

Superior Court of California, County of Placer  
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S-CV-0033498  
Everett, Brian, et al vs. Pulte

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**FILED**  
Superior Court of California  
County of Placer  
**DEC 13 2018**  
Jake Chatters  
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BY FAX

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **FOR THE COUNTY OF PLACER**

18 BRIAN EVERETT, et al.,  
19 Plaintiff(s),  
20 vs.  
21 PULTE GROUP, INC., et al.,  
22 Defendant(s).

Case No.: S-CV-0033498  
~~PROPOSED~~ <sup>Amended</sup> FINAL ORDER AND  
JUDGMENT APPROVING CLASS  
ACTION SETTLEMENT, AND  
GRANTING ATTORNEY FEES, COSTS,  
AND CLASS REPRESENTATIVE  
INCENTIVE AWARDS  
Judge: ~~Commissioner Irbay~~ <sup>Judge Michael W. Jones</sup>  
Department: 32 43  
Hearing: December 6, 2018  
Time: 8:30 a.m.  
Complaint filed: September 18, 2013  
FAC filed: October 1, 2013  
SAC filed: April 25, 2014

23 AND RELATED CROSS-ACTION  
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1 WHEREAS, Plaintiffs filed the above-captioned action alleging, inter alia, that the Solar  
2 Tiles are defective and pose a safety hazard;

3 WHEREAS, Defendants have denied any liability or wrongdoing;

4 WHEREAS, Class Counsel, on behalf of the Class Representatives and the Settlement Class,  
5 and Defendants have executed a Class Action Settlement Agreement and Release (“Settlement” or  
6 “Agreement”), Exhibit 1 hereto, providing for the settlement of this action subject to approval of the  
7 Court, entry of this Final Order and Judgment (“Judgment”), and occurrence of the Effective Date;

8 WHEREAS, the Court, the <sup>Judge Michael W. Jones</sup> ~~Commissioner Todd D. Irby~~ presiding, entered the **ORDER**  
9 **PRELIMINARILY APPROVING CLASS SETTLEMENT, CERTIFYING SETTLEMENT**  
10 **CLASS, APPROVING PROPOSED NOTICE, AND SCHEDULING FAIRNESS HEARING**  
11 (“Preliminary Approval Order”) on March 29, 2018, which together, inter alia, (1) conditionally  
12 certified a Settlement Class solely for purposes of implementing the Settlement, (2) directed that  
13 notice of the proposed Settlement be given; and (3) scheduled a fairness hearing to determine  
14 whether the proposed Settlement is fair, just, reasonable and adequate;

15 WHEREAS, in accordance with the Preliminary Approval Order, and as evidenced by the  
16 filing of the declarations of Alex Thomas of KCC, filed on November 9, 2018 in support of  
17 Plaintiffs’ Motion for Final Approval, notice of the Settlement was disseminated to Settlement  
18 Class Members in a timely manner advising them of the pendency and proposed settlement of the  
19 litigation and of the opportunity to request exclusion from or object to or otherwise comment on the  
20 Settlement;

21 WHEREAS, approval of the Settlement will result in substantial savings in time and money  
22 for the parties and will further the interests of justice;

23 WHEREAS, the Settlement is the product of good faith, arms’ length negotiations between  
24 the parties; and

25 WHEREAS, a hearing was held on December 6, 2018 at which all interested persons were  
26 given an opportunity to be heard; and the Court, having read and considered all submissions and all  
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1 objections in connection with the proposed Settlement, and having reviewed and considered the  
2 files and records herein, and good cause appearing:

3 **NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that:**

4 1. This Judgment hereby incorporates by reference the definitions in the Settlement,  
5 and all capitalized terms used herein shall have the same meanings as set forth in the Settlement.

