

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KARMA SIEWHARACK, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

QUEENS LONG ISLAND MEDICAL GROUP P.C.,

Defendant.

Index No. 11-cv-03603-WFK-ARL

**NOTICE OF PROPOSED SETTLEMENT OF
CLASS ACTION LAWSUIT AND FAIRNESS HEARING**

**TO: ALL CURRENT AND FORMER NON-EXEMPT EMPLOYEES WHO ARE OR
WERE EMPLOYED BY QUEENS LONG ISLAND MEDICAL GROUP P.C.
("QLIMG") IN ANY OF ITS OFFICES AND/OR URGENT CARE CENTERS**

Based on QLIMG's records, you may be a Class Member who is entitled to participate in a proposed \$2,450,000.00 million settlement of the case captioned *Siewharack v. Queens Long Island Medical Group P.C.* (the "Lawsuit"). **Please read this Notice carefully.** It contains important information about your rights concerning the class action settlement described below.

As described more fully below, to participate in the settlement, you must submit a properly completed Claim Form and Release in time to be postmarked by May 13, 2013 and also for the Claims Administrator to receive it by May 20, 2013. If you fail to turn in a timely Claim Form and Release, you will receive no monetary distribution from the settlement. Unless you "Opt Out" of the Lawsuit and the Settlement by submitting an Opt-Out Statement postmarked by May 13, 2013 and received by May 20, 2013, you will be bound by the terms of the settlement, regardless of whether you submit a Claim Form and Release or receive money.

Class Members are encouraged to participate in this settlement. The law prohibits retaliation against current or former employees who participate in settlements.

Important Deadlines:

- Deadline for the Claim Form and Release: must be mailed to the Claims Administrator postmarked by May 13, 2013, and also received by May 20, 2013.
- Deadline for the Opt-Out Statement: must be postmarked by May 13, 2013 and received by May 20, 2013.

- Deadline for objecting to the Settlement: must be postmarked by May 13, 2013 and mailed in time for the Claims Administrator to receive it by May 20, 2013.

For assistance completing the Claim Form and Release or for assistance with related matters, please contact the Claims Administrator at (855) 615-4340.

This Notice explains the nature of the Lawsuit and the terms of the settlement and informs you of your rights and obligations. This Notice should not be understood as an expression of any opinion by the Court as to the merits of any of the claims or defenses asserted by the parties. This Notice contains information about the following topics:

1. What Is This Lawsuit About
2. What Is A Class Action
3. What Is The Purpose Of This Notice
4. Who Is Included In The Lawsuit
5. Who Is Class Counsel
6. What Are The Benefits And Terms Of The Proposed Settlement
7. When Is The Fairness Hearing To Approve The Settlement
8. How Can You Object To The Proposed Settlement
9. How Can You Opt Out Of The Settlement
10. How Can You Examine Court Records
11. What If You Have Questions

1. What Is This Lawsuit About

A former employee of QLIMG, Karma Siewharack (“Plaintiff”), filed this lawsuit alleging that QLIMG violated the Fair Labor Standards Act (“FLSA”) and New York Labor Law by causing QLIMG’s time-clock system to round down the amount of time employees were credited with having performed work at the company’s facilities. As a result, Plaintiff alleges that she and other non-exempt employees of QLIMG were not fully compensated for work performed before and after scheduled shifts and during meal breaks. She further alleges that hourly, non-exempt employees did not receive overtime for all hours worked over forty hours in a week. Plaintiff, on behalf of herself and others she claims are similarly situated, seeks to recover unpaid wages and overtime, damages, injunctive relief and attorneys’ fees and costs.

QLIMG has denied and continues to deny any wrongdoing and denies any and all liability and damages with respect to the alleged facts or causes of action asserted in the Lawsuit. To avoid the burden, expense, inconvenience, and uncertainty of continued litigation, however,

QLIMG has concluded that it is in its best interests to resolve and settle the Lawsuit by entering into a settlement agreement (the “Settlement”).

The Lawsuit is presently before Judge William F. Kuntz, United States District Judge for the United States District Court for the Eastern District of New York. Judge Kuntz has not made any decisions on the merits of the case. On February 7, 2013, Judge Kuntz conditionally certified this matter as a class action and granted preliminary approval of the Settlement (the “Preliminary Approval Order”), subject to a fairness hearing which will take place on June 14, 2013, at 11:00 a.m. in the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201.

