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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF ALAMEDA

17 ADELBERT CAGUNGAO and FAY SMITH,
18 Individually and on Behalf of All Other Similarly
Situated Employees,

19 Plaintiffs,

20 v.

21 PREMA P. THEKKEK, et al.,

22 Defendants.

No. RG15787300

**CLASS ACTION SETTLEMENT AND
RELEASE AGREEMENT**

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I. INTRODUCTION

This Class Action Settlement and Release Agreement (“Agreement” or “Settlement”) is entered into between plaintiff Fay Smith, Individually and on Behalf of All Other Similarly Situated Employees (“Plaintiffs”), on the one hand, and defendants Prema Thekkek; Antony Thekkek; Paksn, Inc.; CCRC, LLC; HCRC, Inc.; MCRC, LLC; Aakash, Inc.; Apple Care Center, LLC; Bayview Care, Inc.; Diyavilla, Inc.; Gracevilla, Inc.; Karma, Inc.; Kayal, Inc.; Marinoak, Inc.; Nadhan, Inc.; Nadhi, Inc.; Nasaky, Inc.; Oakrheem, Inc.; Sagar, Inc.; Sandhya, Inc.; Thekkek Health Services, Inc.; Westvilla, Inc.; Millbrae Skilled Care, LLC; Height Street Skilled Care, LLC; Premier Rehab, Inc.; Caresystems, Inc.; and Burlingame Hacienda (“Defendants”), on the other hand, with respect to the following case *Adelbert Cagungao and Fay Smith, individually and on behalf of all other similarly situated employees of Defendants, Plaintiffs v. Prema P. Thekkek, et al., Defendants*, Alameda County Superior Court Case No. RG15787300 (the “Lawsuit”). This Agreement shall become effective upon the “Effective Date of Settlement” as defined below.

II. DEFINITIONS

1. “Administrator” is defined as Phoenix Settlement Administrators, who shall perform the customary duties of a class action settlement administrator including, but not limited to, the duties enumerated in this Agreement.

2. “Administrator Costs” are defined as the costs, fees, charges, and expenses of the class action settlement administration.

3. “Information Form” refers to Exhibit 2, the form approved by the Settling Parties (defined below) and subject to Court approval, which the Administrator will mail to each Class Member (defined below).

4. “Class” or “Class Member” are defined as all persons who performed work as Nursing Staff in California for or on behalf of one or more of the Defendants, at any time during Covered Period (defined below).

5. “Class Counsel” shall refer to Robert S. Arns, Jonathan E. Davis, Kevin M. Osborne, and Julie C. Erickson of The Arns Law Firm; Kathryn A. Stebner, Kelly Knapp, and

1 George Kawamoto of Stebner and Associates; Michael D. Thamer of the Law Offices of Michael
2 D. Thamer; W. Timothy Needham of Janssen Malloy LLP; and Christopher J. Healey and
3 Stefanie Warren of Dentons US LLP.

4 6. "Class Representative" shall individually refer to plaintiff Fay Smith.

5 7. "Court" refers to the Alameda County Superior Court, Department 17, the
6 Honorable George C. Hernandez, Jr., presiding.

7 8. "Covered Period" or "Covered Time Frame" shall mean the period commencing
8 on September 25, 2011 through Preliminary Approval (defined below).

9 9. "Defense Counsel" shall refer to Rick Canvel, Attorney at Law.

10 10. "Effective Date of Settlement" is defined as the day after the expiration of ten
11 (10) days after an order finally approving the Agreement is rendered and not subject to appeal or
12 to any attempt to re-open the judgment or to request to extend the time to seek an appeal; or, if
13 an appeal has been sought, the expiration of ten (10) days after the final disposition of any such
14 appeal and any further proceedings in the Court (and, following any such proceedings, the
15 expiration of all time to notice an appeal or, if an appeal has been sought, the expiration of ten
16 (10) days after the final disposition of any such appeal), which disposition approves the Court's
17 order finally approving the Agreement.

18 11. "Exclusion Request" or "Request for Exclusion" refers to a timely and valid
19 written request to opt-out or exclude oneself from the Settlement sent by any Class Member to
20 the Settlement Administrator. A Class Member must submit a Request for Exclusion to exclude
21 himself or herself from the Settlement and from the release of claims pursuant to this Settlement.

22 12. "Final Judgment" shall mean the Order Granting Final Approval of Class Action
23 Settlement and the separate judgment entered thereon by the Court.

24 13. "Gross Settlement Amount" shall mean Six Million Dollars and No Cents
25 (\$6,000,000.00) as the amount that will be paid by Defendants pursuant to the terms of this
26 Agreement.

27 14. "Individual Settlement Payment" is the payment that each Participating Class
28 Member (defined below) will receive under the terms of this Agreement and shall be calculated

1 based upon the total shifts worked by each Participating Class Member during the Covered
2 Period. The number of shifts worked will then be adjusted to an “Adjusted Work Shifts” by
3 applying a multiplier, as described in section V.C., below. Each individual Class Member’s share
4 of the Net Settlement Amount will be calculated by dividing his or her Adjusted Work Shifts by
5 the total number of Adjusted Work Shifts of all Class Members during the Covered Period.

6 15. “Net Settlement Amount” shall mean the Gross Settlement Amount minus the
7 amounts allocated and approved by the Court for Class Representatives payment, Class
8 Counsel’s attorneys’ fees and costs, the payment to the Labor and Workforce Development
9 Agency (“LWDA”), the Administrator’s Costs, and the employer’s portion of FICA, FUTA and
10 all other state and federal payroll taxes.

11 16. “Notice” shall mean the Notice of Class Action Settlement (see **Exhibit 1**
12 attached hereto) approved by the Settling Parties (defined below) and subject to Court approval,
13 which the Administrator will mail to each Class Member explaining the terms of the Settlement
14 contemplated by this Agreement and the notice process.

15 17. “Participating Class Members” shall mean all Class Members that do not opt out
16 of the Settlement by sending a timely and valid Request for Exclusion (discussed further below).

17 18. “Preliminary Approval” means the date the Court preliminary approves the
18 Agreement.

19 19. “Settling Parties” shall collectively refer to Plaintiffs and Defendant.

