

**NOTICE OF CLASS ACTION AND PRIVATE ATTORNEY GENERAL ACT (“PAGA”) SETTLEMENT**

*A court authorized this notice. This is not a solicitation. This is not a lawsuit against you and you are not being sued. However, your legal rights are affected by whether you act or don’t act. Please read it carefully.*

**TO: All persons who were employed by defendant Hort Tech LLC or Hort Tech, Inc. in California in a non-exempt position at any time during the period of August 7, 2014, to January 15, 2020.**

On January 15, 2020, the Honorable Sunshine S. Sykes of the California Superior Court, County of Riverside (“Court”), granted preliminary approval to a proposed class action settlement (“Settlement”) of the lawsuit entitled *Arsenia Rodriguez v. Hort Tech LLC, et al.* Case No. RIC1816212 (“Class Action”), and ordered the litigants to notify all class members about the Settlement.

The Court has certified the following class for settlement purposes:

All persons who are, or have been employed by either defendant Hort Tech LLC or defendant Hort Tech, Inc. in California in a non-exempt position at any time during the period of August 7, 2014, to January 15, 2020 (“Class” or “Class Members”).

The Court has also approved a settlement of claims under the Private Attorney General Act (“PAGA”) for:

All persons who are, or have been employed by either defendant Hort Tech LLC or defendant Hort Tech, Inc. in California in a non-exempt position at any time during the period of August 21, 2017, to January 15, 2020 (“PAGA Employees”).

You are receiving this Notice of Class Action Settlement (“Notice”) because either Hort Tech LLC’s or Hort Tech, Inc.’s (collectively, “Defendants”) records indicate that you are a Class Member who may be entitled to participate in the Settlement. Because your rights may be affected by this Settlement, it is important that you read this Notice carefully. The purpose of this Notice is to provide a brief description of the claims alleged, the key terms of the Settlement, and your rights and options with respect to the Settlement.

**YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.**

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**1. Why Have I Received this Notice?**

Defendants’ records indicate that you may be a Class Member and/or PAGA Employee. The Settlement will resolve all Class Members’ released claims, as described below, from August 7, 2014 through December 20, 2019 (the “Release Period”). You are a member of the Class if you were employed as a non-exempt employee by Defendants in the State of California during the period of August 7, 2014 to December 20, 2019 (“Class Period”).

A Preliminary Approval Hearing was held on December 20, 2019 in the California Superior Court, County of Riverside. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice. The Court also approved the PAGA settlement (described in Question 12 below).

The Court will hold a final fairness hearing concerning the proposed settlement on June 10, 2020 at 8:30 a.m. before Judge Sunshine S. Sykes located in Department 06 at the Riverside County Superior Court at 4050 Main Street, Riverside, California 92501.

**2. What is this Case About?**

The action entitled *ARSENIA RODRIGUEZ v. HORT TECH LLC, et al.* Case No. RIC1816212 was commenced by Plaintiff Arsenia Rodriguez (“Plaintiff”) in the Riverside County Superior Court as a putative class action. Plaintiff also pursued various claims as private attorneys general against Defendants under Labor Code sections 2699 et seq. and the California Private Attorney General Act of 2004 (“PAGA”).

Plaintiff, on her own behalf and on behalf of other current and former non-exempt employees, alleged in the Class Action that Defendants: 1) failed to provide legally-compliant meal periods; 2) failed to provide legally-compliant rest periods; 3) failed to pay overtime wages for all hours worked; 4) failed to pay minimum wage for all hours worked; 5) failed to maintain legally-required records; 6) failed to provide accurate, itemized wage statements; and 7) failed to timely pay wages owed to all employees during each pay period and upon termination of employment. Defendants deny all of these allegations and contend that Plaintiff's claims lack merit. Defendants contend that they have: (1) properly paid all current and former employees for all time worked, including minimum wages and overtime; (2) provided all current and former employees with proper and legally-compliant meal periods and rest breaks; (3) timely paid all wages owed to all current and former employees during each pay period and former employees upon termination of employment; (5) provided all current and former employees with accurate and legally-compliant wage statements; and (6) maintained all legally-required records for all current and former employees.

