

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JAMES FULTON, et al., on behalf of themselves and all others similarly situated,)	
)	
Plaintiffs,)	CIVIL ACTION
)	
v.)	No. 10-2645-KHV-JPO
)	
TLC LAWN CARE, INC.,)	
)	
Defendant.)	
)	

**YOU ARE RECEIVING THIS NOTICE BECAUSE, UNLESS YOU WITHDRAW YOUR
PREVIOUS CONSENT TO JOIN THIS ACTION, YOU WILL BE ENTITLED TO
MONEY FROM A SETTLEMENT WITH TLC LAWN CARE, INC., (“TLC”)
INVOLVING ALLEGATIONS THAT TLC FAILED TO PAY APPROPRIATE
COMPENSATION TO CERTAIN EMPLOYEES.**

**THIS NOTICE AFFECTS YOUR RIGHTS.
PLEASE READ IT CAREFULLY.**

**THIS IS NOT A SOLICITATION FROM A LAWYER. THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF KANSAS HAS AUTHORIZED THIS
NOTICE.**

NOTICE OF COLLECTIVE ACTION SETTLEMENT:

TO: [REDACTED]

RE: Settlement of Claims for Alleged Unpaid Compensation and All Related Claims for Relief

I. INTRODUCTION

This Notice of Settlement is to inform you that TLC has agreed to settle a lawsuit filed by Plaintiffs claiming that TLC violated the Fair Labor Standards Act (“FLSA”) and the Kansas Wage Payment Act (“KWPA”) by failing to pay appropriate compensation, including overtime compensation to certain employees employed by TLC. This Notice is to inform you about the status of the lawsuit, including your right to receive a share of the settlement funds.

II. DESCRIPTION OF THE LAWSUIT

On December 1, 2010, James Fulton, Brandon Russell, Eric Wadkins, John Buckner, Mark A. Theis and Randy D. Russell (“Named Plaintiffs” or “Class Representatives”) filed a Complaint in the United States District Court for the District of Kansas on behalf of themselves and all similarly situated employees employed by TLC. The Complaint alleged violations of the FLSA and KWPA for non-payment of overtime wages, liquidated damages and attorneys’ fees. Specifically, the Named Plaintiffs alleged that TLC failed to properly compensate them and other hourly employees employed at TLC’s Kansas location, including compensation for overtime wages for time worked above forty (40) hours per week.

TLC denied, and continues to deny, the allegations in the Named Plaintiffs’ Complaint and contends that its policies and practices regarding compensation of employees were proper and in compliance with the law at all times. TLC wishes to settle this litigation, however, to avoid costly, disruptive, and time-consuming litigation and does not admit to any wrong-doing or liability.

The Named Plaintiffs have consulted with their counsel and recognize the risks inherent in this litigation. As such, the Named Plaintiffs have negotiated a settlement that provides for direct monetary payments to the Eligible Plaintiffs in this action. On [REDACTED], the Court approved the Settlement and certified this case as a collective action under Section 16(b) of the FLSA for settlement purposes.

The Named Plaintiffs and attorneys for the Plaintiffs believe that the Settlement described below is fair, adequate, reasonable, and in the best interests of the Settlement Class. This Notice is being sent to you because you have opted-in to this case. **As such, unless you elect to sign and submit the enclosed “Withdrawal of Consent to Join” form, you will receive a payment under the Settlement.**

III. SETTLEMENT

After analyzing and reviewing the factual and legal basis for the claims presented in this action, the Named Plaintiffs have recognized that there would be risks and delays inherent in the further litigation of this matter. Similarly, although TLC has not admitted any wrong-doing, it too recognizes the risks and expenses associated with litigation. For these reasons, the Parties agreed to explore a possible resolution to this matter and have now reached a settlement with respect to the claims.

