

NOTICE TO CLASS MEMBERS OF PROPOSED CLASS ACTION SETTLEMENT & FINAL APPROVAL HEARING

Araiza, et al v. The Scotts Company, LLC, Case No. BC570350

Gonzalez v. The Scotts Company, LLC, Case No. BC577875

*SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES*

If you were employed by The Scotts Company, LLC (“Scotts”) as a Merchandiser or Counselor referred to in this Notice as “M&C”) in the State of California at any time during the period of January 26, 2011 through December 1, 2015 (this period is referred to in this Notice as the “Class Period”) you are eligible to receive a payment from a proposed class action settlement. All M&Cs who were employed by Scotts in California during the Class Period are referred to in this Notice as “Class Members.” You have been identified by Scotts’ business records as a Class Member.

This Notice was authorized by the Court. This is not a solicitation from a lawyer.

You are not being sued. Read this Notice carefully. Your legal rights are affected whether you act or not.

«Barcode» «BarcodeString»
SIMID «SIMID»
«FirstName» «LastName»
«Address1» «Address2»
«City» «State» «Zip»

- A settlement has been reached between Plaintiffs Lewis Araiza, Michael Leite, David Morales, and Everado Gonzalez (“Plaintiffs”) and Scotts.
- The settlement resolves two consolidated class action lawsuits alleging that Scotts failed to pay Class Members all minimum wages due, overtime wages due, failed to provide meal periods or rest breaks or pay premium pay for missed meal periods or rest breaks, failed to provide accurate wage statements, failed to pay all amounts due at termination, and failed to reimburse Class Members for business expenses incurred, including all gas mileage expenses incurred, during the course of their employment with Scotts. Scotts vigorously denies all the claims and contentions made in the lawsuit and maintains it has fully complied with the law. Scotts has decided to settle this case to avoid the expense and distraction of litigation.
- The parties have reached a compromise and settlement of these disputed claims. The settlement makes clear that there has been no finding, nor any admission, of any unlawful conduct by Scotts. If the case were to proceed, the Plaintiffs could lose and recover nothing. Through this settlement, however, Class Members who do not exclude themselves from the settlement will receive cash payments. Payments will be based on your pro-rata number of Days Worked for Scotts as compared with all the Days Worked by all Class Members during the Class Period for those Class Members who do not opt out of this settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
AUTOMATIC INCLUSION	If you were employed by Scotts as an M&C at any time from January 26, 2011 through December 1, 2015, you do not need to do anything to participate in the Settlement. If you do nothing, you will receive a payment automatically based on the number of Days Worked identified below in Section 3.d, if the Court approves the proposed settlement. You will give up the right to bring or participate in any similar action that may be filed against Scotts.
REQUEST EXCLUSION FROM THE SETTLEMENT	If you wish to be excluded from the settlement, you must submit a written Request for Exclusion according to the instructions contained in this Notice. If you submit a Request for Exclusion, you will not be bound by the Settlement (including, but not limited to the Released Claims provision described under Question 5 below), but you will not receive any payment pursuant to the settlement.
OBJECT	You may also object and tell the Court why you don’t like the settlement. If the Court approves the settlement despite your objection, you will still be bound by the settlement.

- **Your options are more fully explained in this notice below. The deadline to submit an objection or request exclusion is July 18, 2016. Your objection or request for exclusion must be postmarked by that date, or it will have no effect.**

1. Why did I receive this notice?

The Plaintiffs and Scotts have entered into a Joint Stipulation and Class Action Settlement Agreement (“Settlement Agreement”) that will, if finally approved by the Court, fully resolve this case. The Settlement Agreement sets forth the details of the settlement. You may obtain a copy of the Settlement Agreement from the Settlement Administrator or Class Counsel. (Details concerning where to get additional information, including a copy of the Agreement, are provided at the end of this Notice.) The proposed Settlement Agreement has been submitted to the Court, and has been preliminarily approved for settlement purposes only. The Court appointed the law firms

of HammondLaw, P.C. of Baltimore, Maryland, Ackermann & Tilajef, P.C. of Los Angeles, California, Law Offices of Todd M. Friedman, P.C. of Beverly Hills, California, and Asaf Law of Beverly Hills, California, as Class Counsel to represent you and the Settlement Class.

