

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

DAVID MATSON, et al., Individually and  
on Behalf of All Similarly Situated,

Plaintiffs,

V.

NIBCO INC.,

Defendant.

CASE NO. SA-19-CV-00717-JKP

**NOTICE OF CLASS ACTION SETTLEMENT**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

**Attention:** If (a) you owned or occupied a residential structure in certain Alabama and Texas cities set forth below, that contains or contained NIBCO 1006 Tubing (“Tubing”), NIBCO F1807 Fittings (“Fittings”), and/or NIBCO Stainless Steel Clamps (“Clamps”)<sup>1</sup>; and/or (b) you paid for repairs or damages resulting from a Qualifying Leak from NIBCO Tubing, Fittings, or Clamps in such residential structures, then you should read this Notice of Class Action Settlement because you may be entitled to benefits from a class action settlement.

- A settlement has been proposed in a class action lawsuit against Defendant NIBCO Inc. (“NIBCO”) in which it was alleged that NIBCO PEX 1006 Tubing, NIBCO F1807 Fittings, and/or NIBCO Stainless Steel Clamps (the “Covered Products”) are defective and can leak causing water damage. NIBCO denies these allegations and rejects the claim that there is anything wrong with these products, but has agreed to the Settlement described in this Notice.
- If you are a Settlement Class Member (defined below), you may qualify for monetary benefits under the proposed Settlement for past or future reasonably proven and unreimbursed reasonable costs incurred in connection with: (a) the repair or replacement of the pertinent section(s) of Tubing, Fittings, and/or Clamps as a direct result of a Qualifying Leak (defined below); (b) the repair or replacement of other property damaged as a direct result of a Qualifying Leak; and (c) the material and labor costs reasonably necessary to bring the residential or commercial structure and its contents back to the same

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<sup>1</sup>The definition of any capitalized term not defined herein can be found in the Settlement Agreement which can be downloaded at the Settlement Website: [www.AlabamaTexasPEXsettlement.com](http://www.AlabamaTexasPEXsettlement.com).

finish and quality as existed before the Qualifying Leak. You may also qualify for a re-plumb remedy if you have experienced or experience Multiple Qualifying Leaks.

- The proposed Settlement has been preliminarily approved by the Court. This Notice provides information about the Litigation, the Settlement, and your options as a Settlement Class Member. Please read this Notice carefully because it affects your legal rights. A federal court authorized the sending of this Notice to you. This is not a solicitation.

<b>Your Legal Rights and Options In This Settlement</b>	
<b>Submit a Claim Form</b>	To receive cash reimbursement for Reasonably Proven Property Damage due to a Qualifying Leak and/or a re-plumb remedy, you must submit a Claim Form by the deadlines described below and listed on the Settlement Website, <a href="http://www.AlabamaTexasPEXsettlement.com">www.AlabamaTexasPEXsettlement.com</a> .
<b>Request Exclusion / Opt-Out Deadline: May 10, 2021</b>	This option, described in detail below, allows you to sue or continue to sue NIBCO and certain others regarding claims that the Covered Products are defective. If you opt-out, you will not be bound by any of the terms of the Settlement but you will also not be entitled to submit a Claim Form for monetary benefits from the Settlement.
<b>Object Deadline: May 10, 2021</b>	You are entitled to submit a written objection telling the Court what you do not like about the Settlement pursuant to the procedures described in detail below. You cannot request exclusion and object.
<b>Attend the Final Approval Hearing Scheduled for June 15, 2021 at 10:30 a.m.</b>	You are entitled to attend the Final Approval Hearing at which time the Court will consider whether to grant final approval of the Settlement.
<b>Do Nothing</b>	If you are a Settlement Class Member and do nothing, you will be bound by the terms of the Settlement if it is approved by the Court, whether or not you submit a Claim Form, and you will be subject to the release of claims set forth in the Settlement.

- The date and time of the Final Approval Hearing is subject to modification by the Court so please check the Settlement Website at [www.AlabamaTexasPEXsettlement.com](http://www.AlabamaTexasPEXsettlement.com) for updates.

## **1. WHY WAS THIS NOTICE ISSUED?**

The United States District Court for the Western District of Texas, the federal court overseeing the Litigation and that preliminarily approved the Settlement, authorized this Notice to inform you

about the Settlement and your options before it decides whether to grant final approval of the Settlement. Further information about the Settlement can be found at [www.AlabamaTexasPEXsettlement.com](http://www.AlabamaTexasPEXsettlement.com).

**2. WHAT IS THE LAWSUIT ABOUT?**

In this Litigation, the Plaintiffs alleged individual and class action claims against NIBCO asserting that the Covered Products are defective and prone to leak causing water damage. There are two class action lawsuits that are being settled. The term “Litigation” means *Matson v. NIBCO Inc.*, No. 19-cv-01137-RBF-JKP (W.D. Tex.), and *Garrett. v. NIBCO Inc.*, No. 19-cv-01137-RDP (D. Ala.).

