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**EYLUL REFIDE SIMSEK, on behalf of herself and all others similarly situated,
Plaintiffs, -against- NEW YORK STATE CATHOLIC HEALTH PLAN, INC. d/b/a
FIDELIS CARE NEW YORK, MARK LANE, and PATRICK FRAWLEY,
Defendants.**

11-CV-5393 (FB)(JMA)

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW
YORK**

2014 U.S. Dist. LEXIS 22979

**February 14, 2014, Decided
February 14, 2014, Filed**

COUNSEL: [*1] For Eylul Refide Simsek, on behalf of herself of all others similarly situated, Plaintiff: Brian Scott Schaffer, Eric Joshua Gitig, Joseph A. Fitapelli, LEAD ATTORNEYS, Frank Joseph Mazzaferro, Fitapelli & Schaffer, LLP, New York, NY.

For New York State Catholic Health Plan, Inc., doing business as Fidelis Care New York, Defendant: Noel P Tripp, Wendy J. Mellk, LEAD ATTORNEYS, Jackson Lewis, P.C., Melville, NY.

For Mark Lane, Patrick Frawley, Defendants: Noel P Tripp, LEAD ATTORNEY, Wendy J. Mellk, Jackson Lewis, P.C., Melville, NY.

JUDGES: JOAN M. AZRACK, UNITED STATES MAGISTRATE JUDGE.

OPINION BY: JOAN M. AZRACK

OPINION

REPORT AND RECOMMENDATION

AZRACK, United States Magistrate Judge:

The parties in this wage-and-hour action have reached a class-wide settlement. Plaintiff Eylul Refide Simsek ("named plaintiff" or "Simsek") commenced the instant action on November 3, 2011 as a putative class action under Federal Rule of Civil Procedure ("FRCP") 23 and as a collective action under 29 U.S.C. § 216(b), bringing claims under the Fair Labor Standards Act ("FLSA") and the New York Labor Law ("NYLL"). Specifically, named plaintiff alleged that defendants violated the FLSA and the NYLL by unlawfully depriving plaintiff and [*2] similarly situated Retention Field Representatives ("RFRs") of premium overtime compensation and gap time wages when they worked in excess of 40 hours per week, and spread-of-hours pay when the length of their workdays was greater than 10 hours a day. (See generally Compl., ECF No. 1.) Plaintiffs have filed an unopposed motion seeking: (1) final approval of the settlement agreement and release; (2) certification of the class for purposes of settlement under FRCP 23 and § 216(b) of the FLSA; (3) approval of a service award for the named plaintiff; (4) an award of attorneys' fees, and (5) reimbursement for litigation costs and expenses. (Pl.'s Aff. in Supp. Mot. for Certification and Final Approval of Class

Action Settlement, ECF No. 43.)

After the court approved notice was sent to the 111 class members, no employees opted out of the settlement. (Id. at 6.) No employees objected to the settlement or the requests for a service award, administrator fees, and attorneys' fees and expenses. (Id.) [*3] By Order dated October 7, 2013, Judge Block referred this matter to me to conduct a fairness hearing and to issue a report and recommendation as to the class settlement. (Order dated October 7, 2013.)

Based on the papers filed in support of these motions, the parties' other filings in this action, and the fairness hearing held on February 11, 2014, I respectfully recommend:

1. The Court certify the following class under FRCP 23(e), for settlement purposes:

The Named Plaintiff and current and former employees of Fidelis who performed work as a Retention Field Representative from November 3, 2005 to April 1, 2013.

2. The Court grant the Motion for Final Approval and finally approves the settlement as set forth in the Settlement Agreement.

3. The Court certify a settlement collective action under the FLSA consisting of all current and former employees of Fidelis who performed work as RFRs for defendants from November 3, 2005 to April 1, 2013.

4. The Court grant a service award of \$10,000 to Simsek.

5. The Court award Class Counsel \$233,333.34 in attorneys' fees.

6. The Court award Class Counsel \$3,653.39 in litigation costs and expenses.

SO ORDERED.

Dated: February 14, 2014
Brooklyn, New York

/s/ [*4] JOAN M. AZRACK

UNITED STATES MAGISTRATE JUDGE

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Time of Request: Wednesday, February 26, 2014 06:40:09 EST

Print Number: 1825:451620222

Number of Lines: 66

Number of Pages: 2

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