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9 **SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 JOAN KIRSCH; individually and on
12 behalf of the class members at the Anthem
and; and ROE HOMEOWNERS 1
13 through 9500;

14 Plaintiffs,

v.

15 DEL WEBB COVENTRY HOMES,
16 INC., an Arizona Corporation; ANTHEM
ARIZONA, LLC, an Arizona limited
17 liability company; PULTE HOME
CORPORATION, an Illinois corporation;
18 DEL WEBB'S COVENTRY HOMES
CONSTRUCTION CO., an Arizona
19 corporation, and DOES 1 through 100,
inclusive,

20 Defendants.

CASE NO.: CV 2007-023536

The Honorable J. Richard Gama

(Electronic Filing Case)

**NOTICE TO CLASS OF PROPOSED
SETTLEMENT**

Hearing Date: May 15, 2014
Hearing Time: 1:30 p.m.

21 **TO ALL HOMEOWNERS OF RECORD OF HOMES WITH AN INITIAL ESCROW**
22 **CLOSING DATE ON OR AFTER DECEMBER 28, 1999 CONSTRUCTED WITH COPPER**
23 **WATER PIPES UNDER THE FOUNDATION SLAB:**

24 **PLEASE READ THIS NOTICE CAREFULLY, IT MAY AFFECT YOUR RIGHTS**

25 A Class Action lawsuit is now pending in the Superior Court of the State of Arizona in
26 and for the County of Maricopa, case number CV2007-023536. You are a member of the Class
if you are the owner of record of a house planned, designed, developed, constructed and
27 originally sold by Defendants Del Webb Coventry Homes, Inc.; Anthem Arizona, LLC; Pulte
Homes Corporation; or Del Webb's Coventry Homes Construction Co. (herein, collectively
28 "Del Webb/Pulte" or "Defendants") with an initial escrow closing date on or after December
28, 1999, constructed with copper water pipes under the house's foundation slab, unless you,
or a previous owner of the residence, have elected to be excluded from the Class.

1 The Class Action complaint alleges that the installation of unprotected hot and cold
2 copper water pipes under the house slabs breached the Arizona implied warranty of
3 workmanship and habitability and/or express warranties for which the Defendants are liable.
The Defendants have denied the condition is a breach of either the implied or express
warranties.

4 The Class has asserted, and Del Webb/Pulte has denied, that when unprotected hot and
5 cold water copper pipes are placed in a common trench under a foundation slab, covered with
6 soil and put to their intended use, a galvanic cell is created where ions from the hot water copper
7 pipe migrate to the cold water copper pipe eventually leading to a leak in the hot water copper
8 pipe. This phenomenon is known as thermogalvanic corrosion. The recommended repair is to
9 terminate the underslab hot water copper pipes and re-route them overhead in the attic space.

10 The parties have reached a proposed settlement of this Class Action lawsuit. On April
11 11, 2014, the Court preliminarily approved this Settlement subject to notice to the individual
12 Class Members and their opportunity to be heard.

13 THEREFORE, YOU ARE HEREBY GIVEN NOTICE that on May 15, 2015 at 1:30
14 p.m. in Courtroom 701 of the Superior Court of the State of Arizona in and for the County of
15 Maricopa located at 201 W. Jefferson, Phoenix, Arizona, 85003, a hearing will take place for
16 the Court to decide whether the Settlement is reasonable and fair and whether the Court should
17 grant final approval of the Settlement. You are entitled, either in person or through legal
18 counsel, to appear and be heard at the scheduled hearing.

19 I.

20 WHAT THE PROPOSED SETTLEMENT PROVIDES

- 21 1. Del Webb/Pulte shall provide an Extended Warranty for 25 years from the date of the
22 initial close of escrow, which Extended Warranty shall run with title to the house and pass to
23 subsequent purchasers until the Extended Warranty period expires.
- 24 2. There are 2,572 houses in the Class. A list of those houses, by address, will be provided
25 to the Court.
- 26 3. Del Webb/Pulte shall create a future repair fund ("Fund") to be administered by
27 Gallagher Bassett Services, Inc. ("Administrator") to address repair of qualifying failures during
28 the extended warranty period. The costs incurred by Gallagher Bassett Services, Inc. for
administration of the Fund will be paid out of the Fund.
- 1 The Maximum Amount of the Fund will be Ten Million Dollars (\$10,000,000.00). If
2 during the term of the Extended Warranty, the Fund is depleted, no further funds will be made
3 available and the Defendants' obligations under the Settlement will be extinguished.
- 4 Upon Court approval of the Settlement, the Defendants shall immediately deposit Five
5 Hundred Thousand Dollars (\$500,000.00) into the Fund. Any time, until the Extended Warranty
6 elapses or the Maximum Amount of the Fund has been or will be reached, if the total amount
7 of the Fund drops below Two Hundred Fifty Thousand Dollars (\$250,000.00), the Defendants
8 shall supplement the Fund to increase it to Five Hundred Thousand Dollars (\$500,000.00).
- 9 The Fund shall be bonded with a Two Million Dollar (\$2,000,000.00) bond. The
10 Administrator shall pay the annual premium for the bond out of the Fund. Class Counsel and
11 Del Webb/Pulte maintain the right to request an increase or decrease to the bond amount at any
12 time during the extended warranty period.

