IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Maribel Alvarez,

Plaintiff,

vs.

Direct Energy Business Marketing, LLC, et al.,

Defendants.

No. CV-16-03657-PHX-SPL

ORDER

I. Background

On October 21, 2016, Plaintiff Maribel Alvarez filed a collective action and class action Complaint against Direct Energy Business Marketing, LLC for unlawful failure to pay overtime wages in violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 ("FLSA"). (Doc. 1.) Plaintiff brought a class action under Federal Rules of Civil Procedure 23 to recover unpaid compensation allegedly resulting from Defendants' violations of the Arizona Wage Statute, A.R.S. § 23-350, *et. seq.* (Doc. 1.) On January 25, 2018, Plaintiff filed a motion for class certification pursuant to Rule 23(a) and Rule 23(b)(1), (2), and (3) and for the appointment of Bonnett, Fairbourn, Friendman & Balint, P.C. as class counsel. (Doc. 67 at 3.) The motion has been fully briefed. (Docs. 67, 72, 82.)

Plaintiff's Motion argues that the requirements for Rules 23(a) and (b)(1)-(3) have been met regarding her claims alleging violations of the Arizona Wage Statute, Count Two of the Complaint. (Doc. 67 at 3.) The proposed class consists of: "[a]ll current and

former Direct Energy employees who worked as Representatives[1] at a Direct Energy call center in Arizona from October 21, 2013 to the present." (Doc. 67 at 10.)

II. Discussion

Rule 23 of the Federal Rules of Civil Procedure governs class actions. A member of a class may sue as a representative party if the member satisfies four prerequisites: numerosity, commonality, typicality, and adequacy of representation. Fed. R. Civ. P. 23(a). In addition to the prerequisites, the plaintiff must also show that the class falls into one of three categories under Rule 23(b), namely that the prosecution of separate actions would create a risk of rulings that are inconsistent or dispositive of the interests of non-parties, the party opposing the class has acted on grounds generally applicable to the class thereby making declaratory relief appropriate, or that questions of law or fact common to class members predominate over any questions affecting only individual members and that a class action is superior to other available methods for resolving the controversy. Fed. R. Civ. P. 23(b)(1)-(3).

"[P]laintiffs wishing to proceed through a class action must actually *prove*—not simply plead—that their proposed class satisfies each requirement of Rule 23[.]" *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2412 (2014); *see Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013). The court must rigorously analyze the facts of a class action to ensure that it comports with Rule 23. *See Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 465 (2013); *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011).

a. Rule 23(a)

1. Numerosity

A proposed class satisfies the numerosity requirement if class members are so

[1] The term "Representative" is a person who worked for Direct Energy as a customer service representative, the same as a "Sales and Service Representative," (Doc. 35-1 at 87), at a call center in Arizona under the same compensation policies as Plaintiff. (Doc. 1 a 2.)

numerous that joinder would be impractical. Fed. R. Civ. P. 23(a)(1). Generally, forty or more members will satisfy the numerosity requirement. *Horton v. USAA Cas. Ins. Co.*, 266 F.R.D. 360, 365 (D. Ariz. 2009) (citing *Garrison v. Asotin County*, 251 F.R.D. 566, 569 (E.D.Wash. 2008)). While no absolute limit exists, numerosity is met when general knowledge and common sense indicate that joinder would be impracticable. *Id.*

Plaintiff states that her proposed class is sufficiently numerous because it is undisputed that the class definition encompasses more than 900 putative class members, which is reflected in the "Notice List produced by Direct Energy after conditional certification of the FLSA collective." (Docs. 67 at 10; 72 at 2.) Defendants do not dispute that number, but, instead, argue that the Court should look to the true "likely plaintiffs" in this case—the twenty-six collective action opt-ins, not the 900 individuals who were presented with notice of Plaintiff's claims. (Doc. 72 at 5-6.) Defendants argue that the joinder of the twenty-six individuals is not inherently impracticable, and, that, by not joining the other hundreds of individuals, the Court would save them from needing to "opt-out" of the proposed class action, given that they have already expressed interest in not joining Plaintiff's claims. (Doc. 72 at 6.) Plaintiff argues that the "opt-out" members might have done so in the FLSA action due to fear of retaliation but might want to be included in the non-FLSA class action, particularly because the non-FLSA claims afford distinct relief. (Doc. 82 at 3.)

