

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 CLASS CLARIFICATION  
NOTICE OF FAIRNESS AND GOOD FAITH SETTLEMENT HEARING

Hearing Date & Time: January 30, 2009, at 9:00 a.m.

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

**TO: ALL OWNERS OF RESIDENCES IN CLARK COUNTY, NEVADA THAT CONTAIN, OR AT ANY TIME CONTAINED, A KITEC AND/OR PLUMBETTER PIPING SYSTEM AND/OR COMPONENTS (THE "CLASS"). YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DON'T ACT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.**

**PURPOSE OF THIS NOTICE:** This Notice is being mailed to all members of the Class and published pursuant to Court Order to notify the Class of the following:

- A proposed settlement ("Ipex Settlement") resolving Class claims in this case has been negotiated on behalf of the Class by Class Counsel with Defendants Ipex Inc., and Ipex USA, LLC, (collectively, "Ipex Defendants") and related entities in this case.
- The Ipex Settlement proposes the creation of a ninety million dollar (\$90,000,000.00) Settlement Fund (less attorneys' fees and costs set forth below) to be used for the benefit of Class Members to pay for the repair of homes with Kitec and PlumBetter plumbing systems in addition to attorney's fees and costs under Court supervision.
- This proposed Settlement is only with the Ipex Defendants and related entities (See Question #5). It does not settle or release any claims you may have as a member of the Class against non-released parties (such as builders or plumbers) involved in this litigation. Those claims against builders and plumbers continue to be prosecuted on your behalf.

**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 Ipex Settlement. **The hearing will be held on January 30, 2009, at 9:00 a.m., at the Clark County District Court, Complex Litigation Center, 333 South Sixth Street, Las Vegas, NV, 89101.**

YOUR LEGAL RIGHTS AND CHOICES		POST MARK
<b>WITHDRAW YOUR PRIOR REQUEST FOR EXCLUSION FROM THE CLASS ("OPT-OUT") AND SUBMIT REQUEST TO JOIN IPEX SETTLEMENT</b>	If you previously filed a request for exclusion from the class ("Opt-Out"), but wish to take part in this Settlement, then you may withdraw your prior Opt-out by submitting a Request to Join Ipex Settlement. After your Request to Join Ipex Settlement is received, you will be eligible to take part in the Ipex Settlement contemplated by this Notice.	DECEMBER 18, 2008
<b>OBJECT TO SETTLEMENT</b>	You may write to the Court and Class Counsel to object to this Settlement. Class Counsel will provide all objections to all parties and the Court.	DECEMBER 18, 2008
<b>APPEAR AT FAIRNESS HEARING</b>	You can ask to speak to the Court about the fairness of the Settlement at the January 30, 2009 Fairness Hearing by submitting a written Notice of Appearance by the December 18, 2008 deadline.	DECEMBER 18, 2008
<b>DO NOTHING</b>	If you do nothing, <b>you will be bound by the Ipex Settlement</b> and be eligible to receive the benefits of the Ipex Settlement if you are a Class Member.	N/A

- These rights and options – **and the deadlines for each** – are explained in this Notice.
- The Court in charge of this litigation must still decide whether to approve the proposed Settlement.
- 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 tell you about legal rights you may have with respect to a 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 a settlement on behalf of the Class 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 Class as clarified by the Court on October 30, 2008. 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 or PlumBetter plumbing systems and/or components manufactured or distributed by or on behalf of the IpeX Defendants, and installed within homes in Clark County, Nevada. Plaintiffs are homeowners in Clark County with residences that have or had Kitec or PlumBetter plumbing system and/or components specified and/or installed by various Developers, General Contractors and/or Plumbers. Plaintiff Class Representatives have alleged that the Kitec and PlumBetter 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.** Any proceeds from this Class Action, after attorneys' fees and costs have been paid, will be used for the benefit of Class Members under Court supervision.

