

below, authorizing notice of the settlement contained in the Settlement Agreement upon the terms and conditions set forth in this Order.

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order have the meanings assigned to them in the Settlement Agreement and this Order.

2. The Court has jurisdiction over the subject matter of this action, including the claims asserted, Plaintiff, the members of the FLSA Collective (“Settlement Collective Action”) and Rule 23 Settlement Class (“Settlement Class”), Defendant, and the implementation and administration of the Settlement Agreement.

3. The Settlement Agreement, which was filed with the Court as Exhibit A to Plaintiff’s Brief in Support of Plaintiff’s Unopposed Amended Motion for Preliminary Approval (Dkt. 62), is preliminarily approved, as it appears fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23, subject to final consideration thereof at the Final Approval Hearing provided for below.

Notice to Settlement Classes, Notice to Regulators, Opt-In Procedure, and Appointment of Settlement Administrator

4. The Court approves as to form and content the Notice, submitted with the Settlement Agreement at Dkt. 63-1;

5. The manner and forms of Notice to be sent to members of the Settlement Collective and Class set forth in § IV of the Settlement Agreement are hereby approved and the provisions thereof are hereby incorporated into this Order so that upon entry of this Order, the Parties are directed to ensure that the Notice is disseminated according to the terms of § IV(A)(2) of the Settlement Agreement. (Dkt. 63-1).

Defendant, with the assistance of the Settlement administrator, must cause to be served written notice of the proposed class settlement on the United States Attorney General and North Carolina Attorney General, which the Court finds are the appropriate officials to receive notice of this proposed settlement under 28 U.S.C. § 1715(a)(1)(2). Defendant shall cause the notice to be served within ten days of the date of this order, which the Court determines is the date on which the proposed settlement is filed in court as contemplated by § 1715(b). The notice shall include the information set forth in § 1715(b)(1)–(6), and (8), as well as the names of class members who are to receive notice. The Court finds that providing such information is feasible under § 1715. The Court’s authorization of notice under 28 U.S.C. § 1715 is not a finding that such statute applies, nor is it an advance approval of any official’s participation in the Court’s review of this settlement.

6. Any member of the Settlement Class who does not properly and timely request exclusion from the Settlement will receive payment as described in the Settlement Agreement. Any member of the Settlement Class who properly and timely requests exclusion from the Settlement will not be legally bound by the terms of the Agreement or the final order approving the Settlement.

7. Prior to the Final Approval Hearing, the Settlement Administrator shall serve and file a sworn statement attesting to compliance with the Settlement Agreement consistent with terms of IV(A)(2) of the Settlement Agreement. (Dkt. 63-1). Class Counsel will file such declaration with the Court prior to the fairness hearing along with any final approval documents, to allow the Court to evaluate whether procedural and substantive due process concerns have been met.

Requests for Exclusion from the North Carolina State Law Settlement Class

8. Members of the Rule 23 Settlement Class may request exclusion from the Rule 23 Settlement Class and the Settlement. All written requests by members of the Settlement Class to exclude themselves from the Settlement must be returned by First-Class U.S. Mail to the Settlement Administrator so that it is postmarked no later than forty-five (45) calendar days after the date on which the Settlement Administrator first mails the Notice to the members of the Settlement Classes. A written request seeking exclusion must expressly state that the class member wishes to be excluded from the Settlement. The request should state at the top of the letter “Request for Exclusion from Settlement in *Roldan v. Bland Landscaping, Inc.*, No. 3:20-CV-00276-KDB-DSC,” and should include the name, address, telephone number, and signature of the individual requesting exclusion from the Settlement.

9. In the event the Settlement receives final approval, any member of the Settlement Class who did not properly and timely request exclusion shall be bound by all the terms and provisions of the Settlement Agreement, the final approval order, the final judgment, and the releases set forth therein, and will be deemed to have waived all objections and opposition to the fairness, reasonableness, and adequacy of the Settlement, whether or not such person objected to the Settlement and whether or not such person made a claim upon, or participated in, the Settlement. All members of the Settlement Class who do not timely and validly request to be excluded would then be enjoined from proceeding against the Defendant for the claims made in the Complaint.

10. All members of the Settlement Class who submit valid and timely notices of their intent to be excluded from the Settlement Classes: (i) shall not have any rights under the Settlement Agreement; (ii) shall not be entitled to receive a settlement payment; and (iii) shall not be bound by the Settlement Agreement, any final approval order, or the final judgment.