2. What Is A Class Action

A class action is a lawsuit in which the claims and rights of many people are decided in a single court proceeding. One or more representative plaintiffs, also known as “Plaintiffs” or “Class Representatives,” file a lawsuit asserting claims on behalf of the entire class.

3. What Is The Purpose Of This Notice

Judge Kuntz has ordered that this Notice be sent to you because you may be a Class Member. The purpose of this Notice is to inform you of the proposed Settlement and of your rights, including:

- To inform you of your right to “opt out” of the settlement class, and thereby preserve your ability to independently bring any claim that you might have;
- To inform you of your right to file objections to the Settlement;
- To inform you of the steps you must take to receive any share of the settlement funds.

4. Who Is Included In The Lawsuit

You are a Class Member if you are or were employed by Queens Long Island Medical Group P.C. in any of its offices and/or urgent care centers at any time from July 26, 2005 (six years prior to the date Plaintiff’s Complaint was filed) to February 7, 2013 (the date the Court signed the Preliminary Approval Order), whether or not you were covered by a collective bargaining agreement.

5. Who Is Class Counsel

The Court has approved and appointed lawyers to represent all members of the Class. Class Counsel are Lee S. Shalov of McLaughlin & Stern, LLP and Louis Ginsberg, of the Law Firm of Louis Ginsberg P.C. Class Counsel can be reached at (212) 448-1100 for Mr. Shalov and (516) 625-0105 for Mr. Ginsberg.

6. What Are The Benefits And Terms Of The Proposed Settlement

Plaintiff and Defendant have agreed to the Settlement summarized below. The complete terms and conditions of the proposed Settlement are on file with the Clerk of Court at the address listed below in Section 10. The parties' obligations under the settlement agreement will not become effective unless and until it receives final court approval, including the exhaustion of any appeals.

(a) What Are The Benefits Of The Settlement

Class Members who do not opt out of the Settlement and timely and properly complete and return the Claim Form and Release, as described in Section 6(c) below ("Qualified Class Members"), will be eligible to receive a specified share of a \$2,450,000.00 settlement fund (the "Total Settlement Amount"), less certain deductions described below, based on a formula approved by the Court.

The following deductions will be made to the \$2,450,000.00 Total Settlement Amount prior to distribution of the settlement funds to Qualified Class Members:

- **Settlement Administration Fees:** A reserve will be set aside for reasonable costs associated with administering the Settlement. The reserve will be used to pay a claims administration company for mailings, processing claims, providing information and assistance to Class Members, and preparing information reported to the Court.
- **Attorneys' Fees and Costs:** Class Counsel will seek, and Defendant will not oppose, an award covering fees not to exceed 33.33% of the Total Settlement Amount described above and an additional amount reimbursement for reasonable litigation costs and expenses. All fee awards, costs and expenses paid to Class Counsel will be paid from the Total Settlement Amount. Thus, you have no personal responsibility to pay attorneys' fees or the costs incurred by Class Counsel. Class Counsel has expended considerable time and effort in the prosecution of this litigation on a contingent basis, and they have advanced the expenses of this litigation in the expectation that if they were successful in obtaining a recovery in the matter, they would be paid from that recovery. In this type of litigation, it is customary for counsel to be awarded a percentage of the recovery to cover attorneys' fees, costs, and expenses.
- **Service Payment:** If the Court approves such payments, the Plaintiff in this case will receive a payment of up to \$10,000 because she provided service to the Class by, among other things, helping Class Counsel formulate claims, appearing for a deposition and participating in the discovery process. The payment outlined in this paragraph is separate from and in addition to the share of the Total Settlement Amount that Plaintiff may also be eligible to receive.
- **Taxes:** One-half of the employment taxes associated with the wages paid under the Settlement will be paid directly by QLIMG up to a cap of \$120,000.00, and

one-half of the employment taxes associated with the wages paid under the Settlement will be paid from the Total Settlement Amount.

The remaining amount in the Total Settlement Amount (the “Net Settlement Amount”) will be distributed according to the method set forth below in Section 6(d).

(b) **What Is The Legal Effect Of Participating In The Settlement**

If the Court grants final approval of the Settlement, in exchange for the \$2,450,000.00 settlement described above, this action will be dismissed with prejudice and Class Members who do not opt out will fully release and discharge QLIMG and certain “released parties” from claims relating to their employment. When claims are “released,” that means that a person covered by the release cannot sue the Defendant, its officers, directors, parents, subsidiaries and other related persons and entities for any of the claims that are covered by the release, such as claims regarding unpaid wages, denial of meal periods and rest breaks and failure to keep records.

