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12
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on behalf of himself and all others similarly situated
14

15 **UNITED STATES DISTRICT COURT**

16 **SOUTHERN DISTRICT OF CALIFORNIA**

17
18
19 EDWARD P. CLIFFORD, on behalf of
himself and all others similarly situated,

Case No. '25CV1286 BJC DDL
CLASS ACTION

20
21 Plaintiffs,

22 vs.

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

23 UPONOR, INC; and DOES 1 through
24 100, inclusive, whose true names are
25 unknown,

26 Defendants. / **DEMAND FOR JURY TRIAL**

27
28

CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

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1 Plaintiff, individually and on behalf of all others similarly situated (the
2 “Putative Class”), alleges the following against Uponor, Inc. (“UPONOR”) based,
3 where applicable, on personal knowledge, information and belief, and the
4 investigation of counsel and its experts.

5 **I. INTRODUCTION**

6 1. This case involves the UPONOR AquaPEX piping systems (“UPONOR
7 PEX”), which includes plastic piping, reinforcement rings and fittings manufactured
8 and sold by Defendant Uponor, Inc. (“UPONOR”) UPONOR PEX pipe is a plastic
9 potable water supply piping product that is manufactured in three colors: Red, White
10 and Blue, all of which are the subject of this lawsuit.

11 2. PEX is an acronym for cross-linked polyethylene. The “PE” refers to
12 the PEX polyethylene raw material used to make the PEX pipe, and the “X” refers to
13 cross-linking the polyethylene across the molecular chain.

14 3. The UPONOR PEX Red, White and Blue pipe is referred to herein as
15 the “UPONOR PEX pipe” or “Class Pipe.” The term UPONOR PEX pipe and Class
16 Pipe are used interchangeably herein.

17 4. The UPONOR PEX pipe includes Red, White and Blue pipe
18 manufactured from approximately 2010 to 2021. On information and belief,
19 UPONOR discontinued the manufacture of Red and Blue pipe in 2021.

20 5. For ease of identification during installation, the Red and Blue pipe have
21 a colored non-PEX coating to provide color. Red UPONOR PEX pipe is used for
22 hot water and Blue UPONOR PEX pipe is used for cold water.

23 6. White UPONOR PEX pipe is for both hot and cold water.

24 7. All UPONOR PEX pipe, whether Red, White or Blue, uses the identical
25 formula and extrusion process. White, Red and Blue UPONOR PEX pipe are
26 functionally identical and fully interchangeable.

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1 8. UPONOR piping is designed for use in potable water supply
2 applications for single-family homes, townhomes, apartments, condominiums and
3 other building types. *The class definition in this case is limited to single family*
4 *residences*. (See paragraph 181).

5 9. The UPONOR PEX piping is used in residential properties for, among
6 other applications:

- 7 • Potable hot-and cold-water, distribution
- 8 • Hot water circulation lines
- 9 • Fire protection systems
- 10 • Closed-loop hydronic radiant heating (radiant floor and baseboard)

11 10. On information and belief, UPONOR has sold millions of feet of
12 UPONOR PEX pipe during the Class period which was installed in thousands of
13 homes in California.

14 11. *Consumers expect that a residential potable water piping system will*
15 *last the equivalent of a lifetime, and UPONOR claims that the Class Pipe will last*
16 *50 to 100 years.*

17 12. Generally, the UPONOR pipe that is the subject of this lawsuit will
18 crack and leak within three to 10 years after installation. The defects are continuing
19 and progressive, cannot be reversed, and the pipe will continue to fail.

20 13. Polyethylene is vulnerable to oxidation.

21 14. When oxygen combines chemically with the UPONOR PEX pipe, the
22 pipe will oxidize and degrade.

23 15. To prevent premature degradation, UPONOR blends antioxidant
24 additives with the polyethylene during production. These antioxidants are intended
25 to scavenge free radicals and protect the polymer chains.

26 16. The Uponor method of pipe production does not mix the antioxidants
27 uniformly with the polyethene which leads to a lack of homogeneity with the
28 distribution of the antioxidants, and causes the pipe to suffer from a defect.

17. Lack of homogeneity results in areas of the polymer with less antioxidant protection. These less-protected areas lead to oxidation of the pipe. This condition further leads to cracks and leaks.

18. UPONOR has long been aware of the process of oxidation and their root causes, but intentionally failed to disclose the defects to consumers, distributors, contractors, installers or building officials.

II. PARTIES

A. Plaintiff

19. Edward P. Clifford (“Plaintiff”) and his wife purchased their home in 2003. Their home is located at 5147 Bella Collina Steet, Oceanside, California. The potable water supply pipe in their home was originally copper.

20. During about January, 2015, Integrity Repipe, Inc. (“Integrity Repipe”) replaced the copper pipe in Plaintiff’s home with the Class Pipe at a cost of \$9,000.00.

21. Integrity Repipe purchased the pipe from Ferguson Enterprises, Inc., which is one of the largest distributors of UPONOR PEX pipe nationwide.

22. Beginning in October, 2022, Plaintiff’s property has had three separate leaks in the UPONOR PEX pipe.

23. The first water leak took place on or about October 27, 2022. UPONOR was made aware of this leak by Plaintiff’s plumber Integrity Repipe.

24. The site inspection was requested by Integrity Repipe. Integrity Repipe was present at the inspection. On February 7, 2023 a site inspection was performed at Plaintiff’s home by UPONOR representative Nick Bowers.

25. Integrity Repipe requested that UPONOR reimburse it for its out of pocket expenses for having repaired the leaking UPONOR PEX pipe and the resulting property damage at Plaintiff’s home.

26. UPONOR denied the request of Integrity Repipe for reimbursement based on the false pretense that the water pressure *in the hot water tank* (not the pipe itself) was too high. In fact, all of the water pressure measured by UPONOR

1 representative Nick Bowers at any fixture throughout the house, including hose bibs,
2 was below 80 PSI, and all water temperature was below 120°F, both of which are in
3 compliance with the Uniform Plumbing Code which is adopted by the State of
4 California.

5 27. Furthermore, temperature and PSI at Plaintiff's property were far below
6 the levels which UPONOR expressly asserts the pipe can tolerate, namely 100 PSI at
7 180°F.

8 28. The leaks at Plaintiff's home were not caused by excessive temperature
9 or pressure, because the temperature and pressure were well below the allowable
10 tolerances of the UPONOR PEX pipes maintained by UPONOR itself.

11 29. At UPONOR's request, Integrity Repipe mailed a sample of Plaintiff's
12 cracked pipe to UPONOR. The sample consisted of a pipe failure in Red pipe away
13 from the fitting.

14 30. Subsequently, Integrity Repipe requested the return of the failed sample
15 provided to UPONOR. UPONOR failed to return the sample to Integrity Repipe
16 after it was requested.

17 31. Plaintiff does not know the current whereabouts of the failed pipe
18 sample from his home now in UPONOR's possession. Plaintiff will seek discovery
19 on this issue and will further seek the return of Plaintiff's failed pipe sample.

20 32. There were no plumbing installation errors at Plaintiff's home as
21 demonstrated by UPONOR's own inspection of Plaintiff's potable water system. ***As***
22 ***described hereinafter, even if UPONOR asserts there were installation errors, any***
23 ***such deficiencies cannot, and do not, cause the oxidative degradation failures of***
24 ***the Class Pipe experienced at Plaintiff's residence, which is solely related and***
25 ***unique to the defective manufacturing process.***

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1 **B. Injury in Fact**

2 33. The leaking pipe in Plaintiff's home caused property damage to
3 insulation, drywall and paint. The leaking portion of the UPONOR PEX pipe was
4 removed and replaced by Integrity Repipe. Integrity Repipe also repaired the
5 property damage caused by the leaks at the expense of Integrity Repipe.

6 34. Plaintiff paid for the paint to repaint the replaced drywall and thereby
7 incurred out of pocket expenses and loss of property constituting injury in fact.
8 Plaintiff personally repainted the portions of the drywall that had been replaced.

9 35. The repainting performed by Plaintiff was temporary because it only
10 covered the replaced drywall installed in the areas of the leaks. Further repainting is
11 required in the kitchen, dining area and TV room.

12 36. Plaintiff will make the necessary arrangements for a painting contractor
13 to complete the repainting of walls and ceilings. In doing so, Plaintiff will incur
14 additional expenditures for labor and materials which will result in further damage to
15 Plaintiff and will constitute further injury in fact.

16 **C. The UPONOR PEX Pipe Must be Removed and Replaced**

17 37. Plaintiff has reasonably decided that all of the Class Pipe in his home
18 must be removed and replaced to avoid further leaks and resulting property damage.
19 Plaintiff is in the process of securing a contractor to replace all UPONOR PEX pipe
20 in his residence.

21 38. Plaintiff's damages will include further out of pocket expenses for the
22 labor and materials necessary to remove and replace all UPONOR PEX pipe,
23 reinforcement rings and fittings and drywall in his home, and to repaint the repaired
24 rooms. The repainting is necessary in order to properly match all of the repaired areas
25 with the rest of the ceiling and walls.

26 39. Plaintiff, and all Putative Class members must remove and replace the
27 UPONOR PEX plumbing systems in their homes. Replacement of the UPONOR
28 PEX pipe is the only means to mitigate further property damage.

1 40. Plaintiff will prove at trial, based upon a preponderance of established
2 and reliable scientific evidence, that the pipe will continue to deteriorate and develop
3 leaks. The defects are continuing and progressive and cannot be reversed or
4 corrected.

5 41. The Class Pipe contained design and manufacturing defects at the time
6 Integrity Repipe purchased the pipe from Ferguson on behalf of Plaintiff. At the time
7 of purchase, Plaintiff and, in turn, all Putative Class members reasonably expected
8 that Class Pipe would reliably function as water supply pipe and had no way of
9 knowing that it contained defects that would cause the pipe to crack, leak and fail
10 prematurely.

11 42. UPONOR concealed the existence of the defects in the Class Pipe from
12 all Putative Class members, including Plaintiff.

13 43. ***Plaintiff, and the Putative Class, would not have purchased the Class***
14 ***Pipe if UPONOR had not concealed material information about the defects.***

15 44. UPONOR is well aware that the failures of the UPONOR PEX pipe at
16 Plaintiff's home are not related to installation problems or improper use by Plaintiff.
17 The leaks at Plaintiff's home are solely attributable to defects in the UPONOR PEX
18 pipe.

19 45. ***Plaintiff never received an Express Warranty from UPONOR.***

20 46. ***Plaintiff has not asserted a claim under UPONOR's express warranty***
21 ***and has not requested or received any compensation from UPONOR under the***
22 ***terms of any UPONOR Express Warranty.***

23 47. ***The request made by Integrity Repipe to UPONOR for reimbursement***
24 ***of its costs to repair portions of Plaintiff's property damage was refused by***
25 ***UPONOR. This request for reimbursement by Integrity Repipe was not a warranty***
26 ***claim on behalf of Plaintiff.***

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1 **D. Defendant**

2 48. Defendant Uponor, Inc. is an Illinois corporation with its principal place
3 of business located at 5925 148th Street West, Apple Valley, Minnesota 55124. At all
4 relevant times herein, Uponor, Inc. designed, manufactured, marketed/advertised, sold
5 and/or distributed UPONOR PEX pipe for use in residential water plumbing systems
6 in California and throughout the United States, both directly and indirectly, to Plaintiff
7 and Putative Class members by and through their employees, agents, including
8 distributors who in turn sold to developers, contractors and plumbing installers of the
9 Class Pipe, who in turn sold the pipe to Plaintiff and all Putative Class members.

10 49. The causes of action in this Complaint are directed to Uponor, Inc. and
11 are based on its misconduct, all alleged herein.

12 50. On information and belief, Uponor Corporation is the parent company
13 of both Uponor North America, Inc. and Defendant Uponor, Inc.

14 51. On information and belief, Uponor Corporation wholly owns Uponor
15 North America, Inc. and Uponor North America, Inc. wholly owns Defendant
16 Uponor, Inc.

17 52. At this time, Plaintiff has insufficient knowledge to allege that these
18 holding companies were involved in the design, manufacture or sale of the UPONOR
19 PEX pipe. Also, Plaintiff lacks sufficient facts to provide detailed allegations that
20 these companies shared in the profits received by Defendant UPONOR, Inc. for the
21 sale of the UPONOR PEX pipe and piping system.

22 53. Plaintiff requests permission to seek discovery against Uponor North
23 America, Inc. and Uponor Corporation to establish a showing of jurisdiction in order
24 to assert causes of action for their wrongful conduct, if appropriate and supported by
25 the evidence.

26 **III. JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

27 54. This Court has original jurisdiction over this action pursuant to the
28 Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because at least one

1 Putative Class member is of diverse citizenship from one Defendant, there are
2 more than 100 Putative Class members, and the aggregate amount in controversy
3 exceeds \$5 million, exclusive of interest and costs.

4 55. This Court has personal jurisdiction over Defendant Uponor, Inc.
5 under California Code of Civil Procedure section 410.10.

6 56. Venue is proper in this District under 28 U.S.C. § 1391, and
7 assignment is proper in this division of the Southern District, because a substantial
8 part of the events or omissions which give rise to the claims occurred in this
9 District, and because Defendant has caused harm to Putative Class members
10 residing in this District, including Plaintiff. UPONOR conducts substantial
11 business, including through numerous distributors, and marketed, advertised and
12 sold Class Pipe in this District.

13 57. Plaintiff has sustained direct injury and out of pocket expenses to
14 repair damages caused by leaks from the UPONOR PEX pipe.

15 58. Plaintiff is also immediately in danger of sustaining further direct
16 injury because the threat of more pipe failure is real and immediate and not
17 conjectural or hypothetical.

18 59. There is a direct causal relationship between the damage suffered by
19 Plaintiff and his claims against Defendant. There is a strong likelihood that the
20 injury will be redressed by a favorable decision.

21 60. The named Plaintiff seeks to represent a class and has alleged and
22 shown that he has suffered resulting property damage, and injury in fact, from the
23 defective and failed UPONOR PEX pipe installed in his residence.

24 **IV. GENERAL FACTUAL ALLEGATIONS REGARDING THE UPONOR**
25 **PEX DEFECTS**

26 **A. Root Cause of the UPONOR PEX Pipe Defects**

27 61. The overarching defect in the UPONOR PEX pipe is caused by
28 *oxidative degradation* in the pipe.

1 62. UPONOR uses the Engle method of cross linking the polyethylene.
2 When using the Engle method, the pipe is extruded while cross-linking is actively
3 taking place. Specifically, the polyethylene used to manufacture the UPONOR PEX
4 pipe is exposed to high temperatures and oxygen during the manufacturing process.

5 63. High heat and reactive chemistry during extrusion of the UPONOR PEX
6 pipe consumes antioxidants prematurely. The initial manufacturing process subjects
7 the polymer to high heat when the polyethylene reacts with oxygen creating oxidized
8 polyethylene. This creates imperfections on the inside surface of the Class Pipe.

9 64. Furthermore, because portions of the pipe become oxidized, the surface
10 no longer resembles polyethylene, but becomes a new polymer surface known as
11 oxidized polyethylene.

12 65. This new material has different properties than polyethylene. It has
13 different physical and chemical properties, and it has a different surface tension and
14 a different density.

15 66. The oxidized polyethylene begins to shrink and develop surface
16 imperfections, similar to the “mud cracking” that forms after a puddle dries in the
17 sun. Those imperfections or microcracks result in stress concentrations and form
18 cracks that ultimately propagate through the wall of a pipe.

19 67. The oxidation of the UPONOR PEX pipe is caused by a chemical
20 reaction *when oxygen molecules interact with the polyethene*, causing the material
21 to break down and degrade. This leads to brittleness and loss of material properties
22 including strength and flexibility.

23 68. This condition causes the UPONOR PEX pipe to prematurely age
24 through introduction of oxygen into the molecular structure. Once initiated, this
25 process of oxidative degradation is significantly accelerated by exposure to normal
26 hot water temperatures, and air, which accelerates the oxidative process and
27 embrittles the pipe causing it to lose mechanical properties and crack.