NIBCO denies the claims and allegations in the Litigation, including that the Covered Products are defective. NIBCO further denies that it violated any law, engaged in any wrongdoing, or owes any liability in this case to Plaintiffs or anyone else. NIBCO is settling to avoid the expense, inconvenience, risk, and disruption of further litigation. The Settlement is not an admission of any liability.

The Court has not decided that NIBCO violated any laws. This Notice is not an expression of any opinion by the Court on the claims alleged in the Litigation.

**Please note that the Settlement does not include any claims for personal injury and does not release any such claims of Settlement Class Members to the extent such claims exist.**

**3. BACKGROUND OF THE LITIGATION**

The original Complaint in the Litigation was filed on June 19, 2019. During the Litigation, the Parties engaged in an alternative dispute resolution (“ADR”) process which included protracted “arms-length” negotiations that ultimately led to a lengthy mediation session overseen by a professional mediator. Through this extensive process, which included ADR-related discovery, and further numerous communications among counsel for the Parties over the course of many months, the Parties finally reached the Settlement described and summarized in this Notice, and memorialized in the Settlement Agreement, which can be read at the Settlement Website, [www.AlabamaTexasPEXsettlement.com](http://www.AlabamaTexasPEXsettlement.com).

**4. WHO IS INCLUDED IN THE SETTLEMENT?**

The term “Settlement Class” is defined in the Settlement Agreement as:

All Persons that own or have owned at any time since January 1, 2005, a residential structure constructed by: (a) D.R. Horton, Inc.-Birmingham (including, but not limited to, those for which the plumbing contracting was performed by or on behalf of Dupree Plumbing Co. Inc.) and which is located in the following cities in Alabama: Bella Vista; Bessemer; Birmingham; Calera; Chelsea; Cottondale; Hoover; Kimberly; Leeds; Maylene; McCalla; Montgomery; Northport; Odenville; Pinson; Prattville; Springville; Trussville; and Tuscaloosa; and/or (b) Continental Homes of Texas, L.P. (including, but not limited to, those for which the plumbing contracting was performed by or on behalf of Christianson

Air Conditioning and Plumbing, LLC) and which is located in the following cities in Texas: Boerne; Cibolo; Converse; Live Oak; Medina County; New Braunfels; Royse City; San Antonio; San Marcos; Schertz; Sequin; and Universal City, that contains or contained NIBCO's Tubing, Fittings, or Clamps, including with respect to both (a) and/or (b), their spouses, joint owners, heirs, executors, administrators, mortgagees, tenants, creditors, lenders, predecessors, successors, trusts and trustees, and assigns ("Occupant Persons"); as well as all Persons who have standing and are entitled to assert a claim on behalf of any such Occupant Persons, such as but not limited to a contractor, distributor, seller, subrogated insurance carrier, or other Person who has claims for contribution, indemnity or otherwise against NIBCO based on claims for Qualifying Leaks of the Tubing, Fittings, or Clamps with respect to such residential structures. The Settlement Class includes all Persons who subsequently purchase or otherwise obtain an interest in a property covered by this Settlement without the need of a formal assignment by contract or court order. A list of the residential structures in Alabama and Texas included in the Settlement Class will be provided to the Settlement Administrator and made available on the Settlement Website.

Excluded from the Settlement Class are D.R. Horton, Inc.-Birmingham, Dupree Plumbing Co. Inc., Continental Homes of Texas, L.P., and Christianson Air Conditioning and Plumbing, LLC.

Also excluded from the Settlement Class is any Person (other than the named Plaintiffs in the Litigation) who, as of October 22, 2020, had pending litigation in any court or tribunal against NIBCO asserting claims based on a Covered Product.

Also excluded from the Settlement Class are: (i) NIBCO, its officers, directors, affiliates, legal representatives, employees, successors, and assigns, and entities in which NIBCO has a controlling interest; (ii) judges presiding over the Litigation; and (iii) local, municipal, state, and federal governmental entities.

The term "Tubing" means PEX tubing manufactured or sold by NIBCO in the United States using (or labeled by NIBCO as using) its 1006 formulation, including NIBCO NEXT-Pure Tubing, NIBCO DURA-PEX Tubing, and NIBCO PEX, during the time period from January 1, 2005 to the present, and used in residential or commercial structures. The term "Tubing" does not include any tubing that was manufactured or sold by NIBCO and that was used in industrial applications, irrigation applications, radiant heating applications, or international applications; as components in appliances; or in RVs.

