

DISTRICT COURT
CLARK COUNTY, NEVADA

IN RE KITEC FITTING LITIGATION

Case No.: A493302

Dept. No.: XVI
(ELECTRONIC FILING CASE)

NOTICE OF PRELIMINARY APPROVAL OF SETTLEMENT
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING

Hearing Date & Time: FEBRUARY 23, 2011, at 1:30 p.m.

A court of law authorized this Notice. It is not from a lawyer. You are not being sued.

TO: ALL OWNERS OF RECORD OF KIMBALL HILL SUBCLASS A RESIDENCES CONTAINING KITEC PLUMBING SYSTEMS – YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

PURPOSE OF THIS NOTICE: This Notice is being mailed to all owners of record of Kimball Hill Subclass A homes constructed by KIMBALL HILL, INC. and/or KIMBALL HILL HOMES NEVADA, INC. (collectively as “Builder”) that are believed to contain Kitec or PlumbBetter plumbing systems to notify the Subclass members that modified settlements have been reached with Builder and one of its plumbing subcontractors, D.R. BOWLES PLUMBING, LLC (“Plumber”), that will create a settlement fund for the benefit of the Subclass members (“the Settlement”). **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE SETTLEMENT BENEFITS.**

FAIRNESS & GOOD FAITH SETTLEMENT HEARING: The Court has issued an Order of Preliminary Approval of the Settlement and set a Fairness and Good Faith Settlement Hearing (“Fairness Hearing”) to consider the fairness, adequacy, and reasonableness of the Subclass Settlement. **The hearing will be held on FEBRUARY 23, 2011, at 1:30 p.m., in the Eighth Judicial District Court, Dept. 16, Courtroom 12D of the Regional Justice Center, located at 200 Lewis Avenue, Las Vegas, Nevada.**

YOUR LEGAL RIGHTS AND CHOICES		DUE DATE
WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS (“OPT-OUT”) AND SUBMIT REQUEST TO REJOIN	If you previously filed a request for exclusion from the class (“Opt-Out”) but wish to take part in this Settlement and receive the benefits it provides, you may withdraw your prior Opt-out by submitting a Request to Rejoin The Settlement. After your Request to Join The Settlement is received, you will be eligible to receive the benefits contemplated by the Settlement.	FEBRUARY 16, 2011
ACCEPT SETTLEMENT & SEND IN CLAIM FORM	If you wish to receive the benefits of this Settlement, you must return the claim form that will be mailed to you after this Settlement receives final approval by the Court.	TO BE DETERMINED
OBJECT TO SETTLEMENT	You may write to the Court to raise concerns you have about this Settlement. Class Counsel will provide all objections to all parties and the Court.	FEBRUARY 16, 2011
APPEAR AT FAIRNESS HEARING	You can ask to speak to the Court about the fairness of this Settlement at the Fairness Hearing by submitting written Notice of Appearance by the Due Date.	FEBRUARY 16, 2011
DO NOTHING	If you do nothing, you will be bound by this Settlement and will be eligible to receive the benefits of the Settlement if you are a Settlement member.	N/A

Your rights and options under this Settlement – **and the Due Dates for each** – are explained in this Notice.

- The Court must still decide whether to approve this proposed Settlement. The benefits contemplated by this Settlement will be made available after the Court approves the Settlement and after all appeals, if any, are ruled upon.
- This Notice is not an opinion of the Court about the merits of the claims or defenses of the parties in the lawsuit. Instead, this Notice is sent to you to inform you about legal rights you may have with respect to this Settlement.

BASIC INFORMATION

1. Why did I get this Notice?

This Notice is given to you pursuant to an Order by the Honorable Timothy C. Williams of the Eighth Judicial District Court, Clark County, Nevada, preliminarily approving this Settlement on behalf of the Settlement Subclass under Rule 23 of the Nevada Rules of Civil Procedure. You received this Notice because our records indicate that you may be a member of the Settlement Subclass. **If you are a tenant or occupant of a home at this address, please ensure that this Notice is provided to the landlord or owner of the home.** You have legal rights and choices to make before the Court decides whether to finally approve this Settlement. This notice package explains:

- What this lawsuit is about.
- Your legal rights.
- The benefits and consequences of this Settlement for eligible recipients.