The Court has not made any determination as to whether the claims advanced by Plaintiff have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendants.

After an exchange of relevant information and evidence, Plaintiff and Defendants (the "Parties") have decided to enter into the Settlement to resolve the Class Action. The law firm representing the Plaintiff – Remedy Law Group LLP ("Class Counsel") - has been appointed by the Court to represent the Class Members. Class Counsel has investigated and researched the claims and issues raised in the Class Action, as well as the law applicable to Plaintiff's claims and Defendants' defenses. While Class Counsel believes that the claims alleged in the Class Action have merit, Class Counsel also recognizes that the risk and expense of continued litigation, including the risk that Defendants may prevail on their defenses, justify settlement. Class Counsel believe the proposed Settlement is fair, adequate, reasonable, and in the best interests of Class Members, and Plaintiff has agreed to settle the Class Action as part of a compromise with Defendants. However, the Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at final fairness hearing.

Defendants have denied, and continue to deny the factual and legal allegations in the Class Action and believe that they have valid defenses to Plaintiff's claims. By agreeing to settle, Defendants are not admitting liability on any of the factual allegations or claims in the Class Action, or that the Class Action can or should proceed as a class action. Defendants have agreed to settle the Class Action because of the risk and expense of continued litigation, and as part of a compromise with Plaintiff. And both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, the Parties avoid the risks and cost of a trial.

**3. Am I a Class Member?**

You are a member of the Class if you were employed by either defendant Hort Tech LLC or Hort Tech, Inc. in California in a non-exempt position at any time during the period of August 7, 2014 to December 20, 2019.

**4. How Does this Class Action Settlement Work?**

In this Class Action, Plaintiff sued on behalf of herself and all other similarly-situated employees. Plaintiff and these other current and former employees comprise the Class for purposes of settlement. The settlement of this Class Action resolves certain claims of the Class and all Class Members except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

**5. Who are the Attorneys Representing the Parties?**

Class Counsel	Defense Counsel
<p>Andranik Tsarukyan, Bar No. 258241            Armen Zenjiryan, Bar No. 261073            REMEDY LAW GROUP LLP            610 E. Providencia Avenue, Unit B            Burbank, CA 91501            Telephone: 818.422.5941</p> <p>Attorneys for Plaintiff,            Arsenia Rodriguez</p>	<p>Tao Y. Leung, Bar No. 254265            Hogan Lovells US LLP            1999 Avenue of the Stars, Suite 1400            Los Angeles, CA 90067            Telephone: 310.785.4600            Facsimile: 310.785.4601</p> <p>Michael DeLarco            Hogan Lovells US LLP            390 Madison Avenue            New York, NY 10017            Telephone: 212.918.3000            Facsimile: 212.918.3100</p> <p>Defendants            Hort Tech LLC and Hort Tech, Inc.</p>

The Court has decided that REMEDY LAW GROUP LLP is qualified to represent you and all other Class Members simultaneously. As part of this settlement, Plaintiff's Counsel is working on your behalf. If you want your own attorney, you may hire one at your own cost.

#### **6. What are My Options?**

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its consequences which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

***Important Note: Hort Tech LLC and Hort Tech, Inc. will take no actions against you in any way for either participating or not participating in this Settlement.***

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this lawsuit and will receive an individual settlement share based on the total number of workweeks you were employed as a non-exempt employee in California during the Release Period. You will release all of the claims defined in Section No. 9 below, and you will give up your right to pursue the claims as defined in Section No. 9 below.
- **OPT OUT:** If you do not want to participate as a Class Member, you may "opt out," which will remove you from the Class and this Class Action. If the Court grants final approval of the Settlement, you will **not** receive an individual settlement share and you will not give up the right to sue Defendants and other entities for any of the claims as defined in Section No. 9 below. If you are a PAGA Employee, you will, however, still release the PAGA Released Claims and receive a payment from the PAGA Fund (described in Question 12).
- **OBJECT:** You may file a legal objection to the proposed settlement. If you would like to object, you may not opt out of this Settlement.

