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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MAY 24 2023

E. Escobedo

Attorneys for Plaintiffs Jorge Aguilera Rodriguez and Eric Hernandez

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

JORGE AGUILERA RODRIGUEZ and ERIC
HERNANDEZ, individually, and on behalf of
other members of the general public similarly
situated,

Plaintiff,

vs.

IMPERIAL WESTERN PRODUCTS, INC., A
CALIFORNIA CORPORATION, a California
corporation; DENALI WATER SOLUTIONS,
LLC, a Delaware limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: CVRI2000071

Assigned to the Hon. Harold W. Hopp

RESERVATION NO. 648601690336

**~~AMENDED PROPOSED~~ ORDER
GRANTING MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: May 24, 2023
Time: 8:30 a.m.
Place: Department 10

1 **ORDER**

2 On May 24, 2023, this Court conducted a hearing on Plaintiffs’ Motion for Preliminary
3 Approval of the Class Action Settlement (the “Motion”). Having considered the Motion and the points
4 and authorities submitted in support of the Motion, including the Amended Joint Stipulation of Class
5 Action Settlement and Release (“Settlement Agreement” or “Settlement”), and **GOOD CAUSE**
6 appearing, **IT IS HEREBY ORDERED** that the Motion is **GRANTED**, subject to the following
7 findings and orders:

8 1. This Order incorporates by reference the Settlement Agreement, and unless indicated
9 otherwise, all capitalized terms used herein will have the same meaning as set forth in the Settlement
10 Agreement.

11 2. The Settlement Class shall be conditionally certified for settlement purposes only and
12 shall consist of all non-exempt employees who worked for IWP in California at any time between
13 November 4, 2016 and April 29, 2022.

14 3. The class action settlement set forth in the Settlement Agreement, entered into among
15 the Parties and their counsel, is preliminarily approved as it appears to be proper, to fall within the range
16 of reasonableness, to be the product of arm’s-length and informed negotiations, to treat all Class
17 Members fairly, and to be presumptively valid, subject only to any objections that may be raised at or
18 before the final approval hearing.

19 4. The Court further finds that Plaintiffs conducted extensive investigation and research,
20 and that they were able to reasonably evaluate their positions and the strengths and weaknesses of their
21 claims and their ability to certify them. Plaintiffs have provided the Court with enough information about
22 the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an
23 independent assessment of the reasonableness of the terms to which the Parties have agreed.

24 5. The Court also finds that settlement now will avoid additional and potentially substantial
25 litigation costs, as well as delay and risks if the Parties were to continue to litigate the Action.

26 6. The Court preliminarily approves the Settlement Agreement, including all the terms and
27 conditions set forth therein and the Gross Settlement Amount and allocation of payments.

28 7. The rights of any potential dissenters to the proposed Settlement are adequately

1 protected in that they may exclude themselves from the Settlement and proceed with any alleged claims
2 they may have against Defendants, or they may object to the Settlement and appear before this Court.
3 However, to do so they must follow the procedures outlined in the Settlement Agreement and Notice of
4 Class and Representative Action Settlement (“Class Notice”).

5 8. The Court approves, as to form and content, the proposed Class Notice, Exclusion Form,
6 and Objection Form, attached as exhibits A, B, and C. Class Members are directed to submit the
7 Exclusion Forms and Objection Forms directly to the Settlement Administrator, and not the Court. The
8 Settlement Administrator shall file a declaration concurrently with the filing of the motion for final
9 approval authenticating a copy of every Exclusion Form and Objection Form received. Counsel or the
10 Settlement Administrator must give notice to any objecting party of any continuance of the hearing of
11 the motion for final approval.

12 9. The Court directs the mailing, by First-Class U.S. mail, of the Class Notices to Class
13 Members in accordance with the schedule set forth below and the other procedures described in the
14 Settlement Agreement. The Court finds that the method selected for communicating the preliminary
15 approval of the Settlement Agreement to Class Members is the best notice practicable under the
16 circumstances, constitutes due and sufficient notice to all persons entitled to notice, and thereby satisfies
17 due process.

18 10. The Court appoints Plaintiffs Jorge Aguilera Rodriguez and Eric Hernandez as the
19 representatives for the Settlement Class conditionally certified by this Order.

20 11. The Court appoints Capstone Law APC as Class Counsel. The Court finds that counsel
21 have demonstrable experience litigating, certifying, and settling class actions, and will serve as adequate
22 counsel for the Class conditionally certified by this Order.

