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22 Attorneys for Plaintiffs ENRIQUE DEL RIVERO, ANA
23 DEL RIVERO, GREG ESTES, and CHERIE ESTES,
24 on behalf of themselves and all others similarly situated

25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

26 **COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

27 ENRIQUE DEL RIVERO, an individual;
28 ANA DEL RIVERO, an individual; GREG
ESTES, an individual; CHERIE ESTES, an
individual; on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

CENTEX HOMES OF CALIFORNIA,
LLC., a Limited Liability Company;
CENTEX HOMES REALTY COMPANY,
a Corporation; PULTE HOME
CORPORATION, a Corporation;
MUELLER INDUSTRIES, INC., a
Corporation; and DOES 1-100,

Defendants.

CASE NO. 30-2013-00649338-CU-CD-CXC
Assigned for all purposes to:
Judge Thierry Patrick Colaw
Dept. CX-105

THIRD AMENDED COMPLAINT

JURY TRIAL DEMANDED

Complaint Filed: 5/9/13

1
2 **AND RELATED CROSS-CLAIM.**

3 Plaintiffs ENRIQUE DEL RIVERO, ANA DEL RIVERO, GREG ESTES, and CHERIE
4 ESTES, on behalf of themselves and all others similarly situated (“Plaintiffs”), are informed,
5 believe and allege as follows:

6 **INTRODUCTION**

7 1. This is a class action addressing solely the incorporation of a single defective
8 component (copper pipe) into a residence, thus exempting Plaintiffs (and the named and
9 unnamed class members) pursuant to Civil Code section 931 from complying with the pre-
10 litigation procedures specified in Division 2, Part 2, Title 7, Chapter 4. Plaintiffs seek damages
11 and other relief on behalf of all similarly-situated homeowners in Ladera Ranch, California,
12 whose homes were built by Defendants CENTEX HOMES OF CALIFORNIA, LLC, CENTEX
13 HOMES REALTY COMPANY and PULTE HOME CORPORATION (collectively “Centex”),
14 who have suffered damage because of owning homes with a defective component, to wit, copper
15 pipe. The copper pipe at issue is defective, and damages Plaintiffs’ and class members’ homes in
16 violation of the standards of residential construction set forth in California Civil Code §895, et
17 seq.

18 2. The homes at issue are located in Ladera Ranch, Orange County, including but
19 not limited to, homes in the 92694 zip code (the “Class Area”). Plaintiffs are informed and
20 believe, and on that basis allege, that the copper pipe utilized was defective for the water
21 conditions in the Class Area.

22 3. The homes have in common a serious defect, namely the incorporation of
23 defective copper pipe instead of stronger resistive pipe.

24 4. Plaintiffs bring this action to seek redress on behalf of the following class:

25 All homeowners in the Class Area whose residences contain copper
26 pipe, were constructed by Centex and substantially completed within
27 ten (10) years of the filing of the original complaint in this action, and
28 the original purchase agreements were signed by the builder on or after
January 1, 2003.

1 **THE PARTIES**

2 5. Plaintiffs Enrique and Ana Del Rivero are individuals and residents of Ladera
3 Ranch, California, whose principal residence is located at 20 Bower Lane, Ladera Ranch,
4 California 92694.

5 6. Plaintiffs Greg and Cherie Estes are individuals and residents of Ladera Ranch,
6 California, whose principal residence is located at 8 St. Steven Court, Ladera Ranch, California
7 92694.

8 7. Plaintiffs' and the class members' homes at issue in this action are all residences
9 in Ladera Ranch, California, including but not limited to, homes in the 92694 zip code, that
10 contain or contained copper pipe, were substantially completed within ten (10) years of the filing
11 of the original complaint in this action, whose original purchase agreements were signed by the
12 builder on or after January 1, 2003, and are collectively referred to herein as the "Subject
13 Homes."

14 8. Plaintiffs are informed and believe and based thereon allege that at all times
15 relevant, defendant Centex Homes of California, LLC was or is a business entity engaged in
16 business in the State of California.

