

Superior Court of the State of California
County of San Bernardino

Angel Landeros, et al., Plaintiffs

v.

Moreland Corporation, et al., Defendants

Class Action

Case No. VCV015526

Assigned to Hon. David Cohn

John Butler, et al., Plaintiffs

v.

Moreland Corporation, et al., Defendants

Class Action

Case No. VCVVS 025552

Assigned to Hon. David Cohn

NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT AND APPROVAL HEARING

TO: Any Individual Who Between April, 1997, and June, 1998, Worked as a Construction Worker on the Victor Valley Medium Community Correctional Facility (“The Project”), Situated in the City of Adelanto, County of San Bernardino, State of California (“Class Members”).

**THIS NOTICE MAY AFFECT YOUR RIGHTS.
PLEASE READ IT CAREFULLY.**

The purpose of this Notice is to inform you of the pendency of this class action, a proposed settlement which has been reached in the class action, and an approval hearing which has been scheduled in order to determine whether the proposed settlement is fair, reasonable and adequate to the members of the Class. This Notice is being sent to you in a form and in a manner approved by the San Bernardino Superior Court. However, this Notice is not an expression of any opinion by the San Bernardino Superior Court as to the merits of the claims or defenses by any of the parties to this class action. Rather, this Notice is being sent to you because information has indicated that you may be a member of the Class.

As set forth below in the section entitled “The Proposed Settlement”, a proposed settlement has been reached in the class action which is subject to court approval. If the settlement is approved by the San Bernardino Superior Court, then eligible Class Members who do not request to be excluded from the Class will be entitled to receive settlement benefits in the form of a check for amounts between \$500 and \$5,000. Class Members who do not request exclusion also will be barred from asserting certain legal claims against the Defendants.

DESCRIPTION OF THE CLASS ACTIONS

On or about June 16, 1998, the lawsuit entitled Angel A. Landeros, et al. v. Moreland Corporation, et al., San Bernardino Superior Court Case No. VCV015526 was filed in the San Bernardino Superior Court, Victorville Division on behalf of plaintiffs Angel A. Landeros, Art L. Murrietta, Florentino Meza, Joshua L. Meza, Wayne Lundberg, Martin A. Pleydle, Maclovio Quintero, Jay R. Hernandez, Joe Rivera, Raymond P. Medina, Dwight Atkins, David Moraga, Daniel Halopoff, Joe De Angelis, Michael Hubbard, Keith Person, James Leroy Levers, Joe Villanueva, individually on their own behalf, and on behalf of all those similarly situated (hereinafter “Landeros Named Plaintiffs”) (hereinafter “the Landeros lawsuit”).

On December 27, 2001 a related class action complaint was filed, *Butler et al. v. Moreland Corporation, et al.*, San Bernardino Superior Court case no. VCVVS 025552, asserting substantially similar claims on behalf of an additional 30 named plaintiffs, John Butler, Robert Bustamante, David Carizales, Jr., David Carizales, Sr., James Chernek, Brian Davidson, Michael Despar, Don Diaz, Ricky Geiken, Jeremy Leder, Paul Macias, Joseph T. Martin, Samuel Mcdaniel, Kent Moore, Michael Nichols, William Page, Robert Parker, Paul J. Pesch, Steven Posey, Robert Raymond, Don J. Robinson, Domingo Ruiz, Jesus Manuel Ruiz, Mike Ryan, Keith Sullivan, Ruben Sosa, Jose Trejo, Jr., Larry Van Leeuwen, Larry Van Nortick, and William Wheaton, individually on their own behalf, and on behalf of all those similarly situated (hereinafter “Butler Named Plaintiffs”) (hereinafter “the Butler lawsuit”).

The lawsuits specifically identified defendants Moreland Corporation, Moreland and Sons Construction, Inc., Maranatha Production Company, LLC, Gary Lasater Construction Inc, and Insurance Company of the West as defendants (“Defendants”). The lawsuit included a claim for all workers employed on the Project who did not receive the minimum required hourly rate of pay.