23 12. The Court approves and appoints CPT Group, Inc. as the Settlement Administrator, and
24 administration costs not to exceed \$15,000 (absent good cause). The Settlement Administrator shall
25 perform all services set forth in Article III of the Settlement Agreement.

26 13. The following dates shall govern for purposes of this Settlement:

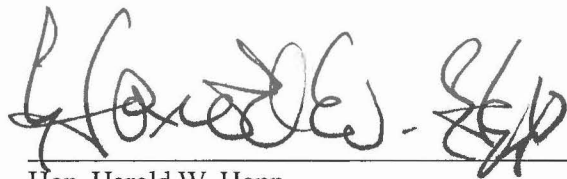
Date	Event
June 8, 2023 (or not later than 10 business days after the Court grants preliminary approval of the Settlement Agreement, if later)	Last day for Defendants to produce the Class List to the Settlement Administrator.

Date	Event
June 23, 2023 (or not later than 10 business days after Defendants produce the Class List, if later)	Last day for the Settlement Administrator to mail Class Notices to all Class Members.
August 7, 2023 (or not later than 45 calendar days after the Settlement Administrator mails the Class Notices, if later)	Last day for Class Members to submit Requests for Exclusion or Objections to the Settlement.
No later than 16 court days prior to the Hearing on the Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Enhancement Payments	Last day for Plaintiffs to file and serve the Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Enhancement Payments.
September 20, 2023 at 8:30 a.m.	Hearing on Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Enhancement Payments.

14. The Court expressly reserves the right to continue or adjourn the final approval hearing without further notice to the Class Members.

IT IS SO ORDERED.

Dated: 5/24/23



Hon. Harold W. Hopp
Riverside County Superior Court Judge

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF RIVERSIDE

NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully

To: All non-exempt hourly employees who were employed by defendant Imperial Western Products, Inc. (“TWP”) and who worked in California at any time between November 4, 2016, through April 29, 2022 (“Class Members”).

All non-exempt hourly employees who were employed by IWP and who worked in California at any time between November 2, 2019, through April 29, 2022 (“PAGA Members”).

On _____, the Honorable Harold W. Hopp of the Riverside County Superior Court (the “Court”) granted preliminary approval of this class and representative action settlement and ordered the litigants to notify all Class Members and PAGA Members of the settlement. **You have received this notice because Defendants’ records indicate that you are a Class Member and/or PAGA Member, and therefore entitled to a payment from the Settlement.**

Unless you choose to opt out of the Settlement by following the procedures described below, you will be deemed a Class Member and/or PAGA Member and, if the Court grants final approval of the Settlement, you will be mailed a check for your share of the Settlement fund. The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at _:00 .m. on _____, 2023, in Department 10 of the Riverside County Superior Court located at 4050 Main Street, Riverside, California 92501.

Please also note that the Final Fairness Hearing may be rescheduled by the Court to another date and/or time. Please visit the Court’s website for any scheduling changes.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don’t Have to Do Anything to Participate in the Settlement	If you do nothing, you will be deemed a “Participating Class Member,” and will be eligible for a payment from the Net Settlement Fund and/or PAGA Fund. In exchange, you will be bound by the terms of the proposed Settlement and give up your right to assert wage and hour claims and PAGA penalty claims against Defendants and the other Released Parties based on the facts alleged in the Action during the applicable Class Period and PAGA Period.
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<p>You Can Opt-out of the Class Settlement but not the PAGA Settlement</p> <p>The Opt-out Deadline is [DATE]</p>	<p>If you don't want to fully participate in the proposed Settlement, you can opt-out of the class settlement by sending the Settlement Administrator a written request for exclusion. Once excluded, you will no longer be eligible for a payment from the Net Settlement Fund and will not be bound by the terms of the proposed class settlement.</p> <p>You cannot opt-out of the PAGA portion of the proposed Settlement. PAGA Members remain eligible to receive a payment from the PAGA Fund and must give up their rights to pursue PAGA penalty claims against Defendants based on the facts alleged in the Action during the PAGA Period.</p>
<p>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</p> <p>Written Objections Must be Submitted by [DATE]</p>	<p>All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed class settlement, but not the PAGA settlement.</p>
<p>You Can Participate in the [DATE] Final Approval Hearing</p>	<p>The Court's Final Approval Hearing is scheduled to take place on [DATE] in Department 10 of the Riverside County Superior Court located at 4050 Main Street, Riverside, California 92501. You don't have to attend, but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing.</p> <p>If the Court grants final approval of the Settlement despite your objection, you will receive a payment from the Net Settlement Fund and you will be bound by the terms of the Settlement.</p>

Summary of the Litigation

On November 4, 2020, Plaintiff Jorge Rodriguez, on his behalf and on behalf of other current and former non-exempt employees, filed a complaint against IWP in Riverside County Superior Court, Case No. CVRI2000071, alleging that IWP violated California state labor laws as a result of its alleged failure to, among other things: (1) pay minimum and overtime wages to employees for all hours worked; (2) provide employees with meal and rest breaks; (3) timely pay all wages owed to employees during each pay period and upon termination of their employment; (4) provide one day of rest in seven; (5) reimburse business expenses; (6) provide employees with accurate, itemized wage statements and maintain accurate payroll records; and (7) unfair and unlawful business practices (the "Action"). On or about January 7, 2021, Plaintiff Rodriguez filed an amended complaint in the Action alleging an additional cause of action for civil penalties based on the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.* ("PAGA"). In November 2020 and May 2022, Plaintiff Rodriguez and/or Eric Hernandez ("Plaintiffs") submitted letters to the California Labor and Workforce Development Agency ("LWDA") alleging violations by IWP and Denali Water Solutions, LLC ("Defendants") of the PAGA. On or about September 15, 2022, Plaintiffs filed the operative Second Amended Complaint against Defendants in this Action ("Complaint"). Plaintiffs also sought derivative statutory penalties, interest, and attorneys' fees and costs based on these alleged violations.

After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. On October 25, 2022, the parties participated in a mediation with Daniel Turner, an experienced and well-respected class action mediator. With Mr. Turner's guidance, the parties were able to negotiate a complete settlement of Plaintiffs' claims.

Counsel for Plaintiffs, and the attorneys appointed by the Court to represent the class, Capstone Law APC ("Class Counsel"), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this Action have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Despite agreeing to and supporting the Settlement, Defendants deny any liability or wrongdoing of any kind whatsoever associated with Plaintiffs' allegations and claims brought in the Action or that could have been brought based on the facts alleged. Defendants assert that they have valid defenses to Plaintiffs' claims. By agreeing to settle, Defendants are not admitting liability on any of the factual allegations or claims in the Action or that the Action can or should proceed as a class or PAGA action. Defendants have agreed to settle the case as part of a compromise with Plaintiffs. The Court has not ruled on who should win. Rather, the Parties have entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Settlement Agreement, in order to avoid the burden, expense, and uncertainty associated with litigating Plaintiffs' claims.

Summary of the Proposed Settlement Terms

Plaintiffs and Defendants have agreed to settle the alleged class and PAGA claims in the Action in exchange for a Gross Settlement Amount of \$635,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) Class Representative Enhancement Payments of \$5,000, each, to Jorge Rodriguez and Eric Hernandez for their services on behalf of the class; (3) \$211,667 in attorneys' fees and up to \$25,000 in litigation costs and expenses; (4) a \$40,000 settlement of claims under the PAGA, inclusive of a \$30,000 payment to the LWDA in connection with the PAGA, and a \$10,000 payment ("PAGA Fund") to all PAGA Members; and (5) reasonable Settlement Administrator's fees and expenses of up to \$15,000. After deducting the above payments, a total of approximately \$_____ will be allocated to Class Members who do not opt out of the Class Settlement ("Net Settlement Fund"). Additionally, all PAGA Members will receive a proportional share of the \$10,000 PAGA Fund, regardless of whether they opt out of the Class Settlement.

Payments from Net Settlement Fund. Defendants will calculate the total number of workweeks worked by each Class Member as a non-exempt employee from November 4, 2016, through April 29, 2022 ("Class Period"), and the aggregate total number of qualifying workweeks worked by all Class Members during the Class Period. Qualifying workweeks will be rounded up to the next whole integer, and each Class Member will be deemed to have worked during at least one qualifying workweek. To determine each Class Member's estimated share of the Net Settlement Fund, the Settlement Administrator will use the following formula: The Net Settlement Fund will be divided by the aggregate total number of qualifying workweeks, resulting in the "Qualifying Workweeks Value." Each Class Member's share of the Net Settlement Fund will be calculated by multiplying each individual Class Member's total number of workweeks during the Class Period by the Qualifying Workweeks Value. The Individual Settlement Payment will be reduced by any required deductions for each Class Members as specifically set forth herein, including employee-side tax withholdings or deductions. If there are any valid and timely requests for exclusion from the Settlement, the Settlement Administrator shall proportionately increase each Participating Class Member's share of the Net Settlement Fund according to the number of qualifying workweeks worked, so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Fund.

According to Defendants' records, you worked during the Class Period in a non-exempt position for a total of _____ workweeks. Accordingly, your estimated payment from the Net Settlement Fund is approximately \$ _____.

Payments from PAGA Fund. Defendants will calculate the total number of workweeks worked by each PAGA Member as a non-exempt employee from November 2, 2019, through April 29, 2022 ("PAGA Period"), and the aggregate total number of qualifying workweeks worked by all PAGA Members during the PAGA Period. Qualifying workweeks will be rounded up to the next whole integer, and each PAGA Member will be deemed to have worked during at least one qualifying workweek. To determine each PAGA Member's estimated share of the PAGA Fund, the Settlement Administrator will use the following formula: The PAGA Fund will be divided by the aggregate total number of qualifying workweeks, resulting in the "PAGA Pay Period Value." Each PAGA Member's share of the PAGA Fund will be calculated by multiplying each individual PAGA Member's total number of workweeks during the PAGA Period by the PAGA Pay Period Value. A request for exclusion from the Settlement does not exclude a PAGA Member from the Release Class Claims and/or Released PAGA Claims, and the PAGA Member will receive their portion of the PAGA Fund even if they submit a valid request for exclusion as to the Class Settlement.

According to Defendants' records, you worked during the PAGA Period in a non-exempt position for a total of _____ workweeks. Accordingly, your estimated payment from the PAGA Fund is approximately \$ _____.

Your Estimated Payment: Based on the above, your estimated payment from the Settlement is approximately \$ _____. If you believe the workweek information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute (such as check stubs, W2s, or letters from HR). All disputes must be postmarked or faxed on or before [insert date of Response Deadline] and must be sent to:

Settlement Administrator
c/o _____
Fax No. _____

If you dispute the information stated above, Defendants' records will control unless you are able to provide documentation that establishes otherwise.

Taxes on Settlement Payments. IRS Forms W-2 and 1099 will be distributed to Participating Class Members and the appropriate taxing authorities reflecting the payments they receive under the Settlement. For purposes of this Settlement, one-third of each Settlement payment to Participating Class Members will be allocated as wages for which IRS Forms W-2 will be issued, and two-thirds will be allocated as non-wages for which IRS Forms 1099-MISC will be issued. All payments to PAGA Members from the PAGA Fund will be allocated as non-wages for which IRS Forms 1099-MISC will be issued. Class Members and PAGA Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. Settlement payment checks to Class Members and PAGA Members returned as undeliverable or remaining uncashed for more than one hundred and eighty (180) calendar days after issuance will be redistributed to Class Members who did deposit their checks. Any remaining unclaimed funds will be paid to Riverside Legal Aid.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If you want to receive your payment from the Settlement, then no further action is required on your part. You will automatically receive your Settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the Settlement, you will be mailed a check for your share of the Settlement funds. In addition, as to Defendants and all of their current and former officers, directors, members, managers, employees, agents, successors, or assigns (“Released Parties”), you will be deemed to have released the Released Class Claims during the Class Period and will be barred from collecting PAGA civil penalties on behalf of yourself and the LWDA for any of the Released PAGA Claims during the PAGA Period:

Released Class Claims: All claims, rights, demands, liabilities and causes of action reasonably arising from the facts pleaded in the operative complaint in the Action, or as reasonably could have been pleaded, including any such claims that were litigated in the Action against Defendants or could reasonably have been litigated in the Action against Defendants based on the facts pleaded in the complaint in the Action. The claims released under this paragraph (“Released Claims”) shall include, but are not necessarily limited to, claims for unpaid wages, unpaid overtime, failure to timely pay all earned wages, meal and rest break violations and/or failure to timely pay meal and/or rest premiums, failure to provide one day’s rest in seven, off the clock work, inaccurate wage statements, record keeping violations, failure to reimburse business expenses, failure to pay all wages owed upon termination, unfair competition, as well as any and all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys’ fees resulting therefrom. This release shall not apply to claims for workers’ compensation benefits, unemployment insurance benefits, or any other claim or right that as a matter of law cannot be waived or released.