The terms of the Release in the Settlement Agreement read:

“The persons released pursuant to this Agreement are QLIMG and Navigant Consulting Inc. and their respective successors, assigns, representatives, insurers, parents, subsidiaries, divisions, affiliates and related companies, present and former members, officers, agents, directors, partners, supervisors, attorneys, employees, consultants, and each and every one of them, and their respective heirs, executors, administrators, successors and assigns, and all persons acting by, through, under or in concert with them, and each and every one of them and their respective heirs, executors, administrators, successors and assigns, and all persons acting by, through, under or in concert with them, as well as Dr. Carlos Hleap, Frank Bonanno, Lonn McDowell, Peter Wolf, Karen O'Neill, Michael Horton, Dr. Anup Gewalla, Dr. Mark Friedman, and Dr. Roy Guinto; (all of which are referred to collectively as the “Released Parties”).”

“By operation of the entry of the Judgment and Final Approval, and except as to such rights or claims as may be created by this Agreement, Plaintiff and each Class Member who does not timely opt out pursuant to Section 3.6 of the Agreement, forever and fully releases the Released Parties from any and all past and present matters, claims, demands, causes of action, and appeals of any kind whatsoever, whether at common law, pursuant to statute, ordinance, or regulation, in equity or otherwise, and whether arising under federal, state, local, or other applicable law, which any such individual has or might have, known or unknown, of any kind whatsoever, that are based upon federal, state or local laws governing overtime pay, wage requirements, or hours worked or that otherwise arise out of or relate to the facts, acts, transactions, occurrences, events or omissions alleged in the Litigation (“Released Claims”). The Released Claims include without limitation claims asserted in the Litigation and any other claims based on federal, state or local law governing overtime pay, exempt status, payment of wages, hours worked, denial of meal periods and rest breaks, denial of spread of hours pay, failure to provide itemized wage statements or wage notices, failure to make payments due had such individual been classified as nonexempt, failure to provide benefits or benefit credits, failure to keep records of hours worked or compensation due, and penalties for any of the foregoing,

including without limitation claims under the Fair Labor Standards Act (“FLSA”), the New York Minimum Wage Act, New York Labor Law §§ 650 *et seq.*, New York Wage Payment Act, New York Labor Law §§ 190 *et seq.*, and the New York State Department of Labor Regulations, 12 N.Y.C.R.R. part 142, 12 N.Y.C.R.R. part 146.

(c) **How Can I Participate In The Settlement**

If you wish to receive a distribution from the settlement fund, you must timely complete and return the enclosed Claim Form and Release according to the instructions provided on the form, including: (1) an acknowledgment that by signing the Claim Form and Release, you opt in to the case pursuant to 29 U.S.C. § 216(b); and (2) a release of claims consistent with that set forth in Section 6(b) of this Notice. The Claim Form and Release must be personally filled out by the current or former employee who seeks to participate in the Settlement or someone with a legal right to act on his or her behalf.

The Claim Form and Release must be properly completed, signed, and mailed to the Claims Administrator via First Class United States Mail, postmarked by May 13, 2013 and also received by the Claims Administrator by May 20, 2013. If you do not properly complete and timely submit the Claim Form and Release, you will not be eligible to receive any monetary distribution. Class Counsel recommend that you send your Claim Form and Release in the enclosed postage-prepaid envelope.

You should keep in mind that if you do not opt out, and if you do not properly and timely complete and return the Claim Form and Release in accordance with instructions provided on the form, you will not receive a distribution from the settlement fund, but you will still be bound by the Release described above.

(d) **How Will My Share Be Calculated If I Participate**

Each Qualified Class Member who submits a timely and properly completed Claim Form and Release will receive a share of the Net Settlement Amount (that is, the settlement funds that remain after deductions are made for attorneys’ fees and expenses, the Plaintiff’s service payment, administration costs and certain employment-related taxes). The formula for distributing the Net Settlement Fund to Qualified Class Members is as follows:

Each Qualified Class Member shall be entitled to that fraction of the Net Settlement Fund which corresponds to the ratio that his or her Gross Earnings (as defined below) bears to the aggregate of all Qualified Class Members’ Gross Earnings. The term “Gross Earnings” shall mean all gross wages paid to such Qualified Class Member by QLIMG during the “Covered Period” (which is July 26, 2005 to the date the Court enters an order preliminarily approving the Settlement) as reflected in IRS Forms W-2 (“Gross W-2 Earnings”). The formula would therefore be $\text{Net Settlement Fund} \times (\text{Qualified Class Member Gross W-2 Earnings} / \text{Class Gross W-2 Earnings})$. For example, if during the Covered Period, Qualified Class Member No. 1 had Gross W-2 Earnings of \$600,000 attributable to non-exempt work, and the aggregate of all Qualified Class Members’ Gross W-2 Earnings attributable to non-exempt work during the Covered Period is \$300,000,000, Qualified Class Member No. 1 would be entitled to \$3,200 (reflecting a hypothetical Net Settlement Fund of \$1,600,000 \times \$600,000/\$300,000,000).

