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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF RIVERSIDE

17 JENNIFER BEAUDET, RONALD BEAUDET,
18 NICK RIPOLY, MICHELLE RIPOLY, JOHN
DALLAH, and SHARON DALLAH,
19 individually, on behalf of all others similarly
situated, and in the public interest,

20 Plaintiffs,

21 vs.

22 WESTERN PACIFIC HOUSING - NORCO
23 ESTATES, LLC, a Limited Liability Company;
LAMCO HOUSING, INC., a Corporation;
24 SCHULER HOMES, INC., a Corporation; and
DOES 1 through 100, inclusive,

25 Defendants.

Case No. 369796
(Honorable Edward Webster, Dept. 5)
JAMS Reference No. 1200031905

Judicial Referee: Hon. Edward J. Wallin (Ret.)

**NOTICE OF JOINT MOTION AND JOINT
MOTION FOR FINAL APPROVAL OF
SETTLEMENT**

[Filed concurrently with Proposed Order and
Declarations of Anthony Lanza, Jon Borderud,
and Clifford Cantor]

Date: November 20, 2006
Time: 9:00 a.m.
Place: JAMS

Date Action Filed: January 15, 2002
Trial Date before JAMS: Vacated

1 **TO ALL PARTIES AND OTHER INTERESTED PERSONS:**

2 **PLEASE TAKE NOTICE** that, on November 20, 2006 at 9:00 a.m or as soon thereafter
3 as the matter can be heard, before the Referee Hon. Edward J. Wallin (ret.) of the Judicial
4 Arbitration and Mediation Service ("JAMS") and in the offices of the Judicial Arbitration and
5 Mediation Service, 500 N. State College Blvd., Suite 600, Orange, California 92680, plaintiffs
6 and Class representatives Jennifer Beaudet, Ronald Beaudet, John Dallah, and Sharon Dallah
7 ("Plaintiffs") and defendants Western Pacific Housing - Norco Estates, LLC, Lamco Housing,
8 Inc., and D.R. Horton, successor by merger to Schuler Homes, Inc. ("Defendants"), will jointly
9 move pursuant to Rule 1859 of the California Rules of Court for final approval of the proposed
10 class settlement that the Referee preliminarily approved on September 27, 2006 and the Superior
11 Court preliminarily approved on October 10, 2006.

12 The joint motion will be based upon this Notice; the accompanying Memorandum of
13 Points and Authorities; the separately filed declarations of Anthony Lanza, Jon Borderud, and
14 Clifford Cantor; the accompanying proposed Order; the pleadings, files, and records of this
15 action, and such further oral and documentary evidence as may be presented at the hearing on this
16 motion.

17 Dated: November 3, 2006

18 *Attorneys for Plaintiffs and the Class*

19 LANZA & GOOLSBY
20 A Professional Law Corp.

21 By: 

Anthony Lanza

22 Jon W. Borderud
23 THE BORDERUD LAW GROUP

24 Clifford Cantor
25 LAW OFFICES OF
26 CLIFFORD A. CANTOR, P.C.

Attorneys for Defendants

*Western Pacific Housing-Norco Estates, LLC,
Lamco Housing, Inc., and D.R. Horton,
successor by merger to Schuler Homes, Inc.:*

RUTAN & TUCKER, LLP

27 By: 

Greg A. Julander

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 After four-and-a-half years of litigation, the parties to this class action entered into an
3 agreement to settle all claims and dismiss this action. Under the California Rules of Court,
4 approval of a proposed class action settlement requires three steps: (1) preliminary approval of
5 the settlement; (2) notice to the class of the settlement and of the final approval hearing; and
6 (3) final approval. *See* Rule 1859. The first two steps have already occurred.

