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11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

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

15
16 IN RE KITEC FITTING LITIGATION

17 **FOURTH AMENDED COMPLAINT**
FOR DAMAGES and
DEMAND FOR JURY TRIAL

18
19 *Exempt from Arbitration:*
Class Action

20
21 COME NOW Plaintiffs TRACIE L. QUINTERRO, ERIC W. QUINTERRO, STEPHEN
22 INFERRERA, SHEILA INFERRERA, ANNA NAVARRO, SUSAN SHELDON, ROBERT
23 DOSTLER, BEVERLY MILLER, EMMA NORTON, DAVID OBER, JENNIFER OBER,
24 CHARLES LANG, KATHERINE LANG, DAVID PURSIANO, LAUREL BRADY, PAMELA
25 J. SMITH, KARI BRADY, PAUL BRADY, RODERICK SAUP, RHONDA SAUP, LAURA
26 ISHUM, NANCY DRAPEAU, YOLANDA FLORES, REBEKAH OGLE and RICK GUZMAN¹

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28 ¹ All named Class Plaintiffs are hereinafter collectively referred to as "Plaintiffs."

1 all individually and as Class Representatives, by and through their attorneys of record, Harrison,
2 Kemp, Jones & Coulthard, LLP, and Lynch, Hopper, & Salzano, LLP,² and for their claims
3 against Defendants IPEX USA, LLC., a Delaware Foreign Limited Liability Company; IPEX,
4 Inc., a Nevada Corporation;³ Classic Plumbing, Inc., a Nevada Corporation; Sharp Plumbing,
5 Inc., a Nevada Corporation; Cox & Sons Plumbing, a Nevada Corporation;⁴ Del Webb
6 Communities, Inc., an Arizona corporation (“Del Webb”); Highland Development Company,
7 Inc., dba Westmark Homes, a Nevada Corporation (“Westmark”); American Premiere Homes
8 and Development, Inc., a Nevada Corporation (“American Premiere”); Developers of Nevada, a
9 Nevada Limited Liability Company (“Developers of Nevada”); Concordia Homes of Nevada,
10 Inc., a Nevada Corporation (“Concordia”); Plaster Development Company, Inc. dba Signature
11 Homes, a Nevada Corporation (“Signature”); and Nigro Development, LLC, a Nevada Limited
12 Liability Company (“Nigro”); Richmond American Homes of Nevada, Inc., a Colorado
13 Corporation (“Richmond”);⁵ and DOES I-X; and ROE CORPORATIONS XI-XX, state, allege,
14 and aver as follows:

15 **I.**

16 **INTRODUCTION**

17 1. This is a class action for damages under Nevada Rule of Civil Procedure 23 and
18 Chapter 40 of the Nevada Revised Statutes on behalf of all similarly-situated owners of
19 residences that have suffered damages as a result of owning homes in Clark County, Nevada,
20 with an installed Kitec plumbing system that includes defective brass KITEC fittings (“Kitec
21 fittings”). Defendants’ failure to properly design, develop, test, manufacture, distribute, market,
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23 ² Hereinafter, “Class Counsel.”

24 ³ Iplex, Inc. and Iplex USA, LLC, are hereinafter collectively referred to as “Iplex.”

25 ⁴ Classic Plumbing, Inc., Sharp Plumbing, Inc., and Cox & Sons Plumbing are hereinafter collectively
26 referred to as the “Plumbing Defendants.”

27 ⁵ Del Webb, Westmark, American Premiere, Developers of Nevada, Concordia, Signature, Nigro and
28 Richmond are collectively referred to hereinafter as “Builders.”

1 sell, and install the Kitec plumbing system with Kitec fittings has caused Plaintiffs and all
2 similarly-situated homeowners to suffer damages. Furthermore, Plaintiffs and all similarly-
3 situated homeowners have suffered damages as a result of owning homes in Clark County,
4 Nevada, constructed by Builder Defendants with defective brass Kitec fittings

5 2. By this Fourth Amended Complaint, Plaintiffs add construction defect claims
6 against Richmond, and add Rick Guzman as a Class Representative, for purposes of settlement
7 with Richmond.

8 **II.**
9 **PARTIES**

10 **A. KB Homeowners.**

11 3. At all times relevant hereto, Plaintiffs Tracie L. Quinterro and Eric W. Quinterro
12 are and were owners of real property constructed by KB Homes of Nevada, Inc., and located at
13 616 Doletto Street, Las Vegas, Nevada, 89138, and residents of Clark County, Nevada.

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

15 4. At all time relevant hereto, Plaintiffs Sheila Inferrera and Stephen Inferrera are
16 and were owners of real property constructed by Communities of Del Webb, Inc., and located at
17 2792 Hartwick Pines Drive, Henderson, Nevada, 89052, and residents of Clark County, Nevada.