- 1 7. The "qualified leak" process shall be as follows:
- 2 A. A homeowner Class member who believes there is a hot water leak under
3 the foundation slab at the residence must contact the Administrator. If the
4 settlement is approved, contact information for Gallagher Bassett Services, Inc.
5 will be provided by mail to all class members.
- 6 B. The Administrator will promptly arrange for an independent, qualified
7 plumber to perform an initial inspection to determine if additional leak detection
8 is warranted.
- 9 C. If from the initial inspection it is determined additional leak detection is
10 warranted, the Administrator shall arrange for an independent, qualified leak
11 detection company to perform a leak detection analysis.
- 12 D. If the independent, qualified leak detection company determines there is
13 a leak in the hot water copper pipes under the foundation, the Administrator,
14 within 30 days, shall issue the homeowner a check in the amount of Seven
15 Thousand Dollars (\$7,000.00).
- 16 E. All communications regarding the "qualified leak" process shall be
17 between the claiming homeowner and the Administrator.
- 18 8. If there is a "qualified leak", a one-time payment of Seven Thousand Dollars (\$7,000.00)
19 is the maximum amount that will be paid from the Fund at any Class address. It will be up to
20 the claiming homeowner to arrange for repair of the leaking hot water copper pipes. It is
21 strongly recommended that a qualified, licensed and bonded plumbing company make the
22 repairs.
- 23 9. Del Webb/Pulte shall pay Class Counsel (Fenton Grant Mayfield Kaneda & Litt, LLP)
24 up to a maximum of One Million Two Hundred Thousand Dollars (\$1,200,000.00) for
25 reimbursement of verified expert investigation costs and litigation costs.
- 26 10. Del Webb/Pulte shall pay Class Counsel (Fenton Grant Mayfield Kaneda & Litt, LLP
27 and Borowsky Law Group, P.C.) attorney fees in the amount of Three Million Dollars
28 (\$3,000,000.00), on the condition that Class Counsel shall not seek additional attorney fees in
this matter, and after the Settlement is approved by the Court and the time for Class member
objections has expired. Said fees shall be paid to Class Counsel within 30 days after the Class
Settlement is finalized and approved by the Court.
11. The Administrator shall provide the Court and Class Counsel a bi-annual statement
accounting for all claims received and funds dispersed from the Fund.
12. Any Class member that previously repaired a leak in the under slab copper pipes shall
be reimbursed, in full, for the verified costs of such repair up to Seven Thousand Dollars
(\$7,000). A list of those homes and reimbursement amounts shall be provided to the Court.

ARIZONA LAW REQUIRES THAT HOMEOWNERS MUST DISCLOSE ANY KNOWN CONSTRUCTION DEFICIENCIES IN THEIR HOUSE TO PROSPECTIVE PURCHASERS. ACCORDINGLY, SHOULD THE SELLER HAVE ACTUAL KNOWLEDGE OF DEFECTIVE CONSTRUCTION IN THEIR HOUSE, THEY ARE OBLIGED TO DISCLOSE THE DEFECT AND ITS REPAIRS, IF ANY, TO A PROSPECTIVE BUYER PRIOR TO THE CLOSE OF ESCROW. A QUALIFIED REAL ESTATE PROFESSIONAL CAN PROVIDE YOU ASSISTANCE WITH THE ARIZONA DISCLOSURE REQUIREMENTS.

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II.