2. What is this lawsuit about?

This is a case arising from allegedly defective Kitec plumbing systems and/or components (“Kitec”) manufactured or distributed by or on behalf of Defendants Ipex Inc., and Ipex USA, LLC (collectively, “Ipex Defendants”), and installed at homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec plumbing systems or components in Clark County, Nevada, are defective because they fail or may fail when exposed to water. This Class Action seeks money damages together with attorneys’ fees and costs of suit from the Defendants on behalf of all Class Members. **This Class Action does not seek any damages for personal injury.**

3. What will this modified Settlement provide Subclass homeowners if approved by the Court?

If approved by the Court, this modified Settlement will create a settlement fund in the amount of \$1,769,000 to be used for the benefit of the Settlement Subclass to pay for a portion of replumbing the Settlement Subclass homes or other benefits that may be approved by the Court. The Settlement with Builder resolves the Subclass members’ claims against Builder related to (1) the homes which closed escrow from October 1, 2002 to October 1, 2006, when originally sold by Builder, including but not limited to the homes located in the developments known as Caparolla, Carnegie, Inspiration at Green Valley Ranch, Naples, San Marcos, and The Heathers (believed to include approximately 456 homes) and (2) the homes within the development known as Green Valley Ranch Parcel 51 (believed to include approximately 91 homes). The modified Settlement with Plumber resolves class claims against Plumber on an address-by-address basis related to 728 homes built by Builder that are located in the developments known as Caparolla, Carnegie, Inspiration at Green Valley Ranch, Naples, San Marcos, and The Heathers. The funds paid by or on behalf of Builder and Plumber will be combined with the Settlement members’ share of settlement funds recovered from the pending \$90 million dollar settlement with the manufacturer of Kitec plumbing (discussed below).

4. Are additional funds anticipated from other parties?

Class Counsel previously reached, and the Court approved, a ninety million dollar (\$90,000,000.00) settlement with the manufacturer of the Kitec plumbing system and related entities (“Ipex Settlement”). Though the Ipex Settlement was approved by the Court, several defendants in the underlying Class Action filed an appeal of the Court’s order approving the Ipex Settlement. The Ipex Settlement funds are therefore currently segregated in various protected accounts pending the resolution of the appeal. This Settlement, however, is not contingent upon the outcome of the Ipex Settlement appeal. Therefore, regardless of the outcome of the Ipex Settlement appeal, this Settlement will remain in full force and effect for the benefit of the Settlement Subclass. In the event the appeal against the Ipex Settlement is successful, Class Counsel, on behalf of the Settlement Subclass, will make efforts to secure a new settlement with, or obtain a judgment against, IPEX in the Class Action. In the event Class Counsel secures a new settlement with, or obtains a judgment against, IPEX relating to this Settlement Subclass, Class Counsel will fund the proportionate share (on a percentage basis of the recovery) of the funds recovered to the Qualified Settlement Fund up to the Settlement Amount for the benefit of the Settlement Subclass.

5. How will this Settlement be funded?

The specific funding for the modified Settlement is as follows: \$483,000 from Builder’s insurance carriers and \$1,286,000 from Plumber and/or its insurance carriers.

6. Why is this a class action, and what is a Subclass?

In a class action lawsuit, one or more people called “Representative Plaintiffs” sue on behalf of other people who have similar claims. All of these people together are known as the “Class” or “Class Members.” One Court decides all the issues in the lawsuit for all Class Members, except for those that exclude themselves from the Class. The judge hearing this class action lawsuit is the Honorable Timothy C. Williams. The presently-named Representative Plaintiffs are Tracie L. Quinterro, Eric W. Quinterro, Stephen Inferrera,

Sheila Inferrera, Anna Navarro, Susan Sheldon, Robert Dostler, Beverly Miller, Emma Norton, David Ober, Jennifer Ober, David Pursiano, Laurel Brady, Pamela T. Smith, Kari Brady, Paul Brady, Roderick Saup, Rhonda Saup, Laura Ishum, Nancy Drapeau, Yolanda Flores, Rebekah Ogle, Rick Guzman, Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey Smith, Mike House, Vincent Marino, Larry Maier, Dan Riordan, and Linda McIntyre. A Subclass is a smaller subset of a larger Class. The Kimball Hill Subclass A Representative is Jared Anderson. The Settlement described in this Notice pertains only to the Settlement Subclass described in this Notice.