### **3. What will the IpeX Settlement provide homeowners if approved by the Court?**

If approved by the Court, the IpeX settlement will create a ninety million dollar (\$90,000,000.00) Settlement Fund (less attorneys' fees and costs set forth below) to be used for the benefit of the Class to pay for the repair and replumb of homes with Kitec and PlumBetter plumbing systems. After the final size of the Class is determined following trial and any appeal, Class Members' pro rata share of the IpeX Settlement will be combined with any money recovered from the other defendants (builders and plumbers) involved in this class action to pay for the replumb of homes. If sufficient money is not recovered from a Class Member's respective builder or plumber, then Class Counsel will petition the Court for further direction regarding how the IpeX Settlement funds should be used for the benefit of the Class. Before the IpeX Settlement can be used for the repair, reimbursement, or replumb of Class Members' homes, however, it must first receive final approval from the Court and survive an appeal, if any, that may be filed by another party (builder or plumber) to this action.

### **4. Why is this a class action?**

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, and Larry Maier.

### **5. Who does the IpeX Settlement include?**

The IpeX Settlement includes all persons who own a home in Clark County, Nevada that contains, or at any time contained, a Kitec or PlumBetter plumbing system or component(s) who have not previously opted-out of this class action. The proposed IpeX Settlement seeks to resolve all Class claims against the IPEX Defendants and related entities, which include IPEX Distribution, Inc., IPEX USA Inc. and IPEX USA LLC, IPEX Inc.'s sales agents (including but not limited to T. Christy Enterprises, Inc.), and IPEX Inc.'s wholesalers (including but not limited to Ferguson Enterprises, Inc., Standard Wholesale Supply Company, and Todd Pipe & Supply - Las Vegas, Inc.) (collectively, the "Released Parties"). The proposed IpeX Settlement is only with the IpeX Defendants and Released Parties. It does not settle or release any claims you may have individually or as part of the Class against other non-released parties in this lawsuit.

### **6. Why have the Class and IpeX Defendants decided to settle?**

The Court has not decided in favor of the Class or IpeX Defendants. IpeX Defendants vigorously deny any wrongdoing, violation of law, or breach of duty asserted by the Class. IpeX Defendants contend that Class claims have no basis in law or fact; that IpeX Defendants have meritorious affirmative defenses to all claims; and that the class action should be dismissed. Both sides, however, have agreed to a settlement in order to avoid the risks and costs associated with trial. The amount paid in this settlement reflects an evaluation of the claims and potential recovery, considering the facts as known to Class Counsel after careful investigation, the likelihood of prevailing at trial, and the likelihood that this litigation, if not settled now, would be further protracted, involve complex issues of fact and law, extra costs and expenses, and the risk the Class could lose at trial.

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

You are part of this Settlement if you: a) own a home in Clark County, Nevada that contains, or at any time contained, a Kitec or PlumBetter plumbing system or component(s); and b) you have not previously opted out of the class action. If you are a tenant of the home that received this Notice, please ensure that this Notice is given to the landlord or owner of the home because it concerns their legal rights and obligations. If you own a home that falls under the definition of the Class, but previously opted out of this class action, you may still take part in this settlement by submitting a Request to Rejoin the Class.

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

If the Ipex Settlement is not approved by the Court at the Fairness Hearing, then the Ipex Settlement will terminate and all Class Members and Parties will be restored to the position they were in before the Ipex Settlement was signed.

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

### 9. If you previously excluded yourself as a member from the Class Action, can you get back in to accept the Ipex Settlement?

Yes, but you must first withdraw you prior “opt-out” and submit a Request to Join the Ipex Settlement by **December 18, 2008**. A Request to Join may be obtained from Class Counsel. If you previously opted out of this class action and do not submit the Request to Join by **December 18, 2008**, then you will not be eligible to receive any benefit from this settlement.

## YOUR RIGHTS – OBJECTING TO THE SETTLEMENT

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

If you are a member of the Class, then you can tell the Court that you do not like the Ipex Settlement or some part of it. This is called objecting to the settlement. You also have the option and right to hire your own lawyer at your own expense. To object, you or your lawyer may send a letter to the Court or appear at the Fairness Hearing. **The Court, however, is entitled to approve the Ipex Settlement in spite of objections and all members of Class will be bound by the Ipex 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 name and title of this lawsuit: IN RE KITEC FITTING LITIGATION, A493302.
- State that the letter is in regard to the Ipex Settlement.
- Your address to confirm that you are a member of Class.
- 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 December 18, 2008, to Class Counsel at the following address:**

CLASS Counsel  
Harrison, Kemp, Jones & Coulthard, LLP  
3800 Howard Hughes Parkway  
17<sup>th</sup> Floor  
Las Vegas, NV 89169

Counsel for IPEX Defendants  
James D. Carraway  
Carraway & Associates, LLC  
1050 Indigo Drive, Suite 200B  
Las Vegas, NV 89145

## THE LAWYERS WHO REPRESENT THE CLASS AND WHO NEGOTIATED THIS SETTLEMENT

### 11. 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. Together, these attorneys are called Class Counsel. **You will not be individually charged for these lawyers.** If you have any question regarding the Ipex Settlement, then you should contact Class Counsel to discuss your concerns. The names and addresses of Class Counsel are as follows:

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

Francis Lynch, Charles Hopper, & Sergio Salzano  
Lynch, Hopper & Salzano, LLP  
231 South 3rd Street, Suite 130  
Las Vegas, Nevada 89101

### 12. How will these attorneys be paid?

Although Class Counsel’s fee agreement with Class Representatives entitle them to request a contingency fee in an amount equal to thirty-three and one-third percent (33 1/3%) of any sum recovered in any settlement reached up to ninety (90) days before trial, Class Counsel has agreed to seek a twenty-five percent (25%) contingency fee from the Ipex Settlement after reduction for any offset for

other related settlements. If Class Counsel were awarded attorney's fees in the amount of 33 1/3%, then its attorney's fees would total at least \$28,194,738.99. By requesting attorney's fees in the amount of 25% of the Ipex Settlement after reduction for any offset for other related settlements, attorneys' fees requested by Class Counsel will not exceed \$21.5 million, plus costs awarded by the Court, which will result in a **reduction** of attorney's fees requested by Class Counsel of almost \$7,000,000.00. This 25% attorney's fee request must still be approved by the Court as reasonable during the Fairness Hearing on this matter, in addition to any costs awarded by the Court.

## **THE COURT'S FAIRNESS HEARING**

### **13. When and where will the Court decide whether to approve the Ipex Settlement?**

The Court will hold a Fairness Hearing on **January 30, 2009, at 9:00 a.m.** At this hearing, the Court will consider whether the Ipex Settlement is fair and adequate. If there are objections, the Court will consider them. 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 Ipex 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:

Clark County District Court  
Complex Litigation Center  
333 South Sixth Street  
Las Vegas, NV, 89101

### **14. 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 Ipex 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 Class Counsel on time, the Court will consider it. You may also pay your own lawyer to review the Ipex Settlement or attend the Fairness Hearing on your behalf.

### **15. May I speak at the hearing?**

You will be allowed to speak at the hearing by sending an Objection (described above within Question #9) to Class Counsel that states you wish to appear at the Fairness Hearing and speak.

## **GETTING MORE INFORMATION**

### **16. Where can I receive more information about this Settlement?**

This Notice is given to inform you of the Court's preliminary approval of the Ipex Settlement. You may obtain specific details about the Ipex Settlement Agreement itself by contacting Class Counsel at the addresses listed above or by viewing the Ipex settlement on the website ([www.plumbingdefect.com](http://www.plumbingdefect.com)) maintained by Class Counsel to provide information to the Class. You can also review and copy legal documents in this class action, including all Ipex Settlement documents, during regular office hours at the office of the District Court Clerk's Office, Clark County Regional Justice Center, 3<sup>rd</sup> Floor, 200 Lewis Avenue, Las Vegas, NV, 89155.