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UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

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YVETTE NORTON, JEANNETTE
RODRIGUEZ-GUZMAN, KELLY
BARKER, JOSEPH BELL, BRAD
EPPERLY, STEPHANIE JONES,
KATHERINE KELLEY KNOWLES,
NANCY RICHARDS, and MARK
ZUMWALT, individually and on
behalf of all others
similarly situated,

Plaintiffs,

v.

MAXIMUS, INC.,

Defendant.

CIV. NO. 1:14-0030 WBS

MEMORANDUM AND ORDER RE: MOTION
FOR FINAL APPROVAL OF CLASS
SETTLEMENT

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Plaintiffs brought this collective action against
defendant Maximus, Inc., alleging that defendant misclassified
them as salaried employees, failed to pay them overtime wages,
and failed to keep accurate time records in violation of the Fair
Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 et seq. (First

1 Am. Compl. ("FAC") (Docket No. 34).) There were two sub-classes
2 in this action: a trainer sub-class and a supervisor sub-class.
3 (Id. at 2.) The trainer sub-class has settled its claims with
4 defendant, and the court has approved that settlement. (See Nov.
5 19, 2015 Order (Docket No. 139).) Before the court now is the
6 supervisor sub-class's Motion for final approval of its
7 settlement with defendant. (Pls.' Mot. (Docket No. 212).)

8 I. Factual and Procedural Background

9 Defendant operates calls centers across the country
10 that "interface with the public regarding . . . the Affordable
11 Care Act." (FAC ¶ 2.) It employs--at its Boise, Idaho and
12 Brownsville, Texas locations--"first-level" supervisors who
13 manage its call agents, monitor phone calls, and compile reports
14 for higher-level managers within the company. (Id. ¶ 4.) These
15 supervisors ("supervisors") comprise the supervisor sub-class.
16 (See id. ¶ 13.)

17 Supervisors brought this action against defendant on
18 January 24, 2014, alleging the following claims under the FLSA:
19 (1) misclassification of employment status, 29 U.S.C. §
20 213(a)(1); (2) failure to pay required overtime, id. §
21 207(a)(2)(C); and (3) failure to keep accurate time records, id.
22 § 211(c).¹ (See Compl. at 21-24 (Docket No. 1).) On May 19,
23

24 ¹ The named supervisor in this action, Yvette Norton,
25 also individually alleges that defendant unlawfully retaliated
26 against her for complaining about its wage practices. (See FAC
27 at 24-26.) As the court noted in its February 22, 2017 order,
28 supervisors have agreed to release "all the claims that were
asserted in [their] Complaint and Amended Complaint against
[defendant]" as part of this settlement, including Ms. Norton's
retaliation claim. (Feb. 22, 2017 Order at 11 (Docket No. 211).)

1 2016, the court granted summary judgment to supervisors on the
2 issue of misclassification, finding that defendant's method of
3 calculating their wages failed to meet the 'salary basis' test of
4 29 C.F.R. § 541.602(a). (See May 19, 2016 Order at 21 (Docket
5 No. 187).) Because defendant did not pay supervisors on a
6 'salary basis,' the court concluded, it misclassified them as
7 exempt from FLSA-required overtime wages. (Id.)

8 On November 1, 2016, supervisors and defendant notified
9 the court that they reached a settlement in this case. (Docket
10 No. 204.) The settlement pays "\$575,000 in overtime hours and
11 \$402,500 in [liquidated] damages" to supervisors, and a "separate
12 award of costs and attorney fees of \$575,280" to supervisors'
13 counsel. (Pls.' Mem. in Supp. of Mot. for Prelim. Approval
14 ("Pls.' Mem.") at 17 (Docket No. 206-1).) The average recovery,
15 assuming each of the 106 supervisors who opted in to this action
16 were to receive settlement funds, is \$9,221.69.

17 The court granted final collective action certification
18 and preliminary approval of class settlement to supervisors on
19 February 22, 2017 ("preliminary approval order order"). (Feb.
20 22, 2017 Order (Docket No. 211).) Supervisors now move for final
21 approval of their settlement with defendant. (Pls.' Mot.)
22 Defendant supports supervisors' Motion. (See Def.'s Resp.
23 (Docket No. 213).)