The Court finds that the numerosity requirement is met and joinder is impracticable. Plaintiff's class definition encompasses at least 900 potential individuals, a number that is not disputed. (Doc. 72 at 6.) The Court is not persuaded that the FLSA opt-in members is the correct earmark, but, instead, the Court looks to the proposed class as a whole. Simply because members opted into the FLSA collective action does not necessarily mean they believe they were not aggrieved under the non-FLSA claims. *See Collinge v. IntelliQuick Delivery, Inc.*, 2015 WL 1292444, at *11 (D. Ariz. Mar. 23, 2015). Further, the Court notes that this action is an employment case, which raises the

issue of class member reluctance to opt-in or to sue individually for fear of retaliation. *Id.* Having the ability to "opt-out" once already a party to the class action does not burden the putative class members, but allows them the ability to make an informed decision as to the non-FLSA claims.

2. Commonality

A proposed class satisfies the commonality requirement if there is at least one question of fact or law common to the class. Fed. R. Civ. P. 23(a)(2). The claims must "depend upon a common contention such that determination of its truth or falsity will resolve an issue that is central to the validity of each claim in one stroke." *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 588 (9th Cir. 2012) (quoting *Wal–Mart*, 564 U.S. at 350) (internal quotations omitted). However, "even a single common question will do." *Wal–Mart*, 564 U.S. at 359 (internal quotations omitted).

Plaintiff argues that the controlling issue is "whether Direct Energy's uniform compensation policies and practices resulted in violations of the Arizona Wage Statute for failure to timely pay wages owed." (Doc. 82 at 4.) Plaintiff argues that the "resolution of the key issue involves analyzing the same set of uniform facts regarding the compensation practices uniformly applicable to the Representatives," which satisfies the commonality requirement. (Doc. 67 at 12.) Defendants contend that Plaintiff's claims that she "routinely did not receive owed incentive pay defined on her paystubs," that she was "required to work off the clock," that she did not receive "all her overtime wages allegedly owed," that Direct Energy "failed to keep accurate time and payroll records for her," and that she was "paid straight-time for some amount of overtime she worked," require individualized inquiry. (Doc. 72 at 7-11.) Defendants point to the nine former and current Direct Energy employees' declarations it produced as evidence. (Doc. 72-1.) Thus, Defendants argue class certification should be denied because there are no common answers that will resolve Plaintiff's claims in one stroke. (Doc. 72 at 12.)

The Court finds that the commonality requirement is met. Plaintiff and the

putative class members have all been or are employed by Direct Energy as customer service representatives performing the same basic duties and subject to the same compensation policies and practices at issue in this case. (*See* Doc. 35-1.) Thus, whether Direct Energy's policies and practices to which the putative class members are all subjected expose them to the alleged injury, *i.e.*, untimely, incorrect compensation, would produce a common answer apt to drive the resolution of the litigation with one stroke. *Mazza*, 666 F.3d at 588. These policies and practices are the "glue" satisfying commonality, as either the policies and practices are unlawful as to every customer service representative or they are not.

3. Typicality

A proposed class satisfies the typicality requirement if the claims of the representative party are typical of the claims of the class. Fed. R. Civ. P. 23(a)(3). As long as the representative's claims are "reasonably coextensive with those of absent class members[,] they need not be substantially identical." *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). In other words, "[t]ypicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought." *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014).

Plaintiff argues that her "claims and injury, like those of the other Representatives, arise from Direct Energy's compensation practices that result in unpaid wages," and, thus, the typicality requirement is met. (Doc. 67 at 13.) Defendants argue that the evidence shows that the facts in this case vary by each class member in material and outcome determinative ways, and, therefore, Plaintiff cannot "fairly represent the claims of those who are dragged into this matter as absent class members." (Doc. 72 at 13.)