Objections to the Settlement

11. Consistent with the Settlement Agreement, members of the Settlement Class who have not requested exclusion and wish to object to the Settlement must file a written objection with the U.S. District Court for the Western District of North Carolina setting forth the nature of his or her objection, and the arguments supporting the objection, and serve copies of the objection to Class Counsel and Defense Counsel. Any objections must be filed and served no later than forty-five (45) calendar days after the date on which the Settlement Administrator first mails the Notice to the members of the Settlement Classes. To the extent that any objection is filed in advance of the Final Approval Hearing, the Parties may file a written response to the objection as time permits. Unless otherwise permitted by the Court, objecting Settlement Class Members shall not be entitled to speak at the hearing on the Final Approval Date unless they have timely filed and served a written objection. Any Settlement Class Member who has properly and timely submitted objections may appear at the Final Approval Date hearing, either in person or through a lawyer retained at their own expense. Any Settlement Class Members who fail to file and serve a timely written objection shall be deemed to have waived any objection and shall be foreclosed from objecting to this Settlement.

Approval and Appointment of Settlement Administrator

12. The Court approves and appoints CPT Group to serve as the neutral, third-party Settlement Administrator in accordance with the terms of the Settlement Agreement and this Order. The Court HEREBY ORDERS and AUTHORIZES CPT Group to perform the administrative duties specified in this Order.

I. Issue Notice of Settlement

13. First, the Court ORDERS CPT Group to issue the approved Notice, via email, and text message¹ to all members of the Settlement Class and Settlement Collective Action, as defined above. To that end, CPT Group shall:

14. Accept receipt of information regarding the Named and Opt-In Plaintiffs and members of the Settlement Class and Settlement Collective Action (as described in § IV(A)(1) of the Settlement Agreement) and shall keep that information confidential in accordance with the terms of § IV(A)(1) of the Settlement Agreement;

15. Update the provided addresses for all members of the Settlement Class and Settlement Collective Action using the National Change of Address database in accordance with the terms of § IV(A)(1) of the Settlement Agreement;

16. Confirm the amount of the individual Settlement Payments in accordance with the terms of § III(B)(2) of the Settlement Agreement;

17. Prepare, format, print, and disseminate by Text, Email, and First-Class U.S. Mail the Notice approved by the Court, together with a pre-addressed, postage-paid return envelope, and follow-up on any undeliverable Notices with a skip trace in accordance with the terms of § IV(A)(2) of the Settlement Agreement;

18. Resend the approved Notice, where appropriate in accordance with the terms of § IV(A)(2) of the Settlement Agreement.

¹ Notice by text message does not violate federal consumer protection law, as Rule 23 class members willingly provided Defendant their phone numbers for purposes of receiving communications related to their employment. *See* Telephone Consumer Protection Act, §47 U.S.C. 227, *et seq.*

19. The Settlement Administrator may provide replacement copies of the Notice by mail or email if requested by a member of the Settlement Class or Settlement Collective Action.

20. Ensuring the total cost is consistent with CPT Group's quoted cost for services and expenses in connection with the administration of the Settlement prior to the mailing, emailing, and texting of the Settlement Notice.

II. Collect Requests for Exclusion

21. The Court FURTHER ORDERS CPT Group to collect written requests for exclusion by members of the Rule 23 Settlement Class. As part of these tasks, CPT Group shall:

22. Establish and maintain a P.O. Box, email account, and website for receipt of requests for exclusion and other communications from the members of the Putative Settlement Class;

23. Contact any members of the Putative Rule 23 Settlement Class who timely and properly submit both (i) a written request for exclusion and (ii) objections to the proposed settlement, to inform such individuals that they cannot both request exclusion from the Settlement and object to the settlement and ask such individuals which option they wish to pursue.

III. Establish and Distribute Funds from a Qualified Settlement Fund

24. Additionally, the Court ORDERS that, following the issuance of an Order from this Court, if any, granting final approval to the Parties' proposed settlement, and after the Effective Date of the Parties' proposed settlement, as defined in § II(A)(6) of the Settlement Agreement, CPT Group shall take the necessary steps, consistent with the Court-approved settlement, to distribute Settlement Payments (as defined in § II(A)(29) of the Settlement Agreement) to Authorized Claimants, as well as to make any other Court-authorized payments under the Settlement. This shall include:

25. Setting up a Qualified Settlement Fund (“QSF”) and accepting distribution by Defendant of the Gross Settlement Amount into that fund in accordance with the terms of § IV(D)(1) of the Settlement Agreement;