24 II. Discussion

25 The Ninth Circuit has declared a "strong judicial
26 policy" in favor of settling of class actions. Class Plaintiffs
27 v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). Where
28 the "parties reach a settlement agreement prior to class

1 certification," however, "courts must peruse the proposed
2 compromise to ratify both [1] the propriety of the certification"
3 under Federal Rule of Civil Procedure 23(a), and "[2] the
4 fairness of the settlement" under Rule 23(e). Staton v. Boeing
5 Co., 327 F.3d 938, 952 (9th Cir. 2003); see also Khanna v. Inter-
6 Con Sec. Sys., Inc., No. CIV S-09-2214 KJM, 2012 WL 4465558, at
7 *3 (E.D. Cal. Sept. 25, 2012) (applying the two requirements
8 stated in Staton in approving FLSA collective action settlement).
9 Each requirement generally proceeds in a two-stage process:
10 preliminary approval, followed by final approval. See Carter v.
11 Anderson Merchandisers, LP, No. EDCV 08-00025-VAPOPX, 2010 WL
12 144067, at *3 (C.D. Cal. Jan. 7, 2010).

13 With respect to the propriety of certification, the
14 court has already granted final collective action certification
15 in this action. (Feb. 22, 2017 Order at 16.)

16 With respect to the fairness of the settlement, the
17 court preliminarily approved the parties' settlement as fair and
18 reasonable on February 22, 2017. (Id.) The only remaining issue
19 in the settlement approval process, therefore, is whether the
20 court should grant final fairness approval with respect to the
21 parties' settlement.

22 A. Terms of Settlement

23 The key terms of the parties' settlement are as
24 follows:

- 25 (1) **The Settlement Class:** The settlement class is comprised
26 of "[a]ll First-Level Supervisors employed by Maximus
27 from on or around August of 2013 and thereafter who
28 were assigned to supervise a team of approximately 14

1 call center employees responsible for handling
2 telephone calls on behalf of Maximus[,]were classified
3 by the company as exempt employees under the FLSA," and
4 opted in to this action. (Id.)

5 (2) **Notice:** Supervisors' counsel sent opt-in notice via
6 postal mail to supervisors in October 2014. (See Oct.
7 28, 2014 Order (Docket No. 62).) 106 supervisors opted
8 in to this action. (Pls.' Mem. at 19.) After opt-in
9 took place, supervisors' counsel informed opt-in
10 supervisors on at least six different occasions, via
11 postal mail, email, and telephone, that they needed to
12 submit their claimed overtime hours in order to be
13 eligible to receive settlement funds. (See Pls.' Mot.
14 at 3-5.) 92 opt-in supervisors submitted their claimed
15 overtime hours. (Pls.' Mem. at 19.) After the court
16 preliminarily approved the parties' settlement,
17 supervisors' counsel mailed and emailed notice of
18 settlement to all opt-in supervisors. (Id. at 2.)

19 (3) **Opt In / Opt Out Procedure:** As noted above, an opt-in
20 notice was sent to supervisors in October 2014.
21 Supervisors had sixty days from the date opt-in notice
22 was sent to opt in to this action by mail, email, or
23 fax. (See Opt-In Notice at 1 (Docket No. 61).) To
24 receive payment under the parties' settlement, opt-in
25 supervisors also needed to submit their claimed
26 overtime hours. Supervisors were able to submit those
27 hours by email from June 2014 through September 2016.
28 (See Decl. of Jennifer Hanway ("Hanway Decl.") Ex. A,

1 June 3, 2014 Email Correspondence; Decl. of Jeremiah
2 Hudson ("Hudson Decl.") Ex. A, Sept. 8, 2016 Email
3 Correspondence.) Because each opt-in supervisor agreed
4 to be bound by this action, (see Opt-In Notice at 1
5 ("You will be bound by the decisions of the Court
6 concerning this lawsuit, whether favorable or
7 unfavorable.")), no opt-out procedure has been
8 provided.