The term "Fittings" means ASTM F1807 yellow brass fittings manufactured or sold by NIBCO in the United States for use in PEX applications during the time period from January 1, 2005 to the present, and used in residential or commercial structures. The term "Fittings" does not include any fittings that were manufactured or sold by NIBCO and that were used in industrial applications, irrigation applications, radiant heating applications, or international applications; as components in equipment or appliances; or in RVs.

The term "Clamps" means stainless steel clamps manufactured or sold by NIBCO in the United States for use in PEX applications during the time period from January 1, 2005 to the present, and

used in residential or commercial structures. The term “Clamps” does not include any clamps that were manufactured or sold by NIBCO and that were used in industrial applications, irrigation applications, radiant heating applications, or international applications; as components in equipment or appliances; or in RVs.

## 5. HOW DO I KNOW IF MY RESIDENCE OR BUILDING HAS THESE PRODUCTS?

NIBCO PEX Tubing bears NIBCO’s brand and the “1006” designation, among other identifying pieces of information. NIBCO’s Fittings are stamped “NIBCO F 1807” and can be located at joints in the PEX tubing. The Fittings can be secured to the pipe by stainless steel Clamps. The Settlement Website will include additional suggestions and pictures to help you identify the Tubing, Fittings, and Clamps.

The Tubing has not been manufactured since 2012, and the Fittings and Clamps have not been manufactured since 2015 (though most Fittings and Clamps were sold by the end of 2012).

## 6. HOW MUCH IS THE TOTAL SETTLEMENT FUND?

If the Court grants final approval of the Settlement, NIBCO will pay money into a Settlement Fund to reimburse Eligible Claimants who submit a timely and valid Claim Form based upon their unreimbursed costs spent on repairs and damages resulting from Qualifying Leaks from the Covered Products (as further defined below) and to pay for re-plumb remedies for those who qualify as a result of the occurrence of Multiple Qualifying Leaks. The Settlement Fund will also be used to pay settlement administration costs. The maximum amount that NIBCO will pay pursuant to the Settlement is Seven Million Six Hundred Fifty Thousand Dollars (\$7,650,000.00). At the end of the Claim Period (defined as the time period from February 23, 2021 to May 16, 2025), any portion of the Settlement Fund not used to pay Eligible Claimants will remain with or be returned to NIBCO.

## 7. WHAT REMEDIES ARE AVAILABLE UNDER THE SETTLEMENT?

The Settlement shall provide the following remedies to Eligible Claimants who submit a valid and timely Claim Form to the Settlement Administrator:

**Past Property Damage Claims.** Past Property Damage Claims are those that are based upon Qualifying Leaks that occurred between January 1, 2005 and the Effective Date. Such Claims must be submitted to the Settlement Administrator within 100 days after the Effective Date though the Settlement Administrator may extend the 100-day period for a particular Claimant upon a showing of good cause as determined by the Settlement Administrator. An explanation in a Claim Form under oath reasonably demonstrating that the Claimant was precluded from submitting a Claim Form due to circumstances beyond the Claimant’s control shall constitute good cause. Eligible Claimants with Past Property Damage Claims shall receive an initial payment of 50% of their Reasonably Proven Property Damage with the potential for a supplemental payment up to 75% of their Reasonably Proven Property Damage. The Claimant must have taken reasonable steps to mitigate (*i.e.*, limit or stop) the effects of the Qualifying Leak.

**Future Property Damage Claims.** Future Property Damage Claims are those that are based upon Qualifying Leaks that occur after the Effective Date and before the end of the Claim Period. Such

Claims must be submitted to the Settlement Administrator within 100 days after the Qualifying Leak occurs, though the Settlement Administrator may extend this 100-day period for a particular Claimant upon a showing of good cause as determined by the Settlement Administrator. An explanation in a Claim Form under oath reasonably demonstrating that the Claimant was precluded from submitting a Claim Form due to circumstances beyond the Claimant's control shall constitute good cause. Eligible Claimants with Future Property Damage Claims shall receive an initial payment of 50% of their Reasonably Proven Property Damage with the potential for a supplemental payment up to 75% of their Reasonably Proven Property Damage. The Claimant must have taken reasonable steps to mitigate (*i.e.*, limit or stop) the effects of the Qualifying Leak.

