SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 09/08/2023 TIME: 10:25:00 AM DEPT: C-74

JUDICIAL OFFICER PRESIDING: Keri Katz
CLERK: Kim Mulligan
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2015-00033538-CU-CD-CTL** CASE INIT.DATE: 10/05/2015
CASE TITLE: **Christian Griffin vs Black Mountain Ranch LLC [E-File]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Construction Defect

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EVENT TYPE: Motion Hearing to Certify/Decertify Class Action

APPEARANCES

The Court, having taken the above-entitled matter under submission on 09/06/2023 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

After entertaining the arguments of counsel and taking the matter under submission, and upon consideration of all the evidence and pleadings, the Court now vacates the tentative ruling (ROA # 659) on the motion for class certification. Instead, the court issues and adopts the final order set forth below. The final order set forth below largely tracks the previously issued tentative ruling, except with some changes and additions. The issuance of this single final ruling is intended to provide a clear record:

The court addresses the evidentiary issues. Defendant Taylor Morrison of California, LLC's evidentiary objections are all OVERRULED. Rick Engineering's evidentiary objections are all OVERRULED. Cross-Defendant Glenn A. Rick Engineering and Development Company's request for judicial notice is GRANTED. Defendant Santaluz, LLC's request for judicial notice is GRANTED. Plaintiffs' reply request for judicial notice is GRANTED.

The court then rules as follows. Plaintiffs' motion for class certification is GRANTED. CCP § 382.

Preliminarily, the court considers Cross-Defendant Glenn A. Rick Engineering and Development Company's opposition as well as the joinders by Cross-Defendant Atkins North America, Inc. Plaintiffs fail to provide any authority precluding Rick Engineering or Atkins from opposing Plaintiffs' motion. *Evans v. Lasco Bathware, Inc.* (2009) 178 Cal.App.4th 1417, a case both sides rely on, although not addressing this issue, indicates opposition by a cross-defendants such as Rick Engineering and Atkins

in this case is appropriate ["Lasco, joined by cross-defendant LSW and Sun, opposed the class certification motion"]. *Evans*, 178 Cal.App.4th at 1424. Also, the court exercises its discretion in favor of considering Atkins late-filed and late-served joinders.

Moving on to the merits,

Code of Civil Procedure section 382 authorizes class actions "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court...." The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. (*Lockheed, supra,* at p. 1104, 131 Cal.Rptr.2d 1, 63 P.3d 913, citing *Washington Mutual Bank v. Superior Court* (2001) 24 Cal.4th 906, 913, 103 Cal.Rptr.2d 320, 15 P.3d 1071 (*Washington Mutual*).) The "community of interest" requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. (*Lockheed, supra,* at p. 1104, 131 Cal.Rptr.2d 1, 63 P.3d 913.)

The certification question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439–440, 97 Cal.Rptr.2d 179, 2 P.3d 27 (*Linder*).) A trial court ruling on a certification motion determines "whether ... the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238, 102 Cal.Rptr. 1, 497 P.2d 225; accord, *Lockheed, supra,* 29 Cal.4th at pp. 1104–1105, 131 Cal.Rptr.2d 1, 63 P.3d 913.)

Sav–On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319, 326. See also, *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

Ascertainable Class

The court finds Plaintiffs meet their burden of establishing an ascertainable class.

Whether a class is ascertainable is determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members. (*Vasquez* v. *Superior Court, supra*, 4 Cal.3d at pp. 821-822; *Miller* v. *Woods, supra*, 148 Cal.App.3d at p. 873.)

Reyes v. San Diego County Bd. of Supervisors (1987) 196 Cal.App.3d 1263, 1271.

