

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE
COUNTY, FLORIDA CIVIL ACTION

RAYMOND A. DELLASELVA, et al,

CASE NO. 03-1947 CA WCM

Plaintiffs,

vs.

FLORIDA DEPARTMENT OF
AGRICULTURE AND CONSUMER
SERVICES, et al.,

Defendants.

**ORDER APPROVING LEAD CLASS COUNSEL'S PLAN
OF ALLOCATION AND DISTRIBUTION OF PROCEEDS, AWARDING
ATTORNEYS' FEES AND COSTS IN CONNECTION WITH POST JUDGMENT
ENFORCEMENT PROCEEDINGS, AND AUTHORIZING LEAD COUNSEL
TO PROCEED WITH DISTRIBUTION OF PROCEEDS**

THIS CAUSE came before the Court on November 20, 2020, at 2:00 p.m., on Lead Class Counsel's Plan of Allocation and Distribution of Proceeds (the "Plan of Distribution"). Present before the Court were Robert C. Gilbert and William S. Williams, Lead Class Counsel and Class Counsel for Plaintiffs and the certified class, respectively, and Wesley R. Parsons, counsel for Defendants. Also present before the Court was Named Plaintiff/Class Representative Lois Stroh. The hearing was conducted using Zoom video technology as a result of the ongoing COVID-19 pandemic. A court reporter was present to record the proceedings. Having reviewed the Plan of Distribution, considered the presentation from Lead Counsel, and being otherwise fully advised in the premises, the Court approves the Plan of Distribution, awards attorneys' fees and costs to Class Counsel in connection with the Post-Judgment Enforcement Proceedings, and authorizes Lead Counsel to proceed with the Plan of Distribution in the manner set forth herein.

Background

1. This constitutional takings litigation was commenced in 2003 by the Named Plaintiffs/Class Representatives, on behalf of themselves and the owners of approximately 11,811 residential properties in Lee County (collectively, the “Lee County Homeowners”), whose approximately 33,957 healthy, uninfected residential citrus trees were destroyed by the Florida Department of Agriculture and Consumer Services and the Florida Commissioner of Agriculture (collectively, “Defendants”) under the citrus canker eradication program (the “CCEP”). *See* Plan of Distribution ¶ 1. The Lee County Homeowners sought full compensation under Article X, § 6(a), Fla. Const., based on Defendants’ taking and destruction of their private property. Defendants denied liability and asserted numerous defenses, including that the Lee County Homeowners’ uninfected trees destroyed constituted a public nuisance and had no compensable value. *Id.* Following more than a decade of hard-fought litigation, including separate trials on liability and to determine the amount of full compensation, the Lee County Homeowners and Class Counsel recovered three judgments against Defendants that awarded full compensation, attorneys’ fees, expert fees and costs. *Id.*

2. The first judgment, entered August 18, 2014, awarded the Lee County Homeowners the amount of \$13,625,249.09, plus post-judgment interest, as full compensation for the private property taken and destroyed by Defendants (the “2014 Judgment”). *See* Plan of Distribution ¶ 2. The Second District Court of Appeal affirmed the 2014 Judgment. *Dep’t of Agriculture v. Dolliver*, 209 So. 3d 578 (Fla. 2d DCA 2016).

3. The second judgment, entered March 18, 2015, awarded Class Counsel the amount of \$988,583.68, plus post-judgment interest, as attorneys’ fees, expert fees and costs for services rendered and costs advanced in the proceedings that culminated in the 2014 Judgment, and

awarded the Named Plaintiffs/Class Representatives the total amount of \$92,000.00, plus post-judgment interest, as class representative service awards for their service and contribution to the prosecution of this litigation (the “2015 Judgment”). *See* Plan of Distribution ¶ 3. The 2015 Judgment specified that: (i) \$821,993.12, plus post-judgment interest, of the total attorneys’ fees and costs awarded was taxed against Defendants; (ii) \$166,590.56, plus post-judgment interest, of the total attorneys’ fees and costs awarded would be recovered from the common fund created by the 2014 Judgment; (iii) any attorneys’ fees and costs not taxed against or not paid in full by Defendants would be paid from the common fund created by the 2014 Judgment; and (iv) the class representative service awards totaling \$92,000.00, plus post-judgment interest, would be paid from the common fund created by the 2014 Judgment. *Id.*