17 9. Plaintiffs are informed and believe and based thereon allege that at all times
18 relevant, defendant Centex Homes Realty Company was or is a business entity engaged in
19 business in the State of California.

20 10. Plaintiffs are informed and believe and based thereon allege that at all times
21 relevant, defendant Pulte Home Corporation was or is a business entity engaged in business in
22 the State of California, and the successor to Centex Homes of California, LLC and Centex
23 Homes Realty Company and expressly or impliedly agreed to assume the subject liabilities,
24 and/or said successor is a mere continuation of the predecessor(s).

25 11. Plaintiffs are informed and believe and thereon allege that defendants Centex
26 Homes of California, LLC, Centex Homes Realty Company and Pulte Home Corporation have,
27 and at all times herein mentioned had, a joint economic and business interest, goal and purpose
28 in the properties and related services sold to plaintiffs and class members.

1 12. As an alternative theory, plaintiffs are informed and believe, and on that basis
2 allege, that defendants Centex Homes of California, LLC, Centex Homes Realty Company and
3 Pulte Home Corporation, are alter egos of each other. Plaintiffs are informed and believe, and on
4 that basis allege, that these Centex defendants share common directors, officers, and/or
5 executives. Plaintiffs are informed and believe, and on that basis allege, that there is common
6 control over the Centex defendants, and they operate pursuant to a common business plan. There
7 is unity of interest among these defendants. The alter-ego relationship among the Centex
8 defendants should be recognized to prevent an injustice. If the alter-ego relationship among
9 them is not recognized, an inequity will result because an entity responsible for wrongdoing will
10 be shielded from liability.

11 13. The term “Centex” refers to defendants Centex Homes of California, LLC,
12 Centex Homes Realty Company and Pulte Home Corporation. Plaintiffs are informed and
13 believe, and on that basis allege, that defendant Centex constructed the Subject Homes, and
14 supplied and/or distributed the copper pipe at issue used in class members’ homes.

15 14. Plaintiffs are informed and believe and based thereon allege that at all times
16 relevant, defendant Mueller Industries, Inc. (“Mueller”) was or is a business entity, engaged in
17 business in the State of California. Plaintiffs are informed and believe, and on that basis allege,
18 that defendant Mueller designed, manufactured, supplied and/or distributed the copper pipe at
19 issue used in class members’ homes.

20 15. As used herein, the term “defendants” refers collectively to all defendants named
21 herein.

22 16. Plaintiffs are informed, believe, and thereupon allege that defendants, including
23 DOES, are/were involved in the planning, development, design, construction, warranting, repair,
24 selection of materials, supply of materials, installation of materials and/or sale of the Subject
25 Homes, and/or were responsible for the design, development, testing, manufacture, distribution,
26 supply, marketing, sale, and warranting of the Subject Homes in Ladera Ranch, California that
27 contain the copper pipe at issue

28 17. Plaintiffs are currently ignorant of the true names and capacities, whether

1 individual, corporate, associate, or otherwise, of the defendants sued herein under the fictitious
2 names Does 1 through 100, inclusive, and therefore, sue such defendants by such fictitious
3 names. Plaintiffs will seek leave to amend this complaint to allege the true names and capacities
4 of said fictitiously named defendants when their true names and capacities have been
5 ascertained. Plaintiffs are informed and believe and thereon allege that each of the fictitiously
6 named Doe Defendants legally responsible in some manner for the events and occurrences
7 alleged herein, and for the damages suffered by the class.

8 18. Plaintiffs are informed and believe and thereon allege that all defendants,
9 including the fictitious Doe defendants, were at all relevant times acting as actual agents,
10 conspirators, ostensible agents, alter egos, partners and/or joint venturers and/or employees of all
11 other defendants, and that all acts alleged herein occurred within the course and scope of said
12 agency, employment, partnership, alter ego relationship, and joint venture, conspiracy or
13 enterprise, and with the express and/or implied permission, knowledge, consent, authorization
14 and ratification of their co-defendants; however, each of these allegations are deemed
15 "alternative" theories whenever not doing so would result in a contradiction with other
16 allegations.

