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10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

12 Case No.: A493302  
13 Dept. No.: Dept. XVI

14  
15 IN RE KITEC FITTING LITIGATION

16 **FIFTH AMENDED COMPLAINT FOR**  
17 **DAMAGES and**  
18 **DEMAND FOR JURY TRIAL**

19  
*Exempt from Arbitration:*  
*Class Action*

20 COME NOW Plaintiffs TRACIE L. QUINTERRO, ERIC W. QUINTERRO, STEPHEN  
21 INFERRERA, SHEILA INFERRERA, ANNA NAVARRO, SUSAN SHELDON, ROBERT  
22 DOSTLER, BEVERLY MILLER, EMMA NORTON, DAVID OBER, JENNIFER OBER,  
23 CHARLES LANG, KATHERINE LANG, DAVID PURSIANO, LAUREL BRADY, PAMELA  
24 T. SMITH, KARI BRADY, PAUL BRADY, RODERICK SAUP, RHONDA SAUP, LAURA  
25 ISHUM, NANCY DRAPEAU, YOLANDA FLORES, REBEKAH OGLE, RICK GUZMAN,  
26 PAUL MESSINGSCHLAGER, BARRY SWEET, EVAN LEVY, MARY LEVY, LESLIE  
27 GUNNELS, JOHN BERBIRIAN, DOUG ELLINGTON, MELANIE LITTLEFIELD, HARVEY  
28

1 SMITH, MIKE HOUSE, VINCENT MARINO, and LARRY MAIER<sup>1</sup> all individually and as  
2 Class Representatives, by and through their attorneys of record, Harrison, Kemp, Jones &  
3 Coulthard, LLP, and Lynch, Hopper, & Salzano, LLP,<sup>2</sup> and for their claims against Defendants  
4 IPEX USA, LLC., a Delaware Foreign Limited Liability Company; IPEX, Inc., a Nevada  
5 Corporation;<sup>3</sup> Classic Plumbing, Inc., a Nevada Corporation; Sharp Plumbing, Inc., a Nevada  
6 Corporation; Cox & Sons Plumbing, a Nevada Corporation; D.R. Bowles Plumbing, LLC, a  
7 Nevada Limited Liability Company (“D.R. Bowles”); Lakewood Plumbing Company Limited  
8 Partnership, a Nevada Limited Partnership (“Lakewood”); Pioneer Plumbing, Inc. (“Pioneer”);<sup>4</sup>  
9 Del Webb Communities, Inc., an Arizona corporation (“Del Webb”); Highland Development  
10 Company, Inc., dba Westmark Homes, a Nevada Corporation (“Westmark”); American Premiere  
11 Homes and Development, Inc., a Nevada Corporation (“American Premiere”); Developers of  
12 Nevada, a Nevada Limited Liability Company (“Developers of Nevada”); Concordia Homes of  
13 Nevada, Inc., a Nevada Corporation (“Concordia”); Plaster Development Company, Inc. dba  
14 Signature Homes, a Nevada Corporation (“Signature”); Nigro Development, LLC, a Nevada  
15 Limited Liability Company (“Nigro”); Richmond American Homes of Nevada, Inc., a Colorado  
16 Corporation (“Richmond”); Maya LLC dba Avante Homes, a Nevada Limited Liability  
17 Company (“Avante”); Desert Wind Homes of Nevada II, Inc., a Nevada Corporation (“Desert  
18 Wind”); D.R. Horton, Inc., a Delaware Corporation (“D.R. Horton”); H & H Development, Ltd.,  
19 a Nevada Limited Liability Company (“H & H”); LBM Development Co., Inc., a Nevada  
20 Corporation (“LBM”); S.B.A. Development, Inc., a Nevada Corporation (“SBA”); Wexford  
21 Homes, Inc., a Nevada Corporation (“Wexford”); William Lyon Homes, Inc., a California  
22 Corporation (“William Lyon”); Astoria Homes, LLC, a Nevada Limited Liability Company

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23  
24 <sup>1</sup> All named Class Plaintiffs are hereinafter collectively referred to as “Plaintiffs.”

25 <sup>2</sup> Hereinafter, “Class Counsel.”

26 <sup>3</sup> IpeX, Inc. and IpeX USA, LLC, are hereinafter collectively referred to as “IpeX.”

27 <sup>4</sup> Classic, Sharp, Cox & Sons, D.R. Bowles, Lakewood and Pioneer are hereinafter collectively referred to  
28 as the “Plumbing Defendants.”

1 (“Astoria”);<sup>5</sup> DOES I-X; and ROE CORPORATIONS XI-XX, state, allege, and aver as follows:

2 **I.**

3 **INTRODUCTION**

4 1. This is a class action for damages under Nevada Rule of Civil Procedure 23 and  
5 Chapter 40 of the Nevada Revised Statutes on behalf of all similarly-situated owners of  
6 residences that have suffered damages as a result of owning homes in Clark County, Nevada,  
7 with an installed Kitec plumbing system that includes defective brass KITEC fittings (“Kitec  
8 fittings”). Defendants’ failure to properly design, develop, test, manufacture, distribute, market,  
9 sell, and install the Kitec plumbing system with Kitec fittings has caused Plaintiffs and all  
10 similarly-situated homeowners to suffer damages. Furthermore, Plaintiffs and all similarly-  
11 situated homeowners have suffered damages as a result of owning homes in Clark County,  
12 Nevada, constructed by Builder Defendants with defective brass Kitec fittings

13 2. By this Fifth Amended Complaint, Plaintiffs add the following:

- 14 i. Claims against Builder Defendants Astoria, Avante, Desert Wind, D.R.  
15 Horton, H & H, LBM, SBA, Wexford, William Lyon;  
16 ii. Claims against Plumbing Defendants D.R. Bowles, Lakewood and  
17 Pioneer;  
18 iii. Specific constructional defect NRS Chapter 40 claims against IpeX, Inc.,  
19 IpeX USA LLC, and all Plumber Defendants; and  
20 iv. Paul Messingschlager, Barry Sweet, Evan Levy, Mary Levy, Leslie  
21 Gunnels, John Berbirian, Doug Ellington, Melanie Littlefield, Harvey  
22 Smith, Mike House, Vincent Marino and Larry Maier as additional Class  
23 Representatives.

24 **II.**

25  
26  
27 <sup>5</sup> Del Webb, Westmark, American Premiere, Developers of Nevada, Concordia, Signature, Nigro,  
28 Richmond, Avante, Desert Wind, DR Horton, H & H, LBM, SBA, Wexford, William Lyon and Astoria  
are collectively referred to hereinafter as “Builders.”

**PARTIES**

**A. KB Homeowners.**

3. At all times relevant hereto, Plaintiffs Tracie L. Quinterro and Eric W. Quinterro are and were owners of real property constructed by KB Homes of Nevada, Inc., and located at 616 Doletto Street, Las Vegas, Nevada, 89138, and residents of Clark County, Nevada.

**B. Del Webb (Pulte) Homeowners.**

4. At all time relevant hereto, Plaintiffs Sheila Inferrera and Stephen Inferrera are and were owners of real property constructed by Communities of Del Webb, Inc., and located at 2792 Hartwick Pines Drive, Henderson, Nevada, 89052, and residents of Clark County, Nevada.

