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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF LOS ANGELES**

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

17 Plaintiffs,

18 vs.

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

21 Defendants.

CASE NO. BC619322

**SECOND SUPPLEMENTAL
DECLARATION OF JEAN-PAUL LE
CLERCQ IN SUPPORT OF PARTIES'
JOINT MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

**[Filed concurrently with Plaintiffs' Proposed
Order Granting Preliminary Approval Of
Class Action Settlement]**

Date: October 30, 2020

Time: 2:00 p.m.

Dept.: 12

25 Plaintiffs herein respectfully submit the Second Supplemental Declaration of Jean-Paul Le
26 Clercq to address this Court's questions and concerns articulated to the parties during the original
27 preliminary approval hearing that took place on September 30, 2020.
28

1 **DECLARATION OF JEAN-PAUL LE CLERCQ**

2 I, Jean-Paul Le Clercq, declare as follows:

3 1. I am an attorney at law duly licensed to practice before all of the courts in the State
4 of California. I am a Partner at the law firm MARTORELL LAW APC, counsel for Plaintiffs in
5 this action. I have personal knowledge of the facts set forth in this Declaration and, if called as a
6 witness, I could and would testify to the truthfulness of the following facts under oath.

7 **Questions Posed By This Court During September 30 Hearing.**

8 2. During the parties’ preliminary approval hearing on September 30, 2020 (the
9 “Hearing”), this Court posed several questions to the parties and requested either amendments to
10 submitted documents or further clarification by way of my declaration. Below are some of the
11 questions this Court posed, and answers thereto:

12 **A. Explanation of the value of the 7-Year Warranty and value of**
13 **settlement to Litigation Class members.**

14 3. During the Hearing, this Court asked for a better description of the monetary value
15 of the 7-Year Warranty period.

16 4. As discussed in my prior declaration, the exact monetary value of the 7-Year
17 Warranty that Litigation Class members will receive is difficult to specify. However, the goal of
18 this lawsuit was to repair class member homes who had stucco applied to their home that is now
19 experiencing rust spot manifestations. Plaintiff’s expert provided two monetary values in his
20 declaration for a typical, non-complex home with no exterior walls: (a) it would cost approximately
21 \$60,000 to \$65,000 to repair a home using his recommended media blasting/mesh
22 application/stucco reapplication process; and (b) it would cost approximately \$17,000 to repair a
23 home using the Litigation Class’s “Pick & Whole House Fog” approach.

24 5. Notably, this \$17,000 repair cost/value does not include potential ancillary or soft
25 costs, which were calculated into the actual estimates provided for both the Sandoval/Alms homes
26 and the Hammett home. Addition of these costs would increase the cost/value of this type of
27 repair. For example, and undoubtedly due to the pandemic and fires in California, Plaintiff’s expert
28

1 just performed this Pick & Whole House Fog on a house with no exterior walls or other
2 complexities and it cost \$27,000.00.

3 6. Simply put, the value of the 7-Year Warranty is estimated to be the difference
4 between the \$17,000 Pick & Whole House Fog, and the \$60-\$65,000 cost to perform Plaintiff's
5 expert's preferred repair approach, or approximately \$43,000 to \$48,000 of value for the 7-Year
6 Warranty. This is because Plaintiff's expert has/will opine that after the 7-year warranty has ended
7 (which at this point should occur in either 2028 or 2029), most (if not all) homes should not have
8 any continued/ongoing rust spots manifesting in their stucco. Accordingly, while the approach to
9 get there will be different, Litigation Class members should have the same rust-free stucco as Class
10 Representatives at the end of the 7-year Warranty period.

11 7. Moreover, and as articulated in my prior declaration and during the Hearing,
12 Litigation Class Members are receiving a different remedy than Class Representatives because a
13 Spot Pick and Spot Fog repair has already been attempted on the Sandoval/Alms homes and
14 Hammett homes seven (7) and six (6) times (respectively). Evidence gathered during discovery in
15 this case, including documents produced and especially the testimony of Nick Brown (the former
16 President of Merlex at the time the stucco at issue was produced) who was deposed over two
17 different days in this case, demonstrates that Litigation Class members have only had one (1) or
18 two (2) attempted repairs performed on their homes to date.

19 8. Further, and once again, the monies and costs associated with the Class
20 Representative home fixes are not monies to be used by Class Representatives as they see fit, as
21 would be the case for a normal class action (for example, where money is paid out to an individual
22 class member for a wage and hour violation or consumer protection claim). Here, the money is
23 being paid specifically to cover the costs of repairs to Class Representative homes, and an
24 accounting will be provided as required by the Settlement Agreement.

25 **B. Cost Of Spot Pick & Spot Repair For Additional Class Member Home.**

26 9. During the hearing, this Court asked me to provide an estimate for the value of a
27 Spot Pick & Spot Fog repair, which is the type of repair that Additional Class Members are getting
28 without any warranty. Plaintiff's expert will testify that the cost of this repair would be similar to

1 the Spot Pick & Whole House Fog, depending on the level of rust spot manifestations on the
2 Additional Class Member's house. For example, if the house had few rust spots manifestations, the
3 cost could drop down to \$10,000, or maybe even less. But, if the house has many rust
4 manifestations on all external portions of the house, then the price would be comparable to the Spot
5 Pick & Whole House fog.

6 **C. Dealing With Undeliverable Mail.**

7 10. During the hearing, this Court asked the parties to explain how "undeliverable mail"
8 would be dealt with during the claims/notice process. However, given the nature of the remedy
9 that is taking place, and given the changes to the class definition described below, no mail should
10 result as being "undeliverable." This is because the remedy is going to a specific home, not a
11 specific person (which is normally the case with other class actions).

12 11. Moreover, and to deal with potential non-responses to the claims/notice process, the
13 parties have specifically baked into the settlement agreement that upwards of two (2) additional
14 reminder notices will be sent to Litigation Class members.

15 **Amendments To Settlement Documents.**

16 12. During the hearing this Court requested that changes be made to settlement related
17 documents to comport with class action settlement requirements, which are reflected in the
18 following amended filings.

19 13. Attached hereto as **Exhibit "1"** is a true and correct copy of the Parties' proposed
20 Amended Class Notice, with all proposed changes redlined and interlineated. This Class Notice
21 includes the following changes:

22 **a.** Changes the definition of the Class to reflect that the repair remedies are
23 going to homes afflicted with stucco manifesting rust, not to a specific current or former
24 owner of that home;

25 **b.** Expressly state that Class Representatives are receiving a different type of
26 repair than Litigation Class members or Additional Class members;

27 **c.** Expressly state at the top of page 1 of the notice, in bold type, that "In Order
28 To Obtain Any Benefit You Must Submit A Claim By X Date."

