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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 1:14-cv-03032-SAB

10 BACILIO RUIZ TORRES and JOSE
11 AMADOR, as individuals and on behalf of
12 all other similarly situated persons,

13 Plaintiffs,

14 v.

15 MERCER CANYONS, INC.,

16 Defendant.
17
18

**ORDER GRANTING
PRELIMINARY APPROVAL
OF SETTLEMENT**

19 Before the Court is Plaintiffs' Unopposed Motion for Preliminary Approval
20 of Class Action Settlement, ECF No. 252, and the proposed Settlement Agreement
21 itself, ECF No. 253. Because the parties have proposed a settlement that was
22 produced through non-collusive negotiations, lacks deficiencies, is reasonable, and
23 treats all members of the class, the subclass, and the class representatives fairly,
24 the Court **grants** preliminary approval.

25 Also before the Court are a Stipulated Motion for Attorneys' Fees, ECF
26 No. 254, and a Stipulated Motion to Exclude Perez Plaintiffs, ECF No. 257. These
27 issues are contemplated in the settlement, but to allow the speedy execution of
28 settlement procedures, the Court will address those motions in a subsequent order.

ORDER GRANTING PRELIMINARY APPROVAL OF . . . ^ 1

BACKGROUND

1
2 On March 14, 2014, named Plaintiffs and class representatives Bacilio Ruiz
3 Torres and Jose Amador filed a proposed class action complaint with this Court.
4 They alleged that in 2013 Defendant Mercer Canyons, Inc. failed to inform them
5 and other putative class members of vineyard jobs paying \$12.00 an hour available
6 under the H-2A worker visa program. They alleged this was in violation of
7 29 U.S.C. § 1831(e) and 29 U.S.C. § 1821(f) and constituted an unfair or
8 deceptive practice under RCW 19.86.020.

9 This case involved extensive discovery and motions practice. In particular,
10 the Court denied Defendant's motion for summary judgment on all claims, its
11 motion to reconsider, and its motion to certify the summary judgment issue for
12 interlocutory appeal.

13 On April 8, 2015 the Court granted a motion to certify a class. In particular,
14 the Court certified an Inaccurate Information class defined as:

15
16 All domestic migrant and seasonal farm workers who: 1) were
17 employed as vineyard workers by Mercer Canyons in 2012; 2) sought
18 employment at Mercer Canyons in 2013 between February 4 and June
19 15, 2013; or 3) performed vineyard work at Mercer Canyons between
20 March 24 and September 15, 2013, and were not referred by
21 WorkSource.

22
23 ECF No. 134 at 12:20-25. Pursuant to Fed. R. Civ. P. 23(b)(3) and (c)(5), the
24 Court also certified a subclass of:

25
26 All domestic and seasonal farm workers who performed vineyard
27 work between March 24 and September 15, 2013 for Mercer
28

1 Canyons, were paid less than \$12 an hour, and were not referred by
2 WorkSource.

3
4 *Id.* at 13:1-4. This class sought relief for alleged violations of 29 U.S.C.
5 1832(a), 29 U.S.C. § 1822(a), and RCW 49.52.052(2) through statutory
6 damages available under 29 U.S.C. § 1854(c)(1).

7 The order certifying the class and subclass was reviewed through
8 interlocutory appeal by the United States Court of Appeals for the Ninth
9 Circuit, and affirmed on August 31, 2016. *Torres v. Mercer Canyons Inc.*,
10 835 F.3d 1125, 1125 (9th Cir. 2016). The Court set a new trial for April
11 2017 and considered several pending motions for summary judgment filed
12 by Plaintiffs.

13 The Court did not have the opportunity to rule on these motions,
14 because in early 2017, the parties began a second round of mediation hosted
15 by United States Magistrate Judge James Hutton, which resulted in this
16 agreement.¹

17 18 **PRELIMINARY APPROVAL OF SETTLEMENT**

19 1) To protect the interests of all class members, Federal Rule of Civil
20 Procedure 23(e) requires the Court to review the parties' proposed settlement
21 agreement and approve it. "The Court considers the settlement as a whole, rather
22 than its components, and lacks the authority to delete, modify or substitute certain
23 provisions." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).
24 Rather, "[t]he settlement must stand or fall in its entirety." *Id.*

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27 _____
28 ¹ An earlier round of settlement negotiations hosted by Judge Hutton had failed to
resolve the case.

1 2) At this stage of the proceedings, the Court must initially consider
2 whether to grant preliminary approval of the settlement as a first step toward final
3 approval. *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008).

4 3) In granting preliminary approval, the Court considers whether the
5 Settlement Agreement appears to be the product of serious, informed, non-
6 collusive negotiations; has no obvious deficiencies; does not grant preferential
7 treatment to class representatives, and falls within the range of possible approval.
8 *Harris v. Vector Mktg. Corp.*, No. 08-cv-05198 EMC, 2011 WL 1627973, at *7
9 (N.D. Cal. Apr. 29, 2011).

10 4) The Court finds that the Settlement Agreement was the result of
11 informed, non-collusive, protracted, and arm's length negotiations between
12 competent counsel and assisted by Judge Hutton. The parties engaged in two
13 separate and lengthy negotiation settlements with Judge Hutton, and the Court
14 concludes that the parties engaged in good faith efforts to resolve the case in the
15 best interest of their clients. *Satchell v. Fed. Exp. Corp.*, No. C 03-2659 SI, 2007
16 WL 1114010, at *4 (N.D. Cal. Apr.13, 2007) ("The assistance of an experienced
17 mediator in the settlement process confirms that the settlement is non-collusive.").
18 Further, the extensive briefing on substantive and procedural issues, as well as this
19 Court's orders, helped insure the parties' decisions were well-informed and based
20 on a solid legal framework. Thus, the parties were capable of arriving at a fair
21 settlement agreement.

22 5) Defendants have proposed creating a fund of \$545,000 to compensate
23 class members for all claims. Class members are eligible for a payment of \$1,000,
24 and class members who are also part of the subclass would receive another
25 payment of \$500. If so many of the 641 class members file claims that all
26 claimants would not be able to receive their due amount, the payments would be
27 reduced pro rata. If so few class members make claims such that settlement funds
28 are left over, those funds would offset any attorneys' fees that the Court may grant.

1 6) To determine whether a settlement amount falls within the range of
2 reasonableness, “courts primarily consider plaintiffs’ expected recovery balanced
3 against the value of the settlement offer.” *Vasquez v. Coast Valley Roofing*, 670 F.
4 Supp. 2d 1114, 1125 (E.D. Cal. 2009). But the Court also considers factors
5 indicating whether the final settlement will be fair, adequate, and reasonable,
6 including the strength of the plaintiffs’ case; the risk, expense, complexity, and
7 likely duration of further litigation; the risk of maintaining class action status
8 throughout the trial; the extent of discovery completed and the stage of the
9 proceedings; the experience and views of counsel; the presence of a governmental
10 participant; and the reaction of class members to the proposed settlement.
11 *Churchill Village v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). There is no
12 governmental participant in this case; and though the two named Plaintiffs
13 approve of the plan, the Court is unable to ascertain the reaction of a significant
14 part of the class until notice is delivered.

15 7) Expected Recovery Against Settlement Value: There are many
16 discretionary factors in the award of damages in these claims, but the evaluation of
17 potential damage scenarios is not the most accurate lens to analyze this factor
18 against. Rather, the Court considers “the *maximum* amount of damages
19 recoverable in a successful litigation” in comparison with the settlement amount.
20 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (emphasis
21 added). Still, “[i]t is well-settled law that a cash settlement amounting to only a
22 fraction of the potential recovery does not per se render the settlement inadequate
23 or unfair.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir.
24 1982).

25 8) Statutory damage claims under AWPAs range from \$0 to \$500 per
26 person per violation, with a class action cap of \$500,000. 29 U.S.C. § 1854(c)(1)
27 & (e). A seven-factor test determines the exact amount. *See, e.g., Martinez v.*
28 *Shinn*, 992 F.2d 997, 999 (9th Cir. 1993). Maximum CPA damages sought in

1 aggregate by the class equaled \$187,672, capable of increasing up to treble
2 damages in the Court's discretion to \$563,000. *See* RCW 19.86.090. Finally, the
3 parties jointly assert that around \$150,000 in unpaid wages were sought by the
4 Equal Pay subclass. These damages could have been doubled in the Court's
5 discretion to \$300,000. RCW 49.52.070.

6 9) The parties jointly present that the settlement fund amount of
7 \$545,000 represents approximately forty-two percent of the maximum award
8 possible in this suit. Forty-two percent represents a significant proportion of an
9 award, and district courts have approved settlements that provide far smaller
10 fractions. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459 (approving a
11 settlement that was "roughly one-sixth of the potential recover); *Glass v. UBS Fin.*
12 *Servs., Inc.*, No. C-06-4068 MMC, 2007 WL 221862 (N.D. Cal. Jan. 26, 2007)
13 (approving a settlement where plaintiffs secured "approximately 25 to 35% of the
14 amount of damages" that could have been proven at trial).

