

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

**THIS IS NOTICE OF A PROPOSED CLASS ACTION SETTLEMENT**

**To: All persons who are, or were, employed by Color Spot at its facilities located in Richmond, Salinas, Lodi, San Juan Capistrano and Fallbrook, California as non-exempt, hourly employees at any time between April 27, 2003 and December 31, 2009, and worked in the potting, loading, maintenance, growing, distribution, assembly, or the production departments.**

**OFFICIAL COURT NOTICE**

**IMPORTANT PLEASE READ CAREFULLY**

**WHY IS THIS NOTICE BEING SENT TO YOU?**

1. This notice is to inform you that a proposed settlement in the case entitled "Jorge Gonzalez, et al., on behalf of themselves and all others similarly situated v. Color Spot Nurseries, Inc.," Case No. BC 370189 (the "Lawsuit") has been reached by the Parties as to Color Spot's facilities located in Richmond, Salinas, Lodi, San Juan Capistrano and Fallbrook, California but excluding the facility located in Carson, California, and has been granted preliminary approval by the court supervising the Lawsuit, the California Superior Court for the County of Los Angeles (the "Court"). This is **not** a notice of a lawsuit against you. **You are not being sued.** Your participation in the Settlement will not affect your employment with Color Spot in any way whatsoever.

2. The Court has ordered that this Notice be sent to you, because you may be a Class Member. The purpose of this notice is to inform you of the proposed Settlement of the Lawsuit regarding all Color Spot California facilities excluding the Carson facility. The notice is also intended (1) to describe the Settlement, including how the Settlement Fund is to be allocated and how the Settlement may affect you, and (2) to advise you of your rights and options with respect to the settlement.

**WHO IS ELIGIBLE TO RECEIVE MONEY FROM THIS SETTLEMENT?**

3. This settlement is for all current and former hourly employees of Color Spot at its facilities located in Richmond, Salinas, Lodi, San Juan Capistrano and Fallbrook, California, who were employed at any time between April 27, 2003 and December 31, 2009, and worked in the potting, loading, maintenance, growing, distribution, assembly, or the production departments ("Class Members").

**WHY YOU SHOULD READ THIS NOTICE**

4. You should read this Notice because you may be entitled to money under this Settlement.

**WHAT IS A CLASS ACTION?**

5. A class action is a lawsuit in which the claims and rights of many people are decided in a single court proceeding. One or more representative plaintiffs, also known as "class representatives," assert claims on behalf of the entire class. This avoids the necessity for a large number of individual lawsuits and enables the court to resolve similar claims efficiently. In a class action, the court supervises the prosecution of class claims by class counsel to ensure fairness.

## SUMMARY OF THE CLAIMS AND ALLEGATIONS

6. The Plaintiffs (former employees of Color Spot's Carson Facility) filed this action against Color Spot alleging that they are entitled to recover money damages (mainly, for denied rest and meal periods). Color Spot vigorously denies the allegations in the lawsuit.

7. On June 8, 2010, the Court gave preliminary approval to a settlement of the action. The Court has made no opinion on the merits of the Lawsuit and has only given preliminary approval to the settlement of the Lawsuit.

## WHO REPRESENTS THE PARTIES?

8. The following attorneys represent the employees of Color Spot in this Action:

**RASTEGAR & MATERN, A P.C.**  
**Attn: Douglas Perlman, Esq.**  
**1010 Crenshaw Boulevard, Suite 100**  
**Torrance, California 90501**  
**Tel. (310) 218-5500**

**YOU MAY TELEPHONE RASTEGAR & MATERN ABOUT ANY QUESTIONS YOU MAY HAVE REGARDING THIS NOTICE.**

The attorneys representing Color Spot are:

**COOK | ROOS | WILBUR LLP**  
**Attn: Thomas M. Gosselin**  
**25 Metro Drive, Suite 600**  
**San Jose, CA 95100**  
**TEL: (408) 573-5782**

## WHAT TO DO IF YOU WANT TO RECEIVE PART OF THE SETTLEMENT

9. If you want to receive part of the Settlement, you must sign and date the attached Claim Form and mail the completed Claim Form by postage prepaid U.S. first class mail postmarked by no later than **October 18, 2010**, to the Claims Administrator at the following address:

**COLOR SPOT CLAIMS ADMINISTRATOR**  
**c/o DESMOND, MARCELLO & AMSTER**  
**P.O. Box 451999**  
**Los Angeles, California 90045**  
**(877) 221-4914**

10. If you need an extra copy of the Claim Form, contact the Claims Administrator or Class Counsel. If any information provided on the Claim Form is incorrect, please make corrections. (For example, if your address is incorrect, please indicate what you think the correct information is.) Also, please provide your telephone number and any other indicated information referred to on your Claim Form if it is not provided. If you wish to have confirmation that your Claim Form has been received by the Claims Administrator, you may do so by calling the Claims Administrator.