5. At all times relevant hereto, Plaintiff, Emma Norton, is and was an owner and occupant of real property constructed by Del Webb and located at 1612 Benchley Court, Henderson, Nevada, 89052, and a resident of Clark County, Nevada.

6. At all time relevant hereto, Plaintiff, Beverly Miller, is and was an owner and occupant of real property constructed by Del Webb and located at 1733 Williamsport Street, Henderson, Nevada, 89052, and a resident of Clark County, Nevada.

**C. John Laing Homeowners.**

7. At all times relevant hereto, Plaintiff, Anna Navarro, is and was an owner and occupant of real property constructed by WL Homes, LLC, dba John Laing Homes and located at 7804 Esteem Street, Las Vegas, Nevada 89131, and a resident of Clark County, Nevada.

8. At all times relevant hereto, Plaintiff, Susan Sheldon, is and was an owner and occupant of real property constructed by WL Homes, LLC, dba John Laing Homes and located at 10389 Heale Garden Court, Las Vegas, Nevada, 89135, and a resident of Clark County, Nevada.

9. At all times relevant hereto, Plaintiff, Robert Dostler, is and was an owner and occupant of real property constructed by WL Homes, LLC, dba John Laing Homes and located at 7820 Strong Water Court, Las Vegas, Nevada, 89131, and a resident of Clark County, Nevada.

1 . . .

2 **D. Westmark Homeowners.**

3 10. At all times relevant hereto, Plaintiffs Jennifer Ober and David Ober are and were  
4 owners of real property constructed by Westmark and located at 9601 Canyon Mesa Drive, Las  
5 Vegas, Nevada, 89144, and residents of Clark County, Nevada.

6 11. At all times relevant hereto, Plaintiffs Katherine Lang and Charles Lang are and  
7 were owners of real property constructed by Westmark and located at 304 Pinion Hills Court,  
8 Las Vegas, Nevada, 89144, and residents of Clark County, Nevada.

9 12. At all times relevant hereto, Plaintiff, David Pursiano, is and was an owner and  
10 occupant of real property constructed by Westmark and located at 9509 Canyon Mesa Drive,  
11 Las Vegas, Nevada, 89144, and a resident of Clark County, Nevada.

12 13. At all times relevant hereto, Plaintiff, Laurel Barry, is and was an owner and  
13 occupant of real property constructed by Westmark and located at 9509 Canyon Mesa Drive, Las  
14 Vegas, Nevada, 89144, and a resident of Clark County, Nevada.

15 **E. American Premiere Homeowners.**

16 14. At all times relevant hereto, Plaintiff, Pamela J. Smith, is and was an owner and  
17 occupant of real property constructed by American Premiere and located at 6905 Rosinwood  
18 Street, Las Vegas, Nevada, 89131, and a resident of Clark County, Nevada.

19 15. At all times relevant hereto, Plaintiffs Kari Brady and Paul Brady are and were  
20 owners of real property constructed by American Premiere and located at 7832 Odysseus  
21 Avenue, Las Vegas, Nevada, 89131, and residents of Clark County, Nevada.

22 **F. Developers of Nevada Homeowners.**

23 16. At all times relevant hereto, Plaintiffs Rhonda Saup and Roderick Saup are and  
24 were owners of real property constructed by Developers of Nevada and located at 4900  
25 Pounding Surf Avenue, Las Vegas, Nevada, 89131, and residents of Clark County, Nevada.

26 **G. Signature Homeowner.**

27 17. At all times relevant hereto, Plaintiff, Nancy Drapeau, is and was an owner and  
28

1 occupant of real property constructed by Signature and located at 4981 Mascaro Drive, Las  
2 Vegas, Nevada, 89122, and a resident of Clark County, Nevada.

3 **H. Nigro Homeowner.**

4 18. At all times relevant hereto, Plaintiff, Laura Ishum, is and was an owner and  
5 occupant of real property constructed by Nigro and located at 625 Beargrass Street, Las Vegas,  
6 Nevada, 89144, and a resident of Clark County, Nevada.

7 **I. Concordia Homeowners.**

8 19. At all times relevant hereto, Plaintiff, Yolanda Flores, is and was an owner and  
9 occupant of real property constructed by Concordia and located at 2481 Crystal Ship Court,  
10 Henderson, Nevada, 89052, and a resident of Clark County, Nevada.

11 20. At all times relevant hereto, Plaintiff, Rebekah Ogle, is and was an owner and  
12 occupant of real property constructed by Concordia and located at 2478 Crystal Ship Court,  
13 Henderson, Nevada, 89052, and a resident of Clark County, Nevada.

14 **J. Richmond Homeowner.**

15 21. At all time relevant hereto, Plaintiff, Rick Guzman, is and was an owner and  
16 occupant of real property constructed by Richmond and located at 2401 Cypress Island Court,  
17 North Las Vegas, Nevada, 89031, and a resident of Clark County, Nevada.

18 **K. Avante Homeowner.**

19 22. At all times relevant hereto, Plaintiff, Paul Messingschlager, is and was an owner  
20 and occupant of real property constructed by Avante and located at 4350 Crimson Tide Avenue,  
21 Las Vegas, Nevada, 89031, and a resident of Clark County, Nevada.

22 **L. Desert Wind Homeowner.**

23 23. At all times relevant hereto, Plaintiff, Barry Sweet, is and was an owner and  
24 occupant of real property constructed by Desert Wind and located at 1293 Autumn Wind Way,  
25 Henderson, Nevada, 89052, and a resident of Clark County, Nevada.

26 **M. D.R. Horton Homeowners.**

27 24. At all times relevant hereto, Plaintiffs, Evan Levy and Mary Levy, are and were  
28

1 owners and occupants of real property constructed by D.R. Horton and located at 4090 Demoline  
2 Circle, Las Vegas, Nevada, 89141, and residents of Clark County, Nevada.

3 **N. H & H Development Homeowners.**

4 25. At all times relevant hereto, Plaintiffs, Leslie Gunnels and John Berbirian, are and  
5 were owners and occupants of real property constructed by H & H Development and located at  
6 4011 Chalfont Court, Las Vegas, Nevada 89121, and residents of Clark County, Nevada

7 26. At all times relevant hereto, Plaintiff, Doug Ellington, is and was an owner and  
8 occupant of real property constructed by H & H Development and located at 4019 Chalfont  
9 Court, Las Vegas, Nevada, 89121, and a resident of Clark County, Nevada.

10 **O. LBM Development Homeowner.**

11 27. At all times relevant hereto, Plaintiff, Melanie Littlefield, is and was an owner  
12 and occupant of real property constructed by LBM Development and located at 7284 Vinca  
13 Road, Las Vegas, Nevada, 89113, and a resident of Clark County, Nevada.

14 **P. SBA Development.**

15 28. At all times relevant hereto, Plaintiff, Harvey Smith, is and was an owner and  
16 occupant of real property constructed by SBA Development and located at 3332 Michaelangelo  
17 Court, Las Vegas, Nevada 89129, and a resident of Clark County, Nevada.

18 **Q. Wexford Homes Homeowner.**

19 29. At all times relevant hereto, Plaintiff, Mike House, is and was the owner and  
20 occupant of real property constructed by Wexford Homes and located at 2272 Platinum Band,  
21 Las Vegas, Nevada, 89156, and a resident of Clark County, Nevada.

22 **R. William Lyon Homeowner.**

23 30. At all times relevant hereto, Plaintiff, Vincent Marino, is and was the owner and  
24 occupant of real property constructed by William Lyon and located at 113 Torchwood Lane, Las  
25 Vegas, Nevada, 89144, and a resident of Clark County, Nevada.

26 **S. Astoria Homeowner.**

27 31. At all times relevant hereto, Plaintiff, Larry Maier, is and was the owner and  
28

1 occupant of real property constructed by Astoria and located at 9372 Pinnacle Cove Street, Las  
2 Vegas, Nevada, 89123, and a resident of Clark County, Nevada.

3 **T. Defendants.**

4 32. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
5 hereto, Defendant, IpeX USA, LLC, is and was a Delaware Foreign Limited Liability Company  
6 that designs, develops, manufactures, distributes, markets, and sells pipe products into Nevada.

7 33. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
8 hereto, Defendant, IPEX, Inc., is and was a Nevada Corporation that designs, develops,  
9 manufactures, distributes, markets, and sells pipe products into Nevada.

10 34. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
11 hereto, Defendant, Classic Plumbing, Inc., is and was a Nevada Corporation that distributes and  
12 installs pipe products in Nevada.

13 35. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
14 hereto, Defendant, Sharp Plumbing, Inc., is and was a Nevada Corporation that distributes and  
15 installs pipe products in Nevada.

16 36. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
17 hereto, Defendant, Cox & Sons Plumbing, is and was a Nevada Corporation that distributes and  
18 installs pipe products in Nevada.

19 37. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
20 hereto, Defendant, D.R. Bowles Plumbing, is and was a Nevada Limited Liability Company that  
21 distributes and installs pipe products in Nevada.

22 38. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
23 hereto, Defendant, Lakewood Plumbing, is and was a Nevada Limited Partnership that  
24 distributes and installs pipe products in Nevada.

25 39. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
26 hereto, Defendant, Pioneer Plumbing, is and was a Nevada Corporation that distributes and  
27 installs pipe products in Nevada.

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1           40.     Plaintiffs are informed and believe and thereupon allege that at all times relevant  
2 hereto, Defendant, Del Webb, is and was a contractor authorized to do business in Clark County,  
3 Nevada and is and was engaged and doing business in Clark County, Nevada, including, but not  
4 limited to, development, construction, improvement, and/or sale of the subject residences.

5           41.     Plaintiffs are informed and believe and thereupon allege that at all times relevant  
6 hereto, Defendant, Westmark, is and was a contractor authorized to do business in Clark County,  
7 Nevada and is and was engaged and doing business in Clark County, Nevada, including, but not  
8 limited to, development, construction, improvement, and/or sale of the subject residences.

9           42.     Plaintiffs are informed and believe and thereupon allege that at all times relevant  
10 hereto, Defendant, American Premiere, is and was a contractor authorized to do business in  
11 Clark County, Nevada and is and was engaged and doing business in Clark County, Nevada,  
12 including, but not limited to, development, construction, improvement, and/or sale of the subject  
13 residences.

14           43.     Plaintiffs are informed and believe and thereupon allege that at all times relevant  
15 hereto, Defendant, Developers of Nevada, is and was a contractor authorized to do business in  
16 Clark County, Nevada and is and was engaged and doing business in Clark County, Nevada,  
17 including, but not limited to, development, construction, improvement, and/or sale of the subject  
18 residences.

19           44.     Plaintiffs are informed and believe and thereupon allege that at all times relevant  
20 hereto, Defendant, Concordia, is and was a contractor authorized to do business in Clark County,  
21 Nevada and is and was engaged in doing business in Clark County, Nevada, including, but not  
22 limited to, development, construction, improvement and/or sale of the subject residences.

23           45.     Plaintiffs are informed and believe and thereupon allege that at all times relevant  
24 hereto, Defendant, Signature Homes, is and was a contractor authorized to do business in Clark  
25 County, Nevada and is and was engaged in doing business in Clark County, Nevada, including,  
26 but not limited to, development, construction, improvement and/or sale of the subject residences.

27           46.     Plaintiffs are informed and believe and thereupon allege that at all times relevant  
28

1 hereto, Defendant, Nigro Development, LLC, is and was a contractor authorized to do business  
2 in Clark County, Nevada and is and was engaged in doing business in Clark County, Nevada,  
3 including, but not limited to, development, construction, improvement and/or sale of the subject  
4 residences.

5 47. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
6 hereto, Defendant, Richmond, is and was a contractor authorized to do business in Clark County,  
7 Nevada, and is and was engaged in doing business in Clark County, Nevada, including, but not  
8 limited to, development, construction, improvement and/or sale of the subject residences.

9 48. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
10 hereto, Defendant, Avante Homes, is and was a contractor authorized to do business in Clark  
11 County, Nevada, and is and was engaged in doing business in Clark County, Nevada, including,  
12 but not limited to, development, construction, improvement and/or sale of the subject residences.

13 49. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
14 hereto, Defendant, Desert Wind, is and was a contractor authorized to do business in Clark  
15 County, Nevada, and is and was engaged in doing business in Clark County, Nevada, including,  
16 but not limited to, development, construction, improvement and/or sale of the subject residences.

17 50. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
18 hereto, Defendant, D.R. Horton, is and was a contractor authorized to do business in Clark  
19 County, Nevada, and is and was engaged in doing business in Clark County, Nevada, including,  
20 but not limited to, development, construction, improvement and/or sale of the subject residences.

21 51. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
22 hereto, Defendant, H & H Development, is and was a contractor authorized to do business in  
23 Clark County, Nevada, and is and was engaged in doing business in Clark County, Nevada,  
24 including, but not limited to, development, construction, improvement and/or sale of the subject  
25 residences.  
26

27 52. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
28

1 hereto, Defendant, LBM Development, is and was a contractor authorized to do business in  
2 Clark County, Nevada, and is and was engaged in doing business in Clark County, Nevada,  
3 including, but not limited to, development, construction, improvement and/or sale of the subject  
4 residences.

5 53. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
6 hereto, Defendant, SBA Development, is and was a contractor authorized to do business in Clark  
7 County, Nevada, and is and was engaged in doing business in Clark County, Nevada, including,  
8 but not limited to, development, construction, improvement and/or sale of the subject residences.

9 54. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
10 hereto, Defendant, Wexford Homes, is and was a contractor authorized to do business in Clark  
11 County, Nevada, and is and was engaged in doing business in Clark County, Nevada, including,  
12 but not limited to, development, construction, improvement and/or sale of the subject residences.

13 55. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
14 hereto, Defendant, William Lyon Homes, is and was a contractor authorized to do business in  
15 Clark County, Nevada, and is and was engaged in doing business in Clark County, Nevada,  
16 including, but not limited to, development, construction, improvement and/or sale of the subject  
17 residences.

