

NOTICE OF CLASS AND COLLECTIVE ACTION SETTLEMENT

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

Hana Etcheverry v. Franciscan Health System d/b/a CHI Franciscan Health, Franciscan Medical Group, Franciscan Health Ventures, Harrison Medical Center, and Harrison Medical Center Foundation (the “Defendants”)

Case No. 3:19-cv-05261-RJB-MAT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

You may be entitled to money from a class action settlement if you are a current or former hourly, non-exempt employee employed by Defendants in Washington in one or more of the job classifications listed below and subjected to an automated 30-minute meal period deduction at any time from April 9, 2015 to June 16, 2021.

The Court has granted preliminary approval of a proposed settlement (“Settlement”) of the above-captioned action (“Class and Collective Action”). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class and Collective Action Settlement (“Notice”) carefully.

The purpose of this Notice is to provide a brief description of the claims alleged in the Class and Collective Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

The Court has not determined that Defendants violated the law. The two sides disagree on whether Plaintiff or Defendants would have prevailed if the case had gone to trial. Defendants deny that they violated any laws or that they have harmed their employees in any way.

Eligibility requirements for receiving payments are described below. Payments will only be issued if the Court grants final approval of the Settlement.

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1. Why have I received this Notice?

Defendants' records indicate that you were employed in one of the positions listed in Section 4 below at some time from April 9, 2015 to June 16, 2021, making you a Class Member and potentially a FLSA Collective Member depending upon your dates of employment and whether you opt in as discussed in Section 8 below.

The parties to this Class and Collective action have entered into a Settlement to avoid the cost and risk of further litigation. Defendants deny all the legal claims in the case. The Plaintiff and her attorneys think the Settlement is in the best interest of the Class and Collective Members. The Court has preliminarily approved the Settlement. The Court must also grant final approval for the Settlement to be valid. If the Court approves the proposed Settlement, your legal rights may be affected.

2. What is this Class and Collective Action about?

This Class and Collective Action was commenced by Plaintiff Hana Etcheverry on April 9, 2019 in the United States District Court, for the Western District of Washington, Case No. 3:19-cv-05621-RJB-MAT. Plaintiff brought this lawsuit against Defendants seeking damages, restitution, penalties, interest, costs and attorney's fees and other relief based on the following alleged causes of action: (1) failure to pay overtime in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207; (2) failure to pay overtime in violation of Revised Code of Washington ("RCW") 49.46.130; (3) failure to provide required meal breaks; (4) failure to provide required rest breaks; (5) failure to pay minimum wages; (6) failure to pay all wages owed at termination; (7) willful refusal to pay wages; and (8) violation of the Washington Consumer Protection Act, RCW 19.86. Plaintiff seeks a monetary recovery on behalf of the Class and the FLSA Collective for the alleged violations, along with interest, costs, and fees.

The Court has not made any determination as to whether the claims advanced by Plaintiff have any merit. The Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendants. Defendants expressly deny that they did anything wrong or that they violated the law and further deny any liability whatsoever to Plaintiff or to the Class or FLSA Collective. Both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial.

3. What is a Class Action and what is a Collective Action?

The Settlement that you are receiving notice about involves a class action and also a collective action. The following claims in the lawsuit are class action claims: (1) failure to pay overtime in violation of RCW 49.46.130; (2) failure to provide required meal breaks; (3) failure to provide required rest breaks; (4) failure to pay minimum wages; (5) failure to pay all wages owed at termination; (6) willful refusal to pay wages; and (7) violation of the Washington Consumer Protection Act, RCW 19.86. Additional claims involving the federal FLSA for unpaid wages are what is referred to as a “collective action.”

A “class action” and a “collective action” have different requirements for how you participate in or exclude yourself from the Settlement.

If you wish to participate in the Class Action Settlement, you do not have to do anything. You will receive money under the Class Action Settlement by doing nothing. If you want to be excluded from, and not bound by, the Class Action Settlement, then you must submit a Request for Exclusion in the manner and timeframe described in this Notice.