The Court finds that the typicality requirement is met. Here, Plaintiff is a customer service representative with Direct Energy, as with all the putative class members, and alleges that her claims and injury arise from Direct Energy's compensation policies and

practices, which are applicable to all such employees. (Doc. 67 at 13; Doc. 35-1.) Thus, the nature of Plaintiff's claim is reasonably coextensive with the putative class members. In other words, the alleged injury, if found, would necessarily be a result of a course of conduct that is not unique to any of them, *i.e.*, a result of Direct Energy's alleged unlawful policies and practices. *See Parsons*, 754 F.3d at 685. The fact that some of the proposed members might have different degrees of injuries, or none at all, does not render the claim or the alleged injury atypical. *Id.* at 686 (citing *Ellis*, 657 F.3d at 985 n.9) (noting that "[d]iffering factual scenarios resulting in a claim of the same nature as other class members does not defeat typicality.").

4. Adequacy

The adequacy requirement is satisfied if the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a)(4). In determining this standard, the court asks: "(1) [d]o the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Staton*, 327 F.3d at 957 (citing *Hanlon*, 150 F.3d at 1020).

Plaintiff argues that she "has no conflicts with other [c]lass members and is committed to vigorously representing the class," as she has suffered the same harm as a result of Defendants' alleged violation of the Arizona Wage Statute. (Doc. 67 at 13.) She also argues that her counsel has "extensive experience litigating wage and hour cases and [is] capable of vigorously prosecuting this action." (Doc. 67 at 13 (citing to Ex. A, Plaintiff's counsel's resume).) Defendants do not address this requirement in any substantive form, but, instead, state that "Plaintiff's claims and the proof she offers will not fairly represent the claims of those who are dragged into this matter." (Doc. 72 at 13.)

The Court finds that the adequacy requirement is met. There is nothing in the record that suggests Plaintiff and her counsel have conflicts of interest with other class members, and, to date, Plaintiff and her counsel have vigorously prosecuted this case.

There is no reason to believe that will not continue. Further, Plaintiff's counsel's resume provides the Court with satisfaction that it is competent to vigorously prosecute this class action. (Doc. 67-1 at 6.)

b. Rule 23(b)

Finding that Plaintiff has met the four requirements of Rule 23(a), the Court turns to the Rule 23(b) analysis, which requires a finding that Plaintiff meet at least one of the three requirements under Rule 23(b). Plaintiff argues that the class should be certified under all three subsections of Rule 23(b). (Doc. 67 at 3.)

1. Rule 23(b)(1)

A class action is maintainable under Rule 23(b)(1) if prosecution of separate actions would create a risk of inconsistent or varying adjudications that would establish incompatible standards for the party opposing the class, Rule 23(b)(1)(A), or if it would be dispositive of the interests of "other members not parties to the individual adjudications" or would impede their ability to protect their interests, Rule 23(b)(1)(B).

a. Subdivision 23(b)(1)(A)

The "incompatible standards of subdivision (b)(1)(A)…must be interpreted to be incompatible standards of conduct required of the defendant in fulfilling judgments in separate actions." *McDonnell-Douglas Corp. v. U.S. Dist. Court for Cent. Dist. of California*, 523 F.2d 1083, 1086 (9th Cir. 1975); *see Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1193 (9th Cir. 2001) (stating that "incompatible standards of conduct" refers to situations where "different results in separate actions would impair the opposing party's ability to pursue a uniform continuing course of conduct."). In other words, subdivision (b)(1)(A) "requires more than a risk that separate judgments would oblige the opposing party to pay damages to some class members but not to others or to pay them different amounts." *Id.*

Plaintiff argues that the class should be certified under (b)(1)(A) because "if one court were to find a violation of state wage law and issue injunctive relief ordering Direct

Energy to correct its compensation practices" and another does not, Defendants would be forced to apply differing compensation policies "resulting in employees being compensated differently for the same work performed." (Doc. 82 at 14.) Defendants contend that they would be able to "readily fulfill potentially conflicting monetary obligations to each putative class member," and a declaratory judgment would make no difference as it is simply a means to a monetary end. (Doc. 72 at 19.)