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B. Flame Treatment for Red and Blue Pipe Creates Additional Defects

69. The oxidative degradation in the UPONOR PEX pipe is compounded in the Red and Blue pipe. With the Red and Blue pipe, UPONOR applies a lacquered coating to provide color over the PEX layer of pipe. To improve the ability of the lacquer coating to adhere, the pipe is run through a furnace at high temperatures.

70. As a result of subjecting the pipe surface to the flame treatment and resulting high temperatures, the outside surface of the Class Pipe prematurely becomes brittle and develops microcracks in the exterior wall of the pipe.

71. The embrittlement and microcracks cause damage to the pipe, and the cracks continue to grow and spread over time, progressively propagating through the wall of the pipe, causing resultant leaks, and resulting property damage.

72. UPONOR refers to the coating process as a lacquer coating. This process was discontinued in 2021, at which time UPONOR ceased the manufacture and sale of Red and Blue PEX pipe.

C. The Fitting Installation Design System Causes Further Degradation of the Defective Pipe

73. The oxidative degradation defect is further exacerbated by the fitting installation design system. The UPONOR installation design system requires that the inside diameter of the pipe be expanded while the pipe is cold (cold-expanded) and stretched with a tool in order to insert the fittings.

74. When the pipe retracts over the fittings, the fittings remain larger than the inside diameter of the pipe, and therefore, the pipe does not return to its original size.

75. This creates stress concentration at the edge of the reinforcement ring that is installed over the fittings. Years after installation, this stress leads to through-wall cracks in the pipe just outside the reinforcement rings and causes leaks and resulting property damage.

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1 76. Because UPONOR utilizes a defective manufacturing process for its
2 pipe, latent defects are manufactured into all UPONOR PEX pipe.

3 77. These defects lead to leaks and resulting property damage, and present
4 serious health and safety risks including mold, bacteria, dropped ceilings due to water
5 absorption and damage to building foundations and footings.

6 78. *This case does not involve any claims related to personal injuries.*

7 **D. The Uponor Method of Producing PEX Pipe**

8 79. Several methods exist to crosslink polyethylene to manufacture PEX
9 pipe. These methods create PEX pipe with very different properties. Uponor
10 manufactures PEX piping using the Engel-method, a hot crosslinking process.

11 80. The Uponor-method of pipe production does not produce consistent,
12 uniform and evenly cross-linked PEX pipe and the antioxidants in the pipe formula
13 are not blended homogenously throughout the pipe.

14 81. The Class Pipe is uniformly defective when it leaves the manufacturing
15 plant.

16 82. Forensic testing has been conducted on portions of the failed UPONOR
17 PEX pipe from Plaintiff's property. The below figures depict cracks in portions of
18 UPONOR PEX pipe installed in Plaintiff's house, including microscopic images of
19 "mud cracking" in the coating surface, the crack initiation point, and slow crack
20 growth.

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83. Below is a photograph of the surface “mud cracking” in a portion of Plaintiff’s failed pipe.



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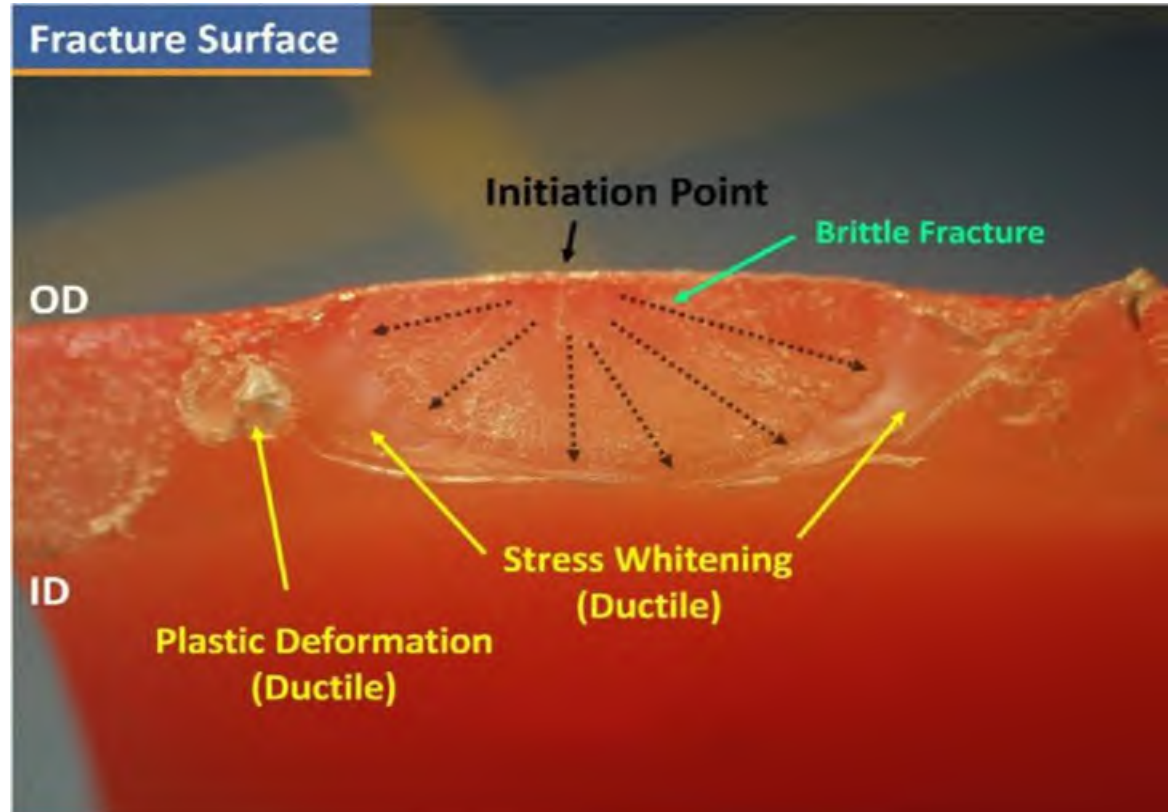
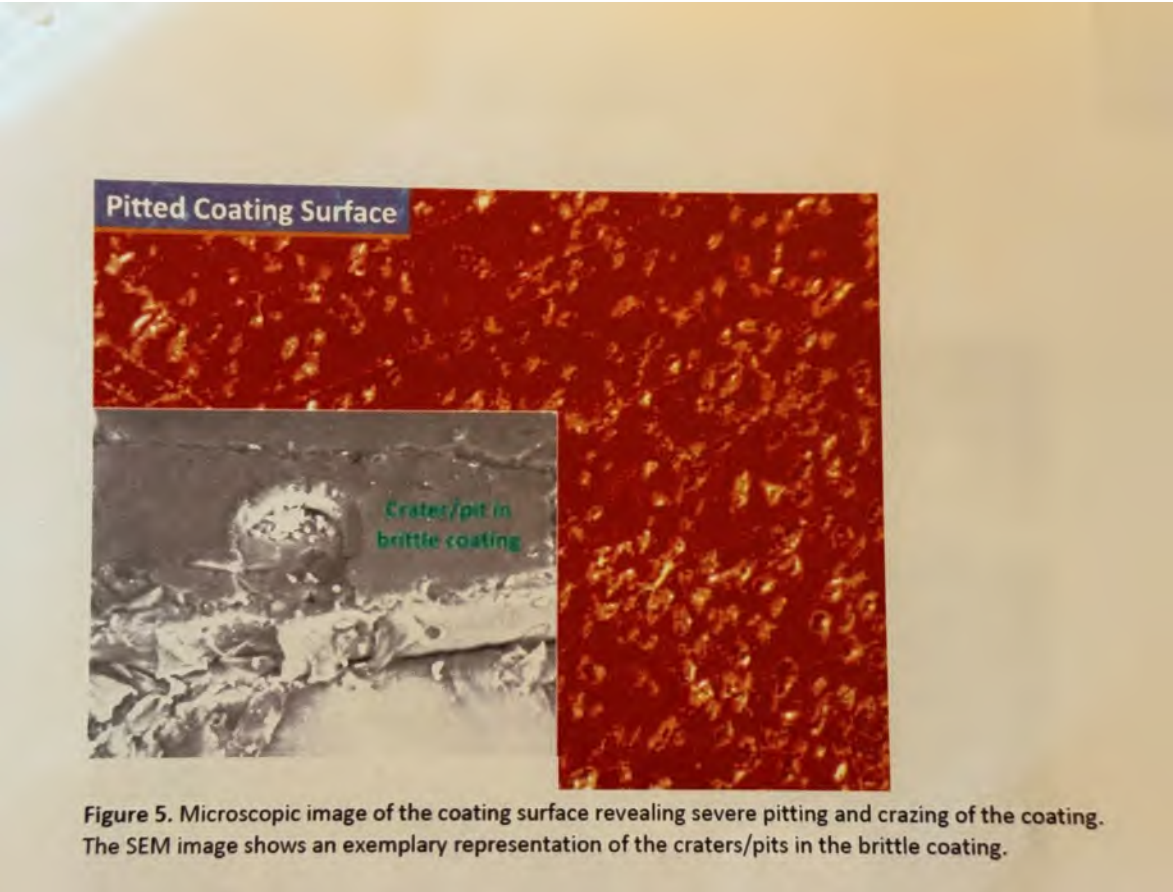
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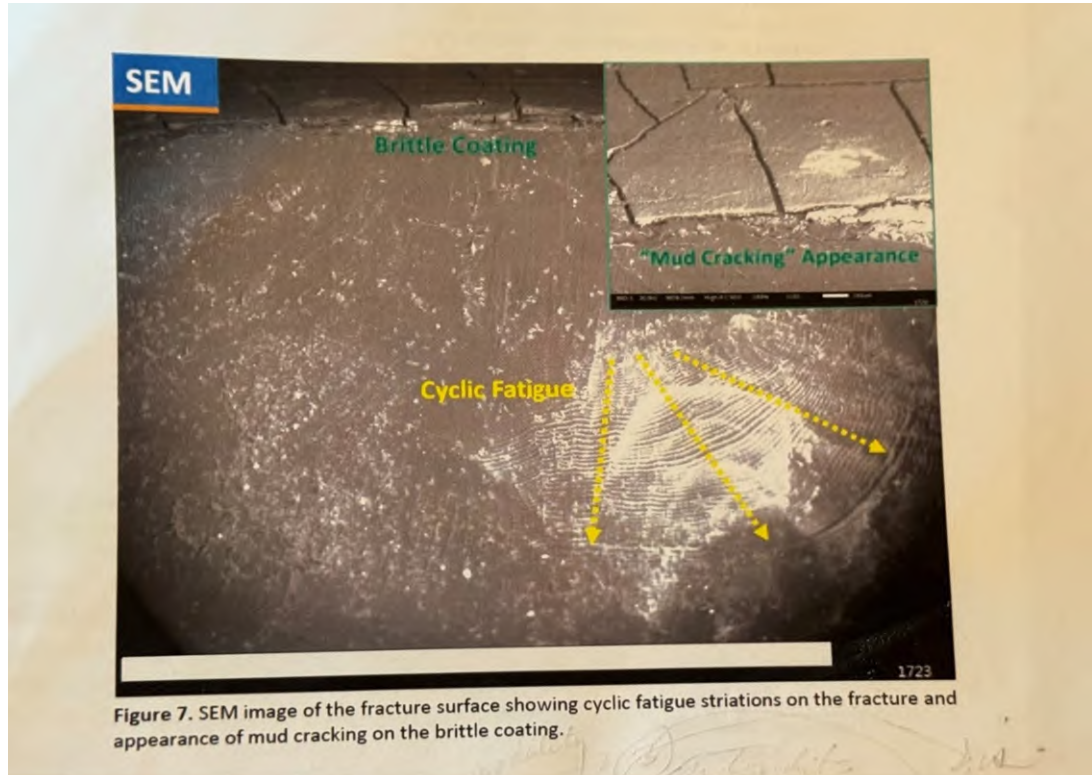
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84. Plaintiff's UPONOR PEX pipe, and the pipe of the Putative Class members have the above-described built-in defects that cannot be caused by poor installation practices or use of the UPONOR PEX pipe by the owner of the property.

E. Life Expectancy of the UPONOR PEX Pipe

85. UPONOR claims and advertises that UPONOR PEX pipe has a life expectancy of at least 50 years. UPONOR also claims that it currently holds the unofficial world record for long-term testing at elevated temperatures and pressure. UPONOR further claims that its testing data indicates a life expectancy of well over 100 years. *In reality, the Class Pipe is known to degrade and leak within a few years after installation.*

F. Promotional Representations

86. In promotional and instructional materials, UPONOR maintained that its UPONOR PEX pipe is superior to other types of PEX pipe and is durable, reliable, and safe. UPONOR has not corrected its representations about the Class Pipe's characteristics in the face of many complaints about failed UPONOR PEX pipe.

1 87. Instead, UPONOR has repeatedly touted the durability and reliability of
2 the UPONOR PEX pipe and assured all developers, installers, building officials and
3 consumers that they could rely upon the pipe being of high quality.

4 88. UPONOR has long been aware of these defects and their root causes,
5 but intentionally failed to disclose the defects to consumers, distributors, contractors,
6 installers or building officials.

7 89. Defendant is further aware of thousands of failures in the UPONOR
8 PEX Pipe that have resulted in leaks and resulting property damage.

9 **G. False Representations and Omissions**

10 90. These representations were and are false and misleading because of
11 what they fail to say: that the UPONOR PEX pipe was and remains predisposed to
12 premature failure due to oxidative degradation, and *that the defects are progressive*
13 *in nature and cannot be corrected.*

14 91. On information and belief, Plaintiff alleges that for many years,
15 UPONOR has generated its own test results that determined through scientific testing
16 the root cause of the defects in its pipe and fitting installation system.

17 92. UPONOR nonetheless continued to sell the defective Class Pipe
18 knowing that it would have serious consequences to Plaintiff and Putative Class
19 members in the form of failed pipe, resulting property damage, and the need to
20 replace their plumbing system.

21 93. Before manufacturing advertising/marketing, distributing and selling
22 UPONOR PEX, Defendant failed to take appropriate steps to design and manufacture
23 its product to be free from defects.

24 94. To the extent that Defendant made any changes to any formula or
25 processing between 2010 to the present in manufacturing the Class Pipe, those
26 changes did not correct or eliminate the defects in the Class Pipe. The defects remain
27 uniform to all Class Pipe.

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1 95. Defendant knew or should have known that the Class Pipe as designed
2 and manufactured was not suitable for use in potable water supply systems.

3 96. UPONOR has long been aware of these defects and their root causes,
4 but intentionally failed to disclose the defects to consumers, distributors, contractors,
5 installers or building officials.

6 97. Plaintiff seeks relief for damages sustained by Plaintiff and the Putative
7 Class that Defendant proximately caused by the products defects, and sale of the
8 Class Pipe.

9 98. This class action for damages and other relief is asserted pursuant to
10 Federal Rule of Civil Procedure 23 on behalf of all Putative Class members in
11 California whose *residential properties contain UPONOR PEX pipe*. The class
12 definition is set forth in paragraph 181.

13 **V. THE SIGNATURE LEAKS**

14 99. *The UPONOR PEX pipe suffers from inherent defects that manifest*
15 *with “signature leaks” inherent to the pipe and cannot be caused by installation*
16 *practices.*

17 **A. Leaks Adjacent to the Fittings**

18 100. Below are four photographs of “signature leaks” in the Class Pipe
19 adjacent to the reinforcement ring that attaches over a fitting joint. (See Images 1
20 through 4 below.)