11. If you are a Class Member and you choose to receive money from the Settlement, you will be bound by all of the provisions of the Settlement Agreement, including a release of claims that will prevent you from separately suing Color Spot.

## WHAT HAPPENS IF YOU DO NOTHING IN RESPONSE TO THIS NOTICE?

12. If you do nothing in response to this notice, you will not be entitled to money from the Settlement. However, you will be still be bound by the terms of the settlement, including the release, even though you did not receive any money. Therefore, you will not have the right to separately pursue your own claims against Color Spot if you do nothing. You are strongly encouraged to make a decision as to whether you wish to participate in the Settlement and to return the Claim Form within the allotted time period.

## WHAT SHOULD YOU DO IF YOU WANT TO PURSUE YOUR OWN CLAIMS SEPARATELY FROM THIS CLASS ACTION?

13. You may retain your right to pursue any claims you may have separately from this Class Action by “opting out” of the Settlement Class. You may opt out of the Settlement Class by mailing a Request for Exclusion to the Claims Administrator at the address listed in Paragraph 9 above, on or before **October 18, 2010**. Such written request for exclusion must contain your name, address, telephone number and the dates and position of your employment with Color Spot. The form must be returned by mail to the Claims Administrator, and must be postmarked on or before **October 18, 2010**.

14. If you chose to opt out, you will not receive any money from the settlement, and you will not have any right to object to the settlement. Any request for exclusion submitted after October 18, 2010 will be disregarded, and if you submit a late request for exclusion, you will not be able to pursue any claims separately from the Class Action, or as part of the Action. Therefore, to protect yourself, you must **either** 1) submit a Claim Form, **or** 2) submit a request for exclusion.

## IF YOU DO NOT AGREE WITH THE SETTLEMENT

15. **IF YOU DO NOT AGREE WITH THE SETTLEMENT**, you can submit an Objection to the Settlement. However, if the Court approves the settlement, you will still be bound by the terms of the settlement. You may both object to the settlement and participate in it, but you must timely file a Claim Form to receive any money from this settlement.

16. To object, you must submit a written objection by **September 2, 2010** to the Settlement Administrator at: **DESMOND, MARCELLO & AMSTER, P.O. Box 451999, Los Angeles, California 90045**. Your objection should clearly explain why you object to the Settlement, state each specific reason in support of your objection and any legal support for each objection and must also state whether you (or someone on your behalf) intend to appear at the Final Approval Hearing. Your objection must state your full name, address and the dates and position of your employment with Color Spot. **DO NOT TELEPHONE THE COURT.**

17. In addition to filing a written objection, you may also present your objection in person at the Final Approval Hearing, which is currently set for **November 2, 2010**, at 9:00 a.m. However, to appear at the Final Approval Hearing in Court, you must first submit a Notice of Intention to Appear at the Final Approval Hearing, at the Los Angeles County Superior Court (Central District) Stanley Mosk Courthouse, 111 N. Hill Street, Los Angeles, CA 90012-3014. You can enter an appearance in *propria persona* (meaning you choose to represent yourself) or through your own attorney. To do so, you or your attorney must also file an Entry of Appearance with the Clerk of the Court, at the court address listed above and deliver copies to each of the attorneys listed above in Paragraph 8, no later than **October 1, 2010**.

18. If you object to the Settlement, you will remain a member of the Class and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way and to the same extent as a Class Member who does not object. Any member of the Class who does not make and serve his or her written objections in the manner provided above shall be deemed to have waived such objections and shall be foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement. Any member of the Class who does not object to the proposed Settlement need not appear at the Settlement Hearing.

**IF YOU INTEND TO OBJECT TO THE SETTLEMENT, BUT WISH TO RECEIVE MONEY FROM THE SETTLEMENT, YOU MUST STILL TIMELY FILE YOUR CLAIM FORM AS STATED ABOVE. IF THE COURT APPROVES THE SETTLEMENT DESPITE YOUR OR ANY OTHER OBJECTIONS AND YOU HAVE NOT SUBMITTED A CLAIM FORM, YOU WILL NOT RECEIVE ANY PROCEEDS FROM THE SETTLEMENT.**

## **SUMMARY OF THE SETTLEMENT AGREEMENT**

19. The description below is a summary of the terms of the settlement. You may obtain more information about the proposed settlement by contacting the attorneys noted above.

