

NOTICE OF PROPOSED PARTIAL CLASS ACTION SETTLEMENT OF *UNTHAKSINKUN v. PORTER*

United States District Court for the Western District of Washington
No. 2:11-cv-00588

You were sent this Notice because you may be a member of the class affected by the Proposed Settlement.

Please read this Notice carefully. This Notice explains important legal rights you may have. Your legal rights may be affected regardless of whether you do or do not act.

Why did I receive this Notice? This Notice relates to a proposed partial settlement (the “Settlement”) of a class action lawsuit (the “Lawsuit”) called *Unthaksinkun, et al. v. Porter*, Case No. 2:11-cv-0058. This Lawsuit was filed by Rattiya Unthaksinkun, Susan Ahmadi, Khaddouj Atif, Anna Sergeyevna Ponomareva, and S.J. (together, they are called “Plaintiffs”) against Douglas Porter (the “Defendant”) as Administrator of the Washington State Health Care Authority (“HCA”). **You may be a member of this class action Lawsuit.**

This Notice explains what the Lawsuit is about, the general terms of the Settlement, and some of your legal rights.

What is the Lawsuit about? On March 1, 2011, HCA cut off Basic Health coverage for approximately 15,387 people because of their citizenship or immigration status. The Plaintiffs are immigrants who had their Basic Health coverage cut off by the HCA, and they filed this Lawsuit claiming that what HCA did was illegal.

In this Lawsuit, the Plaintiffs claim there are two reasons why it was illegal for HCA to stop Basic Health coverage for the persons who lost coverage on March 1, 2011 because of immigration status.

- The Plaintiffs claim it was illegal for HCA to cut off Basic Health coverage of immigrants who were lawfully present in the United States, because of their immigration status. This is called the Equal Protection Claim.
- The Plaintiffs claim that the notice letter HCA sent to people telling them that they would have their Basic Health coverage cut off on March 1, 2011 because of immigration status did not include all the information that was legally required. This is called the Due Process Claim.

The Plaintiffs asked the Court to give them certain remedies if it made a final decision that the Plaintiffs won these claims. One remedy the Plaintiffs requested was for the Court to order HCA to re-enroll class members in Basic Health and not disenroll them again because of immigration status, unless they were not lawfully present in the United States and first received a new termination letter that gave more information about their rights.

What does it mean for the Lawsuit to be a class action? In a class action, the Court can make decisions about the claims of a group of people who may have all been affected by a Defendant in the same way. If the Court agrees to treat a lawsuit as a class action, it decides who is in the “class” of people whose claims will be decided all together. These people are called class “members.”

The Court has ruled that this Lawsuit is a class action.

How do I know if I am a class member in the Lawsuit? You are a class member of this Lawsuit if you meet one of the following descriptions:

- You are a member of the **Due Process Class** if you are a Washington state resident and were sent a notice from HCA informing you that your Basic Health benefits would be cut off on March 1, 2011 because of your immigration status, and did not have your Basic Health benefits reinstated before September 1, 2011.
- You are a member of the **Equal Protection Class** if you are a Washington state resident who is lawfully present in the United States and your Basic Health benefits were cut off on March 1, 2011 because of your immigration status, and did not have your Basic Health benefits reinstated before September 1, 2011.

Have class members been allowed to re-enroll in Basic Health? YES. On October 24, 2011, the Court issued an order called a "Preliminary Injunction." The Preliminary Injunction required HCA to allow class members to re-enroll in Basic Health and ordered HCA not to disenroll class members again because of immigration status, unless (1) the class member was not lawfully present in the United States; and, (2) the HCA first sent the class member a notice letter giving them more information about the termination and their rights to challenge it. The Preliminary Injunction also laid out many steps HCA had to take to make this happen.

The Preliminary Injunction did not end the Lawsuit. The Preliminary Injunction is only effective until the Court changes it or makes a final decision in the case.

What are the terms of the Settlement? The Settlement proposes to *dismiss* the Due Process Claim *without prejudice*. Dismissing the claim means that the Plaintiffs are asking the Court to drop this claim from this Lawsuit and to not make any more decisions about this claim. Without prejudice means that the Plaintiffs or class members could ask a court to decide the Due Process Claim at some later time.

The Court has not decided that Plaintiffs or Defendant should win the Due Process claim. Instead, both sides agreed to the Settlement.

If the Court agrees to the Settlement, this will not affect the Equal Protection Claim in the Lawsuit. The Court will continue to make decisions about this Claim.

If the Court agrees to the Settlement, this will not affect the Preliminary Injunction. If you are receiving Basic Health coverage now as an Equal Protection class member, HCA must continue to obey the Preliminary Injunction in providing coverage to you until either the Court decides to change the order, the case finishes, or the Basic Health Program no longer exists.

Why do the parties want to settle part of this Lawsuit? The Plaintiffs' attorneys ("Class Counsel") believe that dismissing the Due Process claim is in the best interest of class members for several reasons. First, the parties believe that, by doing what the Court ordered in the Preliminary Injunction, the Defendant's agency – the HCA - has essentially done what the Plaintiffs asked it do, if the Plaintiffs actually won the Due Process Claim, for these reasons:

- The HCA sent notices to class members telling them that they could reenroll in Basic Health if they paid the correct premium. The HCA reenrolled class members who asked to be reenrolled and either paid premiums or had premiums paid for them by sponsors.
- The HCA staff then reviewed records to see if they had enough information to decide if each class member who re-enrolled in Basic Health was lawfully present in the United States. If the HCA did not have enough information to decide whether a class member was lawfully present in the United States, it sent the person a letter called a "Continued Eligibility Determination Form" explaining the situation and asking the class member to send the HCA proof of her or his

immigration status. HCA sent each person who did not reply to this letter another letter asking for this information and telling them that they needed to prove they were lawfully present in the United States to keep their eligibility for Basic Health.

- The HCA mailed a new termination notice to reenrolled class members who did not provide proof of lawful presence in the United States. This new notice contained detailed information about the reason the person's Basic Health coverage was ending, as well as how the person could challenge their termination in an administrative hearing.

The Plaintiffs and Defendant agree that by doing these things, the Defendant has likely given the Plaintiffs the remedy they requested from the Court if they won the Due Process Claim. Class Counsel believes that dismissing the Due Process Claim without prejudice will avoid risking a worse decision by the Court and the unnecessary expense and labor needed to further litigate this claim.

Will the Plaintiffs receive any money? The Settlement proposes to award \$1,000 to each of the four Plaintiffs that the court appointed as class representatives (the "Class Representatives") to make decisions for the class members, as a service award for the time and effort they spent on this Lawsuit. The four Class Representatives are Rattiya Unthaksinkun, Susan Ahmadi, Khaddouj Atif, and S.J. No other class members will receive any money.

How will the lawyers be paid? The Settlement proposes to award Class Counsel reasonable fees and costs incurred to the date of the Settlement. The parties have estimated and agreed that this should be \$264,000. The court will decide at the Final Approval Hearing how much to award Class Counsel in fees and costs.

Can I exclude myself from the Settlement? No. Because the Plaintiffs asked for injunctive relief, the Settlement will bind all members of both classes.

How do I object to the Settlement? If you do not like any part of the Settlement, such as the dismissal of the Due Process claim, attorneys' fees, or service awards for the Class Representatives, you may object by writing a letter to the Court and to the parties. Your letter must say something to the effect that "I object to the settlement in *Unthaksinkun v. Porter*, No. 2:11-cv-00588." You must include your name, address, telephone, signature, and the reasons why you object to the Settlement.

Your objection must be postmarked no later than January 2, 2014, and it must be mailed to the following **three (3)** addresses:

TO THE COURT:

U.S. District Court
Clerk's Office
700 Stewart Street, Suite 2310
Seattle, WA 98101

TO CLASS COUNSEL:

Riddell Williams P.S.
c/o Blake Marks-Dias
1001 4th Avenue, Suite 4500
Seattle, WA 98154

TO THE DEFENDANT:

Office of the Attorney General
c/o Gail S. Yu
PO Box 40109
Olympia, WA 98504-0109

Do I have a lawyer in this case? The Court has ordered that Northwest Health Law Advocates and Riddell Williams P.S. are Class Counsel in this Lawsuit and represent the interests of all class members. If you want to be represented by your own lawyer, you may hire one at your own expense.

What is the Final Approval hearing? The Court has preliminarily approved the Settlement and will hold a final hearing to decide whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Class. At the hearing, the Court will also consider Class Counsel's request for an award of attorneys' fees and expenses and the request for service awards to the Class Representatives.

May I speak at the Final Approval hearing? You may speak at the Final Approval hearing, but you are not required to. You must tell the Court in writing that you would like to speak at the hearing. You can make this request in your Objection by stating something to the effect that “I want to speak at the Final Approval Hearing in *Unthaksinkun v. Porter*, No. 2:11-cv-00588.”

When and where is the Final Approval hearing? The court will hold the Final Approval hearing at 3:00 p.m. on March 6, 2014 in Courtroom 14106 at the United States District Court, 700 Stewart Street, Seattle, WA 98101.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

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| SEND WRITTEN COMMENTS | Write to the Court about what you think about the proposed Settlement, including the agreement on attorneys’ fees. If you object to (i.e., don’t like) the Settlement and think it should not be approved, you must send copies of your objection to the Court, Class Counsel and the Defendant. | Deadline: January 2, 2014 |
| GO TO THE FINAL APPROVAL HEARING | The Court will hold a Final Approval hearing to consider the Settlement, the request for attorneys’ fees and expenses of Class Counsel, and the Class Representatives’ request for service awards for bringing the Lawsuit. You may, but are not required to, speak at the hearing to tell the Court what you think about the Settlement, including about any Objection you filed. If you want to speak at the hearing, you must follow the procedures above to notify the Court and parties. | Hearing Date: March 6, 2014 |
| DO NOTHING | You will be giving up your right to object to the Settlement. You may not be able to appeal the Settlement. | No deadline |

How can I get more information? For more detailed information about the Lawsuit or the Settlement and how to take the actions described above, or for a complete copy of the Settlement, please visit <http://www.basichealth.hca.wa.gov> or call Basic Health at 1-800-660-9840. An interpreter will be arranged free of charge if you have trouble speaking or reading English. If you have a disability or other condition that may affect your ability to understand this information, call Basic Health or send us information so that we can accommodate your situation.

You may also contact Class Counsel, Northwest Health Law Advocates and Riddell Williams P.S., by emailing basichealthcare@nohla.org, or at:

Northwest Health Law Advocates
Daniel Gross and Janet Varon
4759 15th Ave. NE, Suite 305
Seattle, WA 98105
(206) 325-6464

Riddell Williams P.S.
Blake Marks-Dias and Michael Pierson
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154-1192
(206) 624-3600

A federal court authorized this Notice. This is not a solicitation from a lawyer.