

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

*Harris v. Vector Marketing Corporation -- Case Number CV 08-5198 EMC*

**NOTICE OF CLASS ACTION SETTLEMENT**

***TO: All Sales Representatives who signed a Sales Representative Agreement in California with Vector Marketing Corporation at some point between October 15, 2004 and April 6, 2011. Please read this Notice carefully as your rights may be affected. You are not being sued. You are being notified of a settlement of a class action from which you are entitled to benefit, and from which you are entitled to make a claim for payment of settlement funds.***

**PLEASE READ THIS ENTIRE NOTICE CAREFULLY. YOUR RIGHTS WILL BE AFFECTED BY THIS SETTLEMENT**

On April 29, 2011, the Court in this action granted preliminary approval of a proposed settlement as set forth in a Class Action Settlement Agreement (the "Settlement Agreement"). You are receiving this Notice because if the settlement is granted final approval by the Court, you will have the right to be paid a share out of the total available settlement funds of Thirteen Million Dollars (\$13,000,000), as described later in this Notice.

As a result of the settlement of the action, the lawsuit will be dismissed with prejudice, and the Defendant will be released from all the Released Claims. The "Released Claims" include any claims that Vector (1) should have paid minimum wages for time spent in initial training (the "training time" claim), (2) owed penalties for that alleged failure, (3) allegedly and improperly required the Sales Representatives to purchase Defendant's "sample kit," (4) as a result of the alleged conduct, also violated California's Unfair Competition laws, and (5) must pay waiting time penalties.

The Class Representative and Class Counsel (as defined below) believe the proposed settlement is fair, adequate and reasonable and that it is in the best interests of the Settlement Class (as defined below). **This Notice is intended to inform you of the proposed settlement and its terms, how you can participate in the proposed settlement or exclude yourself from the proposed settlement should you choose to do so, and also of your right to object to the terms of the proposed settlement if you wish to do so.** This Notice also explains how you can obtain more information about the settlement.

***If the Settlement is approved, each class member who chooses to participate in the settlement will be entitled to receive approximately \$94.00 for the initial training time claim.*** The stated amount for the initial training time claim is before deductions for attorneys' fees, costs, expenses of claims handling, the representative plaintiff's incentive award and the payment agreed to for the benefit of the California Labor and Workplace Development Agency,<sup>1</sup> all of which are subject to the approval of the Court. There is a second part of the settlement relating to reimbursement of payments made for the sample kit, but Vector's records indicate either that you did not pay for a sample kit, or that if you did, you have already returned it for a reimbursement. Therefore, you are only eligible to receive a settlement payment for the initial training time claim.

***To recover a share of the Net Settlement Amount relating to the initial training time claim, which will be determined after further orders of the Court, each Settlement Class Member must submit a valid claim for the training time payment by returning a completed Claim Form in the enclosed self-addressed, stamped envelope on or before July 8, 2011. In order to best protect your right to the payment described above, you should act as soon as possible.***

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<sup>1</sup> The net payments, after the deductions outlined in Section VI of this Notice are made, will be approximately **\$57 for the initial training time claim.**

## **I. SUMMARY OF THE LITIGATION**

Plaintiff Alicia Harris, a former Vector Sales Representative, sued Defendant Vector Marketing Corporation (“Vector”) claiming, among other things, that Vector failed to pay minimum wages for time spent in initial training, improperly required Sales Representatives to purchase Defendant’s “sample kit” and violated California’s Unfair Competition Laws by these actions, and that it owed payment for penalties under California Labor Code Section 203.

Vector denied Plaintiff’s allegations and contended that it was not required to pay minimum wages for initial training under federal or state law, that it did not require the purchase of the sample kit, that it did not violate California’s Unfair Competition Laws, and that it did not owe any payment for penalties under California Labor Code Section 203.

The case was litigated in court for over two and one half years. The Court previously “certified” that the claims were proper to proceed to trial as a class action. As a result of a recent mediation/settlement conference, and with the assistance of a highly regarded mediator, the Parties have now reached a settlement of the claims that were certified by the Court to proceed to trial, as well as a claim that Vector violated California Labor Code Sections 201-203. The Settlement is subject to the approval of the Court.

Members of the Settlement Class have an opportunity to exclude themselves from the Litigation and the settlement, as described below. The Court has not rendered any decisions on the merits of the Litigation. If you do not exclude yourself, you will be bound by the terms of the settlement and will be entitled to receive the payments described above by submitting the claims also described above.

## **II. CLASS DEFINITION**

The Litigation is being settled as a “class action.” In a class action, the plaintiff, also referred to as the class representative, sues on behalf of herself and other persons with similar claims.

The Court has certified a class in this case, and for purposes of this settlement, the Court has decided that the Settlement Class shall be defined as follows:

***All Sales Representatives who signed a Sales Representative Agreement in California with Vector Marketing Corporation at some point between October 15, 2004 and April 6, 2011, and who did not timely submit an Opt Out Form.***

If the Court approves the settlement, the settlement will bind all members of the Settlement Class in regard to all the settled claims, unless they had properly and timely excluded themselves from the Class by the applicable opt out deadline.

## **III. SETTLEMENT SUBCLASSES**

Class Members shall be a part of either one or both of the two Settlement Subclasses: 1) the Training Time Subclass; and 2) the Sample Kit Subclass, as explained in section VI below.

As stated above, you are eligible to be a Settlement Class Member for the Training Time Subclass only, since Vector’s records indicate that you are not eligible to participate in the sample kit subclass.

If you disagree, and believe that you should be permitted to participate in the Sample Kit Subclass, please contact the Claims Administrator and advise it as to why you believe that Vector is incorrect.

## **IV. CLASS REPRESENTATIVES AND CLASS COUNSEL**

The Court previously approved the appointment of Plaintiff Alicia Harris as the “Class Representative” to represent the Class. Ms. Harris has also now been approved by the Court to represent the Settlement Class.

In its prior Order certifying this action as a class action, the Court appointed the following attorneys to represent the Class as “Class Counsel”: MARLIN & SALTZMAN, LLP, the Diversity Law Group, and the Law Offices of Sherry Jung. These same counsel have also now been approved by the Court to be counsel for the Settlement Class.

## V. CLAIMS ADMINISTRATOR

The Court has approved Epiq Systems, Inc. to act as the Claims Administrator for purposes of this settlement. Epiq Systems, Inc. will administer the settlement and claims administration procedures.

## VI. SETTLEMENT VALUE AND AMOUNTS AVAILABLE TO CLAIMANTS

The settlement obligates Defendant to pay a potential maximum settlement amount of Thirteen Million Dollars (\$13,000,000). The settlement will resolve all of the claims that Settlement Class Members could have brought against Vector in regard to the “settled claims”. All claims by Settlement Class Members will be paid out of the settlement fund created by the Settlement Agreement.

All net settlement shares are determined after deduction of all settlement administrative fees and costs, an incentive award to the Class Representative, the attorneys’ fees and costs that the Court will award, the agreed payment to the California Labor and Workforce Development Agency (“LWDA”), and any other expenses which the Court may approve. The amount left after the deductions described above results in the creation of the Net Settlement Amount.

Each Settlement Class Member shall be eligible to recover his or her net settlement payment out of the settlement fund. **To recover a share of the Net Settlement Amount, each Settlement Class Member must submit a valid claim by completing and submitting the Claim Form on or before July 8, 2011.** Members of the Training Time Subclass must have signed a Sales Representative Agreement between October 15, 2004 and April 6, 2011 and attended Vector’s initial sales training seminar. The Settlement Amount shall be allocated to members of the Training Time Subclass as follows:

A. The Training Time Subclass. Each member of the Training Time Subclass will be eligible to recover, before deductions for fees, costs, expenses, incentive award, and the payment to the LWDA, the approximate sum of Ninety Four Dollars (\$94). After all deductions, the exact amounts of which will not be known until the final approval of the settlement is considered by the Court on August 10, 2011, each claimant can expect to receive the net sum of approximately Fifty Seven Dollars (\$57) for the Training Time Claim.

As stated above, you are only eligible to be a Settlement Class Member for the Training Time Subclass, since Vector’s records indicate that you are not eligible to participate in the Sample Kit subclass. Class members who had not yet returned their sample kit to Vector would have been entitled to recover the additional sum of approximately One Hundred Twenty Two Dollars (\$122) upon the return of the Sample Kit, before deductions for fees, costs, expenses, incentive awards, and the payment to the LWDA. After all deductions, the exact amounts of which will not be known until the final approval of the settlement is considered by the Court on August 10, 2011, each sample kit claimant could have expected to receive a net sum of approximately Seventy Five Dollars (\$75) for the Sample Kit Return Claim. In addition, Vector would have paid the full cost of the UPS shipping fee for the return of the sample kit to Vector.

B. Each recipient of any monies paid under the Training Time Claim is responsible for any taxes that might be owed as a result of the receipt of the payment.

C. Class Counsel will request that the Court award Class Counsel an award of Attorneys’ Fees in an amount equal to thirty two point two percent (32.2%) of the Thirteen Million Dollar (\$13,000,000) fund created, for a total fee of Four Million One Hundred Ninety Thousand Dollars (\$4,190,000.00). Class Counsel will also ask that the Court approve the reimbursement of the costs they have expended in the pursuit of this action. To date, Class Counsel has spent approximately \$435,000.00 in such costs, and has incurred an additional obligation to pay approximately \$75,000.00 more in costs in relation to the recent class certification notice mailing. Class Counsel will also incur costs in an amount not to exceed \$250,000.00 in connection with the administration of this notice. In conjunction with the Final Approval Hearing, discussed below in Section IX of this Notice, Class Counsel will file a motion in support of the fees and costs requested.

D. Class Counsel will request that the Court award the Class Representative up to Twenty-Five Thousand Dollars (\$25,000) to compensate her for the time, effort, personal involvement and risk she undertook as Class Representative.

E. Class Counsel will request that the Court award a payment of up to Twenty-Five Thousand Dollars (\$25,000) to the California Labor and Workforce Development Agency.

## **VII. THE CLAIMS PROCESS**

Enclosed with this Notice you will find a Claim Form. As explained above, you are eligible to participate in the Training Time Subclass settlement. In order to receive your "Training Time" payment as part of this settlement, you must submit the Claim Form. **If you do not properly complete and mail in the Claim Form in a timely manner, you run the risk of not receiving any payment under the settlement.**

**THE CLAIM FORM MUST BE COMPLETED, SIGNED UNDER PENALTY OF PERJURY, AND RETURNED TO THE CLAIMS ADMINISTRATOR AT THE ADDRESS SET FORTH BELOW WITHIN 60 DAYS OF THE DATE THAT THIS NOTICE AND THE CLAIM FORM WERE MAILED TO YOU. FOR YOUR CONVENIENCE, A SELF ADDRESSED STAMPED ENVELOPE IS ENCLOSED FOR THE RETURN OF YOUR CLAIM FORM. FOR YOUR CLAIM TO BE CONSIDERED TIMELY, YOUR ENVELOPE MUST BE POSTMARKED NO LATER THAN July 8, 2011.**

**Claim Forms must be mailed to:**

**Harris v. Vector Claims Administration, PO Box 6515, Portland, OR 97228-6515**

Claim Forms must be executed under oath, but do not need to be notarized.

## **VIII. RELEASE AND WAIVER**

If the Court later grants final approval to the settlement, then the Class Representative and all members of the Settlement Class, who do not exclude themselves from the settlement: (i) shall be deemed to have agreed that, except for the obligations imposed by this settlement, Defendant shall be forever released and discharged from all Released Claims (as defined in the Settlement Agreement); and (ii) shall be barred and enjoined from suing Vector for any liability in any way related to, or arising out of any of the Released Claims. The following paragraph contains a summary of the release. The full release is contained in the Settlement Agreement.

For purposes of the Settlement, the "Released Claims" include all Settled Claims. These claims include all claims, rights, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than those costs and expenses required to be paid pursuant to the Settlement Agreement), liens, charges, complaints, causes of action, obligations, or liability of any and every kind, related to the Training Time claims, including Labor Code Sections 201-203 claims relating thereto, the Sample Kit claims, and all California Unfair Competition Claims related to both Training Time and the Sample Kit claims, that were asserted in the Litigation or that could have been asserted but were not asserted in the Litigation, whether known or unknown, to the extent that such claims arise out of the alleged facts, circumstances, and occurrences underlying the allegations as set forth in Plaintiffs' Fourth Amended Complaint filed in conjunction with this Settlement and the Motion for Preliminary Approval filed in support of the Settlement, whether such allegations were or could have been based on common law or equity, or on any statute, rule, regulation, order, or law, whether federal, state, or local.

The Released Claims include common law and equitable claims, as well as state statutory claims and federal statutory claims, if related to the alleged: (1) Training Time claims for minimum wages for the initial three-day sales training seminar; (2) Sample Kit claims for reimbursement; (3) Labor Code Sections 201-203 penalties related thereto; and, (4) Unfair Competition Claims and PAGA claims related thereto. The Release also releases all claims for attorneys' fees and costs incurred by Releasing Settlement Class Members or by Class Counsel in connection with the Litigation and the settlement of the Litigation.

## **IX. SETTLEMENT APPROVAL HEARING**

The Court will hold a Settlement Approval Hearing on August 10, 2011 at 10:30 a.m., in the United States District Court, Courtroom No. C, at 450 Golden Gate Avenue, San Francisco, California 94102, at which time the Court will determine: (1) whether the settlement should be approved as fair, reasonable, and adequate; (2) whether the application of Class Counsel for an award of attorneys' fees and expenses should be approved and, if so, in what amount; (3)

whether the application for an incentive payment for the Class Representative should be approved and, if so, in what amount; and (4) whether a proposed Final Approval Order should be entered as recommended to the Court. If objections have been received, the Court will consider them at that time.

**You Are Not Required To Attend The Settlement Approval Hearing.**

You are welcome to attend the Settlement Approval Hearing, at your own expense. You may request permission to speak to the Court at the Settlement Approval Hearing. You may hire your own attorney at your own expense to speak at the Settlement Approval Hearing. If you want to speak at the Settlement Approval Hearing, you must ask the Court for permission. To do so, you must send a letter to the Court (at the address set forth above in this Section of the Notice) with a copy to the Claims Administrator (at the address set forth in Section VII of this Notice), Class Counsel (at the address set forth in Section XI of the Notice) and Defendant's Counsel (at the address set forth in Section XI of the Notice). Your letter must be filed with the Court and postmarked to counsel no later than June 23, 2011, requesting permission to speak at the Settlement Approval Hearing. Such letter should be signed and should contain a brief statement of the position that you wish to put before the Court at the Settlement Approval Hearing, as well as the basis for that position. The Court may, or may not, grant the request to be heard.

The parties will jointly seek the Court's final approval of the settlement, and adoption of the proposed Final Approval Order, as well as a dismissal of the Litigation with prejudice.

**X. RIGHT TO BE EXCLUDED FROM THE SETTLEMENT**

You have the right to exclude yourself from the Settlement Class. To do so, you must submit an Opt Out Letter as described below. If you do exclude yourself from the Settlement Class, you will be giving up the right to any of the described settlement benefits and the right to object to the Settlement, but you will be free to pursue your claims individually if you wish to do so. In other words, you will not be releasing any claims against Vector and will not be subject to the release contained in the Settlement Agreement. Please note that if you exclude yourself from the Plaintiff Class but do not pursue your claims in a timely manner, some or all of your claims may be barred by the passage of time.

To exclude yourself from the Settlement Class, you must send an Opt Out Letter signed by you and postmarked no later than July 8, 2011 to the *Harris v. Vector* Claims Administrator, at PO Box 6515, Portland, OR 97228-6515. The letter must include your full name, your current address and telephone number, last four of your social security number, the date, and the following language:

“I do not want to be a member of the Settlement Class in *Harris v. Vector Marketing Corporation*, United States District Court for the Northern District of California, Case Number CV 08-5198 EMC. I understand that I will not be eligible to receive any benefits of the settlement or to object to the settlement and that it will be my responsibility to pursue any claims I may have, if I so desire, on my own and at my expense.”

**PLEASE REMEMBER THAT YOU CANNOT EXCLUDE YOURSELF BY PHONE, BY SENDING AN EMAIL, OR BY FACSIMILE.**

No Settlement Class Member may submit an Opt-Out Letter and a Claim Form. If a Settlement Class Member does submit both an Opt-Out Letter and a Claim Form, the Claim Form will govern and you will be considered to be a participating settlement class member.

**XI. RIGHT TO OBJECT TO THE SETTLEMENT**

You have the right to object to the settlement. To do so, you must file a written statement stating your objection and the basis for your objection, along with any and all documents that support your objection, with the court clerk of the United States District Court for the Northern District of California, and provide a copy of the statement to Class Counsel and counsel for Vector. **Your written objection must be filed with the Court Clerk and postmarked to all counsel on or before June 23, 2011.**

Objections must also be mailed to Class Counsel at: Marlin & Saltzman, c/o Stanley Saltzman, 29229 Canwood Street, Suite 208, Agoura Hills, California 91301; and The Diversity Law Group, c/o Larry Lee, 444 S. Flower St., Suite 1370, Los Angeles, California 90071.

Objections must also be mailed to the attorneys for Vector at: Reed Smith LLP, c/o Roxanne M. Wilson, 355 S. Grand Ave., #2900, Los Angeles, California 90071.

If you submit a written objection, you must include your name and address and a statement of the reasons why you believe that the Court should find that the proposed settlement is not in the best interests of the Class. Please note it is not sufficient to simply state that you object. You must give specific reasons why you believe the settlement should not be approved.

If you wish to address the Court at the hearing, you must ask the Court in writing for permission as outlined above, filed no later than June 23, 2011. If you do not comply with these procedures, you will not be entitled to be heard at the hearing or to otherwise contest the approval of the settlement, nor will you be permitted to file an appeal from any orders or judgments of the Court. You will also not be permitted to file any motion to intervene in the action which would otherwise constitute an objection to the settlement. If the Court approves the settlement, the approval will bind all members of the Class, and the judgment will release and dismiss all of the Settlement Class Members' settled claims.

If the settlement is not approved, the case will proceed as if no settlement had been attempted. In that event, Vector retains the right to contest the lawsuit on any grounds it had as of the date the settlement was first agreed to. If the settlement is not approved, there can be no assurance that Settlement Class Members will recover more than is presently provided in the proposed settlement, or that they will recover anything at all.

Members of the Settlement Class who fail to file and serve timely written objections in the manner specified above shall be deemed to have waived any objections to the settlement and shall forever be foreclosed from making any objection (whether by appeal or otherwise) to the settlement, or any aspect of the settlement, including, without limitation, the fairness, reasonableness or adequacy of the proposed settlement, or any award of attorneys' fees or reimbursement of costs and expenses.

## **XII. REMINDER OF IMPORTANT SETTLEMENT DATES AND DEADLINES**

The following are important dates and deadlines under the proposed settlement:

Objection Deadline:	June 23, 2011
Deadline to Submit Claims:	July 8, 2011
Exclusion Deadline:	July 8, 2011
Final Fairness Hearing:	August 10, 2011

## **XIII. AVAILABILITY OF SETTLEMENT RELATED COURT DOCUMENTS**

This Notice contains a summary of the proposed settlement. The entire Settlement Agreement and Class Counsel's motion for attorneys' fees, which will be filed on or before June 2, 2011, will be on file with the Clerk of the United States District Court for the Northern District of California and at the websites maintained by class counsel – [www.marlinsaltzman.com](http://www.marlinsaltzman.com) and/or [www.diversitylaw.com](http://www.diversitylaw.com).

## **XIV. ADDITIONAL INFORMATION**

Any questions concerning the matters contained in this Notice may be directed to the Administrator at its toll free telephone line, at 1-888-227-1521, or Class Counsel (at the addresses set forth above in Section XI of this Notice). You may also seek the advice and counsel of your own attorney, at your own expense, if you desire.

**Please Do Not Call The Court Or The Court Clerk To Ask Questions About The Settlement.**