Released PAGA Claims: All claims exhausted in Plaintiffs’ notice(s) sent to the LWDA and alleged in the operative complaint, which arose during the PAGA Period.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the class settlement, you may exclude yourself by completing and returning the enclosed Exclusion Form. The Exclusion Form must be mailed or faxed to the Settlement Administrator:

Settlement Administrator
c/o _____

The Exclusion Form must be postmarked or faxed not no later than _____, 2023. If you submit an Exclusion Form which is not postmarked or faxed by _____, 2023, your request for exclusion will be rejected, and you will be included in the Class Settlement.

If you choose **Option 2**, you will no longer be a Class Member, and you will:

- Not receive a Payment from the Net Settlement Fund.
- Not release the Released Class Claims.
- If you are a PAGA Member, you will still be barred from collecting PAGA civil penalties for any of the Released PAGA Claims during the PAGA Period, and will receive a payment from the PAGA Fund.

Option 3 – Object to the Settlement

If you decide to object to the Settlement because you find it unfair or unreasonable, you may submit the enclosed Objection Form. The Objection Form must be mailed to the Settlement Administrator at [administrator’s address].

All Objection Forms must be postmarked or faxed to the Settlement Administrator by no later than _____ 2023. By submitting an objection, you are not excluding yourself from the Settlement. To exclude yourself from the Settlement, you must follow the directions described above. Please note that you cannot both object to the Settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness Hearing set for _____, 2023, at _____ a.m./p.m. in the Superior Court of the State of California, for the County of Riverside and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the Settlement. If the Court overrules your objection, you will be deemed to have released the Released Class Claims and Released PAGA Claims.

Additional Information

This Notice of Class and Representative Action Settlement is only a summary of the Action and the Settlement. For a more detailed statement of the matters involved in the Action and the Settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members and PAGA Members regarding this Notice and/or the Settlement should be directed to the Settlement Administrator or Class Counsel.

Raul Perez
Capstone Law APC
1875 Century Park E., Suite 1000
Los Angeles, CA 90067
Phone: 1 (888) 372-4412

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANTS OR DEFENDANTS’ ATTORNEYS WITH INQUIRIES.

EXHIBIT B

Rodriguez v. Imperial Western Products, Inc., Case No. CVRI2000071

EXCLUSION FORM

COMPLETE THIS FORM **ONLY IF YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS.**

YOU MUST POSTMARK OR FAX THIS FORM TO THE SETTLEMENT ADMINISTRATOR NO LATER THAN **[DEADLINE]**.

**THIS MUST BE MAILED OR FAXED TO:
CPT GROUP, INC., THE SETTLEMENT ADMINISTRATOR
50 Corporate Park, Irvine, CA 92606
Fax No. _____**

IF YOU EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS, YOU **WILL NOT RECEIVE** YOUR PAYMENT FROM THE CLASS SETTLEMENT, BUT IF YOU ARE A PAGA GROUP MEMBER, YOU WILL STILL RECEIVE YOUR PAYMENT FROM THE PAGA FUND.

I _____ request to be excluded from the Settlement Class in the matter of *Rodriguez v. Imperial Western Products, Inc.*, Case No. CVRI2000071 (Riverside County Superior Court). I understand that by submitting this Exclusion Form, I will no longer be eligible for a payment from the settlement.

Sign your name here

Print your name here

Address

Telephone

EXHIBIT C

OBJECTION FORM

COMPLETE THIS FORM **ONLY IF YOU WISH TO OBJECT TO THE SETTLEMENT.**

YOU MUST POSTMARK THIS FORM TO THE SETTLEMENT ADMINISTRATOR NO LATER THAN **[DEADLINE]**.

**MAIL OR FAX TO: CPT GROUP, INC., THE SETTLEMENT ADMINISTRATOR
50 Corporate Park, Irvine, CA 92606**

NOTE: If you submit an objection to the settlement, your objection will become a part of the public record and will be available for the public to review.

Please provide the following information for the public record:

Name: _____

Address: _____

Telephone: _____

Signature: _____

I OBJECT TO THE SETTLEMENT BECAUSE:

