

NOTICE OF CLASS ACTION SETTLEMENT

Bacerra v. Sunridge Nurseries, Inc.
Kern County Superior Court, BCV-19-102625

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice because Sunridge Nurseries' records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced matter.

You do not need to take any action to receive a settlement payment and, unless you request to be excluded from the settlement, your legal rights may be affected.

This Notice is designed to advise you of your rights and options with respect to the settlement.

I. INTRODUCTION

This "NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING DATE FOR COURT APPROVAL" ("NOTICE") is to inform you that the parties have agreed to a class action settlement.

The Court has granted preliminary approval of the Settlement and the Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights. A description of the lawsuit, the settlement terms, and your options in response to this Notice are explained below.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you are a Class Member (as defined below) and received this Notice, you are automatically included in the Settlement and do not need to take any further action to receive a payment. If you accept your settlement amount, you will release the claims described in Section V below.

II. DESCRIPTION OF THE LAWSUIT

On **September 16, 2019**, Plaintiff Maria Bacerra filed a Complaint ("Complaint") against Defendants on behalf of the Class Members, in the matter of *Maria Bacerra v. Sunridge Nurseries, Inc., et al.*, Case No. **BCV-19-102625** in the Superior Court of California for the County of Kern (the "Action"). In the Complaint, Plaintiff claimed that Defendants **(1)** failed to pay overtime wages; **(2)** failed to pay minimum wages; **(3)** failed to provide meal periods; **(4)** failed to pay separate compensation for rest periods; **(5)** failed to provide accurate wage statements; **(6)** failed to maintain required records; **(7)** failed to pay all wages earned; **(8)** failed to pay all wages earned upon termination or discharge; and **(9)** unfair business practices based on the foregoing.

Defendants have denied liability, vigorously deny the allegations in the Complaint, and have raised various defenses to these claims. Defendants contend, among other things, that they fully complied with California wage and hour laws, provided timely off-duty meal and rest breaks, properly and timely compensated its employees, and provided accurate itemized wage statements. Defendants wish to settle this case to avoid costly, disruptive, and time-consuming litigation and do not admit to any wrongdoing or liability.

The Court has not ruled on the merits of Plaintiff's claims. By approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Defendants and Plaintiff have concluded that it is in their respective best interests and the interests of the Class Members to settle the Action on the terms summarized in this Notice.

Plaintiff and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

Under this settlement, the following settlement class will be certified under California law: ***all current and former non-exempt field or nursery employees employed by Defendant Sunridge Nurseries, Inc. in California at anytime from September 16, 2015 to the date the Court has given preliminary approval of the Class Settlement.***

Plaintiff and her counsel, Cameron Stewart, Esq. and Ron Makarem, Esq. ("Class Counsel"), believe that the settlement described below is fair, adequate, reasonable and in the best interests of Plaintiff and the Class.

On July 14, 2022, the Court preliminarily approved the settlement and conditionally certified the settlement class. This Notice is being sent to you because Defendants' records indicate that you were employed by Defendants during the Class Period and that you are a Class Member.

IF YOU ARE STILL EMPLOYED BY DEFENDANT, THIS SETTLEMENT WILL NOT AFFECT YOUR EMPLOYMENT.

California law strictly prohibits retaliation. Further, Defendant is prohibited by law from taking any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member's participation or decision not to participate in this Settlement.

III. TERMS OF THE SETTLEMENT

Defendant has agreed to pay \$1,600,000.00 (the "Gross Settlement Amount") to resolve the Released Claims, as defined in section V below. The following payments will be made from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved Phoenix Class Action Administration Solutions, to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, up to \$20,000 will be paid from the Settlement Amount to pay the Settlement Administration Costs.

Class Counsel's Attorneys' Fees and Expenses. Class Counsel – which includes attorneys from Makarem & Associates, ALPC–have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. To date, the parties have aggressively litigated many aspects of the case including settlement efforts and a full day mediation session. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will collectively ask for fees not to exceed 35% (*i.e.*, \$560,000.00) of the Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit. Class Counsel also will ask for reimbursement of up to \$30,000.00 for the costs Class Counsel incurred in connection with the Lawsuit.

Service Payment to Named Plaintiff and Class Representative. Class Counsel will ask the Court to award Named Plaintiff and Class Representative Maria Becerra a service payment in the amount of \$10,000 to compensate her for her service and extra work provided on behalf of the Class Members. The Class Representative also may receive a share of the Settlement as a Class Member.

Net Settlement Amount. After deducting the amounts above, the balance of the Settlement Amount will form the Net Settlement Amount for distribution to the Class Members. Section IV explains your individual share of the Settlement Amount.

