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SUMMONS ISSUED

BLOCK J.

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

AZRACK, MJ.

**KARLA HIDALGO, PEDRO SERRANO, and
CLAUDIA HERNANDEZ, on behalf of themselves
and all others similarly situated,**

Plaintiffs,

-against-

CLASS ACTION COMPLAINT

**NEW YORK STATE CATHOLIC HEALTH
PLAN, INC. d/b/a FIDELIS CARE NEW YORK,
MARK LANE, and PATRICK FRAWLEY,
Defendants.**

Plaintiffs Karla Hidalgo, Pedro Serrano, and Claudia Hernandez, (collectively "Plaintiffs"), individually and on behalf of all others similarly situated, by their attorneys, Fitapelli & Schaffer, LLP, upon personal knowledge as to themselves and upon information and belief as to other matters, allege as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover unpaid wages, overtime compensation, and spread of hours pay for Plaintiffs and their similarly situated co-workers who have been employed by New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York, Mark Lane, and Patrick Frawley (collectively "Fidelis" or "Defendants") in New York.

2. Fidelis is a health insurance provider offering government based health insurance to children and adults in New York. Founded in 1993, Fidelis operates its headquarters out of

Rego Park, New York, with additional offices located throughout New York State.

3. Plaintiffs are hourly employees working for Defendants as Marketing Representatives.

4. Marketing Representatives at Fidelis are required to perform a multitude of duties. Primarily, Marketing Representatives are responsible for enrolling eligible individuals into certain New York State government based health insurance programs. Apart from enrolling individuals in health insurance programs, Marketing Representatives are also required to attend health fairs, make corporate office visits, draft expense reports, and act as liaisons with different departments at Fidelis.

5. Defendants require Marketing Representatives to obtain a minimum of 14 health insurance applications per week, or secure 24 new members per week to meet the minimum productivity requirements. In order to meet these daunting productivity requirements, as well as accomplish their other responsibilities, Marketing Representatives are often required to work in excess of 40 hours per week and, at times, in excess of 12 hours per day.

6. Although Marketing Representatives are non-exempt hourly employees entitled to overtime compensation, Defendants have consistently failed to provide Plaintiffs, and other Marketing Representatives, with the appropriate pay for all hours worked.

7. In that regard, Defendants time keeping practices are inaccurate, as Defendants instruct Plaintiffs to record 37.5 hours per week on their timesheet, regardless of the actual amount of time Plaintiffs work. As a result, Defendants fail to pay Plaintiffs their proper wages for hours 37.5 to 40 (2.5) hours, in addition to overtime hours worked over 40 hours per week.

8. Notwithstanding Marketing Representatives being instructed to record only 37.5 hours per week, Fidelis has a policy whereby Marketing Representatives are advised they will

receive overtime pay if the overtime hours are approved by management. However, when employees request approval, their requests are often denied. Upon information and belief, requests for overtime are denied because management erroneously maintains Marketing Representatives should be able to accomplish their productivity requirements by working only 37.5 hours per week.

9. Defendants know or should know that Marketing Representatives cannot meet the stated quotes within 37.5 per week, because their job duties encompass the following:

- a. Home Visits
- b. Attending Health Fairs
- c. Customer Service (including phone calls with applicants)
- d. Screening Applicants
- e. Filling Out and Reviewing Applications
- f. Making Copies
- g. Attending Meetings
- h. Driving to/from Locations
- i. Preparing Expense Reports (including mileage)

10. Defendants further instruct Marketing Representatives that if they were to record overtime hours on their timesheets without receiving supervisor approval, they would be violating Fidelis policies, with ramifications being “disciplinary action up to and including termination.” As a result of Fidelis’ policies, and fearful of losing their jobs for not meeting production requirements, Marketing Representatives indicate 37.5 hours on their timesheet, even though they work well over 40 hours per week.

11. Fidelis has actual and/or constructive knowledge of Marketing Representatives

working overtime hours. As an example, when addressing the amount of hours necessary to fulfill Defendants' production requirements, Angelo Zuffante, a manager, would frequently tell Marketing Representatives, "Do what you have to do", knowing that Marketing Representatives were working in excess of 40 hours per week.

