

**** E-filed June 14, 2011 ****

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LUIS SANDOVAL, et al.,

No. C09-04969 HRL

Plaintiffs,

v.

AB LANDSCAPING, INC., et al.,

Defendants.

**INTERIM ORDER RE: JOINT
MOTION FOR ORDER CERTIFYING
TENTATIVE SETTLEMENT CLASS,
PRELIMINARILY APPROVING
PROPOSED SETTLEMENT,
APPROVING AND DIRECTING THE
NOTICE PLAN, APPOINTING CLASS
COUNSEL, AND APPOINTING
SETTLEMENT ADMINISTRATOR**

[Re: Docket No. 59]

Luis Sandoval ("Sandoval"), Israel Rodriguez ("Rodriguez"), and Cesar Martinez ("Martinez") (collectively, "Named Plaintiffs") and AB Landscaping, Inc. ("AB Landscaping") and Victor Arellano ("Arellano") (collectively, "Defendants") have entered into a Joint Stipulation of Settlement and Release to settle and dismiss the above-captioned litigation on a class-action basis and have filed a joint motion for an order provisionally certifying the settlement class and preliminarily approving their settlement, approving and directing their notice of settlement, and setting a schedule for the final settlement approval process. Docket No. 59 ("Joint Motion"); Docket No. 60-1 ("Settlement Agreement"). The Court held a hearing on the Joint Motion on May 10, 2011. Docket No. 61. Shortly thereafter, based on the Court's comments during the hearing, the parties submitted certain revised documents; namely, a draft Notice of Class Action Settlement and

1 Settlement Hearing (“Notice”); a draft Claim Form (“Claim Form”); and a draft Opt-In Form (“Opt-
2 In Form”).

3 Upon review, the Court found that Notice, Claim Form, and Opt-In Form submitted by the
4 parties were unclear and, in some instances, inconsistent with the terms of the Settlement
5 Agreement. Accordingly, the Court revised substantial portions of each document. The documents
6 are attached to this Interim Order. If the parties have any comments or proposed revisions to these
7 documents, they shall submit them to the Court within 7 days from the date of this order.

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9 **IT IS SO ORDERED.**

10 Dated: June 14, 2011

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12 _____
13 HOWARD R. LLOYD
14 UNITED STATES MAGISTRATE JUDGE
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C09-04969 HRL Notice will be electronically mailed to:

Adam Wang adamqwang@gmail.com, alpedersen@gmail.com, rosilenda@gmail.com
Adam Lee Pedersen alpedersen@gmail.com
Roger Mark Mason rmason@smwb.com, chilton@smwb.com

Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court’s CM/ECF program.

NOTICE OF CLASS ACTION SETTLEMENT AND SETTLEMENT HEARING

Sandoval, et al. v. AB Landscaping, Inc., et al.

Case No.: C09-04969 HRL

United States District Court for the Northern District of California

Date action filed: October 19, 2009

TO: ALL EMPLOYEES OF AB LANDSCAPING INC. OR VICTOR ARELLANO WHO WERE EMPLOYED ON AN HOURLY BASIS BETWEEN OCTOBER 20, 2005 AND APRIL 1, 2011 (COLLECTIVELY, "CLASS MEMBERS"):

THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM AN ATTORNEY. YOU MAY BE ENTITLED TO MONEY FROM THIS SETTLEMENT. BECAUSE YOUR RIGHTS MAY BE AFFECTED, IT IS EXTREMELY IMPORTANT THAT YOU READ THIS NOTICE CAREFULLY.

YOU ARE HEREBY NOTIFIED that a proposed settlement (the "Settlement") of the above-captioned lawsuit (the "Lawsuit") has been reached by the parties and has been granted preliminary approval by the court. The purpose of this Notice is to describe the Lawsuit, to inform you of the proposed Settlement, and to inform you of your rights and options in connection with the proposed Settlement. The proposed Settlement will resolve all claims for unpaid wages (including overtime) and penalties under the California Labor Code, and, for those who choose to "opt in," for liquidated damages under the Fair Labor Standards Act ("FLSA"). A fairness hearing will be held on _____, 2011 at _____ a.m. in Courtroom 2 before United States Magistrate Judge of the United States District Court for Northern District of California, the Honorable Howard R. Lloyd (the "Fairness Hearing"), to determine whether the Lawsuit should be finally settled.

