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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

UNITED DESERT CHARITIES,
FRED EDE, III, EMILY WILLIAMS,
BRUCE PRITCHARD, JEAN
STEINER, DANIEL BERUBE,
JEFFREY BRETTLER, RANDY
KUBAT, JOHN SNYDER, AND
PANKAJ PATEL, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

SLOAN VALVE COMPANY,
AMERICAN STANDARD BRANDS
AS AMERICA, INC., KOHLER CO.,
GERBER PLUMBING FIXTURES,
LLC, MANSFIELD PLUMBING
PRODUCTS, LLC, HOME DEPOT,
U.S.A., INC., and DOES 1-10,
inclusive,

Defendants.

Case No. CV12-06878 SJO (SHx)

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

The Honorable S. James Otero

Consolidated Cases:
Berube v. Flushmate
2:13-cv-02372-SJO-SH
Brettler v. Flushmate
2:13-cv-02499-SJO-SH
Kubat, et al. v. Flushmate
2:13-cv-02425-SJO-SH
Patel v. Flushmate
2:13-cv-02428-SJO-SH

Related Case:
Dimov, et al. v. Sloan Valve Co.
1:12-cv-09700 (N.D. Ill)

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1 This Class Action Settlement Agreement and Release (“Agreement”¹) is
2 submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to
3 the approval of the Court, this Agreement memorializes the settlement between and
4 among all Parties to fully resolve the Action. This Agreement is entered into by
5 and between Plaintiffs United Desert Charities (“UDC”), Fred Ede, III, Emily
6 Williams, Bruce Pritchard, and Jean Steiner (“UDC Plaintiffs”); Daniel Berube;
7 Jeffrey Brettler; Randy Kubat and John Snyder (“Kubat Plaintiffs”); Milen Dimov,
8 Trigona Dimova, Scott Iver, and Neal Olderman (“Dimov Plaintiffs”); and Pankaj
9 Patel (collectively, “Plaintiffs”), individually on their own behalf, and in their
10 representative capacity on behalf of the Settlement Class, and Defendants Sloan
11 Valve Company (“Sloan”) and Flushmate, a division of Sloan Valve Company
12 (“Flushmate”); AS America, Inc., doing business as American Standard Brands
13 (“American Standard”); Kohler Co. (“Kohler”); Gerber Plumbing Fixtures, LLC
14 (“Gerber”); Mansfield Plumbing Products, LLC (“Mansfield”); and Home Depot
15 U.S.A., Inc. (“Home Depot”) (collectively, “Defendants”). This Agreement is
16 intended by the Parties to fully and finally compromise, resolve, discharge and
17 settle all Released Claims on the terms and conditions set forth herein, subject to
18 approval of the Court.

19 RECITALS

20 WHEREAS, a number of putative class actions have been filed against
21 Defendants regarding the Flushmate System and Flushmate Toilets: *United Desert*
22 *Charities, et al. v. Flushmate, et al.*, Case No. CV12-06878 SJO (SHx) (C.D. Cal.);
23 *Berube v. Flushmate*, Case No. 2:13-cv-02372-SJO-SH (C.D. Cal.); *Brettler v.*
24 *Flushmate*, 2:13-cv-02499-SJO-SH (C.D. Cal.); *Kubat, et al. v. Flushmate*,
25 2:13-cv-02425-SJO-SH (C.D. Cal.); *Patel v. Flushmate*, 2:13-cv-02428-SJO-SH
26 (C.D. Cal.); and *Dimov, et al. v. Sloan Valve Company*, Case No. 1:12-cv-09700

27 _____
28 ¹ Capitalized terms used herein have the definitions set forth in section 1, below.

1 (N.D. Ill.);

2 WHEREAS, the putative class action complaints filed by Plaintiffs in the
3 United States District Court for the Central District of California and in other
4 District Courts allege claims for damages and other relief against Defendants
5 related to the Flushmate System and Flushmate Toilets;

6 WHEREAS, all Defendants have denied, and continue to deny, the
7 substantive claims set forth in the complaints in this Action, and have denied and
8 continue to deny any and all wrongdoing and liability of any kind with respect to
9 any and all facts and claims alleged and further deny that any Class Member has
10 suffered any damage;

11 WHEREAS, the Plaintiffs, by and through the Class Counsel listed below,
12 have conducted a thorough examination and investigation of the facts and law
13 relating to the allegations, claims and defenses asserted in this Action;

14 WHEREAS, under the supervision of a mediator (Hon. William J. Cahill,
15 Ret.), the Parties have engaged in extensive, arms-length negotiations extending for
16 a period of approximately ten (10) months;

17 WHEREAS, based upon extensive analysis of the facts and the law
18 applicable to Plaintiffs' claims, and the discovery undertaken prior to execution of
19 this Agreement, and taking into account the extensive burdens and expense of
20 litigation, including the risks and uncertainties associated with protracted trials and
21 appeals, as well as the fair, cost-effective and assured method of resolving the
22 claims of the Settlement Class, Class Counsel have concluded that this Agreement
23 provides substantial benefits to the Settlement Class and is fair, reasonable,
24 adequate and in the best interests of Plaintiffs and the Settlement Class;

25 WHEREAS, Defendants have denied, and continue to deny, any liability or
26 wrongdoing, but have similarly concluded that this Agreement is desirable in order
27 to avoid the time, risk and expense of defending multiple and protracted litigation,
28 and to resolve finally and completely the pending and potential claims of Plaintiffs

1 and the Settlement Class relating in any way to the Flushmate System and
2 Flushmate Toilets;

3 WHEREAS, the Parties agree that Class Members shall have the right to be
4 excluded (“Opt-Out”) from the Settlement Class as provided in this Agreement,
5 such that participation in the Plan of Allocation shall be voluntary; and

6 WHEREAS, the Parties and their counsel agree that the settlement embodied
7 in this Agreement is a fair, reasonable, and adequate resolution of the Action, and
8 that the settlement in no way interferes with or otherwise hampers Defendants’
9 obligations to any federal or state or local agency, including the U.S. Consumer
10 Product Safety Commission.

11 **NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED**
12 **TO AND AGREED**, by and between the Parties, through their respective counsel,
13 and subject to the approval of the Court pursuant to Fed. R. Civ. P. 23(e), that the
14 Action be settled, compromised and dismissed, on the merits and with prejudice,
15 and the Released Claims be finally and fully compromised, settled and dismissed as
16 to the Released Parties, subject to and in accordance with the following terms and
17 conditions:

18 **I. DEFINITIONS**

19 As used in this Agreement and the exhibits hereto, in addition to any
20 definitions elsewhere in this Agreement, the following terms shall have the
21 meanings set forth below:

22 “Action” means the consolidated actions *United Desert Charities, et al. v.*
23 *Sloan Valve Company, et al.*, United States District Court for the Central District of
24 California, Case No. CV12-06878 SJO (SHx); *Daniel E. Berube v. Flushmate, a*
25 *Division of Sloan Valve Company*, United States District Court for the Central
26 District of California, Case No. 2:13-cv-02372-SJO-SH; *Jeffrey Brettler v.*
27 *Flushmate, a Division of Sloan Valve Company*, United States District Court for the
28 Central District of California, Case No. 2:13-cv-02499-SJO-SH; *Randy Kubat, et*

1 *al. v. Flushmate, a Division of Sloan Valve Company*, Case No. 2:13-cv-02425-
2 SJO-SH; and *Pankaj Patel v. Flushmate, a Division of Sloan Valve Company*,
3 United States District Court for the Central District of California, Case No. 2:13-cv-
4 02428-SJO-SH; and the related action, *Milen Dimov, et al. v. Sloan Valve*
5 *Company*, United States District Court for the Northern District of Illinois, Case
6 No. 1:12-cv-09700.

7 “Additional Property Damage Payments” means any additional Settlement
8 Payment obligations set forth in Section IV.A.4 below.

9 “Agreement” means this Class Action Settlement Agreement and Release,
10 including all exhibits hereto.

11 “Burst,” “Bursted,” or “Bursting” means a separation of the Flushmate
12 System’s polypropylene vessel at or near the vessel’s weld seam causing damage to
13 the Flushmate Toilet.

14 “Claim Form” means the documentation a Settlement Class Member must
15 submit, under penalty of perjury, in order to participate in the Settlement Benefits
16 offered to the Settlement Class.

17 “Claims Administrator” means the Person selected by Class Counsel and
18 approved by the Court to manage and direct the processing and payment of claims.

19 “Claims Administration Trust Account” means the account established by the
20 Claims Administrator, under the supervision of Class Counsel, from which
21 disbursements will be made to pay Eligible Claims and the reasonable costs of
22 administration of the Settlement Agreement. The Claims Administration Trust
23 Account shall be placed in a national bank or similar institution with assets in
24 excess of \$1 billion and shall earn interest.

25 “Claims Period” means the time period commencing on the Notice Date and
26 concluding two (2) years after the Effective Date, during which Settlement Class
27 Members may file claims with the Claims Administrator, in accordance with the
28 Plan of Allocation.

1 “Claims Process” means the process approved by the Court as contemplated
2 in Section V below.

3 “Class” means any Person who owns or owned a Flushmate System or
4 Flushmate Toilet installed in the United States. Excluded from the Class are (1)
5 Defendants, any entity in which Defendants have a controlling interest, or which
6 has a controlling interest in Defendants and Defendants’ legal representatives,
7 assigns, and successors, and any retailers or wholesalers of the Flushmate System
8 or Flushmate Toilets, and (2) the judges to whom this case is or was assigned and
9 any members of the judges’ immediate families. Also excluded from the Class are
10 (3) all Persons who have obtained a judgment against Defendants with regard to the
11 Released Claims on or before the date of Preliminary Approval by the Court; (4) all
12 Persons who, prior to Preliminary Approval, received cash reimbursement from
13 Flushmate for property damage resulting from a Burst or Leak in their Flushmate
14 System; (5) all Persons who have incurred damages as a result of a Leak or Burst of
15 a Flushmate System that occurred on or before August 9, 2008, but who have not
16 brought any civil action relating thereto on or before August 9, 2012; (6) all
17 Persons whose Property previously contained, but no longer contains, a Flushmate
18 System or Flushmate Toilet, and have not experienced a Leak or Burst of a
19 Flushmate System or Flushmate Toilet, except Persons who replaced their
20 Flushmate Toilets in response to the Recall; and (7) all Persons who formerly
21 owned Property that contained a Flushmate System, and did not experience a Leak
22 or Burst of a Flushmate System or Flushmate Toilet during their ownership.

23 “Class Counsel” means Birka-White Law Offices, Lief Cabraser Heimann &
24 Bernstein, LLP, Parker Waichman LLP, Levin Fishbein, Sedran & Berman, LLP,
25 Audet & Partners, LLP, Wexler Wallace, LLP, Holland Groves Schneller & Stolze
26 LLC, and Geragos and Geragos, P.C.