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- d. Repeats the release language verbatim;
- e. Expressly states that Class Members may appear at the final approval hearing remotely using the Court’s website.

14. Attached hereto as **Exhibit “2”** is a true and correct copy of the clean version of the proposed Amended Class Notice.

15. Moreover, attached hereto as **Exhibit “3”** is a true and correct copy of the Amended Order Granting Preliminary Approval for Class Action settlement, which also includes the changes referenced in Paragraph 12 above.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed on October 23, 2020, in Los Angeles, California.



JEAN-PAUL LE CLERCQ

EXHIBIT 1

EXHIBIT 1

If you own a home with stucco manufactured or sold by Merlex Stucco, Inc., you could get benefits from a class action settlement.

Para ver este aviso en español, visite www.MerlexStuccoSettlement.com.

A California State Court authorized this Notice. It is not a solicitation from a lawyer.

TO OBTAIN ANY BENEFITS AVAILABLE UNDER THIS SETTLEMENT, YOU MUST SUBMIT A CLAIM BY (DATE). SEE ATTACHED FORM.

- The Settlement will provide for at least one free repair, in the form of a “Pick and Whole House Fog Repair” or “Spot Pick and Spot Fog Repair” for homes affixed with Merlex Stucco as a remedy for verified rust spots that have appeared on the Merlex stucco surface.
- To qualify, you must verify that you had stucco manufactured or sold by Merlex applied to your home on or after May 6, 2013 that later developed the appearance of rust spots, and you must submit a valid and timely Claim by the Claims Deadline (**DATE**).
- Your legal rights are affected whether you act or don’t act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	The only way to get settlement benefits. Claim Forms must be submitted online or postmarked by [DATE].
EXCLUDE YOURSELF	Get no settlement benefits. This is the only option that allows you to ever be part of any other lawsuit against Defendant about the legal claims in this case. Requests for exclusion must be postmarked by [DATE].
OBJECT OR COMMENT	Write to the Court about why you don’t like the Settlement. The deadline to file an objection is [DATE].
GO TO A HEARING	Ask to speak in Court about why you do or do not support the proposed Settlement or any of its provisions. The Final Approval Hearing will be held on [DATE].
DO NOTHING	Get no benefits from this action. Give up rights.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Benefits will be provided if the Court approves the Settlement and after appeals, if any, are resolved. Please be patient.

QUESTIONS? Read on, visit www.MerlexStuccoSettlement.com, or call 1-XXX-XXX-XXXX

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BASIC INFORMATION

1. Why did I receive a Notice?

You have been identified as a potential Class Member who may own a home with Merlex Stucco that is covered by this Settlement. You have legal rights and options that you may exercise before the Court decides whether to approve the Settlement. This Notice has been approved by the Court and summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please review the Settlement Agreement and Release, available at www.MerlexStuccoSettlement.com. Judge Carolyn Kuhl of the Superior Court of California, County of Los Angeles, is overseeing this class action. The lawsuit is known as *Sandoval et al. v. Merlex Stucco, Inc.*, Case No. BC619322 (the “Action” or “Litigation”).

2. What is this lawsuit about?

The lawsuit claimed that the Product at issue, Merlex brand stucco, is defective because it may contain iron deposits that, over time, may manifest as rust spots on homes where the stucco was applied. Defendant does not believe Plaintiffs’ claims have merit and has denied and continues to deny any and all claims, including but not limited to claims of defect and/or allegations concerning the safety of the Product.

3. What is a class action?

In a class action lawsuit, one or more people called Class Representatives sue on behalf of other people who have similar claims. The people together are a Class or Class Members. The people who sued—and all the Class Members like them—are called the Plaintiffs. The company they sued is called the Defendant. One court resolves the issues for everyone in the Class, except for those people who choose to exclude themselves from the Class.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or Defendant. Instead, both sides agreed to a settlement. That way, they avoid the risk and cost of a trial, and the people affected will get benefits. The Parties believe that the proposed Settlement is fair, reasonable, and adequate.

WHO IS IN THE SETTLEMENT

To see if you will get benefits from the Settlement, you first have to decide if you are a Class Member.

5. How do I know if I am part of the Settlement?

The Court has concluded that Class Members are comprised of the “Litigation Class Members” and “Additional Class Members,” as defined below:

- **Litigation Class Members:** ~~All individuals who own or owned the properties identified on the class list filed on June 5, 2019 pursuant to the Court’s May 16, 2019 order related to the certified class. All persons in California that had stucco manufactured or sold by Merlex Stucco, Inc., applied to their property on or after May 6, 2013 that was defective, improperly manufactured and/or contained iron impurities and that developed the appearance of rust in the stucco, and: (a) subsequently complained about the appearance of rust, by themselves or through an agent or other representative, to Merlex Stucco, Inc. or its successors or assignees, or to another entity through which the members of the class obtained Merlex brand stucco and to which Merlex Stucco, Inc., and/or its successors or assignees, directly sold the stucco; and/or (b) those persons in California of which Merlex Stucco, Inc., or its successors, agents, insurers, assignees, and affiliates are otherwise aware as having applied Merlex brand stucco to their property on or after May 6, 2013 containing impurities that have led to the appearance of rust in the stucco.~~

- **Additional Class Members:** California residents who are not part of the Litigation Class, but who currently own or formerly owned any property to which stucco manufactured or sold by Merlex Stucco, Inc. was applied on or after May 6, 2013, that was allegedly defective, improperly manufactured, or contained impurities and that developed the appearance of rust in the stucco. California residents who own property to which stucco manufactured or sold by Merlex Stucco, Inc. was applied on or after May 6, 2013, that was allegedly defective, improperly manufactured, or contained impurities and that developed the appearance of rust in the stucco (the “Additional Class Members”).

Excluded from the Class are (1) Defendant, its successors in interest, its related entities, parent companies, subsidiaries and affiliates, and their respective officers, directors, and employees; (2) insurers of the homes owned by the Settlement Class; (3) all persons and/or entities claiming to be subrogated to the rights of the Settlement Class; (4) individuals who validly and timely opt-out of the Settlement; (5) members of the Settlement Class who previously have released their claims against Defendant with respect to the issues raised in the Litigation; and (6) any judge to whom this matter is assigned, and his or her immediate family (spouse, domestic partner, or children).

6. I’m still not sure if I am included.

If you are still unsure whether you are included, you can call or email the Claims Administrator at [email] or 1-xxx-xxx-xxxx.

