

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 09, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

OMAR PALMA RENTERIA,
individually and on behalf of all others
similarly situated,

Plaintiff,

GILBERTO GOMEZ GARCIA,
individually and on behalf of all others
similarly situated, and JONATHAN
GOMEZ RIVERA, individually and on
behalf of all others similarly situated,

Intervenor-

Plaintiffs,

v.

STEMILT AG SERVICES LLC, a solely
owned subsidiary of Stemilt Growers
LLC, and DOES 1–10,

Defendants.

No. 2:20-cv-00392-SMJ

**ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Before the Court is Plaintiff Omar Palma Renteria and Intervenor Plaintiffs
Gilberto Gomez Garcia and Jonathan Gomez Rivera (collectively, “Plaintiffs”)
Motion for Final Approval of Class Action Settlement, ECF No. 33, and Stipulated
Motion for Approval of Certain Settlement Claims, ECF No. 39. Individual notice

1 complying with Federal Rule of Civil Procedure 23 was sent to the last-known
2 address of each member of the Class and supplemental notice procedures outlined
3 in the Settlement Agreement and approved by the Preliminary Approval Order have
4 been completed. The Court held a fairness hearing on final approval of the
5 settlement on September 9, 2021. Defendant does not object to final approval as
6 proposed by Plaintiffs. *See* ECF No. 41. The Court finds that good cause exists to
7 grant both motions and approve the class action settlement.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 **1.** Plaintiffs’ Motion for Final Approval of Class Action Settlement, **ECF**
10 **No. 33**, is **GRANTED**.

11 **2.** The parties’ Stipulated Motion for Approval of Certain Settlement
12 Claims, **ECF No. 39**, is **GRANTED**.

13 **3.** Based on good cause shown, the Court **APPROVES** acceptance of all
14 valid settlement claims filed by Settlement Class Members under the
15 prior settlement even if those Settlement Class Members did not file
16 new Settlement Claim Forms. *See* ECF No. 39.

17 **4.** Unless otherwise provided herein, all capitalized terms in this Order
18 shall have the same meaning as set forth in the Settlement Agreement,
19 ECF No. 27-1 at 16–32, or Plaintiffs’ Motion for Preliminary
20 Approval, ECF No. 27.

1 **5.** The Court finds that notice to the Class has been completed in
2 conformity with the Preliminary Approval Order. The Court finds that
3 this notice was the best notice practicable under the circumstances, that
4 it provided due and adequate notice of the proceedings and of the
5 matters set forth therein, and that it fully satisfied all applicable
6 requirements of law and due process.

7 **6.** The Court finds that notice of the Settlement Agreement has been
8 provided to the United States Attorney General and the Attorney
9 General of each state in which any Class Member resides, in
10 accordance with 28 U.S.C. § 1715.

11 **7.** The Court finds it has personal and subject matter jurisdiction over all
12 claims asserted in this litigation with respect to all members of the
13 Class.

14 **8.** Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the
15 Court has **CERTIFIED** for settlement purposes the following Class:

16 All individuals who were employed by Stemilt AG
17 Services LLC in the position of hand harvester, pruner,
18 picker, thinner, or farm worker and paid on a piece-rate
19 basis at any time from May 21, 2015 to May 17, 2018.

20 **9.** In connection with this certification, the Court has made the following
 findings:

1 *A.* The Class is so numerous that joinder of all members is
2 impracticable;

3 *B.* There are questions of law or fact common to the Class;

4 *C.* Plaintiffs' claims are typical of the claims being resolved
5 through the proposed settlement;

6 *D.* Plaintiffs are capable of fairly and adequately protecting the
7 interests of the Class members in connection with the
8 settlement;

9 *E.* For purposes of determining whether the settlement is fair,
10 reasonable and adequate, common questions of law and fact
11 predominate over questions affecting only individual Class
12 members. Accordingly, the Class is sufficiently cohesive to
13 warrant settlement by representation; and

14 *F.* For purposes of settlement, certification of the Class is superior
15 to other available methods for the fair and efficient settlement
16 of the claims of the Class members.

17 **10.** The Court has **APPOINTED** Plaintiff Omar Palma Renteria and
18 Intervenor Plaintiffs Gilberto Gomez Garcia and Jonathan Gomez
19 Rivera as representatives of the Class.

1 **11.** The Court has **APPOINTED** Marc Cote, Sean Phelan, and Anne
2 Silver of Frank Freed Subit & Thomas LLP and Joachim Morrison and
3 Xaxira Ponce de Leon of Columbia Legal Services as Class Counsel.