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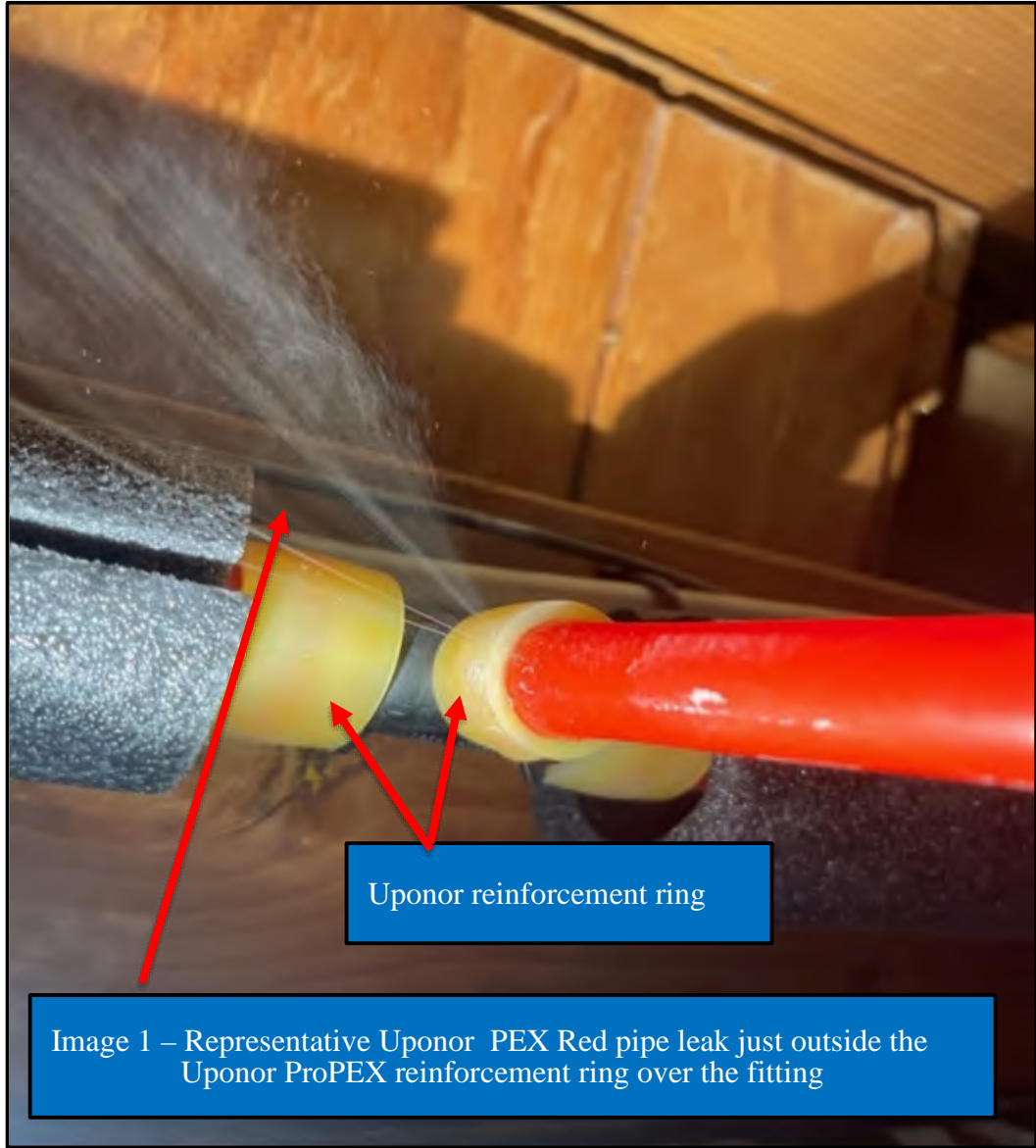
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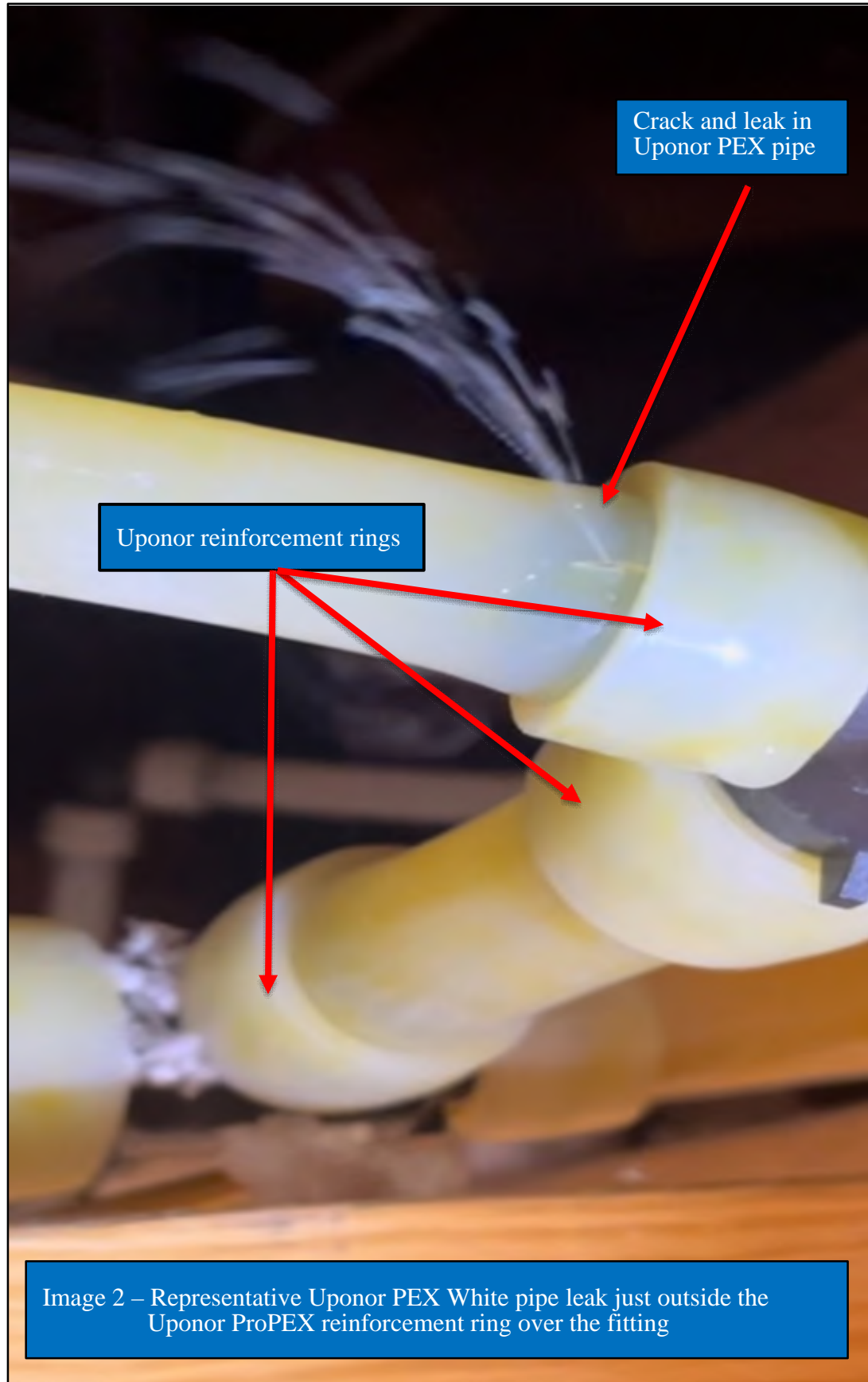
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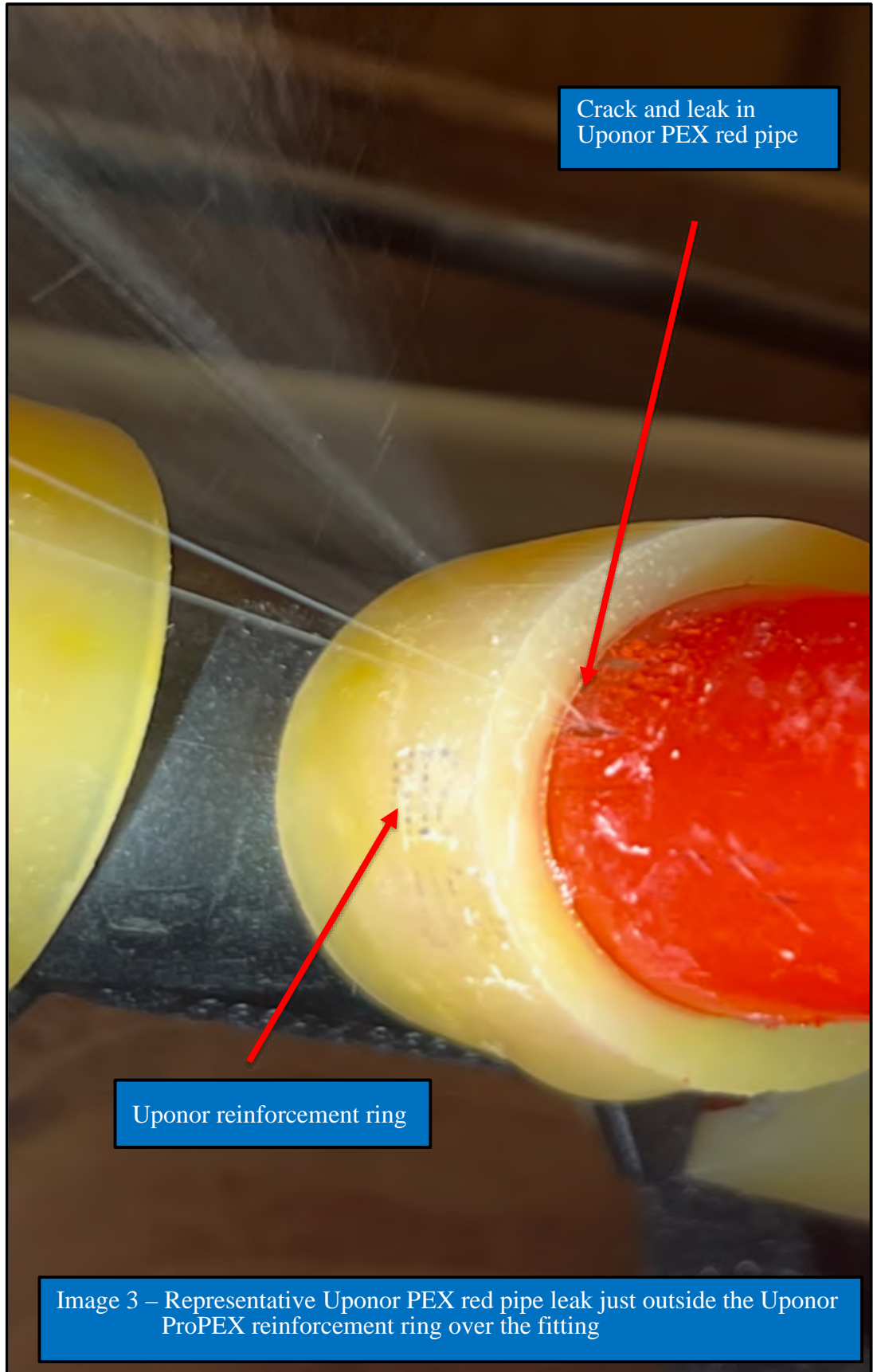
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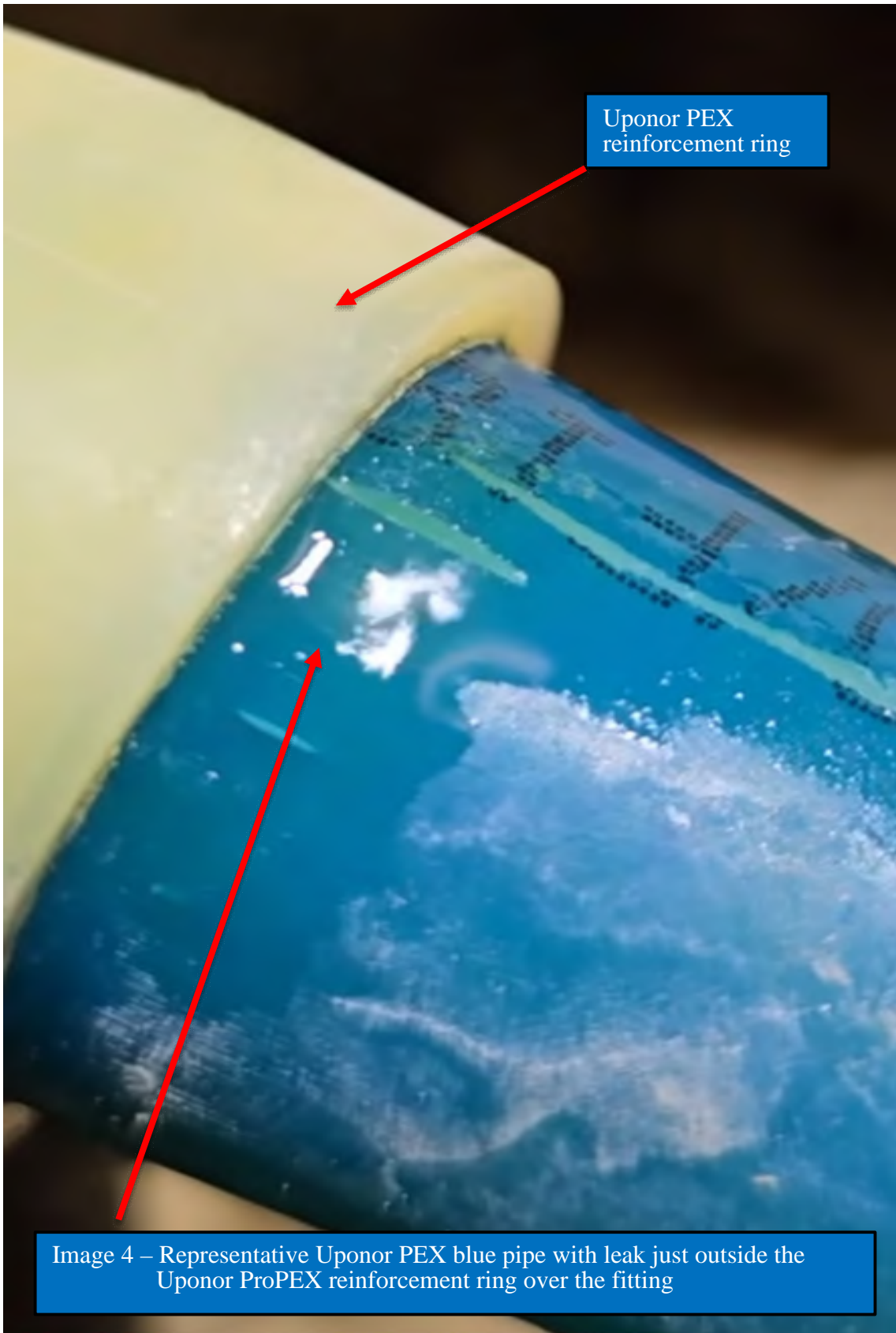
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B. Leaks in the Wall of the Pipe Away from the Fitting

101. Below are three photographs of longitudinal cracking in the body of pipe away from the fitting. See Images 5 through 7 below.



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Image 6 – Cracked and leaking Uponor PEX red pipe away from fitting at Plaintiff’s home



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Image 7- Representative cracked and leaking Uponor PEX white pipe away from fitting



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102. The previous photographs depict the primary “*signature*” failure mechanisms of UPONOR PEX pipe, that lead to through-wall cracking of the Class Pipe. *Poor installation practices will not cause these defects in the Class Pipe and perfect installation practices will not prevent them.*

C. Property Damage

103. The leaks in the Class Pipe cause property damage to, among other things, drywall, insulation, paint and flooring. See Images 8 through 11 below for representative examples of resulting property damage from leaks in the Class Pipe.



Image 8- Saturated drywall from Uponor PEX pipe leak



Image 9 –
Water leaking from Uponor PEX
pipe through ceiling into garbage
can

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Image 10 - Partially removed water damaged drywall to expose leak from Uponor PEX pipe leak

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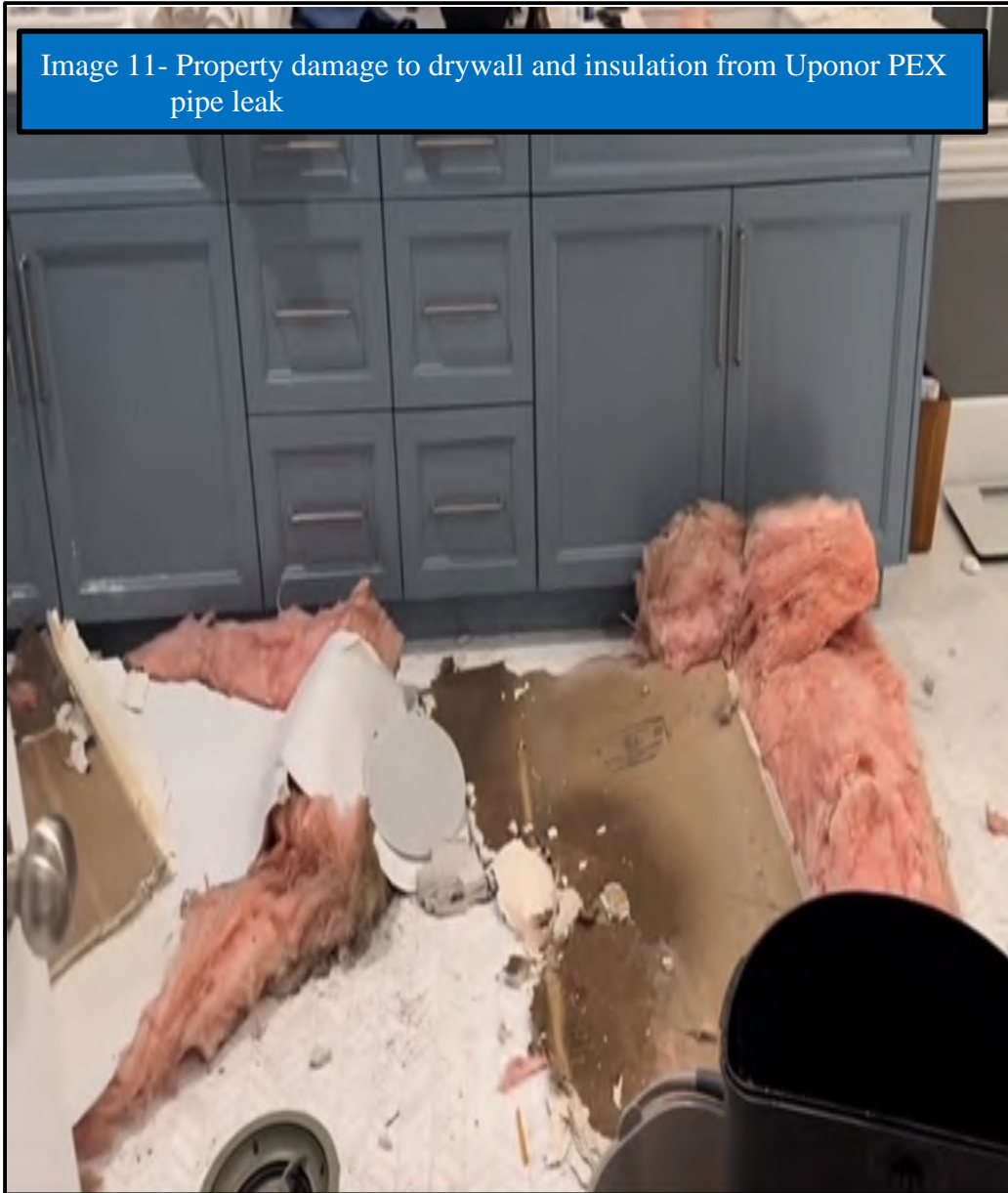
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Image 11- Property damage to drywall and insulation from Uponor PEX pipe leak



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1 **VI. JUDICIAL SUMMARY OF THE ROOT CAUSE OF THE FAILURES**

2 104. The common failure modality in UPONOR PEX pipe is caused by
3 oxidative embrittlement and degradation of the inside surface of the UPONOR PEX
4 pipe as a consequence of poor distribution and extraction of protective antioxidants
5 resulting in material degradation and oxidation of the *inside wall of the pipe*.

6 105. Antioxidants protect the pipe from oxidation by scavenging free
7 radicals. Once the antioxidants are depleted, the surface of the pipe progressively
8 undergoes oxidative embrittlement.

9 106. This condition is compounded and made worse in the Red and Blue
10 pipe. UPONOR'S patent application of the color coating uses a flame treatment
11 which destroys antioxidants on the outside surface of the UPONOR PEX pipe.

12 107. The color coated surface of the pipe experiences, extensive
13 embrittlement evidenced by mud cracking, pitting, and crazing which produces a
14 network of fine cracks on the surface of the pipe.

15 108. Because of the oxidative degradation and embrittlement, the UPONOR
16 PEX pipe is unable to withstand the strain of the expansion process specified in
17 Uponor fitting installation design system.

18 109. With the Red and Blue UPONOR PEX pipe, the failures are initiated by
19 oxidative embrittlement and degradation on the outside surface of the pipe.

20 110. The Uponor PEX pipe fails outside-in, adjacent to the compression ring
21 of the expansion fitting.

22 111. The surface underneath the brittle coating is also brittle and experiences
23 incipient cracks.

24 112. The causes of the surface defects, both inside and outside the pipe
25 transform over time into incipient cracks, which then propagate by normal use of the
26 potable water system.

27 ///

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1 **VII. INSTALLATION PRACTICES DO NOT CAUSE THE DEFECTS**

2 113. UPONOR certifies and qualifies plumbers to install the Class Pipe. This
3 means that plumbers who install UPONOR PEX pipe are trained and approved
4 *before* installing any UPONOR PEX system.

5 114. On information and belief, even though the plumbers have been certified
6 by UPONOR as being qualified and competent to install the Class Pipe tubing and
7 fittings, UPONOR has advanced the false narrative of “blame the plumber” to deny
8 legitimate consumer complaints against UPONOR who have experienced failed pipe
9 with resulting property damage.

10 115. For example, Plaintiff’s plumber Integrity Repipe has installed at least
11 3,000 UPONOR PEX systems in residential properties. The owner of Integrity
12 Repipe, Joe Ludlow, has been a plumber for over 30 years and is highly experienced
13 with installing UPONOR PEX systems. Mr. Ludlow has been licensed as a plumbing
14 contractor in the State of California for approximately 15 years. During on or about
15 2010, Mr. Ludlow was certified by UPONOR as an authorized and trained installer
16 of UPONOR PEX systems.

17 116. Mr. Ludlow has observed dozens of leaks in UPONOR PEX pipes at
18 various properties. The leaks observed by Mr. Ludlow manifest as described above,
19 either just outside the reinforcement ring at the fitting, or in the body of the pipe away
20 from the fitting. The leaks at Plaintiff’s home have manifested in precisely this way
21 and are common to UPONOR PEX pipe failures. The leaks in Plaintiff’s UPONOR
22 PEX pipe had nothing whatsoever to do with the installation practices of Integrity
23 Repipe.

24 117. Also, the failures in the Class Pipe have nothing to do with excessive
25 temperature of the water or excessive water pressure – another false narrative often
26 employed by UPONOR as a sham defense to cover up the defects in the pipe.

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1 118. There is nothing that the plumber does or can do in the course of
2 installing the Class Pipe tubing that can cause oxidation of the interior or exterior
3 wall of the pipe.

4 119. *Failure from oxidation degradation are unique and uniform in*
5 *appearance and cause. Poor installation, no matter how unlikely, cannot cause*
6 *the signature failure modality of cracking in the wall of the pipe away from the*
7 *fitting, or cracking just outside the reinforcement rings.*

8 120. *Similarly, perfect installation will not prevent the defects from*
9 *manifesting. These defects are solely due to the defective manufacturing process.*

10 **VIII. UPONOR IAPMO CERTIFICATE OF LISTING**

11 121. The Uniform Plumbing Code requires that all plumbing materials be
12 listed with a third-party certification body before the product can be sold.

13 122. UPONOR is listed with the International Association of Plumbing and
14 Mechanical Officials (IAPMO) for its Crosslinked Polyethylene Water Distribution
15 System (PEX).

16 123. The IAPMO Research and Testing, Inc. Certificate of Listing provides
17 as follows:

18 **CHARACTERISTICS:**

19 Cross-linked polyethylene, plastic, hot and cold water
20 distribution system and/or hydronic radiant heating
21 system made in one standard dimension ration *and*
22 *intended for a maximum 100 psi water service up to*
23 *and including a maximum working temperature of*
24 *180° F.* Components are comprised of tubing and/or
25 fittings. (emphasis added)

26 124. The Class Pipe used in residential applications is also approved and
27 used in commercial applications. Commercial hot water PEX systems typically
28 operate at temperatures higher than 140° for dishwasher and related equipment.

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1 125. In the highly unlikely event that in residential properties water pressure
2 exceeds 80 PSI or temperature in excess of 120°, those conditions will not cause the
3 pipe to fail *as the pipe is expressly manufactured and IAPMO listed to tolerate 100*
4 *PSI at 180° F.*

5 126. All UPONOR PEX pipe contains a print line throughout the length of
6 the pipe which identifies the pipe as Uponor, and among other things, reads “80 PSI
7 200°F”. *This is the long-term pressure rating for the pipe at various temperatures*
8 *and is far in excess of the typical residential water pressure at 80 PSI or water*
9 *temperature 120°F.*

10 **IX. WATER TEMPERATURE AND WATER PRESSURE IN THE**
11 **SYSTEM DO NOT CAUSE LEAKS IN THE CLASS PIPE**

12 127. On information and belief, Plaintiff alleges that UPONOR has falsely
13 claimed to Putative Class members or their installers that water temperature and
14 water pressure are the causes of failures in Class Pipe.

15 128. The markings on the pipe uniformly state the pipe is manufactured to 80
16 PSI at 200°F.

17 129. All UPONOR PEX pipe is IAPMO listed to tolerate 100 PSI. This is 20
18 PSI in excess of the PSI used at residential properties.

19 130. All UPONOR PEX pipe is IAPMO listed to tolerate 180°F, *a full 60°*
20 *in excess of the 120° F used in residential properties.*

21 131. UPONOR PEX piping is specifically approved for hot water
22 *recirculation systems* including timed, sensor- activated, self-activated or *continuous*
23 *hot-water circulation systems* operating at temperatures up to and including 140° F.

24 132. UPONOR represents in its Residential Plumbing Installation Guide that
25 its PEX pipe is designed to tolerate excessive temperature and pressure capability in
26 accordance with ASTM F876. This standard requires that UPONOR PEX pipe,
27 maintain its integrity for a period of 720 hours (30 days) at 210° F and 150 PSI.

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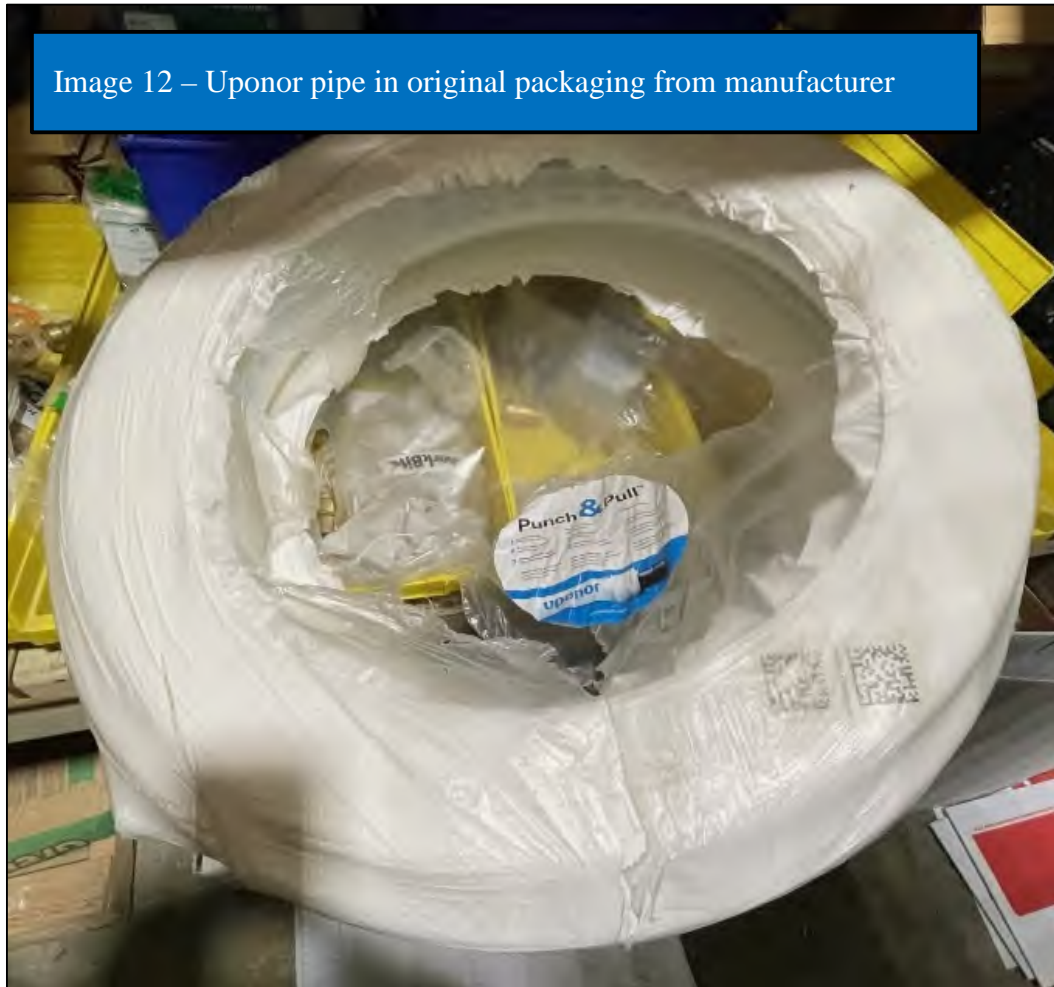
1 133. UPONOR claims that, if installed as directed, UPONOR pipe will
2 withstand these conditions.

3 134. The water temperature of all residential properties is uniformly set at
4 120° or below with rare, if ever, irrelevant exceptions.

5 **X. UPONOR PEX PIPE IS DESIGNED TO BEND AND BENDING THE**
6 **PIPE DOES NOT CAUSE IT TO CRACK AND LEAK**

7 135. The UPONOR PEX pipe is flexible and designed to bend for ease of
8 installation, and is advertised as such. Below is a photograph identified as Image 12
9 of a new roll of PEX pipe in the original UPONOR packaging from the
10 manufacturing plant. The photograph demonstrates that the pipe is coiled like a
11 garden hose and is designed, distributed and sold in this condition.

12
13 Image 12 – Uponor pipe in original packaging from manufacturer
14



136. Furthermore, the pipe is designed to facilitate 90° bends. Below is a photograph identified as Image 13 of the UPONOR support for a 90° bend.



137. The signature failures leading to cracks and leaks have nothing to do with purportedly overbending the pipe.

XI. UPONOR HAS LITIGATED MANY LAWSUITS AND SETTLED MANY COMPLAINTS RELATING TO THE DEFECTIVE CLASS PIPE

138. UPONOR has been sued in several states across the United States for the defective UPONOR PEX pipe. *To Plaintiff's knowledge, after reasonable research by his counsel, no class action has been filed in California relating to UPONOR PEX pipe.*

139. On information and belief, UPONOR has known for many years that the Class Pipe is defective. UPONOR has full knowledge of the defects, and of the risk to consumers of property damage and nonetheless continued to sell the Red and Blue pipe until 2021, and continues to sell the White pipe at this time.