Moreland Corporation identified subcontractors and entities involved in the construction as including: Aardvark Pumping Service, Ace, Acoustical Material Services, Agon, Inc., Almar Drywall, American Fence Company, AR Wilson Plastering, AVCO Disposal, Inc., B&G Turf, Bakersfield Glass, Bakersfield Tile, Bakersfield Lock, Barr Lumber Company, Bill Ayers Construction, Black’s Construction, Inc., Bolles Nursery, C&H Fence & Patio, Inc., C&L Coatings, Inc., California Neon, CLS Imports, Control Fire Protection, CSC Crego Block, Dave Coleman, Dee Jasper & Associates, DMC Welding, Earl Carson, EF Brady, EMSS, Endura Steel, Garcia Roofing, Inc., Gary Lasater Construction, Gee Backhoe Service, Gil Angelo Construction, Gold Star Equipment, Graham Equipment, Grainger, H&B Services, Inc., HCS Cutler, HF Mcallister, Hi Grade Materials Company, Hi Tech Couriers, Hilti, Inc., HPS Plumbing, HUB Construction Specialities, Jim Buck, John Patric Landscaping, KAT Equipment Leasing, Kern Mechanical, Inc., Krazan & Associates, L. Green Plastering, Labor Ready, McGrath Rental Corporation, McLaughlin Construction, Mike Hughs, Mojave Equipment Company, Mountain Woodworks, New World Construction, Norman’s Nursery, Northridge Equipment Rental, Nutty Bolts & Screws, Osborne Pipe & Supply, Primetime Signs, Inc., Ragin’s Sweeping Service, Ray Kuykendall Welding, RB Moss Architectural, Robertson’s Concrete, Rosedale Equipment Rental, Roto Rotor, Sherwin Williams, Sierra Fireproofing, Silverado Excavating, Smith Iron Works, Sonora Equipment Rental, South Kern Machinery, Stingray Hardware, Stockdale Floor Covering, Tech Time Communications, Thompson Door & Frame, Tri State Electric, United Builders, Inc., US Rentals, Inc., Valley Hardwood, Valley Lumber Company, Ward Enterprises, Westburne Supply, Inc., Western Empire, Wilshire Paint Company, and Yocom Masonry, Inc.

CLAIMS ALLEGED IN THE CLASS ACTION

The lawsuit alleged the following causes of action: (1) Breach of Contract - Third Party; (2) Labor Code Section 203 & 203.5 Penalties; (3) Common Count - Open Book Account; (4) Common Count - Labor & Services Performed; (5) Recovery Under Public Works Payment Bond; (6) Fraud; (7) Negligent Misrepresentation; (8) Violation of Statutory Duties; (9) Negligence; and (10) Unfair Business Practices.

The basic claims asserted consist generally of the following allegations: (1) violations of provisions of the California Labor Code which require payment of prevailing wages on public works construction projects (Labor Code sections 1770 et seq.) including payment of overtime, travel and subsistence payments (per diem); (2) breach of a contract requiring compliance with the California Labor Code’s prevailing wage requirements; (3) “waiting time” penalties for failure to pay wages; and (4) damages for misrepresentation; The complaint was amended to pursue claims on behalf of the general public under Business and Professions Code, Section 17200 for unfair business practices.

Defendants contended that they have complied with all laws and prevailing wages were not required for construction of a private facility. Defendants therefore dispute all claims for damages by plaintiffs. Defendants have raised numerous defenses to the claims, including but not limited to the following: (a) the contract entered into between Maranatha Production Company, LLC and the California Department of Corrections did not require the payment of prevailing wages on the Project; (b) the Project was not a public work as defined by *Labor Code* §1720; (c) the complaint failed to state a cause of action against answering defendants; and (d) Plaintiffs’ claims are barred by the statute of limitations.

CLASS ACTION DETERMINATION

On or about August 28, 2002 Plaintiffs moved for consolidation of the *Butler* lawsuit with the *Landeros* lawsuit. On September 20, 2002, Plaintiffs moved for class certification of the *Landeros* lawsuit. Defendants and CDC opposed both motions. On December 4, 2002, Judge John Tomberlin granted the motion for consolidation and the motion for class certification, certifying the *Landeros* lawsuit as a class action to be maintained by the Landeros Named Plaintiffs, as representatives of all workers who worked on the Project, and by their attorneys of record, Richard E. Donahoo, of Donahoo & Associates, Daniel J. Perwich, of Law Offices of Daniel Perwich, and Jay Cordell Horton, of Horton Barbaro & Reilly, as class counsel.

