

Record No. 23-2608

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**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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SUN VALLEY ORCHARDS, LLC,

*Appellant,*

v.

U.S. DEPARTMENT OF LABOR; UNITED  
STATES SECRETARY OF LABOR

*Appellees.*

On Appeal from an Order of the United States District Court  
for the District of New Jersey in Case No. 21-cv-16625  
Honorable Joseph H. Rodriguez

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**JOINT APPENDIX  
VOLUME 1 OF 2, pp. 1 – 103**

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

SUN VALLEY ORCHARDS, LLC,

*Plaintiff,*

V.

Case No. 1:21-CV-16625-JHR-MJS

U.S. DEPARTMENT OF LABOR,  
and JULIE SU, in her official capacity  
as United States Secretary of Labor,

*Defendants.*

## PLAINTIFF'S NOTICE OF APPEAL

Notice is hereby given that Sun Valley Orchards, LLC, Plaintiff in the above-captioned action, hereby appeals to the United States Court of Appeals for the Third Circuit from the final judgment, order, and decision entered in this action on July 27, 2023, granting Defendants' Motion to Dismiss, denying Defendants' Cross-Motion for Summary Judgment as moot, and denying Plaintiff's Motion for Partial Summary Judgment. *See* Dkt. Nos. 36, 37.





**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

SUN VALLEY ORCHARDS, LLC,

*Plaintiff,*

V.

U.S. DEPARTMENT OF LABOR, *et al.*,

*Defendants.*

[illegible]

Hon. Joseph H. Rodriguez

Civil No. 21-cv-16625

## ORDER

These matters having come before the Court on motion of Sun Valley Orchards, LLC, (“Sun Valley”) seeking an order for partial summary judgment pursuant to Fed. R. Civ. P. 56 [Dkt. 19] and on Motions U.S. Department of Labor (“DOL”) seeking an order for dismissal pursuant to Fed. R. Civ. P. 12(b)(6) and cross-motion for summary judgment pursuant to Fed. R. Civ. P. 56 [Dkt. 22]; and the Court having considered the written submissions of the parties and the arguments advanced at the hearing on April 20, 2023; and for the reasons set forth on the record that day and those expressed in the Court’s Opinion of even date,

**IT IS** on this 27th day of **July 2023** hereby

**ORDERED** that DOL's motion to dismiss [Dkt. No. 22] is granted; and it is further

**ORDERED** that Sun Valley’s motion for partial summary judgment [Dkt. No. 19] and DOL’s cross motion for summary judgment [Dkt. No. 22] are denied as moot.

s/ Joseph H. Rodriguez  
Hon. Joseph H. Rodriguez,  
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

SUN VALLEY ORCHARDS, LLC,

*Plaintiff,*

V.

U.S. DEPARTMENT OF LABOR, *et al.*,

*Defendants.*

Hon. Joseph H. Rodriguez

Civil No. 1:21-cv-16625

## OPINION

Plaintiff, Sun Valley Orchards, LLC (“Sun Valley”), moves for partial summary judgment to all claims that are susceptible to the decision based on the administrative record but not as to Sun Valley’s additional claims seeking a *de novo* trial before the Court. The defendants, U.S. Department of Labor (“DOL”), move to dismiss and for summary judgment on all Sun Valley’s claims.

Sun Valley is a New Jersey family farm owned and operated by Joe and Russell Marino. During the 2015 growing season, Sun Valley hired nineteen H-2A workers to harvest asparagus. The workers left the farm later that year and the Department of Labor investigated their departure and found several violations of the H-2A program requirements. Following adjudications against Sun Valley by the Administrative Law Judge and the Administrative Review Board, Sun Valley filed the instant action.

The Court has considered the written submissions of the parties and the arguments advanced at the hearing on April 20, 2023. The record of that hearing is incorporated.

## I. Background

### a. The H-2A Visa Program

To appreciate the facts of this case, some legal background is necessary. The Immigration and Nationality Act of 1952 established the modern framework for regulation of immigration in the United States, including provisions for the admission of permanent and temporary foreign workers. *See* Immigration and Nationality Act of 1952 (“INA”), Pub.L. No. 82–414, 66 Stat. 163 (codified as amended at 8 U.S.C. §§ 1101 et seq.). One such provision was the H–2 visa program, which governed the recruitment of foreign workers for agricultural and non-agricultural jobs. 8 U.S.C. § 1101(a)(15)(H)(ii). In 1986, Congress enacted the Immigration Reform and Control Act of 1986 (“IRCA”), which amended the INA by, among other things, bifurcating the H–2 visa program into the H–2A and H–2B programs,<sup>1</sup> which govern the admission of agricultural and non-agricultural workers, respectively. *See* Pub.L. No. 99–603, § 301(a), 100 Stat. 3359, 3411 (amending 8 U.S.C. § 1101(a)(15)(H)(ii)(a)-(b)).

The Immigration and Nationality Act provides temporary work authorization for foreign agricultural workers under the H-2A program. *See* 8 U.S.C. § 1101(a)(15)(H)(ii)(a); § 1184(c)(1). The H-2A program permits employers to temporarily hire foreign workers upon certification that “(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petitioner” and “(B) the employment of the

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<sup>1</sup> The H-2A program is for agricultural workers, and the H-2B program is for non-agricultural workers.

Before submitting an Application for Temporary Employment Certification, an “employer must submit a completed job order.” 20 C.F.R. § 655.121(a)(1). The job order lists the “[j]ob qualifications and requirements[,]” 20 C.F.R. § 655.122(b), and “[m]inimum benefits, wages, and working conditions[,]” 20 C.F.R. § 655.122(c). Once the DOL certifies an employer’s petition, the employer can petition the Department of

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The Secretary of Labor is “authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment” of the H-2A program. 8 U.S.C. § 1188(g) (2); 29 C.F.R. § 501.1. The Secretary of Labor may also initiate administrative proceedings as necessary, or alternatively may petition “any appropriate District Court of the United States” for injunctive relief, or “specific performance of contractual obligations.” 29 C.F.R. § 501.16. The Department’s Wage and Hour Division Administrator (“Administrator”) investigates possible H-2A violations. If the Administrator determines violations occurred, it may recover back wages, debar the employer from receiving future H-2A labor certifications, and impose civil money penalties. 29 C.F.R. §§ 501.15, 501.16(a)(1), 501.19(a), 501.20(a). The Administrator may also impose civil monetary penalties for “each violation of the work contract, or the obligations imposed by 8 U.S.C. § 1188, 20 C.F.R. part 655.” 29 C.F.R. § 501.19(a). “In determining the amount of penalty to be assessed for each violation, the Administrator shall consider the type of violation committed and other relevant factors.” 29 C.F.R. § 501.19(b).

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determination. 29 C.F.R. §§ 501.33(a), 501.34, 501.35. The Federal Rules of Civil Procedure are generally applicable to litigation before the ALJ. In proceedings before the United States Department of Labor, Office of Administrative Law Judges, “[t]he Federal Rules of Civil Procedure (FRCP) apply in any situation not provided for or controlled by these rules, or a governing statute, regulation, or executive order.” 29 C.F.R. § 18.10(a). The ALJ will prepare a decision on the issues referred by the Administrator. 29 C.F.R. § 501.41(a). Any party wishing review of the ALJ decision can petition the Administrative Review Board (“ARB”). 29 C.F.R. § 501.42(a).

### **c. Sun Valley’s H-2A Violations**

During the 2015 growing season, Sun Valley hired nineteen H-2A workers to harvest asparagus. In completing the H-2A paperwork, Sun Valley stated they would provide the workers access to a kitchen on the premises of the farm when instead, the workers’ supervisor cooked out of the kitchen adjacent to the crew quarters and charged the workers a flat rate of \$75-\$80 per week for food. The supervisor also sold beverages to the workers.

The contract with the nineteen workers entitled them to forty hours of work per week during the season, totaling 1,040 hours. However, if the workers left voluntarily or were fired for cause, they were not entitled to those hours. Fired for cause included a failure “to perform the work as specified,” as well as failure “to meet applicable production standard.” *See* Dkt. 19-1 at 5 (quoting A.R. 1516).

Upon a dispute between the workers and Russel Marino in May 2015, the workers left the farm. When the workers left Sun Valley, they had to complete paperwork stating their reason for departure. The contractor, whom the Marinos hired

Almost two years later after the appointment on October 28, 2019, Judge Timlin issued the decision, finding numerous H-2A violations and imposing \$344,945.80 in back wages and \$211,800 in penalties, a reduction of over \$25,000 from the Administrator's assessment. Sun Valley then appealed to the ARB, which affirmed the ALJ decision.

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administrative record; and the DOL's award violates the Excessive Fines Clause.<sup>3</sup> The DOL argues the adjudication does not violate Article III; the ALJs do not violate the Appointments Clauses or the President's removal power; the adjudicatory system is authorized by the statute and Sun Valley is not entitled to a trial de novo; the imposition of back pay and penalties is fully supported by the record and is neither arbitrary nor capricious; and the DOL did not violate the Excessive Fines Clause.

## II. Standard of Review

### a. Federal Rule of Civil Procedure 12(b)(6)

Federal Rule of Civil Procedure 12(b)(6) allows a party to move for dismissal of a claim based on "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A complaint should be dismissed pursuant to Rule 12(b)(6) if the alleged facts, taken as true, fail to state a claim. *Id.* In general, only the allegations in the complaint, matters of public record, orders, and exhibits attached to the complaint are taken into consideration when deciding a motion to dismiss under Rule 12(b)(6). *See Chester County Intermediate Unit v. Pa. Blue Shield*, 896 F.2d 808, 812 (3d Cir. 1990). It is not necessary for the plaintiff to plead evidence. *Bogosian v. Gulf Oil Corp.*, 561 F.2d 434, 446 (3d Cir. 1977). The question before the Court is not whether the plaintiff will ultimately prevail. *Watson v. Abington Twp.*, 478 F.3d 144, 150 (3d Cir. 2007). Instead, the Court simply asks whether the plaintiff has articulated "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

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<sup>3</sup> Sun Valley states in addition to the claims presented in their motion for partial summary judgment, its complaint includes separate allegations seeking de novo review of the DOL's factual determinations after trial. Because Sun Valley cannot request summary judgment in its favor on those claims, they are not encompassed in the motion for partial summary judgment.



Further, although “detailed factual allegations” are not necessary, “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of a cause of action’s elements will not do.” *Twombly*, 550 U.S. at 555 (internal citations omitted). *See also Iqbal*, 556 U.S. at 678

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(“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”).

Thus, a motion to dismiss should be granted unless the plaintiff’s factual allegations are “enough to raise a right to relief above the speculative level on the assumption that all of the complaint’s allegations are true (even if doubtful in fact).” *Twombly*, 550 U.S. at 556. “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not ‘shown’-that the pleader is entitled to relief.” *Iqbal*, 556 U.S. at 679.

#### **b. Federal Rule of Civil Procedure Rule 56**

Summary judgment shall be granted if “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Thus, the Court will enter summary judgment in favor of a movant who shows that it is entitled to judgment as a matter of law and supports the showing that there is no genuine dispute as to any material fact by “citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations ... admissions, interrogatory answers, or other materials.” Fed. R. Civ. P. 56 (c)(1)(A).

A fact is “material” only if it might impact the “outcome of the suit under the governing law.” *Gonzalez v. Sec’y of Dep’t of Homeland Sec.*, 678 F.3d 254, 261 (3d Cir. 2012). A “genuine” dispute of “material” fact exists where a reasonable jury’s review of the evidence could result in “a verdict for the non-moving party” or where such fact might otherwise affect the disposition of the litigation. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In determining whether a genuine issue of material fact exists,

the court must view the facts and all reasonable inferences drawn from those facts in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

“[T]he party moving for summary judgment under Fed. R. Civ. P. 56(c) bears the burden of demonstrating the absence of any genuine issues of material fact.” *Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1080 (3d Cir. 1996). The moving party may satisfy its burden by producing evidence showing the absence of a genuine issue of material fact or by showing there is no evidence in support of the nonmoving party’s case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Once the moving party has met this burden, the nonmoving party must identify, by affidavits or otherwise, specific facts showing that there is a genuine issue for trial. *Id.*; *Maidenbaum v. Bally’s Park Place, Inc.*, 870 F. Supp. 1254, 1258 (D.N.J. 1994). Thus, to withstand a properly supported motion for summary judgment, the nonmoving party must identify specific facts and affirmative evidence that contradict those offered by the moving party. *Andersen v. Liberty Lobby, Inc.*, 477 U.S. 242, 256-57 (1986). “A nonmoving party may not ‘rest upon mere allegations, general denials or ... vague statements....’” *Trap Rock Indus., Inc. v. Local 825, Int’l Union of Operating Eng’rs*, 982 F.2d 884, 890 (3d Cir. 1992) (quoting *Quiroga v. Hasbro, Inc.*, 934 F.2d 497, 500 (3d Cir. 1991)). Indeed,

the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.

*Celotex*, 477 U.S. at 322. That is, the movant can support the assertion that a fact cannot be genuinely disputed by showing that “an adverse party cannot produce admissible

evidence to support the [alleged dispute of] fact.” Fed. R. Civ. P. 56(c)(1)(B); accord Fed. R. Civ. P. 56(c)(2).

### III. Analysis

#### a. The Department of Labor’s Adjudication does not Violate

##### Article III

“The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.” U.S. Const. art III, § 1. Congress cannot “confer the Government’s ‘judicial Power’ on entities outside Article III.” *Oil States Energy Servs., L.L.C. v. Greene’s Energy Grp., L.L.C.*, 138 S. Ct. 1365, 1373 (2018) (quoting *Stern v. Marshall*, 564 U.S. 462, 484 (2011)).

“When determining whether a proceeding involves an exercise of Article III judicial power, this Court’s precedents have distinguished between ‘public rights’ and ‘private rights.’” *Oil States Energy Servs., L.L.C.*, 138 S. Ct. at 1373 (quoting *Executive Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 32 (2014)). “Those precedents have given Congress significant latitude to assign adjudication of public rights to entities other than Article III courts.” *Id.*

The Supreme Court has not “‘definitively explained’<sup>5</sup> the distinction between public and private rights,” *id.* (quoting *Northern Pipeline Constr. Co. v. Marathon*

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<sup>5</sup> *Crowell v. Benson*, 285 U.S. 22 (1932), attempted to list some of the matters that fall within the public-rights doctrine: “Familiar illustrations of administrative agencies created for the determination of such matters are found in connection with the exercise of the congressional power as to interstate and foreign commerce, taxation, immigration, the public lands, public health, the facilities of the post office, pensions and payments to veterans.” *Id.*, 285 U.S. at 51.

*Pipeline Co.*, 458 U.S. 50, 69 (1982)), and the Court’s precedents “applying the public-rights doctrine have ‘not been entirely consistent.’” *Id.* (quoting *Stern*, 564 U.S. at 488). However, precedents have recognized that the public-rights doctrine covers matters “which arise between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments.” *Crowell*, 285 U.S. at 50.

The Supreme Court continues to limit the public-rights doctrine to “cases in which the claim at issue derives from a federal regulatory scheme, or in which resolution of the claim by an expert Government agency is deemed essential to a limited regulatory objective within the agency’s authority.” *Stern*, 564 U.S. at 490. Thus, the public-rights doctrine applies “when the right is integrally related to [a] particular Federal Government action.” *Id.*

The public-rights doctrine applies to the DOL’s case against Sun Valley for its H-2A violations because the H-2A involves immigration, which is a matter that falls within the doctrine. Under the Constitution, “control of the admission of aliens is committed exclusively to Congress, and ... may lawfully impose appropriate obligations, sanction their enforcement by reasonable money penalties, and invest in administrative officials the power to impose and enforce them.” *Lloyd Sabaudo Societa Anonima Per Azioni v. Elting*, 287 U.S. 329, 334 (1932). “Congress has often created new statutory obligations, provided for civil penalties for their violation, and committed exclusively to an administrative agency the function of deciding whether a violation has in fact occurred.”

*Atlas Roofing Co. v. Occupational Safety & Health Rev. Comm'n*, 430 U.S. 442, 450 (1977).

Sun Valley argues this is a private right case because it involves “claims that historically were the subject action at common law, and because imposing over half a million dollars in liability on a family farm (on a breach-of-contract theory) is an inherently judicial matter.” Dkt. 19-1 at 14. However, the enforcement action here is by the federal government based on Sun Valley’s DOL’s violations, which arise under the public-rights doctrine. *See Stern*, 564 U.S. at 489 (The public rights exception arises “between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments” and private rights involve “the liability of one individual to another under the law as defined.”). Because this matter is based on Sun Valley’s violations of DOL’s regulations, derives from a federal regulatory scheme under the federal government’s immigration related powers, and is integrally related to a particular Federal Government action, the enforcement action is adjudicated outside Article III. Thus, the DOL did not violate Article III and the claim is therefore dismissed.<sup>6</sup>

**b. The Department of Labor’s Adjudicatory System is Authorized by Statute**

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<sup>6</sup> Additionally, “Article III’s guarantee of an impartial and independent adjudication by the federal judiciary is subject to waiver.” *Commodity Futures Trading Comm’n v. Schor*, 478 U.S. 833, 834 (1986). “[A] party may impliedly consent through his “actions rather than [his] words.” *In re Trib. Media Co.*, 902 F.3d 384, 394 (3d Cir. 2018) (quoting *Roell v. Withrow*, 538 U.S. 580, 589-90 (2003)). Here, Sun Valley impliedly consented to a non-Article III adjudication based upon the continued litigation through the DOL for four years and never objected to the agency’s non-Article III status.

Sun Valley argues “Congress has not authorized the Agency adjudication in this case.” Dkt. 19-1 at 25. However, by the plain language of the statute:

The Secretary of Labor is *authorized* to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

8 U.S.C. § 1188(g)(2). Per the statute, the Secretary could have just decided to impose such penalties. However, the Secretary may “prescribe regulations for the government of his department” and “the distribution and performance of its business.” 5 U.S.C. § 301. Here, the Secretary prescribed regulations for the government of its department and the distribution and performance of its business by allowing H-2A violators to challenge these assessments through an adjudicatory process where ALJs can consider testimony and evidence. If a party is dissatisfied with the ALJ’s decision, they then may petition the ARB to review the decision. 29 C.F.R. § 501.42.

Based on the clear language of the statute, Congress authorized the DOL to adjudicate civil monetary penalties or back pay in administrative proceedings.

**c. Sun Valley Bore the Responsibility to Develop Issues for the Adjudicator’s Consideration**

“Administrative review schemes commonly require parties to give the agency an opportunity to address an issue before seeking judicial review of that question.” *Carr v. Saul*, 141 S. Ct. 1352, 1358 (2021). “Where statutes and regulations are silent, however, courts decide whether to require issue exhaustion based on ‘an analogy to the rule that appellate courts will not consider arguments not raised before trial courts.’” *Id.* (quoting *Sims v. Apfel*, 530 U.S. 103, 108-09 (2000)). When determining to impose an issue

exhaustion requirement, the court “depends on the degree to which the analogy to normal adversarial litigation applies in a particular administrative proceeding.” *Id.* at 1358 (quoting *Sims*, 530 U.S. at 109). Issue exhaustion is at its greatest where the parties are expected to develop the issues in an adversarial administrative proceeding. *Sims*, 530 U.S. at 110.

The ALJ does not look into its own issues. The DOL’s H-2A enforcement proceedings require “formal adversarial adjudications.” 29 C.F.R. § 18.101. “Any person desiring review of a determination referred to in § 501.32, including judicial review, shall make a written request for an administrative hearing....” 29 C.F.R. § 501.33(a). The request must “[s]tate the specific reason or reasons the person requesting the hearing believes such determination is in error[.]” 29 C.F.R. § 501.33(b)(3). Additionally, within the prehearing statement, it must state “[t]he issues of law to be determined with reference to the appropriate statute, regulation, or case law[.]” 29 C.F.R. § 18.80(c)(2).

Because issue exhaustion was required and Sun Valley bore the responsibility to develop issues for the adjudicator’s consideration and failed to raise its Appointments Clause and Removal Power objections in the agency proceedings, the claims are deemed forfeited and are hereby dismissed.

#### **d. The Administrative Law Judge did not Violate the Appointments Clause**

Despite, Sun Valley’s procedural missteps. Sun Valley argues the DOL’s award must be vacated because the ALJ was not constitutionally appointed. *See* Dkt. 19-1 at 28. However, “ratification can remedy a defect arising from the decision of ‘an improperly appointed official ... when.... a properly appointed official has the power to conduct an



independent evaluation of the merits and does so.” *Wilkes-Barre Hosp. Co. v. Nat’l Lab. Rels. Bd.*, 857 F.3d 364, 371 (D.C. Cir. 2017). There are three general requirements for ratification: (1) “the ratifier must, at the time of ratification, still have the authority to take the action to be ratified[,]” (2) “the ratifier must have full knowledge of the decision to be ratified[,]” and (3) “the ratifier must make a detached and considered affirmation of the earlier decision.” *Advanced Disposal Servs. E., Inc. v. N.L.R.B.*, 820 F.3d 592, 602 (3d Cir. 2016). Evidence of a detached and considered judgment can be “implied from subsequent conduct, [], such when a later act is necessarily an affirmation on an earlier act.” *Id.* at 603. Ratification may be done by a properly appointed superior official or a properly appointed official is capable of ratifying their own decisions. *Id.* at 605. In determining whether ratification has occurred, agency officials are owed “proper deference” under the “presumption of regularity.” *Id.*

Here, Judge Timlin’s appointment was ratified by the head of her department, the Secretary of Labor, after she held the hearing, but nearly two years before she decided Sun Valley’s case. Upon her appointment, Judge Timlin then ratified all prior proceedings. The knowledge requirement is easily satisfied since Judge Timlin presided over Sun Valley’s case and the four-day hearing. The detached and considered affirmation of all earlier decisions is also satisfied since Judge Timlin did not decide anything of substance for nearly two years after the Secretary ratified her appointment. Additionally, Judge Timlin’s later decision was an affirmation of the validity of her earlier actions in conducting the case. Because Judge Timlin was a properly appointed

inferior officer when she decided Sun Valley's case, there was no Appointment Clause Violation.<sup>7</sup>

**e. The Administrative Law Judge did not Enjoy Impermissible Protections Against Removal**

Sun Valley claims "[t]he ALJ who adjudicated Sun Valley's case [] was not subject to effective control by the President through the removal power." Dkt. 19-1 at 30. Article II provides "[t]he executive Power shall be vested in a President of the United States of America[.]" and "he shall take Care that the Laws be faithfully executed[.]" U.S. Const. art. II § 1; *id.* at § 3. "The entire 'executive Power' belongs to the President alone." *Seila L. L.L.C. v. CFPB*, 140 S. Ct. 2183, 2197 (2020). However, lesser executive officers will assist and "remain accountable to the President, whose authority they wield." *Id.* The President's authority includes "the ability to remove executive officials, for it is 'only the authority that can remove' such officials...." *Id.* (quoting *Bowsher v. Synar*, 478 U.S. 714, 726 (1986)).

As inferior officers, the DOL's ALJs are appointed by the Secretary of Labor, the Head of their Department. Such power of appointment of executive officers comes with it "necessary incident of removal." *Myers v. United States*, 272 U.S. 52, 126-27 (1926). In *Humphrey's Executor v. United States*, the Supreme Court held that Congress can, under certain circumstances, create independent agencies run by principal officers appointed by the President, whom the President may not remove at will but only for good cause. *Humphrey's Executor v. United States*, 295 U.S. 602 (1935). Likewise,

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<sup>7</sup> Because Sun Valley does not allege its previous claim in its complaint that the ALJs who make up the Review Board violate the Appointments Clause because they qualify as principal officers of the United States insofar as their decisions are final decisions of the Labor Department and are not subject to review by a superior executive officer, the Court deems the alleged claim from Sun Valley's complaint abandoned.

in *United States v. Perkins*, 116 U.S. 483 (1886), and *Morrison v. Olson*, 487 U.S. 654 (1988), the Court sustained similar restrictions on the power of principal executive officers, themselves responsible to the President, to remove their own inferiors. Congress has the power to limit and regulate removal of such inferior officers in the heads of departments. *Perkins*, 116 U. S. at 485.

The Supreme Court has upheld limited restrictions on the President’s removal power where “only one level of protected tenure separated the President from an officer exercising executive power.” *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 495, (2010). When there is only one level of protected tenure separating the President from an officer, there is no removal problem because “[i]t [is] the President—or a subordinate he [can] remove at will—who decide[s] whether the officer’s conduct merit[s] removal under the good-cause standard.” *Id.*

Despite the Merit Systems Protection Board (the “Board”) determining whether there is removal for “good cause,” the action is taken by the agency which the administrative law judge is employed. 5 U.S.C. § 7521(a). The Board is simply there to make sure the agency properly invoked “good cause” for removal. Because ALJs may be removed by the Secretary of Labor for “good cause,” there is no removal problem. *See id.* There is only one level of protected tenure separating the President from an officer since the Secretary of Labor is removable by the President.

Further, there is no removal problem when the Secretary of Labor does not need to use ALJs at all. Thus, “[t]he President has broad executive power to order the Secretary of Labor to change DOL’s regulatory scheme and remove ALJs from the adjudicatory process under 30 U.S.C. § 932a.” *Decker Coal Co. v. Pehringer*, 8 F.4th

1123, 1134 (9th Cir. 2021). For the above reasons, Sun Valley's removal-power claim is hereby dismissed.

**f. The Department of Labor's Imposition of Back Pay and Penalties was Neither Arbitrary nor Capricious**

Sun Valley makes two arguments regarding the agency's award for the meal plan and beverage issues: (1) the ALJ and ARB did not adequately justify its imposition of monetary penalties, and (2) the DOL's award of back wages is not supported by substantial evidence. "Judicial review under [the arbitrary-and-capricious standard] is deferential, and a court may not substitute its own policy judgment for that of the agency." *Fed. Commc'ns Comm'n v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021). "A court simply ensures that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision." *Id.*

First addressing the imposition of monetary damages. "In determining the amount of penalty to be assessed for each violation, the WHD Administrator shall consider the type of violation committed and other relevant factors." 29 C.F.R. § 501.19(b). "The decision [of the ALJ] shall [] include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the WHD Administrator." 29 C.F.R. § 501.41(b). Further, the ALJ must state the reason or reasons for such order. *Id.*

Sun Valley complains that Judge Timlin deferred to the enforcement personnel instead of conducting a de novo review of the Administrator's determination. Dkt. 19-1 at 33. However, the ALJ only had to affirm, deny, reverse, or modify the determination of the WHD Administrator and state the reasons for such order. Such requirements

were met by the ALJ when she affirmed the Administrator's assessment of penalties for meal and beverage violations and stated the reason for such order is to "deter other H-2A employers from making the same failure to disclose in a potentially exploitative way." *See* AR 4500-02.

Insofar as the regulatory factors considered by the WHD Administrator, the Administrator assessed one penalty for Sun Valley's combined meal and drink violations in the amount of \$1,350 for each of Sun Valley's 147 workers, where instead, the Administrator had the discretion to assess the meal and drink penalties separately. Judge Timlin found the Administrator applied the factors appropriately and assessed the penalty in this way due to the seriousness of the violation and great impact on workers.

Secondly, addressing the award of back wages. "The employer must make all deductions from the worker's paycheck required by law. The job offer must specify all deductions not required by law which the employer will take from the worker's paycheck." 20 C.F.R. § 655.122(p)(1). "A deduction that is primarily for the benefit or convenience of the employer will not be recognized as reasonable and therefore the cost of such an item may not be included in computing wages." 20 C.F.R. § 655.122(p)(2).

In this matter, Sun Valley deducted meal-plan and beverages charges from the workers' pay without prior disclosure in the job order. The undisclosed deductions from the meal-plan charges reduced the workers' wages below the required wages specified in the job order. Further, the meal-plan changed a material term of the job order, which harmed both the workers' reliance on the H-2A program to ensure the protection of workers' rights and the overall integrity of the H-2A program. It is evident Sun Valley profited from the sales of the meal-plan and beverages charges. Such profits are clearly

### **g. Sun Valley Improperly Terminated Nineteen Workers**

Sun Valley argues the agency’s award for early termination is not supported by substantial evidence. *See* Dkt. 19-1 at 36. The ALJ and ARB affirmed that Sun Valley improperly fired nineteen workers after the May 2015 altercation. Judge Timlin relied on testimony of various workers to determine they were fired. When evaluating the witnesses’ credibility, Judge Timlin found that “the [worker] witnesses were consistent in describing the heated events at the meeting while Joseph Marino was unable to remember specifically what was said.” Dkt. 22-1 at 38; *see* AR 4343. Upon appeal, the ARB reviewed Judge Timlin’s cited evidence and properly deferred to the credibility determinations, affirming the ALJ’s ruling.

“[T]he ALJ must necessarily make certain credibility determinations, and this Court defers to the ALJ’s assessment of credibility.” *Zirnsak v. Colvin*, 777 F.3d 607, 612 (3d Cir. 2014); see *Diaz v. Comm’r*, 577 F.3d 500, 506 (3d Cir.2009) (“In determining whether there is substantial evidence to support an administrative law judge’s decision, we owe deference to his evaluation of the evidence [and] assessment of the credibility of witnesses....”). However, the ALJ must specifically identify and explain what evidence it found not credible and why it found it not credible. *Adorno v. Shalala*, 40 F.3d 43, 48 (3d Cir.1994) (citing *Stewart v. Sec’y of Health, Education and Welfare*, 714 F.2d 287, 290 (3d Cir.1983)); see also *Stout v. Comm’r*, 454 F.3d 1050, 1054 (9th Cir.2006) (stating that an ALJ is required to provide “specific reasons for rejecting lay testimony”). An ALJ cannot reject evidence for an incorrect or unsupported reason. *Ray v. Astrue*, 649 F.Supp.2d 391, 402 (E.D.Pa.2009) (quoting *Mason v. Shalala*, 994 F.2d 1058, 1066 (3d Cir.1993)).

Because the Court owes deference to the ALJ's evaluation of the evidence and assessment of the credibility of witnesses, the Court agrees with Judge Timlin's determination. Based on the workers' testimony and explanation for why the ALJ found the workers' testimony credible, the ARB reasonably affirmed that Sun Valley Improperly terminated nineteen workers in May 2015.

#### **h. The Department of Labor is Authorized to Assess Back Wages**

Sun Valley argues the “Agency’s entire award of back pay (for all the various violations) must be vacated because the statute does not authorize back pay.” Dkt. 19-1 at 38. “The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance

of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment....” 8 U.S.C. § 1188(g)(2).

Nothing in the statute prevents the agency from awarding back wages. The statute merely includes a list of some actions the Secretary of Labor is authorized to take. *See generally* INCLUDE, Black's Law Dictionary (11th ed. 2019) (“The participle *including* typically indicates a partial list.”). Additionally, when 8 U.S.C. § 1188 has been violated, actions including “the recovery of unpaid wages” may be taken. 29 C.F.R. § 501.16(a)(1).

**i. The Labor Department did not Violate the Excessive Fines Clause**

Sun Valley argues the “Agency’s award for the meal plan and beverages violations also violates the Eighth Amendment’s Excessive Fines Clause.” Dkt. 19-1 at 39. The Eighth Amendment provides that: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. The Eighth Amendment is applicable if the forfeiture constitutes a “fine” and is violated only if that fine is “excessive.” *See Tillman v. Lebanon Cnty. Corr. Facility*, 221 F.3d 410, 420 (3d Cir. 2000). In *Bajakajian*, the Supreme Court held that the forfeiture of a sum of money grossly disproportionate to the defendant’s offense constituted an Excessive Fines Clause violation and was therefore, unconstitutional. *United States v. Bajakajian*, 524 U.S. 321, 337 (1998).

The DOL’s award of penalties was not grossly disproportional to Sun Valley’s meal plan and beverages violations. Sun Valley’s violations harmed the workers’ reliance and overall integrity of the H-2A program. Instead of imposing separate penalties for each of the meal and drink violations, the DOL only imposed one penalty of \$1,350 per



worker for Sun Valley’s combined violations. The DOL also applied a ten percent reduction to the penalties due to Sun Valley not having a prior history with the H-2A program. Such reduction and imposition of one penalty is not grossly disproportionate to Sun Valley’s offenses when the sum is less than legally permissible. *See Tillman*, 221 F.3d at 420-21.

Additionally, a reviewing court should evaluate “the sentences imposed for commission of the same crime in other jurisdictions.” *United States v. Cheeseman*, 600 F.3d 270, 284 (3d Cir. 2010). “From 2005 through August 2021, the DOL [] imposed three civil monetary penalties over \$1 million; fifty-two penalties between \$100,000 and \$1 million; 482 penalties between \$10,000 and \$100,000; and 1,850 penalties under \$10,000 for alleged violations of the H-2A program.” Dkt. 19-1 at 3. Thus, there is nothing out of the ordinary about Sun Valley’s \$198,450 penalties, and Sun Valley’s Excessive Fine claim is dismissed.

#### **IV. Conclusion**

For the reasons stated above Defendants’ Motion to Dismiss [Dkt. 22-1] is granted without prejudice, and Plaintiff’s Motion for Partial Summary Judgment [Dkt. 19-1] and Defendant’s Cross-Motion for Summary Judgment [Dkt. 22-1] are denied as moot.

An appropriate Order shall issue.

Dated: July 27, 2023

s/ Joseph H. Rodriguez  
Hon. Joseph H. Rodriguez,  
UNITED STATES DISTRICT JUDGE

**U.S. Department of Labor**

Administrative Review Board  
200 Constitution Ave. NW  
Washington, DC 20210-0001



**In the Matter of:**

ADMINISTRATOR, WAGE AND,  
HOUR DIVISION, UNITED STATES  
DEPARTMENT OF LABOR,

**ARB CASE NO. 2020-0018**

ALJ CASE NO. 2017-TAE-00003

**PLAINTIFF,**

**V.**

**DATE: May 27, 2021**

**SUN VALLEY ORCHARDS, LLC,**

**RESPONDENT.**

## Appearances:

***For the Complainants:***

**Christopher J. Schulte, Esq.; *CJ Lake, LLC*; Washington, District of Columbia**

***For the Respondent:***

**Kate S. O'Scannlain, Esq., Jennifer S. Brand, Esq., Sarah K. Marcus, Esq., Rachel Goldberg, Esq.; and Amelia Bell Bryson, Esq.; *Office of the Solicitor, U.S. Department of Labor*; Washington, District of Columbia**

**Before: James D. McGinley, *Chief Administrative Appeals Judge*; James A. Haynes and Stephen M. Godek, *Administrative Appeals Judges***

## DECISION AND ORDER

PER CURIAM. This case arises under the worker protection provisions of the H-2A temporary agricultural worker program of the Immigration and Nationality Act (INA) and the H-2A implementing regulations.<sup>1</sup> The Administrator of the Wage and Hour Division, United States Department of Labor (Administrator), filed a Notice of Determination, finding that Sun Valley Orchards, LLC (Respondent) violated multiple H-2A program regulations through the actions of its agent, Agustin Hernandez. The Administrator assessed back wages and civil money penalties (CMPs) against the Respondent for violating the governing H-2A regulations.

Respondent requested a hearing, and the Administrator referred the matter to the Office of Administrative Law Judges (OALJ). After a hearing, an Administrative Law Judge (ALJ) issued a Decision and Order Affirming in Part and Modifying in Part the Administrator's Findings (D. & O.). The ALJ found that Respondent violated several of the H-2A program requirements and owed a total of \$344,945.80 in back wages and \$211,800 in CMPs.

Respondent appealed the ALJ's findings to the Administrative Review Board (Board). After considering the record and the parties' arguments, we conclude that the ALJ correctly determined that Respondent committed serious violations of the H-2A program requirements and, as a result of these violations, the ALJ properly awarded back wages and assessed CMPs. Therefore, we affirm the ALJ's decision.

## BACKGROUND

Respondent is a New Jersey farm owned by the Marino family, including brothers Russell and Joseph.<sup>2</sup> At all relevant times, Respondent employed Hernandez as its supervisor of the farmworkers.<sup>3</sup> Hernandez supervised the workers in every aspect of their lives and work. Hernandez oriented the workers, maintained their housing facilities, sold them meals and drinks, oversaw

<sup>1</sup> See 8 U.S.C. § 1188(c); 20 C.F.R. § 655, Subpart B; 29 C.F.R. § 501.

<sup>2</sup> D. & O. at 3. Both brothers play a role in the events that give rise to this appeal.

<sup>3</sup> *Id.* at 4, 9-11.

transportation, and distributed pay.<sup>4</sup> Workers paid Hernandez for meals, drinks, housing, and transportation.<sup>5</sup>

Respondent filed two job orders with the Department of Labor (Department) to hire H-2A workers to pick produce crops from April 13 to October 10, 2015.<sup>6</sup> It was Respondent's first time utilizing the H-2A program.<sup>7</sup> In these job orders, Respondent represented to the Department and the H-2A workers that it would "furnish free cooking and kitchen facilities to those workers who are entitled to live in the employer housing so that workers may prepare their own meals."<sup>8</sup>

During the 2015 growing season, the H-2A workers, and many of Respondent's domestic workers, lived at Respondent's housing facility.<sup>9</sup> However, the kitchen at the workers' housing facilities was not large enough to allow the workers to cook their own meals after returning from their shifts.<sup>10</sup> Instead, Hernandez managed a meal plan for the workers, as instructed by Respondent, in which Hernandez would provide cooked food for a fee of \$75 to \$80 per week.<sup>11</sup> All of the H-2A workers participated in the meal plan at some point.<sup>12</sup> Respondent owned the kitchen, paid its utility bills, and directed Hernandez to maintain records of meal purchases and not to make a profit from the meal plan.<sup>13</sup> The workers did not pay Respondent directly for the meal plan. Instead, Hernandez would take the workers' checks to the bank to cash them and then return the remaining money after deducting the amount owed for the meal plan.<sup>14</sup>

The farmworkers harvested asparagus and peppers. The workers' shifts lasted for twelve hours each day with only a single, one-hour, break.<sup>15</sup> Potable

<sup>4</sup> *Id.* at 9-11.

<sup>5</sup> *Id.* at 11.

<sup>6</sup> *Id.* at 3-4.

<sup>7</sup> *Id.* at 20.

8 *Id.* at 15.

<sup>9</sup> *Id.* at 4.

10        *Id.* at 12.

11 *Id.* at 10.

<sup>12</sup> *Id.* at 4, 40.

<sup>13</sup> *Id.* at 8, 10.

14 *Id.* at 8.

15      *Id.* at 9.

drinking water and clean bathroom facilities were not consistently available to the workers while working in the fields.<sup>16</sup>

Many other aspects of the workers' living and working conditions were inadequate. The workers' dormitories had dirty bathrooms without hot water and two broken sinks.<sup>17</sup> The windows and doors lacked screens and garbage cans lacked lids, which attracted flies and other pests.<sup>18</sup> Respondent transported the workers from the dormitories in unsafe school buses that were driven by workers who were not licensed drivers.<sup>19</sup> A Wage and Hour Division (WHD) investigator found that three of the five buses used by Respondent had worn, unsafe tires and one that had a broken rear turn signal.<sup>20</sup>

Hernandez sold non-alcoholic beverages to the workers in the kitchen and while he supervised them in the fields.<sup>21</sup> He also sold beer to the workers from the kitchen, though he did not have a state license to sell alcohol.<sup>22</sup> Hernandez did not maintain records of the drink sales.

In May 2015, nineteen workers sought a meeting with management to raise concerns about their living and working conditions.<sup>23</sup> Workers testified that Russell Marino was very angry at the meeting and fired the workers.<sup>24</sup> Respondent subsequently distributed worker departure forms that falsely stated the workers were resigning because of personal issues, such as a sick family member.<sup>25</sup> Respondent did not allow the workers to state on the forms that they were fired.<sup>26</sup> Respondent provided the forms to Department and other government agencies after the workers signed them.<sup>27</sup> Russell Marino testified that he listed a false reason for the workers' departure because he did not want to make it harder for the workers to

<sup>16</sup> *Id.* at 18-20.

<sup>17</sup> *Id.* at 6-7, 29.

18 *Id.* at 46.

<sup>19</sup> *Id.* at 8, 21.

20 *Id.* at 8.

21 *Id.* at 16.

22 *Id.* at 7.

23        *Id.* at 14.

<sup>24</sup> *Id.* at 14-15, 44.

<sup>25</sup> *Id.* at 19-20.

26 *Id.* at 20.

<sup>27</sup> *Id.* at 20, 49.

find work later with a mark on their record but he also admitted it was to “protect against . . . this lawsuit.”<sup>28</sup> Respondent replaced the workers with other H-2A workers.<sup>29</sup>

In August, Respondent laid off another group of forty-four workers because of a pepper crop failure.<sup>30</sup> Respondent had these workers also sign forms falsely stating their reasons for leaving.<sup>31</sup>

The WHD investigated Respondent to ensure compliance with H-2A regulations during the 2015 growing season.<sup>32</sup> On June 22, 2016, the Administrator issued a Notice of Determination after the investigation, alleging multiple violations of the H-2A program and assessing \$369,703.22 in back wages and \$212,250 in CMPs against Respondent.<sup>33</sup> Respondent requested a hearing before an ALJ, and the Administrator referred the matter to the OALJ.<sup>34</sup>

## ALJ DECISION

The ALJ held an evidentiary hearing on July 18 through 21, 2017 and issued her decision on October 28, 2019.<sup>35</sup> The ALJ made several narrative findings of fact, including that “[k]itchen access was unavailable or otherwise denied” to the workers and that Respondent informed the workers that they could purchase a meal plan for \$75 to \$80 a week.<sup>36</sup> The ALJ also found that potable water and clean bathroom facilities were only sporadically available, especially in the fields, and that the workers’ housing was inadequate.<sup>37</sup> Further, the ALJ found that Respondent fired the nineteen workers in May 2015 after the contentious meeting and that Respondent provided the terminated workers with worker departure forms that gave false reasons for leaving.<sup>38</sup>

<sup>28</sup> *Id.* at 19-20.

29 *Id.* at 17.

30      *Id.* at 12.

<sup>31</sup> *Id.* at 20-21.

32 *Id.* at 6.

33 *Id.*

34 *Id.*

35 *Id.* at 2, 6.

36 *Id.* at 20.

37 *Id.*

<sup>38</sup> *Id.* at 20-21.

The ALJ then discussed the Administrator's violation findings and the back wages and CMPs assessed against Respondent. As an initial matter, the ALJ found that Hernandez acted as Respondent's agent at all relevant times with actual and apparent authority.<sup>39</sup> Under 20 C.F.R. § 655.122(p), the ALJ held that the Administrator properly found that Respondent unlawfully deducted from the workers' wages for the meals, non-alcoholic beverages, and beer under 20 C.F.R. § 655.122(g), (p), and (q).<sup>40</sup> Under 20 C.F.R. § 655.122(p), Respondent could not make deductions from the workers' pay that provided a profit or violated any law.

The ALJ found that Respondent was required to remit back pay for the deductions made from the workers' wages for the meals and non-alcoholic beverages.<sup>41</sup> Under 20 C.F.R. § 655.122(p)(1), job orders must list any deduction not required by law. The ALJ found that Respondent failed to note the deductions for the meal plan in the job orders, depriving the workers of the wage promised to them in the job order.<sup>42</sup> The ALJ explained that the assessment of the entire amount deducted from the workers for the meal plan provided them their contractual right to the wage promised in the job orders and provided a deterrent effect to future employers who may also attempt to alter the terms of the job order upon the workers' arrival.<sup>43</sup> Thus, ALJ affirmed the Administrator's \$128,285 back wage assessment for the amount that Hernandez deducted for the meal plan. The ALJ also upheld the Administrator's decision to assess one \$1,350 CMP per affected worker for all of the meal and drink violations, totaling \$198,450.<sup>44</sup>

The ALJ further found that Respondent profited from the sales of the non-alcoholic beverages to the workers. The ALJ approved of the WHD's use of the *Anderson v. Mt. Clemens Pottery Co.*,<sup>45</sup> method for calculating the back pay, in which an employee need only show a just and reasonable inference of the amount owed if the employer fails to keep records documenting the unpaid wages. However, the ALJ found the preponderance of the evidence established the workers

39 *Id.* at 36.

40 *Id.* at 35.

<sup>41</sup> *Id.* at 39-40.

42 *Id.* at 39.

43 *Id.*

<sup>44</sup> *Id.* Under H-2A regulations at the time of the assessment, CMPs may not exceed \$1,500 per violation. 29 C.F.R. § 501.19(c) (2010).

45 328 U.S. 680 (1946).

purchased an average of 4 drinks a day rather than the Administrator's finding of 4.42.<sup>46</sup> Therefore, the ALJ modified the back wages from \$71,790.08 to \$64,960.<sup>47</sup>

The ALJ found that the beer sales were also unlawful deductions because Hernandez sold beer without a license in violation of New Jersey law<sup>48</sup> and ordered Respondent to remit the \$8,972.61 of profits from the sales.<sup>49</sup>

The ALJ next found the Administrator properly found that Respondent discharged twenty-four workers before they had been offered work for at least three-fourths of the workdays specified in the job orders in violation of 20 C.F.R. § 655.122(i)(1).<sup>50</sup> For the nineteen workers who left after the meeting with management in May 2015, the ALJ recalled the workers' consistent testimony that Russell Marino became hostile to the workers and terminated their positions in anger.<sup>51</sup> The ALJ credited the workers' testimony over Joseph Marino's testimony regarding the meeting because he "was unable to specifically remember what was said" during the argument.<sup>52</sup> Therefore, the ALJ found that Respondent terminated the nineteen workers' employment before they worked the three-fourths of the hours promised in the job orders and was liable for any back pay because of the terminations.<sup>53</sup>

The ALJ further found that Respondent violated the three-fourths guarantee for four of the workers that were laid off in August 2015 because of a crop failure. The ALJ noted that counsel for Respondent agreed to the Administrator's calculations of the hours given to the four workers at the hearing and did not defend against the alleged violation in its post-hearing brief.<sup>54</sup> The ALJ also found that

46 D. & O. at 41.

<sup>47</sup> *Id.* at 42.

48 The parties stipulated that the beer sales violated New Jersey state law. *Id.* at 38.

<sup>49</sup> *Id.* at 42. Because Hernandez failed to maintain records for the beer sold to bars, the Administrator also employed the *Mt. Clemens* method in determining the tax from the beer sales, which the ALJ found to be reasonable. *Id.* at 41.

50 *Id.* at 43.

51 *Id.* at 43-44.

52 *Id.* at 44.

<sup>53</sup> *Id.* The ALJ also found in the alternative that Respondent constructively discharged the workers through the poor working and living conditions. *Id.* at 44-46.

54 *Id.* at 47.



Respondent failed to satisfy its guarantee for one worker, Jose Islas Larraga, because the record contained no evidence that he abandoned his job.<sup>55</sup>

The ALJ affirmed the Administrator's \$142,728.22 assessment of back wages for the three-fourths violations, noting that Respondent did not contest the calculations for the nineteen workers and Larraga and was unable to prove that the calculations for the four workers were unreasonable.<sup>56</sup> The ALJ further found that the Administrator's assessment of one \$1,350 CMP for the violations was reasonable.<sup>57</sup>

Next, the ALJ affirmed the Administrator's single \$1,350 CMP for Respondent's unlawful attempts to cause the workers to waive their three-fourths guarantee.<sup>58</sup> The worker departure forms provided by Respondent to the Department falsely stated that the workers left voluntarily for personal reasons, which Respondent admitted was false.<sup>59</sup> Though the forms did not expressly state that they were giving up their three-fourths guarantee, the ALJ noted that the misrepresentation that they left voluntarily would proximately cause the workers to waive the guarantee under 20 C.F.R. § 655.122(n).<sup>60</sup>

The ALJ affirmed the Administrator's \$3,150 CMP for Respondent's inadequate housing conditions, including the missing screens, uncovered garbage cans, and shortage of hot water, that violated § 655.122(d)(1).<sup>61</sup> The ALJ also affirmed the Administrator's \$7,500 in CMPs for Respondent's use of substandard transportation and unlicensed drivers in violation of § 655.122(h)(4).<sup>62</sup>

55 *Id.*

<sup>56</sup> *Id.* at 47-48.

<sup>57</sup> *Id.* at 48. Respondent does not contest the back pay and CMP calculations on appeal.

58 *Id.* at 49-50. Respondent does not contest the calculation of the CMP on appeal.

59 *Id.*

60 *Id.* at 49.

<sup>61</sup> *Id.* at 50. The ALJ did find that the Administrator's \$450 CMP for a mattress found on the ground of the dormitories was unreasonable because the evidence did not establish that the mattress was unlawfully unclean. *Id.* at 51-52.

<sup>62</sup> *Id.* at 52-53. Respondent does not contest the CMPs for the transportation violations on appeal.

In total, the ALJ imposed \$344,945.80 in back wages and \$211,800 in CMPs against Respondent.<sup>63</sup> Respondent petitioned for review of the decision thereafter.

### JURISDICTION AND STANDARD OF REVIEW

The Board has jurisdiction to hear appeals concerning questions of law or fact from ALJ final decisions in cases under the INA's H-2A provisions and its implementing regulations.<sup>64</sup> The Board will affirm the ALJ's factual findings if supported by substantial evidence but reviews all conclusions of law de novo.<sup>65</sup> Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>66</sup>

### DISCUSSION

Respondent presents many arguments against several aspects of the ALJ's decision on appeal. Respondent contests the ALJ's finding that at all relevant times, Hernandez acted as Respondent's agent. Respondent also contests the ALJ's findings against it for the unlawful meal and drink deductions, the three-fourths guarantee violations, and the attempted waiver violation. We shall address each argument in turn.

#### 1. Hernandez's Status as an Agent of Respondent

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<sup>63</sup> *Id.* at 53-54. The total back wages and CMPs included: \$128,285 in back wages and \$198,450 in CMPs for the meal-related violations; \$64,960 in back wages for the soft drinks sold; \$8,972.61 in back wages for the beer sold; \$142,728.22 in back wages and \$1,350 in CMPs for the three-fourths guarantee violations; \$1,350 in CMPs for the attempted waiver; \$3,150 in CMPs for the inadequate housing; and \$7,500 for the substandard transportation and unlicensed drivers. *Id.* at 54-55.

<sup>64</sup> Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary's discretionary review of ARB decisions)), 85 Fed. Reg. 13186 (Mar. 6, 2020); 20 C.F.R. § 655.845; 29 C.F.R. § 501.42.

<sup>65</sup> *Adm'r, Wage and Hour Div. v. Fernandez Farms, Inc.*, ARB No. 2016-0097, ALJ No. 2014-TAE-00008, slip op. at 2 (ARB Sept. 16, 2019).

<sup>66</sup> *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)).

Respondent contests the ALJ's finding that Hernandez acted as Respondent's agent while operating the meal plan and selling the workers beer, thereby making Respondent liable for his unlawful actions. Respondent claims that the principles of agency do not apply because "the theory in this case is breach of contract" and that Hernandez acted independently when operating the meal plan by using the workers' payments to buy food and compensate kitchen staff. The ALJ found that Hernandez acted as Respondent's agent at all relevant times, with both actual and apparent authority over the workers and, therefore, his actions were "legally equivalent to the actions of Respondent."<sup>67</sup>

First, we conclude that the ALJ correctly held that common law agency principles apply to violations arising under the INA, including the H-2A regulations.<sup>68</sup> Therefore, an H-2A employer is liable for its employee's unlawful actions while acting under actual or apparent authority of the employer.<sup>69</sup>

The ALJ found that Hernandez acted with actual authority when he administered the meal plan. An agent acts with actual authority "when at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act."<sup>70</sup> Here, Respondent told Hernandez to operate the same meal plan that Respondent had used for workers before engaging in the H-2A program. It had Hernandez attend Department training sessions concerning meal plans, and instructed Hernandez to maintain the records of the food and beverage sales and to comply with the H-2A program requirements.<sup>71</sup> Under these

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<sup>67</sup> D. & O. at 36.

<sup>68</sup> See *Ramos-Barrientos v. Bland*, 661 F.3d 587, 601 (11th Cir. 2011); *Arriaga v. Fla. Pac. Farms, L.L.C.*, 305 F.3d 1228, 1245 (11th Cir. 2002) (quoting *Burlington Indus. v. Ellerth*, 524 U.S. 742 (1998)) ("When applying agency principles to federal statutes, 'the Restatement (Second) of Agency . . . is a useful beginning point for a discussion of general agency principles'"); *Garcia-Celestino v. Ruiz Harvesting, Inc.*, 843 F.3d 1276, 1289 (11th Cir. 2016) ("The common law principles of agency . . . dictate the parameters of the employment relationship under the H-2A program.").

<sup>69</sup> See *Arriaga*, 305 F.3d at 1244-45.

<sup>70</sup> Restatement (Third) Of Agency § 2.01 (2006); see also *Castillo*, 96 F. Supp. 2d at 593 ("Express actual authority exists 'where the principal has made it clear to the agent that he [or she] wants the act under scrutiny to be done.'") (quoting *Pasant v. Jackson Nat'l Life Ins. Co.*, 52 F.3d 94, 97 (5th Cir. 1995)).

<sup>71</sup> D. & O. at 22.

instructions, Hernandez operated the meal plan service and collected money from the workers for the food. Without Hernandez's services, Respondent would not have complied with its requirement to provide meals to its workers. This evidence demonstrates Hernandez reasonably believed that he was operating the meal plan under his employer's instructions and not as his own business. Respondent points to no evidence that would support a legal conclusion to the contrary. Thus, we conclude the ALJ correctly found that Hernandez acted with actual authority.<sup>72</sup>

Though the ALJ found that Hernandez acted as Respondent's agent at all relevant times, the ALJ also found that Hernandez was an "affiliated person" of Respondent when selling beer to the workers. An H-2A employer may not make a deduction from an employee's wages that "includes profit to the employer or to any affiliated person."<sup>73</sup> WHD guidance describes an affiliated person as those "who furnish workers, any person acting in the employer's behalf or interest (directly or indirectly), or who has an interest in the employment relationship."<sup>74</sup> At the very least, Hernandez acted indirectly in Respondent's interest when selling the beer to the workers out of Respondent's kitchen. Therefore, the ALJ correctly found Respondent was liable for any unlawful profit that Hernandez made from the sale of beer to the workers.

## 2. The Workers' Kitchen Facilities

For the period from June 1, 2015 through October 10, 2015, Respondent signed a job order submitted to the Department in which it promised to "furnish free cooking and kitchen facilities to those workers who are entitled to live in the employer's housing so that workers may prepare their own meals" and that "[o]nce a week the employers will offer to provide (on a voluntary basis by the workers) free transportation to assure workers access to the closest store where they can purchase groceries."<sup>75</sup>

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<sup>72</sup> The ALJ also correctly found that Hernandez acted with apparent authority when administering the meal plan because the workers reasonably believed that Respondent instructed Hernandez to implement the meal plan. D. & O. at 37-38; *see Arriaga*, 305 F.3d at 1245. However, we need not discuss this finding in detail because we affirm the ALJ's finding that Hernandez acted with actual authority.

<sup>73</sup> 20 C.F.R. § 655.122(p)(2).

<sup>74</sup> U.S. DEP'T OF LABOR, WAGE & HOUR DIV., FIELD ASSISTANCE BULLETIN NO. 2012-3 2 (May 17, 2012), [https://www.dol.gov/sites/dolgov/files/WHd/legacy/files/fab2012\\_3.pdf](https://www.dol.gov/sites/dolgov/files/WHd/legacy/files/fab2012_3.pdf).

<sup>75</sup> D. & O. at 15.

Respondent contends the ALJ's finding that it failed to provide the kitchen facilities contractually promised to the workers is not supported by the evidence in the record. Respondent claims the testimony was "inconsistent" regarding how many workers could simultaneously use the kitchen and that some workers either used the kitchen or never asked to use it. However, Respondent's argument misses the point. Even if there were inconsistencies, they do not undercut the ALJ's finding that Respondent failed to meet its legal obligation to provide the workers with access to its kitchen to prepare meals on their own, nor would they provide an evidentiary basis to disturb the ALJ's findings on this issue. The Administrator points out that Hernandez testified that the kitchen was too small for the workers to prepare their own food. Hernandez's wife, who worked in the kitchen, further explained that workers were not allowed to use the kitchen.<sup>76</sup> Hernandez himself testified that workers were only allowed to store small items in the kitchen, and the workers who were able to cook for themselves purchased and used a hot plate in the dormitories.<sup>77</sup> Thus, we conclude that the ALJ's finding is supported by substantial evidence in the record.