PRIOR LAWSUIT AGAINST FIDELIS

12. In or about January 30, 2007, Thelma Higueros brought suit against Defendants for failure to pay overtime compensation. *See Higueros v. New York Catholic Health Plan, Inc. d/b/a Fidelis Care, Inc.*, 07 Civ. 0418 (E.D.N.Y. Jan. 30, 2007). In or about October 2008, *Higueros* was certified as a Class Action covering the period of January 30, 2001 to January 30, 2007, with notice issued to prospective class members.

13. Upon information and belief, in or about November 2008, Defendants Mark Lane and Patrick Frawley held a meeting with over one hundred Marketing Representatives to discuss the *Higueros* Class Action. During that meeting, Defendants intimidated Marketing Representatives, including Plaintiffs, into opting-out of the *Higueros* Class Action. For example, Mr. Lane claimed Plaintiff Higueros exaggerated her hours, stating "it was not possible for her to work so many hours". Furthermore, Mr. Lane erroneously told Marketing Representatives that they had to either opt-in or opt-out of the lawsuit. Moreover, at one point during the meeting, Mr. Lane warned Marketing Representatives to opt-out if "you don't want to be involved in a lawsuit against us [Fidelis]." As a result of Defendants undue influence, Plaintiffs Pedro Serrano, Karla Hidalgo, and approximately 185 other Marketing Representatives, opted-out of the *Higueros* Class Action.

14. Since January 30, 2007, the end of the class period in *Higueros*, Defendants have continued to deprive Marketing Representatives and their similarly situated co-workers, of

earned hourly and overtime wages.

15. As non-exempt employees, Marketing Representatives are entitled to overtime premiums for the hours they work in excess of 40 in a workweek. By failing to provide such wages, Defendants uniformly disregarded overtime provisions of the FLSA and the NYLL, despite knowledge that their practices violated the law.

16. Plaintiffs bring this action on behalf of themselves and similarly situated current and former employees of Defendants who elect to opt-in to this action pursuant to the FLSA, 29 U.S.C. §§ 201 *et seq.*, and specifically, the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the wage-and-hour provisions of the FLSA by Defendants that have deprived Plaintiffs and others similarly situated of their lawfully earned wages.

17. Plaintiffs also bring claims on behalf of themselves and a class of similarly situated current and former employees who work or worked for Defendants as Marketing Representatives in New York, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for failure to pay hourly wages, overtime and spread of hours pay in violation of the NYLL, Article 6 §190 *et seq.* and Article 19, § 650 *et seq.*, and the supporting New York State Department of Labor regulations.

THE PARTIES

Plaintiffs

Karla Hidalgo

18. Plaintiff Karla Hidalgo (“Hidalgo”) is an adult individual who is a resident of Oceanside, New York.

19. Hidalgo has been employed by Defendants as a Marketing Representative from on or about September 27, 2002 to the present, and opted out of the *Higueros* action.

20. Hidalgo is a covered employee within the meaning of the FLSA and NYLL.

21. A written consent form for Hidalgo is being filed with this Class Action Complaint.

Pedro Serrano

22. Plaintiff Pedro Serrano (“Serrano”) is an adult individual who is a resident of Elmont, New York.

23. Serrano has been employed by Defendants as a Marketing Representative from in or about April 2006 to the present and, opted out of the *Higueros* action.

24. Serrano is a covered employee within the meaning of the FLSA and NYLL.

25. A written consent form for Serrano is being filed with this Class Action Complaint.

Claudia Hernandez

26. Plaintiff Claudia Hernandez (“Hernandez”) is an adult individual who is a resident of Levittown, New York.

27. Hernandez has been employed by Defendants as a Marketing Representative from on or about January 14, 2008 to the present.