9 (4) **Objection Procedure:** Pursuant to the court's
10 preliminary approval order, opt-in supervisors were
11 given twenty-six days from the date notice of
12 settlement was sent to object to the parties'
13 settlement. (See Feb. 22, 2017 Order at 17 (requiring
14 that notice be sent by March 2 and objections be filed
15 by March 28).) The notice of settlement stated that
16 objections must be in writing, sent to supervisors'
17 counsel, and filed with the court by March 28, 2017.
18 (See id.; Notice of Settlement at 4 (Docket No. 206-
19 2).) The notice also stated that supervisors who wish
20 to object in person or via counsel at the final
21 fairness hearing must file a notice of appearance with
22 the court by March 28. (See Notice of Settlement at
23 4.) The court is aware of one objection that was sent
24 to supervisors' counsel, but not filed with the court.
25 (See Pls.' Mot. at 2-3.)

26 (5) **Settlement Amount:** Defendant will pay \$575,000 in back
27 overtime wages and \$402,500 in liquidated damages to
28 participating supervisors. (Notice of Settlement at 2-

1 3.) This amount "will not be subjected to a reduction
2 for . . . attorneys' fees or costs." (Id. at 3.)

3 (6) **Attorneys' Fees and Costs and Enhancement Award:**

4 Supervisors' counsel will receive "a separate award of
5 costs and attorney fees of \$575,280" under the parties'
6 settlement. (Pls.' Mem. at 17.) The named supervisor
7 in this action, Yvette Norton, has not requested an
8 enhancement award.

9 (7) **Settlement Distribution:** Settlement funds will be

10 distributed "based upon the hours of . . . [unpaid]
11 overtime reasonably claimed by each Supervisor." (Id.)
12 The number of claimed overtime hours that are
13 "reasonable" will be determined based on "period of
14 employment as a Supervisor," "a review of PTO, Holiday,
15 LWP and FMLA hours taken," and "a review of badge
16 swipes to determine the days Supervisors were present
17 at a call center." (Id.) Supervisors' counsel
18 represent that each supervisor who submitted his or her
19 claimed overtime hours can expect to receive
20 "approximately 79.09% of [his or her] reasonably
21 claimed overtime hours multiplied by an average
22 overtime hourly rate of \$26.97," plus "an additional
23 payment equal to 78.94% of his or her reasonably
24 claimed overtime payment as liquidated damages."
25 (Notice of Settlement at 3.) The average recovery,
26 assuming each of the 106 opt-in supervisors were to
27 receive settlement funds, is \$9,221.69.

28 (8) **Release:** The settlement will release "all the claims

1 that were asserted in the Complaint and Amended
2 Complaint against [defendant] under the FLSA in Boise,
3 Idaho or Brownsville, Texas.” (Id.) For supervisors,
4 these claims are: (1) misclassification of employment
5 status, 29 U.S.C. § 213(a)(1); (2) failure to pay
6 required overtime, id. § 207(a)(2)(C); and (3) failure
7 to keep accurate time records, id. § 211(c). (See FAC
8 at 20-24.) The settlement also releases an unlawful
9 retaliation claim, 29 U.S.C. § 215(a)(3), brought
10 individually by Ms. Norton. (See id. at 24-26.)

11 B. Fairness of Settlement

12 Federal Rule of Civil Procedure 23(e) “requires the
13 district court to determine whether a proposed [class] settlement
14 is fundamentally fair, adequate, and reasonable.” Hanlon v.
15 Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). In
16 determining the fairness of a class settlement, the court is
17 directed by the Ninth Circuit to consider the following factors:

18 [1] the strength of plaintiffs’ case; [2] the risk,
19 expense, complexity, and likely duration of further
20 litigation; [3] the risk of maintaining class action
21 status throughout the trial; [4] the amount offered in
22 settlement; [5] the extent of discovery completed and
23 the stage of the proceedings; [6] the experience and
24 views of counsel; [7] the presence of a governmental
25 participant; and [8] the reaction of the class members
26 to the proposed settlement.

27 Id.; see also Murillo v. Pac. Gas & Elec. Co., No. 2:08-1974 WBS
28 GGH, 2010 WL 2889728, at *5 (E.D. Cal. July 21, 2010) (applying
Hanlon’s factors in assessing fairness of FLSA collective action
settlement); but see In re Bluetooth Headset Prods. Liab. Lit.,
654 F.3d 935, 946 (9th Cir.2011) (“The factors in a court’s

1 fairness assessment will naturally vary from case to case.”).

2 The court addresses each factor in turn.

3 1. Strength of Supervisors’ Case

4 An important consideration in determining the fairness
5 of class settlements is the strength of the class’s case balanced
6 against the amount offered in the settlement. Nat’l Rural
7 Telecommunications Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 526
8 (C.D. Cal. 2004). A district court, however, is not required to
9 reach any ultimate conclusions on the merits of the case, “for it
10 is the very uncertainty of outcome in litigation and avoidance of
11 wastefulness and expensive litigation that induce consensual
12 settlements.” Officers for Justice v. Civil Serv. Comm’n of the
13 City & Cnty. of SF, 688 F.2d 615, 625 (9th Cir. 2004).

14 The court has granted summary judgment to supervisors
15 on the issue of misclassification. (May 19, 2016 Order at 21.)
16 Pursuant to that order, supervisors have established their claim
17 that defendant failed to pay them required overtime wages under
18 the FLSA. However, the amount of overtime wages and liquidated
19 damages due under the FLSA remain disputed. (Pls.’ Mem. at 15.)
20 Supervisors concede that they do “not have accurate time records
21 of the hours they worked” and have “had to calculate their
22 overtime hours from memory and by using incomplete badge swipe
23 data and other types of documents.” (Id.) “Had the parties not
24 reached a settlement,” supervisors represent, further litigation
25 would have resulted over the amount of damages due in this case.
26 (See id.)

27 The settlement reached in this case will compensate
28 supervisors for “79.09% of [their] reasonably claimed overtime

1 hours" and pay them "78.94% of [their] reasonably claimed
2 overtime payment as liquidated damages." (Id.; Notice of
3 Settlement at 3.) The average recovery per opt-in supervisor
4 under the settlement is \$9,221.69. (Pls.' Mem. at 17, 19.) In
5 light of the uncertainties surrounding determination of damages
6 in this case, the court finds that the parties' settlement
7 constitutes a fair resolution of supervisors' claims. See
8 Rodriguez v. West Pub. Corp., No. CV 05-3222 R (MCX), 2007 WL
9 2827379, at *9 (C.D. Cal. Sept. 10, 2007) (noting that a
10 "settlement amount representing 33% of maximum possible recovery
11 [is] well within a reasonable range" in class action
12 settlements), rev'd on other grounds in Rodriguez v. West Publ'g
13 Corp., 563 F.3d 948 (9th Cir. 2009).

14 2. Risk, Expense, Complexity, and Likely Duration of
15 Further Litigation

16 As explained above, supervisors would have faced
17 uncertainties with respect to proving the amount of damages due
18 in this case had the parties not reached a settlement.
19 Prolonging litigation over the amount of damages due would have
20 required both sides to expend "hundreds of [additional] hours of
21 attorney time" and additional litigation costs. (Id. at 16.) "A
22 new round of discovery on the [issue of] claimed [overtime]
23 hours," and possibly a "jury trial," would have been necessary to
24 resolve the issue of damages. (Id.) These uncertainties,
25 expenses, and delays weigh in favor of approving the parties'
26 settlement. See DIRECTV, 221 F.R.D. at 526 ("[U]nless the
27 settlement is clearly inadequate, its acceptance and approval are
28 preferable to lengthy and expensive litigation with uncertain

1 results.”).