### **3. The Back Wages and CMPs for the Undisclosed Meal Plan Deductions**

Respondent contests the ALJ's order of \$128,185 in back wages and \$198,450 in CMPs for the deductions made from the workers' wages for the undisclosed meal plan under 20 C.F.R. § 655.122(p). Respondent argues that Hernandez did not deduct the meal plan costs from the workers' pay because the record demonstrated that the workers would pay him after they received their cash, and that the ALJ's decision to assess a per-worker CMP rather than a single CMP is excessive because there was only one violation of failing to disclose the meal charges.

As an initial matter, Respondent fails to accurately describe how the workers paid for the meal plan. As the ALJ observed, the workers never paid in cash for either the meals or the beverages Hernandez sold. Instead, Hernandez would cash the workers' checks at the bank and then return the money to them, minus what was owed for meals and beverages.<sup>78</sup>

Further, the manner in which Hernandez charged the workers for the meal plan is irrelevant because shifting a cost that Respondent could not deduct

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<sup>76</sup> Hearing Transcript (Tr.) at 175-76; Plaintiff's Exhibit (PX) 19 at 809.

<sup>77</sup> Tr. at 176; PX-19 at 1103-06.

<sup>78</sup> D. & O. at 8.

“constitutes an unlawful de facto deduction that impermissibly drives the employee’s pay below the required prevailing wage.”<sup>79</sup> The Board has held that “there is no legal difference between an employer directly deducting a cost from a worker’s wages, and shifting to the employee a cost that the employer could not lawfully directly deduct from wages.”<sup>80</sup> Here, whether Hernandez took the money before or after providing the workers’ pay is a distinction without a difference because the effect would be the same. The workers’ would lose \$75-80 of their earnings. Thus, the charges Hernandez took out of the workers’ pay for the meal plans were deductions.

Respondent’s contention that the Administrator can only assess one CMP for its failure to disclose the meal plan is incorrect. H-2A regulations permit the Administrator to assess a CMP “for each violation of the work contract” including each failure to “pay an individual worker properly or to honor the terms or conditions of a worker’s employment.”<sup>81</sup> Under each worker’s job contract, Respondent falsely represented that an adequate kitchen would be provided. Further, Hernandez, acting as Respondent’s agent, failed to pay each worker properly by subtracting deductions from each worker’s pay that were not disclosed in the job orders. Therefore, Respondent failed to honor the terms of each worker’s job contract, resulting in a violation for each worker Respondent employed.

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<sup>79</sup> *Weeks Marine, Inc.*, ARB Nos. 2012-0093, -0095, ALJ No. 2009-DBA-00006, slip op. at 7 (ARB Apr. 29, 2015); *see also Arriaga*, 305 F.3d at 1236 (holding that the FLSA rule prohibiting deductions for the costs of facilities that primarily benefit the employer “cannot be avoided by simply requiring employees to make such purchases on their own, either in advance of or during the employment”). The H-2A regulations incorporate FLSA regulations for the permissibility of deductions. 20 C.F.R. § 655.122(p) (“The principles applied in determining whether deductions are reasonable . . . are explained in more detail in 29 CFR part 531.”).

<sup>80</sup> *Weeks Marine, Inc.*, ARB Nos. 2012-0093, slip op. at 6-7 (considering a cost that the employer could not lawfully deduct from employee wages under Davis-Bacon Act regulations that also incorporate FLSA standards for the permissibility of deductions).

<sup>81</sup> 29 C.F.R. § 501.19(a) (2010) (“Each failure . . . constitutes a separate violation.”).



The Administrator is granted discretion in “fashioning an appropriate remedy for a violation” within the limits of the H-2A regulations.<sup>82</sup> The regulations permit the Administrator to assess up to \$1,500 per CMP.<sup>83</sup> The Administrator’s decision to assess one \$1,350 CMP for each worker that was misled by the job order was not an abuse of her discretion.

#### 4. The Impact of the Failure to Disclose the Meal Plan

Respondent argues that the ALJ’s order for \$128,285 in back wages and \$198,450 in CMPs for the unlawful meal plan deductions should be reversed because its failure to disclose the meal plan charges would not have impacted the Department’s decision to approve Respondent’s H-2A application or the workers’ decision to accept the job orders. Respondent claims that the purpose of the H-2A disclosure requirements is: (1) to inform potential workers of the terms of conditions so they can decide whether to accept the job; and (2) to allow the Department to know whether the terms of the job might adversely affect similarly-employed domestic workers. Respondent cites *Matter of Global Horizons*, in which an ALJ granted partial summary decision to the employer that had failed to accurately disclose meal charges because the employer did not exploit the workers by overcharging for meals.<sup>84</sup> Thus, Respondent claims that the back wages and CMPs are not warranted because Respondent did not profit off of the meal plan.

The deductions were unlawful because they were not disclosed, not because they provided a profit. The H-2A wage requirements are not “met where *undisclosed* or unauthorized deductions, rebates, or refunds reduce the wage payment made to the employee below the minimum amounts required.”<sup>85</sup> Here, the undisclosed deductions for the meal plan reduced the workers’ wages below the required wages (*i.e.* the wages specified in the job orders). Therefore, the back pay award for all

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<sup>82</sup> *Overdevest Nurseries, LP*, 2015-TAE-00008, slip op. at 18 (OALJ Feb. 18, 2016) (citing *Wage & Hour Div. v. Kutty*, ARB No. 2003-0022, 2001-LCA-00010 to -00025 (ARB May 31, 2005)); 29 C.F.R. § 501.19(a) (2010) (“A civil money penalty *may* be assessed by the WHD Administrator for each violation of the work contract.”) (emphasis added).

<sup>83</sup> 29 C.F.R. § 501.19(c) (2010) (CMPs “will not exceed \$1,500 per violation.”)

<sup>84</sup> *Matter of Global Horizons*, ALJ No. 2010-TAE-00002, slip op. at 9 (OALJ Dec. 17, 2010).

<sup>85</sup> 20 C.F.R. § 655.122(p)(2).





Respondent contests the \$64,960 back wages award for Hernandez's soft drink sales to the workers.<sup>90</sup> Respondent claims that testimony established that potable water was available to the workers at all times and that Hernandez's sales had no impact on Respondent's profits. Respondent adds that there was no testimony for why it was necessary for the workers to buy the soft drinks and that the H-2A regulations do not justify an award of free drinks to the workers.

We agree that the regulations generally do not require H-2A employers to provide soft drinks to its workers. However, if an employer or an "affiliated person" does sell them drinks, the regulations prohibit them from profiting from the sales.<sup>91</sup> If an employer or affiliated person does unlawfully sell the workers drinks, the employer is liable for the amount charged that reduced the employee's wages below the amount promised in the job orders.<sup>92</sup> Hernandez, who was acting as Respondent's agent when selling the drinks out of the kitchen or in the fields while supervising the workers, testified that he sold the beverages at a profit.<sup>93</sup> Thus, the soft drink sales were unlawful deductions from the workers' wages.

Further, although Respondent contends that evidence demonstrated that water was available at meals and at all times in the fields, the ALJ did not base her finding on the availability of potable water. Rather, the ALJ relied on her finding that drinkable water was sporadically available<sup>94</sup> to support her decision to award the full amount charged for the soft drinks. Even if Respondent had consistently provided its workers with clean, drinkable water at all times, Hernandez's sale of

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<sup>90</sup> Respondent does not contest the calculation of the back wages award.

<sup>91</sup> See 20 C.F.R. § 655.122(p)(2) ("A deduction is not reasonable if it includes a profit to the employer or to any affiliated person.").

<sup>92</sup> *Id.* ("The wage requirements of § 655.120 will not be met where undisclosed or unauthorized deductions . . . reduce the wage payment made to the employee below the minimum amounts required."); 29 C.F.R. § 501.16(a)(1) ("Whenever the WHD Administrator believes that 8 U.S.C. 1188, 20 CFR part 655, subpart B . . . have been violated, such action shall be taken and such proceedings instituted as deemed appropriate, including . . . the recovery of unpaid wages" and "the enforcement of provisions of the work contract.").

<sup>93</sup> D. & O. at 16; Tr. at 195 ("Q: You would pay 13 to \$14 for a 24-pack of soda? A: Yes. Q: Workers were charged \$1 per soda? A: Seventy-five cents, I think.").

<sup>94</sup> The ALJ found that workers did not have consistent access to potable water, based on workers' consistent testimony that clean water was not always available. D. & O. at 18-19.

beverages for a profit still violated the regulations, and therefore, Respondent would be liable for the back wages.

Hernandez also sold beer to the workers from the kitchen, in violation of state law because he did not have a license to sell alcohol.<sup>95</sup> Hernandez did not maintain records of the drink sales, so the Administrator reconstructed the amount of drinks sold to the workers.<sup>96</sup> The Administrator determined that Respondent owed \$8,972.61 in back wages for the profit Hernandez earned through his sale of beer in violation of state law.<sup>97</sup>

Respondent claims that the Administrator's calculations of Hernandez's beer sales were incorrect because the investigator based the calculations off of a different brand of beer, store, and price used by Hernandez. However, because Respondent failed to keep records of the beer sold to the workers, the ALJ correctly applied the *Anderson v. Mt. Clemens Pottery Co.* burden shifting framework, in which the plaintiff only needs to produce sufficient evidence of the wages owed as a matter of just and reasonable inference.<sup>98</sup> The burden then shifts to the employer to produce evidence of the precise amount owed, and if the employer fails to do so, the court may award damages that need only be "approximate."<sup>99</sup>

Because Respondent could not rebut the Administrator's calculations with precise amounts, the ALJ was correct in awarding back wages that were an approximation of Hernandez's profits. The Administrator used the prices for beer at wholesale retailer Costco, while Hernandez had purchased the beer at Sam's Club, another wholesale club likely to sell products at similar prices.<sup>100</sup> Further, the Administrator used the price of Coors Light to calculate the profits, which is one of

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<sup>95</sup> *Id.* at 7.

<sup>96</sup> *Id.* at 7-8, 24-25.

<sup>97</sup> *Id.* at 24. To calculate Hernandez's estimated profit from the beer sales, a WHD investigator used the price of \$20.99 per thirty-pack of Coors Light, which is one brand of beer Hernandez sold, based upon the cost from a wholesale club similar to the one used by Hernandez to buy the beer. The investigator determined that he profited \$1.30 per can because Hernandez sold the beer for \$2 a can and each beer cost him \$.70 to buy. The investigator determined Respondent profited \$18.20 off each worker per week based on a reasonable estimation of how much beer each worker bought per week. *Id.* at 7-8.

<sup>98</sup> *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946).

<sup>99</sup> *Id.* at 687-88.

<sup>100</sup> D. & O. at 42.

the brands of beer Hernandez sold.<sup>101</sup> The *Mt. Clemens* standard only requires estimates; precision is not required. Therefore, the ALJ's finding of \$8,972.61 in profits from the beer sales was reasonable.

## 6. The Three-Fourths Guarantee Violations and Waiver Attempts

Respondent contests the award of \$142,728.22 in back wages and \$1,350 in CMPs for the ALJ's findings that Respondent had violated the three-fourths guarantee for several workers.<sup>102</sup> H-2A employers must offer each worker "employment for a total number of work hours equal to at least three-fourths of the workdays" that are "specified in the work contract."<sup>103</sup> A worker that abandons employment or is terminated for cause is not entitled to the guarantee.<sup>104</sup>

For the nineteen workers that left in May 2015, Respondent disputes the ALJ's finding that Respondent terminated the workers without cause and the ALJ's credibility determination that favored the workers over Respondent's witnesses. Respondent cites one worker's uncorroborated testimony that Russell Marino tried to hit him as evidence that the workers' testimony lacked credibility and claims that it would have been illogical to fire the workers during harvest season.

The Board gives ALJ credibility determinations "great deference" if they are not "inherently incredible or patently unreasonable."<sup>105</sup> The Board affords such deference because the ALJ is able to observe the "witnesses' demeanor while testifying" and "the extent to which their testimony is supported or contradicted by other credible evidence."<sup>106</sup> Here, the ALJ noted the consistency of the testimony of several of the workers' regarding the May 2015 meeting and that Joseph Marino's hearing testimony contradicted his deposition. Although one worker's uncorroborated testimony about an alleged assault does not bolster the ALJ's credibility finding, it does not make the determination "inherently incredible or

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<sup>101</sup> *Id.* at 7-8.

<sup>102</sup> Respondent does not contest the calculation of the back wages award or CMPs.

<sup>103</sup> 20 C.F.R. § 655.122(i)(1).

<sup>104</sup> § 655.122(n).

<sup>105</sup> *Kanj v. Viejas Band of Kumeyaay Indians*, ARB No. 2012-0002, ALJ No. 2006-WPC-00001, slip op. at 6 (ARB Aug. 29, 2012).

<sup>106</sup> *Id.* (quoting *Caldwell v. EG&G Def. Materials, Inc.*, ARB No. 2005-0101, ALJ No. 2003-SDW-00001, slip op. at 12 (ARB Oct. 31, 2008)).

patently unreasonable.” The ALJ’s credibility determination is substantial evidence that Respondent made “a rash, and perhaps illogical, decision” to fire the workers at that meeting and replace them in violation of their three-fourths guarantee.<sup>107</sup>

The Respondent also disputes the ALJ’s finding that Respondent violated the three-fourths guarantee for four workers who were sent home after the pepper crop had become diseased.<sup>108</sup> Respondent claims that the four workers were offered the required hours but were unable to work them because they were sick or injured. However, Respondent waived this argument before the ALJ by agreeing to the Administrator’s calculations regarding the three-fourths violations for the four workers and by failing to raise any argument against the alleged violation in its post-hearing brief.<sup>109</sup> Even if it did not waive the argument, Respondent does not cite to any evidence in the record demonstrating that the four workers were offered the required amount of work. Therefore, we affirm the ALJ’s three-fourths violation finding concerning these four workers.<sup>110</sup>

Respondent contests the ALJ’s finding that it attempted to waive the workers’ three-fourths guarantees by falsifying their departure forms to say they

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<sup>107</sup> D. & O. at 44. The ALJ also found in the alternative that Respondent constructively discharged the nineteen workers. *Id.* at 44-46. Because we affirm the ALJ’s finding that Respondent actually discharged the workers, we need not discuss the ALJ’s alternative finding regarding constructive discharge.

<sup>108</sup> *Id.* at 12, 47.

<sup>109</sup> *Sandra Lee Bart*, ARB No. 2019-0004, ALJ No. 2017-TAE-00014, slip op. at 4-5 (ARB Sept. 22, 2020) (“Under our well-established precedent, we decline to consider arguments that a party raises for the first time on appeal.”). Counsel for Respondent withdrew an exhibit containing its own calculations of the hours worked and stated he “was wrong” about its contents. D. & O. at 47.

<sup>110</sup> The Administrator claims that Respondent appears to group one worker, Islas Larraga, who left in June 2015, in with the four workers who were dismissed in August. The ALJ made a separate finding that the record contained no evidence that he abandoned his job and that Respondent violated his three-fourths guarantee. D. & O. at 47. Even if he did abandon the job, Respondent still failed to report the end of his employment to the Department as required. 20 C.F.R. § 655.122(n) (“If the worker voluntarily abandons employment . . . and the employer notifies [the Department,] . . . the worker is not entitled to the three-fourths guarantee.”).

left voluntarily.<sup>111</sup> Respondent argues that it was not attempting to have the workers waive their three-fourths guarantee because they never presented the forms to WHD investigators to explain their departures. However, H-2A regulations state that an employer may not “*seek to have an H-2A worker . . . waive any rights conferred under 8 U.S.C. 1188, 20 CFR part 655, subpart B.*”<sup>112</sup> Respondent had asked the workers to sign the falsified form. Whether Respondent presented the forms to WHD investigators is irrelevant in this case. Substantial evidence supports the finding that it was attempting to waive their rights because Respondent admitted that no workers had sick or deceased family members and that the purpose of falsifying the forms was “to protect against . . . this lawsuit.”

## 7. Remaining Arguments

Respondent contests the \$3,150 in CMPs for the workers’ inadequate living conditions, stating that the “condition of the housing resulted from lack of care by the workers living there, but more importantly, could have been remedied immediately if the WHD Investigator had been interested in the workers’ living conditions rather than in assessing CMPs and raised the issue to Sun Valley in a timely manner.” We are unable to discern any legal argument from this statement, nor do we see any abuse of discretion in the ALJ’s order of CMPs for the workers’ poor housing conditions.

Last, in a section titled “Estoppel/Laches/Mitigation,” Respondent complains that the WHD improperly failed to raise concerns about the meal plan charges and bring an enforcement action in a timely manner. Respondent claims that the WHD knew of the meal plan in July 2015 but did not discuss any issue with Respondent until February 2016. This argument is without merit.<sup>113</sup> Respondent admits that there is no case law that applies the doctrines of laches or estoppel to a government enforcement action and that H-2A employers are ultimately still responsible for complying with the regulations. Indeed, the Administrator notes that there is no

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<sup>111</sup> Respondent does not contest the calculation of the \$1,350 CMP for the violation.

<sup>112</sup> 29 C.F.R. § 501.5 (emphasis added).

<sup>113</sup> We must make the point that participation in the H-2B visa program is voluntary. Respondent was under no compulsion to file a request for visas as a means to fulfill its projected employment needs. However, having received the benefit of government action, Respondent was obliged to tell the truth, and to meet the obligations it had undertaken both to its visa employees and to the federal government. We see no mitigating factors. On the contrary, Respondent appears to have simply violated the law.

regulatory requirement for the WHD to notify an employer the instant a violation is suspected and that the Supreme Court has long recognized that laches is not a defense to a government enforcement action.<sup>114</sup>

### CONCLUSION

For the foregoing reasons, we agree with the ALJ's following findings, determination of back wages, and CMP assessments:

1. Respondent violated 20 C.F.R. § 655.122(g), (p), and (q) by making false promises about kitchen access and failing to disclose meal charges. As a result, it owes \$128,285 in back wages, and \$198,450 in CMPs.

2. Respondent violated 20 C.F.R. § 655.122(p) through the sale of drinks and other items at a profit or in violation of state law. As a result, it owes \$64,960 in back wages for non-alcoholic drinks sold and \$8,972.61 for the profit it made from the beer it sold.

3. Respondent violated 20 C.F.R. § 655.122(i) by discharging certain workers prior to such workers meeting the three-fourths guarantee. As a result, it owes \$142,728.22 in back wages, and \$1,350 in CMPs.

4. Respondent violated 29 C.F.R. § 501.5 by attempting to cause workers to waive the three-fourths guarantee at 20 C.F.R. § 655.122(i). As a result, it owes \$1,350 in CMPs.

5. Respondent violated 20 C.F.R. § 655.122(d) through the provision of inadequate housing. As a result, it owes \$3,150 in CMPs.

6. Respondent violated 20 C.F.R. § 655.122(h)(4) through substandard transportation and unlicensed drivers. As a result, it owes \$7,500 in CMPs.

Therefore, we **AFFIRM** the ALJ's Decision and Order Affirming in Part and Modifying in Part the Administrator's Findings.

### SO ORDERED.

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<sup>114</sup> See *Utah Power & Light Co. v. United States*, 243 U.S. 389, 409 (1917) (“As a general rule, laches or neglect of duty on the part of officers of the government is no defense to a suit by it to enforce a public right or protect a public interest.”).





On May 23, 2017, by facsimile, Respondent's counsel filed an Emergency Motion for Revised Schedule proposing to move the filing of motions for summary decision deadline to June 9, 2017. By facsimile dated May 24, 2017, the Administrator filed her Opposition to Respondent's Motion for a Third Extension to the Summary Decision Deadline. Respondent submitted, by facsimile on May 24, 2017, Respondent's Reply in Further Support of Emergency Motion for Revised Schedule.

A May 25, 2017 Order Granting Respondent's Emergency Motion for Revised Schedule afforded the parties a one-week extension to file motions for summary decision. Further, the Order advised the parties that no other deadlines would change and the hearing remained scheduled for July 18, 2017 in Cherry Hill, New Jersey. The undersigned received both the Administrator's Motion for Partial Summary Decision and Respondent's Motion for Summary Decision on June 2, 2017.

On June 6, 2017, by facsimile, the Administrator filed a Joint Motion to Extend by One Week Certain Pre-Hearing Deadlines. The parties jointly requested that the undersigned set June 16, 2017 as the deadline to file summary decision oppositions, extend the deadline for pre-hearing disclosures and exchanges to June 19, 2017, and extend the deadline for the pre-hearing statements to June 23, 2017. A June 8, 2017 Order granted the parties' joint motion to extend the foregoing deadlines. A July 7, 2017 Order denied the parties' motions for summary decision.

On July 18, 2017, the hearing commenced in Cherry Hill, New Jersey. At the conclusion of the hearing, on July 21, 2017,<sup>1</sup> the undersigned directed the parties to meet and confer regarding a briefing schedule. On September 25, 2017, by facsimile letter, the parties filed a Joint Motion to Set Post Hearing Briefing Schedule. An October 5, 2017 Order granted the parties' joint motion and extended the deadline to submit post-hearing briefs to December 15, 2017. Both parties submitted briefs on December 15, 2017.

## ISSUES

1. Did Respondent violate 20 C.F.R. § 655.122(g), (p), and (q) by making false promises about kitchen access and failing to disclose meal charges?
  - a. If so, did the Administrator properly assess \$128,285 in back wages?
  - b. If so, did the Administrator properly assess \$198,450 in civil money penalties ("CMPs")?
2. Did Respondent violate 20 C.F.R. § 655.122(p) through Agustin Hernandez's sale of drinks and other items at a profit or in violation of state law?
  - a. If so, did the Administrator properly assess \$80,762.69 in back wages?

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<sup>1</sup> At the hearing, the undersigned admitted the following exhibits: Administrative Law Judge's Exhibit ("ALJX") 1; Joint Exhibits ("JX") 1-JX 10; Prosecuting Party's Exhibits ("PX") 1; PX 2; PX 3; PX 15-PX 15-2; PX 16; PX 16-1; PX 17-1; PX 17-2; PX 17-3; PX 19; PX 20; PX 21; PX 22; PX 23; PX 24; PX 25; PX 28; PX 29; PX 30; PX 32; PX 33; PX 34; PX 35; PX 36; PX 37; PX 39; PX 41; and PX 42; Respondent's Exhibits ("RX") 1; RX 2; RX 5; RX 7; RX 9; and RX 12-RX 19.



3. Did Respondent violate 20 C.F.R. § 655.122(i) by discharging certain workers prior to such workers meeting the three-fourths wages guarantee?
  - a. If so, did the Administrator properly assess \$142,728.22 in back wages?
  - b. If so, did the Administrator properly assess \$1,350.00 in CMPs?
4. Did Respondent violate 29 C.F.R. § 501.5 by attempting to cause workers to waive the three-fourths guarantee at 20 C.F.R. § 655.122(i)?
  - a. If so, did the Administrator properly assess \$1,350.00 in CMPs?
5. Did Respondent violate 20 C.F.R. § 655.122(d) by providing inadequate housing?
  - a. If so, did the Administrator properly assess \$3,600.00 in CMPs?
6. Did Respondent violate 20 C.F.R. § 655.122(h)(4) through providing substandard transportation and unlicensed drivers?
  - a. If so, did the Administrator properly assess \$7,500.00 in CMPs?

See Administrator's Brief at 91 (revising back wages owed); *see, e.g.*, JX 10 page 160 (the Administrator's originally submitted "Summary of Violations" table).

### STIPULATIONS OF FACT

The Parties agree to the following stipulations, provided in full:<sup>2</sup>

1. Respondent, a New Jersey farm, employs both foreign nationals working on H-2A visas ("H-2A workers") as well as a number of non-H-2A employees, including non-H-2A employees engaged in corresponding employment ("domestic workers").<sup>3</sup> The workers' duties include picking asparagus, peppers, and other crops.
2. Respondent was founded as a limited liability corporation in 2012 and is owned by Russell Marino Jr.; Joseph Marino, Harry Marino; and Russell Marino, Sr.
3. Respondent took over the farming operation formerly known as Marino Brothers, Inc.
4. Marino Brothers, Inc. did business under the trade name "Sun Valley Orchards."
5. Russell Marino, Sr.; Sebastien Marino; and Harry Marino owned Marino Brothers, Inc.
6. Marino Brothers, Inc. employed Agustin Hernandez ("Hernandez") and Russell Marino, Jr. (among others).
7. To obtain workers for the period of April 13, 2015 to October 10, 2015 (the "2015 growing season"), Respondent filed two applications for Temporary Employment Certification ETA Form 9142 ("TEC") and two Agricultural and Food Processing Clearance Orders (ETA Form 790) ("job orders").

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<sup>2</sup> The undersigned has made minor grammatical changes to the Parties' stipulations.

<sup>3</sup> Where necessary and appropriate, the undersigned will use the term "farmworkers" to denote both H-2A workers and non H-2A domestic workers.

8. Respondent filed a job order for the period of April 13, 2015 to October 10, 2015. The Department of Labor subsequently approved this job order. JX 1 contains a true and accurate copy of that job order.
9. Respondent also filed a TEC for this same time period. The Department subsequently approved this TEC. JX 2 is a true and accurate copy of that TEC.
10. Respondent also filed a job order for the period of June 1, 2015 to October 10, 2015. The Department subsequently approved this job order. JX 3 is a true and accurate copy of that job order.
11. Respondent also filed a TEC for the period of June 1, 2015 to October 10, 2015. The Department subsequently approved this TEC. JX 4 is a true and accurate copy of that TEC.
12. After the Department of Labor approved these TECs and job orders, Respondent hired H-2A workers.
13. During 2015, Respondent qualified as an employer within the definition of 20 C.F.R. § 655.103(b).
14. During 2015, Hernandez was not an employer within the definition of 20 C.F.R. § 655.103(b).
15. JX 5 is a chart listing the ninety-six H-2A workers and fifty-one domestic workers that Respondent employed during the 2015 growing season.
16. In the job orders, Respondent promised to pay these employees \$11.29 per hour or at a piece rate, whichever was higher.
17. JX 6 is a true and accurate copy of Respondent's employee roster for the 2015 growing season.
18. During the 2015 growing season, Hernandez supervised Respondent's H-2A and domestic workers and selected the drivers to transport Respondent's H-2A and domestic workers from the housing facility to the agricultural fields.
19. During the 2015 growing season, Respondent's H-2A workers, and many of its domestic workers, lived at Respondent's housing facility, which is located at 1321 Route 45 South, Swedesboro, NJ 08085.
20. This housing facility was built before April 3, 1980, and includes (among other things) bedrooms, a bathroom facility, and (in an adjacent building with a separate entrance) a kitchen.

21. During the 2015 growing season, Respondent paid for the utilities for this kitchen (including gas, electricity, and water), and provided various appliances for the kitchen, including stoves, freezers, a microwave, and refrigerators.
22. During the 2015 growing season, 139 of Respondent's H-2A and domestic workers purchased meals prepared in Respondent's kitchen and paid Hernandez between \$75 and \$80 a week for these meals.
23. During the 2015 growing season, many of Respondent's H-2A and domestic workers paid Hernandez for soft drinks, energy drinks, and snacks, among other things.
24. During the 2015 growing season, to the parties' knowledge, Respondent withheld no money from any H-2A or domestic worker's paychecks for meals, drinks, or any other items.
25. Other than payments to Hernandez, to the parties' knowledge, none of the H-2A workers or domestic workers paid Respondent for meals, drinks, or any other items.
26. During the 2015 growing season, Hernandez did not have a license to sell beer or cigarettes.
27. The chart at JX 7 lists workers who last worked at Respondent on or before May 7, 2015.<sup>4</sup>
28. Jose D. Islas Larraga last worked for Respondent on June 9, 2015.<sup>5</sup>
29. On or about August 8, 2015, Respondent terminated the employment of Miguel A. Elizondo Soto, Luis A. Luna Gonzalez, Jose L. Silva Lopez, Dario Morales Acosta, and Rodrigo Raya Tapia. These workers' last day of work occurred on or before August 4, 2015.
30. Respondent asked workers whose work ended before the end of the season to complete a worker departure form.
31. The top half of this form was in English and the bottom half was in Spanish.
32. The workers were instructed to retain the bottom half and to return the top half.
33. JX 8 contains true and accurate copies of the English portions of the worker departure forms signed by Respondent's workers around the time that their work was ending.

4 The parties dispute whether the workers' employment ended because Respondent constructively discharged or terminated them, or because they voluntarily quit.

<sup>5</sup> The parties also dispute the reasons that this worker stopped working for Respondent.

34. Attached, as JX 9 is a true and accurate copy of a worker departure form, including English and Spanish portions, dated August 8, 2015.
35. Worker departure forms were distributed to H-2A workers who departed before the end of the season around the time that these workers' work ended.
36. During the 2015 growing season, the Wage and Hour Division of the U.S. Department of Labor, including Wage Hour Investigators ("WHI") John Crudup and Jose Perez, investigated Respondent to determine (among other things) whether the farm was in compliance with H-2A regulations.
37. During their investigation, [the Administrator] inspected the housing facility and five of Respondent's buses, interviewed Respondent's workers and drivers, and met with Respondent's owners and with Hernandez.
38. On June 22, 2016, the Administrator issued a determination letter alleging that Respondent violated certain H-2A regulations and assessing \$369,703.22 in back wages and \$212,250.00 in CMPs against Respondent.
39. On July 20, 2016, Respondent filed a timely hearing request.
40. On December 23, 2016, the Administrator filed an Order of Reference referring the matter to OALJ. The Administrator also amended the determination letter by adjusting the amounts sought to \$376,697.61 in back wages and \$212,250.00 in CMPs, and added additional findings and bases for the Administrator's back wage and CMP assessment.
41. Attached, as JX 10 is a true and accurate copy of the Order of Reference, which includes true and accurate copies of the underlying determination letter and hearing request referenced in paragraphs 38-40.
42. During the course of discovery in this matter, the Administrator took depositions of six H-2A workers. In accordance with 29 C.F.R. § 18.55(a), the Parties stipulate that true and accurate transcripts or videos of the depositions, or portions thereof, may be used at the hearing to the extent that doing so would be admissible under the applicable rules of evidence as if the deponent were present and testifying at the hearing.

See ALJX 1 ("Joint Stipulation of Agreed Facts").

## **FINDINGS OF FACT<sup>6</sup>**

### **Bathroom Conditions**

The bathrooms at Respondent's dormitories lacked sufficient hot water.<sup>7</sup> Two of the sinks were completely broken.<sup>8</sup> The bathrooms contained windows without screens, which

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<sup>6</sup> For the sake of readability only, the undersigned has grouped the findings of fact in alphabetical order, and used footnote citations.

allowed entry to pests.<sup>9</sup> Relatedly, when workers first arrived, there were no bathrooms in the fields.<sup>10</sup>

### Beer Sales

Hernandez sold beer to the farmworkers; however, he did not have a license from the State of New Jersey to do so.<sup>11</sup> Hernandez did not keep a record of the amount of beers sold to the farmworkers. As a result, WHI Perez created the reconstruction at PX 2, which attempted to calculate Hernandez's "estimated profit."<sup>12</sup> The evidence of record reasonably establishes that the workers bought three and three-quarter cans of beer per week; however, some workers bought more per week and some did not buy any beer at all.<sup>13</sup> To determine the price of beers, WHI Perez went to Costco and obtained a price of \$20.99 for a thirty-pack of Coors Light.<sup>14</sup> The Administrator reasonably estimated that the wholesale price for a can of beer was seventy cents.<sup>15</sup> WHI Perez went to Costco, because Elia Pinon, Hernandez's wife, told him that she and Hernandez bought their beer at another wholesaler, Sam's Club.<sup>16</sup> Hernandez sold Corona,

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<sup>7</sup> See Tr. at 30, 60 (Maldonado's testimony), 103–04 (Gustavo Perez's testimony), 330 (WHI Perez's testimony); PX 7 at 189 (Silva Lopez recalling that, at times, he took cold showers); PX 11 at 288 (Garcia Dominguez stating on deposition that there was only enough hot water for ten people to shower before it ran out). Cf. Tr. at 203, 215 (Hernandez's testimony that workers had to "wait a little bit" for hot water).

<sup>8</sup> See Tr. at 200–01 (Hernandez's testimony).

<sup>9</sup> See Tr. at 202–03 (Hernandez's testimony).

<sup>10</sup> See Tr. at 17–19, 76 (Maldonado's testimony), 91 (Gustavo Perez's testimony), 139 (Cheguez's testimony); PX 9 at 216 (Cinta Tegoma's deposition testimony that workers had the option to "hold" their waste or "run towards the trees"); PX 11 at 274 (Dominguez's deposition testimony that bathrooms were not available).

<sup>11</sup> See ALJX 1 at ¶ 26 (Joint Stipulation of Agreed Facts).

<sup>12</sup> Tr. at 581, 637–38 (WHI Perez's testimony); Appendix C to the Administrator's brief titled "Revised Back Wage Computations as to Illegal Beer Sales at a Profit."

<sup>13</sup> See, e.g., PX 13 at 345–47 (Dario Morales Acosta testifying that he bought around two and one-half beers per week, but other workers likely bought more); PX 3 at 80–82 (Cervantes Ramirez recalling that he purchased six beers per week with three other coworkers); PX 5 at 142 (Miguel Angel Elizondo Soto stating that he bought two beers a week); PX 11 at 281–83 (Garcia Dominguez recalling that he purchased seven beers a week, but some workers bought three to five beers per night); Tr. at 25–26 (Maldonado, who only worked for Respondent for two weeks, bought a twelve-pack of beer each week); PX 7 at 180–82 (Silva Lopez remembering that he bought one or two beers a day for three days a week, and that some workers bought more beer than he did). Cf. PX 9 at 219; Tr. at 98, 269 (Cinta Tegoma and Gustavo Marquez Perez, respectively, testifying that they did not purchase any beer; Pedro Zavala Almanza only ever purchased one beer).

<sup>14</sup> See Tr. at 450–51.

<sup>15</sup> See Tr. at 374, 451–52, 627.

<sup>16</sup> See Tr. at 505–06.

Coors Light, Budweiser, Modelo, and Coors Light.<sup>17</sup> Thus, it was reasonable for WHI Perez to determine the per-can cost through comparison of Coors Light sold at a wholesale club, here Costco. The Administrator decided to reimburse those farmworkers who bought beer for the amount of Hernandez's profit, which it reasonably determined was \$1.30 per can (the beers cost seventy cents and Hernandez sold the beers for \$2).<sup>18</sup> Perez provided a reasonable calculation that Respondent owed each worker \$18.20 per week in back wages.<sup>19</sup>

### **Buses**

Respondent used buses to transport the farmworkers from its dormitory to the fields; one field was a fifteen-minute drive from the dormitory area.<sup>20</sup> Hernandez chose bus drivers from amongst its farmworkers.<sup>21</sup> Of the five buses WHI Perez inspected, three had worn, unsafe tires.<sup>22</sup> One bus had a broken rear turn signal.<sup>23</sup>

### **Deductions from Pay**

The farmworkers never paid in cash for either the meals or the beverages Hernandez sold.<sup>24</sup> Hernandez would take workers' checks to the bank to cash them and then return the money to the workers, minus any money owed for meals and beverages.<sup>25</sup> Russel Marino, Jr. told Hernandez to keep track of the farmworkers' payments in this way.<sup>26</sup>

### **Drivers**

Hernandez selected bus drivers from within Respondent's pool of workers.<sup>27</sup> Hernandez would allow any such worker to drive if the worker had a Mexican driver's license or driving

<sup>17</sup> See Tr. at 359–60 (WHI Perez discussing the contents of Hernandez's refrigerator, as shown in PX 32, pages 1076 and 1078–79); Tr. at 580 (discussing the contents of PX 32, page 1077, showing a can of Coors Light).

<sup>18</sup> See Appendix C to Administrator's Brief.

<sup>19</sup> See Tr. at 626–27; PX 2.

<sup>20</sup> See Tr. at 204–05. *C.f.* 31–32 (Maldonado recalling that the trips were thirty-minutes each way).

<sup>21</sup> See Tr. at 31, 104.

<sup>22</sup> See Tr. at 402–06, 607–08; PX 29 pages 1058–63 (showing three tires that are clearly unsafe for road use due to the condition of the tires as bald and cracked).

<sup>23</sup> See Tr. at 405; PX 29 at 1057 (showing that bus number 205 has a broken right rear turn signal).

<sup>24</sup> See Tr. at 42 (Maldonado's testimony), 100 (Gustavo Perez's testimony), 186–87, 211 (Hernandez's testimony that workers never paid Respondent).

<sup>25</sup> See Tr. at 100, 189, and 338–40.

<sup>26</sup> See Tr. at 187.

<sup>27</sup> See Tr. at 205.

The farmworkers engaged in “hard work.”<sup>33</sup> The workers worked twelve hours per day with only one one-hour break.<sup>34</sup> Some of the workers had prior experience working in a bent over posture.<sup>35</sup>

Hernandez has worked for Respondent or its predecessor companies for twenty-seven years.<sup>36</sup> His father worked for Respondent, his son currently drives a bus for Respondent, and his wife works in Respondent's kitchen.<sup>37</sup> Hernandez receives all of his pay from Respondent; Respondent provides him with an hourly pay rate plus commission for the amount of product that is packaged.<sup>38</sup> For example, if the farmworkers packaged more asparagus, Hernandez would receive more money in the form of a commission.<sup>39</sup>

39            Id.



In 2015, Hernandez helped facilitate Respondent's engagement in the H-2A program.<sup>40</sup> Hernandez operated the meal plan that fed the farmworkers. Although Hernandez utilized Respondent's kitchen to do so, he paid the cooks, and bought groceries and certain appliances, as needed, to cook the meals.<sup>41</sup> Hernandez's wife, Elia Pinon, worked in the kitchen.<sup>42</sup> After Respondent decided to utilize the H-2A program in 2015, Respondent told Hernandez that he could keep charging for meals but that Hernandez—not Respondent—would be responsible for paying the kitchen staff's wages.<sup>43</sup>

Concerning kitchen access, Russel Marino, Jr. told Hernandez to "accommodate the guys however he had to."<sup>44</sup> Respondent paid the kitchen's utility bills.<sup>45</sup> Respondent did not pick the menu or otherwise tell Hernandez how to run the kitchen or set prices.<sup>46</sup> Hernandez told Respondent how much he planned to charge for the meals.<sup>47</sup> Respondent told Hernandez to keep track of the workers' payments for the meal plan.<sup>48</sup> Respondent took Hernandez to a meeting with the Department to ensure he understood the regulatory parameters concerning meal plans.<sup>49</sup> Respondent told Hernandez "for years" to keep his receipts, "because you cannot make a profit on the men."<sup>50</sup> Hernandez charged workers seventy-five to eighty dollars per week to participate in the meal plan and kept track of the workers' participation.<sup>51</sup> Hernandez also sold beverages, including beer, to the farmworkers.<sup>52</sup> Respondent did not receive money from Hernandez or otherwise tell him how much to sell the drinks.<sup>53</sup> Hernandez kept a "store" in Respondent's kitchen, where he would sell drinks, snacks, and beer.<sup>54</sup>

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<sup>40</sup> See Tr. at 171–74, 806–07 (Russel Marino, Jr. recalling that in 2015, he asked Hernandez how many workers from the H-2A program he would need).

<sup>41</sup> See Tr. at 177–78, 229, 244, 252, and 793.

<sup>42</sup> Tr. at 171; PX 19.

<sup>43</sup> See Tr. at 177.

<sup>44</sup> Tr. at 743.

<sup>45</sup> See Tr. at 793.

<sup>46</sup> See Tr. at 247, 808.

<sup>47</sup> See Tr. at 187–88.

<sup>48</sup> See Tr. at 186–87.

<sup>49</sup> See Tr. at 738, 742–43.

<sup>50</sup> See Tr. at 808.

<sup>51</sup> See Tr. at 179–80.

<sup>52</sup> See Tr. at 194–95, 638.

<sup>53</sup> See Tr. at 737.

<sup>54</sup> See Tr. at 51; PX 32 pages 1075–76, 1082 (showing items associated with a company store, including a cash register, stacks of instant soup, a coffee urn, a Coca-Cola branded glass door refrigerator stocked with sodas



When workers arrived at the camp, Hernandez said that he would orient them about housing, the “rules of the camp,” keeping the bathrooms clean, hours of work, pay, kitchen access, and cost of meals.<sup>55</sup> Hernandez told the workers when to work; the workers did not have a choice as to their hours.<sup>56</sup> Russel Marino, Jr. only “sometimes” was present for the workers’ orientation.<sup>57</sup> “Several times a day,” Russel Marino, Jr. would check in with Hernandez concerning the farm’s “day-to-day happenings.”<sup>58</sup> Russel Marino, Jr. did not explain the meal cost because “that’s in the contract.”<sup>59</sup> When the farmworkers paid Hernandez, the workers signed a form to indicate they “agreed that they received the meal and” paid for the meal plan; Respondent’s name appears at the top of the form.<sup>60</sup>

Hernandez also maintained the sleeping quarters and bathroom facilities at Respondent's dormitory site.<sup>61</sup> Hernandez was responsible for transporting the farmworkers from the dormitory area to the fields.<sup>62</sup> Respondent tasked Hernandez with ensuring that the workers had water in the fields.<sup>63</sup> Workers paid Hernandez for meals, drinks, housing, and transportation; they did not pay Respondent directly.<sup>64</sup>

## Kitchen Access

and Monster energy drinks, and a wire display rack stocked with chips and other snack foods), PX 32 page 1079 (showing the contents of a refrigerator full of beer).

<sup>55</sup> See Tr. at 61 (Maldonado stating that Hernandez was “in charge” and he never spoke with anyone from the Marino family); 174–75 (Hernandez’s testimony); 773 (Russel Marino, Jr. stating that Hernandez “primarily” oriented the workers); 825 (Russel Marino, Jr. stating that the workers complained to Hernandez because Russel Marino, Jr. does not speak Spanish and “that’s the chain of command”); PX 3 at 101 (Carlos Cervantes Ramirez stating on deposition that Hernandez was “in charge”).

<sup>56</sup> See Tr. at 17 (Maldonado’s testimony), 90–91 (Gustavo Perez’s testimony), 139 (Cheguez’s testimony), 257 (Almanza’s testimony), PX 3 at 68–69 (deposition of Cervantes Ramirez); cf. JX 1; JX 3 (ETA Forms 790 telling the workers to “anticipate” working seven hours each weekday and five hours on either Saturday or Sunday (JX 1 says Saturday and JX 3 says Sunday), and informing the workers that they “may be requested to work 12+ hours per day . . . but will not be required to do so”).

57 PX 15 at 401.

58 Tr. at 719.

<sup>59</sup> PX 15 at 403–04 (Russel Marino, Jr. stating that everything he said was true as of 2015).

<sup>60</sup> PX 17 at 764 (Hernandez’s deposition testimony, discussing PX 17-2 at 799 (the meal payment form)); Tr. at 182–86 (Hernandez testifying he would use the form at PX 17-2—a document Respondent created in its office—to keep track of the workers who engaged in Respondent’s meals program).

<sup>61</sup> See Tr. at 199–205.

<sup>62</sup> See Tr. at 204–05.

<sup>63</sup> See Tr. at 213.

<sup>64</sup> See Tr. at 211, 233.

Although the dormitory-area had a kitchen, workers did not have access to the kitchen. The workers could not make their own meals.<sup>65</sup> Except for a refrigerator Hernandez added to keep cool the beverages he sold, Respondent owned the kitchen, all of its major appliances, and paid for all utilities.<sup>66</sup> The workers never asked to use the kitchen facilities.<sup>67</sup> Chequez testified that the farmworkers “were sure that they were going to say no because . . . we couldn’t . . . do our own cooking there.”<sup>68</sup> The kitchen was large, but not large enough for “many workers to cook simultaneously.”<sup>69</sup>

### **Layoffs and Three-fourths Guarantee**

In August 2015, Respondent’s pepper crop became diseased and Respondent had to lay off forty-four workers due to lack of work.<sup>70</sup> Hernandez chose “troublemakers” to lay off because no workers initially volunteered for the layoff.<sup>71</sup> The “troublemakers” were those employees who refused to work on the weekend.<sup>72</sup> Russel Marino, Jr. did not know the names of

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<sup>65</sup> See Tr. at 20–21 (Maldonado testifying “[s]ince they didn’t have another kitchen to prepare our food, we had to consume the food that they sold us”), 93–94 (Gustavo Perez’s testimony), 159 (Chequez’s testimony), 175–76 (Hernandez recognizing that the kitchen was not large enough “for everyone to cook” or to store food in the kitchen’s refrigerators), 263–64 (Almanza’s testimony that he could not cook in the kitchen, so he bought his own “stove”), 283 (Almanza’s testimony that he never observed any of the farmworkers in the kitchen), 333, 337 (WHI Perez concluding that workers did not have access to the kitchen for the purpose of cooking their own meals), 500 (WHI Perez stating that workers had asked Hernandez to use the kitchen), 589–90 (WHI Perez discussing Pinon’s statement at PX 19 page 809, that workers were not allowed to access the kitchen to cook their own food; sometimes Pinon gave workers permission to reheat food, but only under supervision); *cf.* Tr. at 771–73 (Russel Marino, Jr. recalling that in 2015, Respondent provided cooking “facilities” and kitchen access to the farmworkers “free of charge” and that Hernandez never prevented anyone from cooking in the kitchen), Tr. at 455 (WHI Perez recalling that Russel Marino, Jr. and Joseph Marino told him that workers had access to the kitchen facilities). Hernandez sold soft drinks, beer, and general provisions out of Respondent’s kitchen. See Tr. at 190, 194, 357–60; PX 32 pages 1050, 1076, and 1078–79.

<sup>66</sup> Tr. at 745, 778, 793; ALJX 1 at ¶ 21.

<sup>67</sup> See Tr. at 592.

<sup>68</sup> Tr. at 159.

<sup>69</sup> Tr. at 744 (Russel Marino, Jr.’s testimony). See Tr. at 501 (WHI Perez agreeing it would be “close quarters” if 150 people attempted to use the kitchen at once), 175–76 (Hernandez’s testimony that the kitchen was not large enough “for everyone to cook in the kitchen” or to store food in the kitchen’s refrigerators).

<sup>70</sup> Tr. at 207, 238.

<sup>71</sup> See Tr. at 208 (Hernandez’s testimony); *cf.* Tr. at 779 (Russel Marino, Jr. testifying that “troublemakers” were not selected because Respondent had no troublemakers).

<sup>72</sup> *Id.*

## Litter at the Dormitory

## Mattresses

73 Tr. at 216.

75 Tr. at 681

<sup>77</sup> Tr. at 610–11.

80 Tr. at 375.

85 PX 28 page 1056.

investigation, WHI Perez learned that workers slept on mattresses placed on the floor.<sup>86</sup> WHI Perez did not know how the mattresses came to rest on the floor.<sup>87</sup> He “assumed” that each worker had his or her own mattress.<sup>88</sup> WHI Perez did not recall if he observed any bunkbeds with missing mattresses.<sup>89</sup>

## May 2015 Argument

In May 2015,<sup>90</sup> a meeting occurred between Respondent—represented by Hernandez. Russel Marino, Jr., and Joseph Marino—and nineteen of the farmworkers.<sup>91</sup> The nineteen workers were upset at the working and living conditions, and wanted to share their concerns with Respondent.<sup>92</sup> During the May 2015 meeting, Russel Marino, Jr. became angry with the workers.<sup>93</sup> A number of the nineteen workers left the argument thinking that Respondent had

86                    Id.

87 See Tr. at 492.

<sup>88</sup> See Tr. at 494–95.

<sup>89</sup> See Tr. at 599; see also Tr. at 493.

<sup>90</sup> Neither party proffered evidence as to when in May 2015 the argument occurred; however, the argument had to occur before the May 7, 2015 email from Warren Wicker of National Agriculture Consultants, which informed the Department of the departure of the nineteen workers.

<sup>91</sup> See, e.g., Tr. at 407, 538–41, 723–27, 766, 809–11, 826–31.

92        See, e.g., Tr. at 33–40 (Maldonado’s testimony that he and his coworkers were upset about the working conditions and so wanted to talk to Russel Marino, Jr.), 106–07 (Gustavo Perez’s testimony that he and a group of his coworkers decided to talk to Russel Marino, Jr. because “of the conditions we were in, because we didn’t have a place to cook, because of the bathrooms, because of the way the installations were, and because of the way [Hernandez] treated us”), 117 (Gustavo Perez saying that he first complained to Hernandez concerning the working conditions “about a week” after he began working for Respondent), 122 (Gustavo Perez stating his concern that he did not receive proper training), 138–39 (Cheguez recalling that Hernandez was a “bad” supervisor, and threatened the workers with deportation, and always required the workers to work faster), 148 (Cheguez recalling that the workers “wanted to work” but Respondent did not treat them well), 160 (Cheguez agreeing that the goal of the conversation was to work at a more “comfortable pace”); PX 5 at 125 (Elizondo Soto recalling Hernandez’s threats to send the workers “back to Mexico”). *Cf.* Tr. at 220–24 (Hernandez recalling that workers thought the work was too hard and that they did not complain about housing), 726 (Russel Marino, Jr. testifying that the workers could not perform the job because it was too hard and was for “real men”), 810 (Joseph Marino stating that the workers felt the work was too hard).

93 See, e.g., Tr. at 39, 65, 81–83 (Maldonado recalling that Russel Marino, Jr. said that the workers “could leave” if they did not like the conditions and that Russel Marino, Jr. “practically fired [Respondent’s H-2A workers]” during the argument, and that he felt like he “needed to leave”; he left due to problems “with [his] boss”), 107–08 (Gustavo Perez stating that, during the May 2015 argument, Russel Marino, Jr. was very upset and cursed at the farmworkers; Gustavo Perez believed he could not continue working for Respondent), 129–30 (Gustavo Perez remembering that Russel Marino, Jr. said that the workers were not “working out for him” and then apologized after the conversation), 147 (Cheguez remembering that Russel Marino, Jr. “scream[ed] and yell[ed] in an arrogant way”), 222 (Hernandez stating that Russel Marino, Jr. “was a little bit upset”), 728 (Russel Marino, Jr. remembering thinking that Respondent had exhausted all of its options, and “we’re [either] going to let these guys go, or we’re going to send them on their way, however we had to do it”); PX 3 at 101 (Cervantes Ramirez recalling that, during the argument, Russel Marino, Jr. said that the workers were fired); PX 9 at 232, 258 (Cinta Tegoma recalling that

JX 1 is the ETA Form 790 Job Order, which requested forty workers for the period of April 13, 2015 to October 10, 2015. On December 12, 2014, Russel Marino, Jr. signed the Job Order.<sup>96</sup> The Job Order at JX 1 states:

JX 3, the ETA Form 790 Job Order concerning the period June 1, 2015 to October 10, 2015, contained the same or substantially similar language.<sup>98</sup>

Respondent hired a company called National Agricultural Consultants to help complete the 2015 H-2A job orders.<sup>99</sup> Russel Marino, Jr. said that he conducted research and sought advice from other farmers concerning Respondent's participation in the H-2A program.<sup>100</sup>

Upon arrival at Respondent's dormitory, Hernandez informed the farmworkers about the existence of a meal plan, which cost between \$75 and \$80 per week.<sup>101</sup> Russel Marino, Jr.

Russel Marino, Jr. tried to hit him and that Russel Marino, Jr. did not give him the option of staying because he “was fired”); PX 11 at 305 (Hector Mishel Garcia Dominguez stating that he left Respondent’s employ not for personal reasons, but because Russel Marino, Jr. “decided that we were not worth for the job [sic]).”

95 Tr. at 826–29.

96 See JX 1.

97 Id.

98 See JX 3.

<sup>99</sup> See Tr. at 740–41; PX 40 (Respondent’s Form I-129, “Petition for a Nonimmigrant Worker,” which contains the signatures of Theresa Ward from National Agricultural Consultants and Russel Marino, Jr.).

100 Tr. at 713.

testified that in 2015 Respondent indeed furnished the “facilities” to allow the farmworkers to cook their own meals.<sup>102</sup> Although in both 2015 and 2016, Respondent provided meals “at cost” to the farmworkers, Russel Marino, Jr. recognized that the 2015 job order failed to mention that fact.<sup>103</sup>

### **Non-alcoholic Beverages and Other Items Sold to the Farmworkers**

Hernandez sold a variety of items to the farmworkers, including soda, energy drinks, beer, Gatorade, cookies, toilet paper, and soup.<sup>104</sup> The Administrator decided to enforce back wages and CMPs against Respondent only for the beverages it sold to the farmworkers; the Administrator did not enforce back wages and CMPs for any violations resulting from the selling of cookies, toilet paper, and soup. Hernandez sold the beverages in the fields and out of Respondent’s kitchen.<sup>105</sup> The Administrator had to reconstruct the amount of non-alcoholic drinks sold because Hernandez either destroyed or otherwise could not produce his records as to the workers’ purchase of drinks in the summer of 2015.<sup>106</sup> The preponderant evidence of record demonstrates that each farmworker purchased from Hernandez, on average, four non-alcoholic drinks per day.<sup>107</sup> By contrast, the Administrator considered a 4.4 drinks-per-day figure. The Administrator applied a price of \$1.25 per drink, even though the Administrator determined that was likely a conservative estimate.<sup>108</sup>

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<sup>101</sup> See Tr. at 20 (Maldonado’s testimony), 92 (Gustavo Perez saying that he had no choice but to pay Hernandez for the meal plan, even though he would have rather prepared his own food ), 140–41 (Cheguez’s testimony of same), 176 (Hernandez stating that workers who did not wish to participate in the meal plan had to “eat outside or to order a delivery meal”), 178–80 (Hernandez discussing PX 17-1 and PX 17-2, where Hernandez tracked the workers who participated in the meal plans), 262 (Almanza’s testimony), 334 (WHI Perez’s testimony). WHI Perez did not learn why the meal plan cost \$75 some weeks and other weeks cost \$80. See Tr. at 600.

<sup>102</sup> Tr. at 772.

<sup>103</sup> Tr. at 763.

<sup>104</sup> See Tr. at 22–27, 96–97, 193–97, 266–67, and 502.

<sup>105</sup> See Tr. at 189–94, 266–67, 360.

<sup>106</sup> See Tr. at 209 (Hernandez’s testimony), 361 (WHI Perez stating that Hernandez generally “did not have purchase receipts for drinks,” even though he had such receipts for meals).

<sup>107</sup> See Tr. at 360–61 (WHI Perez testifying that that Hernandez said he sold four soft drinks per day per worker), 143 (Cheguez testifying that he purchased “three to four” soft drinks per day), 97 (Gustavo Marquez Perez stating that he purchased between eight and nine soft drinks per day), 269 (Almanza recalling that he purchased three to four soft drinks per day), Tr. at 21–23 (Maldonado testifying that he purchased eight soft drinks per day); PX 3 at 72 (Cervantes Ramirez saying that he bought three to four soft drinks per day); PX 5 at 132–33 (Elizondo Soto testifying that he bought five or six soft drinks per day); PX 9 at 217 (Cinta Tegoma recalling that he bought four soft drinks per day); PX 11 at 276–77 (Garcia Dominguez saying that he bought four or five soft drinks every day); PX 13 at 341 (Morales Acosta testifying that he purchased three or four soft drinks per day).

<sup>108</sup> See PX 2; Tr. at 195–96 (Hernandez testifying that workers paid between \$.75 and \$1.00 for soda, and \$1.50 for Monster and Red Bull); PX 19, page 809 (Pinon stating on an “Employee Personal Interview Statement” on the Department’s letterhead that she charged \$1.00 for soda and Gatorade, and \$2.00 for Monster).

Hernandez could not provide all receipts for the beverages sold because Russel Marino, Jr. told him he did not need to keep such receipts.<sup>109</sup> PX 36, page 1141, is a July 2015 receipt for thirty-six cans of Coke, which Pinon and Hernandez purchased for thirteen dollars. Pinon said that she and Hernandez purchased the sodas and energy drinks from a Sam's Club in Deptford, New Jersey.<sup>110</sup> When determining the prices of soda and Gatorade WHI Perez perused the website for the Deptford, New Jersey Sam's Club.<sup>111</sup>

### **Respondent's Business, Generally**

The same family has owned Respondent's farm for four generations.<sup>112</sup> Respondent is owned in equal parts by Joseph Marino, Russel Marino, Jr., Russel Marino—their father—and Harry Marino—their uncle.<sup>113</sup> Russel Marino, Jr. and Joseph Marino perform most of the day-to-day operations. (*Id.*) In 2014, Respondent's I-129 petition stated a "gross annual income of \$7,500,000."<sup>114</sup>

Labor is "essential" to Respondent's business.<sup>115</sup> Although Respondent always used migrant labor, after 2014, Respondent decided to participate in the H-2A program.<sup>116</sup> In May 2015, the farmworkers picked asparagus. The asparagus harvest occurs within a six to eight week period.<sup>117</sup> The workers perform other tasks during the asparagus harvest.<sup>118</sup> In May 2015, Respondent needed the workers' labor and did not want them to leave.<sup>119</sup> It cost Respondent \$1,000 to bring in each H-2A worker.<sup>120</sup> Respondent replaced the nineteen workers who left after the May 2015 argument with other H-2A workers.<sup>121</sup>

### **Rides**

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<sup>109</sup> See Tr. at 370–71.

<sup>110</sup> See Tr. at 448–49; PX 19.

<sup>111</sup> See Tr. at 647.

<sup>112</sup> Tr. at 714–15.

<sup>113</sup> See Tr. at 787–88.

<sup>114</sup> Tr. at 822–24.

<sup>115</sup> Tr. at 715.

<sup>116</sup> See Tr. at 787–88.

<sup>117</sup> See Tr. at 774.

<sup>118</sup> See Tr. at 774–75.

<sup>119</sup> Id.

<sup>120</sup> See Tr. at 730.

<sup>121</sup> See Tr. at 730–31.



JX 1 is the ETA Form 790 Job Order, which requested forty workers for the period of April 13, 2015 to October 10, 2015. It states, “[o]nce a week the employers will offer to provide (on a voluntary basis) free transportation to assure workers access to the closest store where they can purchase groceries.”<sup>122</sup> However, Respondent either charged its farmworkers for transportation or did not offer such transportation.<sup>123</sup> Russel Marino, Jr. admitted the Respondent did not “formally” tell the farmworkers about transportation, but said “when the bus was getting ready to leave to go into the town, they said, okay, whoever wants to go, get on the bus, we’re going to the town just like your contract says that every one of you have a copy of.”<sup>124</sup>

## Screens

The screens on the windows of Respondent's dormitory were ripped or missing.<sup>125</sup> The windows of Respondent's bathroom were also missing screens.<sup>126</sup> Some garbage cans did not have lids and WHI Perez noted the presence of flies around such lidless garbage cans.<sup>127</sup>

## Water

Water was available to workers during mealtime.<sup>128</sup> The water had “a bad taste to it.”<sup>129</sup> Hernandez recognized that, in the past, the water had a bad taste to it; however, Respondent replaced the filter and fixed the problem.<sup>130</sup> At first, the water in the fields was either missing or

122 JX 1.

<sup>123</sup> See Tr. at 27–28 (Maldonado testifying that Respondent charged its workers \$10 for transportation costs for each shopping trip), 100–02 (Gustavo Perez’s testimony), 146 (Cheguez recalling that Respondent charged \$10 for transportation costs per shopping trip), 266 (Almanza stating that Respondent did not provide free transportation and charged the farmworkers \$10 per trip), 303 (Almanza stating that the Marinos told him to talk to Hernandez about rides to the store), 337, 501–02 (WHI Perez stating that his investigation revealed that Respondent charged the farmworkers between \$10 and \$15 for rides to town).

124 Tr. at 765.

<sup>125</sup> See Tr. at 201–03 (Hernandez’s testimony); PX 28, pages 1049–55; Tr. at 323–28 (WHI Perez recalling the presence of flies in the dormitory).

<sup>126</sup> See Tr. at 331; PX 28 pages 1046–47.

127 See Tr. at 332.

<sup>128</sup> See Tr. at 281 (Almanza's testimony), 567 (WHI Perez's testimony), 719–20 (Russel Marino, Jr.'s testimony).

<sup>129</sup> See Tr. at 23, 52 (Maldonado testifying that the water's taste made him buy beverages from Hernandez), 262 (Almanza's testimony), PX 9 at 216 (Cinta Tegoma testifying on deposition that water was not present in the fields).

130 See Tr. at 233–34.



dirty.<sup>131</sup> At the time of WHI Perez's first visit, water was available in the fields, and the water did not have a smell.<sup>132</sup> Respondent provided the farmworkers with potable water, although not at all times.

### Worker Departure Forms

Following the May 2015 argument about the working and living conditions at Respondent's farm, Hernandez handed out worker departure forms to the nineteen farmworkers who participated in that conversation.<sup>133</sup> The worker departure forms were written in both English and Spanish.<sup>134</sup> The worker departure forms stated that the workers were voluntarily leaving due to personal issues, like a sick or dying loved one.<sup>135</sup> The worker departure forms misrepresented the true reason for the workers' departure.<sup>136</sup> The worker departure forms stated that Respondent offered the farmworkers workers additional work for the remainder of the contract, but Respondent offered no such work.<sup>137</sup> Before handing the worker departure forms to the farmworkers, Russel Marino, Jr. signed the forms; he stated at his deposition that the purpose of the worker departure forms was to "protect against . . . this lawsuit."<sup>138</sup>

<sup>131</sup> See Tr. at 19 (Maldonado's testimony), Tr. at 91 (Gustavo Perez stating that water was only "sometimes" available in the fields); 139–40 (Cheguez's testimony), PX 5 at 134 (Elizondo Soto's deposition), PX 3 at 73 (Cervantes Ramirez's testimony that water would run out by the afternoon); PX 9 at 216 (Tegoma's deposition testimony that water was not available in the fields). But cf. Tr. at 213 (Hernandez testifying that workers had access to water "everyday"); PX 11 at 274 (Dominguez stating that the fields had water).

<sup>132</sup> See Tr. at 546, 553.

<sup>133</sup> See Tr. at 108–10 (Gustavo Perez's testimony), 149 (Cheguez's testimony), 225 (Hernandez's testimony), 272–74 (Almanza's testimony); see, e.g., JX 9.

<sup>134</sup> See Tr. at 38, 776; see, e.g., JX 8 at 89–150; JX 9.

<sup>135</sup> See Tr. at 37 (Maldonado's testimony), 108–110 (Gustavo Perez's testimony), 149 (Cheguez's testimony), 225 (Hernandez's testimony), 272–74 (Almanza testifying that Hernandez gave the workers a form "and asked us to sign the paper because "there was no other choice" and "we couldn't do anything about it"), 409–10 (WHI Perez's testimony), 732–33 (Russel Marino, Jr. saying that he gave the workers "the option to check off the box that said they were returning home because of personal reasons"), and 769 (Russel Marino, Jr. recalling that he brought forms for the workers to sign stating that they were "resigning").

<sup>136</sup> See Tr. at 39–40 (Maldonado's testimony that he left due to the problems he had "with my boss" who told him "we should leave" after the May 2015 argument), 109–10 (Gustavo Perez recalling that Hernandez told Respondent's workers to sign next to the box indicating that the workers needed to return to Mexico for personal reasons because "that was the best option so that we wouldn't have [visa] problems and they wouldn't either"), 149–50, 155–56 (Cheguez's testimony that Russel Marino, Jr. had already filled out the forms prior to distribution to the farmworkers so that the workers' "didn't have any problems when we returned back"; Cheguez signed the form "out of fear"), and 418–19 (WHI Perez's testimony that, based on his investigation, the forms "falsely reported that workers were leaving for personal reason when they were, in fact, leaving because they were terminated or for other circumstances").

<sup>137</sup> See Tr. at 280 (Almanza's testimony), 150 (Cheguez stating that he wished to continue working because he had a six-month contract).

<sup>138</sup> PX 15 at 475 (Russel Marino, Jr.'s deposition).

Russel Marino, Jr. testified that Theresa Ward, a manager with National Agricultural Consulting, created the form.<sup>139</sup> National Agricultural Consultants sent the false notification to the Department.<sup>140</sup> Ward advised Russel Marino, Jr. that the option was:

the right thing to do for them for their future employment. Because fieldwork may not have been for them, they may have been able to do warehouse working or something else. And I didn't want to, you know, put a little mark on their form, saying that, okay, this guy can't -- I had to fire this guy. I didn't want to say that, not that I was firing them anyway. But I gave them the option to personal reasons [sic] for that reason just so in the future they wouldn't have any problem getting picked off a list for future work.<sup>141</sup>

Russel Marino, Jr. noted that the worker departure forms did not allow the farmworkers the possibility to suggest that the workers were fired.<sup>142</sup> He recognized, however, that “[a]s a technicality, I guess” the workers did not resign; “they were terminated.”<sup>143</sup>

## NARRATIVE FINDINGS OF FACT

Respondent is a large, family owned, agricultural producer located in southern New Jersey. Although Respondent always used migrant labor, 2015 was the first year that it decided to engage with the H-2A program. The job orders Respondent issued informed putative H-2A farmworkers that Respondent would provide the workers with kitchen access. Upon arrival at Respondent's dormitories, however, Respondent informed the farmworkers that rather than kitchen access, they could purchase a meal plan costing between \$75 and \$80 each week. Kitchen access was unavailable or otherwise denied. Along with the meal plan, Respondent sold the farmworkers drinks, including beer.

The farmworkers engaged in hard work, including, *inter alia*, the harvesting of asparagus and peppers. Potable water and clean bathroom facilities were only sporadically available, especially in the fields. The farmworkers were upset with these conditions and wanted Respondent to address their concerns. An argument occurred sometime in May 2015 between nineteen farmworkers and owners Russel Marino, Jr. and Joseph Marino and Respondent's foreman, Hernandez. This argument led directly to Respondent's firing of the nineteen workers. Respondent provided the affected farmworkers with worker departure forms that

<sup>139</sup> See Tr. at 730–31, 776–80; JX 8.

<sup>140</sup> See Tr. at 409–10 (WHI Perez’s testimony), 748 (Russel Marino, Jr. stating that he did not give the workers laid off in August 2015 a “choice” to stay because “work slowed down”), 753–54 (Russel Marino, Jr. discussed the contents of PX 39 at 1191, an August 21, 2015 email, sent by National Agricultural Consultants, copying Russel Marino, Jr., to the Department stating that the form listed “workers returned [home] for personal reasons”).

141 Tr. at 733; see 781.

142 Tr. at 734.

143 Tr. at 748.

mischaracterized the reasons for their leaving as needing to return home to care for a sick or dying loved one. In August 2015, Respondent laid off another cohort of workers and had that group sign similar forms.

Respondent provided inadequate housing to the farmworkers. The dormitory included dirty bathrooms without hot water and screens on the windows, other windows with broken or missing screen, and uncovered garbage cans. Respondent transported the workers from the dormitory area to the fields in unsafe vehicles with unlicensed drivers.

After a full investigation, the Administrator found various violations of the Act, and assessed \$351,775.90 in back wages and \$212,250.00 in CMPs.

## POSITIONS OF THE PARTIES

### *The Administrator's Brief*

The Administrator argued that Respondent violated § 655.122(g), (p)(1), and (q), because it did not disclose the existence of the meal plan on the job order it provided to prospective H-2A workers; it otherwise did not provide kitchen access to the workers. See Administrator’s Brief at 22 (citing JX 1 at 2). Respondent also allegedly made impermissible deductions to the farmworkers’ pay when it charged for meals. Id. The Administrator wrote that, to fulfill its duties under the job order, Respondent must have actually “furnish[ed]” kitchen access; the fact that Respondent did not affirmatively deny kitchen access to any employees’ request is not enough. See Administrator’s Brief at 24–25 (citing 20 C.F.R. § 655.122(g)).

As a corollary, the Administrator argued that because Respondent did not provide its farmworkers with kitchen access, it was responsible for providing workers with meals free of charge. See Administrator’s Brief at 26. Additionally, because Respondent did not disclose the required meal charges, it violated § 655.122(g). It violated § 655.122(q) because it omitted from the job offer “one of the ‘provisions required’ by § 655.122(g), namely disclosure of the meal charges.” (Id.) That Hernandez operated the meal plan does not absolve Respondent from liability, because Respondent was still the party responsible for disclosing the meal charges, which it failed to do. Allowing an employer to deflect liability in this way would open a loophole, which would “eviscerate” other aspects of the program’s requirements, such as “prohibitions on excessive meal charges (§ 655.173(a)) and charges that include a profit (§ 655.122(p)(2)), and the obligation to provide [farmworkers] free housing (§ 655.122(d)).” Id. n.16.

The Administrator continued, stating Respondent violated the regulations through the actions of its “agent Hernandez.” See Administrator’s Brief at 27. In order not to violate the regulations, the job order must have disclosed any “deductions” Hernandez made for the meal plan. See id. (citing § 655.122(q)). The law allegedly makes no distinction between a deduction from wages and “shifting to the employee a cost that the employer could not lawfully directly deduct from wages.” See id. (citing In re: Weeks Marine, Inc., ARB No. 12-093, 2015 WL 2172482, at \*4 (Apr. 29, 2015)).

The Act's protections for migrant laborers do not exempt agricultural employers from common law agency principles. Therefore, the Administrator argued, Hernandez's act of charging workers for the meal plan was equivalent to Respondent charging its workers for the meal plan. See Administrator's Brief at 29 (citing Castillo v. Case Farms of Ohio, Inc., 96 F. Supp. 2d 578, 593 (W.D. Tex. 1999); Restatement (Third) of Agency ("Restatement") § 6.01) ("This section states the basic principle that when an agent enters into a contract on behalf of a disclosed principal, the principal and the third party are parties to the contract."). The Administrator stated that because Hernandez had either "actual authority," "apparent authority," or both, to act on Respondent's behalf to charge Respondent's farmworkers for the meal plan, Respondent violated "20 C.F.R. § 655.122(g), (p)(1) and (q) by constructively deducting the meal charges from workers' wages, without having disclosed the meal plan charges in the Job Orders." See Administrator's Brief at 30.

Section 2.01 of the Restatement posits that actual authority exists "when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act." See Administrator's Brief at 29. Due to the kitchen's size, Respondent's "longstanding practice" was to require farmworkers to purchase meal plans from Hernandez. See Administrator's Brief at 30 (citing Tr. 176–77, 186–87, 738, 742–43, 808). Respondent showed its authority over Hernandez by having Hernandez attend Departmental training sessions concerning meal plans, and following up with Hernandez to ensure compliance. See Administrator's Brief at 30–31 (citing PX 15 at 401–03; Tr. 51, 174–75, 773 (orientation), 187 (follow-up), 776).

Apparent authority exists when "a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations." See Administrator's Brief at 30–32 (Restatement § 2.03). The Administrator argued that Respondent's workers held a reasonable belief that Hernandez had apparent authority to act on Respondent's behalf for several reasons. First, Russel Marino, Jr. told the workers that Hernandez would feed them "three squares a day". In addition, the workers recorded their payment for the meal plan using a form bearing Respondent's name. Finally, "Hernandez was the intermediary between workers and [Respondent] and [Hernandez] was their supervisor in every aspect of their lives." See Administrator's Brief at 32 (citing PX 7 at 173; PX 15 at 401–03; PX 17-2 at 799–800, Tr. at 51, 61, 172–75, 182, 211, 236–37, 773, 825).

The H-2A regulations prohibit profiteering, because such actions would improperly reduce workers' wages. See Administrator's Brief at 33 (citing 20 C.F.R. § 655.122(p)(2)). An H-2A employer or "any affiliated person" may deduct wages, but "all deductions must be reasonable." 20 C.F.R. § 655.122(p)(1), (2).

The wage requirements of § 655.120 will not be met where undisclosed or unauthorized deductions, rebates, or refunds reduce the wage payment made to the employee below the minimum amounts required under this subpart, or where the employee fails to receive such amounts free and clear because the employee kicks back directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee.

20 C.F.R. § 655.122(p)(2). The term “‘affiliated person’ includes but is not limited to . . . any person acting in the employer’s behalf or interest (directly or indirectly), or who has an interest in the employment relationship.” See Administrator’s Brief at 33 (quoting [WHD Bulletin No. 2012-3](#)). If a prohibited charge “reduce[s] the wage payment . . . below the minimum amounts required,” an employer owes back wages to any effected farmworkers. See Administrator’s Brief at 33 (citing 20 C.F.R. § 655.120 § 655.122(l), (p)(2); 29 C.F.R. § 501.16(a)(2)).

The governing regulations prohibit any charge or deduction that either: (1) “includes a profit to the employer or to any affiliated person,” 20 C.F.R. § 655.122(p)(2); or (2) involves items sold in violation of any federal, state, or local law, see 29 C.F.R. § 531.31 (which § 655.122(p)(2) incorporates by reference). See Administrator’s Brief at 33–34. The Administrator continued that it is Respondent’s duty to prove that the products sold did not include a profit or were otherwise reasonable. See Administrator’s Brief at 33 (citing Ortiz v. Paramo, No. 06-3062, 2008 WL 4378373, at \*6 (D.N.J. Sept. 19, 2008)).

The Administrator argued that Hernandez fits the definition of an affiliated person. See Administrator’s Brief at 34–35. As such, the regulations prohibit Hernandez from profiteering from Respondent’s workers; neither Respondent nor Hernandez kept receipts to determine whether Hernandez obtained any profit. Id. (citing Tr. at 209, 361, 371, 452–53). Hernandez also sold beer without a license. See Administrator’s Brief at 36 (citing N.J. Stat. Ann. § 33:1-2(a) (requiring a license to sell beer in New Jersey)).

The Administrator asserted that Respondent owes \$209,047.69 in back pay to the summer 2015 workers. See Administrator’s Brief at 38. The \$209,047.69 figure represents the full amount of improper charges made to Respondent’s farmworkers for meals and drinks. Back pay for the full amount charged is appropriate, the Administrator asserted, because the regulations require disclosure of meal costs regardless of whether an employer profited, so absent a full back pay requirement, an employer would have no incentive to disclose meal costs. See Administrator’s Brief at 38–39 (citing In re Global Horizons, Inc., No. 2010-TAE-00002, slip op. at 2 (OALJ Dec. 13, 2011)). The job order Respondent issued told the prospective farmworkers that Respondent would pay either \$11.29 per hour or the piece rate, whichever is greater. The piece rate or \$11.29 per hour became the “minimum amount[] required” under 20 C.F.R. §§ 655.120, 122(l), and (p)(2). Therefore, Administrator argued, “any improper charges to workers pushed their wages below the promised rate.” See Administrator’s Brief at 38 n.21.

Concerning drinks, because Hernandez did not keep records as to the costs of and profits from the drinks he sold to Respondent’s workers, such costs should not offset the back pay award. See Administrator’s Brief at 39–40 (citing various cases arising under the Fair Labor Standards Act (“FLSA”)). Calculating back wages for drinks is appropriate here, the Administrator continued, because the water in the fields tasted bad, the work was long and hard, and the workers “had no practical alternative.” See Administrator’s Brief at 40–41.

When an H-2A employer fails to keep records of deductions, the Anderson v. Mt. Clemens Pottery Co. burden-shifting framework applies. See Administrator’s Brief at 44 (citing Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946); Hart v. Rick’s Cabaret Int’l, Inc., 73



F. Supp. 3d 382, 390 (S.D.N.Y. 2014)). The Administrator argues here that, because the workers had no legal obligation to document such expenses, and were otherwise unable to document the expenses while working in the fields, the burden should fall on Respondent to account for all charges incurred. See Administrator’s Brief at 44–45 (citing Tr. 22, 77–78, 209).

The Mt. Clemens standard requires the Administrator to produce sufficient evidence to show the amount of the improper charges or deductions “as a matter of just and reasonable inference.” See Administrator’s Brief at 45 (citing Weeks Marine II, slip op. at 19). At that point, the burden switches to Respondent to negate the reasonableness of any inferences drawn from the Administrator’s evidence. See id. (citing Hart, 73 F. Supp. 3d at 390). If the Respondent is unable to negate the reasonableness, a court may award damages, though approximate. See Administrator’s Brief at 45–46 (citing Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 688 (1946)); In re Greater Mo. Med. Pro-Care Providers, Inc., ARB No. 12-015, 2014 WL 469269 (ARB Jan. 29, 2014), at \*16). Because the Administrator’s evidence is reasonable, and Respondent is unable to negate that reasonableness, the undersigned should uphold the back wage calculations for drinks Respondent sold in 2015. See Administrator’s Brief at 46.

The Administrator also calculated that Respondent owed \$128,285 in back wages to 139 workers for the unlawful meal deductions. See Administrator’s Brief at 46–48. The Administrator discussed the calculations leading to the \$128,285 back wage figure. PX 2 is a document the Administrator created to show Respondent’s summer 2015 weekly payroll records. Based on these records, the Administrator determined that Respondent employed 148 separate workers during the 2015 growing season for at least one week. See Administrator’s Brief at 46. Except for three weeks where Respondent charged \$80 per week, the Administrator determined that Respondent charged \$75 per week for the meals. See Administrator’s Brief at 47 (citing Tr. at 443.) The Administrator reduced the back wages for those workers who did not pay for the meal plan. See Administrator’s Brief at 47 (citing Tr. at 444–45.) The Administrator noted that the parties stipulated that the meal plan cost between \$75 and \$80 per week and that 139 workers paid for the meal plan each week. See Administrator’s Brief at 47. The Administrator called the \$128,285 back wage figure a “conservative reconstruction of the back wages owed.” See Administrator’s Brief at 48.

The Administrator further determined that Respondent owed \$71,790.08 in back wages for improper soft drink charges. See Administrator's Brief at 48–51 (citing PX 2 at 32, 61). Respondent's farmworkers allegedly purchased an average of 4.42 drinks per day and paid \$1.25 per drink, on average, for a total of \$38.68 per week. See Administrator's Brief at 48 (citing Tr. at 427–28, 439, 443, 624). Hernandez's testimony allegedly supports the Administrator's determination that workers paid on average \$1.25 per drink. See Administrator's Brief at 51 (comparing Tr. at 195–96, with PX 19 at 809). Hernandez did not keep records of the number of drinks the farmworkers purchased, and the Administrator said that Hernandez's estimate of three to four drinks per day was low and less credible than the workers' testimony. See Administrator's Brief at 49 (citing Tr. at 195, 209; Appendix A to Administrator's Brief).

The Administrator also sought back wages for \$8,972.61 for the beer Hernandez sold to the farmworkers. See Administrator’s Brief at 51–54. Hernandez allegedly sold beer for two

(1) previous history of violations, (2) number of workers affected by the violations, (3) the gravity of the violations, (4) efforts made in good faith to comply, (5) explanation from the person charged with the violations, (6) commitment to future compliance, and (7) the extent to which the violator achieved a financial gain or the potential financial loss or potential injury to the workers.

The Administrator argued that she reasonably considered the evidence of record and applied the foregoing mitigation factors concerning the allegedly unlawful deductions for the meal plan and drinks. See Administrator’s Brief at 55 (citing District Director Rachor’s testimony at Tr. at 849–54). Due to the “seriousness of the violation”, concerning the false statement in the job order about kitchen access, the Administrator initially assessed a \$1,500 CMP for each of the 147 affected workers. The Administrator did not assess a second set of CMPs for each worker for the purported drink violations. See Administrator’s Brief at 56. Rather, the Administrator used her discretion to apply one CMP for all violations §§ 655.122(g), (p), and (q). The Administrator reduced the CMP based on mitigation factor one, because Respondent did not have a history of H-2A violations. See Administrator’s Brief at 56–57. Thus, the Administrator assessed a \$1,350 CMP for the 147 affected farmworkers. The Administrator discussed why she did not apply the remaining mitigation factors. See Administrator’s Brief at 57–58 (noting that the violation injured a large volume of workers, involved false statements to employees and so constituted a serious violation, was committed knowingly, and caused financial loss to the farmworkers).

Appx073

violation of the three-fourths guarantee<sup>144</sup> included four workers terminated in August 2015 without cause, nineteen workers discharged in May 2015, and one worker for whom Respondent failed to notify government agencies of the reasons for his departure in June 2015.<sup>145</sup> See Administrator’s Brief at 60–61. Concerning the first set of workers, Respondent has conceded it violated the three-fourths guarantee and owes that cohort \$4,386.18 in total back pay. See Administrator’s Brief at 63 (citing PX 1; Tr. at 426, 639, 642–44). The regulations only relieve employers from the three-fourths guarantee when a worker “voluntarily abandons employment” or is “terminated for cause,” and the employer also timely and properly notifies the appropriate federal agencies. See Administrator’s Brief at 62 (citing § 655.122(n)).

The Administrator argued that, despite what Respondent communicated to the Department on the worker departure forms, Respondent terminated the nineteen workers that left in May 2015. See Administrator’s Brief at 63–64 (citing Tr. 39, 65, 80–81, 107–08, 125, 129; PX 3 at 101; PX 9 at 232–33, 258; PX 11 at 305). The Administrator asserted that Respondent could not defend itself through its “false notifications to government agencies” concerning the worker departure forms the workers signed stating that they had sick or injured family members. See Administrator’s Brief at 64 n.43 (citing See JX 8 at 89–95, 102, 106, 107; PX 3-1 at 115; see also JX 8 at 98–100).

Even if Respondent did not terminate the nineteen workers in May 2015, the Administrator argued in the alternative that Respondent constructively discharged the workers. See Administrator’s Brief at 64–68. Respondent constructively discharged the workers based on the “intolerable work and living conditions that they faced.” See Administrator’s Brief at 64 (citing Chertkova v. Conn. Gen. Life Ins. Co., 92 F.3d 81, 89 (2d Cir. 1996)). Constructive discharge operates under an objective standard: “Did working conditions become so intolerable that a reasonable person in the employee’s position would have felt compelled to resign?” See Administrator’s Brief at 65 (quoting Pa. State Police v. Suders, 542 U.S. 129, 141 (2004)). The Administrator said that the asparagus picking conditions were unendurable, because Respondent required the pickers to work in a crouched position for ten to twelve hours most days without rest. See Administrator’s Brief at 65 (citing Tr. 17, 90–91, 139, 238–39, 257; PX 3 at 68–71). The field conditions were also intolerable as, in May 2015, the fields lacked bathrooms or were in disrepair. See Administrator’s Brief at 66 (citing Tr. 18–19, 91, 139; PX 3 at 91; PX 9 at 216, 220) and Administrator’s Brief at 67 (citing PX 5 at 142–43; Tr. at 39, 103, 163). At times, the fields also lacked drinking water. See Administrator’s Brief at 66 (citing Tr. 19, 139; PX 5 at 19; PX 9 at 216; PX 3 at 73).

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<sup>144</sup> “The employer must guarantee to offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays of the total period beginning with the first workday after the arrival of the worker at the place of employment or the advertised contractual first date of need, whichever is later, and ending on the expiration date specified in the work contract or in its extensions, if any.” 20 C.F.R. § 655.122(i)(1).

<sup>145</sup> The name of the lone worker is Jose Islas Larraga. See Administrator’s Brief at 73–74. Respondent owes back pay to Islas Larraga in the amount of \$2,751.94 because, contrary to the regulatory requirements, Respondent never provided notice that Islas Larraga no longer worked for Respondent. Id. (Tr. 419, 436; PX 39 at 1189-1216 (Islas Larraga absent from full set of notifications)).



The Administrator next described her back wages calculations and argued that such calculations were “reasonable.” See Administrator’s Brief at 68. The Administrator relied on Respondent’s payroll records at PX 1 and PX 2, and noted that the undersigned admitted both exhibits as “summaries of voluminous records pursuant to Federal Rule of Evidence 1006 and 29 C.F.R. § 18.1006.” See Administrator’s Brief at 68 n.47 (citing Tr. at 584–85, 968).

First, the Administrator determined the “total period,” § 655.122(i)(1), on which Respondent based its three-fourths guarantee. The Administrator determined the start date of the first weekly pay period in which a worker was paid in 2015. See Administrator’s Brief at 69 (citing Tr. at 428; PX 1.) The Administrator calculated the length of the workdays (seven hours on weekdays and five hours on weekends), and used the length of the workdays to determine the ending date of the guarantee period (October 10, 2015). See Administrator’s Brief at 69 (citing Tr. 420, 523; see JX 1 at 1, 9 11; JX 3 at 42, 50). The Administrator then found the number of weeks (expressed as hours) from the start of the first pay period to the end of the guarantee period. See Administrator’s Brief at 69 (citing Tr. at 428; PX 1).

To yield the data contained in the “total workday hours between first pay period and contract end” column of PX 1, the Administrator multiplied the “weeks” column and the “job offer hours per week” column; the Administrator then subtracted the “federal holiday(s) hours” column from this product. See Administrator’s Brief at 70. The Administrator created the three-fourths guarantee column by multiplying the “total workday hours between first pay period and contract end” column by three-fourths. Id. The “variance” column shows the difference between the “3/4 guarantee” column and the “hrs wrked” column. Id. To determine the amount of back pay owed, the Administrator multiplied the figure in the “variance” column by \$11.29, the minimum hourly wage the Respondent pledged to pay its farmworkers in 2015. See Administrator’s Brief at 70. In this way, the Administrator calculated both the number of hours for each worker that Respondent violated the three-fourths guarantee and the back pay due. See id. Because Respondent did not keep any records of hours offered to the employees, in violation of § 655.122(j), the Administrator argued that the undersigned should not use hours offered as a relevant factor. See Administrator’s Brief at 71–72 (citing In re: Global Horizons, Inc., No. 2005-TAE-00001 slip op. at 40–41, 63, 77, 88–92) (“Global Horizons III”).

The Administrator also assessed a \$1,350 CMP for Respondent's alleged violation of the three-fourths guarantee concerning twenty-four of the affected farmworkers. See Administrator's Brief at 74–75 (citing Tr. at 856–57 (allowing a ten percent reduction for Respondent's lack of H-2A history, but finding that reductions were not warranted for the number of workers involved, the gravity of the situation, the commitment for future compliance, or financial gain to the Respondent), 935–37). Mitigation factors four and five do not apply, because Respondent's hours tracking program did not track hours offered and because Respondent continues to deny liability for some of the three-fourths guarantee issues. *Id.*

The Administrator assessed an additional \$1,350 CMP for Respondent's alleged violation of 29 C.F.R. § 501.5, which "prohibits any 'person' from 'seek[ing] to have' any H-2A worker waive rights pursuant to 20 C.F.R. part 655, subpart B," including the three-fourths guarantee at § 655.122(i). See Administrator's Brief at 75–78. The Administrator referred to this as a "coercion violation." See Administrator's Brief at 78. Respondent provided the workers who

left in May and August worker departure forms stating that the workers “resign[ed]” their jobs. See Administrator’s Brief at 76 (citing Tr. 83, 108–110, 149, 225, 274, 732, 768–69). Respondent allegedly violated 29 C.F.R. § 501.5 by first requiring the workers to sign worker departure forms stating that they resign; second, by having the workers falsely state that they have ill or deceased relatives. See Administrator’s Brief at 76. Russel Marino, Jr. stated at deposition that the purpose of the worker departure forms was to protect against litigation. See Administrator’s Brief at 77 (citing PX 15 at 475). Respondent’s agent, National Agricultural Consultants, also sent false notifications to the Department. See id. (citing PX 39 at 1191–95, 1198–1200; Tr. 409, 748, 753–54). The Administrator stated that Respondent is responsible for its agent’s actions. See Administrator’s Brief at 77 (citing JX 2 at 31, 39–41; JX 4 at 70; 20 C.F.R. § 655.135). On page 754 of the hearing transcript, the Respondent allegedly conceded the August workers were terminated without cause. Id. The Administrator considered all seven mitigation factors, and applied only the first one due to Respondent’s lack of past noncompliance. See Administrator’s Brief at 77–78 (citing Tr. at 858–61.)

The Administrator assessed \$3,600 in CMPs for five alleged violations of 20 C.F.R. § 655.122(d)(1)(i), which concerns housing violations. See Administrator’s Brief at 78–86. Specifically, the Administrator assessed the following CMPs:

\$900 for the unscreened bathroom windows; \$900 for the faulty dormitory screen windows and doors; \$900 for the uncovered garbage cans; \$450 for the hot water shortage; and \$450 for the unclean mattresses on the floor.

See Administrator's Brief at 84 (citing JX 10 at 160; Tr. 861–63, 938–39).

Because Respondent's dormitories were built prior to 1980, the applicable regulations are the Employment and Training Administration Housing Standards codified at 20 C.F.R. §§ 654.404–654.417. Section 654.408(a) mandates that “all outside openings . . . be protected with screening of not less than [sixteen] mesh.” See Administrator's Brief at 78 (citing 20 C.F.R. § 655.122(d)(1)(i)). The Administrator argued that Respondent violated this requirement because its dormitory contained ripped or missing window screens. See Administrator's Brief at 78–79 (citing Tr. at 202–03, 324, 330–31; PX 28 at 1046–47). The ETA regulations require that “[a]ll screen doors . . . be tight fitting, in good repair, and equipped with self-closing devices.” 20 C.F.R. § 654.408(b). The Administrator averred that Respondent violated this requirement, as well; some screens were ripped and some doors did not close. See Administrator's Brief at 80–82 (citing PX 28 at 1048–52; Tr. 324–28). Respondent is obliged to maintain housing in compliance with federal standards throughout the growing season. See Administrator's Brief at 81 (citing JX 2 at 30–31, 39; JX 4 at 69–70, 78).

Concerning garbage receptacles, the ETA regulations require that Respondent maintain “fly-tight, clean containers in good condition” near the dormitory. 20 C.F.R. § 654.414(a). The Administrator argued that the condition of Respondent’s refuse containers violated the regulations. It even kept open piles of refuse near the dormitory. See Administrator’s Brief at 82 (citing Tr. at 324, 329, 332, 603–04; PX 28 at 1053–55; PX 33 at 1094).

For each of the five housing violations, the Administrator considered all of the mitigation factors enumerated at § 501.19(b) to reduce the penalty below the \$1,500 maximum. See Administrator’s Brief at 84–86 (citing Tr. at 862–66, 937–45). The Administrator applied the first, sixth, and seventh mitigating factors. See Administrator’s Brief at 84–85. Specific to the bathroom, dormitory screen, and garbage violations, the Administrator further reduced the CMP because there was no evidence that any worker contracted a communicable disease due to the cited issues. See Administrator’s Brief at 85 (citing Tr. at 864). For the hot water and mattress violations, the Administrator also applied mitigation factors three, four and the final factor. Id. (citing Tr. at 865–66, 941). Additionally, mitigation factor two applied to the mattress violation, and mitigation factor five applied to the hot water violation. Id. (citing Tr. at 456, 865, 937, 941).

In addition to the purported driver's license issue, the Administrator alleged that CMPs are due because Respondent operated vehicles with worn tires and one vehicle had a broken rear tail light. See Administrator's Brief at 88–89 (citing Tr. 404–06; PX 29 at 1057). This broken tail light showed that Respondent was in violation of both federal laws and state laws. See id. (citing 29 C.F.R. § 500.105(b)(3)(ii); 49 C.F.R. § 393.11; N.J. Stat. Ann. § 39:3-61(a)). Three of the buses had worn tires. See Administrator's Brief at 88–89. The Administrator argued that the

## The Respondent's Brief

Concerning meals, Respondent argued that many of the farmworkers never asked to use the kitchen facilities, and Respondent never denied them permission. See Respondent’s Brief at 7–8 (citing 50–51, 176, 213–14). Respondent argued that the hearing testimony was “inconsistent” as to the number of workers who could cook at once or whether it was feasible to cook in shifts. *Id.*

Respondent continued that the Administrator's case relies on the position that the inaccurate job order misled Respondent's farmworkers. See Respondent's Brief at 9–12.

The Administrator’s argument that Hernandez acted as Respondent’s agent “makes no sense,” according to Respondent. See Respondent’s Brief at 13–16. Agency theory does not apply to a breach of Respondent’s contract with the government and the farmworkers. See Respondent’s Brief at 13 (citing Young v. Bethlehem Area Vo-Tech Sch., 2007 U.S. Dist. LEXIS 13531, \*39 (E.D. Pa. Feb. 28, 2007) for the principle that *respondeat superior* does not apply in breach of contract claims)). Hernandez and Respondent were not the farmworkers’ joint employers, either. See Respondent’s Brief at 14–15 (discussing Ramos Ortiz v. Paramo, Civ. Action 06-3062, 2008 U.S. Dist. LEXIS 72387 (D.N.J. Sept. 19, 2008)). Because Hernandez did not fit under the regulatory definition of the term “employer,” 20 C.F.R. § 655.103(b), the Administrator allegedly could not show that Respondent “received any payments from workers for meals nor for anything else.” See Respondent’s Brief at 16. Such payments went to Hernandez “in his individual capacity.” Id. Respondent did not direct Hernandez to collect the money, did not approve of Hernandez’s actions, and Respondent did not “even [know] that this was happening.” Id. Thus, the Administrator is unable to attribute any “employer-agent theory” of liability to Hernandez.

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Respondent called WHI Perez’s back wage calculations “creative.” See Respondent’s Brief at 21–22. The Administrator allegedly had an “unreliable estimate” of the amount paid to Hernandez for the drinks, because the estimate relied on “post hoc recollections.” Id.; see Respondent’s Brief at 22 n.6 (“Investigator Perez’s use of spreadsheets and calculations implies a degree of precision that is not supported by the underlying information on which his calculations rest.”). The Administrator also relied on prices obtained from Costco, even though the record establishes that Hernandez shopped at Sam’s Club. See Respondent’s Brief at 22 (citing Tr. at 430, 508–09, 627). Additionally, the Administrator used prices for Coors Light when “nobody bought” it. See Respondent’s Brief at 22–23.

Concerning the former group, Respondent argued that voluntary abandonment of work voids the three-fourths guarantee. See Respondent’s Brief at 23–28. As Respondent put it, the workers decided together that harvesting asparagus was “more difficult than they wished, [and] stopped working *en masse*.” See Respondent’s Brief at 23. Because the asparagus harvest

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would otherwise be ruined, Joseph Marino and Russel Marino, Jr. pleaded for the workers to stay. Id. Respondent noted witness testimony that the asparagus crop was difficult to harvest. See Respondent’s Brief at 24–25 (citing Tr. at 49, 50, 122–16, 723–27, 809–12). Additionally, Respondent never told the nineteen workers they “must” leave work and that the workers were terminated without cause. See Respondent’s Brief at 25–26 (citing Tr. at 66–67) (emphasis in the original). For purposes of calculating the three-fourths guarantee, the regulations “draw[] a crucial distinction between a worker terminated without cause and a worker voluntarily abandoning employment.” See Respondent’s Brief at 26. The latter employee does not deserve back pay for violations of the three-fourths guarantee. Id. Respondent argued that the workers in question voluntarily abandoned their employment. Id. It was “simply preposterous” that Respondent would fire the workers, since asparagus requires such a quick harvest. Id.

Additionally, the Administrator is allegedly unable to establish the objective standard constituting constructive discharge. See Respondent’s Brief at 26–27 (citing Stucke v. City of Philadelphia, 685 Fed. Appx. 150, 155 (3d Cir. Apr. 12, 2017); Duffy v. Paper Magic Group, 265 F.3d 163, 169 (3d Cir. 2001)). Because a “reasonable person” would not have felt compelled to resign, the Respondent argued that Respondent did not constructively discharge the nineteen-workers. See Respondent’s Brief at 27. As proof, Respondent asserted that the “vast majority” of farmworkers that worked under the same conditions did not feel “so compelled to walk off the job.” Id. (citing Tr. at 65, 817–18).

Concerning the group that left Respondent's employ in August 2015, Respondent said that the Administrator did not account for the hours Respondent offered this cohort. See Respondent's Brief at 28–30. Twenty C.F.R. § 655.122(i) requires only that an employer offer the worker employment; it does not require the employee to have actually worked to meet the three-fourths guarantee. See Respondent's Brief at 28. The P.E.T. Tiger technology Respondent used to track the farmworkers' work would not capture if a worker were sick, injured, or otherwise declined work because the worker was not “scanned in” to start the day. See Respondent's Brief at 29 (citing Tr. at 683–84, 833–34). WHI Perez allegedly did not ask Respondent about hours that it offered the farmworkers. Id. (citing Tr. at 554–58, 649). Respondent argued that the three-fourths guarantee did not apply to Islas Larraga because he had “absconded” from the job mid-season, and so voluntarily quit. See Respondent's Brief at 29–30.

Respondent next discussed the \$1,350 CMP for Respondent's alleged attempt to have the workers waive their rights on the worker departure forms. See Respondent's Brief at 30–31. Respondent explained that Theresa Ward of National Agriculture Consultants told Russel Marino, Jr. that workers were concerned that if they could not perform a job and abandoned employment, it would reflect badly on their ability to secure future employment. See Respondent's Brief at 30 (citing Tr. at 731–33, 812). Hernandez provided the blank worker departure forms to the workers. Id. (citing Tr. at 225, 227). Respondent conceded that the workers did not have sick or deceased family members, as the form indicates, but said, "that decision was between the group of workers and between the workers and their contact back in Mexico." See Respondent's Brief at 31. Respondent did not coerce the workers to give up any right, because "none of the forms purport to surrender a right held by any of the workers." See id.

Respondent continued that the undersigned should reduce the \$3,600 CMP for the housing violations. See Respondent's Brief at 31–33. Respondent allegedly made “immediate repairs and corrections,” but WHI never followed up to account for those remedies. See Respondent's Brief at 32 (citing Tr. at 497–99). Hernandez inspected housing conditions twice per week and Russel Marino, Jr. said that workers could raise concerns about housing and then Respondent would make the necessary repairs. Id. (citing Tr. at 176, 782). As to the \$450 mattress violation, District Director Rachor allegedly “conceded” that the requirement was to provide a bed, “not to prevent workers from moving mattresses from a provided bed onto the floor.” See Respondent's Brief at 33 (citing Tr. at 923; 20 C.F.R. § 654.416(a)). Respondent emphasized that the New Jersey Department of Labor certified the dormitory for 136 workers and the housing population never exceed 118 during the 2015 season. Id. (citing Tr. at 803–04; RX 2 at 13).

Respondent further stated that the alleged transportation violations do “not support the full CMP assessment pursued by the Administrator in this case.” See Respondent's Brief at 33–34. Respondent allegedly “resolved” the driver's license issue through the addition of internal protocols. See id. Concerning the tire tread, Respondent argued that the Administrator merely used “eyeball measurement” to determine that the tire was “bald.” See Respondent's Brief at 34. WHI Perez reviewed the pictures he took and purportedly “admitted that there were ‘tread marks’ on the tires in question.” See Respondent's Brief at 34 (citing Tr. at 533–36). Because Respondent has generally addressed and remediated the issues for which the Administrator seeks CMPs, Respondent requested the undersigned to “set[] any remaining CMPs at a reasonable level commensurate with the facts of the case.” Id.

## DISCUSSION

The modern H-2A visa program arose out the 1986 amendment to the INA. See generally Staff of House Comm. On Education and Labor, 102d Cong., 1st Sess., Report on the Use of Temporary Foreign Workers in the Florida Sugar Cane Industry 3-4 (Comm. Print 1991). The Administrator enforces the attestations an employer makes in a temporary agricultural labor certification application, as well as the regulations that implement the H-2A program. See 29 C.F.R. §§ 501.1, 501.5, 501.16, 501.17. An “employer's job offer must offer to U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers.” 20 C.F.R. § 655.122(a). Thus, the H-2A regulations prohibit any discrimination between H-2A workers and domestic workers. Id. The Administrator may penalize an employer who fails to abide by the governing H-2A regulations through the imposition of monetary penalties, debarment from filing other H-2A certification applications, and instituting proceedings for specific performance, injunctive, or other equitable relief. See In re: Global Horizons, Inc., 2006-TLC-00013, slip op. at 4 (ALJ Nov. 30, 2006).

The Administrator may assess CMPs against a violating employer for each violation of the work contract or the governing regulations. 29 C.F.R. § 501.19(a) (2010). In determining the amount of such penalty, “the WHD Administrator considers the type of violation committed and other relevant factors[,]” including:



1. Previous history of violation or violations of the H-2A provisions of the Act and these regulations;
2. The number of workers affected by the violation or violations;
3. The gravity of the violation or violations;
4. Efforts made in good faith to comply with the H-2A provisions of the Act and these regulations;
5. Explanation of person charged with the violation or violations;
6. Commitment to future compliance, taking into account the public health, interest or safety, and whether the person has previously violated the H-2A provision of the Act; and
7. The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers.

29 C.F.R. §501.19(b).

A party has a right to a *de novo* hearing before an administrative law judge, who may affirm, deny, reverse, or modify in whole or in part the decision of the Administrator. See, e.g., Three D. Farms, LLC d/b/a Three D Farms, 2016-TAE-00003 (Aug. 18, 2016); Seasonal Ag Services, Inc., 2014-TAE-00006, slip op. at 12 (Dec. 5, 2014).

- I. The Administrator properly found violations of 20 C.F.R. § 655.122(g), (p), and (q) concerning improper deductions Respondent's agent, Hernandez, made concerning meals, non-alcoholic beverages, and alcoholic beverages. Back pay and the imposition of CMPs, therefore, are warranted.

Twenty C.F.R. § 655.122(g) requires an employer to provide H-2A workers either “three meals a day or [to] furnish free and convenient cooking and kitchen facilities.” If the employer requires workers to pay for their meals, the employer must state the charge on the job offer. (*Id.*) The regulations also require the employer to provide a prospective H-2A worker a copy of the work contract prior to the worker's application for a visa. § 655.122(q). The work contract must contain, *inter alia*, terms concerning whether the employer will provide meals or kitchen access, as stated in § 655.122(g). Here, Respondent filed two job orders. The first concerned the period April 13, 2015 to October 10, 2015; the second concerned June 1, 2015 to October 10, 2015. See JX 1; JX 3 (respectively). Section 14 of the job order requires the employer to “describe how [it] intends to provide either [three] meals to each worker or furnish free and convenient cooking and kitchen facilities.” In both JX 1 and JX 3, Respondent informed the Department—as well as prospective H-2A workers—that it “will furnish free cooking and kitchen facilities . . . so that workers may prepare their own meals.” Russel Marino, Jr. signed both forms in his role as Respondent's “owner/manager.” (*Id.*) Despite Respondent's assurances, however, the workers who arrived at Respondent's New Jersey dormitory were greeted with news that Respondent planned to feed them not with free kitchen access, but through a meal plan costing each worker \$75 to \$80 per week.<sup>147</sup> In this way, Respondent immediately breached a material

<sup>147</sup> See Tr. at 20 (Maldonado's testimony), 92, 140–41 (Gustavo Perez saying that he had no choice but to pay Hernandez for the meal plan, even though he would have rather prepared his own food ), 176 (Hernandez stating that workers who did not wish to participate in the meal plan had to “eat outside or to order a delivery meal”), 178–80 (discussing PX 17-1 and PX 17-2, where Hernandez tracked the workers who participated in the meal plans), 262

term of the job order; the contract that cemented the working relationship between Respondent and farmworkers who traveled often thousands of miles to work in Respondent's fields.

Respondent's counterargument that none of the workers requested access to Respondent's kitchen facilities and some did not object to the meal plan, see Respondent's Brief at 7–9, is unavailing. The express terms of the job orders at JX 1 and JX 3—the employment contracts between the farmworkers and Respondent—were clearly not in line with the realities facing the farmworkers upon arrival at Respondent's dormitory. Respondent, therefore, violated 20 C.F.R. §§ 655.122(g), and (q).

Respondent also attempts to deflect liability concerning its violation of the regulations concerning proper deductions from the farmworkers' pay. See 20 C.F.R. § 655.122(p) ("The job offer must specify all deductions not required by law which the employer will make from the worker's paycheck . . . . A deduction is not reasonable if it includes a profit to the employer or to any affiliated person."). Respondent argues that all deductions from pay, if any, occurred due to the actions of Hernandez, not Respondent. Therefore, to the undersigned must first determine whether Hernandez acted as Respondent's agent, and second if any deductions occurred.

A. At all relevant times, Hernandez acted as Respondent's agent.

Hernandez held both actual authority and apparent authority over the farmworkers. The actions of Hernandez, therefore, are legally equivalent to the actions of Respondent. See Restatement (Third) Of Agency Intro. (2006). Contrary to Respondent's assertion, see Respondent's Brief at 13–16, common law agency principles do apply to violations arising under the INA. See Castillo v. Case Farms of Ohio, Inc., 96 F. Supp. 2d 578, 593 (W.D. Tex. 1999) (citing Montelongo v. Meese, 803 F.2d 1341, 1349 (5th Cir.1986)); Escobar v. Baker, 814 F. Supp. 1491, 1503–04 (W.D. Wash. 1993); Bueno v. Mattner, 829 F.2d 1380, 1384 (6th Cir. 1987). The Restatement (Third) of Agency, therefore, is instructive as to the definitions of actual authority and apparent authority.

Hernandez acted with Respondent's actual authority. "An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act." Restatement (Third) Of Agency § 2.01 (2006). An agent's belief is reasonable where it is "grounded in a manifestation of the principal." Restatement (Third) Of Agency § 2.02 cmt. c (2006).

Here, Respondent had a legal duty to feed the farmworkers it hired and housed in its dormitory. Although Respondent promised kitchen access to the farmworkers, see JX 1 and JX 3, it tasked Hernandez with operation of the meal plan that ultimately fed the farmworkers. Although Hernandez utilized Respondent's kitchen to do so, he paid the cooks, bought the groceries, and appliances as needed to cook the meals. See Tr. at 177–78, 229, 244, 252, and 793. For its part, Respondent owned the kitchen, all of the major appliances therein, and paid for

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(Almanza's testimony), 334 (WHI Perez's testimony). Respondent never explained to WHI Perez why the meal plan cost \$75 some weeks and other weeks cost \$80. See Tr. at 600.

the kitchen's utilities. See ALJX 1 at ¶ 21. After Respondent decided to utilize the H-2A program in 2015, Respondent told Hernandez that he could keep charging for meals but that Hernandez—not Respondent—would be responsible for paying the cooks' wages. See Tr. at 177. Respondent spoke with Hernandez concerning the amount he intended to charge the farmworkers for meals, and Respondent took Hernandez to a meeting with the Department to ensure he understood the regulatory limits of the meal plan. See Tr. at 187–88, 738, and 742–43. Russel Marino, Jr. told Hernandez “for years” to keep his food and beverage receipts, “because you cannot make a profit on the men.” See Tr. at 808. Russel Marino, Jr. told Hernandez to keep track of the farmworkers' payments through deductions of their pay. Respondent also allowed Hernandez to choose the drivers that operated Respondent's busses, which transported the farmworkers from the dormitory to the fields. See Tr. at 205, 390–401. Hernandez has worked for Respondent for twenty-seven years, and receives an hourly rate plus commission based on the amount of crops harvested. See Tr. at 171, 230. Finally, the parties stipulated that during the 2015 growing season, Hernandez supervised the farmworkers. See ALJX 1 at ¶ 18. The preponderant evidence establishes, therefore, that, in all of his duties—and especially concerning the operation of the meal plan—Hernandez acted with Respondent's actual authority. Hernandez also reasonably believed that the Respondent wished him to operate the meal plan; Respondent's statements to Hernandez and actions in taking him to a meeting with the Department demonstrate that Hernandez's belief was reasonable. Hernandez, therefore, acted with the actual authority of the Respondent, and served as Respondent's agent at all relevant times.

Assuming, *arguendo*, Hernandez did not act under Respondent's actual authority, he acted with Respondent's apparent authority. Put another way, the farmworkers reasonably believed that Hernandez was Respondent's agent. Therefore, his actions are imputed to Respondent. See Restatement (Third) Of Agency § 2.03 cmt. c. Restatement (Third) Of Agency § 2.03 defines apparent authority as, "the power held by an agent or other actor to affect a principal's legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations." At all relevant times, Hernandez supervised the farmworkers. See ALJX 1 at ¶ 18. When workers arrived at the camp, Hernandez said that he would orient them about housing, the "rules of the camp," keeping the bathrooms clean, hours of work, pay, kitchen access, and cost of meals.<sup>148</sup> When the farmworkers paid Hernandez, the workers signed a form to indicate they "agreed that they received the meal and" paid for the meal plan; Respondent's name appears on the top of the form.<sup>149</sup> Russel Marino, Jr. only "sometimes" attended the workers' orientation. (PX 15 at 401.) "Several times a day" Russel Marino, Jr. would check in with Hernandez—not the workers—concerning the operation of the farm. (Tr. at 719.) If workers

148        See Tr. at 61 (Maldonado stating that Hernandez was “in charge” and he never spoke with anyone from the Marino family); 174–175 (Hernandez’s testimony); 773 (Russel Marino, Jr. stating that Hernandez “primarily” oriented the workers); 825 (Russel Marino, Jr. stating that the workers complained to Hernandez because Russel Marino, Jr. does not speak Spanish and “that’s the chain of command”); PX 3 at 101 (Cervantes Ramirez stating on deposition that Hernandez was “in charge”).

<sup>149</sup> PX 17 at 764 (Hernandez’s deposition testimony, discussing PX 17-2 at 799 (the meal payment form); Tr. at 182–86 (Hernandez testifying he would use the form at PX 17-2—a document Respondent created in its office—to keep track of the workers who paid for meals).

- As Respondent's agent, Hernandez was an "affiliated person." See WHD Bulletin No. 2012-3 ("The term 'affiliated person' includes but is not limited to agents. . . . any person acting in the employer's behalf or interest (directly or indirectly), or who has an interest in the employment relationship."). The regulations therefore prohibit Hernandez from charging any deduction not listed on Respondent's job order. See 20 C.F.R. § 655.122(p)(2). The regulations separately prohibited Hernandez from profiting off any items sold in violation of any law. See id. (specifically incorporating the FLSA regulations at 29 C.F.R. Part 531). To determine whether an employer has met the FLSA's minimum wage requirements, 29 C.F.R. § 531.27 credits an employer for "the reasonable cost . . . of board, lodging, or other facilities customarily furnished . . . to his employees when the cost of such board, lodging, or other facilities is not excluded from wages paid to such employees." The regulations define the term "facilities customarily furnished" and exclude from that definition "[f]acilities furnished in violation of any Federal, State or local law." § 531.31. "Items such as alcohol and cigarettes constitute 'other facilities' under the law." Ortiz v. Paramo, No. CIV. 06-3062 RBK/AMD, 2009 WL 4575618, at \*3 (D.N.J. Dec. 1, 2009) (citing Leach v. Johnston, 812 F. Supp. 1198, 1204 (M.D. Fla. 1992), disapproved of on other grounds by Aimable v. Long and Scott Farms, 20 F.3d 434, 441 (11th Cir.1994)). Therefore, Hernandez and Respondent were unable to make deductions not contemplated by the job order; they were also unable to profit from the selling of any illegal facilities. Concerning the latter prohibition, the parties stipulate that Hernandez sold beer to the farmworkers without a license to do so in violation of New Jersey law. See ALJX 1 at ¶ 26; N.J. Stat. Ann. § 33:1-2(a) (mandating that a license is required to sell beer)). Thus, Respondent was unable to profit from the sale of beer, an illegal activity, warranting the remittal of back pay in the amount of Hernandez's profit.

1. Respondent's failure to provide kitchen access or otherwise to disclose meal charges constituted violations of 20 C.F.R. § 655.122(g), (p), and (q).

The Administrator properly assessed \$128,285 in back wages for the meals the farmworkers purchased.

Because Respondent made deductions of the farmworkers' pay for the meals and non-alcoholic beverages, Respondent is required to provide back pay to the effected farmworkers. See § 655.122(p)(1) (requiring the job offer to include *any* deduction "not required by law which the employer will make form the worker's paycheck"); Global Horizons, Inc., OALJ Case No.: 2010-TAE-00002, slip op. at 2 n.7 (ALJ Dec. 13, 2011) (recognizing that, although the meals deduction of \$6.00 per day was a "favorable rate[]," it does not "negate the violation, as the deductions thwarted the regulatory scheme."). That Hernandez did not allow the farmworkers to pay him in cash, but took money out of their pay, does not establish that a deduction did not occur. Regardless of the mechanism by which Hernandez deducted the meal and drink purchases, deductions of the farmworkers' pay—constructive or actual—still occurred, and so Respondent is required to reimburse the farmworkers. See In re: Weeks Marine, Inc., ARB No. 12-093, 2015 WL 2172482, at \*4 (Apr. 29, 2015) (citing Arriaga v. Fl. Pacific Farms, 305 F.3d 1228, 1236 (11th Cir. 2002); Salazar-Martinez v. Fowler Bros., 781 F. Supp. 2d 183, 191 n.5 (W.D.N.Y. 2011)).

A less severe consequence would deny the farmworkers their contractual right to the \$11.29 per hour minimum wage promised on the job order. See JX 1; JX 3; 20 C.F.R. §§ 655.120, 122(1), (p)(2). A less severe consequence, furthermore, would provide a decreased deterrent effect to future employers who may also attempt to alter the terms of the job order upon the workers' arrival. The violation consists of the deduction itself—not the purported reasonableness of the deduction—so Respondent's argument concerning the "reasonable" price of meals, see Respondent's Brief at 16–18; RX 5; RX 7; RX 8, is inapposite.

Respondent’s argument that some of the workers approved of the meal plan, see Respondent’s Brief at 9–12, is also unavailing; the operative job orders—the contracts between Respondent and its workers—allow for kitchen access only. See JX 1, JX 3. The governing regulations require the “job offer [to] specify all deductions not required by law which the employer will make from the worker’s paycheck.” 20 C.F.R. § 655.122(p), (g), (q). Respondent’s unilateral substitution of the meal plan for the agreed upon kitchen access is in violation of the regulations, *per se*. Respondent’s reliance on Global Horizon as negative authority is not compelling, because, contrary to Respondent’s assertion, Hernandez acted as Respondent’s agent. The practical effect of this agency relationship is that when the workers paid Hernandez for the meal plan, it was as if they paid Respondent. See Respondent’s Brief at 11. In other words, “the integrity of the wage setting process” in fact, did not remain “perfect intact.” Id. at 12. Respondent’s additional argument that, unlike the employer in Global Horizons, Respondent did not profit from the meal plan is also unavailing. See id. at 13. Profit can take many forms. Although some profit was certainly quantifiable—like the profit Hernandez made for the beers and non-alcoholic beverages he sold, and the fact that Pinon, Hernandez’s wife, received employment in Respondent’s kitchen—some forms of profit are less quantifiable. For example, Hernandez’s meal plan made unnecessary any costly expansion of Respondent’s kitchen facilities, which Respondent would have had to undertake to fulfill the terms the job orders at JX 1 and JX 3. See Tr. at 175–76 (Hernandez testifying that the kitchen was not large enough “for everyone to cook”). To argue, therefore, as Respondent does, that it



The Administrator, therefore, reasonably imposed a \$128,285 back pay requirement, see PX 2, for the meal plan violations outlined above. WHI Perez authored the back wage assessment in PX 2; he is highly qualified to do so and credibly testified to the methodology he used in arriving at the \$128,285 back pay figure. See Tr. at 305–08, 439–61. Respondent improperly deducted meals concerning ninety-six of its H-2A workers and fifty-one of its domestic workers.<sup>150</sup> For each worker, PX 2 lists the week worked (“payroll week ending” date) and how much the worker paid for, *inter alia*, meals. The parties stipulated that Hernandez charged between \$75 and \$80 per week; the Administrator accounted for this variance in her calculations in PX 2. The Administrator also subtracted those workers that did not engage in the meal plan from the back wage calculation. The Administrator’s calculations, as expressed in PX 2, are reasonable and support her requirement for Respondent to provide back pay in the amount of \$128,285.

- Hernandez—Respondent’s agent—sold workers non-alcoholic drinks throughout the day; either in the fields or at the company store. See ALJX 1 at ¶ 23; Tr. at 22–23, 24–27, 96–97, 189–90, 193–97, 266–67, 360, 502. The money paid for the non-alcoholic drinks was an

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The Administrator attempted to reconstruct the amount of non-alcoholic drinks sold; Hernandez either destroyed or otherwise could not produce his records as to the workers' purchase of drinks in the summer of 2015. See Tr. at 209 (Hernandez's testimony), 361 (WHI Perez stating that Hernandez "did not have purchase receipts for drinks," even though he had such receipts for meals). In doing so, the Administrator reasonably followed the standard propounded in Anderson v. Mt. Clemens Pottery Co., where the Supreme Court determined that, in an action to recover unpaid wages under the FLSA, an employee is required to provide exact evidence of unpaid wages. 328 U.S. 680, 686–89 (1946); see Administrator v. Fernandez Farms, Inc., 2014-TAE-00008, slip op. at 35 (ALJ Aug. 25, 2016) (applying the Mt. Clemens standard within a TAE context)). Rather, where an employer fails to keep records documenting unpaid wages, the Supreme Court applies a burden-shifting standard, which first requires the employer to account for the charges. Id. at 687. If an employer does not provide accurate records, the burden shifts to the employee to provide "sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference." Id. At that point, the burden shifts back to the employer to rebut the scope and size of the alleged violations. Id. at 687–88.

Here, the Administrator reviewed the entirety of the record and concluded that each of Respondent's workers purchased, on average, 4.42 drinks per day. The preponderant evidence of record, however, establishes that the workers purchased an average of only four, not 4.42, non-alcoholic drinks per day. It was reasonable, however, and likely in Employer's favor, to

- Similar to the non-alcoholic drinks issue, Hernandez did not keep accurate records as to the amount of beer sold to Respondent's workers. Therefore, the Mt. Clemens burden-shifting standard, again, applies. Appendix C to the Administrator's brief titled "Revised Back Wage Computations as to Illegal Beer Sales at a Profit." The Administrator revised her initial back pay assessment for the illicit beer purchases, see JX 10 (Order of Reference), after taking witness testimony at the hearing. Appendix C lists the worker's name, the number of weeks they were on Respondent's payroll during the summer of 2015, as well as the total profit Respondent obtained from selling the worker beer. For most workers (some did not imbibe), the Administrator utilized a profit per week of \$4.87, based on its conclusion that the workers drank 3.75 beers per week and Hernandez made \$1.30 profit per can. Because Hernandez unlawfully sold alcohol without a license, ALJX 1 at ¶ 26, the regulations do not permit him to make a profit off such sales. See 29 C.F.R. § 531.31. Therefore, the Administrator reasonably charged Respondent for Hernandez's profit. Respondent is unable to rebut the Administrator's calculations as unreasonable. As discussed, *supra*, the Administrator's estimates as to the number of beers consumed per week and Hernandez's profits were reasonable.

- Although it was likely within the Administrator's reasonable discretion to assess separate CMPs for each violation of 20 C.F.R. §§ 655.122(g), (p), and (q), the Administrator decided to assess one \$1,350 CMP for the entirety of the violations of § 655.122. The Administrator reasonably assessed the \$1,350 CMP for each of the 147 effected workers, which amounts to a \$198,450 CMP. District Director Rachor explained that the Administrator assessed the CMP in

154 \$35.00 per week multiplied by 1,856 separate weeks.



- The H-2A regulations require employers “to offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays of the total period . . . specified in the work contract.” 20 C.F.R. § 655.122(i)(1). The Administrator assessed back wages and CMPs concerning Respondent’s violation of the three-fourths requirement to three discrete groups of workers. The first set involves the nineteen workers that Respondent terminated after the May 2015 argument. See Administrator’s Brief at 63–73. The second set concerns four workers—Luna Gonzales, Elizondo Soto, Raya Tapia, and Morales Acosta—whom Respondent laid off in August 2019. See Administrator’s Brief at 63. The final set concerns a single worker, Islas Larraga, who last worked for Respondent on June 9, 2015. See Administrator’s Brief at 73. Application of the governing law establishes that Respondent terminated or otherwise constructively discharged each of the twenty-four workers, and that the Administrator reasonably assessed back wages and CMPs for violation of the § 655.122(i) three-fourths requirement.

- Upon arrival at the camp, Hernandez was openly hostile to the workers. Cheguez testified that Hernandez was a “bad” supervisor and threatened the workers with deportation if they did not work faster. (Tr. at 138–39.) Elizondo Soto’s deposition testimony supports Cheguez’s recollection. See PX 5 at 125. Additionally, the workers arrived at the camp and

encountered the working and housing conditions from which the current litigation arises. As discussed throughout this Decision and Order, those conditions were oftentimes in violation of the governing federal regulations, state law, or both. It was within this context that the nineteen workers engaged with Hernandez and Russel Marino, Jr., which lead to the May 2015 argument that ended in their termination. *Cf.* Tr. at 106–7 (Gustavo Perez stating that the argument represented the workers’ attempt at fixing the foregoing problems with Respondent). During the conversation, Russel Marino, Jr. became upset and became verbally and, perhaps even, physically abusive. *See* Tr. at 107–08 (Gustavo Perez stating that Russel Marino, Jr. was very upset and cursed at the farmworkers, and feeling like he could not continue working), 147 (Cheguez remembering that Russel Marino, Jr. “scream[ed] and yell[ed] in an arrogant way”), 222 (Hernandez stating that Russel Marino, Jr. “was a little bit upset”); PX 9 at 232, 258 (Hugo Leonel Cinta Tegoma recalling during deposition that Russel Marino, Jr. tried to hit him). In his anger, Russel Marino, Jr. terminated the nineteen workers. *See* Tr. at 39–40, 65 (Maldonado stating that Russel Marino, Jr. had “practically fired us”), 80–83 (Maldonado recalling that Russel Marino, Jr. said that the workers “could leave” if they did not like the conditions and that Russel Marino, Jr. “practically fired [the farmworkers]” during the argument, and that he felt like he “needed to leave”; he left due to problems “with my boss”), 107–08, 125–29 (Gustavo Perez recalling that Russel Marino, Jr. was upset at the farmworkers and said “we weren’t necessary” during the argument, that he did not have the opportunity to continue working for Respondent due to the conversation, and that Hernandez told him he “must leave”). Respondent argues that, given the status of the asparagus crop as ripe for harvesting, it makes no logical sense for Russel Marino, Jr. to fire the nineteen workers. *See* Respondent’s Brief at 24–26.

However, the employee witnesses were consistent in describing the heated events at the meeting while Joseph Marino was unable to remember specifically what was said. During his deposition, Joseph Marino testified that he that he did not recall what was said at the argument; at the hearing, Joseph Marino said he recalled “part of what [Russel Marino, Jr.] said.” (Tr. at 825–29.) Joseph Marino’s testimony, compared to the employees, lacks credibility. The facts, as presented at the hearing, are that the employees arrived at the worksite to find a difficult supervisor in Hernandez, grueling work picking asparagus, and living conditions that were not as promised in their contract. They asked for a meeting to try to address the issues with management; this angered management, who felt pressure to get their crop harvested. Management made a decision, albeit a rash, and perhaps illogical, decision, to terminate this group of workers and then quickly replace the terminated workers. *See* JX 2, JX 6 (showing a number of H-2A workers hired at the end of May 2015). Considering the entirety of the evidence, Respondent terminated the nineteen workers that left in May 2015 before they worked the guaranteed three-fourths of the hours promised in their contracts, and is liable for any back pay due because of such termination.

1. Assuming, *arguendo*, Respondent did not terminate the workers in May 2015; it constructively discharged such workers. Back pay, therefore, is due.

To find constructive discharge, a plaintiff must “show working conditions so intolerable that a reasonable person would have felt compelled to resign.” Pennsylvania State Police v. Suders, 542 U.S. 129, 147 (2004); WHD Bulletin No. 2012-1 (Feb. 28, 2012) (“If a worker

departs employment because working conditions have become so intolerable that a reasonable person in the worker's position would not stay, the worker's departure may constitute a constructive discharge and not abandonment"). The Administrative Review Board emphasizes that the analysis turns on the employee's "reasonable inferences" drawn from the statements and conduct of the employer. Jackson v. Protein Express, 95-STA-38 (Jan. 9, 1997). The Third Circuit<sup>155</sup> instructs finders of fact to review the following nonexclusive factors: "(1) a threat of discharge; (2) suggestions or encouragement of resignation; (3) a demotion or reduction of pay or benefits; (4) involuntary transfer to a less desirable position; (5) alteration of job responsibilities; (6) unsatisfactory job evaluations." Nuness v. Simon & Schuster, Inc., 325 F. Supp. 3d 535, 560 (D.N.J. 2018) (summarizing Clowes v. Allegheny Valley Hosp., 991 F.2d 1159, 1161 (3d Cir. 1993)); WHD Bulletin No. 2012-1 ("the terms and conditions of the worker's employment must have been effectively altered by the employer's conduct," and intolerable housing and working conditions can demonstrate a constructive discharge claim). In Clowes, the Third Circuit reversed a finding of constructive discharge, in part, when the plaintiff "was never threatened with discharge; nor did her employer ever urge or suggest that she resign or retire." 991 F.2d at 1161. The Wage and Hour Division advises that a worker who quits because the worker is "unhappy with the general nature of work assignments" is not constructively discharged.

Assuming it did not fire the workers outright, the preponderant evidence demonstrates that Respondent constructively discharged the nineteen workers who left in May 2015. The first Clowes factor is satisfied. Hernandez threatened the workers with discharge, and Russel Marino, Jr. likely fired the workers during the May 2019 argument. *See supra*. Therefore, unlike the plaintiff in Clowes, here Respondent actually threatened the workers with discharge, or the workers reasonably inferred such a threat, or both. 991 F.2d at 1161. Indeed, Respondent likely outright fired the nineteen farmworkers. The first Clowes factor weighs considerably toward a finding of a constructive discharge; the deplorable situation in which the workers found themselves upon arrival at Respondent's farm compounds the significance of this consideration.

Another Clowes factor fulfilled here is that Respondent's actions materially reduced the workers' benefits. Despite the assurances Respondent made on the job order—the employment agreement both sides agreed upon prior to the summer 2015 growing season—the workers arrived at Respondent's camp to learn not only that they did not have kitchen access, but also that Employer expected them to pay for a meal plan costing between seventy-five and eighty-dollars per week. This arrangement caused a quantifiable reduction in the benefits the workers reasonably relied upon when agreeing to travel to the United States to work in Respondent's fields.

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<sup>155</sup> As this case arose in New Jersey, the undersigned will apply the law of the U.S. Court of Appeals for the Third Circuit. In a case arising within the State of California, an administrative law judge applied Ninth Circuit law. Without passing specific judgment on the ALJ's decision to do so, the Administrative Review Board affirmed in full the administrative law judge's Decision and Order. *See Global Horizons*, ARB Case No. 09-016, ALJ Case No. 2008-TAE-00003, 11 (Dec. 21, 2010); *Delegation of Authority and Assignment of Responsibility to the Administrative Review Board*, 77 FED. REG. 69378, 69378–80 (Nov. 16, 2012) (declining to provide any discussion as to which circuit law applies to the Administrative Review Board's review of an administrative law judge's decision and order in a TAE matter).

Finally, Hernandez changed the terms and conditions of the workers' responsibilities. Contrary to the job order, the workers regularly worked twelve-hour days in extreme weather conditions. The job order stated that they would work between five and seven hours per day (except one day per week), see JX 1 and JX 3; however, the workers testified to regularly working twelve-hour days. Although the job orders stated that workers "may be requested" to work additional hours, see id., the corroborative testimony of numerous workers establishes that Hernandez told the workers where, when, and how long to work and that he often directed them to work twelve hour days. This was a material change to the workers' responsibilities as listed on the job orders, and so the fifth Clowes factor applies.

Thus, the evidence of record establishes many of the Clowes factors, including threat of discharge, reduction of benefits, and alteration of job responsibilities. Although the other factors—suggestions or encouragement of resignation, involuntary transfer, and unsatisfactory job evaluations—are not satisfied, those factors do not necessarily apply to the exigencies of the working situation at Respondent's farm. Weighing the Clowes factors in the totality, the Administrator has preponderantly established that Respondent constructively discharged nineteen farmworkers after the May 2015 argument.

Aside from the Clowes factors, the WHD Bulletin provides additional guidance that compels a finding that Respondent constructively discharged the workers who left in May 2015. See WHD Bulletin No. 2012-1 (“Constructive discharge may exist when a worker leaves the job because the housing conditions in which the worker is required to live are intolerable and violate applicable safety and health standards (*i.e.*, grossly inadequate heating during the winter, lack of running water, exposure of bare electrical wires).” As demonstrated, *infra*, Respondent is liable for numerous violations of the regulations concerning the proper housing and transportation of H-2A workers. The workers’ housing conditions involved broken screens, which allowed in flies and other pests. The dormitory area also had litter strewn on the ground and trashcans without lids; the bathrooms lacked sufficient hot water. Respondent also provided unsafe transportation to its workers. When the workers initially arrived, the fields lacked bathrooms and access to water. All of these violations further demonstrate that Respondent committed a constructive discharge of the nineteen workers who left after the May 2015 argument.

The nineteen terminated or otherwise constructively discharged workers, therefore, did not abandon their positions. See 655.122(n) (providing that the three-fourths guarantee does not apply to workers who voluntarily abandon their jobs); WHD Bulletin No. 2012-1 (stating that a constructively discharged worker does not commit the act of abandonment). Although the WHD Bulletin states that constructive discharge does not apply to workers who are merely unhappy with their work assignment; that provision does not apply here. The facts establish that the workers engaged with Hernandez and Russel Marino, Jr., because the workers wanted to work but were unhappy with the working and living conditions. The workers' concerns were not subjective; they related to the actual living and working conditions they faced while working for Respondent. The fact that other workers stayed while the nineteen workers left, see Respondent's Brief at 27, does nothing to dispel the unacceptable—and at times unlawful—conditions to which Respondent subjected the farmworkers. Because Respondent terminated or otherwise constructively discharged the nineteen workers after the May 2015 argument, the Administrator has established a three-fourths violation concerning such workers.

2. Respondent violated the three-fourths guarantee concerning four of the forty-four workers it laid off in August 2015. Therefore, back pay is warranted.

Respondent laid off forty-four workers in August 2015 due to inclement weather and lack of work. Respondent did not meet the three-fourths guarantee for four such workers: Luna Gonzalez, Elizondo Soto, Raya Tapia, and Morales Acosta. See PX 1; Tr. at 702–04. At the hearing, Respondent withdrew RX 4, which—according to “Respondent’s Exhibit List”—contained a “calculation of hours worked for [six] workers.” See “Respondent’s Exhibit List; see also Tr. at 702–04. Respondent’s counsel stated “I was wrong” about the contents of RX 4, and agreed that the Administrator provided accurate calculations as to Respondent’s three-fourths violations concerning Luna Gonzalez, Elizondo Soto, Raya Tapia, and Morales Acosta. (Tr. at 704.) In its brief, Respondent did not discuss or otherwise defend against the alleged three-fourths guarantee violation concerning these four workers. Accordingly, the undersigned finds that Respondent does not controvert the violation of the three-fourths guarantee concerning Luna Gonzalez, Elizondo Soto, Raya Tapia, and Morales Acosta. Review of the evidence of record further establishes that fact.

3. Respondent violated the three-fourths guarantee concerning Jose Islas Larraga, and he deserves back pay.

According to the information Respondent provided to the Administrator, Islas Larraga last worked for Respondent on June 9, 2015. See PX 1. The regulations only absolve an employer from liability for a worker's three-fourths guarantee when the worker abandons the job or is otherwise terminated for cause. 20 C.F.R. § 655.122(n). The record contains no evidence to establish that Islas Larraga abandoned his job. Assuming, *arguendo*, he did abandon his job, the regulations would only relieve Respondent of three-fourths guarantee liability if it provided timely notice to the Department. See *id.* (referring to the DOL Notification Process at 76 FED. REG. 21,041). Respondent provided no notice to the Department concerning the end of Islas Larraga's employment. Therefore, Respondent violated the three-fourths guarantee concerning Islas Larraga, as well.

4. The Administrator reasonably computed back wages for the twenty-four workers discussed in this section.

WHI Perez has worked as an investigator for U.S. Department of Labor, the Wage and Hour Division for six years. (Tr. at 305–06.) Of the 200 cases he has helped investigate during his tenure with the Department, WHI Perez has worked on between five and ten cases concerning violations of the H-2A regulations. (Tr. at 306.) WHI Perez created the table at PX 1, which calculated the three-fourths guarantee for the twenty-four workers for whom Respondent is required to remit back pay. The undersigned admitted PX 1 as a summary of voluminous records under 29 C.F.R. § 18.1006. The voluminous records that PX 1 summarizes are Respondent’s weekly payroll records, which are contained in the record at PX 23. See Tr. at 420–21. Charlene Rachor is the “District Director of the Southern New Jersey District Office for the Wage and Hour Division.” (Tr. at 845.) In that capacity, District Director Rachor oversees



investigations, supervises investigators, and issues letters regarding findings of investigations including H-2A determination letters. (Id.) Although District Director Rachor was not WHI Perez's supervisor, she supported the quality of WHI Perez's work product and stated that "he would do the back wages as accurately as possible." (Tr. at 897–98.) District Director Rachor said that WHI Perez's supervisor would have reviewed his back wages calculations. (Tr. at 898.) WHI Perez described the methodology he employed to determine back wages due, (Tr. at 420–30); his testimony was reasonable based on the evidence of record. Aside from arguing that voluntary abandonment voids the three-fourth guarantee, Respondent did not criticize WHI Perez's calculations or the methodology he applied in PX 1 concerning either the nineteen workers terminated in May 2015 or Islas Larraga. See Respondent's Brief at 23–28. Review of PX 1 shows that WHI Perez reasonably determined not only that a three-fourths violation occurred, but also the back wages Respondent owes, because of such underpayment.

Respondent, however, alleged that WHI Perez failed to account for the hours Respondent offered to the four workers whom it laid off in August 2015, and for whom the Administrator asserted violations of the three-fourths guarantee. See Respondent’s Brief at 28–30. Respondent noted that its tracking system was incapable of capturing any time, for example, where Respondent offered hours to a worker, but the worker was sick or otherwise unable to take the hours. Id. Respondent’s argument is unpersuasive, as the governing regulations require it to “keep accurate and adequate records with respect to the workers earnings, including but not limited to . . . records showing . . . the number of hours of work **offered** each day . . . .” 20 C.F.R. § 655.122(j)(1) (emphasis added); see § 655.122(j)(3). Although Respondent took ample testimony about the immoderate costs and general capabilities concerning its record keeping system, see Tr. at 682–86, 706, 798, Respondent is unable to argue persuasively that the Administrator’s calculations are unreasonable when Respondent’s tracking system does not comport with the regulatory requirements. The Administrator, therefore, reasonably calculated the back wages owed to the four workers laid off in August 2015.

In sum, the Administrator reasonably assessed a combined \$142,728.22 in back wages for Respondent's three-fourths guarantee violations concerning the nineteen farmworkers terminated in May 2015, the four farmworkers laid off in August 2015, and Islas Larraga.

5. The Administrator reasonably assessed a single \$1,350 CMP for the violations discussed in this section.

Additionally, the Administrator assessed a reasonable CMP of \$1,350,<sup>156</sup> total, for Respondent's various three-fourths guarantee violations. The Administrator reasonably considered all of the mitigation factors. See Tr. at 856–58, 935–37. District Director Rachor explained the importance of the three-fourths guarantee:

Well, as I said, we have a situation where, you know, workers are -- H-2A allows an employer to bring over farmer workers, non-immigrant workers by laying out

<sup>156</sup> At the time of the assessment, the governing regulations allowed the Administrator to assess \$1,500 in civil money penalties for “[e]ach failure to pay an individual worker properly or to honor the terms or conditions of a worker’s employment.” 29 C.F.R. § 501.19(a), (c) (2016).

terms and conditions of employment basically in the form of a contract. The workers are provided a copy of that so they can see, okay, this is the money I'm going to earn. If they come here and they are terminated, forced to resign, and they don't receive that three-[fourths] guarantee, now that's wages that they've lost and perhaps they wouldn't have come.

(Tr. at 858.) The undersigned finds compelling District Director Rachor's explanation of the rationale behind the Administrator's decision to apply CMPs for the three-fourths guarantee violations. District Director Rachor also rationally explained the Administrator's decision to apply only the mitigation factor concerning Respondent's lack of a history of violations. See Tr. at 856–57. The undersigned agrees with the Administrator's decision not to apply the remaining mitigation factors. The Administrator, therefore, reasonably assessed one \$1,350 CMP for Respondent's twenty-four three-fourths guarantee violations.

III. The Administrator reasonably decided to assess a \$1,350 CMP for Respondent's attempt to cause its workers to waive the three-fourths guarantee.

A \$1,350 CMP for Employer's attempt to cause its workers to waive the three-fourths guarantee is reasonable. Twenty-nine C.F.R. § 501.5 mandates, “[a] person may not seek to have an H-2A worker . . . or a U.S. worker . . . waive any rights conferred under 8 U.S.C. 1188, 20 C.F.R. part 655, subpart B.” Under 20 C.F.R. § 655.122(i), employers are required “to offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays of the total period . . . .” Here, Employer provided worker departure forms to the nineteen farmworkers that left in May 2015. The worker departure forms stated that the farmworkers voluntarily left their jobs due to personal issues.<sup>157</sup> The regulations consider such an act “abandonment,” the practical effect of which is to forego a farmworker's three-fourths guarantee.” See § 655.122(n). The worker departure forms Respondent provided did not allow the farmworkers to state the true reasons they left. Respondent affirmatively provided the worker departure forms to the Department and other government agencies. This was a misrepresentation, as Respondent terminated or otherwise constructively discharged the workers. Further, Respondent admitted in its brief that the workers had no sick or deceased family members. See Respondent's Brief at 31; PX 15 at 475 (Russel Marino, Jr. stating that the purpose of the worker departure forms was to “protect against . . . this lawsuit”). That a third party may have advised the workers to sign the form as written does not absolve Respondent's liability from first, affirmatively providing forms with false information to the workers and second providing such documents to the Department.

Although the worker departure forms do not specifically state that the workers would give up their three-fourths guarantee, a proximate result of the misrepresentation is that the workers would forfeit their right to the three-fourths guarantee. The forms averred that

<sup>157</sup> See Tr. at 37 (Maldonado's testimony), 108–110, 149–50 (Cheguez's testimony), 225 (Hernandez's testimony), 272–74 (Almanza testifying that Hernandez gave the workers a form “and asked us to sign the paper because ‘there was no other choice’” and “we couldn't do anything about it”), 409–10 (WHI Perez's testimony), 732–34 (Russel Marino, Jr. saying that he gave the worker “the option to check off the box that said they were returning home because of personal reasons”), 769 (Russel Marino, Jr. recalling that he brought forms for the workers to sign stating that they were “resigning”).

Respondent offered the worker additional work sufficient to complete the three-fourths guarantee; however, Respondent never made such a representation to the workers. Russel Marino, Jr. said that he did not want to have the workers sign a form saying that they were terminated, so he “gave them the option” to say that they quit for personal reasons. (Tr. at 733.) The fact that Respondent did not allow the workers to attest to the exact reason they left Respondent’s employ renders moot Respondent’s argument that it did not seek to have the employees waive any right. See Respondent’s Brief at 31. Here, the worker departure forms effectively waived the farmworkers’ right to the three-fourths guarantee; Respondent coerced the farmworkers into doing so.

To arrive at the \$1,350 CMP, the Administrator decided against instituting the penalty per violation; rather the Administrator applied one \$1,500 CMP, which included a \$150 deduction because Respondent had no prior violations. See Tr. at 856–58. The Administrator made the \$150 deduction after reviewing all mitigation factors. (*Id.*) Based on review of the record and the findings of fact made herein—including Respondent’s limited experience with the H-2A program—the Administrator’s decision to impose a \$1,350 CMP for Respondent’s violation of 29 C.F.R. 501.5 is reasonable.

IV. Respondent violated 20 C.F.R. § 655.122(d)(1) by providing inadequate housing, but the Administrator did not impose a reasonable \$3,600 CMP. Rather, a \$3,150 CMP is reasonable to assess.

As discussed below, the Administrator has successfully established violations for the bathroom windows with missing or broken screens, dormitory windows with missing or broken screens, uncovered garbage cans, and a shortage of hot water. However, the Administrator is unable to demonstrate that Employer committed a violation due to the provision of any unclean mattresses. A separate CMP for any mattress violation, therefore, is not warranted.

A. The Administrator assessed a reasonable \$3,150 CMP resulting from Respondent’s housing violations concerning missing or broken screens, uncovered garbage cans, and a shortage of hot water

The Administrator assessed \$3,150 in CMPs for four violations of 20 C.F.R. § 655.122(d)(1), as follows: \$900 for the unscreened bathroom windows; \$900 for the faulty dormitory screen windows and doors; \$900 for the uncovered garbage cans; and \$450 for the hot water shortage. See Administrator’s Brief at 84 (citing JX 10 at 160; Tr. 861–65, 938–39). Because Respondent’s dormitories were built prior to 1980, the applicable regulations are the Employment and Training Administration Housing Standards codified at 20 C.F.R. §§ 654.404 through 654.417. The Administrator assessed reasonable CMPs because of Respondent’s four discrete violations of § 655.122(d)(1). First, the record clearly shows unscreened bathroom windows. See Tr. at 331; PX 28, pages 1046–47. Section 654.408(a) mandates that “all outside opening . . . be protected with screening of not less than [sixteen] mesh.” The Administrator, therefore, has successfully established a violation of § 655.122(d)(1). Second, the record shows obviously broken screens on the windows and doors of the dormitory in violation of § 654.408(a). See Tr. at 201–03 (Hernandez’s testimony); PX 28, pages 1049–55. WHI Perez recalled the presence of flies in the dormitory. (Tr. at 323–28.) Third, the grounds surrounding



Respondent's dormitory also contained uncovered trash cans. Section 654.414 requires employers to provide "fly tight, clean containers . . . adjacent to each housing unit for the storage of garbage or other refuse." Here, some of the garbage cans surrounding the dormitory did not have lids and WHI Perez noted the presence of flies around such lidless garbage cans. See Tr. at 324, 332. PX 33, page 1094, is a photograph of an open pile of discarded cans of soda and beer. See Tr. at 374–75, 603–04. The pile of discarded cans is located "directly across from the dormitory housing." (Tr. at 375.) PX 33, pages 1095 through 1102, are more photographs of the discarded cans. (Id.) The Administrator, therefore, has established a violation of § 654.414. Fourth, the Administrator reasonably assessed \$450 in CMPs for the shortage of hot water. According to § 654.412, "[b]athing and hand washing facilities, supplied with hot and cold water under pressure, must be provided for the use of all occupants." Here, the bathrooms at Respondent's dormitory lacked sufficient hot water. See Tr. at 30, 59–60 (Maldonado's testimony), 103–04 (Gustavo Perez's testimony), 330 (WHI Perez's testimony that he had to wait two to three minutes "to determine that there was no hot water present"); PX 7 at 189 (Silva Lopez recalling that, at times, he took cold showers); PX 11 at 288 (Hector Mishel Garcia Dominguez stating in his deposition that there was only enough hot water for ten people to shower before it ran out). *Cf.* 203, 215 (Hernandez's testimony that workers had to "wait a little bit" for hot water). Respondent, therefore, violated the hot water requirement at § 654.412. The Administrator reviewed and applied the various mitigation factors at 29 C.F.R. § 501.19(b) to the facts surrounding the violation and reasonably reduced the CMPs to \$3,150.<sup>158</sup> See Tr. at 862–66.

Finally, Respondent argued that the Administrator did not attempt to determine whether Respondent addressed the housing violations WHI Perez observed. See Respondent's Brief at 31–33. This argument is unavailing, because the record does not establish that Respondent ever contacted the Administrator to inform her that it made such repairs. Therefore, the Administrator reasonably reviewed the mitigating factors at 29 C.F.R. § 501.19(b), and rationally assessed CMPs for the foregoing housing violations.

**B. The CMP assessed for the unclean mattress violation is unreasonable.**

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<sup>158</sup> Concerning the bathroom screens, screen doors, and garbage cans, the Administrator applied the same mitigation factors and for the same reasons. The Administrator allowed a ten percent reduction because Respondent lacked a history of violations. However, the Administrator did not allow a reduction due to the number of workers affected, because of the gravity of the violation, because Respondent did not correct the violations immediately, and because Respondent provided no good explanation for the violations. See Tr. at 863–64. The Administrator applied the various mitigation factors at 29 C.F.R. § 501.19(b) to the facts surrounding the violation and reasonably reduced the CMP from a base penalty of \$1,500 to \$450. See Tr. at 865–66. The Administrator applied a ten percent deduction due to Respondent's commitment to future compliance and another ten percent deduction because the profit and loss component did not apply. Id.

Concerning the hot water violation, the Administrator did not apply mitigation factor number two, because the lack of hot water affected a large number of workers. The Administrator applied the mitigation factors for the gravity of the violation, because nobody was injured; she applied mitigation factor number five because Respondent provided a good explanation in that it did not know of the violation. The Administrator also applied mitigation factor six for a commitment to future compliance and another ten percent reduction because the Respondent did not stand to make any financial gain. Tr. at 865–66; see also Tr. at 937 (stating that the Administrator applied the same mitigation factors for the hot water and purported mattress violations, except the Administrator did not apply mitigation factor two). All of the Administrator's decision are reasonable based on the factual record.

The Administrator assessed a \$450 CMP for unclean mattresses, which WHI Perez observed and photographed. See Administrator’s Brief at 84 (citing JX 10 at 160; Tr. 862–66, 938–39). The CMP is unreasonable. The Administrator assessed the CMP due to a purported violation of 20 C.F.R. § 654.416, which requires an employer to “provide[]” H-2A workers with facilities consisting of, *inter alia*, “bunks, provided with clean mattresses.” Here, WHI Perez assessed the violation, even though he “assumed” each worker had a mattress, and he could not recall if he observed any bunkbeds that were missing mattresses. See Tr. at 599; see also Tr. at 493. WHI Perez observed and photographed mattresses on the floor. See Tr. at 329; PX 28 at 1056. However, the photograph and WHI Perez’s testimony does not preponderantly establish that Employer was in violation of § 654.416. The mattresses in the photograph are covered in bedsheets and other belongings, and so do not reasonably show the cleanliness of the employer-provided mattress. Although it is possible that the floor is unclean, thereby making the mattress unclean, neither the photographic nor the testimonial evidence proves this point. The Administrator did not successfully establish that Respondent did not “provide[]” its workers with “clean mattresses.” § 654.416. Accordingly, the \$450 CMP for unclean mattresses is not a reasonable penalty.

- V. Respondent violated 20 C.F.R. § 655.122(h)(4) through its use of substandard transportation and use of unlicensed drivers. The Administrator imposed a reasonable \$7,500 in CMPs.

Twenty C.F.R. § 655.122(h)(4) requires “[a]ll employer-provided transportation” to “comply with all applicable Federal, State or local laws and regulations.” The Administrator reasonably assessed CMPs against Respondent because it used drivers without proper licenses, and because it transported its farmworkers using buses that fell below state and federal safety standards.

- A. The \$7,500 total CMP the Administrator imposed for transportation violations (20 C.F.R. § 655.122(h)(4)) was reasonable considering Respondent’s violation for using unlicensed bus drivers.

The laws of the State of New Jersey prohibit driving on “public highways” without a driver’s license. See N.J. Stat. Ann. § 39:3-10). New Jersey also prohibits the transportation of migrant farmworkers by drivers who are not licensed in the United States or Canada. See Administrator’s Brief at 86–87 (citing N.J. Admin. Code § 13:21-13.2). Additionally, the H-2A regulations require drivers to possess a “valid permit qualifying the driver to operate the type of vehicle driven by him in the jurisdiction by which the permit is issued.” 29 C.F.R. § 500.105(b)(1)(iii) (incorporated by reference in 20 C.F.R. § 655.122(h)(4)).

Here, in response to WHI Perez’s request, none of the five workers WHI Perez observed driving the buses provided him with acceptable driver’s licenses. See Tr. at 393, 399–400. Hernandez only provided driver’s licenses to WHI Perez for three of the five drivers WHI Perez observed. (Tr. at 400.) Two had Mexican driver’s licenses and one had an expired Mexican driver’s license; the other two drivers had no licenses. See 390–401; PX 30 at 1064–72. The Administrator, therefore, has reasonably proven a violation of § 655.122(h)(4). The

Administrator reviewed the mitigation factors at 29 C.F.R. § 501.19(b), and reasonably assessed reductions of the CMPs. See Tr. at 868–70.<sup>159</sup>

- B. The \$7,500 total CMP the Administrator imposed for transportation violations (20 C.F.R. § 655.122(h)(4)) was also reasonable considering Respondent’s violation for using unsafe vehicles.

The Administrator reasonably found two violations concerning the vehicles Respondent used to transport its farmworkers. One of the buses Respondent used to transport its farmworkers had a broken rear tail light. See Tr. at 405; PX 29 at 1057 (showing that bus number 205 has a broken right rear turn signal). The obviously broken tail light put Respondent in violation of federal and state motor vehicle laws. See, e.g., 29 C.F.R. § 500.105(b)(3)(ii) (incorporating the lighting devices required under 49 U.S.C. 3102(c)); 49 C.F.R. § 393.11 (titled “Parts and Accessories Necessary For Safe Operation,” specifically concerning commercial vehicles); N.J. Stat. Ann. § 39:3-61(a) (titled “Lamps and Reflectors Required on Particular Vehicles.”). The CMP was reasonable, as it took into account the violation and the Administrator’s review of the mitigation factors at 29 C.F.R. § 501.19(b).

The Administrator also rationally proved that the Respondent committed a violation by operating three buses with worn tires. Regardless of the instrument by which the investigator measured the tread on the tires, it is plainly evident that the Respondent operated buses with bald, unsafe tires. See Tr. at 402–06, 607–08; PX 29, pages 1058–63 (showing three tires that are clearly unsafe for road use due to the condition of the tire as worn, cracked, or both). Respondent did so in violation of federal and state laws. See 29 C.F.R. § 500.105(b)(3)(v); N.J. Admin. Code § 13:21-13.11(b) (prohibiting motor vehicles from transferring migrant workers with “tires which have been worn so smooth as to expose the tire fabric or which shall have any other defect likely to cause failure of the tire.”). Respondent’s actions also put lives at risk. The Administrator reviewed the mitigation factors at 29 C.F.R. § 501.19(b) and reasonably assessed a CMP of \$750 per vehicle. See Tr. at 870–71. The gravity of the violation—involving a threat to the health and safety of Respondent’s workers—is such that the Administrator’s decision to apply any of the mitigation factors whatsoever represents a lenient decision. See Tr. at 868–74.

## VI. Conclusion

This Decision modifies, in part, the Administrator’s findings. Nevertheless, the preponderant evidence of record establishes that Respondent must remit \$344,945.80<sup>160</sup> in back

<sup>159</sup> The Administrator reasonably allowed a ten percent reduction due to Respondent’s lack of history with the H-2A program; her decisions to allow additional ten percent reductions due to the number of workers involved, and Respondent’s commitment to future compliance, financial gain to the Respondent, and the catch all factor were also correct based on the record. (Tr. at 868–69.) The Administrator reasonably explained why it did not provide reductions for the gravity of the violation—unlicensed drivers are a safety hazard—as well as Respondent’s efforts to comply in good faith and its explanation for the violation. (*Id.*) Respondent’s practice of using unlicensed drivers demonstrates its general disregard for the safety and wellbeing of not only the guest farmworkers in its employ, but also for other motorists.

<sup>160</sup> \$128,285 in back wages for meals; \$64,960 in back wages for non-alcoholic drinks; \$8,972.61 for beer; \$142,728.22 for the various three-fourths guarantee violations.

wages and \$211,800<sup>161</sup> in civil money penalties. The undersigned found the Administrator's assessments to be reasonable and accurate, except for the back wages owed for non-alcoholic drinks, and the CMP assessed for the non-existent mattress violation.

In its brief, Respondent noted that the penalties "dwarf those"<sup>162</sup> assessed in the Global Horizons cases, 2005-TAE-0001 and 2010-TAE-0002, which involved "rampant wage theft" and employers being paid kickbacks from the workers. Respondent's Brief at 4. There, the Administrator sought \$350,000 in civil money penalties. Here, the Administrator has established \$212,250.00 in CMPs. The scale of the CMPs is due to no reason aside from the sheer numbers of farmworkers affected by Respondent's violations. Additionally, the Administrator utilized conservative estimates to calculate the required back pay. The Administrator showed further restraint when deciding to apply one CMP for all of the violations of §§ 655.122(g), (p), and (q); she was well within her rights to have required Respondent to pay for each violation separately. Moreover, the governing regulations allow the Administrator to debar the Respondent from further certification, among other penalties. The Administrator showed further restraint in her decision not to apply those remedies, as well.

The Administrator's findings, modified in part herein, illustrate the truism that serious violations call for serious penalties. Respondent engaged in serious violations of the Act, and committed such violations against 147 farmworkers who in good faith engaged with the H-2A program.

**THEREFORE**, the undersigned finds:

1. Respondent violated 20 C.F.R. § 655.122(g), (p), and (q) by making false promises about kitchen access and failing to disclose meal charges. As a result, it owes \$128,285 in back wages, and \$198,450 in CMPs.
2. Respondent violated 20 C.F.R. § 655.122(p) through the sale of drinks and other items at a profit or in violation of state law. As a result, it owes \$64,960 in back wages for non-alcoholic drinks sold and \$8,972.61 for the profit it made from the beer it sold.
3. Respondent violated 20 C.F.R. § 655.122(i) in discharging certain workers prior to such workers meeting the three-fourths guarantee. As a result, it owes \$142,728.22 in back wages, and \$1,350 in CMPs.

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<sup>161</sup> \$198,450 for violations of 20 C.F.R. §§ 655.122(g), (p), (q); \$1,350 for the three-fourths guarantee violations; \$1,350 for coercing the waiver of the three-fourths guarantee; \$3,150 for the various housing violations; and \$7,500 for violations concerning the use of unsafe vehicles.

<sup>162</sup> Respondent's laches and estoppel arguments, see Respondent's Brief at 18–19, are also denied as there is no indication that the Administrator engaged in a prolonged delay in enforcement. WHI Perez arrived at Respondent's dormitory in July 2015 in an investigatory capacity, only. ALJX 1 ¶ 36. The Administrator did not make a formal conclusion as to whether Respondent committed any violations until the June 22, 2016 determination letter. See ALJX 1 at ¶ 38. Because any delay was not unreasonable, the undersigned denies Respondent's estoppel and laches arguments.

4. Respondent violated 29 C.F.R. § 501.5 by attempting to cause workers to waive the three-fourths guarantee at 20 C.F.R. § 655.122(i). As a result, it owes \$1,350 in CMPs
5. Respondent violated 20 C.F.R. § 655.122(d) through the provision of inadequate housing. As a result, it owes \$3,150 in CMPs.
6. Respondent violated 20 C.F.R. § 655.122(h)(4) through substandard transportation and unlicensed drivers. As a result, it owes \$7,500 in CMPs.

SO ORDERED.

**THERESA C. TIMLIN**  
Administrative Law Judge

Cherry Hill, New Jersey

**NOTICE OF APPEAL RIGHTS:** Any party seeking review of this decision, including judicial review, shall file a Petition for Review (§Petition§) with the Administrative Review Board (§ARB§) within 30 days of the date of this decision. 29 C.F.R. § 501.42. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed. An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents. Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: [Boards-EFSR-Help@dol.gov](mailto:Boards-EFSR-Help@dol.gov)

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. If you e-File your petition, only one copy need be uploaded. Copies of the Petition should be served on all parties and on the undersigned Administrative Law Judge. If the ARB does not receive the Petition within 30 days of the date of this decision, or if the ARB does not issue a notice accepting a timely filed Petition within 30 days of its receipt of the Petition, this decision shall be deemed the final agency action. 29 C.F.R. §501.42(a).

Record No. 23-2608

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**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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SUN VALLEY ORCHARDS, LLC,

*Appellant,*

v.

U.S. DEPARTMENT OF LABOR; UNITED  
STATES SECRETARY OF LABOR

*Appellees.*

On Appeal from an Order of the United States District Court  
for the District of New Jersey in Case No. 21-cv-16625  
Honorable Joseph H. Rodriguez

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JOINT APPENDIX  
VOLUME 2 OF 2, pp. 104 – 356

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**Appendix Page**

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Order of Reference for 2017-MSP-00002 dated Dec. 23, 2016 .....	Appx159
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APPEAL,CLOSED

**U.S. District Court  
District of New Jersey [LIVE] (Camden)  
CIVIL DOCKET FOR CASE #: 1:21-cv-16625-JHR-MJS**

SUN VALLEY ORCHARDS, LLC v. U.S. DEPARTMENT OF  
LABOR et al

Assigned to: Judge Joseph H. Rodriguez  
Referred to: Magistrate Judge Matthew J. Skahill  
Case in other court: 3rd circuit, 23-02608  
Cause: 05:551 Administrative Procedure Act

Date Filed: 09/08/2021  
Date Terminated: 07/27/2023  
Jury Demand: Plaintiff  
Nature of Suit: 899 Other Statutes:  
Administrative Procedures Act/Review or  
Appeal of Agency Decision  
Jurisdiction: U.S. Government Defendant

**Plaintiff**

**SUN VALLEY ORCHARDS, LLC**

represented by **SCOTT M. WILHELM**  
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*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**U.S. DEPARTMENT OF LABOR**

represented by **STEPHEN EHRLICH**  
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Email: stephen.ehrlich@usdoj.gov  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**MARTIN J WALSH**  
*in his official capacity as United States  
Secretary of Labor*

represented by **STEPHEN EHRLICH**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
09/08/2021	<a href="#"><u>1</u></a>	COMPLAINT against U.S. DEPARTMENT OF LABOR, MARTIN J WALSH ( Filing and Admin fee \$ 402 receipt number ANJDC-12781662), filed by SUN VALLEY ORCHARDS, LLC. (Attachments: # <a href="#"><u>1</u></a> Civil Cover Sheet, # <a href="#"><u>2</u></a> Exhibit A, # <a href="#"><u>3</u></a> Exhibit B, # <a href="#"><u>4</u></a> Exhibit C, # <a href="#"><u>5</u></a> Exhibit D)(WILHELM, SCOTT) (Entered: 09/08/2021)
09/08/2021	<a href="#"><u>2</u></a>	Corporate Disclosure Statement by SUN VALLEY ORCHARDS, LLC. (WILHELM, SCOTT) (Entered: 09/08/2021)
09/08/2021		Judge Joseph H. Rodriguez and Magistrate Judge Matthew J. Skahill added. (dd, ) (Entered: 09/08/2021)
09/08/2021	<a href="#"><u>3</u></a>	SUMMONS ISSUED as to U.S. DEPARTMENT OF LABOR, MARTIN J WALSH. Attached is the official court Summons, please fill out Defendant and Plaintiffs attorney information and serve. (pr, ) (Entered: 09/08/2021)
09/08/2021	<a href="#"><u>4</u></a>	MOTION for Leave to Appear Pro Hac Vice by SUN VALLEY ORCHARDS, LLC. (Attachments: # <a href="#"><u>1</u></a> Certification of Scott M. Wilhelm, Esq., # <a href="#"><u>2</u></a> Certification of Robert E. Johnson, Esq., # <a href="#"><u>3</u></a> Text of Proposed Order)(WILHELM, SCOTT) (Entered: 09/08/2021)
09/08/2021		Set/Reset Deadlines as to <a href="#"><u>4</u></a> MOTION for Leave to Appear Pro Hac Vice . Motion set for 10/4/2021 before Magistrate Judge Matthew J. Skahill. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk's Office and does not supersede any previous or subsequent orders from the Court. (tf, ) (Entered: 09/08/2021)
09/20/2021	<a href="#"><u>5</u></a>	SUMMONS Returned Executed by SUN VALLEY ORCHARDS, LLC. U.S. DEPARTMENT OF LABOR served on 9/13/2021, answer due 11/12/2021. (WILHELM, SCOTT) (Entered: 09/20/2021)
09/20/2021	<a href="#"><u>6</u></a>	SUMMONS Returned Executed by SUN VALLEY ORCHARDS, LLC. MARTIN J WALSH served on 9/13/2021, answer due 11/12/2021. (WILHELM, SCOTT) (Entered: 09/20/2021)
09/20/2021	<a href="#"><u>7</u></a>	SUMMONS Returned Executed by SUN VALLEY ORCHARDS, LLC. (WILHELM, SCOTT) (Entered: 09/20/2021)
09/29/2021	<a href="#"><u>8</u></a>	SUMMONS Returned Executed by SUN VALLEY ORCHARDS, LLC. (WILHELM, SCOTT) (Entered: 09/29/2021)
10/13/2021	<a href="#"><u>9</u></a>	ORDER granting <a href="#"><u>4</u></a> Motion for Leave to Appear Pro Hac Vice as to Robert E. Johnson, Esquire. Signed by Magistrate Judge Matthew J. Skahill on 10/13/2021. (dmr) (Entered: 10/13/2021)
10/18/2021	<a href="#"><u>10</u></a>	MOTION for Leave to Appear Pro Hac Vice by SUN VALLEY ORCHARDS, LLC. (Attachments: # <a href="#"><u>1</u></a> Certification of Scott M Wilhelm Esq, # <a href="#"><u>2</u></a> Certification of Robert M Belden Esq, # <a href="#"><u>3</u></a> Certificate of Service, # <a href="#"><u>4</u></a> Text of Proposed Order)(WILHELM, SCOTT) (Entered: 10/18/2021)
10/19/2021		Set/Reset Deadlines as to <a href="#"><u>10</u></a> MOTION for Leave to Appear Pro Hac Vice . Motion set for 11/15/2021 before Magistrate Judge Matthew J. Skahill. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk's Office and does not supersede any previous or subsequent orders from the Court. (dmr) (Entered: 10/19/2021)
10/19/2021	<a href="#"><u>11</u></a>	Amended MOTION to Amend/Correct <a href="#"><u>10</u></a> MOTION for Leave to Appear Pro Hac Vice <i>to Correct Certification of Scott M. Wilhelm, Esq.</i> by SUN VALLEY ORCHARDS, LLC. (WILHELM, SCOTT) (Entered: 10/19/2021)

10/20/2021		<b>CLERK'S QUALITY CONTROL MESSAGE</b> - The Certification <a href="#">11</a> filed by Scott Wilhelm on 10/19/2021 was submitted incorrectly using the Motion to Amend event. In the future please use the Certification or Amended Document event. This submission will remain on the docket unless otherwise ordered by the court. (dmr) (Entered: 10/20/2021)
10/25/2021		Pro Hac Vice fee as to Robert E Johnson: \$ 150, receipt number CAM013368 (dmr) (Entered: 10/25/2021)
10/29/2021	12	Text Order: The motion for pro hac vice admission [Doc. No. 10] is DENIED WITHOUT PREJUDICE. Counsel is kindly asked to update his certification in support of the motion by certifying for Mr. Belden and extracting the inadvertent reference to Mr. Johnson. Upon receipt, the Court will be in a position to promptly grant the motion. So Ordered by Magistrate Judge Matthew J. Skahill on 10/29/21. (Entered: 10/29/2021)
11/02/2021	<a href="#">13</a>	ORDER granting <a href="#">10</a> Motion for Leave to Appear Pro Hac Vice as to Robert M. Belden, Esquire. Signed by Magistrate Judge Matthew J. Skahill on 11/2/2021. (dmr) (Entered: 11/02/2021)
11/04/2021	<a href="#">14</a>	Notice of Request by Pro Hac Vice Robert E. Johnson, Esq. to receive Notices of Electronic Filings. (WILHELM, SCOTT) (Entered: 11/04/2021)
11/04/2021		Pro Hac Vice fee as to Robert M. Belden,: \$ 150, receipt number CAM013417 (dmr) (Entered: 11/04/2021)
11/04/2021		Pro Hac Vice counsel, ROBERT E. JOHNSON, has been added to receive Notices of Electronic Filing. Pursuant to L.Civ.R. 101.1, only local counsel are entitled to sign and file papers, enter appearances and receive payments on judgments, decrees or orders. (dmr) (Entered: 11/04/2021)
11/09/2021	<a href="#">15</a>	NOTICE of Appearance by STEPHEN EHRLICH on behalf of All Defendants (EHRLICH, STEPHEN) (Entered: 11/09/2021)
11/09/2021	<a href="#">16</a>	Joint MOTION for Extension of Time to File Answer , <i>Set Briefing Schedule, and Waive Local Rule 56.1</i> by All Defendants. (Attachments: # <a href="#">1</a> Text of Proposed Order)(EHRLICH, STEPHEN) (Entered: 11/09/2021)
11/10/2021		Set/Reset Deadlines as to <a href="#">16</a> Joint MOTION for Extension of Time to File Answer , <i>Set Briefing Schedule, and Waive Local Rule 56.1</i> . Motion set for 12/6/2021 before Magistrate Judge Matthew J. Skahill. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk's Office and does not supersede any previous or subsequent orders from the Court. (dmr) (Entered: 11/10/2021)
11/10/2021	<a href="#">17</a>	ORDER granting <a href="#">16</a> Joint MOTION for Extension of Time to File Answer , <i>Set Briefing Schedule, and Waive Local Rule 56.1</i> . Signed by Judge Joseph H. Rodriguez on 11/10/2021. (dmr) (Entered: 11/10/2021)
12/15/2021	<a href="#">18</a>	NOTICE by All Defendants of <i>Administrative Record</i> (EHRLICH, STEPHEN) (Entered: 12/15/2021)
02/02/2022	<a href="#">19</a>	MOTION for Summary Judgment by SUN VALLEY ORCHARDS, LLC. Responses due by 3/16/2022 (Attachments: # <a href="#">1</a> Brief, # <a href="#">2</a> Text of Proposed Order)(WILHELM, SCOTT) (Entered: 02/02/2022)

02/03/2022		Set/Reset Deadlines as to <a href="#">19</a> MOTION for Summary Judgment . Motion set for 3/7/2022 before Judge Joseph H. Rodriguez. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk's Office and does not supersede any previous or subsequent orders from the Court. (dmr) (Entered: 02/03/2022)
03/08/2022	<a href="#">20</a>	Consent MOTION for Extension of Time to File Response/Reply by All Defendants. (Attachments: # <a href="#">1</a> Text of Proposed Order)(EHRlich, STEPHEN) (Entered: 03/08/2022)
03/09/2022		Set/Reset Deadlines as to <a href="#">20</a> Consent MOTION for Extension of Time to File Response/Reply . Motion set for 4/4/2022 before Judge Joseph H. Rodriguez. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk's Office and does not supersede any previous or subsequent orders from the Court. (dmr) (Entered: 03/09/2022)
03/09/2022	<a href="#">21</a>	ORDER granting <a href="#">20</a> Motion for Extension of Time to File Response/Reply. Defendants' combined opposition to Plaintiff's partial motion for summary judgment and motion to dismiss/cross-motion for summary judgment shall be due by 4/13/2022. Plaintiff's combined reply due 5/18/2022. Defendants' reply in support is due by 6/15/2022, etc. Signed by Judge Joseph H. Rodriguez on 3/9/2022. (dmr) (Entered: 03/09/2022)
04/13/2022	<a href="#">22</a>	MOTION to Dismiss , Cross MOTION for Summary Judgment <i>and Opposition to Plaintiff's Motion for Partial Summary Judgment</i> by All Defendants. (Attachments: # <a href="#">1</a> Brief, # <a href="#">2</a> Text of Proposed Order)(EHRlich, STEPHEN) (Entered: 04/13/2022)
04/14/2022		Set/Reset Deadlines as to <a href="#">22</a> MOTION to Dismiss Cross MOTION for Summary Judgment <i>and Opposition to Plaintiff's Motion for Partial Summary Judgment</i> . Motion set for 5/2/2022 before Judge Joseph H. Rodriguez. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk's Office and does not supersede any previous or subsequent orders from the Court. (dmr) (Entered: 04/14/2022)
04/14/2022		Amended Set/Reset Deadlines as to <a href="#">22</a> MOTION to Dismiss Cross MOTION for Summary Judgment <i>and Opposition to Plaintiff's Motion for Partial Summary Judgment</i> . Motion set for 5/16/2022 before Judge Joseph H. Rodriguez. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk's Office and does not supersede any previous or subsequent orders from the Court. (dmr) (Entered: 04/14/2022)
05/18/2022	<a href="#">23</a>	BRIEF in Support filed by SUN VALLEY ORCHARDS, LLC re <a href="#">19</a> MOTION for Summary Judgment , <a href="#">22</a> MOTION to Dismiss Cross MOTION for Summary Judgment <i>and Opposition to Plaintiff's Motion for Partial Summary Judgment</i> (WILHELM, SCOTT) (Entered: 05/18/2022)
05/20/2022	<a href="#">24</a>	BRIEF in Support filed by SUN VALLEY ORCHARDS, LLC re <a href="#">19</a> MOTION for Summary Judgment , <a href="#">22</a> MOTION to Dismiss Cross MOTION for Summary Judgment <i>and Opposition to Plaintiff's Motion for Partial Summary Judgment as Supplemented</i> (WILHELM, SCOTT) (Entered: 05/20/2022)
06/10/2022	<a href="#">25</a>	Consent MOTION for Leave to File Excess Pages by All Defendants. (Attachments: # <a href="#">1</a> Text of Proposed Order)(EHRlich, STEPHEN) (Entered: 06/10/2022)

06/10/2022		Set/Reset Deadlines as to <a href="#">25</a> Consent MOTION for Leave to File Excess Pages . Motion set for 7/5/2022 before Judge Joseph H. Rodriguez. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk's Office and does not supersede any previous or subsequent orders from the Court. (dmr) (Entered: 06/10/2022)
06/14/2022	<a href="#">26</a>	ORDER granting <a href="#">25</a> Motion for Leave to File Excess Pages. ORDERED that Defendants' reply in support of their motion to dismiss/cross-motion for summary judgment shall be due by 6/15/2022 and shall be no longer than 25 pages using 12-point proportional font.. Signed by Judge Joseph H. Rodriguez on 6/14/2022. (dmr) (Entered: 06/14/2022)
06/15/2022	<a href="#">27</a>	REPLY to Response to Motion filed by All Defendants re <a href="#">22</a> MOTION to Dismiss Cross MOTION for Summary Judgment <i>and Opposition to Plaintiff's Motion for Partial Summary Judgment</i> (EHRlich, STEPHEN) (Entered: 06/15/2022)
07/12/2022	<a href="#">28</a>	BRIEF in Support filed by SUN VALLEY ORCHARDS, LLC re <a href="#">19</a> MOTION for Summary Judgment , <a href="#">22</a> MOTION to Dismiss Cross MOTION for Summary Judgment <i>and Opposition to Plaintiff's Motion for Partial Summary Judgment</i> (Attachments: # <a href="#">1</a> Exhibit)(WILHELM, SCOTT) (Entered: 07/12/2022)
07/22/2022	<a href="#">29</a>	RESPONSE re <a href="#">28</a> Brief in Support of Motion,. (EHRlich, STEPHEN) (Entered: 07/22/2022)
03/09/2023	<a href="#">30</a>	LETTER ORDER scheduling oral argument re <a href="#">22</a> MOTION to Dismiss and Cross Motion for Summary Judgment and <a href="#">19</a> MOTION for Summary Judgment on 4/20/2023 at 10:00 AM in Camden - Courtroom 5D before Judge Joseph H. Rodriguez. Signed by Judge Joseph H. Rodriguez on 3/8/2023. (dmr) (Entered: 03/09/2023)
03/16/2023	<a href="#">31</a>	NOTICE of Appearance by SCOTT M. WILHELM on behalf of SUN VALLEY ORCHARDS, LLC (WILHELM, SCOTT) (Entered: 03/16/2023)
03/17/2023		<b>CLERK'S QUALITY CONTROL MESSAGE</b> - The Notice of Appearance <a href="#">31</a> submitted by Scott Wilhelm on 3/16/2023 contains a signature of an attorney who does not appear to be admitted to this Court. Only Registered Users are permitted to sign electronically filed documents with an s/. This submission will remain on the docket unless otherwise ordered by the court. (dmr) (Entered: 03/17/2023)
04/18/2023	<a href="#">32</a>	BRIEF in Support filed by SUN VALLEY ORCHARDS, LLC re <a href="#">19</a> MOTION for Summary Judgment <i>Plaintiff's Third Notice of Supplemental Authority</i> (WILHELM, SCOTT) (Entered: 04/18/2023)
04/19/2023	<a href="#">33</a>	BRIEF in Support filed by SUN VALLEY ORCHARDS, LLC re <a href="#">19</a> MOTION for Summary Judgment <i>Plaintiff's Third Notice of Supplemental Authority with Exhibit</i> (WILHELM, SCOTT) (Entered: 04/19/2023)
04/20/2023	<a href="#">34</a>	Minute Entry for proceedings held before Judge Joseph H. Rodriguez: Motion Hearing held on 4/20/2023 re Plaintiff's <a href="#">19</a> MOTION for Summary Judgment, Defendant's <a href="#">22</a> MOTION to Dismiss Cross MOTION for Summary Judgment. Decision Reserved. (Court Reporter, Sharon Ricci (267-249-8780)) (dmr) (Entered: 04/20/2023)
05/31/2023	<a href="#">35</a>	Transcript of Motion Hearing held on 4/20/2023, before Judge Joseph H. Rodriguez. Court Reporter/Transcriber Sharon Ricci (267-249-8780). <b>NOTICE REGARDING (1) REDACTION OF PERSONAL IDENTIFIERS IN TRANSCRIPTS AND (2) MOTION TO REDACT AND SEAL:</b> The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this Transcript to comply with Fed.R.Civ.P.5.2(a) (personal identifiers). Parties seeking to redact and seal this Transcript, or portions thereof, pursuant to L.Civ.R. 5.3(g) must e-file a Motion to Redact and Seal utilizing the event 'Redact and Seal Transcript/Digital Recording'. Redaction Request to



		Court Reporter/Transcription Agency due, but not filed, by 6/21/2023. Redacted Transcript Deadline set for 7/3/2023. Release of Transcript Restriction set for 8/29/2023. (mag) (Entered: 05/31/2023)
07/27/2023	<a href="#">36</a>	OPINION. Signed by Judge Joseph H. Rodriguez on 7/27/2023. (dmr) (Entered: 07/27/2023)
07/27/2023	<a href="#">37</a>	ORDER Granting DOL's <a href="#">22</a> Motion to Dismiss; Denying as moot Sun Valley's <a href="#">19</a> Motion for Partial Summary Judgment and DOL's <a href="#">22</a> Cross Motion for Summary Judgment. ***CIVIL CASE TERMINATED. Signed by Judge Joseph H. Rodriguez on 7/27/2023. (dmr) (Entered: 07/27/2023)
09/01/2023	<a href="#">38</a>	NOTICE OF APPEAL as to <a href="#">37</a> Order on Motion for Summary Judgment,, Order on Motion to Dismiss,,, <a href="#">36</a> Opinion by SUN VALLEY ORCHARDS, LLC. Filing fee \$ 505, receipt number ANJDC-14624788. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (WILHELM, SCOTT) (Entered: 09/01/2023)
09/05/2023	<a href="#">39</a>	USCA Case Number 23-2608 for <a href="#">38</a> Notice of Appeal (USCA), filed by SUN VALLEY ORCHARDS, LLC. USCA Case Manager Tim McIntyre (Document Restricted - Court Only) (ca3tmm, ) (Entered: 09/05/2023)

PACER Service Center			
Transaction Receipt			
08/27/2024 18:54:49			
PACER Login:	if012567	Client Code:	
Description:	Docket Report	Search Criteria:	1:21-cv-16625-JHR-MJS Start date: 1/1/1980 End date: 8/27/2024
Billable Pages:	5	Cost:	0.50

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

SUN VALLEY ORCHARDS, LLC,

*Plaintiff,*

v.