20 **III. BACKGROUND AND REASONS FOR SETTLEMENT**

21 **A. The Lawsuit**

22 On September 25, 2015, Adelbert Cagungao filed a wage and hour class action against
23 Defendants, on behalf of himself and all other similarly situated employees, alleging the
24 following seven causes of action: (1) unpaid wages in violation of Labor Code §§ 216, 1194, &
25 1197; (2) failure to pay overtime wages in violation of Labor Code §§ 204, 510, & 1198; (3)
26 failure to pay wages for rest periods in violation of Labor Code § 226.7; (4) failure to pay wages
27 for meal periods in violation of Labor Code §§ 226.7 & 512; (5) failure to properly report pay in
28 violation of Labor Code §§ 226 & 1174; (6) requirement of false time statements in violation

1 Labor Code § 206.5; (7) civil penalties under Labor Code § 2699; (8) waiting time penalties in
2 violation of Labor Code §§ 201, 202, & 203; (9) unlawful business practices in violation of
3 Business & Professions Code § 17200, *et. seq.*; (10) unfair business practices in violation of
4 Business & Professions Code § 17200, *et. seq.*; (11) fraudulent business practices in violation of
5 Business & Professions Code § 17200, *et. seq.*; and (12) unjust enrichment. Adelbert Cagungao
6 was, during the course of litigation, replaced by a named class representative Fay Smith.

7 **B. Plaintiffs' Contentions**

8 Plaintiffs and their counsel believe this putative class action is meritorious based on the
9 alleged violations of California's wage and hour and unfair competition laws by Defendants and
10 is appropriate for class action treatment pursuant to California Code of Civil Procedure § 382.
11 However, Plaintiffs and their counsel recognize that litigation is uncertain, and believe that the
12 present Settlement is in the best interest of the Class Members.

13 **C. Defendants' Contentions**

14 Defendants deny any liability or wrongdoing of any kind associated with the claims
15 alleged in the action, and contend that, for purposes other than settlement, this Lawsuit is not
16 appropriate for class action treatment pursuant to California Code of Civil Procedure § 382.
17 Defendants further contend that they have complied with the California Labor Code, California
18 Business and Professions Code, and all applicable Wage Orders of the California Industrial
19 Welfare Commission. Defendants contend they paid their employees all wages due and owing
20 and have fully complied with all California laws and regulations. However, Defendants also
21 agree that because litigation is uncertain, settlement is in the best interests of all the parties in this
22 Lawsuit.

23 **D. Settlement Reached After Mediation**

24 1. After multiple rounds of mediation conducted from August to October 2016 by
25 retired judge, Honorable William Cahill (retired), in San Francisco, California, this Settlement
26 was reached after arms-length negotiations by and among the Settling Parties. The Parties began
27 mediating on August 24, 2016 and continued to negotiate through Judge Cahill through e-mail
28 and phone calls through October 2016.

1 2. The Settling Parties agree that this Settlement reflects their good faith
2 compromise of the claims raised in this Lawsuit, based upon their assessment of the mutual risks
3 and costs of further litigation and assessments of their respective counsel.

4 3. The Settling Parties further agree that the Settlement is fair and reasonable and
5 will so represent to the Court. In addition, Judge Cahill may, at his discretion, execute a
6 declaration supporting the Settlement and the reasonableness of this Settlement, and the Court
7 may, in its discretion, contact Judge Cahill to discuss the Settlement and whether or not it is fair
8 and reasonable.

9 **E. Adequate Investigation and Fair and Reasonable Settlement**

10 Class Counsel has conducted a thorough investigation into the facts of the Lawsuit,
11 including a review of relevant documents and an extensive collection of data of time and pay
12 records for the putative class, and has diligently pursued an investigation of the claims of the
13 Class Members against Defendants. Based on their own independent investigation and
14 evaluation, Class Counsel is of the opinion that this Settlement with Defendants for the
15 consideration, and on the terms set forth in this Agreement, is fair, reasonable, and adequate, and
16 is in the best interests of the Class Members in light of all known facts and circumstances,
17 including the risk of significant delay, the risk the class will not be certified by the Court, the
18 defenses asserted by Defendants and the potential appellate issues.

19 **IV. NO ADMISSION**

20 1. Nothing contained in this Agreement or in the settlement stipulation for
21 settlement entered into at the mediation (the "Stipulation for Settlement") shall be construed or
22 deemed an admission of liability, culpability, negligence, or wrongdoing, on the part of
23 Defendants and its former and present parents, subsidiaries and affiliated corporations and
24 entities, and all of their current and former officers, directors, current and former owners,
25 trustees, members, managers, employees, consultants, partners, insurers, shareholders, joint
26 venturers, agents, successors, assigns and/or legal representatives. Nor shall anything in this
27 Agreement or in the Stipulation for Settlement be construed or deemed an admission that this
28 Lawsuit was or was not properly brought as a class action or a representative action under

1 California Code of Civil Procedure § 382, Business and Professions Code § 17200, or the Private
2 Attorneys General Act. Each of the Settling Parties has entered into this Settlement with the
3 intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

4 2. Settlement of the Lawsuit, the negotiation and execution of this Agreement and
5 the Stipulation for Settlement, and all acts performed or documents executed pursuant to or in
6 furtherance of this Agreement or in connection with the Settlement are not, shall not be deemed
7 to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the
8 part of Defendants or its former and present parents, subsidiaries or affiliated corporations or
9 entities, or their current or former officers, directors, current or former owners, trustees,
10 members, managers, employees, consultants, partners, insurers, shareholders, joint venturers,
11 agents, successors, assigns or legal representatives, or of the truth of any of the factual
12 allegations in the operative Complaint in the Lawsuit, or the lack thereof. This Agreement
13 constitutes the settlement documents and shall be inadmissible in evidence in any proceeding,
14 except an action or proceeding to approve, interpret, or enforce the terms of the Agreement.