2 3. Risk of Maintaining Class Action Status Throughout
3 Trial

4 Though defendant consented to class certification for
5 purposes of settlement, (see Def.’s Resp. at 1), it represents
6 that it “may have moved to de-certify the conditional class
7 certification” granted by the court in August 2014 had this case
8 proceeded on the merits, (see Pls.’ Mem. at 16). Supervisors
9 agree that “[t]here is no assurance that [the] issue [of class
10 certification] would have been . . . resolved” in their favor had
11 this case proceeded. (Id. at 17.) The risk that supervisors
12 would not have been able to maintain class action status
13 throughout trial favors settlement. See Castillo v. ADT, LLC,
14 No. CV 2:15-383 WBS DB, 2017 WL 363108, at *5 (E.D. Cal. Jan. 25,
15 2017) (noting that where “class certification is not guaranteed,”
16 the risk of maintaining class action status favors settlement).

17 4. Amount Offered in Settlement

18 “In assessing the consideration obtained by the class
19 members in a class action settlement, it is the complete package
20 taken as a whole, rather than the individual component parts,
21 that must be examined for overall fairness.” Ontiveros v.
22 Zamora, 303 F.R.D. 356, 370 (E.D. Cal. 2014). “[I]t is well-
23 settled law that a proposed settlement may be acceptable even
24 though it amounts to only a fraction of the potential recovery
25 that might be available to the class members at trial.” DIRECTV,
26 221 F.R.D. at 527 (citing cases).

27 The parties’ settlement pays “\$575,000 in overtime
28 hours and \$402,500 in [liquidated] damages” to supervisors.

1 (Pls.' Mem. at 17.) Settlement funds will be distributed "based
2 upon the [number of] hours of . . . overtime reasonably claimed
3 by each Supervisor." (Id.) The average recovery per opt-in
4 supervisor is \$9,221.69. Supervisors represent that the
5 settlement will compensate supervisors for "79.09% of [their]
6 reasonably claimed overtime hours" and pay them "78.94% of
7 [their] reasonably claimed overtime payment as liquidated
8 damages." (Id. at 15; Notice of Settlement at 3.)

9 The court finds no reason to doubt the fairness of the
10 settlement award in this case. The award appears to be well
11 within the range of settlements that district courts in this
12 circuit have found to be reasonable. See, e.g., Rodriguez, 2007
13 WL 2827379, at *9 (a class settlement award amounting to 33% of
14 maximum possible recovery is reasonable). Each participating
15 supervisor will be able to recover a significant portion of their
16 unpaid overtime hours and liquidated damages. Accordingly, the
17 court finds the amount offered in the parties' settlement to be
18 fair and reasonable.

19 5. Extent of Discovery Completed and Stage of
20 Proceedings

21 A settlement that occurs in an advanced stage of a case
22 indicates that the parties carefully investigated and vigorously
23 litigated the case before reaching a resolution. See Alberto v.
24 GMRI, Inc., Civ. No. 07-1895 WBS DAD, 2008 WL 4891201, at *9
25 (E.D. Cal. Nov. 12, 2008). The parties in this case litigated
26 this action for well over two years before settling it. (See
27 Compl. (filed in January 2014); Docket No. 204 (notifying court
28 that case settled in November 2016).) They reached settlement

1 after engaging in "extensive" discovery "that required the
2 production and review of hundreds of thousands of documents" and
3 several depositions, (Pls.' Mem. at 17-18), and litigating
4 motions for class certification, (see Aug. 25, 2014 Order (Docket
5 No. 59)); summary judgment, (see May 19, 2016 Order); and
6 reconsideration of summary judgment, (see Sept. 2, 2016 Order
7 (Docket No. 197)). Settlement discussions included several
8 "offers and counter offers." (Pls.' Mem. at 15.) In light of
9 the advanced stage of this action and the efforts put forth by
10 the parties in litigating it, the court finds that the extent of
11 discovery and state of proceedings in this case weigh in favor of
12 approving the parties' settlement.