As *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955 explains,

. . . the objectives of this requirement are best achieved by regarding a class as ascertainable when it is defined "in terms of objective characteristics and common transactional facts" that make "the ultimate identification of class members possible when that identification becomes necessary." (*Hicks*, *supra*, 89 Cal.App.4th at p. 915, 107 Cal.Rptr.2d 761.) We regard this standard as including class definitions that are "sufficient to allow a member of [the class] to identify himself or herself as having a right to recover based on the [class] description." (*Bartold*, *supra*, 81 Cal.App.4th at p. 828, 97 Cal.Rptr.2d 226.)

Noel, 7 Cal.5th at 980.

The operative Second Amended Complaint defines the class as:

[A]ll persons who were, or are purchasers and owners of homes in the Del Sur community whose homes are plumbed with copper pipes or copper components.

[SAC ¶ 42.]

However, in their moving papers Plaintiffs seek to certify a class defined as:

[T]he purchasers and owners of single-family homes plumbed with copper piping that are located within the Del Sur community of Black Mountain Ranch.

The court analyzes this motion in the context of the class definition proposed by Plaintiffs in their moving papers on this motion.

Plaintiffs submit evidence that all homes in the Del Sur subdivision receive water from the Black Mountain Ranch Reservoir and that there are at least 438 single-family homes in the Del Sur subdivision that are plumbed with copper piping. Plaintiffs also submit evidence that putative class members can be identified through public records, construction plans and plumbing contracts and that Plaintiffs can effectuate notice via local publications. The court finds Plaintiffs establish that the size of the class is sufficiently numerous and that there are sufficient means available to identify members of the class. The court also finds the class definition sufficient to allow members of the putative class to identify themselves as having a right to recover based on the description of the class.

The court is not persuaded by the arguments opposing parties raise. Evidence that at deposition the two named Plaintiffs could not identify more than a few other putative class members does not preclude a finding of numerosity. Based on the evidence Plaintiffs submit, putative class members will be able to self-identify based on the location of their homes within Del Sur and based on a visual inspection of plumbing components within their homes. Although Rick Engineering challenges the declaration of Plaintiffs' expert Craig Schlumbohm on issues relating to ascertainability, the court finds Plaintiffs evidence sufficient to support a finding of ascertainability.

At oral argument additional issues were raised regarding the class definition. The court ordered the parties to meet and confer and submit a stipulation addressing these issues. The parties failed to stipulate and subsequent briefing was ordered by the court. After review of all pleadings and considering all relevant evidence, the court defines the class as follows:

Current owners of single-family residential homes that are plumbed with copper and located within one of the following communities of the Del Sur housing development of Black Mountain Ranch: Averon, Alcala, Bridgewalk, Cabrillo, Kensington, or Madeira 1.

Community of Interest

The court finds Plaintiffs meets their burden of establishing a sufficient community of interest.

As set forth above,

[t]he "community of interest" requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class

representatives who can adequately represent the class.

Sav-On, 34 Cal.4th at 326.

- ***Predominance***

The "ultimate question" the element of predominance presents is whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238, 102 Cal.Rptr. 1, 497 P.2d 225; accord, *Sav–On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 17 Cal.Rptr.3d 906, 96 P.3d 194.) The answer hinges on "whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment." (*Sav–On,* at p. 327, 17 Cal.Rptr.3d 906, 96 P.3d 194.) A court must examine the allegations of the complaint and supporting declarations (*ibid.*) and consider whether the legal and factual issues they present are such that their resolution in a single class proceeding would be both desirable and feasible. "As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107 Cal.Rptr.2d 761; accord, *Knapp v. AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941, 124 Cal.Rptr.3d 565.)

Brinker, 53 Cal.4th at 1021–1022.

The operative Second Amended Complaint alleges two causes of action for strict products liability and negligence. Plaintiffs' theory of recovery is that the defectively designed/constructed/installed Reservoir delivers water containing a bacteria that causes corrosion of the copper plumbing in the homes in the Del Sur subdivision of Black Mountain Ranch. Plaintiffs submit evidence that they will utilize common proof to prove 1) that the Reservoir was defectively designed/constructed/installed, 2) the corrosive nature of water from the Reservoir as a result of nitrification/nitrifying bacteria, 3) the effect of the corrosive water on copper, and 4) that all putative class members sustained the same alleged damage – corrosion of copper plumbing. Plaintiffs also submit evidence that each putative class member seeks the same remedy – complete replumbing with corrosion-resistant materials. Such evidence supports a finding that common issues predominate.