18 56. Plaintiffs are informed and believe and thereupon allege that at all times relevant  
19 hereto, Defendant, Astoria Homes, is and was a contractor authorized to do business in Clark  
20 County, Nevada and is and was engaged and doing business in Clark County, Nevada, including,  
21 but not limited to, development, construction, improvement, and/or sale of the subject  
22 residences.

23 57. The true names and capacities, whether individual, corporate, associate or  
24 otherwise, of Defendants herein designated as DOES I through X and ROE CORPORATIONS  
25 XI through XX inclusive, are unknown to the Plaintiffs at this time, who therefore sue said  
26 Defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege that  
27 each of said Defendant are responsible in some manner for the events and happenings and  
28

1 proximately caused the injuries and damages herein alleged. Plaintiffs will seek leave to amend  
2 this Complaint to allege their true names and capacities as they are ascertained.

3 **III.**

4 **JURISDICTION AND VENUE**

5 58. This Court has jurisdiction in this matter, and venue is proper, in that the basis of  
6 this Complaint arises from Defendants designing, developing, manufacturing, distributing,  
7 marketing, selling, installing or causing to be installed the Kitec plumbing system and Kitec  
8 fittings for homes located in Clark County, Nevada, and from Builders' construction of homes  
9 within Clark County, Nevada, and their failure to follow the requirements of NRS Chapter 40.

10 **IV.**

11 **CLASS ACTION ALLEGATIONS**

12 59. A class action is alleged pursuant to Rule 23 of the Nevada Rules of Civil  
13 Procedure and NRS Chapter 40. The class consists of all similarly-situated owners of residences  
14 who own the Subject Homes constructed by Builders. Plaintiffs bring this action as a class  
15 action on behalf of the class of all similarly-situated individuals who presently own the homes.

16 60. The class, which consists of all similarly-situated owners of residences in Clark  
17 County, Nevada, with Kitec fittings constructed by Builders, is so numerous that joinder of all  
18 homeowners individually would be impractical and that disposition of their claims in a class  
19 action is in the best interests of the parties and judicial economy.

20 61. This action involves questions of law and fact common to each member of the  
21 class, in that all members of the class have suffered damages as a result of the installation of  
22 Kitec plumbing system and the defective Kitec fittings within their residences.

23 62. The claims of the Plaintiffs and relief herein sought are typical of the claims and  
24 relief which could be prayed for as to each member of the class generally.

25 63. Plaintiffs can fairly and adequately protect the interests of all members of the  
26 class in as much as each Class Plaintiff is an owner of a residence constructed by Builders with a  
27 Kitec plumbing system that contains defective brass Kitec fittings and each Plaintiffs' residence  
28

1 was damaged by the acts and practices of the Defendants.

2 64. Prosecution of separate actions by individual members of the class would create a  
3 risk of inconsistent or varying adjudications with respect to individual members of the class  
4 which would establish incompatible standards of conduct for the party opposing the class.

5 65. On October 16, 2006, via order of the Honorable Timothy C. Williams, Eighth  
6 Judicial District Court, this case was originally certified as a class action generally known as the  
7 *In re Kitec Fitting Litigation*, on behalf of “Any owner of a residence in Clark County, Nevada,  
8 with brass Kitec Fittings installed by Defendants Classic Plumbing, Inc., Sharp Plumbing, Inc.,  
9 or Cox & Sons Plumbing, Inc., between 1996 and the present.”

10 66. On \_\_\_\_\_, 2008, via order of the Honorable Timothy C. Williams, Eight  
11 Judicial District Court, the class definition was revised to include claims of “Any owner of a  
12 residence in Clark County, Nevada completed between 1996 and the present with brass Kitec  
13 fittings.”

14 **V.**

15 **GENERAL ALLEGATIONS**

16 67. The Plaintiffs are informed and believe and thereupon allege that Defendants are,  
17 and at all times relevant hereto were, engaged in the business of designing, developing,  
18 manufacturing, distributing, marketing, selling, and installing the Kitec plumbing system, Kitec  
19 fittings, and other plumbing materials in Clark County, Nevada.

20 68. Builder Defendants are “Contractors” as contemplated by NRS 40.620 as Builder  
21 Defendants developed, constructed, altered, repaired, improved or landscaped the Subject  
22 Homes.

23 69. Plumbing Defendants are “Subcontractors” as contemplated by NRS 40.632 as  
24 Plumbing Defendants performed work on behalf of another contractor in the construction of the  
25 Subject Homes.

26 70. Ipex is a “Supplier” as contemplated by NRS 40.634 as Ipex provided materials,  
27 equipment or other supplies for the construction of the Subject Homes.

28

1           71.     According to Ipex’s brochures, Kitec XPA pipe is made from an aluminum tube  
2 bonded between two layers of smooth plastic.

3           72.     Pursuant to Ipex’s marketing materials, Kitec XPA pipe is safe, reliable,  
4 corrosion-resistant, clean and does not taint water quality, virtually maintenance-free, and  
5 provides proven and long-term performance, a low lifetime cost of ownership, and adds to a  
6 home’s resale value.

7           73.     Ipex also touts Kitec XPA pipe’s better water flow because its smooth plastic  
8 inner wall permanently resists scaling and mineral buildup, keeping water flow constant year  
9 after year.

10          74.     Specifically, Ipex claims that with the largest inside diameter of any alternative  
11 piping system, Kitec XPA pipe provides more water whenever and wherever needed.

12          75.     At all times mentioned herein, Ipex, through advertising and their authorized  
13 agents and sales representatives, asserted, stated, represented and warranted that Ipex had  
14 extensively tested the Kitec plumbing system, and that based on the results of the research and  
15 tests, the Kitec plumbing system was properly designed, developed, marketed, and manufactured  
16 so as to operate adequately, reliably, and as represented.

17          76.     At all times mentioned herein, Ipex, through advertising and through their  
18 authorized agents and sales representatives, asserted, stated represented, and warranted that the  
19 Kitec plumbing system would not rust or corrode and that the smooth plastic inner wall of the  
20 Kitec XPA pipe resists scaling and mineral buildup, keeping flow constant year after year.

21          77.     Ipex claims in its product information sheet that with state of the art  
22 manufacturing facilities and distribution centers across North America, the IPEX name is  
23 synonymous with quality and performance.

24          78.     Ipex, and their authorized agents and sales representatives, made the above-  
25 described assertions, statements, representations, and warranties with the intent and purpose of  
26 inducing plumbing suppliers, the Plumbing Defendants, and the Builders to buy the Kitec  
27 plumbing system and Kitec fittings from Ipex to install in homes in Clark County, Nevada.

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1           79.     Plaintiffs believe that the Kitec plumbing system and Kitec fittings were installed  
2 by Plumbing Defendants throughout Plaintiffs' homes and the homes of all similarly-situated  
3 owners of residences in Clark County, Nevada.

4           80.     Plaintiffs are informed and believe and thereupon allege that Builders are, and at  
5 all times relevant hereto were, engaged in the construction of residences within Clark County  
6 Nevada.