THE SETTLEMENT BENEFITS—WHAT YOU GET

7. What does the Settlement provide?

The Settlement provides two benefit options depending on whether you are a Litigation Class Member or Additional Class Member, as follows:

Litigation Class Members will be entitled to a Pick & Whole House Fog Repair, paid for by Defendant, as a remedy for verified rust spots on their respective properties. The “Pick & Whole House Fog Repair” means a stucco repair method wherein the stucco on the entire home is inspected for rust spots, any rust spots that are located are removed, and the entire home is thereafter “fogged” with Fogcoat in a color that matches as close to the home’s current color as possible. To qualify for this remedy, members of the Litigation Class must submit a valid and timely Claim by the Claims Deadline. The remedy under this paragraph will be provided after the Effective Date of the Class Settlement and repairs to the first property will commence not later than sixty (60) days after the Effective Date or sixty (60) days after the date the first claim is received, whichever is later, on a first come, first served basis, consistent with the Settlement Agreement, which is available at www.merlexstuccosettlement.com. The repairs under this paragraph will be performed by a pre-Approved Subcontractor and the repair will include and be subject to the seven (7) year Pick & Whole House Fog Warranty. Upon completion of any repair pursuant to this paragraph, the Approved Subcontractor will provide the necessary information for submitting claims under the Pick & Whole House Fog Warranty for repair work due to any manifestations of additional rust spots.

Additional Class Members will be entitled to a Spot Pick & Spot Fog Repair, paid for by Defendant, as a remedy for verified rust spots on their respective properties. The “Spot Pick & Spot Fog Repair” means a stucco repair method in which any rust spots that are located, the particle causing the stain will be removed. Following a whole house stucco inspection, and after every spot has been properly removed, and thereafter 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. To qualify for this remedy, Additional Class Members must submit a valid and timely Claim by the Claims Deadline, along with Required Documentation. The remedy under this paragraph will be provided after the Effective Date of the Class Settlement and repairs will commence not later than sixty (60) days after the Effective Date, on a first come, first served basis, consistent with the Settlement Agreement, which is available at www.merlexstuccosettlement.com. The Spot Pick & Spot Fog Repair will be performed by an Approved Subcontractor. The Spot Pick & Spot Fog Repair will not include any future guarantee or warranty.

Additional Class Members will have thirty (30) days from the date repair work is completed to submit a complaint that repair work was not done correctly to PAREX, which will provide a copy of all such requests to Class Counsel. Such complaints will be addressed promptly by PAREX to determine if an additional Spot Pick & Spot Fog Repair is necessary. If the Additional Class Member submitting a complaint and PAREX do not agree regarding whether an additional Spot Pick & Spot Fog Repair is necessary, the dispute will be referred to a different Approved Subcontractor, who will inspect and verify the necessity of follow up repair work and, upon verification of the claim, may approve an additional Spot Pick and Spot Fog Repair.

Named Class Representatives. Due to the gravity of manifestation of rust spots at their properties, which is high in severity on their properties, the Named Class Representatives Fernando & Gloria Sandoval, John and Christine Alms, and Jean Hammett will be entitled to a Media Blast and Mesh Repair. Plaintiffs' expert estimates the repairs to the Sandoval home and the arterial wall of the Alms home will total \$168,841.26 and the repairs to the Hammett home will total \$79,342.81

Claim Forms are available online on the Settlement Website. You can also request that a Claim Form get emailed to you by calling the Claims Administrator toll-free at 1-XXX-XXX-XXXX or emailing [email]. The deadline to submit claims is [DATE].

8. When would I get my settlement benefits?

The Court will hold a Final Approval Hearing on [DATE], to decide whether to approve the Settlement. If the Court approves the Settlement after that, there may be appeals. Note that the Court may change the Final Approval Hearing date without further notice so please check the Settlement Website, www.MerlexStuccoSettlement.com, for updates. It's always uncertain whether those appeals can be resolved, and resolving them can take time, perhaps more than a year. Please be patient.

9. What am I giving up to stay in the Class?

Unless you exclude yourself, you are staying in the Class, and that means that you can't sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues in this case. It also means that all of the Court's orders will apply to you and legally bind you. If you sign the Claim Form, you will agree to a release of claims which describes exactly the legal claims that you give up if you get settlement benefits. The Release is defined and detailed in the Settlement Agreement, which is available at www.merlexstuccosettlement.com.

The release provided by the Class Action Settlement Agreement and Release provides, ~~in relevant parts, for the following:~~

By this Settlement Agreement and the following Release, Defendant and Released Parties are released from any and all claims or causes of action that were, or could have been, asserted by the Plaintiffs or any Class Members against them regarding the claims made, or that could have been made, in the Complaint and Complaint Amendment relating to the allegedly defective Merlex stucco applied to their homes, except as set forth in section VIII(D) below. Without assuming that the Release given by this Settlement Agreement is a general release, Plaintiffs and Class Members expressly waive and relinquish all such claims or causes of action against the Released Parties to the fullest extent permitted by law. Plaintiffs, on their behalf and not on behalf of the Class Members, expressly understand and acknowledge that through this Settlement Agreement Plaintiffs only will be deemed by the Final Approval Order to acknowledge and waive Section 1542 of the Civil Code of the State of California, which provides that:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that,

if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiffs on behalf of themselves only expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable or equivalent to Section 1542, to the fullest extent they may lawfully waive such rights. Plaintiffs and the Class Members recognize that, even if they later discover facts in addition to or different from those which they now know or believe to be true, they nevertheless agree that, upon entry of the Final Approval Order and accompanying Judgment, Plaintiffs and the Class Members fully, finally, and forever settle and release any and all of the Released Claims against the Released Parties. The Parties acknowledge that the foregoing waiver and release was bargained for and is a material element of the Settlement Agreement.

Plaintiffs represent and warrant that they are the sole and exclusive owner of all claims that they personally are releasing under this Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action. Class Members submitting a Claim Form shall represent and warrant therein that they are the sole and exclusive owners of all claims that they personally are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that such Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action.

This Settlement Agreement does not affect the rights of Class Members who timely and properly request exclusion from the Settlement Agreement. The Settlement Agreement does not release claims for personal injury or claims for subrogation.

Upon issuance of the Final Approval Order: (i) the Settlement Agreement shall be the exclusive remedy for any and all Class Members, except those who have opted out in accordance with the terms and provisions hereof; (ii) Defendant and Released Parties shall not be subject to liability or expense of any kind to any Class Member(s) for reasons related to the Litigation except as set forth herein; and (iii) Class Members shall be permanently barred from initiating, asserting, or prosecuting any and all released claims against Defendant and Released Parties.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want compensation from the Settlement, but you want to keep the right to sue or continue to sue Defendant on your own about the legal issues in this case, then you must take steps to get out. This is called excluding yourself, sometimes referred to as opting out of the Settlement Class.

