

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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STEVEN BERNDT and  
ERIC HOLEVATZ,

Plaintiffs,

ORDER

v.

11-cv-791-wmc

CLEARY BUILDING CORP.,

Defendant.

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The court is in receipt of the parties' joint motion for preliminary approval of class action settlement. (Dkt. #414.) The court will hold a telephonic hearing on the motion Thursday, October 3, 2013, at 1:00 p.m. to address briefly the following:

(1) the factual basis for treating foremen and non-foremen differently with regard to (a) the hourly rate used in calculating individual settlement awards, and (b) the inclusion of driving time in the awards for non-foremen;

(2) relatedly, whether any of the proposed class representatives are foremen;

(3) whether it would be preferable and/or practical to send out different class action notices to opt-in FLSA plaintiffs versus those class members who did not opt into the FLSA collective action; and

(4) the factual basis for the apparent discrepancy between (a) the award of liquidated damages described in the brief in support of preliminary approval and the settlement agreement (*compare* Br. in Supp. (dkt. #415) 9 (describing liquidated damages award for FLSA opt-in plaintiffs) *with* Settlement Agreement (dkt. #416) 7 (describing liquidated damages award based on state law)); and (b) the payment of overtime as described in the

brief in support of preliminary approval and the settlement agreement (Br. in Supp. (dkt. #415) 9 (describing overtime rate paid for 20% of hours) *with* Settlement Agreement (dkt. #416) 7 (describing overtime rate paid for 40% of hours)).

Counsel for plaintiff is responsible for setting up the call to chambers at (608) 264-5087.

Entered this 19th day of September, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge