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Clerk of the Superior Court
DEC 19 2014
K. BRECKENRIDGE

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SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN DIEGO

SONIA HOFMANN,

Plaintiff,

vs.

PERMATEX,

Defendant.

) Case No. 37-2013-00041164-CU-BT-CTL

) CLASS ACTION

) **REVISED [~~PROPOSED~~] ORDER**
) **GRANTING RENEWED MOTION**
) **FOR PRELIMINARY APPROVAL OF**
) **CLASS ACTION SETTLEMENT AND**
) **APPROVING FORM AND MANNER**
) **OF SERVICE**

) Judge: Hon. Timothy Taylor
) Dept.: C-72

WHEREAS, this action is pending before this Court as a putative class action; and
WHEREAS, the parties most recently applied to this Court for an Order preliminarily approving the settlement of the above-captioned litigation ("Action") in accordance with the parties' Settlement Agreement, dated August 28, 2014, which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Action, and for dismissal of the Action with prejudice against defendant PERMATEX, a division of ILLINOIS TOOL WORKS INC. ("Permatex" or "Defendant") upon the terms and conditions set forth

1 therein; and the Court having read and considered the Settlement Agreement and the exhibits
2 annexed thereto;

3 NOW, THEREFORE, it is hereby ORDERED:

4 1. This Preliminary Approval Order incorporates by reference the definitions in the
5 Settlement Agreement, and all terms used herein shall have the same meaning as set forth in the
6 Settlement Agreement, *and incorporates the minutes for 12/19/14.* ^{to}

7 2. The Court hereby preliminarily approves the Settlement Agreement.

8 3. The Court finds that the requirements of California Code of Civil Procedure § 382
9 have been satisfied for certifying a Settlement Class and the Court has made a preliminary
10 determination that plaintiff and representative Sonia Hofmann ("Plaintiff") is an adequate class
11 representative of the Settlement Class.

12 4. The Court hereby certifies the Settlement Class, as defined in the Settlement
13 Agreement, for settlement purposes only and in accordance with the standards set forth in *Dunk*
14 *v. Ford Motor Company* (1996) 48 Cal.App.4th 1794.

15 5. Pending resolution of these settlement proceedings, no other action now pending
16 or hereinafter filed arising out of all or any part of the subject matter of the Action shall be
17 maintained as a class action and, except as provided by further order of the Court, for good cause
18 shown, all persons are hereby enjoined, during the pendency of these settlement proceedings,
19 from filing or prosecuting purported class actions against Defendant with respect to any of the
20 Released Claims as defined in the Settlement Agreement.

21 6. A hearing ("Final Approval Hearing") shall be held before this Court at 330 W.
22 Broadway, Department 72, San Diego, CA 92101 on June 26, 2015, at 1:30 p.m., to determine:
23 (a) whether the proposed settlement of the Action on the terms and conditions provided for the in
24 the Settlement Agreement are fair, reasonable and adequate, and (b) whether a final approval
25 order and judgment should be entered herein. The Court may adjourn or continue the Final
26 Approval Hearing without further notice to the Settlement Class.

27 7. The Court hereby approves, as to form and content, the forms of notice annexed
28 as Exhibits A, F, and H to Settlement Agreement and the Notice Program set forth in paragraphs

1 E.1 to E.9 of the Settlement. The Court finds that the Notice meets the requirements of
2 California Code of Civil Procedure §§ 382 and 581(k), California Rule of Court 3.766(d), and of
3 due process, and is the most reasonable notice that is practicable under the circumstances, and
4 shall constitute due and sufficient notice to all persons entitled thereto.

5 8. Within twenty (20) days of the date of this Order, the Court hereby directs
6 Defendant to distribute the Notice as set forth in paragraphs E.1 to E.9 of the Settlement.
7 Defendant shall pay the costs of claims administration, including the costs associated with
8 preparing, printing and disseminating to the Settlement Class the Notices as set forth in
9 paragraphs E.1 - E.9 of the Settlement Agreement in amount not to exceed \$60,000.00.

