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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,

Plaintiffs,

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 for All Purposes to:

Hon. Harold Hopp

Dept. 10

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE**

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Settlement ("Agreement" or "Settlement").

6 This Agreement is made by and between Named Plaintiffs Jorge Aguilera Rodriguez and
7 Eric Hernandez ("Named Plaintiffs"), individually and on behalf of Class Members, on the one hand,
8 and Defendants Imperial Western Products, Inc. ("IWP") and Denali Water Solutions, LLC
9 ("Denali") (collectively "Defendants"), on the other hand. Named Plaintiffs and Defendants
10 collectively are referred to in this Agreement as "the Parties."

11 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
12 concluded by agreement of Defendants to pay the settlement amount of Six Hundred and Thirty-five
13 Thousand Dollars and Zero Cents (\$635,000.00) as provided in Section 3.06(a) below ("Gross
14 Settlement Amount") pursuant to the terms and conditions of this Agreement and for the
15 consideration set forth herein, including but not limited to, a release of all claims by Named Plaintiffs
16 and the Class Members as set forth herein.

17 ARTICLE I

18 DEFINITIONS

19 Unless otherwise defined herein, the following terms used in this Agreement shall have the
20 meanings ascribed to them as set forth below:

21 a. "Action" means the action described as follows: *Jorge Aguilera Rodriguez and Erick*
22 *Hernandez*, individually, and on behalf of other members of the general public similarly situated; v.
23 *Imperial Western Products, Inc.*, A California Corporation; *Denali Water Solutions, LLC*, a
24 Delaware limited liability company; and DOES 1 through 10, inclusive," Case No. CVRI2000071,
25 commenced on November 4, 2020, in the Superior Court of the State of California for the County
26 of Riverside.

1 b. “Agreement” or “Settlement” means this Joint Stipulation of Class Action Settlement
2 and Release, including the attached Exhibit(s).

3 c. “Class” means all non-exempt employees who worked for IWP in California at any
4 time between November 4, 2016 and April 29, 2022.

5 d. “Class Counsel” means the attorneys for the Class and the Class Members, who are:
6 CAPSTONE LAW, APC
7 Raul Perez
8 Robert Drexler
9 Molly DeSario
10 Jonathan Lee
11 1875 Century Park East, Suite 1000
12 Los Angeles, California 90067
13 Telephone: (310) 556-4811
14 Facsimile: (310) 943-0396

15 e. “Class List” means a list based on Defendant’s business records that identifies each
16 Class Member’s name, last known home or mailing address, Social Security number or, as
17 applicable, other taxpayer identification number, dates of employment, and the number of
18 Qualifying Class Workweeks worked during the Class Period.

19 f. “Class Member(s)” means all members of the Class.

20 g. “Class Period” means November 4, 2016 to April 29, 2022.

21 h. “Court” means the California Superior Court for the County of Riverside, where the
22 Action is currently pending.

23 i. “Date of Finality” means the later of the following: (1) the date the Final Order is
24 signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no
25 appeal is taken of the Final Order, sixty-five (65) days after the Final Order; or (3) if an appeal or
26 other judicial review is taken from the Court’s overruling of objections to the settlement, ten (10)
27 days after the appeal is withdrawn or after an appellate decision affirming the Final Order becomes
28 final.

 j. “Defendants” mean IWP and Denali.

 k. “Defense Counsel” means counsel for Defendants:
 SCHOR VOGELZANG & CHUNG LLP
 Lisa Hird Chung

Janelle Thornton
Carl Lehman
2170 Fourth Ave
San Diego, California 92101
Telephone: (619) 906-2400
Facsimile: (619) 906-2401

l. "Disposition" means the method by which the Court approves the terms of the Settlement and retains jurisdiction over its enforcement, implementation, construction, administration, and interpretation.

m. "Enhancement Payments" means a monetary amount of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) for the Named Plaintiffs to be split between the two, subject to Court approval, in recognition of their effort and work in prosecuting the Action on behalf of Class Members.

n. "Final Order Approving Settlement of Class Action" or "Final Order" means the final formal court order signed by the Court following the Final Fairness and Approval Hearing in accordance with the terms herein, approving this Agreement.

o. "Gross Settlement Amount" means Six Hundred and Thirty-five Thousand Dollars and Zero Cents (\$635,000.00) to be paid by Defendants as provided by this Agreement to settle this Action. The Net Settlement Amount, Settlement Administration Costs, the Enhancement Payments, the PAGA Settlement Amount, and attorney's fees and costs shall be paid out of the Gross Settlement Amount. The General Release Payments and employer's share of payroll taxes arising from the payments made under this settlement shall be paid by Defendants separate from and in addition to the Gross Settlement Amount. The Gross Settlement Amount is subject to pro rata increases pursuant to Section 3.04(e) below. No part of the Gross Settlement Amount shall revert to Defendants.

p. "General Release Payments" means a monetary payment separate and apart from the Gross Settlement Amount of Ten Thousand Dollars (\$10,000) for the Named Plaintiffs, to be split between the two, as consideration for general releases of all claims arising out of Named Plaintiffs' employment with Defendants.