Opposing parties Defendants Taylor Morrison of California, LLC, Defendant Santaluz, LLC, Cross-Defendant Rick Engineering and joining party Cross-Defendant Atkins raise various issues in opposition. Taylor Morrison submits evidence that there were multiple builders involved in the construction of the homes within the Del Sur subdivision. Such evidence does not defeat a finding of commonality. Plaintiffs' theory is not dependent on proving that there are any defects in the homes. Rather, Plaintiffs' theory is that the Reservoir was defectively designed/constructed/installed and that water from the Reservoir causes corrosion of copper plumbing within the homes. Thus, the only pertinent construction-related issue is whether the home has copper plumbing.

The court is not persuaded by opposing parties' reliance on the analysis of the strict liability and negligence causes of action in *Hicks.* Opposing parties rely exclusively on the following short analysis of the strict liability and negligence claims in *Hicks*.

It is well-settled strict liability and negligence do not provide a remedy for defects which have not caused property damage, i.e., defects causing only economic damage. Accordingly, to recover under these

theories of liability each class member would have to come forward and prove specific damage to her home (e.g., uneven floors, insect infestation, misaligned doors and windows), and that such damage was caused by cracks in the foundation, not some other agent.

Given this need for individualized proof, commonality of facts is lost and the action splits into more pieces than the allegedly defective foundations.

Hicks, 89 Cal.App.4th at 923–924.

However, unlike the circumstances in *Hicks*, Plaintiffs' theory as to the strict liability and negligence causes of action does not require each putative class member to prove specific property damage caused by exposure to water from the allegedly defective Reservoir. Rather, Plaintiffs theory is that all homes with copper plumbing suffered damage upon water from the Reservoir first coming into contact with copper plumbing in the home. Plaintiffs intend to establish the fact of damage on a class-wide basis via evidence that exposure of copper to water from the Reservoir causes corrosion at the point of entry of the water into the home. In this circumstance, the court finds Plaintiffs establish that Defendant's "liability can be determined by facts common to all members of the class" so as to allow for class certification under the analysis in *Hicks*. *Hicks*, 89 Cal.App.4th at 916.

Opposing parties also argue that there will be differing costs of replumbing each house. However, "[a]s a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." *Hicks,* 89 Cal.App.4th at 916. *Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th 1138 further explains,

[o]rdinarily, class treatment of a claim is appropriate if the facts necessary to establish liability are capable of common proof, including the so-called " 'fact of damage,' " that is, the existence of harm establishing an entitlement to damages. (*B.W.I. Custom Kitchen v. Owens–Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1350–1354, 235 Cal.Rptr. 228.) If the defendant's liability can be determined " ' "by facts common to all members of the class," ' " a class may be certified even though class members must individually establish the amount of their restitution. (See *Duran, supra,* 59 Cal.4th at p. 28, 172 Cal.Rptr.3d 371, 325 P.3d 916, quoting *Brinker, supra,* 53 Cal.4th at pp. 1021–1022, 139 Cal.Rptr.3d 315, 273 P.3d 513.)

Safeway, 238 Cal.App.4th at 1154.

Based on Plaintiffs' theory, Plaintiffs will establish the "fact of damage" by common proof that water from the Reservoir causes corrosion of copper plumbing. Such circumstances support class certification.