28. Hernandez is a covered employee within the meaning of the FLSA and NYLL.

29. A written consent form for Hernandez is being with this Class Action Complaint.

Defendants

30. Defendants New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York, Mark Lane, and Patrick Frawley (collectively “Fidelis” or “Defendants”) jointly employed Plaintiffs and similarly situated employees at all times relevant. Each Defendant has had

substantial control over Plaintiffs' working conditions, and over the unlawful policies and practices alleged herein.

New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York

31. New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York ("Fidelis") is a domestic business corporation, organized and existing under the laws of New York.

32. Throughout the relevant period, Fidelis employed Plaintiffs and similarly situated employees within the meaning of the FLSA and NYLL.

33. Fidelis is a covered employer within the meaning of the FLSA and NYLL and, at all times relevant, employed and/or jointly employed Plaintiffs and similarly situated employees.

34. At all relevant times, Fidelis maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

35. Upon information and belief, Fidelis applies the same employment policies, practices, and procedures to all Marketing Representatives throughout New York, including policies, practices, and procedures with respect to payment of overtime compensation.

36. Upon information and belief, at all times relevant, Fidelis's annual gross volume of sales made or business done was not less than \$500,000.00.

Individual Defendants

Mark Lane

37. Upon information and belief, Mark Lane ("Lane") is a resident of the State of New York.

38. Upon information and belief, at all relevant times, Lane has been the President

and Chief Executive Officer of Fidelis.

39. Upon information and belief, at all relevant times, Lane has had power over personnel decisions at the Fidelis, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

40. Upon information and belief, at all relevant times, Lane has had power over payroll decisions at the Fidelis, including the power to retain time and/or wage records.

41. Upon information and belief, Lane is actively involved in managing the day to day operations of Fidelis.

42. Upon information and belief, at all times relevant, Lane has also had the power to stop any illegal pay practices that harmed Plaintiffs.

43. Lane is a covered employer within the meaning of the FLSA and the NYLL, and at all times relevant, employed and/or jointly employed Plaintiffs and similarly situated employees.

Patrick Frawley

44. Upon information and belief, Patrick Frawley ("Frawley") is a resident of the State of New York.

45. Upon information and belief, at all relevant times, Frawley has been the Executive Vice President and Chief Operating Officer of Fidelis.

46. Upon information and belief, at all relevant times, Frawley has had power over personnel decisions at the Fidelis, including the power to hire and fire employees, set their wages, and otherwise control the terms and conditions of their employment.

47. Upon information and belief, at all relevant times, Frawley has had power over payroll decisions at the Fidelis, including the power to retain time and/or wage records.

48. Upon information and belief, Frawley is actively involved in managing the day to day operations of Fidelis.

49. Upon information and belief, at all times relevant, Frawley has also had the power to stop any illegal pay practices that harmed Plaintiffs.

50. Frawley is a covered employer within the meaning of the FLSA and the NYLL, and at all times relevant, employed and/or jointly employed Plaintiffs and similarly situated employees.

JURISDICTION AND VENUE

51. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

52. This Court also has jurisdiction over Plaintiffs' claims under the FLSA pursuant to 29 U.S.C. § 216(b).

53. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

54. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

COLLECTIVE-WIDE FACTUAL ALLEGATIONS

55. Plaintiffs bring the First and Second Causes of Action, FLSA claims, on behalf of themselves and all similarly situated persons who work or have worked for Defendants as Marketing Representatives in New York who elect to opt-in to this action (the "FLSA Collective")

56. Consistent with Defendants' policy and pattern or practice, Plaintiffs and the

FLSA Collective were not paid hourly pay for hours 37.5 to 40 and premium overtime compensation for all hours worked beyond 40 per workweek.

57. All of the work that Plaintiffs and the FLSA Collective have performed has been assigned by Defendants, and/or Defendants have been aware of all of the work that Plaintiffs and the FLSA Collective have performed.

58. As part of its regular business practice, Defendants have intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiffs and the FLSA Collective. This policy and pattern or practice includes, but is not limited to:

a. willfully failing to pay its employees, including Plaintiffs and the FLSA Collective, hourly pay for hours 37.5 to 40 and overtime wages for hours that they worked in excess of 40 hours per workweek;

b. willfully failing to record all of the time that its employees, including Plaintiffs and the FLSA Collective, have worked for the benefit of Defendants.

59. Defendants' unlawful conduct, as described in this Class Action Complaint, is pursuant to a corporate policy or practice of minimizing labor costs by having employees record their hours inaccurately.

60. Defendants are aware or should have been aware that federal law required them to pay employees performing non-exempt duties an overtime premium for hours worked in excess of 40 per workweek.

61. Plaintiffs and the FLSA Collective perform or performed the same primary duties.

62. Defendants' unlawful conduct has been widespread, repeated, and consistent.

CLASS ACTION ALLEGATIONS

63. Plaintiffs brings the Third, Fourth, and Fifth Causes of Action, NYLL claims,

under Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and two classes of persons consisting of:

- A. All persons who work or have worked for Defendants as "Marketing Representatives" in New York between January 31, 2007 and the date of final judgment in this matter (the "Rule 23 Class").
- B. All persons who opted-out of the *Higueros v. New York Catholic Health Plan, Inc. d/b/a Fidelis Care, Inc.*, 07 Civ. 0418 (E.D.N.Y. Jan. 30, 2007), Class Action, who work or have worked at New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York as Marketing Representatives in New York between September 27, 2005 to the present. (the "Rule 23 Sub-Class").

64. Excluded from the Rule 23 Classes are Defendants, Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Rule 23 Classes.

65. The members of the Rule 23 Classes are so numerous that joinder of all members is impracticable.

66. Upon information and belief, the size of the Rule 23 Classes are at least 50 individuals. Although the precise number of such employees is unknown, the facts on which the calculation of that number depends are presently within the sole control of Defendants.

67. Defendants have acted or have refused to act on grounds generally applicable to the Rule 23 Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Rule 23 Classes as a whole.

68. Common questions of law and fact exist as to the Rule 23 Classes that predominate over any questions only affecting them individually and include, but are not limited to, the following:

- (a) whether Defendants violated NYLL, Articles 6 and 19, and the supporting New York State Department of Labor regulations;
- (b) whether Defendants failed to compensate Plaintiffs and the Rule 23 Classes for hours 37.5 to 40 and hours worked in excess of 40 hours per workweek;
- (c) whether Defendants failed to pay Plaintiffs and the Rule 23 Classes spread of hours pay;
- (d) whether Defendants failed to keep true and accurate time and pay records for all hours worked by Plaintiffs and the Rule 23 Classes, and other records required by the NYLL;
- (e) what proof of hours is sufficient where an employer fails in its duty to maintain true and accurate time records;
- (f) whether Defendants' policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and
- (g) the nature and extent of class-wide injury and the measure of damages for those injuries.

69. The claims of Plaintiffs are typical of the claims of the Rule 23 Classes they seek to represent. Plaintiffs and all members of the Rule 23 Classes work, or have worked, for Defendants as Marketing Representatives in New York. Plaintiffs and members of the Rule 23 Classes, enjoy the same statutory rights under the NYLL to be paid for all hours worked, to be paid overtime wages and spread of hours pay. Plaintiffs and members of the Rule 23 Classes have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL. Plaintiffs and the members of the Rule 23 Classes have all been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct.

70. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Rule 23 Classes. Plaintiffs understand that as class representatives, they assume a fiduciary responsibility to the class to represent its interests fairly and adequately. Plaintiffs recognize that as class representatives, they must represent and consider the interests of the class

just as they would represent and consider their own interests. Plaintiffs understand that in decisions regarding the conduct of the litigation and its possible settlement, they must not favor their own interests over the class. Plaintiffs recognize that any resolution of a class action must be in the best interest of the class. Plaintiffs understand that in order to provide adequate representation, they must be informed of developments in litigation, cooperate with class counsel, and testify at deposition and/or trial. Plaintiffs have retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between the Plaintiffs and the Rule 23 members.

71. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. The members of the Rule 23 Classes have been damaged and are entitled to recovery as a result of Defendants' violation of the NYLL as well as its common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the Rule 23 Classes are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. The individual Plaintiffs lack the financial resources to conduct a thorough examination of Defendants' timekeeping and compensation practices and to prosecute vigorously a lawsuit against Defendants to recover such damages. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

72. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

PLAINTIFFS' FACTUAL ALLEGATIONS

73. Consistent with its policies and patterns or practices as described herein, Defendants harmed Plaintiffs individually as follows:

Karla Hidalgo

74. From in or about October 2005 to in or around 2007, Hidalgo worked over 40 hours per week, with a maximum of approximately 80 hours per workweek for Defendants without receiving regular pay for hours 37.5 to 40, or overtime compensation for any of the hours she worked over 40 in a workweek.

75. From in or about 2007 to in or around February 2010, Hidalgo worked over 40 hours per week, with a maximum of approximately 57 hours per workweek for Defendants without receiving regular pay for hours 37.5 to 40, or overtime compensation for any of the hours she worked over 40 in a workweek.

76. Following the February 2008 meeting held by Lane and Frawley, Hidalgo opted-out of the *Higueros* Class Action.

77. From in or around March 2010 to the present, Hidalgo worked over 40 hours per week, with a maximum of approximately 50 hours per workweek for Defendants without receiving pay for hours 37.5 to 40, or overtime compensation for any of the hours she worked over 40 in a workweek.

78. Defendants were aware that Hidalgo's position as a Marketing Representative was non-exempt and that Hidalgo was working well over 40 hours per workweek, yet they failed to pay her any overtime compensation for any of the hours she worked over 40 in a workweek.

79. Defendants did not pay Hidalgo an hourly wage for the gap time she worked between 37.5 hours and 40 hours per week.

80. Defendants did not pay Hidalgo spread of hours pay for all of the time that she worked in excess of 10 hours per day.

81. Upon information and belief, Defendants did not keep accurate records of hours worked by Hidalgo.

Pedro Serrano

82. From in or about September 2006 to in or about February 2010, Serrano worked over 40 hours per week, with a maximum of approximately 64 hours per workweek for Defendants without receiving regular pay for hours 37.5 to 40, or overtime compensation for any of the hours he worked over 40 in a workweek.

83. Following the February 2008 meeting held by Lane and Frawley, Serrano opted-out of the *Higueros* Class Action.

84. From in or about March 2010 to the present, Serrano worked over 40 hours per week, with a maximum of approximately 59 hours per workweek for Defendants without receiving regular pay for hours 37.5 to 40, or overtime compensation for any of the hours he worked over 40 in a workweek.

85. Defendants were aware that Serrano's position as a Marketing Representative was non-exempt and Serrano was working well over 40 hours per workweek, yet they failed to pay him any overtime compensation for any of the hours he worked over 40 in a workweek.

86. Defendants did not pay Serrano an hourly wage for the gap time he worked between 37.5 hours and 40 hours per week.

87. Defendants did not pay Serrano spread of hours pay for all of the time that he worked in excess of 10 hours per day.

88. Upon information and belief, Defendants did not keep accurate records of hours worked by Serrano.

Claudia Hernandez

89. From on or about January 14, 2008 to in or around February 2010, Hernandez worked over 40 hours per week, to a maximum of approximately 80 hours per workweek for Defendants without receiving regular pay for hours 37.5 to 40, or overtime compensation for any of the hours she worked over 40 in a workweek.

90. From in or about March 20010 to the present, Hernandez has worked over 40 hours per week, to a maximum of approximately 50 hours per workweek for Defendants without receiving regular pay for hours 37.5 to 40, or overtime compensation for any of the hours she worked over 40 in a workweek.

91. Defendants were aware that Hernandez's position as a Marketing Representative was non-exempt and Hernandez was working well over 40 hours per workweek, yet they failed to pay her any overtime compensation for any of the hours she worked over 40 in a workweek.

92. Defendants did not pay Hernandez an hourly wage for the gap time she worked between 37.5 hours and 40 hours per week.

93. Defendants did not pay Hernandez spread of hours pay for all of the time that she worked in excess of 10 hours per day.