WHAT YOUR OPTIONS ARE AS A CLASS MEMBER

If you, or a prior owner of your house, have not previously elected to be removed from the Class, you have the right to object to the terms of the Settlement. Class members may object to the Settlement by filing a written objection and notice of intention to appear with the Clerk in Courtroom 701 of the Superior Court of the State of Arizona in and for the County of Maricopa, case number CV2007-023536. A copy of any such objection and notice of intention to appear also must be mailed to Class Counsel as follows:

Bruce Mayfield, Esq.
FENTON GRANT MAYFIELD KANEDA & LITT, LLP
1955 Village Center Circle
Las Vegas, Nevada 89134

You must state the specific grounds for your objection, your full name, your current mailing address, the address of the Class house (if different from your current mailing address, the case name (*Kirsch v. Del Webb Coventry Homes Inc., et. al*), case number, and the date, time and place of hearing. In order to be considered by the Court, your written objection must be filed with the Clerk of the Court and copies mailed to Class Counsel at least five (5) business days in advance of the May 15, 2014 hearing. If you comply with the provisions outlined in this paragraph for registering a written objection to the Settlement, you do not have to appear at the May 15, 2014 hearing for the Court to consider your objection; however, if you chose to appear at the hearing, the Class Counsel will represent you.

If you wish to remain a member of the Class, but do not wish to be represented by Class Counsel, in addition to your written objection, you must enter an appearance yourself or through your own attorney. To do so, you must file an Entry of Appearance with the Clerk in Courtroom 701 of the Superior Court of the State of Arizona in and for the County of Maricopa, case number CV2007-023536 and mail copies to Class Counsel at least five (5) business days in advance of the May 15, 2014 hearing. If you chose this option, you solely will be responsible for the fees and costs of your own attorney.

III.

WHAT YOU GIVE UP IN THIS SETTLEMENT

If the Court approves the Settlement, the Class Action lawsuit against the Defendants concerning the installation of unprotected copper water pipes under the foundation slabs of the Class houses at Anthem will be resolved in its entirety as between all Class members and the Defendants and the Settlement terms will be implemented.

Under such Court approval, if you, or a prior owner, have not excluded yourself from the Class, you will be deemed to have submitted yourself to the jurisdiction of the Court and it further will be deemed that you are releasing the Defendants from any claims you may have against the Defendants for the use, installation and/or failure of the unprotected copper water pipes under the foundation slab of your house. If during the course of the Extended Warranty period, your house suffers a leak in the unprotected copper hot water pipes under your foundation slab, **YOUR ONLY RECOURSE WILL BE TO FOLLOW THE "QUALIFIED LEAK" PROVISIONS AS DESCRIBED HEREIN ABOVE.** If your house suffers a leak in the unprotected copper hot water pipes under your foundation slab after the Extended Warranty period expires, **YOU WILL HAVE NO RECOURSE WHATSOEVER AGAINST THE DEFENDANTS OR ANYONE ELSE.**

1 If the Court does not approve this Settlement, or the Settlement does not become final
2 for some other reason, the litigation against the Defendants will continue.

3 **IV.**

4 **FINAL SETTLEMENT APPROVAL HEARING**

5 On May 15, 2015 at 1:30 p.m. in Courtroom 701 of the Superior Court of the State of
6 Arizona in and for the County of Maricopa located at 201 W. Jefferson, Phoenix, Arizona,
7 85003, a hearing will take place before the Honorable J. Richard Gama to decide whether the
8 Settlement is reasonable and fair, and whether the Court should grant final approval of the
9 Settlement. The hearing date may change without further notice. Whether or not you make an
10 appearance, at the hearing, personally or through an attorney, the Court will consider your
11 objection if it was timely filed pursuant to the provisions of this Notice.

12 **V.**

13 **FOR MORE INFORMATION**

14 For more information regarding the precise terms and conditions of the Settlement,
15 contact Class Counsel Bruce Mayfield, Esq., FENTON GRANT MAYFIELD KANEDA &
16 LITT, LLP at (702) 947-4900 or (800) 238-0625. The Class Action complaint and other court
17 documents regarding this action are available for inspection during regular business hours at the
18 office of the Clerk of Superior Court of the State of Arizona in and for the County of Maricopa
19 located at 201 W. Jefferson, Phoenix, Arizona, 85003.

20 **DO NOT CONTACT THE COURT, THE COURT CLERK OR THE DEFENDANTS**
21 **WITH QUESTIONS REGARDING THIS NOTICE OF THE PROPOSED SETTLEMENT.**
22 **THEY WILL NOT BE PERMITTED TO DISCUSS THE TERMS OF THE SETTLEMENT**
23 **WITH YOU. ANY QUESTIONS SHOULD BE DIRECTED TO CLASS COUNSEL.**

24 DATED this 17th day of April, 2014

25 FENTON GRANT MAYFIELD
26 KANEDA & LITT, LLP

27 By: 
28 BRUCE MAYFIELD, ESQ., Bar No. 020884