

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MERCED

HILARIO BANUELOS SOTO, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

BRITZ FARMING CORP, a California
Corporation; and DOES 1 through 20, inclusive;

Defendant.

CASE NO. 19CV-04182

**NOTICE OF PROPOSED CLASS
ACTION SETTLEMENT AND HEARING
DATE FOR COURT APPROVAL**

Complaint Filed: September 25, 2019

To: all individuals who are or were employed as hourly, non-exempt employees by Britz Farming Corp. or its predecessor, merged or related entities in California from September 25, 2015 through February 4, 2020 (“Class Members”).

YOU ARE ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT. PLEASE READ THIS NOTICE CAREFULLY.

The settlement involves claims against Britz Farming Corp. (“Defendant”) alleging: (1) failure to pay wages for all hours worked (Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1; IWC Wage Order No. 14-2001); (2) failure to pay overtime wages (Cal. Labor Code §§ 510, 1194; IWC Wage Order No. 14-2001); (3) failure to provide paid rest periods and/or pay missed rest period premiums (Cal. Labor Code § 226.2, 226.7; IWC Wage Order No. 14-2001); (4) failure to provide compliant meal periods and/or pay missed meal period premiums (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 14-2001); (5) failure to reimburse business expenses (Cal. Labor Code § 2802); (6) failure to provide complete/accurate wage statements (Cal. Labor Code § 226(a) and 226.3); (7) failure to pay all wages due to former employees based on the foregoing (Cal. Labor Code § 201 – 203); (8) derivative UCL violations based on the foregoing (Cal. Bus. & Prof. Code §§ 17200-17204); and (9) PAGA and other penalties (Cal. Labor Code § 2699, *et seq.*) based on the foregoing.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you are a Class Member (as defined above) 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.

I. INTRODUCTION

This “NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING DATE FOR COURT APPROVAL” (“NOTICE”) is to inform you that Defendant has agreed to settle a class action lawsuit on behalf of all Class Members which claimed, among other things, that Defendant violated various wage and hour laws by failing to pay all minimum and overtime wages for all hours worked, failing to provide compliant meal and rest

periods or to pay meal and rest break premiums, failing to reimburse for business expenses, failing to pay its former employees all wages due at separation from employment, failing to issue accurate itemized wage statements, failing to provide employees with changing areas that are separate and apart from restrooms, violating California Labor Code provisions forming the basis for a PAGA claim and a class action claim, and violating Section 17200 with respect to its employees at any time during the period from September 25, 2015 through February 4, 2020 (the “Class Period”).

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.

II. DESCRIPTION OF THE LAWSUIT

On September 25, 2019, Plaintiff Hilario Banuelos Soto filed his Complaint (“Complaint”) against Defendant on behalf of the Class Members, in the matter of *Hilario Banuelos Soto v. Britz Farming Corp, et al.*, in Merced County Superior Court, Case No. 19CV-04182, alleging the following Causes of Action: (1) failure to pay wages for all hours worked (Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1; IWC Wage Order No. 14-2001); (2) failure to pay overtime wages (Cal. Labor Code §§ 510, 1194; IWC Wage Order No. 14-2001); (3) failure to provide paid rest periods and/or pay missed rest period premiums (Cal. Labor Code § 226.2, 226.7; IWC Wage Order No. 14-2001); (4) failure to provide compliant meal periods and/or pay missed meal period premiums (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 14-2001); (5) failure to reimburse business expenses (Cal. Labor Code § 2802); (6) failure to provide complete/accurate wage statements (Cal. Labor Code § 226(a) and 226.3); (7) failure to pay all wages due to former employees based on the foregoing (Cal. Labor Code § 201 – 203); (8) derivative UCL violations based on the foregoing (Cal. Bus. & Prof. Code §§ 17200-17204); and (9) PAGA and other penalties (Cal. Labor Code § 2699, *et seq.*) based on the foregoing.

Defendant has denied liability, has denied the allegations in the Complaint, and has raised various defenses to these claims. Defendant contends, among other things, that it fully complied with California wage and hour laws and provided its employees with the required statutorily mandated wages, provided timely off-duty meal and rest breaks, provided reimbursement for business expenses, and provided accurate itemized wage statements. Defendant also contends that its employees were compensated for all duties performed, and that their employees have been dealt with legally and fairly. Defendant wishes to settle this case to avoid costly, disruptive, and time-consuming litigation and does 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, Defendant 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. After Defendant provided extensive discovery and information to counsel for the Class Members, the Settlement was reached after arms-length non-collusive negotiations between the parties, including a full day of mediation with a highly-experienced employment law mediator. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Settlement was a fair, reasonable and adequate way to resolve the disputed claims.

The 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 individuals who are or were employed as hourly, non-exempt employees by Defendant or its predecessor, merged or related entities in California from September 25, 2015 through February 4, 2020

Plaintiff Hilario Banuelos Soto and his counsel, Jonathan Melmed, Esq. of Melmed Law Group P.C., and Craig Ackermann of Ackermann & Tilajef, P.C. (“Class Counsel”), believe that the settlement described below is fair, adequate, reasonable and in the best interests of Plaintiff and the Class.