94. Hernandez never received notice of the *Higueros* Class Action.

95. Upon information and belief, Defendants did not keep accurate records of hours worked by Hernandez.

FIRST CAUSE OF ACTION
Fair Labor Standards Act – Overtime Wages
(Brought on behalf of Plaintiffs and the FLSA Collective)

96. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

97. Defendants have engaged in a widespread pattern and practice of violating the FLSA, as described in this Class Action Complaint.

98. Plaintiffs have consented in writing to be a party of this action, pursuant to 29 U.S.C. § 216(b).

99. At all relevant times, Plaintiffs and other similarly situated current and former employees were engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

100. The overtime wage provisions set forth in §§ 201 *et seq.* of the FLSA apply to Defendants.

101. Defendants are employers engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

102. At all times relevant, Plaintiffs were employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

103. Defendants have failed to pay Plaintiffs and other similarly situated current and former employees the overtime wages to which they were entitled to under the FLSA.

104. Defendants' violations of the FLSA, as described in this Class Action Complaint, have been willful and intentional. Defendants have not made a good faith effort to comply with the FLSA with respect to their compensation of Plaintiffs and other similarly situated current and former employees.

105. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 225.

106. As a result of Defendants' willful violations of the FLSA, Plaintiffs and all other similarly situated have suffered damages by being denied overtime wages in accordance with 29 U.S.C. §§ 201 *et seq.*

107. As a result of the unlawful acts of Defendants, Plaintiffs and other similarly situated current and former employees have been deprived of overtime compensation and other wages in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs and other compensation pursuant to 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION
Fair Labor Standards Act – Gap Time
(Brought on behalf of Plaintiffs and the FLSA Collective)

108. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

109. Defendants have engaged in a widespread pattern and practice of violating the FLSA, as described in this Complaint.

110. Plaintiffs have consented in writing to be a party of this action, pursuant to 29 U.S.C. § 216(b).

111. At all relevant times, Plaintiffs and other similarly situated current and former employees were engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

112. The wage provisions set forth in §§ 201 *et seq.* of the FLSA apply to Defendants.

113. Defendants are employers engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

114. At all times relevant, Plaintiffs were employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

115. Defendants have failed to pay Plaintiffs and other similarly situated current and former employees 2.5 hours per week for hours 37.5 to 40 to which they were entitled to under the FLSA in workweeks where Plaintiffs and class members worked over 40 hours per week.

116. This FLSA gap-time claim is cognizable pursuant to 29 C.F.R § 778.315.

117. Defendants' violations of the FLSA, as described in this Class Action Complaint, have been willful and intentional. Defendants have not made a good faith effort to comply with the FLSA with respect to its compensation of Plaintiffs and other similarly situated current and former employees.

118. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 225.

119. As a result of Defendants' willful violations of the FLSA, Plaintiffs and all other similarly situated have suffered damages by being denied pay for hours 37.5 to 40 in accordance with the FLSA and corresponding United States Department of Labor regulations.

120. As a result of the unlawful acts of Defendants, Plaintiffs and other similarly situated current and former employees have been deprived of 2.5 hours of regular pay for hours 37.5 to 40 and other wages in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interests, attorneys' fees, costs and other compensation pursuant to the FLSA and corresponding United States Department of Labor regulations.

THIRD CAUSE OF ACTION

**New York Labor Law Article 19 – Unpaid Overtime
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)**

121. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

122. Defendants engaged in a widespread pattern, policy, and practice of violating the NYLL, as detailed in this Class Action Complaint.

123. At all times relevant, Plaintiffs and members of the Rule 23 Class have been employees and Defendants have been their employer within the meaning of the NYLL.

124. Plaintiffs and the Class Members are covered by the NYLL.

125. Defendants employed Plaintiffs and members of the Rule 23 Class as an employer.

126. Defendants have failed to pay Plaintiffs and the members of the Rule 23 Class overtime wages to which they are entitled under the NYLL Article 19 §650 *et seq.*, and the supporting New York State Department of Labor Regulations.