7           81.     Within ten (10) years of completion of construction, Plaintiffs discovered that  
8 their residences were built with defective Kitec fittings.

9           82.     Plaintiffs are informed and believed that Kitec fittings are universally defective  
10 because of a well-known chemical reaction known as dezincification, which automatically  
11 occurs when the brass used to make Kitec fittings is exposed to water.

12           83.     Brass is an alloy primarily composed of copper and zinc. When Kitec fittings are  
13 exposed to water, zinc leaches out of the brass fittings leaving behind a weak and porous  
14 honeycomb of copper and telltale blockage of zinc oxide that inevitably leads to leaks, restricted  
15 water flow, and breakage. Kitec fittings, therefore, not only cause substantial injury to residences  
16 after they burst and leak, but also impair the ability of a residence's plumbing system to  
17 effectively operate and provide water to appliances and plumbing fixtures.

18           84.     The universally defective nature of this single product renders each class  
19 member's claim, legal theory, and injury common and typical. The class action is the superior  
20 vehicle for this litigation because a singular defect predominates over any other issue and the  
21 combination of these identical claims maximizes judicial efficiency and ensures that affected  
22 consumers have their day in court.

23           85.     Del Webb was given notice of potential claims related to defective Kitec fittings  
24 on behalf of all similarly-situated owners of residences under the procedures contained within  
25 Nevada Revised Statutes §40.600 *et seq* on August 22, 2006. However, Del Webb has failed to  
26 follow the appropriate procedures provided within NRS Chapter 40. Plaintiffs, therefore, invoke  
27 all rights and remedies available to them pursuant to NRS §40.600 *et seq*.

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1 86. Westmark was given notice of potential claims related to defective Kitec fittings  
2 on behalf of all similarly-situated owners of residences under the procedures contained within  
3 Nevada Revised Statutes §40.600 *et seq* on November 16, 2006. However, Westmark has failed  
4 to follow the appropriate procedures provided within NRS Chapter 40. Plaintiffs, therefore,  
5 invoke all rights and remedies available to them pursuant to §40.600 *et seq*.

6 87. American Premiere was given notice of potential claims related to defective  
7 Kitec fittings on behalf of all similarly-situated owners of residences under the procedures  
8 contained within Nevada Revised Statutes §40.600 *et seq* on November 14, 2006. However,  
9 American Premiere has failed to follow the appropriate procedures within NRS Chapter 40.  
10 Plaintiffs, therefore, invoke all rights and remedies available to them pursuant to §40.600 *et seq*.

11 88. Developers of Nevada was given notice of potential claims related to defective  
12 Kitec fittings on behalf of all similarly-situated owners of residences under the procedures  
13 contained within Nevada Revised Statutes §40.600 *et seq* on June 14, 2007. Subsequent to  
14 Plaintiffs' Chapter 40 Notice, Developers of Nevada stipulated to Plaintiffs amending their  
15 complaint to bring Developers of Nevada in as a defendant.

16 89. For purposes of settlement, Concordia stipulated to waiving the NRS Chapter 40  
17 time-frames and to Plaintiffs amending their complaint to bring Concordia in as a defendant.

18 90. Signature Homes was given notice of potential claims related to defective Kitec  
19 fittings on behalf of all similarly-situated owners of residences under the procedures contained  
20 within Nevada Revised Statutes §40.600 *et seq* on November 14, 2006. However, Signature has  
21 failed to follow the appropriate procedures within NRS Chapter 40. Plaintiffs, therefore, invoke  
22 all rights and remedies available to them pursuant to §40.600 *et seq*.

23 91. Nigro was given notice of potential claims related to defective Kitec fittings on  
24 behalf of all similarly-situated owners of residences under the procedures contained within  
25 Nevada Revised Statutes §40.600 *et seq* on June 14, 2007. However, Nigro has failed to follow  
26 the appropriate procedures within NRS Chapter 40. Plaintiffs, therefore, invoke all rights and  
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1 remedies available to them pursuant to §40.600 *et seq.*

2 92. Richmond was given notice of potential claims related to defective Kitec fittings  
3 on behalf of all similarly-situated owners of residences under the procedures contained within  
4 Nevada Revised Statutes §40.600 *et seq* on November 14, 2006. Class Plaintiffs and Richmond  
5 filed a joint settlement motion for the claims alleged in this Complaint on February 22, 2008.

6 93. Avante was given notice of potential claims related to defective Kitec fittings on  
7 behalf of all similarly-situated owners of residences under the procedures contained within  
8 Nevada Revised Statutes §40.600 *et seq* on September 7, 2007. However, Avante has failed to  
9 follow the appropriate procedures within NRS Chapter 40. Plaintiffs, therefore, invoke all rights  
10 and remedies available to them pursuant to §40.600 *et seq.*

11 94. Desert Wind was given notice of potential claims related to defective Kitec  
12 fittings on behalf of all similarly-situated owners of residences under the procedures contained  
13 within Nevada Revised Statutes §40.600 *et seq* on July 25, 2007. However, Desert Wind has  
14 failed to follow the appropriate procedures within NRS Chapter 40. Plaintiffs, therefore, invoke  
15 all rights and remedies available to them pursuant to §40.600 *et seq.*

16 95. D.R. Horton was given notice of potential claims related to defective Kitec  
17 fittings on behalf of all similarly-situated owners of residences under the procedures contained  
18 within Nevada Revised Statutes §40.600 *et seq* on July 25, 2007. However, D.R. Horton has  
19 failed to follow the appropriate procedures within NRS Chapter 40. Plaintiffs, therefore, invoke  
20 all rights and remedies available to them pursuant to §40.600 *et seq.*

21 96. H &H Development was given notice of potential claims related to defective  
22 Kitec fittings on behalf of all similarly-situated owners of residences under the procedures  
23 contained within Nevada Revised Statutes §40.600 *et seq* on July 25, 2007. However, H & H  
24 Development has failed to follow the appropriate procedures within NRS Chapter 40. Plaintiffs,  
25 therefore, invoke all rights and remedies available to them pursuant to §40.600 *et seq.*

26 97. LBM Development was given notice of potential claims related to defective Kitec  
27 fittings on behalf of all similarly-situated owners of residences under the procedures contained  
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1 within Nevada Revised Statutes §40.600 *et seq* on August 2, 2007. However, LBM  
2 Development has failed to follow the appropriate procedures within NRS Chapter 40. Plaintiffs,  
3 therefore, invoke all rights and remedies available to them pursuant to §40.600 *et seq*.

4 98. SBA Development was given notice of potential claims related to defective Kitec  
5 fittings on behalf of all similarly-situated owners of residences under the procedures contained  
6 within Nevada Revised Statutes §40.600 *et seq* on November 16, 2007. However, SBA  
7 Development has failed to follow the appropriate procedures within NRS Chapter 40. Plaintiffs,  
8 therefore, invoke all rights and remedies available to them pursuant to §40.600 *et seq*.

9 99. Wexford Homes was given notice of potential claims related to defective Kitec  
10 fittings on behalf of all similarly-situated owners of residences under the procedures contained  
11 within Nevada Revised Statutes §40.600 *et seq* on September 21, 2007. However, Wexford  
12 Homes has failed to follow the appropriate procedures within NRS Chapter 40. Plaintiffs,  
13 therefore, invoke all rights and remedies available to them pursuant to §40.600 *et seq*.