If you also want to participate in the FLSA Collective Action Settlement, then you must opt in by submitting the FLSA Collective Consent Form provided with this Notice, and you must do so within the timeframe described in this Notice. Unlike with the Class Action Settlement, if you do not return your FLSA Collective Consent Form, then you will *not* receive money under the FLSA Collective Settlement.

In sum, for the Class Action Settlement, you don’t have to do anything to get the money and to be bound by the release of class action claims. However, for the FLSA Collective Settlement, you must submit the FLSA Collective Consent Form to receive money from the FLSA Net Settlement Fund. If you don’t submit the FLSA Collective Consent Form you will not receive a Settlement Share from the FLSA Net Settlement Fund or be bound by the release of collective action claims.

4. Am I a Class Member?

You are a Class Member if you are a current or former hourly, non-exempt employee employed by Defendants in Washington in one or more of the job classifications in the table below and were subjected to an automated 30-minute meal period deduction policy at any time from April 9, 2015 through June 16, 2021 (the “Class Period”).

Certified Medical Assistant (“CNA”)	Medical Assistant	RN-Clinic Oncology
CNA-Health Unit Coordinator	Medical Assistant Clinic	RN-Clinic Oncology Cert
CNA-Home Health Aide	Medical Assistant Clinic Lead	RN-Clinic Oncology Lead-Cert

CNA-HUC-Monitor Tech Combo	Medical Assistant Float II	RN-Clinic Specialty
CAN-Transporter	Medical Assistant Lead	RN-Coordinator
CAN-Transporter Diag Imaging	Medical Assistant Reg Float	RN-Enterostomal
Endoscopy Tech	Medical Assistant-Ortho Cast	RN-Homecare Charge
Endoscopy Tech I	Medical Assistant-Ortho Cast Lead	RN-Injector
Endoscopy Tech II	Monitor Tech-HLT Unit Coord LD	RN-Lead
Endoscopy Tech Lead	Nurse Technician-Student	RN-Navigator
Licensed Practical Nurse ("LPN")	Reg Medical Assistant Clinic	RN-Patient Care Coordinator HA
LPN-Anesthesia	Registered Medical Assistant	RN-Patient Care Coordinator HART
LPN-Anesthesia Tech Cert	Registered Nurse ("RN")	RN-Patient Care Coordinator IP
LPN-Care Coordinator	RN-Cardiac Device	RN-Patient Care Coordinator RR
LPN-Case Coordinator	RN-Cert	RN-Pre/Post Surgery
LPN-C-Clinic	RN-Charge	RN-Residency
LPN-Clinic	RN-Charge Cert	RN-Residency Program
LPN-Clinic Coordinator	RN-Charge Relief	RN-Resource
LPN-Clinic Float II	RN-Charge Relief Cert	RN-Resource Code
LPN-Clinic Gastro	RN-Clinic	RN-Resource Periop
LPN-Clinic Gastro Preadmit	RN-Clinic Cardio	RN-Resource Periop Cert
LPN-Clinic Lead	RN-Clinic Float	RN-SWAT
LPN-Clinic Trauma	RN-Clinic Float II	RN-SWAT Cert
LPN-Lead	RN-Clinic Gastro	RN-Wound Care Coordinator
LPN-Triage	RN-Clinic Gastro Cert	RN-Wound Care Coordinator Cert
Medical Assist Clinic Float	RN-Clinic Lead	

5. Am I a FLSA Collective Member?

You are a FLSA Collective Member if you are a current or former hourly, non-exempt employee employed by Defendants in Washington in one or more of the job classifications listed in Section 4 above and were subjected to an automatic time deduction policy and practice at any time from April 9, 2016 through June 16, 2021 (the “FLSA Collective Period”) and if you timely submit a FLSA Collective Consent Form.

