

NOTICE OF CLASS ACTION SETTLEMENT TO ALL PERSONS WHO APPLIED FOR EMPLOYMENT AND WORKED AS A NON-EXEMPT EMPLOYEE FOR WESTERN MANAGEMENT, LLC (“DEFENDANT”) DURING THE TIME FRAME SPECIFIED BELOW.

Re Kevin Tyler v. Western Management, LLC
Santa Clara County Superior Court Case No. 17CV319893

PLEASE READ THIS ENTIRE NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHT TO A MONETARY SETTLEMENT RELATED TO YOUR APPLICATION AND EMPLOYMENT WITH DEFENDANT DURING THE TIME FRAME SPECIFIED BELOW. THIS IS A COURT-ORDERED NOTICE. THIS NOTICE IS NOT FROM A LAWYER AND YOU ARE NOT BEING SUED.

DEFENDANT’S RECORDS SHOW THAT YOU APPLIED FOR EMPLOYMENT AND WERE SUBSEQUENTLY HIRED BY WESTERN MANAGEMENT AFTER A BACKGROUND CHECK, AND THAT YOU ARE ELIGIBLE FOR A PAYMENT FROM A CLASS ACTION SETTLEMENT.

AND

IF YOU WORKED FOR DEFENDANT IN CALIFORNIA AND ARE RECEIVING THIS NOTICE, DEFENDANT’S RECORDS SHOW THAT YOU WERE EMPLOYED FOR A TOTAL OF [INSERT INDIVIDUAL # OF WORKWEEKS] WEEKS DURING THE RELEVANT TIME PERIOD, AND THAT YOU ARE ELIGIBLE FOR A SEPARATE PAYMENT FROM A CLASS ACTION SETTLEMENT.

BASED UPON THE NUMBER OF WORKWEEKS THAT YOU WORKED FOR DEFENDANT IN CALIFORNIA BETWEEN DURING THE TIME FRAME SPECIFIED BELOW, IT IS ESTIMATED THAT YOUR PAYMENT UNDER THIS SETTLEMENT WILL BE \$[INSERT INDIVIDUAL DOLLAR AMOUNT] PRIOR TO ANY APPLICABLE TAXES AND DEDUCTIONS

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT
 INCLUDE THE FOLLOWING:**

DO NOTHING	You will receive a payment from the Settlement and you will release certain claims covered by the Settlement against Defendant.
EXCLUDE YOURSELF	Receive no payment of the Settlement and retain any and all rights you may have against Defendant.
OBJECT	Write to the Settlement Administrator about why you don’t agree with the Settlement. The Court may or may not agree with your objection. Objecting to the Settlement will not exclude you from the Settlement. You may object by submitting your objection to the Settlement Administrator <i>or</i> you may appear at the Final Fairness Hearing.
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement

WAGE AND HOUR CLASS: The Settlement resolves Plaintiff Kevin Tyler’s (“Plaintiff”) alleged wage and hour claims against Defendant with respect to employees who worked for Defendant in the State of California between November 30, 2013 and December 2, 2020 (the “Wage and Hour Class Period”). Defendant denies all of Plaintiff’s allegations and claims.

FCRA CLASS: This Settlement also resolves Plaintiff’s alleged claims for violation of the Fair Credit Reporting Act (16 U.S.C. §§ 1681 *et seq.*) (“FCRA”) with respect to any individuals who applied for employment with Defendant and for which a background check was performed in the United States between November 30, 2012 and December 2, 2020 (the “FCRA Class Period”). Defendant denies all of Plaintiff’s allegations and claims.

NO MONEY WILL GO BACK TO DEFENDANT UNDER THE TERMS OF THIS SETTLEMENT.

BASIC INFORMATION

1. *What is this lawsuit about?*

Plaintiff alleges that as to applicants for employment and employees in Arizona, California, New Mexico, Oklahoma, and Texas, Defendant violated the FCRA by procuring a background check report with the use of a non-compliant disclosure form. Plaintiff also alleges that as to employees of Defendant in California, Defendant failed to provide Class Members with meal periods, failed to provide them with rest breaks, failed to pay them all hourly and overtime wages, failed to provide them with written accurate wage statements, failed to timely pay them all wages upon separation, and failed to pay them expense reimbursements, interest, and penalties under California labor laws. Defendant denies liability, and contends that Class Members were properly compensated for all hours worked and that the background check disclosure form was compliant. This Settlement constitutes a compromise of highly disputed claims and should not be construed as an admission of liability on Defendant's part.

2. *Why is this a Class Action?*

In a class action lawsuit, one or more people called the "Class Representative" (in this case, Plaintiff) sue on behalf of people who the Class Representative alleges have similar claims. The people together are a "Class" or "Class Members." The Santa Clara County Superior Court (the "Court") has granted preliminary approval of the proposed settlement (the Settlement") of this class action lawsuit. If the Settlement does not receive final approval from the Court, the Class Members will not get the benefits of this Settlement and Plaintiff will need to go back to court to prove his case through trial.

3. *Why is there a Settlement?*

In the interest of efficiency and economy, the Parties to the litigation decided to resolve the litigation through the Settlement. In this way, the Parties avoid the risks and costs of trial. In deciding whether to grant final approval of the Settlement, the Court will not decide who is right or wrong. Instead, it will determine whether the Settlement is fair, reasonable, and adequate.

4. *Why did I receive this Notice?*

You received this Notice because Defendant's records show that you are a Class Member in this case, as described below.

WHO IS IN THE SETTLEMENT?

5. *How do I know if I am part of the Settlement?*

Whether you are in the Settlement depends on whether you are a Class Member. You are an FCRA Class Member if you applied for employment and gained employment with Defendant at any time during the applicable Class Period. You are a Wage and Hour Class Member if you worked for Defendant in California at any time during the applicable Class Period. Defendant's records indicate that you are a Class Member. You may be an FCRA Class Member, a Wage and Hour Class Member, or both.

6. *What are my options:*

As a Class Member, you have several options available to you. You may:

- (i) Participate in the Settlement and receive a settlement check. To participate in the Settlement, you do not need to do anything. You will receive a settlement check that will be mailed to you later this year or early next year after the Court grants final approval of the Settlement. (The Court proceedings have been delayed because of Covid-19 court closures.) The estimated amount of your settlement check is listed on Page 1 of this Notice.
- (ii) Object to the Settlement; or
- (iii) Request to be excluded from the Settlement.

SETTLEMENT BENEFITS – WHAT YOU COULD RECEIVE?

7. *What are the Settlement terms?*

The Class in this case consists of any and all applicants for employment who worked for Defendant in Arizona, California, New Mexico, Texas or Oklahoma during the applicable FCRA Class Period; and non-exempt current and former employees who worked for Defendant in California during the applicable Wage and Hour Class Period. Class Members who do not opt out of the Class will be bound by the Settlement and will release their claims against Defendant as specified in the Settlement.

Defendant has agreed to pay a maximum, non-reversionary, settlement amount of Five Hundred Thousand Five Hundred Dollars (\$500,000.00) (the “Gross Settlement Amount” or “GSA”) to fully resolve all claims in the lawsuit, including payments to Class Members, attorneys’ fees and costs, and the class representative service award. The specific settlement terms are as follows:

The Gross Settlement Amount under the Settlement is Five Hundred Thousand Dollars (\$500,000.00), from which payments will be made for: (1) attorneys’ fees in an amount up to one-third of the GSA (\$166,666.66) to Class Counsel, subject to Court approval; (2) actual litigation costs incurred by Class Counsel not to exceed \$30,000.00, subject to Court approval; (3) a Class Representative service award to Plaintiff of up to \$10,000, subject to Court approval; (4) settlement administration costs not to exceed \$10,000 payable to Phoenix Settlement Administrators, subject to Court approval; and (5) payment to the California Labor and Workforce Development Agency of \$150,000.00 for payment of penalties under the Labor Code Private Attorney General Act (“PAGA”). The GSA is non-reversionary, meaning no amount of the GSA will be retained by, or revert back, to Defendant. Any monies in the GSA that are attributable to Class Members who opt out of the Settlement will be redistributed on a pro rata basis to those Class Members who participate in the Settlement. The funds for any settlement checks that are not cashed within 180 days from the date of mailing will be sent to the designated *cy pres* recipient the Legal Aid Society of Santa Clara County.

After the deductions from the Gross Settlement Amount for attorneys’ fees, litigation costs, settlement administration costs, the service award to Plaintiff, and the payment under PAGA described above, the remaining balance (the “Net Settlement Amount” or “NSA”) shall be available to pay settlement checks to the Class Members based upon the formula set forth in Paragraph 8 below.

8. *How will my Settlement payment be calculated?*

After deduction of the Court-approved fees and expenses set forth above, the remainder of the GSA (which remainder is the NSA) shall be available for payment to Class Members based on the following formula:

Twenty-five percent (25%) of the NSA will be allocated to the FCRA Class. This portion of the NSA will be distributed on a pro rata basis to all such employees and applicants.

Seventy-five percent (75%) of the NSA will be allocated to the Wage and Hour Class. To fairly allocate settlement funds based on the Class Member’s dates of employment as a Wage and Hour Class Member (excluding weeks during which no duties were performed) and any entitlement to waiting time penalties, the distribution amount will be calculated as follows: The total Workweeks for all Wage and Hour Class Members in the Wage and Hour Class Period plus additional Workweeks allocated for separated employees shall be divided into the Net Settlement Amount to calculate the agreed upon payment per Workweek (the “Workweek Rate”). Each Wage and Hour Class Member who separated from Defendant during the Wage and Hour Class Period at least once will receive an allotment of six additional Workweeks. Each Wage and Hour Class Member will be paid the Workweek Rate for each Workweek.

An employee who is a member of both classes may recover from both the FCRA NSA and the Wage and Hour NSA.

9. Disputing the data on your Individual Notice

You have the opportunity to dispute the data set forth on the first page of this Notice, including the number of workweeks used to calculate your Settlement payment, if you believe the data is incorrect. To dispute the data on this Notice, you must send a letter, signed under penalty of perjury, to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208 Orange, CA, 92863 by February 22, 2021 disputing the data on this Notice and providing any supporting documentation you have. The Settlement Administrator will use Defendant's records and the information you provide to resolve any disputes about the data appearing on this Notice. The Settlement Administrator's determination will be final and binding.

10. What are the possible settlement benefits from this Settlement?

You have the right to receive money from the Settlement if you received this Notice. The estimated amount of your share of the Settlement money is listed on the first page of this Notice.

State law and Defendant's policy strictly prohibit any retaliation against you for participating in the Settlement. Defendant will not take any adverse action against you because of your decision to participate in this Settlement. Defendant wants you to participate in the Settlement. Whether you participate in the Settlement or not, no amount Defendant has agreed to pay under the terms of the Settlement will go back to Defendant.

11. How do I participate in the Settlement and get a settlement check?

You do not need to do anything to participate in the Settlement and receive a settlement payment. You will receive a settlement check that will be mailed to you later this year after the Court grants final approval of the Settlement.

12. When will I get my settlement check?

Checks for the amount of each Class Member's individual settlement payment will be distributed if and when the Settlement receives final approval from the Court. Settlement checks will be sent to the address listed on this Notice. If you move after receiving this Notice, fill out the change of address section on this Notice or prepare a letter with your new address and mail the Notice or letter to Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA, 92863, You can also call the Settlement Administrator at (800) 523-5773 and advise them of your new address.

13. Will I have to pay taxes on my settlement payment?

Class Members will be responsible for paying any taxes owing for their settlement payments. The Settlement Administrator will issue Form W-2s and 1099s with respect to such payments as required by law. Without any party hereto admitting any liability of any type or kind, the Parties agree and intend that the payments made under this Settlement are compensatory payments to the Class Members intended to compensate Class Members for alleged damages. With respect to the Wage and Hour Class, the distributions to the Class Members from the NSA will be allocated 30% wages, 30% for interest, and 40% for penalties. With respect to the FCRA class, each settlement share is allocated one hundred percent to penalties (for which 1099s will be issued). The Settlement Administrator will withhold employee and employer taxes from the wage portion of the settlement payments and issue W-2s to the Class Members for the wage portion of the settlement payments and Form 1099s for the penalty and interest portion of the settlement payments.

14. Am I giving anything up by remaining in the Class?

Unless you remove yourself from the Settlement (which is called "excluding yourself" or "opting out"), you are part of the Class. By staying part of the Class, court orders will apply to you, and you will be bound by the Release of Claims set forth in the Settlement Agreement. A release means you can't sue or be part of any other lawsuit against Defendant about the claims or issues being released in this lawsuit for the applicable Class Period ever again.

If the Court approves the proposed Settlement, the Settlement Agreement will bind all Class Members who have not opted out of the Settlement (“Class Participants”), and will bar them from bringing the claims described in the release below against Defendant. Specifically, after Court approval, the Settlement provides for the following release for the time period with respect to the Wage and Hour Class between November 30, 2013 and December 2, 2020; and with respect to the FCRA Class between November 30, 2012 and December 2, 2020:

In exchange for the consideration, undertakings, and covenants undertaken by Defendant in this Agreement, Named Plaintiff and Class Participants release the Released Parties, to the fullest extent permitted by law, from all claims/causes of action contained in any of the complaints and/or PAGA letters alleged/filed/sent in this Action or which could have been alleged based on the facts/legal claims/legal theories alleged in the Action.

Upon approval of the terms of the Settlement Agreement at the Final Approval Hearing, by automatic effect of the Settlement Agreement, Plaintiff and each Class Participant shall release and discharge Defendant and the other Released Parties from Released Class Claims.

Upon approval of the terms of the Settlement Agreement at the Final Approval Hearing, all PAGA Employees, including Plaintiff, shall release and discharge Defendant and the other Released Parties from Released PAGA Claims, irrespective of whether that PAGA Employee validly requests exclusion from the settlement of Released Class Claims. An opt-out does not affect the release of PAGA Claims under this Agreement.

“Released Class Claims” means all claims alleged or that could have been alleged based on the operative facts pled in the original Complaint filed November 30, 2017, which are as follows: failure to provide meal periods, failure to provide rest periods, failure to pay hourly wages, failure to indemnify, failure to provide accurate written wage statements, failure to timely pay all final wages, violation of Business and Professions Code section 17200, penalties pursuant to PAGA, and violation of the FCRA. The release of the Class Claims shall be effective from the periods specified above.

“Released PAGA Claims” means all PAGA Claims that were actually alleged or could have been alleged in the original Complaint in this Action by Named Plaintiff, on behalf of the State of California, himself, and PAGA Employees. The release of the Released PAGA Claims shall be effective from November 30, 2016 to the date of Final Approval.

“Released Parties” shall mean Defendant and each of their respective parents, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, attorneys and any past, present or future officers, directors and employees), predecessors, successors, and assigns.

YOUR RIGHTS – OBJECTING TO THE SETTLEMENT AND APPEARING AT THE HEARING

15. How do I object to the Settlement?

If you wish to object to the Settlement, you may file a written objection (“Objection”) with the Court stating why you object to the Settlement. Your Objection should also indicate whether you intend to appear and object to the Settlement at the Final Approval Hearing; although you may still appear at the Final Approval Hearing whether or not a written objection has been submitted. Your Objection should be submitted to the Settlement Administrator by mail to P.O. Box 7208, Orange, CA 92863 or may be filed at the Clerk’s Office of the Santa Clara County Superior Court, Downtown Superior Court, located at 191 North First Street, San Jose, California 95113. If you submit a written objection, you should also serve copies of your Objection to Class Counsel and Defendant’s counsel at the addresses listed in Section 16 below.

You should file and serve your Objection on or before February 22, 2021, forty-five (45) days from the date that the Notice was first mailed to Class Members. Copies of all settlement documents, including the Settlement Agreement, Motion for Preliminary Approval of Class Action Settlement, and Motion for Final Approval of Class Action Settlement and Awards of Attorneys’ Fees and Costs (when filed), are available for your inspection and review at the Clerk’s Office of the Santa Clara County Superior Court, Downtown Superior Court, located at 191 North First Street, San Jose, California 95113 or by going to www.phoenixclassaction.com/tyler-v-western.

Any Class Member may object to the Settlement or be heard at the Final Approval Hearing, regardless of whether written notice of the Class Member's intention to appear at the Final Approval Hearing is submitted to the Settlement Administrator. The Court, in its sole discretion, may permit any member of the Class to address the Court at the Final Approval Hearing and may consider any statements made by a Class Member.

If the Court rejects your Objection, however, you will be bound by the terms of the Settlement. Persons who exclude themselves from the Settlement may not submit objections to the Settlement but may still appear at the Final Approval Hearing.

16. Who are the attorneys representing the class?

Plaintiff and Class Members' Attorney
("Class Counsel"):

Shaun Setareh (SBN 204514)
William M. Pao (SBN 219846)
SETAREH LAW GROUP
9665 Wilshire Boulevard, Suite 430
Beverly Hills, California 90212
Telephone (310) 888-7771
Facsimile (310) 888-0109

17. Can I appear at the Final Settlement hearing?

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend.

Due to the COVID-19 pandemic, hearings are currently being conducted remotely with the assistance of a third-party service provider, CourtCall. Class members who wish to appear at the final fairness hearing should contact class counsel to arrange a telephonic appearance through CourtCall, at least three days before the hearing if possible. Any CourtCall fees for an appearance by an objecting class member will be paid by class counsel.

YOUR RIGHTS – GETTING OUT OF THE SETTLEMENT

18. Can I remove myself from the Settlement?

Any Class Member who wishes to be excluded from the Class and Settlement must return a written request to be excluded from the Settlement to the Settlement Administrator by first class U.S. mail, or equivalent, postage paid and postmarked, on or before February 22, 2021, forty-five (45) days from the date that the Notice is first mailed to Class Members. The written notice must clearly identify the name of the Class Member requesting exclusion, the last four digits of his/her social security number, his/her current address, and contain a statement expressly stating that he/she seeks to be excluded from the Settlement such as "I wish to opt out of the Lawsuit and the Settlement of the case: Kevin Tyler v. Western Management, LLC., Santa Clara County Superior Court Case No. 18CV336058. I understand that by requesting to be excluded from the Settlement, I will receive no money from the Settlement described in the Notice I have received and read," and contain the full legal signature of the requesting Class Member. By submitting such a Request for Exclusion, a Class Member shall be deemed to have exercised his or her option to opt out of the class action lawsuit and Settlement.

The date of the postmark on the return envelope shall be the exclusive means used to determine whether a Class Member has timely returned his or her request for exclusion before the deadline. Any Class Member that timely submits a proper request for exclusion will not be entitled to any money under this Settlement, and will not be bound by the Settlement or have any right to object, appeal or comment thereon. Class Members who do not timely submit a proper request for exclusion shall be bound by all terms of this Settlement, including the Release of Claims, and the Judgment entered in this Action by the Court.

Send the Request for Exclusion directly to the Settlement Administrator (Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA, 92863). **Do not send the Request for Exclusion to the Court.** The judgment following approval of the Settlement by the Court will bind all Class Members who do not request exclusion from the Settlement.

19. What is the difference between excluding and objecting?

Excluding yourself or opting out means removing yourself from the Class and the Settlement altogether – you will not receive any money or be bound by the terms of the Settlement. Objecting means that you are remaining in the Class and will receive money and be bound by the terms of the Settlement but that you are complaining about some part of the Settlement that you do not like.

WHAT IF I DO NOTHING?

20. What if I do nothing?

If you do nothing, you will be bound by the terms of the Settlement, which means you will receive a settlement payment and cannot bring a lawsuit against Defendant regarding the Released Claims covered by the Settlement.

DO I NEED TO HIRE MY OWN LAWYER?

21. Do I need to hire my own lawyer?

You do not need to hire your own lawyer, but you can if you want to. Plaintiff, you, and the entire Class are already represented by the Plaintiff’s attorneys listed above, who are known as Class Counsel. Class Counsel’s services are paid for under the Settlement. If you decide to hire your own attorney you will have to pay for your own attorney’s services.

You may contact Class Counsel if you have any questions about this Notice or the Settlement, but please *do not contact the Court or Defendant*.

FINAL APPROVAL OF SETTLEMENT

22. When will the Settlement be final?

The Final Approval Hearing on the fairness, reasonableness, and adequacy of the Settlement will be held at 1:30 p.m. on April 14, 2021 at the Santa Clara County Superior Court, Downtown Superior Court, located at 191 North First Street, San Jose, California 95113. The hearing may be continued without further notice. **You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend.**

MORE INFORMATION

23. Where can I get more information?

This Notice is only a summary of the Settlement. For more information you may inspect the Court files, including the Settlement Agreement (also called the “Joint Stipulation of Class Action Settlement and Release of Claims”), at the Court Clerk’s Office located at the Santa Clara County Superior Court, Downtown Superior Court, located at 191 North First Street, San Jose, California 95113, during regular business hours. You may also contact Class Counsel listed above for more information or go to www.phoenixclassaction.com/tyler-v-western.

**PLEASE DO NOT CALL THE COURT, DEFENDANT, OR ITS ATTORNEYS
ABOUT THIS NOTICE**

By Order of the Santa Clara County Superior Court, the Honorable Patricia M. Lucas.