27 “Class Notice” means the Court-approved forms of notice of the settlement
28 embodied in this Agreement that will be provided to the Class and provides the

1 information required pursuant to Federal Rule of Civil Procedure 23 and the
2 requirements of due process.

3 “Class Representatives” or “Plaintiffs” means United Desert Charities, Fred
4 Ede, III, Emily Williams, Bruce Pritchard, Jean Steiner, Daniel Berube, Jeffrey
5 Brettler, Randy Kubat, John Snyder, Milen Dimov, Trigona Dimova, Scott Iver,
6 Neal Olderman, and Pankaj Patel, individually on their own behalf, and in their
7 representative capacity on behalf of the Settlement Class.

8 “Complaint” means the Consolidated Complaint, which will be submitted
9 with Plaintiffs’ Motion for Preliminary Approval of the settlement embodied in this
10 Agreement.

11 “Court” means the United States District Court for the Central District of
12 California.

13 “CPSC” means the U.S. Consumer Product Safety Commission.

14 “Defendants” means collectively Sloan Valve Company (“Sloan”);
15 Flushmate, a division of Sloan Valve Company (“Flushmate”); AS America, Inc.,
16 doing business as American Standard Brands (“American Standard”); Kohler Co.
17 (“Kohler”); Gerber Plumbing Fixtures, LLC (“Gerber”); Mansfield Plumbing
18 Products, LLC (“Mansfield”); and Home Depot U.S.A., Inc. (“Home Depot”).

19 “Defense Counsel” means Dentons US LLP.

20 “Effective” or Effective Date” means either (1) the date of the Court’s Final
21 Order and Judgment approving this Agreement if no objections are timely filed; (2)
22 the expiration date of the time for filing a notice of appeal from the Final Order and
23 Judgment if objections are filed but no appeal is filed; or (3) if an appeal is filed,
24 the latest of (i) the date of final affirmance of the Final Order and Judgment, (ii) the
25 expiration of the time for filing a petition for writ of certiorari to review the Final
26 Order and Judgment if affirmed, and if the certiorari is granted, the date of final
27 affirmance of the Final Order and Judgment following review pursuant to that
28 grant, or (iii) the date of final dismissal of any appeal from the Final Order and

1 Judgment or the final dismissal of any proceeding on certiorari to review the Final
2 Order and Judgment that has the effect of confirming the Final Order and
3 Judgment.

4 “Eligible Claim” means a claim or claims by a Settlement Class Member
5 meeting the criteria for settlement payment under this Agreement and the Plan of
6 Allocation.

7 “Fairness Hearing” shall have the meaning set forth in Section II E.7 of this
8 Agreement.

9 “Final” means that all of the following have occurred with respect to the
10 Final Order and Judgment: (1) this Agreement is approved in all respects by the
11 Court, without material modifications that are unacceptable to Plaintiffs or
12 Defendants; and (2) a Final Order and Judgment has been entered dismissing with
13 prejudice the claims of the Plaintiffs and all Settlement Class Members who do not
14 Opt-Out as provided by Rule 23 of the Federal Rules of Civil Procedure.

15 “Final Order and Judgment” means a Court order and judgment entered in
16 this Action approving this Agreement in all respects, without material
17 modifications, and dismissing with prejudice the claims of the Settlement Class
18 Members who do not opt-out as provided by Rule 23 of the Federal Rules of Civil
19 Procedure, and containing the terms set forth in Section II.F of this Agreement.

20 “Flushmate System” means the Series 503 Flushmate III Pressure-Assist
21 Flushing System manufactured by Flushmate from October 14, 1997 to June 30,
22 2009. The manufacturing date code/serial number is 16 characters long and is
23 located on the label on the top of the Flushmate System’s polypropylene vessel.
24 The first six numerals of the serial number are the manufacturing date code. The
25 manufacturing date code range for the Recall begins with 101497 (October 14,
26 1997) and continues through 063009 (June 30, 2009).

27 “Flushmate Toilet” means a toilet equipped with the Flushmate System.
28

1 “Incentive Award” shall have the meaning set forth in Section VIII of this
2 Agreement.

3 “Leak,” “Leaking,” or “Leaked” means a leak in the Flushmate System’s
4 polypropylene vessel. For ease of claims administration only, the definition of
5 “Leak,” “Leaking” or “Leaked” shall include any leak in the Flushmate System’s
6 polypropylene vessel and is not limited to a leak occurring at or near the vessel’s
7 weld seam causing damage to the Flushmate Toilet; provided, however, “Leak,”
8 “Leaking” or “Leaked” shall not include a leak arising from any other component
9 part of the Flushmate System (*i.e.*, flush valve cartridge assembly, lower supply
10 shank, upper supply assembly or duck bill valve). A leak from a component part of
11 the Flushmate System is not included as part of the Settlement Agreement.

12 “Notice Date” means the date upon which Class Notice is first disseminated
13 to the Class.

14 “Notice Plan” means the Court-approved plan for dissemination of Class
15 Notice to Class Members.

16 “Notice Provider” means the Court-approved notice experts authorized to
17 design and implement the Notice Plan.

18 “Opt-Out Period” means the period for filing a Request for Exclusion, ending
19 on the deadline contained in the Class Notice.

20 “Opt-Out” means a Person who timely submitted a valid Request for
21 Exclusion during the Opt-Out Period.

22 “Parties” means Plaintiffs, individually on their own behalf, and in their
23 representative capacity on behalf of the Settlement Class, and Defendants,
24 collectively.

25 “Person” means any individual, corporation, trust, partnership, limited
26 liability company or other legal entity, public or private, including the United States
27 Government and any state or local government, and his, her, or its respective
28 predecessors, successors, subrogees or assigns.

1 “Plan of Allocation” means the procedure for submission, processing, and
2 resolution of Eligible Claims by members of the Settlement Class referenced in
3 Section V below.

4 “Preliminary Approval Order” means the order that the Parties will seek from
5 the Court, as described in Section II.E of this Agreement, which, *inter alia*, would:
6 (1) preliminarily certify the Settlement Class under Federal Rule of Civil Procedure
7 23(b)(3); (2) preliminarily approve this Agreement, without material modifications
8 that are unacceptable to Plaintiffs and Defendants; (3) approve the proposed Class
9 Notice; and (4) set a date for the Fairness Hearing to address this Agreement
10 following dissemination of Class Notice to the Class Members.

11 “Property” means any structure, including homes, townhouses,
12 condominiums, apartments, multi-unit housing structures, hotels, motels, hospitals,
13 schools, churches or other places of worship, commercial structures, government
14 structures, homes within a homeowners association or other similar entities, other
15 types of buildings (e.g., guest houses, garages, workshops, sheds, hangers), or other
16 structures of any kind, whether commercial or residential (including permanent or
17 temporary residential structures), or any improvement to real property on or in
18 which a Flushmate Toilet or Flushmate System is or was installed, located in the
19 United States.

20 “Property Damage” means direct damage to a Settlement Class Member’s
21 Flushmate Toilet, Property and/or personal property which occurs on or before the
22 last day of the Claims Period as a result of a Burst or Leak in a Flushmate System.

23 “Qualified Settlement Account” means the account(s) established under
24 Section IV.C. of this Agreement and in accordance with Section 468(B) of the
25 Internal Revenue Code of 1986, as amended.

26 “Recall” means the voluntary product recall of the Flushmate System
27 announced jointly by Flushmate and the CPSC in June 2012 and January 2014.
28

1 “Release” means the release of Released Claims by Plaintiffs and the
2 Settlement Class Members in favor of the Released Parties as set forth in Section
3 VI.A of this Agreement.

4 “Released Claims” means any and all claims, actions, demands, causes of
5 action, suits, obligations, damages, rights or liabilities, of any nature and
6 description whatsoever, known or unknown, present or future, concealed or hidden,
7 liquidated or unliquidated, fixed or contingent, anticipated or unanticipated,
8 whether statutory, in tort, contract, law, equity or otherwise, that have been, could
9 have been or might in the future be asserted by Plaintiffs and the Settlement Class,
10 or any of their respective heirs, spouses, executors, administrators, partners,
11 attorneys, subrogees, predecessors, successors, assigns, agents, and/or
12 representatives, and/or anyone acting or purporting to act on their behalf, arising
13 out of or related to the Recall or the Action. Released Claims include, but are not
14 limited to, all claimed or unclaimed compensatory damages, statutory damages,
15 consequential damages, incidental damages, punitive and exemplary damages,
16 fines, penalties, claims for disgorgement, or equitable, declaratory or injunctive
17 relief under any federal statute (including, but not limited to, the Magnuson-Moss
18 Warranty Act) or state statute (including, but not limited to, any state consumer
19 protection statutes) or common law or any other law whatsoever, to the extent such
20 claims are alleged to be caused by, arise out of, or relate to any claim asserted, or
21 that could have been asserted, in the Action relating to the Flushmate System and/or
22 Flushmate Toilets. Released Claims further include any claim for interest, costs
23 and fees arising out of any of the claims asserted, or that could have been asserted,
24 in the Action. Released Claims shall not include any claims for personal injury,
25 wrongful death and/or emotional distress caused by Flushmate Systems or
26 Flushmate Toilets which have Leaked or Burst. Released Claims also shall not
27 include claims for property damage caused by Flushmate Systems or Flushmate
28 Toilets which Leak or Burst after the expiration of the Claims Period.

1 Notwithstanding the foregoing, nothing in this Agreement shall be deemed a release
2 of the Parties' respective rights and obligations under this Agreement.

3 "Released Parties" means each Defendant and each Defendant's present,
4 former and future subsidiaries, affiliates, divisions, parents, predecessors,
5 successors and assigns, and all of their representatives, officers, directors,
6 employees, agents, attorneys, shareholders, insurers, vendors, suppliers,
7 manufacturers, distributors, and any other Person engaged in any aspect of the
8 manufacturing, testing, sale, marketing, and distribution of the Flushmate System or
9 Flushmate Toilets, jointly and severally.

10 "Repair Kit" means the "Flushmate III Repair Kit" described and pictured in
11 Exhibit A hereto, or a later version or component thereof, if any, required by the
12 CPSC.

13 "Request For Exclusion" or "Opt-Out" means the written communication
14 that must be filed with the Claims Administrator under Section III.D of this
15 Agreement, and postmarked on or before the end of the Opt-Out Period if a Class
16 Member wishes to be excluded from the Settlement Class.

17 "Settlement" means this Agreement, including all exhibits hereto.

18 "Settlement Benefits" collectively means the benefits provided to Settlement
19 Class Members as set forth in Section V of this Agreement.

20 "Settlement Class" means all Class Members who have not properly
21 executed and timely filed a Request for Exclusion with the Claims Administrator.

22 "Settlement Class Member" means any Person included in the Settlement
23 Class.

