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22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

23 **COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST COURTHOUSE**

24 FERNANDO SANDOVAL; GLORIA
25 SANDOVAL; JOHN ALMS; and CHRISTINE
26 ALMS, individually and on behalf of all similarly
27 situated individuals,

28 Plaintiffs,

vs.

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

Defendants.

CASE NO. BC619322

CLASS ACTION

**NOTICE OF MOTION AND MOTION FOR
AN AWARD OF ATTORNEY FEES,
COSTS AND EXPENSES AND
INCENTIVE AWARDS; MEMORANDUM
OF POINTS AND AUTHORITIES**

[Filed concurrently with Compendium of
Declarations]

Date: April 9, 2021

Time: 10:30 a.m.

Dept.: 12

1 **TO THE COURT, ALL PARTIES AND PARTIES' COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on April 9, 2021 at 10:30 a.m, or as soon thereafter as the
3 matter may be heard in Department 12 of this Court, located at 312 North Spring Street, Los
4 Angeles, CA 90012, Class Counsel will move and hereby do move the Court for an order: (1)
5 awarding Class Counsel attorneys' fees in the amount of \$627,545; (2) awarding Class Counsel
6 \$47,475 as reimbursement of out-of-pocket costs and expenses incurred in prosecuting the
7 litigation, allocated as \$23,737.50 to Martorell Law APC and \$23,737.50 to Bordin Semmer LLP;
8 (3) awarding class representative plaintiffs the incentive awards in the following amounts: (a) to
9 Fernando Sandoval and Gloria Sandoval, jointly, \$18,000; (b) to John Alms and Christine Alms,
10 jointly, \$6,000; and (c) to Jean Hammett, \$3,000.

11 This Motion is made on the grounds that the attorney fees requested are fair and reasonable
12 in light of the results achieved in the Settlement, the work performed and the time expended by
13 Class Counsel. In addition, the costs and expenses for which Class Counsel seek reimbursement
14 were reasonably expended for the benefit of the class members in this litigation. Moreover, the
15 incentive awards are appropriate in this case as each of the representative plaintiffs has actively
16 participated in this litigation and contributed materially to the successful outcome.

17 The Motion is based upon this Notice; the attached Memorandum in Support, the separately
18 filed compendium of evidence, including the declarations of Fernando Sandoval, John Alms, Jean
19 Hammett, Eduardo Martorell, Joshua Bordin-Wosk, Jean-Paul Le Clercq, and Christopher
20 Blanchard; all pleadings, records and papers on file in the above-entitled action; and the arguments
21 of counsel.

22 Dated: February 5, 2021

BORDIN SEMMER LLP

23
24 By: 

25
26 _____
27 Joshua Bordin-Wosk
28 Christopher Blanchard
Attorneys for Plaintiffs

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 After more than four years of litigation, a heavily contested class certification process, and
4 an extremely complicated settlement negotiation, the parties in this case have reached a settlement
5 agreement for which the Court has granted preliminary approval. In anticipation of final approval of
6 the settlement, Class Counsel bring this Motion for an Award of Attorneys’ Fees and Costs and for
7 an Incentive Award to the Class Representatives.

8 Specifically, Class Counsel seek a total recovery of \$627,545 in fees and \$47,475 in costs.
9 Plaintiffs seek incentive awards for the class representatives of amounts between \$3,000 and \$18,000.
10 As set forth below, the requested fees, costs, and incentive awards are more than reasonable in light
11 of the complexity of this litigation, the hours and effort expended, and the risk associated with this
12 litigation. Most notably, the attorney’s fees requested are below Class Counsel’s actual lodestar, as
13 evidence by their time records, and based on reasonable hourly rates experienced attorneys. Further,
14 the attorneys’ fees sought by Class Counsel represent a blended hourly rate of just \$479 per hour –
15 below contingency rates for the Los Angeles market in similar cases. Class Counsel has provided the
16 Court with billing records and an accounting of costs to be recovered, further supporting a finding
17 that the requested award of fees and costs is reasonable.

