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Attorneys for Plaintiff Xavier Nunez

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

XAVIER NUNEZ, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

NEVELL GROUP, INC., a California
Corporation, and DOES 1-100, inclusive,

Defendants.

Case No.: 30-2015-00783269-CU-OE-CXC

Assigned to the Hon. William D. Cluster

**[REVISED PROPOSED] ORDER AND
JUDGMENT GRANTING MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND MOTION FOR
ATTORNEYS' FEES, COSTS AND
EXPENSES, AND A CLASS
REPRESENTATIVE ENHANCEMENT
PAYMENT**

Date: March 8, 2024
Time: 9:00 a.m.
Place: Department CX101

Complaint Filed: April 20, 2015
Trial Date: None Set

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

MAR 11 2024

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

1 **ORDER AND JUDGMENT**

2 This matter came before the Court for a hearing on the Motion for Final Approval of the Class
3 Action Settlement and Motion for Attorneys' Fees, Costs and Expenses, and a Class Representative
4 Enhancement Payment (collectively, the "Motions"). Due and adequate notice having been given to Class
5 Members as required by the Court's Preliminary Approval Order, and the Court having reviewed the
6 Motions, and determining that the settlement is fair, adequate and reasonable, and otherwise being fully
7 informed and **GOOD CAUSE** appearing therefore, it is hereby **ORDERED AS FOLLOWS**:

8 1. For the reasons set forth in the Preliminary Approval Order, which are adopted and
9 incorporated herein by reference, this Court finds that the requirements of California Code of Civil
10 Procedure section 382 and rule 3.769 of the California Rules of Court have been satisfied.

11 2. This Order hereby adopts and incorporates by reference the terms and conditions of the
12 Amended Joint Stipulation of Class Action Settlement and Release (collectively, "Settlement Agreement"
13 or "Settlement") (*see ROA # 572, Ex. 1*), together with the definitions and terms used and contained
14 therein.

15 3. The Court finds that it has jurisdiction over the subject matter of the action and over all
16 parties to the action, including all members of the Settlement Class.

17 4. The Class Notice fully and accurately informed Class Members of all material elements
18 of the proposed settlement and of their opportunity to opt out or object; was the best notice practicable
19 under the circumstances; was valid, due, and sufficient notice to all Class Members; and complied fully
20 with the laws of the State of California and due process. The Class Notice fairly and adequately described
21 the settlement and provided Class Members with adequate instructions and a variety of means to obtain
22 additional information.

23 5. Class Members were given a full opportunity to participate in the Final Approval hearing,
24 and all Class Members and other persons wishing to be heard have been heard. Accordingly, the Court
25 determines that all Class Members who did not timely and properly opt out of the settlement are bound by
26 this Order.

27 6. The Court has considered all relevant factors for determining the fairness of the settlement
28 and has concluded that all such factors weigh in favor of granting final approval. In particular, the Court

1 finds that the settlement was reached following meaningful discovery and investigation conducted by
2 Plaintiff's Counsel; that the settlement is the result of serious, informed, adversarial, and arm's-length
3 negotiations between the Parties; and that the terms of the settlement are in all respects fair, adequate, and
4 reasonable.

5 7. In so finding, the Court has considered all evidence presented, including evidence
6 regarding the strength of Plaintiff's case; the risk, expense, and complexity of the claims presented; the
7 likely duration of further litigation; the amount offered in settlement; the extent of investigation and
8 discovery completed; and the experience and views of counsel. The Parties have provided the Court with
9 sufficient information about the nature and magnitude of the claims being settled, as well as the
10 impediments to recovery, to make an independent assessment of the reasonableness of the terms to which
11 the Parties have agreed.

12 8. Accordingly, the Court hereby approves the settlement as set forth in the Settlement
13 Agreement and expressly finds that the settlement is, in all respects, fair, reasonable, adequate, and in the
14 best interests of the entire Settlement Class and hereby directs implementation of all remaining terms,
15 conditions, and provisions of the Settlement Agreement. The Court also finds that settlement now will
16 avoid additional and potentially substantial litigation costs, as well as delay and risks if the Parties were to
17 continue to litigate the case. Additionally, after considering the monetary recovery provided by the
18 settlement—a \$5.3 million gross settlement amount—in light of the challenges posed by continued
19 litigation, the Court concludes that the settlement provides Class Members with fair and adequate relief.

20 9. The Settlement Agreement is not an admission by Defendant or by any other Released
21 Party, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant or
22 any other Released Party. Neither this Order, the Settlement Agreement, nor any document referred to
23 herein, nor any action taken to carry out the Settlement Agreement, may be construed as, or may be used
24 as, an admission of any fault, wrongdoing, omission, concession, waiver of defenses, or liability
25 whatsoever by or against Defendant or any of the other Released Parties.

26 10. With the exception of the 6 individuals who opted out of the Settlement Class—Jason
27 Cortez, Andreas Kinder, John F. Kessler, Santiago Ruvalcaba, Ivan Volcov, and Steve Winard—final
28 approval shall be with respect to: All persons who worked for Defendant in California as non-exempt

1 construction workers from April 20, 2011 to April 28, 2022 (“Participating Class Members”).

2 11. Plaintiff Xavier Nunez is an adequate and suitable representative and is hereby appointed
3 the Class Representative for the Settlement Class. The Court finds that Plaintiff’s investment and
4 commitment to the litigation and its outcome ensured adequate and zealous advocacy for the Settlement
5 Class, and that his interests are aligned with those of the Settlement Class.