13 6. Experience and Views of Counsel

14 "When approving class action settlements, the court
15 must give considerable weight to class counsel's opinions due to
16 counsel's familiarity with the litigation and [their] previous
17 experience with class action lawsuits." Murillo, 2010 WL
18 2889728, at *8. Supervisors' counsel represent that they have
19 "many years of litigation experience" and, as one might surmise,
20 great familiarity with this case. (Pls.' Mem. at 18.) Counsel
21 believe "that the proposed settlement is fair and reasonable and
22 provides sufficient compensation to the Supervisors." (Id.) The
23 court finds no reason to doubt these representations.
24 Accordingly, this factor weighs in favor of approving the
25 parties' settlement.

26 7. Presence of Government Participant

27 No government entity participated in this action. This
28 factor is therefore irrelevant to the court's analysis.

1 8. Reaction of Class Members

2 "It is established that the absence of a large number
3 of objections to a proposed class action settlement raises a
4 strong presumption that the terms of a proposed class settlement
5 action are favorable to the class members." DIRECTV, 221 F.R.D.
6 at 529. Supervisors' counsel sent notice of settlement to each
7 of the 106 supervisors who opted in to this action. (See Pls.'
8 Mot. at 2.) Only one supervisor objected. (Id. at 5.) The
9 general absence of objections among opt-in supervisors
10 establishes a presumption that the settlement in this case is
11 fair to opt-in supervisors. See DIRECTV, 221 F.R.D. at 529.

12 The sole objection, raised by supervisor James Wilfong,
13 does not rebut that presumption or otherwise warrant rejection of
14 the parties' settlement.

15 As an initial matter, Mr. Wilfong did not comply with
16 the objection procedure set forth by the court in its preliminary
17 approval order in objecting. The court stated in its preliminary
18 approval order that "[a]ny objection to the parties' proposed
19 settlement shall be filed" with the court. (Feb. 22, 2017 Order
20 at 17.) Supervisors' counsel relayed that requirement to
21 supervisors in the notice of settlement. (Notice of Settlement
22 at 4 ("You must . . . mail your Objection to the Clerk of the
23 Court of the United States District Court.")) The notice of
24 settlement expressly warned that failure to "object in the manner
25 described" in the notice will be "deemed to [constitute] waive[r
26 of] any objections." (Id. at 4-5.)

27 Mr. Wilfong did not file his objection with the court.
28 The court is only aware of his objection because he emailed the

1 objection to supervisors' counsel, who brought the objection to
2 the court's attention.² (See Pls.' Mot. at 2.) Mr. Wilfong's
3 failure to file his objection, as required by the court, is
4 sufficient grounds for the court to disregard his objection. See
5 In re TD Ameritrade Account Holder Litig., No. C 07-2852 SBA,
6 2011 WL 4079226, at *11 (N.D. Cal. Sept. 13, 2011) (disregarding
7 objection to settlement where objector "submitted [his] objection
8 to Class Counsel, but did not file [the] objection with the Court
9 as required").

10 Even if the court were to consider Mr. Wilfong's
11 objection, the objection would fail on the merits. Mr. Wilfong
12 objects because supervisors' counsel plan to exclude him from
13 receiving settlement funds due to his purported failure to submit
14 his claimed overtime hours. (See Hudson Decl. Ex. B, Wilfong
15 Objection.) Mr. Wilfong claims that he submitted his hours by
16 postal mail in September 2016. (Id.) Supervisors' counsel claim
17 that they never received his hours, (see Decl. of Steffanie Coy
18 ("Coy Decl.") ¶ 3 (Docket No. 212-3)), and that he ignored at
19 least seven attempts they made to contact him to obtain his hours
20 over the course of litigation, (see Pls.' Mot. at 3). The
21 settlement, supervisors' counsel note, was negotiated without
22 consideration for Mr. Wilfong's hours. It would be unfair to
23 award funds that were negotiated as payments in satisfaction of
24 other supervisors' unpaid overtime hours to Mr. Wilfong,

25 ² In his email to supervisors' counsel, Mr. Wilfong
26 "stated that he would be mailing his Objection to the Clerk of
27 the Court." (Pls.' Mot. at 2-3.) No objection was filed with
28 the court as of the time of the final fairness hearing on April
17, 2017, however. The deadline to file an objection was March
28, 2017. (Feb. 22, 2017 Order at 17.)

1 supervisors' counsel contend.