The procedures for opting out and objecting are set forth below in the sections entitled "How do I Opt Out or Exclude Myself from this Settlement" and "How do I Object to the Settlement?"

#### **7. How do I Opt Out or Exclude Myself from this Settlement?**

If you do not wish to participate in the Settlement, you may be excluded (i.e., "opt out") by sending a timely written request that contains your name, address, telephone number, the last four digits of your Social Security number, and the name of the case and case number (entitled *Rodriguez v. Hort Tech LLC, et al., Case No. RIC1816212*) "Request for Exclusion".

If you opt out of the Settlement, you will not be releasing the claims set forth in Question 9.

The exclusion form must include your name, signature, address, telephone number, and last four digits of your Social Security number. Sign, date, and send the Exclusion Form via First Class U.S. Mail, postmarked no later than April 30, 2020, or via facsimile to: Rodriguez v. Hort Tech LLC, c/o Phoenix Class Action Administration Solutions, 1411 N. Batavia St., Suite 105, Orange, CA 92863, facsimile number: (949) 209-2503 ("Settlement Administrator"). Enclosed is an exclusion form you may use should you wish to opt out of the Settlement.

The Court will exclude any Class Member who submits a complete and timely exclusion form as described in the paragraph above. Exclusion forms that do not include all required information and/or that are not timely submitted will be deemed null, void, and ineffective. Any Class Member who fails to submit a valid and timely exclusion form on or before the above-specified deadline shall be bound by all terms of the Settlement, release and any judgment entered in the Class Action if the Settlement receives final approval from the Court.

#### **8. How do I Object to the Settlement?**

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement by informing the Settlement Administrator in writing of your objection. To do so, you must submit a valid, written objection on or before April 30, 2020. All objections must state: (a) state your full name, address, and telephone number; (b) describe, in clear and concise terms, the grounds for objection; (c) identify the name of the case (*Rodriguez v. Hort Tech LLC, et al., Case No. RIC1816212*); (d) be submitted to the Settlement Administrator; and (e) be filed or postmarked on or before April 30, 2020.

Class Members who timely file valid objections to the Settlement may appear at the final fairness hearing, either in person or through the objector's own counsel. Class Members' timely and valid objections to the Settlement will still be considered even if the objector does not appear at the final fairness hearing.

If the Court rejects the Notice of Objection, the Class Member will receive an individual settlement share and will be bound by the terms of the Settlement.

#### **9. How does this Settlement Affect My Rights? What are the Released Claims?**

If the proposed Settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not validly opt-out of the Settlement will be bound by the Court's Final Judgment and will fully release and discharge Defendants and One Rock Capital Partners, LLC, and their past, present, and future officers, directors, employees, and agents ("Released Parties"). from the released claims described below.

## Released Claims.

The claims released are as follows: any and all claims under the California wage orders of the Industrial Welfare Commission (8 Cal. Code Regs. sections 11010, *et seq.*), California Labor Code, California Business & Professions Code (including but not limited to Business & Professions Code section 17200), California Code of Civil Procedure, the Private Attorneys General Act of 2004, as well as any and all debts, rights, demands, liabilities, obligations, guarantees, penalties, costs, expenses, attorneys' fees, damages, liquidated damages, actions, or causes of action, of whatever kind or nature, whether known or unknown, contingent or accrued, from August 7, 2014 through December 20, 2019, and any and all claims under California, federal, or local law that arise out of or relate to the allegations asserted in the Class Action, which are asserted in the Class Action, were or could have been pled based upon the factual allegations contained in the Class Action and those based on the facts and claims asserted in the pleadings or Plaintiff's PAGA letter for (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to maintain required records; (6) failure to provide accurate wage statements; and (7) any related claims for unfair business practices in violation of California's Business and Professions Code, Section 17200. The claims released include all claims described above—that is, those claims that are or reasonably could have been asserted in the First Amended Complaint—whether known or unknown. Thus, if a Class Member participates in the Settlement, then even if the Class Member discovers facts in addition to, or different from, those that he or she now knows or believes to be true or otherwise fails to discover facts with respect to the subject matter of the claims released, those claims will remain released and forever barred. The claims released include any and all claims for wages, bonus pay, reporting time pay, commissions, incentive pay, overtime pay, premium pay such as meal and rest period premiums, final wages, minimum wages, off-the-clock work, business expense reimbursement, penalties such as penalties for incorrect wage statements, wages due on termination, liquidated damages or any pay, premium, or penalty provided for under the California Labor Code or other applicable wage-and-hour statute. All of the aforementioned collectively are referred to as "Released Claims."

### **10. How Much Can I Expect to Receive From This Settlement?**

The Parties have agreed to settle Plaintiff's and the Class Members' claims in exchange for a "Gross Settlement Amount" of \$800,000.00. This amount is inclusive of: (1) individual settlement payments ("Individual Settlement Shares") to Class Members who do not opt out of the Settlement ("Participating Class Members"); (2) payment of up to \$7,500 to Plaintiff for her service as a Class Representative ("Class Representative Enhancement"); (3) up to \$266,666.67 in Attorneys' Fees and up to \$10,000 in Costs for Class Counsel's prosecution of the Class Action; (4) a \$10,000 payment in connection with the settlement of claims under the PAGA; and (5) up to \$17,500 in Settlement Administrator fees and expenses. All of these payments are subject to Court approval.

After deducting the above-referenced items, the remaining amount ("Net Settlement Amount") will be proportionately distributed amongst all Participating Class Members. The Settlement Administrator will calculate the Individual Settlement Shares for Participating Class Members. Each Participating Class Member's gross Individual Settlement Share shall be determined based on the following formula:

- (a) the total number of workweeks for all Participating Class Members during the Class Period will be calculated ("Total Workweeks")
- (b) dividing the Net Settlement Amount by the Total Workweeks worked by all Participating Class Members ("Individual Settlement Share Workweek Value"); and by
- (c) multiplying the Individual Settlement Share Workweek Value by the total number of Workweeks worked by the Participating Class Member;
- (d) The gross amount of each Individual Settlement Share will be reduced by required withholding and deductions for employee taxes on the wage portion of the Individual Settlement Share;
- (e) The entire Net Settlement Amount will be disbursed to all Participating Class Members.

The value of each Participating Class Member's individual settlement share ties directly to the amount of Workweeks that he or she worked. It is estimated the average class member will receive approximately \$501.63, with the approximate range of payment ranging between \$11 to over \$2,500 per Participating Class Member. The gross amount of each individual settlement share will be reduced by required withholding and deductions for employee taxes on the wage portion of the individual settlement share on the terms set forth in this Joint Stipulation and Settlement Agreement. In no event shall the total individual settlement shares paid to Participating Class Members exceed the Net Settlement Amount. If Workweek data is not available for any Participating Class Member, that Participating Class Member's total Workweeks shall be calculated using some other reasonable basis, such as the first and last dates of employment with Defendant but excluding any leave or non-work periods exceeding three (3) consecutive days.

Twenty percent (20%) of your individual settlement share will be treated as unpaid wages. Applicable taxes will be withheld from the wages portion of your individual settlement share only and reported on an IRS Form W-2. The remaining eighty percent (80%) of your individual settlement share payment will be treated as penalties and interest and will be paid pursuant to an IRS Form 1099. Participating Class Members should consult their tax advisors about the tax consequences of the individual settlement shares they receive under the Settlement.

If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, pay the amount of the uncashed checks to The Boys & Girls Clubs of Coachella Valley.

## **11. What are the PAGA Released Claims?**

If you were employed by either Defendant in the State of California during the period of August 21, 2017 to December 20, 2019 you are a PAGA Employee. The Court approved the PAGA settlement on December 20, 2019.