6 12. The Court hereby awards Plaintiff a Class Representative Enhancement Payment of
7 \$5,000 for his service on behalf of the Settlement Class, and for agreeing to a general release of all claims
8 arising out of his employment with Defendant.

9 13. The Court finds that the attorneys at Capstone Law APC and James Hawkins APLC have
10 the requisite qualifications, experience, and skill to protect and advance the interests of the Settlement
11 Class. The Court therefore finds that counsel satisfy the professional and ethical obligations attendant to
12 the position of Class Counsel, and hereby appoints Capstone Law APC and James Hawkins APLC as
13 counsel for the Settlement Class.

14 14. The settlement of civil penalties under PAGA in the amount of \$150,000 is hereby
15 approved. Seventy-Five Percent (75%), or \$112,500, shall be paid to the California Labor and Workforce
16 Development Agency. The remaining Twenty-Five Percent (25%), or \$37,500, will be paid to PAGA
17 Members.

18 15. The Court hereby awards \$1,766,667 in attorneys’ fees and \$32,453.43 in costs and
19 expenses to Capstone Law APC and James Hawkins APLC. The award of attorneys’ fees and costs will
20 be divided as follows: (i) \$883,333.50 in attorneys’ fees and \$27,298.96 in litigation costs to Capstone
21 Law APC; and (ii) \$883,333.50 in attorneys’ fees and \$5,154.47 in litigation costs to James Hawkins
22 APLC.

23 16. The Court approves settlement administration costs and expenses in the amount of
24 \$28,000 to CPT Group, Inc.

25 17. All Class Members were given a full and fair opportunity to participate in the Approval
26 Hearing, and all members of the Settlement Class wishing to be heard have been heard. Members of the
27 Settlement Class also have had a full and fair opportunity to exclude themselves from the proposed
28 settlement and the class. Accordingly, the terms of the Settlement Agreement and of the Court’s Order and

1 Judgment shall be forever binding on all Participating Class Members. These Participating Class Members
2 have released and forever discharged the Released Parties for any and all Released Class Claims during
3 the Class Period, *as set forth in the Settlement Agreement.*

NDC

~~All claims, rights, demands, liabilities and causes of action that are alleged, or reasonably could have been alleged based on the facts asserted in the operative Complaint in the Action including, but not limited to, the following claims: (i) violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (ii) violation of the Fair Labor Standards Act (unpaid overtime); (iii) violations of Labor Code §§ 1182.12, 1194, 1197, 1197.1 and 1198; (iv) violation of California Labor Code §§ 226.7, 512(a) & 1198 (failure to provide meal periods); (v) violation of Labor Code §§ 226.7 & 1198 (failure to authorize and permit rest periods); (vi) violation of Labor Code § 226 (failure to provide compliant wage statements); (vii) violation of Labor Code §§ 201, 202 & 203 (failure to timely pay wages); (viii) violation of California Labor code § 2802 (unpaid business-related expenses); (ix) violation of California Business & Professions Code § 17200, *et seq.* (unlawful business practices); (x) violation of California Business & Professions Code § 17200, *et seq.* (unfair business practices); and (xi) Private Attorneys General Act of 2004 Labor Code § 2698, *et seq.*~~

NDC

13 18. Additionally, all PAGA Members and the LWDA have released and forever discharged
14 the Released Parties for any and all Released PAGA Claims during the PAGA Period: ~~All claims~~ *as set forth*
15 *in the Settlement Agreement.* ~~asserted through California Labor Code §§ 2698, *et seq.*, that reasonably arise out of or are related to the~~
16 ~~Released Class Claims during the PAGA Period.~~

17 19. Judgment in this matter is entered in accordance with the above findings.

18 20. Without affecting the finality of the Judgment, the Court shall retain exclusive and
19 continuing jurisdiction over the above-captioned action and the parties under Cal. Civ. Proc. Code § 664.6,
20 including all Participating Settlement Members and PAGA Members, for purposes of enforcing the terms
21 of the Judgment entered herein.

22 21. This document shall constitute a judgment (and separate document constituting said
23 judgment) for purposes of California Rules of Court, Rule 3.769(h).

24 22. Plaintiff shall give notice of this Order and Judgment to Class Members, pursuant to rule
25 3.771 of the California Rules of Court, by posting an electronic copy of this Order and Judgment on the
26 Settlement Administrator's website.

27 23. Pursuant to CCP § 384(b), Plaintiff shall submit to the Court a report on or before
28 November 27, 2024 setting forth the actual amounts paid to class members and other amounts disbursed

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pursuant to the settlement. Upon receiving the report, the Court will determine whether further reports and/or a hearing will be necessary.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: 3-11-24

William D. Cluster
Hon. William D. Cluster
Orange County Superior Court Judge

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PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **March 8, 2024**, I served the document described as **[REVISED PROPOSED] ORDER AND JUDGMENT GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR ATTORNEYS' FEES, COSTS AND EXPENSES, AND A CLASS REPRESENTATIVE ENHANCEMENT PAYMENT** on the interested parties in this action by sending [] the original [or] [] a true copy thereof [] to interested parties as follows [or] [] as stated on the attached service list:

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XAVIER NUNEZ

BY ELECTRONIC SERVICE: I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **March 8, 2024**, at Los Angeles, California.

Sophia Flores



Type/Print Name

Signature