You can view the Settlement Agreement and other Court documents related to this case by visiting <http://www.phoenixclassaction.com/>

IV. YOUR INDIVIDUAL SHARE OF THE SETTLEMENT AMOUNT

The Individual Settlement Amount for each Class Participant (a Class Member that does not opt-out of the Settlement) will be calculated on a pro rata basis based on the number of workweeks worked during the Class Period, as follows. The dollars per compensable workweek will be calculated by dividing the total number of workweeks worked by the Net Settlement Amount to determine a workweek value. The workweek value will be multiplied by the number of workweeks each Class Member worked during the Class Period to determine the Individual Settlement Amount for each Class Member. If any Class Member opts-out of the Settlement, his/her share will be distributed to Class Participants. Ten percent (10%) of the Settlement Award distributed to each Claimant will be considered and reported as "wages" (W-2 reporting), and Ninety percent (90%) of the Settlement Award will be distributed to each Claimant as "interest" and as non-wage "penalties" (Form 1099). Defendant, or its proxies, shall take all usual and customary deductions from the Settlement payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest or penalty distribution; however, it will be reported on IRS Form 1099 as income. Class Participants are responsible for the proper income tax treatment of the Settlement Awards. The Settlement Administrator, Defendants and their counsel, and Class Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

The workweeks you worked for Defendant during the Class Period will be calculated based on Defendant's records.
BASED ON DEFENDANT'S RECORDS, YOU WORKED APPROXIMATELY «Total_Weeks» WORKWEEKS DURING THE CLASS PERIOD.

ACCORDINGLY, YOUR ESTIMATED INDIVIDUAL SETTLEMENT SHARE OF THE NET SETTLEMENT AMOUNT IS «Est_Set_Amt».«ESA_Before_Paga»

Your estimated pro-rata share may change depending on factors such as, but not limited to, the number of Class Members who effectively exclude themselves from the Settlement or by court order. The Net Settlement Amount to be distributed to all Class Members who do not opt-out of the settlement is currently estimated to be «Est_Set_Amt».

If you feel that you were not credited with the correct number of workweeks worked during the Class Period, you may submit evidence to the Settlement Administrator on or before October 11, 2022 with documentation to establish the number of pay periods you claim to have actually worked during the Class Period. DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS. The Parties and Settlement Administrator will promptly evaluate the evidence submitted and discuss in good faith how many workweeks should be credited. The Settlement Administrator will make the final decision as to how many weeks are credited and report the outcome to the Class Participant. If you are unsatisfied with the decision, you may submit an Objection, as discussed below.

Settlement checks will be mailed to all Class Members who do not request to be excluded (i.e., opt-out) approximately 30 days after the Court grants final approval of the Settlement and judgment is entered.

You can view the final approval order and final judgment and payment schedule at <http://www.phoenixclassaction.com/>

V. THE RELEASE OF CLAIMS

If the Court approves the Settlement, the Court will enter judgment and the Settlement Agreement will bind all members of the Settlement Class who have not opted out of the Settlement and will bar all Class Members from bringing certain claims against Defendants as described below.

The Released Parties are Defendant Sunridge Nurseries, Inc. and all of Defendant's present, past, and future parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, representatives, attorneys, insurers, partners, investors, administrators, members, predecessors, customers, clients, joint ventures, successors and assigns, and any individual or entity which could be liable for any of the Released Claims.

The Released Claims are those claims alleged in the operative Complaint, including any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against Released Parties (as defined above), of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated that were asserted in the Complaint or could have been asserted in the Action that accrued during the Class Period and arising from the facts, allegations, or legal theories set forth in the Complaint, including but not limited to the alleged denial of meal periods and rest breaks; the alleged failure to pay overtime wages, including for miscalculation of the regular rate of pay; the alleged failure to pay all minimum wages; the alleged failure to pay minimum or overtime wages for all hours worked; the alleged failure to properly paid piece rate wages; the alleged failure to provide separate compensation for rest periods; the alleged failure to provide accurate itemized wage statements; the alleged failure to timely pay all wages due during employment; the alleged failure to maintain required records; and the alleged failure to timely and fully pay all wages due upon separation from employment.

The Settlement does not release any person, party or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of any nature, nor does it release any claims, actions, or causes of action which may be possessed by Settlement Class Members under state or federal discrimination statutes, including, without limitation, the Cal. Fair Employment and Housing Act, the Cal. Government Code § 12940, *et seq.*; the Unruh Civil Rights Act, the Cal. Civil Code §51, *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*; and all of their implementing regulations and interpretive guidelines.

Class Members who do not opt out will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Settlement payments constitute payment of all sums allegedly due to them. Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Settlement payments. That section provides in pertinent part as follows:

“An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.”