As part of the Settlement, Defendants have agreed to pay a PAGA Payment of \$10,000.00. Seventy-five percent (75%) of this payment goes to the Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) is divided amongst PAGA Employees. The 25% that goes to PAGA Employees is called the PAGA Fund.

The PAGA Fund is allocated to each PAGA Employee based on the number of weeks worked by each PAGA Employee during the period of August 21, 2017 to December 20, 2019. The amount of the PAGA Fund paid to each PAGA Employee ("Individual PAGA Share") shall be determined based on the following formula:

- (a) the total number of workweeks for all PAGA Employees from August 21, 2017 to January 15, 2020 ("PAGA Period") will be calculated ("Total PAGA Workweeks")
- (b) dividing the PAGA Fund by the Total PAGA Workweeks ("PAGA Workweek Value");
- (c) multiplying the PAGA Workweek Value by the total number of Workweeks worked by the PAGA Employee during the PAGA Period.

Plaintiff, on behalf of herself, all aggrieved employees, and as a representative of the State of California as a private attorney general, and all PAGA Employees, fully release and forever discharge the Released Parties (described above) from any and all claims for PAGA penalties under Labor Code Sections 2698, et seq. from August 21, 2017 to December 20, 2019 ("PAGA Released Claims").

It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge any and all PAGA claims that were raised, or could have been raised based on the factual allegations contained in the First Amended Complaint and Plaintiff's PAGA letter, during the period of August 21, 2017 to December 20, 2019. In order for the Released Parties to achieve a full and complete release, each PAGA Employee acknowledges that this Settlement is intended to include, in its effect, all PAGA claims of any nature. As a result of this Release, the PAGA Employees will be unable to bring a claim under the California Private Attorneys General Act, and California Labor Code Sections 2698 et seq. for any alleged violations of the PAGA Released Claims that took place between August 21, 2017 through December 20, 2019. For the avoidance of doubt, the PAGA Released Claims also include any and all claims and related PAGA penalties alleged in the First Amended Complaint, as well as any and all PAGA penalties that were, or could have been, pled based upon the factual allegations contained in the First Amended Complaint, or were or could have been pled based upon the factual allegations contained in Plaintiff's PAGA letter.

If you are a PAGA Employee and opt-out of the Settlement, you will still receive an Individual PAGA Share and will still be releasing the PAGA Released Claims. If you are a Class Member who does not opt-out of the Settlement and you are also a PAGA Employee, you will receive a single check that combines your Individual Settlement Share and your Individual PAGA Share.

If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, pay the amount of the uncashed checks to The Boys and Girls Clubs of Coachella Valley.

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**IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS**, you should contact the Settlement Administrator at the following address and toll-free telephone number listed below, Class Counsel, or to Defense Counsel. Please refer to the Rodriguez v. Hort Tech LLC Class Action Settlement.

Phoenix Settlement Administrators  
P.O. Box 7208  
Orange, CA 92863  
Phone: 1-800-523-5773

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. The complete terms and conditions of the Settlement are contained in the Settlement Agreement and other case-related documents, available at [www.phoenixclassaction.com/rodriguez-v-hort-tech](http://www.phoenixclassaction.com/rodriguez-v-hort-tech). You may also refer to the Exhibit 1 of the Declaration of Andranik Tsaryukyan in Support of Plaintiff's Amended Motion for Preliminary Approval of Class Action Settlement, filed on November 22, 2019, which is on file with the Court at the Riverside Superior Court. The Riverside Superior Court is located at 4050 Main Street, Riverside, California 92501 and is open between 8:30 a.m. and 4:00 p.m. You may also obtain and examine the online pleadings and other records in the Class Action on the Riverside County Superior Court's website at <http://www.public-access.riverside.courts.ca.gov/OpenAccess/>. To find the Class Action records, select "Riverside Public Access – Civil", then select "Search by Case Number" and enter "RIC" in the Case Type field, and then "1816212" in the Case Number field, and then select the hyperlink for the Case Number. Images of every document filed in the case may be viewed through the "Register of Actions" at a minimal charge.

**PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.**