14 100. William Lyon Homes was given notice of potential claims related to defective  
15 Kitec fittings on behalf of all similarly-situated owners of residences under the procedures  
16 contained within Nevada Revised Statutes §40.600 *et seq* on August 28, 2007. However,  
17 William Lyon Homes has failed to follow the appropriate procedures within NRS Chapter 40.  
18 Plaintiffs, therefore, invoke all rights and remedies available to them pursuant to §40.600 *et seq*.

19 101. Class Plaintiffs and Astoria have participated in several NRS Chapter 40 pre-  
20 litigation mediations and settlement discussions. In furtherance of those discussions, Class  
21 Plaintiffs add claims against Astoria by this complaint.

22 102. Ipex, Plumbing Defendants, and Builders have failed to follow the appropriate  
23 procedures provided within NRS Chapter 40. Plaintiffs, therefore, invoke all rights and remedies  
24 available to them pursuant to NRS §40.600 *et seq*, and bring the following claims for relief:

25 **VI.**

26 **FIRST CLAIM FOR RELIEF**

27 **(Products Liability - Against Ipex and Plumbing Defendants)**

1           103. Plaintiffs repeat, reallege, and incorporate herein by reference all prior paragraphs  
2 as though fully set forth herein.

3           104. At all times relevant herein, Defendants were the designers, developers,  
4 manufacturers, distributors, marketers, sellers, and installers of the Kitec XPA pipe and Kitec  
5 fittings.

6           105. Defendants engaged in the business of designing, developing, manufacturing,  
7 distributing, marketing, selling, and installing plumbing supplies and pipes such as the materials  
8 at issue herein.

9           106. Defendants knew and/or should have known and expected that the Kitec XPA  
10 pipe would reach the ultimate user and/or consumer without substantial change and would be in  
11 the condition in which it was sold by Ipex.

12           107. At all times herein relevant, Defendants owed a duty of reasonable care to the  
13 Plaintiffs in the design, development, manufacturing, distributing, marketing, selling, selection  
14 of materials used, and installation of Kitec XPA pipe and Kitec fittings.

15           108. Defendants breached this duty in the following manner, including but not limited  
16 to failing to adequately and properly:

- 17           a. Supply Kitec XPA pipe and Kitec fittings for use without defects;
  - 18           b. Inspect and test the fittings which will be used in households;
  - 19           c. Manufacture, design, develop, build, market, sell, and produce and/or  
20 otherwise put into the stream of commerce Kitec XPA pipe and fittings  
21 which were without defect;
  - 22           d. Install defect-free components into the plumbing system of the subject  
23 home;
  - 24           e. Select and utilize materials which are defect-free;
  - 25           f. Design a water supply pipe and/or components which will operate and/or  
26 perform in a defect-free manner so as to prevent damage; and
  - 27           g. Warn of the damage as a result of the installation of the Kitec plumbing
- 28

1 system.

2 109. But for the manufacturing defect, design defect, and selection of improper  
3 materials by Defendants, and breach of duty by Defendants, Plaintiffs and the class would not  
4 have suffered injury or damages.

5 110. Defendants knew and/or should have known the pipe at issue was a repository  
6 and/or conduit of water and/or subject to water pressure such as it was foreseeable to Defendants  
7 that failure of the pipe and/or other components would cause damages to the ultimate users.

8 111. As a direct and proximate result of all the foregoing and as a result of the acts  
9 and/or omissions of Defendants, Plaintiffs and the class have sustained damage, in an amount in  
10 excess of Ten Thousand Dollars (\$10,000.00), and as further provided for pursuant to NRS  
11 §40.600 *et seq.*

12 112. It has been necessary for the Plaintiffs to retain the services of Class Counsel to  
13 represent them and the class and to bring this action, and attorneys' fees and costs should be  
14 awarded, as provided by law.

15  
16 **VII.**

17 **SECOND CLAIM FOR RELIEF**

18 **(Strict Liability - Against Ipex and Plumbing Defendants)**

19 113. Plaintiffs repeat, reallege, and incorporate herein by reference all prior paragraphs  
20 as though fully set forth herein.

21 114. As a direct and proximate result of the foregoing, Ipex and Plumbing Defendants,  
22 as the designers, developers, manufacturers, distributors, marketers, sellers, and installers are  
23 strictly liable to the Plaintiffs for their damages set forth herein.

24 115. As designers, developers, manufacturers, distributors, marketers, sellers, and  
25 installers, Defendants willfully, maliciously, and by gross negligence and in total disregard,  
26 designed, developed, manufactured, distributed, marketed, sold, and installed the Kitec plumbing  
27 system and Kitec fittings so as to cause the Subject Homes to be in a dangerous, defective, and  
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1 unsafe and unfit condition for habitation and use in the way and manner the homes plumbing  
2 system would customarily be used and employed.

3 116. As designers, developers, manufacturers, distributors, marketers, sellers, and  
4 installers, and having full knowledge of said Kitec fittings being defective, dangerous, and of an  
5 unsafe condition, Defendants willfully, maliciously, knowingly, and by gross negligence and in  
6 total disregard, placed them on the market, and into the stream of commerce, knowing that they  
7 would be sold and used by members of the general public without inspection for defects.

8 117. The Kitec plumbing system and Kitec fittings were installed at the Subject Homes  
9 by the Plumbing Defendants in the same condition that they were in when they left the control of  
10 Ipex.

11 118. As a direct and proximate result of all the foregoing and as a result of the acts  
12 and/or omissions of Defendants, Plaintiffs and the class have sustained damage, in an amount in  
13 excess of Ten Thousand Dollars (\$10,000.00), and as further provided for pursuant to NRS  
14 §40.600 *et seq.*

15 119. It has been necessary for the Plaintiffs to retain the services of Class Counsel to  
16 represent them and the class and to bring this action, and attorneys' fees and costs should be  
17 awarded, as provided by law.

## 18 VIII.

### 19 THIRD CLAIM FOR RELIEF

#### 20 (Breach of Express Warranty - Against Ipex and Plumbing Defendants)

21 120. Plaintiffs repeat, reallege, and incorporate herein by reference all prior paragraphs  
22 as though fully set forth herein.

23 121. Ipex designed, developed, manufactured, distributed, and marketed the Kitec  
24 plumbing system for purposes of its eventual sale to retail buyers.

25 122. Ipex included an express thirty-year warranty with the Kitec plumbing system.

26 123. Furthermore, the express statements, assertions, marketing materials, and  
27 representations by each Defendant concerning the Kitec plumbing system and Kitec fittings as  
28 set forth above constitute express warranties.

1 124. Defendants failed to provide a defect-free home and failed to inspect and identify  
2 pipe defects and defects in the pipe's fitting and components.

3 125. Ipex failed to provide a defect-free home in failing to provide quality  
4 workmanship and defect free materials and merchandise in manufacturing the Kitec XPA pipe  
5 and fittings.