24 "Settlement Fund Trust Account" means the interest bearing account
25 established and held by an institution or institutions to be determined by Class
26 Counsel, subject to the approval of Defense Counsel, which approval shall not be
27 unreasonably withheld, in accordance with the terms of Section IV.B of this
28 Agreement, and into which Settlement Payments are deposited. The Settlement

1 Fund Trust Account shall be a Qualified Settlement Account pursuant to Section
2 IV.C of this Agreement.

3 “Settlement Payments” means the total amount of payments made by the
4 Defendants into the Settlement Fund Trust Account, including the \$18,000,000
5 guaranteed payment, plus any Additional Property Damage Payments as outlined in
6 Section IV.A.4 of this Agreement

7 “Sloan” means Sloan Valve Company and its subsidiaries, affiliates,
8 divisions, predecessors, successors and assigns, including Flushmate.

9 “Special Master” means the Person proposed by the Parties and appointed by
10 the Court to preside over implementation of this Agreement and to resolve any
11 disputes related to the Plan of Allocation.

12 “United States” means the fifty (50) States, the District of Columbia, and all
13 territories and possessions.

14 “Year One” means the first year of required funding of this Agreement by
15 Defendants.

16 “Year Two” means the second year of required funding of this Agreement by
17 Defendants.

18 “Year Three” means the third year of required funding of this Agreement by
19 Defendants.

20 **II. GENERAL TERMS AND CONDITIONS OF SETTLEMENT**

21 **A. Summary of Settlement**

22 In exchange for the Release, Covenant Not to Sue, and dismissal of the
23 Action with prejudice, and subject to the terms and conditions set forth in this
24 Agreement, the Parties agree to establish a Plan of Allocation for submission to the
25 Court, and to otherwise make the Settlement Benefits available to Settlement Class
26 Members who submit Eligible Claims in the time and manner specified.

27 **B. The Flushmate Recall**

28 Nothing contained in this Agreement or the Plan of Allocation shall interfere

1 with Flushmate's past and continuing obligations to the CPSC. Flushmate shall
2 retain sole responsibility for responding to the Recall, including, but not limited to,
3 the shipment of Repair Kits to Class Members, responding to Leak and Burst
4 issues, and meeting all reporting obligations to the CPSC. Class Counsel and the
5 Claims Administrator will provide complete access to any claims data Flushmate
6 needs to satisfy its reporting obligations to the CPSC on an as needed and/or as
7 requested basis.

8 **C. Benefit to Plaintiffs and Class**

9 Plaintiffs and Class Counsel have concluded, under the circumstances and
10 considering the pertinent facts and applicable law, that it is in the best interests of
11 the Plaintiffs and the Class to enter into this Agreement to avoid the uncertainties of
12 litigation and to secure a significant benefit to Plaintiffs and all Class Members.
13 Plaintiffs and Class Counsel consider the terms and conditions of this Agreement to
14 be fair, adequate, and reasonable and in the best interests of each of the Class
15 Members.

16 **D. No Admission of Liability**

17 This Agreement, whether or not consummated, and any actions or
18 proceedings pursuant to this Agreement, are for settlement purposes only. Neither
19 the fact of, nor any provision contained in this Agreement or its exhibits or any
20 action taken hereunder shall constitute, be construed as, or be admissible in
21 evidence as any admission of the validity of any claim or any fact alleged by
22 Plaintiffs in this Action or in any other pending action or of any wrongdoing, fault,
23 violation of law, or liability of any kind on the part of Defendants or admission by
24 Defendants of any claim or allegation made in this Action or in any other action, or
25 as an admission by any of the Plaintiffs or Class Members of the validity of any fact
26 or defense asserted against them in this Action or in any other action.

27 This Agreement is without prejudice to the rights of Defendants to (i) oppose
28 class certification in this Action should this Agreement not be approved or

1 implemented for any reason, (ii) oppose certification in any other proposed or
2 certified class action, or (iii) use the grant or denial of certification of the Class to
3 oppose certification of any other proposed or existing class arising out of the claims
4 asserted in the Action. Plaintiffs agree that, in the event that this Agreement is not
5 approved or is terminated as provided herein, they will not argue that class
6 certification is proper because Defendants agreed to the settlement embodied in this
7 Agreement. Defendants do not admit that the classes alleged in the Action are
8 susceptible to certification on a litigated basis.

9 **E. Submission Of The Settlement To The Court For Approval**

10 Promptly after execution of this Agreement, Class Counsel shall move the
11 Court for entry of the Preliminary Approval Order which by its terms shall:

- 12 1. Appoint Plaintiffs as Class Representatives of the Class;
- 13 2. Appoint Class Counsel to represent Plaintiffs and the Class;
- 14 3. Preliminarily and conditionally certify the Class under Rule 23 of
15 Federal Rules of Civil Procedure for settlement purposes only and
16 without prejudice to Defendants' right to contest class certification if
17 the Agreement is not approved;
- 18 4. Preliminarily approve this Agreement for purposes of disseminating
19 Class Notice to the Class;
- 20 5. Approve the form and content(s) of the Class Notice and the Notice
21 Plan for dissemination of Class Notice to the Class;
- 22 6. Provide for additional disclosures and discovery of the reasonably
23 available Class Member contact information referred to in Section
24 III.A of this Agreement, subject to entry of a Stipulated Protective
25 Order to protect confidential and proprietary business and personal
26 information as provided in Section XII of this Agreement;
- 27 7. Schedule a hearing (the "Fairness Hearing") to (i) consider the
28 fairness, reasonableness, and adequacy of the settlement embodied in

1 this Agreement; (ii) consider entry of the Final Order and Judgment
2 approving the settlement embodied in this Agreement and the
3 dismissal with prejudice of the Action; (iii) provide Settlement Class
4 Members with the opportunity to object to the proposed settlement
5 embodied in this Agreement; (iv) consider Class Counsel's application
6 for an award of attorneys' fees and reimbursement of costs and
7 expenses; (v) consider the payment of an incentive payment to the
8 Class Representatives; and (vi) consider such other matters as the
9 Court may deem necessary or proper under the circumstances in
10 accordance with Federal Rule of Civil Procedure 23.

11 8. Establish a briefing schedule for the submission of Plaintiffs' Motion
12 for Final Approval, Motion for Class Counsel's Attorneys' Fees and
13 Cost Reimbursement and Incentive Awards to Class Representatives,
14 Objections/Comments to the Settlement, and Class Counsel's Reply
15 Briefs. These submissions, unless otherwise agreed upon by the
16 Parties or ordered by the Court, shall be scheduled as follows: Class
17 Counsel's Motion for Final Approval and Motion for an Award of
18 Attorneys' Fees, Cost Reimbursement and Incentive Awards for the
19 Class Representatives shall be filed with the Court no later than 75
20 days before the Fairness Hearing; any objections/comments to the
21 settlement embodied in this Agreement shall be filed and served no
22 later than 30 days before the Fairness Hearing; and Plaintiffs and
23 Defendants' responses to Objections and Reply Briefs, if any, shall be
24 filed no later than 14 days before the Fairness Hearing.

25 **F. Request For Entry Of Final Order And Judgment**

26 This Agreement is subject to, and conditioned upon, the entry by the Court of
27 the Final Order and Judgment granting Final approval of the settlement embodied
28 in this Agreement in accordance with applicable jurisprudence, and providing the

1 below-specified Settlement Benefits, which shall, *inter alia*, be subject to the terms
2 and conditions of this Agreement and the Parties' performance of their continuing
3 rights and obligations hereunder. Such Final Order and Judgment shall:

- 4 1. Confirm the certification of the Settlement Class for settlement
5 purposes only;
- 6 2. Dismiss the Complaint in the Action with prejudice and without costs,
7 other than as described herein and except to the extent that Opt-Out
8 rights are exercised pursuant to Section III.D of this Agreement, and
9 stay or dismiss all other actions of Settlement Class Members on the
10 Released Claims, without costs, now existing or hereafter brought
11 against any Released Party in any state, federal and territorial courts;
- 12 3. Bar and enjoin all Settlement Class Members from asserting against
13 any Released Party any and all Released Claims which the Settlement
14 Class Member had, has, or may have in the future;
- 15 4. Release each Released Party from the Released Claims which any
16 Settlement Class Members have, had, or may have in the future,
17 against such Released Party;
- 18 5. Determine that this Agreement is entered into in good faith, is
19 reasonable, fair and adequate, and in the best interest of the Settlement
20 Class; and
- 21 6. Reserve the Court's continuing and exclusive jurisdiction over the
22 Parties to this Agreement, including Defendants, Plaintiffs and all
23 Settlement Class Members, to administer, supervise, construe and
24 enforce this Agreement in accordance with its terms for the mutual
25 benefit of the Parties.

26 **G. Settlement Class Definition**

27 For settlement purposes only, Plaintiffs propose, and Defendants consent,
28 that the Court certify the "Settlement Class" under Rule 23(b)(3) of the Federal

1 Rules of Civil Procedure, as that term is defined above.

2 **H. Certification of Settlement Class.**

3 The Parties agree that, for settlement purposes only, the Action shall be
4 certified and proceed as a class action under applicable jurisprudence consisting of
5 all Settlement Class Members, with Plaintiffs appointed as Class Representatives
6 and Class Counsel appointed as counsel for all Plaintiffs and the Settlement Class.
7 In particular, for purposes of settling the Action only, the Parties conditionally
8 stipulate and agree that the following Rule 23 requisites have been met:

- 9 1. The Settlement Class is so numerous as to make it impracticable to
10 join all Settlement Class Members.
- 11 2. There is an ascertainable class.
- 12 3. There are common questions of law and fact.
- 13 4. Plaintiffs' claims are typical of the claims of the members of the
14 Settlement Class.
- 15 5. Class Counsel should be deemed "Settlement Class Counsel" and will
16 fairly and adequately protect the interests of the Settlement Class.
- 17 6. Class Representatives will fairly and adequately protect the interests of
18 the Settlement Class.
- 19 7. The prosecution of separate actions by individual members of the
20 Settlement Class would create the risk of inconsistent or varying
21 adjudications, which would establish incompatible standards of
22 conduct.
- 23 8. Questions of law and fact common to the members of the Settlement
24 Class predominate over questions affecting individual members of the
25 Settlement Class and a class action is superior to other available means
26 for the fair and efficient adjudication of the controversy.
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1 **I. Dismissal of Related Action**

2 Within ten (10) days of the Effective Date, Plaintiffs in the related action,
3 *Milen Dimov, et al. v. Sloan Valve Company*, United States District Court for the
4 Northern District of Illinois, Case No. 1:12-cv-09700, will seek voluntary dismissal
5 with prejudice in accordance with the terms of this Agreement without further
6 notice to the Class.

7 **III. NOTICE PROGRAM FOR THE SETTLEMENT CLASS**

8 **A. Notice.**

9 Upon Preliminary Approval, and as the Court may direct, Class Counsel and
10 Defense Counsel or their designees shall cause the Class Notice describing the
11 Fairness Hearing and the settlement embodied herein to be provided to Settlement
12 Class Members as provided in the Notice Plan.