U.S. DEPARTMENT OF LABOR,  
and MARTIN J. WALSH, in his  
official capacity as United States  
Secretary of Labor,

*Defendants.*

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
AND DEMAND FOR JURY TRIAL**

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## LOCAL RULE 10.1 STATEMENT

1. The mailing addresses of the parties to this action are:

Sun Valley Orchards, LLC  
29 Vestry Road  
Swedesboro, NJ 08085

Department of Labor  
200 Constitution Avenue N.W.  
Washington, D.C. 20001

Martin J. Walsh, U.S. Secretary of Labor  
200 Constitution Avenue N.W.  
Washington, D.C. 20001

## INTRODUCTION

2. Sun Valley Orchards, a family farm in New Jersey, has spent nearly five years in proceedings before agency judges, attempting to contest the U.S. Department of Labor's decision to subject the farm to over half a million dollars in liability. The bulk of that assessment—over \$320,000—is related to a paperwork violation: When filling out paperwork to participate in a DOL visa program for migrant farm workers, the farm indicated that it would give workers access to a kitchen when, in fact, it offered a meal plan under which workers could purchase food at a cost of approximately \$3.75 per meal. The farm was in its first year participating in the H-2A visa program when it made that mistake, and DOL's only complaint about the meal plan was that it was not accurately described in the farm's paperwork; in subsequent years, the farm has offered the same meal plan without DOL raising any objections.

3. DOL in this case has appointed itself prosecutor, judge, and jury. The monetary award was first assessed by DOL inspectors, was then affirmed by a DOL administrative law judge after an administrative hearing, and was finally affirmed by an appellate panel of DOL judges. DOL wrote the governing regulations with only minimal congressional guidance, and



## THE PARTIES

8. Plaintiff Sun Valley Orchards, LLC is a family-owned limited liability company organized under the laws of New Jersey. Joseph Marino is the Managing Partner of Sun Valley Orchards, and he owns and operates the company together with his brother Russell Marino. Sun Valley Orchards operates a vegetable farm in southern New Jersey, growing crops including peppers, squash, eggplant, cucumbers, and asparagus.

9. Defendant U.S. Department of Labor (“DOL”) is the federal administrative agency responsible for bringing enforcement actions against employers for alleged violations of the rules and regulations of the H-2A visa program. The enforcement proceeding at issue in this case was initiated by DOL personnel, tried by DOL attorneys, heard and decided by a DOL judge, and then affirmed by a panel of DOL appellate judges.

10. Defendant Martin J. Walsh is sued in his official capacity as the U.S. Secretary of Labor. In that capacity, he is responsible for the oversight, administration, and enforcement of the H-2A visa program.

## REGULATORY BACKGROUND

## The Statutory Framework

11. The H-2A visa program was created by Congress in 1986, as part of the Immigration Reform and Control Act, Pub. L. No. 99-603, 100 Stat 3359. The H-2A program allows for employment of foreign nationals as temporary agricultural workers in circumstances where an employer's needs cannot be met out of the domestic labor pool. *See* 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a); 1188(a).

12. Congress has enacted express provisions to govern the debarment of H-2A employers who allegedly violate H-2A regulations. Under these provisions, DOL may debar an

employer for up to three years if the employer “substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers.” 8 U.S.C. § 1188(b)(2). If an employer contests its debarment, the statute also expressly provides for “a de novo administrative hearing respecting the denial or revocation.” *Id.* § 1188(e).

13. By contrast, Congress has *not* authorized agency judges to impose monetary penalties for violations of the H-2A program through agency adjudication.

14. DOL’s statutory authority to impose monetary penalties for H-2A violations is found in a single, vague provision: “The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.” 8 U.S.C. § 1188(g)(2).

15. Notably, while Section 1188(g)(2) authorizes the Secretary of Labor to impose “appropriate penalties,” the statute says nothing at all about imposing such penalties in administrative proceedings before agency judges.

16. To the contrary, Congress has specifically provided that “[w]henver a civil fine, penalty or pecuniary forfeiture is prescribed for the violation of an Act of Congress without specifying the mode of recovery or enforcement thereof, it may be recovered in a civil action.” 28 U.S.C. § 2461(a). When Congress authorized the Secretary of Labor to impose penalties for violations of H-2A violations, Congress thus authorized the Secretary of Labor to impose those penalties “in a civil action”—not an administrative proceeding before an administrative judge.

## DOL's System of Administrative Adjudication

17. Despite the above lack of congressional authorization, the Secretary of Labor has promulgated regulations providing for the imposition of civil monetary penalties and back wages in administrative courts. Based solely on the vague statutory grant of authority in Section 1188(g)(2), DOL regulations subject employers to “appropriate administrative proceedings” to impose penalties including “recovery of unpaid wages” and “assessment of a civil money penalty.” 29 C.F.R. § 501.16.

18. Under DOL’s regulations, the amount of a civil monetary penalty is determined in the first instance by the agency’s enforcement personnel in the Wage and Hour Division, who “shall consider the type of violation committed and other relevant factors.” 29 C.F.R. § 501.19(b). These “relevant factors” include, but “are not limited to,” seven factors listed in the regulation: (1) the employer’s previous history of violations; (2) the number of workers affected; (3) the gravity of the violation; (4) good faith efforts to comply; (5) the employer’s explanation for the violation; (6) the employer’s commitment to future compliance; and (7) the extent of the employer’s financial gain or the worker’s financial loss or injury. *Id.*

19. Under DOL’s regulations, a “civil money penalty for each violation of the work contract or a requirement of [the H-2A program] will not exceed \$1,787 per violation.” 29 C.F.R. § 501.19(c). In 2015, the time period at issue in this case, that amount was set at \$1,500. *See* 81 Fed. Reg. 43429, 43435 (July 1, 2016).

20. Under DOL’s regulation, “[e]ach failure to pay an individual worker properly or to honor the terms or conditions of a worker’s employment . . . or the regulations in this part constitutes a separate violation.” 29 C.F.R. § 501.19(a).

21. Once a penalty is assessed by DOL's enforcement personnel, that determination is reviewed at a hearing by DOL ALJs, who are employees of the agency.

22. As DOL employees, ALJs are affected by the financial health of the agency as a whole. For instance, when DOL was forced to make budget cuts in 2013, the DOL's Office of Administrative Law Judges was forced to cut its budget by five percent and, as a result, furloughed DOL ALJs for multiple days.

23. In litigation, DOL has also taken the position that the Secretary of Labor has "broad authority to remove ALJs" from their positions and that "Article II's mandate that inferior executive officers remain accountable to the President and their Department Heads through the removal power applies to ALJs." Brief for Federal Respondent at 30, 35, *K&R Contractors, LLC v. Keene*, No. 20-2021 (4th Cir. Feb. 4, 2021).

24. After an ALJ issues a decision, DOL regulations then allow an employer to appeal that decision to an internal agency appellate court called the Administrative Review Board ("ARB"). 29 C.F.R. § 501.42.

25. The ARB is nowhere authorized by any statute. Rather, the Secretary of Labor created the ARB by executive order in 1996. *See* Secretary's Order 02-96, 61 Fed. Reg. 19978 (May 3, 1996); *see also* Secretary's Order 02-2012, 77 Fed. Reg. 69378 (Nov. 16, 2012).

26. The ARB consists of a maximum of five administrative judges appointed by the Secretary of Labor. 77 Fed. Reg. at 69379. The members of the ARB are appointed for a fixed term "of two years or less." *Id.*

27. The Secretary of Labor's Orders creating the ARB direct that "[t]he Board shall not have jurisdiction to pass on the validity of any portion of the Code of Federal Regulations



which has been duly promulgated by the Department of Labor and shall observe the provisions thereof, where pertinent, in its decisions.” 61 Fed. Reg. at 19979; *see also* 77 Fed. Reg. at 69379.

### **DOL’s H-2A Enforcement Activity**

28. As recently as 2006, annual civil monetary penalties imposed by DOL for violations of the H-2A program totaled just \$57,900. *See* David J. Bier, Cato Institute, Immigration Research and Policy Brief No. 17, *H-2A Visas for Agriculture: The Complex Process for Farmers to Hire Agricultural Guest Workers* (Mar. 10, 2020) (Table B).<sup>1</sup>

29. Annual civil monetary penalties for H-2A violations first crossed the million-dollar mark in 2012 and reached as high as \$5.9 million in 2013. *Id.*

30. Data on DOL’s website shows that, from 2005 through August 2021, DOL has imposed three civil monetary penalties over \$1 million; 52 penalties between \$100,000 and \$1 million; 482 penalties between \$10,000 and \$100,000; and 1,850 penalties under \$10,000 for alleged violations of the H-2A program. *See* U.S. Dep’t of Labor, Wage and Hour Compliance Action Data (hereinafter, “DOL Data”).<sup>2</sup>

31. In addition to imposing civil monetary penalties for H-2A violations, DOL’s ALJs also assess back wages that are purportedly owed to employees of H-2A employers. Since 2005, DOL has assessed a total of \$37.5 million in civil monetary penalties and \$28.9 million in back wages in connection with the H-2A program. *See* DOL Data, *supra* ¶ 30.

32. Back wages are technically owed to the employees, but in most cases involving the H-2A program they are collected by the agency. Employees must then claim the funds from the government. If the funds go unclaimed for three years, the government keeps the money.

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<sup>1</sup> Available at <https://www.cato.org/publications/immigration-research-policy-brief/h-2a-visas-agriculture-complex-process-farmers-hire>.

<sup>2</sup> Available at [https://enforcedata.dol.gov/views/data\\_summary.php](https://enforcedata.dol.gov/views/data_summary.php).

33. In 2015, the DOL’s Office of Inspector General found that DOL “made minimal efforts to locate” employees who it was supposed to pay back wages. U.S. Dep’t of Labor, Office of Inspector General, *Wage and Hour Division Needs to Strengthen Management Controls for Back Wage Distributions* (Mar. 2015).<sup>3</sup> As a result, between 2010 and 2014, the government kept \$60 million in back wages that were collected by DOL and never paid to workers. *Id.*

34. While the amount of money collected for alleged H-2A violations in administrative proceedings has significantly increased, the number of employers who are debarred for violations has remained relatively small. The number of debarments each year ranges from zero (in 2010) to 31 (in 2018). *See Bier, supra* ¶ 28.

35. In 2015, the agency imposed \$3.9 million in civil monetary penalties in 207 cases involving alleged violations of the H-2A program. *See Bier, supra* ¶ 28. In that same year, the agency debarred 30 employers. *Id.*

36. In other words, the agency subjects more employers to its *unauthorized* administrative procedures for monetary penalties than it does to its *authorized* administrative procedures for debarment.

## FACTUAL BACKGROUND

### Sun Valley Orchards

37. Sun Valley Orchards operates a family farm in southern New Jersey that grows a variety of vegetables, including peppers, squash, eggplant, cucumbers, and asparagus.

38. Sun Valley Orchards is owned and operated by two brothers, Joseph and Russell Marino. They are fourth-generation farmers in New Jersey.

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<sup>3</sup> Available at <https://www.oig.dol.gov/public/reports/oa/2015/04-15-001-04-420.pdf>.

39. Vegetable farming is a labor-intensive business. Because vegetables are easily bruised and damaged, they cannot be harvested by machine and must be picked by hand. Many vegetables also must be hand-planted, and, in some instances, must be tied up to stakes while in the process of growing.

40. As a result, Sun Valley Orchards depends on seasonal labor to grow and harvest its crops. It would be impossible to run the farm without those workers.

41. During the times relevant to this case, Sun Valley Orchards' seasonal workers were supervised by Agustin Hernandez. Agustin's father also previously worked at Sun Valley Orchards, and Agustin's wife worked in the farm's kitchen cooking meals for the workers.

42. Seasonal workers at Sun Valley Orchards are paid above minimum wage: In 2015, when the events at issue here occurred, the Marinos paid their workers \$11.29 per hour, as compared to the then-prevailing state minimum wage of \$8.38 per hour. Moreover, unlike for domestic workers, those wages are not subject to tax withholding.

43. Seasonal workers at Sun Valley Orchards are also provided with free lodging at the farm in group dormitories with bunk beds.

44. Working at a vegetable farm like Sun Valley Orchards is hard work, but it is also comparatively well paid. Given the wage rate and the provision of free lodging, workers can make a good amount of money over a season.

## The 2015 Growing Season

45. During the 2015 season, Sun Valley Orchards participated for the first time in the H-2A visa program.

46. Before the 2015 season, Sun Valley Orchards had relied on seasonal workers who primarily came from Florida and Puerto Rico; the Marino brothers had avoided the H-2A visa

program in part because they had heard horror stories about other farms' regulatory tie-ups with DOL. But in 2015 the farm was increasingly unable to meet its needs out of the domestic labor pool, and the Marinos decided they had no real choice other than to enter the program.

47. Because the H-2A program is complex and requires significant paperwork, the Marinos hired a contractor to help them navigate the program and fill out the necessary forms.

48. Towards the beginning of the 2015 season, an inspector from DOL visited Sun Valley Orchards.

49. When the inspector left, the Marinos asked if he had spotted any issues and if there were any changes the Marinos ought to make. The inspector assured the Marinos that everything was fine and did not suggest any changes.

#### **DOL's Half-Million Dollar Assessment**

50. In early 2016, the DOL inspector returned—this time accompanied by officials from DOL's headquarters in Washington, D.C. These DOL officials handed Joseph and Russell a letter stating that they were being assessed over \$550,000 for alleged H-2A violations—including a civil monetary penalty of over \$200,000 and over \$350,000 in back wages.

51. In June 2016, DOL mailed a letter finalizing this assessment. A copy of that letter is attached as Exhibit A.

#### **The Meal Plan Paperwork**

52. The majority of this assessment was based on a paperwork violation: Over \$326,000 of the over-\$550,000 assessment was imposed because Sun Valley Orchards' H-2A paperwork did not accurately describe the farm's meal plan for its workers.

53. On that basis alone, DOL enforcement personnel assessed \$198,450 in monetary penalties and \$128,285 in back wages. DOL enforcement personnel calculated the penalty by

assessing a \$1,350 penalty for each worker who was eligible to participate in the farm's meal plan (whether they were H-2A workers or not, and whether they actually chose to participate or not); and DOL enforcement personnel calculated the back wages by determining the full amount paid by all of Sun Valley Orchards' workers for the meal plan during the 2015 season (whether those amounts were paid by H-2A workers or not).

54. It is entirely legal for an H-2A employer to offer employees a meal plan, and, in fact, federal regulations expressly allow H-2A employers to charge workers for meals. *See* 20 C.F.R. § 655.122(g).

55. The amount that employers may charge for meals is set by regulation and is indexed to inflation. *See id.* § 655.173(a). In 2015, the agency set the maximum allowable meal charge at \$11.86 per day, or \$83.02 per week. *See* 80 Fed. Reg. 9482 (Feb. 23, 2015).

56. The amount charged by Sun Valley Orchards was below the maximum allowable amount set by DOL's own regulations. Sun Valley Orchards' meal plan for 2015 charged workers \$75 to \$80 per week, or between \$10.71 and \$11.42 per day.

57. DOL's only concern with Sun Valley Orchards' meal plan was that it was not accurately described on the farm's paperwork. Instead, the contractor who filled out Sun Valley Orchards' application erroneously stated that employees would have access to the kitchen so that they could cook their own meals.

58. Even if employees *had* been given access to the kitchen, those employees still would have had to pay to purchase food. Indeed, given the cost of food in New Jersey, the high caloric needs of workers performing manual labor, and the fact that workers eating individually would not be able to buy in bulk, it would have been difficult for the workers to eat for much less than the cost of the meal plan even if the farm had provided them with kitchen access.

59. Nothing in the H-2A program regulations required Sun Valley Orchards to provide its workers with free food, and Sun Valley Orchards never stated that it would do so. Yet, under DOL’s assessment, Sun Valley Orchards was required to pay as “back wages” the *full* amount paid by all of its workers for its meal plan.

60. In subsequent years, after the 2015 season, Sun Valley Orchards has continued to offer a meal plan for H-2A workers but has described the meal plan on its H-2A paperwork. DOL has not expressed any concern with Sun Valley Orchards' meal plan in those later years, confirming that DOL's sole concern with the meal plan in 2015 was that it was not fully described on the farm's paperwork.

## The Early Departure Paperwork

61. Most of the remainder of the assessment consisted of \$142,728.20 in back wages (and \$2,700 in penalties) related to the early departure of some of the farm's workers.

62. DOL regulations include a “three-fourths guarantee” for H-2A workers, under which employers must “guarantee to offer the worker employment for a total number of work hours equal to at least three-fourths of the workdays” of the period for which the worker is hired. 20 C.F.R. § 655.122(i). A worker is not entitled to that guarantee, however, if the worker “voluntarily abandons employment before the end of the contract period” or if the worker “is terminated for cause.” *Id.* § 655.122(n).

63. During the 2015 season, nineteen of the farm's H-2A workers left early and, in doing so, signed paperwork stating that they were leaving voluntarily. The workers were asked to pick asparagus, which is particularly difficult physical work, and they left the farm after just a short time on the job because they did not like the work.

64. DOL, however, claimed that this paperwork was inaccurate and that these workers were fired.

65. Even if the Marinos *had* fired the workers, the workers would not have been entitled to the benefit of the three-fourths guarantee so long as the farm had filed paperwork informing DOL that the workers were being terminated for cause.

66. The applicable job order stated that “cause” to fire the workers would include if a worker “fails . . . to perform the work as specified,” “malingers or otherwise refuses without justified cause to perform as directed the work for which the Worker was recruited and hired,” or otherwise “fails to meet applicable production standards or keep up with fellow workers.”

67. DOL’s complaint was therefore not that the farm allegedly fired the workers, but, rather, that the farm allegedly did so without filing the necessary paperwork to establish that the termination was for cause.

68. Because DOL believed the workers were fired without the proper paperwork to establish that the termination was for cause, DOL assessed back wages equal to the amount the workers would have been paid under the three-quarters guarantee.

#### The Remainder of the Assessment

69. Beyond that, DOL assessed over \$71,000 in back wages because Agustin Hernandez (the workers’ supervisor) sold non-alcoholic beverages to the workers. Agustin would sell sodas for \$1, energy drinks for \$1.50, and bottled water for \$0.75.

70. DOL assessed back wages because Agustin purchased the beverages and sold them at a small up-charge; DOL believed that it was unlawful for Agustin to profit off such sales. However, in calculating the amount of back wages, DOL awarded the *full* amount paid by the workers, and not just the amount of Agustin’s profit.



71. It is not illegal to sell drinks to H-2A workers, and DOL would have had no problem if the farm had instead allowed an independent third party to come sell drinks to the workers (even if an independent vendor would have charged *more* for drinks). In fact, the farm has done just that in later years, and DOL has raised no objection.

72. Similarly, DOL assessed \$8,972.60 in back wages because Agustin sometimes bought beers in bulk and sold them to the workers at the dormitories. Again, it is not illegal to sell alcoholic beverages to H-2A workers, but DOL objected to these sales because they were made by the workers' supervisor. DOL would have raised no objection if the farm had allowed an independent third party to come sell beers to the workers.

73. Finally, less than two percent of DOL's total assessment pertained to actual living and working conditions at the farm. DOL assessed \$3,600 in civil monetary penalties related to living conditions, such as missing screens on some of the windows, as well as \$7,500 in civil monetary penalties related to the provision of transportation to the fields.

74. Since this fine was assessed, Sun Valley Orchards has continued to participate in the H-2A program. DOL has not sought to debar Sun Valley Orchards from the H-2A program, and DOL has not imposed any fines for later years.

75. Sun Valley Orchards does not have \$550,000 to pay to DOL, and if Sun Valley Orchards is forced to pay that amount it may very well destroy the business.

## AGENCY PROCEEDINGS

## Before The Administrative Law Judge

### The Assignment and Hearing

76. As required by DOL regulations, Sun Valley Orchards contested the agency's letter assessing penalties and back wages by requesting a hearing.

77. The Administrator of DOL's Wage and Standards Division referred the case to the DOL's Chief ALJ, who, in turn, referred the case to DOL ALJ Theresa C. Timlin.

78. ALJ Timlin has been employed by the DOL for almost the entirety of her career. ALJ Timlin completed her education in 1990. From 1991-2005, she worked as an attorney in the DOL's Office of the Regional Solicitor. From 2005-2008, she worked in the DOL's Office of Federal Contract Compliance Programs. And—after a one-year period working as an ALJ at the Social Security Administration—she worked as a DOL ALJ from 2009 through the present.

79. On information and belief, because ALJ Timlin was hired as a DOL ALJ via a transfer from the Social Security Administration, ALJ Timlin's hiring as a DOL ALJ was effected without an appointment by the Secretary of Labor.

80. ALJ Timlin held a four-day hearing for this case in July 2017. During the hearing, ALJ Timlin heard testimony from multiple witnesses, including Joseph Marino, Russell Marino, three former employees of Sun Valley Orchards, and a DOL inspector.

81. On December 21, 2017, the Secretary of Labor ratified ALJ Timlin’s appointment as an ALJ. The Secretary’s letter stated that the ratification was “intended to address any claim that administrative proceedings pending before, or presided over by, administrative law judges of the U.S. Department of Labor violate the Appointments Clause.”

82. ALJ Timlin issued her decision on October 28, 2019. ALJ Timlin based her decision on evidence and testimony presented at the July 2017 hearing, which occurred prior to the Secretary of Labor's ratification of ALJ Timlin's appointment.

### The ALJ's Decision

83. The ALJ's decision affirmed the DOL's initial assessment in almost all material respects. A copy of the ALJ's decision is attached as Exhibit B.

84. The ALJ affirmed the \$198,450 civil monetary penalty for the meal plan violation. In doing so, the ALJ did not attempt to decide the appropriate penalty for the meal plan violation. Instead, the ALJ merely concluded that the penalty assessment made by DOL's enforcement personnel was "reasonable" and "rational."

85. The ALJ therefore concluded that “[t]he Administrator’s assessment of a \$1,350 CMP for each worker was reasonable, because she reviewed each of the mitigation criteria at 29 C.F.R. § 501.19(b)” and “rationally considered all of the § 501.19(b) mitigation factors.”

86. Among other things, although Sun Valley Orchards argued that the workers did not suffer any significant harm as a result of the farm’s paperwork error—as they would have had to pay for meals regardless, even if they had been afforded kitchen access—the ALJ found that DOL “rationally viewed the violation as serious.”

87. The ALJ also held that DOL’s enforcement personnel “reasonably” multiplied the \$1,350 monetary penalty by the number of workers eligible to participate in the meal plan. To justify this multiplier—which increased the penalty from \$1,350 to \$198,450—the ALJ stated simply: “District Director Rachor explained that the Administrator assessed the CMP in this way due to the seriousness of the violation and the ‘large amount of workers affected.’”

88. The ALJ also affirmed the assessment of \$128,285 in back wages for the meal plan violation. While Sun Valley Orchards had argued that this assessment of back wages vastly overstated any harm to the employees—who would have had to purchase food even if they had been granted kitchen access—the ALJ deemed that to be irrelevant. The ALJ reasoned that “[a] material change to the terms of [the] contract necessarily provides ‘harm’ to both the workers’ reliance on the H-2A program to ensure that their rights are protected, as well as the overall integrity of the program itself.”

89. The ALJ also affirmed the assessment of back wages for Agustin’s beverage sales. Although there is no requirement anywhere in DOL’s regulations for the H-2A program to provide free beverages to workers, the ALJ reasoned that the sales constituted an “unlawful deduction” from the workers’ pay because Agustin made a profit from the sales.

90. Although there was no evidence that Sun Valley Orchards in any way authorized Agustin’s beverage sales, the ALJ held that Sun Valley Orchards could be held responsible for Agustin’s beverage sales because Agustin acted as Sun Valley Orchards’ agent.

91. The ALJ, however, did reduce the award for the non-alcoholic beverage sales from \$71,790.08 to \$64,960 on the ground that the evidence did not support DOL enforcement personnel’s calculations regarding the number of drinks consumed by the workers.

92. The ALJ separately affirmed the award of \$142,728.20 in back wages related to the early departure of a portion of the farm’s employees. In doing so, the ALJ assessed the credibility of the witnesses and determined, on that basis, that the workers were fired: The ALJ found that “Joseph Marino’s testimony, compared to the employees, lacks credibility.”

93. The ALJ made this decision even though none of the employees who testified at the hearing actually testified that they were fired. One worker was asked “[d]id anyone ever tell you [that] you were fired?” and answered “[n]o.” Another worker testified that Russell Marino “told us that he didn’t need us and that if we wanted to leave we could leave, so I decided to leave.” This testimony was consistent with Sun Valley Orchards’ position that the workers decided to quit because they did not like the work.

94. The ALJ further affirmed the imposition of a \$1,350 civil monetary penalty for the failure to pay these allegedly due back wages, as well as a \$1,350 civil monetary penalty for the departure paperwork. The ALJ concluded that the DOL “reasonably considered all of the

mitigation factors.” And the ALJ concluded that it was reasonable to impose a single penalty for each of these violations—rather than multiplying the penalties by the number of employees—based on Sun Valley Orchards’ “limited experience with the H-2A program.”

95. Finally, the ALJ mostly affirmed the comparatively smaller assessment for the living conditions at the dormitory and the transportation to the fields. Here, however, the ALJ did modify the assessment in one small respect: The ALJ found that a \$450 penalty for an unclean mattress was “not a reasonable penalty” because the record evidence did not actually support a finding that the mattress was unclean.

### **Before the Administrative Review Board**

96. As required by DOL regulations, Sun Valley Orchards appealed the ALJ’s opinion to DOL’s Administrative Review Board (“ARB”).

97. On May 27, 2021, the ARB issued a decision affirming the ALJ in all respects. A copy of the ARB’s decision is attached as Exhibit C.

98. The ARB affirmed the \$198,450 civil monetary penalty and \$128,285 in back wages for the meal plan violation. The ARB found it irrelevant whether or not the failure to accurately describe the meal plan actually caused harm to the workers, as “[t]he deductions were unlawful because they were not disclosed, not because they provided a profit.” The ARB likewise concluded that “whether providing a meal plan instead of cooking facilities would affect any of the workers’ decisions to work for Respondent is irrelevant.”

99. The ARB also affirmed the decision to multiply the \$1,350 penalty for the meal plan violation by the total number of workers at the farm. The ARB reasoned that Sun Valley Orchards had “failed to honor the terms of each worker’s job contract,” with the result that it was reasonable to impose a separate penalty for each worker.

100. The ARB next affirmed the award of \$64,960 in back wages for the sale of non-alcoholic beverages. The ARB “agree[d] that the regulations generally do not require H-2A employers to provide soft drinks to its workers” but found that the sales constituted unlawful deductions from the workers’ wages because Agustin had “sold the beverages at a profit.”

101. The ARB also affirmed the award of \$8,972.60 in back wages for the sale of alcoholic beverages. The ARB found that the ALJ had correctly awarded “back wages that were an approximation of [Agustin’s] profits” under a burden shifting framework.

102. Separately, the ARB affirmed the award of \$142,728.20 in back wages and the \$1,350 monetary penalty related to the early departure of some of the workers. The ARB explained that it “gives ALJ credibility determinations ‘great deference’ if they are not ‘inherently incredible or patently unreasonable’” and found that the “ALJ’s credibility determination is substantial evidence that Respondent made ‘a rash, and perhaps illogical, decision’ to fire the workers.”

103. The ALJ had separately adopted an alternative holding that, if the workers were not actually fired, then they were constructively discharged. But the ARB did not rely on—and did not review—that part of the ALJ’s reasoning. Instead, the ARB rested this \$142,728.20 award solely on the ALJ’s credibility determination.

104. Finally, the ARB rejected the argument that agency enforcement personnel “improperly failed to raise concerns about the meal plan charges and bring an enforcement action in a timely manner,” explaining that there “is no case law that applies the doctrine of laches or estoppel to a government enforcement action” and “no regulatory requirement for the [agency’s inspectors] to notify an employer the instant a violation is suspected.”

105. On August 10, 2021, DOL sent a letter to the attorneys who represented Sun Valley Orchards in the administrative proceeding demanding “prompt payment” of the award and asserting that “interest is currently accruing.” The letter states that “[i]f Respondent does not make full payment by September 10, 2021, the Administrator [of DOL’s Wage and Hour Division] intends to take appropriate steps, including referral for debt collection or litigation.” A copy of this demand letter is attached as Exhibit D.

## CLAIMS

**Count I:**  
**DOL's H-2A Enforcement Procedures Violate Article III**  
**(5 U.S.C. § 706(2)(B))**

106. The allegations of ¶¶ 11-36 and 76-105 are incorporated here in full.

107. Article III, Section 1 of the U.S. Constitution states that the “judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” Article III further provides for various protections for the judges of these Article III courts in order to guarantee judicial independence.

108. Under Article III, this “judicial power shall extend to *all* cases, in Law and Equity, arising under . . . the Laws of the United States.”

109. The Supreme Court has held that cases implicating an individual’s “private rights” must be tried before an Article III court. *See Stern v. Marshall*, 564 U.S. 462, 495 (2011).

110. An order to pay money to the government—either in the form of a civil monetary penalty or in the form of back wages—affects a person’s private rights because it results in the confiscation of their private property.

111. Furthermore, the decision below awarded over one hundred thousand dollars in back wages because the ALJ made a credibility determination and, based on that credibility



determination, found Sun Valley Orchards breached its contractual obligation by firing nineteen of its workers. That type of breach-of-contract claim is a prototypical case involving private rights, and, as such, must be tried in an Article III court.

112. Because the proceeding here involved an attempt to force Sun Valley Orchards to pay money to the government, the proceeding implicated private rights and should have been brought before an Article III court.

113. While the Supreme Court rejected a Seventh Amendment challenge to the imposition of monetary penalties by ALJs in *Atlas Roofing Co. v. Occupational Safety & Health Review Commission*, 430 U.S. 442 (1977), that case did not involve a claim under Article III. *Atlas Roofing* holds that *if* a case is properly tried before an agency judge, then a Seventh Amendment jury need not be provided, but it does not address the circumstances under which monetary penalties may appropriately be imposed by an agency court.

114. Moreover, *Atlas Roofing* rested on the Supreme Court’s conclusion that, “when Congress creates new statutory ‘public rights,’ it may assign their adjudication to an administrative agency.” 430 U.S. at 455. That holding does not apply here, as Congress nowhere indicated that these types of violations of H-2A regulations should be adjudicated before ALJs.

115. DOL’s procedures for agency adjudication of H-2A violations violate Article III insofar as the agency has assumed for itself the power to adjudicate cases affecting employers’ private rights. Even assuming that Congress could permissibly assign such cases to agency judges under Article III (and it cannot), an executive agency cannot assume that judicial power for itself without express and specific direction from Congress.

116. This violation is compounded by DOL's position that interest begins to accrue on its award as soon as ARB issues its decision. It violates Article III for an agency court to issue a decision that is treated as if it were the equivalent of a final judgment of an Article III court.

117. Because DOL's adjudicatory procedures violate Article III, the decision below should be vacated and DOL should be enjoined from taking any action to enforce that decision.

**Count II:  
The Agency Judges In This Case Were Not Constitutionally Appointed And Enjoy  
Unconstitutional Protection Against Removal  
(5 U.S.C. § 706(2)(B))**

118. The allegations of ¶¶ 17-27, 76-82, 96-97 and 105 are incorporated here in full.

119. ALJ Timlin qualifies as an inferior officer of the United States under the Appointments Clause. *See Lucia v. SEC*, 138 S. Ct. 2044 (2018).

120. As a result, for ALJ Timlin to be constitutionally appointed, she must have been appointed either by the President, the Courts, or the Head of the Department.

121. At the time ALJ Timlin held the hearing in this case, none of those things were true. She had not been appointed by the President, by the Courts, or by the Secretary of Labor.

122. While the Secretary confirmed ALJ Timlin's appointment in December 2017, that re-appointment occurred *after* the hearing in this case. That post-hoc re-appointment does not change the fact that the hearing in this case was overseen by an improperly appointed official, as "the 'appropriate' remedy for an adjudication tainted with an appointments violation is a new 'hearing before a properly appointed' official." *Lucia*, 138 S. Ct. at 2055.

123. To the extent that DOL does not enjoy "broad authority to remove ALJs," as it has claimed, *see supra* ¶ 23, restrictions on DOL's authority to remove ALJs also separately violate the requirement that executive officials be subject to removal under *Myers v. United States*, 272 U.S. 52 (1926).

124. In addition, the ALJs who make up the ARB qualify as principal officers of the United States under the Appointments Clause. *See United States v. Arthrex, Inc.*, 141 S. Ct. 1970 (2021). This is because the ARB’s decisions are the final decisions of the DOL and are not subject to “review by a superior executive officer.”

125. Under the Appointments Clause, ARB judges must therefore be appointed by the President and confirmed by the Senate. However, ARB judges are not appointed by the President and are not confirmed by the Senate.

126. The proper remedy for these Appointments Clause violations is to vacate the proceedings below and to remand to the agency for new proceedings before constitutionally appointed governmental officials.

127. Notably, the remedy for an Appointments Clause violation (remand to the agency) is more limited than the remedy for a violation of Article III (a trial in an Article III court). If Sun Valley Orchards prevails on both the Appointments Clause claim *and* the Article III claim, then no remand to the agency would be necessary and instead Sun Valley Orchards would be entitled to a new trial in an Article III court.

**Count III:**  
**The Penalty Imposed In This Case Is An Excessive Fine**  
**(5 U.S.C. § 706(2)(B))**

128. The allegations of ¶¶ 37-60, 84-88, and 98-99 are incorporated here in full.

129. The DOL in the proceeding below imposed a \$198,450 civil monetary penalty and \$128,285 in back wages for a paperwork violation involving failure to properly describe the farm's completely legal meal plan on the farm's H-2A paperwork.

130. The DOL imposed this monetary award without any consideration for the actual amount of harm incurred by the employees. Instead, the ALJ reasoned that *any* departure from an

132. Because the DOL justified the imposition of this monetary award on grounds of deterrence, this monetary award is punitive and therefore subject to review under the Excessive Fines Clause.

134. As a remedy for this violation of the Excessive Fines Clause, the Court should hold a hearing to determine the actual harm (if any) suffered by the employees and should reduce the size of the award to an amount no more than double the actual damages incurred as a result of the meal plan violation in this case.

135. The allegations of ¶¶ 11-36 and 45-105 are incorporated here in full.

136. Congress has not authorized DOL ALJs to adjudicate cases involving alleged violations of H-2A regulations. Congress provided that “[t]he Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.” 8 U.S.C. § 1188(g)(2). But that statute does not say that the Secretary may assess penalties or secure such other relief in proceedings before agency judges.

137. Congress has specifically provided that “[w]henever a civil fine, penalty or pecuniary forfeiture is prescribed for the violation of an Act of Congress without specifying the mode of recovery or enforcement thereof, it may be recovered in a civil action.” 28 U.S.C. § 2461(a). Thus, because Congress has not expressly provided for agency adjudication of H-2A penalties, those penalties must be assessed in a civil action.

138. The APA likewise contemplates that agency adjudication must be authorized by statute. The APA provides for “substantial evidence” review of agency decisions only if those decisions were made at “an agency hearing provided by statute.” 5 U.S.C. § 706(2)(E). Otherwise, the APA provides for “trial de novo by the reviewing court.” *Id.* § 706(2)(F).

139. Because Congress has not authorized adjudication of alleged H-2A violations by agency judges, Plaintiff is entitled to “trial de novo by the reviewing court.” *Id.*

140. As a remedy for this violation, Defendants should be enjoined from enforcing the agency decision below. If Defendants wish to impose this penalty on Sun Valley Orchards, they should be required to affirmatively press their claims in an Article III court. And if Defendants do choose to affirmatively press their claims, the case should be set for trial where the issues can be decided under a *de novo* standard of review.

141. At the required *de novo* trial, Plaintiff would litigate all of the factual and legal issues decided by the agency courts in this case. Among other things, Sun Valley Orchards would seek a *de novo* determination of the appropriate penalty for the various meal plan and beverage-related violations; would seek a *de novo* determination of whether Sun Valley Orchards can be held responsible for the sales of beverages by the workers' supervisor; and would seek a *de novo* determination of whether the nineteen workers were fired or, instead, quit their jobs.

142. If Defendants decide to press forward with the necessary *de novo* trial, Sun Valley Orchards also hereby invokes its right to trial by jury under the Seventh Amendment.

**Count V:  
The Agency’s Decision Is Not Supported By Substantial Evidence, Is An Abuse of  
Discretion, and Is Not In Accordance With Law  
(5 U.S.C. § 706(2)(A), (E))**

143. The allegations of ¶¶ 45-105 are incorporated here in full.

144. Under the APA, agency action may be overturned if it is not supported by substantial evidence, if it is an abuse of discretion, or if it is otherwise not in accordance with law. As set forth above, Sun Valley Orchards disputes that any such standard should apply here. However, in the alternative, the agency decision in this case fails review even under that deferential standard.

145. First, the award of \$128,285 in back wages is not supported by substantial evidence, constitutes an abuse of discretion, and is not in accordance with law because the evidence did not support a finding that the employees were actually owed \$128,285 in back wages. Even if the employees had been afforded kitchen access as the H-2A application stated, the employees would still have had to pay to purchase food, so the entire cost of the meal plan cannot be counted as a loss to the employees.

146. Second, the \$198,450 civil monetary penalty is not supported by substantial evidence, constitutes an abuse of discretion, and is not in accordance with law insofar as the penalty vastly exceeds the amount of any harm to the workers and is also duplicative of the award of back wages. The ALJ, after hearing all the evidence, failed to determine an appropriate penalty under the regulations and instead upheld the penalty because the agency “considered” the relevant factors under the governing DOL regulation and because the agency’s analysis of those factors was “rational.” Such near-total deference to agency enforcement personnel is not an appropriate basis for a penalty decision.

147. The \$198,450 civil monetary penalty also is not supported by substantial evidence, is an abuse of discretion, and is not in accordance with law insofar as DOL failed to proffer any colorable basis to multiply the penalty by the number of employees. Both the ARB and the ALJ tried to justify that decision by noting the number of employees affected, but that rationale would apply for *every* case and every penalty. The ALJ also said that this multiplication was warranted given the seriousness of the violation, but neither the ALJ nor anyone at DOL has proffered a reasonable explanation why this paperwork violation should be considered so serious that it warrants imposing hundreds of thousands of dollars in liability.

148. Third, DOL’s decision to impose \$64,960 in back wages for the sale of non-alcoholic drinks was not supported by substantial evidence, an abuse of discretion, and not in accordance with law insofar as the penalty vastly exceeds the amount of any harm to the workers. There is no requirement to provide free beverages for H-2A workers, and, even if the drinks had been sold by an independent third party rather than the workers’ supervisor, the workers still would not have obtained the drinks for free.



149. Fourth, DOL's decision to impose \$64,960 in back wages for the sale of non-alcoholic drinks and \$8,972.60 for the sale of beer was not supported by substantial evidence, an abuse of discretion, and not in accordance with law insofar as the evidence did not support a determination that the farm ratified or approved of the supervisor's sale of those beverages.

150. Fifth, DOL's decision to impose \$142,728.20 in back wages and \$2,700 civil monetary penalties in connection with the early departure of a portion of the farm's workers was not supported by substantial evidence, an abuse of discretion, and not in accordance with law, as the employees did not actually testify that they were fired.

## REQUEST FOR RELIEF

In light of the foregoing, Plaintiff Sun Valley Orchards respectfully requests the following relief:

A. An injunction enjoining the Defendants from enforcing the decision of the Administrative Review Board or commencing any action to collect the amounts claimed in the Notice of Determination from Sun Valley Orchards;

B. A declaration that the Department's procedures for imposing civil monetary penalties and back wages for alleged violations of the H-2A program are not authorized by statute and also violate Article III;

C. A declaration that the proceedings in this case violated the Appointments Clause insofar as the ALJ and the ARB were not appointed in a constitutionally adequate manner;

D. A declaration that the monetary award in this case violated the Excessive Fines Clause of the U.S. Constitution;

E. A declaration that the decision below was not supported by substantial evidence and was otherwise contrary to law;

F. An award of Plaintiff's costs and expenses of this action, together with reasonable attorneys' fees, under the Equal Access to Justice Act or otherwise; and

G. Any other legal or equitable relief to which Plaintiff may show itself to be justly entitled.

Dated: September 8, 2021

Respectfully submitted,

---

/s/ Scott M. Wilhelm

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*Attorneys for Plaintiff Sun Valley Orchards, LLC*

## LOCAL RULE 11.2 CERTIFICATION

Pursuant to Local Civil Rule 11.2, Plaintiff Sun Valley Orchards, LLC certifies that the matter in controversy in this action is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding.

Dated: September 8, 2021

Respectfully submitted,

---

/s/ Scott M. Wilhelm

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\* *Pro hac motion to be filed*

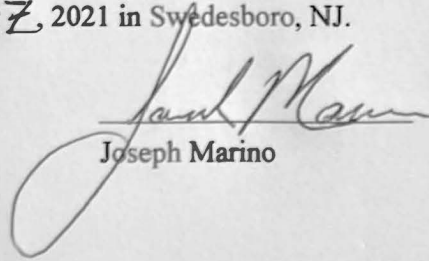
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**VERIFICATION**

I, Joseph Marino, hereby verify that I am the Managing Partner of Sun Valley Orchards, LLC. I have reviewed the foregoing Complaint and I verify under penalty of perjury that the facts set forth in the Complaint are true and correct to the best of my knowledge.

Executed on September 7, 2021 in Swedesboro, NJ.

  
Joseph Marino

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

SUN VALLEY ORCHARDS, LLC,

Plaintiff,

v.

U.S. DEPARTMENT OF LABOR, *et al.*,

Defendants.

Case No. 1:21-cv-16625-JHR-MJS

**NOTICE OF ADMINISTRATIVE RECORD**

Defendants hereby file the attached certification and index of the administrative record in this case. The full administrative record is publicly available on the Department of Labor's website. It can be found under the "Affirmative Disclosures" section in the Department of Labor's FOIA Library (<https://www.dol.gov/general/foia/readroom>) or at the following direct link: <https://www.dol.gov/sites/dolgov/files/SOL/FOIA/Final-Administrative-Record-Sun-Valley-Orchards-v-DOL.pdf>.

DATED: December 15, 2021

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

SUN VALLEY ORCHARDS, LLC,

Plaintiffs,

v.

U.S. DEPARTMENT OF LABOR, *et al.*,

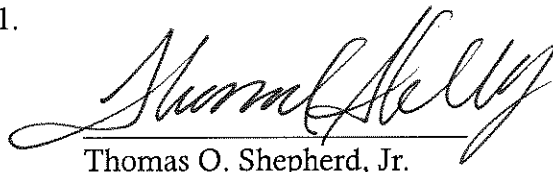
Defendants.

Case No. 1:21-CV-16625-JHR-MJS

**CERTIFICATION OF ADMINISTRATIVE RECORD**

I, Thomas O. Shepherd, Jr., Clerk of the Appellate Boards of the U.S. Department of Labor, certify, to the best of my knowledge, that the produced materials—described in the accompanying index—constitute the administrative record in the above-captioned case. It contains non-privileged materials that were considered by the U.S. Department of Labor, including the Administrative Review Board, in connection with the administrative proceedings in *Administrator, Wage and Hour Division, U.S. Department of Labor v. Sun Valley Orchards, LLC*.

Executed: December 14, 2021.



Thomas O. Shepherd, Jr.  
Clerk of the Appellate Boards  
U.S. Department of Labor

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

SUN VALLEY ORCHARDS, LLC,

Plaintiffs,

v.

U.S. DEPARTMENT OF LABOR, *et al.*,

Defendants.

Case No. 1:21-CV-16625-JHR-MJS

**ADMINISTRATIVE RECORD INDEX**

<b><u>Proceedings before the Administrative Law Judge (ALJ)</u></b> <b><u>(Case No. 2017-TAE-00003) (2017-MSPA-00002)</u></b>			<b><u>Page</u></b>
	<b>Date</b>	<b>Document Name</b>	
1.	June 22, 2016	Letter from Charlene Rachor, District Director, Wage and Hour Division, U.S. Department of Labor (“Wage and Hour Division”) to Sun Valley Orchards, LLC (“Sun Valley”) Regarding Notice of Determination of Wages Owed and Assessing Civil Money Penalties	AR – 0001
2.	July 20, 2016	Letter from Christopher Schulte, Counsel for Sun Valley, to Wage and Hour Division Requesting a Hearing Regarding Assessment of Civil Money Penalties	AR – 0009
3.	August 9, 2016	Letter from Charlene Rachor, District Director, Wage and Hour Division to Agustin Hernandez Regarding Assessment of Civil Money Penalty for Violations of the Migrant and Seasonal Agricultural Worker Protection Act (“MSPA”)	AR – 0012
4.	September 2, 2016	Letter from Christopher Schulte, Counsel for Agustin Hernandez, to Wage and Hour Division Requesting a Hearing Regarding Assessment of Civil Money Penalties	AR – 0018



5.	December 23, 2016	Letter from Jason Glick, Counsel for the Administrator, Wage and Hour Division (“Administrator”), to Chief ALJ Henley, requesting consolidation of 2017-TAE-00003 and 2017-MSPA-00002 and attaching:  1. Order of Reference for 2017-TAE-00003  2. Order of Reference for 2017-MSPA-00002  3. Notice of Appearance of Jason Glick, as Counsel for Administrator in 2017-TAE-00003  4. Notice of Appearance of Jason Glick, as Counsel for Administrator in 2017-MSPA-00002	AR – 0021
6.	January 18, 2017	ALJ Initial Notice of Hearing and Pre-Hearing Order	AR – 0030
7.	January 27, 2017	Notice of Appearance of Christopher Schulte, as Counsel for Sun Valley Orchards and Hernandez (collectively, “Respondents”)	AR – 0039
8.	January 27, 2017	Joint Motion for Revised Schedule	AR – 0042
9.	February 7, 2017	ALJ Order Granting the Parties Joint Motion for Revised Schedule	AR – 0046
10.	April 13, 2017	Administrator’s Emergency Motion for Leave to Administer Oaths Remotely in De Bene Esse Depositions	AR – 0051
11.	April 14, 2017	Respondent Sun Valley’s Opposition to Administrator’s “Emergency” Motion to Waive Rules	AR – 0074
12.	April 21, 2017	ALJ Order Granting Motion for Leave to Administer Oaths Remotely in De Bene Esse Depositions	AR – 0085
13.	April 24, 2017	Letter from Administrator to ALJ Timlin Regarding Court’s April 21, 2017 Order Granting Motion for Leave to Administer Oaths Remotely in De Bene Esse Depositions	AR – 0090
14.	April 26, 2017	Letter from Respondent to ALJ Timlin Regarding De Bene Esse Depositions	AR – 0093
15.	May 8, 2017	Letter from Administrator to ALJ Timlin Enclosing Stipulation of Dismissal and Order for 2017-MSP-00002	AR – 0096

16.	May 15, 2017	ALJ Order Approving Stipulation of Dismissal of 2017-MSP-00002	AR – 0100
<b><u>Proceedings before the Administrative Law Judge (ALJ)</u></b> <b><u>(Case No. 2017-TAE-00003)</u></b>			
17.	May 17, 2017	Joint Motion for Revised Schedule	AR – 0104
18.	May 22, 2017	ALJ Order Granting Joint Motion for Revised Schedule	AR – 0107
19.	May 23, 2017	Sun Valley's Emergency Motion for Revised Schedule	AR – 0111
20.	May 24, 2017	Administrator's Opposition to Respondent's Motion for a Third Extension to the Summary Decision Deadline	AR – 0117
21.	May 24, 2017	Sun Valley's Reply in Further Support of Emergency Motion for Revised Schedule	AR – 0124
22.	May 25, 2017	ALJ Order Granting Sun Valley's Emergency Motion for Revised Schedule	AR – 0129
23.	June 1, 2017	Administrator's Motion for Partial Summary Decision and Memorandum of Law in Support of the Administrator's Motion for Partial Summary Decision, with Enclosed Declarations and Exhibits	AR – 0133
24.	June 1, 2017	Sun Valley's Motion for Summary Decision and Memorandum of Law in Support of Sun Valley's Motion for Summary Decision, with Enclosed Declaration and Exhibits	AR – 0717
25.	June 5, 2017	Letter from Sun Valley to ALJ Timlin Submitting and Enclosing Replacement Pages for Sun Valley's Motion for Summary Decision, Exhibit 12	AR – 1169
26.	June 6, 2017	Joint Motion to Extend by One Week Certain Pre-Hearing Deadlines	AR – 1170
27.	June 8, 2017	ALJ Order Granting the Parties Joint Motion to Extend by One Week Certain Pre-Hearing Deadlines	AR – 1173
28.	June 8, 2017	Letter from Legal Assistant to the ALJ to Counsel for Sun Valley Confirming Receipt of Replacement Pages for Sun Valley's Motion for Summary Decision, Exhibit 12 and Returning the Originally Submitted Exhibit 12	AR – 1177

29.	June 15, 2017	Administrator's Memorandum of Law in Opposition to Sun Valley's Motion for Summary Decision, with Enclosed Declarations and Exhibits	AR – 1178
30.	June 15, 2017	Joint Stipulation of Agreed Facts and Joint Exhibits	AR – 1489
31.	June 15, 2017	Sun Valley's Memorandum of Law in Opposition to the Administrator's Motion for Partial Summary Decision, with Enclosed Exhibits	AR – 1668
32.	June 22, 2017	Administrator's Pre-Hearing Statement and Objections to Sun Valley's Preliminary Exhibit List	AR – 1692
33.	June 22, 2017	Sun Valley's Pre-Hearing Statement and Objections to the Administrator's Preliminary Exhibit List	AR – 1705
34.	June 27, 2017	Administrator's Pre-Hearing Motion for an Order to Compel the Hearing Appearance of Sun Valley's Employee, Agustin Hernandez	AR – 1717
35.	June 30, 2017	Parties' Stipulation Regarding Agustin Hernandez's Appearance at Trial	AR – 1725
36.	July 7, 2017	ALJ Order Denying Parties' Motions for Summary Decision	AR – 1729
37.	July 18, 2017	Hearing Transcript, Pages 1 – 165	AR – 1733
38.	July 19, 2017	Hearing Transcript, Pages 166 – 344	AR – 1899
39.	July 20, 2017	Hearing Transcript, Pages 345 – 652	AR – 2079
40.	July 21, 2017	Hearing Transcript, Pages 653 – 976	AR – 2388
41.	July 21, 2017	Administrator's Exhibits	AR – 2713
42.	July 21, 2017	Respondent's Exhibits	AR – 3906
43.	July 27, 2017	Letter from Administrator Submitting Password for Two Encrypted DVDs Provided to the Court During Hearing	AR – 4143
44.	September 25, 2017	Joint Motion to Set Post-Hearing Briefing Schedule	AR – 4144
45.	October 5, 2017	ALJ Order Granting Joint Motion to Set Post-Hearing Briefing Schedule	AR – 4147

46.	December 15, 2017	Administrator's Post-Hearing Brief	AR – 4151
47.	December 15, 2017	Sun Valley's Post-Hearing Brief	AR – 4260
48.	October 28, 2019	ALJ Decision and Order Affirming In Part and Modifying In Part the Administrator's Findings	AR – 4300
<b>Proceedings before the Administrative Review Board (ARB) (Case No. 2019-0018)</b>			
49.	November 27, 2019	Sun Valley's Petition for Review of a Decision and Order Affirming in Part and Modifying In Part the Administrator's Findings	AR – 4357
50.	December 6, 2019	Notice of Appeal and Order Establishing Brief Schedule	AR – 4372
51.	December 11, 2019	Sun Valley's Consent Motion to Extend Briefing Scheduling	AR – 4379
52.	December 19, 2019	ARB Order Granting Motion for Extension of Time to File Opening Brief	AR – 4381
53.	January 31, 2020	Sun Valley's Supporting Brief of Points and Authorities In Support of Reversal of a Decision and Order Affirming In Part and Modifying In Part the Administrator's Findings	AR – 4384
54.	February 5, 2020	Administrator's Motion for Extension of Time	AR – 4410
55.	February 14, 2020	ARB Order Granting Administrator's Motion for Extension of Time to File a Response Brief	AR – 4414
56.	March 20, 2020	Administrator's Response Brief	AR – 4417
57.	May 27, 2021	ARB Decision and Order	AR – 4488

## United States Department of Labor

Wage and Hour Division  
3131 Princeton Pike  
Building 5, Room 216  
Lawrenceville, New Jersey 08648  
Tel. (609) 538-8310  
Fax (609) 538-8314



Date: June 22, 2016

CERTIFIED MAIL RETURN RECEIPT REQUESTED: 7013 1710 0001 5882 0376

To: Sun Valley Orchards, LLC  
Attn: Mr. Russell J. Marino, Jr.  
29 Vestry Road  
Salem, New Jersey 08085

Subject: Notice of Determination of Wages Owed and Assessing Civil Money Penalties

Case Reference Number: 1765359

Dear Sir(s):

An investigation conducted by this office of Sun Valley Orchards, LLC d/b/a Sun Valley Orchards, relating to the requirements applicable to the employment of H-2A and other workers under the Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act (IRCA) (8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c) and 1186) in Flemington, New Jersey, covering the period from April 13, 2015 through October 10, 2015, disclosed that Sun Valley Orchards, LLC failed to comply with Section 218 of the INA and applicable regulations at 20 C.F.R. Part 655 and 29 C.F.R. Part 501.