127. Defendants failed to pay Plaintiffs and members of the Rule 23 Class, overtime at a wage rate of one and one-half times their regular rate of pay.

128. Defendants failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiffs and members of the Rule 23 Class.

129. Defendants' violations of the NYLL, as described in this Class Action Complaint, have been willful and intentional.

130. Due to Defendants' violations of the NYLL, Plaintiffs and the members of the Rule 23 Class, are entitled to recover from Defendants unpaid overtime, reasonable attorneys' fees and costs of the action, liquidated damages as provided for by NYLL Article 6 § 198, and

pre-judgment and post-judgment interest.

FOURTH CAUSE OF AUCTION

**New York Labor Law Article 6 – Failure to Pay Wages
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)**

131. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

132. Defendants have willfully failed to pay Plaintiffs and the members of the Rule 23 Class for 2.5 hours worked per week (between 37.5 to 40 hours per week).

133. By Defendants' failure to pay Plaintiffs and the member of the Rule 23 Class all rightfully earned wages, Defendants have willfully violated the NYLL Article 6, §§ 190, 191 *et seq.*, and the supporting New York State Department of Labor regulation.

134. Due to Defendants' violations of the NYLL, Plaintiffs and the members of the Rule 23 Class are entitled to recover from Defendants their unpaid wages, liquidated damages, as provided for by NYLL Article 6 § 198, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

FIFTH CAUSE OF ACTION

**New York Labor Law– Spread-of-Hours Pay
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)**

135. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

136. Defendants have willfully failed to pay Plaintiffs and the members of the Rule 23 Class additional compensation of one hour's pay at the basic minimum hourly wage rate for each day during which they worked more than 10 hours.

137. By Defendants' failure to pay Plaintiffs and the member of the Rule 23 Class spread-of-hours pay, Defendants have willfully violated the NYLL Article 19, §§ 650 *et seq.*,

and the supporting New York State Department of Labor regulation.

138. Due to Defendants' violations of the NYLL, Plaintiffs and the members of the Rule 23 Class are entitled to recover from Defendants their wages, liquidated damages, as provided for by NYLL Article 6 § 198, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated persons, seeks for the following relief:

A. That, at the earliest possible time, Plaintiffs be allowed to give notice of this class action, or that the Court issue such notice, to all persons who are presently, or have at any time during the six years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, been employed by Defendants as Marketing Representatives or similarly situated positions. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

B. Unpaid gap time, overtime pay, and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor regulations.

C. Unpaid agreed to wages, overtime pay, spread of hours pay, and 100% liquidated damages permitted by law pursuant to NYLL.

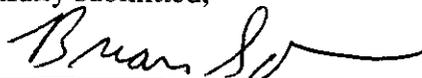
D. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

E. Designation of Plaintiffs as representatives of the Rule 23 Class, and counsel of record as Class Counsel;

- F. Issuance of a declaratory judgment that the practices complained of in this Class Action Complaint are unlawful under the NYLL.
- G. Pre-judgment interest and post-judgment interest as provided by law;
- H. Appropriate equitable and injunctive relief to remedy violations, including but not necessarily limited to an order enjoining Defendants from continuing its unlawful practices;
- I. Attorneys' fees and costs of the action;
- J. Such other injunctive and equitable relief as this Court shall deem just and proper.

Dated: New York, New York
September 27, 2011

Respectfully submitted,



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the Putative Class*

FAIR LABOR STANDARDS ACT CONSENT

I, consent to be a party plaintiff in a lawsuit against Fidelis/New York State Catholic Health Plan and/or related entities and individuals in order to seek redress for violations of Fair Labor Standards Act, pursuant to 29 U.S.C. §216 (b). I hereby designate Fitapelli & Schaffer, LLP to represent me in such a lawsuit.



Signature

KARLA HIDALGO.

Full Legal Name (Print)



Address



City, State

Zip Code

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Signature PEDRO FERRARO

Full Legal Name (Print)

Address

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Signature

Claudia R. Hernandez

Full Legal Name (Print)



Address



City, State

Zip Code