17 19. Does 1-50, whose identities are presently unknown, are the subject of ongoing
18 discovery and therefore are sued under fictitious names. Does 1-50 were involved in the
19 planning, development, design, construction, warranting, repair, selection of materials, supply of
20 materials, installation of materials and/or sale of the Subject Homes, which contain the defective
21 copper pipe at issue, and proximately caused the injuries and damages herein alleged. Plaintiffs
22 will seek leave to amend this Complaint to allege their true names and capacities as they are
23 ascertained.

24 20. Does 51-100, whose identities are presently unknown, are the subject of ongoing
25 discovery and therefore are sued under fictitious names. Does 51-100 were responsible for and
26 engaged in the design, development, testing, manufacture, distribution, supply, marketing, sale,
27 and warranting of the defective copper pipe at issue. Plaintiffs will seek leave to amend this
28 Complaint to allege their true names and capacities as they are ascertained.

1 homes.

2 28. Plaintiffs are informed, believe, and thereupon allege that the above-referenced
3 defective condition violates the standards of residential construction set forth in California Civil
4 Code §895, et seq. and has proximately caused damage to homeowners who are members of the
5 class.

6 29. Plaintiffs are informed, believe and thereupon allege that the Builders' contractors
7 are agents of the builders. One such contractor has confirmed in sworn deposition testimony that
8 it has known about pinhole leaks in copper pipe in South Orange County for years prior to
9 building the Subject Homes. Despite this clear notice, they failed to warn the homeowners of
10 possible defects, neglected to select proper pipe for the water type, and incorporated a defective
11 component pipe into the residences.

12 30. Plaintiffs are informed, believe, and thereupon allege that the builders and/or their
13 contractors received reports of numerous complaints that gave them notice of the defect inherent
14 in the copper pipe incorporated into residences in the class area, including complaints of pinhole
15 leaks, for homes in Orange County, prior to building the subject homes.

16 31. Plaintiffs are informed, believe and based thereupon allege that the builder and/or
17 their contractors have tested the water and/or pipe installed in the homes prior to installing
18 copper pipe into the subject homes, and had information prior to incorporating the copper pipe
19 into the residences confirming that the copper pipe installed in the homes was defective.

20 32. Each of the named Plaintiffs and class members have a contract and/or are in
21 privity with defendants and/or are third party beneficiaries of contracts. Plaintiffs reserve the
22 right to amend their complaint to attach a copy of the contracts and warranties at issue after an
23 appropriate opportunity for discovery.

24 33. Plaintiffs and the class members' homes have an actionable defect which violates
25 the standards set forth in California Civil Code §895, et seq. Individual product manufacturers,
26 material suppliers, builders, general contractors, and subcontractors are subject to an action for
27 recovery of damages for the violation of the standards enumerated in California Civil Code
28 section 895, et seq.

1 include, but are not limited to, the following:

- 2 a. Whether the copper pipe was defective for the water conditions in the Class Area;
- 3 b. Whether Defendants had notice, and the degree of notice that they had, of the water
- 4 conditions in the Class Area;
- 5 c. Whether California Civil Code sections 896(a)(14) and/or (15) were violated by the
- 6 incorporation, selection, design, manufacture, supply and/or utilization of the pipe at
- 7 issue herein.
- 8 d. Whether defendants violated the “unlawful” prong of the UCL;
- 9 e. Whether defendants violated the “fraudulent” prong of the UCL;
- 10 f. Whether the Centex defendants are alter egos, or otherwise jointly liable;
- 11 g. Whether any defenses raised are meritorious;
- 12 h. Whether the copper pipe at issue has corroded; and
- 13 i. Whether the copper pipe at issue needs to be removed and replaced.

14 41. The claims of the Plaintiffs and relief herein sought are typical of the claims and
15 relief that could generally be sought by each member of this proposed class.