The Parties thereafter litigated alternative proposed orders setting forth the Court’s ruling on the motion for class certification. On January 10, 2003, Judge Robert Law signed and entered the order proposed by Plaintiffs. On or about January 25, 2003, notice of the certification of the *Landeros* lawsuit as a class action was made to the Class by First Class mail and by publication in newspapers in the cities of Victorville and Bakersfield, California.

On January 22, 2003, defendant Maranatha Production Co., LLC (“Maranatha”) sought relief from the Fourth District Court of Appeals, to vacate Judge Law’s January 10, 2003 order granting the motion for class certification. After further briefing, on March 24, 2003, the court of appeals denied the petition, except as to a single cause of action based on Labor Code section 203 for “waiting-time” penalties, which the court of appeals excluded from class treatment. On May 21, 2003, the Supreme Court denied Maranatha’s petition for review.

On June 12, 2003 trial commenced before Judge David Cohn in Department V-10 of the San Bernardino Superior Court, Victorville Division. On September 19, 2003 prior to conclusion of trial, the Parties reached a settlement of the Landeros and Butler lawsuits.

THE PROPOSED SETTLEMENT

Due to the need to obtain from Class Members information within their possession which is required in order to validate their entitlement to benefits under the Settlement Agreement, the Settlement is structured as a “claims made settlement” with a maximum settlement value of \$6,000,000 (Six Million dollars) (“Settlement Amount”) to be distributed to the members of the Settlement Class and Class Counsel.

In order to receive payment Class Members will be required to complete and submit a Claim Form establishing their eligibility to receive payment. A Claim Form is enclosed with this Notice. TO BE TIMELY, A CLAIM FORM MUST BE MAILED VIA FIRST CLASS MAIL WITH A POSTMARK DATE OF NO LATER THAN MAY 17, 2004 and MUST INCLUDE A COPY OF AN ACCEPTABLE FORM OF PERSONAL IDENTIFICATION (EITHER A VALID DRIVER’S LICENSE, SOCIAL SECURITY CARD, PASSPORT, OR PICTURE IDENTIFICATION).

The amount due to each Class Member who timely submits a valid Claim Form will be calculated by the Court-appointed Settlement Administrator based upon the number of days the claimant worked on the Project. The agreed upon compensation to each Class Member, based upon days worked on the Project is as follows:

1 – 15 days worked	\$ 500
16 – 30 days worked	\$ 1,000
31 – 60 days worked	\$ 2,000
61 – 90 days worked	\$ 3,000
91 – 120 days worked	\$ 4,000
121 or more days worked	\$ 5,000

Claims may be disputed. In the event of a dispute, the Settlement Administrator may request further information including documentary evidence or presentation of original identification documents in addition to the information submitted on the Claim Form. The Settlement Administrator may conduct a hearing. The Settlement Administrator shall resolve the dispute under a preponderance of evidence standard. The parties to the dispute may appeal the decision of the Settlement Administrator within twenty-one days to the San Bernardino Superior Court.

The San Bernardino Superior Court has preliminarily approved the proposed Settlement as fair, reasonable and adequate to the Class Members. If the Court gives final approval to the proposed Settlement, then the Court will enter a final judgment which will be binding upon all Class Members who do not submit a Request for Exclusion.

RECOMMENDATION OF CLASS COUNSEL

The settlement was agreed upon by the Parties only after the Parties had completed extensive discovery, participated in arm’s-length negotiations, commenced trial, and engaged in formal mediation before three neutral mediators. After taking into account the disputed factual and legal issues involved in the Action, the substantial information learned through discovery in the Action, the recommendation of the mediators, and the substantial benefits to be received by Class Members under the settlement, Class Counsel have concluded that the settlement is in the best interests of the Class Members.