6 2. The Court has jurisdiction over the subject matter of the action and over all parties to  
7 the action. The Court enters this Judgment solely for settlement purposes. In the event the  
8 Settlement is terminated, pursuant to its terms or otherwise, this Judgment shall be vacated *nunc pro*  
9 *tunc*. If the Settlement is terminated, Defendants reserve and shall have the right to challenge class  
10 certification, with Plaintiffs bearing the burden of proving satisfaction of the certification  
11 prerequisites. The fact of this Settlement and entry of this Judgment shall have no impact on the  
12 burden of proof or the showing required to certify a class for nonsettlement purposes.

13 3. Solely for purposes of implementation of this Settlement and based upon the  
14 standards applicable to certifying settlement classes, the Settlement Class, as defined in the  
15 Settlement, is hereby established in this action. The preliminary findings set forth in the  
16 Preliminary Approval Order are hereby adopted as the Court's final findings and incorporated  
17 herein by reference.

18 4. Solely for purposes of implementation of this Settlement, Plaintiffs David and  
19 Ramona Guerra; Michael Cusanelli and Feng Yu Hsiao; Charlie and Christine Hebert; Edward  
20 Eugene Snyder III and Judy Ann Snyder as Trustees of the Snyder Family 2008 Revocable Trust;  
21 Sean Docherty and Krysia Von Burg; Stephon G. Allen; Sarmad and Anwir Mansour; and Antonio  
22 Guzman and Lisa Howard are hereby appointed Class Representatives.

23 5. Solely for purposes of implementation of this Settlement, Matthew R. Schoech of  
24 Schoech Law Group; Brian S. Kabateck of Kabateck LLP; and Glen Van Dyke of Van Dyke Law  
25 Group, are hereby appointed Class Counsel.

26 6. Solely for purposes of implementation of this Settlement, Kurtzman Carson  
27 Consultants of San Rafael, California is hereby appointed the Claims Administrator.

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1           7.       The notice provided to the Settlement Class members, as evidenced by the  
2 declarations filed with the Court, constitutes the best notice practicable under the circumstances and  
3 includes individual notice to all Settlement Class members who could be identified with reasonable  
4 effort. Said notice constitutes valid, due and sufficient notice to all Settlement Class members,  
5 complying fully with the requirements of applicable law. The Court specifically finds that the Class  
6 Notice:

7           a.       Was simply written and readily understandable;

8           b.       Was reasonably calculated to fairly apprise Settlement Class members of (i) the  
9 pendency of the above-captioned action and the claims asserted by the Settlement Class, (ii) the  
10 allegations asserted herein, (iii) the Settlement Class definition, (iv) the terms of the proposed  
11 Settlement, including the way Settlement Class members may receive benefits, (v) the maximum  
12 amount of attorneys' fees that would be sought by Class Counsel and the Incentive Award for the  
13 Class Representatives, (vi) their right to object to or exclude themselves from the Settlement and the  
14 time and manner for doing so, (vii) their right to appear at the Fairness Hearing (either on their own  
15 or through counsel hired at their own expense) if they did not exclude themselves from the  
16 Settlement Class, and (viii) the binding effect of the Settlement and the expected Final Order and  
17 Judgment on all persons who did not timely and validly request exclusion from the Settlement  
18 Class;

19           c.       Informed the Settlement Class members of the general risks of continued litigation;  
20 and

21           d.       Identified the website address for Settlement Class members to use to submit claims,  
22 and/or to obtain additional information regarding the Settlement.

23           8.       The settlement as set forth in the Agreement is hereby approved in all respects. The  
24 Court finds that the Settlement is, in all respects, fair, just, reasonable, and adequate to the  
25 Settlement Class members, and satisfies the requirements of California Code of Civil Procedure  
26 sections 382 and 384 and California Rule of Court 3.769. This Settlement confers substantial  
27 benefits on the Settlement Class members without the risk and uncertainty of litigation. In light of  
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1 the defenses available to Defendant as to certification and the merits of the claims, as well as the  
2 prior bankruptcy of several Defendants and the coverage defenses asserted by Defendants' various  
3 insurance carriers, recovery to Plaintiffs or Settlement Class members without settlement is far from  
4 certain. Further, the Court specifically finds that the unpaid residual, if any, will be distributed in a  
5 manner designed to further the purposes of the underlying causes of action and will promote justice  
6 for all Californians.