q. "Individual Settlement Payment(s)" means each Participating Class Member's respective share of the Net Settlement Amount and any payment a PAGA Group Member is entitled to receive from the PAGA Fund ("Individual PAGA Payment"). Individual Settlement Payments will be determined by the calculations provided in this Agreement.

r. "LWDA" means The State of California Labor and Workforce Development Agency.

s. "LWDA Payment" means 75% of the \$40,000 allocated to the settlement of PAGA claims which, subject to Court approval, will be paid to the LWDA pursuant to Section 3.06(e) of this Agreement, as provided for below.

t. "Motion for Final Approval" means Plaintiffs' submission of a written motion, including any evidence as may be required for the Court to conduct an inquiry into the fairness of the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and to enter a Final Order in this Action.

u. "Motion for Preliminary Approval" means Plaintiffs' submission of a written motion, including any evidence as may be required for the Court to grant preliminary approval of the Settlement as required by Rule 3.769 of the California Rules of Court.

v. "Named Plaintiffs" means Jorge Aguilera Rodriguez and Eric Hernandez.

w. "Net Settlement Amount" means the Gross Settlement Amount, less Court-approved administration costs, Class Counsels' attorney's fees and costs, Enhancement Payment, and PAGA Settlement Amount, pursuant to Section 3.06(a)-(f) below.

x. "Non-Participating Class Member(s)" means any Class Member(s) who submit to the Settlement Administrator a valid and timely written request to be excluded from the Class pursuant to Section 3.04(b) below.

y. "Notice Packet" means the Notice of Proposed Class Action Settlement in a form substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

z. "PAGA" means the California Private Attorneys General Act of 2004, which is codified in California Labor Code §§ 2698 *et seq.*

1 aa. "PAGA Settlement Amount" means the portion of the Gross Settlement Amount
2 allocated to the resolution of PAGA Group Members' claims arising under PAGA. The Parties have
3 agreed that the PAGA Settlement Amount is Forty Thousand Dollars (\$40,000), subject to Court
4 approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment, and the
5 remaining 25% ("PAGA Fund") will be distributed to PAGA Group Members.

6 bb. "PAGA Group Members" means all non-exempt employees who worked for IWP in
7 California at any time between November 2, 2019 through April 29, 2022 ("PAGA Period").

8 cc. "PAGA Period" means the period from November 2, 2019 through April 29, 2022.

9 dd. "Participating Class Member(s)" is defined as a Class Member who does not timely
10 exclude himself or herself from the Settlement and will therefore receive his or her share of the Net
11 Settlement Amount automatically without the need to return a claim form. Each Participating Class
12 Member will be paid his/her Individual Settlement Payment.

13 ee. "Preliminary Approval Date" means the date the Court preliminarily approves the
14 Settlement embodied in this Agreement.

15 ff. "Qualified Settlement Fund" or "QSF" means a fund within the meaning of Treasury
16 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
17 Administrator for the benefit of Participating Class Members and PAGA Group Members.

18 gg. "Qualifying Class Workweeks" means the number of weeks that Class Members
19 worked for Defendants as non-exempt employees during the Class Period.

20 hh. "Qualifying PAGA Workweeks" means the number of weeks that PAGA Group
21 Members worked for Defendants as non-exempt employees during the PAGA Period.

22 ii. "Released Parties" means Defendants and all of their current and former officers,
23 directors, members, managers, employees, consultants, partners, shareholders, joint ventures,
24 agents, successors, assigns or legal representatives.

25 jj. "Response Deadline" means the deadline by which Class Members must postmark
26 or fax to the Settlement Administrator requests for exclusion or written notices of objection. The
27 Response Deadline will be forty-five (45) calendar days after the initial mailing of the Notice Packet

1 by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a Sunday or
2 federal holiday, in which case the Response Deadline will be extended to the next day on which the
3 U.S. Postal Service is open. The Response Deadline will be extended as set forth herein if there is a
4 re-mailing.

5 kk. "Settlement Administrator" means CPT Group, Inc., which the Parties have agreed
6 will be responsible for the administration of the Individual Settlement Payments to be made by
7 Defendants from the Gross Settlement Amount and related matters under this Agreement.

8 **ARTICLE II**

9 **CONTINGENT NATURE OF THE AGREEMENT**

10 **Section 2.01: Stipulation of Class Certification for Settlement Purposes**

11 Because the Parties have stipulated to the certification of the Class with respect to all causes
12 of action alleged in the Action for settlement purposes only, this Agreement requires preliminary
13 and final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional
14 basis. This Agreement is contingent upon the approval and certification by the Court. If the Date of
15 Finality does not occur, the Agreement shall be considered void ab initio and shall be of no force or
16 effect whatsoever and shall not be referred to or utilized for any purpose whatsoever. Defendants do
17 not consent to certification of the Class for any purpose other than to effectuate settlement of the
18 Action. If the Date of Finality does not occur, or if Disposition of this Action is not effectuated, any
19 certification of the Class as to Defendants will be vacated and Named Plaintiffs, Defendants, and the
20 Class will be returned to their positions with respect to the Action as if the Agreement had not been
21 entered into. In the event that the Date of Finality does not occur: (a) any Court orders preliminarily
22 or finally approving certification of any class contemplated by this Agreement shall be null, void,
23 and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the
24 settlement reflected in this Agreement, the fact that Defendants did not oppose the certification of a
25 Class under this Agreement, or that the Court preliminarily approved the certification of the Class,
26 shall not be used or cited thereafter by any person or entity, including in any manner whatsoever,
27 including without limitation any contested proceeding relating to the certification of any class. If the

1 Date of Finality does not occur, this Agreement shall be deemed null and void, shall be of no force
2 or effect whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendants
3 expressly reserve the right to challenge the propriety of class certification in the Action for any
4 purpose, if the Date of Finality does not occur.