4. The third judgment, entered December 22, 2016, awarded Class Counsel the amount of \$70,892.50, plus post-judgment interest, as attorneys’ fees for services rendered in connection with Defendants’ appeal of the 2014 Judgment (the “2016 Judgment”). *See* Plan of Distribution ¶ 4. The 2016 Judgment specified that any attorneys’ fees not paid in full by Defendants would be paid from the common fund created by the 2014 Judgment. *Id.*

5. All three judgments became final by December 2016. *See* Plan of Distribution ¶ 5. Despite their finality, Defendants did not pay the amounts due under the 2014 Judgment, 2015 Judgment and 2016 Judgment, prompting further litigation in which the Lee County Homeowners and Class Counsel sought a writ of mandamus and to declare unconstitutional one of the state statutes invoked by Defendants as the basis for nonpayment (the “Post-Judgment Enforcement Proceedings”). *Id.* In June 2017, the Named Plaintiffs/Class Representatives and Class Counsel filed the Post-Judgment Motion (Complaint) for Writ of Mandamus or, in the Alternative, to Declare §§ 11.066(3) and (4), Fla, Stat., Unconstitutional, As Applied (the “Post-Judgment

Motion”). *Id.* In March 2018, this Court entered its “Order Declaring Sections 11.066(3) and (4), Fla. Stat., Unconstitutional, *As Applied*, and Granting Writ of Mandamus” (the “§ 11.066 Order”). *Id.* The § 11.066 Order and accompanying Writ of Mandamus ordered Defendants to immediately pay, or authorize payment of, the amounts due under the three judgments, and declared unconstitutional one of the statutes invoked by Defendants as the basis for nonpayment. *Id.* In November 2019, the Second District affirmed the § 11.066 Order and Writ of Mandamus. *Fla. Dep’t of Agric. & Consumer Servs. v. Dolliver*, 283 So. 3d 953 (Fla. 2d DCA 2019).

6. Defendants appealed to the Supreme Court of Florida. In March 2020, while the appeal was pending before the Supreme Court, the 2020 Legislature appropriated \$19,173,978.00 to pay and satisfy the 2014 Judgment, 2015 Judgment and 2016 Judgment. *See* Plan of Distribution ¶ 6. The Legislature’s appropriation of \$19,173,978.00 became law on July 1, 2020. *Id.*

7. In mid-July 2020, after briefing had been completed and oral argument had been scheduled, the Supreme Court of Florida directed Defendants to show cause why the appeal should not be dismissed as moot based on the 2020 Legislature’s appropriation of funds to pay the three judgments. *See* Plan of Distribution ¶ 7. On August 13, 2020, after considering the parties’ responses, the Supreme Court dismissed the appeal as moot. On September 17, 2020, the Supreme Court denied Defendants’ motion for rehearing. *Id.*

Calculation of Payments to Eligible Lee County Homeowners

8. On October 19, 2020, this Court entered its “Order on Class Counsel’s Request for Determination of Appropriate Method for Calculating Payments to Eligible Lee County Homeowners” (the “Payment Calculation Order”). *See* Plan of Distribution, Exhibit A. The Payment Calculation Order concluded that the appropriate method for calculating payments to eligible Lee County Homeowners should be based on \$285.25 per tree, in accord with the jury

verdict rendered during the 2014 compensation trial, for each of the total number of eligible uninfected trees, with the resulting per tree amount multiplied by the number of trees owned by each of the eligible Lee County Homeowners, with individual set-offs deducted from these amounts. *Id.* at ¶ 17. The Payment Calculation Order directed Lead Counsel and his team of professionals to complete the data analysis and calculate the payment amounts for all eligible uninfected trees and determine the amounts of payments to be distributed to all eligible Lee County Homeowners, after deducting set-off amounts based on each homeowner's individual usage of Shade Florida (Walmart) debit cards and/or negotiation of \$55 per-tree statutory payments, and after deducting from the common fund all non-taxable attorneys' fees, costs and expert fees, as well as fees and costs associated with the allocation and distribution process. *Id.* ¶ 18.