15 10) This conclusion is further strengthened by the discretionary nature of
16 much of the damages available in this case. Many of the damage considerations
17 would depend on factual findings, with no clear indication whether the predicate
18 facts would end up in either parties' favor. *See, e.g., Martinez*, 992 F.2d at 999
19 (factors for statutory damages under AWPAs include "extent of the defendant's
20 culpability" and "the circumstances of each case"); *N. Seattle Health Cntr. Corp.*
21 *v. Allstate Fire & Cas. Ins. Co.*, No. C14-1680JLR, 2016 WL 1643979, at *5
22 (W.D. Wash. Apr. 26, 2016) (awarding treble damages under CPA based on
23 factual findings); *Edman v. Kindred Nursing Cntrs. W., L.L.C.*, No. 14-CV-01280-
24 BJR, 2016 WL 6836884, at *11 (W.D. Wash. Nov. 21, 2016) (doubling of unpaid
25 wage damages requires finding of willfulness). Additionally, the Court is
26 persuaded by the parties' conclusion that the planned awards of \$1,000 (for class
27 members) and \$1,500 (for subclass members) exceeds statutory AWPAs damages
28 as far as proving further facts contested by Defendant.

1 11) These amounts strike the Court as within the range of reasonableness.
2 Thus, class members are treated fairly within this settlement, with subclass
3 members receiving an additional sum in compensation for additional alleged harm.
4 There is no obvious deficiency in this proposed payment system.

5 12) Named Plaintiffs and class representatives Bacilio Ruiz-Torres and
6 Jose Amador would be paid \$7,500 for their services as class representatives.
7 Service awards to named plaintiffs do not render a settlement unfair or
8 unreasonable. *Stanton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). So long
9 as named Plaintiffs are otherwise compensated in a manner identical to other class
10 members, this consideration passes muster.

11 13) The Strength of Plaintiffs' case: Plaintiffs' case was sufficiently
12 strong to justify a valuable settlement. Rulings on class certification (and
13 affirmance on appeal) and summary judgment indicate that Plaintiffs' claims were
14 plausibly meritorious.

15 14) The Risk, Expense, Complexity, and Likely Duration of Further
16 Litigation: A two-week jury trial representing the interests of over six hundred
17 class members epitomizes the risk and complexity of litigation. Given the appeals
18 and many motions to reconsider filed in this case, the Court concludes that further
19 post-trial and appellate litigation would have been likely.

20 15) The Risk of Maintaining Class Action Status Throughout the Trial:
21 Given the strength of Plaintiff's motion to certify the class, the work that went into
22 tailoring appropriate class definitions, and the Ninth Circuit's affirmance of the
23 class certification order, it is unlikely that decertification would have occurred.

24 16) The Extent of Discovery Completed: Thousands of documents have
25 been exchanged in discovery in this case, and the completion of discovery co-
26 incited with the conclusion of the settlement agreement. The Court concludes that
27 the parties are sufficiently aware of the factual issues and disputes in this case,
28 allowing them to make an informed settlement decision.

1 17) The Experience and Views of Counsel: The attorneys involved in this
2 case have litigated it expertly, and in their long experience in class action and
3 labor work conclude this settlement is fair and reasonable.

4 18) Based on the above findings, the settlement agreement appears on its
5 face to be fair, adequate, and reasonable. The Court hereby **ENTERS** the
6 following order regarding preliminary approval of the settlement.

7 19) Plaintiffs' Unopposed Motion for Preliminary Approval of Class
8 Action Settlement, ECF No. 252, is **GRANTED**. Preliminary approval of the
9 parties' Settlement Agreement is **GRANTED**, and its terms are conditionally
10 approved, subject to final approval at the Final Approval Hearing.

11 20) Federal Rule of Civil Procedure 23(e) requires the Court to "direct
12 notice in a reasonable manner to all class members" before considering whether to
13 finally approve the parties' Settlement Agreement.

14 21) Rule 23(e) also requires that the Court give all Class Members an
15 opportunity to object to the proposed settlement before the Court considers
16 whether to finally approve the settlement.

17 22) The Court may only grant *final* approval to the parties' settlement if it
18 finds that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P.
19 23(e)(2).

20 23) The content of the proposed class action notice, "If You Worked at
21 Mercer Canyons, Inc. in 2012 or 2013, or Went to Mercer Canyons in 2013
22 Looking for Work, a Proposed Monetary Settlement Has Been Reached and Will
23 Affect Your Rights" ("Class Notice") and claim form, ECF No. 252-1; the
24 proposed radio notice, ECF No. 252-2; and the printed media notice, ECF
25 No. 252-2, are reasonably calculated means to notify class members of their rights.
26 The proposed methods of dissemination meet the requirements of due process and
27 Federal Rules of Civil Procedure 23(c)(2) and 23(e)(1), and are the best notice that
28 is practicable under the circumstances.

1 24) The Court approves the Class Notices that the Plaintiffs attached as
2 Exhibits 1 and 2 to their motion. ECF No. 252-1 & -2.

3 25) All notices shall be translated into Spanish.

4 26) The Court approves the method of dissemination of the two Notices
5 proposed by the Plaintiffs in their motion. Class counsel Columbia Legal Services
6 (CLS) are hereby **APPOINTED** as the administrators of the class notification and
7 settlement process. CLS shall issue notice, administer the claims process, and
8 process payment to qualified claimants.

9 27) By **April 6, 2017**, Plaintiffs shall deliver an English and Spanish
10 version of the Class Notice and claim form by first class mail to all class members.

11 28) By **April 6, 2017** Plaintiffs shall have English and Spanish versions
12 of the Class Notice published in an appropriate newspaper.

13 29) By **April 6, 2017** Plaintiffs shall have the radio announcement of the
14 Class Notice aired on an appropriate radio station in English and Spanish.

15 30) Claims by class members must be submitted by **June 30, 2017**.

16 31) Any Class Member who wishes to object to the fairness,
17 reasonableness, or adequacy of the Settlement Agreement must send a written
18 statement setting forth his or her objection(s) by first-class mail, postage prepaid,
19 to the Court.

20 32) To be considered, the objection must be in writing and must include
21 the following information: (a) the name of the case, *Bacilio Ruiz Torres et al. v.*
22 *Mercer Canyons, Inc.*, No. 1:14-cv-03032-SAB; (b) the objecting Class Member's
23 name, home or contact address, and telephone number; (c) a sentence stating that
24 the objecting Class Member is a member of the Class; (d) the reasons why the
25 Class Member objects; and any evidence and legal authority the Class Member
26 wishes to bring to the Court's attention in support of his or her objection(s).

1 33) Objections must be mailed to the Court at Ruiz v. Mercer Canyons
2 Objections, U.S. District Court, P.O. Box 1493, Spokane WA 99201, and
3 postmarked no later than **June 30, 2017**.

4 34) Any member of the Plaintiff Class who fails to object in writing as
5 described above by the deadline shall waive and forfeit any and all rights he or she
6 may have to object to final approval of the Settlement Agreement.

7 35) Any Class Member may raise an objection either on his or her own or
8 through an attorney hired at the Class Member's own expense. A Class Member's
9 hiring of an attorney shall not extend any of the deadlines set forth in this Order. If
10 a Class Member hires an attorney other than Class Counsel to represent him or her,
11 the attorney must file and serve a notice of appearance, no later than **June 30,**
12 **2017**.

13 36) Any Class Member or attorney, other than the parties' counsel,
14 intending to appear and speak at the Final Approval Hearing must send a notice of
15 their intention to do so by first-class mail, postage prepaid, to the Court
16 postmarked no later than **June 30, 2017**. Any Class Member or attorney, other
17 than the Parties' counsel, who fails to provide the notice of his or her intention to
18 appear and speak will not be allowed to speak at the Final Approval Hearing.

19 37) It is not necessary for any Class Member who objects as described
20 above to appear at the Final Approval Hearing. The Court will consider any
21 properly made objection before making a decision regarding whether to finally
22 approve the Settlement.

23 38) Class Counsel shall file a motion for final approval of the settlement
24 and a response to any proper objections no later than **August 18, 2017**.

25 39) The Final Approval Hearing will be held at the United States
26 Courthouse for the Eastern District of Washington in Yakima, Washington located
27 at 25 S. 3rd Street, Yakima WA 98901. The parties shall work with the Deputy
28 Clerk of Court to arrange a time and date for the Final Approval Hearing.

CASE SCHEDULE

40) The Court sets the following deadlines:

	Event	Timing or Deadline
1.	Deadline for mailing Notice of Proposed Class Action Settlement to Class Members	April 6, 2017
2.	Deadline for Defendants' and Plaintiffs' counsel to post a copy of the Notice of Proposed Class Action Settlement and a copy of the parties' Settlement Agreement on their respective web sites.	April 6, 2017
3.	Deadline for publication of Notice of Proposed Class Action Settlement in English and Spanish on three separate dates in a newspaper.	April 6, 2017
4.	Deadline for filing a claim.	June 30, 2017
5.	Deadline for filing an objection.	June 30, 2017
6.	Deadline for attorneys representing objectors to serve and file notices of appearance.	June 30, 2017
7.	Deadline for objectors or their attorneys to serve and file notice of intent to appear and speak at Final Approval Hearing.	June 30, 2017
8.	Deadline for Class Counsel to file Plaintiffs' motion for final approval and response to any objections or opposition memorandum filed by any objector.	August 18, 2017
9.	Final Approval Hearing in United States Courthouse in Yakima, Washington.	To be determined.

1 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter
2 this Order and to provide copies to counsel.

3 **DATED** this 7th day of March, 2017.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

9 Stanley A. Bastian
10 United States District Judge