4 **12.** No objections to the Settlement have been lodged.

5 **13.** The terms set forth in the Settlement are **APPROVED** as being fair,
6 adequate, and reasonable in light of the degree of recovery obtained in
7 relation to the risks faced by the Class in litigating the claims. The
8 Class is properly certified as part of this settlement. The relief provided
9 to the Class under the Settlement Agreement is appropriate as to the
10 individual members of the Class and as a whole.

11 **14.** The Court finds the Settlement fair, reasonable, and adequate per the
12 requirements of Rule 23(e)(2). The following findings support the
13 Court's determination:

14 **A.** The class representatives and class counsel, who have drawn on
15 extensive experience representing farm workers in wage-and-
16 hour class actions, have adequately represented the class;

17 **B.** The parties negotiated the proposal at arm's length, through two
18 mediation sessions before an experienced mediator and
19 continued negotiations following mediation;

1 **C.** The relief provided for the class is adequate, particularly in light
2 of the high costs, risks, and delay of trial and likely appeals, the
3 effectiveness of the claims process described in the Settlement
4 Agreement, the reasonable attorney fees awarded herein, and the
5 terms of the Settlement Agreement;

6 **D.** The Settlement treats class members equitably relative to one
7 another, as no segment of the class is excluded or treated
8 differently than any other.

9 **15.** The Court **APPROVES** the payment of **\$750,000** in attorney fees to
10 Class Counsel as fair and reasonable based on the “percentage of
11 recovery” approach.

12 **A.** When state substantive law applies to plaintiffs’ claims, attorney
13 fees are to be awarded in accordance with state law. *Vizcaino v.*
14 *Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). Because
15 Washington law governs the central claims in the case, attorney
16 fees must be awarded in accordance with Washington law. *Id.*
17 “Under Washington law, the percentage-of-recovery approach
18 is used in calculating fees in common fund cases.” *Id.* (citing
19 *Bowles v. Dep’t of Ret. Sys.*, 121 Wn.2d 52, 72, 847 P.2d 440
20 (1993)).

1 **B.** The benchmark in Washington for an attorney fee award in a
2 common fund settlement is twenty-five percent of the fund. *Id.*;
3 *Bowles*, 121 Wn.2d at 72–73. In accordance with *Bowles* and
4 *Vizcaino*, Class Counsel seek a benchmark fee of twenty-five
5 percent of the common fund. The Court finds no “special
6 circumstances” to depart from the benchmark award of twenty-
7 five percent in this case. *See Bowles*, 121 Wn.2d at 73. The
8 approved attorney fee award of \$750,000 is exactly twenty-five
9 percent of the \$3,000,000 common fund. The twenty-five
10 percent fee is within the range of reasonableness set forth in
11 *Bowles* and *Vizcaino* and is consistent with fee awards in similar
12 class actions.

13 **C.** The Court reaches the conclusion that the twenty-five percent
14 fee award to Class Counsel is reasonable in this case after
15 analyzing (1) the exceptional results Class Counsel achieved for
16 the Class; (2) the diligent effort utilized by Class Counsel in
17 litigating the Class claims; (3) Class Counsel’s substantial
18 experience in complex litigation and the skill utilized to achieve
19 the settlement; (4) the hurdles to achieving and maintaining
20 certification of the Class, establishing and proving liability and

1 damages at trial; (5) the substantial risks Class Counsel took in
2 litigating this case on a contingency basis and paying costs; (6)
3 the fact that Class Counsel had to forgo other work due to their
4 duties and obligations to the Class; (7) the high-quality work
5 Class Counsel performed; and (8) the duration and complexity
6 of the litigation and scope of discovery.

7 **D.** No Class Member has objected to the requested fee award.

8 **E.** “[W]hile the primary basis of the fee award” for common fund
9 settlements “remains the percentage method, the lodestar may
10 provide a useful perspective on the reasonableness of a given
11 percentage award.” *Vizcaino*, 290 F.3d at 1050. This Court has
12 performed a lodestar cross-check on the twenty-five percent fee.
13 The Court finds that payment of fees in the amount of \$750,000
14 is fair and reasonable using a lodestar cross-check.

