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20 Attorneys for Plaintiffs James Foti, Jeff Swoboda
21 and the putative class of all other similarly situated.

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

24 JAMES FOTI, an individual; MARC LEBLANC,
25 an individual; PATRICIA LISCO, an individual;
26 JEFF SWOBODA, an individual; LUCIANA
27 SWOBODA, an individual, on behalf of themselves
28 and all others similarly situated,

Plaintiffs,

v.

JOHN LAING HOMES (CALIFORNIA), INC., a
Corporation; WL HOMES, LLC dba JOHN LAING
HOMES, a Limited Liability Company;
PLUMBING CONCEPTS, INC., a Corporation;
MUELLER INDUSTRIES, INC., a Corporation;
and DOES 1-100,

Defendants.

Case No. 30-2013-00649415-CU-CD-CXC

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

Judge: Hon. Glenda Sanders

Dept: CX-101

Complaint Filed: May 9, 2013

1 **STIPULATION OF SETTLEMENT AND RELEASE**

2 Plaintiffs James Foti, Jeff Swoboda and Luciana Swoboda (“Plaintiffs”) individually and on
3 behalf of the Settlement Class described below, and defendants John Laing Homes (California), Inc. and
4 WL Homes, LLC dba John Laing Homes, LLC along with their insurer Steadfast Insurance Company
5 (collectively, “Defendants”), by and through their respective counsel of record, agree to resolve the
6 above-captioned case through this Class Action Settlement and Release Agreement, dated March 8,
7 2022, which is being entered into by the Parties for settlement purposes only.

8 **I. DEFINITIONS**

9 **1.1 Action.** “Action” shall mean the above-captioned lawsuit.

10 **1.2 Administrative Costs.** “Administration Costs” means the costs of administering the
11 settlement by the Class Administrator, including, but not limited to, the costs of mailing the Class Notice
12 and related documents to Class Members, and administering the portion of the Settlement Fund by the
13 Class Administrator.

14 **1.3 Agreement.** “Agreement” means this Class Settlement Agreement and Release,
15 including all exhibits hereto.

16 **1.4 Attorney Fee Award.** “Attorney Fee Award” means the amount awarded by the Court
17 to Plaintiffs’ Counsel as attorneys’ fees, such amount to be in full and complete satisfaction of Plaintiff’s
18 Counsel’s claim or request (and any request made by any other attorneys) for payment of attorneys’
19 fees, costs, disbursements and compensation in the Action.

20 **1.5 Award.** “Award” means the *pro rata* benefit to be paid on behalf of each Settlement
21 Class Member from the “Net Settlement Fund.”

22 **1.6 Bankruptcy.** “Bankruptcy” shall refer to the bankruptcy proceeding entitled *In re WL*
23 *Homes LLC, et al.* in the United States Bankruptcy Court for the District of Delaware, Case No. 09-
24 10571 (BLS).

25 **1.7 Bankruptcy Relief Order.** “Bankruptcy Relief Order” shall refer to the October 28,
26 2015 Order from the *In re WL Homes LLC* bankruptcy court that modified the automatic stay to allow
27 Plaintiffs to pursue the Action in the Orange County Superior Court, “but to collect any settlement or
28 judgment exclusively from the proceeds of any applicable insurance policies and not from the Debtor’s

1 estate . . .”

2 **1.8 Class Administrator.** “Class Administrator” shall mean ILYM Group, Inc., 14751
3 Plaza Dr., Suite J, Tustin CA 92780. The Class Administrator shall receive and administer the
4 Settlement Funds.

5 **1.9 Class Counsel.** “Class Counsel” shall mean: Bridgford, Gleason & Artinian, Kabateck
6 LLP, and McNicholas & McNicholas.

7 **1.10 Class Home List.** “Class Home List” shall mean the complete list of the addresses of
8 the homes that are covered by this Settlement and is comprised of those 138 homes developed by
9 Defendants in the St. Mays Road and Potter Bend developments located in Ladera Ranch, California
10 identified on Exhibit A hereto.

11 **1.11 Class Notice.** “Class Notice” means the notice of this settlement contemplated by this
12 Agreement, substantially in the forms attached hereto collectively as Exhibit B, or as otherwise
13 approved by the Court.

14 **1.12 Class Representatives.** “Class Representatives” means named plaintiffs James Foti
15 and Jeff and Luciana Swoboda.

16 **1.13 Court.** “Court” means the Superior Court of California for the County of Orange,
17 Complex Division.

18 **1.14 Defendants.** “Defendants” means John Laing Homes (California), Inc. and WL
19 Homes, LLC dba John Laing Homes, LLC along with their insurer Steadfast Insurance Company.

20 **1.15 Defendants’ Counsel.** “Defendant’s Counsel” means Robert B. Titus from Lorber,
21 Greenfield & Polito.

22 **1.16 Eligible Share.** “Eligible Share” shall mean each individual Settlement Class
23 Member’s share of the Net Settlement Fund, which will be determined by dividing the Net Settlement
24 Fund by the 138 homes included in the Settlement Class.