20. Settlement Fund. Color Spot and the Named Plaintiffs have agreed that, in order to resolve this action, Color Spot will pay a maximum of One Million Five Hundred Thousand Dollars (\$1,500,000), in exchange for the release of claims against it. After deduction from the Settlement Fund of Service Payments of an amount not to exceed \$7,500 for each of the Named Plaintiffs to be determined by the Court, the Private Attorney General Act Payment to the State of California (\$20,000), administrative costs (\$30,000) and Class Counsel's attorney's fees and costs (\$540,000), the settlement fund will be distributed to Class Members who submit a timely Claim Form for purposes of this settlement ("Settlement Fund"). The Settlement Fund will be used to pay the claims of members of the settlement class who submit a Claim Form and who do not choose to exclude themselves from the Lawsuit. The Settlement Fund also provides a payment of an amount not to exceed \$7,500 for each of the Named Plaintiffs to be determined by the Court for their activities as a named plaintiff in the Lawsuit; this is the Service Payment referred to above. The Settlement Agreement also provides for payment of class counsel's attorneys fees from the Settlement Fund, up to a maximum amount of \$500,000.00. Individual payments to eligible Class Members shall be paid from the Settlement Fund based on a formula that will provide a fixed payment, less applicable state and federal withholding tax, applicable payroll deductions, other deductions required by state and local law, and social security withholdings, based on the number of pay periods worked as explained in Paragraph 21. Additionally, of the amount to be paid to Class Members, the parties agree that, for purposes of this settlement, 25% is allocated to wages, 75% is allocated to civil penalties and interest. Color Spot shall pay, in addition, any employer payroll taxes owing on the portion of the individual payments that is allocated to wages. Settlement amounts required to be paid by Color Spot to fund the Settlement Fund will be made in two installments: the first installment in the amount of \$750,000 will be made shortly after the Court issues its order granting final approval of the settlement and a second installment will be made no later than six months following the date of the first installment, but in no case earlier than June 1, 2011, and will be in an amount sufficient to cover the remaining unpaid settlement obligations.

21. Payment Formula. After the Service Payments, the Private Attorney General Act Payment, Administrative Costs and Class Counsel's Attorney's Fees and Costs are deducted from the Settlement Fund, the remaining settlement benefits for each Class Member will be determined by dividing the total number of pay periods worked by all the Class Members in the Settlement Class into the remaining settlement fund and then multiplying the quotient by the total pay periods worked by a Class Member who submits a valid Claim Form. For example, if (a) \$585,000 remains in the Settlement Fund after distribution of Service Payments, the Private Attorney General Act Payment, Administrative Costs and Class Counsel's Attorney's Fees and Costs, and (b) there are 600 Class Members in the Settlement Class who worked a total of 109,200 pay periods, \$5.35 ( $\$585,000/109,200$ ) will be paid to each Class Member for every pay period (s)he worked. So, if Class Member #1 worked during 50 pay periods, (s)he would receive \$267.50. However, in order to receive the Settlement Benefits, Class Members must timely complete, sign and return the Claim Form. Color Spot will pay at least 40% of the remaining settlement fund to Class Members who submit a valid Claim Form. In the event the total amount claimed does not exceed 40% of the Remaining Settlement Fund, the difference between the total amount claimed and 40% of the Remaining Settlement Fund shall again be distributed to the Class Members who submit a valid Claim Form in the same proportion each such Class Member's total pay periods bear to the total number of pay periods worked by all the Class Members who submit a valid Claim Form.

22. Attorneys' Fees for Class Counsel: Class Counsel will be paid from the Settlement Sum. The attorneys for the Class will ask for fees of no more than \$500,000 and reimbursement of costs of litigation of no more than \$40,000. The actual amount awarded will be determined by the Court to ensure that the amount of attorneys' fees and costs is reasonable. Subject to Court approval and the conditions specified in the Settlement Agreement, and in exchange for the

release of all Settled Claims by the eligible Class Members, Color Spot shall pay the sum of Five Hundred Thousand Dollars (\$500,000.00) to Class Counsel, as attorneys' fees and costs for prosecution of the Lawsuit. This means that Class members will not have to pay anything to the lawyers.