The Court finds that Plaintiff has met its obligation under Rule 23(b)(1)(A). Unlike in *McDonnell-Douglas Corp*. where the court noted that Plaintiffs had not specified and the Court could not discern "what obligations such a declaration would impose upon defendants that a judgment for damages would not," 523 F.2d at 1086, in this case, Plaintiff has specified that a potential judgment declaring the need for modification of Direct Energy's compensation policies and practices would result in incompatible standards of conduct. Potential wage law violations involving the policies and practices which govern all Direct Energy customer service representatives could result in broad-based remedies affecting all putative class members. Though damages are sought, the Court finds that there is "more than a risk" that Direct Energy might be unable to "pursue a uniform continuing course of conduct" should separate judgments be made. *Zinser*, 253 F.3d at 1193.

b. Subdivision 23(b)(1)(B)

Subdivision(b)(1)(B) allows for certification if separate adjudications of individual members would impair the other class members' rights to protect their interests or would be dispositive of them. Rule 23(b)(1)(B). This subdivision is commonly applied in "limited fund" cases. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 834-35 (1999).

Defendants argue that Plaintiff has not shown that "the adjudication of Plaintiff's claims would substantially affect the claims of absent class members" nor has she demonstrated "how a potential award in this case would irretrievably prejudice others, like diminishing a finite fund." (Doc. 72 at 19-20.) Plaintiff argues that "adjudication

with respect to an individual class member would be dispositive of the interests of other members not parties to the individual adjudication" and, though this is not a typical "limited fund" case, the equitable relief she is seeking would "have the same effect by requiring Direct Energy to disgorge amounts wrongfully withheld and pay such amounts to members of the Rule 23 class." (Doc. 82 at 14.)

The Court finds that Plaintiff has met its obligation under Rule 23(b)(1)(B). Though the Court agrees this is not a typical "limited fund" case, it is a case where, as a practical matter, the effects of a potential legal determination as to Direct Energy's compensation policies and practices could not be confined to Plaintiff. *See* Federal Rules Decisions, 39 F.R.D. 69, 101 (discussing the purpose of Rule 23(b)(1)(B)). A decision as to one individual class member regarding Direct Energy's uniform compensation policies and practices could very well be dispositive of all other class members' claims, as any change in Defendants' compensation policies and practices would uniformly be applied to all customer service representatives. Each putative class member has an interest in Direct Energy's uniform compensation policies and practices, and it would be incongruous if some class members were paid or not paid wages based on a finding of a wage law violation due to unlawful compensation policies and practices by one court but not by another who found no such violation. In other words, the "individual action inescapably will alter the substance of the rights of others having similar claims." *Green v. Occidental Petroleum Corp.*, 541 F.2d 1335, 1340 n. 10 (9th Cir. 1976) (citing *LaMar v. H & B Novelty & Loan Co.*, 489 F.2d 461 (9th Cir. 1973)).

2. Rule 23(b)(2)

A class may be maintained under Rule 23(b)(2) where the defendant's conduct applies generally to all class members, thereby making injunctive or declaratory relief appropriate with respect to the class as a whole. "The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class

members or as to none of them." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011) (internal quotations omitted). In other words, a Rule 23(b) class is allowed only when a single, indivisible remedy would provide relief to each class member. *Id.*

Plaintiff argues that "[a]ll representatives are subjected to the same compensation practices, duties, and timekeeping practices," and, thus, any injunctive or declaratory relief would affect the whole class. (Doc. 67 at 15-16.) Plaintiff also argues that she is only asking for injunctive relief under this subsection, not monetary relief, as that relief is sought under subdivision (b)(3). (Doc. 82 at 11, 13-14.) Defendants argue that "it is indisputable that monetary damages are sought" and that equitable relief does not stand alone but is, instead, asserted in furtherance of monetary relief. (Doc. 72 at 21.) They also argue that Plaintiff's claims are not common nor evidence a common policy or practice. (Doc. 72 at 21.)

