

**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)

**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 real property containing plumbing systems that contain 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, 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, which at all times were certified by all appropriate industry standards, 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 Settlement for 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 finish and quality as existed before the Qualifying Leak. You may also qualify for a re-plumb remedy if you have experienced three or more separate Qualifying Leaks.

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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.pexsystemsettlement.com](http://www.pexsystemsettlement.com).

- 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.pexsystemsettlement.com">www.pexsystemsettlement.com</a> .
<b>Request Exclusion / Opt-Out Deadline:</b> <b>February 27, 2019</b>	This option, described in detail below, allows you to sue or continue to sue NIBCO 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>Objection Deadline:</b> <b>February 27, 2019</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.
<b>Attend the Final Approval Hearing Scheduled for April 8, 2019</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.pexsystemsettlement.com](http://www.pexsystemsettlement.com) for updates.

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

The United States District Court for the District of New Jersey, 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.pexsystemsettlement.com](http://www.pexsystemsettlement.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 *Meadow, et al. v. NIBCO Inc.*, No. 15-cv-01124 (M.D. Tenn.) and *Cole, et al. v. NIBCO Inc.*, No. 13-cv-7871 (D.N.J.).

NIBCO rejects 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 December 27, 2013, and the Parties have been in litigation for almost five (5) years. During this period, the Parties vigorously litigated the case and engaged in substantial discovery concerning the Covered Products. The discovery engaged in by the Parties included, without limitation: (a) the production and review of over one-hundred sixty thousand (160,000) pages of documents; (b) fifty-one (51) subpoenas issued to third parties; (c) depositions of thirty-one (31) fact witnesses including fourteen (14) Plaintiffs, nine (9) NIBCO employees, and eight (8) plumbers and third parties; (d) discovery from relevant foreign entities; (e) substantial work with seven (7) expert witnesses retained by the Parties in support of their respective positions in the Litigation; (8) inspections of Plaintiffs’ homes; (9) analysis of hundreds of sample Covered Products; and (9) seven (7) expert depositions.

Following this extensive discovery process, the Parties engaged in an alternative dispute resolution (“ADR”) process which included multiple in-person mediation sessions overseen by professional mediators. Through this extensive process, which included additional 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.pexsystemsettlement.com](http://www.pexsystemsettlement.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 or commercial structure in the United States that contains or contained NIBCO's Tubing, Fittings, or Clamps, including 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 builder, 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 or commercial 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.

Excluded from the Settlement Class are Occupant Persons with respect to residential structures constructed by 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 are located in the following cities in Alabama: Bella Vista; Bessemer; Birmingham; Calera; Chelsea; Cottdale; Hoover; Kimberly; Leeds; Maylene; McCalla; Montgomery; Northport; Odenville; Pinson; Prattville; Springville; Trussville; and Tuscaloosa. Also excluded from the Settlement Class are Occupant Persons with respect to residential structures constructed by 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 are 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. A list of such residential structures in Alabama and Texas covered by this exclusion will be provided to the Settlement Administrator and made available on the Settlement Website. Also 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, solely with respect to the structures identified in that list.

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. The Settlement Fund will also be used to pay Class Counsel’s attorneys’ fees and costs, settlement administration costs, and any service awards to the Class Representatives, all subject to the approval of the Court. The maximum amount that NIBCO will pay pursuant to the Settlement is Forty-Three Million Five Hundred Thousand Dollars (\$43,500,000.00). At the end of the Claim Period (which will extend for six years after the Effective Date of the Settlement), 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 by 150 days after the Effective Date though the Settlement Administrator may extend this period for a particular Claimant upon a showing of good cause as determined by the Settlement Administrator. Eligible Claimants with Past Property Damage Claims shall receive up to 70% of their Reasonably Proven Property Damage. In order to ensure that the Net Settlement Fund is not depleted during the Claim Period, the Eligible Claimants shall receive an initial payment of 25%, and at the end of the Claim Period, the Eligible Claimants shall receive a second *pro rata* payment, which depending on the claim rate and the amount remaining in the Net Settlement Fund shall make the total payment up to 70% 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 during the Claim Period. Such Claims must be submitted to the Settlement Administrator by 150 days after the 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. Eligible Claimants with Future Property Damage Claims shall receive up to 70% of their Reasonably Proven Property Damage. In order to ensure that the Net Settlement Fund is not depleted during the Claim Period, the Eligible Claimants shall receive an initial payment of 25%, and at the end of the Claim Period, the Eligible Claimants shall receive a second *pro rata* payment, which depending on the claim rate and the amount remaining in the Net Settlement Fund shall make the total payment up to 70% 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 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 re-plumbing 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 NIBCO PEX Tubing, Clamps, and Fittings. Such Claims must be submitted to the Settlement Administrator by 150 days after the Effective Date if the third Qualifying Leak occurred before the Effective Date, or otherwise must be submitted by 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. 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 available at the Settlement Website, [www.pexsystemsettlement.com](http://www.pexsystemsettlement.com), which 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 and the amount remaining in the Net Settlement Fund shall make the total payment up to 70% of their Re-

Plumb Calculation. 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. The Settlement Administrator may engage one or more dedicated re-plumbers 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.