5 The Parties and their respective counsel shall take all steps that may be requested by the
6 Court relating to the approval and implementation of this Agreement and shall otherwise use their
7 respective best efforts to obtain Court approval and implement this Agreement. If the Court does not
8 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
9 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
10 resolution, the Parties agree to seek the assistance of mediator Daniel Turner, Esq. to resolve the
11 dispute.

12 **ARTICLE III**

13 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

14 The procedure for obtaining Court approval of and implementing this Agreement shall be as
15 follows:

16 **Section 3.01: Motion for Conditional Class Certification and Preliminary Approval**

17 Named Plaintiffs will bring a motion before the Court for an order conditionally certifying
18 the Class to include all claims pled in the Action based on the preliminary approval of this
19 Agreement. The date that the Court grants preliminary approval of this Agreement will be the
20 "Preliminary Approval Date."

21 **Section 3.02: The Settlement Administrator**

22 The Parties have chosen CPT Group, Inc. to administer this Settlement and to act as the
23 Settlement Administrator, including but not limited to distributing and responding to inquiries about
24 the Notice Packet, determining the validity of exclusions/opt-outs, calculating the Net Settlement
25 Amount and the Individual Settlement Payments, issuing the Individual Settlement Payment checks
26 and distributing them to Participating Class Members and PAGA Group Members, establishing and
27 maintaining the QSF, and issuing the payment to Class Counsel for attorneys' fees and costs, the
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Enhancement Payments and the General Release Payments to Named Plaintiffs, and the employer payroll taxes to the appropriate taxing authorities. The Settlement Administrator shall expressly agree to all of the terms and conditions of this Agreement.

All costs of administering the Settlement, including but not limited to all costs and fees associated with preparing, issuing and mailing any and all notices to Class Members and/or Participating Class Members and PAGA Group Members, all costs and fees associated with computing, processing, reviewing, and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency, all costs and fees associated with preparing any other checks, notices, reports, or filings to be prepared in the course of administering disbursements from the Net Settlement Amount and PAGA Fund, and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement (“Settlement Administration Costs”), shall be paid to the Settlement Administrator from the Gross Settlement Amount.

Section 3.03: Notice to Class Members

No later than ten (10) business days after the Preliminary Approval Date, Defendants will provide the Settlement Administrator with a “Class List” in electronic format based on its business records, identifying the names of the Class Members, their last known home addresses, Social Security numbers or, as applicable, other taxpayer identification number, their dates of employment, Qualifying Class Workweeks, and Qualifying PAGA Workweeks.

Within ten (10) business days of receiving a Class List from Defendants or the Preliminary Approval Date, whichever is later, the Settlement Administrator will send Class Members, by first-class mail, at their last known address, the Court approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the Settlement Class. The Notice Packet will include a calculation of the Class Member’s approximate share of the Net Settlement Amount and if applicable, PAGA Fund. Class Members will have forty-five (45) days from the date of mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the Settlement

1 Administrator will check all Class Member addresses against the National Change of Address
2 database and shall update any addresses before mailing. The Settlement Administrator will skip trace
3 and re-mail all returned, undelivered mail within five (5) days of receiving notice that a Notice
4 Packet was undeliverable. If a Class Member's notice is re-mailed, the Class Member shall have
5 fifteen (15) calendar days from the re-mailing, or forty-five (45) calendar days from the date of the
6 initial mailing, whichever is later, in which to postmark objections or requests for exclusion. Class
7 Members shall not be required to submit claim forms in order to receive a proportional share of the
8 Net Settlement Amount and, if applicable, PAGA Fund.

9 If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall
10 re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose
11 Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement
12 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
13 mass search on LexisNexis or comparable databases based on set criteria and, if another address is
14 identified, shall mail the Notice Packet to the newly identified address. It is the intent of the parties
15 that reasonable means be used to locate Class Members and that the Settlement Administrator be
16 given discretion to take steps in order to facilitate notice of the Settlement and delivery of the
17 Individual Settlement Payments to all Participating Class Members.

18 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
19 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
20 status report provided to the Parties.

21 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
22 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class
23 Member's Individual Settlement Payment. The Settlement Administrator will hold the Class
24 Member's Individual Settlement Payment during the check cashing period on behalf of the Class
25 Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and
26 Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
27
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1 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
2 procedures set forth in Section 3.07(f) below.

3 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the
4 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
5 attesting to completion of the notice process, including any attempts to obtain valid mailing
6 addresses for and re-sending of any returned Notice Packets, as well as the number of valid requests
7 for exclusion and objections that the Settlement Administrator received.

8 **Section 3.04: Responses to Notice**

9 **a. Class Member Disputes**

10 If any Class Member disagrees with Defendants' records as to his or her Qualifying Class
11 Workweeks during the Class Period as reflected in the Notice Packet, the Class Member shall set
12 forth in writing the Qualifying Class Workweeks he/she claims to have worked during the Class
13 Period and submit such writing to the Settlement Administrator by the Response Deadline, along
14 with any supporting documentation. The Notice will also provide a method for the Class Member to
15 challenge the employment data on which his or her Individual Settlement Payment is based. The
16 Settlement Administrator shall contact the Parties regarding the dispute and the Parties will work in
17 good faith to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator
18 will be the final arbiter of the Qualifying Class Workweeks for each Class Member during the Class
19 Period based on the information provided to it.

20 **b. Requests for Exclusion from Class**

21 In order for any Class Member to validly exclude himself or herself from the Class and this
22 Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed by the Class
23 Member or his or her authorized representative, and must be sent to the Settlement Administrator,
24 postmarked no later than the Response Deadline (or fifteen (15) days after the Settlement
25 Administrator re-mails the Notice to the Class Member, whichever is later). The Notice Packet shall
26 contain instructions on how to validly exclude himself or herself from the Class and this Settlement
27 (*i.e.*, opt out), including the language to be used in a request for exclusion. The date of the initial

1 mailing of the Notice Packet, and the date the signed request for exclusion was postmarked, shall be
2 conclusively determined according to the records of the Settlement Administrator. Any Class
3 Member who timely and validly requests exclusion from the Class and this Settlement will not be
4 entitled to any Individual Settlement Payment, with the exception of the Individual PAGA Payment
5 to the extent the Class Member is a PAGA Group Member, will not be bound by the terms and
6 conditions of this Agreement, and will not have any right to object, appeal, or comment thereon.
7 PAGA Group Members shall receive an Individual PAGA Payment regardless of their decision to
8 submit a request for exclusion to opt out of the Settlement. The request for exclusion shall not be
9 effective as to the release of claims arising under PAGA.

10 Any Class Member who fails to timely submit a request for exclusion shall automatically be
11 deemed a Class Member whose rights and claims with respect to the issues raised in the Action are
12 determined by the Court's Final Order Approving Settlement of Class Action, and by the other
13 rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the Action
14 and/or released in this Agreement will be extinguished.

15 **c. Objections to Settlement**

16 For any Class Member to object to this Agreement, or any term of it, the person making the
17 objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the
18 Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15)
19 days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later),
20 a written statement of the grounds of objection, signed by the objecting Class Member or his or her
21 attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and
22 the date the signed objection was postmarked, shall be conclusively determined according to the
23 records of the Settlement Administrator. The Settlement Administrator shall send any objections it
24 receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class
25 Members may also appear at the final approval hearing to object. The Court retains final authority
26 with respect to the consideration and admissibility of any Class Member objections.

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d. Encouragement of Class Members

The Parties to this Agreement and the counsel representing such Parties shall not, directly or indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from this Settlement (opt out), or to object to it. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

e. Right of Plaintiffs to Adjust Gross Settlement Amount

Defendants have estimated the number of Class Members as 409 and the number of Qualifying Class Workweeks to be 52,406 between November 4, 2016 and April 29, 2022. If the total number of Qualifying Class Workweeks from November 4, 2016 and April 29, 2022 are determined to be in excess of 10% of 52,406 (which is more than 57,647) Qualifying Class Workweeks, there will be a pro rata adjustment to the Gross Settlement Amount for each workweek above 57,647.

f. Defendants' Option to Withdraw

If more than 5% of the Class Members submit valid and timely exclusion forms pursuant to Section 3.04(b), Defendants at their sole option may withdraw from the Agreement and Defendants' obligations under prior agreements to settle this Action are entirely void. If Defendants elect to void the Agreement pursuant to this option, they must pay for all Settlement Administration Costs to date and the cost of informing the Class Members that the Agreement was voided.

Section 3.05: Final Fairness and Approval Hearing

On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement and determine whether the Court should give it final approval, and (2) consider any objections made and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a Proposed Final Order Approving Settlement of Class Action.

1 **Section 3.06: Settlement Payment Procedures**

2 **a. Settlement Amount**

3 In exchange for the Released Claims set forth in this Agreement, Defendants agree to pay
4 the Gross Settlement Amount in the amount of Six Hundred and Thirty-five Thousand Dollars and
5 Zero Cents (\$635,000.00), subject to a pro rata increase under the conditions set forth in Section
6 3.04(e). The General Release payments to the Named Plaintiffs are not to be paid out of the Gross
7 Settlement Amount.

8 Within twenty (20) calendar days after the Date of Finality, Defendants shall transfer the
9 Gross Settlement Amount, General Release Payments, and Defendants' share of employer-side
10 payroll taxes into a QSF established by the Settlement Administrator either directly or by sending
11 the funds to the Settlement Administrator to be deposited and distributed. The Settlement Administrator
12 will use these funds to fund payment of the Individual Settlement Payments to Participating Class
13 Members and PAGA Group Members, Class Counsel's attorneys' fees and costs, the Enhancement
14 Payments and General Release Payments, the LWDA Payment, the Settlement Administration
15 Costs, and employer-side payroll taxes.