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

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

24 **C. John Laing Homeowners.**

25 7. At all times relevant hereto, Plaintiff, Anna Navarro, is and was an owner and
26 occupant of real property constructed by WL Homes, LLC, dba John Laing Homes and located at
27 7804 Esteem Street, Las Vegas, Nevada 89131, and a resident of Clark County, Nevada.

1 8. At all times relevant hereto, Plaintiff, Susan Sheldon, is and was an owner and
2 occupant of real property constructed by WL Homes, LLC, dba John Laing Homes and located at
3 10389 Heale Garden Court, Las Vegas, Nevada, 89135, and a resident of Clark County, Nevada.

4 9. At all times relevant hereto, Plaintiff, Robert Dostler, is and was an owner and
5 occupant of real property constructed by WL Homes, LLC, dba John Laing Homes and located at
6 7820 Strong Water Court, Las Vegas, Nevada, 89131, and a resident of Clark County, Nevada.

7 **D. Westmark Homeowners.**

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

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

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

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

20 **E. American Premiere Homeowners.**

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

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

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1 **F. Developers of Nevada Homeowners.**

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

5 **G. Signature Homeowner.**

6 17. At all times relevant hereto, Plaintiff, Nancy Drapeau, is and was an owner and
7 occupant of real property constructed by Signature and located at 4981 Mascaro Drive, Las
8 Vegas, Nevada, 89122, and a resident of Clark County, Nevada.

9 **H. Nigro Homeowner.**

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

13 **I. Concordia Homeowners.**

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

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

20 **J. Richmond Homeowner.**

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

24 **K. Defendants.**

25 22. Plaintiffs are informed and believe and thereupon allege that at all times relevant
26 hereto, Defendant, Ipex USA, LLC, is and was a Delaware Foreign Limited Liability Company
27 that designs, develops, manufactures, distributes, markets, and sells pipe products into Nevada.

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

4 24. Plaintiffs are informed and believe and thereupon allege that at all times relevant
5 hereto, Defendant, Classic Plumbing, Inc., is and was a Nevada Corporation that distributes and
6 installs pipe products in Nevada.

7 25. Plaintiffs are informed and believe and thereupon allege that at all times relevant
8 hereto, Defendant, Sharp Plumbing, Inc., is and was a Nevada Corporation that distributes and
9 installs pipe products in Nevada.

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

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

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

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

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

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

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

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

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

20 35. The true names and capacities, whether individual, corporate, associate or
21 otherwise, of Defendants herein designated as DOES I through X and ROE CORPORATIONS
22 XI through XX inclusive, are unknown to the Plaintiffs at this time, who therefore sue said
23 Defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege that
24 each of said Defendant are responsible in some manner for the events and happenings and
25 proximately caused the injuries and damages herein alleged. Plaintiffs will seek leave to amend
26 this Complaint to allege their true names and capacities as they are ascertained.

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III.

JURISDICTION AND VENUE

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

IV.

CLASS ACTION ALLEGATIONS

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

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

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

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

41. Plaintiffs can fairly and adequately protect the interests of all members of the class in as much as each Class Plaintiff is an owner of a residence constructed by Builders with a Kitec plumbing system that contains defective brass Kitec fittings and each Plaintiffs' residence was damaged by the acts and practices of the Defendants.

42. Prosecution of separate actions by individual members of the class would create a

1 risk of inconsistent or varying adjudications with respect to individual members of the class
2 which would establish incompatible standards of conduct for the party opposing the class.

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

8 V.

9 **GENERAL ALLEGATIONS**

10 44. The Plaintiffs are informed and believe and thereupon allege that Defendants are,
11 and at all times relevant hereto were, engaged in the business of designing, developing,
12 manufacturing, distributing, marketing, selling, and installing the Kitec plumbing system, Kitec
13 fittings, and other plumbing materials in Clark County, Nevada.

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

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

20 47. Ipex also touts Kitec XPA pipe’s better water flow because its smooth plastic
21 inner wall permanently resists scaling and mineral buildup, keeping water flow constant year
22 after year.

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

25 49. At all times mentioned herein, Ipex, through advertising and their authorized
26 agents and sales representatives, asserted, stated, represented and warranted that Ipex had
27 extensively tested the Kitec plumbing system, and that based on the results of the research and
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1 tests, the Kitec plumbing system was properly designed, developed, marketed, and manufactured
2 so as to operate adequately, reliably, and as represented.

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

7 51. Ipex claims in its product information sheet that with state of the art
8 manufacturing facilities and distribution centers across North America, the IPEX name is
9 synonymous with quality and performance.