7       9.       There is one (1) Person, the identity which is known to KCC, who has filed timely  
8 and valid requests to exclude themselves and are hereby excluded from the Settlement Class. Such  
9 Person is not entitled to receive any portion of the Settlement, but neither is such Person bound by  
10 any provision of the Preliminary Approval Order, Final Order, this Judgment or the Settlement.  
11 Such Person may pursue their own claims against Defendant, if any. All Settlement Class members  
12 are bound by this Judgment and the Settlement, including all releases provided for therein and  
13 herein, whether or not they file any or a valid claim for an Individual Settlement Payment.

14       10.       The Settlement reflects a compromise and settlement of disputed claims and is not in  
15 any respect an admission or concession by any of the parties. More specifically,

16       a.       The Settlement, any negotiations, proceedings, documents or anything else related to  
17 the Settlement, its implementation, or its judicial approval shall not be construed as, or deemed to  
18 be evidence of, any admission or concession by any of the parties or any other Person.

19       b.       By entering into the Settlement, it is understood that the Released Parties do not  
20 admit and expressly deny that they have breached any duty, obligation, or agreement; deny that they  
21 have engaged in any illegal, tortious, or wrongful activity; deny that they are liable to any member  
22 of the Settlement Class or any other Person; and/or deny that any damages have been sustained by  
23 any member of the Settlement Class or by any other Person in any way arising out of or relating to  
24 the Solar Tiles.

25       c.       The Settlement, any negotiations, proceedings, or documents related to the  
26 Settlement, its implementation, or its judicial approval (as well as the fact of the Settlement and any  
27 acts or documents related to the Settlement or its implementation) shall not be construed as, or  
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1 deemed to be evidence of, any admission or concession by any of the parties or any other Person  
2 regarding any matter, including, without limitation, the absence or presence of liability, the absence  
3 or presence of damages, or the propriety or impropriety of class treatment.

4 d. The Settlement is for settlement purposes only.

5 e. The Settlement, any negotiations, proceedings, or documents related to the  
6 Settlement, its implementation, or its judicial approval (as well as the fact of the Settlement and any  
7 acts or documents related to the Settlement or its implementation) cannot be asserted or used by any  
8 Person to support a contention that class certification is proper or improper or that liability does or  
9 does not exist, or for any other reason, in the above-captioned action or in any other proceedings  
10 (except a proceeding to enforce its terms).

11 11. This Judgment and the incorporated Settlement fully resolves all claims in the action,  
12 without costs (except as otherwise provided in the Settlement), including without limitation all  
13 Released Claims brought or which could have been brought by the Releasing Parties.

14 12. This settlement is the product of substantial, good faith, arms' length negotiations  
15 between Class Counsel and Defendants, Defendants' insurers, and Defendants' Counsel and is, in  
16 all respects, fair, just, reasonable and adequate to the Settlement Class.

17 13. Except for the obligations and rights created by the Settlement, upon the Effective  
18 Date, all Releasing Parties, and each of them, release and absolutely and forever discharge the  
19 Released Persons from any and all Released Claims.

20 14. The Settlement Class members, and the Releasing Parties, and all Persons acting in  
21 concert or participation with them or through them, either directly or indirectly, representatively or  
22 in any other capacity, are hereby forever barred, restrained, and enjoined from filing, prosecuting,  
23 pursuing or litigating any claim released hereby in this or in any other forum.

24 15. The Court reserves jurisdiction, without affecting the finality of this Judgment, over  
25 the implementation of this Settlement and any releases contained therein and all matters related or  
26 ancillary to the foregoing.