The Parties agreed to resolve all claims of Eligible Plaintiffs for a total amount of Forty Thousand Three-Hundred Seventy-One and Thirty-Nine cents (\$40,371.39). Through this Settlement, all Eligible Plaintiffs shall receive a portion of this amount. Separately, and in further consideration to resolve this matter, Nineteen Thousand Six-Hundred Twenty-Eight dollars and Sixty-One cents (\$19,628.61) will be paid by TLC to class counsel for attorneys’ fees, future attorneys’ fees, and expenses by TLC.

The individual settlement amounts to be paid to each Eligible Plaintiff were determined and will be distributed based a calculation on unpaid “straight time” that was determined based on a detailed comparison of TLC’s payroll and time clock records, multiplied by each Eligible

Plaintiff's applicable hourly rates. If you do not withdraw your consent to join this action, your individual settlement amount will be \$ [REDACTED].

TLC will issue each Eligible Plaintiff receiving a settlement payment an IRS Form 1099 related thereto. Please consult with your accountant or other tax advisor regarding the tax consequences of any settlement payment you receive.

Under this Settlement, the Court has awarded Plaintiffs' Counsel separate monies for attorneys' fees and expenses. Eligible Plaintiffs that participate in the Settlement will not be required to make any payments for attorneys' fees or other litigation costs from their individual settlement amounts.

You have two options in responding to this Notice:

- 1. You do not need to take any further action to participate in this Settlement and obtain your individual settlement amount set forth above.** By participating in this Settlement, you will release any claims for unpaid wages that were earned and/or due you for work performed during any and all periods of your employment with TLC from December 1, 2007 to October ____, 2011.
- 2. If you do not wish to participate in this Settlement, you must properly execute and timely return the attached Withdrawal of Consent to Join form to:**

**Mark A. Kistler
BRADY & ASSOCIATES
10901 Lowell Ave., Suite 280
Overland Park, Kansas 66210**

no later than twenty-one (21) days from the date of mailing of this Notice (the deadline to return an executed Withdrawal of Consent to Join form is [REDACTED].)

- 3. If you complete and timely return the Withdrawal of Consent to Join form attached to this Notice you will not be a part of this settlement, you will receive no money, and you will not be subject to the settlement. You will retain the right to separately pursue the claims at issue in this lawsuit and the settlement will have no affect on you. Because of the operative statute of limitations applicable to this case, if you do not join this settlement you may lose your right, if such a right exists, to recover in the future for these claims.**

IV. SCOPE OF THE RELEASE FOR PARTICIPATING PLAINTIFFS

As set forth above, you do not need to take action to participate in this Settlement and receive payment. If you participate in this Settlement, you will become eligible for payment under the settlement agreed to in this matter. In addition, by participating in this Settlement, you shall be deemed to have released, waived and forever discharged TLC and its affiliates, officers, directors, and employees, of and from any and all claims, rights, or causes of action of any nature or kind whatsoever under federal, state, or other applicable law, whether known or unknown, for

unpaid wages which were earned and/or due you for work performed during any and all periods of your employment with TLC from December 1, 2007 to October ____, 2011.

V. QUESTIONS

All Eligible Plaintiffs who have opted-in to this lawsuit will receive this Notice. Questions about the lawsuit and settlement should be directed to counsel:

Mark Kistler
BRADY AND ASSOCIATES
10901 Lowell, Suite 280
Overland Park, KS 66210
(913) 696-0295
mkistler@mbradylaw.com

DO NOT CONTACT THE COURT WITH QUESTIONS
THE COURT TAKES NO POSITION ON THE MERITS OF
THE CLAIMS OR DEFENSES SET FORTH IN THIS LAWSUIT.

VII. CORRECTIONS TO NAME OR ADDRESS

If, for any future references and mailings, you wish to change the name or address listed on the envelope in which this Notice was sent, please complete, execute and mail the form entitled "Change of Name and Address Information" attached to this Notice. Please note that the submission of this form is not necessary if the corrected name or address information has already been submitted.

CHANGE OF NAME AND ADDRESS INFORMATION FORM

Name: _____

Prior Name(s): _____

Current Address: _____

Former Address: _____

Current Contact Information:

Home: _____

Work: _____

Cell: _____

Email: _____

Date: _____

Signature: _____

Printed Name: _____