On June 17, 2020, the Court preliminarily approved the settlement and conditionally certified the settlement class. This Notice is being sent to you because Defendant’s records indicate that you were employed by Defendant during the Class Period.

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 \$371,000.00 (the “Settlement Amount”) to resolve claims in the operative Complaint (“Complaint”).

The Parties agreed to the following payments from the Settlement Amount:

Settlement Administration Costs. The Court has approved CPT Group, Inc. 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, reasonable costs not to exceed \$15,000 will be paid from the Settlement Amount to pay the Settlement Administration Costs.

Attorneys’ Fees and Expenses. Class Counsel – includes attorneys from Melmed Law Group P.C., and Ackermann & Tilajef, P.C.– 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 of one third (*i.e.*, \$123,666.67) 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 \$10,000.00 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 Hilario Banuelos Soto a service payment in the amount of \$10,000 to compensate him for his 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.

PAGA Payment. The Parties have agreed on a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the Net Settlement Amount to be distributed to the Participating Class Members. Class Counsel shall give timely notice of the Class Settlement to the LWDA under Labor Code section 2699(1)(2).

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.

You can view the Settlement Agreement and other Court documents related to this case by visiting www.CPTGroup.com/SotoBritzFarmingSettlement.

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 as follows. Compensable pay workweeks will be all weeks worked by all Class Members during the Class Period. 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. Twenty percent (20%) of the Settlement Award distributed to each Claimant will be considered and reported as “wages” (W-2 reporting), and eighty percent (80%) of the Settlement Award will be distributed to each Claimant as “interest” and as non-wage “penalties” (Form 1099). Defendant, or their 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, Defendant and its 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. 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 August 31, 2020 with

documentation to establish the number of workweeks 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 5 days after the Effective Date. The payment will be made by the Settlement Administrator.

You can view the final approval order and final judgment and payment schedule at www.CPTGroup.com/SotoBritzFarmingSettlement.

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 Defendant as described below.

The settlement includes a release by Class Members (other than those who submitted a timely request to be excluded) of Defendant and all of its shareholders, members, agents, predecessors, successors and assigns (the “Released Parties”) those claims alleged in the operative Complaint (“Complaint”), including claims under Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 2802 as well as IWC Wage Order No. 14, and the California Business and Professions Code Section 17200 based on alleged violation of the foregoing statutes and Wage Order section; as well as all claims arising under the listed Labor Code statutes based on the primary rights of those statutes (the “Released Class Claims”). Additionally, Plaintiff, on behalf of himself, and as a private attorney general on behalf of the State of California, and all other Aggrieved Employees, will release the Released Parties from any civil penalty claims under the Private Attorneys General Act, Labor Code section 2699, et seq. (“PAGA”), predicated on the claims alleged in the Complaint, as well as all PAGA claim predicated on the listed Labor Code statutes based on the primary rights of those statutes (the “PAGA Released Claims”). The Release Period for the Released Class Claims shall be September 25, 2015 through February 4, 2020.

Plaintiff Hilario Banuelos Soto agrees to a general release of all claims against Defendant during the Class Period and agrees to waive his rights under Civil Code Section 1542.

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 August 31, 2020, 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 HILARIO BANUELOS SOTO V. BRITZ FARMING CORP LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE 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 August 31, 2020**:

Soto v. Britz Farming Corp. Settlement Administrator
c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606

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. 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 file with the Settlement Administrator a written objection stating your name, address, telephone number, dates of employment with Defendant, 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, *Soto v. Britz Farming Corp. Settlement Administrator*, c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606, **by no later than August 31, 2020** 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 December 7, 2020, at 1:30 p.m. in Department 8 of the Merced Superior Court, located at 2260 N. Street, Merced, CA 95340. 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 August 31, 2020. All objections or other correspondence must state the name and number of the case, which is *Hilario Banuelos Soto v. Britz Farming Corp, et al.* Case No. 19CV-04182.

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, *Soto v. Britz Farming Corp. Settlement Administrator*, c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 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 APPROVED

If the Stipulation 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: 1-888-506-0394 or by e-mail at SotoBritzFarmingSettlement@cptgroup.com. You may also contact Class Counsel at the address or phone number listed below.

THE ATTORNEYS REPRESENTING THE CLASS MEMBERS ARE:

MELMED LAW GROUP P.C.

Jonathan Melmed, Esq.

jm@melmedlaw.com

1801 Century Park East, Suite 850

Los Angeles, California 90067

Telephone: (310) 824-3828

Facsimile: (310) 862-6851

ACKERMANN & TILAJEF, P.C.

Craig J. Ackermann, Esq. (SBN 229832)

cja@ackermanntilajef.com

Sam Vahedi, Esq. (SBN 282660)

sv@ackermanntilajef.com

1180 South Beverly Drive, Suite 610

Los Angeles, California 90035

Telephone: (310) 277-0614

Facsimile: (310) 277-0635