16 Within ten (10) court days after funding, the Settlement Administrator will pay the Individual
17 Settlement Payments to Participating Class Members and PAGA Group Members, Class Counsel's
18 attorneys' fees and costs, LWDA Payment, the Enhancement Payments and General Release
19 Payments, and employer and employee tax withholdings applicable to the Net Settlement Amount
20 allocated to wages. Prior to this distribution, the Settlement Administrator will perform a search
21 based on the National Change of Address Database to update and correct for any known or
22 identifiable address changes.

23 **b. Payment of Attorneys' Fees and Costs**

24 Class Counsel shall submit an application for an award of attorneys' fees of up to one-third
25 of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is Two
26 Hundred and Eleven Thousand Six Hundred and Sixty-Seven Dollars and Zero Cents (\$211,667.00).
27 Class Counsel shall submit an application for an award of costs not to exceed Twenty-Five Thousand

1 Dollars and Zero Cents (\$25,000.00). Such application for attorneys' fees and costs shall be heard
2 by the Court at the Final Fairness and Approval Hearing. Defendants shall not object to or oppose
3 any such application in these amounts. Class Counsel shall serve Defendants with copies of all
4 documents submitted in support of their application for an award of attorneys' fees and costs.

5 Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the
6 Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys'
7 fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs,
8 and expenses related to the investigation, prosecution, and settlement of the Action incurred through
9 the Date of Finality. To the extent that the Court approves less than the amount of attorney's fees
10 and/or costs that Class Counsel requests, the difference between the requested and awarded amounts
11 will be reallocated to the Net Settlement Amount.

12 **c. Payment of Settlement Administration Costs**

13 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
14 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed
15 Fifteen Thousand Dollars (\$15,000.00).

16 **d. Payment of Enhancement Payment to Named Plaintiffs**

17 Subject to Court approval, the Named Plaintiffs shall receive Enhancement Payments of up
18 to a total of Ten Thousand Dollars (\$10,000.00) to be split evenly between the Named Plaintiffs, the
19 request for which Defendants will not object to or oppose. The Enhancement Payments shall be paid
20 out of the Gross Settlement Amount and shall not constitute payment to any Participating Class
21 Member(s) other than Named Plaintiffs. To the extent that the Court approves less than the amount
22 of Enhancement Payments that Class Counsel request, the difference between the requested and
23 awarded amounts will be reallocated to the Net Settlement Amount.

24 Because it is the intent of the Parties that the Enhancement Payments represent payment to
25 Named Plaintiffs for their service to the Class Members, and not wages, the Settlement
26 Administrator will not withhold any taxes from the Enhancement Payments. The Enhancement

1 Payments will be reported on a Form 1099, which the Settlement Administrator will provide to
2 Named Plaintiffs and to the pertinent taxing authorities as required by law.

3 **e. Payment to the Labor and Workforce Development Agency**

4 In consideration of claims made under PAGA, Class Counsel will request that the Court
5 approve allocation of Forty Thousand Dollars and Zero Cents (\$40,000.00) of the Gross Settlement
6 Amount to these claims. Seventy-five percent (75%) of this payment will be paid to the California
7 Labor and Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%)
8 will be paid to PAGA Group Members. Defendants will not oppose this request. The entire PAGA
9 Settlement Amount will be paid out of the Gross Settlement Amount. The Court's adjustment, if
10 any, of the amount allocated to Named Plaintiffs' PAGA claim in the Action, will not invalidate this
11 Agreement.

12 **f. Payment of Individual Settlement Payments to Participating Class Members**

13 The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement
14 Payments with the exception of the Individual PAGA Payment, which shall be distributed from the
15 PAGA Fund. The Parties agree that the Net Settlement Amount shall be divided between all
16 Participating Class Members in proportion to the number of individual Qualifying Class Workweeks
17 for each Class Member. To calculate the minimum amount each Class Member will receive based
18 on their individual Qualifying Class Workweeks, the Net Settlement Amount will be divided by the
19 total number of Qualifying Class Workweeks by all Class Members during the Class Period and then
20 allocated on a pro rata basis. Qualifying Class Workweeks will be rounded up to the next whole
21 integer, and each Class Member will be deemed to have worked during at least one Qualifying Class
22 Workweek. Each Class Member's approximate Individual Settlement Payment amount will be
23 included in his or her Notice Packet. After final approval by the Court, the Net Settlement Amount
24 will be dispersed to Participating Class Members (those who did not exclude themselves) on a pro
25 rata basis based on the individual Qualifying Class Workweeks worked during the Class Period by
26 each Participating Class Member.

1 The Parties agree that the PAGA Fund shall be divided between all PAGA Group Members
2 in proportion to the number of individual Qualifying PAGA Workweeks for each PAGA Group
3 Member. To calculate the minimum amount each PAGA Group Member will receive based on their
4 individual Qualifying PAGA Workweeks, the PAGA Fund will be divided by the total number of
5 Qualifying PAGA Workweeks by all PAGA Group Members during the PAGA Period and then
6 allocated on a pro rata basis. Qualifying PAGA Workweeks will be rounded up to the next whole
7 integer, and each PAGA Group Member will be deemed to have worked during at least one
8 Qualifying PAGA Workweek. PAGA Group Members shall receive this portion of their Individual
9 Settlement Payment (the Individual PAGA Payment) regardless of whether they submit a request
10 for exclusion to opt out of the Settlement regarding the class claims.

11 Each Individual Settlement Payment, exclusive of the Individual PAGA Payment, will
12 represent wages and penalties allocated using the following formula: 1/3 allocated to wages and 2/3
13 allocated to interest and penalties. The amounts paid as wages shall be subject to all tax withholdings
14 customarily made from an employee's wages and all other authorized and required withholdings and
15 shall be reported by W-2 forms. The employer-side taxes will be paid separate from and in addition
16 to the Gross Settlement Amount. The amounts paid as penalties and interest shall be subject to all
17 authorized and required withholdings other than the tax withholdings customarily made from
18 employees' wages and shall be reported by IRS 1099 forms. 100% of the amounts paid to PAGA
19 Group Members from the PAGA Fund shall be allocated as penalties, and not wages, for which the
20 Settlement Administrator will issue to the PAGA Group Member an IRS Form-1099.

21 No later than ten (10) business days after receiving the Gross Settlement Amount from
22 Defendants, the Settlement Administrator shall prepare and mail the checks for the Individual
23 Settlement Payments to Participating Class Members and PAGA Group Members. Individual
24 Settlement Payments paid from the Net Settlement Amount allocated to wages will be reduced by
25 applicable employer and employee tax withholdings, and the Settlement Administrator will issue a
26 Form W-2 for the wage portion of the Individual Settlement Payments. The Settlement
27 Administrator will issue a Form 1099 to the extent required by law for the interest and penalty
28

1 portions of the Individual Settlement Payments. Participating Class Members and PAGA Group
2 Members shall have 180 days from the date their Individual Settlement Payment checks are dated to
3 cash their Settlement checks. Any checks that are not cashed upon the expiration of that 180-day
4 time period will be void, and the uncashed funds shall be paid to the State Controller Unclaimed
5 Property Fund in the name of the Class Member for whom the funds are designated.

6 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
7 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
8 a mass search on LexisNexis or a comparable database based on set criteria and, if another address
9 is identified, the Settlement Administrator shall mail the check to the newly identified address. If the
10 Settlement Administrator is unable to obtain a valid mailing address through this process, the
11 Settlement Administrator will tender the funds from the undeliverable checks to the State Controller
12 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

13 **g. Default on Payment**

14 In the event Defendants make a late payment or do not pay any portion of the Gross
15 Settlement Amount, it shall be considered a default. In the event Defendants fail to make any
16 payment on the date it is due, under Section 3.06(a), the Settlement Administrator will provide notice
17 to Class Counsel and Defense Counsel within three (3) business days of the missed payment.
18 Thereafter, Defendants will have seven (7) days to cure the default and tender payment to the
19 Settlement Administrator. In the event Defendants fail to cure the default within the times set forth
20 herein, Named Plaintiffs may elect to enter judgment against Defendants, on an ex parte basis, for
21 the balance of the unpaid Gross Settlement Amount to date, and Named Plaintiffs will be entitled to
22 recover interest at ten percent (10%) per year from the due date for such payment and reasonable
23 attorneys' fees and costs.

24 **h. No Credit Toward Benefit Plans**

25 The Individual Settlement Payments made to Participating Class Members and PAGA Group
26 Members under this Agreement, as well as any other payments made pursuant to this Agreement,
27 will not be utilized to calculate any additional benefits under any benefit plans to which any Class
28

1 Members and PAGA Group Members may be eligible, including, but not limited to: profit-sharing
2 plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans,
3 and any other benefit plan. Rather, it is the Parties' intention that this Agreement will not affect any
4 rights, contributions, or amounts to which any Class Members and PAGA Group Members may be
5 entitled under any benefit plans.

6 **ARTICLE IV**

7 **LIMITATIONS ON USE OF THIS SETTLEMENT**

8 **Section 4.01: No Admission**

9 Defendants dispute the allegations in the Action and dispute that, but for this Settlement, a
10 Class should not have been certified in the Action. This Agreement is entered into solely for the
11 purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be
12 construed as an admission of liability or wrongdoing by Defendants.

13 **Section 4.02: Non-Evidentiary Use**

14 Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor
15 the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or
16 deemed to be evidence for any purpose adverse to Defendants or any other of the Released Parties,
17 including but not limited to, evidence of a presumption, concession, indication, or admission by any
18 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or
19 (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further
20 proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this
21 Agreement or for Defendants to establish that a Class Member has resolved any of his or her claims
22 released through this Agreement.

23 **Section 4.03: Nullification**

24 The Parties have agreed to the certification of the Class encompassing all claims alleged in
25 the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason
26 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
27 Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order

1 is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the
2 Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this
3 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
4 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement
5 had been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing
6 to stipulate to class certification of all causes of action pled in the Action as part of the Settlement
7 will have no bearing on, and will not be admissible in connection with, the issue of whether the Class
8 should be certified by the Court in a non-settlement context in this Action or any other action, and
9 in any of those events, Defendants expressly reserve the right to oppose certification of the Class.

