

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

Apr 27, 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
PRELIMINARY 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 Preliminary Approval of Class Action Settlement, ECF No. 27. The

1 Court has considered the Settlement Agreement, ECF No. 27-1 at 16–32, the
2 proposed notice, ECF No. 27-1 at 36–40, and the briefing, and is fully informed.

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

4 **1.** Plaintiffs’ Motion for Preliminary Approval of Class Action
5 Settlement, **ECF No. 27**, and related motion to expedite, **ECF No. 28**,
6 are **GRANTED**.

7 **2.** Unless otherwise provided herein, all capitalized terms in this Order
8 shall have the same meaning as set forth in the Settlement Agreement.
9 *See* ECF No. 27-1 at 16–32.

10 **3.** Solely for purposes of settlement, this Court certifies this case as a
11 class action under Federal Rule of Civil Procedure 23. For the reasons
12 stated in Plaintiffs’ Motion for Preliminary Approval of Class Action
13 Settlement, the Class satisfies the elements of Rule 23(a) and Rule
14 23(b)(3) and thus a class action, for purposes of settlement, is
15 appropriate. The Court certifies the following Class for purposes of
16 settlement:

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

1 **4.** The Court appoints Omar Palma Renteria, Gilberto Gomez Garcia, and
2 Jonathan Gomez Rivera as Class representatives for the Settlement
3 Class.

4 **5.** For purposes of settlement, the Settlement Class is sufficiently
5 numerous to meet the requirement of Rule 23(a)(1). The Class includes
6 approximately 10,580 people, and joinder of all such persons would be
7 impracticable. *See* Fed. R. Civ. P. 23(a)(1).

8 **6.** The case presents common issues of law and fact for the Settlement
9 Class. *See* Fed. R. Civ. P. 23(a)(2). For purposes of settlement, the
10 commonality requirement is satisfied because there are questions of
11 law and fact common to the Class that center on Stemilt’s common
12 employment practices. *See id.*; *Vaquero v. Ashley Furniture Indus.,*
13 *Inc.*, 824 F.3d 1150, 1154 (9th Cir. 2016) (holding that commonality
14 was satisfied based on common issue presented by compensation plan
15 where sales associates were compensated through commissions but
16 also performed worked not “directly involved in selling”). Plaintiffs’
17 claims present issues similar to the issues the Ninth Circuit found
18 satisfied the commonality requirement in *Vaquero*: whether Stemilt’s
19 alleged policy of not separately paying piece-rate workers for non-
20 productive work violates the Washington Minimum Wage Act. *See id.*

1 at 1154 (holding that sales associate pleaded a common claim capable
2 of class-wide resolution when he asserted that employer’s commission
3 plan did not compensate for non-sales work).

4 7. The typicality requirement is satisfied because Plaintiffs’ claims,
5 which are based on Stemilt’s common compensation and timekeeping
6 practices, are “reasonably coextensive with those of the absent class
7 members.” *See* Fed. R. Civ. P. 23(a)(3); *Hansen v. Ticket Track, Inc.*,
8 213 F.R.D. 412, 415 (W.D. Wash. 2003).

9 8. For purposes of settlement, the final prerequisite under Rule 23(a)(4),
10 “adequacy,” is satisfied because the named Plaintiffs and their counsel
11 do not have any conflicts of interest with other class members, and
12 they have shown they will prosecute the action vigorously on behalf of
13 the class. *See Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th
14 Cir. 2011). Plaintiffs’ interests are coextensive with, and not
15 antagonistic to, the interests of the Class. *See* Fed. R. Civ. P. 23(a)(4);
16 *see also Hansen*, 213 F.R.D. at 415–16. Plaintiffs are represented by
17 qualified and competent counsel who have extensive experience and
18 expertise in prosecuting wage-and-hour class actions, including cases
19 involving migrant and seasonal farm workers.

1 **9.** In addition, this Court finds, for the purposes of settlement, that
2 “questions of law or fact common to class members predominate over
3 any questions affecting only individual members, and that a class
4 action is superior to other available methods for fairly and efficiently
5 adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). The
6 predominance requirement is satisfied for purposes of settlement
7 because the common and overarching question in this case is whether
8 Stemilt separately paid piece-rate workers for non-piecework time. In
9 addition, resolution of thousands of relatively small-value claims
10 through this Settlement is far superior to individual lawsuits and
11 promotes consistency and efficiency of adjudication. *See* Fed. R. Civ.
12 P. 23(b)(3); *see also Hansen*, 213 F.R.D. at 416–17.