6. What does the Settlement provide?

The total maximum amount that Defendants will be required to pay under this Settlement is Five Million, Five Hundred Thousand Dollars (\$5,500,000.00) (“Gross Settlement Amount”). The following amounts will be deducted from the Gross Settlement Amount if approved by the Court: The FLSA Net Settlement Fund of \$500,000.00, the Class Representative Service Payment of up to \$10,000.00, the Class Counsel Fees Payment up to \$1,833,333.33 (one-third of the Gross Settlement Amount), the Class Counsel Litigation Expenses Payment up to \$11,000.00, and the Settlement Administration Expenses estimated at \$72,650.00. All of these payments are subject to Court approval. The amount remaining after making these deductions from the Gross Settlement Amount will be the Class Net Settlement Fund, estimated to be \$3,073,016.67.

7. How much money will I get if I participate in the Settlement?

Collectively, the payments you will receive from the Class Net Settlement Fund and the FLSA Net Settlement Fund are referred to as your Settlement Share.

If you do not exclude yourself from (“opt out” of) the Class Action Settlement, you will be a “Participating Class Member,” and you will receive a payment estimated to be \$<< Rule 23 Award Rounded>> from the Class Net Settlement Fund. This payment is based on the number of workweeks you worked as a Class Member. It will be calculated by (a) dividing the Class Net Settlement Fund by the total number of workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each individual Participating Class Member’s workweeks during the Class Period. According to Defendants’ records, you worked a total of <<Rule 23 Weeks>> Eligible Work Weeks during the Class Period.

If you are also an FLSA Collective Member and you complete and timely mail the FLSA Collective Consent Form, you will be an “Opt-In Plaintiff,” and you will receive a payment estimated to be \$<<FLSA Award Rounded>> from the FLSA Net Settlement Fund. The Settlement Share for each Opt-In Plaintiff will be calculated by (a) dividing the FLSA Net Settlement Fund by the total number of workweeks worked by all Opt-In Plaintiffs during the FLSA Collective Period and (b) multiplying the result by each individual Opt-In Plaintiff’s workweeks worked during the FLSA Collective Period. According to Defendants’ records, you worked a total of <<FLSA Wweeks>> Eligible Work Weeks during the FLSA Collective Period.

Disputes as to Workweeks. If you wish to dispute the workweeks allocated to you, you must

submit your dispute in writing to the Settlement Administrator by no later than September 27, 2021. You must include documentation to support your calculations. All disputes about workweek calculations will be resolved by the Settlement Administrator.

Tax Treatment of Settlement Shares. Subject to approval by the Court, one-third (1/3) of each Settlement Share is in settlement of wage claims (the “Wage Portion”). The Wage Portion is subject to wage withholdings and shall be reported on IRS Form W-2. Subject to approval by the Court, one-third (1/3) of each Settlement Share is in settlement of claims for interest and one-third (1/3) of each Settlement Share is in settlement of claims for penalties allegedly due to employees (collectively the “Non-Wage Portion”). The Non-Wage Portion will not be subject to wage withholdings and will be reported on IRS Form 1099. Except as provided here, you will be responsible for paying all federal, state and local taxes associated with your Settlement Share.

Uncashed Settlement Share Checks. You must cash Settlement Share checks by no later than 180 days from the date of issuance. If your is returned to the Settlement Administrator within 120 days, the Settlement Administrator will make all reasonable efforts to re-mail it you at your correct address. If your Settlement Share check is not cashed within 120 days, the Settlement Administrator will also send you a notice informing you that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the 60 day period after this notice, the funds from such uncashed checks will be redistributed as explained below.

Redistribution and *Cy Pres* Distribution of Uncashed Settlement Share Checks. If the uncashed Settlement Share checks equal or exceed \$50,000, the Settlement Administrator shall make a second distribution of the uncashed funds on a pro rata basis to the Participating Class Members and Opt-In Plaintiffs who previously cashed their Settlement Share checks. In the event of such a redistribution, the additional settlement administration costs related to the redistribution will be deducted from the total amount of uncashed checks prior to the redistribution. If a check to a Participating Class Member or Opt-In Plaintiff is returned to the Settlement Administrator as undeliverable during the second distribution, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. If none is found, then said check shall revert to the *cy pres* recipient. If there are uncashed check funds remaining from the redistribution, then the amount will revert to *cy pres*.