Plaintiff is seeking a "hybrid approach," asking the Court to certify the class under Count Two "for injunctive relief from Direct Energy's wrongful compensation policies and practices" under subdivision (b)(2) and the same class "for damages to compensate her and the Representatives for unpaid wages" under (b)(3). (Doc. 82 at 11.) The Court finds that Plaintiff has not satisfied subdivision (b)(2) as the injunctive relief sought, even if awarded, would not provide relief "with respect to the class as a whole," as some of the putative class members are former employees. An injunction directing Direct Energy to modify its compensation policies and practices would not affect those putative class members who are no longer employees of Direct Energy, thus, even certifying the class under Plaintiff's hybrid approach would not suffice. *See Wal-Mart*, 564 U.S. at 364-65 (stating that "those plaintiffs no longer employed by [defendant] lack standing to seek injunctive or declaratory relief against its employment practices."). The Court finds that both the monetary and injunctive relief should be considered under Rule 23(b)(3), which dually addresses issues of liability and damages, and to which the Court may award injunctive and money relief accordingly.

3. Rule 23(b)(3)

A class may be maintained under Rule 23(b)(3) where questions of law or fact common to the class predominate over questions affecting only individual members, and a class action is superior to other available methods for resolving the controversy. If proof of liability would involve transaction-by-transaction analysis, then individual issues will predominate. *See Torres v. Mercer Canyons Inc*., 835 F.3d 1125, 1134 (9th Cir. 2016); *Hanlon*, 150 F.3d at 1022. If, however, liability can be established on a class-wide basis, common issues will predominate, and a class action will serve as the most efficient means of resolving the controversy. *Torres*, 835 F.3d at 1134; *Zinser v. Accufix Research Inst.*, Inc., 253 F.3d 1180, 1189 (9th Cir. 2001). This is so even if, at the damages stage, there are ultimately "non-injured" class members, and individualized damages' calculations are required. *Torres*, 835 F.3d at 1136; *see also Wal-Mart*, 564 U.S. at 362.

Plaintiff argues that her claim has no legal distinction from any of the putative class members, as "Direct Energy violated the FLSA and Arizona wage laws by failing to pay Class members all the compensation they were due for time they worked," that any issue as to individualized damages' calculations will be properly dealt with at the damages stage, and that a class action is the superior method of adjudication because it would be wasteful and inefficient to try numerous cases on the same issue of liability. (Doc. 67 at 16-17; Doc. 82 at 12-13.) Defendants argue that this case requires case-by-case analysis, including questions regarding whether specific individuals ever actually had issues with pay or time being reported incorrectly, how those issues were addressed by that individual, and whether the individual ever worked overtime, and that these issues go to liability and not damages. (Doc. 72 at 15.)

The main issue is whether Direct Energy's compensation policies and practices are uniform as to all customer service representatives so that each employee would be exposed to the challenged conduct on a class-wide basis. Defendants do not argue that all customer service representatives are not employees as defined in A.R.S. § 23-350(2) nor

that its compensation policies and practices are not applicable to all customer service representatives. In fact, Defendants agree that its compensation policies and practices do apply to all customer service representatives. (Doc. 35-1.) Though Defendants argue that some employees included in the putative class members are not eligible to accrue overtime and have not otherwise been "injured," those potential claims do not defeat predominance. The salient issue is that all putative class members are exposed to the same alleged unlawful conduct, *i.e.*, Direct Energy's compensation policies and practices resulting in a violation of the Arizona Wage Statute, proof of which can be discerned from uniformly applied evidence—payroll records, time sheets, tables to calculate bonuses, etc.

Direct Energy's customer service representatives perform primarily the same duties in the same manner and get paid a flat hourly rate. Defendants' reliance on *Vinole* and *O'Hearn* is misplaced; both cases deal with "exempt" employees in the wage exemption context, and the inherent issues of individualized inquiry, which typically defeats the necessary homogeneity for a Rule 23(b)(3) certification due to the employees' lack of uniform control as a result of their "exempt" status. *See Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 946-47 (9th Cir. 2009); *O'Hearn v. Les Schwab Warehouse Ctr., Inc.*, 2014 WL 6654207, at *3-4 (W.D. Wash. Nov. 24, 2014). Further, Defendants' claim that the individualized inquiry is a matter of liability and not damages is incorrect. If the question as to whether Direct Energy's compensation policies and practices result in a violation of the Arizona Wage Statute is answered affirmatively, the issue as to liability is answered as to all the putative class members, whether they are part-time, closed little or many sales, worked overtime, or are now former employees. Where the individualized inquiry comes into play is at the damages stage. The Court need not reject certification because some of the class members, after Defendants' uniform conduct has been found unlawful, may not have actually been wronged. *See Torres*, 835 F.3d at 1136.

Additionally, Plaintiff does not limit her claims to those individuals who were eligible for overtime and did not get paid correctly. She asserts that "Direct Energy violated the FLSA and Arizona wage laws by failing to pay Class members all the compensation they were due for the time they worked," which could include individuals who were paid incorrectly for incentive pay or "off the clock" work. (Doc. 67 at 16.) Simply because Defendants offer evidence of individuals who apparently were satisfied with Direct Energy's compensation policies and practices does not render predominance lacking. (*See* Doc. 72 at 7-9.) Though Defendants argue that its compensation policies and practices call for its employees to be paid for all overtime and that there is no alleged unofficial or informal policy that violates their stated policies, those arguments are best made at trial or at the summary judgment stage, as it goes to the merits of the case. Thus, the Court finds that the common question of whether Direct Energy's compensation policies and practices did in fact result in denial of or inaccurate compensation predominates over any individualized issues regarding the specific amount of damages a particular class member might be able to prove at a later time.

As to superiority, the Court finds that certifying the class would further judicial economy and promote efficiency in resolving the question of liability. Unlike in *Vinole*, the Plaintiff here has alleged facts regarding "uniformity in work duties and experiences that diminish the need for individualized inquiry." 571 F.3d at 947. The evidence shows a detailed table of how incentive pay is calculated, customer service representatives' pay rates, and other common proof, *i.e.*, "centralized control in the form of standardized hierarchy, standardized corporate policies and procedures governing employees, [and] uniform training programs." *Vinole*, 571 F.3d at 946; Doc. 35-1 at 29, 32, 89-92, 95-110, 114-17. It is feasible that the Court, or an appointed special master, would be able to use a formulaic approach to do calculations, supported by the payroll and time keeping records, to compute "effortlessly [and] mechanically…the number of days [the employee] worked each week and his hourly wage." *Espenscheid v. DirectSat USA, LLC*,

705 F.3d 770, 773 (7th Cir. 2013). Defendants' reliance on *Espenscheid* is unavailing, as the employees there were subject to piecemeal compensation because they were treated "more like independent contractors than employees" who received compensation by completing installation and repair jobs "rather than being paid a fixed hourly rate." *Id.* That is not the case here. While the customer service representatives may have differing incentive payouts based on their sales, they are paid a fixed hourly rate, and the incentive payout is a formulaic, non-discretionary calculation.

In any event, this Circuit has made clear that individualized damages calculations alone do not defeat certification as long as there is a common question as to liability. *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1167 (9th Cir. 2014) (quoting *Leyva v. Medline Industries, Inc.*, 716 F.3d 510 (9th Cir. 2013)). Defendants are free, of course, to address concerns with the Court and individualized defenses during the damages phase.

III. Conclusion

Having reviewed the Parties' briefing (Docs. 67, 72, 82), the Court finds that Plaintiff has met the four Rule 23(a) requirements and has shown that the class should be certified under Rule 23(b)(1) and (3). Accordingly,

IT IS ORDERED:

1. Plaintiff's motion for class certification (Doc. 67) is **granted as modified.**

2. Pursuant to Rules 23(a) and 23(b)(1) and (3), the Court certifies a class for Count Two of the Complaint, defined as (i) all current and former Direct Energy employees, (ii) who worked as customer service representatives, (iii) at a Direct Energy call center, (iv) in Arizona, (v) from October 21, 2013 to present.

3. The Court appoints the law firm of Bonnett, Fairbourn, Friendman & Balint, P.C. as class counsel pursuant to Rule 23(g).

Dated this 30th day of August, 2018.

Honorable Steven P. Logan
United States District Judge