15 **V. TERMS OF THE SETTLEMENT**

16 **A. Gross Settlement Amount**

17 The claims of all the Class Members are settled for the Gross Settlement Amount of Six
18 Million Dollars and No Cents (\$6,000,000.00) by Defendants. This Gross Settlement Amount is
19 inclusive of attorneys' fees, costs and expenses directly or indirectly related to the Lawsuit
20 (which includes all such fees, costs and expenses incurred to date, as well as all such fees, costs
21 and expenses incurred in documenting the settlement, securing approval of the settlement,
22 administering and obtaining a judgment from the Court), Administration Costs, the payment to
23 the LWDA for claims under Private Attorneys' General Act of 2004, Cal. Labor Code §§ 2699 et
24 seq. ("PAGA"), the enhancement payment to the Class Representatives and the employer's
25 portion of FICA, FUTA, and all other state and federal payroll taxes. If there is any reduction in
26 attorneys' fees, costs, enhancement payment, Administrator Costs, and/or PAGA payment, then
27 the funds will be distributed to the Net Settlement Amount. There will be no reversion to
28 Defendant.

1 **B. Net Settlement Amount**

2 The Net Settlement Amount shall be the Gross Settlement Amount, minus the following
3 subject to approval by the Court: (1) the award of attorneys’ fees and costs to Class Counsel; (2)
4 the enhancement payment to the Class Representatives; (3) Administrator Costs; (4) PAGA
5 payment to the State of California LWDA; and (5) the employer’s portion of FICA, FUTA, and
6 all other state and federal payroll taxes.

7 **C. Payments to Class Members by Defendants**

8 Participating Class Members will be paid from the Net Settlement Amount. All Class
9 Members are classified in Defendants’ records by their position as either an (1) “RN,” (2)
10 “RNA,” (3) “CNA,” or (4) “LVN.” Each Participating Class Member’s share of the Net
11 Settlement Amount will be calculated by adding the number of shifts he or she worked for
12 Defendants in a non-exempt position in California during the Covered Period. The number of
13 shifts worked will then be adjusted by a multiplier, based on the variance in each position’s
14 average wages, to calculate the “Adjusted Work Shifts.” The multipliers for the various
15 positions are as follows: (1) RNs – 3.07, (2) RNAs – 1.07, (3) CNAs – 0.63, (4) LVNs – 2.48.
16 Each individual Class Member’s share of the Net Settlement Amount will be calculated by
17 dividing his or her Adjusted Work Shifts by the total number of Adjusted Work Shifts of all
18 Class Members during the Covered Period.

19 **D. Administrator**

20 The Settling Parties have negotiated and selected Phoenix Settlement Administrator to be
21 the Administrator, who shall follow all the Settling Parties’ instructions which are not in express
22 contravention to the Agreement as preliminarily approved by the Court.

23 **E. The Class Members’ Release of Claims**

24 Upon the Effective Date, the Class Members who do not exclude themselves from the
25 Settlement will release and discharge Defendants, and all of its former and present parents,
26 subsidiaries, and affiliates, and its current and former owners, officers, directors, employees,
27 consultants, managers, partners, insurers, members, shareholders and agents, and their
28 predecessors and successors, assigns, and legal representatives of all such entities and individuals

1 (“Class Members’ Released Parties” or “Released Parties”), from any and all claims, causes of
2 action, damages, wages, benefits, expenses, penalties, debts, liabilities, demands, obligations,
3 attorneys’ fees, costs, and any other form of relief or remedy in law, equity, or whatever kind of
4 nature, arising from the claims pleaded in the Lawsuit and any claims that could have been
5 pleaded based on the facts pleaded in the Lawsuit, including, without limitation, all claims for
6 failure to accurately calculate and pay overtime compensation, failure to pay for all hours
7 worked, failure to provide meal periods, failure to provide rest periods, failure to provide proper
8 itemized wage statements, failure to keep accurate records, failure to pay or properly pay for
9 hours worked off the clock, failure to pay wages upon termination of employment, waiting time
10 penalties, requiring unlawful releases, violations of the IWC Wage Orders, and unfair business
11 practices under the California Labor Code and California Business and Professions Code,
12 including without limitation all claims for restitution or equitable relief, liquidated damages,
13 punitive damages, penalties of any nature whatsoever, attorneys’ fees and costs, during the
14 Covered Time Frame, asserted or that could have been asserted against the Class Members’
15 Released Parties based on the facts or claims alleged in the Lawsuit through Preliminary
16 Approval of the Settlement. The claims released by the Class Members include claims under
17 PAGA, for civil penalties based on any of the violations alleged in this Lawsuit, which includes
18 civil penalties under PAGA for violations of the provisions of the applicable Industrial Welfare
19 Commission Wage Orders (including violations pertaining to unpaid wages, meal periods, rest
20 breaks, etc.). Collectively all the claims released are referred to as “Class Members’ Released
21 Claims” or “Released Claims.” The Class Members’ Released Claims include, without
22 limitation, claims meeting the above definition(s) under any and all applicable statutes, including
23 without limitation California Labor Code §§ 203, 204, 206.5, 210, 216, 226, 226.7, 510, 512,
24 558; 1174, 1174.5, 1194, 1197, 1197.1 and 1198; the California Unfair Competition Act, and in
25 particular, California Bus. & Prof. Code §§ 17200 et seq.; PAGA; California Code of Civil
26 Procedure § 1021.5; and any other provision of the California Labor Code or any applicable
27 California Industrial Welfare Commission Wage Orders, in all of their iterations.

1 **F. Class Representatives' General Release**

2 1. In consideration of the mutual covenants, promises, and representations set forth
3 in this Settlement, Class Representative, on behalf of herself and on behalf of her current,
4 former, and future heirs, spouses, children, offspring, executors, trustees, administrators,
5 attorneys, agents, personal and legal representatives, successors, and assigns, does hereby and
6 forever releases the Released Parties from all claims, demands, rights, liabilities and causes of
7 action of every nature and description whatsoever, known or unknown, asserted or that might
8 have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule
9 or regulation arising out of, relating to, or in connection with any act or omission by or on the
10 part of any of the Released Parties committed or omitted up until the date of the final approval of
11 this Settlement, based on her employment with Defendants, including all claims asserted in the
12 Lawsuit.

13 2. The Class Representative acknowledges that she is releasing both known and
14 unknown and suspected and unsuspected claims and causes of action arising from the facts
15 alleged in this Lawsuit and is aware that she may hereafter discover legal or equitable claims or
16 remedies presently unknown or unsuspected or facts in addition to or different from those which
17 she now knows or believes to be true with respect to the allegations and subject matters in the
18 complaint and other filings in the Lawsuit during the class period or with respect to the Released
19 Claims. Nevertheless, it is the intention of the Class Representative to fully, finally, and forever
20 settle and release all such matters, and all such claims and causes of action arising from or
21 relating thereto, which exist, hereafter may be determined to exist, or might have existed
22 (whether or not previously or currently asserted in the Lawsuit).

