UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED FARM WORKERS, et al., Plaintiffs, v. THE UNITED STATES DEPARTMENT OF LABOR, et al., Defendants.	No. 1:20-cv-01690-DAD-JLT ORDER DENYING PROPOSED INTERVENORS' MOTIONS TO INTERVENE AND TO STAY ALL PROCEEDINGS (Doc. Nos. 69, 70)

This matter comes before the court on the motions to stay this action and intervene filed on June 10, 2021 by the National Council of Agricultural Employers and Western Growers Association (collectively, "proposed intervenors"). (Doc. Nos. 69, 70.) A hearing on the motions was held on June 22, 2021. Attorneys Rachel Jacobson, Mark Selwyn, Derek Woodman, and Trent Taylor appeared by video for plaintiffs United Farm Workers and UFW Foundation (collectively, "plaintiffs"); United States Department of Justice Trial Attorney Michael Gaffney appeared by video for defendants the United States Department of Labor ("DOL") and the Secretary of Labor (collectively, "defendants"), and attorneys Christopher Schulte and Robert Roy appeared by video for proposed intervenors. For the reasons explained below and as stated on the record at the conclusion of the hearing, the motion to intervene is denied and the motion to stay is denied as moot.

BACKGROUND

The factual background of this case was set forth in the court's order granting plaintiffs' motion for a preliminary injunction. (*See* Doc. No. 37.) That background will not be repeated here, but the facts relevant to the disposition of this motion are discussed below.

On December 23, 2020, the court granted plaintiffs' motion for a preliminary injunction in this action, prohibiting defendants from implementing the final rule published on November 5, 2020 and requiring defendants to publish 2021 Adverse Effect Wage Rates ("AEWRs") in accordance with the existing regulations. (*Id.* at 39); *see also Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States*, 85 Fed. Reg. 70,445 (Nov. 5, 2020). On January 12, 2021, the court issued a supplemental order directing defendants "to provide notice to all H-2A employers who submit job orders and applications for H-2A labor certification between December 21, 2020 and the publication of the final 2021 AEWRs" and inform them of the potential of backpay claims. (*Id.* at 4.) Defendants issued that court-ordered notice to employers on January 15, 2021. *See* U.S. Dep't of Labor, *Employment and Training Administration—Announcements* (Jan. 15, 2021), https://www.dol.gov/agencies/eta/foreign-labor/news.

On February 23, 2021, the DOL's Employment and Training Administration issued a notice in the Federal Register announcing, as directed by the court, the 2021 AEWRs applicable to H-2A workers and workers in corresponding employment performing agricultural labor or services other than the herding or production of livestock on the range. *Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2021 Adverse Effect Wage Rates for Non-Range Occupations*, 86 Fed. Reg. 10,996 (Feb. 23, 2021). The AEWRs set forth in that notice were effective immediately. *Id.*

On March 11, 2021, plaintiffs filed a motion seeking wage adjustment payments for qualifying farmworkers as part of the injunctive relief ordered by the court. (Doc. No. 44 at 9.) Following two hearings, on May 14, 2021, the court granted plaintiffs' motion, which it construed as a motion seeking an extension of the previously granted preliminary injunctive relief to include an equitable restitution component. (Doc. No. 58.) On June 3, 2021, the parties filed a joint

status report which included two requests for modifications of the court's May 14, 2021 order. (Doc. No. 64.) On June 11, 2021, the court issued an order amending and clarifying the scope of its May 14, 2021 order. (Doc. No. 74.)

On June 10, 2021, as the signed order amending the May 14, 2021 order was being prepared for filing on the court's docket, proposed intervenors filed the pending motion to intervene and motion to stay all proceedings in this case pending the court's ruling on their motion to intervene.[1] (Doc. Nos. 69, 70.) On June 18, 2021, plaintiffs filed their oppositions to the motions. (Doc. Nos. 77, 78.) On June 21, 2021, defendants filed their opposition to the motions. (Doc. No. 79.)

LEGAL STANDARD

Intervention as a matter of right is governed by Federal Rule of Civil Procedure 24(a), which provides that "[o]n timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a). A party seeking to intervene as a matter of right must satisfy the following four requirements: (1) the applicant has a significant protectable interest relating to the transaction that is the subject of the suit; (2) the disposition of the action may impair or impede the applicant's ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent the applicant's interest. *Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011); *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir.

[1] In light of this fact, the court *sua sponte* granted a limited stay of its June 11, 2021 order, staying defendants' compliance deadlines as set forth in that order until the court had ruled on the motion to intervene and lifted the limited stay. (Doc. No. 74 at 7.) The June 11, 2021 order had directed defendants to notify state workforce agencies, employers, and the public within fourteen days of the court's order that H-2A employers who submitted job orders or applications for H-2A labor certification between December 21, 2020 and February 23, 2021 were required to make wage adjustment payments to qualifying H-2A workers and U.S. farmworkers in corresponding employment who worked during the period from January 15, 2021 to February 23, 2021 ("the Interim Period") and received an hourly wage below the geographically applicable 2021 AEWR. (*Id.*)

2002). Courts generally construe the rule broadly in favor of applicants who seek to intervene. *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006); *City of Los Angeles*, 288 F.3d at 397. A liberal interpretation of the rule "serves both efficient resolution of issues and broadened access to the courts. By allowing parties with a practical interest in the outcome of a particular case to intervene, we often prevent or simplify future litigation involving related issues[.]" *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1496 n.8 (9th Cir. 1995) (citations omitted).

Rule 24 also allows for permissive intervention. *See* Fed. R. Civ. P. 24(b)(1)(B) (noting a court may permit a party to intervene who "has a claim or defense that shares with the main action a common question of law or fact"). "[P]ermissive intervention 'requires (1) an independent ground for jurisdiction; (2) a timely motion; and (3) a common question of law and fact between the movant's claim or defense and the main action.'" *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011) (internal citations omitted). "Permissive intervention is committed to the broad discretion of the district court . . .." *Orange Cty. v. Air Cal.*, 799 F.2d 535, 539 (9th Cir. 1986).

ANALYSIS

In their pending motion, the proposed intervenors move to intervene as of right under Federal Rule of Civil Procedure 24(a)(2). (Doc. No. 70 at 2–3.) In the alternative, they seek to intervene permissively under Rule 24(b)(1)(B). (*Id.* at 21–22.) Specifically, proposed intervenors seek to intervene in order to challenge the validity and enforceability of the limited equitable restitution remedy adopted by the court in granting preliminary injunctive relief to plaintiffs. (*Id.* at 6.)

A. Intervention as of Right

Each of the four elements for intervening as a matter of right "must be demonstrated in order to provide a non-party with a right to intervene." *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997). "Failure to satisfy any one of the requirements is fatal to the application, and we need not reach the remaining elements if one of the elements is not satisfied." *Perry v. Proposition 8 Off. Proponents*, 587 F.3d 947, 950 (9th Cir. 2009).

Because the court concludes that proposed intervenors have failed to demonstrate both that defendants are inadequately representing their interests in this action and that the pending motion is also timely, only those two elements of intervention as of right will be addressed below.

1. Whether the Existing Parties Adequately Represent the Applicant's Interest

To determine whether existing parties are adequately representing a proposed intervenor's interests, courts consider

> whether (1) the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) the present party is capable and willing to make such arguments; and (3) a proposed intervenor would [not] offer any necessary elements to the proceeding that other parties would neglect.

Arakaki v. Cayetano, 324 F.3d 1078, 1086 (9th Cir. 2003) (internal citation and quotation marks omitted). The proposed intervenors' burden of proof is minimal and is satisfied if they can "demonstrate that representation of their interests 'may be' inadequate." *Id.*

The first factor, "how the interest compares with the interests of existing parties," is "[t]he most important factor in determining the adequacy of representation." *Id.* However, there is "a presumption that the government will adequately represent a party's interests." *Low v. Altus Fin. S.A.*, 44 Fed. App'x 282, 284 (9th Cir. 2002).[2] Additionally, "[w]hen an applicant for intervention and an existing party have the same ultimate objective, a presumption of adequacy of representation arises." *Arakaki*, 324 F.3d at 1086. "If the applicant's interest is identical to that of one of the present parties, a compelling showing should be required to demonstrate inadequate representation." *Id.* When the parties "share the same ultimate objective, differences in litigation strategy do not normally justify intervention." *Id.*

Proposed intervenors assert that they do not share the same ultimate objective as defendants because defendants must represent the broad public interest, not just the economic interest of H-2A employers. (Doc. No. 70 at 19) They argue that their interests in (1) potential enforcement of back wage claims, which they alone will bear the burden of paying; (2) other enforcement actions from DOL regarding the court's orders; and (3) the potential adverse

[2] Citation to this unpublished Ninth Circuit opinion is appropriate pursuant to Ninth Circuit Rule 36-3(b).

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