

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION

CHRISTOPHER KIRK, Individually and on)
behalf of all other similarly situated,)
)
Plaintiffs,) Case No. 1:15-cv-00116
)
v.) JURY TRIAL DEMANDED
)
DR WELL SITE SERVICES, LLC,) Judge Barbara Rothstein
TERVITA, LLC and TERVITA (US)
OPERATIONS) LLC,)
)
Defendants.)

**OFFICIAL COURT NOTICE OF SETTLEMENT OF
COLLECTIVE ACTION AND OF YOUR OPT-IN RIGHTS**

To: Former consultants of DR Well Site Service, LLC who worked in excess of 40 hours in a workweek while providing services to Tervita, LLC from May 15, 2014 until September 1, 2015.

Re: Settlement of FLSA Collective Action Lawsuit and Opportunity to Opt-In and Participate in the Settlement.

Date: July 27, 2017

INTRODUCTION

- The Parties, defined below, have settled this lawsuit, and Tervita, LLC and Tervita (US Operations), LLC have agreed to pay up to **four hundred twenty-one thousand, two hundred fifty dollars (\$421,250.00)** as part of the settlement.
- The Court approved a settlement agreement under which you are eligible to receive approximately **\$«SettlementAmt»**. Please read this Notice carefully. It contains important information about your rights concerning settlement of this lawsuit.
- As described more fully below, you have the right to participate in this settlement. To participate in the settlement, you must send a properly completed Consent and Substitute W-9 Form that must be postmarked or received by the Claims Administrator by September 25, 2017. If you fail to return the Consent and Substitute W-9 Form, you will receive no money from the settlement.
- This Notice explains the lawsuit, the key settlement terms, and your rights and obligations. It is not an expression of any opinion by the Court as to the merits of any of the claims or defenses asserted by the Parties.

1. What Is the Lawsuit About, and Why Was this Notice Sent?

A former consultant of DR Well Site Services, LLC (“DR Well Site”) who provided services to Tervita, LLC, Christopher Kirk (“Plaintiff”), filed a lawsuit in the United States District Court for the Western District of Pennsylvania (the “Lawsuit”) in which he alleges that DR Well Site, Tervita, LLC and Tervita (US Operations), LLC (collectively “Defendants”) improperly paid Plaintiff and similarly situated individuals on a day-rate basis, failed to pay them overtime, and misclassified them as independent contractors. He alleges that Defendants’ actions violated the Fair Labor Standards Act (“FLSA”) and the Pennsylvania Minimum Wage Act (“PMWA”).

Tervita, LLC and Tervita (US Operations), LLC (jointly “Tervita”) deny that they violated the law, specifically deny that they violated any statutory or common law as alleged, and assert that they have strong defenses to the Lawsuit.

Plaintiff and Tervita (collectively “the Parties”), through their counsel, conducted a thorough investigation of the claims that Plaintiff asserted in the Lawsuit and/or that relate to or could have arisen out of the same facts alleged in the Lawsuit, including both asserted and unasserted claims. The Parties engaged in an arms’ length mediation on December 2, 2015 with former U.S. Magistrate Judge Kenneth Benson and resolved this Lawsuit (the “Settlement”).

The Court reviewed the Parties’ settlement agreement (“Settlement Agreement”) that describes the Settlement terms in detail. The Court found it to be fair, reasonable, adequate, and in the best interest of Plaintiff and all similarly situated individuals in light of all known facts and circumstances, including the risk of delay and the defenses asserted by Tervita.

For purposes of the Settlement only, the Court certified a class of individuals under the Fair Labor Standards Act (“FLSA”) who have the ability to opt-in and participate in this Settlement and collect money from it in exchange for agreeing to the release of claims in the Consent and Substitute W-9 Form (the “FLSA Class”). As part of that process, the Court approved the mailing of this Notice and the accompanying Consent and Substitute W-9 Form.

The Parties entered into this Settlement to avoid the risks, uncertainty, expense and burden of further litigation. Neither this Notice, nor anything in the Settlement Agreement, should be construed or deemed an admission of liability, culpability, negligence, or wrongdoing by Tervita or a concession about the merits of the Lawsuit on the part of Plaintiff.

2. Who Can Participate in the Settlement?

The FLSA Class certified by the Court consists of all consultants who were referred to Tervita by DR Well Site, worked over 40 hours in a workweek according to DR Well Site’s time and expense reports and the invoices DR Well Site submitted to Tervita, and were paid a day rate but no overtime by DR Well Site while they performed work for Tervita from May 15, 2014 until September 1, 2015.

3. What Are Your Options?

You have two options with regard to this Settlement. You may:

- (1) Participate in the Settlement and accept the \$«SettlementAmt» you are entitled to by returning a Consent and Substitute W-9 Form;
- (2) Do nothing.

Information on how exercising each option would affect your rights is provided below.

4. What Are the Terms of the Settlement, and How Was the Value of Each FLSA Class Member's Claims Determined?

Tervita agreed to pay a "Maximum Gross Settlement Amount" of Four Hundred Twenty-One Thousand, Two Hundred Fifty Dollars (**\$421,250.00**) to resolve the Lawsuit. The Maximum Gross Settlement Amount refers to the maximum amount that Tervita would pay if every FLSA Class member submits a properly completed Consent and Substitute W-9 Form by the deadline below. It includes Class Counsel's Fees and Costs, including the Claims Administrator's fees and costs, and the Enhancement Award. Tervita's portion of the payroll taxes on the settlement payments, including but not limited to all FICA and FUTA taxes on the payments, will be paid separate and apart from the Maximum Gross Settlement Amount. Any amounts that are not distributed will be returned to Tervita by the Claims Administrator.

Payments to FLSA Class members will be based on the Net Settlement Amount. The Net Settlement Amount represents the maximum amount that Tervita would pay if every FLSA Class member submits a properly completed Consent and Substitute W-9 Form by the deadline below. The Net Settlement Amount will not exceed two hundred fifty-six thousand three hundred twelve dollars and fifty cents (**\$256,312.50**). The Net Settlement Amount will be calculated by subtracting from the Maximum Gross Settlement Amount Class Counsel's Fees and Costs, including the Claims Administrator's fees and expenses and the Enhancement Award.

Tervita agreed to pay each FLSA Class Member who submits a properly completed Consent and Substitute W-9 Form by the deadline below his pro rata share of the Net Settlement Amount. Each FLSA Class Member's pro rata share was determined by taking the number of workweeks in which the FLSA Class Member worked over 40 hours in workweek when he was assigned by DR Well Site to work for Tervita between May 15, 2014 until September 1, 2015 and dividing it by 716, the total number of workweeks DR Well Site's records show all FLSA Class Members worked over 40 hours in a workweek when they were assigned by DR Well Site to work for Tervita between May 15, 2014 and September 1, 2015.

One half the payment to each FLSA Class Member will be paid as liquidated damages for which an IRS Form 1099 will be issued. The other half will be paid as unpaid overtime and other wage-related damages from which required withholdings will be deducted and for which an IRS Form W-2 will be issued.

The Claims Administrator will make the payments to FLSA Class members by November 9, 2017.

The Court has approved an Enhancement Award of two thousand five hundred dollars (\$2,500.00) to Plaintiff for his role in bringing the Lawsuit, working with counsel on behalf of himself and FLSA Class members, and serving as the settlement class representative.

If you have questions about the number of workweeks in which you worked over 40 hours on your Consent and Substitute W-9 Form, you may contact the Claims Administrator at (888) 250-6810.

5. Who Represents the Class, and How Are the Attorneys for the Class Being Paid?

As part of the Court's approval of the Settlement Agreement, the Court appointed the following counsel for Plaintiff as Settlement Class Counsel:

Settlement Class Counsel:

Andrew W. Dunlap
Josephson Dunlap
11 Greenway Plaza, Suite 3050
Houston, TX 77046
713-352-1100
adunlap@mybackwages.com

Richard J. Burch
Bruckner Burch PLLC
8 Greenway Plaza, Suite 1500
Houston, TX 77046
713-877-8788
rburch@brucknerburch.com

Joshua P. Geist
Goodrich & Geist, P.C.
3534 California Avenue
Pittsburgh, PA 15212
josh@goodrichandgeist.com

Settlement Class Counsel are receiving Attorneys' Fees of thirty-five percent (35%) of the Maximum Settlement Amount, and reimbursement of \$15,000.00 in costs they incurred in litigating the Lawsuit.

6. How Can You Participate in the Settlement?

To participate in the Settlement and receive your pro rata share, you must mail a fully completed and valid Consent and Substitute W-9 Form to the Claims Administrator so that it is received or postmarked on or before September 25, 2017.

A copy of the Consent and Substitute W-9 Form is enclosed with this Notice. The form also may be obtained by contacting the Claims Administrator listed below or by downloading it from the Claims Administrator's website: www.ilymgrouppclassaction.com. The Claims Administrator's address is at the end of this Notice and on the Consent and Substitute W-9 Form.

As explained more fully on the Consent and Substitute W-9 Form, by submitting the Consent and Substitute W-9 Form, you will waive your right to bring any claims you may have against Tervita based on the FLSA, PMWA, any other state, or local wage and hour laws, and any wage payment laws from **May 15, 2014 until September 1, 2015**.

7. What If You Do Nothing?

If you do not return the Consent and Substitute W-9 Form by the deadline, you will receive no money from the Settlement. You will not waive any rights you may have to file a claim against Tervita, but you will not be able to collect any funds from this Settlement.

8. Why Is DR Well Site Services, LLC Not Part of this Settlement?

DR Well Site was named as a defendant in this Lawsuit. On November 20, 2015, DR Well Site filed a bankruptcy case under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Middle District of Pennsylvania. Because of that filing, Plaintiff's claims against DR Well Site in this Lawsuit were automatically stayed or put on hold pending the outcome of the bankruptcy case. The Parties resolved the Lawsuit without DR Well Site participating in the Settlement. This Settlement does **not** release DR Well Site Services, LLC as a potential defendant, and each person receiving this Notice retains his right to pursue claims of unpaid wages and related damages from DR Well Site Services, LLC.

9. What If You Have Questions?

This Notice only summarizes the Lawsuit, the Settlement, and related matters. For more information about the Lawsuit or the Settlement or if you have any questions regarding the Notice or the Consent and Substitute W-9 Form, you may examine the Court file for the Lawsuit or contact the Claims Administrator.

If you want to see the complete court file, including a copy of the Settlement Agreement, you may visit the Clerk of Court, United States District Court for the Western District of Pennsylvania, Erie Division, U.S. Courthouse, 17 South Park Row, Erie, PA 16501. The Clerk will make all files relating to the Lawsuit available to you for inspection and copying at your expense during normal business hours.

You also may obtain additional information concerning the Settlement by contacting the Claims Administrator at:

Kirk v. DR Well Site Services, LLC, et al.
c/o ILYM Group, Inc.
P.O. Box 2031
Tustin, CA 92781

Do not contact the Court or Tervita about this matter.

Dated: July 27, 2017

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