**Re-Plumb Claims for Claimants with Multiple Leaks.** An Eligible Claimant who demonstrates that their residential structure has experienced, or experiences before the end of the Claim Period, Multiple Qualifying Leaks, each one occurring in such a manner that replumbing all or part of the structure would mitigate future events, has the option of requesting a payment relating to a complete re-plumb of relevant PEX Tubing, Clamps, and Fittings. Such Claims must be submitted to the Settlement Administrator within 100 days after the Effective Date if the third Qualifying Leak occurred before the Effective Date, or otherwise must be submitted within 100 days after the third Qualifying Leak occurs, though the Settlement Administrator may extend these periods for a particular Claimant upon a showing of good cause as determined by the Settlement Administrator. An explanation in a Claim Form under oath reasonably demonstrating that the Claimant was precluded from submitting a Claim Form due to circumstances beyond the Claimant's control shall constitute good cause. The amount of the payment (the "Re-Plumb Calculation") shall be calculated at a rate of \$722.50 per plumbing fixture present in the residential structure (e.g., the Re-Plumb Calculation for a home with 13 fixtures would be \$9,392.50). Eligible Claimants shall receive an initial payment of 50% of the Re-Plumb Calculation with the potential for a supplemental payment up to 75% of the Re-Plumb Calculation. A schedule of qualifying fixtures and half-fixtures is attached to the Settlement Agreement and shall be used by the Settlement Administrator in determining the amount of an Eligible Claimant's Re-Plumb Calculation under this Paragraph and sub-parts. The Re-Plumb calculation shall also include calculation, where applicable and necessary, for replacement of the main water service line at a rate of \$828.75.

- Class Counsel has identified and negotiated with Repipe Specialists of Texas to act as the preferred provider of re-plumbs for the Texas communities in the Settlement Class definition and MilesParker Group LLC to act as the preferred provider of re-plumbs in the Alabama communities in the Settlement Class definition (together, "Preferred Providers"). The Preferred Providers have performed numerous re-plumbs in the communities in the Settlement Class definition. The per-fixture rates provided for are based on the favorable rates that Class Counsel has been able to negotiate with the Preferred Providers, who are ready and able to complete the re-plumbs in the respective communities in the Settlement Class at the amounts stated in the preceding paragraph. These rates reflect an approximate 15% discount on rates the Preferred Providers would charge homeowners in the geographic areas included in the Settlement Class and, thus, offer a further benefit to Settlement Class Members.
- An Eligible Claimant for a re-plumb is entitled, but not required, to select the Preferred Provider to perform the re-plumb; however, the rate of reimbursement for a re-plumb will be calculated based on the same rates of \$722.50 per plumbing fixture rate and

\$828.75 per main water service line even if the Eligible Claimant chooses a service provider other than the Preferred Provider and that service provider charges more than the Re-Plumb Calculation set forth above. Eligible Claimants who select the Preferred Provider are required to follow the additional claim procedure set forth in the Settlement Agreement and explained on the Settlement Website.

- Eligible Claimants who have experienced, or experience during the Claim Period, Multiple Qualifying Leaks, each one occurring in such a manner that re-plumbing all or part of the structure would mitigate future events, have the option to select a cash payment of \$3,000.00 in lieu of a re-plumb remedy in exchange for the Eligible Claimant's agreement that the Eligible Claimant(s) and their structure are no longer eligible to make any Future Property Damage Claims.

## 8. WHAT IS THE DEFINITION OF A QUALIFYING LEAK?

The term "Qualifying Leak" means:

- i. With respect to Tubing: A physical escape of water from Tubing causing damage.
- ii. With respect to Fittings: A physical escape of water from a Fitting causing damage.
- iii. With respect to Clamps: A physical escape of water from a Clamp causing damage.
- iv. A Qualifying Leak does not occur where, based on the available evidence, the Settlement Administrator, NIBCO, and Co-Lead Class Counsel all agree that based on available evidence, a physical escape of water from a Covered Product causing damage was solely and exclusively the result of: (1) a penetration of the Tubing, Fittings, and/or Clamps from a foreign object such as a nail or other physical abuse; (2) improper attachment of the Tubing, Fittings, and/or Clamps to plumbing components or appliances; (3) improper stress on the Tubing, Fittings, and/or Clamps due to improper installation; (4) leaks due to an improperly set or malfunctioning pressure-reducing valve not manufactured or sold by NIBCO; (5) leaks due to age of fixture sealant components supplied or provided by a plumber; or (6) any installation issue in violation of NIBCO's installation guidelines and/or unrelated to the design, manufacture, performance, or selection of the Tubing, Fittings, and/or Clamps. If it is determined that a Qualifying Leak has not occurred because the physical escape of water causing damage was solely and exclusively the result of one or more of the causes set forth in (1) through (6) above with respect to a particular Claimant, then that Claimant shall have the benefits of the carve-out of the release provisions in Paragraph 35 of the Settlement Agreement, subject to certain limited exceptions set forth in Paragraph 35, meaning that Claimant shall not be precluded by the Release from filing claims against its installer or third parties.

If a Claimant wishes to appeal the Settlement Administrator's rejection of a Claim on the basis of whether the Claim presents a Qualifying Leak, then the Claim will be submitted to an Independent Engineering Consultant appointed by the Court. The Claimant and NIBCO will both have the opportunity to present five-page statements and supporting materials to the Independent Engineering Consultant setting forth their position about whether the Claim should be deemed eligible or ineligible for compensation under the Settlement. NIBCO shall have the burden of

establishing that a leak was not a Qualifying Leak if it initiates the challenge. The decision of the Independent Engineering Consultant shall be final.