23 3. The Class Representative further agrees that no third party, including but not
24 limited to any private attorney general, including but not limited to under PAGA, or any
25 Business & Professions Code § 17200 plaintiff, shall bring any claim released herein on her
26 behalf.

27 4. The Class Representative further covenants and agrees that (a) she will not sue or
28 bring any action or cause of action, including by way of third-party claim, cross-claim, or

1 counterclaim, against any of the Released Parties with respect to any of the Class
2 Representatives' released claims; (b) she will not initiate or participate in bringing or pursuing
3 any class action against any of the Released Parties with respect to any of the Class
4 Representative's released claims; (c) if involuntarily included in any such class action, the Class
5 Representative will use her best efforts to withdraw therefrom; and (d) she will not assist any
6 third party in initiating or pursuing a class action suit with respect to any of the Class
7 Representative's released claims. Nothing herein shall preclude the Class Representative from
8 complying with a lawful order by a court with jurisdiction or responding to a duly issued
9 subpoena.

10 5. The Class Representative makes this waiver with full knowledge of her rights and
11 with the specific intent to waive known and unknown claims arising on or before the day of the
12 final approval of the Settlement, and therefore specifically waives the provisions of any statute,
13 rule, decision or other source of law of the United States or of any state of the United States or
14 any subdivision of a state which prevents release of unknown claims.

15 **G. Attorneys' Fees and Costs**

16 1. The Lawsuit alleges a potential claim for attorneys' fees and costs pursuant to,
17 inter alia, the California Labor Code and the Code of Civil Procedure. The Settling Parties agree
18 that any and all such claims for attorneys' fees and costs have been settled in this Agreement
19 subject only to approval by the Court.

20 2. Plaintiffs will request that Class Counsel be awarded attorneys' fees of an amount
21 not to exceed 29% of the Gross Settlement Amount (\$1,740,000) and actual costs. This amount
22 shall be included in the Gross Settlement Amount and deducted therefrom. A Form 1099 will be
23 issued to Class Counsel with respect to their awarded attorneys' fees and actual costs.

24 3. If the Court awards Class Counsel with attorneys' fees and costs that are less than
25 the amount requested, that difference shall be allocated to the Net Settlement Amount and
26 distributed to the Participating Class Members.

27 4. Neither Plaintiffs nor Class Counsel, nor any other Class Member, shall seek
28 payment of attorneys' fees or reimbursement of costs or expenses from Defendants except as

1 expressly set forth in this Agreement. In other words, by entering into this Agreement, the
2 Settling Parties waive any and all claims for fees, costs, indemnity or contribution, against any
3 Participating Class Member, Defendants or its counsel, or against Plaintiffs and Class Counsel
4 arising from this Lawsuit. In consideration of their awarded attorneys' fees and expenses, Class
5 Counsel waives any and all claims to any further attorneys' fees and expenses in connection with
6 the Lawsuit.

7 5. Attorneys' fees and actual costs awarded by the Court shall be payable from the
8 Gross Settlement Fund 10 days after an order awarding final approval of the settlement,
9 notwithstanding the existence of any timely filed objections thereto, or potential for appeal
10 therefrom, or collateral attack on the Settlement or any part thereof, subject to Class Counsel's
11 obligation to make appropriate refunds or repayments to the Settlement Fund plus accrued
12 interest at the same net rate as is earned by the Settlement Fund, if and when, as a result of any
13 appeal or further proceedings on remand, or successful collateral attack, the fee or cost award is
14 reduced or reversed.

15 **H. Enhancement Payment to Class Representatives**

16 1. Class Counsel will request, and Defendants and its counsel will not oppose,
17 payment to the Class Representative, Fay Smith, in the amount not to exceed Five Thousand
18 Dollars and No Cents (\$5,000.00) in addition to whatever pro rata portion of the Net Settlement
19 Amount she is otherwise entitled to receive as a Participating Class Member. A Form 1099 will
20 be issued with respect to her awarded enhancement payment.

21 2. If the Court awards Class Representative an enhancement that is less than the
22 amount requested, the difference shall be allocated to the Net Settlement Amount.

23 **I. PAGA**

24 The Settling Parties agree that Eighty Five Thousand Dollars and No Cents (\$85,000) of
25 the Gross Settlement Amount will be allocated to settle the PAGA claim, and will be distributed
26 as follows: 75 percent of the apportioned PAGA settlement amount (\$63,750) will be paid to the
27 LWDA, and the remaining 25 percent (\$21,250) will be divided equally among the Participating
28 Class Members and included in their Individual Settlement Payments on a pro rata share basis

1 (based on number of shifts worked during the Covered Time Frame). The State of California
2 Labor and Workforce Development Agency will be notified of this settlement at the time the
3 Motion for Preliminary Approval of Settlement is filed with the Court.

4 **J. Administration**

5 The Motion for Preliminary Approval shall ask for up to Twenty Five Thousand Dollars
6 (\$25,000) from the Gross Settlement Amount for Administrator Costs. Administrator Costs are
7 not to exceed this amount. If the Administrator Costs are less than \$25,000, that difference shall
8 be allocated to the Net Settlement Amount.

9 **K. Distribution to Participating Class Members**

10 1. Defendants agree to compensate the Participating Class Members based on the
11 shifts worked. The Parties will use Defendants' records to calculate, and the Class Members shall
12 verify through the notice process, the total shifts worked by each Participating Class Members in
13 California during the Covered Time Frame. The number of shifts worked will be adjusted to an
14 "Adjusted Work Shifts" by applying a multiplier, as described in section V.C., above. Each
15 individual Class Member's share of the Net Settlement Amount will be calculated by dividing
16 his or her Adjusted Work Shifts by the total number of Adjusted Work Shifts of all Class
17 Members during the Covered Period. Each Individual Settlement Payment will be calculated by
18 multiplying each individual Class Member's share of the Net Settlement Amount by the Net
19 Settlement Amount. This resulting amount will be subject to tax withholdings as further
20 specified herein.