As a consequence of these H-2A violations, \$369,703.22 in unpaid wages are owed to one hundred and forty seven workers. The specific violations and the wages owed associated with them are set forth in the attached matrix entitled *Summary of Violations*.

In addition, pursuant to Section 218(g)(2) of the INA and its implementing regulations at 29 C.F.R. Part 501, civil money penalties are hereby assessed in the amount of \$212,250.00. The specific violations and the civil money penalties associated with them are set forth in the attached matrix entitled *Summary of Violations*.

The full amount(s) reflected above \$581,953.22 is due and payable within 30 days to **“Wage and Hour Division, U.S. Department of Labor.”** Payments by certified check or money order should be delivered or mailed to:

U.S. Department of Labor  
Wage and Hour Division  
The Curtis Center, Suite 850 West  
170 S. Independence Mall West  
Philadelphia, PA 19106-3317

The fact that the above sanctions/remedies are being imposed for the H-2A violations found at this time does not preclude the taking of other enforcement action as is deemed appropriate by the Department of Labor, or the additional assessments of back wages or civil money penalties for violations of the H-2A provisions found at some future time. Such other enforcement action may include the pursuit of unpaid wages, injunctive action, specific performance of the work contract, and denial or revocation of temporary alien agricultural labor certification.

The dollar amount(s) reflected above constitute a debt owed to the Federal government. This debt is subject to the assessment of interest, administrative cost charges and penalties in accordance with the Debt Collection Act of 1982, and departmental policies. Interest will be assessed at the Treasury Tax and Loan Account Rate on any balance outstanding from the date of this notice, accruing from the notice date. Administrative cost charges will be assessed to help defray the Government's cost of collecting this debt. A penalty at the rate of 6% will be assessed on any portion of the debt remaining delinquent for more than 90 days. In order to avoid these charges, forward payments to the office listed above by the indicated due date.

You have the right to request a hearing on the determination that any or all of the violations occurred. Such request must be dated and in writing; must contain specific reasons why you believe that the violations for which you have been charged did not occur; and must be received within 30 days from the date of this letter by the Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-3502, Washington, D.C. 20210, with a copy to this office. The procedure for requesting a hearing is provided in Section 501.33 of Regulations, 29 CFR 501. If a request for a hearing is not received within the time specified, the determination of the Administrator shall become the final and unappealable Order of the Secretary.

We would like to call to your attention that when a request for a hearing is filed with the Wage and Hour Administrator, the matter is referred to the Chief Administrative Law Judge. A formal hearing is then scheduled for a final determination with respect to the alleged violations. At such hearing you may, by yourself or through an attorney retained by you, present such witnesses, introduce such evidence and establish such facts as you believe will support your position.

Copies of Section 218 of INA and Regulations, 20 CFR Part 655 and 29 CFR Part 501 can be viewed at [www.dol.gov](http://www.dol.gov).

Finally, we wish to point out that there may be a question as to the deductibility of civil money penalties paid as a business expense under the Internal Revenue Code. In this regard, you may wish to contact the Internal Revenue Service.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charlene Rachor".

Charlene Rachor  
District Director

cc: Regional Administrator, Mark Watson, Jr.

Enclosures: Summary of Violations



U.S. Department of Labor  
Wage and Hour Division

Case ID: 1765359  
ACT: H-2A  
EIN: 46-0542793  
Name: Sun Valley Orchards, LLC  
ER Address: 29 Vestry Road  
Salem, NJ 08085

Unpaid Wages  
Amount Due: \$369,703.22

THIS SHEET MUST BE INCLUDED WITH PAYMENT  
YOU MUST WRITE YOUR TAX ID ON YOUR CHECK

MAIL TO:

U.S. Department of Labor  
Wage and Hour Division  
The Curtis Center, Suite 850 West  
170 S. Independence Mall West  
Philadelphia, PA 19106-3317

AMOUNT PAID: \$. \_\_\_\_\_

- - Regional Office Copy - -

U.S. Department of Labor  
Wage and Hour Division

Case ID: 1765359  
ACT: H-2A  
EIN: 46-0542793  
Name: Sun Valley Orchards, LLC

ER Address: 29 Vestry Road  
Salem, NJ 08085

Amount Due  
In Civil Money  
Penalty: \$212,250.00

THIS SHEET MUST BE INCLUDED WITH PAYMENT

YOU MUST WRITE YOUR TAX ID ON YOUR CHECK

MAIL TO:

U.S. Department of Labor  
Wage and Hour Division  
The Curtis Center, Suite 850 West  
170 S. Independence Mall West  
Philadelphia, PA 19106-3317

AMOUNT PAID: \$ \_\_\_\_\_

DATE OF PMT: \_\_\_\_\_

CHECK NO. \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

- - District Office Copy - -

### Summary of Violations

Regulatory Requirement Violated	Summary Description	Unpaid Wages Owed	Civil Money Penalty
20 C.F.R. §655.122(d)(1)	<b>Employer failed to provide for or secure housing for those workers who are not reasonably able to return to their permanent residence at the end of the work day, without charge to the worker, that complies with the applicable housing safety and health standards.</b> Specifically, the investigation disclosed that the housing facility provided for workers was missing window screens and had screen doors not in good repair contributing to the insect infestation throughout the camp. Several bathroom sinks did not have hot water, refuse containers throughout facility were missing fly tight lids and multiple mattresses used by occupants for sleeping purposes were directly on the floor without a bed frame.	\$0.00	\$3,600.00
20 C.F.R. §655.122(g)	<b>Failure to comply with “meals” requirement(s).</b> Specifically, the investigation disclosed that the employer failed to provide free and convenient cooking and kitchen facilities to the workers that would enable them to prepare their own meals. The job offers for these contracts specifically stated that these facilities would be provided to workers. When the employer provides a meal plan, the job offer for the contract must state the charge for such meals, including drinks. The job offer for these contracts does not contain disclosure of meal charges and as such all meal and drink charges must be returned to the workers resulting in back wages being due to 147 affected workers.	\$234,079.28	\$198,450.00
20 C.F.R. §655.122(h)(4)	<b>Failure to provide transportation in compliance with all applicable Federal, State, or local laws and regulations between the worker’s living quarters and the employer’s worksite without cost to the worker.</b> Specifically, the investigation disclosed that three of the five vehicles used to	\$0.00	\$7,500.00

	transport workers had insufficient tread on the tires for safe operation and one had a non-functioning rear directional. Additionally, the five vehicles used to transport H-2A and corresponding workers were operated by drivers who failed to possess valid, unexpired driver's licenses recognized by the State of New Jersey for operation of same.		
20 C.F.R. §655.122(i)	<b>Failure to comply with the three-fourths guarantee.</b> Specifically, the investigation disclosed that 19 of the H-2A workers on the first contract of 2015 did not meet the $\frac{3}{4}$ guarantee since they were constructively forced to return home prior to the end of the contract period due to the myriad of misrepresentations on the contract, poor housing conditions, lack of transportation and general mistreatment by the employer and or his farm labor contractor. Additionally, 6 other workers employed in 2015 did not meet the $\frac{3}{4}$ guarantee based on a review of payroll records.	\$135,623.94	\$1,350.00
20 C.F.R. §655.122(q)	<b>Failure to comply with requirement to disclose the work contract.</b> Specifically, the investigation disclosed that the employer provided a copy of the worker contract that did not contain the actual conditions of employment. The contracts do not address the "meal plan" charges and misrepresent that free cooking facilities will be provided to the workers along with free transportation to purchase food. The kitchen facilities were locked, workers had no access to the kitchen for preparation of meals and transportation to purchase food was not provided.	\$0.00	\$0.00
20 C.F.R. §655.122(p)	<b>Failure to comply with "deductions" requirement(s).</b> Specifically, the investigation disclosed that the job offer did not specify "all" the deductions not required by law which the employer will make from workers' pay checks. The "meal plan" was not disclosed in the job offer or the contract. The back wages associated with this violation and penalty for same are addressed above in 20 CFR 655.122(g).	\$0.00	\$0.00

29 C.F.R. §501.5	The investigation disclosed that Russell J. Marino sought to have covered workers waive rights conferred under sec. 218 of the INA, regulations at 20 C.F.R. § 655, or regulations at 29 C.F.R. § 501. Specifically, the investigation disclosed that the employer and or his farm labor contractor coerced workers leaving the contracts prior to the ending date to sign a form created by Sun Valley Orchards, LLC stating that they were leaving early for "personal reasons" in an attempt to have them waive their ¾ guarantee rights as party to the contracts. Workers left the job early due to the conditions stated above in 20 CFR 655.122(i) and/or because of misrepresentations by the employer and/or his farm labor contractor.	\$0.00	\$1,350.00
Total		\$369,703.22	\$212,250.00

UNITED STATES DEPARTMENT OF LABOR  
NEW YORK, NY

\_\_\_\_\_  
IN THE MATTER OF:

SUN VALLEY ORCHARDS, LLC,  
  
Respondent.

CASE NO. 2016-TAE-\_\_\_\_\_

**ORDER OF REFERENCE**

TO: CHIEF ADMINISTRATIVE LAW JUDGE  
Office of the Administrative Law Judges  
United States Department of Labor

Pursuant to a timely request by Respondent for a hearing on the assessment of \$369,703.22 in unpaid wages and \$212,250.00 in civil money penalties, a hearing has been duly determined to be appropriate and pursuant to regulations is therefore required to be held to inquire into matters arising under the provisions of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101, *et seq.* as amended by the Immigration Reform Control Act of 1986, Pub. L. 99-603, § 301, 100 Stat. 3359, 3411 and the implementing regulations.

The unpaid wages and civil money penalties were assessed on June 22, 2016, pursuant to 29 C.F.R. § 501.16(a)(1) as a result of alleged violations of regulations, as described in the June 22, 2016 Notice of Determination, including but not limited to 20 C.F.R. § 655.122(g) (failure to comply with meals requirement), § 655.122(p) (failure to comply with requirements regarding paycheck deductions), and § 655.122(i) (failure to comply with the three-fourths guarantee). The Administrator hereby amends the June 22, 2016 Notice of Determination to allege that Respondent also violated: (1) § 655.122(p) by making unreasonable deductions from workers' paychecks, insofar as Respondent sold workers beverages and other goods at a profit and/or in violation of state law; (2) § 655.122(i) by terminating workers without cause; and 3) 29 C.F.R. §

501.5 insofar as Respondent improperly sought to have terminated workers waive their rights. The Administrator also hereby amends the June 22, 2016 Notice of Determination to allege that Respondent owes a total of \$376,697.61 in unpaid wages and \$212,250.00 in CMPs.

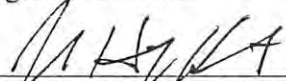
The matter is accordingly hereby referred to the Chief Administrative Law Judge for designation and hearing in accordance with the INA, its implementing regulations, and 29 C.F.R. § 501.37(a).

Enclosed hereto for filing of record pursuant to 29 C.F.R. § 501.37(a) are copies of: (1) the Notice of Determination issued to Sun Valley Orchards, LLC on June 22, 2016; and (2) Respondent's timely request for a hearing dated July 20, 2016.

Dated and signed at New York, New York, on this 23<sup>rd</sup> day of December 2016.

JENNIFER S. BRAND  
Associate Solicitor of Labor for  
Fair Labor Standards

  
JEFFREY S. ROGOFF  
Regional Solicitor

  
JACOB HEYMAN-KANTOR  
Trial Attorney

  
JASON E. GLICK  
Trial Attorney

Office of the Solicitor  
201 Varick St, Room 983  
New York, NY 10014

Attorneys for the Administrator  
Wage and Hour Division  
United States Department of Labor



UNITED STATES DEPARTMENT OF LABOR  
NEW YORK, NY

IN THE MATTER OF:

AGUSTIN HERNANDEZ,  
dba AGUSTIN HERNANDEZ FLC

Respondent.

CASE NO. 2016-MSPA-\_\_\_\_-P

**ORDER OF REFERENCE**

TO: CHIEF ADMINISTRATIVE LAW JUDGE  
Office of the Administrative Law Judges  
United States Department of Labor

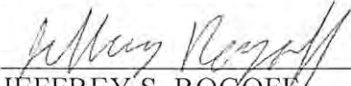
Pursuant to a timely request by Respondent for a hearing on the assessment of \$1,000.00 in civil money penalties, a hearing has been duly determined to be appropriate and pursuant to regulations is therefore required to be held to inquire into matters arising under the provisions of the Migrant and Seasonal Agricultural Worker Protection Act of 1983 (MSPA), 29 U.S.C. § 1801, *et seq.* and the applicable regulations thereunder, 29 C.F.R. Part 500. In particular, civil money penalties were assessed against Respondent as a result of violations of 29 C.F.R. § 500.75.

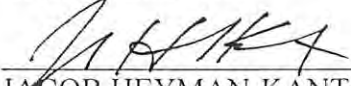
The matter is accordingly hereby referred to the Chief Administrative Law Judge for designation and hearing pursuant to Sections 503(b)(1) and 503(b)(2) of MSPA and implementing regulations, including 29 C.F.R. §§ 500.212 and 500.224(a).


Enclosed hereto for filing of record pursuant to 29 C.F.R. § 500.224(a) are: (1) an authenticated copy of the Notice of Determination issued to Respondent on August 9, 2016; and (2) a copy of Respondent's timely request for a hearing dated September 2, 2016.

Dated and signed at New York, New York, on this 25<sup>th</sup> day of December 2016.

JENNIFER S. BRAND  
Associate Solicitor of Labor for  
Fair Labor Standards

  
JEFFREY S. ROGOFF  
Regional Solicitor

  
JACOB HEYMAN-KANTOR  
Trial Attorney

  
JASON E. GLICK  
Trial Attorney

Office of the Solicitor  
201 Varick St, Room 983  
New York, NY 10014

Attorneys for the Administrator  
Wage and Hour Division  
United States Department of Labor

**U.S. Department of Labor**

Office of Administrative Law Judges  
2 Executive Campus, Suite 450  
Cherry Hill, NJ 08002

(856) 486-3800  
(856) 486-3806 (FAX)



**Issue Date: 18 January 2017**

Case No.: **2017-TAE-00003**

In the Matter of

**ADMINISTRATOR, WAGE AND HOUR  
DIVISION, U.S. DEPARTMENT OF LABOR**  
Plaintiff

v.

**SUN VALLEY ORCHARDS, LLC**  
Respondent

and

Case No.: **2017-MSP-00002**

In the Matter of

**SECRETARY OF LABOR**  
Plaintiff

v.

**AGUSTIN HERNANDEZ, d/b/a  
AGUSTIN HERNANDEZ FLC**  
Respondent

**INITIAL NOTICE OF HEARING  
AND PREHEARING ORDER**

This matter involves two actions, one under the Immigration and Nationality Act ("INA") Temporary Alien Employment H-2A visa program, 8 U.S.C. Sections 1101(a)(15)(H)(ii)(a); 1188(c), as implemented by regulations at 29 C.F.R. Part 501; and the other under the safety and health and contractor registration provisions of the Migrant and Seasonal Agricultural Workers Protection Act, 29 U.S.C. § 1801 et seq., and implementing regulations at 29 C.F.R. Part 500. These matters were consolidated for hearing.

**NOTICE OF HEARING**

The matter will be scheduled for hearing as follows:

**DATE:** Thursday, February 16, 2017<sup>1</sup>  
**TIME:** 10:00 a.m.  
**PLACE:** Office of Administrative Law Judges  
U.S. Department of Labor  
2 Executive Campus  
Suite 450  
Cherry Hill, New Jersey

A request by a party to continue the hearing or to change the place of the hearing must be made by motion. 29 C.F.R. § 18.41(b). I request that such motion be made as soon as possible and that the party who submits the motion confer with the opposing party before submitting the motion and indicate the opposing party's position in the motion. See 29 C.F.R. § 18.33(c)(3).

**PRE-HEARING CONFERENCE WITH THE PARTIES**

Presuming that the hearing will be held as currently scheduled on Thursday, February 16, 2017, a telephonic pre-hearing conference will be held on Thursday, February 2, 2017 at 3:00 p.m. (EST). Each party must be present to participate at the pre-hearing conference.<sup>2</sup> The principal purposes for the pre-hearing conference are to discuss settlement of this matter (see below); if settlement is not possible, the conference will discuss the upcoming hearing. Instructions for the pre-hearing conference are as follows: At the appointed time, phone 866-793-8793; when prompted, enter the following code: 47228682.

**PREHEARING ORDER**

This Initial Prehearing Order states the basic schedule for the proceeding and provides notice of several procedural matters and requirements. This Initial Prehearing Order does not purport to cover all applicable procedural rules and requirements, and therefore the parties must become familiar with and adhere to the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges at 29 C.F.R. Part 18, Subpart A and with the FRSA regulations at 29 C.F.R. Part 1982. These regulations, which were significantly revised effective June 18, 2015, may be found at [www.ecfr.gov](http://www.ecfr.gov) and at

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<sup>1</sup> I presume that the hearing in this matter can be concluded in one day. Nevertheless, I **DIRECT** the parties to keep the following business day **Friday, February 17, 2017**, free on their calendars, so that if a second day of hearing is necessary it can be held at that time.

<sup>2</sup> If a party is represented by counsel, counsel must attend the conference and the party may (but is not required to) also attend.

[www.oalj.dol.gov/LIBRULES.HTM](http://www.oalj.dol.gov/LIBRULES.HTM). See 80 Fed. Reg. 28,767 (May 18, 2015) (final rule); 80 Fed. Reg. 27539 (July 1, 2015) (technical corrections).

### **NOTICE OF ASSIGNMENT**

This matter has been assigned to Theresa C. Timlin, Administrative Law Judge (ALJ) of the U.S. Department of Labor, for hearing and decision. All filings in this matter should be addressed to me at the address shown in the letterhead above. Telephone inquiries should be directed to Jacqueline Kaczak, Legal Assistant, at 856-486-3800, Extension 122. When contacting my office, please note that parties, their representatives, or other interested persons must not engage in ex parte communications on the merits of a case with the judge. 29 C.F.R. § 18.14.

### **ENTRY OF APPEARANCE BY REPRESENTATIVES**

When first making an appearance, each representative must file a notice of appearance that indicates on whose behalf the appearance is made and the proceeding name and docket number. Any attorney representative must include in the notice of appearance the license registration number(s) assigned to the attorney. 29 C.F.R. § 18.22(a). An individual who is not an attorney must obtain the presiding judge's approval to serve as a representative by filing a written request to serve as a non-attorney representative that sets forth the name of the party or subpoenaed witness represented and certifies that the party or subpoenaed witness desires the representation. 29 C.F.R. § 18.22(b)(2).

### **PRE-HEARING PROCEDURE**

The following sets the schedule for the pre-hearing procedure:

- a. **DISCOVERY**. A party may seek discovery immediately upon issuance of this Initial Prehearing Order. 29 C.F.R. § 18.50(a)(1). The time for responding to any discovery requests made prior to the initial conference may be extended by the parties in the discovery plan agreed to during the initial conference referenced below. 29 C.F.R. § 18.50(a)(1)(i). Parties must complete all discovery at least **14** days prior the date of the evidentiary hearing. Parties should note that most discovery requests and responses are not filed with the presiding judge until they are used in the proceeding or the judge orders filing. 29 C.F.R. § 18.30(b)(1).
- b. **INITIAL CONFERENCE**. Within **10** days from the date of this Initial Prehearing Order, the parties must meet and confer regarding the matters set forth in 29 C.F.R. § 18.50(b)(2). The initial conference may be held in person, via telephone or video conference, or other means mutually acceptable to the parties. The representatives of record and any unrepresented parties that have appeared in the case are jointly responsible for arranging the conference. For the instant case, the parties will not be required to submit a written discovery plan to the presiding judge.

c. **INITIAL DISCLOSURES.** Within **14** days from the date of this order, and without awaiting a formal discovery request, the parties must provide to all other parties the documents and information set forth in 29 C.F.R. § 18.50(c)(1)(i).

All disclosures must be made in writing, signed, and served. The parties must supplement the disclosures when required by 29 C.F.R. § 18.53(a). A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures. 29 C.F.R. § 18.50(c)(1)(vi).

The initial disclosures are not filed with the presiding judge unless used in supporting a motion or other request, or if the judge orders filing.

d. **PRE-HEARING DISCLOSURES AND EXCHANGES.** At least **21** days before the date of the hearing the parties must:

- (1) Pre-mark and exchange copies of exhibits, along with a preliminary exhibit list. Each page of multi-page exhibits must be numbered. Exhibits must be offered at the hearing. This evidence should not be submitted to the presiding judge before trial. An extra set of exhibits for witnesses to use as they testify must be provided at trial.
- (2) Stipulate as to the authenticity and content of all documents which they agree should be made a part of the record. Each of the stipulated documents must be properly marked for identification at the bottom of each page as Joint Exhibit 1, 2, 3, etc., paginated, and either placed in a three-ring binder or be bound together in some other acceptable form. Stipulated joint exhibits are encouraged; such exhibits are to be offered at the hearing unless the presiding judge directs earlier submission.
- (3) Exchange preliminary witness lists along with a precise statement of what the testimony of each will prove.
- (4) Designate expert witnesses on the witness list, with a brief statement concerning the field of expertise and proposed testimony. Any testifying expert must have submitted a written report, which is to be marked and exchanged as indicated above. 29 C.F.R. § 18.50(c)(2).
- (5) Confer on agreed facts and execute "Joint Stipulation of Agreed Facts" as appropriate. 29 C.F.R. § 18.83.

Objections to any of the proposed testimony or documentary evidence exchanged must be filed within 7 days from the date of receipt of the pre-hearing exchange of materials. **Failure without good cause to file an objection within the prescribed period may result in a waiver of all objections with respect to the introduction of the testimonial or documentary evidence.**



e. **PREHEARING STATEMENT.** At least **21** days before the date of the hearing each party must complete and deliver to the other parties *and the presiding judge* a Prehearing Statement containing all the information and the signature required by 29 C.F.R. § 18.80.

### **MOTIONS AND OTHER REQUESTS FOR RELIEF**

All written motions and other requests for relief from the presiding judge, including requests for extensions of time or continuances, must be submitted in motion form, with a caption, and not by letter. The motion or other request must conform to the rules governing captions and other matters of form. 29 C.F.R. §§ 18.33, 18.34 and 18.35.

If the motion is opposed, the motion must contain a declaration that the parties have made a good faith effort but were unable to resolve the dispute giving rise to the motion before filing such motions with the presiding judge. Any motion failing to contain the required declaration may be summarily denied. The declaration is not required for unrepresented parties and for motions specified in 29 C.F.R. § 18.33(c)(3).

Motions for Summary Decision are required to be filed at least **21 days** prior to the date fixed for formal hearing. 29 C.F.R. § 18.72.

### **PUBLIC HEARING**

OALJ conducts public hearings. 29 C.F.R. § 18.81. A presumption of public access applies to the entire hearing process. Transcripts and documents filed with OALJ are subject to inspection under the Freedom of Information Act regardless of whether those documents are moved into evidence at the formal hearing. The judge's final decision and selected orders are published on the agency website. **Parties are responsible for redacting filings and exhibits as required under 29 C.F.R. § 18.31.** Failure to redact or to obtain an order sealing a record prior to filing with the judge may result in waiver of protection from disclosure of information contained in those documents. For good cause, the judge may order protection of material pursuant to 29 C.F.R. §§ 18.85 (privileged, sensitive or classified material) and 18.52 (protective orders). In limited circumstances authorized by law, the judge may close a hearing. 29 C.F.R. § 18.81(a). See also 29 C.F.R. § 70.26(b) (designation of confidential business information at time of submission or reasonable time thereafter).

### **SUBPOENAS**

Requests for subpoenas must be in writing and comply with the provisions of 29 C.F.R. § 18.56. Information about obtaining subpoenas can be found at [www.oalj.dol.gov/SUBPOENAS.HTM](http://www.oalj.dol.gov/SUBPOENAS.HTM). Parties, and not OALJ, are responsible for preparing and serving subpoenas upon any witness and for tendering any required costs and expenses.



### **ALTERNATIVE DISPUTE RESOLUTION**

OALJ offers two forms of court-sponsored alternative dispute resolution: settlement judges or mediation by a neutral. See 29 C.F.R. § 18.13 (settlement judge rule); Alternative Dispute Resolution Act of 1996, 5 U.S.C. §§ 572 and 573 (agency may appoint employee as a neutral to conduct mediation). For additional information see [www.oalj.dol.gov/SETTLEMENT\\_JUDGE.HTM](http://www.oalj.dol.gov/SETTLEMENT_JUDGE.HTM). Any requests for appointment of a settlement judge or a mediator in this case must be a joint request, submitted in writing to the District Chief Judge at the address and fax number above.

### **SETTLEMENT AGREEMENTS**

Any settlement agreement must be filed with the presiding judge for review and approval. 29 C.F.R. § 1982.111(d)(2).

### **TRANSLATORS AND INTERPRETERS; REASONABLE ACCOMMODATIONS**

The parties must advise the undersigned promptly if a translator or an interpreter will be needed at the hearing. Parties may provide their own translator or interpreter or may request provision of a translator or an interpreter by the Department of Labor. Parties needing assistance with translation or interpretation services, or a reasonable accommodation, must inform the undersigned no less than 30 days before the date of the hearing.

### **LEGIBLE COPIES**

The parties are directed to conduct a review of all documents which are to be made a part of the formal record. Any documents received which are not clearly legible will have limited evidentiary value, and may be given no weight.

### **HEARING EXHIBITS**

1. All documentary evidence to be offered at the hearing shall be presented in a bound volume, individually numbered by tab, and sequentially numbered overall in the lower right corner of each page. Each volume shall be limited to approximately 100 pages.
2. Exhibits shall be paginated and marked appropriately as follows: Prosecuting Party - "PX \_\_\_\_" and Respondent - "RX \_\_\_\_."
3. The exhibits shall be accompanied by an exhibit index containing a description of each exhibit by tab number/letter, date and author, immediately followed by a statement of **precisely** (not generally) what the exhibit proves (if the exhibit exceeds 5 pages, the page(s) on which such proof appears shall be specified, and the relevant material highlighted).
4. Attached to each exhibit containing handwritten or difficult to read entries shall

be a typed version of any such entry. A party disagreeing with the interpretation of the entry may submit its own typed version at the hearing.

5. A curriculum vitae or equivalent qualifications summary shall be submitted for any expert witness as part of the documentary evidence. No oral direct evidence on the expert's qualifications will be permitted absent a showing of special need.
6. The parties are encouraged to submit exhibits jointly to the greatest extent possible. Exhibits submitted jointly shall be denominated "JX \_\_\_\_," sequentially by letter (not number). If the parties cannot agree on the content of the index, each party may submit a separate index to the Joint Exhibits in which the party describes each exhibit and states what the exhibit proves, as set forth in subparagraph 3, above.
7. No post-hearing deposition testimony or other evidence of any kind shall be accepted, except for good cause shown and with my specific authorization.

#### **ELECTRONIC AND DIGITAL EVIDENCE**

The parties are informed that the hearing room is not equipped for the viewing of evidence in electronic or digital formats. A party who intends to submit evidence in any electronic or digital form must submit three (3) copies to me (in addition to the copy exchanged with opposing counsel) and must coordinate in advance with my office for guidance on readable formats. A party who submits evidence in a non-paper format is also responsible for providing me a means to refer to such evidence during the hearing (e.g., laptop computer).

#### **CONSEQUENCES OF FAILURE TO COMPLY**

Failure to comply with the provisions of this prehearing order may result in the imposition of sanctions including, but not limited to, the following: the exclusion of evidence, the dismissal of the claim, the entry of a default judgment, or the removal of the offending representative from the case. 29 C.F.R. §§ 18.12(b), 18.35(c), 18.57 and 18.87.

**SO ORDERED.**



Digitally signed by THERESA TIMLIN  
DN: CN=THERESA TIMLIN,  
OU=JUDGE, O=US DOL Office of  
Administrative Law Judges, L=CHERRY  
HILL, S=NJ, C=US  
Location: CHERRY HILL NJ

**THERESA C. TIMLIN**  
Administrative Law Judge

Cherry Hill, New Jersey

**SERVICE SHEET**

Case Name: **WAGE\_AND\_HOUR\_DIVISI\_v\_SUN\_VALLEY\_ORCHARDS\_\_**

Case Numbers: **2017TAE00003, 2017MSP00002**

Document Title: **INITIAL NOTICE OF HEARING AND PREHEARING ORDER**

I hereby certify that a copy of the above-referenced document was sent to the following this 18th day of January, 2017:



Digitally signed by JACQUELINE KACZAK  
DN: CN=JACQUELINE KACZAK,  
OU=LEGAL ASSISTANT, O=US DOL Office  
of Administrative Law Judges, L=CHERRY  
HILL, S=NJ, C=US  
Location: CHERRY HILL NJ

**JACQUELINE KACZAK**  
**LEGAL ASSISTANT**

Administrator  
Wage and Hour Division  
U. S. Dept. of Labor  
Room S-3502, FPB  
200 Constitution Ave., N.W.  
WASHINGTON DC 20210  
*{Hard Copy - Regular Mail}*

Secretary of Labor  
c/o Administrative Review Board  
U. S. Department of Labor  
Suite S-5220, FPB  
200 Constitution Ave., N.W.  
WASHINGTON DC 20210  
*{Hard Copy - Regular Mail}*

Regional Administrator  
U. S. Department of Labor/ESA  
Wage and Hour Division  
The Curtis Center, Room 850 West  
170 S. Independence Mall West  
PHILADELPHIA PA 19106  
*{Hard Copy - Regular Mail}*

District Director  
U.S. Department of Labor  
ESA Wage and Hour Division  
3131 Princeton Pike  
Building 5, Room 216  
LAWRENCEVILLE NJ 08648  
*{Hard Copy - Regular Mail}*

Associate Solicitor  
Division of Fair Labor Standards  
U. S. Department of Labor  
Room N-2716, FPB  
200 Constitution Ave., N.W.  
WASHINGTON DC 20210  
*{Hard Copy - Regular Mail}*

Jacob Heyman-Kantor, Esq.  
U.S. Department of Labor  
Office of the Solicitor  
201 Varick Street  
Room 983  
NEW YORK NY 10014  
*{Hard Copy - Express (UPS)}*

**SERVICE SHEET** continued (2017TAE00003 Notice of Hearing) Page: 2

Jason Glick, Esq.  
U.S. Department of Labor  
Office of the Solicitor  
201 Varick Street  
Room 983  
NEW YORK NY 10014  
*{Hard Copy - Express (UPS)}*

Sun Valley Orchards, LLC  
Attn: Mr. Russell J. Marino, Jr.  
29 Vestry Road  
SALEM NJ 08085  
*{Hard Copy - Regular Mail}*

Christopher Schulte, Esq.  
CJ Lake, LLC  
525 Ninth Street, N.W.  
Suite 800  
WASHINGTON DC 20004  
*{Hard Copy - Express (UPS)}*

Agustin Hernandez  
Agustin Hernandez FLC  
744 Tomlin-Station Road  
MULLICA HILL NJ 08062  
*{Hard Copy - Express (UPS)}*

Free State Reporting Inc  
1378 Cape St. Clair Road  
ANNAPOLIS MD 21409  
*{Hard Copy - Regular Mail}*

**U.S. Department of Labor  
Office of the Solicitor**

201 Varick Street, Room 983  
New York, NY 10014  
Tel: (646) 264-3687  
Fax: (646) 264-3660  
Email: [glick.jason.e@dol.gov](mailto:glick.jason.e@dol.gov)



Reply to the Attention of:

Jason E. Glick, Esq.

May 8, 2017

**Via First Class Mail**

Hon. Theresa C. Timlin, Administrative Law Judge  
Office of Administrative Law Judges  
2 Executive Campus, Suite 450  
Cherry Hill, NJ 08002

**Re: *In re Agustin Hernandez d/b/a Agustin Hernandez FLC*, 2017-MSP-00002**


Dear Judge Timlin:

Counsel for the Secretary and for Respondent Agustin Hernandez have executed a stipulation dismissing the above-captioned case with prejudice, on the terms set out fully in the enclosed Stipulation of Dismissal and Order. This stipulation applies only to the above-captioned case.

Respectfully submitted,

Jeffrey S. Rogoff  
Regional Solicitor

By:

  
\_\_\_\_\_  
Jason E. Glick  
Attorney





UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
CHERRY HILL, NEW JERSEY

\*\*\*\*\*

IN THE MATTER OF:  
Secretary of Labor

Plaintiff,

v.

Agustin Hernandez, d/b/a  
Agustin Hernandez FLC

Respondent.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

Case No. 2017-MSP-00002

\*\*\*\*\*

**STIPULATION OF DISMISSAL AND ORDER**

The parties, Respondent Agustin Hernandez, d/b/a Agustin Hernandez FLC ("Respondent") and the Secretary of Labor, U.S. Department of Labor ("Secretary") hereby stipulate and agree that:

1. On August 9, 2016, the U.S. Department of Labor, Wage and Hour Division issued a Notice of Determination alleging that Respondent violated 29 C.F.R. § 500.75 during the period April 5, 2015 to October 11, 2015, and assessing a civil money penalty.

2. On September 2, 2016, Respondent filed a timely request for a hearing with respect to the allegations of violations set forth in the August 9, 2016 Notice of Determination.

3. The U.S. Department of Labor, Wage and Hour Division, by and through the Secretary, hereby agrees to withdraw its August 9, 2016 Notice of Determination.

4. Respondent hereby agrees to withdraw its September 2, 2016 hearing request.

5. The parties hereby agree to dismiss this case, No. 2017-MSP-00002, with prejudice.

6. The parties hereby waive any further procedural steps before an Administrative Law Judge of the U.S. Department of Labor regarding this matter.

7. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

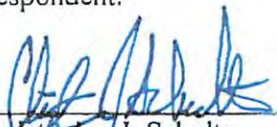
DATED: May 5, 2017

DATED: May 5, 2017

For the Respondent:

For the Secretary:

BY:

  
Christopher J. Schulte  
CJ Lake, LLC  
525 Ninth St., NW, Suite 800  
Washington, DC 20004

Tel. 202.465.3000  
Fax 202.347.3664  
Cschulte@cj-lake.com

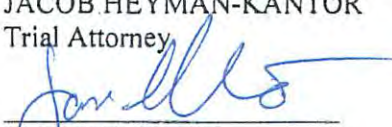
Attorney for Respondent Hernandez

JENNIFER BRAND  
Associate Solicitor for Fair Labor  
Standards

JEFFREY S. ROGOFF  
Regional Solicitor

JACOB HEYMAN-KANTOR  
Trial Attorney


By:

  
JASON E. GLICK  
Trial Attorney

Office of the Solicitor  
201 Varick St, Room 983  
New York, NY 10014  
Tel.: 646.264.3687  
Fax: 646.264.3660  
Glick.Jason.E@dol.gov

Attorneys for the Secretary  
United States Department of Labor

SO ORDERED:

  
HONORABLE THERESA C. TIMLIN  
Administrative Law Judge

5/11/2017  
Date




CERTIFICATE OF SERVICE

I, Jason E. Glick, hereby certify that the foregoing letter and enclosed signed Stipulation of Dismissal and Order were served this 8th day of May 2017 upon the person named below at the e-mail address listed below:

Christopher J. Schulte  
cschulte@cj-lake.com

CJ Lake, LLC  
525 Ninth Street, NW  
Suite 800  
Washington, DC 20004

Mr. Schulte has consented in writing to service by e-mail in this case.

  
\_\_\_\_\_  
Jason E. Glick  
Attorney

**U.S. Department of Labor**

Office of Administrative Law Judges  
2 Executive Campus, Suite 450  
Cherry Hill, NJ 08002

(856) 486-3800  
(856) 486-3806 (FAX)



**Issue Date: 15 May 2017**

Case No.: **2017-MSP-00002**

In the Matter of

**SECRETARY OF LABOR**  
Plaintiff

v.

**AGUSTIN HERNANDEZ, d/b/a**  
**AGUSTIN HERNANDEZ FLC**  
Respondent

**ORDER APPROVING STIPULATION OF DISMISSAL**

This matter is an enforcement proceeding under the Migrant and Seasonal Agricultural Worker Protection Act of 1983 ("MSPA"), 29 U.S.C. §1801, *et seq.*, and the implementing regulations at 29 C.F.R. Part 500. The matter was docketed by the U.S. Department of Labor, Office of Administrative Law Judges on December 28, 2016. A hearing is scheduled for July 18, 2017 in Cherry Hill, New Jersey.<sup>1</sup>

Under cover letter dated May 8, 2017, counsel for Plaintiff forwarded to the undersigned the parties Stipulation of Dismissal and Order ("Stipulation"). The parties, Respondent Agustin Hernandez, d/b/a Agustin Hernandez FLC ("Respondent") and the Secretary of Labor, U.S. Department of Labor ("Secretary") hereby stipulate and agree that:

1. On August 9, 2016, the U.S. Department of Labor, Wage and Hour Division issued a Notice of Determination alleging that Respondent violated 29 C.F.R. § 500.75 during the period April 5, 2015 to October 11, 2015, assessing a civil money penalty.
2. On September 2, 2016 Respondent filed a timely request for hearing with respect to the allegations of violations set forth in the Notice of Determination dated August 9, 2016.

---

<sup>1</sup> On December 23, 2016, pursuant to 29 C.F.R. § 18.43, the Administrator requested that this proceeding be consolidated for hearing with Case No.: 2017-TAE-00003, Sun Valley Orchards, LLC.

3. The U.S. Department of Labor, Wage and Hour Division, by and through the Secretary, hereby agree to withdraw its Notice of Determination dated August 9, 2016.
4. Respondent hereby agrees to withdraw its hearing request of September 2, 2016.
5. The parties hereby agree to dismiss this case, with prejudice.
6. The parties hereby waive any further procedural steps before an Administrative Law Judge of the U.S. Department of Labor regarding this matter.
7. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

Based on the parties' Stipulation, I hereby **DISMISS** this matter, with prejudice.

SO ORDERED.



Digitally signed by THERESA TIMLIN  
DN: CN=THERESA TIMLIN,  
OU=JUDGE, O=US DOL Office of  
Administrative Law Judges, L=CHERRY  
HILL, S=NJ, C=US  
Location: CHERRY HILL NJ

**THERESA C. TIMLIN**  
Administrative Law Judge

Cherry Hill, New Jersey

**SERVICE SHEET**

Case Name: **WAGE AND HOUR DIVISION v. AGUSTIN HERNANDEZ FLC ET AL.**

Case Number: **2017MSP00002**

Document Title: **ORDER APPROVING STIPULATION OF DISMISSAL**

I hereby certify that a copy of the above-referenced document was sent to the following this 15th day of May, 2017:



Digitally signed by JACQUELINE KACZAK  
DN: CN=JACQUELINE KACZAK,  
OU=LEGAL ASSISTANT, O=US DOL Office  
of Administrative Law Judges, L=CHERRY  
HILL, S=NJ, C=US  
Location: CHERRY HILL NJ

**JACQUELINE KACZAK**  
LEGAL ASSISTANT

Associate Solicitor  
Division of Fair Labor Standards  
U. S. Department of Labor  
Room N-2716, FPB  
200 Constitution Ave., N.W.  
WASHINGTON DC 20210  
*{Hard Copy - Regular Mail}*

Jacob Heyman-Kantor, Esq.  
U.S. Department of Labor  
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NEW YORK NY 10014  
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Administrator  
Wage and Hour Division  
U. S. Dept. of Labor  
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200 Constitution Ave., N.W.  
WASHINGTON DC 20210  
*{Hard Copy - Regular Mail}*

Jason E Glick, Esq.  
U.S. Department of Labor  
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NEW YORK NY 10014  
*{Hard Copy - Regular Mail}*

Regional Solicitor  
U. S. Department of Labor  
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NEW YORK NY 10014  
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District Director  
U.S. Department of Labor  
ESA Wage and Hour Division  
3131 Princeton Pike  
Building 5, Room 216  
LAWRENCEVILLE NJ 08648  
*{Hard Copy - Regular Mail}*

**SERVICE SHEET** continued (2017MSP00002 Hearing Cancelled) Page: 2

Agustin Hernandez  
Agustin Hernandez FLC  
744 Tomlin-Station Road  
MULLICA HILL NJ 08062  
*{Hard Copy - Regular Mail}*

Christopher J Schulte, Esq.  
CJ Lake, LLC  
525 Ninth Street, N.W.  
Suite 800  
WASHINGTON DC 20004  
*{Hard Copy - Regular Mail}*

Free State Reporting Inc  
1378 Cape St. Clair Road  
ANNAPOLIS MD 21409  
*{Hard Copy - Regular Mail}*

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
CHERRY HILL, NEW JERSEY

In the Matter of )  
)  
)

ADMINISTRATOR, WAGE AND HOUR  
DIVISION, U.S. DEPARTMENT OF LABOR  
Plaintiff )

v. )  
)

SUN VALLEY ORCHARDS, LLC  
Respondent. )  
)

Case No.: 2017-TAE-00003

**Joint Stipulation of Agreed Facts And Joint Exhibits**

The Administrator and Sun Valley Orchards, LLC ("Sun Valley") have conferred in a good faith effort to stipulate to the facts to the fullest extent possible. The following are the parties' stipulated facts:

1. Sun Valley, a New Jersey farm, employs both foreign nationals working on H-2A visas ("H-2A workers") as well as a number of non-H-2A employees, including non-H-2A employees engaged in corresponding employment ("domestic workers"). These workers' duties include picking asparagus, peppers, and other crops.

2. Sun Valley was founded as a limited liability corporation in 2012 and is owned by Russell Marino Jr., Joe Marino, Harry Marino, and Russell Marino Sr.

3. Sun Valley took over the farming operation formerly known as Marino Brothers, Inc.

4. Marino Brothers, Inc. did business under the trade name "Sun Valley Orchards."

5. Marino Brothers, Inc. was owned by Russell Marino Sr., Sebastien Marino, and Harry Marino.



6. Marino Brothers Inc. employed Agustin Hernandez and Russell Marino Jr. (among others).

*Sun Valley applies to participate in the H-2A program for 2015*

7. To obtain workers for the period of April 13, 2015 to October 10, 2015 (the “2015 growing season”), Sun Valley filed two applications for Temporary Employment Certification ETA Form 9142 (“TEC”) and two Agricultural and Food Processing Clearance Orders (ETA Form 790) (“job order”).

8. Sun Valley filed a job order for the period of April 13, 2015 to October 10, 2015. The Department of Labor subsequently approved this job order. Attached hereto as Joint Exhibit 1 is a true and accurate copy of that job order.

9. Sun Valley also filed a TEC for this same time period. The Department of Labor subsequently approved this TEC. Attached hereto as Joint Exhibit 2 is a true and accurate copy of that TEC.

10. Sun Valley also filed a job order for the period of June 1, 2015 to October 10, 2015. The Department of Labor subsequently approved this job order. Attached hereto as Joint Exhibit 3 is a true and accurate copy of that job order.

11. Sun Valley also filed a TEC for the period of June 1, 2015 to October 10, 2015. The Department of Labor subsequently approved this TEC. Attached hereto as Joint Exhibit 4 is a true and accurate copy of that TEC.

12. After these TECs and job orders were approved, Sun Valley hired H-2A workers.

13. During 2015 Sun Valley qualified as an employer within the definition of 20 C.F.R. § 655.103(b).



14. During 2015, Agustin Hernandez was not an employer within the definition of 20 C.F.R. § 655.103(b).

*The 2015 growing season at Sun Valley*

15. Attached hereto as Joint Exhibit 5 is a chart listing the 96 H-2A workers and 51 domestic workers that Sun Valley employed during the 2015 growing season.

16. In the job orders, Sun Valley promised to pay these employees \$11.29 per hour or at a piece rate, whichever was higher.

17. Attached as Joint Exhibit 6 is a true and accurate copy of Sun Valley's employee roster for the 2015 growing season.

18. During the 2015 growing season, Agustin Hernandez supervised Sun Valley's H-2A and domestic workers and selected the drivers to transport Sun Valley's H-2A and domestic workers from the housing facility to the agricultural fields.

19. During the 2015 growing season, Sun Valley's H-2A workers, and many of its domestic workers, lived at Sun Valley's housing facility, which is located at 1321 Route 45 South, Swedesboro, NJ 08085.

20. This housing facility was built before April 3, 1980, and includes (among other things) bedrooms, a bathroom facility, and (in an adjacent building with a separate entrance) a kitchen.

21. During the 2015 growing season, Sun Valley paid for the utilities for this kitchen (including gas, electricity, and water), and provided various appliances for the kitchen, including stoves, freezers, a microwave, and refrigerators.

22. During the 2015 growing season, 139 of Sun Valley's H-2A and domestic workers purchased meals prepared in Sun Valley's kitchen and paid Agustin Hernandez between \$75 and \$80 a week for these meals.

23. During the 2015 growing season, many Sun Valley H-2A and domestic workers paid Agustin Hernandez for soft drinks, energy drinks, and snacks, among other things.

24. During the 2015 growing season, to the parties' knowledge no money was withheld from any H-2A or domestic worker's pay checks by Sun Valley for meals, drinks, or any other items.

25. Other than payments to Hernandez, to the parties' knowledge none of the H-2A workers or domestic workers paid Sun Valley for meals, drinks, or any other items.

26. During the 2015 growing season, Hernandez did not have a license to sell beer or cigarettes.

H-2A employees whose work with Sun Valley ended mid-season

27. Attached as Joint Exhibit 7 is a chart listing workers who last worked at Sun Valley on or before May 7, 2015.<sup>1</sup>

28. Jose D. Islas Larraga last worked at Sun Valley on June 9, 2015.<sup>2</sup>

29. On or about August 8, 2015, Sun Valley terminated the employment of Miguel A. Elizondo Soto; Luis A. Luna Gonzalez; Jose L. Silva Lopez; Dario Morales Acosta; and Rodrigo Raya Tapia. These workers' last day of work was on or before August 4, 2015.

30. Sun Valley asked workers whose work at Sun Valley ended before the end of the season to complete a worker departure form.

31. The top half of this form was in English and the bottom half was in Spanish.

32. The workers were instructed to retain the bottom half and return the top half.

---

<sup>1</sup> The parties dispute whether these workers employment ended because they were constructively discharged, terminated, or voluntarily quit.

<sup>2</sup> The parties also dispute the reasons that this worker stopped working at Sun Valley Orchards.

33. Attached as Joint Exhibit 8 are true and accurate copies of the English portions of the worker departure forms signed by Sun Valley workers around the time that their work was ending.

34. Attached as Joint Exhibit 9 is a true and accurate copy of a worker departure form, including English and Spanish portions, dated August 8, 2015.

35. Worker departure forms were distributed to H-2A workers who departed before the end of the season around the time that these workers' work ended.

*Investigation by the Administrator and Subsequent Procedural History*

36. During the 2015 growing season, the Wage and Hour Division of the U.S. Department of Labor, including Wage Hour investigators John Crudup and Jose Perez, investigated Sun Valley to determine (among other things) whether the farm was in compliance with H-2A regulations.

37. During their investigation, Wage Hour inspected the housing facility and five Sun Valley buses, interviewed Sun Valley workers and drivers, and met with Sun Valley owners and with Agustin Hernandez.

38. On June 22, 2016, the Administrator issued a determination letter alleging that Sun Valley violated certain H-2A regulations and assessing \$369,703.22 in back wages and \$212,250.00 in civil money penalties ("CMPs") against Sun Valley.

39. On July 20, 2016, Sun Valley filed a timely hearing request.

40. On December 23, 2016, the Administrator filed an Order of Reference referring the matter to the Office of Administrative Law Judges. The Administrator also amended the determination letter by adjusting the amounts sought to \$376,697.61 in back wages and \$212,250.00 in CMPs, and added additional findings and bases for the Administrator's back wage and CMP assessment.

41. Attached as Joint Exhibit 10 is a true and accurate copy of the Order of Reference, which includes true and accurate copies of the underlying determination letter and hearing request referenced in paragraphs 38-40.