25 **1.17 Final Approval Hearing.** “Final Approval Hearing” shall mean the hearing conducted
26 by the Court in connection with the determination of the fairness, adequacy and reasonableness of this
27 Agreement and the proposed settlement of the Action, including Plaintiff’s Counsel’s application for the
28 Attorney Fee Award and the Representative Plaintiff’s Award.

1 **1.18 Final Approval Order.** “Final Approval Order” means the Court’s Order approving
2 this Agreement, finding the settlement is fair, adequate and reasonable and confirming the final
3 certification of the Class.

4 **1.19 Final Approval Order and Judgment.** “Final Approval Order and Judgment” shall
5 mean the Order pursuant to Rule of Court 3.769 that gives final approval of this Settlement Agreement
6 and provides for the orderly performance and enforcement of the terms and conditions of this Settlement
7 Agreement, as well as the Judgment rendered by the Court pursuant to Rule of Court 3.769(h). The
8 Order shall be in substantially the same form as is agreed by the Parties.

9 **1.20 Motion for Preliminary Approval.** “Motion for Preliminary Approval” shall mean
10 the Motion for Preliminary Approval of the Settlement to be filed in this Action pursuant to California
11 Rule of Court 3.769(c).

12 **1.21 Net Settlement Fund.** “Net Settlement Fund” means the Settlement Fund (including
13 accrued interest) minus (a) Administrative Fees and Costs, (b) the total attorneys’ fees and costs
14 awarded to Class Counsel by the Court; and (c) any incentive payments awarded to the Class
15 Representative by the Court.

16 **1.22 Notice Date.** “Notice Date” shall mean the date on which the Class Administrator shall
17 send the Class Notice. The Notice Date shall be no more than thirty (30) business days after entry of the
18 Preliminary Approval Order.

19 **1.23 Objection Deadline.** “Objection Deadline” means sixty (60) calendar days from the
20 Notice Date.

21 **1.24 Opt-Out.** “Opt-Out” means a Settlement Class Member (i) who timely submits a
22 properly completed and executed Request for Exclusion, and (ii) who does not rescind that Request for
23 Exclusion before the end of the Opt-Out Period.

24 **1.25 Opt-Out Period.** “Opt-Out Period” means the period commencing on the Notice Date
25 and ending sixty (60) calendar days thereafter during which Settlement Class Members may submit a
26 timely Request for Exclusion. The last day of the Opt-Out Period shall be specifically set forth in the
27 Class Notice.

28 **1.26 Participating Settlement Class Member.** “Participating Settlement Class Member”

1 shall mean the Settlement Class Member who was sent Notice that was not returned as undeliverable
2 (after all reasonable attempts have been made by the Class Administrator) who have not Opted Out.

3 **1.27 Parties.** “Parties” shall mean the Plaintiffs, the Settlement Class Members and
4 Defendants.

5 **1.28 Plaintiffs.** “Plaintiffs” shall mean the Class Representatives and the Settlement Class
6 Members.

7 **1.29 Plaintiffs’ Released Parties.** “Plaintiffs’ Released Parties” shall mean Defendants,
8 and each and all of their past, present, and future parents, subsidiaries, subcontractors, affiliated
9 companies and corporations, and each and all of their respective past, present, and future directors,
10 officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers,
11 shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint ventures,
12 assigns, or related entities, and each and all of their respective executors, successors, assigns, and legal
13 representatives, and any subcontractors and design professionals hired by Defendants to construct or
14 work on the Settlement Class Members’ homes, as well as any supplier, manufacturer or distributor of
15 copper pipe for potable water systems in the Settlement Class Members’ homes.

16 **1.30 Preliminary Approval.** “Preliminary Approval” shall mean that the Court has entered
17 the Preliminary Approval Order.

18 **1.31 Preliminary Approval Date.** “Preliminary Approval Date” means the date on which
19 the Preliminary Approval Order is entered by the Court.

20 **1.32 Preliminary Approval Order.** “Preliminary Approval Order” shall mean the order
21 entered by the Court that grants Preliminary Approval of this Settlement including, among other things,
22 conditional certification of the Class, preliminary approval of the terms of the settlement, and approval
23 of the form and method of Class Notice. The Preliminary Approval Order shall be in substantially the
24 form attached hereto as Exhibit C, subject to non-material modifications made by the Court.

25 **1.33 Release.** “Release” means the release set forth in Paragraph 5.1 of this Agreement.

26 **1.34 Releasing Parties.** “Releasing Parties” shall mean the Class Representatives and all
27 Settlement Class Members who did not opt out during the Opt-Out Period.

28 **1.35 Representative Plaintiffs’ Award.** “Representative Plaintiffs’ Award” means the

1 amount, if any, that is approved by the Court for payment to Class Representatives for acting as class
2 representatives in the Action.

3 **1.36 Request for Exclusion.** “Request for Exclusion” means the submission by Settlement
4 Class Members to the Class Administrator requesting to opt out of the settlement. A form Request for
5 Exclusion is Exhibit D.