18 As to the class representatives, their declarations filed in support of this Motion demonstrate
19 their great commitment to this case and obtaining a resolution on behalf of the class. They were
20 uniquely invested in obtaining a positive result to help homeowners obtain repairs of their homes,
21 and they succeeded in that goal, particularly Plaintiff Fernando Sandoval who expended an incredible
22 amount of time and efforts to obtain repairs for Class Representative and Class Member homes.

23 Given the results obtained and hours expended in this matter, the requested attorneys’ fees
24 and costs and incentive awards are reasonable and appropriate, and Plaintiffs’ and Class Counsel
25 respectfully request that the Court enter an order granting the fees, costs, and awards as requested.

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1 **II. STATEMENT OF FACTS**

2 **A. PLAINTIFFS' CLAIMS**

3 This lawsuit was filed on May 6, 2021 by plaintiffs Fernando Sandoval, Gloria Sandoval,
4 John Alms, and Christine Alms against defendant Merlex Stucco, Inc. (“Merlex”). (Compendium of
5 Evidence [“COE”], Exh. 8 [Compl.]) Plaintiffs’ claims were for breach of contract, breach of
6 implied warranty, breach of express warranty, negligence, negligent misrepresentation, strict
7 products liability, violations of the Consumers Legal Remedies Act, Violation of Unfair Competition
8 Law, and False Advertising. (*Id.*) Plaintiffs brought their claims as a class action on behalf of all
9 purchasers in California affected by Merlex’s actions. (*Id.* at ¶ 19.)

10 Plaintiffs alleged that Merlex sold a defective stucco that contained inappropriate levels of
11 iron. (*Id.* at ¶ 9.) As a result, rust spots appeared throughout the stucco. (*Id.*) Plaintiffs purchased
12 Merlex stucco to apply to their houses. (*Id.* at ¶ 10.) Within months, dark red spots began appearing
13 in the newly applied stucco. (*Id.*) at ¶ 14.) Plaintiffs complained and Merlex responded by admitting
14 that there was a problem with its stucco resulting from increased concentration of iron in the product.
15 (*Id.* at ¶ 15.) Merlex offered to remove the rust spots by picking out the spots and applying a new
16 stucco coat over the picked area. (*Id.* at ¶ 16.) Merlex’s proposed solution, however, was ineffective,
17 and the rust spots continue to appear on the homes to this day. (*Id.* at ¶¶ 16-17.)

18 **B. MOTION WORK AND DISCOVERY**

19 Prior to filing their class certification motion work, Class Counsel dealt with demurrers and
20 motions to strike filed by both Defendants Merlex and PW Gillibrand, requiring the filing for a first
21 amended complaint. (Bordin-Wosk Decl., ¶ 13.)

22 In order to address the preliminary issue of class certification, the parties engaged in extensive
23 written discovery. Counsel for Plaintiffs prepared and propounded 91 Special Interrogatories, 61
24 Requests for Production of Documents, and 44 Requests for Admission on Merlex. (Bordin-Wosk
25 Decl., ¶ 14.) Counsel for Plaintiffs also prepared and propounded 23 Special Interrogatories and 29
26 Requests for Admission on Parex USA, Inc. (“Parex”), the company that had acquired Merlex. (*Id.*)
27 Merlex propounded a total of four sets of form interrogatories, 292 Special Interrogatories, 184
28

1 Requests for Production, and 156 Requests for Admission to the Plaintiffs, for which Class Counsel
2 prepared responses. (*Id.*)

3 Plaintiff's counsel prepared business records subpoenas for numerous third-party companies,
4 including P.W. Gillibrand Co., Inc. ("PW Gillibrand"), the company that had supplied Merlex with
5 the sand that allegedly caused the concentration of iron in the stucco. (Bordin-Wosk Decl., ¶ 15.) All
6 told, Plaintiffs received in excess of 1,633 pages of document production from Merlex and various
7 third parties. (Bordin-Wosk Decl., ¶ 15.)

8 Plaintiffs deposed the following witnesses: (a) Abraham Palomino, an employee of Merlex
9 that was involved in the pick-and-fog efforts employed by Merlex; (b) Robert J. Dickson, the person
10 most knowledgeable on behalf of Merlex; (c) Nick Brown, the former President of Merlex; and (d)
11 Jim Dean, person most knowledgeable on behalf of PW Gillibrand. (Bordin-Wosk Decl., ¶ 16.)
12 Merlex deposed plaintiffs Fernando Sandoval and John Alms. (Bordin-Wosk Decl., ¶ 16.)

