Hearing Date: November 8, 2019
9:30 a.m.

SUPERIOR COURT OF WASHINGTON
FOR CHELAN COUNTY

OMAR PALMA RENTERIA, individually and on behalf of all others similarly situated, Plaintiffs, vs. STEMILT AG SERVICES, LLC, a solely owned subsidiary of Stemilt Growers, LLC, and DOES 1-10, inclusive, Defendant.	Case No. 18-2-00471-8 CLASS MEMBERS GILBERTO GOMEZ GARCIA AND JONATHAN GOMEZ RIVERA MOTION TO INTERVENE AND TO POSTPONE HEARING OF FINAL APPROVAL OF PROPOSED SETTLEMENT

Gilberto Gomez Garcia and Jonathan Gomez Rivera ("Intervenors") are absent class members in the present state court action who never received notice, apparently sent by regular mail to their homes in Mexico, of the proposed settlement now before the Court. Intervenors respectfully request the Court: 1) postpone the November 8, 2019 Fairness Hearing for parties to adequately review, brief, and argue the merits of the proposed state court settlement; 2) grant their motions to Shorten Time and to Intervene pursuant to CR 24(a) or in the alternative under CR 24(b); and, 3) order counsel to provide information regarding notice of absent class members residing in Mexico.

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I. BACKGROUND

Intervenors are H-2A workers from Mexico who also seek to represent a class of over 1,100 similarly-situated Mexican nationals in a federal class action involving allegations of forced labor, under the federal Trafficking Victims Protection Act ("TVPA"), in Stemilt's orchards in 2017. The Intervenors also allege Stemilt failed to compensate all 2017 Mexican H-2A workers who lived in Stemilt labor camps for wait time. The H-2A workers were bused to various remote orchards throughout eastern Washington, and, upon their arrival, had to wait a considerable amount of time before starting work. Additionally, the workers had to wait on Stemilt's busses at the end of the workday while the foreman filled out paperwork.

II. STATEMENT OF FACTS

The *Renteria* case was filed in May 2018 on behalf of more than 10,000 agricultural workers in Washington. According to the *Renteria* motion for preliminary approval and motion for final approval of the proposed settlement, the parties agreed to informal discovery to facilitate early settlement talks. Defendants provided certain documents and data on March 7, 2019, and the case settled less than two weeks later on March 19, 2019.

The proposed settlement class is defined as:

> All individuals who (1) resided in Washington State and/or worked in Washington State for Defendant; (2) were employed by Defendant in the position of hand harvester, pruner, picker, thinner, farm worker, or any other similar position; (3) and who were paid on a piece-rate basis, at any time from May 21, 2015 through May 17, 2018.

Plaintiffs filed a motion for preliminary approval of the proposed settlement on May 15, 2019. Through a Settlement Administrator selected by the parties, notices were mailed to all class members via first class mail on or about July 12, 2019. The deadline for filing objections to the settlement, exclusion requests, and claim forms was September 25, 2019. Intervenors

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never received notice of the settlement and were entirely unaware of the existence of the state court lawsuit until October 23, 2019. It is entirely unknown how many absent class members reside in Mexico, how many received notice, how many filed claims, and the value of their wage claims.

On September 19, 2019, Intervenors sent a copy of the federal forced labor complaint to counsel for Stemilt and offering a period of time to enter into negotiations before filing suit. *Garcia Decl.* at ¶ 4. The forced labor claims of the H-2A workers also included a proposed wage claim class consisting of:

> All Mexican nationals employed at Stemilt Ag Services, LLC in Washington, pursuant to the 2017 H-2A contracts from January 16 through November 15, 2017, who traveled on Stemilt buses to other Stemilt orchards for work.

Gomez Objections, Ex. A at 24 (¶ 109). When Intervenors' counsel spoke with Stemilt's counsel on September 30, 2019, Stemilt's counsel did not mention the pendency of the *Renteria* case or any deadline related to filing claims or objections. *Id.* at ¶ 6. Over the course of the next several weeks, Stemilt's counsel and Intervenors' counsel exchanged several messages, but Stemilt's counsel did not mention the *Renteria* case or any proposed settlement until October 23, 2019. *Id.* at ¶¶ 6-7. Stemilt's counsel informed Intervenors that the wage claims raised in the draft federal complaint would be extinguished by the pending state court settlement. *Id.* at ¶ 7. Intervenors' counsel asked Stemilt's counsel for documents related to the proposed *Renteria* settlement and about details related to the Final Approval Hearing. That information was not provided until late Friday afternoon on November 1, 2019. *Id.* at ¶¶ 8-9.

Intervenors filed an objection to the proposed settlement on November 6, 2019 after requests to delay the hearing were rebuffed. *Id.* at ¶ 10. The objection was sent to the Settlement Administrator and Parties via email.

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III. ARGUMENT

A. The Final Fairness Hearing Should Be Postponed to Ensure Basic Fairness and Transparency of the Notice Process and Potentially Narrow the Scope of the Proposed Settlement Agreement.

CR 23 provides that all class actions must be approved by the court after appropriate notice and opportunities for class members to file objections or opt out. Here, the court granted preliminary approval, approved a notice program based entirely on mail even for putative class members residing in Mexico, and set a final approval hearing date of November 8, 2019. Having set that date, the court can continue it with or without formal notice to the class. The Court has absolute authority to determine its process for considering and approving class action settlements. CR 24(d).

It is unclear whether counsel for the parties advised the Court that substantial numbers of class members resided in Mexico. Additionally, it is unclear whether the Court was advised of recent case law holding that service of Mexican H-2A farm workers by mail was entirely inadequate.