13 The Notice Plan shall be implemented by the Court-approved Notice
14 Provider proposed by Plaintiffs and subject to the approval of Defendants. At a
15 minimum, the Notice Plan shall provide for direct mail notice to any Class Member
16 for whom street addresses and/or email addresses can be obtained with reasonable
17 effort from Defendants; publication of a “summary” notice; dissemination of a long
18 form notice; establishment of a settlement website with search engine optimization
19 placement; a toll-free number specified in the summary notice; and a reminder
20 notice to be disseminated, in the discretion of Class Counsel, to Settlement Class
21 Members in Year Two.

22 Pursuant to the Notice Plan, and subject to entry of the Stipulated Protective
23 Order, Defendants will provide the reasonably available contact information they
24 have for Class Members, including names, street addresses, and/or e-mail
25 addresses, to the Notice Provider and Claims Administrator within twenty (20)
26 business days following Preliminary Approval.

27 The forms of Class Notice shall advise Class Members of the Fairness
28 Hearing, the terms of the settlement embodied in this Agreement, and of their

1 rights, including the right to opt-out, comment upon, or object to the settlement
2 embodied in this Agreement, and other relevant information regarding the
3 settlement. Copies of the proposed Notice Plan and forms of Class Notice shall be
4 submitted to the Court with Plaintiffs' Motion for Preliminary Approval.

5 **B. Cost of Notice**

6 All reasonable costs associated with the creation and implementation of the
7 Notice Plan described herein shall be paid out of the Settlement Fund Trust
8 Account, subject to Court approval.

9 **C. CAFA Notice**

10 Not later than ten (10) days after the filing of Plaintiffs' Motion for
11 Preliminary Approval, Defendants shall have complied with the obligations set
12 forth under 28 U.S.C. § 1715. Defendants shall properly notify Class Counsel and
13 the Court of their compliance with 28 U.S.C § 1715 as required by the Class Action
14 Fairness Act.

15 **D. Opt-Out Rights**

16 Any Class Member may opt out of the Class at any time during the Opt-Out
17 Period. In order to exercise the Opt-Out right, the Class Member must timely
18 complete and mail a written Request for Exclusion to the Claims Administrator
19 during the Opt-Out Period. Except for those Class Members who have properly
20 opted out, all Class Members will be deemed a Settlement Class Member for all
21 purposes under this Agreement. Any Class Member who elects to Opt-Out of the
22 Settlement Class shall not (i) be bound by any orders or judgments entered in this
23 Action; (ii) be entitled to Settlement Benefits under or be affected by this
24 Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to
25 object to any aspect of this Agreement.

26 To be timely, a Request for Exclusion must be postmarked by the deadline
27 set forth in the Class Notice and must be postmarked no less than 30 days before
28 the date of the Fairness Hearing.

1 To be valid, a Request for Exclusion must include (i) the full name and
2 current address and telephone number of the Class Member and property location
3 where the Class Member's Flushmate Toilet or Flushmate System is installed, if
4 different from current address; (ii) the approximate date of the Class Member's
5 purchase, installation or receipt, of the Class Member's Flushmate Toilet or
6 Flushmate System; (iii) the serial number(s), if known, of the Flushmate System(s)
7 the Class Member owns or owned; (iv) a statement substantially to the effect of:
8 "I/We hereby request that I/we be excluded from the proposed class in *United*
9 *Desert Charities, et al. v. Sloan Valve Company, et al.*, and receive none of the
10 benefits of the settlement; and (v) the signature of the Class Member. If the Class
11 Member is represented by counsel, the Request for Exclusion must also be signed
12 by the attorney who represents the Class Member. A Request for Exclusion signed
13 by counsel alone shall not be sufficient. No "mass" or "class" Requests for
14 Exclusion shall be allowed.

15 Any Class Member who submits a timely Request for Exclusion may revoke
16 his or her Request for Exclusion by submitting to the Claims Administrator a
17 written statement of revocation, postmarked or received no later than five (5) days
18 before the date of the Fairness Hearing. Should Class Counsel or Defense Counsel
19 receive Requests for Exclusion or revocation of such requests, they shall promptly
20 provide copies to each other and to the Claims Administrator.

21 The Claims Administrator shall provide Class Counsel and Defense Counsel
22 with copies of all completed Requests for Exclusion within three (3) business days
23 after expiration of the Opt-Out Period.

24 **E. Objections**

25 Any Settlement Class Member shall be entitled to submit an objection and/or
26 comments regarding certification of the Settlement Class and/or approval of the
27 settlement embodied in this Agreement or any terms thereof, including attorneys'
28 fees. For an objection to be considered by the Court, the objection must be

1 submitted in accordance with the following procedure:

- 2 1. The objection must be in writing and post-marked no later than thirty
3 (30) days before the Fairness Hearing.
- 4 2. To be valid, an objection must include (i) the full name and current
5 address and telephone number of the Settlement Class Member and
6 property location where the Class Member's Flushmate Toilet or
7 Flushmate System is or was installed, if different from current address;
8 (ii) the approximate date of the Settlement Class Member's purchase,
9 installation or receipt of the Settlement Class Member's Flushmate
10 Toilet or Flushmate System; (iii) the serial number(s) of the Flushmate
11 System(s) the Settlement Class Member owns or owned; (iv) any and
12 all objections asserted by the Settlement Class Member, the reasons
13 therefor, and any and all supporting papers, including, without
14 limitation, all briefs, written evidence, and declarations; and (v) the
15 Settlement Class Member's signature, and if represented by counsel,
16 the signature of the attorney representing the Settlement Class
17 Member. An objection signed by counsel alone shall not be sufficient.
- 18 3. Settlement Class Members submitting objections who wish to appear
19 at the Fairness Hearing and seek to orally present their objections to
20 the Court must include a written statement of intent to appear at the
21 Fairness Hearing in the manner prescribed by the Class Notice. Only
22 Settlement Class Members who specify in their objections that they
23 intend to appear at the Fairness Hearing will have the right to present
24 their objections orally at the Fairness Hearing, and only if the Court
25 believes that such oral presentation is appropriate and/or necessary.
26 Settlement Class Members who do not submit timely written
27 objections as set forth above and detailed in the Class Notice will have
28 waived their right to assert such objections and will not be permitted to

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present their objections at the Fairness Hearing.

- 4. The objection and/or any notice of intent to appear at the Fairness Hearing must be mailed to:

The Court

Clerk of Court
United States District Court for the Central District of California
312 North Spring Street
Los Angeles, California 90012

Class Counsel

Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Attn: Kristen Law Sagafi

AND

Defense Counsel

Dentons US LLP
525 Market Street, 26th Floor
San Francisco, CA 94105
Attn: Steven Frankel

- 5. Failure to comply timely and fully with these procedures shall result in the invalidity and dismissal of any objection. Settlement Class Members who fail to file and serve timely written objections as set forth herein shall be deemed to have waived any objections and shall not be heard at the Fairness Hearing and shall be foreclosed from making any objections (including, by appeal or otherwise) to the settlement embodied in this Agreement. Statements regarding ownership of the Flushmate Toilet(s) shall be signed under penalty of perjury by the Settlement Class Member.

1 **IV. SETTLEMENT FUND**

2 Defendants have agreed, subject to Court entry of the Final Order and
3 Judgment, to make the following Settlement Payments: (1) \$18,000,000 in
4 guaranteed payments during Year One, Year Two and Year Three; and (2)
5 Additional Property Damage Payments, if, and only if, the aggregate amount of
6 approved Property Damage claims submitted during the Claims Period and paid
7 from the Claims Administration Trust Account to Class Members exceeds
8 \$1,500,000 and the Settlement Fund Trust Account has been exhausted due to
9 payments to Settlement Class Members who timely filed Eligible Claims.

10 **A. Timing of Defendants' Settlement Payments**

11 Defendants agree that they shall make the following Settlement Payments to
12 the Settlement Fund Trust Account in the manner set forth below. Defendants'
13 Settlement Payment obligations under this Agreement shall not exceed in the
14 aggregate the sum of \$18,000,000, plus any Additional Property Damage Payments,
15 if any, as described in Section IV A.4 below.

16 **1. Defendants' Payment Obligations in Year One**

17 No later than ten days after Preliminary Approval, Defendants shall deposit
18 \$2,000,000 into the Settlement Fund Trust Account; no later than ten days after the
19 Effective Date, Defendants shall deposit \$4,500,000 into the Settlement Fund Trust
20 Account; and no later than six months after the Effective Date, Defendants shall
21 deposit \$2,500,000 into the Settlement Fund Trust Account. The total Settlement
22 Payments made by Defendants during Year One shall be \$9,000,000.

23 In the event the Agreement does not become Effective, Defendants shall be
24 entitled to reimbursement of all unused monies in the Settlement Fund Trust
25 Account and Claims Administration Trust Account, plus accrued interest. The
26 amount of reimbursement shall be less all reasonable costs incurred for Class
27 Notice and/or any Claims Administration and shall be made within ten days after
28 notice by the Defendants.

1 **2. Defendants' Payment Obligations in Year Two**

2 No later than one year after the Effective Date, Defendants shall deposit
3 \$4,000,000 into the Settlement Fund Trust Account, and no later than eighteen
4 months after the Effective Date, Defendants shall deposit \$2,000,000 into the
5 Settlement Fund Trust Account. The total Settlement Payments made by
6 Defendants during Year Two shall be \$6,000,000.

7 **3. Defendants' Payment Obligations in Year Three**

8 No later than two years after the Effective Date, Defendants shall deposit
9 \$750,000 into the Settlement Fund Trust Account. At the end of the 27th, 30th and
10 33rd months after the Effective Date, Defendants shall deposit \$750,000 into the
11 Settlement Fund Trust Account. The total Settlement Payments made by
12 Defendants during Year Three shall be \$3,000,000.

13 **4. Defendants' Additional Property Damage Payment**
14 **Obligations**

15 If any qualified Property Damage claims remain unpaid after the exhaustion
16 of the Settlement Payments set forth above, and the total amount of approved
17 Property Damage claims submitted during the Claims Period and paid from the
18 Claims Administration Trust Account to Settlement Class Members exceeds
19 \$1,500,000 in the aggregate, Defendants shall deposit into the Settlement Fund
20 Trust Account on an ongoing basis the amount needed to pay all unpaid qualified
21 Property Damage claims filed during the Claims Period.

22 **B. Trust Accounts**

23 **1. Settlement Fund Trust Account**

24 In order to implement the payment of claims and court ordered costs, fees,
25 and other expenses, Class Counsel shall establish and create a Settlement Fund
26 Trust Account into which all Settlement Payments will be deposited by the
27 Defendants as outlined in this Agreement. From the Settlement Fund Trust
28 Account, Class Counsel shall pay and/or reimburse all costs associated with Notice,

1 attorneys' fees and costs (as approved by the Court) and all other related costs,
2 including payments to the Claims Administration Trust Account. The Settlement
3 Fund Trust Account shall be maintained as a Qualified Settlement Payment
4 Account as set forth in Section IV.C below.