If the value of the uncashed Settlement Share checks is less than this \$50,000 threshold, the undistributed amount will be distributed *cy pres* equally between Pierce County Catholic Community Services and the Legal Foundation of Washington. The Participating Class Members and Opt-In Plaintiffs who did not cash their checks will remain bound by the Settlement.

8. How do I get my Settlement Share?

To receive a payment from the Class Action Settlement, you don’t have to do anything. If the Court approves the Class Action Settlement, you will automatically become a Participating Class Member and receive a payment from the Class Net Settlement Fund.

The FLSA Collective Action is different than the Class Action. Federal law requires that you opt in to the FLSA Collective Action to participate and receive a payment. **If you are a FLSA Collective Member, to receive a payment from the FLSA Net Settlement Fund, you must complete the FLSA Collective Consent Form and mail it to the Settlement Administrator by no later than September 27, 2021.**

Not all Class Members are FLSA Collective Members. Because of differences in state and federal law, the Class Period begins on April 9, 2015, while the FLSA Collective Period begins on April 9, 2016, so Class Members who were not employed in covered positions after April 9, 2016 cannot be FLSA Collective Members.

9. Who are the attorneys representing the parties?

Attorneys for the Plaintiff and the Class/FLSA Collective	Attorneys for Defendants
<p>TERRELL MARSHALL LAW GROUP PLLC Beth E. Terrell, WSBA #26759 Toby J. Marshall, WSBA #32723 936 North 34th Street, Suite 300 Seattle, WA 98103-8869 Telephone: (206) 816-6603 Fax: (206) 319-5450 Email: bterrell@terrellmarshall.com tmarshall@terrellmarshall.com</p>	<p>POLSINELLI PC Donald L. Samuels, WSBA #56214 1401 Lawrence Street, Suite 2300 Denver, CO 80202 Telephone: (303) 572-9300 Facsimile: (303)572-7883 E-mail: dsamuels@polsinelli.com</p>
<p>SCHNEIDER WALLACE COTTRELL KONECKY LLP Carolyn H. Cottrell, CA Bar # 166977 Ori Edelstein, CA Bar # 268145 <i>Pro Hac Vice</i> 2000 Powell Street, Suite 1400 Emeryville, CA 94608 Telephone: (415) 421-7100 Fax: (415) 421-7105 Email: ccottrell@schneiderwallace.com oedelstein@schneiderwallace.com</p>	<p>POLSINELLI PC Jessica M. Andrade, WSBA #39297 1000 2nd Avenue, Suite 3500 Seattle, WA. 98104 Telephone: (206) 393-5400 Facsimile: (206) 393-5401 E-mail: Jessica.andrade@polsinelli.com</p>
<p>SCHNEIDER WALLACE COTTRELL KONECKY LLP William M. Hogg, TX Bar # 24087733 <i>Pro Hac Vice</i> 3700 Buffalo Speedway, Suite 960 Houston, TX 77098</p>	

Telephone: (713) 338-2560 Fax: (866) 505-8036 Email: whogg@schneiderwallace.com	
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The Court has decided that the firms Terrell, Marshall Law Group PLLC and Schneider Wallace Cottrell Konecky LLP are qualified to represent you and all other Class Members and FLSA Collective Members simultaneously in this Settlement. You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

10. What are my options?

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Notice: *Defendants will not retaliate against you in any way for either participating or not participating in this Settlement.*

DO NOTHING **PLEASE PAY CLOSE ATTENTION because doing nothing will have different consequences for you as it relates to the Settlement of the Class Action and the FLSA Collective Action.** For the Class Action, if you do nothing, you *will* receive money from the Class Net Settlement Fund and *will* be bound by the Release of Class Action Claims. For the FLSA Collective Action, if you do nothing, you will *not* receive money from the FLSA Net Settlement Fund and will *not* be bound by the Release of FLSA Collective Action Claims.