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

14 53. Plaintiffs believe that the Kitec plumbing system and Kitec fittings were installed
15 by Plumbing Defendants throughout Plaintiffs' homes and the homes of all similarly-situated
16 owners of residences in Clark County, Nevada.

17 54. Plaintiffs are informed and believe and thereupon allege that Builders are, and at
18 all times relevant hereto were, engaged in the construction of residences within Clark County
19 Nevada.

20 55. Within ten (10) years of completion of construction, Plaintiffs discovered that
21 their residences were built with defective Kitec fittings.

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

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

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

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

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

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

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

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

4 64. Signature Homes 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 14, 2006. However, Signature has
7 failed to follow the appropriate procedures within NRS Chapter 40. Plaintiffs, therefore, invoke
8 all rights and remedies available to them pursuant to §40.600 *et seq*.

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

14 66. Richmond was given notice of potential claims related to defective Kitec fittings
15 on behalf of all similarly-situated owners of residences under the procedures contained within
16 Nevada Revised Statutes §40.600 *et seq* on November 14, 2006. Class Plaintiffs and Richmond
17 will file a joint settlement motion for the claims alleged in this Complaint immediately following
18 the filing of this Complaint and Richmond's Answer thereto.

19 67. Builders have failed to follow the appropriate procedures provided within NRS
20 Chapter 40. Plaintiffs therefore invoke all rights and remedies available to them pursuant to NRS
21 §40.600 *et seq*, and bring the following claims for relief:

22 **VI.**

23 **FIRST CLAIM FOR RELIEF**

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

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

27 69. At all times relevant herein, Defendants were the designers, developers,
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1 manufacturers, distributors, marketers, sellers, and installers of the Kitec XPA pipe and Kitec
2 fittings.

3 70. Defendants engaged in the business of designing, developing, manufacturing,
4 distributing, marketing, selling, and installing plumbing supplies and pipes such as the materials
5 at issue herein.

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

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

12 73. Defendants breached this duty in the following manner, including but not limited
13 to failing to adequately and properly:

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

26 74. But for the manufacturing defect, design defect, and selection of improper
27 materials by Defendants, and breach of duty by Defendants, Plaintiffs and the class would not
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1 have suffered injury or damages.

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

5 76. As a direct and proximate result of all the foregoing and as a result of the acts
6 and/or omissions of Defendants, Plaintiffs and the class have sustained damage, in an amount in
7 excess of Ten Thousand Dollars (\$10,000.00).

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

11 **VII.**

12 **SECOND CLAIM FOR RELIEF**

13 **(Strict Liability - Against IpeX and Plumbing Defendants)**

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

16 79. As a direct and proximate result of the foregoing, Defendants, as the designers,
17 developers, manufacturers, distributors, marketers, sellers, and installers are strictly liable to the
18 Plaintiffs for their damages set forth herein.

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

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

3 82. The Kitec plumbing system and Kitec fittings were installed at the Subject Homes
4 by the Plumbing Defendants in the same condition that they were in when they left the control of
5 IpeX.

6 83. As a direct and proximate result of all the foregoing and as a result of the acts
7 and/or omissions of Defendants, Plaintiffs and the class have sustained damage, in an amount in
8 excess of Ten Thousand Dollars (\$10,000.00).

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

12 VIII.

13 THIRD CLAIM FOR RELIEF

14 (Breach of Express Warranty - Against IpeX and Plumbing Defendants)

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

17 86. IpeX designed, developed, manufactured, distributed, and marketed the Kitec
18 plumbing system for purposes of its eventual sale to retail buyers.

19 87. IpeX included an express thirty-year warranty with the Kitec plumbing system.

20 88. Furthermore, the express statements, assertions, marketing materials, and
21 representations by each Defendant concerning the Kitec plumbing system and Kitec fittings as set
22 forth above constitute express warranties.

23 89. Defendants failed to provide a defect-free home and failed to inspect and identify
24 pipe defects and defects in the pipe's fitting and components.

25 90. IpeX failed to provide a defect-free home in failing to provide quality
26 workmanship and defect free materials and merchandise in manufacturing the Kitec XPA pipe
27 and fittings.

1 100. Plaintiffs relied upon said warranties and believed that said designs, work, and
2 materials were of first-class workmanlike quality and fit for the intended use and purpose of a
3 plumbing system.

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

7 102. Defendants failed to provide a defect-free home and failed to inspect and identify
8 pipe defects and defects in its components.

9 103. But for each Defendants' breach of implied warranty, Plaintiffs and the class
10 would not have sustained injury or damages.

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

14 105. As a direct and proximate result of each Defendants' breach of implied warranty,
15 Plaintiffs and the class have sustained damage, in an amount in excess of Ten Thousand Dollars
16 (\$10,000.00).

17 106. 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 **X.**

21 **FIFTH CLAIM FOR RELIEF**

22 **(Breach of Warranty of Merchantability - Against Ipex and Plumbing Defendants)**

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

25 108. Defendants designed, developed, manufactured, distributed, marketed, and sold
26 into the stream of commerce the Kitec plumbing system and Kitec fittings installed at the Subject
27 Homes.

1 109. Defendants knew and/or should have known that Kitec plumbing system and
2 Kitec fittings were not of average acceptable quality as it was designed and/or manufactured with
3 substandard and defective materials.

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

7 111. Defendants knew and/or should have known that the Kitec plumbing system and
8 Kitec fittings would reach the ultimate user and/or consumer without substantial change and
9 would be in the condition in which it was sold.

10 112. The Defendants' Kitec plumbing system and Kitec fittings have failed.

11 113. But for each Defendants' breach, the Plaintiffs would not have sustained injury or
12 damages.

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

17 115. As a direct and proximate result of each Defendants' breach, Plaintiffs and the
18 class have sustained damage, in an amount in excess of Ten Thousand Dollars (\$10,000.00).

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

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XI.

SIXTH CLAIM FOR RELIEF

(Negligence - Against IPEX)

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

118. 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.

119. 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.

120. 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.

121. 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).

122. 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)

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

124. 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

1 were free from defect in the plumbing work performed at the Subject Homes.

2 125. The Plumbing Defendants breached their duty of care by negligently failing to
3 install the Kitec plumbing system and Kitec fittings at issue in a manner consistent with the
4 manufacturer's specifications, municipal codes, and/or standards of performance within the trade,
5 as well as failing to use materials and/or parts that are capable of performing in a defect-free
6 manner.

7 126. But for the negligent actions and inactions of the Plumbing Defendants and/or
8 breaches of duty by the Plumbing Defendants, Plaintiffs and the class would not have sustained
9 damages.

10 127. As a direct and proximate result of the Plumbing Defendants actions and inactions
11 in installation and/or inspection of materials, Plaintiffs and the class have sustained damage, in
12 an amount in excess of Ten Thousand Dollars (\$10,000.00).

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

16 **XIII.**

17 **EIGHTH CLAIM FOR RELIEF**

18 **(Strict Products Liability - Against Builders)**

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

21 130. At all times relevant herein, Builders were contractors engaged in the sale and
22 construction of residences containing Kitec fittings.

23 131. Builders knew or should have known that Kitec fittings would reach residential
24 buyers without substantial change from the condition sold by the manufacturer. Further, Kitec
25 fittings were installed in residences by Builders in the same condition as they were when they left
26 the control of the manufacturer. Builders therefore failed to adequately and properly:
27

- 1 a. Inspect and test the fittings used in residences;
- 2 b. Select and install, or caused to be installed, products that are defect-free;
- 3 c. Warn of the damage as a result of the installation of the Kitec plumbing
- 4 system.

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

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

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

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

22 136. 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.

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1 intended.

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

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

9 149. Builders knew or should have known that Kitec fittings were not of merchantable
10 quality or fit for the intended purposes and were designed and manufactured with substandard
11 and defective materials.

12 150. Builders knew or should have known that Kitec fittings were not fit for the
13 ordinary purpose for which they were intended to be used as they were designed and
14 manufactured with substandard and defective materials.

15 151. Builders knew and/or should have known that the Kitec plumbing system and
16 Kitec fittings would reach the ultimate user and/or consumer without substantial change and
17 would be in the condition in which it was sold

18 152. As a direct and proximate result of each Builders' breaches of implied warranty,
19 Plaintiffs and the class have sustained damage, in an amount in excess of Ten Thousand Dollars
20 (\$10,000.00).

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

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XVI.

ELEVENTH CLAIM FOR RELIEF

(Negligence - Against Builders)

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

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

156. Builders breached this duty of care by:

- a. Negligently designing, developing, manufacturing, distributing, 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.

157. 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).

158. 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.

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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.

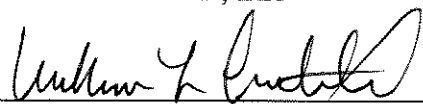
XIII.

DEMAND FOR JURY TRIAL

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

DATED this 6th day of February, 2008..

HARRISON, KEMP, JONES
& COULTHARD, LLP



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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of February, 2008, the foregoing **FOURTH 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/ Shirley Davey

An Employee of Harrison, Kemp Jones & Coulthard

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