5 **2. Claims Administration Trust Account**

6 In addition to the Settlement Fund Trust Account established by Class
7 Counsel, the Claims Administrator shall establish and maintain, under the
8 supervision of Class Counsel, a Trust Account for payment of claims to Settlement
9 Class Members and related costs associated with administration of the claims
10 ("Claims Administration Trust Account"). The Claims Administration Trust
11 Account shall receive appropriate initial funding from Class Counsel. Additional
12 funding will be provided from the Settlement Fund Trust Account as set forth in the
13 Plan of Allocation.

14 **3. Miscellaneous**

15 The Settlement Fund Trust Account and Claims Administration Trust
16 Account (collectively, "Trust Accounts") shall remain under the jurisdiction of the
17 Court. The Trust Accounts shall be placed in national banks or similar institutions
18 with assets in excess of \$1 billion and shall earn interest. Instructions regarding
19 distribution of funds shall be set forth in the Plan of Allocation.

20 **C. Tax Status of Settlement Fund Trust Account**

21 The Settlement Fund Trust Account created under this Agreement shall be
22 established and maintained as a Qualified Settlement Account in accordance with
23 Section 468B of the Internal Revenue Code of 1986, as amended (the "Code"), and
24 the Treasury Regulations promulgated thereunder. The Parties agree to negotiate in
25 good faith, subject to Court approval, any changes to this Agreement necessary to
26 obtain IRS approval of the Settlement Fund Trust Account as a Qualified
27 Settlement Account.

28 Class Counsel is appointed to be the "administrator" of the Settlement Fund

1 Trust Account within the meaning of Treasury Regulations Section 1.468B 2(k)(3).
2 As such, Class Counsel will comply with the duties and obligations applicable to
3 the administrator under the Treasury Regulations promulgated under Code Section
4 468B, including, but not limited to, the following: (1) obtaining tax identification
5 numbers for the Settlement Fund Trust Account; (2) preparing and timely filing, or
6 causing to be prepared and timely filed, all tax returns the Settlement Fund Trust
7 Account is required to file under federal or state law; (3) paying from the
8 Settlement Fund Trust Account all taxes, including penalties, interest and additions
9 to tax, that are imposed upon the Settlement Fund Trust Account by federal or state
10 law; (4) complying with applicable federal or state information reporting and
11 withholding requirements; and (5) filing, or causing to be filed, tax elections
12 available to the Settlement Fund Trust Account, including a request for a prompt
13 assessment of tax under Code Section 6501(d) if and when Class Counsel deems it
14 appropriate to do so. If at any time it is determined that the Settlement Fund Trust
15 Account does not qualify as a Qualified Settlement Account under Code Section
16 468B, Class Counsel shall promptly seek refunds of all taxes paid by the Settlement
17 Fund Trust Account. Class Counsel shall pay to the Settlement Fund Trust Account
18 all such refunds received, together with interest actually received, from all taxing
19 authorities.

20 Defendants, as “transferor” to the Settlement Fund Trust Account within the
21 meaning of Treasury Regulations Section 1.468B 1(d)(1), shall provide and file the
22 statements required by Treasury Regulations Section 1.468B 1(e).

23 The reasonable expenses associated with the preparation and filing of tax
24 returns and the payment of taxes with respect to the Settlement Fund Trust Account
25 will be paid by the Settlement Fund Trust Account.

26 **V. CLAIMS PROCESS**

27 The Parties shall submit to the Court a proposed Plan of Allocation outlining
28 the process for filing, review, and payment of claims during the Claims Period.

1 **A. Claims Administration**

2 For purposes of the Claims Process, the services of a Claims Administrator
3 and a Special Master shall be retained subject to the Court’s approval. The Claims
4 Administrator shall be responsible for effectuating the Claims Process. The Special
5 Master shall be responsible for resolving all disputes arising as a result of the
6 Claims Process, if any.

7 **B. Eligibility of Settlement Class Members**

8 Subject to a more detailed outline set forth in the proposed Plan of
9 Allocation, to qualify for non-property damage Settlement Benefits, a Settlement
10 Class Member must demonstrate proof of ownership of the Flushmate Toilet and
11 timely submit a Claim Form. To qualify for Property Damage Settlement Benefits,
12 the Settlement Class Member must demonstrate proof of ownership of the Property
13 that contains or contained a Flushmate Toilet and timely submit a Claim Form. The
14 Claims Administrator may permit a Settlement Class Member to remedy
15 deficiencies in any Claim Form or related documents during the Claims Period
16 upon a showing of good cause to the Special Circumstances Committee (as defined
17 in the Plan of Allocation).

18 If there is more than one Settlement Class Member with respect to a
19 Property, apportionment, if any, of the Settlement Benefits between or among those
20 Settlement Class Members will be made by agreement among those Settlement
21 Class Members or, if necessary, by the Claims Administrator, whose decision may
22 be appealed to the Special Master.

23 If a Settlement Class Member’s Property contains more than one Flushmate
24 Toilet, the Settlement Class Member shall be entitled to timely file non-property
25 damage claims for each Flushmate Toilet located at the Property. To the extent
26 necessary, the Claims Administrator may develop a protocol to efficiently handle
27 claims involving multiple Flushmate Toilets located at the same Property address,
28 subject to approval of the Special Circumstances Committee, and if necessary, by

1 the Special Master and/or the Court.

2 **C. Potential Pro Rata Distribution to Class Members**

3 To the extent that any monies remain in the Trust Accounts after the end of
4 the Claims Period, if economically feasible, Class Counsel may distribute, on a *pro*
5 *rata* or other equitable basis, any remaining monies to Settlement Class Members
6 who timely submitted Eligible Claims as a form of “supplemental” payment. In the
7 event that monies remain in the Trust Accounts, but *pro rata* distribution would be
8 impracticable, Class Counsel will seek the Court’s approval for *cy pres* distribution
9 in compliance with the standard articulated in *Dennis v. Kellogg, Co.*, 697 F.3d
10 858, 865-66 (9th Cir. 2012) and any subsequent applicable case law.

11 **D. Non-Interference with Defendants’ Business Operations and**
12 **Reporting Obligations.**

13 The Notice Plan, Claims Administration, Claims Process and Plan of
14 Allocation shall be implemented in a manner that does not interfere with
15 Defendants’ business operations, and this settlement shall not in any way interfere
16 with Flushmate’s ongoing reporting obligations to the CPSC in connection with the
17 Recall. Defendants and Class Counsel reserve the right to communicate with and
18 respond to inquiries from Settlement Class Members about the settlement embodied
19 in this Agreement and the Action consistent with the terms of the Class Notice.

20 **E. Costs and Reporting**

21 All reasonable and necessary expenses incurred in administering this
22 Agreement, including the costs of implementing and administering the Plan of
23 Allocation, shall be paid from the Trust Accounts. The Claims Administrator shall,
24 under the supervision of the Court, administer the Settlement Benefits provided by
25 this Agreement by processing and resolving claims in a rational, responsive, cost-
26 effective, and timely manner. The Claims Administrator shall maintain reasonably
27 detailed records of its activities under this Agreement in a computerized database.
28 The Claims Administrator shall maintain all such records until expiration of the

1 term of this Agreement, and then destroyed unless Class Counsel and Defense
2 Counsel otherwise agree and/or the Court otherwise directs. The Claims
3 Administrator shall provide Class Counsel and Defense Counsel with a detailed
4 written summary of the charges for its services on a quarterly basis.

5 Class Counsel, in conjunction with the Claims Administrator, shall submit an
6 annual report to the Court summarizing the work performed by the Claims
7 Administrator, including a report of all amounts paid to Settlement Class Members
8 during the prior year.

9 Defendants and Defense Counsel shall have the right, at their sole expense,
10 during the term of this Agreement to independently review the documents
11 supporting the performance and findings of the Claims Administrator.

12 Upon reasonable request by Flushmate, the Claims Administrator shall
13 provide Class Member information gathered in connection with Claims Processing
14 to Flushmate sufficient to permit Flushmate to add Class Member names, street
15 addresses and Flushmate System serial numbers to its warranty database.

16 The Claims Administrator may be replaced at any time by Court order and
17 upon application to the Court by Class Counsel or Defense Counsel for cause
18 through a duly noticed and served motion. The moving party shall meet and confer
19 with the non-moving party at least ten (10) days prior to filing any such motion.

20 **VI. RELEASE AND COVENANT NOT TO SUE**

21 **A. Release.**

22 Upon the Effective Date, Plaintiffs, on behalf of themselves and in their
23 representative capacity on behalf of the Class, and each Settlement Class Member,
24 and their respective spouses, heirs, executors, administrators, representatives,
25 agents, attorneys, subrogees, partners, successors, predecessors and assigns and all
26 those acting or purporting to act on their behalf with respect to any Flushmate
27 System or Flushmate Toilet, as those terms are defined herein, shall conclusively be
28 deemed to have fully, finally and forever released, relinquished and discharged the

1 Released Parties from and against any and all liability for the Released Claims.

2 This Release does not extend to any Flushmate System or Flushmate Toilet that has
3 performance problems unrelated to a “Leak,” a “Burst,” or the Recall.

4 **B. Covenant Not To Sue.**

5 Upon the Effective Date, Plaintiffs, on behalf of themselves and in their
6 representative capacity on behalf of the Settlement Class, and each Settlement Class
7 Member, and their respective spouses, heirs, executors, administrators,
8 representatives, agents, attorneys, subrogees, partners, successors, predecessors and
9 assigns and all those acting or purporting to act on their behalf with respect to any
10 Flushmate Toilet or Flushmate System, as those terms are defined herein, covenant
11 and agree that they shall not hereafter commence any lawsuit or proceeding that
12 seeks to establish liability against any Released Party or any other Person based, in
13 whole or in part, on any of the Released Claims.

14 **C. Good Faith.**

15 Plaintiffs and each Settlement Class Member agree that the provisions of this
16 Agreement and any claim thereunder constitute a good faith settlement under
17 California Code of Civil Procedure sections 877 and 877.6 and comparable laws in
18 other states, that Class Counsel and the Released Parties shall cooperate fully in any
19 effort of the Released Parties to establish such good faith settlement before any
20 court (including, without limitation, by joining any motion or other procedure and
21 providing declarations and other evidence to establish such good faith settlement
22 where requested by any Released Party), and that all payments of Settlement
23 Benefits made under this Agreement relate to claims arising out of or related to the
24 Released Claims.

25 The Parties to this Agreement and their counsel agree that they shall act in
26 good faith and exercise their best efforts to secure approval of this Agreement and
27 full participation by all members of the Settlement Class and that they will take
28 such other reasonable steps as are necessary to implement this Agreement. Subject

1 to Court approval, the Parties may agree to reasonable extensions of time to carry
2 out any provisions of this Agreement.

3 The Parties also agree to hold all proceedings in the Action in abeyance,
4 including any and all discovery, except such steps and proceedings as are necessary
5 to implement and complete the settlement embodied in this Agreement.

6 **D. Warranty Rights.**

7 Nothing in this Agreement shall, or shall be construed to, restrict or
8 otherwise alter the written express limited warranty that Flushmate offered with the
9 Flushmate System or that manufacturers of Flushmate Toilets offered with their
10 respective Flushmate Toilets to the extent not otherwise expired.

11 **E. Waiver of Unknown Claims.**

12 Plaintiffs, on behalf of themselves and in their representative capacity on
13 behalf of the Settlement Class, and each Settlement Class Member, and their
14 respective spouses, heirs, executors, administrators, representatives, agents,
15 attorneys, subrogees, partners, successors, predecessors and assigns, and all those
16 acting or purporting to act on their behalf, hereby warrant, represent and agree that:
17 (i) unknown losses or claims could possibly exist and present losses may have been
18 underestimated in amount or severity; (ii) they have explicitly taken that into
19 account in entering into this Agreement, and a portion of the consideration and the
20 mutual covenants contained herein have been bargained for between the Parties,
21 with the knowledge of the possibility of such unknown claims and losses; and
22 (iii) the Settlement Benefits provided to them were given in exchange for a full
23 accord, satisfaction and discharge of all Released Claims. Consequently, each
24 Plaintiff and each Settlement Class Member expressly waives, and is conclusively
25 deemed to have waived, all rights under California Civil Code Section 1542, which
26 provides:

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1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
2 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
3 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
4 THE RELEASES, WHICH IF KNOWN BY HIM OR HER MUST
5 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
6 WITH THE DEBTOR.

7 Each Plaintiff and each Settlement Class Member likewise expressly waives,
8 and is conclusively deemed to have waived, all rights under any similar federal or
9 state statute or regulation.

10 Each Plaintiff and each Settlement Class Member acknowledges and agrees
11 that: (iv) he, she or it understands and appreciates the significance of this waiver of
12 California Civil Code Section 1542 and/or of any other applicable law relating to
13 limitations on releases; and (v) notwithstanding that he, she or it may hereafter
14 discover facts in addition to, or different from, those facts which he, she or it now
15 knows or believes to be true with respect to the subject matter of this Agreement, it
16 is his, her or its intention to release fully, finally and forever all Released Claims,
17 and dismiss with prejudice the Action; and (vi) in furtherance of such intention, the
18 release of all Released Claims will be and remain in effect notwithstanding the
19 discovery or existence of any such additional or different facts.

20 Class Counsel agree that: (vii) they will not directly or indirectly, alone or
21 through others, promote, assist, advise, discuss or cooperate with any other Person,
22 firm or entity to institute or pursue any claims or litigation against the Released
23 Parties in any way relating to the Released Claims by any Settlement Class
24 Member; and (viii) they will not represent, encourage, solicit, or otherwise assist
25 any Person in requesting exclusion from the Class.

26 Notwithstanding the above, Defendants shall be solely responsible for the
27 resolution and payment of all claims falling within the scope of Section V of this
28 Agreement, including any notice of specific potential claims, that are made prior to
Preliminary Approval of this Agreement.

1 **VII. ATTORNEYS' FEES AND COSTS**

2 Class Counsel will petition the Court for an order awarding reasonable
3 attorneys' fees not to exceed twenty-five percent (25%) of the Settlement Payments
4 made by Defendants into the Settlement Fund Trust Account, plus reimbursement
5 of costs and expenses. Any amount awarded by the Court shall be paid out of the
6 Settlement Fund Trust Account. Defendants will not object to Class Counsel's
7 application for attorneys' fees up to 25% of the Settlement Payments made into the
8 Settlement Fund Trust Account plus reimbursement of costs and other expenses.

9 In order to maximize funds available to Settlement Class Members over the
10 payment period set forth in the Agreement, Class Counsel's application for
11 attorneys' fees and costs will request separate payments in Year One, Year Two,
12 and Year Three, in the following manner

13 **Year One:** Class Counsel will seek 25% of the \$9 million to be paid into the
14 Settlement Fund Trust Account in Year One, and reimbursement of 100% of their
15 litigation costs, the total approved amount of which will be payable from the
16 Settlement Fund Trust Account in Year One.

17 **Year Two:** Class Counsel will seek 25% of the \$6 million to be paid into the
18 Settlement Fund Trust Account in Year Two, the total approved amount of which
19 will be payable from the Settlement Fund Trust Account in Year Two

20 **Year Three:** Class Counsel will seek 25% of the \$3 million to be paid into
21 the Settlement Fund Trust Account in Year Three, the total approved amount of
22 which will be payable from the Settlement Fund Trust Account in Year Three
23 within 5 days of each quarterly payment made in Year Three.

24 In addition, to the extent that Settlement Payments exceed \$18 million due to
25 Additional Property Damage Payments, Class Counsel will seek 25% of any
26 additional monies actually paid into the Settlement Fund Trust Account.

27 Payment of the attorneys' fees and costs awarded from the Settlement Fund
28 Trust Account as set forth herein shall constitute full satisfaction of any claim for

1 fees and/or costs between and among Class Counsel, and any other attorneys who
2 claim entitlement to fees or costs under the settlement embodied in this Agreement,
3 on the one hand, and Defendants and the Released Parties, on the other hand. Class
4 Representatives and Class Counsel, on behalf of themselves and all Settlement
5 Class Members, agree that they shall not seek any additional attorneys' fees or costs
6 under any theory related to the Action as against any of the Released Parties.
7 Defendants shall have no responsibility for allocation of fees among Class Counsel.

8 **VIII. INCENTIVE AWARDS**

9 In recognition of the time and effort Class Representatives United Desert
10 Charities, Fred Ede, III, Emily Williams, Bruce Pritchard, Jean Steiner, Milen
11 Dimov, Trigona Dimova, Scott Iver, Neal Olderman, Daniel Berube, Jeffrey
12 Brettler, Randy Kubat, John Snyder, and Pankaj Patel expended in pursuing this
13 Action and in fulfilling their obligations and responsibilities as Class
14 Representatives, and of the Settlement Benefits conferred on all of the Class
15 Members by the settlement embodied in this Agreement, Class Counsel will ask the
16 Court to approve an incentive award not to exceed \$1,000 to each Class
17 Representative named above (the "Incentive Award"). Defendants agree that they
18 will not object to a request by Class Counsel to the Court for an incentive award to
19 each Class Representative not to exceed \$1,000, which is to be paid following the
20 Effective Date from the Settlement Fund Trust Account in Year One. Additionally,
21 each Class Representative shall be entitled to submit a Claim Form according to the
22 same process as other Class Members. No other agreement exists between or
23 among the Parties as to payments to be made to the Class Representatives.

24 **IX. COURT APPROVAL**

25 **A. Court Submission**

26 Class Counsel will submit this Agreement, along with such other supporting
27 papers as may be appropriate, to the Court for Preliminary Approval pursuant to
28 Rule 23 of the Federal Rules of Civil Procedure. If the Court declines to grant

1 Preliminary Approval, to order notice of a Fairness Hearing with respect to the
2 proposed Settlement Class, and/or to grant approval after the Fairness Hearing or
3 otherwise materially alters the terms of this Agreement, then this Agreement will
4 terminate as soon as the Court enters an order unconditionally and finally
5 adjudicating that the terms and conditions of the settlement embodied in this
6 Agreement are not approved.

7 **B. Final Order and Judgment**

8 The Parties agree that this Agreement is expressly conditioned upon
9 dismissal with prejudice of the Action, and the Final Order and Judgment becoming
10 Effective. The Parties will jointly submit a proposed Final Order and Judgment
11 prior to the Fairness Hearing.

12 **X. EXCLUSIVE REMEDY AND JURISDICTION OF COURT**

13 This Agreement shall be the sole and exclusive remedy of Settlement Class
14 Members against any of the Released Parties relating to any and all Released
15 Claims. Upon entry of the Final Order and Judgment, each and every Settlement
16 Class Member shall be permanently barred and enjoined from initiating, asserting
17 and/or prosecuting any Released Claims against any of the Released Parties in any
18 court, arbitration, tribunal, or forum of any kind.

19 The Parties agree that the Court shall retain exclusive and continuing
20 jurisdiction over the Action, the Parties, Settlement Class Members, and the Claims
21 Administrator in order to interpret and enforce the terms, conditions and obligations
22 under this Agreement.

23 **XI. TERMINATION**

24 This Agreement shall, without notice, be automatically terminated if the
25 Final Order and Judgment is not entered, or if the Final Order and Judgment is
26 reversed on appeal and the reversal becomes Final.

27 If Settlement Class Members who own or owned in the aggregate 7.5 percent
28 (7.5%) or more Flushmate Systems submit timely and valid Requests for Exclusion,

1 Defendants shall have the right, at their option, to terminate and rescind this
2 Agreement, provided that Defendants exercise this right within ten days after
3 receiving notice that the specified number of timely and valid Requests for
4 Exclusion have been submitted. To terminate the Agreement under this paragraph,
5 Defendants must provide timely written notice to Class Counsel and to the Court.

6 Upon termination of this Agreement, all Parties shall be restored to their
7 respective positions as existed immediately prior to the date of execution of this
8 Agreement except as otherwise provided.

9 Upon termination, this Agreement shall have no further force or effect, and
10 all monies paid by Defendants into the Settlement Fund Trust Account shall be
11 returned within ten days, including any interest earned on such monies, but less
12 such sums as may have been expended on Class Notice and Claims Administration.

13 Notwithstanding any other provision of this Agreement, if this Agreement is
14 terminated, Defendants hereby stipulate and agree that Plaintiffs may pursue their
15 claims by moving for class certification. In that event, Defendants may oppose
16 class certification on any grounds *nunc pro tunc* without prejudice from the
17 existence of this Agreement.

18 **XII. CONFIDENTIALITY**

19 The Parties and their counsel shall keep the terms of this Agreement
20 confidential until the terms are disclosed as part of the public record. The terms of
21 this Agreement and the contents of the settlement negotiations may, however, be
22 disclosed to Defendants' respective parent and affiliate corporations, insurers,
23 reinsurers, attorneys, auditors, and administrators.

24 The names, addresses, and other data concerning Settlement Class Members
25 compiled by Defendants in effectuating this Agreement, and all documents
26 produced by Defendants to Class Counsel in connection with this Action
27 ("Proprietary Information"), constitute confidential and proprietary business and
28 personal information.

1 It is further agreed that after performance of all terms of this Agreement is
2 completed, any and all Proprietary Information or other documentation (exclusive
3 of documents filed with the Court) provided by Defendants to Plaintiffs, Class
4 Counsel, or the Claims Administrator in this Action, and all copies thereof, shall be
5 promptly returned to Defendants or destroyed, and Class Counsel shall confirm in
6 writing, at the time of the return or destruction of the Proprietary Information and
7 documentation, that all such Proprietary Information and documentation has been
8 returned or destroyed.