OPT OUT If you do not want to participate as a member of the Class Action, then you may “opt out” in the manner described in Section 11 below, “How do I opt out or exclude myself from this settlement,” which will remove you from the Class Action. If the Court grants final approval of the settlement, you will *not* receive a Settlement Share and you will *not* give up the right to sue Defendants and the Released Parties for the Release of Claims by Participating Class Members as defined in Section 13 below.

OPT IN **Participate in the FLSA Collective Net Settlement Fund by Opting In.** If you want to participate in the FLSA Collective Net Settlement Fund and receive a Settlement Share under the FLSA Collective Action Settlement, then you must timely complete and mail the FLSA Collective Consent Form to the Settlement Administrator as described in Section 8 above.

OBJECT You may file a legal objection to any aspect of the proposed settlement, including the amount of fees requested by Class Counsel. You can object to the Class Action Settlement or the FLSA Collective Action Settlement. If you want to object to the Class Action Settlement, then you must not opt out

of the Class Action Settlement. And if you want to object to the FLSA Collective Action Settlement, then you must opt in by timely submitting a FLSA Collective Consent Form.

The procedures for opting out of the Class Action or objecting to either or both the Class Action Settlement and FLSA Collective Action Settlement are set forth below in Section 11, “How do I opt out or exclude myself from this Settlement?” and Section 12, “How do I object to the Settlement?”.

11. How do I opt out or exclude myself from the Class Action Settlement?

If you do not want to take part in the Class Action Settlement, you must individually sign and mail a written Request for Exclusion to the Settlement Administrator at Etcheverry v. FHS, c/o Settlement Services, Inc., PO Box 10269, Tallahassee, FL 32302-2269. The Request for Exclusion must be postmarked by **September 27, 2021** and actually received by the Settlement Administrator to be effective.

If you submit a valid Request for Exclusion, you will not receive a Settlement Share, and you will not be bound by the Settlement and the Final judgment entered by the Court. You also will not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement. The Court’s entry of the Final Judgment, following Final Approval of the Settlement, will be binding on all Class Members who do not request exclusion from the Settlement.

12. How do I object to the Settlement?

If you who wish to object to the Settlement or any aspect of it, including Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, or the Class Representative Service Payments, you may do so, either in writing or orally at the final approval hearing. Objections in writing must be submitted to the Settlement Administrator with copies to the Parties’ Counsel and postmarked no later than **September 27, 2021**. Objections must set forth the factual and legal grounds for the objection. If you make a timely objection, you are entitled, but are not required, to be heard regarding your objection at the final approval hearing either by you personally appearing or by your own attorney appearing for you.

If you do not submit a timely objection, you will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, unless otherwise excused by the Court upon a showing of good cause. If you file a valid Request for Exclusion as provided in Section 11 above, you will have no ability to comment on or object to the Settlement

13. How does the Settlement affect my rights?

If the proposed Settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court’s Final

Judgment and will release Defendants and the Released Parties¹ from the Release of Claims by Participating Class Members. The Release of Claims by Participating Class Members provides as follows:

Release of Claims by Participating Class Members. As of the Effective Date, Participating Class Members will fully and finally release and discharge Defendants and the Released Parties from any and all state or local claims, obligations, demands, rights, actions, causes of action and liabilities, whether known or unknown, that were alleged or that reasonably could have been alleged based on the facts alleged in the Complaint, including claims for unpaid overtime wages, unpaid wages, minimum wage violations, meal period violations, rest period violations, failure to pay wages at termination, restitution, penalties, interest, liquidated damages, double damages, treble damages, exemplary damages, attorneys' fees, costs, disbursements and expenses, including without limitation claims under RCW 19.52.020, RCW 49.12.010, RCW 49.12.020, RCW 49.12.050, RCW 49.12.150, RCW 49.12.170, RCW 49.46.020, RCW 49.46.030, RCW 49.46.090, RCW 49.46.130, RCW 49.48.010, RCW 49.48.030, RCW 49.52.050, RCW 49.52.070, WAC 296-126-023, WAC 296-126-092, WAC 296-128-010, WAC 296-126-040 and claims for violation of the Washington Consumer Protection Act, RCW 19.86.