9. Florida FGT, LLC ("FFGT") prepared, processed and performed the data analysis and calculated preliminary payment amounts in accord with the Payment Calculation Order for all eligible Lee County Homeowners who owned uninfected trees destroyed under the CCEP.¹ *See* Plan of Distribution ¶ 9. Based on the Payment Calculation Order, FFGT has calculated preliminary payment amounts for all eligible Lee County Homeowners on a gross basis, before deducting setoffs, and on a net basis, after deducting individual set-offs based on each homeowner's actual usage (if any) of Shade Florida (Walmart) debit cards and/or negotiation of \$55 per-tree statutory payments. *Id.*

¹ A total of 128 Lee County Homeowners timely excluded themselves from the certified class following dissemination of class notice in 2012. *See* Plan of Distribution ¶ 9, n.3. These 128 Lee County Homeowners owned a total of 315 uninfected residential citrus trees. *Id.* Based on their exclusion from the certified class, these 128 Lee County Homeowners are not bound by the Homeowners' Compensation Judgment and are not eligible to receive payments from the proceeds recovered. *Id.*

10. Based on FFGT's analysis and preliminary calculations, approximately 11,742 eligible Lee County Homeowners will receive payments for approximately 33,251 uninfected trees.² *See* Plan of Distribution ¶ 10. Based on FFGT's preliminary calculations, using \$16,836,925.69 as the amount available for distribution to eligible Lee County Homeowners, after deducting from the common fund all non-taxable attorneys' fees, costs and expert fees, as well as fees and costs associated with the allocation and distribution process as provided in the Payment Calculation Order, the gross award per tree will be approximately \$558.00 to \$560.00, before deducting individual setoffs.³

11. Based on FFGT's analysis and preliminary calculations, approximately 6,100 eligible Lee County Homeowners will receive payments exceeding \$1,000.00, approximately 3,300 eligible Lee County Homeowners will receive payments ranging from \$501.00 up to \$1,000.00, approximately 2,200 eligible Lee County Homeowners will receive payments ranging from \$251.00 up to \$500.00, and approximately 30 eligible Lee County Homeowners will receive payments of \$250.00 and less.⁴ *See* Plan of Distribution ¶ 12.

² During the course of analyzing the electronic data and documents records, FFGT identified and, at Lead Counsel's direction, removed non-residential properties from the list of eligible Lee County Homeowners. These include: (i) properties owned by commercial enterprises that are operated as trailer parks and mobile home parks; (ii) government-owned properties; and (iii) properties owned by and operated as businesses and houses of worship. *See* Plan of Distribution ¶ 10, n.4. These properties were removed because they are not residential properties and, therefore, not part of the certified class of Lee County Homeowners.

³ By comparison, eligible Broward County homeowners received \$175.36 per tree, before deducting set-offs based on their individual usage of Shade Florida (Walmart) debit cards and/or negotiation of \$55 per tree statutory payments. *See* Plan of Distribution ¶ 10, n.5.

⁴ FFGT's analysis and preliminary calculations indicate that approximately 10,000 eligible Lee County Homeowners had between 1 and 4 citrus trees destroyed; approximately 1,500 eligible Lee County Homeowners had between 5 and 9 citrus trees destroyed; and approximately 250 eligible Lee County Homeowners had 10 or more citrus trees destroyed. *See* Plan of Distribution ¶ 12, n.6.

Administration and Distribution of Payments to Eligible Lee County Homeowners

12. Payments to eligible Lee County Homeowners will be administered and distributed by Angeion Group (“Angeion”), a nationally-recognized class action administrator. *See* Plan of Distribution ¶ 13. In addition to distributing payments to eligible Lee County Homeowners, Angeion will provide post-distribution support services including, but not limited to, establishing a website and toll-free number where Lee County Homeowners will be able to find answers to frequently asked questions, and providing customer service representatives who will be available to respond to individual inquiries following the distribution of checks. *Id.*

13. Payments to eligible Lee County Homeowners will be made by standard checks and mailed by first class U.S. mail. *See* Plan of Distribution ¶ 14. To minimize fraud, the checks will contain a legend requiring legally valid identification or be subject to some other restriction requiring positive proof before cashing or negotiation. The checks will be valid for a minimum of 180 days. *Id.* Before mailing the checks, Angeion will undertake efforts to obtain the most current mailing addresses for all eligible Lee County Homeowners. *Id.* Checks returned as undeliverable will be the subject of further efforts by Angeion to locate updated addresses and, if obtained, will be re-mailed. *Id.* Throughout the distribution process, Angeion will provide Lead Counsel with regular updates on the number of checks returned as undeliverable, check negotiation rates, and information regarding inquiries from and interactions with Lee County Homeowners. *Id.*

14. Lead Counsel will report to the Court on the results of the distribution process and propose recommendations regarding disposition of the remaining proceeds, including a potential second distribution, if feasible and practicable, payment of additional fees and costs to FFGT and/or Angeion in connection with post-distribution services, as well as supplemental attorneys’

fees and costs for future services rendered by Lead Counsel in connection with the distribution process. *See* Plan of Distribution ¶ 15.

Award of Attorneys' Fees and Costs for Post-Judgment Enforcement Proceedings

15. As noted above, in June 2017, the Named Plaintiffs/Class Representatives and Class Counsel filed the Post-Judgment Motion. *See* Plan of Distribution ¶ 16. In March 2018, this Court entered the § 11.066 Order. *Id.* at ¶ 17. The § 11.066 Order granted Class Counsel's entitlement to attorneys' fees and costs associated with the Post-Judgment Enforcement Proceedings. *Id.* In the ensuing appellate proceedings, the Second District and the Supreme Court of Florida also granted Class Counsel's entitlement to appellate fees in an amount to be determined by this Court. *Id.* at ¶¶ 18-19.

16. On October 5, 2020, Class Counsel filed their Motion to Determine Amount of Attorneys' Fees and Costs for Post-Judgment Enforcement Proceedings (the "2020 Fees and Costs Request"). *See* Plan of Distribution ¶ 20. In lieu of a contested proceeding to determine the amount of attorneys' fees and costs under the 2020 Fees and Costs Request, the parties stipulated that the full amount of attorneys' fees and costs awarded to Class Counsel in connection with the Post-Judgment Enforcement Proceedings would be paid from the common fund proceeds. *Id.* Prior to reaching the stipulation, Lead Counsel consulted with the Named Plaintiffs/Class Representatives and advised them that paying all of Class Counsel's fees and costs from the common fund proceeds would reduce payments to eligible Lee County Homeowners by approximately \$15.00 per-tree. *See* Plan of Distribution Exhibit G, Declaration of Robert Gilbert at ¶ 2 ("Gilbert Decl."). The Named Plaintiffs/Class Representatives authorized Class Counsel to represent their full endorsement of the stipulation to the Court. *Id.*

17. According to the 2020 Fees and Costs Request and supporting Declaration of Lead Counsel Robert Gilbert, Class Counsel devoted a combined total of 718.00 hours to the Post-Judgment Enforcement Proceedings. *See* Gilbert Decl. at ¶ 5. Mr. Gilbert rendered 640.70 hours of services as part of the Post-Judgment Enforcement Proceedings. *Id.* Mr. Gilbert billed for his time based on his standard hourly rates in effect during the period from June 2017 through September 2020. *Id.* at ¶¶ 7-8. Mr. Williams rendered 77.30 hours of services as part of the Post-Judgment Enforcement Proceedings. *Id.* at ¶ 5. Mr. Williams billed for his time based on his standard hourly rates in effect during the period from June 2017 through September 2020. *Id.* at ¶¶ 7, 9.

18. Mr. Gilbert's firm also advanced and/or incurred \$112,126.27 in costs and expenses in connection with the Post-Judgment Enforcement Proceedings. *See* Gilbert Decl. at ¶ 11. Mr. Williams' firm advanced and/or incurred \$1,793.87 in costs and expenses in connection with the Post-Judgment Enforcement Proceedings. *Id.*

19. According to Class Counsel, all of the services rendered and costs advanced and/or incurred by Class Counsel in connection with the Post-Judgment Enforcement Proceedings were necessary and reasonable to recover payment under the 2014 Judgment, 2015 Judgment and 2016 Judgment. *See* Gilbert Decl. at ¶¶ 5-12.

20. Class Counsel also submitted the declaration of Scott W. Weinstein, a prominent local attorney known to this Court who testified as an expert on behalf of Class Counsel during the 2015 fee proceeding. *See* Plan of Distribution Exhibit H, Declaration of Scott W. Weinstein ("Weinstein Decl."). Mr. Weinstein supports Class Counsel's fee request in its entirety. *See* Weinstein Decl. at ¶¶ 6 – 16. Mr. Weinstein opined that: (i) Plaintiffs and the Lee County Homeowners were extremely well represented by Class Counsel during the Post-Judgment

Enforcement Proceedings (*Id.* at ¶ 6); (ii) all of the hours that Class Counsel devoted to the Post-Judgment Enforcement Proceedings were necessary and justified based on claims and defenses that involved complex and novel issues of great public importance relating to constitutional law and statutory interpretation (*Id.* at ¶ 7); (iii) the hourly rates utilized by Class Counsel during the period of June 2017 through September 2020 are reasonable and within the range of hourly rates customarily charged by other Florida practitioners capable of handling complex and novel issues of great public importance involving constitutional law and statutory interpretation (*Id.* at ¶ 8); and (iv) Class Counsel's lodestar in connection with the Post-Judgment Enforcement Proceedings in the amount of \$556,650.00 for Robert C. Gilbert P.A./Grossman Roth Yaffa Cohen, P.A., and \$59,230.00 for William S. Williams/Lytal Reiter Smith Ivey & Fronrath, L.L.P., is reasonable and should be approved (*Id.* at ¶ 9).

21. Based on the parties' stipulation, including the Named Plaintiffs/Class Representatives' endorsement, the declaration of Lead Counsel Robert Gilbert and the supporting declaration of Scott W. Weinstein, Esq., Class Counsel's fee expert, the Court finds and concludes that: (i) all of hours rendered by Class Counsel in connection with the Post-Judgment Enforcement Proceedings were reasonable and necessary to recover payment under the 2014 Judgment, 2015 Judgment and 2016 Judgment; (ii) the hourly rates utilized by Class Counsel during the period encompassing the Post-Judgment Enforcement Proceedings were reasonable; and (iii) all of the costs and expenses advanced and/or incurred by Class Counsel in connection with the Post-Judgment Enforcement Proceedings were necessary and reasonable to recover payment under the 2014 Judgment, 2015 Judgment and 2016 Judgment.