Taylor Morrison also raises issues relating to its affirmative defenses. The assertion of the affirmative defense of comparative negligence does not defeat a finding of commonality because Plaintiffs' theory is that the homes are damaged as soon as the water comes in contact with copper plumbing, irrespective of any other feature of the house (i.e., water heater, water softener) and irrespective of any maintenance issues. Although opposing parties raise issues as to the cause of "blue water" Plaintiffs' claims are not based on "blue water" but rather on water from the Reservoir causing the corrosion of copper plumbing.

Taylor Morrison also argues that Plaintiffs claims are barred under the *Noerr-Pennington* doctrine. As Taylor Morrison concedes, such merit-based arguments are generally not considered in ruling on a motion for class certification. As *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429 explains,

[w]hen the substantive theories and claims of a proposed class suit are alleged to be without legal or factual merit, the interests of fairness and efficiency are furthered when the contention is resolved in the context of a formal pleading (demurrer) or motion (judgment on the pleadings, summary judgment, or summary adjudication) that affords proper notice and employs clear standards. Were we to condone merit-based challenges as part and parcel of the certification process, similar procedural protections would be necessary to ensure that an otherwise certifiable class is not unfairly denied the opportunity to proceed on legitimate claims. Substantial discovery also may be required if plaintiffs are expected to make meaningful presentations on the merits. All of that is likely to render the certification process more protracted and cumbersome, even if, as Thrifty suggests, trial courts were prohibited from resolving factual disputes.[8] Such complications hardly seem necessary when procedures already exist for early merit challenges.

Linder, 23 Cal.4th at 440–441.

Taylor Morrison relies on *Bennett v. Regents of University of California* (2005) 133 Cal.App.4th 347 which recognizes

[i]n an exceptional case, where the parties have had notice and an opportunity to brief the issue, class certification may be refused because a claim lacks merit as a matter of law. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 443, 97 Cal.Rptr.2d 179, 2 P.3d 27.)

Bennett, 133 Cal.App.4th at 355.

Taylor Morrison's arguments ignore that the "notice and opportunity to brief the issue" discussed in *Linder* was with reference to "a defendants demurrer or pretrial motion." *Linder*, 23 Cal.4th at 440. As Taylor Morrison raises this issue in opposition, the court finds Plaintiffs have not had sufficient notice and opportunity to brief this issue. Taylor Morrison also fails to establish how factual issues such as whether Defendants' alleged conduct vis-à-vis the City constitutes "petitioning activity" and whether Defendants' alleged conduct was "objectively baseless" such that these activities fall outside of the *Noerr-Pennington* doctrine can be appropriately adjudicated in the context of this motion for class certification. The court finds Taylor Morrison fails to establish that this case is the type of "exceptional case" allowing for adjudication of any merits-based issues on this motion for class certification.

For these same reasons, the other merits-based issues opposing parties raise are not properly considered in opposition to a motion for class certification. See also, *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.

A class certification motion is not a license for a free-floating inquiry into the validity of the complaint's allegations; rather, resolution of disputes over the merits of a case generally must be postponed until after class certification has been decided (*Fireside Bank v. Superior Court, supra,* 40 Cal.4th at pp. 1083–1086, 56 Cal.Rptr.3d 861, 155 P.3d 268), with the court assuming for purposes of the certification motion that any claims have merit (*Linder,* at p. 443, 97 Cal.Rptr.2d 179, 2 P.3d 27).

Brinker, 53 Cal.4th at 1023.

The other issues opposing parties raise, including that Plaintiffs' expert Bowcock admits "the water from the Reservoir complies with all applicable federal and state water quality standards" and arguments that the City of San Diego is responsible for the quality of all water from the Reservoir, are issues subject to common proof. Also, evidence that "blue water" and corroded pipes may be caused by other agents

(type of water heater, type of water softener (if any), type of plumbing fixtures, improper installation of plumbing fixtures, maintenance-related issues) does not defeat certification because Plaintiffs' theory is that the water coming from the Reservoir caused damage immediately upon coming into contact with the copper plumbing inside the house. The issue of when the City of San Diego banned PEX plumbing is also subject to class-wide proof. Although opposing parties argue that there are individualized issues relating to damage to other property (not copper plumbing), diminution in value/impact on rental values, and personal injuries, Plaintiffs are not pursuing these types of damages.

