

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

KIMBERLY COLE, *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

NIBCO, INC.,

Defendant.

Civil Action No. 13-cv-7871 (FLW)(TJB)

-AND-

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

CHAD MEADOW, *et al.*, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

NIBCO, INC.,

Defendant.

Civil Action No. 3:15-cv-1124

AMENDMENT TO SETTLEMENT AGREEMENT

Plaintiffs in the above-captioned cases, *Cole, et al. v. NIBCO Inc.*, No. 13-cv-7871 (D.N.J.), and *Meadow, et al. v. NIBCO Inc.*, No. 15-cv-1124 (M.D. Tenn.) (collectively, the “**Litigation**”), and Defendant NIBCO Inc. (together with Plaintiffs, the “**Parties**”), hereby agree to amend the Settlement Agreement as set forth below.

WHEREAS, the Parties intend to clarify or expand upon certain provisions of the Settlement Agreement as described below;

NOW, THEREFORE:

1. Pursuant to Paragraph VIII.B. of the Preliminary Approval Order, the Parties agree to amend the definition of “Qualifying Leak” as set forth in Paragraph 1(ff)(iv) of the Settlement Agreement to provide as follows (with the amended language in bold solely for purposes of clearly identifying changes):

A Qualifying Leak does not occur where, following the procedure set forth in Paragraph 14 below, 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, meaning that Claimant shall not be precluded by the Release from filing claims against its installer or third parties.

2. Pursuant to Paragraph VIII.B. of the Preliminary Approval Order, the Parties agree to amend Paragraph 9.c. of the Settlement Agreement to provide as follows (with the amended language in bold solely for purposes of clearly identifying changes):

c. **Re-Plumb Claims for Claimants with Multiple Leaks.** An Eligible Claimant who demonstrates that their residential or commercial structure has experienced three (3) or more Qualifying Leaks, each one occurring at a separate time after repair and 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 150 days after the Effective Date if the third Qualifying Leak occurred before the Effective Date, or otherwise must be submitted within 150 days after the third Qualifying Leak occurs, though the Settlement Administrator may extend this 150-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. The amount of the payment (the "Re-Plumb Calculation(s)") shall be calculated at a rate of \$600 per plumbing fixture present in the residential or commercial structure (*e.g.*, the Re-Plumb Calculation for a home with 13.5 fixtures would be \$8,100). The Re-Plumb Calculation shall be limited to a maximum of \$16,000 per residence or structure. A schedule of qualifying fixtures and half-fixtures is attached hereto as **Exhibit 3** and shall be used by the Settlement Administrator in determining the amount of an Eligible Claimant's Re-Plumb Calculation under this Paragraph. Eligible Claimants shall receive an initial payment of 25% of the Re-Plumb Calculation, and at the end of the Claim Period, the Eligible Claimants shall receive a second *pro rata* payment, which depending on the claim rate shall make the total payment up to 70% of their Re-Plumb Calculation. Co-Lead Class Counsel shall monitor the Net Settlement Fund and if appropriate, may make a recommendation to the Court that the subsequent payment can be accelerated or that another interim payment can be made during the Claim Period, based upon the number of Claims and the amount remaining in the Net Settlement Fund. If an Eligible Claimant is compensated for a Re-Plumb Claim, that Eligible Claimant and their residential or commercial structure are no longer eligible to make any Future Property Damage Claims. Subject to the written approval of Co-Lead Class Counsel and Counsel for NIBCO, the Settlement Administrator may engage one or more dedicated replumbers to complete approved re-plumbings as set forth in this Paragraph. To the extent an Eligible Claimant's residential or commercial structure has experienced three (3) or more Qualifying Leaks and the Eligible Claimant paid for a complete re-plumb of Covered Products in the Eligible Claimant's structure before the Preliminary Approval Date, the Eligible Claimant may request payment consistent with the terms and limitations of this Paragraph.

Notwithstanding the requirement that a Claimant’s residential or commercial structure must have experienced three (3) or more Qualifying Leaks, each one occurring at a separate time after repair and in such a manner that replumbing all or part of the structure would mitigate future events, a Claimant who has paid for a complete re-plumb of Covered Products in the Claimant’s structure after at least one (1) Qualifying Leak can seek consideration as an exception and request payment consistent with the terms and limitations of this Paragraph upon a showing of good cause as determined by the Settlement Administrator and approved by NIBCO and Co-Lead Class Counsel that the Claimant’s unique circumstances warranted such re-plumb to mitigate future leaks.

3. Pursuant to Paragraph VIII.B. of the Preliminary Approval Order, the Parties agree to amend Paragraph 34 of the Settlement Agreement to provide as follows (with the amended language in bold solely for purposes of clearly identifying changes):

34. **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.