## 9. HOW DO I SUBMIT A CLAIM FORM?

To be eligible to receive any of the remedies described above, you must complete and submit a valid and timely Claim Form. The Claim Period ends on May 16, 2025. Your Claim Form and supporting documentation may be submitted:

- online through the claim portal located on the Settlement Website, [www.AlabamaTexasPEXsettlement.com](http://www.AlabamaTexasPEXsettlement.com);
- by email to the Settlement Administrator using the email address [info@AlabamaTexasPEXsettlement.com](mailto:info@AlabamaTexasPEXsettlement.com); or
- by U.S. Mail to the Settlement Administrator using the address: Alabama Texas PEX Settlement, Attn: CLAIMS, 1650 Arch Street, Philadelphia, PA 19103.

Claim Forms are available for download at [www.AlabamaTexasPEXsettlement.com](http://www.AlabamaTexasPEXsettlement.com), and are also available by email or by writing to the Settlement Administrator using the information above.

If the Qualifying Leak occurred between January 1, 2005 and the Effective Date, the deadline for submitting a Claim Form is 100 days after the Effective Date. If the Qualifying Leak is experienced after the Effective Date and during the Claim Period, the deadline for submitting a claim form is 100 days after the Qualifying Leak occurs. Re-Plumb Claims for those who have experienced or do experience Multiple Qualifying Leaks prior to the end of the Claim Period (see Question 7 above) must be submitted to the Settlement Administrator within 100 days after the Effective Date if the third Qualifying Leak occurred before the Effective Date, or otherwise must be submitted within 100 days after the third Qualifying Leak occurs.

Please check the Settlement Website at [www.AlabamaTexasPEXsettlement.com](http://www.AlabamaTexasPEXsettlement.com) for updates regarding the Effective Date and corresponding Claim Form Deadline dates. **In any event, please file your Claim Form as soon as possible.**

## 10. WHAT ARE THE RELEASED CLAIMS?

**Release.** Upon the Effective Date, all Settlement Class Members, as well as any Person who receives any payment from the Net Settlement Fund, on behalf of themselves and their agents, heirs, executors and administrators, successors, assigns, insurers, attorneys, representatives, and any and all Persons who seek to claim through or in the name or right of any of them (but excluding any Persons who timely opted out of the Settlement with regard to the buildings or geographic scope for which they opted out) (the “Releasing Parties”), release and forever discharge (as by an instrument under seal without further act by any Person, and upon good and sufficient consideration), NIBCO, its administrators, insurers, reinsurers, agents, firms, parent companies/corporations, sister companies/corporations, subsidiaries and affiliates, and any sales agents and distributors, wholesalers, retailers, plumbers, homebuilders, developers, contractors,

engineers, architects, and any other product or service provider or any other party in the chain of distribution who distributed, specified, recommended, sold, and/or installed the Tubing, Fittings, and/or Clamps, and all of the foregoing Persons' respective predecessors, successors, assigns and present and former officers, directors, shareholders, employees, agents, attorneys, and representatives (collectively, the "Released Parties"), from each and every claim of liability, on any legal or equitable ground whatsoever, including relief under federal law or the laws of any state, regarding or related to NIBCO's Tubing, Fittings, and/or Clamps, including without limitation their design, manufacture, purchase, use, marketing, promotions, sale, or certification, and including without limitation all past, present, or future claims, damages, or liability on any legal or equitable ground whatsoever, and regardless of whether such claims might have been or might be brought directly, or through subrogation or assignment or otherwise, on account of or related to the Tubing, Fittings, and/or Clamps, which were alleged or could have been alleged in the Complaints filed in the Litigation. The Release is as a result of membership as a Settlement Class Member, status as Releasing Parties, the Court's approval process herein, and the occurrence of the Effective Date, and is not conditional on receipt of payment by any particular member of the Settlement Class or Releasing Party. Without in any way limiting its scope, and, except to the extent otherwise specified in the Settlement Agreement, the Release covers by example and without limitation, any and all claims for reasonable attorneys' fees, costs, expert fees, consultant fees, interest, litigation fees, costs, or any other fees, costs, and/or disbursements incurred by any attorneys, Class Counsel, Plaintiffs, Settlement Class Members, or any Releasing Party who claim to have assisted in conferring the benefits under this Settlement upon the Settlement Class. This Settlement Agreement and the Release provided for herein shall not and are not intended to release the claims of the Releasing Parties against the suppliers of raw materials, components, or ingredients used in the manufacture of the Tubing, Fittings, and/or Clamps, which the Releasing Parties hereby fully and forever assign, transfer, and convey to NIBCO. For purposes of any claims by NIBCO against the suppliers of raw materials, components, or ingredients used in the manufacture of the Tubing, Fittings, and/or Clamps, should such supplier seek to join any Releasing Party in such a claim, NIBCO shall defend, indemnify, and hold harmless the Releasing Party from any and all claims of any such supplier against the Releasing Party.

**Exclusions from Release.** All personal injury claims are expressly excluded from the Release; for the avoidance of doubt, however, claims for emotional distress and/or mental anguish are subject to the Release in Paragraph 34 and not part of this personal injury exclusion. In addition, subject to the terms of Paragraph 34, the Parties further agree that certain limited claims as specified below, which a Releasing Party has brought or may in the future bring against an installer, plumber, homebuilder, contractor, or other product or service provider, or any other party in the chain of distribution who purchased, specified, recommended, sold, and/or installed the Tubing, Fittings, and/or Clamps, related solely and exclusively to the alleged faulty installation of the Tubing, Fittings, and/or Clamps, are expressly not released as to such Persons. This limited exception shall include only claims alleging that a party or parties other than NIBCO are wholly responsible for a leak of the Tubing, Fittings, or Clamps, including, without limitation, as a result of (1) a penetration of the Tubing, Fittings, and/or Clamps from a foreign object such as a nail or other physical abuse; (2) improper attachment of the Tubing, Fittings, and/or Clamps to plumbing components or appliances; (3) improper stress on the Tubing, Fittings, and/or Clamps due to improper installation; (4) leaks due to an improperly set or malfunctioning pressure-reducing valve not manufactured or sold by NIBCO; (5) leaks due to age of fixture sealant components supplied or provided by a plumber; or (6) any installation issue in violation of NIBCO's installation guidelines and/or unrelated to the design, manufacture, performance, or selection of the Tubing,

Fittings, and/or Clamps. However, if a court finds, via dispositive motion or otherwise, that NIBCO was at least partially responsible, then this limited exception shall not apply and the claim is released under Paragraph 34. Nothing in this Paragraph shall permit any Releasing Party to bring any other claims released herein, including without limitation claims for improper, insufficient, or negligent advice, recommendation, solicitation, purchase, selection, or sale of the Tubing, Fittings, and/or Clamps, and in no event shall any claim whose prosecution is permitted by this Paragraph allege, purport to allege or depend on any wrongful act, error or omission, loss, or liability, whether strict, or due to fault or otherwise, by NIBCO. The Releasing Parties and NIBCO do not intend to create and do not believe that the reservation provided in this Paragraph creates any basis for a claim of indemnification, contribution, or any other claim, however denominated, by a nonparty against the Released Parties, with the exception that, as described in Paragraph 34, parties who opted out of the Settlement do not release their ability to assert indemnification, contribution, and any other claim however denominated against Released Parties. This provision is intended solely to preserve a Releasing Party's ability to seek relief against the non-released individuals or entities for liability unrelated to NIBCO as expressly specified in this Paragraph. In addition, the Releasing Parties agree that in any action brought by a Releasing Party alleging that a party or parties other than NIBCO are wholly responsible for a leak of the Tubing, Fittings, or Clamps, including, but not limited to, based on a leak that is not a Qualifying Leak, should any such third party sued by a Releasing Party file a claim or cause of action against any Released Party for contribution, indemnification, or any other claim, however denominated, arising out of or related to the Tubing, Fittings, and/or Clamps, the Releasing Parties shall hold NIBCO and the Released Parties harmless, agree to a judgment in NIBCO's and the Released Parties' favor dismissing all claims asserted by the Releasing Party or anyone claiming by, through, or under the Releasing Party, and to the extent that the claims against NIBCO or the Released Parties are not released, then reduce or remit any judgment against such third party by the percentage, amount, or share necessary under applicable law to fully discharge and relieve NIBCO and the Released Parties of liability to such third party for claims for contribution, indemnification, or any other claim, however denominated, including attorneys' fees and costs such Person may seek against NIBCO and the Released Parties. If a Releasing Party files a claim or cause of action against any third party alleging that a party or parties other than NIBCO are wholly responsible for a leak of the Tubing, Fittings, or Clamps, including, but not limited to, based on a leak that is not a Qualifying Leak, the Releasing Party must not include any claim or allegation for design defects, manufacturing defects, marketing defects, or any other claim that is a "products liability action," as contemplated by Section 82.001(2) of the Texas Civil Practice and Remedies Code. The Releasing Party also must include the following language in the complaint, petition, or other document asserting the claim: "This is not a 'products liability action' as defined in Section 82.001(2) of the Texas Civil Practice & Remedies Code. The plaintiff does not allege design, manufacturing, or marketing defects in the plumbing system or any of its component parts. The plaintiff expressly waives any products liability action it may have associated with NIBCO's Tubing, Fittings, and/or Clamps. The plaintiff's claims are not product-based, but instead are based on services provided by the defendants. The plaintiff solely seeks damages resulting from the negligent installation of the plumbing system into the home." In any event, however, the Releasing Parties' obligation is limited to releasing, reducing, or remitting in an amount no more than the amount of the judgment against NIBCO or the Released Parties. If any third party sued by a Releasing Party obtains a judgment against NIBCO or any Released Party for contribution, indemnification, or any other claim, however denominated, the Releasing Party agrees that the Releasing Party shall reduce or remit its judgment against such third party by the amount of such third party's judgment against NIBCO and the Released Party not to exceed the amount of that