If the proposed Settlement is approved by the Court, a Final Judgment will be entered by the Court.

All FLSA Collective Members who are Opt-In Plaintiffs will be bound by the Court's Final Judgment and will also release Defendants and the Released Parties from the Release of Claims by Opt-In Plaintiffs which is an additional release to the Release of Claims by Participating Class Members discussed above. The Release of Claims by Opt-In Plaintiffs provides as follows:

Release of Claims by Opt-In Plaintiffs. As of the Effective Date, Opt-in Plaintiffs shall fully and finally release and discharge Defendants and the Released Parties from all FLSA claims, whether known or unknown, that were alleged or that reasonably could have been alleged based on the facts alleged in the Complaint.

The Effective Date is the date the Settlement is approved by the Court and the Final Judgment becomes final as defined in the Settlement Agreement.

14. How will the attorneys for the Class and FLSA Collective be paid?

The attorneys for the Class and FLSA Collective will be paid from the Gross Settlement Fund. Subject to Court approval, Class Counsel shall be paid an amount not to exceed one-third of the Gross Settlement Fund (\$1,833,333.33) in fees and up to \$11,000.00 in litigation costs. The Plaintiff will also be paid, subject to Court approval, an amount not to exceed \$10,000, as an enhancement for the initiation of and prosecution of this case, the risks undertaken for the payment

¹ "Released Parties" means Defendants, their parents, predecessors, successors, all affiliates, subsidiaries, and their respective officers, directors, agents, employees, and stockholders.

of costs in the event this case had been lost, and a general release of all claims.

15. When and where will the Court decide whether to approve the Settlement?

The Court will hold a final approval hearing (also called a fairness hearing) to decide whether to finally approve the Settlement. The hearing will be on October 19, 2021 in Courtroom A at the United States Courthouse, which is located at 1717 Pacific Avenue, Tacoma, WA 98402. The hearing may be moved to a different date or time without additional notice.

At the hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If you have filed a timely objection, the Court will consider it, and you may choose to speak at the hearing. The Court will decide how much to pay (1) the Settlement Administrator for settlement administrations costs, (2) the Plaintiff for her role as the Class Representative, and (3) Class Counsel for attorneys' fees and costs. After the hearing, the court will decide whether to approve the settlement. We do not know how long the Court's decision will take.

You do not need to go to the hearing. Class Counsel and Defendants' lawyers will answer any questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you don't have to go to court to talk about it. As long as you mailed your objection on time, the Court will consider it. If you have filed a timely objection, you may pay another lawyer at your own expense to attend the hearing and appear on your behalf, but it is not required.

16. How do I get more information?

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the *Etcheverry v. Franciscan Health System* Class and Collective Action Settlement.

Etcheverry v. FHS Settlement Administrator
c/o Settlement Services, Inc.
PO Box 10269
Tallahassee, FL 32302-2269
Phone: (833) 594-2008

This Notice, which has been approved by the Court, is only a summary. A more detailed Settlement Agreement contains the complete terms of the Settlement, and is on file with the Court, where it is available for your review. For more detailed information, you may refer to the underlying documents and papers on file with the Court at United States District Court Western District of Washington, 700 Stewart Street, Suite 2310, Seattle, WA 98101, from 7:00 a.m. to 5:00 p.m., Monday through Friday, or may ask for a free copy from Class Counsel.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT.