

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

This is a court-authorized notice. This is not a solicitation from a lawyer.

NOTICE OF CLASS ACTION SETTLEMENT

To «fname» «lname»:

A settlement has been reached in the case of *Barragan Contreras et al. v. Rosann Landscape Corp. et al.*, No. 7:17-cv-06453-CS, which will affect your rights. Enclosed is a claim form allowing you to receive money from the settlement in this case. Under the terms of the settlement, if it is approved by the Court and you have submitted a completed claim form, you will be mailed a settlement payment after the time period for any appeals (and extensions of time for appeals) has expired or any appeals are resolved, and will release all of your claims against Rosann Landscape Corp., A.F.A. Management Corp., Ana Maria Birlescu (“Defendants” or “Rosann Landscape”), and the Frank Auricchio Revocable Living Trust (the “Trust”) related to violations of the New York Labor Law and the Fair Labor Standards Act, and other claims that could have been brought in this lawsuit. This settlement does not release other claims you may have against Defendants or the Trust that are outside the scope of the release described in Appendix A of this notice. Your gross settlement payment is estimated to be approximately \$«Award Amount» less tax withholding as explained in Section 6 below.

If your address has changed or will change in the next several months, you will need to provide your updated contact information to the Claims Administrator at the address below in Section 7.

YOUR OPTIONS

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
PARTICIPATE IN THE SETTLEMENT AND RECEIVE A PAYMENT	If you wish to settle your claims and receive a payment, you must fill out and return the enclosed Claim Form by June 17, 2021 . If the Court grants final approval of the settlement, you will receive a payment in the mail.
OBJECT	Write to the Court (via the Claims Administrator) to object to the settlement, or any part of it. Objections must be mailed to the Claims Administrator by First-Class United States Mail, postage prepaid, and be received no later than February 26, 2021 , as detailed below.

**GO TO THE HEARING
TO SPEAK ABOUT
YOUR OBJECTION**

The Court will hold a hearing (the fairness hearing) as explained below to decide whether to approve the settlement. You may attend the hearing to speak to the Court about any objection you have to the settlement, but only if you make a written objection first in accordance with Section 9 below and state in your objection that you would like to speak at the hearing about your objections.

BASIC INFORMATION

1. What is the purpose of this notice?

The Court has ordered that this Notice be sent to you because you are a member of the class on whose behalf the settlement was reached. The purpose of this Notice is to inform you of your rights and options **and the deadlines to exercise them** under the terms of the settlement agreement. The Court still has to decide whether to grant final approval to the settlement. Payments will be made only if the Court approves the settlement and after any appeals are resolved.

The information provided in this Class Notice is only a summary. The terms of the Settlement Agreement are the binding terms of this settlement, and all such terms and releases are explained in the Settlement Agreement that is on file with the Court and available from the Claims Administrator or Class Counsel (see Section 15 below). If the settlement is not approved by the Court or does not become final for some other reason, Plaintiffs' case against Defendants will continue.

2. What is this Lawsuit about?

Named Plaintiffs Jose Barragan Contreras, Juan Alonzo Orellana, and Jorge Yopez brought this action on behalf of themselves and other landscaping, groundskeeping, and maintenance employees of Rosann Landscape against Defendants under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA"), and the New York Labor Law ("NYLL") for unpaid overtime and spread-of-hours wages, including wages for "off the clock" work, hiring notice and wage statement damages, liquidated damages, pre-judgment interest, and attorneys' fees and costs. Plaintiff Jose Barragan Contreras also alleges that Rosann Landscape never paid him for additional "off the clock" work he performed as a crew leader. The Court has already determined that Rosann Landscape failed to pay overtime or issue adequate hiring notices and wage statements to all class members. Rosann Landscape denies the remaining allegations in the lawsuit.

The lawsuit is known as *Barragan Contreras et al. v. Rosann Landscape Corp. et al.*, No. 7:17-cv-06453-CS (S.D.N.Y.), and it is pending in the United States District Court for the Southern District of New York ("the Court").

3. What is a class action? Who is in the class?

In a class action, one or more individuals, called Class Representatives, sue on behalf of themselves and other employees who they believe have the same or similar claims. In a class action, one court

resolves all related issues for these individuals, except for those who decide to exclude themselves from the Class.

