

NOV 09 2017

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8 RONALD BEREND, KEITH BISPO

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

RECEIVED
Central Civil West
OCT 06 2017
By: M. Aguirre

11
12 ROBERT AGUIRRE, IRVING BELTRAN,)
13 JAKE BEREND, RONALD BEREND,)
14 KEITH BISPO)

15 Plaintiffs,

16 vs.

17 MIDWEST ENVIRONMENTAL
18 CONTROL, INC., MEC, INC.

19 Defendants

CASE NO. JCCP 4797 / S-1500-CV-282121

JUDGMENT ON A CLASS ACTION
SETTLEMENT

DATE: 11-9-17

TIME: 10:00 A.M.

DEPT: 310

20
21 Following Plaintiffs' motions for preliminary and final approval of a class action settlement,
22 the court enters the following judgment:

23 1. For the purpose of this settlement a class is certified as follows: June 20, 2017 and going
24 back to May 28, 2010, all hourly California employees of Defendant, MIDWEST
25 ENVIRONMENTAL CONTROL, INC. and/or MEC, Inc. who earned California prevailing wages
26 including, but not limited to the correct rates as well as overtime and double time and who are
27 beneficiaries under non-Federal prevailing wage contracts for which prevailing wages were not
28 properly paid, failed to have all wages paid when they quit or were fired according to California

1 Labor Code Sections 201 and 202, had earned wages converted by the employer while claiming the
2 employer was placing the wages into a 401k for the employee, whose payroll stubs failed to indicate
3 the hourly rates of pay, whose paystubs failed to properly show deductions including deductions
4 for a 401k, failed to accurately show how the net amounts were derived, failed to disclose how
5 many hours were paid at prevailing wage opposed to how many were not, and failed to accurately
6 or at all state the hourly prevailing wage the employees were being paid.

7 2. To the extent it is authorized by law this court incorporates the terms of the Joint
8 Stipulation of Class Action Settlement and Release attached hereto, made a part hereof, and Marked
9 as Exhibit 1 hereto into this judgment.

10 3. Plaintiffs, JAKE and RONALD BEREND are appointed class representatives.

11 4. Karl Gerber is appointed Class Counsel.

12 5. CPT Group, Incorporated is appointed as the Settlement Administrator.

13 6. Gross Settlement Sums shall be paid as follows: (1) Settlement Administrator will pay
14 Class Representative Ronald Berend \$5,000, Jake Berend \$5,000, \$3,000 each to Plaintiffs, Robert
15 Aguirre, Irving Beltran, and Keith Bispo. All sums shall be paid in pro-rata shares with each
16 distribution to the Class with these funds proportionately divided based upon their total share of
17 available deposited funds each time Defendants make a payment to the Settlement Administrator;
18 (2) Class Counsel will be paid \$15,000 for costs and attorney fees of \$116,666 in pro-rata shares
19 with each distribution to the Class proportionately divided based upon their total share of available
20 deposited funds each time Defendants make a payment to the Settlement Administrator; (3) the
21 claims administrator will disburse the claims administration and receive fees of Twenty Six
22 Thousand Dollars (\$26,000.00) as follows: Six Thousand Five Hundred Dollars (\$6,500) with the
23 first distribution to the Class, Six Thousand Five Hundred Dollars (\$6,500) with the second
24 distribution to the Class, Six Thousand Five Hundred Dollars (\$6,500) with the third distribution
25 to the Class, and Six Thousand Five Hundred Dollars (\$6,500) with the fourth distribution to the
26 Class; (4) as soon as the Claims Administrator receives the fourth payment from Defendants, the
27 claims administrator will disburse \$7,500 to the Labor Workforce Development Agency for PAGA
28 Penalties, which represents the seventy-five percent (75%) share of the \$10,000 portion of the Gross

1 Settlement Sum allocated to PAGA pursuant to *Labor Code* section 2699, *et seq.*; (5) distributions
2 to eligible Settlement Class Members will occur annually, with the first distribution being made
3 fourteen (14) days after Final Approval, and the second through fourth distributions being made
4 fourteen (14) days after the Settlement Administrator receives the second through fourth payments
5 from Defendants.

6 7. The Claims Administrator will not withhold any taxes from the service award. The Claims
7 Administrator will report the service awards on Form 1099s, which it will provide to the Named
8 Plaintiffs and Class Representatives and to the pertinent taxing authorities.

9 8. No later than fourteen (14) calendar days after each annual payment of funds to the
10 Claims Administrator, Defendants, through the Claims Administrator, and according to the terms,
11 conditions and procedures set forth in Paragraph 2.1.6 of the Joint Stipulation of Class Action
12 Settlement and Release, shall pay to each Participating Class Member their Individual Settlement
13 Amount. Each of the payments to Participating Class Members will be inclusive of interest and
14 penalties, including PAGA and wage statement penalties, and will be allocated as follows: 30%
15 to satisfaction of claims for unpaid wages; 70% to the satisfaction of claims for interest and
16 penalties. All settlement payments for wages shall be subject to required withholdings and
17 deductions as W-2 wage payments. With regard to payments in settlement of claims for penalties
18 and interest, these payments shall be issued through a 1099 form and not subject to withholdings
19 or deductions.

20 9. The Claims Administrator shall compute the Individual Settlement Amount for the
21 Participating Class Members by multiplying the Class Member Payout Fund by a fraction, the
22 numerator of which is the total number workweeks the Participating Class Member worked during
23 the Class Period and the denominator of which is the total number of workweeks in the Class Period
24 worked by all Participating Class Members.

25 10. Defendants, through the Claims Administrator, will report each payment made on the
26 Gross Settlement Sum to government authorities including the Internal Revenue Service as required
27 by law, and it shall make all required deductions and/or withholdings. Defendants, through the
28 Claims Administrator, shall report payments for penalties and interest to the Internal Revenue

1 Service (and other relevant governmental agencies) as non-wage income in the year of payment on
2 a Form 1099, or similar form issued to the Participating Class Members in question.

3 11. To the extent that there are excess funds from uncashed checks or Class Members who
4 cannot be located, after 180 days of CPT Group, Inc.'s mailing of any check that is not negotiated
5 the parties agree such funds will escheat to the State of California's Unclaimed Property Fund in
6 the name of the Class Member.

7 12. The Claims Administrator will facilitate the mailing to Class Members via first class
8 mail through the United States Postal Service, postage pre-paid. The envelope containing the Class
9 mailing shall bear the following phrase in bold type, ¼ inch below the return address or ¼ inch
10 above the addressee's address: RETURN SERVICE REQUESTED. The envelope shall also bear
11 the following phrase in the bottom left hand corner: IMPORTANT – MIDWEST
12 ENVIRONMENTAL CONTROL, INC. CLASS ACTION SETTLEMENT INFORMATION.
13 PLEASE OPEN IMMEDIATELY. The mailing enclosing the Class Notice will not contain any
14 other materials. The Class Notice and its envelope or covering shall be marked to denote the return
15 address of the Claims Administrator as set forth at the top of the Response.

16 13. For the Class Representatives and Named Plaintiffs, the Claims Administrator shall
17 mail all materials in care of Class Counsel at Class Counsel's address. For Class Members who
18 have been designated by Defendants on the Class List as an active employee, the Claims
19 Administrator shall mail to their Last Known Addresses provided by Defendants. No Reasonable
20 Address Verification or Accurant Skip Tracing will be conducted on Class Members designated by
21 Defendants as active, as the Settling Parties agree that Defendants should have the most updated
22 address information for these Class Members. For Class Members who have been designated as
23 former employees by Defendants, prior to mailings, the Claims Administrator shall undertake a
24 Reasonable Address Verification and Accurant Skip Tracing to ascertain the accuracy of the Last
25 Known Address of the Class Member. To the extent this process yields an Updated Address, that
26 Updated Address shall replace the Last Known Address and be treated as the new Last Known
27 Address for purposes of mailing. If a Class Member is known to be deceased, the mailing shall be
28 to their Last Known Address (or Updated Address, if applicable) of the legal representative of the