portion of the judgment for which such third party obtains contribution, indemnification, or other relief, however denominated, so as to fully satisfy such third party's judgment against NIBCO and the Released Party including attorneys' fees and costs such third party may seek against NIBCO and the Released Party. In any settlement between any of the Releasing Parties and any Person arising out of or related to NIBCO's Tubing, Fittings, and/or Clamps, the Releasing Parties shall be deemed to have obtained a release in favor of all Released Parties.

## 11. WHO IS CLASS COUNSEL?

In its Preliminary Approval Order, the Court appointed Austin Tighe of Nix Patterson LLP; Robert E. Linkin of Munck Wilson Mandala, LLP; J. David Rowe of DuBois Bryant & Campbell LLP; Brandon J. Grable of Grable Grimshaw Mora; and Kirby D. Farris of Farris, Riley & Pitt, LLP, as Co-Lead Class Counsel to represent Plaintiffs and the Settlement Class Members. You will not be charged for these lawyers. If you wish to be represented by your own lawyer, you may hire one at your own expense. The contact information for Co-Lead Class Counsel is set forth below:

Austin Tighe  
Nix Patterson, LLP  
3600 N. Capital of Texas Highway, Suite B350  
Austin, Texas 78746  
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303 Colorado Street, Suite 2300  
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Kirby Farris  
Farris, Riley, & Pitt, LLP  
The Financial Center  
505 20<sup>th</sup> Street N., Suite 1700  
Birmingham, Alabama 35203  
kfarris@frplegal.com

## 12. CLASS COUNSEL'S ATTORNEYS' FEES AND COSTS.

Within the time period established by the Court and no later than thirty (30) days prior to the Objection and Opt Out Deadline, Class Counsel will file a Motion for Approval of Attorneys' Fees,

Cost and Service Awards to be paid separately by NIBCO, meaning that it shall not be paid out of or deducted from, the \$7,650,000.00 Class Settlement Fund. To be clear, no Settlement Class Member will pay any attorneys' fees for Class Counsel. NIBCO will pay Class Counsel's attorneys' fees. Class Counsel in the Litigation shall apply for the following: (a) attorneys' fees and reimbursement of costs not to exceed Two Million Three Hundred Thirty Thousand Dollars (\$2,330,000) and (b) a service award of up to \$10,000 for Plaintiffs David and Barbara Matson (which represents a per-household limitation) and up to \$10,000 for Plaintiff Yolanda Garrett in recognition of their time, costs, and effort in the Litigation. These amounts will be paid separately by NIBCO, meaning that these amounts shall not be paid out of or deducted from the \$7,650,000.00 Class Settlement Fund.

### 13. HOW DO I OPT OUT OF THE SETTLEMENT?

Settlement Class Members may submit a Request for Exclusion from (*i.e.*, "opt-out" of) the Settlement to preserve their own individual rights to sue or continue to sue NIBCO and certain others with respect to the Covered Products. A member of the Settlement Class who timely and validly submits a Request for Exclusion cannot object to the Settlement and is not eligible to receive any Settlement Payment.

To validly request exclusion from the Settlement Class, a member of the Settlement Class must submit a written request to opt out to the Settlement Administrator so that it is postmarked by May 10, 2021 stating that "I wish to exclude myself from the Settlement Class in the NIBCO Litigation Class Action Settlement" (or substantially similar clear and unambiguous language). That written request shall contain the Settlement Class member's printed name, address, telephone number, email address, and date of birth. The Request for Exclusion must contain the actual written signature of the Settlement Class member seeking to exclude himself or herself from the Settlement Class. Requests for Exclusion cannot be made on a group or class basis, except that joint owners of the same residence or structure may opt out by using the same form so long as it is individually signed by each joint owner.

All Requests for Exclusion must be sent to the Settlement Administrator at the following address: **Class Action Opt-Outs, Attn: Alabama Texas PEX Settlement, 1650 Arch Street, Philadelphia, PA 19103.**

Those Persons falling within the definition of the Settlement Class as "Persons who have standing and are entitled to assert a claim on behalf of any such Occupant Persons" need not file a separate Request for Exclusion for each residential structure for which they meet this definition so long as they identify each such structure for which they are opting out in their Request for Exclusion; provided, however, that any such Persons cannot opt out for purposes of some structures but remain in the Settlement Class for others.