10. How do I get out of the Settlement?

Any Class Member who wants to be excluded from the Class must submit a Request for Exclusion in writing to the Claims Administrator at the address provided below. Your request must be postmarked on or before [DATE] and must include your full name and the address of the property where Merlex stucco is alleged to have been used, and a specific statement of your desire to be excluded from the Settlement and from the Class. If you do not comply

with these requirements, you will be bound by the terms of the Settlement. Any Class Member who submits a timely Request for Exclusion shall be deemed to have waived any rights or benefits under the Settlement Agreement.

Merlex Stucco Settlement
c/o JND Legal Administration

ADDRESS
ADDRESS

11. If I don't exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you will be bound by the Final Order and Judgment, and you give up the right to sue Defendant for the claims that this settlement resolves. If you have a pending lawsuit against Defendant, speak to your lawyer in that lawsuit immediately. You must exclude yourself from the Class to continue your own lawsuit against Defendant.

12. If I exclude myself, can I get benefits from the Settlement?

No. If you exclude yourself, you may not submit a Claim Form to ask for any benefits. But, you may sue, continue to sue, or be part of a different lawsuit against Defendant.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in the case?

The Court has appointed the law firms of Martorell Law APC, and Bordin Semmer LLP to represent you and other Class Members. Together, the lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees and ~~litigation expenses costs~~ up to \$675,000.00 and a payment up eighteen thousand dollars (\$18,000) total to the Sandoval Plaintiffs, six thousand dollars (\$6,000) total to the Alms Plaintiffs, and three thousand (\$3,000) to the Hammett Plaintiff. The fees and expenses that the Court approves will be paid by Defendant. The costs to administer the Settlement will also be paid by Defendant. Class Counsel's Motion for Attorneys' Fees and Costs will be available on the Settlement Website once it has been filed.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the Settlement or some part of it.

15. How do I tell the Court that I don't like the Settlement?

If you are a Class Member, you can object to the Settlement if you don't like any part of it. You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different Settlement; the Court can only approve or reject the Settlement. If the Court denies approval, none of the benefits set forth herein will be available under the settlement, and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must be mailed to the Claims Administrator at the addresses provided below. Your objection must be filed on or before [DATE].

To state a valid objection to the Settlement, an objecting Class Member must provide the following information in their written objection:

- Full name, current address, and current telephone number;
- Documentation and/or other statement or proof sufficient to establish membership in the class;
- A statement of the position(s) the objector wishes to assert, including the factual and/or legal grounds for the position; and
- Copies of any documents the objector wishes to submit to support their position; and
- A statement whether the objector intends to appear at the hearing.

Claims Administrator

Merlex Stucco Settlement
c/o JND Legal Administration
ADDRESS
Seattle, WA 98111-9148

Any objecting Class Member may appear, in person or by counsel, at the Final Approval Hearing to show cause why the Settlement should not be approved as fair, adequate, and reasonable, or to object to any applications for the Class Representative Service Award or Class Counsels' Fees and Expenses.

16. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend, and you may ask to speak, but you don't have to.

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at [TIME] on [DATE], at the Los Angeles County Superior Court, Spring Street Courthouse, Department SSC 12, 312 North Spring Street, Los Angeles, California 90012.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. Note that the Court may change the Final Approval Hearing date without further notice so please check the Settlement Website, www.MerlexStuccoSettlement.com, for updates.

18. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have, but you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you filed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

[If you wish to appear at the Final Approval Hearing, you may do so remotely. Please see www.lacourt.org and http://www.lacourt.org/division/civil/CI0040.aspx for information regarding remote appearances.](http://www.lacourt.org)

19. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. You cannot speak at the hearing if you excluded yourself.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you do nothing, you'll get no benefits from the Settlement. And, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant about the legal issues in this case ever again.

GETTING MORE INFORMATION

21. Are there more details about the Settlement?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement and Release. You can get a copy of the Settlement Agreement and Release and other important case documents at www.MerlexStuccoSettlement.com.

22. How do I get more information?

You can call toll-free [1-XXX-XXX-XXXX](tel:1-XXX-XXX-XXXX), email [\[email address\]](mailto:[email address]), or visit the Settlement Website at www.MerlexStuccoSettlement.com, where you will find answers to common questions about the Settlement, an online Claim Form, and important documents related to the Settlement. You should check the Settlement Website regularly for updates on the case.

You may also contact one of the following attorneys appointed by the Court to serve as Class Counsel:

Christopher Blanchard	Jean-Paul Le Clercq
CBlanchard@BordinSemmer.com	JPLeClercq@martorell-law.com
Bordin Semmer LLP	Martorell Law APC
6100 Center Drive, Suite 1100	6100 Center Drive, Suite 1130
Los Angeles, CA, 90045	Los Angeles, CA, 90045
323-457-2110	323-840-1200

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

EXHIBIT 2

EXHIBIT 2

If you own a home with stucco manufactured or sold by Merlex Stucco, Inc., you could get benefits from a class action settlement.

Para ver este aviso en español, visite www.MerlexStuccoSettlement.com.

A California State Court authorized this Notice. It is not a solicitation from a lawyer.

TO OBTAIN ANY BENEFITS AVAILABLE UNDER THIS SETTLEMENT, YOU MUST SUBMIT A CLAIM BY (DATE). SEE ATTACHED FORM.

- The Settlement will provide for at least one free repair, in the form of a “Pick and Whole House Fog Repair” or “Spot Pick and Spot Fog Repair” for homes affixed with Merlex Stucco as a remedy for verified rust spots that have appeared on the Merlex stucco surface.
- To qualify, you must verify that you had stucco manufactured or sold by Merlex applied to your home on or after May 6, 2013 that later developed the appearance of rust spots, and you must submit a valid and timely Claim by the Claims Deadline (DATE).
- Your legal rights are affected whether you act or don’t act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	The only way to get settlement benefits. Claim Forms must be submitted online or postmarked by [DATE].
EXCLUDE YOURSELF	Get no settlement benefits. This is the only option that allows you to ever be part of any other lawsuit against Defendant about the legal claims in this case. Requests for exclusion must be postmarked by [DATE].
OBJECT OR COMMENT	Write to the Court about why you don’t like the Settlement. The deadline to file an objection is [DATE].
GO TO A HEARING	Ask to speak in Court about why you do or do not support the proposed Settlement or any of its provisions. The Final Approval Hearing will be held on [DATE].
DO NOTHING	Get no benefits from this action. Give up rights.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Benefits will be provided if the Court approves the Settlement and after appeals, if any, are resolved. Please be patient.