Rick Engineering argues that some of the homes included in Plaintiffs' calculations may not include copper plumbing. However, verification that a class member's home contains copper plumbing may be addressed in the post-trial claims process. As *Sav-On* explains,

[w]e long ago recognized "that each class member might be required ultimately to justify an individual claim does not necessarily preclude maintenance of a class action." (*Collins v. Rocha, supra,* 7 Cal.3d at p. 238, 102 Cal.Rptr. 1, 497 P.2d 225.) Predominance is a comparative concept, and "the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate." (*Reyes v. Board of Supervisors, supra,* 196 Cal.App.3d at p. 1278, 242 Cal.Rptr. 339; see *Lockheed, supra,* 29 Cal.4th at p. 1105, 131 Cal.Rptr.2d 1, 63 P.3d 913; *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 707–710, 63 Cal.Rptr. 724, 433 P.2d 732.) Individual issues do not render class certification inappropriate so long as such issues may effectively be managed. (*Richmond v. Dart Industries, Inc., supra,* 29 Cal.3d at p. 473, 174 Cal.Rptr. 515, 629 P.2d 23; see also *Occidental Land, Inc., supra,* 18 Cal.3d at pp. 363–364, 134 Cal.Rptr. 388, 556 P.2d 750; *Washington Mutual, supra,* 24 Cal.4th at p. 922, 103 Cal.Rptr.2d 320, 15 P.3d 1071.)

Sav-On, 34 Cal.4th at 334.

To the extent opposing parties raise issues as to the opinions of Plaintiffs' experts Craig Schlumbohm and Robert W. Bowcock, the court finds both Schlumbohm and Bowcock's analysis sufficient to satisfy the requirements of *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747. See, *Apple Inc. v. Superior Court* (2018) 19 Cal.App.5th 1101.

At oral argument Santaluz again raised the issue of the applicability of the Right to Repair Act (CC § 895, et seq.). Preliminarily, the Right to Repair Act does not apply to strict liability causes of action. CC § 936; *Acqua Vista Homeowners Assn. v. MWI, Inc.* (2017) 7 Cal.App.5th 1129; *State Farm General Insurance Company v. Oetiker, Inc.* (2020) 58 Cal.App.5th 940. As such, the viability of Plaintiffs' strict liability cause of action as a class action is not impacted by the Right to Repair Act. Addressing Plaintiffs' negligence cause of action, Santaluz's arguments are based on the premise that "Plaintiff contends the deficiency here is the existence of copper plumbing in the homes which is corroding." Santaluz argues that "Plaintiff's complaint and discovery responses unequivocally establish the instant claims of defective plumbing fall squarely and fully and exclusively under the Right to Repair Act.

However, the Second Amended Complaint alleges:

The design and construction by Defendants, and any successors and/or assignees, of the Black Mountain Ranch Reservoir is defective and has caused and/or contributed to the ongoing delivery of corrosive water and resultant damage to Plaintiffs and the Class.

[SAC p. 3, ll. 26-28 through p. 4. l. 1.]

50. Defendants (and their predecessors, successors and/or assignees) designed, distributed, and/or supplied the defective water systems, including the Reservoir, and facilitated the distribution and supply of corrosive water. The treated water received by Class members is defective and Class Plaintiffs contend that the water's lack of suitability and damaging effects were worsened by the defective water system, including the Reservoir, designed and constructed by Defendants. . . .

53. Plaintiffs are informed and believe, and thereon allege, that the treated water supplied and/or distributed by Defendants is and was defective at the point of delivery of the water and at such time as the water leaves the Reservoir designed, built, and/or facilitated by the Defendants. . . .