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1 140. On information and belief, UPONOR stopped selling the Red and Blue
2 pipe because it was well aware that its patented flame treatment prior to the
3 application of the coating created a defect which further predisposed the pipe to
4 premature failure. UPONOR was aware of this defect long before it ceased selling
5 the Red and Blue pipe.

6 141. UPONOR's decision to continue selling its PEX pipe demonstrates its
7 continued and conscious disregard of its long standing knowledge of the defects and
8 reliable scientific evidence demonstrating the high probability of ongoing pipe
9 failures causing resulting property damage and loss of use to consumers.

10 142. UPONOR has continued to accrue knowledge of the defects, and their
11 serious consequences, over the course of many years. Indeed, UPONOR has known
12 about, investigated, and litigated numerous cases to develop full knowledge of the
13 defects, supported by internal investigation and testing both inside the company and
14 with the use of outside laboratories. These lawsuits and claims have caused
15 UPONOR to develop a clear factual foundation to know without question that there
16 are defects in the Class Pipe.

17 143. On information and belief, despite obvious signs of known and
18 dangerous defects and associated risks, UPONOR concealed claims and scientific
19 findings of Class Pipe defects from consumers, distributors, contractors, installers
20 and building officials.

21 144. To date, UPONOR has taken no serious corrective action to pay for the
22 removal and replacement of the defective pipe or to address these defects or to
23 otherwise notify its distributors, installers, building officials or consumers of the
24 defects and high probability of failure.

25 145. On information and belief, UPONOR has insisted that there be
26 confidentiality provisions in all settlement agreements.

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1 **XII. UPONOR HAS FULL KNOWLEDGE ABOUT THOUSANDS OF**
2 **REPORTED LEAKS IN THE CLASS PIPE**

3 146. UPONOR has for many years been on notice of the Class Pipe defects
4 and the resulting property damage *from consumer and installer reports of leaks*.

5 147. On information and belief, thousands of pipe failures have been reported
6 to UPONOR by installers and property owners who have reported cracked and failed
7 UPONOR PEX pipe with resulting property damage.

8 148. On information and belief, UPONOR monitors these reports of pipe
9 failures.

10 149. Moreover, in many of these reports of failed pipe, it is expressly clear
11 that UPONOR was directly informed of and investigated the leaks in question. While
12 UPONOR has had access to the full body of these complaints for many years, it has
13 failed and continues to refuse to warn its property owners or its installers or
14 distributors of the known defects or to reasonably disclose the defects that repeatedly
15 and perniciously manifest in the Class Pipe.

16 150. The exact time when UPONOR became aware of these defects will be
17 established through discovery.

18 **XIII. DESPITE ITS KNOWLEDGE, UPONOR MISREPRESENTED**
19 **AND CONCEALED IMPORTANT INFORMATION ABOUT THE**
20 **CLASS PIPE DEFECT**

21 151. For all consumers, including Plaintiff, durability, reliability and safety
22 of potable water systems are important factors when buying a home, or selecting
23 pipe when replacing one's potable water supply system. UPONOR capitalized on
24 this fact in advertising about the Class Pipe and touted the superior qualities of the
25 Class Pipe through marketing including durability, reliability and safety.

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1 152. Defendant has represented that UPONOR PEX pipe has superior
2 resistance to stress-crack corrosion and that the pipe would not experience micro-
3 cracking during expansion. These representations are material and deliberately false
4 and misleading.

5 153. UPONOR's knowledge of the defects is based on scientific evidence,
6 generated by UPONOR and independent laboratories, as well as experts employed
7 or retained by UPONOR, or which UPONOR learned of through lawsuits and
8 independent reports of failed pipe and its own investigations.

9 154. Plaintiff and Putative Class members, through their installers were
10 exposed to these advertisements and promotional materials and representations prior
11 to purchasing the Class Pipe. The misleading statements about the durability and
12 safety of the Class Pipe in UPONOR's advertisements and promotional materials, as
13 well as UPONOR's omission of the truth about the Class Pipe defects, influenced
14 Plaintiff and Putative Class members through their installers to decide to purchase
15 the Class Pipe.

16 155. Despite its knowledge of the Class Pipe defects and the impact on
17 reliability, UPONOR has concealed the defects and failed to replace the Class Pipe,
18 and has thereby avoided the significant costs, inconveniences, and reputational harms
19 of recalling millions of feet of defective pipe.

20 156. UPONOR has hidden the defects despite its obligation to disclose it,
21 misrepresented the Class Pipe to be reliable and safe, and continued to sell them to
22 contractors and plumbers who installed the defective Class Pipe on behalf of
23 consumers.

24 157. Despite full knowledge of the problems with its pipe, UPONOR has
25 failed to correct the defects and continues to market the defective pipe.

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158. If UPONOR had instead chosen to disclose the truth about the defects to its developers, contractors and installers, Plaintiff and Putative Class members would have been informed about the defects *and would not have purchased or had the defective pipe installed in their homes.*

XIV. UPONOR PUBLISHED DESIGN AND PLUMBING INSTALLATION MANUALS FOR THE CLASS PIPE THAT DETAILED THE DURABILITY AND SAFETY FEATURES BUT DID NOT DISCLOSE THE OXIDATION DEFECT

159. UPONOR published at least two manuals, with periodic updates: 1) the Uponor Plumbing Design Assistance Manual; and 2) the Uponor Professional Plumbing Installation Guide. *The manuals specifically permit the installation of hot water recirculation systems.*

160. A hot water recirculating system is a plumbing system that **circulates hot water to fixtures quickly without waiting for the water to get hot.** This is done by installing a recirculating pump in the plumbing lines to create a loop that slowly and constantly circulates the water in the hot water pipes back into the water heater for reheating.

161. Consumers prefer and enjoy hot water circulation systems because they produce instant hot water at the fixtures.

162. On information and belief, the greatest number of failures of UPONOR PEX pipe are found in pipe used for hot water supply and continuous hot water circulation systems. Yet, these failures are not disclosed to developers, contractors, distributors, installers or the public or potential customers.

163. While UPONOR expressly advertises UPONOR PEX is suitable for use in all hot water continuous recirculation systems not exceeding 140°, it then states in its design and installation manuals the following:

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Note: Uponor does not promote the use of continuous recirculation due to excessive energy waste.

164. This statement is deliberately deceptive. These manuals uniformly omit any disclosure or warning about the defects in the UPONOR PEX pipe.

165. The hot water temperature in residential properties for continuous recirculation pipe is uniformly 120° or less, well below the UPONOR minimum engineered temperature tolerance level of 140°.

166. UPONOR has no legitimate basis to on the one hand advertise that its pipe is suitable for hot water use up to 140°, and to simultaneously state that hot water recirculation systems waste energy.

167. Rather than disclose the defects, and that heat from hot water *accelerates failures in the pipe*, UPONOR conceals this fact under the guise of trying to save energy. UPONOR fails to disclose its true motivation to cover up the fact that hot water accelerates oxidation and cracking in the Class Pipe because UPONOR was well aware that the pipe suffers from oxidative degradation starting with the initial manufacturing process, and then progresses to failure over time.

**XV. THE DESIGN DEFECTS IN THE UPONOR PEX PIPE
ARE THE SOLE CAUSE OF THE LEAKS**

168. The leaks in UPONOR PEX pipe are not caused by installation practices or use by Putative Class members. The Class Pipe is defective and is the sole cause of the leaks and resulting damage. The Putative Class members cannot and have not done anything to contribute to the leaks caused by oxidative degradation or alter the causal chain of the defect.

169. ASTM International, formerly known as American Society for Testing Materials, promulgates performance standards. These standards do not guarantee performance. These standards describe standardized products. They are promulgated in order that consumers can expect minimum standardized products,

1 such as length, diameter and short-term productivity. *The standards do not purport*
2 *to ensure longevity or long-term performance.*

3 170. To the extent that UPONOR PEX pipe is in some form compliant with
4 industry standards for manufacturing pipe, compliance with these standards would
5 not prevent the defects in the Class Pipe, *nor are the industry standards intended*
6 *to ensure or guarantee that the pipe is properly designed or manufactured.*

7 171. UPONOR PEX pipe is not reasonably designed and alternative non-
8 defective designs were available that were safe, practical and economically
9 feasible.

10 172. There are no intervening or superseding causes to the defects in the
11 Class Pipe.

12 173. Also, there is no third-party fault by any third-party such as the
13 distributors, contractors, installers or maintenance providers.

14 **XVI. CLASS ACTION ALLEGATIONS**

15 174. This lawsuit seeks redress from UPONOR for the damages incurred
16 when Plaintiff and proposed Putative Class members paid for the Class Pipe with
17 known defects.

18 175. This case is about UPONOR's legal responsibility for its knowledge,
19 conduct, and defective products. The proposed Putative Class members' claims all
20 derive directly from a single course of conduct by UPONOR. The objective facts are
21 the same for all Putative Class members. Within each Count asserted by Plaintiff on
22 behalf of himself and the proposed Putative Class, the same legal standards govern in
23 California.

24 176. Accordingly, Plaintiff brings this lawsuit as a class action on his own
25 behalf, and on behalf of all other persons similarly situated, as members of the
26 proposed Putative Class pursuant to Federal Rules of Civil Procedure 23(a), (b)(2),
27 and/or (b)(3), and/or (c)(4). This action satisfies the numerosity, commonality,
28 typicality, adequacy, predominance, and superiority requirements of those

1 provisions. Certification of Plaintiff's claims for class-wide treatment is appropriate
2 because Plaintiff can prove the elements of the claims on a class-wide basis.

3 **A. The Class Definition**

4 177. The Putative Class consists of owners of residential property in
5 California that contain or contained the UPONOR PEX Red, White and/or Blue
6 piping manufactured and installed from 2010 to the present.

7 178. The UPONOR PEX pipe was typically sold by UPONOR to plumbing
8 distributors who in turn sold to plumbers or contractors who purchased and
9 installed the UPONOR PEX pipe on behalf of Plaintiff and the Putative Class.

10 179. The information presently available to Plaintiff shows that UPONOR
11 continued to manufacture and sell the defective White pipe from 2010 through the
12 present and reveal that UPONOR discontinued the manufacture and sale of the
13 defective UPONOR PEX Red and Blue pipe from 2010 to 2021.

14 180. The precise production period for the UPONOR Red, White and Blue
15 PEX pipe is uniquely in the Defendant's hands, as only UPONOR possesses the
16 information about the exact date of manufacture of the UPONOR PEX pipe.
17 UPONOR has further information that will demonstrate the presence of the defects
18 in the UPONOR PEX pipe and when and how it was designed and manufactured.
19 Plaintiff and Putative Class members are unable to obtain precise information on
20 their own from information publicly available.

21 181. The proposed Putative Class definition is:

22 All persons and entities that own residential
23 properties in the state of California in which
24 UPONOR PEX pipe manufactured and installed
25 after 2010, or who replaced their UPONOR PEX
26 pipe manufactured after 2010.

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182. Excluded from the Putative Class are:

a. All owners or former owners of UPONOR PEX pipe (Class Pipe) installed in residential properties that have asserted a claim pursuant to the requirements and terms of UPONOR's Express Warranty claim;

b. Defendant's officers, directors and employees; Defendant's affiliates and affiliates' officers, directors, and employees; Defendant's distributors and distributors' officers, directors, and employees;

c. All developers of homes in which UPONOR PEX pipe;

d. All installers of UPONOR PEX pipe; and

e. Judicial officers and their immediate family members and associated court staff assigned to this case.

183. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of their claims on a class-wide basis using the same evidence as would be used in individual actions alleging the same claims.

B. Ascertainability

184. The names of all distributors of the UPONOR PEX pipe are available through discovery. The names of all plumbers who purchased UPONOR PEX pipe from distributors are available through discovery. The names of Putative Class members are available through discovery.

185. There are well known and Court accepted notice plans that can identify and inform installers and consumers if they have the defective UPONOR PEX pipe and system.

186. In addition, the ability of a Putative Class member to determine whether Class Pipe has been installed in a building is simple, with a very high degree of accuracy with no requirement for destructive testing to the building. The Class Pipe is also date coded and thus, the date of manufacturer can be determined. This ease of determining whether a property has the Class Pipe is based on the following facts:

1 **a. All UPONOR PEX Pipe is Marked with the UPONOR Name.**

2 187. UPONOR PEX pipe is continuously labeled on the wall of all of its pipe.
3 The markings are clear and easily readable. The UPC is adopted by the State of
4 California and is uniformly applicated throughout the State of California. UPC
5 section 301.2.1 requires that the name of the manufacturer be placed on the pipe.
6 UPC Section 301.2.1 states:

7 **Each length of pipe and each pipe fitting, trap, fixture,**
8 **material, and device used in a plumbing system shall**
9 **have cast, stamped, or indelibly marked on it any**
10 **markings required by the applicable referenced**
11 **standards and listing agency, and the manufacturer's**
12 **mark or name, which shall readily identify the**
13 **manufacturer to the end user of the product.** Where
14 required by the approved standard that applies, the
15 product shall be marked with the weight and the quality
16 of the product. Materials and devices used or entering into
17 the construction of plumbing and drainage systems, or
18 parts thereof shall be marked and identified in a manner
19 satisfactory to the Authority Having Jurisdiction. Such
20 marking shall be done by the manufacturer. Field
21 markings shall not be acceptable. (emphasis added)

22 188. The UPONOR PEX system is not sold as pipe alone, but as a system
23 which includes the pipe, fittings, and reinforcement rings which are sized and
24 designed to be used only with UPONOR PEX pipe.

25 189. When the Class Pipe is installed in a building, all of the pipe,
26 reinforcement rings and fittings will have been manufactured by UPONOR.

27 190. UPONOR's IAPMO Certificate of Listing requires that all the pipe be
28 marked with the manufacturers name, size of pipe, code number identifying the
29 compound and date of manufacture. The certificate of listing reads, in part, as
30 follows:

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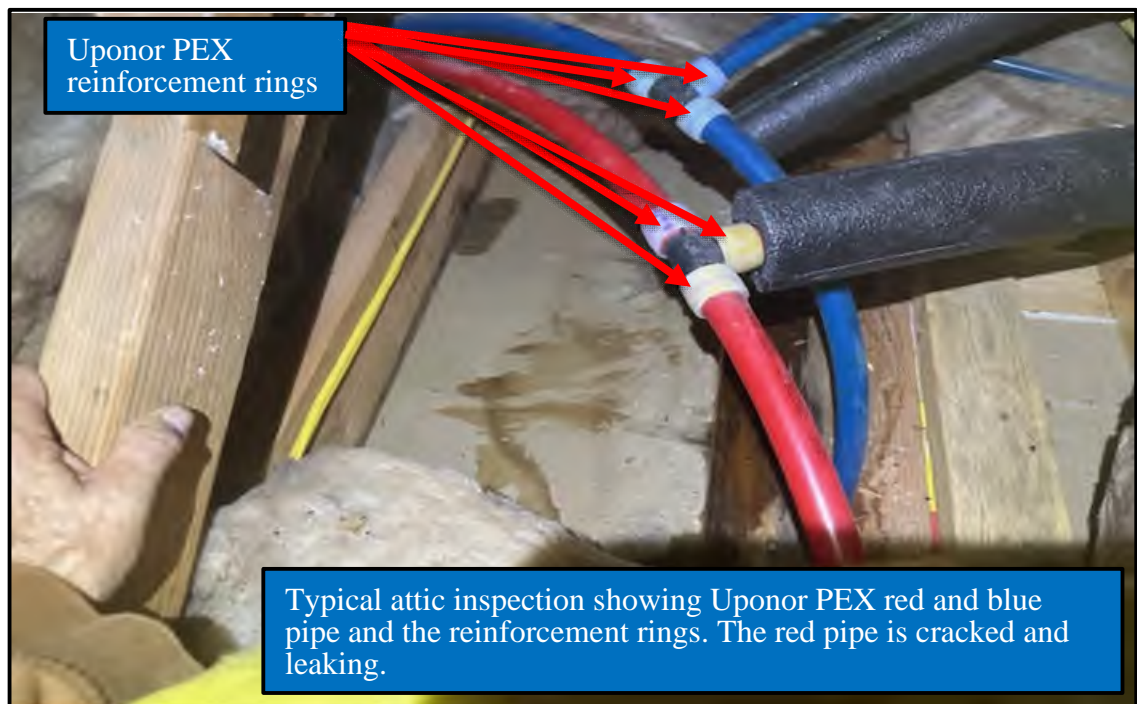
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IDENTIFICATION:

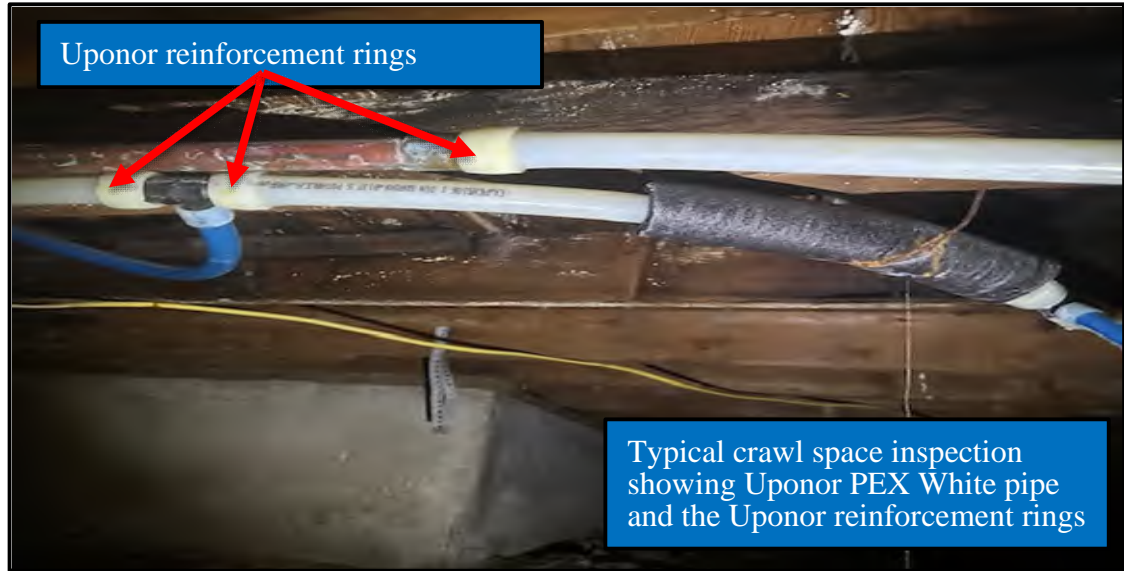
The tubing shall be marked with the manufacturer's name or trademark, ASTM F877 PEX, nominal size, standard dimension ratio, and a code number identifying the compound and the date of manufacturer. The fittings shall be marked with the manufacturers name or trademark, pressure rating at 180 F and ASTM F877 or PEX when size permits.” (emphasis added)

b. UPONOR PEX Pipe and Reinforcement Rings Can Be Easily Identified In Attics And In The Area of The Raised Foundation.

191. Residences are constructed in two manners, concrete slab on grade and raised foundations. In structures that are slab on grade, the Class Pipe is installed in the attics with drops into the wall cavities for the various plumbing fixtures. By looking into the attic, the Class Pipe is easily identified. If UPONOR PEX pipe is identified in the attic, then the entire PEX system will be UPONOR. This observation requires no repairs or destructive work.



192. If the building has a raised foundation, then the UPONOR PEX pipe can also be identified in the crawl space. If one section of Class Pipe is identified, then all of the PEX pipe will be UPONOR. This observation requires no destructive work and requires no repairs.



193. UPONOR utilizes an UPONOR PEX reinforcement ring at all fitting connections. This reinforcement ring is unique to UPONOR and is easily identifiable. These reinforcement rings can also be identified under a sink or toilet. This observation requires no destructive work and requires no repairs.

d. UPONOR Angle Stops Are Easily Identified

194. If the installer plumbing contractor has used UPONOR they may have also used UPONOR angle stops. These angle stops have been available throughout the proposed class period and fasten directly to the Class Pipe tubing.

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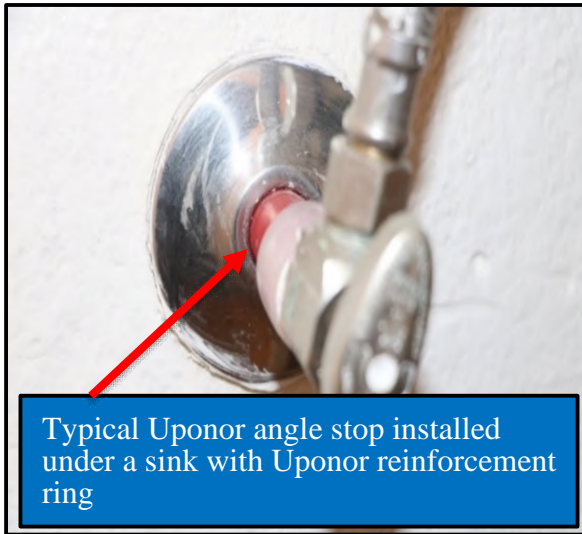
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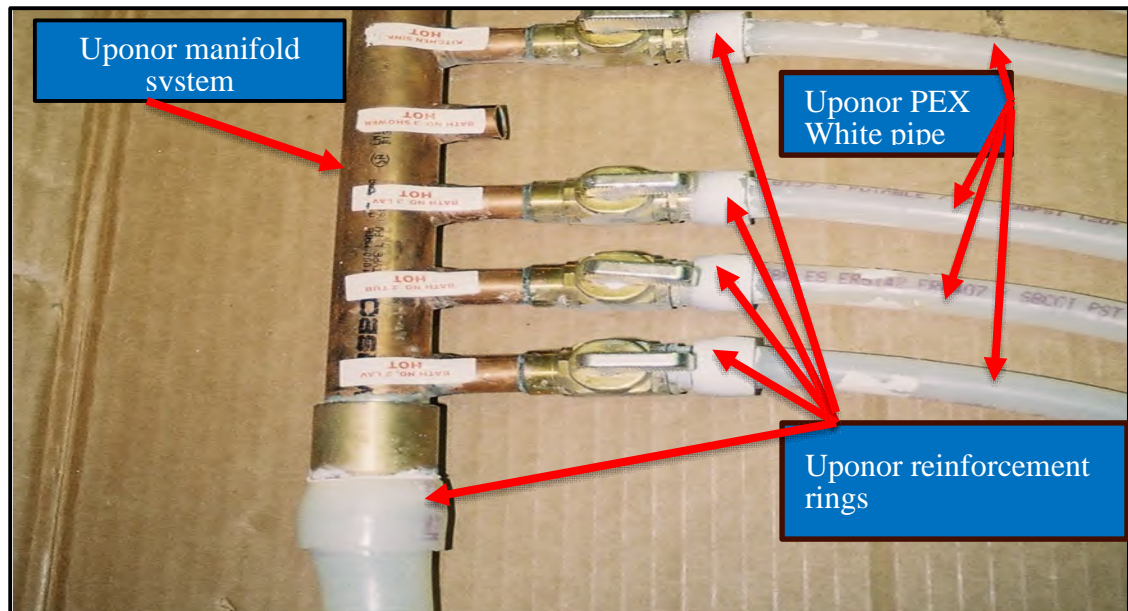
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e. Uponor Manifold

195. A plumbing manifold is a central distribution point for water supply lines, allowing for individual shut-off valves and easy access for maintenance.

196. If the UPONOR system utilizes the UPONOR manifold system then identification of the UPONOR system can be easily accomplished because the manifolds are required to be accessible in order to be operated. Typically, an access panel door is opened and the tubing and stops are readily visible for identification. Also, the manifolds are connected directly to the UPONOR PEX pipe using the UPONOR reinforcement rings for the UPONOR cold-expansion fitting system.



197. The identification of the product as Class Pipe is then easily documented with a photo using a camera or phone.

f. Additional Methods to Identify Installed Class Pipe

198. In addition, all of the Putative Class members that have had a leak in their UPONOR PEX pipe, the plumber making the repair would have additional information confirming that the failed pipe was manufactured by UPONOR.

199. In addition, any Putative Class member whose existing potable system was replaced would have personal knowledge that the replaced pipe was manufactured by UPONOR.

200. Also, if the home of the Putative Class member was originally constructed with an UPONOR system, that information would be readily available to the Putative Class member by contacting their developer or installer and inquiring about what pipe was used for the potable water system.

201. Also, established and Court approved class notice methodologies and programs can be uniquely designed to notify owners of residential properties to easily determine if they are class members.

202. Plaintiff reserves the right to amend the Putative Class definitions if discovery and further investigation reveal that any Putative Class should be expanded, reduced, divided into additional subclasses under Rule 23(c)(5), or otherwise modified.

C. Numerosity: Federal Rule of Civil Procedure 23(a)(1)

203. The members of the Putative Class are so numerous and geographically dispersed that individual joinder of all Putative Class members is impracticable. There are thousands of Putative Class members in the state of California. The identities of the California Putative Class members may be ascertained as described above, and further from Defendant's records. Putative Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods.

D. Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3)

204. This action involves common questions of law and fact, which predominate over any questions affecting individual Putative Class members. These include, without limitation, the following:

- a. Whether the UPONOR PEX White pipe manufactured between 2010 and the present is defective;
- b. Whether the UPONOR PEX Red and Blue pipe manufactured between 2010 and 2021 (“Class Pipe”) is defective;
- c. Whether at the time the Class Pipe left the control of Defendant, the UPONOR PEX pipe was defective in design and manufacture;
- d. Whether Defendant failed to warn consumers that the Class Pipe that was manufactured between 2010 and the present is defective;
- e. Whether the UPONOR PEX pipe is subject to premature failure, degradation, and/or deterioration;
- f. Whether Defendant made misleading statements in connection with the advertising/marketing and/or sale of the Class Pipe that was manufactured between 2010 and the present;
- g. Whether Defendant omitted material information when it advertised/marketed and/or sold the Class Pipe that was manufactured between 2010 to the present;
- h. Whether Defendant knew, or should have known, about the defects in its UPONOR PEX pipe, and, if so, how long it has or should have known about the defects;
- i. Whether Defendant had a duty to disclose the defective nature of the Class Pipe to Plaintiff and Putative Class members;
- j. Whether Defendant’s concealment of the defects caused Plaintiff and Putative Class members to act to their detriment by purchasing the Class Pipe;

k. Whether Defendant concealed the defects in the Class Pipe;

l. Whether Defendant's statements, concealments, and omissions regarding the Class Pipe were material, in that a reasonable consumer could consider them important in purchasing, installing and using the Class Pipe;

m. Whether Defendant's conduct tolls any or all applicable limitations periods by acts of fraudulent concealment, application of the discovery rule, or equitable estoppel;

n. Whether Defendant engaged in unfair, deceptive, unlawful, and/or fraudulent acts or practices, in trade or commerce, by failing to disclose that the Class Pipe was defective as designed, manufactured and sold;

o. Whether Defendant's concealment of the true defective nature of the Class Pipe caused its market price to incorporate a premium reflecting the assumption by consumers that the Class Pipe was not defective and was fully functional for use in residential properties and, if so, the market value of that premium;

p. Whether Plaintiff and the other Putative Class members are entitled to damages, including punitive damages, and other monetary or restitutionary relief and, if so, in what amount; and

q. Whether Plaintiff and other Putative Class members are entitled to an order enjoining the Defendant from further deceptive distribution and sales practices with respect to the Class Pipe.

205. These and other common questions of law and fact predominate over any questions affecting solely individual members of the Putative Class.

E. Typicality: Federal Rule of Civil Procedure 23(a)(3)

206. Plaintiff's claims are typical of the claims of Putative Class members whom they seek to represent under Fed. R. Civ. P. 23(a)(3), because Plaintiff and each Putative Class member own a residential property in which the defective Class Pipe was installed, or owned residential property in which failed UPONOR PEX

1 pipe was removed and replaced, and were comparably injured through Defendant's
2 wrongful conduct as described above. Plaintiff and the other Putative Class
3 members suffered damages as a direct proximate result of the same wrongful
4 practices by Defendant. Plaintiff's claims arise from the same practices and courses
5 of conduct that give rise to the claims of the other Putative Class members.
6 Plaintiff's claims are based upon the same legal theories as the claims of the other
7 Putative Class members.

8 **F. Adequacy: Federal Rule of Civil Procedure 23(a)(4)**

9 207. Plaintiff will fairly and adequately represent and protect the interests of
10 the Putative Class members as required by Fed. R. Civ. P. 23(a)(4). Plaintiff's
11 interests do not conflict with the interests of the Putative Class members. Plaintiff
12 has retained counsel competent and experienced in complex class action litigation
13 and consumer protection litigation. Plaintiff intends to prosecute this action
14 vigorously. Neither Plaintiff nor his counsel has interests that conflict with the
15 interests of the other Putative Class members. Therefore, the interests of the Putative
16 Class members will be fairly and adequately protected.

17 **G. Declaratory and Injunctive Relief: Federal Rule of Civil**
18 **Procedure 23(b)(2)**

19 208. Defendant has acted or refused to act on grounds generally applicable
20 to Plaintiff and the other members of the Putative Class, thereby making
21 appropriate final injunctive relief and declaratory relief, as described below, with
22 respect to the Putative Class as a whole.

23 **H. Superiority: Federal Rule of Civil Procedure 23(b)(3)**

24 209. A class action is superior to any other available means for the fair and
25 efficient adjudication of this controversy, and no unusual difficulties are likely to
26 be encountered in its management. The damages or other financial detriment
27 suffered by Plaintiff and the other Putative Class members are relatively small
28 compared to the burden and expense that would be required to individually litigate

1 their claims against Defendant such that it would be impracticable for members of
2 the Putative Class to individually seek redress for Defendant's wrongful conduct.

3 210. Even if Putative Class members could afford individual litigation, the
4 court system could recognize the class procedural device as superior to
5 individualized litigation. Individualized litigation creates a potential for
6 inconsistent or contradictory judgments and increases the delay and expense to all
7 parties and the court system. By contrast, the class action device presents far fewer
8 management difficulties and provides the benefits of single adjudication, economy
9 of scale, and comprehensive supervision by a single court.

10 **XVII. ANY APPLICABLE STATUTES OF LIMITATION ARE TOLLED**

11 211. Plaintiffs' claims and all Putative Class members' claims are brought
12 within the applicable statutes of limitations.

13 212. Plaintiffs' and Putative Class members' claims are not barred by any
14 statute of limitation or statute of repose because Defendant actively and fraudulently
15 concealed from the public including Plaintiff and other Putative Class members (i)
16 the defects in the Class Pipe, (ii) Defendant's actions in creating the defects, and (iii)
17 the cause of Plaintiffs' and the Putative Class members' damages and injury in fact.

18 213. On information and belief, Defendant has known of the defects in the
19 Class Pipe for many years, because UPONOR learned, through reports of failed pipe
20 and internal testing, investigation and analysis that the UPONOR PEX pipe was
21 cracking and leaking including through its own books, records, and personnel.
22 Nonetheless, UPONOR continued to manufacture and sell the defective Class Pipe.
23 UPONOR obtained further knowledge of the risks of the Class Pipe defects from
24 numerous consumer lawsuits, and consumers and installer claims relating to cracked
25 and leaking Class Pipe, occurring in many locations throughout the United States,
26 which provided additional and confirmatory notice to UPONOR of the Class Pipe
27 defects.

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1 214. Discovery relating to all nationwide reports of leaks made to UPONOR
2 are relevant to this California Putative Class as those reports are relevant to when
3 UPONOR was on notice of the defects and what UPONOR knew, and Plaintiff
4 requests such discovery.

5 215. UPONOR had a duty to disclose the Class Pipe defects to consumers.
6 Instead, UPONOR knowingly, affirmatively, and actively concealed the defects from
7 consumers by continuing to manufacture, distribute and sell the Class Pipe to
8 installers who then sold Plaintiff and the Putative Class members; to advertise the
9 efficacy of the Class Pipe; and to fail to notify Plaintiff and the Putative Class
10 members about the true nature of the defective Class Pipe.

11 216. As of the date of this Complaint, UPONOR still has not disclosed, and
12 continues to conceal, that the Class Pipe is defective, and that the Class Pipe will
13 continue to prematurely fail in the future. Despite its knowledge of the Class Pipe
14 defects and its attendant risks, UPONOR continues to market the Class Pipe based
15 on alleged superior quality and reliability while omitting the disclosure of the defects
16 and reliability risks associated with the Class Pipe defect.

17 217. Defendant affirmatively concealed the injuries to Plaintiff and other
18 Putative Class members by concealing that the Class Pipe has defects that cause
19 leaks and/or by failing to disclose material facts regarding the defects when
20 Defendant had a duty to disclose such information to the Putative Class members
21 who would be reasonably expected to have plumbing installed in their homes or
22 structures and/or to builders and plumbers who were reasonably expected to use such
23 Class Pipe, based on (1) Defendant's superior and sole knowledge related to the
24 defects, and (2) Defendant's continuous statements to the public, builders, building
25 officials and plumbers about the quality of Class Pipe as set forth herein.

26 218. Between 2010 and the present, Defendant made public statements and
27 publicly maintained that the Class Pipe was the highest quality PEX pipe available,
28 that its cross chemical bonding process gave it superior characteristics, that Class

1 Pipe has superior resistance to stress-crack corrosion and that Class Pipe will suffer
2 no micro-cracking during expansion, and that consumers should trust Defendant to
3 provide the highest quality UPONOR PEX pipe because the company has many
4 years of industry experience and is an industry leader in the manufacture of
5 UPONOR PEX pipe. These statements to the public were affirmative acts of
6 concealment of the defects in the Class Pipe, of which Defendant was aware.

7 219. On information and belief, Defendant knew that the Class Pipe was
8 defective and caused leaks and damages for many years. Defendant knew that
9 property owners were being injured by the defects in Class Pipe not long after
10 Defendant started manufacturing the Class Pipe. Defendant knew that it was the
11 wrongdoer who created the defects in Class Pipe.

12 220. Defendant engaged in a scheme to cover up evidence of premature
13 deterioration and failure of Class Pipe by occasionally providing reimbursement for
14 spot repairs of the Class Pipe when leaks were reported and not notifying all
15 potentially affected persons of such deterioration and progressive failure modalities
16 of Class Pipe.

17 221. Between 2010 and the present, Defendant did not notify the public of
18 defects in the Class Pipe, but affirmatively conducted a plan to conceal claims of
19 property owners. Defendant conducted a plan to continue making public statements
20 about the Class Pipe being of highest quality, and to occasionally provide
21 reimbursement for repairs of faulty and failed Class Pipe on a case-by-case basis
22 when a failure was reported instead of notifying potential owners, builders, and
23 plumbers of the defects in the Class Pipe.

24 222. Defendant's actions and statements concealed the fact of the defects in
25 the Class Pipe and were intended by Defendant to exclude suspicion and prevent
26 inquiry regarding defects in the Class Pipe.

27 223. Plaintiff and other Putative Class members had no way to know of the
28 defects in the Class Pipe because the UPONOR PEX piping and its defects are latent

1 and the leaks manifest behind the walls and ceilings of the homes and other
2 structures of Plaintiff and other Putative Class members.

3 224. Plaintiff and members of the proposed Putative Class could not have
4 discovered through the exercise of reasonable diligence that UPONOR was
5 concealing the Class Pipe defects and misrepresenting the defective nature of the
6 Class Pipe.

7 225. With respect to Class Pipe that has not yet experienced cracks and leaks
8 Putative Class members did not discover, could not reasonably have discovered, and
9 had no reason to suspect that their Class Pipe is defective.

10 226. The continued use of the Class Pipe is compromised by these defects
11 such that the Class Pipe is likely to prematurely fail and cause property damage, and
12 that, as a result of the foregoing, they overpaid for their pipe, and/or the value of
13 their pipe is diminished.

14 227. With respect to Class Pipe that has experienced cracks and leaks prior
15 to the filing of this Complaint, Putative Class members did not discover and could
16 not reasonably have discovered that such failure was due to defects known to
17 UPONOR.

18 228. Plaintiff and other Putative Class members did not discover, and did not
19 know of, facts that would have caused a reasonable person to suspect that UPONOR
20 did not report this material information within their knowledge to consumers,
21 installers, or relevant authorities; nor would a reasonable and diligent investigation
22 have disclosed that UPONOR was aware of the defective nature of the Class Pipe.

23 229. Due to the highly technical nature of the Class Pipe defect, Plaintiff and
24 Putative Class members were unable to independently discover it using reasonable
25 diligence. Absent counsel and retained consultants with relevant expertise, Plaintiff
26 and Putative Class members lack the necessary expertise to analyze the design and
27 manufacturing methods of the Class Pipe, and to understand its defective nature.

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1 230. UPONOR has not issued a recall or issued other similar public
2 statements about the Class Pipe defects, and Plaintiff first learned of the defective
3 nature of the Class Pipe defect, and of UPONOR's scheme to design and sell
4 defective Class Pipe, only after he had multiple failures and then in connection with
5 retaining counsel and filing this lawsuit.

6 231. For the foregoing reasons, UPONOR is estopped from relying on any
7 statutes of limitation or repose as a defense in this action. All applicable statutes of
8 limitation and repose have been tolled by operation of the discovery rule and by
9 UPONOR's intentional concealment with respect to all claims against UPONOR.

10 **XVIII. CAUSES OF ACTION**

11 232. Plaintiff and the Putative Class make *no* claim under any UPONOR
12 Express Warranty or any implied warranty and are not seeking relief provided for
13 in the UPONOR Express Warranty, or any implied warranty under law.

14 233. Plaintiff further states that, in any event, UPONOR's Express
15 Warranty does not apply to him because it was never provided to him; that he was
16 unaware of any Express Warranty; that he never agreed or assented to any
17 Express Warranty with UPONOR; and that he has never made a claim under the
18 UPONOR Express Warranty, or any implied warranty under law, and is not
19 bound by the terms of any UPONOR Express Warranty.

20 234. Because UPONOR failed to provide Plaintiff or the Putative Class
21 any UPONOR Express Warranty, UPONOR is estopped from asserting any rights
22 under the terms of any UPONOR Express Warranty.

23 235. Plaintiff alleges that he, and the Putative Class members, are not
24 assignees of any UPONOR Express Warranty, and that no rights pursuant to an
25 UPONOR Express Warranty have ever been transferred to Plaintiff or the
26 Putative Class.

27 236. Plaintiff and the Putative Class are not seeking to enforce any rights
28 as a third-party beneficiary, if any such rights exist.

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COUNT I:
VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW
(CAL. BUS. & PROF. CODE § 17200, *ET SEQ.*)

237. Plaintiff re-alleges and incorporates by reference all preceding allegations as though fully set forth herein.

238. Plaintiff brings this claim on behalf of himself and the California State Putative Class against the Defendant.

239. The California Unfair Competition Law (“UCL”), Cal. Bus. and Prof. Code § 17200, prohibits any “unlawful, unfair, or fraudulent business act or practices.”

240. Defendant’s knowing and intentional conduct described in this Complaint constitutes unlawful, fraudulent, and unfair business acts and practices in violation of the UCL. Specifically, Defendant’s conduct is unlawful, fraudulent, and unfair in at least the following ways:

- a. by knowingly and intentionally concealing from Plaintiff and California State Putative Class members that the Class Pipe suffers from defects while obtaining money from the California State Putative Class members through the sale of the Class Pipe;
- b. by marketing Class Pipe as possessing a functional, safe, and defect-free water supply system;
- c. by designing and manufacturing the Class Pipe to contain a design and manufacturing defects causing the Class Pipe to crack and leak and prematurely fail contrary to what was disclosed and represented to consumers and/or installers who purchased Class Pipe, and failing to replace defective Class Pipe free of charge; and
- d. by violating the other California laws alleged herein, including the False Advertising Law and the Consumers Legal Remedies Act.

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241. Defendant, the California Plaintiff, and California State Putative Class members are “persons” within the meaning of the Cal. Bus. and Prof. Code § 17201.

242. Defendant’s misrepresentations, omissions, and concealment were material to the California Plaintiff and California State Putative Class members, and Defendant misrepresented, concealed, or failed to disclose the truth with the intention that consumers would rely on the misrepresentations, concealment, and omissions.

243. Defendant’s material misrepresentations and omissions alleged herein caused Plaintiff and the California State Putative Class members to make their purchases of their Class Pipe. Absent those misrepresentations and omissions, Plaintiff and California State Putative Class members would not have purchased the Class Pipe.

244. Accordingly, Plaintiff and California State Putative Class members have suffered ascertainable loss and actual damages as a direct and proximate result of Defendant’s misrepresentations and their concealment of and failure to disclose material information.

245. Defendant’s violations present a continuing risk to Plaintiff and California State Putative Class members, as well as to the general public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

246. Plaintiff requests that this Court enter an order enjoining Defendant from continuing its unfair, unlawful, and/or deceptive practices and restoring to members of the California State Putative Class any money Defendant acquired by unfair competition, including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Bus. & Prof. Code § 3345, and for such other relief set forth below.

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COUNT II:
VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT
(CAL. CIV. CODE § 1750, *ET SEQ.*)

247. Plaintiff re-alleges and incorporates by reference all preceding allegations as though fully set forth herein.

248. Plaintiff brings this claim on behalf of himself and the California State Putative Class against the Defendant.

249. Plaintiff and California State Putative Class members are “consumers” within the meaning of Cal. Civ. Code § 1761(d).

250. Defendant, the California Plaintiff, and California State Putative Class members are “persons” within the meaning of Cal. Civ. Code § 1761(c).

251. The Class Pipe are “goods” within the meaning of Cal. Civ. Code § 1761(a).

252. The California Legal Remedies Act (“CLRA”) prohibits “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer[.]” Cal. Civ. Code § 1770.

253. Defendant engaged in unfair or deceptive acts or practices when, in the course of their business they, among other acts and practices, intentionally and knowingly made materially false representations regarding the reliability and performance of the Class Pipe as detailed above.

254. Specifically, by misrepresenting the Class Pipe as reliable and/or free from defects, and by failing to disclose and actively concealing the risk of premature failure posed by the Class Pipe, Defendant engaged in one or more of the following unfair or deceptive business practices as defined in Cal. Civ. Code § 1770(a):

a. Representing that the Class Pipe had characteristics, uses, benefits, and qualities which it does not have.

- 1 b. Representing that the Class Pipe is of a particular standard,
2 quality, and grade when it is not.
- 3 c. Advertising the Class Pipe and/or with the intent not to sell
4 the Class Pipe as advertised.
- 5 d. Representing that the subject of a transaction has been supplied
6 in accordance with a previous representation when it has not.
- 7 Cal. Civ. Code §§ 1770(a)(5), (7), (9), and (16).

8 255. Additionally, in the various channels of information through which
9 Defendant sold and marketed Class Pipe, Defendant failed to disclose material
10 information concerning the Class Pipe, which they had a duty to disclose. Defendant
11 had a duty to disclose the defects because, as detailed above: (a) Defendant knew
12 about the defects in the Class Pipe; (b) Defendant had exclusive knowledge of
13 material facts not known to the general public or the other California State Putative
14 Class members; (c) Defendant actively concealed material facts concerning the
15 Class Pipe defects from the general public, Plaintiff and California State Putative
16 Class members; and (d) Defendant made partial representations about the Class Pipe
17 that were misleading because they did not disclose the full truth.

18 256. Defendant's unfair or deceptive acts or practices, including its
19 misrepresentations, concealments, omissions, and/or suppressions of material facts,
20 had a tendency or capacity to mislead and create a false impression in consumers,
21 and were likely to and did in fact deceive reasonable consumers, including Plaintiff
22 and California State Putative Class members, about the reliability of Class Pipe, the
23 quality of the Class Pipe, and the true value of the Class Pipe.

24 257. Plaintiff and the other California State Putative Class members have
25 suffered injury in fact and actual damages resulting from Defendant's material
26 omissions. Plaintiff paid out of pocket expenses to paint drywall that replaced
27 existing drywall damaged by failure in the Class Pipe installed in his home. Plaintiff
28 will also pay significantly more out of pocket expenses to properly repaint the entire

1 walls in which the damaged drywall was patched and temporarily repainted, and to
2 remove and replace all of the Class Pipe installed in his residential property. This
3 Complaint will be amended to provide the exact amount of the costs to remove and
4 replace all of the UPONOR PEX pipe from his residence.

5 258. Defendant's violations present a continuing risk of further property
6 damage and safety risks to Plaintiff and California State Putative Class members, as
7 well as to the general public, and therefore affect the public interest.

8 259. Defendant is on notice of the issues raised in this count and this
9 Complaint by way of, among other things, litigation and hundreds if not thousands
10 of public consumer reports of failed pipe detailed above, as well as its own intrinsic
11 knowledge of defects it has included in the Class Pipe by design. On November 8,
12 2024, Plaintiff also sent a notice letter to Defendant in accordance with Cal. Civ.
13 Code § 1782(a) of the CLRA, notifying Defendant of its alleged violations of Cal.
14 Civ. Code § 1770(a) and demanding that Defendant correct or agree to correct the
15 actions described therein within thirty (30) days of the notice letter. Defendant did
16 not correct or agree to correct its actions within thirty days, and Plaintiff therefore
17 seek compensatory and monetary damages to which Plaintiff and California
18 Putative Class members are entitled under the CLRA.

19 260. Attached hereto and filed concurrently herewith as **Exhibit A-001**
20 **through 002** is Plaintiff's venue affidavit required by CLRA, Cal. Civ. Code §
21 1780(d).

22 **COUNT III:**

23 **VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW**

24 **(CAL. BUS. & PROF. CODE § 17500, ET SEQ.)**

25 261. Plaintiff re-alleges and incorporates by reference all preceding
26 allegations as though fully set forth herein.

27 262. Plaintiff brings this claim on behalf of himself and the California
28 State Putative Class against the Defendant.

1 263. The California False Advertising Law (“FAL”), Cal. Bus. & Prof.
2 Code § 17500, prohibits false advertising.

3 264. Defendant, the California Plaintiff, and California State Putative
4 Class members are “persons” within the meaning of Cal. Bus. & Prof. Code §
5 17506.

6 265. Defendant violated the FAL by causing to be made or disseminated
7 through California and the United States, through advertising, marketing and other
8 publications, statements regarding the reliability of the Class Pipe that were untrue
9 or misleading, and which were known, or which by the exercise of reasonable care
10 should have been known to Defendant, to be untrue and misleading to consumers
11 and installers of the defective UPONOR PEX pipe, including California State
12 Putative Class members. Numerous examples of these statements and
13 advertisements appear in the preceding paragraphs throughout this Complaint.

14 266. The misrepresentations and omissions regarding the reliability of Class
15 Pipe as set forth in this Complaint were material and had a tendency or capacity to
16 mislead and create a false impression in consumers, and were likely to and did in
17 fact deceive reasonable consumers, including Plaintiff and California State Putative
18 Class members, about the true reliability of Class Pipe, the quality of the Defendant’s
19 brand, and the true value of the Class Pipe.

20 267. In purchasing their Class Pipe, the California State Putative Class
21 members relied on the misrepresentations and/or omissions of Defendant with
22 respect to the reliability and durability of the Class Pipe. Defendant’s representations
23 turned out not to be true and the omissions of material facts because the Class Pipe
24 is distributed with a defect, rendering the Class Pipe defective and unsuitable for use
25 in a residential water supply system.