13 In addition to the above formal discovery, Plaintiffs' counsel and its investigators conducted
14 substantial investigation in this matter to identify additional affected homes and potential class
15 members. (Bordin-Wosk Decl., ¶ 17.) Ultimately, given his intimate involvement with the matter,
16 plaintiff Fernando Sandoval accompanied an investigator for a significant period of time to identify
17 potentially affected homes in order to ensure that all possible class members were identified and that
18 the scope of rust spots in stucco were properly understood. (Bordin-Wosk Decl., ¶ 17.)

19 **C. CLASS CERTIFICATION**

20 Plaintiffs filed their Motion for Class Certification on September 25, 2017. (Bordin-Wosk
21 Decl., ¶ 18.) After Merlex filed its opposition papers and Plaintiffs filed their reply brief, the Court
22 heard arguments as to the Motion on October 23, 2017. (Bordin-Wosk Decl., ¶ 18.) At that time the
23 Court ordered supplemental briefing by the parties, which the parties completed prior to another
24 hearing on class certification. (Bordin-Wosk Decl., ¶ 18.)

25 On February 5, 2018, the Court heard further arguments and granted in part the Motion for
26 Class Certification. (Bordin-Wosk Decl., ¶ 19.) The Court certified a class as to Plaintiffs' Second,
27 Fourth, Sixth, and Eighth Causes of Action. (Bordin-Wosk Decl., ¶ 19.) The Court appointed Bordin
28 Semmer LLP and Martorell Law APC as Class Counsel and Fernando Sandoval, Gloria Sandoval,

1 John Alms, and Christine Alms as Class Representatives. The Court also ordered Plaintiff to file an
2 amendment to the Eighth Cause of Action for Unfair Competition and set a simultaneous briefing
3 schedule as to notice to the class and whether Plaintiff's amended Eighth Cause of Action was
4 appropriate for class treatment. (Bordin-Wosk Decl., ¶ 19.)

5 Plaintiffs thereafter filed their amendment to the Eighth Cause of Action, significantly
6 expanding on the allegations of the cause of action under Business & Professions Code Section
7 17200. (COE, Exh. 9.) Merlex filed a demurrer and motion to strike as to five of Plaintiffs' causes of
8 action, including all of the causes of action for which the Court certified a class. (Bordin-Wosk Decl.,
9 ¶ 20.) Ultimately the Court allowed Plaintiffs' causes of action to stand and certified a class as to
10 Plaintiffs' amended Eighth Cause of Action. (Bordin-Wosk Decl., ¶ 20.) The Court ordered that
11 Notice to the Class be given and that was done through a third-party administrator. (Bordin-Wosk
12 Decl., ¶ 20.)

13 During this time, plaintiffs John and Christine Alms moved out of state. (Bordin-Wosk Decl.,
14 ¶ 21.) In an effort to ensure adequate representation for the class, counsel for Plaintiffs worked with
15 Jean Hammett, another affected homeowner, and she provided important assistance in ensuring that
16 the matter was resolved successfully. (Bordin-Wosk Decl., ¶ 21) As part of the Motion for Final
17 Approval, and on or about November 12, 2020, Plaintiffs filed a First Amended Complaint that
18 included Ms. Hammett as a class representative in addition to the Alms and Sandovals, along with
19 clarifying the addition of Plaintiffs' 8th COA. (Bordin-Wosk Decl., ¶ 21.)

20 **D. SETTLEMENT NEGOTIATIONS**

21 The parties in this case attended two separate mediations, the first on July 17, 2017 prior to
22 class certification and the second on August 3, 2018 after the Court had certified a class. (Bordin-
23 Wosk Decl., ¶ 22.) Neither mediation was successful and the parties were far apart as to any potential
24 settlement. (Bordin-Wosk Decl., ¶ 22.)