Scotts' records show that you are a Member of the Class preliminarily approved by the Court. As a Class Member, you are entitled to share in the funds to be made available for settlement of this class action. You are not being sued and you will not be individually responsible for any of the attorneys' fees or costs of the litigation because the settlement requires those amounts to be paid from the Total Settlement Sum paid by Scotts. However, your rights will be affected by the Settlement Agreement described in this Notice whether you act or not. This Notice explains the lawsuit, the settlement, and your legal rights.

The Court must finally approve the terms of the settlement described below as fair and reasonable to the Settlement Class, before it will take effect. This process will take approximately four months, though it may take longer depending upon the Court's schedule. If approved, the settlement will affect all Class Members who do not exclude themselves from the Settlement Class. An Administrator that has been appointed by the Court will make all approved settlement payments after the Court orders them. Those settlement payments are described in this Notice.

2. The Actions – What are the cases about?

Plaintiffs Lewis Araiza, Michael Leite, and David Morales filed *Araiza v. The Scotts Company, LLC*, Case No. BC570350, on January 26, 2015 in the Superior Court of Los Angeles County. Plaintiff Gonzalez filed *Gonzalez v. The Scotts Company, LLC*, Case No. BC577875, on April 7, 2015 in the Superior Court of Los Angeles County. Plaintiffs in each of these actions alleged that, in the course of their employment for Defendant and during the Class Period, Defendant violated Cal. Labor Code § 2802 and California's Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq* by failing to reimburse Class Members for all of their necessarily incurred business expenses. In the Gonzalez case, Plaintiff Gonzalez further alleged that Defendant: (a) violated Cal. Labor Code §§ 1194 by failing to pay minimum wage to M&Cs for all hours worked; (b) failed to pay overtime wages in violation of Labor Code §§ 510 and 558 ; (c) failed to provide meal and rest breaks, and failed to pay premium pay for missed breaks in violation of Labor Code §§ 226.7, 512 and 558; and (d) failed to issue accurate wage statements in violation of Labor Code § 226; (e) failed to pay all wages due upon termination in violation of Labor Code §§ 201-203, and (f) violated the Private Attorneys General Act ("PAGA"), Labor Code §§ 2698-2699.5. Plaintiffs also alleged that Defendant issued inaccurate wage statements to a separate class consisting of all non-exempt employees of Scotts in California who worked double overtime at any time during the Class Period ("Wage Statement Class") in violation of California Labor Code § 226.

Scotts vigorously denies all the claims and contentions made in the lawsuit and maintains it has fully complied with the law. Scotts has decided to settle this case to avoid the expense and distraction of litigation. The Court has not found Scotts in violation of any of the laws alleged. If this case were to proceed, Scotts might win the case and then Plaintiffs would recover nothing. To avoid the cost and uncertainty of litigation, Plaintiffs and Scotts have agreed on the settlement terms described below.

3. What are the settlement terms and how much can I expect to receive if I participate?

a. Overall summary of settlement terms

Scotts will pay \$925,000 to settle this case (the "Total Settlement Sum"). From that amount, payments will be made to Class Counsel for attorneys' fees and costs, to the Settlement Administrator for administration costs, to the Plaintiffs for their representation of the Class, to the California Labor and Workforce Development Agency for its share of penalties under the PAGA, to the Reserve Fund, and to employer side taxes. The amounts of these various payments are described in this Notice below. After deduction of these amounts, the remainder – the "Net Settlement Amount" – of approximately \$554,916.67, will be distributed to Class Members and Wage Statement Class Members who do not request exclusion from this settlement (referred to in this Notice as a "Participating Class Member").

