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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Maribel Alvarez,

9 Plaintiff,

10 vs.

11 Direct Energy Business Marketing LLC,
12 et al.,

13 Defendants.
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No. CV-16-03657-PHX-SPL

ORDER

15 Before the Court are Plaintiff's Unopposed Application for Attorneys' Fees and
16 Costs and Service Awards (Doc. 272) and Motion for Approval of the Class Action
17 Settlement (Doc. 274). For the following reasons, the Court will grant the motions.

18 On October 21, 2016, Maribel Alvarez ("Plaintiff") filed this collective action on
19 behalf of herself and other similarly situated employees of Direct Energy Business
20 Marketing LLC and its affiliates ("Defendants"), alleging that Defendants failed to pay
21 hourly wages, commissions/incentive wages, and overtime wages in violation of the Fair
22 Labor Standards Act, 29 U.S.C. §§ 201-219 ("FLSA"). (Doc. 1) Plaintiff also alleged
23 violations of the Arizona Wage Statutes, A.R.S. §§ 23-351, -352, -353, and -355 and
24 requested class certification pursuant to Federal Rule of Civil Procedure 23 ("Rule 23").
25 (Doc. 1)

26 On March 8, 2019, after participating in extensive discovery in this case as well as
27 arms-length negotiations, the parties filed a Joint Notice of Settlement. (Doc. 251) On July
28 25, 2019, the parties filed a Motion for Preliminary Approval of Proposed FLSA Collective

1 Action and Rule 23 Class Action Settlement. (Doc. 266) The Court granted the Motion and
2 preliminarily approved the settlement on November 11, 2019. (Doc. 267)

3 The parties' agreement states that Defendants shall provide for a total gross
4 settlement amount of \$1.3 million, \$856,041 of which is not subject to reversion. (Doc.
5 274 at 3) In the Order preliminarily approving the settlement, the Court: (1) conditionally
6 certified the Rule 23 class for settlement purposes; (2) confirmed the appointment of
7 Maribel Alvarez as the class representative; (3) confirmed the appointment of Ty Frankel
8 and Patricia Syverson as class counsel; and (4) approved the notice of settlement to all
9 prospective class members pursuant to Rule 23 and the Class Action Fairness Act of 2005.¹
10 (Doc. 267 at 5-6) In November of 2019, the Settlement Administrator sent the notice of
11 settlement to each prospective class member, and the deadline for objections ended on
12 January 16, 2020. (Doc. 274 at 3, 5-6) To date, 23 of the 25 FLSA Opt-in class members
13 have submitted claims and 185 of the 893 Rule 23 class members have submitted claims.
14 (Doc. 279 at 2) There are no objections to the settlement. (Doc. 274 at 6)

15 On January 7, 2020, Plaintiff filed the Unopposed Application for Attorneys' Fees
16 and Costs and Service Awards. (Doc. 272) On January 23, 2020, Plaintiff filed the Motion
17 for Approval of the Class Action Settlement. (Doc. 274) On January 30, 2020, the Court
18 held a final fairness hearing pursuant to Rule 23(e). (Doc. 275) At the hearing, the Court
19 ordered that: (1) Plaintiff's counsel submit an itemized billing statement in support of their
20 request for attorneys' fees and costs; and (2) the parties submit a joint notice of settlement
21 outlining the final accounting calculations under the settlement agreement. (Doc. 275) The
22 parties timely submitted the requested documents. (Docs. 276, 279) The Court has read
23 and considered the settlement agreement, the pending motions, and the record in this case.
24 The Court finds that, in consideration of the almost four years of litigation and the reasons
25 stated below, the settlement agreement is fundamentally fair, reasonable, adequate, and in
26 the best interest of the class members. Accordingly,

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28 ¹ 28 U.S.C. §§ 1332(d), 1453, and 1711-1715.

1 **IT IS ORDERED** that Plaintiff’s Unopposed Application for Attorneys’ Fees and
2 Costs and Service Awards (Doc. 272) and Motion for Approval of the Class Action
3 Settlement (Doc. 274) are **granted**.

4 **IT IS FURTHER ORDERED:**

5 1. For settlement purposes only, the Court certifies the following Settlement
6 Classes:

7 a. “Rule 23 Class Members” includes Direct Energy employees who worked
8 as customer service representatives at an Arizona Direct Energy call center
9 in Arizona from October 21, 2013 to August 30, 2018 and whose names are
10 set forth in an exhibit to the Settlement Agreement.

11 b. “FLSA Opt-in Class Members” means the current and former Customer
12 Service Representatives who worked at a Direct Energy call center in
13 Arizona who validly opted into this Lawsuit and who did not subsequently
14 opt out and whose names are set forth in an exhibit to the Settlement
15 Agreement.