16 42. Plaintiffs can fairly and adequately protect the interests of all members of the
17 proposed class. The Subject Homes all contain defective copper pipe at issue herein.

18 43. Prosecution of separate actions by individual members of the proposed class
19 would create a risk of inconsistent or varying adjudications with respect to individual members
20 of the class and thus establish incompatible standards of conduct for the party or parties opposing
21 the class. Further, the relatively small amounts of the individual claims mean that class treatment
22 is the superior manner to address the defect at issue herein.

23 44. Plaintiffs’ attorneys have the experience, knowledge, and resources to adequately
24 and properly represent the interests of the proposed class.

25 **FIRST CAUSE OF ACTION**

26 **(Violation of Standards of Residential Construction)**

27 **(By Plaintiffs Against All Defendants)**

28 45. Plaintiffs re-allege and incorporate herein by reference the allegations contained

1 in the preceding paragraphs of this complaint, as though fully set forth herein.

2 46. Defendants are subject to an action for recovery of damages for the violation of
3 the standards enumerated in California Civil Code §895, et seq.

4 47. Defendants are liable for damages arising out of and related to the incorporation,
5 at the time of original construction, of defective copper pipe into Plaintiffs' and class members'
6 residences, which is leaking and/or corroding so as to impede the useful life of the system.

7 48. As a direct and proximate result of defendants' violations of standards for
8 residential construction, Plaintiffs and class members have been damaged and are entitled to
9 recover the cost of remedying the incorporation of the defective copper pipe in addition to all
10 other damages permitted under Section 944 and/or that the court deems just and proper.

11 **SECOND CAUSE OF ACTION**

12 **(Unfair Business Practices, Business & Professions Code §§17200, et seq.)**

13 **(By Plaintiffs Against All Defendants)**

14 49. Plaintiffs re-allege and incorporate by reference all preceding paragraphs of this
15 Complaint as though fully set forth herein.

16 50. Business & Professions Code section 17200 prohibits any unfair competition,
17 including any unlawful, unfair or fraudulent business act or practice.

18 51. The conduct of defendants, as set forth in the allegations in this complaint,
19 constitutes unlawful, unfair or fraudulent business practices.

20 52. Defendants' unlawful conduct includes, but is not limited to, violation of
21 California Civil Code § 896, et seq. Specifically, the building standards set forth at sections
22 896(a)(14) and/or (15) were violated by Defendants' incorporation, selection, design,
23 manufacture, supply and/or utilization of the defective pipe at issue herein that has leaked and/or
24 corroded so as to impede the useful life of the system – a statutory violation of law.

25 53. Defendants' fraudulent conduct includes, but is not limited to, concealing from
26 both original and subsequent purchasers that the copper pipe installed in the Subject Homes was
27 not compatible and adequate for the water conditions in the area, which defendants knew or
28 should have known; Defendants had express knowledge that the pipe used would corrode and/or

1 leak given the water conditions in the class area, and failed to disclose the same to original and
2 subsequent purchasers of the Subject Homes. As previously herein alleged, the builders and/or
3 their contractors received reports of numerous complaints that gave them notice of the defect
4 inherent in the copper pipe incorporated into residences in the class area, including complaints of
5 pinhole leaks, for homes in Orange County, prior to building the subject homes; and the builders
6 and/or contractors have tested the water and/or pipe installed in the homes prior to installing
7 copper pipe into the subject homes, and had information prior to incorporating the copper pipe
8 into the residences evidencing that the copper pipe installed in the homes was defective.
9 Plaintiffs relied upon Defendants accurately disclosing the impact of the water on the copper
10 pipe which did not meet the building standards set forth at Civ. Code Section 896(a)(14) and/or
11 (15).

12 54. As a direct and proximate result of Defendants' unlawful and/or fraudulent
13 conduct described hereinabove, Plaintiffs and the putative class have suffered actual injury and
14 economic loss in the form of diminution in the effective life of the copper pipe and diminution in
15 the useful life of the plumbing system on the whole, in addition to diminution in value of the
16 Subject Homes.