26. Before issuing payment to Plaintiff’s Attorneys, paying Court-authorized Service Awards to the Named Plaintiff Roldan and early opt-in Plaintiff J.M. Surles (as set forth in § IV(D)(4) of the Settlement Agreement), if any, from the Court-Authorized Attorneys’ Fees and Expenses, and issuing I.R.S. Form 1099s to Named and Opt-in Plaintiffs for such payments, in accordance with the terms of § IV(D)(4) of the Settlement Agreement;

27. Paying Court-authorized awards of Class Counsel’s Fees and Expenses, minus Court-Authorized Service Awards, (as set forth in § IV(D)(4) of the Settlement Agreement), if any, from the QSF, and issuing I.R.S. Form 1099s to Class Counsel for such payments, in accordance with the terms § IV(D)(3) of the Settlement Agreement;

28. If the Court awards less than the requested amount of Attorneys’ Fees, Expenses, or Service Awards, re-calculate the amount of the individual Settlement Payments in accordance with § III(C)(2) of the Settlement Agreement prior to distribution and following the Effective Date.

29. Determining which members of the Settlement Class or Settlement Collective Action are Authorized Claimants who will receive Settlement Payments;

30. Performing all tax reporting duties required by federal, state, or local law, in accordance with the terms of § IV(D)(2) of the Settlement Agreement;

31. Preparing and sending, by U.S. Mail, Settlement Payments to Authorized Claimants in accordance with the terms of § IV (D)(2) of the Settlement Agreement;

32. Preparing and sending, by U.S. Mail, I.R.S. Forms W-2 and 1099 to Authorized Claimants either contemporaneously with or an appropriate time after the issuance of Settlement Payments, in accordance with the terms of § III(D) of the Settlement Agreement;

33. Providing copies of each negotiated settlement check to Defendant.

34. Voiding and placing stop-payments on Settlement Payment checks that are not negotiated within one hundred-eighty (180) calendar days after being mailed to Authorized Claimants, or that are reported as potentially stolen or lost by an Authorized Claimant; Reissuing and mailing checks to Authorized Claimants who reported the check was lost or stolen;

35. Within Two Hundred-Twenty-Five (225) days after mailing the Individual Settlement Amount checks, alert Class Counsel of the amount of unclaimed funds, including the names of individuals who did cash their Settlement Payments. As any unclaimed funds will be deemed waived, such unclaimed funds shall be redistributed to Authorized Claimants who did cash the settlement payment within the 180-day period, using the same pro-rata basis described in § III.B.2 of the Settlement Agreement. Class Counsel shall perform the calculated distribution of pro-rated unclaimed funds to the proper Authorized Claimants and shall provide such information to CPT Group within seven (7) days of CPT Group providing an accounting of unclaimed funds.

36. Within fourteen (14) days of receiving the pro-rata redistribution amounts for Authorized Claimants, issuing a checks identified in § IV(D)(2) in accordance with the terms of that Section of the Settlement Agreement.

IV. Reporting Activities to the Parties

37. CPT Group is HEREBY ORDERED to regularly report to the Parties, in written form, the substance of the work it performs in this matter pursuant to this Order and the Settlement Agreement in accordance with the terms of § IV(A)(1)-(3) of the Settlement Agreement. This shall

include informing the Parties of the dates CPT Group mails, texts, and emails the Notice to members of the Settlement Classes, the number of objections or exclusion requests received, and when it distributes funds from the QSF. Within five calendar days after the Court enters an Order Granting Preliminary Approval of the Agreement, the Settlement Administrator will provide a near-final draft of any notice package to Defendant's counsel so that Defendant may give appropriate notice under 28 U.S.C. § 1715.

38. The Settlement Administrator shall provide to Class Counsel, within 75 days of the mailing of the Notice of Settlement a declaration from an appropriate agent or agents working for it, stating under penalty of perjury: (a) the names and addresses of all individuals to whom the Settlement Administrator mailed and emailed notice of the proposed settlement; (b) whether each such individual was an Opt-in Plaintiff, member of the Settlement Collective Action, or member of a Settlement Class; and (c) the identity of all individuals who validly and timely requested exclusion from the settlement. Such declaration will be filed prior to the final approval hearing for the Court's consideration.