RELEASE OF CLAIMS BY CLASS MEMBERS

If the settlement is granted final approval by the Court, all Class Members who have not filed a valid and timely Request for Exclusion (the “Settlement Class”) shall be forever barred from suing the Defendants, the employers of Claimants, subcontractors, materialmen, suppliers, and other Released Parties (as defined in the Settlement Agreement) for any and all actions, causes of action, claims, demands, liabilities, obligations, proceedings and/or rights of any nature

and description whatsoever, liquidated or unliquidated, known or unknown, in law or in equity, whether or not concealed or hidden, that have been asserted or that might have been asserted by Plaintiffs or any Class Member, including violations of any state or federal statutes, rules or regulations, or principles of common law, based upon, arising out of or related to, in whole or in part, the allegations, claims and/or theories raised in, or that could have been raised in, the Action. This release will bind all members of the Settlement Class regardless of whether they file a Claim Form.

In connection with the release and discharge of the Released Claims, each member of the Settlement Class shall be deemed to have expressly waived all rights under *California Civil Code* section 1542 (or any like or similar statute or common law doctrine), and to have done so understanding the significance of that waiver. Section 1542 provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

ATTORNEYS’ FEES, EXPENSES AND OTHER PAYMENTS

Under the terms of the settlement Class Counsel will apply to the Court for an order requiring Defendants to pay \$2,000,000 in attorneys’ fees, representing one-third (33.33%) of the \$6 million Settlement. Class Counsel also will apply to the Court for an order requiring Defendants to reimburse Class Counsel for the reasonable expenses incurred by Class Counsel in connection with the Action up to \$175,000. Finally, under the agreement, the Landeros Named Plaintiffs and Butler Named Plaintiffs shall be paid \$650,000 for individual claims not subject to class certification, and for an award of incentive payments to the individual Class Representatives. The Landeros Named Plaintiffs and Butler Named Plaintiffs shall not be required to submit a Claim Form. The attorneys’ fees, expenses individual damages and incentive awards granted by the Court will be deducted from the \$6 million amount to be paid out by Defendants.

THE SETTLEMENT APPROVAL HEARING

A hearing will be held on February 27, 2004 at 10:30 a.m. in Courtroom No. V8 of the San Bernardino Superior Court, located at 14455 Civic Drive, Victorville, California, 92392, to determine whether the proposed settlement should be finally approved by the Court as fair, adequate and reasonable and to determine whether and to what extent the Court should award attorneys’ fees, costs and expenses to Class Counsel and approve the payment of incentive awards. The settlement approval hearing may be rescheduled or continued to a later date without further notice. You are not required to attend the hearing, but you may do so on your own or through an attorney retained by you at your own expense.

RIGHT TO BE EXCLUDED FROM THE CLASS ACTION

Any Class Member who wishes to exclude himself, herself or itself from the Class may do so by exercising his, her or its right to be excluded from such class as instructed below. If you do request exclusion, then: (1) you will not be entitled to receive any of the benefits available under the settlement if it is approved by the Court; (2) you will not be bound by the final judgment entered in this action upon the approval of the settlement; and (3) you will be free to pursue or not pursue any legal rights which you may have against the Defendants.

If you do not request exclusion, then:

(1) you will be bound by the final judgment entered in this class action under the legal doctrines of *res judicata* and/or collateral estoppel;

(2) you may, if you so elect, object to the proposed settlement; and

(3) the Settlement Administrator may be provided with documents and records relating to your work on the Project, notwithstanding any protection from disclosure which might otherwise apply to such documents.

All requests for exclusion must be made in writing, must state your request to be excluded, and must be mailed to the address of the Settlement Administrator set forth below in the section entitled “Mailing Addresses For All Communications”.

All written requests for exclusion must be postmarked no later than February 6, 2004, and must include your name, address, telephone number and signature. Any request for exclusion made on behalf of a class member by a representative of that class member must state the capacity in which the representative is acting.

RIGHT TO APPEAR IN THE CLASS ACTION

Any Class Member who does not request exclusion, and who so wishes, may apply to the San Bernardino Superior Court for permission to appear in this class action. Prior to doing so, you must enter a formal appearance either individually or through your own counsel.

The original of all documents relating to an appearance should be filed with the Clerk of the San Bernardino Superior Court, Victorville Division, 14455 Civic Drive, Victorville, California, 92392. Such documents shall be identified as filed in connection with this class action by including thereon the *Landeros* caption and case number appearing at the head of this Notice. Copies of all documents filed with the San Bernardino Superior Court must be served by mail upon Class Counsel and Defense Counsel at the addresses set forth below in the section entitled "Mailing Addresses For All Communications". If you do not enter an appearance individually or through counsel of your choice at your own expense, you will be represented in this class action by Class Counsel appointed by the Superior Court.