## **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 available evidence, a physical escape of water from a Covered Product causing damage was the clear result of: (1) a penetration of the Tubing, Fittings, and/or Clamp from a foreign object such as a nail or other physical abuse; (2) improper attachment of the Tubing, Fittings, and/or Clamp to plumbing components or appliances; (3) improper stress on the Tubing, Fittings, and/or Clamp 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 clearly 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 the Settlement Agreement, meaning that Claimant shall not be precluded by the Release from filing claims against their 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 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. Your Claim Form and supporting documentation may be submitted:

- online through the claim portal located on the Settlement Website, [www.pexsystemsettlement.com](http://www.pexsystemsettlement.com);
- by email to the Settlement Administrator using the email address [info@pexsystemsettlement.com](mailto:info@pexsystemsettlement.com); or
- by U.S. Mail to the Settlement Administrator using the address: PEX System Settlement, Attn: CLAIMS, PO Box 58086, 1500 JFK Boulevard, Suite C31, Philadelphia, PA 19102.

Claim Forms are available for download at [www.pexsystemsettlement.com](http://www.pexsystemsettlement.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 150 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 150 days after the Qualifying Leak occurs. Re-Plumb Claims for those with at least three separate Qualifying Leaks before or during the Claim Period (see Question 7 above) 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.

Please check the Settlement Website at [www.pexsystemsettlement.com](http://www.pexsystemsettlement.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 (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, 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. 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. 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. 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.

## 11. WHO IS CLASS COUNSEL?

In its Preliminary Approval Order, the Court appointed Shanon J. Carson, Lawrence Deutsch and Jacob M. Polakoff of Berger Montague PC ([www.bergermontague.com](http://www.bergermontague.com)), and Joseph G. Sauder, Matthew D. Schelkopf and Joseph B. Kenney of Sauder Schelkopf LLC ([www.sauderschelkopf.com](http://www.sauderschelkopf.com)), 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:

Shanon J. Carson  
Lawrence Deutsch  
Jacob M. Polakoff  
Berger Montague PC  
1818 Market Street, Suite 3600

Joseph G. Sauder  
Matthew D. Schelkopf  
Joseph B. Kenney  
Sauder Schelkopf LLC  
555 Lancaster Avenue

Philadelphia, PA 19103  
Telephone: (215) 875-3070  
Email: [nibco@bm.net](mailto:nibco@bm.net)

Berwyn, PA 19312  
Telephone: (888) 711-9975  
Email: [jbk@sstriallawyers.com](mailto:jbk@sstriallawyers.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 from the Gross Settlement Fund, which shall be included on the Settlement Website. Class Counsel in the Litigation shall apply for the following: (a) attorneys' fees not to exceed 29.885% of the Gross Settlement Fund; (b) reimbursement of litigation costs plus reasonable costs incurred through the Effective Date (which are currently approximately \$1,095,000); and (c) service awards of \$10,000 for Kimberly and Alan Cole, James Monica, Linda Boyd, Michael McMahon, Ray Sminkey, James Medders, Robert and Sarah Peperno, Kelly McCoy, Chad Meadow, John and Susan Plisko, and Kenneth McLaughlin (which shall also represent a per-household limitation), and service awards of \$2,500 for Lesa Watts, Ryan Kenny, and Alexander and Andrea Davis (which shall also represent a per-household limitation), in recognition of their time, costs and effort in the Litigation in, for example and as applicable, producing documents and information to Class Counsel, sitting for deposition, and permitting a home inspection, among many other representative duties and services performed.

## 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 with respect to the Covered Products. A member of the Settlement Class who 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 the February 27, 2019 Objection and Opt-Out Deadline 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: NIBCO Class Action Settlement PO Box 58086, 1500 JFK Boulevard, Suite C31, Philadelphia, PA 19102.**

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 and/or commercial 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 the February 27, 2019 Objection and Opt-Out Deadline, 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: NIBCO Class Action Settlement, PO Box 58086, 1500 JFK Boulevard, Suite C31, Philadelphia, PA 19102.**

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 April 8, 2019 at 10:00 a.m, at the United States District Court for the District of New Jersey at 402 East State Street, Trenton, NJ 08608, in Courtroom 5-E, before Judge Freda L. Wolfson, 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.pexsystemsettlement.com](http://www.pexsystemsettlement.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.pexsystemsettlement.com](http://www.pexsystemsettlement.com).

If you need more information or have any questions, you may contact the Settlement Administrator via the Settlement Website, [www.pexsystemsettlement.com](http://www.pexsystemsettlement.com), by toll-free telephone at 1-855-649-5968, or by email at [info@pexsystemsettlement.com](mailto:info@pexsystemsettlement.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.**