VI. WHAT ARE YOUR OPTIONS?

A. Do Nothing and Receive Your Portion of the Settlement

You are automatically included as a Class Participant and will receive a settlement payment and do not have to take any further action to receive your settlement payment. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment. The estimated amount of your settlement payment if you do nothing is included on the attached Share Form.

B. Opt-Out and Be Excluded from the Class and the Settlement

If you **do not** wish to take part in the Settlement, you may exclude yourself (i.e., opt-out) by sending to the Settlement Administrator a “Request for Exclusion from the Class Action Settlement” letter/card postmarked no later than **October 11, 2022**, with your name, address, telephone number, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE BECERRA V. SUNRIDGE NURSERIES, INC. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE.”

Send the Request for Exclusion directly to the Settlement Administrator at the following address **by no later than October 11, 2022**:

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
Telephone: (800) 523-5773
Facsimile: (949) 209-2503
Email: notice@phoenixclassaction.com

Any person who submits a timely Request for Exclusion from the Class Action Settlement shall, upon receipt, no longer be a Class Member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. If you want confirmation of receipt of your Opt-Out, please send it by U.S. certified mail, return receipt requested and/or contact the Settlement Administrator.

C. Object to the Settlement

You also have the right to object to the terms of the Settlement if you do not Opt-Out. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the proposed Settlement, or any portion of it, you must submit to the Settlement Administrator a written objection stating your name, address, telephone number, dates of employment with Defendants, the case name and number, each specific reason in support of your objection, and any legal support for each objection. Objections must be in writing and must be mailed to the Settlement Administrator, at P.O. Box 7208, Orange, CA 92863, **by no later than October 11, 2022**, for your objection to be considered. **OBJECTIONS THAT DO NOT INCLUDE ALL REQUIRED INFORMATION, OR THAT ARE NOT SUBMITTED TIMELY, MAY NOT BE CONSIDERED BY THE COURT.**

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will receive payment and be bound by the terms of the Settlement in the same way as Class Members who do not object. Any member of the Settlement Class who does not object in the manner provided above shall have waived any objection to the Settlement, whether by appeal or otherwise.

D. Your Right to Appear at the Final Approval and Fairness Hearing Through an Attorney or In Person

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for October 26, 2022, at 8:30 a.m. in Department J of the Kern County Superior Court, located at 1215 Truxtun Avenue, Bakersfield, CA 93301. You have the right to appear either in person or through your own attorney at this hearing. Objections not previously filed in writing in a timely manner as described above will not be considered by the Court. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before October 11, 2022. All objections or other correspondence must state the name and number of the case, which is *Bacerra v. Sunridge Nurseries, Inc. et al.*, Case No. **BCV-19-102625**.

VII. UPDATE FOR YOUR CHANGE OF ADDRESS

If you move after receiving this Notice or if it was misaddressed, please complete the Change of Address portion of the Share Form and mail it to the Settlement Administrator, at, P.O. Box 7208, Orange, CA 92863 as soon as possible. **THIS IS IMPORTANT SO THAT FUTURE NOTICES AND/OR THE SETTLEMENT PAYMENT REACH YOU.**

VIII. IF THE STIPULATION OF SETTLEMENT AND RELEASE OF CLASS ACTION IS NOT

If the Settlement Agreement is not approved by the Court, or if any of its conditions are not satisfied, the conditional settlement will be voided, no money will be paid, and the case will return to litigation. If that happens, there is no assurance: (1) that the Class will be certified; (2) that any decision at trial would be in favor of Class Members; (3) that a trial decision, if any, would be as favorable to the Class Members as this settlement; or (4) that any favorable trial decision would be upheld if an appeal was filed.

IX. QUESTIONS OR COMMENTS?

PLEASE DO NOT CALL OR CONTACT THE COURT. If you have any questions about the settlement, you may contact the Settlement Administrator at: Telephone: (800) 523-5773 or by e-mail at notice@phoenixclassaction.com. You may also contact Class Counsel or Defense Counsel at the addresses and phone numbers listed below.

THE ATTORNEYS REPRESENTING THE CLASS MEMBERS ARE:

Makarem & Associates, APLC
Ronald W. Makarem
Cameron A. Stewart
11601 Wilshire Boulevard, Suite 2440
Los Angeles, California 90025-1760
Telephone: 310-312-0299

THE ATTORNEYS REPRESENTING SUNRIDGE NURSERIES, INC. ARE:

Klein DeNatale Goldner Cooper Rosenlieb & Kimball, LLP
Vanessa Franco Chavez
Mayra G. Estrada
10000 Stockdale Highway, Suite 200
Bakersfield, CA 93311
Telephone: 661-395-1000