26 268. Plaintiff and the other California State Putative Class members have
27 suffered an injury in fact, including the loss of money or property, as a result of
28 Defendant’s unfair, unlawful, and/or deceptive practices. Had they known the truth,

1 Plaintiff and California State Putative Class members would not have purchased the
2 Class Pipe.

3 269. Plaintiff and California State Putative Class members had no way of
4 discerning that Defendant's representations were false and misleading, or otherwise
5 learning the facts that Defendant had concealed or failed to disclose. Plaintiff and
6 California State Putative Class members did not, and could not, unravel Defendant's
7 deception on their own.

8 270. Defendant had an ongoing duty to Plaintiff and California State Putative
9 Class members to refrain from unfair or deceptive practices under the California
10 False Advertising Law in the course of their business. Specifically, the Defendant
11 owed Plaintiff and California State Putative Class members a duty to disclose all the
12 material facts concerning the defects in the Class Pipe because they possessed
13 exclusive knowledge, they intentionally concealed the defects from Plaintiff and
14 California State Putative Class members, and/or they made misrepresentations that
15 were misleading because they were contradicted by withheld facts.

16 271. All of the wrongful conduct alleged herein occurred, and continues to
17 occur, in the conduct of Defendant's business. Defendant's wrongful conduct is part
18 of a pattern or generalized course of conduct that is still perpetuated and repeated,
19 in the State of California.

20 272. Defendant's violations present a continuing risk to Plaintiff and
21 California State Putative Class members, as well as to the general public.
22 Defendant's unlawful acts and practices complained of herein affect the public
23 interest.

24 273. Plaintiff requests that this Court enter an order enjoining Defendant
25 from continuing its unfair, unlawful, and/or deceptive practices and restoring to the
26 California State Putative Class any money Defendant acquired by unfair
27 competition, including restitution and/or restitutionary disgorgement, and for such
28 other relief set forth below.

COUNT IV:
FRAUD BY CONCEALMENT
(COMMON LAW)

274. Plaintiff re-alleges and incorporates by reference all paragraphs as though fully set forth herein.

275. Plaintiff brings this claim against Defendant on behalf of himself and the California State Putative Class under the common law of fraudulent concealment.

276. Defendant is liable for both fraudulent concealment and non-disclosure. *See, e.g.*, Restatement (Second) of Torts §§ 550-51 (1977).

277. Defendant intentionally and knowingly concealed and suppressed material facts from consumers regarding the Class Pipe defects causing a serious risk of property damage.

278. A reasonable consumer would not have expected that the Class Pipe contained defects that would cause premature cracking and leaking. Defendant knew that reasonable consumers expected that their Class Pipe would be without defects and would rely on those facts in deciding whether to purchase and install the Class Pipe. Whether a manufacturer's products are reliable and whether that manufacturer stands behind its products, are material concerns to a consumer.

279. Defendant ensured that Plaintiff and the Putative Class did not discover this information by actively concealing and misrepresenting the true nature of the Class Pipe defect. Defendant intended for Plaintiff and the Putative Class to rely on their omissions—which they did by purchasing homes in which the UPONOR PEX pipe was installed or purchased the Class Pipe through their installers of Class Pipe at the prices they paid.

280. Defendant had a duty to disclose the Class Pipe defects because:

a. UPONOR had exclusive and/or far superior knowledge and access to the facts about these hidden and complex defects. Defendant also knew that

1 these technical facts were not known to or reasonably discoverable by Plaintiff and
2 the Putative Class; UPONOR knew the Class Pipe defects and the risks to property
3 damages was a material fact that would affect Plaintiff's or Putative Class members'
4 decisions to buy Class Pipe; UPONOR is subject to statutory duties to disclose known
5 defects to consumers; UPONOR's actions to avoid investigations and a recall due to
6 the defects deprived consumers of an opportunity in which they could have learned
7 about it; and UPONOR made incomplete representations about the reliability of the
8 Class Pipe, while purposefully withholding material facts about a known defect. In
9 uniform advertising and materials, Defendant intentionally concealed, suppressed,
10 and failed to disclose to Plaintiff and the Putative Class that the Class Pipe contained
11 defects that would cause premature failure. Because it volunteered to provide
12 information about the Class Pipe that it offered for sale to Plaintiff and the Putative
13 Class, either through its developers, contractors, sellers of the property, or installers,
14 Defendant had the duty to disclose the whole truth. It did not.

15 281. To this day, Defendant has not made a full and adequate disclosure
16 and continues to conceal material information regarding the Class Pipe defects.
17 The omitted and concealed facts were material because a reasonable person would
18 find them important in purchasing Class Pipe and because they directly impact the
19 value and reliability of the Class Pipe purchased and/or installed by Plaintiff and
20 the Putative Class.

21 282. Defendant actively concealed or suppressed these material facts, in
22 whole or in part, to maintain a market for their Class Pipe, to protect profits, and
23 to avoid costly recalls that would hurt the UPONOR brand's image and reduce
24 profits. It did so at the expense of Plaintiff and the Putative Class. Had they been
25 aware of the defects in the Class Pipe, and Defendant's callous and conscious
26 disregard for safety and risk of property damage, Plaintiff and the Putative Class
27 would not have purchased the Class Pipe.

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1 Integrity Repipe to replace Plaintiff's potable water supply system. UPONOR's
2 largest distributor in California and the United States is Ferguson Enterprises, Inc.
3 ("Ferguson"). Integrity Repipe bought the Class Pipe from Ferguson to be used on
4 Plaintiff's residential property with Plaintiff's money.

5 292. Plaintiff's money to purchase the Class Pipe was paid to Integrity
6 Repipe who paid the distributor Ferguson from whom Integrity Repipe purchased
7 the Class Pipe. Ferguson then paid Uponor, Inc.

8 293. In this fashion, the benefit of Plaintiff's money, namely the purchase
9 price of the Class Pipe, was conferred on Uponor, Inc. and retained by Uponor,
10 Inc. through the above-described distribution channels for Plaintiff's Class Pipe.

11 294. All of the Class Pipe was sold to consumers or end-users in some
12 variation of the above system, namely consumer pays the developer, contractor or
13 installer to buy the Class Pipe, who buys the Class Pipe from the distributor, who
14 pays Uponor, Inc. This Complaint will be amended if the evidence shows that
15 Defendant Uponor, Inc. passes some or all of the profit either to Uponor North
16 America, Inc., or Uponor Corporation or both.

17 295. The benefit that Plaintiff conferred on Uponor, Inc. and that Uponor,
18 Inc. retained at Plaintiff's expense was the purchase price of Class Pipe. The chain
19 of distribution of Plaintiff's Class Pipe and the monetary compensation for the
20 Class Pipe followed a pattern that is typical to all sales of Class Pipe.

21 296. Thus, Uponor, Inc., was paid with Plaintiff's money indirectly
22 through its distributor Ferguson. The benefit of the purchase price was conferred
23 on Uponor, Inc., or other Uponor entities and retained at Plaintiff's expense.

24 297. As between Plaintiff and Uponor, Inc., it is unjust for Uponor, Inc. to
25 retain the benefit conferred upon it by Plaintiff in that Plaintiff paid \$9,000.00 for
26 the installation of the Class Pipe based upon the promises from Uponor, Inc. that
27 the Class Pipe would be free from defects and would safely supply water to his
28 residence, none of which were delivered or fulfilled as promised by Uponor, Inc.

COUNT VI:
NEGLIGENCE

**(PLAINTIFF, ON BEHALF OF HIMSELF AND ALL OTHERS
SIMILARLY SITUATED, AGAINST DEFENDANT)**

298. Plaintiff re-alleges and incorporates by reference all paragraphs as though fully set forth herein.

299. Defendant owed Plaintiff and the other members of the Putative Class a duty to exercise reasonable and ordinary care in the testing, design, manufacture, distribution, advertising/marketing, and/or sale of the Uponor PEX pipe.

300. Defendant negligently, carelessly, tortiously, and/or wrongfully failed to use reasonable care in the testing, design, manufacture, distribution, advertising/marketing, and/or sale of the Uponor PEX pipe in the homes and other structures owned by Plaintiff and the other members of the Putative Class.

301. Defendant knew or should have known that owners of homes and other structures with Uponor PEX pipe, including Plaintiff's and the other members of the Putative Class, would be substantially damaged thereby, as alleged herein.

302. The use of Uponor PEX pipe has resulted in or will result in foreseeable property damage as alleged herein which damages include costs to repair damages to the homes, and other structures of Plaintiff and the Putative Class caused by leaks, and the cost to remove and replace the defective UPONOR PEX pipe.

303. Defendant was under a duty to exercise ordinary care to avoid reasonably foreseeable injury to purchasers of UPONOR PEX pipe and purchasers of homes and other structures, and knew or should have foreseen with reasonable certainty that purchasers and/or end users would suffer the damages set forth herein if Defendant failed to perform its duty to cause the Uponor PEX pipe to be tested,

1 designed, manufactured, distributed, advertised/marketed, and/or sold in a non-
2 defective manner.

3 304. Defendant failed and neglected to properly test, design, manufacture,
4 distribute, advertise/market, and/or sell Uponor PEX pipe in that Defendant so
5 negligently, carelessly and in an unworkmanlike manner performed the aforesaid
6 work such that Uponor PEX pipe was tested, designed, manufactured, distributed,
7 advertised/marketed, and/or sold improperly, negligently, carelessly and/or in a
8 defective and unworkmanlike manner.

9 305. Plaintiff and the other members of the Putative Class are lay people
10 and lack the knowledge, understanding, and ability to understand whether the lines
11 and components of the plumbing systems have any defects. Plaintiff and the other
12 members of the Putative Class lack any reasonable ability to test the Uponor PEX
13 pipe to know whether a defect exists.

14 306. Defendant's negligence is a substantial factor in causing the damages
15 as alleged herein.

16 307. As a direct and proximate result of the conduct described herein,
17 Plaintiff and the members of the Putative Class have suffered damages, including
18 damages to property other than the Uponor PEX pipe, in an amount precisely
19 unknown, and according to proof at trial.

20 308. As a direct and proximate result of Defendant's negligence,
21 carelessness, and breaches of its duty of reasonable and ordinary care, Plaintiff and
22 the Putative Class have been caused to suffer losses and damages, including
23 damage to their homes due to leakage from the defective Uponor PEX pipe and
24 the cost of removal and replacement of the defective Uponor PEX pipe and other
25 incidental and consequential expenses associated with the failure of Uponor PEX
26 pipe, all of which damages were foreseeable by Defendant.

27 ///

28 ///

COUNT VII

STRICT PRODUCT LIABILITY

309. Plaintiff re-alleges and incorporates by reference all paragraphs as though fully set forth herein.

310. At all times material to this action, Defendant was engaged in the process of designing, engineering, developing, testing, approving, manufacturing, fabricating, equipping, inspecting, repairing, labeling, advertising, promoting, marketing, distributing, selling, and supplying Uponor PEX pipe in California.

311. At the time the Uponor PEX pipe left the control of Defendant, it was defective in design and manufacture and unreasonably defective and dangerous to Plaintiff and the other members of the Putative Class who might reasonably be expected to use it in the plumbing systems in their homes and other structures. These defects include, but are not limited to, the conditions described hereinabove.

312. The Uponor PEX pipe was expected by Defendant to reach, and did reach, property owners/end users without substantial change in the condition in which it was placed on the market and was expected to be installed in the homes and other structures of Plaintiff and other members of the Putative Class.

313. Defendant, as the designer and manufacturer of Uponor PEX pipe, is held to the level of knowledge of an expert in the field of the design and manufacture of Uponor PEX pipe including any cracking, microcracking, oxidative degradation, deterioration, weakening, failure or leaks caused by a furnace/flame treatment and/or the application of coatings and adhesives to the PEX pipe, and failure of the fitting installation design system.

314. Plaintiff and the other members of the Putative Class were persons who would be expected to use Uponor PEX pipe in the potable water system in their homes and other structures.

315. The defects in the Uponor PEX pipe used in the homes and other structures of Plaintiff and the other members of the Putative Class were a direct and

1 proximate cause of the damages alleged herein sustained by Plaintiffs and the
2 members of the Putative Class.

3 316. Defendant is strictly liable to Plaintiff and the Putative Class for the
4 damages alleged herein caused by the defects and inadequacies in the design,
5 manufacture and sale of Uponor PEX pipe.

6 **XIX. PRAYER FOR RELIEF**

7 Plaintiff, on behalf of himself and all others similarly situated, request for the
8 Court to enter judgment against the Defendant, as follows:

9 a. An order certifying the proposed Putative Class, designating
10 Plaintiff as the named representative of the Putative Class, designating Class
11 Counsel, and making such further orders for the protection of Putative Class
12 members as the Court deems appropriate, under Fed. R. Civ. P. 23;

13 b. An award to Plaintiff and Putative Class members of costs,
14 restitution, compensatory damages, out-of-pocket costs, damages, and punitive and
15 exemplary damages under applicable law; and disgorgement, in an amount to be
16 determined at trial;

17 c. An order enjoining the Defendant to desist from further deceptive
18 distribution and sales practices with respect to the Class Pipe and such other
19 injunctive relief that the Court deems just and proper;

20 d. A declaration that Defendant is financially responsible for all
21 Putative Class notice and the administration of Putative Class relief;

22 e. An award all costs of suit, costs of notice, forensic investigation
23 and analysis costs, and fees of experts, including engineering, design,
24 formulation, PEX, testing, and construction experts;

25 f. Any applicable statutory and civil penalties;

26 g. An award of costs and attorneys' fees, as allowed by law;

27 h. An order requiring Defendant to pay both pre-judgement and post-
28 judgment interest on any amounts awarded.

i. Leave to amend this Complaint to conform to the evidence produced during discovery or at trial; and

j. Such other or further relief as the Court may deem appropriate, just, and equitable under the circumstances.

XX. DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any and all issues in this action triable by a jury.

Dated: May 20, 2025

BIRKA-WHITE LAW OFFICES

By: /s/ David M. Birka-White
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Attorneys for Plaintiff
EDWARD P. CLIFFORD,
on behalf of himself and all others
similarly situated

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TABLE OF CONTENTS OF EXHIBITS

Exhibit A: Plaintiff’s CLRA Venue Affidavit.....001-002

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9 Attorneys for Plaintiff EDWARD P. CLIFFORD,
on behalf of himself and all others similarly situated
10
11

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA
14

15 EDWARD P. CLIFFORD, on behalf of
16 himself and all others similarly situated,

17 Plaintiffs,

18 vs.
19

20 UPONOR, INC.;
DOES 1 through 100, inclusive, whose
21 true names are unknown,

22 Defendants.
23 _____/

Case No. '25CV1286 BJC DDL

CLRA VENUE DECLARATION OF
EDWARD P. CLIFFORD
PURSUANT TO CALIFORNIA
CIVIL CODE SECTION 1780(d)

24
25
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28 - 1 -

1 I, EDWARD P. CLIFFORD, declare as follows:

2 1. I have personal knowledge of the facts stated herein and, if called upon
3 to do so, could competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. My residence is 5147 Bella Collina Street, Oceanside, CA 92056, San
6 Diego County, which is located within the jurisdiction of this Court.

7 4. I submit this declaration in support of the Complaint in this case,
8 which is based in part on violations of the Consumers Legal Remedies Act,
9 California Civil Code section 1750 *et seq.*


10 5. I understand that UPONOR, INC. has its principal place of business
11 and generally conduct business in Apple Valley, Minnesota.

12 6. The Complaint has been filed in the proper place for trial of this
13 action.

14 7. Based on the above facts, I respectfully request that this Court find
15 proper venue for this action in San Diego County.

16 I declare under penalty of perjury under the laws of the United States that the
17 foregoing is true and correct to the best of my knowledge.

18 Executed on April 27, 2025 in Oceanside, San Diego, California.

19
20 By: 
21 EDWARD P. CLIFFORD
22 On behalf of himself and
23 all others similarly situated
24
25
26
27
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- 2 -

CLRA VENUE DECLARATION OF EDWARD P. CLIFFORD
PURSUANT TO CALIFORNIA CIVIL CODE § 1780(d)