21 2. The Administrator in consultation with the Defendants shall be responsible for
22 issuing the payments and calculating and withholding all required state and federal taxes, if any,
23 from the Individual Settlement Payments to the Participating Class Members.

24 3. The Parties and their counsel will support each and every provision of this
25 Agreement before the Court and will work together as necessary to obtain the Court's approval
26 of its form and content.

27 4. Once the memorialized Agreement and other settlement documents are approved
28 by the Court, the payments to each Participating Class Member will be paid in accordance with

1 the provisions set forth in this Agreement.

2 5. The Administrator shall never be empowered to make payments to Participating
3 Class Members exceeding the total Net Settlement Amount or deviate from the payment formula
4 agreed upon by the Settling Parties.

5 **L. Tax Allocation.**

6 The Settling Parties agree that, because the Individual Settlement Payments are for
7 settlement of alleged unpaid wages, interest, and statutory penalties, 70% of the Individual
8 Settlement Payments will be subject to tax withholding and this portion of the payments will be
9 reported on an IRS Form W-2 for wages, and 30% of the Individual Settlement Payments will be
10 for penalties and interest to be paid without withholding and reported on an IRS Form 1099. The
11 Administrator will be responsible for issuing any required state and federal reporting documents
12 (such as IRS Forms W-2s and 1099s) to Participating Class Members, Class Counsel, the State
13 of California and the Class Representatives.

14 **M. Injunctive Relief**

15 Without admitting to failure to perform any of the foregoing, Defendants agree to
16 undertake the following acts pursuant to this Agreement, which Class Counsel will monitor
17 through independent investigation for a period not exceeding two (2) years:

- 18 1. Defendants will pay all Class Members for all hours worked, including but not
19 limited to, hours spent charting in connection with their work. Where this work
20 requires the Class perform work that exceeds eight (8) hours in a day or forty (40)
21 hours in a week, Defendants will pay the Class Members overtime rate as required
22 by law.
- 23 2. Defendants will provide all Class Members one 10-minute rest break for any shift
24 where a Class Member works at least 4 hours. In the event a Class Member is not
25 provided one 10-minute rest break for each 4-hour shift, Defendants will
26 compensate that Class Member 1 additional hour of pay at the Class Member's
27 regular hourly rate.

1 3. Defendants will provide all Class Members one 30-minute meal break for any
2 shift where a Class Member works at least 5 hours. In the event a Class Member
3 is not provided one 30-minute rest break for each 5-hour shift, Defendants will
4 compensate that Class Member 1 additional hour of pay at the Class Member's
5 regular hourly rate.

6 4. Defendants will maintain records reflecting paid charting, provided or paid 10-
7 minute rest breaks, and provided or paid 30-minute meal breaks for all Class
8 Members and will furnish each Class Member records reflecting the same at the
9 time of payment of wages.

10 **VI. THE EFFECTIVE DATE OF SETTLEMENT**

11 This Agreement shall become effective and deemed final only upon the Effective Date of
12 Settlement. No money will be distributed to Participating Class members until after the Effective
13 Date of Settlement as set forth herein.

14 **VII. DEPOSITS AND PAYMENT**

15 1. Defendants agrees to pay the total amount of the payments due to the Class
16 Representatives, Class Counsel, the LDWA, the Administrator, the Participating Class Members,
17 and the employer's portion of state and federal taxes in three (3) equal installments:
18 \$2,000,000.00 will be paid in cash by 12:00 p.m., January 5, 2017; \$2,000,000.00 will be paid in
19 cash by 12:00 p.m., February 5, 2017; and \$2,000,000.00 will be paid in cash by 12:00 p.m.,
20 March 5, 2017.

21 2. The amounts owed to Class Counsel for attorney's fees and actual costs shall be
22 paid upon award, as described in section V.G.5., above. The amounts owed to Class
23 Representative, the LDWA, the Administrator, and the Participating Class Members, shall be
24 paid by the Administrator once all installments are received in distributions pursuant to the
25 following payment schedule:

26 a. The "First Settlement Distribution" shall be sent on or before April 5,
27 2017.

28 b. The "Second Settlement Distribution" shall be made on or before August

1 5, 2017.

2 3. The Settlement Administrator will mail the First Settlement Distribution to all
3 Participating Class Members on the prescribed date. The amount of each check issued at the time
4 of the First Settlement Distribution shall be the Participating Class Member's pro rata share of
5 the Net Settlement Amount at the time of the distribution, as defined in section II.14.
6 ("Individual Settlement Payment"), above. Participating Class Members must cash Individual
7 Settlement Payments from the First Settlement Distribution within one hundred and twenty (120)
8 calendar days after it is mailed. If a check is returned to the Settlement Administrator, the
9 Settlement Administrator will make all reasonable efforts to re-mail it to the Participating Class
10 Member the correct address. If the check remains uncashed by the expiration of the 120-day
11 period, the Settlement Administrator will keep an accounting of such funds, including the
12 identification of the Participating Class Member. The Settlement Administrator will then return
13 the unclaimed funds to the Net Settlement Amount. In such event, the Participating Class
14 Member will nevertheless remain bound by the Settlement and the releases contained herein.

15 4. The Settlement Administrator will mail the Second Settlement Distribution to all
16 Participating Class Members who cashed checks issued at the time of the First Settlement
17 Distribution. The amount of each check issued in the Second Settlement Distribution shall be the
18 Participating Class Member's pro rata share of the remaining funds in the Net Settlement
19 Amount at the time of the distribution, as defined in section II.14. ("Individual Settlement
20 Payment"), above. Participating Class Members must cash Individual Settlement Payments from
21 the First Settlement Distribution within one hundred and twenty (120) calendar days after it is
22 mailed. If a check is returned to the Settlement Administrator, the Settlement Administrator will
23 make all reasonable efforts to re-mail it to the Participating Class Member the correct address. If
24 the check remains uncashed by the expiration of the 120-day period, the Settlement
25 Administrator will issue the unclaimed funds along with any other residue of the Net Settlement
26 Amount to the parties' designated *cy pres* recipient, as described in section VII.6., below.