39. To allow the Parties and the Court to evaluate the work performed by CPT Group in this matter, CPT Group is also ORDERED to maintain records of all activities associated with its settlement administration duties pursuant to this Order and the Settlement Agreement, including: (i) records reflecting the dates of all mailings to members of the Settlement Class or Settlement Collective Action; (ii) records reflecting the dates of all materials and inquiries received in connection with the proposed settlement (whether by U.S. Mail and/or text); (iii) the original mailing envelope for any returned Notice, any written requests for exclusion, or any other correspondence received from members of the Settlement Class, Settlement Collective Action, or Authorized Claimants; (iv) the original copies of any U.S. mail, or email/text communications with

any members of the Settlement Class, Settlement Collective Action, or Authorized Claimants; and
(v) copies of cancelled checks for any Authorized Claimant.

V. Miscellaneous

40. The Court FURTHER ORDERS that counsel for all Parties have the right to review and approve any documents to be mailed by CPT Group in connection with the proposed settlement prior to their mailing, and CPT Group may not mail any such documents without first receiving written approval from counsel for the Parties or direction from the Court to send such documents.

41. CPT Group is FURTHER ORDERED to take reasonable steps to protect the disclosure of any and all personal information concerning members of the Settlement Class or Settlement Collective Action provided to CPT Group by counsel for the Parties, including but not limited to members of the Settlement Class or Settlement Collective Action personal information provided pursuant to § IV(A)(1) of the Settlement Agreement. This includes maintaining reasonable administrative, physical, and technical controls in order to avoid public disclosure of any such information and to protect the confidentiality, security, integrity, and availability of such personal data in accordance with the terms of § IV(A)(1) of the Settlement Agreement.

42. Finally, CPT Group is ORDERED to perform whatever additional tasks that are agreed to by all Parties, and which are reasonably necessary to effectuate the issuance of the Court-authorized Notice, to collect and track any requests for exclusion from those Settlement Class members who wish to exclude themselves from the proposed settlement, and, if it is later granted final approval, to distribute funds associated with the settlement in accordance with the terms of the Settlement Agreement.

The Final Approval Hearing

43. Pursuant to Rule 23(e) of the Fed. R. Civ. P., the Court will hold a hearing to determine whether the Settlement Agreement and its terms are fair, reasonable and in the best interests of the members of the Settlement Classes, and whether a final judgment as to Plaintiff's claims as provided in the Settlement Agreement should be entered granting final approval of the Settlement (the "Final Approval Hearing").

44. At the Final Approval Hearing, the Court shall also determine whether, and in what amount, attorney's fees, costs, and expenses should be awarded to Class Counsel, and whether, and in what amount, service awards should be made to Plaintiffs.

45. The Final Approval Hearing is hereby scheduled to be held before this Court on the 13th day of December, 2022 at 10:00 a.m. in Courtroom 4B of the United States District Court for the Western District of North Carolina, Charles R. Jonas Federal Building, 401 West Trade Street, Charlotte, North Carolina 28202.

46. The date and time of the Final Approval Hearing shall be set forth in the Notice, but the Final Approval Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class Settlement Collective Action, or Authorized Claimants other than that which may be posted by the Court.

47. Unless the Court orders otherwise for good cause shown, only members of the Settlement Class who have filed and served timely notices of objection in accordance with the terms of § IV(A)(3) of the Settlement Agreement and this Order shall be entitled to be heard at the Final Approval Hearing. Any member of the Settlement Class who does not timely file and serve an objection in writing to the Settlement Administrator, within 45 calendar days after the mailing date of the Notice of Settlement, prior to entry of Final Judgment, or to Class

Counsel's application for fees, costs, and expenses or to service awards, in accordance with the procedure set forth in the Notice and mandated in this Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

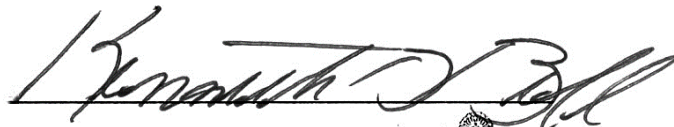
Other Provisions

48. Each and every time period and provision of the Settlement Agreement shall be deemed incorporated into this Order as if expressly set forth and shall have the full force and effect of an Order of this Court.

49. If the Settlement Agreement is terminated pursuant to the terms of the Settlement Agreement, or this Court does not grant final approval of the Settlement Agreement, or the Settlement is not consummated or fails to become effective for any reason whatsoever, the Parties reserve all of their rights, including the right to continue with the litigation as set forth in the Settlement Agreement.

SO ORDERED.

Signed: September 6, 2022



Kenneth D. Bell
United States District Judge