42. During the course of discovery in this matter, the Administrator took depositions of six H-2A workers. In accordance with 29 C.F.R. § 18.55(a), the parties stipulate that true and accurate transcripts or videos of the depositions, or portions thereof, may be used at the hearing to the extent that doing so would be admissible under the applicable rules of evidence as if the deponent were present and testifying at the hearing

**Joint Exhibit 5**  
**H-2A and domestic workers employed by Sun Valley during 2015**

	<b>Last Name</b>	<b>First Name</b>
1	Aguilar Caldera	Eliseo
2	Aguilar Marques	Irineo
3	Aguilar Soto	Trinidad
4	Aponte Rodriguez	Daniel
5	Aponte Rodriguez	Johnny
6	Arias	Baltazar
7	Arias	Ricardo
8	Arias Maya	German
9	Arroyo Alonso	Nicolas
10	Asencion Flores	Eusebio
11	Baltazar	Cheguez J
12	Blanco Aguilar	Oscar J
13	Carrera Cortez	Martin
14	Carrera Hernandez	Camilo
15	Castaneda	David
16	Cervantes Aguilar	Griseldo
17	Cervantes Cumplido	Rafael
18	Cervantes Ramirez	Carlos
19	Chargoy Escudero	Pedro
20	Cinta Tegoma	Hugo L
21	Cruz	Delmar
22	Cruz Lopez	Javier
23	Cruz Perez	Antonio
24	Cruz Reyes	Carlos
25	Cruz Reyes	Jose D
26	Cuellar Romero	Gustavo
27	Cumplido Aguilar	Juan M
28	De La Cruz Martinez	Eduardo
29	De La Cruz Morales	Rogelio
30	Del Angel Salas	Geovani de Jesus
31	Dominguez Cruz	Humberto
32	Elizondo Soto	Miguel A
33	Escovar	Jorge
34	Flores Flores	David
35	Flores Montero	Gilberto
36	Franco Varga	Oscar R
37	Galindo Cervantes	Honorato

38	Galindo Cervantes	Juan E
39	Galindo Reyes	Alfredo
40	Garcia Cardos	Erick G
41	Garcia Cervantes	Norberto
42	Garcia Delgado	Manuel
43	Garcia Dominguez	Hector M
44	Garcia Olarte	Demetrio
45	Garcia Ramirez	Omar
46	Garcia Raya	Jorge L
47	Godinez Barcenaz	Adan
48	Gomes	Francisco J
49	Gomez Lopez	Fernando
50	Gonzalez Jaimes	Amadeo
51	Gonzalez Jaimes	Gaspar
52	Grijalva Ramos	Celso
53	Guillen Segovia	Armando
54	Hernandez	Fabian
55	Hernandez	Francisco
56	Hernandez	Roberto
57	Hernandez Hernandez	Felix Arturo
58	Hernandez Perez	Herlindo
59	Hernandez Perez	Jeronimo
60	Hernandez Perez	Rufino
61	Hernandez Sanchez	Ines
62	Hernandez Zavala	Luis A
63	Hurtado Olvera	Martin
64	Ibanez	Francisco A
65	Islas Larraga	Jose D
66	Jacobo Ramirez	Jose M
67	Jimenez	Raul
68	Jimenez Osornio	Jose Erick
69	Juarez Hernandez	Javier
70	Justiniano Soto	Carlos R
71	Lara Amador	Reymundo
72	Lara Amador	Vicente
73	Leon Hernandez	Ruben
74	Lopez	Ranulfo
75	Lopez Carrera	Modesto E
76	Lopez Carrera	Yreneo C
77	Lopez Cruz	Ricardo
78	Lopez Cruz	Victor
79	Lopez Lopez	Conrado
80	Lopez Lopez	Domingo
81	Lopez Mendez	Jose
82	Lugo Morales	Gabriel



83	Luna Gonzalez	Luis A
84	Magallanes Hernandez	Carlos
85	Maldonado Maldonado	Marco G
86	Marquez Perez	Gustavo
87	Martinez Antonio	Valentin
88	Martinez Areliano	Efrain
89	Martinez Arellano	Cesar
90	Martinez Cervantes	Manuel
91	Martinez Paulino	Jose
92	Mendez Hernandez	Cristian
93	Mendoza Soto	Esteban
94	Morales Acosta	Dario
95	Ortega Vargas	Marcelo
96	Perez	Ramiro
97	Perez	Tomas
98	Perez Lopez	Domingo
99	Perez Vasquez	Conrado
100	Pinon	Jose L
101	Pinon Rangel	Francisco J
102	Pinon Roque	Omar
103	Ramirez	Lorenzo Domingo
104	Ramirez	Matias
105	Ramirez Chavez	Juan
106	Raya	Jose
107	Raya Garcia	Adan
108	Raya Tapia	Rodrigo
109	Reyes	Delfino Antonio
110	Reynoso	Adonias O
111	Reynoso Rodriguez	Elias
112	Reynoso Rodriguez	Jose L
113	Rios Bautista	Mateo
114	Rodriguez Jaimes	Armando
115	Rodriguez Velasquez	Jeines
116	Rodriguez Velasquez	Salvador
117	Romero Arrendondo	Alejandro
118	Rosales Lopez	Lucio
119	Sanchez Dolores	Venustiano
120	Sanchez Villasenor	Alejandro
121	Sanchez Villasenor	Saul
122	Santi Lopez	Carmelino
123	Santiago Mendoza	Isau
124	Santis Morales	Francisco
125	Santiz Perez	Rogelio
126	Santos Urquiza	Juan
127	Santoyo Castro	Ricardo



128	Silva	Alfredo L
129	Silva Llaguno	Andres
130	Silva Llaguno	Carlos
131	Silva Lopez	Jose L
132	Sonalo Guerrero	Tomas
133	Soto Gurrola	J Santos
134	Tapia Barbosa	Armando
135	Vallejo Rojas	Nocolas
136	Vargas	Diego
137	Vargas	Juan
138	Vargas Vargas	Octavio
139	Vargas Venegas	Alvaro
140	Vazquez Desion	Adrian
141	Velasquez	Esdras
142	Velasquez	Leny
143	Villasenor	Frediberto
144	Villasenor Vargas	Jose M
145	Zavala Almanza	Pedro
146	Zavala Jaimes	Humberto
147	Zeveleta Hernandez	Marcos

Joint Exhibit 7  
H-2A employees whose work with Sun Valley ended by May 7, 2015

	Name
1	Jose Manuel Baltazar Chequez
2	Carlos Cervantes Ramirez
3	Hugo Leonel Cinta Tegoma
4	Humberto Dominguez
5	Hector M. Garcia Dominguez
6	Celso Grijalva Ramos
7	Ines Hernandez Sanchez
8	Javier Juarez Hernandez
9	Marco G. Maldonado
10	Gustavo Marquez Perez
11	Cristian Mendez Hernandez
12	Marcelo Ortega Vargas
13	Delfino Antonio Reyes
14	Lucio Rosales Lopez
15	Venustiano Sanchez Dolores
16	Isau Santiago Mendoza
17	Tomas Sonalo Guerrero
18	Adrian Vazquez Desion
19	Marcos Zaveleta

## Joint Exhibits

JX	Description
1	Job order for April 13, 2015 to October 10, 2015
2	TEC for April 13, 2015 to October 10, 2015 (DOL 00271-288)
3	Job order for June 1, 2015 to October 10, 2015
4	TEC for June 1, 2015 to October 10, 2015 (DOL 00289-304)
5	List of Sun Valley H-2A and domestic workers
6	Sun Valley 2015 employee roster (DOL 01602 - 1604)
7	List of H-2A employees whose work at Sun Valley ended by May 7, 2015
8	Completed English portions of worker departure forms
9	Worker departure form, including English and Spanish portions, dated August 8, 2015 (DOL 02363)
10	Order of Reference

Dated: June 15, 2017

For the Respondent:

  
\_\_\_\_\_  
Christopher J. Schulte  
CJ Lake, LLC


525 Ninth St., NW, Suite 800  
Washington, DC 20004  
cschulte@cj-lake.com

Dated: June 15, 2017

For the Administrator:

JENNIFER S. BRAND  
Associate Solicitor for  
Fair Labor Standards

JEFFREY S. ROGOFF  
Regional Solicitor

  
\_\_\_\_\_  
Jacob Heyman-Kantor  
Jason E. Glick  
Trial Attorneys

U.S. Department of Labor  
Office of the Solicitor, Region II  
201 Varick St., Room 983  
New York, NY 10014  
HeymanKantor.Jacob@dol.gov  
Glick.Jason.E@dol.gov

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
CHERRY HILL, NEW JERSEY

In the Matter of	)	
	)	
ADMINISTRATOR, WAGE AND HOUR	)	
DIVISION, U.S. DEPARTMENT OF LABOR	)	
Plaintiff	)	Case No.: 2017-TAE-00003
	)	
v.	)	
	)	<b>Joint Exhibits</b>
SUN VALLEY ORCHARDS, LLC	)	
Respondent.	)	

**Binder A**

**JX 1 to 10**



**U.S. Department Labor  
Employment and Training Administration**

OMB Control No. 1205-0134  
Expiration Date: October 31, 2015

**Agricultural and Food Processing Clearance Order ETA Form 790  
Orden de Empleo para Obreros/Trabajadores Agrícolas y Procesamiento de Alimentos**

(Print or type in each field block - To include additional information, go to block # 28 - Please follow Step-By-Step Instructions)  
(Favor de usar letra de molde en la solicitud - Para incluir información adicional ver el punto # 28 - Favor de seguir las instrucciones paso-a-paso)

<p>1. Employer's and/or Agent's Name and Address (Number, Street, City, State and Zip Code / Nombre y Dirección del Empleador/Patrón y/o Agente (Número, Calle, Ciudad, Estado y Código Postal):</p> <p>Sun Valley Orchards LLC 12 Vestry Rd Swedesboro NJ 08085</p> <p>C/O NAC 685 US Hwy 15 301 Carthage, NC 28327</p>		<p>4. Code / Código Industrial:</p> <p>NAICS 11219</p> <p>5. SOC (ONET/OES) Occupational Title / Título Ocupacional</p> <p>Farmworkers and Laborers, Crop [45-2082.02]</p>		<p>5. Job Order No. / Num. de Orden de Empleo:</p> <p>NJ0982022</p>																
<p>a) Federal Employer Identification Number (FEIN) / Número federal de identificación del Empleador:</p> <p>[REDACTED]</p> <p>b) Telephone Number / Número de Teléfono:</p> <p>Employer (856) 769-5280 NAC (910) 947-6004</p> <p>c) Fax Number / Número de Fax:</p> <p>Employer: (856) 769-5213 NAC (910) 947-6006</p> <p>d) E-mail Address / Dirección de Correo Electrónico:</p> <p>N/A</p>		<p>6. Address of Order Holding Office (include Telephone number) / Dirección de la Oficina donde se radica la oferta (incluye el número de teléfono):</p> <p>One-Stop Career Center 215 Crown Point Road, Suite 200 Thorofare, NJ 08086</p> <p>7. Name of Local Office Representative (include direct dial telephone number) / Nombre del Representante de la Oficina Local (incluye el número de teléfono de su línea directa):</p> <p>Manager: 856-384-3700</p>																		
<p>2. Address and Directions to Work Site / Domicilio y Direcciones al lugar de trabajo:</p> <p>29 Vestry Rd, Swedesboro, NJ 08085</p> <p>See attached spreadsheet for additional work sites all of which are owned/leased by employer. employer provides daily transportation from main location to each work site.</p>		<p>7. Clearance Order Issue Date / Fecha de Emisión de la Orden de Empleo:</p> <p>02/12/2015</p> <p>8. Job Order Expiration Date / Fecha de Vencimiento o Expiración de la Orden de Empleo:</p> <p>07/27/2015</p> <p>9. Anticipated Period of Employment / Periodo anticipado o previsto de Empleo:</p> <p>From / Desde: 04/13/2015 To / Hasta: 10/10/2015</p>																		
<p>3. Address and Directions to Housing / Domicilio y Direcciones al lugar de vivienda:</p> <p>1329 Rt 45 South, Harrisonville, NJ 08085</p> <p>a) Description of Housing / Descripción de la vivienda:</p> <p>Block Building Capacity: 170</p>		<p>10. Number of Workers Requested / Número de Trabajadores Solicitados:</p> <p>40</p> <p>11. Anticipated Hours of Work per Week / Horas Anticipadas/Previstas de Trabajo por Semana. Total: 40</p> <table border="0"> <tr> <td>Sunday / Domingo</td> <td>5</td> <td>Thursday / Jueves</td> <td>7</td> </tr> <tr> <td>Monday / Lunes</td> <td>7</td> <td>Friday / Viernes</td> <td>7</td> </tr> <tr> <td>Tuesday / Martes</td> <td>7</td> <td>Saturday / Sábado</td> <td>0</td> </tr> <tr> <td>Wednesday / Miércoles</td> <td>7</td> <td></td> <td></td> </tr> </table>			Sunday / Domingo	5	Thursday / Jueves	7	Monday / Lunes	7	Friday / Viernes	7	Tuesday / Martes	7	Saturday / Sábado	0	Wednesday / Miércoles	7		
Sunday / Domingo	5	Thursday / Jueves	7																	
Monday / Lunes	7	Friday / Viernes	7																	
Tuesday / Martes	7	Saturday / Sábado	0																	
Wednesday / Miércoles	7																			
		<p>12. Anticipated range of hours for different seasonal activities / Rango previsto de horas por las diferentes actividades de la temporada:</p> <p>7:00am-3:00pm hours vary; See attachment to ETA 790 for more complete details / las horas 7:00am-3:00pm varían ver fijación a ETA 790 para detalles más completos</p> <p>13. Collect Calls Accepted from: / Aceptan Llamadas por Cobrar de:</p> <p>Employer / Empleador: Yes / SI <input type="checkbox"/> No <input checked="" type="checkbox"/></p>																		

DOL00271

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Appx192

14. Describe how the employer intends to provide either 3 meals a day to each worker or furnish free and convenient cooking and kitchen facilities for workers to prepare meals / Describa cómo el empleador tiene la intención de ofrecer, ya sea 3 comidas al día a cada trabajador, o proporcionar gratuitamente instalaciones para cocinar.

Employers will furnish free cooking and kitchen facilities to those workers who are entitled to live in the employers' housing so that workers may prepare their own meals. Workers will buy their own groceries. Once a week the employers will offer to provide (on a voluntary basis by the workers) free transportation to assure workers access to the closest store where they can purchase groceries.

Housing is provided at no cost to workers who are not reasonably able to return the same day to their place of residence. This paragraph applies to such workers only. Housing is not provided to non-workers. Housing capacity is strictly regulated by the US Department of Labor, and no person, other than the eligible employees authorized by the employer, may occupy or remain overnight in employer-provided housing. Employer-provided housing must meet the full set of DOL Occupational Safety and Health Administration (OSHA) standards set forth at 29 CFR 1910.142, or the full set of standards set at §§ 654.404 through 654.417, whichever are applicable under § 654.401. The housing is offered as temporary in-season (during the employment period only) housing provided for migrant agricultural workers while they are employed at farms beyond normal commuting distance from their residence. Workers provided housing by the employer must promptly vacate the housing upon termination of employment. No charge will be made for beds or cooking utensils and similar items furnished to workers to whom housing is provided. All housing is group housing in which all workers will share kitchens and common areas without regard to gender. Female workers, however, will be provided with sleeping facilities shared only with other family members or with other females. Sex-segregated toilets facilities will be provided. Workers who reside in such housing agree to be responsible for maintaining the housing in a neat and clean manner. Workers residing in employer's housing may have mail directed to them at the employer's address on attached addendum. Rental housing will comply with all applicable regulations.

SEE ETA 790 attachments

Los empleadores proporcionarán facilidades libres de cocina y cocina a esos trabajadores que tienen derecho para vivir en los empleadores que albergan para que trabajadores puedan preparar sus propias comidas. Los trabajadores comprarán sus propios comestibles. Una vez a la semana los empleadores ofrecerán proporcionar (en una base voluntaria por los trabajadores) libreta transporte para asegurarse de que trabajadores conseguir acceso a a la tienda más cercana donde pueden comprar comestibles.

Albergar es proporcionado en ningún costo a trabajadores que no son razonablemente capaces de regresar el mismo día a su domicilio. Este párrafo aplica a tales trabajadores sólo. Albergar no es proporcionado a no-trabajadores. La capacidad de la envoltura es regulada estrictamente por la Secretaría de Trabajo de EEUU, y por ninguna persona, de otra manera que los empleados elegibles autorizado por el empleador, puede ocupar ni pueden quedarse por la noche en albergar de empleador-proporcionó. Albergar de empleador-proporcionó debe encontrar el conjunto lleno de DOL la Administración Profesional de la Seguridad y la Salud (OSHA) estándares exponen en 29 CFR 1910.142, o el conjunto lleno de estándares pone en §§ 654.404 por 654.417, el que son aplicables abajo § 654.401. La envoltura es ofrecida como en-temporada temporaria (durante el período de empleo sólo) albergando previo trabajadores agrícola migratorios mientras son empleados en granjas más allá de conmutar normal distancia de su residencia. Los trabajadores proporcionaron albergar por el empleador debe desocupar inmediatamente la envoltura sobre la cesantía. Ninguna carga será causada camas ni útiles de cocina y artículos semejantes proporcionaron a trabajadores a quien albergar es proporcionado. Toda la envoltura es envoltura de grupo en la que todos los trabajadores compartirán cocinas y áreas comunes sin consideración al género. Los trabajadores femeninos serán proporcionados sin embargo con facilidades durmientes compartidas sólo con otros miembros de la familia o con otras hembras. Las facilidades de lavabos de sexo-segregó serán proporcionadas. Los trabajadores que residen en tal envoltura concuerdan en ser responsables de mantener la envoltura en una manera ordenada y limpia. Los trabajadores que residen en la envoltura de empleador pueden tener correo dirigido a ellos en la dirección del empleador en el apéndice conectado. Alquiler de viviendas va a cumplir con todas las regulaciones aplicables VEA ETA 790 fijaciones



15. Referral Instructions and Hiring Information / Instrucciones sobre cómo Referir Candidatos/Solicitantes - (Explain how applicants are to be hired or referred, and the Employer's/Agent's available hour to interview workers / Explique cómo los candidatos serán contratados o referidos, y las horas disponibles del empleador/agente para entrevistar a los trabajadores). See instructions for more details / Vea las instrucciones para más detalles.

Workers are screened for compliance with the following criteria: 1) confirm ability, availability, qualifications and willingness to perform work described and confirm intention to work the entire season, 2) local workers confirm availability of reliable daily transportation to and from the job site for the entire season. Non local workers confirm availability of transportation to job site to begin work, 3) confirmation of full disclosure of all terms, condition, and nature of work-job by local employment staff, 4) affirmative confirmation of legal qualifications to work in the US as described below. The employer may terminate the worker (foreign and/or domestic) with notification to the employment service if employer discovers a criminal conviction record or status as a registered sex offender that employer reasonably believes, consistent with current law, will impair the safety and living conditions of other workers. Workers recruited against the Job Offer from within normal commuting distance will not be provided with housing, subsistence and transportation.

Only workers legally entitled to work in the United States and who possess original identity and employment eligibility documents sufficient to complete INS Form I-9, as required by the Immigration and Nationality Act, will be permitted to complete the hiring process. Workers referred against this order should be informed that they must have these documents in their possession when they arrive at the place of employment. Provided that workers complete section 1 of form I-9, workers will have three business days to produce the required documentation to complete section 2 of form I-9, as provided in the Act. Workers not providing this documentation will not be allowed to go to work on the fourth business day of employment, or any subsequent days until the documentation is provided, as provided in the Act.

SEE ETA 790 ATTACHMENTS FOR DETAILS.

para Los trabajadores son investigados para la conformidad con los criterios siguientes: un) confirma capacidad, la disponibilidad, los requisitos y el consentimiento para realizar el trabajo descritos y confirman intención trabajar la temporada entera, 2) trabajadores locales confirman la disponibilidad de transporte diario seguro a y del sitio de trabajo para la temporada entera. Los trabajadores no locales confirman la disponibilidad de transporte al sitio del trabajo para empezar el trabajo, 3) confirmación de revelación plena de todos los términos, de la condición, y de la naturaleza de trabajo-trabajo por el personal local de empleo, 4) confirmación afirmativa de requisitos legales trabajar en EEUU como descrito abajo. El empleador puede terminar al trabajador (extranjero y/o doméstico) con notificación al servicio del empleo si empleador descubre un registro criminal de convicción o estatus como un delincuente sexual registrado que empleador cree razonablemente, coherente con la ley actual, dañará la seguridad y las condiciones de vida de otros trabajadores. Los trabajadores alistaron contra la Oferta de empleo de dentro de conmutar normal que distancia no será proporcionada con albergar, la subsistencia y el transporte.

Sólo trabajadores permitieron legalmente trabajar en Estados Unidos y en que elegibilidad original de identidad y empleo de fuerzas armadas documenta suficiente para completar EN Forma yo-9, como necesario por la Inmigración y Acto de Nacionalidad, será permitido completar el proceso que emplea. Los trabajadores referidos contra esta orden deben ser informados que deben tener estos documentos en su posesión cuando llegan en el lugar de empleo. Con tal de que trabajadores completan sección 1 de forma yo-9, los trabajadores tendrán tres días hábiles para producir la documentación necesaria para completar sección 2 de forma yo-9, como proporcionado en el Acto. Los trabajadores que no proporcionan esta documentación no serán permitidos ir a trabajar en el cuarto día hábil de empleo, ni de ningún día subsecuente hasta que la documentación sea proporcionada, como proporcionado en el Acto.

VEA ETA 790 FIJACIONES PARA DETALLES.

16. Job description and requirements / Descripción y requisitos del trabajo:

Workers will harvest Asparagus, Zucchini, Pickles, Cucumbers, Eggplant, Peppers and peaches. Sometimes this will occur at top a 5ft ladder. Workers must take care when working a top ladders.

SEE ETA 790 ATTACHMENTS

Los trabajadores se cosecha Espárragos, calabacín, encurtidos, pepinos, berenjenas, pimientos y los melocotones. A veces esto ocurre en la parte superior un 5 pies escalera los trabajadores deben tener cuidado al trabajar una escalera.

VER ETA 790 ARCHIVOS ADJUNTOS

1. Is previous work experience preferred? / Se prefiere previa experiencia? Yes / Si ☒ No ☐ If yes, number of months preferred: / Si es así, número de meses de experiencia: 3 variable experience harvesting a perishable crop. Applicants must be able to furnish affirmative job references from recent employers operating comparable operations establishing acceptable previous experience. See attachments for more details. La cosecha de una experiencia comprobable de cultivos perecederos. Los solicitantes deben estar en condiciones de proporcionar referencias de trabajo positivas de los últimos los empleadores comparables establecer niveles aceptables de experiencia previa. Consulte los documentos adjuntos para obtener más detalles.

2. Check all requirements that apply:

- ☐ Certification/License Requirements / Certificación/Licencia Requisitos
- ☐ Driver Requirements / Requisitos del conductor
- ☐ Employer Will Train / Empleador entrenará o adiestrará
- ☒ Extensive Sitting / Estar sentado largos ratos
- ☒ Exposure to Extreme Temp. / Expuesto a Temperaturas Extremas
- ☒ Lifting requirement / Levantar o Cargar 75 lbs./libras
- ☒ Repetitive Movements / Movimientos repetitivos

- ☐ Criminal Background Check / Verificación de antecedentes penales
- ☒ Drug Screen / Detección de Drogas (random)
- ☒ Extensive Pushing and Pulling / Empujar y Jalar Extensamente
- ☒ Extensive Walking / Caminar por largos ratos
- ☒ Frequent Stooping / Inclínándose o agachándose con frecuencia
- ☒ DT/Holiday is not mandatory / Horas Extras (sobre tiempo) / Días Feriados no obligatorio

17. Wage Rates, Special Pay Information and Deductions / Tarifa de Pago, Información Sobre Pagos Especiales y Deducciones (Rebajas)							
Crop Activities	Hourly Wage	Piece Rate / Unit(s)	Special Pay (bonus, etc.)	Deductions*	Yes/Si	No	Pay Period / Período de Pago
Cultivos	Salario por Hora	Pago por Pieza / Unidad(es)	Pagos Especiales (Bono, etc.)	Deducciones			/ /
Vegetables	\$ 11.29	\$		Social Security / Seguro Social	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Weekly / Semanal
	\$	\$		Federal Tax / Impuestos Federales	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	\$	\$		State Tax / Impuestos Estatales	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bi-weekly / Quincenal
	\$	\$		Meals / Comidas	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	\$	\$		Other (specify) / Otro (especifica)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Monthly/Mensual
see attachments vea fijaciones							Other/Otro
<p>18. More Details About the Pay / Mas Detalles Sobre el Pago:</p> <p>In the event that the Department Of Labor promulgates a new AEWB applicable to any portion of the period of employment covered by this job order which is higher or lower than the AEWB herein, the employer will pay the higher AEWB, and may at the employer's discretion pay the lower AEWB, beginning with the effective date of the new AEWB. Employer will pay the highest of the AEWB, prevailing wage, the piece rate, the agreed-upon collective bargaining wage or the Federal or State minimum wage at the time the work is performed.</p> <p>In the tasks where there is no prevailing practice to pay a piece rate the employer, at his sole discretion, may opt to pay per hour to ensure a good quality product. At no time will the workers be paid less than the highest available wage. See Attachments for complete wage information.</p> <p>En caso de que la Secretaría de Trabajo promulgue un nuevo AEWB aplicable a cualquier porción del período de empleo cubierto por esta orden de trabajo que es más alta o más bajo que el AEWB en esto, el empleador pagará el AEWB más alto, y may en la discreción del empleador paga el AEWB más bajo, empezando con la fecha de vigencia del nuevo AEWB. El empleador pagará el más alto del AEWB, prevaleciendo el sueldo, el precio a destajo, el aceptó el sueldo de negociación colectiva o el Federal o salario mínimo de Estado en aquel momento el trabajo es realizado.</p> <p>En las tareas donde no hay práctica predominante pagar un precio a destajo el empleador, en su única discreción, puede optar por pagar por hora de asegurar un producto bueno de calidad. En ningún tiempo haga a los trabajadores son pagados menos que el sueldo disponible más alto. Vea Fijaciones para la información completa del sueldo.</p>							
<p>19. Transportation Arrangements / Arreglos de Transportación</p> <p>The Employer will not advance transportation and subsistence costs to Workers for transportation to the place of employment. This subparagraph applies only to Workers who cannot reasonably return to their residence the same day. After the workers has completed 50% of the work contract. All eligible applicants will have their inbound reasonable transportation expenses reimbursed, one time only. Domestic applicants from outside of the normal commuting distance that voluntary chose not to reside in the employer provided housing, the employer will pay for the initial inbound transportation reimbursement. However, the employer will not reimburse any workers for daily transportation cost whether commuting from inside or outside of the area of intended employment. Employer will not pay for voluntary trips back to their residence due to family emergencies, or vacations. SEE ATTACHMENTS TO ETA 790 FOR MORE COMPLETE DETAILS.</p> <p>El Empleador no avanzará transporte y subsistencia costos a Trabajadores para el transporte al lugar de empleo. Este subpárrafo aplica sólo a Trabajadores que pueden no regreso de razonability a su residencia el mismo día. Después de que los trabajadores hayan completado 50% del contrato del trabajo. Todos los solicitantes elegibles tendrán sus gastos razonables de entrada de transporte reembolsados, un tiempo sólo. Los solicitantes domésticos de fuera de la distancia normal que conmuta que voluntario escogió no residir en el empleador proporcionó albergar, el empleador pagará por el reembolso de entrada inicial de transporte. Sin embargo, el empleador no reembolsará a ningún trabajador para el costo diario de transporte si conmutando de dentro de ni fuera del área de empleo destinado. El empleador no pagará por viajes voluntarios atrás a su residencia debido a emergencias familiares, ni debido a licencias.</p> <p>VEA FIJACIONES A ETA 790 PARA DETALLES MAS COMPLETOS.</p>							

<p>20. Is it the prevailing practice to use Farm Labor Contractors (FLC) to recruit, supervise, transport, house, and/or pay workers for this (these) crop activity (ies)? / ¿Es la práctica habitual usar Contratistas de Trabajo Agrícola para reclutar, supervisar, transportar, dar vivienda, y/o pagarle a los trabajadores para este(os) tipo(s) de cosecha(s)? Yes / Si <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If you have checked yes, what is the FLC wage for each activity? / Si contesto "Si," cuál es el salario que le paga al Contratista de Trabajo Agrícola por cada actividad?</p>	
21. Are workers covered for Unemployment Insurance? / ¿Se le proporcionan Seguro de Desempleo a los trabajadores?	Yes/Si <input checked="" type="checkbox"/> No <input type="checkbox"/> *if applicable
22. Are workers covered by workers' compensation? / ¿Se le provee seguro de compensación/indemnización al trabajador:	Yes/Si <input checked="" type="checkbox"/> No <input type="checkbox"/>
23. Are tools, supplies, and equipment provided at no charge to the workers? / ¿Se les proveen herramientas y equipos sin costo alguno a los trabajadores?	Yes/Si <input checked="" type="checkbox"/> No <input type="checkbox"/> see attached
<p>24. List any arrangements which have been made with establishment owners or agents for the payment of a commission or other benefits for sales made to workers. (If there are no such arrangements, enter "None".) / Enumere todos los acuerdos o convenios hechos con los propietarios del establecimiento o sus agentes para el pago de una comisión u otros beneficios por ventas hechas a los trabajadores. (Si no hay ningún acuerdo o convenio, indique "Ninguno".)</p> <p>none/ninguno</p>	
<p>25. List any strike, work stoppage, slowdown, or interruption of operation by the employees at the place where the workers will be employed. (If there are no such incidents, enter "None".) / Enumere toda huelga, paro o interrupción de operaciones de trabajo por parte de los empleados en el lugar de empleo. (Si no hay incidentes de este tipo, indique "Ninguno".)</p> <p>none/ninguno</p>	

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26. Is this job order to be placed in connection with a future Application for Temporary Employment Certification for H-2A workers? / ¿Esta orden de empleo ha sido puesta en conexión con una futura solicitud de certificación de empleo temporal para trabajadores H-2A?

Yes/ Sí ☐ No ☐

27. Employer's Certification: This job order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job. / Certificación del Empleador. Esta orden de trabajo describe los términos y condiciones del empleo que se le ofrece, y contiene todos los términos y condiciones materiales ofrecidos.

Russell Marino Jr. OWNER/MANAGER  
Employer's Printed Name & Title / Nombre y Título en Letra de Molde/Imprenta del Empleador

[Signature]  
Employer's Signature / Firma y Título del Empleador

12/22-14  
Date / Fecha

READ CAREFULLY, in view of the statutorily established basic function of the Employment Service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the Employment and Training Administration (ETA) nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the American Job Center constitute a contractual job offer to which the American Job Center, ETA or a State agency is in any way a party.

LEA CON CUIDADO, En vista de la función básica del Servicio de Empleo establecida por ley, como una entidad de intercambio laboral sin comisiones, es decir, como un foro para reunir a los empleadores y los solicitantes de empleo, ni ETA ni las agencias del estado pueden garantizar la exactitud o veracidad de la información contenida en las ordenes de trabajo sometidas por los empleadores. Ni ninguna orden de trabajo aceptado o contratado en el Centro de Carreras (American Job Center) constituyen una oferta de trabajo contractual a las que el American Job Center, ETA o un organismo estatal es de ninguna manera una de las partes.

#### PUBLIC BURDEN STATEMENT

The public reporting burden for responding to ETA Form 790, which is required to obtain or retain benefits (44 USC 3501), is estimated to be approximately 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and reviewing the collection. The public need not respond to this collection of information unless it displays a currently valid OMB Control Number. This is public information and there is no expectation of confidentiality. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Room C-4510, 200 Constitution Avenue, NW, Washington, DC 20210.

#### DECLARACION DE CARGA PUBLICA

La carga de información pública para responder a la Forma ETA 790, que se requiere para obtener o retener beneficios (44 USC 3501) se estima en aproximadamente 60 minutos por respuesta, incluyendo el tiempo para revisar las instrucciones, buscar fuentes de datos existentes, recopilar y revisar la colección. El público no tiene por qué responder a esta recopilación de información a menos que muestre un número de control OMB válido. Esta información es pública y no hay ninguna expectativa de confidencialidad. Envíe sus comentarios acerca de esta carga o cualquier otro aspecto de esta colección, incluyendo sugerencias para reducir esta carga, al U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Room C-4510, 200 Constitution Avenue, NW, Washington, DC 20210.

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28. Use this section to provide additional supporting information (including section Box number). Include attachments, if necessary. / Utilice esta sección para proporcionar información adicional de apoyo; incluya el número de la sección e incluya archivos adjuntos, si es necesario.

SEE ATTACHMENTS TO THE ETA 790 FOR DETAILS CONCERNING THIS JOB OPENING.

VEA FIJACIONES A LA ETA 790 PARA DETALLES CON RESPECTO A ESTA APERTURA de TRABAJO

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**20 CFR 653.501  
Assurances**

**INTRASTATE AND INTERSTATE CLEARANCE ORDER**

The employer agrees to provide to workers referred through the clearance system the number of hours of work per week cited in Item 10 of the clearance order for the week beginning with the anticipated date of need, unless the employer has amended the date of need at least 10 working days prior to the original date of need by so notifying the Order-Holding Office (OHO). If the employer fails to notify the OHO at least 10 working days prior to the original date of need, the employer shall pay eligible workers referred through the intrastate/interstate clearance system the specified hourly rate or pay, or in the absence of a specified hourly rate or pay, the higher of the Federal or State minimum wage rate for the first week starting with the original anticipated date of need. The employer may require workers to perform alternative work if the guarantee is invoked and if such alternative work is stated on the job order.

The employer agrees that no extension of employment beyond the period of employment shown on the job order will relieve the employer from paying the wages already earned, or specified in the job order as a term of employment, providing transportation or paying transportation expenses to the worker's home.

The employer assures that all working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration and other employment-related laws.

The employer agrees to expeditiously notify the OHO or State agency by telephone immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over recruitment, or other factors have changed the terms and conditions of employment.

The employer, if acting as a farm labor contractor, has a valid farm labor contractor registration certificate.

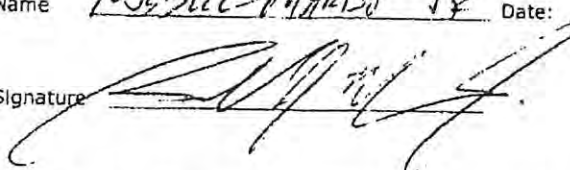
The employer assures the availability of no cost or public housing which meets applicable Federal and State standards and which is sufficient to house the specified number of workers requested through the clearance system.

The employer also assures that outreach workers shall have reasonable access to the workers in the conduct of outreach activities pursuant to 20 CFR 653.107.

Employer's Name

ROSELL-MARINO JR Date: 12/22/14

Employer's Signature



Besides the material terms and conditions of the employment, the employer must agree to these assurances if the job order is to be placed as part of the Agricultural Recruitment System. This assurance statement must be signed by the employer, and it must accompany the ETA Form 790.

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ATTACHMENT TO ETA 790

Workers recruited under this Job Order are recruited to work on the employer's farm shown on the addendum in the certified occupation during the period of employment shown in Item 9. The employer/member will offer US workers at least the same opportunities, wages, benefits, and working conditions as those which the employer offers or intends to offer to non-immigrant foreign workers. \*Use of the masculine pronoun herein is for convenience of reference only.

1. Name and address of employer: Sun Valley Orchards LLC; 29 Vestry Rd, Swedesboro NJ 08085.

9. Anticipated dates of employment: 04/13/2015 until 10/10/2015.

10. The number of workers shown is the aggregate number of foreign workers that will be employed by the employer under this temporary employment certification. The approximate maximum number of workers (foreign and domestic) to be employed in the certified occupation is shown on the addendum. The numbers shown are approximations provided for the governing administrative agencies. The actual number of workers employed in the certified job opportunities of the grower at any given time may be more or less than the approximate numbers shown in the addendum, depending upon crop conditions, weather, markets or other circumstances that develop during the season.

11. Anticipated Hours of Work: Worker will report to work at the designated time and place as directed by the Grower each day. The standard workweek of 7 hours per day Monday-Friday, and 5 hours on Saturday is normal; however, workers may be requested to work 12+ hours per day depending upon the conditions in the fields and maturity of the crops but will not be required to do so. Also, the workers may be requested to work on federal holidays and on their Sabbath but will not be required to do so. Workers may volunteer to work additional hours when work is available. Down Time: Workers should expect occasional periods of little or no work because of weather, crop or other conditions beyond the employer's control. These periods can occur anytime throughout the season.

Starting and ending times will change due to weather and crop conditions. During certain times of the season workers are required to work at night. Workers will be given as much notice as possible when the changing of shifts is required. If a worker is offered and agrees to work more than the scheduled hours during the workweek, they must still report to work on their other scheduled days, unless arrangements are approved in advance with the owner or supervisor. Choosing to work longer hours during the week does not exclude workers from working each scheduled work day. Not reporting for work on your scheduled work day will be counted as an unexcused absence.

14. Employers will furnish free cooking and kitchen facilities to those workers who are entitled to live in the employers' housing so that workers may prepare their own meals. Workers will buy their own groceries. Once a week the employers will offer to provide (on a voluntary basis by the workers) free transportation to assure workers access to the closest store where they can purchase groceries.

Housing is provided at no cost to workers who are not reasonably able to return the same day to their place of residence. This paragraph applies to such workers only. Housing is not provided to non-workers. Housing capacity is strictly regulated by the US Department of Labor, and no person, other than the eligible employees authorized by the employer, may occupy or remain overnight in employer-provided housing. The housing is offered as temporary in-season (during the employment period only) housing provided for migrant agricultural workers while they are employed at farms beyond normal commuting distance from their residence. Workers provided housing by the employer must promptly vacate the housing upon termination of employment. No charge will be made for beds, cooking utensils and similar items furnished to workers to whom housing is provided hereunder unless unlawfully removed or damaged beyond normal wear and tear. All housing is group housing in which all workers will share kitchens and common areas without regard to gender. Female workers, however, will be provided with sleeping facilities shared only with other family members or with other females. Sex-segregated toilets facilities will be provided. Workers who reside in such housing agree to be responsible for maintaining the housing in a neat and clean manner. Reasonable repair costs of damage or loss of property, other than that caused by normal wear and tear will be charged to the worker if he is found to be responsible for damage or loss to housing or furnishings. Workers residing in employer's housing may have mail directed to them at the employer's address on attached addendum. All housing or public accommodations will comply with applicable State, Federal, Local, or health regulations. Employer-provided housing will meet the full set of DOL Occupational Safety and Health Administration (OSHA) standards set forth at 29 CFR 1910.142, or the full set of standards set at §§ 654.404 through 654.417, whichever are applicable under § 654.401.

15. Interested candidates should contact their local State Workforce Office to receive a copy of the ETA 790 and applicable attachments. Once the applicant has a copy of the job order they may apply directly to employer by calling (856) 769-5280 ext 7. Applicants are encouraged to fax applications or resumes to (856) 769-5213 attn Farmworker Job. Group interviews for local applicants will be held Tuesdays and Fridays from 8am - 11am. Applicants are encouraged to arrive 15-20 minutes early to complete/review an application packet at 29 Vestry Rd, Swedesboro NJ 08085.

All interstate (out of state) and intrastate (in state) applicants interested in this job offer should first contact the order holding office prior to contacting the employer for information and permission to refer. Workers should be fully apprised by their local employment office of the terms, conditions and nature of employment prior to referral. This will enable applicants to review all the information and make an

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informed decision about the job and will ensure compliance with disclosure requirements. In...state (out of state) and Intrastate (in state) candidates will be interviewed over the phone once employer has received written confirmation that all required disclosures have been made. Completing an application is part of the interview process.

Workers should be fully apprised by the local employment office of the terms, conditions and nature of employment prior to referral. Workers are screened for compliance with the following criteria: a) confirm ability, availability, qualifications and willingness to perform work described and confirm intention to work the entire season, 2) local workers confirm availability of reliable daily transportation to and from the job site for the entire season. Non local workers confirm availability of transportation to job site to begin work, 3) confirmation of full disclosure of all terms, condition, and nature of work-job by local employment staff, 4) affirmative confirmation of legal qualifications to work in the US as described below. The employer may terminate the worker (foreign and/or domestic) with notification to the employment service if employer discovers a criminal conviction record or status as a registered sex offender that employer reasonably believes, consistent with current law, will impair the safety and living conditions of other workers.

Only workers legally entitled to work in the United States and who possess original identity and employment eligibility documents sufficient to complete INS Form I-9, as required by the Immigration and Nationality Act, will be permitted to complete the hiring process. Workers referred against this order should be informed that they must have these documents in their possession when they arrive at the place of employment. Provided that workers complete section 1 of form I-9, workers will have three business days to produce the required documentation to complete section 2 of form I-9, as provided in the Act. Workers not providing this documentation will not be allowed to go to work on the fourth business day of employment, or any subsequent days until the documentation is provided, as provided in the Act.

16. Job Specifications: Must have three months' verifiable experience hand harvesting a perishable crop. Applicants must be able to furnish affirmative job references from recent employers operating comparable operations establishing acceptable previous experience.

Worker must possess requisite physical strength and endurance to repeat the harvest process throughout the workday, working quickly and skillfully to perform activities for which they were hired. Workers must work at a sustained, vigorous pace and make bona fide efforts to work efficiently and consistently that are reasonable under the climatic and other working conditions, considering also the amount, quality, and efficiency of work accomplished by their coworkers. Workers may not leave trash, or other discarded items in work areas or vehicles but must dispose of such items in provided receptacles. Workers must wash hands with soap and water after all bathroom and meal breaks. Allergies to varieties of ragweed, goldenrod, insecticides, related agricultural chemicals, etc, may affect workers ability to perform the work described herein. Workers should be physically able to do the work described with or without reasonable accommodation. Must display the ability to move, place, climb and work from orchard ladders up to 6 feet in height, making the necessary adjustments for various procedures while carrying up to 30 pounds.

**Sanitation Requirements:** For food and general personal safety purposes, all workers will be required and expected to follow common sanitary practices at all times. This is particularly critical when hand harvesting crops for human consumption. Employees are required to cleanse their hands by washing them thoroughly with soap and water after using the bathroom and before entering the fields for harvest activities or the packing facility for packing operations.

Workers will plant, cultivate, and harvest Asparagus, Zucchini, Pickles, Cucumbers, Egg Plant, and Peppers.

**Asparagus:** Workers will move along assigned row, stopping, bending and reaching to cut asparagus spears at ground level may operate self-propelled harvesting aid on which workers ride while stopping to cut spears at ground level. Spears which are less than 1/4 inch in diameter (measured at butt) are discarded. Spears over 1/4 inch in diameter which exceed 12 inches in length will be re-broken at the butt end. Any spearhead which has begun to open will be discarded. Spears meeting harvest specification will be placed in a straight fashion in field buckets and carried to trucks or trailers for dumping. Workers will be required to stay on their assigned row. Workers must use care while using knives to prevent injury to themselves and other workers.

**Zucchini, Pickles, Cucumbers, Egg Plant, and Peppers:** Workers will plant, cultivate and harvest vegetables. Workers will be required to remove weeds by hand or with a hoe. Workers will bend and stoop to pick vegetables according to size, color, shape and degree of maturity and place into field containers. Workers may carry full container weighing approximately fifty (50) lbs. and empty into field bin or load onto trailer. May be required to pull and discard culls as directed by supervisor. Pickers will take care not to bruise or scar produce. Pre-harvest activities may include staking, tying, transplanting and pruning. Workers will stand on feet for long periods of time. Workers are required to work in fields when plants are wet with dew or rain. Temperatures in fields during working hours can range from forty (40) to over one hundred (100) degrees.

**Peaches:** Workers will perform various duties associated with thinning and picking peaches. Worker will be assigned a row, usually with a partner, and is responsible for picking all the proper fruit from that row, or half row. Fruit are selected from the tree according to size and/or color standard set by the picking supervisor. In some instances, fruit harvest will be done from a six-foot ladder weighing up to 30 lbs. All workers must be able to lift, carry, and work from the top of the ladder. The entire tree must be checked to ensure removal of all fruit meeting-picking requirements. Fruit are placed gently in the picking container until container is full. The full picking container weighing up to 25 lbs. is then taken to fruit wagon and gently emptied into a field bin, taking care of not to spill or bruise the fruit in the container or in the field bin. Workers are to stay on their assigned row unless directed by a supervisor to change, or to

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help someone out sporadically. Picking up fruit will be kept free of limbs, leaves or mushy fruit. Fruit harvested specifically for sale at a roadside stand as fresh market specialty baskets, in peck or half bushel containers must be field graded. For fruit harvest for sale at a roadside stand, extra care must be used to insure that each piece of fruit is undamaged and perfect. Workers will be required to pick up and return picking ladders to the ladder wagon provided by the grower at the end of each workday or as directed by the grower or designated supervisor.

**Farm Equipment Operation:** Workers may be required to operate tractors and other farm equipment during daily operations, as an incidental activity. Before any worker is required to operate any farm equipment, workers will be instructed in the safety and operation of the tractor before driving the tractor. Tractors should be driven in a manner to protect operator, other workers, products, trees, crops, and equipment. Repeated failure to obey safety requirements and operating instructions may result in termination.

**Orchard Maintenance:** Workers will be responsible for general orchard clean up. They will rake up debris from the land such as sticks, straw, etc. Workers involved in orchard maintenance may be required to hoe trees, girdle, spread fertilizer, pick up roots and limbs, strip suckers or unwanted growth from trees, dig root suckers, knock fruit off trees, use hand sprayer, remove vines, lay irrigation pipe, repair and maintain drip system, and strap and tie fruit trees. Employer will provide all equipment. Instruction will be given for each task and standards of performance communicated to workers. The specific standards for a job will be disclosed and demonstrated by the supervisor before the work begins.

**Orchard Clean Up:** They may be responsible for the removal of old and unproductive peach trees. They must take care to not damage or destroy any other trees or property in the area.

**Forklift Operation during Packing Operations:** Workers may be required to operate forklifts during packing operations as an incidental. Before any worker is required to operate a forklift, the worker will be instructed in the proper and safe operation. Workers will be required to operate forklifts according to instructions and in a manner that protects the operator, other workers and equipment. Repeated failure to obey operating and safety instructions may result in termination.

#### **Farm and Field Sanitation**

All workers will be responsible for picking up trash, cleaning bathrooms, sweeping floors and other farm sanitation duties.

This employer may grow one or more other crops. Farmers frequently decide whether to plant these crops and what additional crops they will plant after this application is submitted. Information on crops planted after submission of this application will be disclosed in writing to the U.S. Department of Labor for approval as soon as it is known.

**GENERAL CONDITIONS APPLICABLE TO ALL CROPS:** Fieldwork begins at assigned time shortly after daylight. Work may be performed during light rain and in high humidity and in temperatures ranging from 110+ degrees to below 20 degrees F. Workers will perform the majority of tasks standing in the upright position and can expect to stand on their feet for extended periods of time. Some tasks, however, require workers to perform activities on their feet in stooped or crouched position for long periods of time. Workers will supply their own work clothes. All the tasks in this Job Description constitute one (1) job; the employer may assign workers to different tasks on any day or to multiple tasks during the same day in the sole judgment of the employer. Workers may be required to perform work, on the farm, that is incidental to farming the crops listed in the application, such as performing hand cultivation tasks, packing, weeding or hoeing, cleaning and repairing farm buildings, grounds, set up and move equipment, cleaning and maintaining drip irrigation systems, weeding, etc. This is a very demanding and competitive business in which quality specifications must be rigorously adhered to. Sloppy work cannot and will not be tolerated.

**Full Crop Commitment:** This is regular work, seven hours per day, Monday-Friday, and five on Saturday for the full remainder of the period of employment. The worker agrees to work for assigned employer(s) whenever work is available during the full remaining period of employment even though work may be slack at times. The worker understands that if the worker quits or is terminated for cause prior to the end of the period of employment, the worker will not receive the 3/4 guarantees discussed below and will not receive certain transportation reimbursements discussed below. Excessive tardiness and/or absences will not be tolerated and will result in termination.

Daily individual work assignments, crew assignments, and location of work, will be determined by and at the sole discretion of the farm manager and/or farm supervisor as the needs of the farming operation dictate. Workers may be assigned a variety of duties in any given day and/or different tasks on different days. Workers will be expected to perform any of the listed duties and work on any crop as assigned by the worker's supervisor.

Harvesting specifications, in particular, can change from time to time during the season due to crop or market conditions, even on the same crop. Workers will be expected to conform to the specific instructions given for each day's work.

The farm owner/supervisor or a designated employee will provide instructions and general supervision. However, field workers will be expected to perform their duties in a timely and proficient manner without close supervision.

17. Wage Rates, Special Pay Information and Deductions: The tasks in the crops listed below will be paid at the piece rates listed. All other work will be paid the adverse effect wage rate (AEWR) of \$ 11.29 per hour. Employer will pay the highest of the AEWR, prevailing

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wage, the agreed-upon collective bargaining wage or the Federal or State minimum wage when the work is performed. In the event that the Department Of Labor promulgates a new AEWR applicable to any portion of the period of employment covered by this job order which is higher or lower than the AEWR herein, the employer will pay the higher AEWR, and may, at the employer's discretion pay the lower AEWR, beginning with the effective date of the new AEWR.

Workers are guaranteed that their total earnings will be at least equal to the AEWR of \$11.29 per hour for all hours worked in a pay period. If a worker's total earnings in any pay period in which the worker has worked at a piece rate are less than the AEWR of \$11.29 for all hours worked in the pay period, the employer will increase the worker's pay to the guaranteed minimum of \$11.29 per hour for the total hours worked in the pay period.

<u>Commodity</u>	<u>Rate</u>	<u>Unit</u>
Asparagus	\$7.00	Packed out 28# crate
Zucchini	\$1.00	Packed out 1/2bu equivalent
Pickles	\$1.50	Packed out 1.0bu equivalent
Cucumber	\$1.00	Packed out 1 1/9bu equivalent
Eggplant	\$0.60	Packed out 1 1/9bu equivalent
Pepper	\$0.60	Packed out 1 1/9bu equivalent
Peaches	Hourly + POB	Packed out 1/2bu equivalent

\*POB= Packed  
Out Bonus

All jobs performed hourly will be compensated at \$11.29/hr

\*Peaches: \$11.29/hr + \$3.50/bin + Pack out bonus

Pack out bonus may vary; 2014 bonus was \$3.42/bin

Due to weather and crop conditions, the employer reserves the right to temporary increase the listed piece rates, or add a piece rate. The employer also reserves the right to completely do away with the piece rate all together to ensure a quality product and fair earnings. Employer reserves the right to add a piece rate, with notification to workers, prior to adding the rate.

All activities not listed as paid by piece rate will be paid by the hour.

18. More details concerning pay: Employer reserves the right to pay higher than the stated wage rate to any worker foreign or domestic. This is not promised or guaranteed. The decision to pay above the stated rates will be made by the employer, at their sole discretion, and will be based on factors including the recipients' performance and tenure.

A). The employer will make the following deductions from the worker's wages: FICA taxes, State (if applicable) and Federal income tax as required by law. Workers will be charged for the following: cash advances and repayment of loans, repayment of overpayment of wages to the worker, payment for articles which the Worker has voluntarily purchased from the Employer, long-distance telephone charges, recovery of any loss to the Employer due to the Worker's damage (beyond normal wear and tear) or loss of equipment or housing items where it is shown that the Worker is responsible, and any other charges expressly authorized by the Worker in writing. If the grower reimburses the worker prior to the 50% date, and the worker is terminated for cause or abandons prior to the 50% date, the grower reserves the right to recapture that reimbursement. No deduction not required by law will be made that brings the worker's hourly earnings below the statutory federal or state minimum wage. There may be deductions that reduce your pay below the stated contract wage; but will not reduce your pay below Federal or State Minimum Wage, whichever is higher. FICA, State and Federal taxes will not be deducted from those worker's wages that are working under a temporary, agricultural visa, unless it's discovered it is required or if the worker request withholding.

B) Employers guarantee to offer employment for the hourly equivalent of 3/4 of the workdays of the total specified period during which the work contract and all amendments thereof are in effect, beginning with the first workday after the workers' arrival at the assigned Grower's farm, ready, willing, able, and eligible to work and ending on the expiration date specified in the work contract and all extensions thereof or upon the termination of this employment as provided below. For purposes of this guarantee, a "workday" consists of seven hours Monday-Friday and five hours on Saturday. The worker is not required to work on his Sabbath or on federal holidays

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which are New Year's Day, January 1; Martin Luther King, Jr.'s birthday, the third Monday in January; Presidents Day, the third Monday in February; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veteran's Day, November 11; Thanksgiving Day, the fourth Thursday in November; and Christmas Day, December 25. On certain of these days, work may be available. If the worker at the conclusion of his work agreement has been afforded less employment opportunity than required under this provision, the worker will be paid at his average hourly rate for the hours, in addition to those actually offered, up to the hourly equivalent of the guaranteed number of days. In determining whether the guarantee of employment has been met, any hours which the Worker fails to work during a workday, when the Employer offers him the opportunity to work, and all hours of work actually performed shall be counted toward meeting this guarantee.

C). This employment guarantee shall be terminated before the end of the Period of Employment if the services of the workers are no longer required for reasons beyond the control of the Employer due to fire, frost, flood, drought, hail, other Act of God (AOG) which makes fulfillment of this contract impossible. (CO will be notified and employer will seek approval for AOG's) In such cases, the employer will make efforts to transfer workers to other comparable employment acceptable to workers. If such transfer is not effective, workers will be returned at Employer's expense to the place from which Worker, without intervening employment, came to work for employer. In the event of such termination, the 3/4-guarantee period ends on the date of termination. The guarantee shall be void from the beginning should the Worker voluntarily abandon this employment before the end of the contract period or in the event the Worker is terminated for a lawful job-related reason, and the employer notifies the NPC, and DHS in the case of an H-2A worker, in writing or by any other method specified by the Department or DHS in a manner specified in a notice published in the Federal Register not later than 2 working days after such abandonment occurs and this will relieve the employer from subsequent transportation and subsistence costs and the 3/4<sup>th</sup> guarantee.

D). The payroll period shall be weekly. Workers will be paid weekly with a 1 week holding period.

E). Employer will provide a worker referred through the SWA Interstate System forty (40) hours of work for the week beginning with the anticipated date of need, unless the employer has amended the date of need by notifying the local employment service office at least 10 working days prior to the original date of need. If the employer fails to notify the order-holding office, then employer shall pay an eligible worker referred through the interstate clearance system \$11.29 per hour for the first week, starting with the original anticipated date of need. 40 hrs x \$11.29 = \$451.60 gross (before taxes). The employer may require the worker to perform alternative work if the guarantee cited in this section is invoked. If the worker fails to notify the order-holding office of his continuing interest in the job no sooner than nine working days and no later than five working days before the date of need, the worker will be disqualified from the above-mentioned assurance.

F). The Employer will furnish to the worker, on or before each payday one or more written statements showing the worker's total earnings for the pay period, his hourly rate or piece rate (if applicable); the hours of work which have been offered to the worker, the total hours actually worked by the worker, beginning and ending times, an itemization of all deductions made from the worker's wages; the worker's net pay; the employer's name, address and IRS identification number. Employer will abide by all regulations at 20 CFR 655.122(j)(k).

19. Transportation: The Employer will not advance transportation and subsistence costs to Workers for transportation to the place of employment.

This subparagraph applies only to Workers who cannot reasonably return to their residence the same day. After the workers have completed 50% of the work contract. All eligible applicants will have their inbound reasonable transportation expenses reimbursed, one time only. Domestic applicants from outside of the normal commuting distance that voluntarily chose not to reside in the employer provided housing, the employer will pay for the initial inbound transportation reimbursement. However, the employer will not reimburse any workers for daily transportation cost whether commuting from inside or outside of the area of intended employment. Employer will not pay for voluntary trips back to their residence due to family emergencies, or vacations.

The amount of such transportation payment will be equal to the Worker's actual transportation costs not to exceed the most economical and reasonable common carrier transportation charges for the distance involved. In lieu of the above payments to the workers for transportation, the employer reserves the right to charter or otherwise arrange to provide for transportation at the employer's election. Subsistence reimbursement shall be ~~\$44.50~~ <sup>\$11.96</sup> per day, without producing documentation of actual expenses, or will otherwise be paid as per 20 CFR 655.122(h) only to those employees who are eligible under the H-2A program regulations for subsistence pay. Maximum Amount to be reimbursed with receipts is \$46.00. By way of illustration and not in limitation of the foregoing, the employer will not pay transportation for such worker if he does not have suitable documents to comply with proof of identity and employment eligibility requirements of IRCA, if he is discharged for lawful job-related reasons, if he has knowledge at the place of recruitment that he cannot perform the duties of the job as described above or if he abandons this employment when he is needed by the Grower. If the grower reimburses the worker prior to the 50% date, and the worker is terminated for cause or abandons prior to the 50% date, the grower reserves the right to recapture that reimbursement.

Employer will provide, pay, or reimburse transportation and subsistence under this agreement if the worker is terminated because of work related injury caused by this/these crop activities and is so certified by a doctor acceptable to employer before leaving employers farm, or termination resulting from an Act of God, as outlined in 655.122(o), which makes fulfillment of this contract impossible as provided in paragraph 18C or if the worker is displaced by a U.S. worker under DOL's 50% rule.

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Employer will offer free transportation for workers living in employer's housing facility both to and from the daily work site. The use of the transportation by the worker is voluntary; no worker will be required as a condition of employment to utilize the transportation offered by the employer. Workers are free to choose their own means of transportation at their own expense.

For US workers who complete the work contract and are eligible for the outbound transportation benefit, or if the employee is terminated without cause, and the worker has no immediate subsequent H2a employment, or an H2a workers that is displaced due the employers obligation under the USDOL 50% rule, the Employer will provide or pay for the worker's reasonable cost of return transportation and subsistence from the place of employment to the place from which the worker departed to work for the employer, except when the worker will not be returning to the place of recruitment due to subsequent employment with another employer. If the subsequent employer has not agreed to provide or pay for the worker's transportation to the subsequent place of employment, the Employer will provide or pay for the transportation and subsistence to the subsequent place of employment in lieu of providing or paying for such expenses from the place of employment to the place from which the worker departed to work for the employer. If the subsequent employer has agreed to provide or pay for the worker's transportation and subsistence to the subsequent place of employment the Employer will not provide or pay for such expenses. The Employer reserves the right to arrange charter or other return transportation. Workers eligible for this benefit who do not wish to avail themselves of employer arranged return transportation would be provided their outbound transportation and subsistence by check. If a worker chooses to not use the employer arrange transportation then they will only be reimbursed for the transportation not included in the employer arranged (Mexican transportation, border crossing and daily subsistence.) In those circumstances, the grower will distribute the checks, as soon as all work is completed, as determined by the employer, and the worker is ready to depart. Workers may select any means of transportation home they choose, however, the reimbursement is limited to the most economical and reasonable common carrier transportation cost for the distance involved. Workers who arrange their own transportation understand they assume all liability and hold harmless the grower/association for any damages, injuries, and personal or property losses.

21. U.S. workers may or may not be covered by unemployment insurance and may or may not be eligible under current unemployment regulations. Workers employed under this job order are designated as seasonal employees.

22. Injuries: Worker will be covered by Worker's Compensation Insurance or equivalent employer provided insurance for injuries arising out of and in the course of employment. Employer assures that there will be no lapse in coverage for workers compensation. The employers workers compensation will be provided throughout the entire length of the contract period. Employer's proof of insurance coverage will be provided to the Regional Administrator before certification is granted. All workers must report all injuries and illnesses to their employer. Failure not to do so may result in termination.

23. Employers will provide tools and equipment at no cost for workers to perform the above tasks. Workers will be charged for any willful damage to or loss of such tools and equipment.

24. For workers covered by MSPA 29 CFR 500.075(8) there are not any arrangements made with establishment owners or agents for the payment of a commission or other benefits for sales made to the workers.

#### 28. Other Conditions of Employment:

A). Discipline and/or Termination: Employer may discipline and/or terminate the worker for lawful job-related reasons and so notify the Job Service local office of the termination if the worker: a) refuses without justified cause to perform work for which the worker was recruited and hired, b) commit serious act(s) of misconduct or serious or repeated violation(s) of Work Rules attached hereto. c) fails after completing the training period to perform the work as specified in Item 16 and Attachment, d) malingers or otherwise refuses without justified cause to perform as directed the work for which the Worker was recruited and hired; e) provides other lawful job-related reason(s) for termination of employment, f) abandons his employment; g) fails to meet applicable production standards or keep up with fellow workers h) falsifies identification, personnel, medical, production or other work related records, i) fails or refuses to take a drug test, or j) commits acts of insubordination, k) the employer may terminate the worker (foreign or domestic) with notification to the employment service if employer discovers a criminal conviction record or status as a registered sex offender that employer reasonably believes, consistent with current law, will impair the safety and living conditions of other workers. Reason beyond employer's control" includes termination of workers, if he not a U.S. worker because a U.S. worker makes himself available for the job under DOL's 50% rule. Workers must notify the employer prior to voluntarily terminating their employment. All wages due will be forwarded to the last known address for Workers that leave without providing notice. It is imperative that workers provide a complete and accurate address to the employer no later than the first day of employment. These employers have a no complete, no rehire policy. Termination for lawful job related reasons before the specified ending date listed in this application will disqualify the employee from future employment opportunities with this employer. Workers who abandon their employment without notice during the period covered by this work agreement will be disqualified from future employment opportunities with this employer. Voluntary resignation before the specified ending date listed in this application may disqualify the employee from future employment opportunities with this employer. For workers who resign their employment voluntarily, the employer will consider and evaluate special circumstances and hardship cases on a case-by-case basis. Employees, without exception, are required to notify appropriate supervisory staff prior to voluntarily terminating their employment to be considered and eligible for exemption to the no complete - no rehire policy.

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B). The employer may discipline the worker, including requiring the worker to leave the field ("time out") for a period determined by the foreman, suspension from employment for up to three days, or termination of employment as described in termination (A) above.

C). Employer Obligation If Employment Extended: No extension of employment beyond the Period of Employment specified in the job order shall relieve the Employer from paying the wages already earned, or if specified in the job order as a term of employment, providing return transportation or paying return transportation expenses to the Worker.

D). Employer Notification of Changes in Employment Terms and Conditions: Employers will expeditiously notify the order-holding local office or State agency by email immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over recruitment, or other factors have changed the terms and conditions of employment. The terms of this Work Agreement thereafter may be changed upon posted notice to the Worker.

E). Outreach Workers: Outreach workers shall have reasonable access to the Worker in the conduct of outreach activities pursuant to 20 CFR 653.107 and 20 CFR 653.501.