17 55. On behalf of the general public, plaintiffs and members of each class request that
18 this Court order that Defendants be required to disgorge the profits they have wrongfully
19 obtained through the use of these unlawful, unfair or fraudulent practices, provide restitution, and
20 that an injunction issue to correct the wrongful business practices alleged in this complaint.

21 **THIRD CAUSE OF ACTION**

22 **(Breach of Express Warranties)**

23 **(By Plaintiffs Against Defendants Mueller and Does 51-100)**

24 56. Plaintiffs re-allege and incorporate by reference all preceding paragraphs of this
25 Complaint as though fully set forth herein.

26 57. Plaintiffs and their members had a contract and/or were privity with defendants
27 and/or were the intended third-party beneficiaries of each and every such act and/or warranty.

28 58. Plaintiffs and class members have performed all conditions to be performed by

1 them pursuant to their real estate purchase and sale agreements, or were excused from such
2 performance as a result of Defendants' conduct.

3 59. Defendants Mueller and Does 51-100 did prepare, distribute, and provide express
4 warranties regarding the copper pipe installed at the Subject Homes. These warranties provide
5 coverage for certain defects in this copper pipe. These warranties were intended for use by
6 customers and end-users of the copper pipe, including Plaintiffs and the class members.

7 60. Defendants Mueller and Does 51-100 expressly warranted in writing to Plaintiffs
8 and the class members that the copper pipe used in the Subject Homes was adequate and proper
9 for the Class Area.

10 61. Plaintiffs reserve the right to amend this complaint to attach copies of the written
11 warranties made and/or to more clearly allege the express warranties made, after a reasonable
12 opportunity for discovery.

13 62. Plaintiffs are informed, believe, and thereupon allege that Defendants Mueller and
14 Does 51-100 breached the express warranties made by incorporating defective copper pipe into
15 the Subject Residences.

16 63. As a direct and proximate result of the breaches of the express warranties by
17 defendants as herein alleged, Plaintiffs and their members have been, and will continue to be,
18 caused damage as more fully described herein.

19 64. As a further direct and proximate result of the breaches of the express warranties
20 by defendants as herein alleged, Plaintiffs and their members have suffered injuries and/or
21 damages to property in an amount not fully known but believed to be within the jurisdiction of
22 this Court. Plaintiffs and their members will establish the amount of their damages at the time of
23 trial according to proof.

24 **FOURTH CAUSE OF ACTION**

25 **(Breach of Implied Warranties)**

26 **(By Plaintiffs Against Defendants Mueller and Does 51-100)**

27 65. Plaintiffs re-allege and incorporate by reference all preceding paragraphs of this
28 Complaint as though fully set forth herein.

1 66. Plaintiffs are informed, believe, and thereupon allege that Defendants were
2 engaged in and are responsible for the design, development, testing, manufacture, distribution,
3 supply, marketing, sale, and warranting of defective copper pipe installed and used in the
4 Subject Homes.

5 67. Plaintiffs and their members had contracts with defendants and/or were in privity
6 with defendants and/or were the intended third-party beneficiaries of each and every such act
7 and/or warranty.

8 68. Defendants were, and/or are, in the business of selling copper pipe products to
9 builder Defendants, and that the product sold to said Defendants was not fit for the ordinary
10 purposes for which such goods are used

11 69. By designing, manufacturing, marketing, and/or supplying the copper pipe to be
12 installed in the Subject Homes, Defendants impliedly warranted that said component was free of
13 defects, was of merchantable quality, was suitable and fit for the ordinary purpose for which said
14 component was intended, was safe, and was proper.

15 70. Defendants impliedly warranted that the copper pipe was fit for the particular
16 purpose for which it was intended, and that said component would perform in a defect-free
17 manner.

18 71. Plaintiffs are informed, believe, and thereupon allege that Defendants breached
19 their implied warranties by designing, manufacturing, assembling, distributing, marketing, and
20 selling defective copper pipe.

21 72. As a direct and proximate result of the breaches of the implied warranties by
22 Defendants, Plaintiffs and their members have been, and will continue to be, caused damage.

