

**Smith v. Thekkek, et al.** (formerly *Cagungao v. Thekkek, et al.*)  
Alameda Superior Court (Case No. RG15787300)

**NOTICE OF CLASS ACTION SETTLEMENT**

A State Court authorized this notice. This is not a solicitation from a lawyer.

**YOU HAVE BEEN IDENTIFIED AS SOMEONE WHO WORKED FOR ONE OR MORE OF THE PERSONS OR COMPANIES BELOW (“DEFENDANTS”) IN CALIFORNIA AND PERFORMED NURSING WORK IN A NON-EXEMPT POSITION BETWEEN SEPTEMBER 25, 2011 AND DECEMBER 21, 2016.**

PREMA THEKKEK	BURLINGAME HACIENDA	NADHAN, INC.
ANTONY THEKKEK	CARESYSTEMS, INC.	NADHI, INC.
PAKSN, INC.	DIYAVILLA, INC.	NASAKY, INC.
CCRC, LLC	GRACEVILLA, INC.	OAKRHEEM, INC.
HCRC, INC.	HEIGHT ST. SKILLED CARE, LLC	PREMIER REHAB, INC.
MCRC, LLC	KARMA, INC.	SAGAR, INC.
AAKASH, INC.	KAYAL, INC.	SANDHYA, INC.
APPLE CARE CENTER, LLC	MARINOAK, INC.	THEKKEK HEALTH SVCS., INC.
BAYVIEW CARE, INC.	MILLBRAE SKILLED CARE, LLC	WESTVILLA, INC.

A settlement has been reached in a class action lawsuit involving claims asserted on behalf of current and former non-exempt employees of the above-referenced Defendants for work performed between September 25, 2011 and December 21, 2016 (the "Class Members"). Your legal rights are affected whether you act or don't act. Read this notice carefully.

**A. DESCRIPTION OF THE CLASS ACTION:**

On September 25, 2015, former employee Adelbert Cagungao filed a class action lawsuit against Defendants. Former employee Fay Smith replaced Mr. Cagungao as a plaintiff later in the case. The lawsuit claimed Defendants violated California laws by failing to pay wages and overtime, failing to provide meal and rest breaks, failing to provide accurate records of hours and pay, requiring false time statements, and related damages and penalties.

Defendants have denied the allegations in the lawsuit. They contend that they fully complied with all applicable laws and do not owe any money to any Class Member.

The judge in this case has not ruled on the claims. Both sides recognize, however, there are risks, expenses, and business disruption if the lawsuit continues and therefore, they have agreed to enter into a settlement.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT</b>	
<b>DO NOTHING AND REMAIN IN THE CLASS</b>	If you do not respond to this notice, you will receive benefits in the form of a check. You will also give up your right to sue the Defendants about any of the claims in this case. If you wish to update your address or dispute the number of shifts you worked for Defendants, please complete the <b>INFORMATION FORM</b> included with this notice.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT</b>	If you do not want to be in the class, you can opt out by March 21, 2017. You will get no benefits from the Settlement, but you will keep your right to sue Defendants on your own for claims asserted in this case.
<b>OBJECT</b>	If you think there is something wrong with the settlement, you can write a letter to the Court by March 21, 2017 with your objection. If you object, you will remain in the class and may still receive a settlement payment.
If you are a current employee of Defendants, <u>state and federal law prohibit retaliation and discrimination against you</u> regardless of which of the above options you pursue.	

The judge in this case has determined that the settlement is fair, reasonable, and adequate and in the best interest of the Class Members. The judge has also appointed the following lawyers as "Class Counsel":

Robert Arns, Jonathan Davis, Kevin Osborne,  
Julie Erickson, & Robert Foss  
**THE ARNS LAW FIRM**  
515 Folsom St. 3rd Floor  
San Francisco, CA 94105  
Telephone: 415.495.7800

Michael Thamer  
**LAW OFFICES OF MICHAEL D. THAMER**  
Old Callahan School House, 12444 South Highway 3  
Callahan, California 96014-1568  
Tel: (530) 467-5307  
Fax: (530) 467-5437

Kathryn Stebner, Kelly Knapp  
**STEBNER AND ASSOCIATES**  
870 Market Street, Suite 1212  
San Francisco, CA 94102  
Tel: (415) 362-9800  
Fax: (415) 362-9801

W. Timothy Needham  
**JANSSEN MALLOY LLP**  
730 Fifth Street  
Eureka, CA 95501  
Tel: (707) 445-2071  
Fax: (707) 445-8305

Christopher Healey, Stefanie Warren  
**DENTONS US LLP**  
4655 Executive Drive, Suite 700  
San Diego, California 92121  
Tel: (619) 236-1414  
Fax: (619) 232-8311

As Class Counsel, these attorneys have been appointed by the judge to represent the Class.