QUESTIONS? Read on, visit www.MerlexStuccoSettlement.com, or call 1-XXX-XXX-XXXX

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BASIC INFORMATION

1. Why did I receive a Notice?

You have been identified as a potential Class Member who may own a home with Merlex Stucco that is covered by this Settlement. You have legal rights and options that you may exercise before the Court decides whether to approve the Settlement. This Notice has been approved by the Court and summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please review the Settlement Agreement and Release, available at www.MerlexStuccoSettlement.com. Judge Carolyn Kuhl of the Superior Court of California, County of Los Angeles, is overseeing this class action. The lawsuit is known as *Sandoval et al. v. Merlex Stucco, Inc.*, Case No. BC619322 (the “Action” or “Litigation”).

2. What is this lawsuit about?

The lawsuit claimed that the Product at issue, Merlex brand stucco, is defective because it may contain iron deposits that, over time, may manifest as rust spots on homes where the stucco was applied. Defendant does not believe Plaintiffs’ claims have merit and has denied and continues to deny any and all claims, including but not limited to claims of defect and/or allegations concerning the safety of the Product.

3. What is a class action?

In a class action lawsuit, one or more people called Class Representatives sue on behalf of other people who have similar claims. The people together are a Class or Class Members. The people who sued—and all the Class Members like them—are called the Plaintiffs. The company they sued is called the Defendant. One court resolves the issues for everyone in the Class, except for those people who choose to exclude themselves from the Class.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or Defendant. Instead, both sides agreed to a settlement. That way, they avoid the risk and cost of a trial, and the people affected will get benefits. The Parties believe that the proposed Settlement is fair, reasonable, and adequate.

WHO IS IN THE SETTLEMENT

To see if you will get benefits from the Settlement, you first have to decide if you are a Class Member.

5. How do I know if I am part of the Settlement?

The Court has concluded that Class Members are comprised of the “Litigation Class Members” and “Additional Class Members,” as defined below:

- **Litigation Class Members:** All individuals who own or owned the properties identified on the class list filed on June 5, 2019 pursuant to the Court’s May 16, 2019 order related to the certified class.
- **Additional Class Members:** California residents who are not part of the Litigation Class, but who currently own or formerly owned any property to which stucco manufactured or sold by Merlex Stucco, Inc. was applied on or after May 6, 2013, that was allegedly defective, improperly manufactured, or contained impurities and that developed the appearance of rust in the stucco. .

Excluded from the Class are (1) Defendant, its successors in interest, its related entities, parent companies, subsidiaries and affiliates, and their respective officers, directors, and employees; (2) insurers of the homes owned by the Settlement Class; (3) all persons and/or entities claiming to be subrogated to the rights of the Settlement

Class; (4) individuals who validly and timely opt-out of the Settlement; (5) members of the Settlement Class who previously have released their claims against Defendant with respect to the issues raised in the Litigation; and (6) any judge to whom this matter is assigned, and his or her immediate family (spouse, domestic partner, or children).

6. I'm still not sure if I am included.

If you are still unsure whether you are included, you can call or email the Claims Administrator at [email] or 1-XXX-XXX-XXXX.

THE SETTLEMENT BENEFITS—WHAT YOU GET

7. What does the Settlement provide?

The Settlement provides two benefit options depending on whether you are a Litigation Class Member or Additional Class Member, as follows:

Litigation Class Members will be entitled to a Pick & Whole House Fog Repair, paid for by Defendant, as a remedy for verified rust spots on their respective properties. The “Pick & Whole House Fog Repair” means a stucco repair method wherein the stucco on the entire home is inspected for rust spots, any rust spots that are located are removed, and the entire home is thereafter “fogged” with Fogcoat in a color that matches as close to the home’s current color as possible. To qualify for this remedy, members of the Litigation Class must submit a valid and timely Claim by the Claims Deadline. The remedy under this paragraph will be provided after the Effective Date of the Class Settlement and repairs to the first property will commence not later than sixty (60) days after the Effective Date or sixty (60) days after the date the first claim is received, whichever is later, on a first come, first served basis, consistent with the Settlement Agreement, which is available at www.merlexstuccosettlement.com. The repairs under this paragraph will be performed by a pre-Approved Subcontractor and the repair will include and be subject to the seven (7) year Pick & Whole House Fog Warranty. Upon completion of any repair pursuant to this paragraph, the Approved Subcontractor will provide the necessary information for submitting claims under the Pick & Whole House Fog Warranty for repair work due to any manifestations of additional rust spots.

Additional Class Members will be entitled to a Spot Pick & Spot Fog Repair, paid for by Defendant, as a remedy for verified rust spots on their respective properties. The “Spot Pick & Spot Fog Repair” means a stucco repair method in which any rust spots that are located, the particle causing the stain will be removed. Following a whole house stucco inspection, and after every spot has been properly removed, and thereafter 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. To qualify for this remedy, Additional Class Members must submit a valid and timely Claim by the Claims Deadline, along with Required Documentation. The remedy under this paragraph will be provided after the Effective Date of the Class Settlement and repairs will commence not later than sixty (60) days after the Effective Date, on a first come, first served basis, consistent with the Settlement Agreement, which is available at www.merlexstuccosettlement.com. The Spot Pick & Spot Fog Repair will be performed by an Approved Subcontractor. The Spot Pick & Spot Fog Repair will not include any future guarantee or warranty. Additional Class Members will have thirty (30) days from the date repair work is completed to submit a complaint that repair work was not done correctly to PAREX, which will provide a copy of all such requests to Class Counsel. Such complaints will be addressed promptly by PAREX to determine if an additional Spot Pick & Spot Fog Repair is necessary. If the Additional Class Member submitting a complaint and PAREX do not agree regarding whether an additional Spot Pick & Spot Fog Repair is necessary, the dispute will be referred to a different Approved Subcontractor, who will inspect and verify the necessity of follow up repair work and, upon verification of the claim, may approve an additional Spot Pick and Spot Fog Repair.

Named Class Representatives. Due to the gravity of manifestation of rust spots at their properties, which is high in severity on their properties, the Named Class Representatives Fernando & Gloria Sandoval, John and Christine Alms, and Jean Hammett will be entitled to a Media Blast and Mesh Repair. Plaintiffs’ expert estimates the repairs

to the Sandoval home and the arterial wall of the Alms home will total \$168,841.26 and the repairs to the Hammett home will total \$79,342.81

Claim Forms are available online on the Settlement Website. You can also request that a Claim Form get emailed to you by calling the Claims Administrator toll-free at 1-XXX-XXX-XXXX or emailing [email]. The deadline to submit claims is [DATE].