RIGHT TO OBJECT TO THE PROPOSED SETTLEMENT

Any Class Member who does not timely submit a valid Request for Exclusion may object to the proposed settlement, the application for attorneys' fees and expenses and/or the application for incentive awards. All objections must be in writing and **must**: (1) include your name, address and telephone number; (2) provide a detailed explanation of your objection and include any documents upon which you rely to support your objection; (3) include the caption and case number appearing at the head of this Notice; (4) include a statement of whether you intend to appear, either in person or through your own counsel, at the settlement approval hearing; (5) be filed with the Clerk of the San Bernardino Superior Court at the address identified below, NO LATER THAN February 6, 2004; and (6) be served via first class mail on Class Counsel and Defense Counsel at the addresses set forth below NO LATER THAN February 6, 2004. Class Members who fail to comply with these requirements will not be heard, either in person or through counsel, at the time of the settlement approval hearing unless specifically permitted by the Court.

ADDITIONAL COPIES OF THIS NOTICE

This Notice is being mailed to all individuals identified as potential Class Members. Additional copies of this Notice may be obtained by sending a written request to the Settlement Administrator at the address set forth below. A copy of this Notice also may be obtained by dialing the following toll-free number: (800) 507-7984.

MAILING ADDRESSES FOR ALL COMMUNICATIONS

For the purpose of submitting a Claim Form, submitting a Request for Exclusion, or requesting additional copies of this Notice, the mailing address for the Settlement Administrator is:

Settlement Administrator
c/o Desmond, Marcello & Amster
P.O. Box 451999
Los Angeles, CA 90045

For any questions regarding the settlement or the Action, or for the purpose of serving an objection, the mailing addresses of Class Counsel are:

Richard E. Donahoo, State Bar No. 186957
DONAHOO & ASSOCIATES
505 North Tustin Avenue, Suite 160
Santa Ana, California 92705
(714) 953-1010, (714) 953-1777 Facsimile

Daniel J. Perwich, Esq., State Bar No. 113902
LAW OFFICE OF DANIEL PERWICH
110 Juniper Street
San Diego, California 92101
(619) 702-0090, (619) 702-0095 Facsimile

Jay Cordell Horton, State Bar No. 044516
HORTON BARBARO & REILLY
200 North Main Street, 2nd Floor
Santa Ana, California 92702
(714) 835-2122, (714) 973-4892 Facsimile

For the purpose of serving an objection, the mailing addresses of Defendants' and Cross-Defendant's Counsel are:

Thomas S. Clark, Esq.
ARRACHE, CLARK & POTTER
4800 Easton Drive, Suite 114
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(661) 328-1800, Fax: (661) 328-0380
Attorneys for Defendants MORELAND CORPORATION, MORELAND & SONS CONSTRUCTION, INC.

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Law Office of J. Michael Pisas
177 Post Street, Suite 700
San Francisco, California 94108
(415) 433-3993, Fax: (415) 433-3997
Counsel for Defendant INSURANCE COMPANY OF THE WEST

For the purpose of submitting an objection, the address of the Clerk of the Court is:

Clerk of the Court San Bernardino Superior Court, Victorville Division
14455 Civic Drive, Victorville, California 92392

Please direct all questions to Class Counsel in writing at the law offices of DONAHOO & ASSOCIATES listed above. Please do not contact the Court, the Settlement Administrator, or Defense Counsel with your questions, as the Court has ordered that all questions be directed to Class Counsel.

ADDITIONAL INFORMATION

The matters identified and described in this Notice do not purport to be comprehensive and should not be considered as such. Accordingly, Class Members who desire further information may wish to review the pleadings and other records on file with the San Bernardino Superior Court (including but not limited to the Class Action Stipulation Regarding Settlement and the Order re Preliminary Approval of Proposed Settlement, which set forth the terms of the Proposed Settlement). The documents publicly filed in this class action are available for inspection and copying during regular business hours at the Office of the Clerk, San Bernardino Superior Court, Victorville Division, 14455 Civic Drive, Victorville, California, 92392.

Dated: December 19, 2003

Honorable David S. Cohn