Your individual Settlement Award will be based on your status as a Participating Class Member and the number of compensable days you worked as an M&C for Scotts during the Class Period ("Days Worked"), as a pro-rata percentage of the total Days Worked by all Scotts M&Cs during the Class Period.

b. Calculation of individual class member payments

For participating in the settlement, Class Members will automatically receive a Class Participation Award of \$100. Wage Statement Class Members will automatically receive a Wage Statement Class Participation Award of \$50. An additional Settlement Award for Class Members will be calculated based on the number of days a Class Member worked as an M&C for Scotts during the Class Period. "Days Worked" means the number of days a Class Member was designated as an M&C in California in Scotts' payroll system during the Class Period and received a payment through Scotts' payroll system, whether by direct deposit, paycheck, or otherwise. Your total

Days Worked will be divided by the total Days Worked of all Class Members who have not excluded themselves from the Settlement. The resulting fraction or percentage is each Class Member's pro-rata share of the Net Settlement Amount.

c. Who will receive settlement payments?

Any person who was employed by Scotts in California as an M&C at any time from January 26, 2011 through December 1, 2015 will automatically receive a settlement payment consistent with the calculation provided above unless he or she submits a valid and timely Request for Exclusion. Additionally, any person who was employed by Scotts in California, was classified as a non-exempt employee, and who worked double overtime at any time from January 26, 2014 through December 1, 2015 will automatically receive a \$50 payment to settle claims for the Wage Statement Class, unless he or she submits a valid and timely Request for Exclusion.

d. How much can I expect to receive?

Your total Settlement Award is currently estimated at \$<MERGED_EstSettAmnt_CALC>. This consists of your Class Participation Award of \$100 plus your estimated pro-rata share of the Net Settlement Amount. The Net Settlement Amount is currently estimated to be \$554,916.67. Your estimated pro-rata share of the Net Settlement Amount may increase or decrease depending on factors such as, the outcome of any challenge by Class Members and the number of Class Members who effectively exclude themselves from the Settlement.

Your estimated Settlement Award is based on your Days Worked as an M&C for Scotts in California during the Class Period as a percentage of all of the Class Members' Days Worked during the Class Period. "Days Worked" means the number of days you actually worked as an M&C in California, as shown by Scotts' payroll system during the Class Period and received a payment through Scotts' payroll system, whether by direct deposit, paycheck, or otherwise. Scotts' payroll records show that during the Class Period you had a total number of Days Worked of <MERGED_WorkDays>.

If you agree with the total number of your Days Worked during the Class Period and wish to both receive a Settlement Award and be bound by the settlement terms, you do not need to do anything.

If you do not agree with total number of your Days Worked during the Class Period, you may Challenge your Days Worked.

To challenge your Days Worked, you must mail the following information to the Settlement Administrator:

- 1) A written statement detailing what you believe to be the correct number of days you worked as an M&C in California during the Class Period from January 26, 2011 through December 1, 2015; and,
- 2) Any and all information and/or documentary evidence that support your challenge.

Scotts' business records will determine the outcome of the challenge unless you submit valid documents indicating that the business records are inaccurate.

If you change your mailing address, please send your new mailing address to the Settlement Administrator. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your settlement payment.

TO CHALLENGE THE NUMBER OF YOUR DAYS WORKED DURING THE CLASS PERIOD, THESE STEPS MUST BE TAKEN, AND THE APPROPRIATE DOCUMENTATION MUST BE SIGNED AND POSTMARKED NO LATER THAN JULY 5, 2016.

- (1) Applicable Tax Withholding and Responsibility for Taxes

Settlement Awards to Participating Class Members are allocated for tax purposes as follows: Each Participating Settlement Class Member's individual settlement payment shall be treated as wages and interest in the following proportions: 20% of such payments will be considered wages, and will be reported as such to each Class Member on a W-2 Form, and 80% of such payments shall be for interest on allegedly unpaid wages to be reported on a 1099 tax basis. You are advised to seek independent tax advice regarding the potential tax consequences of your settlement amount.

