

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

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4 IN RE: WAL-MART WAGE AND HOUR  
5 EMPLOYMENT PRACTICES  
6 LITIGATION.

MDL 1735

2:06-CV-00225-PMP-PAL

7 ALL RELATED CASES.

8 ORDER AND JUDGMENT

9  
10 This matter is before the Court on the Motion by the Home Office Settlement Class for  
11 Final Approval of Settlement Award of Incentive Payment and Attorneys' Fees and Expenses  
12 ("Home Office Settlement Final Approval Motion").

13 WHEREAS, on November 2, 2009, the District Court entered an Order ("the November  
14 2, 2009, Order") granting final approval to and entering final judgment with respect to a  
15 settlement in In re: Wal-Mart Wage & Hour Employment Practices Litigation, Case No. 2:06-cv-  
16 00225-PMP-PAL as described in the November 2, 2009, Order and

17  
18 WHEREAS, the November 2, 2009, Order additionally ordered conditional certification  
19 for settlement purposes of a Home Office Settlement Class and granted preliminary approval to a  
20 settlement covering the Home Office Settlement Class; and

21 WHEREAS, the November 2, 2009, Order further directed that all members of the Home  
22 Office Settlement Class be given notice of the Home Office Settlement and of the date for the  
23 final approval hearing for the Home Office Settlement; and

24 WHEREAS, all terms, findings, judgments, and decrees in the November 2, 2009, Order  
25 and the Court's rulings on May 7, 2010 and May 18, 2010 pertaining to the Home Office  
26 Settlement are incorporated herein by reference; and  
27

1 WHEREAS, the Court has received the Declaration of Amanda J. Myette, given on  
2 behalf of the Claims Administrator, Rust Consulting, Inc., attesting to the mailing and  
3 publication of the Notice in the Home Office Settlement Class in substantial accordance with the  
4 November 2, 2009 Order; and  
5

6 WHEREAS, there were no timely filed objections to the Home Office Settlement; and

7 WHEREAS, the Court having conducted a final approval hearing for the Home Office  
8 Settlement on May 7, 2010 (the "Home Office Settlement Final Approval hearing"), and having  
9 considered the arguments presented in all of the papers and during the Home Office Settlement  
10 Final Approval Hearing on May 7, 2010, and at the hearing on October 19, 2009, and at all other  
11 hearings held in this action;  
12

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

14 1. The Court has jurisdiction over the subject matter of this action, all members of  
15 the Home Office Settlement Class, the Home Office Class Representative, and all Defendants.

16 2. In accordance with Rule 23 of the Federal Rules of Civil Procedure, the FLSA,  
17 including, without limitation, 29 U.S.C. §§206, 207(a), 211(c), 215, and 216(b), the Class Action  
18 Fairness Act ("CAFA") and the requirements of due process, all members of the Home Office  
19 Settlement Class have been given proper and adequate notice of the Home Office Settlement. In  
20 addition, federal and state officials have received notice of the Home Office Settlement pursuant  
21 to the requirements of CAFA. Based upon the evidence submitted by the Parties, the Agreement,  
22 the November 2, 2009, Order, the arguments of counsel, and all the files, records and  
23 proceedings in this case, the Court finds that the Notice and notice methodology implemented  
24 pursuant to the November 2, 2009, Order: (a) constituted the best practicable notice under the  
25 circumstances; (b) constituted notice that was reasonably calculated, under the circumstances, to  
26 apprise members of the Home Office Settlement Class of the pendency of the litigation, their  
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1 right to object to the Home Office Settlement, and their right to appear at the Home Office  
2 Settlement Final Approval Hearing; (c) were reasonable and constituted due, adequate and  
3 sufficient notice to all persons entitled to notice; and (d) met all applicable requirements of the  
4 Federal Rules of Civil Procedures, the FLSA, CAFA and any other applicable law.

5  
6 3. Based upon the evidence submitted by the Parties, including the declarations of  
7 experts, the Settlement Agreement, the arguments of counsel, and all the files, records and  
8 proceedings in this case, the Court further finds that the Home Office Settlement warrants final  
9 approval pursuant tot Rule 23 of the Federal Rules of Civil Procedures and the FLSA because it  
10 is fair, adequate, and reasonable to those it affects, and resulted form vigorously contested  
11 litigation, including extensive discovery, motion practice, and good-faith arm's length  
12 negotiations between the parties, and is in the public interest. I have previously articulated my  
13 opinions and findings after having considered the following factors and incorporate them by  
14 reference:  
15

- 16 (a) the strength of the plaintiffs' case;
- 17 (b) the risk, expense, complexity and likely duration of further litigation;
- 18 (c) the risk of maintaining class action status throughout the trial;
- 19 (d) the amount offered in settlement;
- 20 (e) the extent of discovery completed, and the state of the proceedings;
- 21 (f) the experience and views of counsel;
- 22 (g) the presence of a governmental participant; and
- 23 (h) the reaction of the class members to the proposed settlement.