7. Why have the Subclass, Builder, and Plumber decided to settle?

The Court has not decided in favor of the Subclass, Builder or Plumber. Builder and Plumber vigorously deny any wrongdoing, violation of law, or breach of duty asserted by Plaintiffs in the class action. Builder and Plumber contend that the homes were properly constructed, marketed, and sold in accordance with appropriate care, relevant standards, and “good practice,” that Class claims have no basis in law or fact, that Builder and Plumber have meritorious affirmative defenses to all claims, and that the class action should be dismissed. All sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial.

8. How do I know if I am part of this Settlement?

You are part of this Settlement if: a) You own a Kimball Hill Subclass A home constructed by Builder that contains, or at any time contained, a Kitec plumbing system; and b) You did not previously opt out of this class action. If you do not own one of the homes within the Settlement Subclass, you are not a part of this Settlement. If you own a home in the Settlement Subclass but previously opted out of this class action, you may still take part in this Settlement by timely submitting a Request to Rejoin the Class.

9. What happens if this modified Settlement is approved by the Court?

If this modified Settlement is approved by the Court, then you will be notified of the Court’s final approval and provided with a Claim Form to request the benefits of the Settlement. The notice of the Court’s final approval will explain how to obtain the benefits provided by the Settlement and will include the Claim Form that you will be required to return to the Claims Administrator to take part in this Settlement.

10. What happens if this Settlement is not approved by the Court?

If the Settlement is not approved by the Court at the Fairness Hearing, the Settlement will terminate and all the Settlement Subclass Members and parties will be restored to the position they were in before the Settlement was reached.

11. How soon will the replumb be scheduled?

Due to Kimball Hill’s bankruptcy and significant issues with Kimball Hill’s applicable insurance, the Class may be unable to aggregate sufficient funds to cover all of the costs associated with replumbing each of the Kimball Hill Settlement Homes. If sufficient funds necessary to perform full replumbs of the Kimball Hill Settlement Homes are not recovered in this class action, then the Kimball Hill Settlement members will receive the benefits of this Settlement in another Court-approved form.

12. What if I already replumbed my home or have already suffered damages from a Kitec fitting leak?

If you already replumbed your home or have suffered damage from a Kitec fitting failure, you **may** be entitled to monetary reimbursement, subject to approval by, and in an amount to be determined by, the Claims Administrator. In order to request reimbursement for a prior replumb or damages, you must submit a Claim Form and supporting documentation to the Claims Administrator, who will then review the merits of your claim and provide a response to you within 60 days of receipt of the Claim Form. **DO NOT HIRE OR CONTACT AN INDEPENDENT PLUMBER TO PERFORM A REPLUMB. PLEASE READ THIS NOTICE IN ITS ENTIRETY FOR INFORMATION REGARDING YOUR RIGHTS TO THE SETTLEMENT BENEFITS.**

YOUR RIGHTS – IF YOU PREVIOUSLY OPTED OUT OF THE CLASS ACTION

13. If I previously excluded myself as a member from the Class Action, can I still accept the Settlement?

Yes, but you must first timely withdraw your prior “opt-out” and submit a Request to Rejoin the Settlement. A Request to Rejoin may be obtained from Class Counsel at the locations identified in Paragraph 18 below. **If you previously opted out of this class action and do not submit and postmark the Request to Rejoin on or before FEBRUARY 16, 2011, you will not be eligible to receive the benefits provided in this Settlement.**

YOUR RIGHTS – IF YOU DO NOT WISH TO TAKE PART IN THIS SETTLEMENT

14. What if I do not want to be part of this Settlement?

If you do not wish to receive the benefits provided in this Settlement, then you may exclude yourself from the Settlement by not returning the Claim Form that will be provided to you upon final approval of this Settlement. **If you exclude yourself, then you will not receive the benefits and you will give up your right to sue Builder and Plumber on these claims later.**

15. If I exclude myself, may I pursue a claim against Builder and Plumber independently?

If you exclude yourself from this Settlement, you **will not** be entitled to pursue an independent claim against Builder and Plumber concerning Kitec Fittings.