6 126. The Plumbing Defendants failed to provide a defect-free home in failing to  
7 provide quality workmanship and defect-free materials in their installation of the Kitec plumbing  
8 system and Kitec fittings.

9 127. But for the manufacturing defect, design defect, selection of improper materials,  
10 improper installation, and/or the breaches of duty by each Defendant, Plaintiffs and the class  
11 would not have sustained injury or damages.

12 128. Upon discovery of the defective Kitec plumbing systems installed within their  
13 homes, Plaintiffs have diligently brought this Complaint to give notice to Defendants of  
14 Plaintiffs' claims including breach of express warranties made by Defendants to Plaintiffs.

15 129. As a direct and proximate result of each Defendants' breach, Plaintiffs and the  
16 class have sustained damage, in an amount in excess of Ten Thousand Dollars (\$10,000.00), and  
17 as further provided for pursuant to NRS §40.600 *et seq.*

18 130. It has been necessary for the Plaintiffs to retain the services of Class Counsel to  
19 represent them and the class and to bring this action, and attorneys' fees and costs should be  
20 awarded, as provided by law.

21 **IX.**

22 **FOURTH CLAIM FOR RELIEF**

23 **(Breach of Implied Warranty - Against Ipex and Plumbing Defendants)**

24 131. Plaintiffs repeat, reallege, and incorporate herein by reference all prior paragraphs  
25 as though fully set forth herein.

26 132. Defendants designed, developed, manufactured, distributed, and marketed the  
27 Kitec plumbing system and Kitec fittings for purposes of its eventual sale to retail buyers.

28 133. Defendants impliedly warranted that the Kitec plumbing system and Kitec fittings

1 were properly designed, developed, manufactured, distributed, marketed, sold, and installed and  
2 that the designs and materials were proper and of first-class and workmanlike quality.

3 134. The Plumbing Defendants impliedly warranted that the Kitec plumbing system  
4 and Kitec fittings were properly installed and that all work performed was proper and of first-  
5 class workmanlike quality.

6 135. Plaintiffs relied upon said warranties and believed that said designs, work, and  
7 materials were of first-class workmanlike quality and fit for the intended use and purpose of a  
8 plumbing system.

9 136. Plaintiffs are informed and believe, and thereon allege, that each Defendant  
10 breached said warranty by failing to provide adequate and proper designs, calculations, and/or  
11 details and failing to properly install the Kitec plumbing system and Kitec fittings.

12 137. Defendants failed to provide a defect-free home and failed to inspect and identify  
13 pipe defects and defects in its components.

14 138. But for each Defendants' breach of implied warranty, Plaintiffs and the class  
15 would not have sustained injury or damages.

16 139. Upon discovery of the defective Kitec plumbing systems installed within their  
17 homes, Plaintiffs have diligently brought this Complaint to give Defendants notice of Plaintiffs'  
18 claims, which include breach of implied warranties made by Defendants to Plaintiffs.

19 140. As a direct and proximate result of each Defendants' breach of implied warranty,  
20 Plaintiffs and the class have sustained damage, in an amount in excess of Ten Thousand Dollars  
21 (\$10,000.00), and as further provided for pursuant to NRS §40.600 *et seq.*

22 141. It has been necessary for the Plaintiffs to retain the services of Class Counsel to  
23 represent them and the class and to bring this action, and attorneys' fees and costs should be  
24 awarded, as provided by law.

25 **X.**

26 **FIFTH CLAIM FOR RELIEF**

27 **(Breach of Warranty of Merchantability - Against IpeX and Plumbing Defendants)**

28 142. Plaintiffs repeat, reallege, and incorporate herein by reference all prior paragraphs

1 as though fully set forth herein.

2 143. Defendants designed, developed, manufactured, distributed, marketed, and sold  
3 into the stream of commerce the Kitec plumbing system and Kitec fittings installed at the Subject  
4 Homes.

5 144. Defendants knew and/or should have known that Kitec plumbing system and  
6 Kitec fittings were not of average acceptable quality as it was designed and/or manufactured  
7 with substandard and defective materials.

8 145. Defendants knew and/or should have known that the Kitec plumbing system and  
9 Kitec fittings were not generally fit for the ordinary purpose for which they were intended to be  
10 used as they were designed and manufactured with substandard and defective materials.

11 146. Defendants knew and/or should have known that the Kitec plumbing system and  
12 Kitec fittings would reach the ultimate user and/or consumer without substantial change and  
13 would be in the condition in which it was sold.

14 147. The Defendants' Kitec plumbing system and Kitec fittings have failed.

15 148. But for each Defendants' breach, the Plaintiffs would not have sustained injury or  
16 damages.

17 149. Upon discovery of the defective Kitec plumbing systems installed within their  
18 homes, Plaintiffs have diligently brought this Complaint to give notice to Defendants of  
19 Plaintiffs' claims including breach of warranties of merchantability made by Defendants to  
20 Plaintiffs.

21 150. As a direct and proximate result of each Defendants' breach, Plaintiffs and the  
22 class have sustained damage, in an amount in excess of Ten Thousand Dollars (\$10,000.00), and  
23 as further provided for pursuant to NRS §40.600 *et seq.*

24 151. It has been necessary for the Plaintiffs to retain the services of Class Counsel to  
25 represent them and the class and to bring this action, and attorneys' fees and costs should be  
26 awarded, as provided by law.

27 **XI.**

28 **SIXTH CLAIM FOR RELIEF**

**(Negligence - Against IPEX)**

152. Plaintiffs repeat, reallege, and incorporate herein by reference all prior paragraphs as though fully set forth herein.

153. IpeX owed the Plaintiffs a duty of care to design, develop, manufacture, distribute, market, and sell a safe plumbing system, and fittings free of defects.

154. IpeX breached its duty of care by negligently designing, developing, manufacturing, distributing, marketing, and selling an unreasonably unsafe plumbing system and Kitec fittings with manufacturing defects, design defects, and selection of improper materials.

155. IpeX breached its duty of care by negligently failing to warn Nevada consumers, contractors, and retailers that the Kitec XPA plumbing system contained defective fittings that would fail.

156. As a direct and proximate result of all the foregoing and as a result of the acts and/or omissions of IpeX, Plaintiffs and the class have sustained damage, in an amount in excess of Ten Thousand Dollars (\$10,000.00), and as further provided for pursuant to NRS §40.600 *et seq.*

157. It has been necessary for the Plaintiffs to retain the services of Class Counsel to represent them and the class and to bring this action, and attorneys' fees and costs should be awarded, as provided by law.

**XII.**

**SEVENTH CLAIM FOR RELIEF**

**(Negligence - Against Plumbing Defendants)**

158. Plaintiffs repeat, reallege, and incorporate herein by reference all prior paragraphs as though fully set forth herein.

159. The Plumbing Defendants owed the Plaintiffs a duty of care to install the Kitec plumbing system and Kitec fittings properly and within the manner specified by the manufacturer, municipal codes and within the trade, and otherwise, use quality materials that were free from defect in the plumbing work performed at the Subject Homes.



- b. Select and install, or caused to be installed, products that are defect-free;
- c. Warn of the damage as a result of the installation of the Kitec plumbing system.