2 The court agrees with supervisors' counsel's position.
3 Evidence submitted by supervisors' counsel indicates that counsel
4 attempted to contact Mr. Wilfong at least seven times during the
5 course of this litigation. (See June 3, 2014 Email
6 Correspondence; Coy Decl. Ex. A, Nov. 11, 2014 Email
7 Correspondence (Docket No. 212-3); id. Ex. B, Nov. 24, 2014
8 Postal Mail Correspondence; Hanway Decl. Ex. B, Sept. 14, 2015
9 Email Correspondence; Coy Decl. Ex. C, May 24, 2016 Email
10 Correspondence; Decl. of Angie Perkins ¶ 3 (testifying that
11 counsel attempted to contact Mr. Wilfong by phone in August 2016)
12 (Docket No. 212-1); Sept. 8, 2016 Email Correspondence.) Each
13 attempt to reach Mr. Wilfong was met with silence. (See Pls.'
14 Mot. at 3.)

15 Mr. Wilfong claims that he responded to counsel's
16 September 2016 correspondence by submitting his overtime hours
17 via postal mail. (See Wilfong Objection.) Even if that were
18 true, Mr. Wilfong did not comply with counsel's instructions in
19 submitting his hours, as counsel had requested that the hours be
20 submitted by email, as opposed to postal mail, due to the urgent
21 nature of the request.³ (See Sept. 8, 2016 Email
22 Correspondence.) In light of Mr. Wilfong's failure to respond to
23 counsel's numerous attempts to reach him, and in light of his
24 failure to follow counsel's instructions in submitting his
25 overtime hours, the court will not fault counsel for their non-

26 ³ The request indicated that settlement negotiations with
27 defendant were ongoing, and that the number of overtime hours
28 claimed by supervisors was the key consideration in settlement
discussions. (See Sept. 2016 Email Correspondence.)

1 receipt of Mr. Wilfong's hours.

2 Because it would be unfair to award funds that were
3 negotiated as payments in satisfaction of other supervisors'
4 unpaid overtime hours to Mr. Wilfong, the court will not require
5 supervisors' counsel to allocate settlement funds to him.
6 Accordingly, Mr. Wilfong's objection fails on the merits, and the
7 court finds that the reaction of opt-in supervisors to the
8 parties' settlement favors approval of the settlement.

9 Having considered supervisors' reaction and other
10 factors relevant to assessing the fairness of the parties'
11 settlement, the court finds the settlement to be fair, adequate,
12 and reasonable under Rule 23(e).

13 C. Attorneys' Fees and Costs

14 Federal Rule of Civil Procedure 23(h) provides that
15 "[i]n a certified class action, the court may award reasonable
16 attorney's fees and nontaxable costs that are authorized by law
17 or by the parties' agreement." Fed. R. Civ. P. 23(h). If a
18 class action settlement includes an award of attorney's fees,
19 that award must be evaluated in the overall context of the
20 settlement. Knisley v. Network Assocs., 312 F.3d 1123, 1126 (9th
21 Cir. 2002); Monterrubio v. Best Buy Stores, L.P., 291 F.R.D. 443,
22 455 (E.D. Cal. 2013) (England, J.). "[T]he award, like the
23 settlement itself, [must be] reasonable, even if the parties have
24 already agreed to an amount." Bluetooth Headset, 654 F.3d at
25 941.

26 The Ninth Circuit has approved two methods of assessing
27 the reasonableness of attorneys' fees awards in class action
28 settlements: percentage-of-recovery and lodestar. Vizcaino v.

1 Microsoft Corp., 290 F.3d 1043, 1047 (9th Cir. 2002). In
2 assessing the reasonableness of common fund class settlements,
3 such as this, the court has discretion to use either method. Id.

4 Supervisors' counsel are requesting a fees and costs
5 award of \$575,280. (Pls.' Mem. at 17.) The amount sought
6 constitutes approximately 37% of the total money paid by
7 defendant in this settlement. The court noted in its preliminary
8 approval order that while the amount sought surpasses the 25%
9 benchmark the Ninth Circuit set for attorneys' fees awards in
10 common fund class settlements, it appears to be justified under
11 the lodestar method.⁴ (Feb. 22, 2017 order at 14.) The court
12 has not become aware of any facts since it preliminarily approved
13 counsel's requested fees and costs that changes its initial
14 analysis. Accordingly, the court will grant final approval with
15 respect to counsel's requested fees and costs.

16 The court need not address any issues regarding an
17 enhancement award for Ms. Norton because she has not requested
18 one.

19 III. Conclusion

20 For the reasons stated in this Order, the court finds
21 the parties' settlement to be fair, reasonable, and adequate.
22 Consummation of the settlement in accordance with the terms
23 agreed to by the parties is approved. The settlement shall be
24 binding upon all supervisors who opted in to this action.

25 ⁴ The court based this finding on counsel's
26 representation at the preliminary approval hearing that the
27 amount sought was the product of the number of hours counsel
28 reasonably expended litigating this case multiplied by the same
attorney fee rate the court approved in the trainer sub-class's
settlement. (Feb. 22, 2017 Order at 14.)

1 The court also finds supervisors' counsel's request of
2 \$575,280 in attorneys' fees and costs to be reasonable, and
3 grants final approval with respect to that payment.

4 IT IS THEREFORE ORDERED that supervisors' Motion for
5 final approval of their class settlement with defendant be, and
6 the same hereby is, GRANTED.

7 IT IS FURTHER ORDERED THAT:

- 8 (1) The court appoints supervisor Yvette Norton as
9 representative of the supervisor sub-class and finds
10 that she meets the requirements of Federal Rule of
11 Civil Procedure 23.
- 12 (2) The court appoints Howard Belodoff of Belodoff Law
13 Office, PLLC, 1004 West Fort Street, Boise, ID 83702,
14 and Jeremiah Hudson of Fisher Rainey Hudson, 950 West
15 Bannock Street, Suite 630, Boise, ID 83702, as class
16 counsel and finds that they meet the requirements of
17 Rule 23.
- 18 (3) The court finds that the notice plan described in
19 supervisors' Motion (Docket No. 212) was the best
20 notice practicable under the circumstances and
21 satisfies the requirements of due process and Rule 23.
22 That plan is approved and adopted. The notice of
23 settlement sent to supervisors who opted in to this
24 action (Docket No. 206-2) complies with Rules 23(c)(2)
25 and 23(e), and is approved and adopted.
- 26 (4) The court finds that supervisors' counsel took
27 appropriate steps to locate and inform all opt-in
28 supervisors of the parties' settlement. No further

1 notice to opt-in supervisors is necessary.

2 (5) As of the date this Order is signed, all supervisors
3 who opted in to this action hereby do and shall be
4 deemed to have fully, finally, and forever released,
5 settled, compromised, relinquished, and discharged
6 defendant of and from any and all claims that were
7 asserted in supervisors' complaint (Docket No. 1) and
8 amended complaint (Docket No. 34) against defendant
9 under the FLSA in Boise, Idaho or Brownsville, Texas.

10 (6) Supervisors' counsel are entitled to attorneys' fees
11 and costs in the amount of \$575,280. Such fees shall
12 be paid by defendant to supervisors' counsel within
13 twenty-one days of the date this Order is signed.

14 (7) Opt-in supervisors are entitled to \$575,000 in
15 compensation for unpaid overtime hours and \$402,500 in
16 liquidated damages. Such funds shall be paid by
17 defendant to opt-in supervisors in accordance with the
18 terms of the parties' settlement within twenty-one days
19 of the date this Order is signed.

20 (8) This action is dismissed with prejudice. However,
21 without affecting the finality of this Order, the court
22 shall retain continuing jurisdiction over the
23 interpretation, implementation, and enforcement of the
24 settlement ratified in this Order with respect to all
25 parties in this action and their counsel of record.

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27 The clerk is instructed to enter judgment accordingly.
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1 Dated: April 17, 2017



2 WILLIAM B. SHUBB
3 UNITED STATES DISTRICT JUDGE
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