SCOTT RASMUSSEN, ESQ.
Nevada Bar No. 6100
HANSEN RASMUSSEN, LLC
1835 Village Center Circle
Las Vegas, Nevada 89134
Telephone: (702) 385-5533
Facsimile: (702) 382-8891

Attorneys for Defendant
RCR PLUMBING AND MECHANICAL, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

EDWIN K. SLAUGHTER, REBECCA FLINN, and MEL and CAROL HEALEY, individually, and on behalf of all other similarly situated Plaintiffs, vs. UPONOR, INC., a Minnesota corporation; UPONOR NORTH AMERICA, INC., a Minnesota corporation; RCR PLUMBING AND MECHANICAL, INC., a California corporation; INTERSTATE PLUMBING & AIR CONDITIONING, LLC, a Nevada limited liability company; UNITED PLUMBING, LLC, a Nevada limited liability company; FERGUSON ENTERPRISES, INC., a Virginia corporation; HUGHES WATER & SEWER LP, a Florida limited partnership and successor by merger to STANDARD WHOLESALE SUPPLY COMPANY, a dissolved Nevada corporation; HD SUPPLY CONSTRUCTION SUPPLY, LIMITED PARTNERSHIP, a Florida limited partnership: DOES 1-30, ROE CORPORATIONS I-XXX Defendants.	**CASE NO.: 2:08 CV-1223-RCJ-GWF** **ORDER ON DEENDANT RCR PLUMBING AND MECHANICAL, INC.'S MOTION FOR ATTORNEYS' FEES AND COSTS**

This case is a class action lawsuit against Defendants, who are alleged to have manufactured, marketed, distributed, and/or installed allegedly defective plumbing components, which Plaintiffs allege caused harm, or are likely to cause harm in the future, to their residences located in Clark County, Nevada. The case has been dismissed with prejudice. Before the Court is Defendant RCR PLUMBING AND MECHANICAL, INC.'s Motion for Attorney's Fees and Costs (#353). As stated herein, the Motion is Granted, in part.

LAW OFFICES
HANSEN RASMUSSEN, LLC
1835 Village Center Circle
Las Vegas, Nevada 89134
Telephone: (702) 385-5533
Facsimile: (702) 382-8891

The Court awards Defendant RCR PLUMBING AND MECHANICAL, INC. twenty percent (20% = $19,312.89) of its requested attorney's fees ($96,564.47) and 100% of its taxable costs, including experts' fees and travel expenses in the total amount of $53,048.86.

As such, the total award of fees and costs to Defendant RCR PLUMBING AND MECHANICAL, INC. IS **$72,361.75**.

The Court also awards prejudgment interest is not awarded, but post-judgment interest should be awarded from the date of the entry of the judgment at the federal rate. The weekly average of the 1-year constant maturity Treasury yield for the week before January 27, 2010 is .31%. The daily rate for post-judgment interest is .00000849315 ($.0031/365). Post judgment interest will accumulate at $.37 a day until satisfied.

I. FINDINGS OF FACT

On July 28, 2008, Plaintiffs Edwin K. Slaughter, Rebecca Flinn, Mel Healey and carol Healey filed the present cause of action, on behalf of themselves and all others similarly situated, in the District Court for Clark County, Nevada. Defendants Uponor, Inc.; Uponor North America, Inc.; Uponor Corp.; RCR Plumbing & Mechanical, Inc.; Interstate Plumbing & Air Conditioning, LLC; United Plumbing, LLC; Ferguson Enterprises, Inc.; Hughes Water & Sewer LP; and HD Supply Construction Supply Limited Partnership are alleged to be engaged in the business of designing, developing, manufacturing, distributing, marketing, selling, and installing the Wirsbo PEX plumbing system, Wirsbo brass fittings, and other plumbing materials as part of the potable water supply systems of residential dwellings in Clark County, Nevada.

Plaintiffs alleged that all of the Wirsbo brass fittings installed as part of the potable water systems of the residential dwellings in Clark County, Nevada are defective as the result of a chemical reaction known as dezincification. Plaintiffs are suing under the following theories of liability: (1) product liability; (2) strict liability; (3) breach of express warranty; (4) breach of implied warranty; (5) breach of warranty of merchantability; and (6) negligence.

On September 15, 2008, Defendant Uponor, Inc. removed the lawsuit from state court to federal court pursuant to the Class Action Fairness Act ("CAFA") on the grounds that the amount in

LAW OFFICES
HANSEN RASMUSSEN, LLC
1835 Village Center Circle
Las Vegas, Nevada 89134
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controversy exceeds $5,000,000.00, there is diversity of citizenship between Plaintiffs and more than one primary Defendant, and there are claimed to be more than 100 class members.

On October 14, 2008, Plaintiffs filed a Motion to Remand (#17) under the "mandatory home-state", "local controversy" and "discretionary" exceptions to CAFA jurisdiction.

On March 5, 2009, Plaintiffs motion to remand was denied (#94).

On April 20, 2009, Plaintiffs moved to certify the class (#110). Defendants responded with motions for leave to conduct discovery (#118 and #119) which were granted and the hearing on class certification was set for November 23, 2009 (#144). At the request of Defendants, Uponor, Inc. and RCR Plumbing and Mechanical, Inc., this hearing was continued to March 29, 2010 (#227) and then moved up by the Court to January 25, 2010 (#272).

Although running at the same time, a substantial part of the discovery conducted by the Defendants was in response to Plaintiffs motion for Class Certification.