10 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
11 Gross Settlement Amount shall not be distributed pending the completion of the appeal.

12 ARTICLE V

13 RELEASES

14 **Section 5.01: Released Claims by Class Members**

15 Upon the date Defendants transfer the Gross Settlement Amount, Named Plaintiffs and
16 Participating Class Members who do not opt out of the Settlement, on behalf of themselves, their
17 heirs, spouses, executors, administrators, attorneys, agents and assigns, fully and finally release and
18 discharge Released Parties from all claims, rights, demands, liabilities and causes of action of any
19 nature or description arising from the facts pleaded in the operative complaint in the Action, or as
20 reasonably could have been pleaded, including any such claims that were litigated in the Action
21 against Defendants or could reasonably have been litigated in the Action against Defendants based
22 on the facts pleaded in the complaint in the Action. The claims released under this paragraph
23 (“Released Claims”) shall include, but are not necessarily limited to, claims for unpaid wages,
24 unpaid overtime, failure to timely pay all earned wages, meal and rest break violations and/or failure
25 to timely pay meal and/or rest premiums, failure to provide one day’s rest in seven, off the clock
26 work, inaccurate wage statements, record keeping violations, failure to reimburse business expenses,
27 failure to pay all wages owed upon termination, unfair competition, as well as any and all damages,

1 restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys' fees
2 resulting therefrom. This release shall not apply to claims for workers' compensation benefits,
3 unemployment insurance benefits, or any other claim or right that as a matter of law cannot be
4 waived or released.

5 **Section 5.02: Released Claims by PAGA Group Members**

6 Upon the Date of Finality, the State of California and PAGA Group Members release the
7 Released Parties from all claims exhausted in Plaintiffs' notice(s) sent to the LWDA and alleged in
8 the operative complaint, which arose during the PAGA Period, regardless of whether PAGA Group
9 Members opt out of the Class Settlement.

10 **Section 5.03: Named Plaintiffs' Release of Unknown Claims**

11 Upon the Date of Finality, Named Plaintiffs release the Defendants from all claims, demands,
12 rights, liabilities and causes of action of every nature and description whatsoever, known or
13 unknown, suspected or unsuspected, asserted or that might have been asserted, whether in tort,
14 contract, or violation of any state or federal statute, rule or regulation arising out of, relating to, or
15 in connection with any act or omission by or on the part of any of the Released Parties committed or
16 omitted prior to the execution hereof, to the maximum extent permitted by law. This release excludes
17 any current and/or future claims that are unwaivable as a matter of law and workers compensation
18 claims.

19 Section 1542 of the California Civil Code provides as follows:

20 *"A general release does not extend to claims which the creditor or releasing party*
21 *does not know or suspect to exist in his or her favor at the time of executing the*
22 *release and that, if known by him or her, would have materially affected his or her*
23 *settlement with the debtor or released party."*

24 Named Plaintiffs stipulate and agree that as to the Released Parties, Named Plaintiffs
25 expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and
26 benefits of section 1542 of the California Civil Code, including Labor Code section 2802.

27 **ARTICLE VI**

MISCELLANEOUS PROVISIONS

Section 6.01: Amendments or Modification

The terms and provisions of this Agreement may be amended or modified only by an express written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel and approved by the Court.

Section 6.02: Assignment

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

Section 6.03: Governing Law

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, without regard to conflicts of laws.

Section 6.04: Entire Agreement

This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties with respect to the subject matter contained herein. In case of any conflict between text contained in Articles I through VI of this Agreement and text contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be controlling, unless the Exhibits are changed by or in response to a Court order. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the Parties with respect to the settlement of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of prior agreements or proposals.

Section 6.05: Waiver of Compliance

Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.06: Counterparts and Fax/PDF Signatures

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original. All counterparts taken together shall constitute one instrument. A fax, DocuSign, or PDF signature on this Agreement shall be as valid as an original signature.

Section 6.07: Meet and Confer Regarding Disputes

Should any dispute arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, a representative of Class Counsel and a representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior to submitting such disputes to the Court.

Section 6.08: Agreement Binding on Successors

This Agreement will be binding upon, and inure to the benefit of, the successors in interest of each of the Parties.

Section 6.09: Cooperation in Drafting

The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

1 **Section 6.10: Fair and Reasonable Settlement**

2 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement
3 of the Action and have arrived at this Agreement through arm's-length negotiation and in the context
4 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties
5 further believe that the Settlement is and is consistent with public policy, and fully complies with
6 applicable law.

7 **Section 6.11: Headings**

8 The descriptive heading of any section or paragraph of this Agreement is inserted for
9 convenience of reference only and does not constitute a part of this Agreement and shall not be
10 considered in interpreting this Agreement.