1 deceased Class Member's estate, to the extent known. Unless the Claims Administrator receives
2 a class member mailing returned from the United States Postal Service for reasons discussed below
3 in this paragraph, a mailing shall be deemed mailed and received by the Class Member to whom
4 it was sent five (5) days after mailing. In the event that subsequent to the first mailing of a payment
5 to a class member the mailing is returned to the Claims Administrator by the United States Postal
6 Service because the address of the recipient is no longer valid, i.e., the envelope is marked "Return
7 to Sender," the Claims Administrator shall undertake an Experian Skip Tracing on the Class
8 Member to attempt to ascertain the current address of the particular Class Member in question and,
9 if such an address is ascertained, the Claims Administrator will re-send the mailing within three (3)
10 business days of receipt of the returned Class Notice. In either event, the mailing shall be deemed
11 received once it is mailed for the second time. For each payment, in the event that subsequent to
12 the first mailing of a payment is returned to the Claims Administrator by the United States Postal
13 Service because the address of the recipient is no longer valid, i.e., the envelope is marked "Return
14 to Sender," the Claims Administrator shall be required to take no further action with that Class
15 Notice and it shall be deemed to have been delivered. In the event that subsequent to the first
16 mailing of a payment the mailing is returned to the Claims Administrator by the United States
17 Postal Service with a forwarding address for the recipient, the Claims Administrator shall re-mail
18 to that address within three (3) business days of receipt of the returned Class Notice, the mailing
19 will be deemed mailed and received at that point, and the forwarding address shall be deemed the
20 Updated Address for that Class Member. In any event, if the Claims Administrator does not receive
21 notice from the United States Postal Service that a particular payment mailing is undeliverable, or
22 should be sent to a forwarding address, at least ten (10) days prior to the deadline for the Claims
23 Administrator to mail they shall provide a Declaration of Compliance, and the notice procedures
24 in this paragraph will be deemed to have been complied with and no further action need be taken
25 by the Claims Administrator with regard to that mailing. In the event the Claims Administrator
26 must re-mail any payment due to it being returned for an invalid address, the deadlines shall be
27 extended for those re-mailings to no later than ten (10) calendar days from the date of the re-
28 mailing.

1 14. Class Members who did not properly Opt Out of the Settlement Class are deemed Members
2 of the Settlement Class and shall be bound by the Judgment. The class members who opted out:
3 Felix Ayala, Manuel Quino, Rafael Narando, Sr., and Juan Casillas are not bound by this judgment.

4 15. In exchange for Defendants' requirement to pay the sums specified in this judgment, they
5 are released of all claims, rights, demands, liabilities, damages, attorneys' fees, costs, and causes
6 of action arising from or related to the Claims litigated in the Action, including statutory or common
7 law claims for wages, penalties, interest, attorneys' fees, litigation costs, restitution, equitable
8 relief, or other relief under California Business & Professions Code § 17200, et seq., based on the
9 following categories of allegations as set forth in the operative complaint: (1) California Prevailing
10 Wage Violations, (2) Breach of Third-Party Beneficiary Contracts (Written), (3) California Labor
11 Code Section 1194 Violations, (4) Conversion, (5) Labor Code Section 201-203 Violations, (6)
12 Labor Code Section 226 Violations, (7) California Business & Professions Code 17200 Violations,
13 and (8) California Labor Code Section 2699 Violations, attorneys' fees or litigation costs, and all
14 other claims that were or could have been asserted based on the facts alleged in this lawsuit. Action.

15 16. The Court reserves exclusive and continuing jurisdiction over this case, the Class
16 Representatives and Named Plaintiffs, the Settlement Class, and Defendants for the purposes of
17 supervising the implementation, enforcement, construction, administration, and interpretation of
18 this Judgment.

19
20 Dated: ``

NOV 09 2017

KENNETH R. FREEMAN

Hon. Freeman

KENNETH R. FREEMAN