

# SETTLEMENT AGREEMENT

## PURPOSE

The purpose of this Settlement Agreement and Release (the “Agreement”) is to set forth a binding agreement, subject to approval pursuant to Rule 1859 of the California Rules of Court (“CRC”), between the parties to fully resolve the matter titled *Beaudet et al. v. Western Pacific Housing-Norco Estates, LLC et al.*, Case No. 369796 (Superior Court, Riverside County, Cal.), JAMS Reference No. 1200031905 (the “Action”).

## PARTIES

The parties to this Agreement are Western Pacific Housing-Norco Estates, LLC (“Western Pacific”), Lamco Housing, Inc., and D.R. Horton, Inc., successor by merger to Schuler Homes, Inc. (collectively “Defendants”), and Jennifer Beaudet, Ronald Beaudet, John Dallah and Sharon Dallah, individually and as representatives of a class of persons comprised of certain individuals who purchased homes from Western Pacific in its development of 217 homes in three tracts (known as Crestmont, Bridlecrest and Rose Canyon) located in the Norco Hills community in the town of Norco, California (the development is collectively referred to as “Hidden Valley”).

## RECITALS

A. **Filing of action.** On January 15, 2002, named plaintiffs Jennifer Beaudet, Ronald Beaudet, John Dallah, and Sharon Dallah (the “Named Plaintiffs”), together with Nick Ripoly and Michelle Ripoly, filed the Action, naming Western Pacific, Lamco Housing, Inc., and Schuler Homes, Inc. as defendants (“Complaint”). (Nick and Michelle Ripoly were subsequently dismissed as named plaintiffs.) The Complaint asserted causes of action against Defendants relating to the Hidden Valley development in which the Named Plaintiffs and others had purchased homes from Western Pacific.

B. **Appointment of referee.** By Order of Reference dated July 2, 2002, the Court ordered that the Action be resolved by judicial reference under California Code of Civil Procedure section 638 pursuant to the alternative dispute resolution agreement between Western Pacific and each person who purchased a house in the Hidden Valley development from Western Pacific. The Honorable Edward J. Wallin (Ret.) (the “Referee” or “Justice Wallin”) was appointed the referee.

C. **Operative complaint.** On February 26, 2004, plaintiffs filed their Second Amended Complaint (the “SAC”), which is the operative complaint in the Action.

D. **Class certification.** By Order dated May 12, 2004, the Referee certified certain claims and portions of claims in the SAC for class treatment as set forth in that order (the “Class Certification Order”). The Class Certification Order designated the Named Plaintiffs as

class representatives and their counsel as class counsel (“Class Counsel”). The Class Certification Order defined a class as follows:

All individuals who purchased real estate from defendants located in the developments called “Crestmont,” “Bridlecrest,” and “Rose Canyon,” located in the Norco Hills community, town of Norco, California, prior to January 15, 2002. Excluded are defendants, their officers, directors, employees, legal representatives, assigns, parent entities, subsidiaries, affiliated entities, and predecessors or successors in interest.

Pursuant to the Named Plaintiffs’ motion for class certification, the Referee certified the following claims: (1) the issue of Defendants’ liability on the Named Plaintiffs’ second cause of action for fraudulent concealment; (2) the issue of defendants’ liability on the Named Plaintiffs’ third cause of action for non-disclosure; and (3) the Named Plaintiffs’ fourth cause of action under Business and Professions Code § 17200 et seq.<sup>1</sup> No party ever requested a ruling, nor did the Referee ever make one, on certification of the Named Plaintiffs’ other claims.

E. **Reduction of class.** After the Class Certification Order, the Referee dismissed 19 sets of homebuyers (couples or individuals), who otherwise would have been in the class, pursuant to stipulation and order after notice to the affected class members. (*See* Order dated May 6, 2005.) The Referee also dismissed from the class Felicia Ivezzy, the original purchasers of 2 Hidden Valley homes, as sanctions for violating a discovery order. (*See* Order dated August 5, 2005.) Another set of homeowners, Ted and Nancy Novak, were separately represented by counsel and released their nondisclosure claims against Defendants in a separate dispute before class certification of this action. This reduction from the class definition as originally certified is shown on **Schedule A** hereto. The remainder of the class – i.e., those members not dismissed – is hereinafter referred to as the “Class” or the “Class Members.”

F. **Claims Subject to Settlement.** The parties will request and recommend that, for purposes of settlement only, the Referee expand the causes of action certified to include all causes of action in the SAC with the exception of claims already dismissed or summarily adjudicated.

G. **Denials.** Defendants have denied the allegations in the Complaint and the SAC and have denied any wrongful act or omission, fault, breach of duty or other obligation, or liability as to any of the matters set forth in, or relating to matters set forth in, the Complaint, the SAC, or any other allegations in the Action. Similarly, the Named Plaintiffs have denied that any of the allegations in the Complaint and the SAC lack merit.

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<sup>1</sup> After issuing the Class Certification Order, the Referee summarily adjudicated in Defendants’ favor the portion of the Named Plaintiffs’ third cause of action pertaining to liability under Civil Code § 1102, for which liability previously had been certified. The common-law portion of the third cause of action remained. (*See* Order on Def.s’ Mot. Summ. Adj. on Pltfs’ 3rd Cause of Action, dated Oct. 4, 2004.)

H. **Reason for settling.** The parties are settling to avoid the disruption, uncertainty, costs, and risks associated with further litigation.

NOW, THEREFORE, for full and valuable consideration, and based upon the terms, covenants and conditions contained herein, the parties agree to all the terms herein.

### TERMS

1. **Settlement consideration.** In full settlement of all claims, demands, costs, expenses, damages, losses, attorneys' fees, causes of action, obligations and liabilities of any and every kind arising out of or relating to the matters set forth in the Complaint, the SAC, or otherwise raised in the Action, Defendants shall do the following (collectively referred to as the "Settlement Consideration"):

a. **Primary payment.** Pay \$700,000.00 (Seven Hundred Thousand Dollars) ("Primary Payment") for distribution to or on behalf of the Class Members after deduction of Class Counsel's fees, expenses, and costs and any class-representative compensation paid to the Named Plaintiffs, which Primary Payment Defendants shall tender to Class Counsel (made payable to the Lanza & Goolsby client trust account) within fifteen (15) days after the Effective Date (as defined below);

b. **Expenses other than JAMS expenses.** Pay the expenses associated with settlement, including the cost of sending notice of the proposed settlement to the class. If Class Counsel advances the cost of sending notice of the proposed settlement to the Class, Defendants will reimburse Class Counsel, payable to Lanza & Goolsby within ten (10) days of receiving an invoice for such costs (the parties will work together to determine the current addresses of the Class Members); and

c. **JAMS expenses.** Pay all Referee's fees and JAMS's administrative fees and expenses for any time (or other billable items) the Referee and/or JAMS spent or will spend on this matter from Saturday, July 1, 2006 through the end of the settlement proceedings contemplated herein.

2. **Distribution.** The amount of the Settlement Consideration available for distribution to the Class Members, after deduction of Class Counsel's fees, expenses, and costs and any class-representative compensation paid to the Named Plaintiffs, will be divided evenly among the Class Members shown on **Schedule A**, which distribution will be paid from the Lanza & Goolsby client trust account and sent by mail. Any disputes that may arise by or between any person or counsel as to the accuracy of the Class list shown on **Schedule A** will be resolved by the Referee (or, if the Referee is unavailable, another appropriate judicial officer). Based on appropriate declarations and/or other evidence supplied by Defendants, the parties will request that the Referee approve the Class list shown on **Schedule A**.

3. **No recapture.** No portion of the Settlement Consideration shall be recapturable by Defendants. Any amount of the Settlement Consideration not otherwise paid (e.g., due to a check not being cashed for more than 6 months or for any other reason) shall be

donated to Public Service Law Corporation, a non-profit organization affiliated with the Riverside County Bar Association and established to provide legal services in civil cases to people living in Riverside County who cannot afford an attorney (*see* <http://www.riversidecountybar.com/public-service>).

