders, and judgments in the Action, even if the Settlement Class Member has pending, or subsequently
17 initiates, litigation against any of Plaintiffs' Released Parties relating to the release of Settled Class
18 Claims. A Settlement Class Member who chooses to be excluded from the Settlement Class will be
19 excluded entirely therefrom and, therefore, from participation in the Settlement. The Settlement
20 Administrator shall timely provide the Parties with copies of all Requests for Exclusion within seven (7)
21 days after receipt of said Requests.

22 **4.6 Objections to Settlement.** Any Settlement Class Member other than Opt-Outs
23 may object to the Settlement, motions for attorneys' fees, costs and/or the proposed incentive awards,
24 and/or the proposed Final Approval Order and Judgment either: (1) in person at the Final Approval
25 Hearing; or (2) by a written objection. Any Settlement Class Member who is not an Opt-Out and who
26 wishes to file a written objection shall, by the date set forth in the Preliminary Approval Order approved
27 by the Court, mail to the Settlement Administrator a writing containing a clear and specific statement of
28 the objection, as well as the specific reason(s), if any, for each objection, including any legal support the

1 Settlement Class Member wishes to bring to the Court's attention and any evidence the Settlement Class
2 Member wishes to introduce in support of the objection. Any Settlement Class Member who is not an
3 Opt-Out may file and serve a written objection either on his or her own or through an attorney hired at
4 his or her own expense. A Settlement Class Member who is not an Opt-Out may personally appear at
5 the Final Fairness Hearing or have an attorney appear on his or her behalf.

6 **4.6.1** Opt-Outs shall have no standing to object to the Settlement, motions for
7 attorneys' fees, costs and/or the proposed incentive awards, and/or the proposed Final Approval Order
8 and Judgment. As soon as possible after receipt of an objection, the Settlement Administrator shall
9 provide a copy of the objection and supporting papers (and the accompanying envelope or other
10 packaging) to Class Counsel and Defendants' Counsel. Any Settlement Class Member who fails to
11 comply with the provisions of this Section (*i.e.*, for either a written objection or an objection stated in
12 Court at the Final Approval Hearing) shall waive and forfeit any and all rights to object to the
13 Settlement, motions for attorneys' fees, costs and/or the proposed incentive awards, and/or the proposed
14 Final Approval Order and Judgment and shall be bound by all the terms of the Settlement Agreement
15 and by all proceedings, orders, and judgments in the Action.

16 **4.7 Proof of Payment.** Within ninety (90) days after the Settlement Effective Date,
17 the Settlement Administrator will certify to the Court that checks have been mailed to the Participating
18 Settlement Class Members. The certification required by this Section shall be by declaration(s), based
19 on the personal knowledge of the declarant(s), filed with the Court and served on Class Counsel and
20 Counsel for Defendants.

21 **V. RELEASE OF CLAIMS**

22 **5.1 Release by Class Representative.** Upon the Settlement Effective Date, Class
23 Representative and all of his respective heirs, executors, administrators, predecessors, successors and
24 assigns, shall and hereby do release and forever discharge Plaintiffs' Released Parties from the Settled
25 Claims of the Class Representative.

26 **5.2 Release by Settlement Class Members.** Upon the Settlement Effective Date,
27 Settlement Class Members and all of their respective heirs, executors, administrators, predecessors,
28 successors and assigns, shall and hereby do release and forever discharge Plaintiffs' Released Parties

1 from the Settled Class Claims.

2 **5.3 Complete Defense.** The Parties shall be deemed to have agreed that the Releases
3 set forth in Sections 5.1 and 5.2 will be and may be raised by the Parties and Plaintiffs' Released Parties
4 as a complete defense to, and will preclude any action or proceeding based on the claims set forth
5 therein.

6 **5.4 Effectuation of Settlement.** None of the releases set forth herein includes
7 releases of claims to enforce the terms of the Settlement.