24  
25 After having carefully considered each of these factors and finding they weigh clearly in favor of  
26 approving the settlement, the Court finds that this Settlement is fair and just and provides  
27 substantial benefits to the class members through both economic and injunctive relief. Torrisi v.  
28

1 Tucson Elec. Power Co., 8 F.3d 1370, 1375 (9<sup>th</sup> Cir. 1993); Officers for Justice v. Civil Serv.  
2 Comm'n of the City & County of San Francisco, 688 F.2d 615, 625 (9<sup>th</sup> Cir. 1982). This  
3 Settlement may be presumed to be fair, because settlements that follow sufficient discovery and  
4 genuine arm's length negotiation are presumed fair. Hanlon v. Chrysler Corp., 150 F.3d 1011,  
5 1026 (9<sup>th</sup> Cir. 1998).  
6

7 4. The Home Office Settlement Final Approval Motion is hereby GRANTED, and  
8 the Home Office Settlement is hereby APPROVED as fair, reasonable, adequate, and in the  
9 public interest. The Parties are directed to consummate the Agreement as it relates to the Home  
10 Office Settlement in accordance with the terms of the Agreement and the November 2, 2009,  
11 Order.  
12

13 5. The Court finally certifies the Home Office Settlement Class for settlement  
14 purposes in accordance with the terms and conditions of the November 2, 2009, Order and the  
15 Agreement.  
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17 6. The Court APPROVES payment to the Home Office Settlement Class members  
18 who submitted an Approved Claim in accordance with the terms of the November 2, 2009, Order  
19 and the Agreement.  
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21 7. The Court APPROVES payment of a Class Representative Compensation Award  
22 to Clifford Ferguson in the amount of \$10,000.  
23

24 8. The Court approves an award of Attorneys' Fees and Expenses to Class Counsel  
25 for the Home Office Settlement Class of \$100,000 to be paid from the award of attorneys' fees  
26 authorized by this Court's November 2, 2009, Order and November 20, 2009, Orders. In  
27 accordance with the proceedings on May 7, 2010 and May 18, 2010, the Court further refers any  
28 challenges by Plaintiffs' counsel as to the amount of the Attorneys' Fees and Expenses awarded  
to Class Counsel for the Home Office Settlement Class to Judge Layn R. Phillips.

1           9.       Approved claims by members of the Home Office Settlement Class, the Class  
2 Representative Compensation Award to Clifford Ferguson and Home Office Settlement Class  
3 Attorneys' Fees and Expenses shall be distributed in accordance with the terms of the  
4 Agreement, and any further orders of this Court.  
5

6           10.      The claims brought on behalf of the Home Office Settlement Class, are  
7 DISMISSED WITH PREJUDICE pursuant to the terms of the Agreement and without costs to  
8 any Party, other than as specified in the Agreement and this Order.

9           11.      In consideration of the Class Settlement Amount, and for other good and valuable  
10 consideration, all members of the Home Office Settlement Class other than those who have  
11 submitted timely and valid exclusion letters ("Home Office Settlement Class Releasing Class  
12 Members") shall, by operation of this Judgment, have fully, finally, and forever released,  
13 relinquished, and discharged all Home Office Settlement Class Released Claims against Wal-  
14 Mart in accordance with Section 10.2 of the Agreement, including, but not limited to, any and all  
15 claims arising from alleged: (i) off-the-clock work (including lock-in claims), which includes  
16 claims relating to the non-payment or late payment of wages because work was performed off  
17 the clock and any record keeping violations that are a result of work being performed off the  
18 clock and, therefore, not being records; (ii) meal periods that were not provided or meal periods  
19 that were interrupted; (iii) rest breaks that were not provided or rest breaks that were interrupted;  
20 (iv) inaccurate creation, retention, and preservation of time records; (v) the alteration of time  
21 records and hours worked without proper authorization, including claims relating to one (1) and  
22 two (2) minute shifts, inserted breaks and time editing; (vi) claims that Wal-Mart failed to pay  
23 overtime hours or other wages, including claims related to how overtime is calculated, as a result  
24 of any of the claims covered by the Release contained in Section 10.2 of the Agreement; (vii)  
25 claims for failure to pay wages on termination or late payment of wages on termination or  
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1 otherwise; (viii) claims for contribution to any Wal-Mart profit-sharing or other employee  
2 benefit plan as a result of any of the claims covered by the Release contained in Section 10.2 of  
3 the Agreement; and (ix) claims that Wal-Mart failed to comply with the minimum wage and  
4 overtime obligations imposed by the FLSA as a result of any of the claims covered by the  
5 Release contained in Section 10.2 of the Agreement. In addition, the Home Office Settlement  
6 Class Releasing Class Members shall have covenanted not to sue Wal-Mart with respect to all  
7 such Home Office Settlement Class Released Claims, and shall be permanently barred and  
8 enjoined from instituting, commencing, prosecuting or asserting any such Home Office  
9 Settlement Class Released Claim against Wal-Mart.  
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11 12. In addition, all members of the Home Office Settlement Class who have  
12 submitted an Approved Claim Form shall be deemed to have opted into and consented to join  
13 this action in accordance with the FLSA.  
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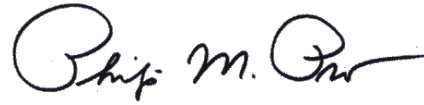
15 13. This Judgment is the Final Judgment in the suit as to all Home Office Settlement  
16 Class Released Claims.

17 14. The Claims Administrator is hereby ordered to file within thirty (30) days of entry  
18 of this Judgment a verified list of the names and addresses of each person who has submitted a  
19 valid request for exclusion from either the Home Office Settlement Class.  
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21 15. In the event that the Settlement Effective Date does not occur, this Judgment shall  
22 be rendered null and void and shall be vacated, nunc pro tunc, except insofar as expressly  
23 provided to the contrary in the Agreement, and without prejudice to the status quo ante rights of  
24 Plaintiffs, members of the Home Office Settlement Class, and Wal-Mart.  
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16. This Court finds there is no just reason for delay and expressly directs Judgment and immediate entry by the Clerk of the Court.

DATED this 2nd day of July, 2010.



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PHILIP M. PRO, U.S. DISTRICT JUDGE