

1 **MARTORELL LAW APC**
Eduardo Martorell, State Bar No. 240027
2 EMartorell@Martorell-Law.com
3 Jean-Paul Le Clercq, State Bar No. 248818
JPLeClercq@Martorell-Law.com
4 6100 Center Drive, Suite 1130
Los Angeles, California 90045
5 Phone: (323) 840-1200; Fax: (323) 840-1300

6 **BORDIN SEMMER LLP**
Joshua Bordin-Wosk, State Bar No. 241077
7 JBordinWosk@BordinSemmer.com
8 Christopher Blanchard, State Bar No, 250729
CBlanchard@BordinSemmer.com
9 6100 Center Drive, Suite 1100
Los Angeles, California 90045
10 Phone: (323) 457-2110; Fax: (323) 457-2120

11 Attorneys for the Plaintiffs and the Certified Class

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF LOS ANGELES**

15 FERNANDO SANDOVAL; GLORIA
SANDOVAL; JOHN ALMS; and CHRISTINE
16 ALMS, individually and on behalf of all similarly
situated individuals,

17
18 Plaintiffs,

19 v.

20 MERLEX STUCCO, INC., a California
Corporation; and DOES 1 through 100, inclusive,

21
22 Defendants.

23 MERLEX STUCCO, INC.,

24 Cross-Complainant,

25 v.

26 P.W. GILLIBRAND CO., INC., and DOES 1
through 10,

27
28 Cross-Defendants.

Case No. BC619322
CLASS ACTION
Hon. Carolyn B. Kuhl; Dept. 12

**DECLARATION OF MIKE BROWN IN
SUPPORT OF PRELIMINARY AND
FINAL APPROVAL OF THE PARTIES'
CLASS ACTION SETTLEMENT**

Complaint Filed: May 6, 2016
Trial Date: None Set

1 **DECLARATION OF MIKE BROWN**

2 I, Mike Brown, declare as follows:

3 1. I am over the age of 18 years old. I have personal knowledge of the facts set forth in
4 this Declaration and, if called as a witness, I could and would testify to the truthfulness of the
5 following facts under oath.

6 2. I am making this declaration in support of both preliminary and final approval of the
7 Parties' class-wide settlement in this matter. I believe that the settlement reached is fair and
8 reasonable under the circumstances as further discussed below. I am submitting this declaration
9 under California Evidence Code section 1152 and pursuant to the Parties' Settlement Agreement
10 and Release.

11 **Experience & Qualifications**

12 3. I am currently the principal of Mike Brown Consulting and Construction. I am a AA
13 licensed General Contractor with 35 years of experience in all aspects of the construction industry.
14 I am also a forensic construction expert who has been personally involved in well over 7,500
15 construction litigation matters involving causation, construction practices, and costs of repair. My
16 qualifications are generally summarized in my Curriculum Vitae, a true and correct copy of which
17 is attached hereto as **Exhibit "A"**.

18 4. In the past ten (10) years, I have testified as an expert in Court or at an arbitration
19 hearing at least 87 times and have testified as an expert in deposition at least 500 times. Notably, I
20 have never been disqualified as an expert.

21 5. Brown Consulting and Construction is also a general contracting firm. My company
22 builds, repairs and renovates homes and other buildings. Pertinent to this matter, I have personally
23 been involved in the application or repair of stucco in excess of 250 times.

24 6. Based on my experience, I am more than well equipped to offer expert opinion
25 testimony regarding the application of Merlex stucco to individual homes that included excess iron
26 in the sand that was used to manufacture the stucco, along with the best practice to repair that
27 stucco and the cost thereto.

1 **Case Involvement**

2 7. I was hired by Class Counsel in this case to act as Plaintiff’s expert. I was notified
3 that the issue in the case was the formation of rust deposits in the exterior stucco on class
4 representative and putative class member homes. As part of my retention, I was asked to offer
5 opinions as to: (a) the likely cause of those rust spots; (b) the best method to remove/repair those
6 rust spots; and (c) the costs associated with that removal/repair.

7 8. It is my understanding that during the deposition of a Merlex employee in this
8 lawsuit, testimony came out that in approximately 2013, Merlex took receipt of sand intended for
9 use in Merlex stucco that had not been properly prepared for use in stucco, specifically that iron
10 impurities within the sand had not been properly removed via the use of a magnet. Excess iron in
11 stucco can result in the iron absorbing moisture, expanding, popping through the surface and
12 forming rust spots, which is what generally happened in this case.