9 **XIII. MISCELLANEOUS PROVISIONS**

10 **A. Integration Clause.**

11 This Agreement, including all exhibits hereto, contains a full, complete, and
12 integrated statement of each and every term and provision agreed to between and
13 among the Parties and supersedes any prior representations, writings or agreements
14 (written or oral) between or among the Parties, which prior agreements may no
15 longer be relied upon for any purpose. This Agreement may not be orally modified
16 in any respect and may be modified only by the written agreement of the Parties,
17 subject to Court approval. The Parties contemplate that, subject to Court approval
18 or without such approval where legally permissible, the exhibits to this Agreement
19 may be modified by subsequent agreement of the Parties prior to dissemination to
20 the Settlement Class. In the event a dispute arises between the Parties over the
21 meaning or intent of any provision of this Agreement, the Parties agree that prior
22 drafts, notes, memoranda, discussions or any other oral communications or
23 documents regarding the negotiations, meaning or intent of this Agreement shall
24 not be offered or admitted into evidence.

25 **B. Headings.**

26 Headings contained in this Agreement are for convenience of reference only
27 and are not intended to alter or vary the construction and meaning of this
28 Agreement.

1 **C. Governing Law.**

2 The construction, interpretation, operation, effect, validity and enforcement
3 of this Agreement and all documents necessary to effectuate it shall be governed by
4 the laws of the State of California without regard to principles of conflict of laws,
5 except to the extent that federal law requires that federal law governs.

6 **D. Both Parties As Drafter.**

7 The Parties stipulate and agree that this Agreement was negotiated on an
8 “arms-length” basis between parties of equal bargaining power represented by
9 counsel, and drafted jointly by the Parties and, accordingly, no ambiguity in this
10 Agreement shall be construed in favor of or against any of the Parties.

11 **E. Non-Waiver.**

12 The waiver by one Party of any provision or breach of this Agreement shall
13 not be deemed a waiver of any other provision or breach of this Agreement.

14 **F. Notice.**

15 Except as otherwise specifically provided herein, whenever any written
16 notice is required by the terms of this Agreement, it shall be deemed effective on
17 the date received, addressed and transmitted by first class United States mail and
18 e-mail as follows:

19 If to Plaintiffs or the Class to:

20 Lieff Cabraser Heimann & Bernstein, LLP
21 275 Battery Street, 29th Floor
22 San Francisco, CA 94111-3339
23 Attn: Kristen Law Sagafi
24 klaw@lchb.com

25 Birka-White Law Offices
26 65 Oak Court
27 Danville, CA 94526
28 Attn: David M. Birka-White
 dbw@birka-white.com

1 If to Defendants to:

2 Dentons US LLP
3 525 Market Street, 26th Floor
4 San Francisco, CA 94105
5 Attn: Steven Frankel
6 steven.frankel@dentons.com

6 **G. Counterpart Execution.**

7 This Agreement may be executed in any number of counterparts. A
8 facsimile or electronically transmitted signature shall be deemed to constitute an
9 original signature for purposes of this Agreement. Each counterpart when so
10 executed shall be deemed to be an original, and all such counterparts together shall
11 constitute the same instrument. This Agreement will be binding when it has been
12 executed and delivered by the last signatory hereto to execute a counterpart, subject
13 to Court approval.

14 **H. Authority Of Signatories.**

15 Each person signing this Agreement represents and warrants that he or she
16 has full authority to sign this Agreement on behalf of the Party for whom he or she
17 is signing and warrants that he or she has the ability to bind that Party to the
18 obligations and commitments set forth herein.

19 **I. Binding Upon Successors.**

20 This Agreement shall be binding upon and inure to the benefit of the Parties
21 and his, her or its representatives, heirs, predecessors, successors, and assigns.

22 **J. Severability.**

23 In the event any one or more of the provisions contained in this Agreement
24 shall for any reason be held invalid, illegal, or unenforceable in any respect such
25 invalidity, illegality, or unenforceability shall not affect any other provisions if the
26 Parties and their counsel mutually elect by written stipulation to be filed with the
27 Court within twenty (20) days of the filing of any such determination or holding to
28 proceed as if such invalid, illegal, or unenforceable provision had never been

1 included in this Agreement.

2 **K. Publicity**

3 Plaintiffs, Class Counsel, Defendants, and Defendants' Counsel agree that
4 they will not make or distribute any press release or other public statement intended
5 to be disseminated through the press or other media that: (i) states or suggests that
6 any party has, through this Agreement, prevailed or established the propriety of its
7 claims or defenses, or that any party has lost or acknowledged the invalidity of its
8 claims or defenses; (ii) states or suggests that this Agreement is evidence on the
9 merits of that party's position in the Action or the lack of merit in any other party's
10 position in the Action; or (iii) disparages any other party with respect to this
11 Agreement, the conduct of the Action, or the subject matter addressed in the
12 Action. The foregoing is not intended to prevent disclosure of the existence or
13 terms of the Agreement itself, or to prevent Class Counsel or Defendants' Counsel
14 from accurately reporting the terms of this Agreement in response to press inquiries
15 related to their respective firms or lawyers pursuant to a statement jointly approved
16 by Class Counsel and Defendants' Counsel. Counsel for each Party agree to
17 instruct all Persons or agents involved in administration of this Agreement to abide
18 by the terms of this paragraph.

19 IN WITNESS WHEREOF, each of the Parties hereto has caused this
20 Agreement to be executed on its, his, her or their behalf, all as of the day set forth
21 below.

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APPROVED AS TO FORM:

Dated: January 22nd, 2014

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Dated: January 20, 2014

PARKER WAICHMAN LLP

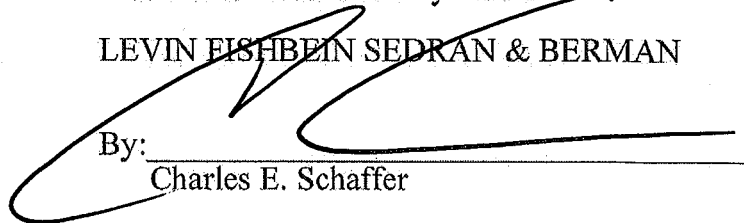
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13 Dated: January ____, 2014

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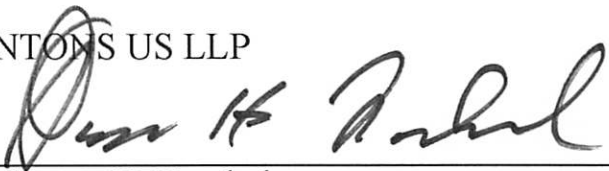
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Dated: January 22, 2014

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Dated: January ___, 2014

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Dated: January __, 2014

DENTONS US LLP

By: _____
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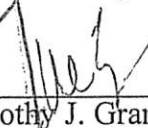
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Dated: January 20, 2014

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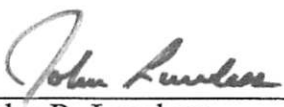
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Attorneys for Defendant
Mansfield Plumbing Products, LLC

1 Dated: January 22, 2014

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Attorneys for Defendant
Home Depot U.S.A., Inc.

ACCEPTED AND AGREED:

PLAINTIFFS:

Dated: January __, 2014

UNITED DESERT CHARITIES

By: _____
Denise Latanzi
Executive Director

Dated: January __, 2014

FRED EDE, III

Dated: January __, 2014

EMILY WILLIAMS

Dated: January __, 2014

BRUCE PRITCHARD

Dated: January __, 2014

JEAN STEINER

Dated: January __, 2014

DANIEL BERUBE

Dated: January __, 2014

JEFFREY BRETTLER

1 Dated: January __, 2014

KING & SPALDING LLP

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3 By: _____

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Home Depot U.S.A., Inc.

11 **ACCEPTED AND AGREED:**

12 **PLAINTIFFS:**

13 Dated: January 18, 2014

UNITED DESERT CHARITIES

14

15 By: _____


Denise Latanzi
Executive Director

17

Dated: January __, 2014

FRED EDE, III

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Dated: January __, 2014

EMILY WILLIAMS

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Dated: January __, 2014

BRUCE PRITCHARD

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Dated: January __, 2014

JEAN STEINER

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Dated: January __, 2014

DANIEL BERUBE

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Dated: January __, 2014

JEFFREY BRETTLER

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Dated: January ___, 2014

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ACCEPTED AND AGREED:

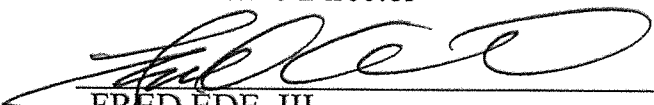
PLAINTIFFS:

Dated: January ___, 2014

UNITED DESERT CHARITIES

By: _____
Denise Latanzi
Executive Director

Dated: January 20, 2014



FRED EDE, III

Dated: January ___, 2014

EMILY WILLIAMS

Dated: January ___, 2014

BRUCE PRITCHARD

Dated: January ___, 2014

JEAN STEINER

Dated: January ___, 2014

DANIEL BERUBE

Dated: January ___, 2014

JEFFREY BRETTLER

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Dated: January __, 2014

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ACCEPTED AND AGREED:

PLAINTIFFS:

Dated: January __, 2014

UNITED DESERT CHARITIES

By: _____
Denise Latanzi
Executive Director

Dated: January __, 2014

FRED EDE, III

Dated: January __, 2014

Emily Williams

EMILY WILLIAMS

Dated: January __, 2014

BRUCE PRITCHARD

Dated: January __, 2014

JEAN STEINER

Dated: January __, 2014

DANIEL BERUBE

Dated: January __, 2014

JEFFREY BRETTLER

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Dated: January __, 2014

KING & SPALDING LLP

By: _____
John R. Lawless

John R. Lawless (State Bar No. 223561)
jlawless@kslaw.com
KING & SPALDING LLP
333 S. Grand Avenue, Suite 4200
Los Angeles, California 90071
Telephone: (213) 443-4355
Facsimile: (213) 443-4310

Attorneys for Defendant
Home Depot U.S.A., Inc.