The Court has certified a class in this case, and you are receiving this Notice because the Court has determined that you are a member of the class, and you did not exclude yourself from the class when you had the opportunity to do so.

4. Why is there a settlement?

The Court ruled that Rosann Landscape owes certain wages and other damages to the class, but the Court did not decide all the issues in the case. In particular, the Court did not decide whether any employee was owed spread-of-hours wages or wages for “off the clock” work. Both Plaintiffs and Defendants believe they would have won on these issues if the case had proceeded to trial, but instead of continuing litigation, both sides agreed to a settlement. That way the parties avoided the burden, expense, and uncertainty of continued litigation and possible appeals. The Named Plaintiffs and Class Counsel think the settlement is in the best interest of the class in light of these risks.

THE SETTLEMENT BENEFITS - WHAT YOU GET

5. What does the settlement provide?

Defendants and the Trust have agreed to pay a total of **\$1,000,000**. This amount will be used to pay settlement payments to the Class Members, attorneys’ fees and costs, any approved Service Awards to the Named Plaintiffs and opt-in Plaintiffs who participated in the litigation, and the cost of administering the settlement. Each Class Member who submits a timely claim form will receive a share of the settlement based on an allocation methodology approved by the Court. The allocation will be based on the amount of time you worked for Rosann Landscape and your rate of pay during your employment.

Plaintiffs will ask the Court to approve Service Awards for the Named Plaintiffs and opt-in Plaintiffs, who participated in the litigation, to compensate them for starting the case, devoting time and energy to it, and risking harm to their career and reputation.

After attorneys’ fees and costs, Services Awards, and the costs of administering the settlement are deducted from the settlement, it is expected that approximately \$575,000 will remain to be distributed among the Class Members as the “Net Settlement Amount.”

If the Court approves the settlement, all Class Members will be deemed to have released all wage and hour claims against Defendants and the Trust in accordance with the provisions of the settlement agreement and the release language in Appendix A of this Notice, even if they do not submit completed Claim Forms or cash, sign, endorse, deposit, or otherwise negotiate their settlement check(s). This means that you cannot sue Rosann Landscape or the Trust for any of the claims covered by the release if the Court approves the settlement. The settlement does not resolve or release any other claims against Rosann Landscape or the Trust that are outside the scope of the release listed in Appendix A of this Notice.

Individuals who do not submit claim forms by **June 17, 2021** or cash their funds within three (3) months from the payout date will have their funds distributed to Class members who have cashed their checks or donated to a non-profit worker center.

6. How much will my payment be?

Based on the formula in the settlement agreement, your gross settlement share is estimated to be approximately \$«Award Amount». \$«Wages» of your settlement payment will be treated as wages with taxes withheld and will be reported to the IRS and state taxing authorities on a W-2 form. The remaining amount will be treated as non-wage income and will be reported to tax authorities on IRS Form 1099.

HOW YOU GET A PAYMENT

7. How can I get my payment?

If you wish to receive a distribution from the settlement fund, **you must complete and return the attached Claim Form by June 17, 2021**. If the Court grants final approval of the settlement (and any appeals are resolved), you will receive a check in the mail. If your address is different than the address to which this notice was mailed or is expected to change in the next several months, please complete the enclosed Change of Address Form and deliver it to the Claims Administrator at:

Contreras v Rosann Landscape Corp. Settlement Administrator
c/o Settlement Services, Inc.
PO Box 10269
Tallahassee, FL 32302-2269
(855) 948-1760

8. When will I get my settlement payment?

The Court will hold a fairness hearing on **March 19, 2021 at 11:45 a.m.** to decide whether to grant final approval of the settlement. If the Court approves the settlement, the settlement will become final when the time period for any appeals has expired (and extensions of time for seeking to appeal have expired) or any appeals are resolved, and your settlement payment will be mailed to you.

OBJECTING TO THE SETTLEMENT

9. How do I tell the Court that I object to the settlement?

You can object to the settlement by submitting a written objection if you do not agree with the settlement or some part of it. You must give reasons why you think the Court should not approve it. To be considered, your objection must be mailed to the Claims Administrator (contact information listed below), by First Class United States Mail, postage prepaid, and received by the

Claims Administrator no later than **February 26, 2021**. The objection must include all reasons for your objection. Any reasons not included in the objection will not be considered. The statement must also include your name, home address, and telephone number. Any Class Member who does not specify his or her objections in writing within the specified time and procedures shall be deemed to have waived all objections and shall not be permitted to make objections to the settlement now or on appeal. The settlement will nonetheless be fully binding on them if final approval is granted.