- (2) Unclaimed Amounts/Uncashed Checks

The Net Settlement Amount shall be distributed to all Class Members who do not effectively exclude themselves from the Settlement. All settlement checks that are not cashed or deposited within ninety days of issuance will be void and will be used to pay Scotts' share of any applicable payroll taxes on the settlement payments. Any remaining balance will be entirely distributed to the Department of Industrial Relations Labor Code § 96.7 Unpaid Wage Fund, which will provide Class Members who fail to cash their settlement check an opportunity to obtain their settlement payment. No unclaimed funds or unclaimed check amounts will be returned to Scotts.

e. Additional payments to the Named Plaintiffs

The Court has also preliminarily approved Service Award payments to each of the four Named Plaintiffs: \$5,500 each to Everado Gonzalez and Michael Leite, and \$2,500 each to Lewis Araiza and David Morales (a total of \$16,000 for the four Named Plaintiffs). The service awards will be paid from the Total Settlement Sum, which will slightly reduce any payment made to participating Class Members. These service awards are intended to compensate the Named Plaintiffs for their risk incurred and time and effort spent in assisting with the prosecution of the Action on behalf of the Class Members and in return for executing a General Release of all Claims against Scotts and the Released Parties, which is broader than the release applicable to the other Class Members who are not Named Plaintiffs.

f. Attorneys' fees and costs for the Class Counsel

The Court has preliminarily and conditionally approved the following law firms as Class Counsel:

Julian Hammond
HammondLaw, P.C.
1829 Reisterstown Road, Suite 410
Baltimore, MD 21208
Tel: (310) 601-6766
Fax: (310) 295-2385

Craig J. Ackermann, Esq.
Ackermann & Tilajef, P.C.
1180 South Beverly Drive, Suite 610
Los Angeles, CA 90035
Tel: (310) 227-0614
Fax: (310) 227-0635

Todd M. Friedman
Law Offices of Todd M. Friedman, P.C.
324 South Beverly Drive, Suite 725
Beverly Hills, CA 90212
Tel: (877) 206-4741
Fax: (866) 633-0228

Asaf Agazanof
Asaf Law
8730 Wilshire Boulevard, Suite 310
Beverly Hills, CA 90211
Tel: (424) 254-8870
Fax: (888) 254-0651

You do not need to pay individually any portion of Class Counsel's attorneys' fees or costs. All payments for those attorneys' fees and costs will be deducted from the Total Settlement Sum, which will reduce any payment made to you should you choose to participate in the Settlement. Class Counsel will apply to the Court for final approval of their attorneys' fees and costs. The attorneys for the Class will ask for reimbursement of their costs of up to \$25,000 actually incurred in litigating this case and for fees of up to \$308,333.33 (an amount equal to one-third of the Total Settlement Sum). The attorneys' fees will be divided up as follows: Attorney Mike Baller, who was a litigation consultant for Class Counsel, will be paid his lodestar in an amount not to exceed \$21,000. The remaining amount will be divided as follows: Class Counsel will split the attorneys' fees award, with HammondLaw and Ackermann & Tilajef, PC receiving 75% of the awarded attorneys' fees and Law Offices of Todd M. Friedman, PC and AsafLaw receiving 25% of the awarded fees. HammondLaw and Ackermann & Tilajef, PC will each receive 50% of their share of the awarded fees, and the Law Offices of Todd M. Friedman, PC and AsafLaw will each receive 50% of their share of the awarded fees. The actual amount awarded will be determined by the Court to ensure that the amount of attorneys' fees and costs is reasonable. The fees and costs of Class Counsel will be paid from the Total Settlement Sum provided by Scotts.