15 **F.** The Court **APPROVES** as reasonable Class Counsel’s total
16 lodestar amount of approximately \$567,249.50 through August
17 19, 2021. The Court reaches this conclusion after analyzing (1)
18 the number of hours Class Counsel reasonably expended on the
19 litigation multiplied by counsel’s reasonable regular hourly
20 rates; (2) the substantial financial recovery Class Counsel

1 achieved for the Class; (3) the diligent and efficient effort
2 utilized by Class Counsel in litigating Plaintiffs’ claims; (4)
3 Class Counsel’s substantial experience in complex litigation and
4 skill utilized to achieve the Settlement; and (5) the hurdles to
5 certifying the Class and proving liability and damages at trial.

6 **G.** Class Counsel reasonably expended more than 1,500 hours in
7 this litigation and are expected to expend more hours through
8 settlement administration and distribution of settlement
9 payments. This Court **APPROVES** the hourly rates detailed in
10 the declarations of Marc Cote, Joachim Morrison, and Laura
11 Gerber. Lead Class Counsel’s regular hourly rates—\$495 for
12 Marc Cote and \$500 for Joachim Morrison—are reasonable
13 rates for class action litigators in this district. Considering all of
14 the attorneys’ experience, skill, and reputation in wage and hour
15 class action cases, the rates are reasonable.

16 **H.** Courts “routinely enhance[] the lodestar to reflect the risk of
17 non-payment in common fund cases.” *Vizcaino*, 290 F.3d at
18 1051 (quoting *In re Wash. Pub. Power Supply Sys. Secs. Litig.*,
19 19 F.3d 1291, 1300 (9th Cir. 1994)). This upward adjustment
20 (or “multiplier”) to an attorney’s lodestar is often warranted

1 based on the contingent nature of success or the quality of work
2 performed. *See id.* at 1051 (approving multiplier of 3.65). A
3 lodestar multiplier can also be based on the benefit obtained for
4 the class or the complexity and novelty of the issues presented.
5 *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941–
6 42 (9th Cir. 2011). In the Ninth Circuit, multipliers “ranging
7 from one to four are frequently awarded.” *Vizcaino*, 290 F.3d at
8 1051 n.6. Courts sometimes find higher multipliers appropriate
9 when using the lodestar method as a cross-check for an award
10 based on the percentage method. *See, e.g., Steiner v. Am. Broad.*
11 *Co., Inc.*, 248 F. App’x 780, 783 (9th Cir. 2007) (finding a
12 multiplier of approximately 6.85 to be “well within the range of
13 multipliers that courts have allowed” when cross-checking a fee
14 based on a percentage of the fund).

15 **I.** Here, the twenty-five percent benchmark fee of \$750,000
16 represents a lodestar multiplier of less than 1.32 on fees through
17 August 19, 2021. This multiplier will be reduced by the hours
18 Class Counsel expend on additional final approval work and
19 work to ensure Qualified Settlement Class Members are
20 appropriately paid their settlement awards.

1 **J.** Because this multiplier is well within the range of
2 reasonableness for percentage fee awards in common fund
3 cases, this Court approves the requested fee award of \$750,000.

4 **16.** The Court **APPROVES** payment of **\$7,267.60** in litigation costs to
5 Class Counsel as fair and reasonable to compensate Class Counsel for
6 the relevant and necessary costs incurred in this case.

7 **A.** “Reasonable costs and expenses incurred by an attorney who
8 creates or preserves a common fund are reimbursed
9 proportionately by those class members who benefit from the
10 settlement.” *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp.
11 1362, 1366 (N.D. Cal. 1996). The settlement notices issued to
12 Class Members in this case indicated that litigation costs were
13 estimated to be \$10,000. Class Counsel seek reimbursement of
14 less than the estimated amount.

15 **17.** Pursuant to the Settlement Agreement, the Court **APPROVES**
16 payment of **\$98,000** from the common fund to the Settlement
17 Administrator, CPT Group, Inc. and up to **\$25,000** to Centro de los
18 Derechos del Migrante, Inc. (“CDM”).

19 **A.** These payments are fair and reasonable to compensate the work
20 and costs incurred in administering the Settlement.

1 **18.** The Court **APPROVES** the service award payments of **\$6,000** each to
2 Plaintiff Omar Palma Renteria and Intervenor Plaintiffs Gilberto
3 Gomez Garcia and Jonathan Gomez Rivera.