Contreras v Rosann Landscape Corp. Settlement Administrator
c/o Settlement Services, Inc.
PO Box 10269
Tallahassee, FL 32302-2269
(855) 948-1760

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in this case?

Yes. The Court has determined that the lawyers at the Worker Justice Center of New York, 9 Main St., Kingston, NY 12401 and David Tykulsker & Associates, 161 Walnut St., Montclair, NJ 07042 are qualified to represent you and all of the other Class Members as “Class Counsel” in this lawsuit.

11. How will the lawyers be paid?

The Named Plaintiffs have entered into a retainer agreement with Class Counsel. Class Counsel has worked on this case for over three years and has agreed to seek approximately one-third of the settlement fund (\$333,000) plus the cost of administering the settlement for their work in the case. The fees will compensate Class Counsel for their time investigating the facts, litigating the case, and negotiating the settlement, along with bearing the risk that the case might never succeed and they would be paid nothing, and for conferring a benefit upon all Class Members.

THE COURT’S FAIRNESS HEARING

12. When and where will the Court decide whether to approve the settlement agreement?

The Court will hold a fairness hearing at **March 19, 2021 on 11:45 a.m.** at the United States District Court for the Southern District of New York, Charles L. Brieant Jr. Federal Building and Courthouse Southern District of New York, 300 Quarropas Street White Plains, NY 10601-4150 before Judge Cathy Seibel in Courtroom **621**.

At the fairness hearing, the Court will consider whether the settlement is fair, reasonable, and adequate, and will also consider the request for Service Awards and attorneys’ fees and costs. You may attend the hearing. You may also speak at the hearing if you have previously timely filed a written objection in which you have stated your intention to speak. If anyone has submitted any objections, the Court will consider them at that time. After the hearing, the Court will decide

whether to approve the settlement.

13. Do I have to come to the fairness hearing?

No, Class Counsel will represent you at the hearing to speak in favor of the settlement. You are welcome to attend (at your own expense) if you so desire. The Court will consider any written objections received in a timely manner, even if the individual who sent in the objection does not appear at the fairness hearing. You may also pay to have your own, different, lawyer attend the fairness hearing. You will be solely responsible for the fees and costs of your own attorney, should you choose to hire one.

14. May I speak at the fairness hearing?

You may ask the Court for permission for you and/or your personal attorney to speak at the fairness hearing if you have previously timely filed a written objection. If you file an objection and wish to appear and speak at the fairness hearing, you must state your intention to do so in writing as part of your written objection, and failure to so specify that you wish to speak will be deemed a waiver of your right to speak.

GETTING MORE INFORMATION

15. Are there more details about the settlement?

You can obtain more information about the settlement or obtain a copy of the Settlement Agreement by contacting the Claims Administrator at:

Contreras v Rosann Landscape Corp. Settlement Administrator
c/o Settlement Services, Inc.
PO Box 10269
Tallahassee, FL 32302-2269
(855) 948-1760

You may also contact Class Counsel at:

Worker Justice Center of New York
9 Main Street
Kingston, NY 12401
(845) 331-6615
mhussain@wjcnj.org

David Tykulsker & Associates
161 Walnut Street
Montclair, NJ 07042
david@dtesq.com

APPENDIX A

Even if you do not submit a timely, completed claim form or cash, deposit, or otherwise negotiate your settlement check(s), you forever and fully release and discharge Rosann Landscape Corp., A.F.A. Management Corp., Ana Maria Birlescu, the Frank Auricchio Revocable Living Trust, and any agents thereof, from any and all claims for wage and hour violations under the New York Labor Law and Fair Labor Standards Act and all other claims that were or could have been asserted in the litigation, including claims for overtime pay through June 30, 2018, and claims for unpaid wages, spread of hours, and failure to provide employees with hiring notices and wage statements through February 15, 2019. This release includes claims for all damages arising from any such released claims, including claims for liquidated damages, interest, and attorneys' fees and costs.