4. Pursuant to Paragraph VIII.B. of the Preliminary Approval Order, the Parties agree to amend Paragraph 35 of the Settlement Agreement to provide as follows (with the amended language in bold solely for purposes of clearly identifying changes):

Exclusions from Release:

All personal injury claims are expressly excluded from the Release. In addition, subject to the terms of Paragraph 34 of the Settlement Agreement, 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 nonreleased 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 against any third party 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. However, the Releasing Parties' obligation is limited to 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.

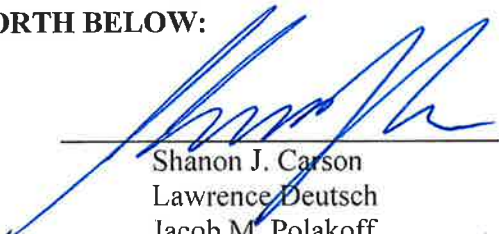
5. The Parties shall ask the Court to include the terms of Paragraphs 1(ff)(iv), 9.c., 34, and 35 as amended in its Final Approval Order.

6. In all other respects the terms of the Settlement Agreement are ratified, affirmed and remain the same.

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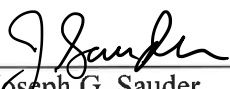
**AGREED AND ENTERED INTO BY THE PARTIES AND THEIR RESPECTIVE
COUNSEL ON THE DATES SET FORTH BELOW:**

Dated: April 5, 2019



Shanon J. Carson
Lawrence Deutsch
Jacob M. Polakoff
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1818 Market Street, Suite 3600
Philadelphia, PA 19103

Dated: April 5, 2019



Joseph G. Sauder
Matthew D. Schelkopf
Joseph B Kenney
SAUDER SCHELKOPF LLC
555 Lancaster Avenue
Berwyn, PA 19312

On behalf of Plaintiffs and the
Settlement Class

Dated: April __, 2019

Edward A. Sullivan III
Position: Vice President, General Counsel &
Secretary

On behalf of NIBCO, Inc.

Dated: April __, 2019

J. Gordon Cooney, Jr.
Franco A. Corrado
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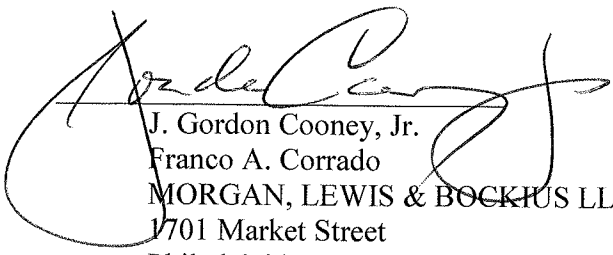
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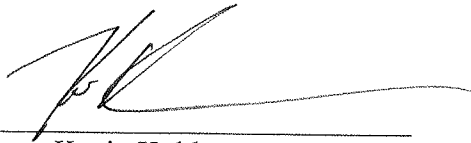
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Kimberly Cole

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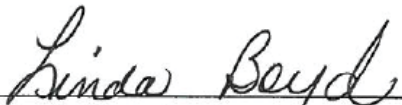
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Mike McMahon

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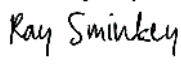
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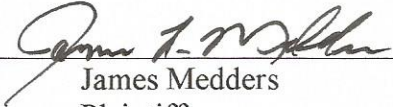
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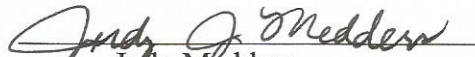
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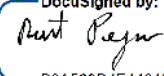
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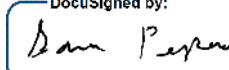
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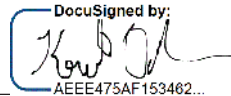
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Plaintiff

4/6/2019

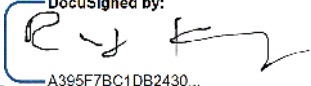
Dated: April __, 2019

DocuSigned by:
Lesa Watts

468E3F390E49442...
Lesa Watts
Plaintiff

4/6/2019

Dated: April __, 2019

DocuSigned by:

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Ryan Kenny
Plaintiff

Dated: April __, 2019

Alexander Davis
Plaintiff

Dated: April __, 2019

Andrea Davis
Plaintiff

Dated: April __, 2019

Ryan Kenny
Plaintiff

4/5/2019

Dated: April __, 2019

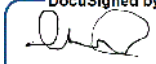
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Alexander Davis
Plaintiff

4/5/2019

Dated: April __, 2019

DocuSigned by:

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Andrea Davis
Plaintiff