4 **A.** These awards are reasonable and do not undermine Plaintiffs’
5 adequacy as Class Representatives. Rather, these awards
6 reasonably compensate Plaintiffs Omar Palma Renteria and
7 Intervenor Plaintiffs Gilberto Gomez Garcia and Jonathan
8 Gomez Rivera for the time and effort each spent serving as class
9 representative, assisting in the investigation of their claims,
10 participating in and keeping abreast of the litigation, and
11 reviewing and approving the proposed settlement terms after
12 consulting with Class Counsel.

13 **19.** To ensure all Settlement Class Members have an adequate opportunity
14 to submit Settlement Claim Forms, any late Claim Forms received by
15 the Settlement Administrator by **September 9, 2021**, shall be
16 **ACCEPTED AS TIMELY.**

17 **A.** “Until the fund created by the settlement is actually distributed,
18 the court retains its traditional equity powers” over the class
19 settlement plan, including the authority to approve “late claims.”
20 *Zients v. LaMorte*, 459 F.2d 628, 630–31 (2d Cir. 1972)

1 (allowing untimely claimants to receive payments from
2 settlement fund); *see also In re Gypsum Antitrust Cases*, 565
3 F.2d 1123, 1128 (9th Cir. 1977) (citing *Zients* in support of the
4 conclusion “that the district court had discretion to grant late
5 claims”).

6 **20.** Each Qualified Settlement Class Member who submits a Settlement
7 Claim Form by **September 9, 2021** shall be entitled to receive a
8 proportional share of the Net Settlement Fund, as set forth in Section
9 III.E.3 of the Settlement Agreement, after deduction of the amounts
10 awarded for attorney fees and costs, service awards, and settlement
11 administration expenses.

12 **A.** Each Qualified Settlement Class Member’s share will be based
13 on his or her hours worked in piecework activities as recorded
14 by Defendant.

15 **B.** Any Qualified Settlement Class Member who fails to cash or
16 deposit a disbursement check issued to that member after a
17 period of **180 calendar days** has elapsed from the date on which
18 the disbursement check was issued will not receive a share of
19 the Settlement Fund but will be bound nevertheless by the terms
20 of the Settlement Agreement and Release.

1 **21.** Following the expiration of **180 calendar days** after the Settlement
2 Administrator issues Settlement Checks, any Residual Funds from
3 uncashed checks will be distributed to the Northwest Justice Project as
4 a *cy pres* beneficiary.

5 **22.** The Settlement is **BINDING** on all Settlement Class members.

6 **23.** No later than **seven calendar days** following the Effective Date,
7 Defendant shall **PAY** the sum of **\$3,000,000** to the Settlement
8 Administrator, CPT.

9 **A.** Within **three business days** after receiving Defendant's
10 payment, the Settlement Administrator shall **PAY** the Attorney
11 Fees Award and Cost Payment to Class Counsel and shall **PAY**
12 the Service Awards to the named Plaintiffs.

13 **B.** Within **fourteen calendar days** following Defendant's
14 payment, the Settlement Administrator shall initiate the
15 Settlement Award payments as provided in the Settlement
16 Agreement.

17 **24.** As of the Effective Date and subject to Defendant's payment of the
18 amounts stated in the Settlement Agreement, this Court **DISMISSES**
19 all claims that were or could have been asserted in the Action on the
20 basis of the allegations contained in the Complaint for the period of

1 May 21, 2015 to May 17, 2018, **WITH PREJUDICE AND**
2 **WITHOUT COSTS** (except as specifically provided in the
3 Settlement Agreement).

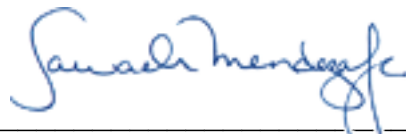
4 **25.** The entry of this Order is **WITHOUT PREJUDICE** to the rights of
5 the Parties to enforce the terms of the Settlement Agreement and the
6 rights of Class Counsel to seek the payment of fees and costs as
7 provided for in the Settlement Agreement.

8 **26.** Without affecting the finality of this Order, or the judgment to be
9 entered pursuant hereto, in any way, the Court **RETAINS**
10 **JURISDICTION** for purposes of enforcement of the Settlement and
11 addressing settlement administration matters and any such post-
12 judgment matters as may be appropriate under the Court's rules.

13 **27.** The Clerk's Office is directed to **ENTER JUDGMENT** and **CLOSE**
14 the file.

15 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
16 provide copies to all counsel.

17 **DATED** this 9th day of September 2021.

18 

19

SALVADOR MENDOZA, JR.
20 United States District Judge