Counsel for the Intervenors has over 25 years representing farm workers in class actions in state and federal court. *Morrison Decl.* at ¶ 4. Columbia Legal Services is presently representing a class of hundreds of Mexican H-2A workers in a separate forced labor class action in federal court in Seattle. *Id.* In that case, Judge Coughenour recently ruled that class notice by mail would be wholly inadequate and that more modern methods of notice were available and likely to achieve actual notice.

> While U.S. mail has long been the primary method of providing class notice, 'courts and counsel have begun to employ new technology to make notice more effective.'
>
> Declarations from class administrators and litigators experienced in working with the class's population [of Mexican H-2A workers] describe the Mexican mail

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> system as unreliable, stating that mail often does not reach its destination or is delayed by weeks or months.

Rosas v. Sarbanand Farms, LLC, C18-0112-JCC, 2019 WL 859225, at *5 (W.D. Wash. Feb. 22, 2019) (requiring notice via electronic messaging through a widely-used cell phone application called "WhatsApp").

Judge Coughenour's ruling is consistent with the fact that neither Intervenor ever received any notice of the *Renteria* case or the proposed settlement. And, when Intervenors asked for basic information regarding the number of absent class members residing in Mexico, what their return rates were, and what their potential damages amounted to, *Renteria* counsel refused to provide any information. Instead, it appears there is a desire to rush this settlement through the system to not only extinguish all claims here, but any potential wage claims raised in the proposed federal court lawsuit.

In light of the fact that none of this information was provided, the Intervenors cannot properly evaluate the adequacy of the notice. The Intervenors respectfully suggest the Court needs similar information to make a proper evaluation. Under these circumstances, the Intervenors respectfully submit that a reasonable continuance of the final approval hearing is warranted.

B. Messrs. Gomez Garcia and Gomez Rivera Should Be Allowed to Intervene as of Right or Permissively.

Intervention as a matter of right should be granted as Intervenors can meet all prongs in the court rule. CR 24(a) provides:

> a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: .... (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the person is so situated that the disposition of the action may as a practical matter impair or impede the person's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

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This rule is liberally construed in favor of allowing intervention. *Olver v. Fowler*, 161 Wash. 2d 655, 664, 168 P.3d 348, 353 (2007). Washington courts allow class members to intervene in order to challenge a proposed settlement. *See Pickett v. Holland Am. Line-Westours, Inc.,* 145 Wash. 2d 178, 182, 35 P.3d 351, 353 (2001) (intervention allowed; the opinion does not specify whether intervention was of right or permissive); *Dolan v. King Cty.*, 184 Wash. App. 1038 (2014) (allowing intervention where the issues that were addressed in the settlement document directly affected intervenor). It should be allowed here.

Under CR 24(a), each requirement of this rule is satisfied. This motion is timely given that Intervenors filed their objection and their motions as soon as it was reasonably possible under the circumstances. The Intervenors are undisputedly members of the *Renteria* class; thus, they have interests relating to the property or transaction which is the subject of the action. The proposed *Renteria* settlement could potentially extinguish viable wage claims in the federal lawsuit.[1] Finally, it is apparent from the responses received from the *Renteria* counsel rebuffing modest requests for a delay and transparency, that the Intervenors' interests are not adequately protected by the existing parties.

Should the Court concluded intervention as a matter of right is not permitted, permissive intervention under CR 24(b) is allowed. That rule provides:

> (b) **Permissive Intervention.** Upon timely application, anyone may be permitted to intervene in an action: .... (2) When an applicant's claim or defense and the main action have a question of law or fact in common. ... In exercising its

[1] The opt-out date has already passed, but this element would still be satisfied even if Intervenors could still opt out. *See* 3 *Newberg on Class Actions* § 9:34 (5th ed.) ("Some courts have denied motions for intervention of right when the proposed intervenor could opt out of the certified class, reasoning that the ability to opt out means the proposed intervenor's interests were not impaired. However, this reading of the 'impairment' is surely wrong: it would mean a class member could never intervene in a (b)(3) class action (since she can always opt out), yet both Rule 23 and the history of Rule 24 explicitly envision intervention as a means of securing adequacy of representation.") (footnotes omitted).

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> discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Under this standard, "[t]he trial court should disallow intervention only when it will unduly delay or prejudice the rights of the original parties." *Wilson Sporting Goods Co. v. Pederson*, 76 Wn. App. 300, 303, 886 P. 2d 203 (1994). Permissive intervention is common in class action cases. 4 *Newberg on Class Actions* § 13:28 (5th ed.) ("[C]ourts generally grant intervention by parties seeking to object to a settlement when those parties are truly affected parties and they file a timely motion."). Each requirement of this rule is also satisfied as the Intervenors timely filed their motion, their federal court waiting time claims contain a common question of law or fact to the *Renteria* wage claims, and intervention would not unduly delay or prejudice the adjudication of the rights of the original parties.

IV. CONCLUSION

Both Mr. Gomez Garcia and Mr. Gomez Rivera deserve basic information to protect not only their individual rights, but those of the class of H-2A Mexican workers they seek to represent in their federal court class action. All members of the proposed federal action will be prejudiced if the *Renteria* settlement is approved without sufficient information and scrutiny. Therefore, they request this Court delay the Final Fairness hearing to allow them the time they deserve to evaluate the *Renteria* settlement and determine the impact it may have upon their federal class action.

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DATED this 7th day of November, 2019.

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CERTIFICATE OF SERVICE

I certify that on this 7th day of November, 2019, I caused the foregoing document to be served on the parties in this matter as follows:

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