g. Settlement Administration Costs

Costs incurred by the Settlement Administrator in connection with providing Notice to the Class, receiving and determining challenges to estimated settlement payment amounts, receiving and forwarding to the Court and the Parties Requests for Exclusion and objection letters received, if any, and calculating and distributing payments due to participating Class Members and others entitled to settlement payment under the terms of the Settlement Agreement as approved by the Court, will be paid from the Total Settlement Sum up to a maximum of \$12,000. The Settlement Administrator's name and contact information is provided below in this Notice.

h. LWDA payment

The Settlement Administrator will make a payment to the California Labor and Workforce Development Agency ("LWDA") in the amount of Three Thousand Seven Hundred Fifty Dollars (\$3,750.00) for the LWDA's portion of the settlement of Plaintiffs' and Class Members' PAGA claims. This payment will be paid from the Total Settlement Amount.

i. Reserve Fund

The Settlement Administrator shall set aside a Reserve Fund of \$5,000 to pay Class Members inadvertently left off the class list, or for other similar circumstances. Any unused funds associated with the Reserve Fund, as well as any uncashed checks, shall be entirely

distributed to the Department of Industrial Relations Labor Code § 96.7 Unpaid Wage Fund, which will provide Class Members who fail to cash their settlement check an opportunity to obtain their settlement payment.

j. All Payments Subject to Court Approval

All of the payments listed above will be made if and only if the Court grants final approval of the Settlement Agreement based on its finding that the settlement is reasonable, fair, and adequate for the Class. The amounts of those payments may be adjusted by the Court.

4. What Are My Options?

You may exclude yourself from the settlement, object to the settlement, or do nothing.

If you want to participate in the settlement, you do not have to do anything. You will receive your Settlement Award automatically if the Settlement is approved by the Court. You also have the right to exclude yourself from the Settlement Class. Finally, you may have a right to object to the settlement. The option you choose affects whether you receive a settlement payment and whether you give up certain rights. These options are also summarized in the chart on the first page of this Notice.

a. What do I have to do in order to receive a settlement payment?

In order to receive a settlement payment, you do not have to do anything. If you do not submit a Request for Exclusion, your individual Settlement Award will be calculated for you and paid automatically.

b. Can I request to be excluded from the Settlement?

You, or any Class Member, can, if you wish, exclude yourself from the Settlement. If you do so, you will not receive a Settlement Award and will not be subject to the terms of the Settlement Agreement.

You may exclude yourself from the proposed settlement by taking the following steps:

- (1) You must mail a written statement containing your name and address, and the last four digits of your Social Security number and state your desire to be excluded from the Settlement Class to the Settlement Administrator, whose name and address is listed below.
- (2) The request must be postmarked by July 18, 2016.

You cannot both exclude yourself and obtain a Settlement Award. If you exclude yourself, you will not receive any payment pursuant to the Settlement. You also cannot both exclude yourself and object to the settlement. If you submit a Request for Exclusion and submit an objection to the settlement, your objection will not be considered.

You may also rescind your request to be excluded from the settlement up to three days prior to September 15, 2016. The rescission of your request must be submitted in a written statement to the Settlement Administrator.

c. How do I object to the settlement?

If you are satisfied with the proposed settlement, you do not need to express your views or appear at the hearing at which the Court will consider final approval of the settlement. However, if you wish to object to the proposed settlement you must take the steps below. Your failure to do so will be deemed a waiver of your objections and you will not be permitted to appear at the hearing at which the Court will consider whether to grant final approval:

- (1) You must mail a written statement to the Settlement Administrator listed below. The Settlement Administrator will send a copy of your objection to all Parties involved in the case and to the Court.
- (2) The written statement **MUST** include: your name, address and last four digits of your Social Security number, and state the basis for your objection. You may appear at the final approval hearing personally, or through your own counsel, paid for at your own expense.
- (3) The written statement must be postmarked by July 18, 2016.