YOUR RIGHTS – OBJECTING TO THE SETTLEMENT

16. How do I tell the Court if I do not like the Settlement?

If you are a member of the Settlement Subclass, then you can tell the Court that you do not like the Settlement or some part of it. This is called objecting to the Settlement. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. **The Court, however, may approve the Settlement despite objections, and all members of the Settlement Subclass will be bound by the Settlement.**

To send a letter to the Court or appear at the Fairness Hearing, you or your lawyer must provide all of the following:

- Entitle the letter: NOTICE OF OBJECTION OR APPEARANCE- **The Kimball Hill Subclass A Settlement**
- The name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Subclass Settlement.
- Your address to confirm that you are a member of Subclass.
- A statement of each objection you have and a summary of the basis for these objections.
- A description of any law or case supporting your objections.
- A statement of whether you or your attorney will ask to appear at the Fairness Hearing to speak on your objections, and if so, how long you will require to present your objections.
- Copies of any documents that you or your attorney wish to present at the Fairness Hearing.
- **Your objection letter must be mailed and postmarked before FEBRUARY 16, 2011, with copies sent to the following address:**

Kemp, Jones & Coulthard, LLP
Wells Fargo Tower, 17th Floor
3800 Howard Hughes Parkway
Las Vegas, NV 89169
Attention: Subclass Settlement Objections

IF YOU DO NOTHING

17. What happens if I do nothing?

If you do nothing, **you will be bound by this Settlement** and will be eligible to receive the benefits of the Settlement if you are a member of the Settlement Subclass. If this Settlement is finally approved by the Court, you will receive a Claim Form with further instructions for requesting and receiving the benefits of this Settlement. If you do not return your Claim Form, you will **not** receive the benefits of this Settlement and you will **give up your right to sue** Builder and Plumber on these claims later. Therefore, if the Court approves this Settlement and you choose not to accept it, or you do not timely take the steps required to claim the benefits of the Settlement, you will have **no** further rights against Builder or Plumber.

THE LAWYERS WHO REPRESENT THE SUBCLASS AND WHO NEGOTIATED THIS SETTLEMENT

18. Do I have a lawyer in this lawsuit?

When the Court first created a class action on October 16, 2006, it appointed the following attorneys to represent all members of the Class, which includes this Subclass. Together, these attorneys are called Class Counsel. **You will not be individually charged for these lawyers.** The names and addresses of Class Counsel are as follows:

J. Randall Jones & William L. Coulthard
Kemp, Jones & Coulthard, LLP
Wells Fargo Tower, 17th Floor
3800 Howard Hughes Parkway
Las Vegas, NV 89169

Francis Lynch, Charles Hopper, & Sergio Salzano
Lynch, Hopper & Salzano, LLP
1640 Alta Drive, Suite #11
Las Vegas, NV 89106

19. How will these attorneys be paid?

Class Counsel negotiated with Builder and Plumber to be paid \$436,000 of the Settlement as their fee as part of this Settlement and \$10,682.60 in reimbursed litigation expenses. The fee award and costs **will not** reduce the amount ultimately dedicated to the Settlement Subclass homes. These awards are contingent upon District Court final approval during the Fairness Hearing. The requested fee and cost awards do not include any fees or costs previously awarded to Class Counsel by way of the Ipex Settlement or in conjunction with subclass settlements or partial settlements related to any homes other than the Kimball Hill Subclass A homes.

The Court's Fairness Hearing

20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing on **FEBRUARY 23, 2011, at 1:30 p.m.** At this hearing, the Court will consider whether the Settlement is fair and adequate. If there are objections, the Court will consider them at that time. The Court will also listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. During this hearing, the Court will also consider any objection to the amount of attorney's fees and expenses.

The Fairness Hearing will be held at:

Regional Justice Center
Courtroom 12D (12th Floor/Department 16)
200 Lewis Avenue
Las Vegas, Nevada 89101

21. Do I have to come to the Fairness Hearing?

No, you are not required to come to the Fairness Hearing if you have no objection to the Settlement. But you are welcome to come if you wish to. If you send an objection, you are not required to attend the hearing to talk about it. As long as you mailed your written objection to the Court on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

22. May I speak at the hearing?

You will be allowed to speak at the hearing by sending a Notice of Appearance (described above within Question 16) to the Court that states you wish to appear at the Fairness Hearing and speak.

Getting More Information

23. Where can I receive more information about this Settlement?

This Notice summarizes the Settlement below. More details are in the Settlement Agreement itself or motion for approval, which you may obtain by contacting Class Counsel at the addresses listed above. You can also review and copy legal documents in this class action during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3rd Floor, 200 Lewis Avenue, Las Vegas, NV, 89101.