7 *First*, On September 27, 2006, the Referee signed an order preliminarily approving the
8 settlement and approving the form and content of notice to the class members (“Preliminary
9 Approval Order”). The Superior Court countersigned the Preliminary Approval Order on October
10 10, 2006. Attached to the Preliminary Approval Order were the following:

11 Attachment A: the Settlement Agreement;

12 Attachment B: the Notice to Class of Proposed Settlement; and

13 Attachment C: the List of Class Members.

14 *Second*, the parties gave notice to the class in the form and manner specified in the
15 Preliminary Approval Order: Within the time limits that the Referee ordered, plaintiffs mailed the
16 Notice by first-class mail directly to each class member and posted the Notice and other relevant
17 settlement documents on www.lanzagoolsby.com, where class members may easily read the
18 documents. *See* Lanza Decl. ¶ 34 (Nov. 6, 2006); Borderud Decl. (Nov. 6, 2006). Thus far,
19 counsel have received no opt-out requests and no objections. Lanza Decl., ¶ 35.

20 It will soon be time for the third step – a final approval hearing pursuant to Rule 1859(g) –
21 which is scheduled for November 20, 2006. The task at the final approval hearing is for the
22 Referee to “conduct an inquiry into the fairness of the proposed settlement.” *Id.* The parties
23 suggested to the Referee (and the Referee approved) that the parties submit their papers in support
24 of final approval one week *before* the deadline for class members to opt out or object, giving class
25 members an opportunity to read the parties’ papers before making their final decisions.

26 Accordingly, the parties jointly submit this motion in support of final approval of the
27 settlement. Plaintiffs are submitting a separate motion for approval of attorney fees,
28 reimbursement of actual expenses, and approval of class representative incentive awards.

1 **I. STANDARDS FOR FINAL APPROVAL**

2 California has a well-established and strong policy in favor of the settlement of litigation.
3 *Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231, 235-36 (it is a “strong policy ... that
4 settlement of litigation should be encouraged”; “[t]he law wisely favors settlements”). Settlement
5 is particularly favored in class actions, given the costs and uncertainties inherent in complex
6 litigation. *7-Eleven Owners For Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th
7 1135, 1151 (“this is especially true in complex class action litigation”).

8 In approving a class settlement, the Referee must “scrutinize the proposed settlement
9 agreement to the extent necessary to reach a reasoned judgment that the agreement is not the
10 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
11 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *See Wershba v.*
12 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (internal quotation marks omitted), *review*
13 *denied*, 2001 Cal. Lexis 8019; *accord, Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
14 1800-1801. Toward this end, the Referee may weigh and balance various non-exclusive factors
15 listed in the case law. *Wershba*, 91 Cal.App.4th at 245. These factors can include “the strength of
16 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, . . . the
17 amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
18 the experience and views of counsel, . . . and the reaction of the class members to the proposed
19 settlement.” *Id.*

20 Notwithstanding other factors, “a presumption of fairness exists where: (1) the settlement
21 is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow
22 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
23 the percentage of objectors is small.” *Id.* (internal quotation marks omitted). Further, “[c]omprise
24 is inherent and necessary in the settlement process.” *Id.* at 250.

25 The Settlement Agreement amply satisfies the requirements for final approval. The facts
26 and circumstances establish that the settlement is fair, reasonable, and adequate when balanced
27 against the risks the parties face on the merits, as well as the expense, delay, and uncertainty of a
28 lengthy trial and probable appeals.

1 **II. NOTICE WAS GIVEN AS ORDERED**

2 Plaintiffs' counsel gave notice to the Class in the form and manner that the Referee
3 ordered in the Preliminary Approval Order. Plaintiffs posted the notice on the web on October 5,
4 2006. It can be found at www.lanzagoolsby.com or www.lanzagoolsby.com/norcohills. By the
5 same date, plaintiffs posted on the same site other documents in which Class members may be
6 interested, such as the Preliminary Approval Order, the Settlement Agreement, and the approved
7 Class list. Plaintiffs then completed mailing the Notice to each Class member on October 11,
8 2006. Lanza Decl. ¶ 34 & Ex.B. This was within the "best-efforts" deadline that the Referee
9 specified in the Preliminary Approval Order.

10 To date, counsel have received no objections or requests to opt-out.

11 **III. THE SETTLEMENT IS FAIR, ADEQUATE, & REASONABLE**

12 The parties believe that the settlement is fair, adequate, and reasonable given all the facts
13 and circumstances of the case.

14 **A. Strengths and weaknesses of plaintiffs' case**

15 This case is not as strong as plaintiffs anticipated when they first filed it in January 2002.
16 With respect to "liability" issues, after exhaustive discovery, plaintiffs have some evidence that
17 Western Pacific knew more about Wyle Labs and Norco Battery than the developer disclosed to
18 its homebuyers.

19 Plaintiffs' evidence, though, is far from uncontroverted. One of Western Pacific's
20 principal defenses on "liability" is that the developer was entitled to rely on a report of a firm that
21 it hired to prepare an environmental impact report, which report assigned minimal significance to
22 Wyle Labs and Norco Battery. Western Pacific contends that, upon reading that report, it was
23 under no further duty to investigate and/or disclose any more than it did. It is unclear what the
24 finder of fact – i.e., the Referee – would view this issue. Lanza Decl. ¶¶ 12-21.

25 With respect to "remedy" issues, plaintiffs' appraisal expert was prepared to testify that
26 the Hidden Valley homebuyers (i.e., the Class) paid more for their homes than they were worth
27 had Western Pacific given proper disclosures. However, there was no market in 2000-2001 for
28 Hidden Valley homes *with* what plaintiffs regard as proper disclosures. Thus, plaintiffs' appraisal

1 expert relied on methods for reaching his conclusions other than the usual comparison method of
2 appraisal.

3 Western Pacific, in turn, also had an appraisal expert. Defendants' appraisal expert was
4 prepared to testify that the homebuyers paid exactly what the Hidden Valley homes were worth in
5 2000-2001. He compared resale prices in Hidden Valley to comparable homes in the vicinity and
6 concluded that the Class members' homes appreciated as much as comparable homes not adjacent
7 to Wyle Labs and Norco Battery. He was also prepared to criticize the various methodologies
8 used by plaintiffs' appraisal expert as unduly speculative, among other things. The finder of fact
9 could have determined that Western Pacific's evidence was more persuasive than plaintiffs',
10 awarding no restitution at all. *See* Lanza Decl. ¶ 18.

11 Another possible outcome plaintiffs faced involved establishing Western Pacific's liability
12 but obtaining only a token or nominal amount of restitution. The market value of homes in
13 Hidden Valley (and, for the most part, all of Southern California) has risen dramatically since
14 2000-2001, resulting in a substantial increase in value for each Class member. The Referee may
15 have been entitled to consider all the equities of the situation, including that the homes
16 substantially increased in value since they were purchased. Lanza Decl. ¶ 19.

17 These considerations are among those that plaintiffs considered in entering into the
18 Settlement Agreement – and that support final approval.

19 **B. Risks, expense, and likely duration of further litigation**

20 Another factor favoring settlement was avoiding the inherent risks and uncertainties
21 associated with a lengthy trial on the merits, the substantial costs associated with such an
22 endeavor, and the lengthy and time-consuming appeals that likely would have resulted regardless
23 of who prevailed. (The risks of trial are discussed above in the section concerning the strengths
24 and weaknesses of plaintiffs' case.) Lanza Decl. ¶ 22.

25 The parties also recognize that a final judgment after resolution of probable appeals,
26 regardless of which party prevails, could be years away. Without a settlement, Plaintiffs and
27 Defendants could potentially incur hundreds of thousands of dollars in additional attorneys' fees
28 and expenses. Lanza Decl. ¶ 23. This desire to avoid the further delay and expense of resolving

1 this dispute through trial and appeal is a significant factor in motivating these parties to settle the
2 case and supports final approval.

3 **C. Amount offered in settlement**

4 Under relevant case law, “[t]he proposed settlement is not to be judged against a
5 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at
6 trial.” *Wershba*, 91 Cal.App.4th at 246. “[T]he test is not the maximum amount plaintiffs might
7 have obtained at trial ... but rather whether the settlement is reasonable under all of the
8 circumstances. *Id.* at 250. This is because prevailing at trial is uncertain, as explained above.