If you have satisfied the requirements set forth above, you have the right to address the Court at the hearing scheduled for September 15, 2016 at 10:00 a.m. before the Honorable Kenneth R. Freeman, Los Angeles County Superior Court Judge, 600 South Commonwealth Avenue, Los Angeles, CA 90005. Remember, if you submit a Request for Exclusion, you cannot submit an objection.

5. Released Claims -- What Will I Give Up if I Participate in the Settlement?

The settlement relates to the time that you worked as an M&C for Scotts during the Class Period, and to any and all claims related to allegedly unpaid wages, unpaid overtime wages, unpaid premium pay for missed meal periods and rest breaks, unreimbursed business expenses, inaccurately issued wage statements, and unpaid wages due at termination.

If the proposed Settlement is approved, all Participating Class Members will be considered to have released Scotts (including its current and former parent corporations, holding corporations, partners, shareholders, subsidiaries, affiliates, divisions, predecessors, successors, related entities, assigns, and all of their current and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, employee benefit plans and the trustees and administrators of any such plans, supervisors, successors, affiliated corporations, divisions, subsidiaries, affiliates or related entities, in any and all capacities, including, but not limited to, the fiduciary, representative, or individual capacity of any released person or entity— collectively referred to as the “Released Parties”) from all wage claims under the California Labor Code, as alleged in the Complaints, such as those arising under the California Labor Code Sections 201, 202, 203, 204, 204(b), 210, 215, 226, 226.6, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1194, 1198, 1199, 2802, and civil penalties under the Private Attorney’s General Act 2698-2699.5, applicable Wage Order, and Business and Professions Code Sections 17200, et seq. The claims released by the Settlement Class shall include claims that are alleged in the Complaints or that arise from facts alleged in the Complaints, for unpaid wages, unpaid overtime wages, unpaid double time wages, failure to pay all wages earned every pay period, failure to provide meal or rest periods, unpaid premiums for missed meal or rest periods, untimely payment of wages, inaccurate wage statements, record keeping violations, claims for failure to reimburse for any and all business related items (including but not limited to cell phone usage and mileage), failure to pay all wages owed upon termination, unfair competition, as well as any damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys’ fees resulting therefrom (collectively, the “Released Claims”). The Participating Settlement Class Members will be permanently barred from suing or otherwise making a claim against any of the Released Parties regarding the Released Claims.

Class Members who do not exclude themselves from the settlement will be considered to have accepted the release and to have waived any and all of the Released Claims against the Released Parties.

6. Will I be subject to discipline based on whether I participate in the settlement?

No California law protects individuals and employees from retaliation based on their decision to participate or not participate in a class action settlement. Scotts is prohibited by law from retaliating in any way based on your decision to participate or not participate in the settlement. Your decision to participate, not participate, or object in this Settlement will not impact your employment with Scotts or Scotts’ treatment of you as a former employee.

7. Where can I get additional information?

This Notice only summarizes this lawsuit, the settlement, and related matters. For more information, please contact the following court-appointed neutral third party Settlement Administrator:

Araiza et al v. The Scotts Company, LLC
c/o Simpluris
P.O. Box 26170
Santa Ana, CA 92799
scotts@simpluris.com
Toll free telephone number: (877) 723-7093

You are also welcome to visit the Settlement Administrator’s website where relevant documents are posted including the Settlement Agreement, in its entirety, and this Notice. That website is: www.simpluris.net/pages/case-info.aspx

The pleadings and other records in this litigation, including the Settlement Agreement, may be examined online at the Los Angeles County Superior Court’s website at <https://www.lacourt.org>. After arriving at the website, navigate to the tab “Online Services” and click on the link “Civil Case Document Images.” From that webpage, you can enter the case number of the lawsuits (provided at the top of this Notice) and follow the onscreen directions to look up the case. Please be aware that you must first set up an account to search and view documents on the court’s online database and that the court may charge a public access fee.

PLEASE DO NOT TELEPHONE THE COURT, DEFENDANT, OR DEFENDANT’S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.