Any Settlement Class Member who does not submit a valid and timely written Request for Exclusion shall be bound by all subsequent proceedings, orders and judgments in this Litigation, including, but not limited to, the Release, the Final Approval Order, and the Final Judgment, even if such Settlement Class Member has litigation pending, or subsequently initiates litigation, against NIBCO or any Released Party relating to the Released Claims.

### 14. HOW TO OBJECT TO THE SETTLEMENT?

Any Settlement Class Member *who does not submit a written Request for Exclusion* may present a written objection to the Settlement explaining why he or she believes that the Settlement Agreement should not be approved by the Court. A Settlement Class Member who wishes to submit an objection must deliver to the Settlement Administrator so that it is postmarked by May 10, 2021, a detailed written statement of the objection(s) and the aspect(s) of the Settlement being challenged, as well as the specific reasons, if any, for each such objection, including any evidence and legal authority that the Settlement Class Member wishes to bring to the Court's attention. All written Objections must be sent to the Settlement Administrator at the following address: **Class Action Objections, Attn: Alabama Texas PEX Settlement, 1650 Arch Street, Philadelphia, PA 19103.**

That written statement must contain (a) the Settlement Class Member's printed name, address, telephone number, and date of birth; (b) evidence showing that the objector is a Settlement Class Member, including the address of the residence or structure that contains or contained a Covered Product and proof that the residence or structure contains or contained a Covered Product (photographs, contemporaneous installation records, *etc.*); (c) any other supporting papers, materials, or briefs that the Settlement Class Member wishes the Court to consider when reviewing the objection; (d) the actual written signature of the Settlement Class Member making the objection; and (e) a statement whether the objecting Settlement Class Member and/or his or her counsel intend to appear at the Final Approval Hearing. If a Settlement Class Member or counsel for the Settlement Class Member who submits an objection to this Settlement has objected to a class action settlement on any prior occasion, the objection shall also disclose all cases in which they have filed an objection by caption, court and case number, and for each case, the disposition of the objection.

A Settlement Class Member may object on his or her own behalf or through an attorney; however, even if represented, the Settlement Class Member must individually sign the objection and all attorneys who are involved in any way asserting objections on behalf of the Settlement Class Member must be listed on the objection papers. Counsel for the Parties may take the deposition of any objector prior to the Final Approval Hearing in a location convenient for the objector.

Any objector who files and serves a timely written objection as described above may appear at the Final Approval Hearing, either in person at their own expense or through personal counsel hired at the objector's expense, to object to the fairness, reasonableness, or adequacy of any aspect of the Settlement on the basis set forth in his or her objection. As noted above, objectors or their attorneys who intend to make an appearance at the Final Approval Hearing must state their intention to appear in the objection delivered to the Settlement Administrator.

## 15. WHEN AND WHERE IS THE FINAL APPROVAL HEARING?

The Court will hold a Final Approval Hearing on June 15, 2021 at 10:30 a.m., at the United States District Court for the Western District of Texas at 655 E. Cesar E. Chavez Blvd., San Antonio, Texas 78206, in Courtroom A, before Judge Richard B. Farrer, to consider whether the Settlement is fair, adequate, and reasonable, and whether it should be finally approved. If there are objections, the Court will consider them at that time. The Court will also consider at this time Class Counsel's Motion for Attorneys' Fees, Costs and Service Awards.

**Important:** The date and time of the Final Approval Hearing is subject to modification by the Court so please check the Settlement Website at [www.AlabamaTexasPEXsettlement.com](http://www.AlabamaTexasPEXsettlement.com) for updates.

Please note that Class Counsel is working on your behalf and will answer any questions that the Court may have about the Settlement. You are welcome to attend the Final Approval Hearing but your appearance is not necessary to receive any benefits available under the Settlement.

## 16. HOW DO I GET MORE INFORMATION?

This Notice only summarizes the Settlement. The full Settlement Agreement and Exhibits (including copies of this Notice and the Claim Form) are located on the Settlement Website, [www.AlabamaTexasPEXsettlement.com](http://www.AlabamaTexasPEXsettlement.com).

If you need more information or have any questions, you may contact the Settlement Administrator via the Settlement Website, [www.AlabamaTexasPEXsettlement.com](http://www.AlabamaTexasPEXsettlement.com), by toll-free telephone at 1-855-976-0649, or by email at [info@AlabamaTexasPEXsettlement.com](mailto:info@AlabamaTexasPEXsettlement.com).

**PLEASE DO NOT WRITE OR CALL THE COURT, THE CLERK OF THE COURT, NIBCO, OR COUNSEL FOR NIBCO FOR INFORMATION ABOUT THE SETTLEMENT OR THIS LAWSUIT.**