9 The principal consideration of the settlement is that defendants will pay \$700,000 to, for,
10 or on behalf of the Class members. While the settlement does not provide as much relief as
11 plaintiffs and the Class members (and class counsel) hoped for, it does provide some relief and it
12 provides it now. This settlement is a preferable outcome to the inherently risky, expensive, and
13 time-consuming alternative of taking this case through trial and the likely appeals that would
14 follow if plaintiffs succeeded even in some smallest measure. Lanza Decl. ¶ 27. The settlement
15 is an acceptable compromise, which favors final approval.

16 **D. The discovery completed and the stage of the proceedings**

17 When the parties entered into the Settlement Agreement, both sides had engaged in
18 considerable discovery, propounding and responding to numerous written discovery requests and
19 taking many depositions of percipient and expert witnesses (45 depositions in total). Discovery
20 was essentially complete. Lanza Decl. ¶ 28.

21 The two sides each filed detailed trial briefs identifying the issues for trial and the relevant
22 facts and law. Trial was scheduled to begin within weeks of when the parties agreed to settle. At
23 the time of the settlement, the parties and their counsel were fully informed as to the strengths of
24 the claims, defenses, and legal and factual arguments. Lanza Decl. ¶ 29. That competent counsel
25 were fully informed about the case at the time they negotiated the settlement favors final
26 approval.

27 **E. Experience and views of plaintiffs’ counsel**

28 Plaintiffs’ counsel recommend this settlement. Class counsel have many years of

1 collective litigation experience. They have appeared successfully in many cases and there is no
2 reason to believe they would be unable or unwilling to proceed to trial in this case. The
3 negotiation process was lengthy, contentious, and difficult. In the opinion of plaintiffs' counsel,
4 the settlement is fair, reasonable and adequate under the circumstances. Lanza Decl. ¶¶ 30-33.
5 This factor supports final approval of the settlement.

6 **F. Reaction of the Class members**

7 Notice has been given as the Referee ordered. To date, counsel have received no requests
8 to opt out and no objections. The deadline is in one week. The reaction so far appears to be that
9 the Class is satisfied with the settlement. Lanza Decl. ¶¶ 34-40. As of this time, this factor
10 supports final approval.

11 **G. All settlement negotiations were at arms' length**

12 The settlement discloses no grounds to doubt its fairness. It was the product of thorough,
13 arms'-length negotiations by experienced and informed counsel. The Settlement Agreement is the
14 product of protracted settlement negotiations over the course of the 4½-year litigation, which
15 included a mediation with the Honorable Leo Wagner (Ret.) and numerous follow-up
16 communications with him and between the parties without the mediator's participation. Lanza
17 Decl. ¶ 41. The parties always negotiated at arms' length as adversaries and at no time colluded
18 to settle the case. Lanza Decl. ¶ 43. This too favors final approval of the settlement.

19 **H. The presumption of fairness applies here**

20 The proposed settlement is fair, adequate, and reasonable for the reasons explained above
21 **and** because certain of those reasons, standing alone, lead to a **presumption of fairness**. See
22 *Wershba*, 91 Cal.App.4th at 245. Each of the factors leading to such a presumption exists here.

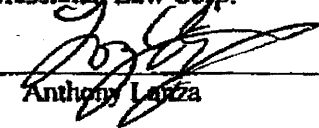
23 *First*, the settlement was reached through arms'-length negotiation. There was no
24 collusion. Lanza Decl. ¶ 43. *Second*, investigation, discovery, and pre-trial proceedings were
25 more than sufficient to allow plaintiffs' counsel and the Referee to act intelligently. Lanza Decl.
26 ¶ 29. *Third*, counsel is experienced in similar litigation. Lanza Decl. ¶¶ 30-33. *Fourth*, the
27 percentage of objectors is small (it is actually zero). Lanza Decl. ¶ 35. Thus, the presumption of
28 fairness applies, which strongly favors final approval of the settlement.

1 **IV. CONCLUSION.**

2 Based on the foregoing, plaintiffs and defendants respectfully request that the Referee
3 grant this motion for final approval of the settlement and enter judgment in accordance with the
4 terms of the Settlement Agreement.

5
6 *Attorneys for Plaintiffs and the Class:*

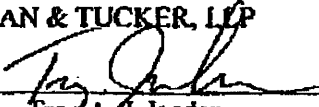
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