8. When would I get my settlement benefits?

The Court will hold a Final Approval Hearing on [DATE], to decide whether to approve the Settlement. If the Court approves the Settlement after that, there may be appeals. Note that the Court may change the Final Approval Hearing date without further notice so please check the Settlement Website, www.MerlexStuccoSettlement.com, for updates. It's always uncertain whether those appeals can be resolved, and resolving them can take time, perhaps more than a year. Please be patient.

9. What am I giving up to stay in the Class?

Unless you exclude yourself, you are staying in the Class, and that means that you can't sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues in this case. It also means that all of the Court's orders will apply to you and legally bind you. If you sign the Claim Form, you will agree to a release of claims which describes exactly the legal claims that you give up if you get settlement benefits. The Release is defined and detailed in the Settlement Agreement, which is available at www.merlexstuccosettlement.com.

The release provided by the Class Action Settlement Agreement and Release provides:

By this Settlement Agreement and the following Release, Defendant and Released Parties are released from any and all claims or causes of action that were, or could have been, asserted by the Plaintiffs or any Class Members against them regarding the claims made, or that could have been made, in the Complaint and Complaint Amendment relating to the allegedly defective Merlex stucco applied to their homes, except as set forth in section VIII(D) below. Without assuming that the Release given by this Settlement Agreement is a general release, Plaintiffs and Class Members expressly waive and relinquish all such claims or causes of action against the Released Parties to the fullest extent permitted by law. Plaintiffs, on their behalf and not on behalf of the Class Members, expressly understand and acknowledge that through this Settlement Agreement Plaintiffs only will be deemed by the Final Approval Order to acknowledge and waive Section 1542 of the Civil Code of the State of California, which provides that:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiffs on behalf of themselves only expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable or equivalent to Section 1542, to the fullest extent they may lawfully waive such rights. Plaintiffs and the Class Members recognize that, even if they later discover facts in addition to or different from those which they now know or believe to be true, they nevertheless agree that, upon entry of the Final Approval Order and accompanying Judgment, Plaintiffs and the Class Members fully, finally, and forever settle and release any and all of the Released Claims against the Released Parties. The Parties acknowledge that the foregoing waiver and release was bargained for and is a material element of the Settlement Agreement.

Plaintiffs represent and warrant that they are the sole and exclusive owner of all claims that they personally are releasing under this Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action. Class Members submitting a Claim Form shall represent and warrant therein that they are the sole and exclusive owners of all claims that they personally are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that such Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action.

This Settlement Agreement does not affect the rights of Class Members who timely and properly request exclusion from the Settlement Agreement. The Settlement Agreement does not release claims for personal injury or claims for subrogation.

Upon issuance of the Final Approval Order: (i) the Settlement Agreement shall be the exclusive remedy for any and all Class Members, except those who have opted out in accordance with the terms and provisions hereof; (ii) Defendant and Released Parties shall not be subject to liability or expense of any kind to any Class Member(s) for reasons related to the Litigation except as set forth herein; and (iii) Class Members shall be permanently barred from initiating, asserting, or prosecuting any and all released claims against Defendant and Released Parties.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want compensation from the Settlement, but you want to keep the right to sue or continue to sue Defendant on your own about the legal issues in this case, then you must take steps to get out. This is called excluding yourself, sometimes referred to as opting out of the Settlement Class.

10. How do I get out of the Settlement?

Any Class Member who wants to be excluded from the Class must submit a Request for Exclusion in writing to the Claims Administrator at the address provided below. Your request must be postmarked on or before [DATE] and must include your full name and the address of the property where Merlex stucco is alleged to have been used, and a specific statement of your desire to be excluded from the Settlement and from the Class. If you do not comply with these requirements, you will be bound by the terms of the Settlement. Any Class Member who submits a timely Request for Exclusion shall be deemed to have waived any rights or benefits under the Settlement Agreement.

Merlex Stucco Settlement
c/o JND Legal Administration
ADDRESS
ADDRESS

11. If I don't exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you will be bound by the Final Order and Judgment, and you give up the right to sue Defendant for the claims that this settlement resolves. If you have a pending lawsuit against Defendant, speak to your lawyer in that lawsuit immediately. You must exclude yourself from the Class to continue your own lawsuit against Defendant.

12. If I exclude myself, can I get benefits from the Settlement?

No. If you exclude yourself, you may not submit a Claim Form to ask for any benefits. But, you may sue, continue to sue, or be part of a different lawsuit against Defendant.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in the case?

The Court has appointed the law firms of Martorell Law APC, and Bordin Semmer LLP to represent you and other Class Members. Together, the lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees and costs up to \$675,000.00 and a payment up eighteen thousand dollars (\$18,000) total to the Sandoval Plaintiffs, six thousand dollars (\$6,000) total to the Alms Plaintiffs, and three thousand (\$3,000) to the Hammett Plaintiff. The fees and expenses that the Court approves will be paid by Defendant. The costs to administer the Settlement will also be paid by Defendant. Class Counsel's Motion for Attorneys' Fees and Costs will be available on the Settlement Website once it has been filed.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the Settlement or some part of it.

15. How do I tell the Court that I don't like the Settlement?

If you are a Class Member, you can object to the Settlement if you don't like any part of it. You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different Settlement; the Court can only approve or reject the Settlement. If the Court denies approval, none of the benefits set forth herein will be available under the settlement, and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must be mailed to the Claims Administrator at the addresses provided below. Your objection must be filed on or before [DATE].

To state a valid objection to the Settlement, an objecting Class Member must provide the following information in their written objection:

- Full name, current address, and current telephone number;
- Documentation and/or other statement or proof sufficient to establish membership in the class;
- A statement of the position(s) the objector wishes to assert, including the factual and/or legal grounds for the position; and
- Copies of any documents the objector wishes to submit to support their position; and
- A statement whether the objector intends to appear at the hearing.

Claims Administrator

Merlex Stucco Settlement
c/o JND Legal Administration
ADDRESS
Seattle, WA 98111-9148

Any objecting Class Member may appear, in person or by counsel, at the Final Approval Hearing to show cause why the Settlement should not be approved as fair, adequate, and reasonable, or to object to any applications for the Class Representative Service Award or Class Counsels' Fees and Expenses.

16. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend, and you may ask to speak, but you don't have to.