22. Based on the foregoing, the Court approves and awards attorneys' fees and costs to Class Counsel in connection with the Post-Judgment Enforcement Proceedings as follows: (i)

attorneys' fees in the amount of \$556,650.00, plus costs and expenses in the amount of \$112,126.27, to Robert C. Gilbert P.A./Grossman Roth Yaffa Cohen, P.A.; and (ii) attorneys' fees in the amount of \$59,230.00, plus costs and expenses in the amount of \$1,793.87, to William S. Williams/Lytal Reiter Smith Ivey & Fronrath, L.L.P. All of the attorneys' fees and costs awarded in connection with the Post-Judgment Enforcement Proceedings will be paid from the common fund proceeds recovered through Class Counsel's efforts. *See, e.g., Costello v. City of Cape Coral*, 693 So. 2d 48, 49 (Fla. 2d DCA 1997) ("The common fund doctrine, in its simplest terms, provides that when litigation contributes substantial benefits to persons not party to the litigation and a fund is established from which the benefits will be paid, the persons responsible for gaining the benefit should be entitled to costs and attorney's fees paid from the fund.").

Approval of Plan of Distribution and Authorization to Distribute Proceeds

23. In mid-July 2020, Defendants delivered a State of Florida warrant in the amount of \$19,173,978.00 to Lead Counsel. *See* Plan of Distribution ¶ 28. The warrant was deposited into Lead Counsel's law firm's IOTA Trust Account, where the funds remain on deposit. *Id.* Following receipt of the funds, a certified public accountant calculated and allocated the amounts due under the 2014 Judgment, the 2015 Judgment and the 2016 Judgment, including post-judgment interest. *Id.*

24. Pursuant to the Plan of Distribution, the proceeds recovered will be used to pay the following amounts:

[SEE TABLE ON NEXT PAGE]

Description	Amount
Total Amount of Proceeds Recovered	\$19,173,978.00
Payments to Named Plaintiffs/Class Representatives of services awards in accord with this Court's Orders dated August 3, 2020 and October 1, 2020, including post-judgment interest through August 3 2020 ⁵	(\$119,674.82)
Payment to Class Counsel of attorneys' fees, costs and expert fees awarded under the 2015 Judgment and the 2016 Judgment, including post-judgment interest through October 31, 2020	(\$1,387,727.40)
Payment to Class Counsel of attorneys' fees and costs in connection with the Post-Judgment Enforcement Proceedings	(\$729,800.14)
Payment to Stewart G. Liebling CPA for accounting services associated with calculations relating to allocation of the judgment proceeds and distributions	(\$2,480.00)
Payment to FFGT for services rendered in connection with the analysis of Defendants' electronic data and documentary records and the calculation of the payment amounts for eligible Lee County Homeowners	(\$19,599.95)
Payment to Angeion for services to be rendered and costs to be incurred in distributing payments to the Lee County Homeowners	(\$77,770.00)
Amount Available for Distribution of Payments to eligible Lee County Homeowners in accord with the Payment Calculation Order	\$16,836,925.69

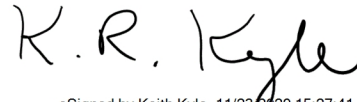
See Plan of Distribution ¶ 29.

25. The Court approves Lead Counsel's Plan of Distribution, awards attorneys' fees and costs to Class Counsel in connection with the Post-Judgment Enforcement Proceedings in the amounts set forth above, authorizes Lead Counsel to distribute funds to Class Counsel and the professionals assisting with the allocation, calculation and distribution of payments to eligible Lee

⁵ These payments were previously authorized by this Court's Orders dated August 3, 2020, and October 1, 2020. See Plan of Distribution ¶ 29, n.10.

County Homeowners in the amounts set forth above, authorizes Lead Counsel to proceed with distribution of proceeds to eligible Lee County Homeowners in accord with the Plan of Distribution, and reserves jurisdiction to address disposition of residual proceeds, including a possible second distribution, payment of additional fees and costs to FFGT and/or Angeion in connection with post-distribution services, and supplemental attorneys' fees and costs for future services rendered by Lead Counsel in connection with the payment allocation and distribution process.

DONE AND ORDERED in Chambers, at Ft. Myers, Lee County, Florida.



eSigned by Keith Kyle 11/23/2020 15:27:41 qIM5JxLo

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