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17 2. For settlement purposes only, the Court appoints the following attorneys to
18 act as Settlement Class Counsel: Ty Frankel and Patricia Syverson of Bonnett,
19 Fairbourn, Friedman & Balint, P.C.

20 3. For settlement purposes only, the Court appoints Maribel Alvarez as Class
21 Representative.

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23 4. The Court finds that notice to the Settlement Classes was provided in accordance
24 with the Court’s Preliminary Approval Order. (Doc. 267) This notice, in form,
25 method, and content, fully complied with the requirements of Rule 23 and due
26 process, constituted the best notice practicable under the circumstances, and
27 constituted sufficient notice to all persons entitled to notice of the settlement.
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1 5. The Court finds that the settlement of this action, on the terms and conditions set
2 forth in the Settlement Agreement, is in all respects fundamentally fair, reasonable,
3 adequate, and in the best interest of the class members, especially in light of: “the
4 strength of the Plaintiff’s case; the risk, expense, complexity, and likely duration of
5 further litigation; the risk of maintaining class action status throughout the trial; the
6 amount offered in settlement; the extent of discovery completed and the stage of the
7 proceedings; the experience and views of counsel; the presence of a governmental
8 participant; and the reaction of the class members to the proposed settlement.” *See*
9 *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, and Prods. Liab. Litig.*,
10 895 F.3d 597, 611 n.18 (9th Cir. 2018) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d
11 1011, 1026 (9th Cir. 1998)).

12 6. The Settlement Agreement, which is outlined in Docket Numbers 266-1 and 279,
13 shall be deemed incorporated herein, is finally approved and shall be consummated
14 in accordance with the terms and provisions thereof, except as amended by any order
15 issued by this Court. All terms of the Settlement Agreement are approved by this
16 Final Approval Order. The fact that this Final Approval Order specifically identifies
17 or summarily recapitulates some, but not other, provisions of the Settlement
18 Agreement does not modify any provision of the Settlement Agreement, nor does it
19 elevate or demote any provision vis á vis any other provision, nor does it create an
20 inference in that regard.

21 7. The Parties are directed to consummate the Settlement Agreement in accordance
22 with its terms. The Parties and any and all Settlement Class Members who did not
23 timely exclude themselves from the Settlement Class are bound by the terms and
24 conditions of the Settlement Agreement.

25 8. By operation of this Final Approval Order, the Releasing Parties release
26 and forever discharge the Released Parties from the Released Claims, and the
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1 Released Parties release and forever discharge Plaintiff and Settlement Class
2 Counsel, as set forth in the Settlement Agreement.

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4 9. This Order is not, and shall not be construed as, an admission by Defendant of
5 any liability or wrongdoing in this or in any other proceeding.

6 10. The Court makes the following awards pursuant to the Settlement Agreement:

7 a. \$132,602.03 as payment for the FLSA Opt-in Class Members who timely
8 submitted claims.

9 b. \$152,804.23 as payment for the Rule 23 Class Members who timely
10 submitted claims.

11 c. \$25,000 as payment for the administration of the Settlement Agreement.

12 d. \$38,500 as incentive awards to Plaintiff Alvarez and certain FLSA Opt-in
13 Class Members, as set forth in the Settlement Agreement.

14 e. \$624,829 as attorneys' fees and costs to Bonnett, Fairbourn, Friedman &
15 Balint, P.C.

16 f. Any additional outstanding costs to be paid from Defendants' reversionary
17 allotment.

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21 11. The Court finds that the parties' agreement to include a reversionary allotment
22 for Defendants is justified in this case. Members of each class are set to receive at
23 least thirty percent of their estimated damages. (Doc. 274 at 9) This amount is
24 consistent with other cases involving the underpayment of wages. *See Quintana v.*
25 *HealthPlanOne LLC*, No. CV-18-02169-PHX-RM, 2019 WL 3342339, at *3 (D.
26 Ariz. July 25, 2019) (finding settlement of wage and hour class action for "one-half
27 or one-third of the total possible recovery" to be reasonable). Additionally, the
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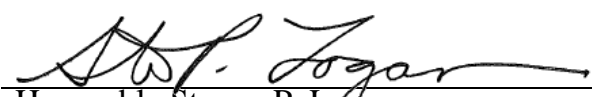
reversionary allotment represents only twenty-five percent of the total settlement fund. Therefore, the Court finds that the reversionary fund was reasonably included in the Settlement Agreement.

12. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

13. Without affecting the finality of this Order, The Court hereby retains continuing and exclusive jurisdiction over the parties and all matters relating to this action and/or the Settlement Agreement, including the administration, interpretation, construction, effectuation, enforcement, and consummation of the Settlement Agreement and this Order.

14. Plaintiff's Complaint (Doc. 1) is hereby dismissed with prejudice without costs to any party, except as provided in the Settlement Agreement.

Dated this 2nd day of March, 2020.


Honorable Steven P. Logan
United States District Judge