I. SUMMARY OF LAWSUIT

A. The above-captioned Lawsuit was filed by plaintiffs Luis Sandoval, Israel Rodriguez and Cesar Martinez (collectively, "Plaintiffs" or "Class Representatives") against Defendants AB Landscaping Inc. and Victor Arellano (collectively, "Defendants"), on behalf of themselves and all Class Members. Plaintiffs alleged that Defendants did not pay overtime wages to Class Members who worked more than 8 hours in a day or more than 40 hours in a week. Plaintiffs also alleged Defendants failed to pay wages due to Class Members within 72 hours after their employment terminated. Plaintiffs further alleged that Defendants failed to furnish Class Members with accurate itemized pay statements as required by law. Plaintiffs sought to recover these unpaid wages as well as corresponding penalties under the California Labor Code, and liquidated damages under the FLSA. Plaintiffs and Defendants have agreed to settle the Lawsuit pursuant to a proposed Settlement Agreement (the "Settlement Agreement"), by which Defendants will pay a sum of money to qualified Class Members in full settlement of any and all claims they may have for unpaid wages and penalties under the California Labor Code, and liquidated damages under the FLSA.

II. TERMS OF THE SETTLEMENT AGREEMENT

A. The parties entered into a proposed Settlement Agreement. The Settlement Agreement is not yet final. The Court will hold a Fairness Hearing on _____, 2011 at 10:00 a.m. in Courtroom 2 before the United States Magistrate Judge Honorable Howard R. Lloyd of the United States District Court for Northern District of California at 280 South First Street, San Jose, CA 95113. At the Fairness Hearing, Magistrate Judge Lloyd will decide whether to finally approve the Settlement Agreement.

B. The Settlement Agreement provides that Defendants will pay a total of Three Hundred Twenty Four Thousand Sixty Eight Dollars and Ninety Nine Cents (\$324,068.99) (the "Settlement Amount") to fully resolve this Lawsuit. The Settlement Amount has been or will be distributed as follows:

1. Defendants previously paid One Hundred Seventy Two Thousand Four Hundred Eighty Two Dollars and Eighty Six Cents (\$172,482.86) to 34 Class Members for unpaid wages based on an audit of payroll and time records of AB Landscaping Inc. for the period from October 20, 2005 through April 1, 2011 (the "Distributed Funds");

2. In addition to the Distributed Funds already paid, AB Landscaping Inc. will pay One Hundred Fifty One Thousand Five Hundred Eighty Six Dollars and Thirteen Cents (\$151,586.13) (the "Settlement Fund") to be distributed as follows:

a. First, Twenty Two Thousand Seven Hundred Forty Four Dollars and Seventy Eight Cents (\$22,744.78) will be paid to qualified Class Members who did not receive Distributed Funds for unpaid wages. The amount of unpaid wages owed to these Class Members has been calculated based on an audit of payroll and time records provided by AB Landscaping Inc. THE CALCULATED AMOUNT OF YOUR UNPAID WAGES IS SET FORTH IN YOUR CLAIM FORM.

b. Second, Class Representatives Luis Sandoval, Israel Rodriguez and Cesar Martinez will be paid \$10,000, \$10,000, and \$5,000, respectively, for their services as the Class Representatives. In light of this payment, they will not receive money in settlement of their claims for penalties under the California Labor Code;

c. Third, Defendants will pay their statutorily-required matching contributions on the wage portion of the Settlement Amount;

d. Fourth, subject to court approval, attorney's fees not to exceed \$80,000 and costs not to exceed \$10,000 will be paid to Plaintiffs' counsel Adam Wang ("Class Counsel");

e. After paying the amounts described above in (a), (b), (c), and (d), 80% of the remaining amount will be distributed to Class Members who timely submitted an "Opt-In Form" to settle their claims for liquidated damages under the FLSA; and 20% of the

remaining amount will be distributed to all Class Members who timely submitted a "Claim Form" for penalties under to the California Labor Code.

C. There are a total of 67 Class Members. If not all Class Members timely submit a Claim Form, the wages owed to those Class Members ("Cy Pres Funds") will be paid to a court-approved nonprofit organization. The parties have proposed that any Cy Pres Funds be paid to the California Bar Association.

D. Defendants will make the Settlement Fund payment within three (3) months after the Court finally approves the Settlement Agreement, if no appeal is taken from such approval.

III. YOUR OPTIONS

If you are a Class Member -- that is, if you were employed by Defendants on an hourly basis between October 19, 2005 and April 1, 2011 -- you have five options. None of these options will cost you any money. You may:

A. MAKE A CLAIM: If you want to participate in the Settlement and receive unpaid wages owed to you in the amount indicated in your Claim Form and receive your share of the corresponding penalties under the California Labor Code, you must submit the Claim Form that accompanies this Notice. You must submit your Claim Form to Class Counsel at the address listed below and it must be postmarked no later than _____, 2011.

