

The Honorable Robert H. Whaley

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSE GUADALUPE PEREZ-FARIAS,
et. al.,

Plaintiffs,

vs.

GLOBAL HORIZONS, INC., *et. al.*,

Defendants.

CLASS ACTION

No. CV-05-3061-RHW

ORDER GRANTING PLAINTIFFS'
MOTION FOR COSTS, INCENTIVE
AWARDS, AND FOR *CY PRES*
DISTRIBUTION

Before the Court is Plaintiffs' Motion for Incentive Awards and for *Cy Pres* Distribution, [ECF No. 1365](#). Oral argument was heard on March 11, 2014 in Yakima. The Plaintiffs were represented by Richard Kuhling and Lori Isley, the Grower Defendants were represented by Brendan Monahan.

The Court accepts the independent report of Victor Lara setting forth the efforts made by Plaintiffs' counsel to locate and compensate class members. [ECF No. 1366-9](#). The Grower Defendants concurred with Mr. Lara's report and that Plaintiffs performed "remarkably well" in their distribution efforts. [ECF No. 1347](#). However, despite those efforts the Plaintiffs provided a final accounting which set

1 forth that \$ 813,542.58 remains undistributed to silent class members. The Court
2 now turns to the distribution of those remaining funds.

3 Plaintiffs proposed this Court award each class representative a \$7,500
4 incentive award for their years of dedication to this case. Incentive awards to class
5 representatives are typical and courts have discretion to make such awards.
6 *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009). When
7 evaluating a request for an incentive payment, the district court must use “relevant
8 factors includ[ing] the actions the plaintiff has taken to protect the interests of the
9 class, the degree to which the class has benefitted from those actions, ... the amount
10 of time and effort the plaintiff expended in pursuing the litigation ... and
11 reasonabl[e] fear[s of] workplace retaliation.” *Staton v. Boeing Co.*, 327 F.3d 938,
12 977 (9th Cir. 2003) (citing cases approving incentive awards between \$2,000-
13 \$10,000). In light of the nine-year commitment made by each of the representative
14 Plaintiffs to this class action, a \$7,500 incentive fee is appropriate for Mr. Perez,
15 Mr. Betancourt, and Mr. Sanchez.
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18 The Plaintiffs also requested costs to distribute class funds. The Grower
19 Defendants agreed that a maximum of \$50,000 of the costs and fees associated
20 with the distribution process could be paid from the judgment proceeds.
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22 [ECF No. 1347 at 4 ¶ 7.4](#). The Court accepts the Plaintiffs’ accounting that it cost
23 \$25,258.51 to distribute the judgment.

1 Following the deadline for claims established by the parties, Plaintiffs
2 received one additional claim form from a class member. [ECF No. 1379](#). The
3 Grower Defendants did not object to this payment. The Court approves this
4 payment.

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6 Before turning to the Plaintiffs' request for *cy pres* distribution the Court
7 must review the Grower Defendants' request for reversion.

8 Reversion of unclaimed funds is inappropriate where deterrence is a goal of
9 the underlying statute. "In light of the deterrence objective of FLCRA and the
10 nature of the violations, we find that reversion of the funds to the defendants is not
11 an available option." *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904
12 F.2d 1301, 1308 (9th Cir. 1990). The Washington Supreme Court ruled that one of
13 the purposes of FLCA is to deter future violations. *Perez-Farias v. Global*
14 *Horizons, Inc.*, 175 Wash.2d 518, 530 (2012). Just as the Ninth Circuit found that
15 reversion was inappropriate in *Six (6) Mexican Workers* it would not be
16 appropriate to return the funds to the Defendants here due to the deterrence
17 objective of FLCA and the statutory violations established for which damages were
18 awarded.
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21 Finally, the Court turns to the Plaintiffs' *cy pres* distribution request. In
22 *Dennis v. Kellogg Co.*, 697 F.3d 858 (9th Cir. 2012), the Ninth Circuit set forth a
23 three-part test for determining the proper recipients of *cy pres* awards. First, all *cy*

1 *pres* awards must be guided by and consistent with the “objectives of the
2 underlying statute” used to generate the funds. *Id.* at 865. Second, courts must
3 consider the “interests of silent class members.” *Id.* And third, courts must not
4 approve *cy pres* awards to entities that are “too remote from the plaintiff class,” *id.*
5 (citations omitted), meaning that *cy pres* beneficiaries must be reasonably “tethered
6 to the nature of the lawsuit and the interests of the silent class members.” *Id.* at
7 867.

9 The Workers proposed four *cy pres* entities, all of which have lengthy track
10 records providing FLCA outreach services and legal representation to farm
11 workers in eastern Washington. [ECF No. 1368](#), [1369](#), [1370](#), [1371](#). The Growers do
12 not dispute that these groups are all appropriate *cy pres* recipients in this case
13 under the Ninth Circuit’s guidelines.¹

15 Each of the proposed entities submitted a declaration in support of the
16 proposed *cy pres* distribution. *Id.* The Court has independently reviewed the
17 declarations submitted by each of the four *cy pres* entities proposed by the
18 Plaintiffs. The Court is satisfied that each of the Plaintiffs’ proposed *cy pres*
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20 ¹ While the Growers proposed worthy charities, they do not meet the Ninth
21 Circuit’s guidelines to receive *cy pres* awards as they are not “dedicated to
22 protecting [silent class members] from, or redressing injuries caused by, [violations
23 of FLCA].” *Id.* at 867.

1 entities are tethered to and aligned with the statutory objectives of FLCA, will
2 work to meet the needs of the silent class members, and serve the geographical
3 area where virtually all silent class members resided – the Yakima Valley.

4 Therefore, the Court agrees that *cy pres* distribution proposed by the Plaintiffs is
5 appropriate.
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7 Accordingly, **IT IS HEREBY ORDERED THAT:**

8 1. The Court awards \$7,500 each to Representative Plaintiffs Perez,
9 Betancourt, and Sanchez as incentive awards.

10 2. The Court awards \$25,258.51 to Columbia Legal Services for costs
11 incurred to distribute FLCA funds to class members. Plaintiffs shall first apply
12 \$20,000 from the FLCA surety bond to cover these costs (*see* [ECF No. 1310](#)) and
13 may cover the balance from the remaining FLCA funds.
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15 3. Columbia Legal Services shall pay the class member submitting a late
16 claim form his damages of \$4,010.07;

17 4. The Court awards *cy pres* funds in the following amounts to the
18 following non-profit organizations to serve farm workers consistent with the
19 principles of FLCA:

20 a. \$495,990.01 to Columbia Legal Services, \$95,990 shall be held
21 in reserve through December 31, 2014 to pay any additional class members
22 submitting a valid claim form to Columbia Legal Services by said date, after
23

1 December 31, 2014, all funds remaining from the \$95,990 shall belong to
2 Columbia Legal Services;

3 b. \$ 95,261.33 to the Northwest Justice Project;

4 c. \$ 95,261.33 to the Laurel Rubin Farmworker Justice Project;

5
6 and,

7 d. \$ 95,261.33 to Northwest Communities Education Center

8 (NCEC)/Radio KDNA.

9 **IT IS SO ORDERED.** The District Court Executive is directed to enter
10 this Order, provide copies to counsel, and **close the file.**

11 **DATED** this 2nd day of April, 2014.

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13 *s/Robert H. Whaley*
14 ROBERT H. WHALEY
15 Senior United States District Court Judge
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