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FILED
SUPERIOR COURT, METROPOLITAN DIVISION
COUNTY OF KERN

JAN 31 2018

TERRY MCNALLY, CLERK
BY DEPUTY

8 Attorneys for Plaintiff Todd Powell, as a Private Attorney
9 General Act Representative of similarly aggrieved individuals
10 in the State of California

11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF KERN**

FILED

13 TODD POWELL, individually, and as a Private
14 Attorney General Act Representative of
15 similarly aggrieved individuals in the State of
16 California

CASE NO. ~~BCV-15-101202~~

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Plaintiff,

vs.

17 BADGER DAYLIGHTING CORP., an Indiana
18 Corporation; and DOES 1 through 20, inclusive.

Date: January 31, 2018
Time: 8:30 a.m.
Dept.: 11

Defendants.

1 This matter came on for hearing on January 31, 2018, in Department 11 of the above-captioned
2 Court on the Motion for Preliminary Approval of Class Action Settlement. Having fully reviewed and
3 considered the moving papers, and having analyzed the Class Action Settlement between Plaintiff and
4 Defendant Badger Daylighting Corp. (the "Agreement" or "Settlement Agreement") attached as
5 Exhibit A to the Declaration of Gene Williams,

6 **THIS COURT HEREBY MAKES THE FOLLOWING ORDERS:**

7 1. This Court hereby preliminarily approves the proposed Settlement Agreement as being
8 fair, reasonable, and adequate.

9 2. All defined terms contained herein shall have the same meanings as those set forth in
10 the Settlement Agreement.

11 3. The Class Notice Packet, attached as Exhibits A-C to the Settlement Agreement, is
12 hereby approved.

13 4. The Court finds that the distribution of the Class Notice in the manner set forth herein
14 substantially meets the requirements of California law and due process, is the best notice practicable
15 under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

16 5. Solely for the purposes of the proposed settlement, the following class is hereby
17 provisionally certified pursuant to California Code of Civil Procedure section 382 as follows:

18 all former and current Operators and Swampers employed by Badger
19 anywhere in the State of California during the Class Period (the period
20 from June 9, 2013 through the date the Court grants preliminary approval
21 of the Settlement), including the following subclasses:

22 a. Former Employees/NorCal: Class Members formerly employed by
23 Badger in Northern California (including Badger's locations in
24 Sacramento, San Jose, Martinez, and Fresno);

25 b. Former Employees/SoCal: Class Members formerly employed by
26 Badger in Southern California (including Badger's locations in
27 Bakersfield, Los Angeles, Riverside, and San Diego);

1 c. Current Employees/NorCal: Class Members currently employed by
2 Badger in Northern California; and

3 d. Current Employees/SoCal: Class Members currently employed by
4 Badger in Southern California.

5 6. Solely for the purposes of the proposed settlement, the Court does hereby preliminarily
6 approve Ronald W. Makarem and Gene Williams of the Law Offices of Makarem & Associates, APLC,
7 as Class Counsel.

8 7. Solely for the purposes of the proposed settlement, the Court does hereby preliminarily
9 approve Todd Powell as Class Representative.

10 8. Solely for the purposes of the proposed settlement, the Court does hereby preliminarily
11 approve of and appoint CPT Group, Inc., as the Parties' Settlement Administrator.

12 9. A final fairness hearing (the "Final Approval Hearing") shall be set on 5/16/10,
13 2018, in Department 11 of this Court, to review the notice process and objections, if any, and to
14 determine whether the proposed settlement on the terms and conditions set forth in the Settlement
15 Agreement are fair, reasonable, and adequate, and should be approved by the Court; whether the
16 Judgment as provided in the Settlement Agreement should be entered into; and to determine the amount
17 of attorneys' fees and costs that should be awarded to Class Counsel and the amount of the Class
18 Representative Service Award that should be awarded to the Representative Plaintiff.