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at [TIME] on [DATE], at the Los Angeles County Superior Court, Spring Street Courthouse, Department SSC 12, 312 North Spring Street, Los Angeles, California 90012.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. Note that the Court may change the Final Approval Hearing date without further notice so please check the Settlement Website, www.MerlexStuccoSettlement.com, for updates.

18. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have, but you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you filed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

If you wish to appear at the Final Approval Hearing, you may do so remotely. Please see www.lacourt.org and <http://www.lacourt.org/division/civil/CI0040.aspx> for information regarding remote appearances.

19. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. You cannot speak at the hearing if you excluded yourself.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you do nothing, you'll get no benefits from the Settlement. And, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant about the legal issues in this case ever again.

GETTING MORE INFORMATION

21. Are there more details about the Settlement?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement and Release. You can get a copy of the Settlement Agreement and Release and other important case documents at www.MerlexStuccoSettlement.com.

22. How do I get more information?

You can call toll-free [1-XXX-XXX-XXXX](tel:1-XXX-XXX-XXXX), email [\[email address\]](mailto:[email address]), or visit the Settlement Website at www.MerlexStuccoSettlement.com, where you will find answers to common questions about the Settlement, an online Claim Form, and important documents related to the Settlement. You should check the Settlement Website regularly for updates on the case.

You may also contact one of the following attorneys appointed by the Court to serve as Class Counsel:

Christopher Blanchard	Jean-Paul Le Clercq
CBlanchard@BordinSemmer.com	JPLeClercq@martorell-law.com
Bordin Semmer LLP	Martorell Law APC
6100 Center Drive, Suite 1100	6100 Center Drive, Suite 1130
Los Angeles, CA, 90045	Los Angeles, CA, 90045
323-457-2110	323-840-1200

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

EXHIBIT 3

EXHIBIT 3

1 **MARTORELL LAW APC**

Eduardo Martorell, State Bar No. 240027

2 EMartorell@Martorell-Law.com

Jean-Paul Le Clercq, State Bar No. 248818

3 JPLeClerc@Martorell-Law.com

4 6100 Center Drive, Suite 1130

Los Angeles, CA, 90045

5 Phone: (323) 840-1200; Fax: (323) 840-1300

6 **BORDIN SEMMER LLP**

Joshua Bordin-Wosk, State Bar No. 241077

7 jbordinwosk@bordinsemer.com

8 Christopher Blanchard, State Bar No. 250729

9 cblanchard@boardinsemmer.com

6100 Center Drive, Suite 1100

Los Angeles, California 90045

10 Phone: 323.457.2100; Fax: 323.457.2120

11 Attorneys for Plaintiffs

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE 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 vs.

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

21
22 Defendants.

23 AND ALL RELATED CROSS-ACTIONS

CASE NO. BC619322

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: September 30, 2020

Time: 11:30 a.m.

Dept.: 12

24
25 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

26 The Court, having read Plaintiffs' Motion for Preliminary Approval of Class Action
27 Settlement, and all filings associated therewith, and having heard argument regarding this Motion,
28 hereby finds and ORDERS as follows:

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1. Plaintiffs Fernando Sandoval, Gloria Sandoval, John Alms, and Christine Alms, individually and on behalf of all similarly situated individuals (“Plaintiffs”) and Defendant Merlex Stucco, Inc.’s (“Melrex”) (collectively, the “parties”) Class Action Settlement Agreement And Release (“Settlement” or “Settlement Agreement”) attached as **Exhibit A** to the Declaration of Jean-Paul Le Clercq, filed on or about September 8, 2020, is within the range of possible recovery and, subject to further consideration at the Final Approval Hearing described below, is preliminarily approved as fair, reasonable, and adequate;

2. For purposes of settlement only, the Court provisionally and conditionally certifies the following two classes:

a. The “Litigation Class,” defined as:

“‘Litigation Class’ means those individuals who own or owned the properties identified on the class list filed on June 5, 2019 pursuant to the Court’s May 16, 2019 order related to the certified class.”

b. The “Additional Class Member” class, defined as:

“‘Additional Class Members’ means California residents who are not part of the Litigation Class, but who currently own or formerly owned any property to which stucco manufactured or sold by Merlex Stucco, Inc. was applied on or after May 6, 2013, that was allegedly defective, improperly manufactured, or contained impurities and that developed the appearance of rust in the stucco.”

3. The Court finds the Litigation Class, consisting of at least 56 members, and the Additional Class Member class, the size of which is presently unknown but is in excess of 100 members, is so numerous that joinder of all members is impracticable. The Court further determines that the Litigation Class is ascertainable based on records associated with Plaintiffs’ Class Certification Motion that was granted by this Court, and that the Additional Class Member class will be ascertainable subject to the Court approved notice and claim process, as further described herein.

4. The Court also finds that there are questions of law and fact common to both the Litigation Class and Additional Class Member class (collectively the “Settlement Class”), where

1 common questions predominate over any individualized questions of law or fact. The primary,
2 common question applicable to all Settlement Class members is whether these class members had
3 Merlex stucco applied to their homes that contained impurities and later developed the appearance
4 of rust.

5 5. The Court further finds that the claims of proposed Class Representatives Fernando
6 Sandoval, Gloria Sandoval, John Alms, Christine Alms, and Jean Hammett are typical of the claims
7 of the Settlement Class, and that they will fairly and adequately protect the interests of the
8 Settlement Class. Accordingly, the Court appoints Mr. and Mrs. Sandoval, Mr. and Mrs. Alms,
9 and Ms. Hammett as Class Representatives, and appoints their counsel of record, Eduardo
10 Martorell and Jean-Paul Le Clercq of Martorell Law, APC, and Joshua Bordin-Wosk and
11 Christopher Blanchard of Bordin Semmer, LLP, as Class Counsel (collectively, “Class Counsel”).

12 6. The Court further finds that certification of the Settlement Class is superior to other
13 available means for the fair and efficient adjudication of the controversy between the parties.

14 7. The Court finds further that the proposed method of providing notice of the
15 Settlement to all Settlement Class members, as described in both the Settlement Agreement itself
16 and the declaration of the Parties’ selected third-party Claims Administrator, Jennifer M. Keough
17 of JND Legal Administration (“JND Legal”), is reasonably calculated to notify the Settlement
18 Class members of the proposed Settlement and provides the best notice possible under the
19 circumstances. The Court also finds that the Notice of Class Action Settlement, attached to the
20 Second Supplemental Declaration of Jean-Paul Le Clercq (filed on October 23, 2020) as **Exhibit 2**
21 is sufficient to inform the Settlement Class Members of the terms of the Settlement and their rights
22 thereunder, including the right to object to the Settlement or any part thereof and the procedure for
23 doing so, their right to exclude themselves from the Settlement and the procedure for doing so,
24 their right to obtain a portion of the Settlement proceeds, and the date, time and location of the
25 Final Approval Hearing. The Court finds that the notice procedures for both the Litigation Class
26 and Additional Class Member class as defined below is fair and reasonable:

27 a. Litigation Class: Litigation Class members, whose names and addresses are
28 already known to the parties, will receive the Notice of Class Action Settlement, along with

1 the Claim Form attached to the parties' Settlement Agreement as **Exhibit 2**, via First Class
2 U.S. Mail. JND Legal will further mail up to two (2) Reminder Notices to Litigation Class
3 Members.

4 b. Additional Class Member class: Additional Class Member class members,
5 and because their names and addresses have not yet been confirmed, will be notified of the
6 pendency of this settlement via the digital media campaign outlined by the Keough/JND
7 Legal declaration, paragraphs 22 through 28. Pursuant to the JND Declaration, the planned
8 notice to Additional Class Members will result in 34 million digital impressions occurring
9 over a 12-week period targeting California home-owners 25 years and older. [¶ 26] The
10 digital notice method will also include the creation of a settlement website. [¶ 28] The
11 scope of this digital media campaign is expected to reach an estimated 70% of Additional
12 Class Members. [¶ 34] Class Counsel has also reserved the right to send postcards to
13 residences Class Counsel believes had Merlex stucco applied to their property during the
14 pertinent timeframe, to improve the potential reach of the Class Notice to the Additional
15 Class Member class.

16 8. Under the terms of the Settlement Agreement, the Court approves the Parties'
17 selection of JND Legal as the third-party Claims Administrator. Defendant Merlex is ordered to
18 provide the Claims Administrator with the Litigation Class List no later than **November 6, 2020**.
19 The Claims Administrator is ordered to: (a) mail the Class Notice/packet to the Litigation Class
20 members via First-Class U.S. Mail as specified in the Settlement Agreement; and (b) begin its 12-
21 week digital media campaign for Additional Class Members, including the publication of the
22 proposed settlement website, no later than **November 13, 2020**, and to otherwise carry out all other
23 duties set forth in the Settlement Agreement. The Parties are ordered to carry out and comply with
24 all terms of this Order and the Settlement Agreement, and particularly with respect to providing the
25 Settlement Administrator all information necessary to perform its duties under the Settlement
26 Agreement.

27 9. Any member of the Settlement Class who wishes to either comment on or object to
28 the Settlement or any term thereof, including any proposed award of attorney's fees and costs to

1 Class Counsel or any proposed enhancement awards/service payments to the Class Representatives,
2 or exclude themselves from the Settlement, must submit their objection, request for exclusion, or
3 claim form in writing to the Claims Administrator with a postmark no later than **February 8, 2021**.

4 10. Class Counsel are hereby ordered to file their Motion for Fees and Costs and
5 Representative Enhancement Awards by no later than **January 8, 2021**, to allow all potential
6 Settlement Class members to review the arguments in favor of Class Counsel's attorney's fees and
7 costs, and Representative Enhancement awards, prior to any deadline to file written objections.

8 11. The Claims Administrator is ordered to submit its declaration regarding settlement
9 administration and compliance to the Court no later than **February 22, 2021**.

10 12. The Parties are ordered to file with the Court their written response to all objections,
11 if any, no later than **February 22, 2021**.

12 13. A Final Approval Hearing is hereby set for **March 17, 2021, at 10:00 a.m.** in
13 Department 12 of the Los Angeles County Superior Court, to consider any objections to the
14 Settlement, determine if the proposed Settlement should be found fair, adequate, and reasonable
15 and given full and final approval by the Court, and to determine the amount of attorney's fees and
16 costs awarded to Class Counsel, the amount of any service payments to the Class Representatives,
17 and to approve the fees and costs payable to the Settlement Administrator. All legal memoranda,
18 affidavits, declarations, or other evidence in support of the request for final approval, or the fees
19 and costs of the Settlement Administrator, shall be filed pursuant to code, or no later than
20 **February 22, 2021**. The Court reserves the right to continue the Final Approval Hearing without
21 further notice to the Settlement Class Members.

22 14. Provided he or she has not submitted a timely and valid Request for Exclusion, and
23 further provided that he or she has submitted a timely objection in writing, any Settlement Class
24 Member may appear, personally or through his or her own counsel, and be heard at the Final
25 Approval Hearing.

26 15. Additionally, and pursuant to the parties' Settlement Agreement, the Court grants
27 Plaintiffs approval to file an Amended Complaint to both identify Jean Hammett as a class
28

1 representative and to add the Additional Class Member class to the proposed class definition.
2 Defendant Merlex Stucco, Inc. need not file a response to the Settlement Amended Complaint.

3 16. All discovery and proceedings are stayed among the settling parties until further
4 order of the Court, except as may be necessary to implement the settlement or comply with the
5 terms of the parties' Settlement Agreement.

6 17. By entering this order, the Court does not make any determination as to the merits of
7 this case. Preliminary approval of the Settlement Agreement is not a finding or admission of
8 liability by Defendant Merlex.

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10 Dated: _____, 2020

Judge of the Superior Court

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PROOF OF SERVICE

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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Howard Hughes Center, 6100 Center Drive, Suite 1130, Los Angeles, California 90045.

On October 23, 2020, I served the within document(s) described as:

SECOND SUPPLEMENTAL DECLARATION OF JEAN-PAUL LE CLERCQ IN SUPPORT OF PARTIES' JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

on the interested parties in this action as stated on the attached mailing list.

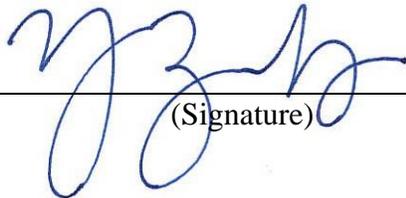
(BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached mailing list. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(BY ELECTRONIC MAIL) I caused such document(s) to be sent by electronic mail as a PDF attachment through Case Anywhere, an electronic service/filing company as indicated on the attached service list.

Executed on October 23, 2020, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Yeshenia Zambrano
(Type or print name)



(Signature)

1 **Fernando Sandoval, et. al. v. Merlex Stucco, Inc., et. al.**

2 **Case No.: BC619322**

3 **ML CLIENT: Fernando Sandoval, Gloria Sandoval, John Alms and Christine Alms**
4 **ML FILE NO.: 1028.001**

5 **SERVICE LIST**

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