62. A reasonable person/entity in Defendant(s)' position under similar circumstances would have warned the merchant homebuilders (at a minimum), as well as Plaintiffs and the Class, of the dangers posed by the water rendered corrosive to copper stored and flowing through Defendant's Reservoir system. Yet, despite the fact that Defendants knew or should have known of the unsafe condition and defects present within the water, and how such defective water would damage copper plumbing, Defendants failed to ensure necessary precautions, such as requiring or cautioning that compatible plumbing systems and materials were used. . . .

63. Defendants recklessly and/or negligently represented to Plaintiffs and Class Members that the homes in the Del Sur community met higher standards of water quality when, in fact, the water was defective, damaging, and posed potential health risks to the Plaintiffs.

73. . . . . As ultimately designed and built, the Reservoir is defective and below the standard of care. . . .

As such, as pled the Second Amended Complaint alleges, not that the copper plumbing is defective, but that the Reservoir is defective. Neither Santaluz nor Taylor Morrison (the latter of whom raises this issue only in a footnote in its opposing papers) provide citation to any allegations in the Second Amended Complaint, or any prior complaint, identifying the copper plumbing as defective. Santaluz relies on excerpts of Plaintiffs' responses to special interrogatories wherein Plaintiffs confirm they contend that the plumbing lines in their homes are corroding, and that the corrosion is impeding the life of the plumbing systems in Plaintiffs' homes. However, such responses do not establish that Plaintiffs contend the plumbing systems themselves are defective. Significantly, Santaluz fails to provide any authority under which the alleged corrosion of copper plumbing as a result of an alleged defect not within the home (i.e., the Reservoir) renders Plaintiffs' claims subject to the Right to Repair Act. Even assuming the Right to Repair Act applies, neither Santaluz nor Taylor Morrison provides an explanation as to why they have not brought a CC § 930(b) motion to stay. In these circumstances, the court finds opposing parties fail to establish that the Right to Repair Act applies to Plaintiffs' claims in this case.

- ***Class representatives with claims or defenses typical of the class***

The court finds Plaintiffs establish that their claims are typical of the class.

We note that it has never been the law in California that the class representative must have *identical* interests with the class members. The only requirements are that common questions of law and fact *predominate* and that the class representative be *similarly* situated. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 815 [94 Cal.Rptr. 796, 484 P.2d 964, 53 A.L.R.3d 513].)

Classen v. Weller (1983) 145 Cal.App.3d 27, 46. See also, *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347.

The court finds Plaintiffs' claims are substantially similar to those of the putative class members. Plaintiffs are homeowners within the Del Sur subdivision and have copper plumbing in their house. Evidence that Plaintiffs no longer live in this home does not defeat a finding of typicality. The court finds the evidence sufficient to establish that Plaintiff is similarly situated with members of the putative class.

Taylor Morrison argues that Plaintiffs home' is not one of the 438 copper plumbed houses. However, the evidence before the court is that Plaintiffs have copper plumbing in their home. As such, Plaintiffs claims are typical of the class – corrosion of copper plumbing as a result of water from the allegedly defective Reservoir. Taylor Morrison raises the $7,500.00 received by Plaintiffs as a result of a settlement with another defendant. Plaintiffs submit evidence that the cost to replace the copper plumbing exceeds this amount. Based on this evidence, the court finds Plaintiffs are similarly situated to the putative class members. The court is not persuaded by Taylor Morrison's arguments based on the cost of installation of a "phosphate feeder." The determinative issues is whether Plaintiffs' claims are similar to those of the class and the class seeks full replacement of the copper plumbing.