27 16. If the Settlement is terminated, that termination shall void *nunc pro tunc* all of the  
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1 rights, obligations, and releases under the Settlement Agreement, except as provided for in Sections  
2 II.A, IV.C (but only the sections concerning the return of Settlement Payments), XI, XII, and XIII  
3 thereof (including any cross-referenced definitions), which shall remain in force.

4 17. No Settlement Class Members or Releasing Parties shall have any claim against the  
5 Released Persons with respect to the processing of Claim Forms or the distribution of any  
6 Settlement payments.

7 18. No Settlement Class Members or Releasing Parties shall have any claim against  
8 Class Counsel and/or the Claims Administrator with respect to the processing of Claim Forms or  
9 distribution of Individual Settlement Payments made substantially in accordance with the  
10 Settlement or any further orders or awards of this Court.

11 19. Settlement Class Members who did not timely object to the Settlement are barred  
12 from prosecuting or pursuing any appeal of this Court's Final Order and Judgment Approving Class  
13 Action Settlement.

14 20. The parties and Claims Administrator are directed to implement the Settlement  
15 according to its terms and conditions.

16 21. The payment of an Incentive Award in the total amount of \$40,000, or \$5,000 per  
17 Property, to the Class Representatives is hereby approved.

18 22. Co-Class Counsels' application for an award of attorneys' fees, costs, and expenses  
19 in the amount of \$202,500 is hereby approved.

20 23. Claims Administration costs of \$31,870.18 are approved, which shall be paid from  
21 the Gross Settlement Sum to the Claims Administrator in accordance with the Settlement.

22 24. Defendants shall provide the Claims Administrator with sufficient funds—the Gross  
23 Settlement Sum—to make all payments and distributions in accordance with the terms of the  
24 Settlement.

25 25. The Claims Administrator shall distribute settlement benefits to Participating Class  
26 Members from the Gross Settlement Sum in accordance with the terms of the Settlement.

27 26. The Court has scheduled a non-appearance case review regarding the final  
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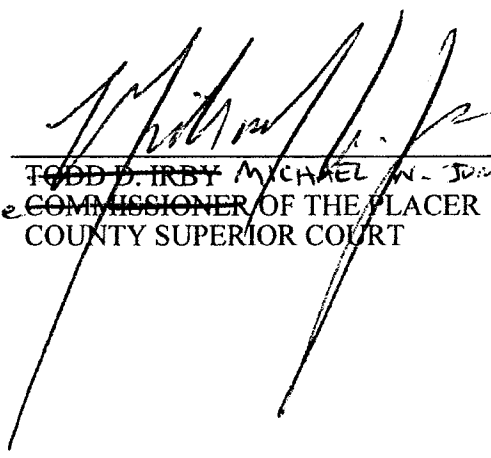
1 distribution of settlement funds on \_\_\_\_\_, 2019 at \_\_\_\_\_ a.m./p.m. in  
2 Department 32 of the above-captioned court. The parties shall file a report and declaration of the  
3 Claims Administrator stating that settlement amounts to the Settlement Class have been paid and  
4 that the terms of the settlement have been completed by \_\_\_\_\_, 2019. The Claims  
5 Administrator shall provide this report and declaration to the parties by or before  
6 \_\_\_\_\_, 2019.

7 27. It is the intention of the Court and this Judgment to approve the terms of the  
8 settlement set forth in the Settlement. As such, to the extent not stated herein, this Judgment  
9 approves any and all provisions of the Settlement Agreement.

10 28. The clerk of the Court shall enter this Order Granting Final Approval of Class Action  
11 Settlement and Judgment and Attorney Fees, Costs, and Incentive Awards.

12 **IT IS SO ORDERED AND ADJUDGED.**

13  
14 Dated: Dec. 13, 2018

  
\_\_\_\_\_  
TODD D. IRBY MICHAEL W. JONES  
July 6 COMMISSIONER OF THE PLACER  
COUNTY SUPERIOR COURT

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