13 9. I have personally dealt with this specific issue – of either iron or other deposits
14 being improperly included in stucco – in excess of 400 homes and 50 different litigations or
15 arbitrations. Based on that experience, my expert opinion is that the guaranteed method for
16 removing unwanted deposits (such as iron) and ensuring that those deposits do not absorb moisture,
17 burst through the surface of the stucco, and cause rust spots/other unsightly damage is to: (a)
18 remove the top layers of stucco using sandblasting or media blasting; (b) applying a modified
19 overlay utilizing a 3-5-5 mesh; and (c) adding a top layer of stucco and applying a new fog
20 coat/repainting (collectively the “Media Blasting And Mesh Repair Process”).

21 10. The above process is intended to remove enough of the offending stucco to apply a
22 mesh overlay that will effectively act as a barrier to prevent further iron deposits from bursting
23 through the top coat of the stucco and causing rust spots, or other types of unsightly spots or
24 damage. In other words, it does not remove all the offending stucco, but it prevents the remaining
25 stucco from causing damage to the exterior stucco layer. Any other one-time approach to
26 addressing this issue other than the Media Blasting And Mesh Repair Process is prone to future rust
27 manifestations.

28

1 11. In my estimation, and in order to perform the Media Blasting And Mesh Repair
2 Process outlined above, the cost for a typical house with no unusual circumstances would be
3 approximately \$60,000.00-\$65,000.00.

4 12. I worked extensively with Class Counsel during the negotiation of the settlement
5 that is being presented to this Court to help formulate a repair protocol and process that will best
6 address the various claimed stucco defect manifestations in this case. Part of that conversation is
7 based on my understanding that the rust manifestations in this case arose from stucco manufactured
8 and distributed in 2013.

9 13. On or about July 17, 2019, I met at the homes of Class Representatives Fernando
10 Sandoval (and the property abutting Mr. Sandoval's residence, previously owned by Class
11 Representative John Alms) and Jean Hammett to assess their property and provide estimates for the
12 Media Blasting And Mesh Repair Process I have outlined above. Based on my review, I created
13 two estimates for the repair of the properties.

14 14. Attached hereto as **Exhibit "B"** is a true and correct copy of my estimate for both
15 the Sandoval residence and the arterial and external walls of the former Alms residence, totaling
16 **\$168,841.26**.

17 15. Attached hereto as **Exhibit "C"** is a true and correct copy of my estimate for the
18 Hammett residence, totaling **\$79,342.81**.

19 16. My firm plans to perform the repair work on all three Class Representative houses
20 and the above two estimates are "flat rate" contracts, meaning that no monies associated with either
21 of those estimates will be going to the Class Representatives personally. Additionally, I primarily
22 created these estimates in 2019, well before the Covid-19 pandemic hit which has increased prices.
23 Despite that, I am still willing to stand by these estimates and perform the necessary work to repair
24 the Class Representatives houses. This process will take somewhere between two (2) and four (4)
25 weeks to perform and will require the Class Representatives to be out of their property for
26 approximately one (1) week.

27 17. The disparity in price between the two properties is primarily due to three factors.
28 First, the Sandoval residence has unique roof shingles that will be damaged during the media

1 sandblasting/grinding process that is necessary to remove the top levels of stucco, and those
2 shingles are no longer available for purchase. Since patch work repairing a roof is not code or city
3 compliant, Mr. Sandoval's entire roof will need to be replaced. Secondly, Mr. Sandoval's house is
4 surrounded by high walls, which will require stucco removal and mesh application on both sides,
5 which is almost enough stucco for a second house. Lastly, the Sandoval estimate includes the price
6 for the repair of the stucco on the arterial and exterior walls surrounding the former Alms
7 residence. In my estimation, and in order to perform the Media Blasting And Mesh Repair Process
8 outlined above, the cost for a typical house with no unusual circumstances would be approximately
9 \$60,000.00-\$65,000.00. However, the repairs to Mr. Sandoval's home will cost \$168,000 because
10 in effect, the stucco work required is equivalent to the repair that would be done to two homes.
11 Thus, while a typical project along the lines proposed for Mr. Sandoval's home would cost less,
12 that cost is significantly higher with respect to Mr. Sandoval's home because of the number of
13 structures involved, plus the need to have the roof repaired. The same is true for Ms. Hammett's
14 home, where the normal repair would cost less, but Ms. Hammett's house also has two detached
15 buildings with the same stucco problems: (a) a detached garage; and (b) a large storage building.