27 5. In the event any Participating Class Member who, for reason of being
28 inadvertently omitted from Defendant's records or not receiving notice of the settlement, did not

1 cash his or her check prior to the lapse of the 120-day period following the First Settlement
2 Distribution comes forward to counsel for the Parties or to the Class Administrator with a valid,
3 albeit late, claim prior to the Second Settlement Distribution, the Settlement Administrator shall
4 issue to such Participating Class Member his or her pro rata share of the First Settlement
5 Distribution and his or her pro rata share of the Second Settlement Distribution at the time of the
6 Second Settlement Distribution, as defined in section II.14. (“Individual Settlement Payment”),
7 above. In this manner, the Net Settlement Amount at the time of the Second Settlement
8 Distribution will be treated as a reserve fund for late or unanticipated claims.

9 6. After payments due to the Class Representatives, Class Counsel, the LDWA, the
10 Administrator, the Participating Class Members, and the employer’s portion of state and federal
11 taxes, are paid, any remaining unpaid portion of the Gross Settlement Amount, if any, shall be
12 paid to the Legal Aid Society Employment Law Center, located at 180 Montgomery Street, Suite
13 600, in San Francisco, California, 94104-4244, as a *cy pres* beneficiary.

14 **VIII. NOTICE TO CLASS MEMBERS**

15 **A. Notice Process**

16 1. Each Class Member will be fully advised of the Settlement. The Settling Parties
17 have jointly drafted a Notice of Pendency of Class Action Settlement (“Notice”). The Settling
18 Parties’ agreed upon proposed Notice is included herewith at **Exhibit 1**. The Notice includes,
19 but is not limited to: information regarding the nature of the Lawsuit; a summary of the
20 substance of the Settlement; the Class Member definition; the release of claims; the work week
21 dispute procedure; the procedure and time period to request exclusion from, or object to the
22 settlement; the date set for the final approval hearing; and the formula used for the Individual
23 Settlement Payments. The Notice will be mailed with an Information Form (Exhibit 2) (the
24 “Notice Packet”). The Notice Packet and all accompanying documents shall be in English.

25 2. Within 14 days after the Court grants Preliminary Approval, Defendants shall
26 provide the Administrator with the name, last known mailing address and telephone number (if
27 readily available) of each Class Member, along with a listing of the total number of work shifts
28 each Class Member worked during the Covered Period.

1 3. The Administrator shall mail the Notice Packet to the Class Members via first-
2 class regular U.S. mail within 14 days of receiving the Class Member information from
3 Defendant. Prior to mailing, the Administrator will perform a search based on the National
4 Change of Address Database to update and correct for any known or identifiable address
5 changes. For each Notice Packet returned as undeliverable, without a forwarding address, the
6 Administrator will perform a single computer and/or “skiptrace” search to obtain an updated
7 address.

8 4. Class Members will have sixty (60) days from the mailing of the Notice Packet to
9 submit a Request For Exclusion or to submit any objections (which periods shall run
10 concurrently).

11 5. All Requests For Exclusion will be submitted to the Administrator, who will
12 timely certify jointly to Class Counsel and Defense Counsel the forms that were timely and
13 correctly submitted.

14 6. Defendant’s payroll records will be presumptively determinative in any dispute
15 over entitlement to payment or over membership in the Class.

16 7. The Settling Parties agree to take all steps required to comply with California
17 Rule of Court Rule 3.769.

18 8. The Administrator shall provide Class Counsel, at least twenty (20) days prior to
19 the final fairness and approval hearing, with a declaration specifying the due diligence it has
20 undertaken with regard to the mailing of the Notice Packet. Class Counsel, in consort with
21 Defense Counsel, shall then file a motion for final approval of the Settlement and a motion for
22 fees and costs before the final approval hearing date, and will provide the declaration from the
23 Administrator to the Court in connection with the final approval motion documents.

24 **B. Contents of Information Form**

25 The Administrator will mail to all Class Members a Notice Packet that includes an
26 Information Form. The Information Form will notify the recipients that they need not return the
27 document to receive a settlement award, will state the number of shifts worked in the Relevant
28 Period, and will enable them to dispute the shifts worked or update their address.

1 **C. Dispute Procedures for Class Members**

2 1. Each Information Form will include a notice of work shifts form listing the total
3 “Individual Shifts Worked,” which will be the total number of shifts worked by an individual
4 Class Member during the Covered Time Frame according to Defendants’ payroll records.

5 2. To the extent a Class Member disputes the information listed on his or her Class
6 Information Form of work shifts, the Class Member may produce evidence to the Administrator
7 showing such other dates he or she contends should be shown on the form. Defendants’ records
8 will be presumed determinative. The Class Counsel and Defense Counsel will meet and confer
9 to evaluate the evidence submitted by the Class Member. If the counsel cannot agree, the
10 dispute will be submitted to the Court whose decision as to which information should be applied
11 will be binding.

12 **D. Requirements for Participation in Class Settlement Class Members**

13 All Class Members, who do not request exclusion, will automatically be eligible to
14 participate in this Settlement and become a Participating Class Member and receive their
15 Individual Settlement Payments.

16 **E. Requirements for Exclusion from Class Settlement**

17 1. In order for a Class Member to validly and effectively request exclusion from, and
18 opt out of, this Settlement, the Class Member must submit a timely and valid written Request for
19 Exclusion directly to the Administrator.

20 2. To be timely, the Request for Exclusion must be postmarked no later than sixty
21 (60) calendar days after the Notice Packet was first mailed.

22 3. To be valid, the Request for Exclusion shall contain a statement that clearly
23 conveys the Class Member’s request to be excluded from the Settlement, their full name, mailing
24 address, telephone number, last four digits of their social security number, and must be signed
25 and dated. No Request for Exclusion will be honored if postmarked after the deadline.

26 **F. Administrator’s Notification Requirements**

27 1. The Administrator will certify jointly to Class Counsel and Defense Counsel
28 which Requests for Exclusion were timely or untimely returned or otherwise submitted.

1 2. No later than twenty (20) calendar days prior to the final fairness and approval
2 hearing, the Administrator will submit a report to Defense Counsel and Class Counsel of (a) the
3 calculation of the amounts due to each Participating Class Member pursuant to this Settlement
4 and the average, low and high Individual Settlement Payments and the Class Representatives’
5 payment, (b) all timely, valid Requests for Exclusion, and (c) all objections received.

6 3. The Administrator shall be responsible for issuing the payments to Participating
7 Class Members and calculating, reporting and withholding all payroll tax withholdings required
8 by state and federal law and will file proof of payment with the Court upon request.