4. **Opting out.** Though the Class has already received a class notice that included an opportunity to opt out of the Action, the parties recommend that the Referee provide an additional opportunity for Class Members to opt out of the settlement contemplated herein. The parties will recommend that requests to opt out be sent to Defendants' counsel and one of Class Counsel. This will be described in the notice of the proposed settlement. Any person who was a Class Member but validly opts out will no longer be considered a Class Member for purposes of this Agreement or the settlement contemplated herein.

5. **Defendants' election based on excessive opt-outs.** If fifteen percent (15%) or more of the Class Members opt out by the opt-out deadline (which deadline will be set forth in the notice of proposed settlement), then Defendants may, at their sole discretion, elect to either void the settlement (which, if Defendants so elect, Defendants shall do no later than seven (7) days after the opt-out deadline) or continue under the settlement. The Referee (or, if the Referee is unavailable, another appropriate judicial officer) will resolve any uncertainty as to whether a particular Class Member properly opted out in calculating the percentage of the Class Members that opt out of the settlement.

6. **Release.** The final judgment will contain a provision deeming that the Named Plaintiffs and all Class Members and their assigns and successors in interest release and forever discharge Defendants and their respective officers, directors, owners, employees, representatives, predecessors, subsidiary entities, affiliates, attorneys, agents and assigns from any and all claims, demands, costs, expenses, attorneys' fees, damages, losses, causes of action, obligations and liabilities, whether known or unknown, whether in law or equity, relating to any or all of the claims or allegations in the Action, including those asserted in the Complaint or SAC, or relating in any way to Wyle Laboratories' Norco facility, the Norco Battery site (also known as the B&H Battery site), the Sav-On store in the shopping center adjacent to the Hidden Valley development, future planned development in the Norco Hills area or Western Pacific's alleged non-disclosure of future planned development in the Norco Hills area, or Western Pacific's non-disclosure or incomplete or inaccurate disclosure of any other information relating to the Hidden Valley development or Norco Hills area, including the homes of the Class Members, that the Class Members now have or might have in the future against Defendants and/or their respective officers, directors, owners, employees, representatives, predecessors, subsidiary entities, affiliates, attorneys, agents and assigns. This release does not extend to any claims that Class Members may have for breach of warranty or construction defects that are not expressly stated in the Complaint or SAC; nor does it extend to claims to perform Defendants' obligations under the settlement as finally approved or constitute a waiver of the rights created by this Agreement; nor does it extend to claims against Wyle Labs or any affiliate of or successor in interest to Wyle Labs.

7. **Civil Code § 1542.** The releases set forth in the final judgment shall deem that the Named Plaintiffs and Class Members expressly agree to waive and relinquish all rights

and benefits they may have under California Civil Code section 1542. That section reads as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

8. **Expenses; fees; class-representative compensation.** The Named Plaintiffs' and Class's expenses and reasonable attorneys' fees involved in pursuing the Action will be paid out of the Primary Payment. The Named Plaintiffs may also request class-representative compensation in an amount to be approved by the Referee, also to be paid out of the Primary Payment. Defendants will not oppose Class Counsel's request for (a) reimbursement of actual expenses; and (b) an award of attorneys' fees not to exceed one-third of the Primary Payment (in lieu of statutory fees or any other fees the Named Plaintiffs or Class Counsel might otherwise have been entitled to recover). Except as provided herein, the parties shall be responsible for their own attorneys' fees, costs, and expenses incurred during this litigation, including their respective share of the Referee's fees and JAMS's administrative fees and expenses.

9. **Notice and administration.** The parties shall recommend that notice of the proposed settlement be accomplished by direct mailing in the form attached to the proposed order that the parties will submit. Once the Referee (or, if the Referee is unavailable, another appropriate judicial officer) approves the form of notice and manner of giving notice, the giving of notice shall be the responsibility of Class Counsel, at Defendant's expense as described in paragraph 1.b. herein. Class Counsel shall bear the burden of administering the settlement, such as preparing and mailing checks.