8 **VI. PRELIMINARY COURT APPROVAL OF THE SETTLEMENT**

9 **6.1 Motion for Preliminary Approval.** The Parties shall submit this Settlement to
10 the Court in support of the Motion for Preliminary Approval and shall request a determination by the
11 Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Settlement,
12 Class Counsel shall apply to the Court for the entry of the Preliminary Approval Order, which shall:

13 (a) Preliminarily approve the Settlement as fair, reasonable, and adequate;

14 (b) Approve as to form and content the proposed Notices substantially in the
15 forms attached hereto as Exhibits B and C;

16 (c) Approve the manner of providing Notice to the Settlement Class Members
17 as described in Section IV of this Settlement Agreement and find that this manner of Notice constitutes
18 the best notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all
19 Settlement Class Members in accordance with California and federal laws and the Constitution of the
20 U.S.;

21 (d) Approve ILYM Group, Inc. as the Settlement Administrator, or another
22 administrator mutually agreed to by the Parties;

23 (e) Schedule the Final Approval Hearing to be held by the Court to determine:

24 (1) Whether the proposed Settlement should be finally approved as
25 fair, reasonable, and adequate;

26 (2) Whether the Final Approval Order and Judgment should be
27 entered;

28 (3) Whether Class Counsel's application for an award of attorneys'

1 fees and costs should be approved; and

2 (4) Whether the incentive awards to the Class Representative should
3 be approved.

4 (f) Provide that the Final Approval Hearing may be continued and adjourned
5 by the Court without further notice to the Class Members;

6 (g) Order that Notice to the Settlement Class Members, in the manner
7 described in Section IV of this Settlement Agreement, be disseminated;

8 (h) Approve the procedure for Settlement Class Members who are not
9 Original Class Members to file Requests for Exclusion, substantially in the manner set forth in
10 Section 4.5 of this Settlement Agreement, and setting a deadline for such Settlement Class Members to
11 exclude themselves from the Settlement Class;

12 (i) Provide that Settlement Class Members who do not file valid and timely
13 Requests for Exclusion will be bound by the Final Approval Order and Judgment and the releases set
14 forth in Section VI of the Settlement; and

15 (j) Declare the date on which the Court preliminarily approves the Settlement
16 as the date that the Settlement is deemed filed.

17 VII. FINAL COURT APPROVAL OF THE SETTLEMENT

18 **7.1 Entry of Final Approval Order and Judgment.** At the Final Approval Hearing, the
19 Parties will request that the Court, among other things, enter the Final Approval Order and Judgment, in
20 which the Court will: (a) approve the Settlement Agreement as fair, reasonable, adequate, and binding
21 on all Settlement Class Members who do not Opt-Out; (b) enter the Final Approval Order and Judgment
22 in accordance with the terms of this Settlement Agreement; (c) determine the amount and approve the
23 payment of attorneys' fees and costs; (d) determine the amount of any incentive payments to award to
24 the Class Representative; (e) provide for the entry of judgment in the Action and for the Release of all
25 Settled Class Claims against the Plaintiffs' Released Parties by the Class Representative and all
26 Settlement Class Members who have not submitted valid and timely Requests for Exclusion; and (f)
27 provide that the Court has continuing jurisdiction over this Action and Settlement in accordance with
28 California Code of Civil Procedure section 664.6 and California Rules of Court, Rule 3.769(h).

1 and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the
2 terms of this Settlement. As soon as practicable after execution of this Settlement, Class Counsel shall,
3 with the assistance and cooperation of Defendants and their counsel, take all necessary steps to secure
4 the Court's Final Judgment.

5 **8.4 No Prior Assignments.** The Parties represent, covenant, and warrant that they
6 have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
7 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or
8 right released and discharged in this Settlement.

9 **8.5 Notices.** Unless otherwise provided herein, all legal notices, demands, or other
10 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
11 the third business day after emailing and mailing by U.S. registered or certified mail, return receipt
12 requested, addressed as follows:

13 (a) To the Class:

14 Richard K. Bridgford, Esq.
15 Michael H. Artinian, Esq.
16 Bridgford, Gleason & Artinian
17 26 Corporate Plaza, Suite 250
18 Newport Beach, CA 92660
19 mike.artinian@bridgfordlaw.com

20 Richard L. Kellner, Esq.
21 Kabateck LLP
22 633 West Fifth Street, Suite 3200
23 Los Angeles, CA 90017
24 rlk@kbklawyers.com

25 (b) To Defendants:

26 William R. Warne, Esq.
27 Meghan M. Baker, Esq.
28 Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
bwarne@downeybrand.com
Mbaker@downeybrand.com

8.6 Construction. The Parties agree that the terms and conditions of this Settlement
are the result of lengthy, intensive arm's-length negotiations between the Parties' counsel, and that the
terms of this Settlement shall not be construed in favor of or against any Party.

1 **8.7 Captions and Interpretations.** Section titles or captions contained in this
2 Settlement are a matter of convenience and for reference, and in no way define, limit, extend, or
3 describe the scope of this Settlement or any provision. Each term of this Settlement is contractual and
4 not merely a recital.