9 **IX. OBJECTIONS TO SETTLEMENT**

10 1. Deadline for Objections: Any Class Member who has not opted out of the
11 Settlement and who wishes to object to the Court’s approval of this Settlement must notify the
12 Court, Class Counsel, Defense Counsel, and the Administrator of their objection, in writing, no
13 later than sixty (60) calendar days after the Notice mailing date. The objection must state the
14 factual and legal basis for the objection and must identify exhibits and/or witnesses, if any, that
15 the objecting Class Member intends to present at the final approval hearing. Any Class Member
16 who opts out of the Settlement shall not have standing to object to the Settlement or appear at the
17 final approval hearing.

18 2. Failure to Object: Any Class Member who fails to file a timely written objection
19 shall be foreclosed from objecting to this Settlement, unless otherwise authorized by the Court
20 prior to entry of final approval.

21 3. Responses to Objections: Counsel for the Settling Parties shall file any response
22 to any objections filed by objecting Class Members at least seven (7) calendar days before the
23 final fairness and approval hearing.

24 **X. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY COURT APPROVAL**

25 1. The Settling Parties will work together expeditiously to obtain preliminary and
26 final approval of this Settlement. Promptly upon execution of the Agreement, the Settling
27 Parties shall apply to the Court for the entry of an Order Granting Preliminary Approval of the
28 Settlement providing for, among other things, the following:

1 a. Scheduling a final fairness and approval hearing on the question of
2 whether the proposed Settlement should be finally approved as fair, reasonable and adequate as
3 to the Class Members, and providing that such final fairness and approval hearing be scheduled
4 for a date that is no earlier than the date required to ensure compliance with California Rules of
5 Court Rule 3.769;

6 b. Approving as to form and content the proposed Notice (**Exhibit 1**);

7 c. Approving as to form and content the proposed Information Form and
8 instruction (**Exhibit 2**);

9 d. Directing the mailing of the Notice Packet by first class mail to the Class
10 Members;

11 e. Preliminarily approving the Settlement;

12 f. Preliminarily certifying the class for settlement purposes only;

13 g. Approving Robert S. Arns, Jonathan E. Davis, Kevin M. Osborne, and
14 Julie C. Erickson of the Arns Law Firm; Kathryn A. Stebner, Kelly Knapp, and George
15 Kawamoto of Stebner and Associates; Michael D. Thamer of the Law Offices of Michael D.
16 Thamer; W. Timothy Needham of Janssen Malloy LLP; and Christopher J. Healey and Stefanie
17 Warren of Dentons US LLP as Class Counsel; Fay Smith as Class Representative; and Phoenix
18 Settlement Administrators as Administrator; and

19 h. Preliminarily approving the requested Class Counsel's attorneys' fees and
20 costs, Class Representative's enhancement payments, the LWDA allocation, and allocated
21 Administration Costs subject to the Court's final approval at the final fairness and approval
22 hearing.

23 2. For clarity, Class Counsel shall not file the motion for preliminary approval of
24 Settlement until Class Counsel obtains Defense Counsel's express approval as to said motion and
25 all accompanying exhibits and other documents related to this Settlement. After Defense
26 Counsel gives the required approval, Class Counsel shall not modify any language in the motion
27 or the accompanying exhibits absent Defense Counsel's express approval.

1 **XI. DUTIES OF PARTIES FOLLOWING PRELIMINARY COURT APPROVAL**

2 1. Class Counsel will move for final approval of the Settlement, which motion will
3 include a request for final approval of an award of the Class Representative’s enhancement
4 payments and Class Counsel’s attorneys’ fees and costs pursuant to the Settlement, which motion
5 and requests Defendants will not oppose subject to the limits in the Agreement. Defense
6 Counsel shall review and approve the final approval papers before filing, excluding Class
7 Counsel’s request for attorneys’ fees.

8 2. If the Court does not grant final approval of the Settlement, or if the Court’s final
9 approval of the Settlement is reversed or materially modified on appellate review, then this
10 Settlement will become null and void as discussed further below.

11 3. In connection with seeking final approval by the Court of the Settlement, Class
12 Counsel will submit a proposed Order Granting Final Approval of Class Action Settlement. The
13 Settling Parties agree that, in connection with final approval of the Settlement, the Court will
14 enter judgment pursuant to California Rule of Court 3.769(h). These documents shall provide
15 for, among other things, the following:

16 a. Approving the Settlement, adjudging the terms thereof to be fair,
17 reasonable and adequate, and directing consummation of its terms and provisions;

18 b. Approving Class Counsel’s application for an award of attorneys’ fees and
19 reimbursement of costs (up to the maximum discussed above);

20 c. Approving the Class Representative’s enhancement payments (up to the
21 maximums discussed above);

22 d. Approving the PAGA award payment to LWDA (up to the maximum
23 discussed above);

24 e. Certifying the Class for purposes of this Settlement only;

25 f. Entering judgment on the Lawsuit and permanently barring the Class
26 Representative and all Class Members from prosecuting any of the claims released in this
27 Agreement against Defendants and the Released Parties; and

28 g. Waiving all rights to appeal.

1 **XII. EFFECT OF NON-APPROVAL**

2 1. If this Settlement is not preliminarily or finally approved by the Court or if Final
3 Judgment is not entered, this Agreement shall be null and void.

4 2. In such event, the following provisions will become effective:

5 a. Nothing in this Agreement shall be construed as a determination,
6 admission, or concession of any issue in this Lawsuit or in any other action or proceeding, and
7 nothing in this Agreement may be offered into evidence for any purpose;

8 b. The Settling Parties expressly reserve their rights with respect to the
9 prosecution and defense of the Lawsuit as if this Agreement never existed;

10 c. Plaintiffs may, at their discretion, move to enter and enforce the
11 Stipulation for Settlement executed by Settling Parties on October 10, 2016; and

12 d. Defendants and the Class Representative shall be equally responsible for
13 any costs for notice administration incurred by the Administrator through that date.

14 **XIII. PARTIES' AUTHORITY**

15 The respective signatories to the Settlement represent that they are fully authorized to
16 enter into this Settlement and bind the respective Settling Parties to its terms and conditions.