13 **10.** The Court preliminarily approves the Settlement Agreement and the
14 terms set forth therein—including the relief afforded by the
15 Settlement, the requested Service Awards to the Class representatives,
16 the requested Attorneys’ Fees Award to Class Counsel, the requested
17 Costs Payment to Class Counsel, and payment of settlement
18 administration expenses to Settlement Administrator CPT Group, Inc.
19 (“CPT”) and Centro de los Derechos del Migrante, Inc. (“CDM”)—as
20 being fair, reasonable and adequate. The Settlement Agreement is the

1 result of extensive settlement discussions and arm’s-length
2 negotiations between experienced attorneys who are familiar with
3 class action litigation in general and with the legal and factual issues
4 of this case in particular.

5 **11.** The Court approves Marc Cote, Sean Phelan, and Anne Silver of Frank
6 Freed Subit & Thomas LLP and Joachim Morrison and Xaxira Velasco
7 Ponce De Leon of Columbia Legal Services as Class Counsel.

8 **12.** The Court appoints CPT as Settlement Administrator. The Court
9 approves the Settlement Administrator to perform the functions
10 required by the terms of the Settlement Agreement. The Court also
11 approves CDM to assist with notification and claims for Settlement
12 Class Members in Mexico, as outlined in the Settlement Agreement.

13 **13.** A final fairness hearing (“Final Fairness Hearing”), for purposes of
14 determining whether the Settlement should be finally approved, shall
15 be held before this Court on **September 9, 2021, at 1:30 P.M. in**
16 **Richland.**

17 *A.* At the hearing, the Court will hear arguments concerning
18 whether the proposed settlement and the terms and conditions
19 provided for in the Settlement Agreement should be granted
20 final approval by the Court as fair, reasonable, and adequate.

1 **14.** The Court approves, as to form and content, the Notice to be sent to
2 the Class Members. *See* ECF No. 27-1 at 36–40. In addition, the Court
3 finds that distribution of the Notice in the manner set forth in Paragraph
4 14 of this Order and Section III.K.4 of the Settlement Agreement will
5 meet the requirements of due process and applicable law, will provide
6 the best notice practicable under the circumstances, and will constitute
7 due and sufficient notice to all individuals entitled thereto.

8 **15.** The procedure for distributing the Notice shall be as follows:

9 **A.** **Within 14 days of the date of this Order**, the Settlement
10 Administrator shall mail the Notice (in both Spanish and
11 English) to all Settlement Class Members for whom Stemilt has
12 a U.S. mailing address (“Initial Notification Date”). The Notice
13 mailed to Settlement Class Members shall describe the
14 Settlement and shall advise Settlement Class Members of their
15 right to object to the Settlement and the process by which such
16 objections must be made. The Notice shall also inform
17 Settlement Class Members of their right to exclude themselves
18 from the settlement and explain the exclusion process.

19 **B.** Should any Notice be returned as undeliverable, the Settlement
20 Administrator shall attempt one trace to locate a good address

1 and, if located, shall make a second attempt at mailing the
2 Notice. If such Notice is again returned as undeliverable, no
3 further attempts at delivery of the Notice are required to be
4 made.

5 **C. Within 14 days of the date of this Order**, the Settlement
6 Administrator shall also set up a settlement website containing
7 the full notice, in Spanish and English, along with an online
8 claim form in Spanish and English that Settlement Class
9 Members can use to make a claim.

10 **D. Within 14 days of the date of this Order**, the Settlement
11 Administrator shall also send a text or WhatsApp message in
12 Spanish and English with a link to the settlement website to each
13 Class Member for whom the Settlement Administrator
14 possesses a phone number. This Court specifically authorizes
15 text message or WhatsApp message notification to Settlement
16 Class Members.

17 **E. Within 14 days of the date of this Order**, the Settlement
18 Administrator shall also publicize the Settlement on Facebook
19 (targeted to migrant and seasonal farm workers in Central and
20 Eastern Washington) with links to the settlement website.