10. **Non-collusion.** The two sides have maintained adversarial positions throughout the negotiation of this Agreement and have not colluded in any way. This is the sole agreement concerning resolution of the Action.

11. **Cooperation in effectuating settlement.** The parties will cooperate with each other in taking steps necessary or proper to obtain preliminary and final approval of the settlement described in this Agreement, including but not limited to preparation of proposed notices and orders, briefing as appropriate, and/or providing declarations as appropriate.

12. **Time line.**

a. **Preliminary approval and notice.** Within two weeks after the date of this Agreement or as soon thereafter as practicable, the parties will file a joint motion for preliminary approval of the settlement and approval of the notice of proposed settlement to be given to the Class. The parties will work cooperatively on the form and content of the notice of proposed settlement. In the event of a disagreement between Class Counsel and Defendants' counsel on the notice of proposed settlement, the Referee (or, if the Referee is unavailable, another appropriate judicial officer) will resolve the disagreement.

b. **Transmittal of notice.** Class Counsel shall transmit the notice of proposed settlement to the Class as soon as is practicable after the Referee (or, if the Referee is unavailable, another appropriate judicial officer) grants preliminary approval of the settlement and approval of the content of the notice and the manner of giving it.

c. **Opt-outs and objections.** The parties will recommend that the deadline for receipt of requests to opt out or objections be fifteen (15) days before the final approval hearing, as scheduled by the Referee and communicated in the notice. The procedures and deadline will be described in the notice.

d. **Final approval.** The parties will recommend that the final approval hearing pursuant to CRC § 1859 shall take place as soon as practicable after the preliminary approval and notice of the proposed settlement to the Class Members, providing at least 30 days after the initial mailing of the notice for Class Members to opt out or file objections. Prior to the hearing, the parties will submit a proposed final judgment approving the settlement proposed herein, ordering the parties to carry out their obligations forthwith, and dismissing the Action with prejudice. The proposed final judgment will not apply to former Class Members who properly opt out.

13. **Effective Date.** The “Effective Date” of the settlement contemplated herein shall be the date that a final judgment approving such settlement is no longer subject to appeal. If no Class Member objects to the settlement and no appeal is possible, the Effective Date shall be the date that the Riverside Superior Court enters a final judgment approving the settlement.

14. **Code of Civil Procedure section 583.** The parties will ensure that the five-year prosecution dismissal statute (Code Civ. Proc., § 583) is protected by whatever means may be necessary or appropriate, whether through stipulation and order, commencing trial with the swearing-in of one witness, or otherwise.

15. **Interpretation.** The parties acknowledge that this Agreement was jointly prepared by them by and through their respective legal counsel, and any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any party on the basis that the party drafted the language. This Agreement shall be interpreted according to other rules on interpretation of contracts under California law.

16. **No Admissions.** This Agreement shall not constitute or be interpreted or construed as an admission of fault, wrongful act or omission, or liability by any party to this Agreement as to any of the matters set forth in, or relating to matters set forth in, this Agreement.

17. **Disputes.** Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof shall be resolved by judicial reference pursuant to California Code of Civil Procedure section 638 et seq. in Orange County, California, before a single referee, and administered by JAMS. Justice Wallin shall be the referee. If Justice Wallin is unavailable, the parties shall select another

referee pursuant to JAMS's rules for the selection of a referee or arbitrator. Fees for the reference shall initially be shared equally by the parties to the reference. The referee may, in the ruling, allocate to the prevailing party all or part of the costs of the reference, including the referee's fees.

18. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original as against any party that has signed it, but all of which together will constitute one and the same instrument. Signatures to this Agreement may be transmitted by facsimile or scanned and emailed, and such facsimile or scanned-and-emailed signature will be treated as an original.

19. **Date of Agreement.** The date of this Agreement shall be the date of the last signature below.