17 **XIV. MUTUAL COOPERATION**

18 The Settling Parties agree to fully cooperate with each other to accomplish the terms of
19 this Settlement, including but not limited to executing such documents and taking such other
20 action as may reasonably be necessary to implement the terms of this Settlement. The Settling
21 Parties shall use their best efforts, including all efforts contemplated by this Settlement and any
22 other efforts that may become necessary by order of the Court, or otherwise, to effectuate the
23 terms of this Settlement. As soon as practicable after execution of this Agreement, Class
24 Counsel shall, with the assistance and cooperation of Defendants and its counsel, take all
25 necessary steps to secure the Court's approval of the Settlement and entry of a Final Judgment.

26 **XV. NO PRIOR ASSIGNMENTS**

27 The Settling Parties represent, covenant, and warrant that they have not directly or
28 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to

1 any person or entity any portion of any liability, claim, demand, action, cause of action or right
2 released and discharged in this Settlement.

3 **XVI. NOTICES**

4 Unless otherwise specifically provided herein, all notices, demands or other
5 communications given hereunder shall be in writing and shall be deemed to have been duly
6 given as of the third business day after mailing by United States registered or certified mail,
7 return receipt requested, addressed as follows:

8 a. To the Class:

9 Robert S. Arns
10 Jonathan E. Davis
11 Kevin M. Osborne
12 Julie C. Erickson
13 The Arns Law Firm
14 515 Folsom St., 3rd Floor
15 San Francisco, CA 94105

16 To Defendant:

17 Rick Cavel, Attorney at Law
18 184 Graystone Terrace,
19 San Francisco, CA 94114

20 **XVII. CONSTRUCTION**

21 The Settling Parties agree that the terms and conditions of this Settlement are the result of
22 lengthy, intensive arms-length negotiations between the Settling Parties and that this Settlement
23 shall not be construed in favor of or against any Party by reason of the extent to which any Party
24 or his/her/its counsel participated in the drafting of this Settlement.

25 **XVIII. MODIFICATION**

26 This Agreement may not be changed, altered, or modified, except in writing and signed
27 by the Settling Parties, and approved by the Court. This Agreement may not be discharged
28 except by performance in accordance with its terms or by a writing signed by the Settling Parties.

XIX. INTEGRATION CLAUSE

This Agreement contains the entire agreement between the Settling Parties relating to the

1 settlement contemplated hereby, and replaces all prior or contemporaneous agreements,
2 understandings, representations, and statements, whether oral or written and whether by a party
3 or such party's legal counsel. No rights under this Settlement may be waived except in writing.
4 In entering into this Agreement, the Settling Parties recognize California Civil Code Section
5 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written
6 agreement is to be construed according to its terms and may not be varied or contradicted by
7 extrinsic evidence.

8 **XX. BINDING ON ASSIGNS**

9 This Settlement shall be binding upon and inure to the benefit of the Settling Parties and
10 their respective heirs, trustees, executors, administrators, successors and assigns.

11 **XXI. COUNTERPARTS**

12 This Settlement may be executed by electronic transmission, facsimile and in
13 counterparts, and when each Settling Party has signed and delivered at least one such
14 counterpart, each counterpart shall be deemed an original, and, when taken together with other
15 signed counterparts, shall constitute one Agreement, which shall be binding upon and effective
16 as to all Settling Parties.

17 **XXII. CLASS CERTIFICATION**

18 1. Plaintiffs and Class Counsel agree that this Settlement and the motion for
19 preliminary approval seeking, *inter alia*, certification of a class is for purposes of the settlement
20 only and if, for any reason, the Settlement is not approved, the certification will have no force or
21 effect and will be immediately revoked. Plaintiffs and Class Counsel further agree that
22 certification for purposes of the Settlement is in no way an admission that class certification is
23 proper under the more stringent standard applied for litigation purposes and that this Settlement
24 will not be admissible in this or any other proceeding as evidence that (i) a class should be
25 certified as Plaintiffs have proposed, or (ii) Defendants is liable to Plaintiffs or the other Class
26 Members as Plaintiffs alleged.

27 2. This Settlement is contingent upon the approval and certification by the Court of
28 the class for settlement purposes only. This Settlement shall be deemed null and void and shall

1 be of no force or effect whatsoever, and shall not be admitted, referred to, or utilized by any of
2 the Settling Parties for any purpose whatsoever in the event that:

- 3 a. The Court does not approve this Settlement and does not execute an Order
4 of Final Approval;
- 5 b. The Court does not finally approve the Settlement as proposed by the
6 Settling Parties and without any modification (unless the Settling Parties
7 agree to said modification in writing);
- 8 c. The Order of Final Approval as submitted by the Settling Parties does not
9 become final for any reason;
- 10 d. The Final Approval, as defined herein, does not occur.

11 **XXIII. GOVERNING LAW**

12 This Settlement and the exhibits hereto shall be deemed to have been negotiated,
13 executed and delivered, and to be wholly performed, in the State of California. The rights and
14 obligations of the Settling Parties under this Settlement shall be construed and enforced in
15 accordance with, and be governed by, the substantive and procedural laws of the State of
16 California without regard to California's choice of law principles.

17 **XXIV. CONTINUING JURISDICTION**

18 Except as otherwise specifically provided for herein, the Court shall retain jurisdiction to
19 construe, interpret and enforce this Settlement, to supervise all notices, the administration of the
20 Settlement, and to hear and adjudicate any dispute arising from or related to the Settlement. The
21 Settling Parties agree that the Court has jurisdiction over the Settlement pursuant to California
22 Code of Civil Procedure, Section 664.6.

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1 **XXV. EXECUTION BY PARTIES AND COUNSEL:**

2 Dated: December __, 2016

THE ARNS LAW FIRM

3
4 By: _____

5 ROBERT S. ARNS
6 Attorney for Plaintiffs

7 Dated: December __, 2016

RICK CANVEL, ATTORNEY AT LAW

8
9 By: _____

10 RICK CANVEL
11 Attorney for Defendants

12 **ADDITIONAL COUNSEL FOR PLAINTIFFS AND CLASS:**

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14 Kelly Knapp, State Bar No. 252013
15 George Kawamoto, State Bar No. 280358
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Dated: December __, 2016

PLAINTIFF AND CLASS REPRESENTATIVE

By: _____

FAY SMITH