11 **Section 6.12: Notice**

12 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
13 communications under this Agreement must be in writing and addressed as follows:

14 *To Named Plaintiffs and the Class:*

15 CAPSTONE LAW, APC
16 Raul Perez
17 Robert Drexler
18 Molly DeSario
19 Jonathan Lee
20 1875 Century Park East, Suite 1000
21 Los Angeles, California 90067
22 Telephone: (310) 556-4811
23 Facsimile: (310) 943-0396

24 And

25 *To Defendants:*

26 SCHOR VOGELZANG & CHUNG LLP

27 Lisa Hird Chung
28 lisa@svclegal.com
 Janelle Thornton
 janelle@svclegal.com
 Carl Lehman
 carl@svclegal.com
 2170 Fourth Ave

San Diego, California 92101
Telephone: (619) 906-2400
Facsimile: (619) 906-2401

Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

Section 6.14: Mutual Full Cooperation

The Parties agree fully to cooperate with each other to accomplish the terms of this Agreement, including but not limited to the execution of such documents, and the taking of such other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its terms. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

Section 6.15: Authorization to Act

Class Counsel warrants and represents that they are authorized by Named Plaintiffs, and Defense Counsel warrants that they are authorized by Defendants, to take all appropriate action required to effectuate the terms of this Agreement, except for signing documents, including but not limited to this Agreement, that are required to be signed by the Parties themselves. Defendants

1 represent and warrant that the individual executing this Agreement on its behalf has the full right,
2 power, and authority to enter into this Agreement and to carry out the transactions contemplated
3 herein.

4 **Section 6.16: No Reliance on Representations**

5 The Parties have made such investigation of the facts and the law pertaining to the matters
6 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,
7 on any statement, promise, or representation of fact or law, made by any of the other parties, or any
8 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
9 rights, or with regard to the advisability of entering into and executing this Agreement, or with
10 respect to any other matters. No representations, warranties, or inducements, except as expressly set
11 forth herein, have been made to any party concerning this Agreement.

12 **Section 6.16: Confidentiality Preceding Preliminary Approval**

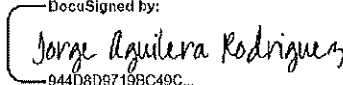
13 The Parties and their counsel agree that they shall not issue any press releases, initiate any
14 contact with the press, respond to any press inquiry, or have any communication with the press about
15 the fact, amount or terms of the Settlement.

16
17 **EXECUTION BY PARTIES AND COUNSEL**

18 The Parties and their counsel hereby execute this Agreement.

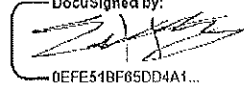
19 Dated: 2/17/2023

JORGE AGUILERA RODRIGUEZ

20 By:  _____
21 DocuSigned by:
22 944D8D9719BC49C...
23 Named Plaintiff

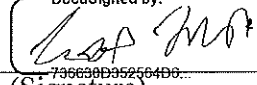
24 Dated: 2/17/2023

ERIC HERNANDEZ

25 By:  _____
26 DocuSigned by:
27 0EFE51BF65DD4A1...
28 Named Plaintiff

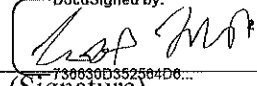
1 Dated: 3/2/2023 | 10:44 AM PST
2 _____
3

IMPERIAL WESTERN PRODUCTS, INC.

By: 
736638D352564D6...
(Signature)
Todd Mathes
(Printed Name)
President and COO
(Title)

7 Dated: 3/2/2023 | 10:44 AM PST
8 _____
9

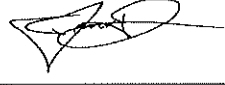
DENALI WATER SOLUTIONS, LLC

By: 
736638D352564D6...
(Signature)
Todd Mathes
(Printed Name)
President and COO
(Title)

13 **APPROVED AS TO FORM ONLY:**

14 Dated: February 17, 2023
15 _____
16

CAPSTONE LAW, APC

By: 
Robert Drexel
Molly Desario
Jonathan Lee

Attorneys for Named Plaintiffs Jorge Aguilera
Rodriguez and Eric Hernandez

22 Dated: 3/2/23
23 _____
24

SCHOR VOGELZANG & CHUNG LLP

By: 
Lisa Hird Chung
Janelle Thornton
Carl Lehman

Attorneys for Defendants Imperial Western
Products, Inc. and Denali Water Solutions, LLC

EXHIBIT A

Rodriguez et al. v. Imperial Western Products, Inc. et al., No. CVRI2000071
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. (“IWP”) 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.
You Can Opt-out of the Class Settlement but not the PAGA Settlement	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.
The Opt-out Deadline is [DATE]	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.

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [DATE]	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.
You Can Participate in the [DATE] Final Approval Hearing	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. 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.

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

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

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

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

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 paid by the Settlement Administrator to the State Controller Unclaimed Property Fund in the name of the Class Member or PAGA Member for whom the funds are designated.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If 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, consultants, partners, shareholders, joint ventures, agents, successors, assigns or legal representatives ("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 of any nature or description 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.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the Settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class and Representative Action Settlement, decided not to participate in the Settlement, and desire to be excluded from the Settlement. The written request for exclusion must include your name, signature, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, or fax the request for exclusion, to the address below.

Settlement Administrator
c/o _____

The request for exclusion must be postmarked or faxed not later than _____, 2023. If you submit a request for exclusion 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 a written objection stating why you object to the Settlement, or you may instead appear at the Final Fairness Hearing to object to the Settlement. Written objections must provide: (1) your full name, signature, address, and telephone number; (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the Settlement Administrator at [administrator's address].

All written objections must be received by the Settlement Administrator by not 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

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

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.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******