23 73. As a further direct and proximate result of the breaches of the implied warranties
24 by Defendants, Plaintiffs and their members have suffered damages in an amount not fully
25 known but believed to be within the jurisdiction of this Court. Plaintiffs and their members will
26 establish the amount of their damages at the time of trial according to proof.

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1 **PRAYER**

2 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 3 1. For general, special, and consequential damages;
- 4 2. For the cost to repair and/or replace the defective copper pipe;
- 5 3. For costs and expenditures to correct, cure, or mitigate damages caused or that
- 6 will be caused by the defects and/or deficiencies as set forth herein;
- 7 4. Economic losses associated with the defects and/or deficiencies, including loss of
- 8 use, diminution in value, relocation, and alternative housing;
- 9 5. For equitable entitlement to attorney's fees and costs from the common fund;
- 10 6. For attorney's fees and costs pursuant to California Code of Civil Procedure
- 11 section 1021.5;
- 12 7. For investigative costs and other damages recoverable pursuant to California Civil
- 13 Code section 944;
- 14 8. For a preliminary and permanent injunction prohibiting defendants from engaging
- 15 in the unlawful or fraudulent conduct, or unfair methods of competition, alleged
- 16 herein;
- 17 9. For any and all other relief available under Business and Professions Code
- 18 sections 17200 *et. seq.*, including but not limited to restitution and disgorgement
- 19 of monies received through defendants' unlawful or fraudulent business practices;
- 20 10. For an award of pre-judgment interest on all monetary damages, fees, and costs
- 21 awarded in this action;
- 22 11. For a declaratory judgment adjudicating the relative rights and duties of the
- 23 parties;
- 24 12. For such other and further relief as the Court deems just and proper.

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DATED: February 1, 2016

BRIDGFORD, GLEASON & ARTINIAN
McNICHOLAS & McNICHOLAS LLP
KABATECK BROWN KELLNER LLP

By: 

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Michael H. Artinian
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Attorneys for Plaintiffs on behalf of themselves and
all others similarly situated

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all claims and causes of action in this lawsuit.

DATED: February 1, 2016

BRIDGFORD, GLEASON & ARTINIAN
McNICHOLAS & McNICHOLAS LLP
KABATECK BROWN KELLNER LLP

By: 

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Michael H. Artinian
John Patrick McNicholas, IV
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Attorneys for Plaintiffs on behalf of themselves and
all others similarly situated

PROOF OF SERVICE
Del Rivero v. Centex Homes, et al.
Orange County Superior Court Case No.: 30-2013-00649338

I, the undersigned, declare that:

I am over the age of 18 years and not a party to the within action. I am employed in the County where the Proof of Service was prepared and my business address is Law Offices of BRIDGFORD, GLEASON & ARTINIAN, 26 Corporate Plaza, Suite 250, Newport Beach, CA 92660.

On the date set forth below, I served the following document(s): **THIRD AMENDED COMPLAINT** on the interested party(s):

SEE ATTACHED SERVICE LIST

by the following means:

- BY MAIL:** By placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid. I am readily familiar with the business practice for collecting and processing correspondence for mailing. On the same day that correspondence is processed for collection and mailing it is deposited in the ordinary course of business with the United States Postal Service in Newport Beach, California to the address(es) shown herein.
- BY PERSONAL SERVICE:** By placing a true copy thereof, enclosed in a sealed envelope, I caused such envelope to be delivered by hand to the recipients herein shown (as set forth on the service list).
- BY OVERNIGHT DELIVERY:** I served the foregoing document by Overnight Delivery as follows: I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to recipients shown herein (as set forth on the service list), with fees for overnight delivery paid or provided for.
- BY ELECTRONIC MAIL (EMAIL):** I caused a true copy thereof sent via email to the address(s) shown herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: February 1, 2016


Debbie Knipe

SERVICE LIST
Del Rivero v. Centex Homes, et al.
Orange County Superior Court Case No.: 30-2013-00649338

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