5 **8.8 Modification.** This Settlement may not be changed, altered, or modified, except
6 in a writing signed by the Parties and their counsel, and approved by the Court. This Settlement may not
7 be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

8 **8.9 Integration Clause.** Except for the settlement agreements between Defendants
9 and Cross-Defendants, this Settlement contains the entire agreement between the Parties relating to the
10 resolution of the Action, and all prior or contemporaneous agreements, understandings, representations,
11 and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged
12 in this Settlement. No rights under this Settlement may be waived except in a writing signed by the
13 Party making the waiver and its counsel. Notwithstanding the foregoing, it is understood and agreed that
14 Defendants and Cross-Defendants will execute a separate settlement agreement documenting the terms
15 and conditions of the settlement of the claims and cross-complaint against Cross-Defendants.

16 **8.10 Binding on Assigns.** This Settlement shall be binding upon and inure to the
17 benefit of the Parties, Cross-Defendants, Plaintiffs' Released Parties and their respective heirs, trustees,
18 executors, administrators, successors, and assigns and, where applicable, all of their current or former
19 parent entities, corporations, subsidiaries, related and affiliated companies and entities, officers,
20 directors, agents, representatives, attorneys, insurers, predecessors, successors, assignees, employees,
21 and all individuals or entities acting by, through, under, or in concert with any of them.

22 **8.11 Class Counsel Signatories.** It is agreed that, because the Settlement Class
23 Members are so numerous, it is impossible or impractical to have each one execute this Settlement. The
24 Notice will advise all Settlement Class Members of the binding nature of the Release. Excepting only
25 the eligible Settlement Class Members who timely submit a Request for Exclusion, the Notice shall have
26 the same force and effect as if this Settlement were executed by each Settlement Class Member with
27 regard to the Settled Class Claims.
28

1 **8.12 Counterparts.** This Settlement may be executed in counterparts, and when each
2 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
3 original, and, when taken together with other signed counterparts, shall constitute one Settlement, which
4 shall be binding upon and effective as to all Parties.

5 **8.13 Governing Law.** This Settlement Agreement shall be governed by the laws of
6 the State of California, without regard to choice-of-law principles.

7 **8.14 Continuing Jurisdiction.** The Court shall retain jurisdiction over the
8 interpretation and implementation of this Settlement Agreement.

9 **8.15 Venue.** Any and all actions or disputes arising out of this Settlement Agreement,
10 including without limitation the enforcement, interpretation, breach, or attempted rescission of this
11 Settlement Agreement, shall be brought exclusively in this Court.

12 **8.16 Waiver.** Any failure by any Party to insist upon the strict performance by any
13 other Party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of
14 the provisions of this Settlement Agreement, and such Party, notwithstanding such failure, shall have the
15 right thereafter to insist upon the specific performance of any and all of the provisions of this Settlement
16 Agreement.

17 **8.17 Conflicts.** In the event of conflict between this Settlement Agreement and any
18 other prepared pursuant to the Settlement, other than any Court order, the terms of this Settlement
19 Agreement shall supersede and control. Notwithstanding the foregoing, it is understood and agreed that
20 Defendants and Cross-Defendants will execute a separate settlement agreement documenting the terms
21 and conditions of the settlement of the claims and cross-complaint against Cross-Defendants.

22 **8.18 Singular/Plural.** The plural of any defined term includes the singular, and the
23 singular of any defined term includes the plural, as the case may be.

24 **8.19 Reasonable Extensions of Time.** Without further order of the Court, the Parties
25 may agree to reasonable extensions of time to carry out any of the provisions of this Settlement.

26 **IT IS SO AGREED:**

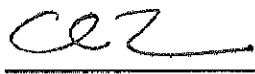
27 Dated: 4/19/2023

28 By: Kendall Brasch
Kendall Brasch
Class Representative Plaintiff

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Dated: 4/26/2023

K. HOVNANIAN ENTERPRISES, INC. and K.
HOVNANIAN COMPANIES OF CALIFORNIA,
INC.

By: 
Its: V.P. + Chief Legal Counsel

APPROVED AS TO FORM AND CONTENT:

By: /s/Richard Kellner
Richard L. Kellner, Esq.
Kabateck LLP
Counsel for Plaintiffs

By: /s/Michael H. Artinian
Michael H. Artinian, Esq.
Bridgford, Gleason & Artinian
Counsel for Plaintiffs

By: /s/William Warne
William R. Warne, Esq.
Downey Brand LLP
Counsel for Defendants