Defendants attend 15 depositions of persons most knowledgeable, all of Defendants, scheduled numerous depositions of witnesses including the named plaintiffs; inspected 5 homes visual and 3 homes destructively; attend agreed upon testing of materials in California; sought discovery of the expert whose affidavit was submitted in support of Plaintiffs motion to Certify Class including appealing the Magistrate's Order to the District Court; and filed a Motion for a Temporary Restraining Order and/or Preliminary Injunction on the contemporaneous Chapter 40 pre-litigation proceedings being filed during the class discovery period.

On November 23, 2009, Plaintiffs' counsel elected an equitable remedy provided by the Court and agreed to "opt-out" all individuals who filed a chapter 40 Notice (#348).

On December 3, 2009, Plaintiffs, without notice of the putative class members, withdrew their Motion to Certify Class (#278).

On December 7, 2009, Plaintiffs filed a Motion for Voluntary Dismissal of the entire action (#285). All Defendants, except Uponor opposed this voluntary dismissal seeking the dismissal to be with prejudice and for an award of their attorneys fees and costs (#314, 316, 318, 319, 320 and 321).

On January 5, 2010, a hearing was held on Plaintiffs motion to voluntarily dismiss without prejudice wherein the Court stated that it would only dismiss with prejudice and that this issue of

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HANSEN RASMUSSEN, LLC
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Las Vegas, Nevada 89134
Telephone: (702) 385-5533
Facsimile: (702) 382-8891

attorneys fees and costs would be reserved for further hearing (#344 and 345). On January 27, 2010, this matter was dismissed with prejudice (#349).

On February 10, 2010, RCR PLUMBING AND MECHANICAL, INC., filed a motion for attorneys fees and costs (#353) seeking $96.564.47 in attorney's fees and $53.048.86. Plaintiffs filed an Opposition and RCR filed a Reply to the Opposition on March 11, 2010 (#373).

At the hearing on May 10, 2010, this Court awarded RCR PLUMBING AND MECHANICAL, INC. 100% of its taxable costs and 20% of all attorneys fees and other costs and ordered the re-taxing of costs to confirm that no amount of attorneys fees were included in the original taxation of costs.

On May 25, 2010, RCR filed its Amended Bill of Costs confirming its taxable costs in the total amount of $17,502.74 and non-taxable costs in the amount of $7,111.50 (#427).

II. CONCLUSIONS OF LAW

This Court retained jurisdiction over the determination of attorneys fees and costs.

RCR'S Motion for Attorneys Fees and Costs was timely and complied with the requirements of LR-54-16.

The hourly billing rates charged by RCR'S counsel are reasonable for the community and for the services provided and said rates were not opposed as excessive or otherwise inappropriate.

The taxable and other costs submitted by RCR are supported by the appropriate documentation as required under LR 54-1(b) and have been actually and necessarily provided and made.

RCR actually and reasonable incurred attorneys fees in the amount of $96.564.47 and costs in the amount of $53.048.86.

An award of attorneys fees and costs is reasonable in this case in light of the duplicative nature of the effort expended in this case and to be expended in future litigation Plaintiff's counsel have stated to be pending regarding the same issues set forth in this matter regarding the Wirsbo fittings in a different forum. Specifically, the need for RCR to investigate and defend a class action in this matter and in subsequent pending and to be filed litigation.

LAW OFFICES
HANSEN RASMUSSEN, LLC
1835 Village Center Circle
Las Vegas, Nevada 89134
Telephone: (702) 385-5533
Facsimile: (702) 382-8801

RCR has substantially complied with the requirements of LR 54-16 and requiring a line-by-line and date by date breakdown of fees and costs would not be productive and would cause the parties to incur additional fees and costs.

The Court finds that an award of 100% of taxable costs pursuant to LR 54-1 and LR 54-15 is reasonable and appropriate.

The Court finds that an in-gross award of 20% of attorneys fees and other costs sought pursuant to LR 54-16 is appropriate and reasonable.

The Court finds that prejudgment interest is not awarded but post-judgment interest should be awarded from the date of the entry of the judgment at the federal rate.

III. ORDER

IT IS HEREBY ORDERED, ADJUDED and DECREED that RCR's Motion for Attorney's fees and Costs (#353) is GRANTED in part and DENIED in part. RCR is awarded 100% of its taxable costs in the amount of **$17,502.74**, 20% of its attorneys fees in the amount of **$19,312.89**, and 20% of its non-taxable costs in the amount of **$7,111.50**.

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1835 Village Center Circle
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IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Motion for Attorney's Fees and Costs is GRANTED as to post-judgment interest at the federal judgment rate. The daily rate for post-judgment interest is (.00000849315 times $43,927.13) $0.37 a day.

IT IS SO ORDERED.

HONORABLE ROBERT C. JONES
UNITED STATES DISTRICT JUDGE

DATED: November 29, 2010

Submitted:

HANSEN RASMUSSEN

/s/ R. Scott Rasmussen

SCOTT RASMUSSEN, ESQ.
Nevada Bar No. 6100
HANSEN RASMUSSEN, LLC
1835 Village Center Circle
Las Vegas, Nevada 89134
Telephone: (702) 385-5533
Facsimile: (702) 382-8891
scottr@hrnvlaw.com

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HANSEN RASMUSSEN, LLC
1835 Village Center Circle
Las Vegas, Nevada 89134
Telephone: (702) 385-5533
Facsimile: (702) 382-8891