Taylor Morrison also raises issues as to the named Plaintiffs' fiduciary duties and the limitations on Plaintiffs' damages claims. The court finds the facts more analogous to those in *Hicks* than those in *Evans v. Lasco Bathware, Inc.* (2009) 178 Cal.App.4th 1417, the case Taylor Morrison relies on. As in *Hicks*, putative class members should be able to easily identify whether they sustained damage to any other property (other than then copper plumbing), and whether they sustained any personal injuries, so as to allow putative class members to "opt out" of the class should they seek to pursue those claims. *Hicks* recognizes "[a]nother possibility is for the trial court to use the class notice procedure to give those class members with property damage the opportunity to opt out of the class. *Hicks*, 89 Cal.App.4th 926. The court exercises its discretion in favor of conditioning class certification on Plaintiffs providing putative class members with this type of notice.

- ***Class representatives who can adequately represent the class***

The court finds Plaintiffs establish that they can adequately represent the class.

As limited above, the court finds Plaintiffs' interests are co-extensive with those of the class. Plaintiffs' claims arise out of the same allegedly defective Reservoir and Plaintiffs alleged injuries and proposed repair are the same as those of the putative class. Based on Plaintiff Dominique Griffin's declaration and Plaintiffs' attorneys' declarations, the court finds that Plaintiffs can adequately represent the class and that Plaintiffs' counsel is qualified to conduct the proposed litigation.
The court is not persuaded by any of the arguments opposing parties raise. As owners of a home allegedly suffering from corroded copper plumbing, Plaintiffs sufficiently establish their "stake" in the outcome of this litigation.

Superiority of Class Action

The court finds Plaintiffs establish that class treatment the superior method of adjudication in this case.

. . . . " 'By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation.' " (*Id.* at p. 469, 174 Cal.Rptr. 515, 629 P.2d 23.)

Many of the issues likely to be most vigorously contested in this dispute, as noted, are common ones. Absent class treatment, each individual plaintiff would present in separate, duplicative proceedings the same or essentially the same arguments and evidence, including expert testimony. The result would be a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants. "It would be neither efficient nor fair to anyone, including defendants, to force multiple trials to hear the same evidence and decide the same issues." (*Boggs v. Divested Atomic Corp.* (S.D.Ohio 1991) 141 F.R.D. 58, 67.)

Sav-On, 34 Cal.4th at 340. See also, *Gentry v. Superior Court* (2007) 42 Cal.4th 443; *Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286.

Plaintiffs sufficiently establish the benefit to class certification in this case. Any putative class member choosing to pursue litigation would bring a virtually identical action as other class members arising out of the allegedly defectively designed/constructed/installed Reservoir. Such duplicative actions are antithetical to judicial economy and efficiency and create a possibility of inconsistent judgments. The court also finds class certification will insure a fair allocation of the available pool of funding from Defendants. See, *Ortiz v. Fibreboard Corp.* (1999) 527 U.S. 815, 837.

Both sides raise the issue of manageability. *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1 sets forth "the trial court's obligation to consider the manageability of individual issues in certifying a class action." *Duran,* 59 Cal.4th at 25.

Plaintiffs submit evidence that they will rely on common evidence to prove the Reservoir's flawed design, the corrosive nature of water from the Reservoir, the effect the water from the Reservoir has on copper, that each home sustained the same damage – corrosion of copper plumbing and that each home requires the same repair – replacement of the copper plumbing with corrosion-resistant material. Plaintiffs also submit evidence that their theory is that each putative class member sustained damage at the entry point of water from the Reservoir into their homes. Based on the Plaintiffs' theory, the issues opposing parties raise as to individualized proof regarding the construction of putative class members' homes and certain features of putative class members' homes will not need to be adjudicated. The court is not persuaded by opposing parties' argument that the amount of Plaintiffs' proposed cost of repair is sufficient to incentivize individual homeowners to file their own lawsuits. Such argument ignores the burdensome effect on the court of multiple lawsuits involving the same issues.

The court confirms the Trial Readiness Conference for July 12, 2024 at 1:30pm and confirms the Trial call for July 19, 2024 at 1:30pm. All other dates shall be per code, or per stipulation of the parties.

IT IS SO ORDERED.

Keri Katz

Judge Keri Katz