

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

THIS IS NOTICE OF A PROPOSED CLASS ACTION SETTLEMENT

To: All current and former persons who worked for Defendants Cardinal Hire, Inc. and/or Vidality, Inc., and/or Paul Campbell (jointly, “Defendants”) in California as Recruiters from July 28, 2016, to the August 15, 2022 (each a “Class Member,” and collectively, “Class Members”):

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1. WHY IS THIS NOTICE BEING SENT TO YOU?

This notice is to inform you that a proposed settlement in the class action lawsuit entitled *Tsernoh v. Vidality, Inc., et al.*, Case No. CGC-20-585613 (the “Lawsuit”) has been reached by the Parties, and has been granted preliminary approval by the California Superior Court for the County of San Francisco (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 engagement with Defendants in any way whatsoever. This notice explains your rights in connection with the proposed class action settlement.

The Court has ordered that this Notice be sent to you because Defendants’ records indicate that you are a Class Member. The purpose of this notice is to inform you of the proposed Settlement of the Lawsuit. The notice is also intended (1) to describe the Settlement, including how the Settlement monies will be allocated and how the Settlement may affect you, and (2) to advise you of your rights and options with respect to the settlement.

2. WHO IS ELIGIBLE TO RECEIVE MONEY FROM THIS SETTLEMENT?

The Settlement Class includes all current and former persons who worked for Vidality, Inc. and/or Cardinal Hire, Inc. and/or Paul Campbell in California as “Recruiters” from July 28, 2016, through August 15, 2022 (“Class Period”).

The Settlement Class will not include any person who previously settled or released any of the Claims covered by the Settlement or any person who was previously paid or received an award through civil or administrative action for any Claim covered by this Settlement.

3. WHY YOU SHOULD READ THIS NOTICE

You should read this Notice because your rights are affected by the proposed Settlement. You should read this Notice to understand your entitlement to money, your right to dispute the information about your workweeks, your right to object to the settlement, your right to opt out of the Settlement, and what happens if you do nothing.

4. WHAT IS A CLASS ACTION?

A class action is a lawsuit in which the claims and rights of many people are decided in a single court proceeding. One representative plaintiff or multiple representative plaintiffs, also known as a “class representative” or “class representatives” can assert claims on behalf of an entire class or group of people.

5. SUMMARY OF THE CLAIMS AND ALLEGATIONS

On July 28, 2020, Plaintiff Yevgeniya Tsernoh (“Plaintiff”) filed a putative class action lawsuit in which she alleged that Defendants owed wages, interest and other penalties to its employees, whom she alleged were misclassified as independent contractors, who worked for Defendants in California as “Recruiters.” Plaintiff’s Complaint alleges causes of action for: (1) Failure to Pay Minimum Wages (L.C. §§ 1194, 1197, 1197.1 and Wage Order 4-2001); (2) Liquidated Damages for Failure to Pay Minimum Wages (Labor Code § 1194.2); (3) Failure to Pay Overtime and Double-time Wages (L.C. §§ 204, 510, 1194, and Wage Order 4-2001); (4) Failure to Provide Meal Breaks (L.C. §§ 226.7, 512, and Wage Order 4-2001); (5) Failure to Provide Rest Breaks (L.C. § 226.7, and Wage Order 4-2001); (6) Failure to Reimburse Required Business Expenses (L.C. § 2802, and Wage Order 4-2001); (7) Failure to Provide Accurate and Itemized Wage Statements (L.C. § 226); (8) Failure to Timely Pay Wages Upon Termination (L. C. §§ 201, 203); and (9) Unfair Business Practices (Bus. & Prof. Code §§ 17200, et seq.). Plaintiff seeks declaratory relief, as well as recovery of compensatory damages, penalties, interest, and attorneys’ fees and costs.

Defendants vigorously deny the allegations in the lawsuit and denies that Plaintiff or the class are entitled to any relief.

On August 15, 2022, the Court gave preliminary approval to the settlement of the Lawsuit. The Court has made no opinion on the merits of the Lawsuit.

6. WHO REPRESENTS THE PARTIES?

The following attorneys represent the parties in this Lawsuit:

For the Class:

INFINITY LAW GROUP LLP
Ilya Filmus, Esq. (SBN 251512)
3450 Geary Blvd., Suite 210
San Francisco, CA 74118
Telephone: (415) 426-3580
Facsimile: (415) 426-3581
ifilmus@infinitylawca.com

For Defendants:

Patrick R. Kitchin, Esq. (SBN 162965)
KITCHIN LEGAL, APC
1999 Harrison Street, 18th Floor #3535
Oakland, CA 94612
Telephone: (415) 677-9058
prk@kitchinlegal.com

The Claims Administrator is Phoenix Class Administration Solutions. Documents regarding this Notice and the settlement can be accessed at www.phoenixclassaction.com/tsernoh_v_vidality/ and you can email the Claims Administrator at notice@phoenixclassaction.com or call the Claims Administrator at 800 523 5773.

7. YOU CAN AUTOMATICALLY RECEIVE SETTLEMENT FUNDS

You do not need to do anything to receive your portion of the Settlement funds. You can object to the fairness of Settlement and still receive your portion of the Settlement Funds. As explained below, it is your responsibility to ensure the Claims Administrator has your current address so a settlement check can be mailed to you.

If you are a Class Member, you will be entitled to money from the Settlement and, you will be bound by the provisions of the Settlement Agreement, including a release of claims that will prevent you from separately suing Defendants unless you timely file a request for exclusion.

8. YOU SHOULD PROVIDE YOUR CURRENT ADDRESS TO THE CLAIMS ADMINISTRATOR

It is your responsibility to keep a current address on file with the Claims Administrator to ensure receipt of your settlement payment.

If you move following receipt of this Notice or if the address to which this Notice was sent is not correct, you must immediately contact the Claims Administrator, whose address and contact information is as follows:

Tsernoh v. Vidality, et. al
c/o Phoenix Settlement Administration
Telephone: (800) 523-5773
Facsimile: (949) 209-2503
Email: notice@phoenixclassaction.com

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

You may retain your right to pursue any claims you may have separately from this Class Action by requesting to be excluded from the Settlement. You may exclude yourself from the Settlement by mailing a letter or sending an email to the Claims Administrator at the address above, on or before **November 5, 2022**.

Such written letter or email requesting exclusion must contain your name, address, and telephone number, and clearly state that you wish to be excluded from the class. The request for exclusion must be signed by you or your authorized representative, returned by mail or email to the Claims Administrator, and must be postmarked on or before **November 5, 2022**.

If you choose to exclude yourself, 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 November 5, 2022, 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 Lawsuit.

10. IF YOU DO NOT AGREE WITH THE SETTLEMENT

IF YOU DO NOT AGREE WITH THE SETTLEMENT, you can submit an Objection to the Settlement as a whole or to any part of the Settlement. However, if the Court approves the Settlement, you will still be bound by the terms of the Settlement and you will be mailed a settlement payment. You may both object to all or part of the Settlement and participate in it.

To object, you or your authorized representative must submit a signed, written objection by November 5, 2022, by mailing or emailing it to Phoenix Class Administration Solutions at the address above. Your objection should clearly explain why you object to the Settlement. Your objection must state your full name, current address, current telephone number, and the dates of your employment with Defendants. **DO NOT TELEPHONE THE COURT.**

If you timely submit an objection, you may appear at the Final Approval Hearing, which will be held at the San Francisco County Superior Court, Civic Center Courthouse, 400 McAllister Street, San Francisco, CA 94102. You can speak on your own behalf or through your own attorney. Neither you nor your attorney need to provide formal, filed notice of your intended appearance. The date and time of the Final Approval Hearing can change. **Please regularly check the website www.phoenixclassaction.com/tsernoh_v_vidality/ for updates.**

If you object to the Settlement, you will remain a member of the Settlement 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 Settlement Class Member who does not object. **ANY MEMBER OF THE SETTLEMENT CLASS WHO DOES NOT OBJECT TO THE PROPOSED SETTLEMENT NEED NOT APPEAR AT THE SETTLEMENT HEARING.**

11. SUMMARY OF THE SETTLEMENT AGREEMENT

The description below is a summary of the terms of the settlement. You may obtain more information about the proposed settlement by contacting any of the attorneys listed above in Section 6 or by reviewing the Settlement Agreement which is available at www.phoenixclassaction.com/tsernoh_v_vidality/.

Settlement Fund, Net Settlement Amount, and General Terms. Defendants and the Named Plaintiff have agreed that, in order to resolve this action, Defendants will pay \$136,512 (“Settlement Fund”), in exchange for the release of all claims against it. This amount will be used to pay (1) the awards to Class Members (“Settlement Awards”) that do not choose to exclude themselves from the Lawsuit (“Participating Class Members”), (2) an amount not to exceed \$10,000 for the Named Plaintiff for her activities as a class representative (subject to approval of the Court), (3) class counsel’s attorney’s fees, up to a maximum amount of \$45,503.95 (subject to approval of the Court), and class counsel’s costs of approximately \$10,000 (subject to approval of the Court), and (5) the costs of settlement administration not to exceed \$6,795.

The Net Settlement Amount shall be the settlement consideration remaining after subtracting the following payment obligations approved by the Court from the Settlement Fund of \$136,512:

- (1) Plaintiffs’ attorneys’ fees of no more than \$45, 503.95 and costs of approximately \$10,000;
- (2) Enhancement award to the named Plaintiff in the amount of no more than \$10,000; and
- (3) Settlement administration fees and costs not to exceed \$6,795.

Subject to approval of the Court, based on the amounts requested by Plaintiff’s counsel and Plaintiff and on the estimated administrative costs, the estimated Net Settlement Amount is \$64,213.05, which will be paid to the Class.

Payment Formula. Class Members who do not file a Request for Exclusion will be entitled to a gross award (“Individual Settlement Payment”). Each Individual Settlement Payment (before deduction for payroll taxes) shall be determined as follows:

Subject to Approval of the Court, Participating Class Members will be entitled to a proportional share of the Net Settlement Amount (estimated to be \$64,213.05), based on the estimated proportional number of weeks worked by each Class Member during the Class Period. Based on current estimates, each Participating Class Member is currently estimated to receive approximately \$25.69 for each week estimated to have been worked as a recruiter.

If you were an “recruiter” during the Class Period, the estimated gross amount that you will receive is included in the attached Settlement Award Form. The gross amount on the Settlement Award form represents an estimate, is subject to Court approval and could change. The share of the Net Settlement Amount for each Class Member is determined by multiplying the estimated number of workweeks each Class Member was engaged by Defendants during the Class Period by the Workweek Dollar Value. The Workweek Dollar Value will be determined by dividing the total amount available to be paid to the Class Members (currently estimated to be \$64,213.05) by the total estimated number of workweeks worked by the Class Members (estimated to be 2,488). This amount is estimated to be \$25.69 for each week worked. If you do not agree with the number of workweeks noted on the enclosed Settlement Award Form, you may send a letter or an email to the Claims Administrator stating the reasons why you dispute the number of workweeks and stating the number of workweeks you claim you performed. If you have documents of substantiating factual information supporting your dispute, it is helpful to provide them to the Claims Administrator, but you should at least keep any documentation that you have. You must provide your workweeks dispute by November 5, 2022.

Payroll Tax Withholding. Twenty percent (20%) of each gross Individual Settlement Payment shall be comprised of wages subject to payroll taxes and eighty percent (80%) shall be comprised of non-wage income. The Claims Administrator shall withhold the employee’s share of payroll taxes from the portions of the Individual Settlement Payments attributable to wage income. The employer’s share of payroll taxes owing on the portion of the Individual Payments that is allocated to wages shall be paid out of Voided Settlement Checks to the extent there are any. To the extent that Voided Settlement Checks are insufficient to cover Defendant’s share of the payroll taxes, Defendants shall be responsible for paying the employer’s share of payroll taxes.

Funds available, if any, from Voided Settlement Checks after applying the funds to payroll taxes will be paid to the tax-exempt charity: National Stuttering Association or another nonprofit organization, subject to Court approval.

Distribution Schedule. Subject to approval of the Court, the Settlement Awards will be made by check. Class member settlement funds will be paid out of the first available funds. Claims administration costs, Class Counsels' attorneys' fees and costs, the Class Representative Enhancement Payment will be paid in later installments. If funds remain after all distributions, they will be paid to the National Stuttering Association, a tax-exempt charity.

Payment of Attorneys' Fees and Costs for Class Counsel. Class Counsel will ask for fees of no more than \$45,503.95 and actual costs incurred, of approximately \$10,000. The actual amount awarded will be determined by the Court to ensure that the amount of attorneys' fees and costs is reasonable. This means that Class Counsel's fees and costs will be paid out of the settlement, and Class members will not have to make any individual payments to the lawyers.

12. EFFECT OF THE SETTLEMENT-RELEASE OF ALL CLAIMS

Release of Claims for Class Members. Upon the Effective Date of the Settlement, all Class Members who have not filed timely, valid Requests for Exclusion shall release, waive and forfeit, and shall have been deemed to have waived and forfeited, all Released Claims against CardinalHire and Vidality, Inc., their parents, subsidiaries, and each of them, and their respective agents, general agents, insurers, reinsurers, payroll companies, attorneys, representatives, owners, stockholders, policyholders, principals, partners, employees, officers, directors, trustees, heirs, successors, predecessors, assigns, parent corporations, subsidiaries, affiliated companies, and Paul Campbell ("Released Parties"), and each and all of them.

"Released Claims" means all claims, rights, demands, liabilities and causes of action, alleged in the Action during the Class Period regarding "Recruiters" only. The primary facts alleged in the Action are that Defendants misclassified Plaintiff and the Class Members as independent contractors rather than employees and failed to provide Plaintiff and the Class Members payment of overtime wages, compliant wage statements, reimbursement of expenses, rest breaks, meal periods, and all wages due upon termination. Additionally, Plaintiff alleges that in doing the above, Defendants violated Sections 17200, *et seq.* of the California Business and Professions Code. The Released Claims include all claims a Class Member could make for legal or equitable relief, for compensatory and statutory damages, penalties, liquidated damages, restitution, injunctive relief, pre-judgment and post-judgment interest, and attorney fees and costs of suit that arise from, or relate to, the facts alleged in the Action. The foregoing is intended to include all claims that a Participating Class Member may have for minimum wages, straight time wages, overtime wages, meal and rest periods, claims under Labor Code Sections 201, 203, 204, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, *et seq.*, and 2802; California Industrial Welfare Commission Wage Orders; Bus. & Prof. Code §§ 17200, *et seq.*; and all other wage, interest, statutory damages, penalty, injunctive and attorney fee claims arising from, or related to, the facts alleged in the Action.

Conditions of the Settlement. This Settlement is conditioned upon the Court entering a judgment and order at or following the Final Approval Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class and that judgment and order having become final.

13. FINAL SETTLEMENT APPROVAL HEARING

The Final Approval Hearing on the adequacy, reasonableness and fairness of the Settlement will be held on **December 22, 2022**, at 9:00 a.m. in Department 304 of the San Francisco County Superior Court, Civic Center Courthouse, 400 McAllister Street, San Francisco, CA 94102. The Settlement Hearing may be continued. **Please regularly check www.phoenixclassaction.com/tsernoh_v_vidality/ for updates regarding the date and/or time of Final Approval hearing.** You are not required to attend the Final Approval Hearing, but you may if you choose. You may also enter an appearance through your own attorney, if you desire, as explained below.

Any Class Member who does not object in the manner provided in Section 10 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.

14. YOU HAVE THE RIGHT TO YOUR OWN COUNSEL

The Court has approved Infinity Law Group as Class Counsel to represent the interests of the Class. You are entitled to have your own counsel assist you with any objection, exclusion request, and/or any appearance in Court. The Court cannot provide legal advice or answer questions regarding this settlement. For questions or copies of documents regarding the settlement, please refer to the resources in Section 6.

15. NO RETALIATION

Applicable law prohibits Defendants from retaliating against employees and/or independent contractors who participate in this Settlement, including exercising opt out rights or objecting to this Settlement.

16. WHAT TO DO IF YOU NEED ADDITIONAL INFORMATION

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 Counsel for either party at the following addresses and telephone numbers:

For the Class:

INFINITY LAW GROUP LLP
Ilya Filmus, Esq. (SBN 251512)
3450 Geary Blvd., Suite 210
San Francisco, CA 74118
Telephone: (415) 426-3580
Facsimile: (415) 426-3581
ifilmus@infinitylawca.com

For Defendants:

Patrick R. Kitchin, Esq. (SBN 162965)
KITCHIN LEGAL, APC
1999 Harrison Street, 18th Floor #3535
Oakland, CA 94612
Telephone: (415) 677-9058
prk@kitchinlegal.com

You may also contact the Settlement Administrator at:

Phoenix Settlement Administration Solutions,
P.O. Box 7208, Orange, CA 92863
notice@phoenixclassaction.com
www.phoenixclassaction.com/tsernoh_v_vidality/
Telephone (800)-523-5773

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