167. As a direct and proximate result of the foregoing, Plaintiffs and the class have suffered damages because of Kitec fittings. Builders are, therefore, strictly liable to class members for the damages set forth herein. But for Builders' selection and use of defective Kitec fittings for installation in class members' homes, class members would not have suffered damages.

168. Builders knew or should have known the Kitec fittings at issue are used to transmit water and are subject to water pressure. It was, therefore, foreseeable that any failure of Kitec fittings would cause damages to the residence and ultimate purchaser.

169. Further, Plaintiffs allege that Builders' selection and installation of Kitec fittings consciously and deliberately disregarded known safety measures in reckless disregard of the possible results, and that Builders selected and/or caused to be installed defective Kitec fittings in class members' homes with knowledge that they would be used by members of the general public without inspection for defects.

170. As a direct and proximate result of Builders' construction of residences with Kitec fittings, and as a result of the acts or omissions of Builders, Plaintiffs and the class have sustained damages in an amount in excess of Ten Thousand Dollars (\$10,000.00), and as further provided for pursuant to NRS §40.600 *et seq.*

171. It has been necessary for the Plaintiffs to retain the services of Class Counsel to represent them and the class and to bring this action, and attorneys' fees and costs should be awarded, as provided by law.

#### XIV.

#### NINTH CLAIM FOR RELIEF

#### (Breach of Express Warranty- Against Builders)

172. Plaintiffs repeat, reallege, and incorporate herein by reference all prior paragraphs as though fully set forth herein.

1 173. Builders selected and installed or caused to be installed the Kitec plumbing  
2 system, which included defective Kitec fittings, within residences in Clark County, Nevada.

3 174. Builders provided an express written warranty with respect to the plumbing  
4 systems in the homes it constructed.

5 175. By failing to provide a defect-free plumbing system, Builders breached their  
6 express warranty related to the plumbing system in the class members' homes.

7 176. Class members relied on said Builders' express warranties.

8 177. As a direct and proximate result of Builders' breach, Plaintiffs and the class have  
9 sustained damage in an amount in excess of Ten Thousand Dollars (\$10,000.00), and as further  
10 provided for pursuant to NRS §40.600 *et seq.*

11 178. It has been necessary for the Plaintiffs to retain the services of Class Counsel to  
12 represent them and the class and to bring this action, and attorneys' fees and costs should be  
13 awarded, as provided by law.

14 **XV.**

15 **TENTH CLAIM FOR RELIEF**

16 **(Breach of Implied Warranties - Against Builders)**

17 179. Plaintiffs repeat, reallege, and incorporate herein by reference all prior paragraphs  
18 as though fully set forth herein.

19 180. Builders selected and installed or caused to be installed Kitec plumbing system,  
20 which included the Kitec fittings, within residences in Clark County, Nevada.

21 181. By selecting, installing, and/or causing the Kitec plumbing system to be installed,  
22 Builders impliedly warranted that the Kitec plumbing system and Kitec fittings were of  
23 merchantable quality, and fit for the ordinary purpose for which said system and fittings were  
24 intended.

25 182. Further, Builders impliedly warranted that the Kitec plumbing system and Kitec  
26 fittings were fit for the particular purpose they were intended, that being to perform in a defect-  
27 free manner for a period of time as is expected and/or customary in the residential construction  
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1 industry.

2 183. Builders breached their implied warranties related to the plumbing system by  
3 failing to provide a defect-free plumbing system in their homes. But for Builders' breach of its  
4 implied warranties, Plaintiffs and the class would not have sustained damages.

5 184. Builders knew or should have known that Kitec fittings were not of merchantable  
6 quality or fit for the intended purposes and were designed and manufactured with substandard  
7 and defective materials.

8 185. Builders knew or should have known that Kitec fittings were not fit for the  
9 ordinary purpose for which they were intended to be used as they were designed and  
10 manufactured with substandard and defective materials.

11 186. Builders knew and/or should have known that the Kitec plumbing system and  
12 Kitec fittings would reach the ultimate user and/or consumer without substantial change and  
13 would be in the condition in which it was sold

14 187. As a direct and proximate result of each Builders' breaches of implied warranty,  
15 Plaintiffs and the class have sustained damage, in an amount in excess of Ten Thousand Dollars  
16 (\$10,000.00), and as further provided for pursuant to NRS §40.600 *et seq.*

17 188. It has been necessary for the Plaintiffs to retain the services of Class Counsel to  
18 represent them and the class and to bring this action, and attorneys' fees and costs should be  
19 awarded, as provided by law.

20 **XVI.**

21 **ELEVENTH CLAIM FOR RELIEF**

22 **(Negligence - Against Builders)**

23 189. Plaintiffs repeat, reallege, and incorporate herein by reference all prior paragraphs  
24 as though fully set forth herein.

25 190. Builders owe Plaintiffs a duty to construct their residences without defects.

26 191. Builders breached this duty of care by:

27 a. Negligently designing, developing, manufacturing, distributing,  
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marketing, and selling residences with defective Kitec fittings;

- b. Failing to adequately investigate and/or test the Kitec plumbing system to determine if it was defect-free and fit for its intended purpose or if the Kitec plumbing system would fail prior to its intended or expected useful life; and/or
- c. Negligently failing to recognize and warn consumers that Kitec fittings were defective and would fail.

192. As a direct and proximate result of the foregoing and as a result of the acts or omissions of Builders, Plaintiffs and the class have sustained damages in excess of Ten Thousand Dollars (\$10,000.00), and as further provided for pursuant to NRS §40.600 *et seq.*

193. It has been necessary for the Plaintiffs to retain the services of Class Counsel to represent them and the class and to bring this action, and attorneys' fees and costs should be awarded, as provided by law.

**XVII.**

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs pray for Judgment against Defendants as follows:

1. For general damages in excess of \$10,000.00, including all damages provided for under Chapter 40 of the Nevada Revised Statutes.
2. For special damages in excess of \$10,000.00;
3. For punitive damages in an amount to be determined at trial;
4. For reasonable attorneys' fees;
5. For costs of suit; and
6. For any such further relief this Court deems appropriate.

**XIII.**

**DEMAND FOR JURY TRIAL**

The Plaintiffs herein demand a trial by jury on all issues so triable.

DATED this 5<sup>th</sup> day of May, 2008.

HARRISON, KEMP, JONES & COULTHARD  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000  
Fax (702) 385-6001

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HARRISON, KEMP, JONES  
& COULTHARD, LLP

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J. RANDALL JONES, ESQ. (1927)  
WILLIAM L. COULTHARD, ESQ. (3927)  
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& COULTHARD, LLP  
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3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000  
Fax (702) 385-6001

**CERTIFICATE OF SERVICE**

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I hereby certify that on the \_\_\_\_ day of April, 2008, the foregoing **FIFTH AMENDED COMPLAINT FOR DAMAGES and DEMAND FOR JURY TRIAL** was served on the following by Electronic Service to:

*All parties on the E-Service List*

/s/ Nicole McLeod

---

An Employee of Harrison, Kemp Jones &

Coulthard

P:\USERS\WLC\IPEX\Pleadings\Complaints\fifth amended complaint (Astoria).wpd