Qualified Class Members are not required to provide their wage information to the Claims Administrator to participate in the Settlement. Wage information for each Qualified Class Member will be provided by QLIMG, and the Claims Administrator will make the necessary calculations with regard to each Qualified Class Members' distribution after all submitted claims are reviewed and processed.

7. When Is The Fairness Hearing To Approve The Settlement

The Court has granted preliminary approval of the proposed Settlement, concluding preliminarily that the Settlement is fair, adequate, and reasonable and that the proposed distribution of the Settlement amount is fair, adequate, and reasonable.

A hearing will be held to determine whether final approval of the Settlement and the amount of reasonable attorneys' fees and costs should be granted. At the hearing, the Court will hear objections, if any, and arguments concerning the fairness of the proposed Settlement and the request for reasonable attorneys' fees and costs. The hearing will take place before Judge Kuntz on June 14, 2013, at 11:00 a.m., or as soon thereafter as practicable, at the Courthouse located at 225 Cadman Plaza East Brooklyn, New York 11201. The time and date of this hearing may be continued or adjourned, so please contact Class Counsel prior to the date of the hearing if you plan to attend.

YOU ARE NOT OBLIGATED TO ATTEND THIS HEARING. YOU MAY ATTEND THE HEARING IF YOU PLAN TO OBJECT TO THE SETTLEMENT. YOU MAY ALSO RETAIN YOUR OWN ATTORNEY TO REPRESENT YOU IN YOUR OBJECTIONS. IF YOU WISH TO OBJECT TO THE SETTLEMENT, YOU MUST SUBMIT A WRITTEN OBJECTION AS DESCRIBED IN THE FOLLOWING SECTION. IF YOU WISH TO APPEAR AT THE HEARING TO DISCUSS YOUR OBJECTION YOU MUST STATE IN YOUR OBJECTION YOUR INTENTION TO APPEAR AT THE FAIRNESS HEARING.

8. How Can You Object To The Proposed Settlement

If you want to present objections at the Fairness Hearing, you must submit a written statement of the objection(s) to the Claims Administrator at the address below. Your objection will not be heard unless it is mailed to the Claims Administrator via First Class United States Mail, postage prepaid. To be effective any objections must be postmarked no later than May 13, 2013 and received by the Claims Administrator no later than May 20, 2013. You do not need to be represented by counsel to object. If you wish to present your objection at the fairness hearing, you must state your intention to do so in your written objection. You may hire a lawyer to assist you with your objection or to represent you at the Fairness Hearing.

Siewharack v. QLIMG Claims Administrator
Post Office Box 10707
Tallahassee, FL 32302-2707

9. How Can You Opt Out Of The Settlement

You have the right to exclude yourself, and yourself only, from this Lawsuit and Settlement. **If you choose to exclude yourself, you will not be barred from seeking relief with respect to any legal claims and will be free to pursue an individual claim, if any, against Defendant, but you will not be eligible to receive the benefits of this Settlement.**

If you intend to exclude yourself, you must complete the enclosed Opt-Out Statement and mail it to the Claims Administrator at the address below. The Opt-Out Statement must be mailed to the Claims Administrator via First Class United States Mail, postage prepaid, postmarked no later than May 13, 2013 and also received no later than May 20, 2013.

Siewharack v. QLIMG Claims Administrator
Post Office Box 10707
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10. How Can You Examine Court Records

The foregoing description of the case is general and does not cover all of the issues and proceedings thus far. In order to see the complete file, including a copy of the settlement agreement, you should visit the Clerk of Court located at 225 Cadman Plaza East Brooklyn, New York 11201. The Clerk will make all files relating to this lawsuit available to you for inspection and copying at your own expense. You may enter an appearance in this case through an attorney if you so desire.

11. What If You Have Questions

If you have questions about this Notice, or want additional information, you can contact the Claims Administrator at (855) 615-4340.

Dated: February 7, 2013

This Notice is sent to you by Order of the United States District Court for the Eastern District of New York.