6 **1.37 Settled Class Claims.** “Settled Class Claims” means collectively any and all claims,
7 demands, rights, liabilities, suits, matters, obligations, damages, losses, costs, actions and causes of
8 action of every nature and description whatsoever, in law or equity, known or unknown, by the
9 Releasing Parties against Plaintiffs’ Released Parties and their insurers, including claims for penalties,
10 attorneys’ fees and costs of such, that arise from the installation or use of copper pipes in the Homes and
11 any alleged violations of California Civil Code § 895 et seq. arising from the installation of copper
12 pipes. Without limiting the foregoing, and for clarification, excluded from the Settled Class Claims are
13 any *other* construction defects or *other* claims relating to the construction of the homes identified in
14 Exhibit A, against any parties, including Defendants, which are not alleged in the Action.

15 **1.38 Settlement Class.** “Settlement Class” shall mean:

16 *(1) All present owners of residential homes in the St. Mays Road and Potters Bend*
17 *projects constructed by John Laing Homes (California), Inc. and WL Homes, LLC*
18 *dba John Laing Homes, LLC in Ladera Ranch, California as set forth in the Class*
19 *Home List attached hereto as Exhibit A (the “PROJECTS”) whose copper pipes*
20 *have not been replaced with PEX or epoxy coating by prior owners of the homes;*
21 *or (2) prior owners of homes in the PROJECTS who replaced their copper pipes*
22 *with PEX or epoxy coating.*

23 **1.39 Settlement Class Members.** “Settlement Class Members” shall mean each and all of
24 the members of the Settlement Class, estimated to be either the present or former homeowner of the 138
25 homes listed on Exhibit A.

26 **1.40 Settlement or Settlement Agreement.** “Settlement” or “Settlement Agreement” shall
27 mean the terms and conditions of this Class Action Settlement and Release Agreement, March 8, 2022,
28 which is being entered into by the Parties for settlement purposes only.

1 **1.41 Settlement Fund.** “Settlement Fund” shall mean the total amount of \$1,700,000.00
2 that shall be funded by Defendants’ insurer, Steadfast Insurance Company, and wired to Class
3 Administrator’s account within 30 days of Preliminary Approval. The Settlement Fund shall be the
4 exclusive source for: (a) the benefits to the Settlement Class Members (*i.e.*, the Award); (b) the Attorney
5 Fee Award; (c) Class Administration costs; and (d) the Representative Plaintiffs’ Award.

6 **1.42 Settlement Effective Date.** “Settlement Effective Date” shall mean the first day
7 following the last of the following occurrences:

8 (a) The time to appeal or seek permission to appeal or seek other judicial
9 review of the Final Approval Order and Judgment has expired with no appeal or other judicial review
10 having been taken or sought; or

11 (b) If an appeal or other judicial review of the Final Approval Order and
12 Judgment has been taken or sought, the date the Final Approval Order and Judgment is finally affirmed
13 by an appellate court with no possibility of subsequent appeal or other judicial review therefrom, or the
14 date the appeal(s) or other judicial review therefrom are finally dismissed with no possibility of
15 subsequent appeal or other judicial review.

16 **II. RECITALS**

17 **2.1 Description of the Action.** Plaintiffs filed this Action on May 9, 2013 on behalf of
18 themselves and other allegedly similarly situated persons whose homes were built by Defendants and
19 contained copper plumbing and piping lines that purportedly were inadequate and defective for the water
20 conditions in Ladera Ranch, California.

21 **2.1.0** On July 24, 2013, Plaintiffs filed the First Amended Complaint.

22 **2.1.1** On February 27, 2014, the Parties entered a stipulation dismissing, without
23 prejudice, defendant Plumbing Concepts, Inc. as a defendant in the Action, which was entered on March
24 26, 2014.

25 **2.1.2** On July 10, 2014, Defendants filed notice of a stay of the Action based upon an
26 automatic bankruptcy stay for a Chapter 11 proceeding filed in the United States Bankruptcy Court for
27 the District of Delaware on behalf of WL Homes LLC.

28 **2.1.3** On October 28, 2015, the Bankruptcy Relief Order was entered, which modified

1 the automatic stay in the Bankruptcy to allow Plaintiffs to pursue the Action in the Orange County
2 Superior Court, “but to collect any settlement or judgment exclusively from the proceeds of any
3 applicable insurance policies and not from the Debtor’s estate . . .”

4 **2.1.4** On or about September 2, 2016, defendant Mueller Industries, Inc. was dismissed
5 from the Action, without prejudice.

6 **2.1.5** For close to nine (9) years, Class Counsel have vigorously litigated this Action
7 and the other related actions against other developers for the same claim that the chemical interaction
8 between the water supplied in Ladera Ranch and the copper pipes installed by developers lessened the
9 reasonably-expected useful life of the copper pipes and results in pinhole leaks. This has included
10 extensive motion practice on the issue of whether the cases can proceed as class actions (which were
11 litigated on two separate occasions before the Court of Appeal) and extensive work with a common
12 water chemist expert.

13 **2.1.6** In August 2021, the Court granted class certification on three (3) related cases. A
14 prior judge had granted class certification of another related case in July 2017.

15 **2.2 Discovery in the Action.** The Parties have engaged in discovery, and have engaged in
16 supplementary confirmatory discovery in connection with this Settlement.

17 **2.3 Settlement Efforts.** During the course of this litigation, the Parties have engaged in
18 arms-length negotiations. The unique issue in this Action is that the Defendants filed for bankruptcy
19 protection imposing an automatic stay on this Action. Plaintiffs sought and obtained the Bankruptcy
20 Relief Order to pursue claims, but that order limits potential class members to the recovery of any
21 settlement or judgment from the Defendants’ insurance policies only. Further, the Parties have engaged
22 in due diligence regarding the application of Defendants’ Self-Insured Retentions (“SIR”) under the
23 subject insurance policies – since those effectively act as deductibles from coverage for which
24 Defendants’ insurers will not have any obligation. As a result, there are certain years of construction for
25 which members of the originally defined class will not have the ability to obtain Defendants’ Insurers’
26 coverage because the SIR exceeds their collective potential damages for certain developments.

27 **2.4 Plaintiffs’ Reasons for Entering Into Settlement.** Class Counsel and the Class
28 Representatives believe that the claims asserted in this Action have merit. Class Counsel and the Class

1 Representatives, however, recognize the uncertain outcome and the risk of any litigation, especially in
2 complex actions such as this, as well as the difficulties and delays inherent in such litigation. Class
3 Counsel and the Class Representatives are also mindful of the inherent problems of proof and defenses
4 to the claims asserted in this Action, and in particular the limitations on recovery given Defendants'
5 Bankruptcy action, the limitation imposed by the Bankruptcy Relief Order, and the SIR limitations on
6 Defendants' insurance policies with their insurers. In light of the above, Class Counsel and the Class
7 Representatives believe that the Settlement set forth in this Settlement Agreement confers substantial
8 benefits upon the Settlement Class, and each of the Settlement Class Members and is fair, just, equitable,
9 reasonable, adequate and in the best interests of all Settlement Class Members.

10 **2.5 Defendants' Reasons for Entering into Settlement.** Defendants have denied, and
11 continue to deny, liability for any of the claims asserted in this Action. Defendants, however, desire to
12 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 its
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 Defendants are agreeing to class certification for
20 settlement purposes only, and that nothing contained in this Settlement Agreement shall be construed or
21 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of any of
22 Defendants or any of Plaintiffs' Released Parties, all of whom deny liability therefor.

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

28 **NOW, THEREFORE,** in consideration of the mutual covenants and promises set forth in this

1 Settlement Agreement, as well as the good and valuable consideration provided for herein, the Parties
2 hereby agree to a full and complete settlement of the Action on the following terms and conditions:

3 **III. TERMS OF SETTLEMENT**

4 **3.1 Contributions to the Settlement Fund.** Defendants, through their insurer Steadfast
5 Insurance Co. shall pay the sum of \$1,700,000.00 to fund the Settlement. Any Net Settlement Funds
6 allocated to Class Homes that Opt-Out of this Settlement shall revert back to Steadfast Insurance Co.

7 **3.1.0 Funding of The Settlement Fund.** Within 30 days of the Court's entry of the
8 Preliminary Approval of the Settlement, Steadfast Insurance Co. shall wire to the Class Administrator's
9 account to be established the amounts listed in Section 3.1 to be used as the Settlement Fund, consistent
10 with the terms of this Settlement Agreement, and shall be maintained in the Class Administrator's
11 account until distributions are made.

12 **3.1.1 Calculation of Net Settlement Fund.** Within five (5) business days of the
13 Settlement Effective Date, the Class Administrator shall calculate the Net Settlement Fund by deducting
14 from the Settlement Fund the anticipated Administrative Costs for the Settlement, attorneys' fees and
15 costs awarded by the Court, any incentive payments awarded to the Class Representatives by the Court,
16 and any other payments agreed to by the Parties and approved by the Court.

17 **3.1.2 Calculation of Eligible Shares to each Settlement Class Member.** Within five
18 (5) business days of the Settlement Effective Date, the Class Administrator shall calculate the Eligible
19 Share of the Net Settlement Fund owed to each Settlement Class Member by dividing the Net Settlement
20 Fund by 138 (*i.e.*, the number of potential Participating Settlement Class Members).

21 **3.1.3 Claims Paid.** This is a claims-paid settlement, and no Participating Settlement
22 Class Member shall be required to submit any claim form in order to obtain an Eligible Share. Every
23 Participating Settlement Class Member who does not file a valid Request for Exclusion shall
24 automatically be entitled to an Eligible Share.

25 **3.1.4 Payment of Claims to the Participating Settlement Class Members.** Within
26 (30) days after the Settlement Effective Date, the Class Administrator shall mail individual Settlement
27 Checks to each Participating Settlement Class Member who is not an Opt Out.

28 **3.1.5 Disposition of Uncashed Settlement Checks.** Each Settlement Check mailed by

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

4 **3.1.6 Attorneys' Fees, Costs and Expenses.** Defendants take no position as to the
5 proper amount of any attorneys' fee award to Class Counsel, and agree that they will not oppose an
6 application by Class Counsel for attorneys' fees. Class Counsel represent and warrant that they will not
7 seek an attorneys' fees award of more than thirty percent (30%) of the Settlement Fund, which equates
8 to Five Hundred and Ten Thousand Dollars (\$510,000.00) and reimbursement of legal costs up to
9 \$20,000.00, and that these amounts are inclusive of all fees, costs, and expenses of Class Counsel, past
10 and future, in connection with the Action. The fees shall be divided amongst Class Counsel based upon
11 their agreement. The attorneys' fees and costs in the amount awarded by the Court shall be paid directly
12 to Class Counsel from the Settlement Fund within two court days after the Settlement Effective Date.
13 The effectiveness of this Settlement will not be conditioned upon or delayed by the Court's failure to
14 approve Class Counsel's request for attorneys' fees and costs, or the Court's award to Class Counsel of
15 attorneys' fees and costs in an amount less than that sought by Class Counsel. Defendants shall have no
16 obligation to pay any attorneys' fees or costs to Class Counsel, separate from any amount awarded by
17 the Court to Class Counsel from the Settlement Fund. Any fees not awarded shall be included within
18 the Net Settlement Fund for distribution to the Participating Settlement Class Members. The Class
19 Representatives have reviewed and approved the aforesaid division of attorneys' fees.

20 **3.1.7 Incentive Payments to the Class Representatives.** Plaintiffs intend to apply to
21 the Court for two (2) incentive payments (one for each household of Class Representatives) of
22 \$10,000.00 each (i.e. a total of \$20,000.00). Defendants take no position as to the proper amount of any
23 Incentive Payments to the Class Representatives, and agree that they will not oppose an application by
24 Class Counsel for the Class Representatives' Incentive Payments. The effectiveness of this Settlement
25 will not be conditioned upon or delayed by the Court's failure to approve any incentive payments to
26 either Class Representatives, and/or the Court's award of incentive payments in an amount less than that
27 sought by either Class Representatives. Defendants shall have no obligation to pay any incentive
28 payments to the Class Representatives, separate from any amount awarded by the Court to the Class

1 Representatives from the Settlement Fund. Any fees not awarded shall be included within the Net
2 Settlement Fund for distribution to the Participating Settlement Class Members.

3 **3.1.8 Costs of Notice and Claims Administration.** Within ten (10) business days of
4 the Settlement Effective Date, the Class Administrator shall be reimbursed from the Settlement Fund
5 for its costs associated with the preparation and mailing of the Notice described in Section 4.2, and the
6 costs for distributing settlement checks to Settlement Class Members.

7 **IV. NOTICE TO THE CLASS**

8 **4.1 Contact Information of Potential Settlement Class Members.** Within ten (10)
9 business days of Preliminary Approval, the Parties shall provide the Class Administrator with the
10 addresses of all homes that are included within the definition of the Settlement Class. The Class
11 Administrator shall then determine the identity of all potential Settlement Class Members by conducting
12 a “chain of title” search for the names and addresses of all individuals who had an ownership interest in
13 the subject homes from the date of construction to the present date.

14 **4.2 Notice.** The Notice shall be substantially in the form attached as Exhibit B, subject to
15 approval by the Court.

16 **4.3 Notice by Mail is the Best, Most Fair and Most Reasonable Form of Notice**
17 **Practicable under the Circumstances.** The Parties agree that providing direct mailed notice to all
18 potential Settlement Class Members is the best, most fair and most reasonable form of notice practicable
19 under the circumstances.

20 **4.3.0** The Notice shall be mailed to all potential Settlement Class Members by the Class
21 Administrator within thirty (30) days of Preliminary Approval, in envelopes marked “Personal and
22 Confidential.”

23 **4.3.1** Any Class Notices that are returned as non-deliverable with a forwarding address
24 shall promptly be re-mailed by the Class Administrator to such forwarding address. To the extent that
25 any Class Notices are returned as non-deliverable without a forwarding address, the Class Administrator
26 shall conduct reasonable research to locate valid address information for the intended recipients of such
27 Class Notices, and shall promptly re-mail the Class Notice, as applicable, to any Potential Settlement
28 Class Members for whom new address information is identified.

1 **4.4 Prior Homeowners.** Under the terms of the Settlement, the current owner shall be
2 deemed to have the right to payment from the Net Settlement Fund, unless a prior owner had re-piped
3 the home with PEX or an epoxy coating. The Parties have determined that it is impracticable to inspect
4 every home in the class to determine whether there has been a replacement of the copper pipes by prior
5 owners with PEX or an epoxy coating. Accordingly, a term of this Settlement is that prior to the Final
6 Approval of the Settlement, a prior owner must submit a verification that the prior owner had re-piped
7 the home with PEX or an epoxy coating. A Prior Owner Re-Piping Form shall be served with the Class
8 Notice and be available on a Class Settlement website maintained by the Class Administrator, in the
9 form attached hereto as Exhibit E.

10 **4.5 Requests for Exclusion.** In order to request exclusion from the Class, the Settlement
11 Class Member must mail a written Request for Exclusion to the Class Administrator. The Request for
12 Exclusion must be signed by the Settlement Class Member, and postmarked no later than the deadline
13 for filing a Request for Exclusion set forth in the Preliminary Approval Order entered by the Court. The
14 Parties agree that they will propose to the Court that the deadline for filing a Request for Exclusion set
15 forth in the Preliminary Approval Order be sixty (60) days after the date Notice was mailed. All
16 Settlement Class Members who do not timely and properly file a Request for Exclusion from the Class
17 shall be bound by all proceedings, orders, and judgments in the Action, even if the Settlement Class
18 Member has pending, or subsequently initiates, litigation against any of the Defendants relating to the
19 Released Claims. A Settlement Class Member who chooses to be excluded from the Class will be
20 excluded entirely from the Class and, therefore, from participation in the Settlement.

21 **4.6 Objections to Settlement.** Any member of the Settlement Class other than Opt Outs
22 may object to the Settlement, motions for attorneys' fees, costs and/or the proposed incentive awards,
23 and/or the proposed Final Approval Order and Judgment. Any member of the Settlement Class who is
24 not an Opt Out and who wishes to file such an objection shall, by the date set forth in the Preliminary
25 Approval Order approved by the Court, mail to the Class Administrator a writing containing a clear and
26 specific statement of the objection, as well as the specific reason(s), if any, for each objection, including
27 any legal support the Settlement Class Member wishes to bring to the Court's attention and any evidence
28 the Settlement Class Member wishes to introduce in support of the objection. Any member of the

1 Settlement Class who is not an Opt Out may file and serve a written objection either on his or her own
2 or through an attorney hired at his or her own expense. Any member of the Settlement Class who is not
3 an Opt Out intending to make an appearance at the Fairness Hearing must: (a) file a notice of
4 appearance with the Court no later than the date set in the Preliminary Approval Order approved by the
5 Court or as the Court may otherwise direct; and (b) mail a copy of the notice of appearance postmarked
6 by the date set in the Preliminary Approval Order approved by the Court to the Class Administrator.

7 **4.6.0** Opt Outs shall have no standing to object to the Settlement, motions for attorneys'
8 fees, costs and/or the proposed incentive awards, and/or the proposed Final Approval Order and
9 Judgment. As soon as possible after receipt of an objection, the Class Administrator shall provide a
10 copy of the objection and supporting papers (and the accompanying envelope or other packaging) to
11 Class Counsel and Defense Counsel. Any Settlement Class Member who fails to comply with the
12 provisions of this Section shall waive and forfeit any and all rights the Settlement Class Member may
13 have to appear separately and/or to object to the Settlement, motions for attorneys' fees, costs and/or the
14 proposed incentive awards, and/or the proposed Final Approval Order and Judgment, and shall be bound
15 by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the
16 Action.

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

22 **4.7 Reversion of Settlement Funds.** Within thirty (30) days after the Class
23 Administrator's certification of Proof of Payment, Steadfast Insurance Co. shall submit a request to the
24 Class Administrator for reversion of any Net Settlement Funds allocated to Class Homes that Opt-Out of
25 the Settlement. Payment shall be made to Steadfast Insurance Co. within fifteen (15) days of said
26 request.

27 **V. RELEASE OF CLAIMS**

28 **5.1 Plaintiffs' Release of Released Parties.** Upon the Settlement Effective Date, Plaintiffs

1 on their own behalves, and on behalf of the Releasing Parties and all of their respective heirs, executors,
2 administrators, predecessors, successors and assigns, shall and hereby do release and forever discharge
3 Plaintiffs' Released Parties from the Settled Class Claims.

4 **5.2 Complete Defense.** The Parties shall be deemed to have agreed that the releases set
5 forth herein will be and may be raised as a complete defense to, and will preclude any action or
6 proceeding based on, Plaintiffs' Released Claims.

7 **5.3 Effectuation of Settlement.** None of the release set forth herein includes releases of
8 claims to enforce the terms of the Settlement.

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

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

- 14 (a) Preliminarily certify the Settlement Class for settlement purposes only;
- 15 (b) Preliminarily approve the Settlement as fair, reasonable, and adequate;
- 16 (c) Preliminarily approve the appointment of Class Counsel for settlement
17 purposes only;
- 18 (d) Preliminarily approve James Foti and Jeff and Luciana Swoboda as Class
19 Representatives for settlement purposes only;
- 20 (e) Approve as to form and content the proposed Notice substantially in the
21 form attached hereto as Exhibit B;
- 22 (f) Approve the manner of providing Notice to the Settlement Class Members
23 as described in Section IV of this Settlement Agreement and find that this manner of notice constitutes
24 the best notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all
25 Settlement Class Members in accordance with California and federal laws and the Constitution of the
26 U.S.;
- 27 (g) Approve ILYM Group, Inc. as the Class Administrator, or another
28 administrator mutually agreed to by the Parties;

- 1 (h) Schedule the Fairness Hearing to be held by the Court to determine:
2 (1) Whether the proposed Settlement should be finally approved as
3 fair, reasonable, and adequate;
4 (2) Whether the Final Approval Order and Judgment should be
5 entered;
6 (3) Whether Class Counsel's application for an award of attorneys'
7 fees and costs should be approved; and
8 (4) Whether the incentive awards to Plaintiffs as Class
9 Representatives should be approved.

10 (i) Provide that the Fairness Hearing may be continued and adjourned by the
11 Court without further notice to the Settlement Class Members;

12 (j) Order that Notice to the Settlement Class Members, in the manner
13 described in Section IV of this Settlement Agreement, be disseminated;

14 (k) Approve the procedure for Settlement Class Members to file Requests for
15 Exclusion, substantially in the manner set forth in Section 4.6 of this Settlement Agreement, and setting
16 a deadline for Settlement Class Members to exclude themselves from the Class;

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

20 (m) Declare the date on which the Court preliminarily approves the Settlement
21 as the date that the Settlement is deemed filed.

22 VII. FINAL COURT APPROVAL OF THE SETTLEMENT

23 7.1 **Entry of Final Approval Order and Judgment.** At the Fairness Hearing, the Parties
24 will request that the Court, among other things, enter the Final Approval Order and Judgment, in which
25 the Court will: (a) approve the Settlement Agreement as fair, reasonable, adequate, and binding on all
26 members of the Settlement Class; (b) enter the Final Approval Order and Judgment in accordance with
27 the terms of this Settlement Agreement; (c) determine the amount and approve the payment of attorneys'
28 fees and costs; (d) determine the amount of any incentive payments to award to the Class

1 Representative; and (e) provide for the entry of judgment in the Action and for the Release of all
2 Released Claims against the Released Parties by the Class Representative and all Settlement Class
3 Members who have not submitted valid and timely Requests for Exclusion from the Class.

4 **7.1.0 Final Judgment.** The Final Approval Order and Judgment shall include a final
5 judgment, which shall:

6 (a) Approve the Settlement, adjudging the terms thereof to be fair, reasonable,
7 and adequate, and directing consummation of its terms and provisions;

8 (b) Approve Class Counsel's application for an award of attorneys' fees and
9 reimbursement of costs, insofar as said application has been granted by the Court;

10 (c) Approve the Class Representative incentive award, insofar as said
11 incentive awards have been granted by the Court;

12 (d) Certify the Settlement Class for settlement purposes only;

13 (e) Permanently bar all Settlement Class Members (other than Opt Outs) from
14 prosecuting against Plaintiffs' Released Parties any and all of Plaintiffs' Released Claims; and

15 (f) Permanently bar the Class Representative from prosecuting against
16 Plaintiffs' Released Parties any and all of Plaintiffs' Released Claims.

17 **VIII. MISCELLANEOUS PROVISIONS**

18 **8.1 Voiding the Agreement.** If the Court denies the Motion for Preliminary Approval or
19 does not enter the Final Approval Order and Judgment, or if the Court's entry of the Final Approval
20 Order and Judgment is reversed on appeal, the Settlement and all related papers including the Motion for
21 Preliminary Approval shall not be used nor be admissible in any subsequent proceedings either in this
22 Court or in any other Court or forum, and the \$1.7 million Settlement Fund shall be returned to Steadfast
23 Insurance Co., minus WL Home's portion of such Class Administrative costs. Further, upon denial of
24 Final Approval, WL Homes' maximum administrative costs would be 50% of the actual costs incurred –
25 up to a limit of \$7,500 for WL Homes (*i.e.*, 50% of a cap of \$15,000 in Class Administrative costs upon
26 denial of Final Approval).

27 **8.2 Signatories' Authority.** The signatories to the Settlement represent that they are
28 authorized to enter into this Settlement and bind their respective Parties to its terms and conditions.

1 **8.3 Mutual Full Cooperation.** The Parties agree to cooperate fully with each other to
2 accomplish the terms of this Settlement, including, but not limited to, execution of such documents and
3 to take such other action as may reasonably be necessary to implement the terms of this Settlement. The
4 Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and
5 any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the terms
6 of this Settlement. As soon as practicable after execution of this Settlement, Class Counsel shall, with
7 the assistance and cooperation of Defendants and their counsel, take all necessary steps to secure the
8 Court's Final Judgment.

9 **8.4 No Prior Assignments.** The Parties represent, covenant, and warrant that they have
10 not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
11 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or
12 right released and discharged in this Settlement.

13 **8.5 Notices.** Unless otherwise provided herein, all notices, demands, or other
14 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
15 the third business day after emailing and mailing by U.S. registered or certified mail, return receipt
16 requested, addressed as follows:

17 (a) To the Class:

18 Richard K. Bridgford, Esq.
19 Michael H. Artinian, Esq.
20 Bridgford, Gleason & Artinian
21 26 Corporate Plaza, Suite 250
22 Newport Beach, CA 92660
23 mike.artinian@bridgfordlaw.com

24 Richard L. Kellner, Esq.
25 Kabateck LLP
26 633 West Fifth Street, Suite 3200
27 Los Angeles, CA 90017
28 rlk@kbklawyers.com

29 (b) To Defendants:

30 Robert B. Titus, Esq.
31 Lorber, Greenfield & Polito, LLP
32 12975 Brookprinter Pl., Suite 200
33 Poway, CA 92064
34 RTitus@lorberlaw.com

1 **8.6 Construction.** The Parties agree that the terms and conditions of this Settlement are
2 the result of lengthy, intensive arm's-length negotiations between the Parties' counsel, and that the terms
3 of this Settlement shall not be construed in favor of or against any Party.

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

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

10 **8.9 Integration Clause.** This Settlement contains the entire agreement between the Parties
11 relating to the resolution of the Action, and all prior or contemporaneous agreements, understandings,
12 representations, and statements, whether oral or written and whether by a Party or such Party's legal
13 counsel, are merged in this Settlement. No rights under this Settlement may be waived except in a
14 writing signed by the Party making the waiver and its counsel.

15 **8.10 Binding on Assigns.** This Settlement shall be binding upon and inure to the benefit of
16 the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns and,
17 where applicable, all of their current or former parent entities, corporations, subsidiaries, related and
18 affiliated companies and entities, officers, directors, agents, representatives, attorneys, insurers,
19 predecessors, successors, assignees, employees, and all individuals or entities acting by, through, under,
20 or in concert with any of them.

21 **8.11 Class Counsel Signatories.** It is agreed that, because the Settlement Class Members
22 are so numerous, it is impossible or impractical to have each Settlement Class Member execute this
23 Settlement. The Notice will advise all Settlement Class Members of the binding nature of the Release.
24 Excepting only the Settlement Class Members who timely submit a Request for Exclusion, the Notice
25 shall have the same force and effect as if this Settlement were executed by each Settlement Class
26 Member with regard to the Settled Class Claims.

27 **8.12 Counterparts.** This Settlement may be executed in counterparts, and when each Party
28 has signed and delivered at least one such counterpart, each counterpart shall be deemed an original,

1 and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be
2 binding upon and effective as to all Parties.

3 **8.13 Class Certification.** The Parties agree that the certification of the Settlement Class is
4 being sought for settlement purposes only and, if for any reason the settlement is not approved, any
5 order certifying the Settlement Class will be of no force or effect and cannot be used for any purpose by
6 any of the Parties in the future. The Parties agree that any order certifying the Settlement Class is in no
7 way an admission that class certification would be proper for litigation purposes.

8 **8.14 Governing Law.** This Settlement Agreement shall be governed by the laws of the
9 State of California, without regard to choice-of-law principles.

10 **8.15 Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation
11 and implementation of this Settlement Agreement.

12 **8.16 Venue.** Any and all actions or disputes arising out of this Settlement Agreement,
13 including without limitation the enforcement, interpretation, breach, or attempted rescission of this
14 Settlement Agreement, shall be brought exclusively in this Court.

15 **8.17 Waiver.** Any failure by any Party to insist upon the strict performance by any other
16 Party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the
17 provisions of this Settlement Agreement, and such Party, notwithstanding such failure, shall have the
18 right thereafter to insist upon the specific performance of any and all of the provisions of this Settlement
19 Agreement.

20 **8.18 Conflicts.** In the event of conflict between this Settlement Agreement and any other
21 prepared pursuant to the Settlement, other than any Court order, the terms of this Settlement Agreement
22 shall supersede and control.

23 **8.19 Singular/Plural.** The plural of any defined term includes the singular, and the singular
24 of any defined term includes the plural, as the case may be.

25 **8.20 Reasonable Extensions of Time.** Without further order of the Court, the Parties may
26 agree to reasonable extensions of time to carry out any of the provisions of this Settlement.
27
28

1 **IT IS SO AGREED:**

2
3 Dated: March __, 2022

By: _____
James Foti
Class Representative Plaintiff

4
5 Dated: March __, 2022

By: _____
Jeff Swoboda
Class Representative Plaintiff

6
7 Dated: March __, 2022

By: _____
Luciana Swoboda
Class Representative Plaintiff

8
9 Dated: March __, 2022

By: _____
Robert B. Titus, Esq.
Attorney for WL HOMES LLC per
Code of Civ. Proc. § 664.6

10
11
12
13 **APPROVED AS TO FORM AND CONTENT:**

14
15 By: _____
Michael H. Artinian, Esq.
16 Bridgford, Gleason & Artinian
Counsel for Plaintiffs

17
18
19 By: _____
Richard L. Kellner, Esq.
20 Kabateck LLP
Counsel for Plaintiffs

21
22 By: _____
23 Robert B. Titus, Esq.
Lorber, Greenfield & Polito
24 *Counsel for Defendants and Steadfast Insurance Co.*