ACCEPTED AND AGREED:

PLAINTIFFS:

Dated: January __, 2014

UNITED DESERT CHARITIES

By: _____
Denise Latanzi
Executive Director

Dated: January __, 2014

FRED EDE, III

Dated: January __, 2014

EMILY WILLIAMS

Dated: January 19, 2014

Bruce Pritchard

BRUCE PRITCHARD

Dated: January __, 2014

JEAN STEINER

Dated: January __, 2014

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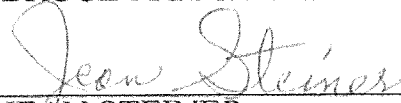
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EMILY WILLIAMS

Dated: January ____, 2014

BRUCE PRITCHARD

Dated: January 21, 2014



JEAN STEINER

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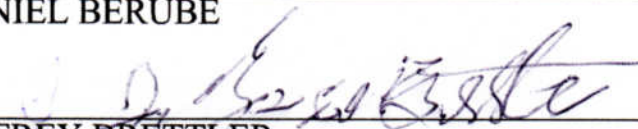
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Dated: January 20, 2014



RANDY KUBAT

Dated: January __, 2014

JOHN SNYDER

Dated: January __, 2014

PANKAJ PATEL

Plaintiffs in the related action, *Milen Dimov, et al. v. Sloan Valve Company*,
U.S. District Court for the Northern District of Illinois, Case No. 1:12-cv-09700

Dated: January __, 2014

MILEN DIMOV

Dated: January __, 2014

TRIGONA DIMOVA

Dated: January __, 2014

SCOTT IVER

Dated: January __, 2014

NEAL OLDERMAN

DEFENDANTS:

Dated: January __, 2014

SLOAN VALVE COMPANY

By: _____
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Dated: January __, 2014

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Dated: January 20, 2014

John L. Snyder
JOHN SNYDER

Dated: January 2, 2014

PANKAJ PATEL

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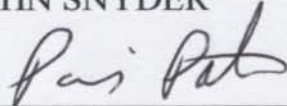
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Dated: January 20, 2014



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MILEN DIMOV

Dated: January 19, 2014

T. Dimova

TRIGONA DIMOVA

Dated: January __, 2014

SCOTT IVER

Dated: January __, 2014

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MILEN DIMOV

Dated: January __, 2014

TRIGONA DIMOVA

Dated: January __, 2014

SCOTT IVER

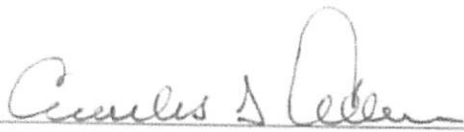
Dated: January __, 2014

NEAL OLDERMAN

DEFENDANTS:

Dated: January 22 2014

SLOAN VALVE COMPANY

By: 
Printed Name: Charles S. Allen
Title: Executive Chairman

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Dated: January 22, 2014

FLUSHMATE, a division of SLOAN VALVE COMPANY

By: [Signature]
Printed Name: JEFF KRULL
Title: CHIEF OPERATING OFFICER

Dated: January __, 2014

AS AMERICA, INC., doing business as AMERICAN STANDARD BRANDS

By: _____
Printed Name: _____
Title: _____

Dated: January __, 2014

KOHLER CO.

By: _____
Printed Name: _____
Title: _____

Dated: January __, 2014

GERBER PLUMBING FIXTURES, LLC

By: _____
Printed Name: _____
Title: _____

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Dated: January __, 2014

FLUSHMATE, a division of SLOAN VALVE COMPANY

By: _____

Printed Name: _____

Title: _____

Dated: January 22, 2014

AS AMERICA, INC., doing business as AMERICAN STANDARD BRANDS

By: Maria ChicLana

Printed Name: Maria ChicLana

Title: General Counsel, Sr. V.P.

Dated: January __, 2014

KOHLER CO.

By: _____

Printed Name: _____

Title: _____

Dated: January __, 2014

GERBER PLUMBING FIXTURES, LLC

By: _____

Printed Name: _____

Title: _____

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Dated: January __, 2014

FLUSHMATE, a division of SLOAN VALVE COMPANY

By: _____

Printed Name: _____

Title: _____

Dated: January __, 2014

AS AMERICA, INC., doing business as AMERICAN STANDARD BRANDS

By: _____

Printed Name: _____

Title: _____

Dated: January 21, 2014

KOHLER CO.

By:  _____

Printed Name: Michael Chandler

Title: VP - Sanitary Products
KBA Kohler Co.

Dated: January __, 2014

GERBER PLUMBING FIXTURES, LLC

By: _____

Printed Name: _____

Title: _____

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FLUSHMATE, a division of SLOAN VALVE COMPANY

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Printed Name: _____

Title: _____

Dated: January __, 2014

AS AMERICA, INC., doing business as AMERICAN STANDARD BRANDS

By: _____

Printed Name: _____

Title: _____

Dated: January __, 2014

KOHLER CO.

By: _____

Printed Name: _____

Title: _____

Dated: January 22, 2014

GERBER PLUMBING FIXTURES, LLC

By: Brian D Fiala

Printed Name: BRIAN D FIALA

Title: VP ADMIN

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Dated: January 20, 2014

MANSFIELD PLUMBING PRODUCTS, LLC

By: Philip C. Tarrant

Printed Name: Philip C. Tarrant

Title: Chief Financial Officer

Dated: January __, 2014

HOME DEPOT U.S.A., INC.

By: _____

Printed Name: _____

Title: _____

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Dated: January ____, 2014

MANSFIELD PLUMBING PRODUCTS, LLC

By: _____

Printed Name: _____

Title: _____

Dated: January 22, 2014

HOME DEPOT U.S.A., INC.

By: William P. Bernette

Printed Name: William P. Bernette

Title: Counsel

EXHIBIT A



FLUSHMATE®

New Hudson, MI

FLUSHMATE® III Repair Kit

If you have any questions, please contact *FLUSHMATE* at **800-533-3460** between 8AM to 4:30PM ET, Monday through Friday.

Things to know before you begin:



WARNING

READ BEFORE YOU START

- To minimize the possibility for injury and property damage due to *FLUSHMATE III* unit separation, it is recommended that you install the Repair Kit **IMMEDIATELY**.
- This Repair Kit has been sent to you to repair your recalled *FLUSHMATE III* unit produced between October 14, 1997 and February 29, 2008.
- The repair should take less than 20 minutes.
- Read all instructions on both sides of this instruction sheet prior to starting the installation.

IMPORTANT: TURN OFF THE WATER AND THEN FLUSH THE TOILET PRIOR TO INSTALLING THE REPAIR KIT.

If you have a rigid supply line/tube and experience difficulty attaching the **EXTERNAL REGULATOR** (You may be required to install a flexible supply line/tube)...



If you have a right hand toilet, which means the flush mechanism is on the right side of the tank...

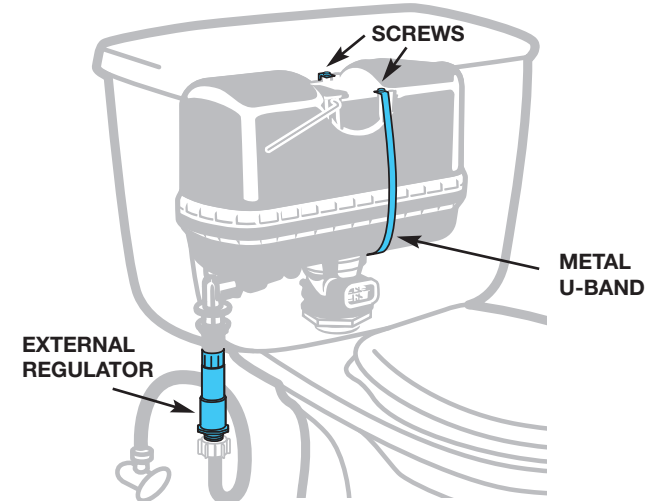


EACH REPAIR KIT CONTAINS:



TOOL NEEDED: Phillips Screwdriver

DO NOT use any types of sealants on threads, including Teflon® Tape, pipe liquid sealer, or plumber's putty.



Repair Kit parts are highlighted in blue for clarity.

... please contact *FLUSHMATE* Consumer Services at (800) 533-3460.

Installation Instructions on reverse side 

FLUSHMATE® III Repair Kit #31508



READ BEFORE YOU START

- To minimize the possibility of injury and property damage due to *FLUSHMATE III* unit separation, it is recommended that you install the Repair Kit IMMEDIATELY.
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- The repair should take less than 20 minutes.
- Read all instructions on both sides of this instruction sheet prior to starting the installation.

WARNING

IMPORTANT: TURN OFF THE WATER AND THEN FLUSH THE TOILET PRIOR TO INSTALLING THE REPAIR KIT.



IMPORTANT:
Before you start, always turn off water and then flush toilet to release pressure before servicing the *FLUSHMATE III* unit, as noted in step 1 and 2.

DO NOT use any types of sealants on threads, including Teflon® Tape, pipe liquid sealer, or plumber's putty.

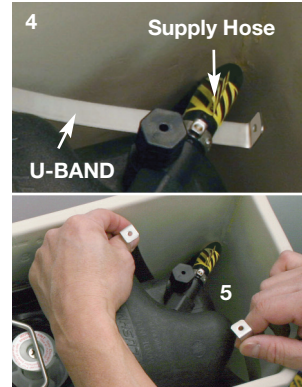
U-BAND Installation Instructions



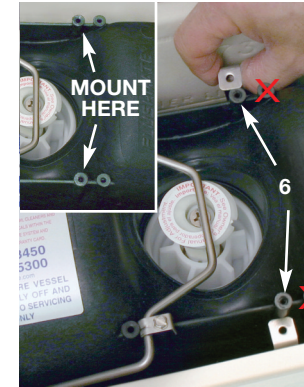
1. Rotate handle of water supply stop clockwise to turn off water.



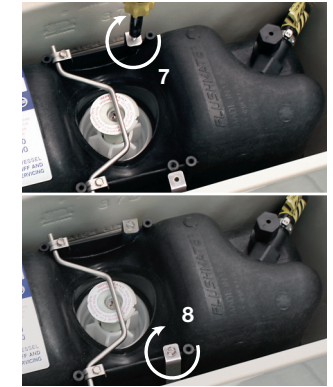
2. Flush toilet to release pressure.
3. Remove china tank lid and flush again to ensure pressure has been released.



4. Slide U-BAND under supply hose.
5. Position the U-BAND down around the right side of the *FLUSHMATE III* unit and guide the U-BAND so that it passes under the right side of the *FLUSHMATE III* unit.



6. Gradually slide U-BAND toward the middle of the *FLUSHMATE III* unit. When aligned, U-BAND should be centered over inner screw holes as shown in the inset image.



7. Align U-BAND hole with inner screw hole on back side of the *FLUSHMATE III* unit, as shown. Install screw, hand tight with screwdriver.
8. Position and secure other end of U-BAND to inner hole, front side. Install screw, hand tight with screwdriver.

EXTERNAL REGULATOR Installation Instructions



9. Disconnect the water supply line from the lower supply shank. Be prepared to collect a small amount of residual water from the supply line.



10. Make sure gasket is seated at base of threads in the EXTERNAL REGULATOR.
11. Thread EXTERNAL REGULATOR onto lower supply shank and hand tighten.

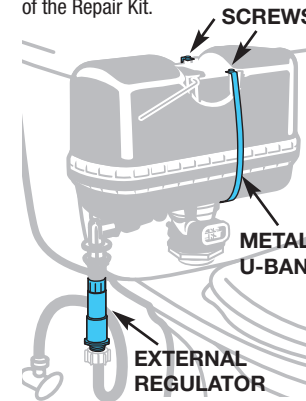


12. Connect supply line to EXTERNAL REGULATOR, hand tighten.
13. Rotate handle of water supply stop counter-clockwise to fully open the water supply.



14. Check for leaks around threaded connections (If leak is present, see "Corrective steps for leaks").
15. Flush toilet. Replace lid.

You have completed the installation of the Repair Kit.



Completed installation should look like illustration shown above. Repair Kit parts are highlighted in blue for clarity.

Corrective steps for leaks –
Make sure all connections are hand tight. If leak continues, turn off the water, flush the toilet to release pressure, disconnect the supply line, and then disconnect the EXTERNAL REGULATOR.

Next, reassemble (See steps 10 through 14).