16 18. I understand that, as part of the settlement in this case, the other certified Class
17 Members will be receiving a "Pick & Whole House Fog" repair, which entails: (a) individual
18 manifestations of rust will be "picked" and removed from the exterior of a house; (b) any spots left
19 from the picking will be filled in as needed; and (c) the entire house will receive a "fog coat," or
20 exterior paint job, that most closely matches the former paint color.

21 19. I estimate that for a typical house, if I were performing a Pick & Full House Fog
22 repair, it would cost approximately \$17,000.00.¹

23 20. Additionally, and of significant importance to the fairness of this settlement, I
24 understand that the settlement agreement between the Parties is that this Pick & Whole House Fog

25 _____
26 ¹ I also understand that the Parties have agreed to provide a "Spot Pick & Spot Fog" repair to
27 individuals who are not part of the class certified by the court in this action and who have never
28 complained about rust spots manifesting in the stucco on their homes. A "Spot Pick & Spot Fog"
repair is the same as a "Pick & Whole House Fog" repair except that only the immediate areas
where a rust spot has been removed will be "fogged" with Fogcoat in a color that matches as close
to the home's current color as possible.

1 method will come with a 7-year warranty. Meaning that if rust manifestations occur again, then
2 Merlex/Parex will come out again and do another series of repairs as necessary.

3 21. In my expert opinion, over time the amount of iron in the stucco that is prone to
4 absorbing more moisture and bursting through the surface to create unsightly spots will decrease.
5 Further, the stucco on the certified Class Members' homes is upwards of 5-6 years old already. My
6 best estimate is that these houses will have experienced most, if not all, of their rust manifestations
7 by or before the end of the 7-year warranty period, such that a large majority (if not all) of the
8 houses will be rust free by the end of the 7-year warranty period.

9 22. Therefore, I view the "Pick & Whole House Fog" repair with a **seven-year**
10 **warranty**, as provided in the Parties' settlement agreement, as an effective and adequate repair
11 option to resolve this case prior to trial. Moreover, this repair method is a quicker and less invasive
12 repair and the certified Class Members receiving this repair will not effectively be forced to leave
13 their house for an approximate week. Accordingly, it is my expert opinion that this repair method
14 **with** the provided warranty is a fair and appropriate repair method to resolve this dispute and repair
15 certified Class Member properties prior to trial.

16 23. The primary reason why the Media Blasting And Mesh Repair Process versus the
17 Pick & Whole House Fog repair method is appropriate for the Class Representatives' homes is
18 because the gravity of manifestation of rust spots at these properties, which are high in severity.
19 Namely, I have inspected other certified Class Member homes, and the Class Representative homes
20 have had a significant and repeated manifestation of rust spots over and above some other homes,
21 such that Merlex/Parex has already attempted repairs via a Pick & Fog method (i.e. only spot
22 painting rather than a full house painting). Per Plaintiff Sandoval and Hammett, Merlex/Parex have
23 already attempted to Pick & Fog their homes on at least six (6) different occasions over the past
24 few years. I understand that no certified Class Members' homes have required so many repeated
25 attempts at repairing their stucco.


26 24. While there will undoubtedly be a disparity in the initial cost of the repair to Class
27 Representatives versus certified Class Member houses, this Court should bear in mind that: (a) the
28 money simply reflects the initial cost of the repair being performed on the respective houses, not a

1 personal benefit to each Class Representative or Class Member; (b) I expect Merlex/Parex to incur
2 more costs to perform follow up stucco repair work, but those additional costs are unknown at this
3 time; and (c) perhaps most importantly, I expect that by the end of the 7-year period, both Class
4 Representatives and certified Class Members all should have homes with rust-free stucco.

5 25. Accordingly, I find that the settlement is fair and reasonable under all the
6 circumstances and serves the purpose of ensuring that all affected Class Members have their homes
7 repaired in a reasonable manner to resolve the damages to their homes caused by rusting stucco
8 without further delay.

9

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct. Executed on August 7, at Placentia, California.

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14 _____
15 MIKE BROWN
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