25 Counsel for Plaintiffs and Merlex nonetheless continued to engage in extensive and complex
26 negotiations subsequent to this Court confirming the scope of the class that had been certified during
27 a Demurrer and Class Notice hearing that took place on May 16, 2019. (Bordin-Wosk Decl., ¶ 23.).
28

1 During that hearing this Court strongly advised and requested that the all parties resolve this case
2 given the scope of the class that it had certified. (*Id.*).

3 Accordingly, and from May 2019 through September 2020, Class Counsel and counsel for
4 Defendant Merlex engaged in *extensive* settlement discussions to consider different processes that
5 could both adequately resolve the certified class’s defective stucco issues, while also potentially
6 expanding the scope of the settlement to capture other, non-class certified homes that had been
7 impacted by Merlex’s defective stucco. (Bordin-Wosk Decl., ¶ 24.).

8 After numerous calls and emails (almost too many too count), some of which necessitated
9 Plaintiff’s expert’s input, and even an informal, in-person meeting between counsel to try to hammer
10 out potential settlement terms, the parties were able to finalize and execute a memorandum of
11 understanding (“MOU”) itemizing the major settlement terms, which was fully executed on or about
12 April 21, 2020. (Le Clercq Decl., ¶ 6.). The parties executed a short form MOU due to the
13 complexities of the settlement and the impending trial date and summary judgment deadlines. Then,
14 over the next four (4) months, the parties engaged in additional, lengthy discussions and negotiations
15 in order to draft and execute a long form settlement agreement, which was fully executed on or about
16 August 10, 2020. (Le Clercq Decl., ¶ 7.)

17 On September 8, 2020, Plaintiffs filed their Motion for Preliminary Approval of the Class
18 Action Settlement. (Le Clercq Decl., ¶ 8.) Cross-Defendant PW Gillibrand opposed the Motion for
19 Preliminary Approval. (Le Clercq Decl., ¶ 8.) On September 30, 2020, the Court held a hearing on
20 the Motion for Preliminary Approval. (Le Clercq Decl., ¶ 8.) The Court posed several questions about
21 the settlement agreement, asked the parties to provide further information, and set a second hearing
22 on the Motion for Preliminary Approval. (Le Clercq Decl., ¶ 8.)

23 Pursuant to this Court’s questions at the September 30, 2020 hearing, the parties engaged in
24 additional settlement discussions about additional potential settlement terms. (Le Clercq Decl., ¶ 9.)
25 Thereafter, Class Counsel submitted additional information and an updated order and notice, and this
26 Court granted preliminary approval of the settlement. (Le Clercq Decl., ¶ 9.) A third-party Claims
27 Administrator has been engaged in the process of providing notice to the class of the proposed
28 settlement and the hearing on final approval. (Bordin-Wosk Decl., ¶ 25.)

1 As part of the Settlement Agreement, Parex, Merlex’s successor-in-interest, agreed to pay
2 Class Counsel’s reasonable attorneys’ fees and expenses of up to \$675,000, subject to approval of
3 the Court. (COE, Exh. 12 at ¶¶ I.12, IX.A.) Parex also agreed that the Class Representatives could
4 apply for service awards of \$18,000 to Fernando and Gloria Sandoval, \$6,000 to John and Christine
5 Alms, and \$3,000 to Jean Hammett. (COE, Exh. 12 at ¶ IX.C.)

6 **III. COUNSEL’S REQUEST FOR \$627,545 IN ATTORNEYS’ FEES IS REASONABLE**
7 **AND APPROPRIATE**

8 When a class action case is settled, it is up to the Court to review and approve any request for
9 attorneys’ fees to ensure that the requested fees are reasonable. *Robbins v. Alibrandi* (2005) 127
10 Cal.App.4th 438, 450. A settlement agreement that provides that plaintiffs’ counsel may seek
11 attorneys’ fees up to a capped amount and that the settling defendant will not challenge the requested
12 fee within that capped amount is proper and reasonable. *In re Consumer Privacy Cases* (2009) 175
13 Cal.App.4th 545, 552 (noting that such “clear sailing agreements” are commonplace, they help to
14 facilitate settlements while avoiding conflicts, and they are proper under California law).

15 The primary method of calculating attorneys’ fees in California is the lodestar method, in
16 which “the trial court multiplies the hours class counsel reasonably expended by reasonable hourly
17 rates, and this calculation can be enhanced or reduced by a multiplier depending on a number of
18 factors.” *Roos v. Honeywell Internat., Inc.* (2015) 241 Cal.App.4th 1472, 1490–1491, *disapproved*
19 *of on other grounds by Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260. Attorneys’
20 fees are broadly granted if they were incurred as long as they were “reasonably spent in pursuit of
21 this litigation,” regardless of whether a particular portion of time was spent on a successful or
22 unsuccessful matter. *See Sundance v. Municipal Court* (1987) 192 Cal.App.3d 268, 273. A party is
23 also entitled to fees incurred in motion practice for seeking the award of fees. *Graham v.*
24 *DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579.

25 “It is not necessary to provide detailed billing timesheets to support an award of attorney fees
26 under the lodestar method.” *Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309,
27 1324. All that is required are declarations providing a sufficient basis to allow the Court to determine
28 the scope and nature of work performed by counsel. *Id.* Nonetheless, where detailed time statements

1 are provided, they “are entitled to credence in the absence of a clear indication the records are
2 erroneous.” *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th
3 359, 396.

4 “Under the lodestar method, a party who qualifies for a fee should recover for all hours
5 reasonably spent unless special circumstances would render an award unjust.” *Vo v. Las Virgenes*
6 *Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 446; *see also Sundance v. Municipal Court* (1987)
7 192 Cal.App.3d 268, 274 (holding “all time reasonably spent should be compensated”). Given the
8 collaborative nature of legal practice, fees should not be reduced for claimed “overlapping work”
9 absent a clear indication that work of multiple lawyers was unnecessarily duplicative. *Horsford*, 132
10 Cal.App.4th at 397 (holding trial court abused its discretion in disregarding time records for any
11 alleged overlapping work). Accordingly, unless otherwise disputable, Class Counsel’s time records
12 are entitled to substantial credence.

13 Of additional note is that among Plaintiff’s causes of action for which the Court certified a
14 class is the Second Cause of Action brought under the Song-Beverly Consumer Warranty Act for
15 breach of implied warranty. (COE, Exh. 8 at ¶¶ 31-36.) Under Song-Beverly, a prevailing plaintiff
16 may be entitled to recovery of attorneys’ fees. Civil Code, § 1794(d). Although this matter has been
17 settled with significant relief for the class, and Class Counsel should be awarded attorneys’ fees in
18 any event, that Class Counsel obtained relief for the class on the Song-Beverly claim further supports
19 the conclusion that an award of attorneys’ fees is appropriate and fair in this case.

20 **A. COUNSEL’S HOURS WORKED WERE REASONABLE**

21 As detailed in the declarations of counsel filed hereto, and in redacted time records that will
22 be separately filed with the Court, Class Counsel have expended or will expend a total of 1309.9
23 hours between seven attorneys over the course of litigating this case for over four and a half years
24 through to final approval and through administration of the settlement terms. These hours included
25 substantial time necessary to investigate this matter and to attempt to locate affected homes and class
26 members. Merlex was aggressive in litigating this case at all stages and took the position at all times
27 that the claims were without merit. Merlex raised numerous substantive arguments about the legal
28 and factual merits of the claims, and it was tenacious in its discovery efforts, attempts to avoid

1 certification of a class (requiring three rounds of class certification briefing before the issue was fully
2 resolved), and attacks on the pleadings.

3 Class Counsel was required to prepare hundreds of discovery responses on behalf of the class
4 representatives, in addition to taking and defending several depositions, working through hundreds
5 of pages of written discovery responses, and reviewing numerous documents produced by Merlex
6 and various third-party entities. Counsel also was required to spend substantial time conferring with
7 class representatives, who were involved at a level highly unusual for most class actions. In addition
8 to the work of lead counsel Eduardo Martorell and Joshua Bordin-Wosk, Megan Atkinson, a former
9 associate of Bordin Martorell LLP and Martorell Law APC, was heavily involved in the investigation
10 and discovery process prior to class certification.

11 Ultimately, class certification was a lengthy process, but one that was met with success for
12 Plaintiffs. The Court ordered multiple rounds of supplemental briefing and several hearings before
13 finally certifying a class as to four of Plaintiffs' causes of action. In addition to his ongoing
14 involvement, Christopher Blanchard, an associate of Bordin Martorell LLP and then Bordin Semmer
15 LLP, was significantly involved in the preparation and argument of class certification, amending the
16 complaint and preparing briefs in opposition to Merlex's attacks on the pleadings, and preparing the
17 Motion for Attorneys' Fees.

18 Settlement negotiations were lengthy, precarious, and extremely complicated. As set forth in
19 the accompanying declaration of Martorell Law APC partner Jean-Paul Le Clercq, the settlement
20 negotiations were the most complicated he has faced in his career. In addition to other significant
21 work on the matter, Mr. Le Clercq took the lead in the laborious settlement negotiations from early
22 2019 until a settlement agreement was finally completed in late 2020.

23 In summary, the number of hours expended by Class Counsel has been reasonable and
24 appropriate given the complexity of this matter and the difficult legal issues presented in the case,
25 and a recovery of attorneys' fees in the amount of \$627,545 is reasonable and appropriate in this
26 case.

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28

1 **B. THE REQUESTED HOURLY RATES ARE REASONABLE**

2 In light of the costs, as set forth below, and the agreed-upon \$675,000 cap in attorneys' fees
3 and costs, the total fee being requested is \$627,545. Divided by the total hours of 1309.9, this
4 represents a blended hourly rate of \$479 per hour. This rate is reasonable and is, in fact, less than the
5 reasonable hourly rate that could have been awarded by this Court in any other circumstance.
6 Notably, Class Counsel agreed to accept a lower fee in order to enhance the chance that this Case
7 could settle without any reduction in benefit to class members, which all the more speaks to the
8 reasonableness of Class Counsel's fee request.

9 Counsel is entitled to compensation at hourly rates that reflect the reasonable market value of
10 its services in the community. *See Serrano v. Unruh* (1982) 32 Cal.3d 621,643. A reasonable hourly
11 rate is the prevailing rate charged by similarly situated attorneys in the community where the Court
12 is located. *Marshall v. Webster* (2020) 54 Cal.App.5th 275, 285. "[T]he trial court has broad authority
13 to determine the amount of a reasonable fee." *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095.
14 Factors that the Court may consider in setting the reasonable hourly rate include: "the skill and
15 experience of the attorneys, the nature of the work performed, the relevant area of expertise, their
16 customary billing rates, and the prevailing rate charged by attorneys of similar skill and experience
17 with comparable legal services in the community." *Flannery v. California Highway Patrol* (1998)
18 61 Cal.App.4th 629, 632–633.

19 "In Los Angeles, hourly rates between \$485 and \$750 are common." *Chambers v. Whirlpool*
20 *Corporation* (C.D. Cal. 2016) 214 F.Supp.3d 877, 899; *see also AECOM Energy & Construction,*
21 *Inc. v. Ripley* (C.D. Cal., Oct. 9, 2018, No. CV175398RSWLSSX) 2018 WL 4904774, at *3 (finding
22 \$892 per hour reasonable partner rate, \$554 per hour reasonable associate rate, and \$334 per hour
23 reasonable paralegal rate); *Perfect 10, Inc. v. Giganews, Inc.* (C.D. Cal., Mar. 24, 2015, No. CV 11-
24 07098-AB SHX) 2015 WL 1746484, at *30 (finding \$825-930 reasonable billing rate for a senior
25 partner, \$660-690 reasonable billing rate for an associate with 11 years experience, \$505 to be a
26 reasonable for an associate of 3 years experience, \$350-410 to be a reasonable billing rate for an
27 associate of 4 years experience, and \$350-360 to be a reasonable billing rate for an associate of 1
28 year's experience). In 2016, the California Supreme Court affirmed an award of \$6,333,333.33 in

1 attorneys' fees as a percentage of the recovery cross-checked against a lodestar of 4,463 hours.
2 *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 487. Adjusting for the lodestar multiplier
3 applied in that case of 2.13, the blended hourly attorney rate was \$666.23 per hour.¹ *See id.*

4 As set forth in the accompanying declarations of counsel, they are well-experienced attorneys
5 that have many years of combined experience in litigating class actions and other complex litigation
6 matters. In light of counsel's experience, the difficult work presented in this case, and the prevailing
7 rates in the community, a blended hourly rate of \$479 per hour is more than reasonable.

8 The widely used Laffey Matrix also supports the hourly rate here. *See Syers Properties III,*
9 *Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 696 (affirming trial court's decision to use the Laffey
10 Matrix as a guide for the reasonable hourly rates rather than rates actually paid). *See also Garnes v.*
11 *Barnhardt* (N.D. Ca. 2006) 2006 U.S. Dist. LEXIS 5938 (finding that "[o]ne reliable official source
12 for rates that vary by experience levels is the Laffey matrix used in the District of Columbia"). The
13 present version of the Laffey Matrix for 2021, which is based on District of Columbia rates, is as
14 follows:

15 Experience (in years)	Law Student/ Paralegal	1-3	4-7	8-10	11-19	20+
16 Rate	\$206	\$378	\$465	\$672	\$759	\$914

17
18 (COE, Exh. 13.) Notably courts have indicated that the Laffey Matrix may be below the rates actually
19 prevailing in California. *See, e.g., Fernandez v. Victoria Secret Stores, LLC* (C.D. Cal., July 21, 2008,
20 No. CV 06-04149 MMM SHX) 2008 WL 8150856, at *15 (adjusting the Laffey rates up by 4.37%
21 for Los Angeles); *In re HPL Technologies, Inc. Securities Litigation* (N.D. Cal. 2005) 366 F.Supp.2d
22 912, 922 (adjusting Laffey rates upward by 9% for the San Francisco Bay area).

23 Applying the above Laffey Matrix rates to the hours expended by each of the above attorneys,
24 along with a conservative estimate of the hours that will be incurred in shepherding this case through
25 remaining motions, final approval, and administration, demonstrates that the requested fees are
26 reasonable, even without an upward adjustment for Southern California rates:

27 _____

28 ¹ The equation for this calculation of a blended rate in *Lafitte* is: (total fees/multiplier)/total
hours, or $(\$6,333,333.33/2.13)/4,463 = \666.23 .

Attorney	Bar Admission	Hours	Rate	Total
Eduardo Martorell	2005	241.4 ²	\$759	\$183,222.60
Joshua Bordin-Wosk	2005	170	\$759	\$129,030.00
Jean-Paul Le Clercq	2007	216	\$759	\$163,944.00
Christopher Blanchard	2005 (2007 in California)	313.5	\$759	\$237,946.50
Megan Atkinson	2012	339	\$465	\$157,635.00
Angelo Mishriki	2015	23.6	\$465	\$10,974.00
Matthew Brown	2021	3.4	\$378	\$1,285.20
Law Clerks	N/A	3	\$150	\$450.00
	Total Hours:	1309.9	Lodestar	\$884,487.30
			Total:	

The Laffey Matrix confirms that the hourly rate applied here is more than reasonable. The total requested fee is more than reasonable considering the complexity of this case, the hours reasonably expended, and the reasonable hourly rates. It is, in fact, less than would be appropriate under a pure lodestar approach. Class Counsel therefore respectfully requests that the Court award Class Counsel \$627,545 in attorneys' fees in this matter.

² Counsel's hours represent hours worked prior to this Motion, and an estimated additional hours in the future for further motion practice, hearings on final approval, and administration of the settlement, as set forth in their accompanying declarations.

1 **IV. CLASS COUNSEL’S REQUEST FOR \$47,475 IN COSTS AND EXPENSES IS**
2 **REASONABLE AND APPROPRIATE**

3 As set forth in the declarations of Eduardo Martorell and Joshua Bordin-Wosk and supporting
4 exhibits, Class Counsel have incurred a total of \$47,475 in litigation costs. These costs include filing
5 fees, expert fees, deposition costs, investigators’ fees, service fees, mediation fees, postage, and
6 similarly common expenses incurred in representing clients in litigation. *See Weil & Brown, et al.,*
7 *Cal. Prac. Guide Prof. Resp.* (Rutter Group 2020) § 5:547. In light of the length of time this case has
8 been pending and the considerable effort undertaken to obtain relief, including extensive
9 investigation and necessity of relying on expert consultation, the requested amount of costs is
10 reasonable.

11 Class Counsel requests that these costs be allocated as \$23,737.50 to Martorell Law APC and
12 \$23,737.50 to Bordin Semmer LLP.

13 **V. SERVICE AWARDS TO CLASS REPRESENTATIVES ARE APPROPRIATE AND**
14 **REASONABLE**

15 Plaintiffs request that the Court make service awards of \$18,000 to Fernando and Gloria
16 Sandoval, \$6,000 to John and Christine Alms, and \$3,000 to Jean Hammett. Service awards to class
17 representatives are designed to incentivize plaintiffs to undertake risks associated with bringing a
18 lawsuit and serving in a representative capacity and to compensate the class representatives for the
19 time they expended on behalf of the class. *See In re. Cellphone Fee Termination Cases* (2010) 186
20 Cal.App.4th 1380 (approving incentive payments of \$10,000 each); *Bell v. Farmers Ins. Exchange*
21 (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named plaintiffs for their efforts
22 in bringing the case).

23 The “[c]riteria courts may consider in determining whether to make an incentive award
24 include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2)
25 the notoriety and personal difficulties encountered by the class representative; 3) the amount of time
26 and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal
27 benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.” *Van Vranken*
28 *v. Atlantice Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299

1 As set forth in the declarations of each of the Class Representatives, the time they dedicated
2 to this case was substantial. Notably, and in support of Plaintiffs Gloria and Fernando Sandoval, Mr.
3 Sandoval himself spent an inordinate, 1,553 hours hours either dealing with the defective stucco on
4 his home/walls or dealing with this case specifically, which is more than sufficient amount of time
5 to support his requested \$18,000 enhancement award. Mr. Sandoval traveled all over Southern
6 California to locate affected homes in an effort to ensure that all potential class members could be
7 identified and that as many affected individuals as possible could obtain relief. Mr. Sandoval, and all
8 class representatives, were passionate advocates for the class and at all times prioritized obtaining
9 relief that genuinely resolved the problems caused by the defective stucco rather than seeking a quick
10 settlement.

11 Class Counsel can attest that each of the Class Representatives were highly engaged and, in
12 fact, participated in this litigation to an unusually high degree. They were each committed to ensuring
13 that members of the class would obtain relief and that the rust spot problems would be fixed.
14 Fernando Sandoval and John Alms sat for extensive depositions. They dedicated substantial time to
15 representing the class and were exemplary class representatives. The small service awards requested
16 are more than reasonable under the circumstances.

17 **VI. CONCLUSION**

18 For the foregoing reasons, and based on the evidence filed in support, Class Counsel
19 respectfully requests that the Court enter an order awarding attorneys' fees and costs to Class
20 Counsel as set forth above, and incentive awards to Class Representatives as set forth above.

21 Respectfully submitted,

22 Dated: February 5, 2021

BORDIN SEMMER LLP

23
24 By:




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26 _____
27 Joshua Bordin-Wosk
28 Christopher Blanchard
Attorneys for Plaintiffs

1 Dated: February 5, 2021

MARTORELL LAW APC

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By: _____
Eduardo Martorell
Jean-Paul Le Clercq
Attorneys for Plaintiffs

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PROOF OF SERVICE

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 February 5, 2021, I served the within document(s) described as:

NOTICE OF MOTION AND MOTION FOR AN AWARD OF ATTORNEY FEES, COSTS AND EXPENSES AND INCENTIVE AWARDS; MEMORANDUM OF POINTS AND AUTHORITIES

COMPENDIUM OF EVIDENCE LODGED IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEY FEES, COSTS AND EXPENSES AND INCENTIVE AWARDS

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

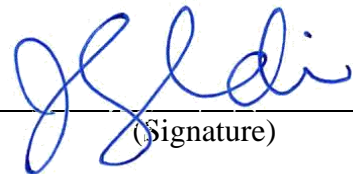
(BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached mailing list. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing 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 February 5, 2021, 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.

Jasmine Soltanmoradi
(Type or print name)


(Signature)

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

3 **Case No.: BC619322**

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

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