B. OPT-IN FOR LIQUIDATED DAMAGES UNDER THE FLSA: If you want to receive additional money in settlement of your claims for liquidated damages under the FLSA (this money is in addition that in settlement of your claims for unpaid wage claim and corresponding penalties under the California Labor Code), you must ALSO submit the Opt-In Form that accompanies this Notice. You must submit your Opt-In Form to Class Counsel at the address listed below and it must be postmarked no later than _____, 2011.

C. REQUEST TO BE EXCLUDED FROM THE SETTLEMENT: If you DO NOT want to participate in the Settlement and DO NOT want to receive unpaid wages owed to you in the amount indicated in your Claim Form or receive your share of the corresponding penalties under the California Labor Code, you must submit a written Request for Exclusion indicating your intent to be excluded from the Settlement. If you choose to opt out, you may still keep any money you may have already received. You must submit your Request for Exclusion to Class Counsel at the address listed below and it must be postmarked no later than _____, 2011. It must also contain your **name, address, telephone number and Social Security Number** and must, at a minimum, contain the following language:

I wish to opt out of the settlement of this case, Sandoval et al. v. AB Landscaping, Inc. (Case No. C09-4969 HRL). I understand that by requesting to be excluded from the settlement, I will receive no money from the settlement funds. I understand that if I am excluded from the class monetary settlement, I may bring a separate action. I understand that in any separate lawsuit, I may receive nothing or less than I would have received if I had filed a claim for money

pursuant to the Settlement. I understand that I should consult with an attorney, at my own expense, regarding the applicable statute of limitations.

D. OBJECT: You may object to the Settlement, either personally or through an attorney. An objection must be in a signed writing that contains your name, address and Social Security number. All objections must be filed with the court and mailed to Class Counsel, at the address shown below, postmarked no later than _____, 2011. If you submit a written objection to the Settlement Agreement, you may also attend the Fairness Hearing to present your objection to the judge, either personally or through an attorney at your own expense. **HOWEVER, IF THE COURT FINALLY APPROVES THE AGREEMENT, YOU WILL BE BOUND BY ITS TERMS AND WILL RECEIVE THE SETTLEMENT SHARE ALLOCATED TO YOU PURSUANT TO THE TERMS OF THE SETTLEMENT OUTLINED ABOVE EVEN IF YOU OBJECT TO ITS TERMS.**

E. DO NOTHING: You have a right to do nothing, and to not participate in the Settlement in any manner. You will not be contacted again. However, you must understand that if you do nothing, you will lose your right to make a claim for unpaid wages and the corresponding penalties under the California Labor Code as provided in this Settlement (but you will not lose your right to pursue liquidated damages under the FLSA). **HOWEVER, YOU WILL STILL BE BOUND BY THE TERMS OF THE SETTLEMENT AGREEMENT, EVEN THOUGH YOU WILL NOT RECEIVE ANY MONEY.**

This is a summary of the Settlement Agreement in this matter. If you wish to read the Settlement Agreement in its entirety, or to review other documents filed in this case, you may review the complete court files at the Clerk's Office, United States District Court, 280 South First Street, San Jose, CA 95113. If you have any questions about the Settlement, you or your own attorney may contact Class Counsel at the address and telephone number listed below.

All documents exercising your options must be sent to the Class Counsel at the following address:

Sandoval et al. v. AB Landscaping Inc., et al.
attn: Adam Wang
P.O. Box _____
San Jose, CA 95113
408-_____

If you choose to participate in the Settlement, you will be bound by the provisions of the Settlement Agreement; that is, you will not be able to separately sue Defendants for unpaid wages and corresponding penalties under the California Labor Code (if you submit a Claim Form) or liquidated damages under the FLSA (if you submit an Opt-In Form).

ANY CLASS MEMBER WHO DOES NOT TIMELY SUBMIT A CLAIM FORM AND OPT-IN FORM INDICATING THEIR WISH TO PARTICIPATE IN THE SETTLEMENT WILL NOT RECEIVE A SHARE OF THE SETTLEMENT.

**ANY CLASS MEMBER WHO WISHES TO OPT OUT BUT DOES NOT TIMELY
SUBMIT AN OPT-OUT FORM WILL BE BOUND BY THIS SETTLEMENT IF
APPROVED BY THE COURT.**

IV. CHANGE OF ADDRESS

If you move after receiving this Notice or if it was misaddressed, you should supply your correct name and address to the Class Counsel at the following address:

Sandoval et al. v. AB Landscaping Inc., et al.
attn: Adam Wang
P.O. Box. _____
San Jose, CA 95113
408-_____

This is important so that any share of the Settlement Fund to which you may be entitled or future notices will reach you.

V. REMINDER AS TO TIME LIMITS

A. If you wish to participate in the Settlement, you must fill out, complete and return a copy of Claim Form and/or Opt-In Form to Class Counsel, postmarked on or before _____.

B. If you wish to be excluded from the Settlement, you must mail a Request for Exclusion indicating your desire to be so excluded to Class Counsel, postmarked on or before _____.

C. If you object to the Settlement Agreement, you must file your objection with the court and mail it to Class Counsel, postmarked on or before _____, 2011.

Dated:

Howard R. Lloyd
United States Magistrate Judge

CLAIM FORM

Sandoval, et al. v. AB Landscaping, Inc., et al.

Case No.: C09-04969 HRL

United States District Court for the Northern District of California

Date action filed: October 19, 2009

Records show that you are a member of the Class that comprises **ALL EMPLOYEES OF AB LANDSCAPING INC. OR VICTOR ARELLANO WHO WERE EMPLOYED ON AN HOURLY BASIS BETWEEN OCTOBER 20, 2005 AND APRIL 1, 2011 (COLLECTIVELY, "CLASS MEMBERS")**.

Records show that you are owed the following:

Name:

Wages Owed:

Amount Paid:

(Payroll withholdings will be taken out)

In addition to the unpaid wages owed to you, you are also entitled to corresponding penalties under the California Labor Code, as described in the attached Notice of Class Action Settlement and Settlement Hearing. **Unless you sign and return this Claim Form, you will waive your rights to these wages and penalties.**

To submit this Claim Form, you must complete and mail it to Class Counsel at the following address no later than _____, 2011:

Sandoval et al. v. AB Landscaping Inc., et al.

attn: Adam Wang

P.O. Box _____

San Jose, CA 95113

408-_____

The unpaid wages owed to you will be calculated based on the number of exemptions you claimed while working for AB Landscaping Inc. unless you send a new W-4 Form together with together with this Form.

Note to claimant:

- 1. You are responsible for income taxes on any recovery you receive.**
- 2. Return this form to Class Counsel no later than _____, 2011. DO NOT WAIT UNTIL THE LAST MINUTE.**

CLAIM FORM

I, the undersigned, wish to participate in the Settlement in Sandoval, et al. v. AB Landscaping, Inc., et al., No. C09-04969 HRL.

Name: _____

Address: _____

Home phone: _____

Work phone: _____

Social Security #: _____

I verify that I am the above named individual.

I declare, under penalty of perjury under the laws of the United States and the State of California, that the information set forth above is true and correct to the best of my knowledge.

(Print Name)

(Signature)

(Date)

OPT-IN FORM

Sandoval, et al. v. AB Landscaping, Inc., et al.

Case No.: C09-04969 HRL

United States District Court for the Northern District of California

Date action filed: October 19, 2009

Records show that you are a member of the Class that comprises **ALL EMPLOYEES OF AB LANDSCAPING INC. OR VICTOR ARELLANO WHO WERE EMPLOYED ON AN HOURLY BASIS BETWEEN OCTOBER 20, 2005 AND APRIL 1, 2011 (COLLECTIVELY, "CLASS MEMBERS")**.

Records also show that you are owed unpaid wages you earned while working for AB Landscaping Inc or Victor Arellano. As a result, pursuant to Fair Labor Standards Act ("FLSA"), you may be entitled to liquidated damages.

If you want to receive money in settlement of your claims for liquidated damages under the FLSA, you must submit this Opt-In Form. (The terms of the Settlement in the above-referenced case will settle your liquidated damages claims under the FLSA only if you choose to opt in. You are not required to settle your liquidated damages claims under the FLSA in order to participate in the Settlement and receive wages or penalties under the California Labor Code).

To submit this Opt-In Form, you must complete and mail it to Class Counsel at the following address no later than _____, 2011:

Sandoval et al. v. AB Landscaping Inc., et al.
attn: Adam Wang
P.O. Box _____
San Jose, CA 95113
408-_____

Note to claimant:

- 1. You are responsible for income taxes on any recovery you receive.**
- 2. Return this form to the Claims Administrator, c/o Adam Wang, no later than _____, 2011. DO NOT WAIT UNTIL THE LAST MINUTE.**

OPT-IN

I, the undersigned, do hereby opt in to settle any liquidated damages due under Fair Labor Standards Act per the Settlement in Sandoval, et al. v. AB Landscaping, Inc., et al. No. C09-04969 HRL.

Name: _____

Address: _____

Home phone: _____

Work phone: _____

Social Security #: _____

I verify that I am the above named individual.

I declare, under penalty of perjury under the laws of the United States and the State of California, that the information set forth above is true and correct.

(Print Name)

(Signature)

(Date)