## **B. SUMMARY OF PROPOSED SETTLEMENT TERMS:**

The full Settlement Agreement is available at [www.phoenixclassaction.com/smithvthekek](http://www.phoenixclassaction.com/smithvthekek). Subject to the judge's approval, a summary of the terms of the Settlement include:

### **1. Class Settlement Amount:**

Defendants will pay \$6,000,000 (Six Million Dollars) into a settlement fund. This fund will pay the following:

- (1) Payments to all Class Members who do not opt-out to their share of the settlement based on the Distribution Formula, below;
- (2) Settlement Administration costs not to exceed at \$25,000, subject to court approval;
- (3) Litigation expenses of approximately \$42,000 advanced by Class Counsel to litigate the case, subject to court approval;
- (4) An incentive award of \$5,000 to Fay Smith to compensate her for her time, work, and risks she undertook as the named plaintiff in this lawsuit, subject to court approval;
- (5) Attorneys' fees for Class Counsel not to exceed \$1,740,000, subject to court approval;
- (6) Any employer-side payroll taxes; and
- (7) A payment of \$63,750 to the California Labor and Workforce Development Agency, subject to court approval.

### **2. Class Member Distribution Formula:**

From the total \$6 million settlement fund, after subtracting the attorneys' fees and costs, settlement administration costs, incentive award to the named plaintiff, employment taxes, and the amount to be paid to California Labor and Workforce Development Agency, approximately \$4,149,250.00 paid to Class Members (the Net Settlement Fund").

Each Class Member's percentage share of the Net Settlement Fund will be calculated as follows. The Settlement Administrator will review Defendants' employment records from September 25, 2011 to December 21, 2016. The percentage share for each Class Member will be the total number of shifts he or she worked during this time divided by the total number of shifts worked by all Class Members (estimated to include 3,884 persons), and then adjusted based on their jobs. Those who were paid higher hourly wages will receive more than those whose hourly wages were lower. Also, those who were found to have done more work off the clock, specifically RNs and LVNs, will receive a higher amount than other workers. The formula is described in detail in the settlement agreement on page 7 under the heading "Payments to Class Members by Defendants."

70% of what each Class Member payment will be counted as W-2 wages for tax purposes. The other 30% will be tax-free 1099 penalties and interest income. An IRS Form W-2 will be issued for the wage portion and an IRS Form 1099 will be issued for the interest and penalties portion.

**NOTE:** Nothing in this Notice or the Settlement is intended to constitute tax advice. You should consult your tax advisor for any tax issues pertaining to this Settlement.

### **3. Other Key Terms of the Settlement:**

Among other terms, one key provision is that the Settlement releases any claims for interest on money that Defendants may owe to those Class Members who remain in the Settlement.

### **4. Payment Schedule:**

The terms of the Settlement require Defendants to make monthly installment payments to the Settlement Administrator, beginning after preliminary approval of the settlement by the judge. The Settlement Administrator will mail checks to you and all the other Class Members once the Defendants have made all monthly payments. You must cash any settlement check within 120 days of the date mailed or it will expire. If you do not cash your check, the funds will be returned to the Settlement Administrator and will be reissued to the other Class Members in a second round of checks. Any remaining unclaimed or undistributed settlement funds shall be distributed to the Legal Aid Society Employment Law Center in San Francisco, California, or other non-profit entity approved by the Court.

Please contact the Settlement Administrator at the phone number below if you don't receive your checks, if you fail to cash your checks on time, or if you change your mailing address.

### **5. Action Required To Receive Your Share of the Settlement:**

**You do not need to do anything** in order to receive your share of the Settlement.

## **C. TO REQUEST EXCLUSION FROM THE SETTLEMENT AGREEMENT:**

If you want to be excluded from the Settlement (also referred to as "opt-out"), you must mail a letter to the Settlement Administrator to request to "opt-out." The Settlement Administrator's mailing address is:

Settlement Administrator  
**Phoenix Settlement Administrators**  
P.O. Box 7208  
Orange, Ca. 92863  
Telephone: (800) 784-2174

Your "opt-out" request letter can be as simple as "*I do not want to be a part of the settlement.*" To be considered timely, your "opt-out" request letter must include your full name, mailing address, telephone number, last four digits of your social security number (for identity verification purposes only), signature, and be mailed by First-Class U.S. Mail to the Settlement Administrator, postmarked on or before **March 21, 2017**.

If you file a timely and valid "opt-out" request, you will no longer be a member of the Class, and you will not receive any money from the Settlement, or be able to object to the terms of the Settlement. However, if you do timely "opt-out," you will not be bound by the terms of the Settlement and may pursue any claims you may have against Defendants at your own expense. If you submit both a completed Information Form and an "opt-out" request, the "opt-out" request will be deemed invalid and you will be bound by, and have the right to participate in the Settlement Award.

## **D. TO OBJECT TO THE SETTLEMENT:**

If you believe the Settlement is unfair or inadequate in any respect, but you do not "opt-out," you can object to the Settlement by filing a written objection stating the specific grounds of your objection with the Alameda County Superior Court, 1225 Fallon Street, Oakland, CA 94612, Attn: Dept. 17, and by mailing a copy of your objection to any of the above Class Counsel and the Settlement Administrator at the above listed addresses.

All objections must be signed and include your full name, mailing address, telephone number, last four digits of your social security number (for identity verification purposes only), and the case name and case number. The objections must state the basis for the objection and must identify exhibits and/or witnesses, if any, that you intend to present at the final approval hearing. All objections must be filed with the Court, and postmarked to Class Counsel, Counsel for Defendants, and the Settlement Administrator on or before **March 21, 2017**.

**E. RELEASE OF LIABILITY:**

If you do not opt-out, and instead remain in the class, upon the Effective Date of the Settlement, you will fully and finally release and discharge Defendants and all their affiliated corporations and entities from any and all claims and any other form of relief or remedy of whatever kind of nature, whether known or unknown, suspected or unsuspected, arising from the claims pleaded in the Class Action and any claims arising out of or related to the Class Action and any claims based on facts alleged in the Class Action, including but not limited to any such claims, whether known or unknown arising under California Labor Code sections: 201, 202, 203, 204, 206.5, 216, 218, 218.5, 218.6, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.5, 1197, 1198 and 2698 et seq., as well as California Industrial Welfare Commission Wage Order 16-2001, Wage Order MW 2001 and MW 2007, Business and Professions Code sections 17200-17208 et seq.

The claims released under this paragraph shall include, but not necessarily be limited to, claims for unpaid wages and overtime wages, claims for failing to receive meal periods and rest breaks, or compensation in lieu thereof, unpaid premium pay for missed meal breaks or rest periods, untimely payment of wages and overtime wages, inaccurate wage statements, record keeping violations, failure to pay all wages owed upon termination, claims for requiring completion of false time statements, unfair competition, as well as any damages, restitution, civil penalties, statutory penalties, taxes, interest or attorneys' fees resulting therefrom. However, individual claims for non-wage related claims, such as for workers' compensation, are specifically excluded from this release.

**F. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT:**

The Final Approval hearing on the fairness and adequacy of the proposed Settlement will be held on April 13, 2017, at 2:30 p.m., in the Alameda County Superior Court, 1221 Oak Street, Oakland, California 94612, in Dept. 17. The Final Approval hearing may be continued without further notice. It is not necessary for you to appear at this hearing, unless you have timely filed an objection to the Settlement.

**G. FOR MORE INFORMATION:**

If you wish to obtain more information about the case or if you would like to see the documents that relate to the settlement, including the Complaint, all papers filed in relation to the motion for preliminary approval of the settlement, all papers filed in relation to final approval of the settlement, the Plaintiffs' attorney's request for fees, and other important documents in this case, you can download them free of charge from <http://www.arnslaw.com/thekkek-settlement>.

Alternatively, for a small fee, all of the pleadings and other records in this litigation, including the Settlement Agreement, may be examined online on the Alameda County Superior Court's website, known as 'DomainWeb,' at <https://publicrecords.alameda.courts.ca.gov/PRS/>. After arriving at the website, click the 'Search By Case Number' link, then enter RG15787300 as the case number and click 'SEARCH.' Images of every document in the case may be viewed (for a charge) through the 'Register of Actions' tab. You may also view every document filed in the case free of charge by using one of the computer terminal kiosks available at each courthouse location that has a facility for civil filings.

**IF YOU HAVE QUESTIONS ABOUT THIS NOTICE,  
PLEASE CALL THE SETTLEMENT ADMINISTRATOR AT (800) 784-2174**

**DO NOT CALL THE COURT**