1 **F. Within 14 days of the date of this Order**, the Settlement
2 Administrator shall also begin to publicize the Settlement
3 through radio announcements on Spanish-language stations in
4 Central and Eastern Washington, with the radio announcements
5 running for **at least 60 days**.

6 **G. Within 14 days of its receipt of the Settlement Claim Forms**
7 **provided by the Settlement Administrator**, Defendant shall
8 provide a Settlement Claim Form (containing an individual
9 Settlement Award estimate) to all Settlement Class Members
10 employed by Stemilt as of the date of this Order.

11 **16.** The Court finds that mail, text messaging or WhatsApp messaging,
12 radio, Facebook, and Defendant's provision of Settlement Claim
13 Forms to Settlement Class Members, in combination, constitute the
14 best notice practicable under the circumstances of this case and are
15 reasonably calculated to apprise the members of the class of the
16 pendency of this action and their right to participate in the action by
17 submitting a claim, objecting to the settlement, or excluding
18 themselves from the settlement. The Court further finds that text
19 messaging is reasonable, that it constitutes due, adequate, and
20 sufficient notice to all persons entitled to receive such notice, and that

1 it meets the requirements of due process and of Federal Rule of Civil
2 Procedure 23. The Court approves, as to form and content, the use of
3 a text message or WhatsApp notice (to be translated into Spanish) the
4 same or substantially similar to the following:

5 “NOTICE OF CLASS ACTION SETTLEMENT: *Palma*
6 *Renteria v. Stemilt Ag Services LLC*, United States District
7 Court Case for the Eastern District of Washington, Case
8 No. 2:20-cv-00392 SMJ. A settlement has been reached in
9 a class action lawsuit brought by former employees of
10 Stemilt concerning alleged unpaid time for piece-rate
11 employees. You may be entitled to a payment from the
class action settlement. Please click here to view the
settlement notice with details regarding the settlement and
instructions on how to submit a claim: [URL]. This text
message has been authorized by the United States District
Court for the Eastern District of Washington. This is not a
solicitation from a lawyer.”

- 12 **17.** If the Court grants final approval, each Settlement Class Member who
13 submits a valid and timely Settlement Claim Form by mail, online on
14 the settlement website, in person at the Stemilt locations described in
15 the Notice and Settlement Agreement, or through CDM will be entitled
16 to receive a proportionate share of the Net Settlement Fund, calculated
17 as set forth in Section III.E.3 of the Settlement Agreement. To be
18 considered timely, the Settlement Claim Form must be postmarked,
19 submitted online, or submitted in person **no later than 90 days**
20 **following the Initial Notification Date** (the “Notice Deadline”).

1 **18.** A Settlement Class Member who wishes to exclude himself or herself
2 from this settlement must submit a timely and valid written request for
3 exclusion to the Settlement Administrator as described in Sections
4 III.A.14 and III.K.4.h. of the Settlement Agreement. To be timely, the
5 exclusion request must be postmarked no later than the Notice
6 Deadline, except as provided in the Settlement Agreement.

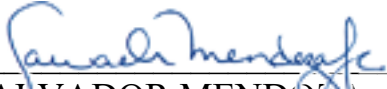
7 **19.** **No later than 14 days before the Notice Deadline**, Class Counsel
8 shall file a motion for final approval of the Settlement and request for
9 attorney fees and costs. The papers in support of final approval,
10 including the request for attorney fees and costs, shall be made
11 available on the settlement website after filing.

12 **20.** Settlement Class Members who wish to object to the Settlement must
13 file with the Court and submit to Settlement Class Counsel and
14 Defendant’s counsel a written statement objecting to the settlement as
15 described in Section III.K.4.g of the Settlement Agreement. Such
16 written statement must be filed, and postmarked or delivered to
17 Settlement Class Counsel and Defendant’s counsel, **no later than the**
18 **Notice Deadline**. The Notice shall provide instructions regarding how
19 to make objections.

- 1 21. Responses to any objections to the Settlement shall be filed and served
- 2 **no later than 14 days after the Notice Deadline.**
- 3 22. The Court may reset the Final Fairness Hearing without further notice
- 4 to the Settlement Class Members.
- 5 23. The Court retains jurisdiction to consider all further applications
- 6 arising out of or connected with the proposed Settlement.

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

9 **DATED** this 27th day of April 2021.

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11 
12 SALVADOR MENDOCCA, JR.
United States District Judge

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