19 10. The Settlement Administrator shall supervise and administer the notice procedure as
20 follows:

21 a. Within ten (10) business days of this Preliminary Approval Order, Defendant shall
22 provide to the Settlement Administrator, in a readable, ready to use electronic
23 spreadsheet format, a list containing the names and last known contact information for
24 all Settlement Class members, including last known address and telephone number, as
25 well as which of the four subclasses identified above each Class Member is a member
26 of, and the total number of weeks that each Settlement Class Member worked for
27 Defendant during the Class Period.

- 1 b. The Settlement Administrator shall run skip-trace checks of the Class Member's
2 addresses against those on file with the U.S. Postal Service's National Change of
3 Address List.
- 4 c. Within ten (10) calendar days of receiving the Class Member contact information from
5 Defendant, the Settlement Administrator shall send the Class Notice Packet to each
6 Class Member by First-Class mail.
- 7 d. There will be a forty-five (45) calendar day period from the date the Class Notice
8 Packets are first mailed during which Class Members may opt-out of or object to the
9 Settlement.
- 10 e. Class Notice Packets returned to the Settlement Administrator as non-delivered within
11 thirty (30) calendar days of the initial mailing shall be further skip-traced, and to the
12 extent possible, resent within ten (10) calendar days to updated addresses. Any Class
13 Notice Packet that is not returned as non-delivered within sixty (60) calendar days of
14 the mailing of the Class Notice Packet shall be presumed to have been received by the
15 Class Member.
- 16 f. At the time the parties file their motion for final approval of the settlement, Class
17 Counsel shall provide the Court with a declaration by the Settlement Administrator,
18 specifying the due diligence it undertook with regard to the mailing of the Class Notice
19 Packet; verifying its settlement administration costs; and reporting on the number of
20 opt-outs, objections, disputed, and average Individual Settlement Payment amounts.

21 11. Any Class Member who wishes to be excluded (opt-out) from the Settlement Class and
22 not participate in the proposed settlement must execute a written request for exclusion to the Settlement
23 Administrator within forty-five (45) calendar days, as set forth in the Request for Exclusion Form
24 included in the Class Notice Packet. To be timely, the request for exclusion must be mailed to the
25 Settlement Administrator, postmarked by the forty-five (45) calendar day deadline. Any Class Member
26 who opts out of the Settlement will be ineligible to receive a settlement payment, but will not be bound
27 by the Settlement Agreement or the release of claims contained therein.

1 12. Class Members who wish to object to the Settlement may do so by filling out and filing
2 the Objection Form included in the Class Notice Packet to the Settlement Administrator no later than
3 forty-five (45) calendar days after the date on which the Class Notice Packet was initially mailed to
4 Class Members. Any Class Member may submit to the Settlement Administrator a written statement
5 objecting to the Settlement that sets forth the grounds for the objection. Any Class Member may appear
6 at the Final Approval Hearing, with or without prior notice, and show cause, if he or she has any, why
7 the proposed Settlement should or should not be approved as fair, reasonable, and adequate, why
8 attorneys' fees and costs should or should not be awarded to Class Counsel as requested, or why the
9 Class Representative Service Award should or should not be awarded as requested. Class Members
10 who validly opt out of the Settlement may not also object to the Settlement.


11 13. At the Final Approval Hearing, the Court shall finally determine whether the proposed
12 Settlement Agreement is fair and reasonable, and also rule on Class Counsel's application for
13 attorneys' fees and costs, and for a Class Representative Service Award.

14 14. The Court's preliminary approval of the Settlement Agreement is not to be deemed an
15 admission of liability or fault by Defendant, or a finding as to the validity of any claims or defenses
16 asserted in the action.

17 15. The Court reserves the right to adjourn the date of the Final Approval Hearing without
18 further notice to the Class Members, and it will retain jurisdiction to consider all further applications
19 arising out of or connected with the proposed Settlement.

20 **IT IS SO ORDERED.**

21
22 Dated: Jan. 31, 2018

23 
24 Honorable David R. Lampe
25 Judge of the Superior Court