## EFFECT OF THE SETTLEMENT-RELEASE OF ALL CLAIMS

23. Release of Claims: Any Class Member not excluding himself or herself from the Class Settlement will be deemed to have released Color Spot, its parent, subsidiaries, and affiliated corporations and entities ("Released Parties") from any and all claims, demands, rights, liabilities, penalties, damages, liquidated damages and causes of action of every nature and description whatsoever, known or unknown, suspected or unsuspected, asserted or that might have been asserted, whether in tort, contract, or for violation of any local, state or federal constitution, statute, rule or regulation, including local, state and federal wage and hour laws, arising out of, relating to, or in connection with, any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failures to act, which did or could have arisen from (a) the claims alleged in the Lawsuit entitled Gonzalez et al. v. Color Spot Nurseries, Inc., Los Angeles County Superior Court Case No. BC-370189, (b) any and all claims related to whether Color Spot violated Labor Code Sections 201, 203, 204, 226.7, 512, or 2699 *et seq.*, Business and Professions Code section 17200 *et seq.*, the Industrial Wage Orders, any other wage and hour laws, and all implementing regulations and interpreting guidance for any and all time periods prior to the date of filing of the Order for Final Approval Hearing Approving Settlement Agreement; and (c) any other causes of action that are based on or reasonably relate to the purported nonpayment of compensation or premium compensation for meal or rest period violations, failure to pay all wages due at termination, time clock rounding practices/working off the clock practices/shaving time practices/differences between clock records and actual hours worked and related wage claim issues in calculating hours worked, meal periods (including second meal periods and any subsequent required meal periods in a workday), rest periods (including second rest periods and any subsequent required rest periods in a workday), or unfair or unlawful business practices based on these alleged violations (including under Business & Professions Code Section 17200 *et seq.*), including related penalties, interest, punitive damages, costs, attorneys' fees, costs, interest, injunctive relief, declaratory relief, restitution, disgorgement, conversion, unjust enrichment or accounting, whether such causes of action are in tort or contract, or pursuant to a statutory remedy ("Released Claims") for any and all time periods prior to the date of filing of the Order for Final Approval Hearing Approving Settlement Agreement.

With respect to any and all Released Claims, a Class Member not excluding himself or herself from the Class Settlement will also be deemed to agree to have expressly, waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of §1542 of the California Civil Code, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

This waiver of California Civil Code §1542 shall include any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failures to act, which did or could have arisen from the payment of wages by Color Spot, including claims that the Named Plaintiffs or other members of the Settlement Class were not paid all earned overtime compensation, for any and all time periods prior to the date of filing of the Order for Final Approval Hearing Approving Settlement Agreement, including those that are equitably tolled, as of and prior to the Cut Off Date in violation of the Fair Labor Standards Act and the California Business & Professions Code, and any and all remedies and penalties provided therein, including but not limited to, Business and Professions Code sections 17200 *et seq.*, restitution, disgorgement, conversion and unjust enrichment, attorneys' fees, costs, interest, and all other penalties. This release is not intended to affect any claim other than the Settled Claims that may exist between or among the Parties and does not release any claim which may arise as to the enforcement of this Settlement Agreement. This is only a summary of the full release contained in the Settlement Agreement, which is on file with the Court and available for your review.

24. Conditions of the Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class.

## FINAL SETTLEMENT APPROVAL HEARING

25. Every class action settlement must be approved by the court that presided over the class action lawsuit. Thus far, the Court has only decided that the proposed settlement may be fair and, therefore, justifies distribution of this Notice. In order to decide whether to give final approval to the proposed settlement the Court will consider related papers and comments submitted by the parties or others and hold a hearing in open court. The Final Approval Hearing on the adequacy, reasonableness and fairness of the Settlement Agreement will be held on **November 2, 2010**, at 9:00 a.m. in Department 72 of the Los Angeles County Superior Court (Central District), Stanley Mosk Courthouse, 111 N. Hill Street, Los Angeles, CA 90012-3014. The Settlement Hearing may be continued without further notice. **You are not required to attend the Final Approval Hearing or file an objection, but you may do either or both.** You may also enter an appearance in through your own attorney, if you desire, as explained in Paragraphs 16 and 17.

26. Any Class Member who does not object in the manner provided above shall be deemed to have approved the Settlement and to have waived such objections and shall be forever foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement.

## NO RETALIATION

27. Applicable law prohibits Color Spot from retaliating against employees who exercise their rights under wage and hour laws. Additionally, Color Spot has agreed that it will not contact Class Members for the purpose of attempting to influence them not to participate in this Settlement; will not take any adverse employment action, or otherwise target, retaliate or discriminate against any Class Member who elects or indicates an intention to participate in this Settlement; and will not disclose the identities of Class Members who elect or decline to participate in this Settlement to any person (*i.e.*, supervisory personnel) employed by Color Spot. In the event you feel you have been threatened or coerced not to participate in this Settlement, or are retaliated against for electing to participate in this Settlement, you should immediately contact Class Counsel listed in paragraph 8.

## WHAT TO DO IF YOU NEED ADDITIONAL INFORMATION

28. This notice only summarizes this Lawsuit, the settlement, and related matters. For more information about the Settlement or if you have any questions regarding the Settlement, you may contact Class Counsel at the following address and telephone number:

**RASTEGAR & MATERN, A P.C.**  
**Attn: Douglas Perlman, Esq.**  
**1010 Crenshaw Boulevard, Suite 100**  
**Torrance, California 90501**  
**Tel. (310) 218-5500**

You may also contact the Settlement Administrator at:

**COLOR SPOT CLAIMS ADMINISTRATOR**  
**c/o DESMOND, MARCELLO & AMSTER**  
**P.O. Box 451999**  
**Los Angeles, California 90045**  
**(877) 221-4914**

***Do not contact the Clerk of the Court about this matter.***