20. **Non-approval of the Settlement.** If the Referee or the Riverside Superior Court does not approve the settlement or if the approval is reversed on appeal, the parties and the claims certified will revert to their status prior to the signing of this Agreement, except that amounts that Defendants paid or owe pursuant to paragraphs 1b and 1c will not be affected.

IT IS SO AGREED.

Dated: \_\_\_\_\_, 2006      Western Pacific Housing-Norco Estates, LLC  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2006      Lamco Housing, Inc.  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2006      D.R. Horton, Inc., on its own behalf and as successor by  
merger to Schuler Homes, Inc.  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2006  
\_\_\_\_\_  
Jennifer Beudet, individually and as Class Representative

Dated: \_\_\_\_\_, 2006  
\_\_\_\_\_  
Ronald Beudet, individually and as Class Representative

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IT IS SO AGREED.

Dated: Aug. 30, 2006 Western Pacific Housing-Norco Estates, LLC  
By: [Signature]  
Its: William Mayer, Vice President

Dated: Aug. 30, 2006 Lamco Housing, Inc.  
By: [Signature]  
Its: William Mayer, Vice President

Dated: Sept. 6, 2006 D.R. Horton, Inc., on its own behalf and as successor by merger to Schuler Homes, Inc.  
By: [Signature]  
Its: VICE PRESIDENT

Dated: \_\_\_\_\_, 2006  
\_\_\_\_\_  
Jennifer Beaudet, individually and as Class Representative

Dated: \_\_\_\_\_, 2006  
\_\_\_\_\_  
Ronald Beaudet, individually and as Class Representative

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Dated: \_\_\_\_\_, 2006      Western Pacific Housing-Norco Estates, LLC  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2006      Lanco Housing, Inc.  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2006      D.R. Horton, Inc., on its own behalf and as successor by  
merger to Schuler Homes, Inc.  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: 8/31, 2006  
\_\_\_\_\_  
Jennifer Beaudet, individually and as Class Representative

Dated: Aug 31, 2006  
\_\_\_\_\_  
Ronald Beaudet, individually and as Class Representative

Dated: \_\_\_\_\_, 2006

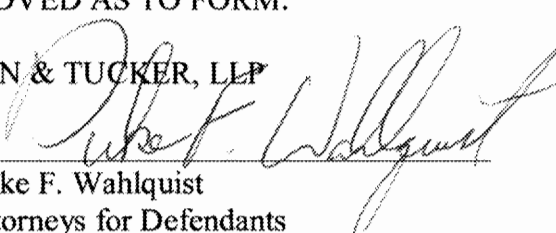
\_\_\_\_\_  
John Dallah, individually and as Class Representative

Dated: \_\_\_\_\_, 2006

\_\_\_\_\_  
Sharon Dallah, individually and as Class Representative

APPROVED AS TO FORM:

RUTAN & TUCKER, LLP

By:   
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Schuler Homes, Inc.

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By: \_\_\_\_\_  
Anthony L. Lanza  
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THE BORDERUD LAW GROUP

By: \_\_\_\_\_  
Jon W. Borderud  
Class Counsel

LAW OFFICES OF CLIFFORD CANTOR, P.C.

By: \_\_\_\_\_  
Clifford Cantor  
Class Counsel

Dated: Sept 20<sup>th</sup>, 2006

John Dallah  
John Dallah, individually and as Class Representative

Dated: Sept 20<sup>th</sup>, 2006

Sharon Dallah  
Sharon Dallah, individually and as Class Representative

APPROVED AS TO FORM:

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Western Pacific Housing-Norco Estates, LLC,  
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Anthony L. Lanza  
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By: \_\_\_\_\_  
Clifford Cantor  
Class Counsel

Dated: \_\_\_\_\_, 2006

John Dallah, individually and as Class Representative

Dated: \_\_\_\_\_, 2006

Sharon Dallah, individually and as Class Representative

APPROVED AS TO FORM:

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By: Clifford Cantor

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