

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

ORDER GRANTING FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT – 1

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       **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)

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

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

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

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

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

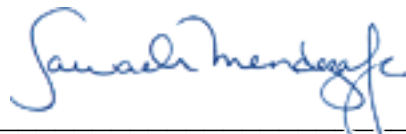
**25.** The entry of this Order is **WITHOUT PREJUDICE** to the rights of the Parties to enforce the terms of the Settlement Agreement and the rights of Class Counsel to seek the payment of fees and costs as provided for in the Settlement Agreement.

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

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

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

**DATED** this 9<sup>th</sup> day of September 2021.



SALVADOR MENDOZA, JR.  
United States District Judge