10 9. At least fourteen court (14) days prior to the Final Approval Hearing, Defendant,
11 through its counsel of record, shall cause to be filed with the Court a sworn affidavit evidencing
12 compliance with the provisions of Settlement Agreement as it relates to providing Notice.

13 10. Upon the Effective Date, as defined in the Settlement Agreement, all members of
14 the Settlement Class who have not opted out of the settlement shall be enjoined and barred from
15 asserting any of the Released Claims against Permatex and the Released Parties, and each Class
16 Member shall be deemed to release any and all such Released Claims as against Permatex and
17 the Released Parties, as these terms are defined in the Settlement Agreement.

18 11. Any Class Member may enter an appearance through counsel of such member's
19 own choosing and at such member's own expense or may appear individually and show cause, if
20 he or she has any facts or arguments to present, as to: (a) why the proposed settlement of the
21 Action as set forth in the Settlement Agreement should or should not be approved as fair,
22 reasonable, and adequate; and (b) why the final approval order and judgment should or should
23 not be entered on the proposed Settlement Agreement. However, no Class Member or any other
24 person shall be heard or entitled to contest the approval of the terms and conditions of the
25 proposed settlement, or, if approved, the Final Approval Order and Judgment to be entered
26 thereon approving the same or the fees and expenses to be awarded, unless on or before February
27 17, 2015, that person has filed with the Court and served (by hand delivery or by First Class
28 regular U.S. mail) written objections complying with the specifications in the Notice. Service of

1 any objections shall be made to Class Counsel, Attn: John H. Donboli, DEL MAR LAW
2 GROUP, LLP, 12250 El Camino Real, Suite 120, San Diego, CA 92130, and Permatex's
3 Counsel: Bradley Cohn, PATTISHALL, MCAULIFFE, NEWBURY, HILLIARD &
4 GERALDSON LLP, 200 S. Wacker Drive, Suite 2900, Chicago, IL 60606. In addition, if a
5 Class Member wishes to submit to the Court any brief in support of his or her objection, he or
6 she must file the brief with the Court and serve it on both Class Counsel and counsel for
7 Defendant prior to February 17, 2015.

8 12. Any Class Member who does not make their objection in the manner provided for
9 in this Preliminary Approval Order shall be deemed to have waived such objection and shall
10 forever be foreclosed from making any objection to or appeal of the fairness, reasonableness or
11 adequacy of the proposed settlement, and to the award of fees and expenses to Class Counsel and
12 other costs, all as set forth in the Settlement Agreement and Preliminary Order.

13 13. Any member of the Settlement Class may choose to exclude himself or herself
14 from the settlement. Any such person who chooses to be excluded from the settlement will not
15 be entitled to any recovery and will not be bound by the Settlement Agreement or have any right
16 to object, appear or comment thereon. Any such person who chooses to request exclusion may
17 do so by submitting a written statement requesting exclusion from the class on or before
18 February 17, 2015. Such written request for exclusion must contain the name, address, and
19 telephone number of the person requesting exclusion, reference the name and number of this
20 litigation (*Hofmann v. Permatex et al.*, San Diego Superior Court, Case No. 37-2013-00041164-
21 CU-BT-CTL), be signed personally by the person requesting exclusion, and be mailed to Class
22 Counsel and counsel for Defendant and postmarked on or before February 17, 2015.

23 14. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of
24 the negotiations or proceedings connected with it, shall be construed in this or any lawsuit as an
25 admission or concession by Defendant of the truth of any of the allegations of the Action, or of
26 any liability, fault, or wrongdoing of any kind, or by the named Plaintiff Sonia Hofmann or any
27 other member of the Settlement Class of the merit of any defense or lack of merit of any claim.

28 15. The Court reserves the right to continue or adjourn the date of the Final Approval

1 Hearing without further notice to the Settlement Class, and retains jurisdiction to consider all
2 further applications arising out of or connected with the proposed settlement.

3 IT IS SO ORDERED.

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5 DATED: 12/19, 2014

By 
THE HONORABLE TIMOTHY TAYLOR JUDGE
OF THE SUPERIOR COURT

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