F). Training: There will be a short demonstration period (up to 1 hr.) to familiarize workers with job specifications, to demonstrate proper methods and other crop specific issues. The employer will not provide separate formal orientation or training periods for each different crop or each different type of task or job assignment covered within the job description. After completion of the training period the employer will expect all workers to possess the skills to work in the production of the crops above. For purposes of this section seven or more hours will be considered one day.

G). Work Agreement: A copy of the contract or Job Clearance Order and work rules (copy attached) will be provided to the worker by the employer no later than on the day the time at which the worker applies for the visa (for foreign workers), or to a worker in corresponding employment no later than when the employment is offered.

H). Employer agrees to abide by the regulations at 20 CFR 655.135.

I). The employer as a part of positive recruitment as per 20 CFR 655.154 is willing, if and when any substantial number of applicants are available, to coordinate group transportation arrangements (to facilitate their purchase of bus tickets etc.), where appropriate, and to provide any additional information that workers need to coordinate their arrival.

J) We are an equal opportunity employer. Women and minorities are encouraged to apply to these positions.

K). SUBSTANCE ABUSE POLICY: This employer will strive to provide a safe and healthful work environment, free of substance abuse, for the protection of our associates, employees and visitors. The use, possession or being under the influence of illegal drugs or alcohol during working time is prohibited. (Alcohol may be permitted in the housing facility outside work hours.) Employees may also be requested to take random drug tests at no cost to the worker. Workers are subject to random drug testing effective their first date of work. Failure to comply with the request or testing positive will result in immediate termination.

L). Pursuant to 20 CFR 655.135(i)(1), each employee that enters the United States with an H-2A temporary work visa must return at the end of the period listed in this contract and certified by the U.S. Department of Labor or upon separation from the employer, whichever is earlier, unless the employee is being sponsored by another subsequent H-2A employer.

M) Grievance Policy: If any area of your work is causing you concern, you have the responsibility to address your concern with your immediate supervisor. Most problems can and should be solved in discussion with your immediate supervisor; if after these attempts there is no satisfactory resolution, you should bring your concerns to upper management.

This employer strongly urges the reporting of all incidents of discrimination, harassment or retaliation, regardless of the offender's identity or position. Individuals who believe they have experienced any of these or who have concerns about such matters should file their complaints before the conduct becomes severe or pervasive. Individuals should not feel obligated to file their complaints with their immediate supervisor first before bringing the matter to the attention of upper management.

Our goal is to have a work environment where we all treat each other respectfully and professionally. Any unprofessional or disrespectful behavior, even if not illegal, that interferes with that goal and will not be tolerated. The employer reserves the right to respond to inappropriate behavior even where no one has complained or indicated they have been offended.

N) The employer is committed to providing a safe, flexible and respectful environment for employees, staff, clients, or anyone you come into contact with on company business, free from all forms of sexual harassment. Any type of sexual harassment is grounds for immediate termination. Sexual harassment is a specific and serious form of harassment. It is defined as: unwelcome sexual behavior, which could be expected to make a person feel offended, humiliated or intimidated. Sexual harassment can be physical, spoken or written. It can include: a) comments about a person's private life or the way they look, b) sexually suggestive behaviour, such as leering or staring, c) brushing up against someone, touching, fondling or hugging, d) sexually suggestive comments or jokes e) displaying

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offensive screen savers, photos, calendar objects, f) repeated requests to go out, g) requests for sex, h) sexually explicit emails, text messages or posts on social networking sites.

Just because someone does not object to inappropriate behavior in the workplace at the time, it does not mean that they are consenting to the behavior.

Sexual harassment is covered in the workplace when it happens at work, at work-related events, between people sharing the same workplace, or between colleagues outside of work.

#### FARM, HARVESTING, AND FIELD FOOD SAFETY RULES

1. Worker must practice good personal hygiene.
2. Worker should wash and sanitize hands for at least 20 seconds:
  - a. Before and after working
  - b. Before beginning work in a different area
  - c. Before and after eating
  - d. After visiting the restrooms, toilets and port-a-johns
  - e. Before and after treating an open wound or cut
  - f. Before and after treating an individual with a cut or wound
  - g. After blowing of nose
  - h. After touching the hair or face
  - i. After sneezing or coughing
  - j. After touching anything which can cause contamination or performing maintenance
  - k. After any break
  - l. After handling any dirty raw material or garbage
  - m. After touching animals or animal feces
3. All jewelry (ring with stones, watches, earrings, etc) must be removed before entering any work area. Wedding bands without stones are permitted (supervisor's authorization is required).
4. Eating food, drinking beverages, chewing gum and using tobacco products are strictly prohibited in all work areas.
5. Worker should use proper hand washing and toilet facilities.
6. Report any active case of illness to crew leader or supervisors before beginning work. Workers with bad colds, contagious diseases, boils or sores will not be allowed to contact product, equipment, boxes and containers.
7. If worker cuts him or herself while working, worker should stop work immediately, cover the wound, and report it to the supervisor. Keep wounds covered so that you do not contaminate the product, equipment, boxes and containers with body fluids.
8. All workers shall maintain neatness while in working areas.
9. Personal items such as pens, pencils, keys, tobacco products, cell phones, snacks, etc., shall not be carried in pockets while in working areas.
10. Animals are prohibited on all farm premises.
11. Only employer personnel and registered visitors are allowed on the employer's premises. Visitors must sign in at designated area prior to entering the premises.
12. Workers families and children are not allowed in any work area.
13. Tools, knives and sheaths must be sanitized upon entering each field, leaving each field, with each crop change and after each break. Worker should wear knife sheath at all times when working. Knife should be stored in sheath.
14. If issued, worker should change and have laundered at least every other day his/her uniforms, and protective clothing. If required, worker should use personal protective equipment correctly.
15. No glass is allowed in any work areas.

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**Addendum - Sun Valley Orchards LLC**

Employers		Total Workers Employed	Starting Date Ending Date	Housing Type	Housing Location County	Total Capacity	Total H2A Wrkrs
Russell James Marino Jr. Sun Valley Orchards LLC 29 Vestry Rd Swedesboro, NJ, 08085 1-856-769-5280 Asparagus, Cucumbers, Eggplant, Peaches, Peppers, Zucchini	(8301)	200	4/13/15 10/10/15		Gloucester	190	40
Total Workers Employed							200
Total Housing Capacity							190
Total H2A Workers Requested							40
Total Employers							1

Housing Types: AP - Apartment, BL - Block, HO - Hotel/Motel, ME - Metal, MH - Mobile Home, SH - Shared, WF - Wood Frame

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Sun Valley Orchards 2015 Field Locations

field location	city	state	zip	county
Burlington / Garrison Rd	Elmer	NJ	08318	Salem
Biddle Rd	Mannington Twp	NJ	08079	Salem
Halltown Rd	Mannington Twp	NJ	08079	Salem
Pt Airy Rd	Woodstown	NJ	08098	Salem
Vestry Rd	Swedesboro	NJ	08085	Gloucester
St Rt 45	Harrisonville	NJ	08085	Gloucester
Marl Rd	Harrisonville	NJ	08085	Gloucester
Swedesboro / Harrisonville Rd	Harrisonville	NJ	08085	Gloucester
Harrisonville/Woodstown Rd	Harrisonville	NJ	08085	Gloucester
Harrisonville/Woodstown Rd	Woodstown	NJ	08098	Salem
Cty Rd 538	Swedesboro	NJ	08085	Gloucester
High St	Swedesboro	NJ	08085	Gloucester

C-3R

DOL00288

U.S. Department of Labor    **Employment and Training Administration**  
Office of Foreign Labor Certification  
Chicago National Processing Center  
11 West Quincy Court  
Chicago, IL 60604



March 13, 2015

Theresa L Ward  
685 Us Hwy 15-501  
Carthage, NC 28327

Case Number: H-300-15056-056255

**RE: Sun Valley Orchards LLC**

Dear Sir/Madam:

Your application seeking temporary labor certification under the H-2A temporary agricultural program has been **certified**. On March 3, 2015, this office accepted for consideration an application from you requesting H-2A temporary labor certification for 40 Farmworkers and Laborers, Crop, Nursery, and Greenhouse job opportunities. In accordance with Departmental regulations at 20 Code of Federal Regulations (CFR) § 655, Subpart B, it has been determined that a sufficient number of able, willing and qualified U.S. workers have not been identified as being available at the time and place needed to fill all of the job opportunities for which certification has been requested and that employment of the H-2A workers will not adversely affect the wages and working conditions of workers in the United States similarly employed.

Therefore, the Department grants certification for 40 Farmworkers and Laborers, Crop, Nursery, and Greenhouse job opportunities. You must comply with all assurances, guarantees and other requirements contained in Departmental regulations at 20 CFR § 655, Subpart B and 20 CFR § 653, Subpart F.

Upon receipt of this notification, you will need to submit to the U.S. Citizenship and Immigration Service (USCIS) California Service Center the I-129 Form that is required in conjunction with an H-2A application. The USCIS petition can be obtained at <http://www.uscis.gov>.

**IMPORTANT NOTE:** The employer must sign and date the ETA Form 9142 prior to submission to USCIS California Service Center.

Enclosed is a bill for fees assessed for the H-2A certification. Non-payment or untimely payment may be considered a substantial violation subject to the procedures in Departmental regulations at 20 CFR § 655.182.

**Important Reminders:**

- In accordance with Departmental regulations at 20 CFR § 655.120(b), if the prevailing hourly wage or piece rate is adjusted during a work contract, and is higher than the highest of the AEWR, the prevailing wage, the agreed-upon collective bargaining wage, or the Federal or State minimum wage, in effect at the time the work is performed, the employer must pay at least that higher prevailing wage or piece rate upon notice to the employer by the Department. The Department posts all current prevailing hourly wages and piece rates to the Department of Labor's Agricultural On-Line Wage Library (AOWL). You are encouraged to visit the AOWL website at <http://www.foreignlaborcert.doleta.gov/aowl.cfm> for the updated wage rates.
- You must continue to cooperate with the State Workforce Agency (SWA) by accepting all referrals of eligible U.S. workers who apply (or on whose behalf an application is made) for the job opportunity until the end of the recruitment period as set forth in Departmental regulations at 20 CFR § 655.135(d). The end date of your obligation to consider all referrals under the 50 percent rule is calculated by the SWA based on the date the H-2A worker departed for the employer's place of business, which is assumed to be three days prior to the first date of need. However, if the H-2A worker will not depart for your place of employment three days prior to the first date of need, Departmental regulation 20 CFR § 655.135(c) requires you to inform the SWA in writing of the new expected departure date.
- You must update and maintain the recruitment report throughout the recruitment period including the 50 percent period as specified in Departmental regulations at 20 CFR § 655.156(b). This supplement to the recruitment report must meet the requirements of Departmental regulations at 20 CFR § 655.156(a)(1)-(4). The employer must sign and date this supplement to the recruitment report and retain it for a period of no less than three (3) years. The supplement to the recruitment report must be provided upon request.
- You are also reminded that in accordance with Departmental regulations at 20 CFR § 655.122(n), the termination of workers for cause and abandonment of the job by workers are to be reported in writing to the Department and to the Department of Homeland Security (DHS) within two (2) business days of the termination or discovering abandonment. To make compliance with this requirement simple and fast, the employer may e-mail the notification directly to the Chicago NPC using [TLC.Chicago@dol.gov](mailto:TLC.Chicago@dol.gov). Your requests will be handled as expeditiously as possible. Employers without internet access may also send written notification by facsimile to (312) 886-1688 (ATTN: H-2A Abandonment and Termination) or U.S. mail to the following address:

U.S. Department of Labor  
Employment and Training Administration  
Office of Foreign Labor Certification  
Chicago National Processing Center  
11 West Quincy Court

Chicago, IL 60604  
ATTN: H-2A Abandonment and Termination

- In accordance with Departmental regulations at 20 CFR § 655.135(i), employers must inform H-2A workers of the requirement that they must leave the United States at the end of the period certified by the Department or separation from the employer, whichever is earlier, unless the H-2A worker is being sponsored by another subsequent employer.
- In accordance with Departmental regulations at 20 CFR § 655.122(q), employers must provide to H-2A workers no later than the time at which the workers apply for the visa, or to workers in corresponding employment no later than on the day work commences, a copy of the work contract between the employer and the workers in a language understood by the worker as necessary or reasonable. For H-2A workers going from an H-2A employer to a subsequent H-2A employer, the copy must be provided no later than the time an offer of employment is made by the subsequent H-2A employer.
- In accordance with Departmental regulations at 20 CFR § 655.135(l), employers must post and maintain in a conspicuous location at the place of employment, a poster provided by the Secretary of the Department of Labor in English, and to the extent necessary, any language common to a significant portion of the workers if they are not fluent in English, which sets out the rights and protections for workers. A copy of the poster is available at <http://www.dol.gov/whd/resources/posters.htm>.
- Departmental regulations at 20 CFR § 655.180, allow the Department to conduct audit examinations of certified H-2A applications. The applications selected for audit will be chosen within the sole discretion of the Department. If your certification has been selected for audit, you are reminded that you must submit the documentation requested in the audit letter within the specified timeframe. Failure to comply with the audit process may result in a finding by the Certifying Officer to revoke the labor certification and/or debarment of the employer from future filings of H-2A temporary labor certification applications. Additionally, the audit findings and underlying documentation may be provided to the Department of Homeland Security or another appropriate enforcement agency. Referrals of any findings that an employer discouraged an eligible U.S. worker from applying, or failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, to the Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices.
- In accordance with Departmental regulations at 20 CFR § 655.170, employers may request to extend (by more than two (2) weeks) the period of employment on certified H-2A applications in writing, to the Chicago NPC. The employer may e-mail the request directly to the Chicago NPC using the address:

TLC.Chicago@dol.gov, with the words "H-2A Extension Request" contained in the subject line of the e-mail. Employers without internet access may send a written request by facsimile to (312) 886-1688 (ATTN: H-2A Extension Request) or by U.S. mail to the following address:

U.S. Department of Labor  
Employment and Training Administration  
Office of Foreign Labor Certification  
Chicago National Processing Center  
11 West Quincy Court  
Chicago, IL 60604  
ATTN: H-2A Extension Request

- Requests for changes in the period of employment lasting two (2) weeks or less can be directly filed with the USCIS California Service Center.

Sincerely,

OFLC Certifying Officer

Enclosures: Invoice for Certification; ETA Form 9142

CC: Sun Valley Orchards LLC  
New Jersey Department of Employment & Workforce

Public Burden Statement: OMB control number 1205-0486, expiration date 03/31/2016. This reporting instruction has been approved under the Paperwork Reduction Act of 1995. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Obligations to respond are mandatory (20 CFR 655.122, 655.135, 655.145, and 655.156). Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Room C-4312, 200 Constitution Ave., NW, Washington, DC 20210. DO NOT send any of the above listed notices to this address.



OMB Approval: 1205-0466  
Expiration Date: 03/31/2016H-2A Application for Temporary Employment Certification  
ETA Form 9142A  
U.S. Department of Labor

Please read and review the filing instructions carefully before completing the ETA Form 9142A. A copy of the instructions can be found at <http://www.foreignlaborcert.dol.gov/>. In accordance with Federal Regulations, incomplete or obviously inaccurate applications will not be certified by the Department of Labor. If submitting this form non-electronically, ALL required fields/items containing an asterisk (\*) must be completed as well as any fields/items where a response is conditional as indicated by the section (§) symbol.

## A. Employment-Based Nonimmigrant Visa Information

1. Indicate the type of visa classification supported by this application (Write classification symbol): \* H-2A

## B. Temporary Need Information

1. Job Title \* Farmworker; Diversified

2. SOC (ONET/OES) code \*  
45-20923. SOC (ONET/OES) occupation title \*  
Farmworkers and Laborers, Crop, Nursery, and Greenhouse4. Is this a full-time position? \*  
☒ Yes ☐ No

## Period of Intended Employment

5. Begin Date \* 04/13/2015  
(mm/dd/yyyy)6. End Date \* 10/10/2015  
(mm/dd/yyyy)

7. Worker positions needed/basis for the visa classification supported by this application

40 Total Worker Positions Being Requested for Certification \*

Basis for the visa classification supported by this application

(Indicate the total workers in each applicable category based on the total workers identified above)

40 a. New employment \*

0

d. New concurrent employment \*

0 b. Continuation of previously approved employment \*  
without change with the same employer

0

e. Change in employer \*

0 c. Change in previously approved employment \*

0

f. Amended petition \*

8. Nature of Temporary Need: (Choose only one of the standards) \*

☒ Seasonal ☐ Peakload ☐ One-Time Occurrence ☐ Intermittent or Other Temporary Need

9. Statement of Temporary Need \*

N/A

ETA Form 9142A

FOR DEPARTMENT OF LABOR USE ONLY

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Case Number: H-300-16058-056255

Case Status: CERTIFIED

Validity Period: 04/13/2015 to 10/10/2015

OMB Approval: 1208-0466  
Expiration Date: 03/31/2016H-2A Application for Temporary Employment Certification  
ETA Form 9142A  
U.S. Department of Labor

## C. Employer Information

**Important Note:** Enter the full name of the individual employer, partnership, or corporation and all other required information in this section. For joint employer or master applications filed on behalf of more than one employer under the H-2A program, identify the main or primary employer in the section below and then submit a separate attachment that identifies each employer, by name, mailing address, and total worker positions needed, under the application.

1. Legal business name *		
Sun Valley Orchards LLC		
2. Trade name/Doing Business As (DBA), if applicable		
N/A		
3. Address 1 *		
29 Vestry Rd		
4. Address 2		
N/A		
5. City *	6. State *	7. Postal code *
Swedesboro	NJ	08085
8. Country *	9. Province	
UNITED STATES OF AMERICA	N/A	
10. Telephone number *	11. Extension	
856-769-5280	N/A	
12. Federal Employer Identification Number (FEIN from IRS) *		13. NAICS code (must be at least 4-digits) *
460542793		111339
14. Number of non-family full-time equivalent employees	15. Annual gross revenue	16. Year established
0		N/A
17. Type of employer application (choose only one box below) *		
<input checked="" type="checkbox"/> Individual Employer <input type="checkbox"/> Association - Sole Employer (H-2A only)		
<input type="checkbox"/> H-2A Labor Contractor or Job Contractor <input type="checkbox"/> Association - Joint Employer (H-2A only)		
<input type="checkbox"/> Association - Filing as Agent (H-2A only)		

## D. Employer Point of Contact Information

**Important Note:** The information contained in this Section must be that of an employee of the employer who is authorized to act on behalf of the employer in labor certification matters. The information in this Section must be different from the agent or attorney information listed in Section E, unless the attorney is an employee of the employer. For joint employer or master applications filed on behalf of more than one employer under the H-2A program, enter only the contact information for the main or primary employer (e.g., contact for an association filing as joint employer) under the application.

1. Contact's last (family) name *	2. First (given) name *	3. Middle name(s) *
Marino Jr	Russell	James
4. Contact's job title *		
Owner/Manager		
5. Address 1 *		
29 Vestry Rd		
6. Address 2		
N/A		
7. City *	8. State *	9. Postal code *
Swedesboro	NJ	08085
10. Country *	11. Province	
UNITED STATES OF AMERICA	N/A	
12. Telephone number *	13. Extension	14. E-Mail address
856-769-5280	N/A	N/A

ETA Form 9142A

FOR DEPARTMENT OF LABOR USE ONLY

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Case Number: H-300-15056-056255

Case Status: CERTIFIED

Validity Period: 04/13/2015 to 10/10/2015

OMB Approval: 1205-0466  
Expiration Date: 03/31/2016H-2A Application for Temporary Employment Certification  
ETA Form 9142A  
U.S. Department of Labor

## E. Attorney or Agent Information (If applicable)

1. Is/are the employer(s) represented by an attorney or agent in the filing of this application (including associations acting as agent under the H-2A program)? If "Yes", complete Section E. *			<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Attorney or Agent's last (family) name § Ward	3. First (given) name § Theresa	4. Middle name(s) § L		
5. Address 1 § 885 US Hwy 15-501				
6. Address 2 N/A				
7. City § Carthage	8. State § NC	9. Postal code § 28327		
10. Country § UNITED STATES OF AMERICA		11. Province N/A		
12. Telephone number § 910-947-6004	13. Extension N/A	14. E-Mail address tward.nac@gmail.com		
15. Law firm/Business name § National Agricultural Consultants LLC		16. Law firm/Business FEIN § 471490898		
17. State Bar number (only if attorney) § N/A		18. State of highest court where attorney is in good standing (only if attorney) § N/A		
19. Name of the highest court where attorney is in good standing (only if attorney) § N/A				

## F. Job Offer Information

## a. Job Description

1. Job Title * Farmworker, Diversified	
2. Number of hours of work per week Basic *: 40 Overtime: 0	3. Hourly Work Schedule * A.M. (h:mm): 7 : 00 P.M. (h:mm): 3 : 00
4. Does this position supervise the work of other employees? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	4a. If yes, number of employees worker will supervise (if applicable) § 0
5. Job duties - A description of the duties to be performed MUST begin in this space. If necessary, add attachment to continue and complete description. *	
Workers will perform a variety of duties with harvesting vegetable crops grown by employer See 9142 attachments for more complete details.	

ETA Form 9142A

FOR DEPARTMENT OF LABOR USE ONLY

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Case Number: H-300-16066-066265

Case Status: CERTIFIED

Validity Period: 04/13/2015 to 10/10/2015

OMB Approval: 1205-0466  
Expiration Date: 03/31/2016H-2A Application for Temporary Employment Certification  
ETA Form 9142A  
U.S. Department of Labor

## F. Job Offer Information (continued)

## b. Minimum Job Requirements

1. Education: minimum U.S. diploma/degree required *	
<input checked="" type="checkbox"/> None <input type="checkbox"/> High School/GED <input type="checkbox"/> Associate's <input type="checkbox"/> Bachelor's <input type="checkbox"/> Master's <input type="checkbox"/> Doctorate (PhD) <input type="checkbox"/> Other degree (JD, MD, etc.)	
1a. If "Other degree" in question 1, specify the diploma/degree required § N/A	1b. Indicate the major(s) and/or field(s) of study required § (May list more than one related major and more than one field) N/A
2. Does the employer require a second U.S. diploma/degree? *	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
2a. If "Yes" in question 2, indicate the second U.S. diploma/degree and the major(s) and/or field(s) of study required § N/A	
3. Is training for the job opportunity required? *	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
3a. If "Yes" in question 3, specify the number of months of training required § 0	3b. Indicate the field(s)/name(s) of training required § (May list more than one related field and more than one type) N/A
4. Is employment experience required? *	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
4a. If "Yes" in question 4, specify the number of months of experience required § 3	4b. Indicate the occupation required § verifiable experience harvesting a perishable crop
5. Special Requirements - List specific skills, licenses/certifications, and requirements of the job opportunity. *	
SEE ADDENDUM	
Applicants must be able to furnish affirmative job references from recent employers operating comparable operations establishing acceptable previous experience. Workers	

## c. Place of Employment Information

1. Worksite address 1 *	
29 Vestry Rd	
2. Address 2 N/A	
3. City *	4. County *
Swedesboro	Gloucester
5. State/District/Territory *	6. Postal code *
NJ	08085
7. Will work be performed in multiple worksites within an area of intended employment or a location(s) other than the address listed above? *	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
7a. If Yes in question 7, identify the geographic place(s) of employment with as much specificity as possible. If necessary, submit an attachment to <u>continue and complete</u> a listing of all anticipated worksites. §	
1. New Jersey Other see attached spreadsheet all of which are owned/leased by employer.	
2. New Jersey Other employer provides daily transportation from main location to each work site.	

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FOR DEPARTMENT OF LABOR USE ONLY

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Case Number: H-300-15056-056255

Case Status: CERTIFIED

Validity Period: 04/13/2015 to 10/10/2015

OMB Approval: 1205-0468  
Expiration Date: 03/31/2016H-2A Application for Temporary Employment Certification  
ETA Form 9142A  
U.S. Department of Labor

## G. Rate of Pay

1. Basic Rate of Pay Offered *		1a. Overtime Rate of Pay (if applicable) \$	
From: \$ 11 . 29 To (Optional): \$ 0 . 00		From: \$ 0 . 00 To (Optional): \$ 0 . 00	
2. Per: (Choose only one) * <input checked="" type="checkbox"/> Hour <input type="checkbox"/> Week <input type="checkbox"/> Bi-Weekly <input type="checkbox"/> Month <input type="checkbox"/> Year <input type="checkbox"/> Piece Rate			
2a. If Piece Rate is indicated in question 2, specify the wage offer requirements: \$ N/A			
3. Additional Wage Information (e.g., multiple worksite applications, itinerant work, or other special procedures). If necessary, add attachment to <u>continue and complete</u> description. \$ SEE ADDENDUM			
In the event that the Department of Labor promulgates a new AEWR applicable to any portion of the period of employment covered by this job order which is higher or lower than the AEWR herein, the employer will pay the higher AEWR, and may, at the			

## H. Recruitment Information

1. Name of State Workforce Agency (SWA) serving the area of intended employment *		
New Jersey Department of Employment & Workforce		
2. SWA job order identification number *	2a. Start date of SWA job order *	2b. End date of SWA job order * (In H-2A this date is 50% of contract period)
NJ0982022	02/12/2014	07/27/2015
3. Is there a Sunday edition of a newspaper (of general circulation) in the area of intended employment? *		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Name of Newspaper/Publication (in area of intended employment for H-2B only). *		Dates of Print Advertisement \$
4. TBA		From: To:
5. N/A		From: To:
6. Additional Recruitment Activities for H-2B program. Use the space below to identify the type(s) or source(s) of recruitment, geographic location(s) of recruitment, and the date(s) on which recruitment was conducted. If necessary, add attachment to <u>continue and complete</u> description. *		
Attempt to re-contact former workers Advertise in local newspaper Advertise by word of mouth Publicize through employment service Solicit help through Ag Extension and Farm Bureau.		
The employers will engage in positive recruitment of U.S. workers to the same extent (with respect to both effort and location) no less than that of non H-2A employers of comparable or smaller size in the area of employment in accordance with 655.135.		

ETA Form 9142A

FOR DEPARTMENT OF LABOR USE ONLY

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Case Number: H-300-15056-056255

Case Status: CERTIFIED

Validity Period: 04/13/2015 to 10/10/2015



OMB Approval: 1205-0466  
Expiration Date: 03/31/2016H-2A Application for Temporary Employment Certification  
ETA Form 9142A  
U.S. Department of Labor**I. Declaration of Employer and Attorney/Agent**

In accordance with Federal regulations, the employer must attest that it will abide by certain terms, assurances and obligations as a condition for receiving a temporary labor certification from the U.S. Department of Labor. Applications that fail to attach Appendix A or Appendix B will be considered incomplete and not accepted for processing by the ETA application processing center.

1. For H-2A Applications ONLY, please confirm that you have read and agree to all the applicable terms, assurances and obligations contained in <b>Appendix A.</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
2. For H-2B Applications ONLY, please confirm that you have read and agree to all the applicable terms, assurances and obligations contained in <b>Appendix B.</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

**J. Preparer**

Complete this section if the preparer of this application is a person other than the one identified in either Section D (employer point of contact) or E (attorney or agent) of this application.

1. Last (family) name \$ N/A	2. First (given) name \$ N/A	3. Middle initial \$ N/A
4. Job Title \$ N/A		
5. Firm/Business name \$ N/A		
6. E-Mail address \$ N/A		

**K. U.S. Government Agency Use (ONLY)**

Pursuant to the provisions of Section 101 (a)(15)(h)(ii) of the Immigration and Nationality Act, as amended, I hereby certify that there are not sufficient U.S. workers available and the employment of the above will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. By virtue of the signature below, the Department of Labor hereby acknowledges the following:

This certification is valid from 04/13/2015 to 10/10/2015

Department of Labor, Office of Foreign Labor Certification

03/13/2015  
Determination Date (date signed)

H-300-15056-056255  
Case number

CERTIFIED  
Case Status

**L. Public Burden Statement 1205-0466**

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 1 hour to complete the form and 20 minutes per response for all other H-2A information collection requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this data collection is required to obtain/retain benefits (Immigration and Nationality Act, 8 U.S.C. 1101, et seq.). Please send comments regarding this burden estimate or any other aspect of this information collection to the Office of Foreign Labor Certification \* U.S. Department of Labor \* Room C4312 \* 200 Constitution Ave., NW, \* Washington, DC \* 20210 or by email [ETA.OFLC.Forms@dol.gov](mailto:ETA.OFLC.Forms@dol.gov). Please do not send the completed application to this address.

ETA Form 9142A

FOR DEPARTMENT OF LABOR USE ONLY

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Case Number: H-300-15056-056255Case Status: CERTIFIEDValidity Period: 04/13/2015 to 10/10/2015



OMB Approval: 1205-0466  
Expiration Date: 03/31/2016

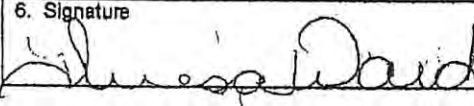
**H-2A Application for Temporary Employment Certification**  
**ETA Form 9142A – APPENDIX A**  
**U.S. Department of Labor**



**For Use In Filing Applications Under the H-2A Agricultural Program ONLY**

**A. Attorney or Agent Declaration**

*I hereby certify that I am an employee of, or hired by, the employer listed in Section C of the ETA Form 9142A, and that I have been designated by that employer to act on its behalf in connection with this application. If I am an agent and not an employee of the employer, then I have attached a Letter of Representation from the employer. I also certify that to the best of my knowledge the information contained herein is true and correct. I understand that to knowingly furnish false information in the preparation of this form and any supplement hereto or to aid, abet, or counsel another to do so is a felony punishable by a \$250,000 fine or 5 years in a Federal penitentiary or both (18 U.S.C. 1001).*

1. Attorney or Agent's last (family) name Ward	2. First (given) name Theresa	3. Middle Initial L
4. Firm/Business name National Agricultural Consultants LLC		
5. E-Mail address tward.nac@gmail.com		
6. Signature 		7. Date signed 03/16/2015

**B. Employer Declaration**

*By virtue of my signature below, I HEREBY CERTIFY the following conditions of employment:*

1. The job opportunity is a full-time temporary position, the qualifications for which do not substantially deviate from the normal and accepted qualifications required by non-H-2A employers in the same or comparable occupations and crops.
2. The worksite for which the employer is requesting H-2A certification does not currently have workers on strike or being locked out in the course of a labor dispute.
3. The job opportunity is and will continue to be open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship, and the employer has conducted and will continue to conduct the required recruitment, in accordance with regulations, and has been unsuccessful in locating sufficient numbers of qualified U.S. applicants for the job opportunity for which certification is sought. Any U.S. workers who applied or apply for the job were or will be rejected only for lawful, job-related reasons, and the employer must retain records of all rejections as required by 20 CFR 655.167.
4. The job opportunity offers U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers and complies with the requirements at 20 CFR 655, Subpart B.
5. The employer understands that it must offer, recruit at, and pay a wage that is the highest of the adverse effect wage rate in effect at the time the job order is placed, the prevailing hourly or piece rate, the agreed-upon collective bargaining rate (CBA), or the Federal or State minimum wage, and, furthermore, that if a new Adverse Effect Wage Rate is published, or the employer is notified of a new prevailing wage rate during the contract period, and that new rate is higher than the wage determined by the NPC (except the CBA) during the application process the employer will increase the pay of all employees in the same job occupation to the higher rate.
6. There are no U.S. workers available in the area(s) capable of performing the temporary services or labor in the job opportunity, and the employer will conduct positive recruitment as specified by the NPC and continue to cooperate with the SWA by accepting referrals of all eligible U.S. workers who apply (or on whose behalf an application is made) for the job opportunity until completion of 50 percent of the contract period calculated from the first date of need indicated in Section B.6 of ETA Form 9142A.
7. All fees associated with processing the temporary labor certification will be paid in a timely manner.

ETA Form 9142A – Appendix A

FOR DEPARTMENT OF LABOR USE ONLY

Page A.1 of A.3

Case Number: H-300-16058-058266

Case Status: CERTIFIED

Period of Employment: 04/15/2015 to 10/10/2015

OMB Approval: 1205-0466  
Expiration Date: 03/31/2016

**H-2A Application for Temporary Employment Certification**  
**ETA Form 9142A – APPENDIX A**  
**U.S. Department of Labor**



8. During the period of employment that is the subject of the labor certification application, the employer:
  - (i) Will comply with applicable Federal, State and local employment-related laws and regulations, including health and safety laws;
  - (ii) Will provide for or secure housing for workers who are not reasonably able to return to their permanent residence at the end of the work day that complies with the applicable local, State, or Federal standards and guidelines for housing without charge to the worker;
  - (iii) Where required, has timely requested a preoccupancy inspection of the housing and received certification;
  - (iv) Will provide insurance, without charge to the worker, under a State workers' compensation law or otherwise, that meets the requirements of 20 CFR 655.122(e).
  - (v) Will provide transportation in compliance with all applicable Federal, State or local laws and regulations between the worker's living quarters (i.e., housing provided by the employer under 20 CFR 655.122(h)) and the employer's worksite without cost to the worker.
9. The employer has not laid off and will not lay off any similarly employed U.S. worker in the occupation that is the subject of the Application for Temporary Employment Certification in the area of intended employment except for lawful, job related reasons within 60 days of the date of need, or if the employer has laid off such workers, it has offered the job opportunity that is the subject of the application to those laid-off U.S. worker(s) and the U.S. worker(s) refused the job opportunity, was rejected for the job opportunity for lawful, job-related reasons, or was hired.
10. The employer and its agents have not sought or received payment of any kind from the H-2A worker for any activity related to obtaining labor certification, including payment of the employer's attorneys' fees, application fees, or recruitment costs. For purposes of this paragraph, payment includes, but is not limited to, monetary payments, wage concessions (including deductions from wages, salary, or benefits), kickbacks, bribes, tributes, in kind payments, and free labor.
11. The employer has and will contractually forbid any foreign labor contractor or recruiter whom the employer engages in international recruitment of H-2A workers to seek or receive payments from prospective employees...
12. The employer has not and will not intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, and has not and will not cause any person to intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, any person who has with just cause:
  - (i) Filed a complaint under or related to Sec. 218 of the INA (8 U.S.C. 1186), or any Department regulation promulgated under Sec. 218 of the INA;
  - (ii) Instituted or caused to be instituted any proceeding under or related to Sec. 218 of the INA, or any Department regulation promulgated under Sec. 218 of the INA;
  - (iii) Testified or is about to testify in any proceeding under or related to Sec. 218 of the INA or any Department regulation promulgated under Sec. 218 of the INA;
  - (iv) Consulted with an employee of a legal assistance program or an attorney on matters related to Sec. 218 of the INA or any Department regulation promulgated under Sec. 218 of the INA; or
  - (v) Exercised or asserted on behalf of himself/herself or others any right or protection afforded by Sec. 218 of the INA, or any Department regulation promulgated under Sec. 218 of the INA.
13. The employer has not and will not discharge any person because of that person's taking any action listed in paragraph 12(i) through (v) listed above.
14. The employer will inform H-2A workers of the requirement that they leave the U.S. at the end of the period certified by the Department or separation from the employer, whichever is earlier, as required under 20 CFR 655.135(i), unless the H-2A worker is being sponsored by another subsequent employer.
15. The employer has posted the Notice of Workers' Rights as required by 20 CFR 655.135(i) in a conspicuous place frequented by all employees.
16. If the application is being filed as an H-2A Labor Contractor the following additional attestations and obligations apply under 20 CFR 655.132:
  - (i) The H-2A Labor Contractor has provided a copy of the MSPA Farm Labor Contractor (FLC) certificate of registration if required under MSPA, 1801 U.S.C. et seq., to have such a certificate identifying the specific farm labor contracting activities it is authorized to perform;
  - (ii) The H-2A Labor Contractor has provided with this application a list of the names and locations of each fixed-site agricultural business to which the H-2A Labor Contractor expects to provide H-2A workers, the expected beginning and ending dates when the H-2A Labor Contractor will be providing the workers to each fixed site, a description of the crops and activities the workers are expected to perform at such fixed site, and copies of the fully-executed work contracts with each fixed-site agricultural business so identified;
  - (iii) The H-2A Labor Contractor is able to provide proof of its ability to discharge financial obligations under the H-2A program and has secured a surety bond as required by 20 CFR 501.9, the original of which is attached and shows the name, address, phone number, and contact person for the surety, and provides the amount of the bond (as calculated pursuant to 20 CFR 501.9);

ETA Form 9142A – Appendix A

FOR DEPARTMENT OF LABOR USE ONLY

Page A.2 of A.3

Case Number: H-300-15066-056255

Case Status: CERTIFIED

Period of Employment: 04/13/2015 to 10/10/2015

OMB Approval: 1205-0466  
Expiration Date: 03/31/2016



# H-2A Application for Temporary Employment Certification

ETA Form 9142A - APPENDIX A  
U.S. Department of Labor

- (iv) The H-2A Labor Contractor has engaged in and will engage in recruitment efforts in each area of intended employment in which it has listed a fixed-site agricultural business as required in 20 CFR 655.121, 655.150-155; and
- (v) Where the fixed-site agricultural business(es) will provide housing or transportation to the workers, proof that:
- All housing used by workers and owned, operated, or secured by the fixed-site agricultural business complies with the applicable housing standards in 20 CFR 655.122(d);
  - All transportation between the worksite and the workers' living quarters that is provided by the fixed-site agricultural business complies with all applicable Federal, State, or local laws and regulations and that it will provide, at a minimum, the same vehicle safety standards, driver licensure, and vehicle insurance as required under 29 U.S.C. 1841 and 29 CFR part 500, except where workers' compensation is used to cover such transportation as described in § 655.122(e); and
  - Certificates of occupancy from the SWA for all employer owned housing and copies of all drivers' licenses, vehicle registration, and insurance policies for all drivers and vehicles used to transport H-2A workers.

I hereby acknowledge that the agent or attorney identified in section E (if any) of the ETA Form 9142A and section A above is authorized to represent me for the purpose of labor certification and, by virtue of my signature in Block 6 below, I take full responsibility for the accuracy of any representations made by my agent or attorney.

I declare under penalty of perjury that I have read and reviewed this application and that to the best of my knowledge the information contained therein is true and accurate. I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by a \$250,000 fine or 5 years in the Federal penitentiary or both (18 U.S.C. 1001).

1. Last (family) name Marino Jr	2. First (given) name Russell	3. Middle Initial James
4. Title Owner/Manager		
5. Signature <i>Russell James Marino Jr by Theresa Ward, NAC</i>		6. Date signed 03/16/2015

Public Burden Statement (1205-0466) Attorney In Fact

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 1 hour to complete the form and 20 minutes per response for all other H-2A information collection requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this data collection is required to obtain/retain benefits (Immigration and Nationality Act, 8 U.S.C. 1101, et seq.). Please send comments regarding this burden estimate or any other aspect of this information collection to the Office of Foreign Labor Certification \* U.S. Department of Labor \* Room C4312 \* 200 Constitution Ave., NW, \* Washington, DC \* 20210 or by email [ETA.OFLC.Forms@dol.gov](mailto:ETA.OFLC.Forms@dol.gov). Please do not send the completed application to this address.

ETA Form 9142A - Appendix A

FOR DEPARTMENT OF LABOR USE ONLY

Page A.3 of A.3

Case Number: H-300-15068-058255

Case Status: CERTIFIED

Period of Employment: 04/13/2015 to 10/10/2015

OMB Approval: 1205-0468  
Expiration Date: 03/31/2016

H-2A Application for Temporary Employment Certification  
ETA Form 9142A  
U.S. Department of Labor



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**ADDENDUM**

**ADDENDUM SECTION F.b.5: Special Requirements**

must be able to bend, stoop, sit and stand on feet for long periods of time. Must be physically able to meet and perform all job specifications stated in job order, including lifting between 35-75 lbs. Must be able to work in hot humid weather for extended periods of time. Workers are also subject to random drug testing at no cost to employee. All drug testing will occur after the worker begins his or her employment. Failing or refusing a drug test will have a negative result in your employment status. See attachment for more complete details.

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ETA Form 9142A

**FOR DEPARTMENT OF LABOR USE ONLY**

Page 7 of 6

Case Number: H-300-18058-068255

Case Status: CERTIFIED

Validity Period: 04/13/2015 to 10/10/2015

OMB Approval: 1205-0466  
Expiration Date: 03/31/2016

H-2A Application for Temporary Employment Certification  
ETA Form 9142A  
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**ADDENDUM**

**ADDENDUM SECTION G.3: Additional Wage Information**

employers discretion pay the lower AEWR, beginning with the effective date of the new AEWR. Employer will pay the highest of the AEWR, prevailing wage, the piece rate, the agreed-upon collective bargaining wage or the Federal or State minimum wage at the time the work is performed.

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**FOR DEPARTMENT OF LABOR USE ONLY**

Page 6 of 6

Case Number: H-300-15058-058255

Case Status: CERTIFIED

Validity Period: 04/13/2015 to 10/10/2015



**Sun Valley Orchards LLC -****H-300-15056-056255 (NJ)****Attachments to ETA 9142**

**F A 3:** Starting and ending times may vary according to weather and crop conditions. If a worker is offered and agrees to work more than the scheduled hours during any work day, they must still report to work on their other scheduled days, unless arrangements are approved in advance with the owner or supervisor. Choosing to work longer hours during the week does not exclude you from working each scheduled work day. Not reporting for work on your scheduled work day will be counted as an unexcused absence.

**F A 5: Job Specifications:** Must have three months' verifiable experience hand harvesting a perishable crop. Applicants must be able to furnish affirmative job references from recent employers operating comparable operations establishing acceptable previous experience.

Worker must possess requisite physical strength and endurance to repeat the harvest process throughout the workday, working quickly and skillfully to perform activities for which they were hired. Workers must work at a sustained, vigorous pace and make bona fide efforts to work efficiently and consistently that are reasonable under the climate and other working conditions; considering also the amount, quality, and efficiency of work accomplished by their coworkers. Workers may not leave trash, or other discarded items in work areas or vehicles but must dispose of such items in provided receptacles. Workers must wash hands with soap and water after all bathroom and meal breaks. Allergies to varieties of ragweed, goldenrod, insecticides, related agricultural chemicals, etc, may affect workers ability to perform the work described herein. Workers should be physically able to do the worker described with or without reasonable accommodation. Must display the ability to move, place, climb and work from orchard ladders up to 6 feet in height, making the necessary adjustments for various procedures while carrying up to 30 pounds.

**Sanitation Requirements:** For food and general personal safety purposes, all workers will be required and expected to follow common sanitary practices at all times. This is particularly critical when hand harvesting crops for human consumption. Employees are required to cleanse their hands by washing them thoroughly with soap and water after using the bathroom and before entering the fields for harvest activities or the packing facility for packing operations.

Workers will plant, cultivate, and harvest Asparagus, Zucchini, Pickles, Cucumbers, Egg Plant, and Peppers.

**Asparagus:** Workers will move along assigned row, stopping, bending and reaching to cut asparagus spears at ground level may operate self-propelled harvesting aid on which workers ride while stopping to cut spears at ground level. Spears which are less than 1/4 inch in diameter (measured at butt) are discarded. Spears over 1/4 inch in diameter which exceed 12 inches in length will be re-broken at the butt end. Any spearhead which has begun to open will be discarded. Spears meeting harvest specification will be placed in a straight fashion in field buckets and carried to trucks or trailers for dumping. Workers will be required to stay on their assigned row. Workers must use care while using knives to prevent injury to themselves and other workers.

**Zucchini, Pickles, Cucumbers, Egg Plant, and Peppers:** Workers will plant, cultivate and harvest vegetables. Workers will be required to remove weeds by hand or with a hoe. Workers will bend and stoop to pick vegetables according to size, color, shape and degree of maturity and place into field containers. Workers may carry full container weighing approximately fifty (50) lbs. and empty into field bin or load onto trailer. May be required to pull and discard culls as directed by supervisor. Pickers will take care not to bruise or scar produce. Pre-harvest activities may include staking, tying, transplanting and pruning. Workers will stand on feet for long periods of time. Workers are required to work in fields when plants are wet with dew or rain. Temperatures in fields during working hours can range from forty (40) to over one hundred (100) degrees.

**Peaches:** Workers will perform various duties associated with thinning and picking peaches. Worker will be assigned a row, usually with a partner, and is responsible for picking all the proper fruit from that row, or half row. Fruit are selected from the tree according to size and/or color standard set by the picking supervisor. In some instances, fruit harvest will be done from a six-foot ladder weighing up to 30 lbs. All workers must be able to lift, carry, and work from the top of the ladder. The entire tree must be checked to ensure removal of all fruit meeting-picking requirements. Fruit are placed gently in the picking container until container is full. The full picking container weighing up to 25 lbs. is then taken to fruit wagon and gently emptied into a field bin, taking care of not to spill or bruise the fruit in the container or in the field bin. Workers are to stay on their assigned row unless directed by a supervisor to change, or to help someone out sporadically. Picking units will be kept free of limbs, leaves or mushy fruit. Fruit harvested specifically for sale at a roadside stand as fresh market specialty baskets in peck or half bushel containers must be field graded. For fruit harvest for sale at a roadside stand, extra care must be used to insure that each piece of fruit is undamaged and perfect. Workers will be required to pick up and return picking ladders to the ladder wagon provided by the grower at the end of each workday or as directed by the grower or designated supervisor.

**Farm Equipment Operation:** Workers may be require to operate tractors and other farm equipment during daily operations, as an incidental activity. Before any worker is require to operate any farm equipment, workers will be instructed in the safety and operation of the tractor before driving the tractor. Tractors should be driven in a manner to protect operator, other workers, products, trees, crops, and equipment. Repeated failure to obey safety requirements and operating instructions may result in termination.



**Sun Valley Orchards LLC - H-300-15056-056255**

**Orchard Maintenance:** Workers will be responsible for general orchard clean up. They will rake up debris from the land such as sticks, straw, etc. Workers involved in orchard maintenance may be required to hoe trees, girdle, spread fertilizer, pick up roots and limbs, strip suckers or unwanted growth from trees, dig root suckers, knock fruit off trees, use hand sprayer, remove vines, lay irrigation pipe, repair and maintain drip system, and strap and tie fruit trees. Employer will provide all equipment. Instruction will be given for each task and standards of performance communicated to workers. The specific standards for a job will be disclosed and demonstrated by the supervisor before the work begins.

**Orchard Clean Up:** They may be responsible for the removal of old and unproductive peach trees. They must take care to not damage or destroy any other trees or property in the area.

**Forklift Operation during Packing Operations:** Workers may be required to operate forklifts during packing operations as an incidental. Before any worker is required to operate a forklift, the worker will be instructed in the proper and safe operation. Workers will be required to operate forklifts according to instructions and in a manner that protects the operator, other workers and equipment. Repeated failure to obey operating and safety instructions may result in termination.

**Farm and Field Sanitation**

All workers will be responsible for picking up trash, cleaning bathrooms, sweeping floors and other farm sanitation duties.

This employer may grow one or more other crops. Farmers frequently decide whether to plant these crops and what additional crops they will plant after this application is submitted. Information on crops planted after submission of this application will be disclosed in writing to the U.S. Department of Labor for approval as soon as it is known.

**GENERAL CONDITIONS APPLICABLE TO ALL CROPS:** Fieldwork begins at assigned time shortly after daylight. Work may be performed during light rain and in high humidity and in temperatures ranging from 110+ degrees to below 20 degrees F. Workers will perform the majority of tasks standing in the upright position and can expect to stand on their feet for extended periods of time. Some tasks, however, require workers to perform activities on their feet in stooped or crouched position for long periods of time. Workers will supply their own work clothes. All the tasks in this Job Description constitute one (1) job; the employer may assign workers to different tasks on any day or to multiple tasks during the same day in the sole judgment of the employer. Workers may be required to perform work, on the farm, that is incidental to farming the crops listed in the application, such as performing hand cultivation tasks, packing, weeding or hoeing, cleaning and repairing farm buildings, grounds, set up and move equipment, cleaning and maintaining drip irrigation systems, weeding, etc. This is a very demanding and competitive business in which quality specifications must be rigorously adhered to. Sloppy work cannot and will not be tolerated.

**Full Crop Commitment:** This is regular work, seven hours per day, Monday-Friday, and five on Sunday for the full remainder of the period of employment. The worker agrees to work for assigned employer(s) whenever work is available during the full remaining period of employment even though work may be slack at times. The worker understands that if the worker quits or is terminated for cause prior to the end of the period of employment, the worker will not receive the 3/4 guarantees discussed below and will not receive certain transportation reimbursements discussed below. Excessive tardiness and/or absences will not be tolerated and will result in termination.

Daily individual work assignments, crew assignments, and location of work, will be made by and at the sole discretion of the farm manager and/or farm supervisor as the needs of the farming operation dictate. Workers may be assigned a variety of duties in any given day and/or different tasks on different days. Workers will be expected to perform any of the listed duties and work on any crop as assigned by the worker's supervisor.

Harvesting specifications, in particular, can change from time to time during the season due to crop or market conditions, even on the same crop. Workers will be expected to conform to the specific instructions given for each day's work.

The farm owner/supervisor or a designated employee will provide instructions and general supervision. However, field workers will be expected to perform their duties in a timely and proficient manner without close supervision.

**Other Conditions of Employment:** A). Discipline and/or Termination: Employer may discipline and/or terminate the worker for lawful job-related reasons and so notify the Job Service local office of the termination if the worker: a) refuses without justified cause to perform work for which the worker was recruited and hired, b) commit serious act(s) of misconduct or serious or repeated violation(s) of Work Rules c) fails after completing the training period to perform the work as specified in Item F-5 and Attachment, d) malinger or otherwise refuses without justified cause to perform as directed the work for which the Worker was recruited and hired; e) provides other lawful job-related reason(s) for termination of employment, f) abandons his employment; g) fails to keep up with fellow workers. h) falsifies identification, personnel, medical, production or other work related records, i) fails or refuses to take a drug test, or j) commits acts of insubordination, k) the employer may terminate the worker (foreign or domestic) with notification to the employment service if employer discovers a criminal conviction record or status as a registered sex offender that employer reasonably believes, consistent with current law, will impair the safety and living conditions of other workers. Reason beyond employer's control" includes termination of workers, if he not a U.S. worker because a U.S. worker makes himself available for the job under DOL's 50% rule. Workers must notify the employer prior to voluntarily terminating their employment. All wages due will be forwarded to the last known address for Workers that leave without providing notice. It is imperative that workers provide a complete and accurate address to the employer no later than the first day of employment. These employers have a no complete, no rehire

**Sun Valley Orchards LLC - H-300-15056-056255 (NJ)**

policy. Termination for lawful job related reasons before the specified ending date listed in this application will disqualify the employee from future employment opportunities with this employer. Workers who abandon their employment without notice during the period covered by this work agreement will be disqualified from future employment opportunities with this employer. Voluntary resignation before the specified ending date listed in this application may disqualify the employee from future employment opportunities with this employer. For workers who resign their employment voluntarily, the employer will consider and evaluate special circumstances and hardship cases on a case-by-case basis. Employees, without exception, are required to notify appropriate supervisory staff prior to voluntarily terminating their employment to be considered and eligible for exemption to the no complete - no rehire policy.

Workers are guaranteed that their total earnings will be at least equal to the AEWR of \$11.29 per hour for all hours worked in a pay period. If a worker's total earnings in any pay period in which the worker has worked at a piece rate are less than the AEWR of \$11.29 for all hours worked in the pay period, the employer will increase the worker's pay to the guaranteed minimum of \$11.29 per hour for the total hours worked in the pay period.

Due to weather and crop conditions, the employer reserves the right to temporary increase the listed piece rates, or add a piece rate. The employer also reserves the right to completely do away with the piece rate all together to ensure a quality product and fair earnings. Employer reserves the right to add a piece rate, with notification to workers, prior to adding the rate.

<u>Comodity</u>	<u>Rate</u>	<u>Unit</u>
Asparagus	\$7.00	Packed out 28# crate
Zuchinni	\$1.00	Packed out 1/2bu equivalent
Pickles	\$1.50	Packed out 1.0bu equivalent
Cucumber	\$1.00	Packed out 1 1/9bu equivalent
Eggplant	\$0.60	Packed out 1 1/9bu equivalent
Pepper	\$0.60	Packed out 1 1/9bu equivalent
Peaches	Hourly + POB	Packed out 1/2bu equivalent

\*POB= Packed Out  
Bonus

All jobs performed hourly will be compensated at \$11.29/hr

\*Peaches: \$11.29/hr + \$3.50/bin + Pack out bonus

Pack out bonus may vary; 2014 bonus was \$3.42/bin

18. More details concerning pay: Employer reserves the right to pay higher than the stated wage rate to any worker foreign or domestic. This is not promised or guaranteed. The decision to pay above the stated rates will be made by the employer, at their sole discretion, and will be based on factors including the recipients' performance and tenure.

Training: There will be a short demonstration period (up to 1 hr.) to familiarize workers with job specifications, to demonstrate proper methods and other crop specific issues. The employer will not provide separate formal orientation or training periods for each different crop or each different type of task or job assignment covered within the job description. After completion of the training period the employer will expect all workers to possess the skills to work in the production of the crops above. For purposes of this section seven or more hours will be considered one day.

\*Use of the masculine pronoun herein is for convenience of reference only.

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**Sun Valley Orchards LLC - H-300-15056-05625  
(NJ)****Addendum - Sun Valley Orchards LLC**

Employers		Total Workers Employed	Starting Date Ending Date	Housing Type	Housing Location County	Total Capacity	Total H2A Wrks
Russell James Marino Jr. Sun Valley Orchards LLC 29 Vestry Rd Swedesboro, NJ, 08085 1-856-769-5280 Asparagus, Cucumbers, Eggplant, Peaches, Peppers, Zucchini	(8301)	200	4/13/15 10/10/15		Gloucester	190	40
Total Workers Employed							200
Total Housing Capacity							190
Total H2A Workers Requested							40
Total Employers							1

ATTACHMENT APPROVED  
BY THE CHICAGO NATIONAL  
PROCESSING CENTER

Housing Types: AP - Apartment, BL - Block, HO - Hotel/Motel, ME - Metal, MH - Mobile Home, SH - Shared, WF - Wood Frame

Page 1 of 1

**Sun Valley Orchards LLC - H-300-15056-05625!  
(NJ)**

<b>Sun Valley Orchards 2015 Field Locations</b>				
<b>field location</b>	<b>city</b>	<b>state</b>	<b>zip</b>	<b>county</b>
Burlington / Garrison Rd	Elmer	NJ	08318	Salem
Biddle Rd	Mannington Twp	NJ	08079	Salem
Halltown Rd	Mannington Twp	NJ	08079	Salem
Pt Airy Rd	Woodstown	NJ	08098	Salem
Vestry Rd	Swedesboro	NJ	08085	Gloucester
St Rt 45	Harrisonville	NJ	08085	Gloucester
Marl Rd	Harrisonville	NJ	08085	Gloucester
Swedesboro / Harrisonville Rd	Harrisonville	NJ	08085	Gloucester
Harrisonville/Woodstown Rd	Harrisonville	NJ	08085	Gloucester
Harrisonville/Woodstown Rd	Woodstown	NJ	08098	Salem
Cty Rd 538	Swedesboro	NJ	08085	Gloucester
High St	Swedesboro	NJ	08085	Gloucester

**LIMITED POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS that the undersigned does constitute and appoint National Agricultural Consultants LLC to be its true and lawful attorney-in-fact with respect to the following:

To act as the authorized representative for Sun Valley Orchards, LLC [client name] in all matters relating to the filing and execution of an H-2A Labor Certification Application with the U.S. Department of Labor, including a Clearance Order with the relevant State Workforce Agency, and a Petition for a Nonimmigrant Worker with the U.S. Department of Homeland Security.

I hereby vest and appoint said attorney-in-fact with full power, authority and discretion to perform any act whatsoever to accomplish the foregoing as fully and with the same force and effect as I could or might do myself.

This Limited Power of Attorney shall be effective as of the date of execution hereof and all persons may rely upon this power as being in full force and effect without any further inquiry whatsoever. This Limited Power of Attorney shall be governed by the laws of the State of North Carolina.

IN WITNESS WHEREOF, I have executed this Limited Power of Attorney this

22 day of DEC, 2014.

By: [Signature] (signature)

Name: Russell Marino Jr (client name)

Title: OWNER/MANAGER

Celeste Anne Keen

Sworn to and subscribed  
before me this  
22 day of Dec, 2014

Notary Public

CELESTE ANNE KEEN  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires 8/4/2018

My Commission Expires: \_\_\_\_\_



**NATIONAL AGRICULTURAL CONSULTANTS LLC  
H-2A CONSULTING SERVICES AGENCY REPRESENTATION AND INDEMNIFICATION AGREEMENT**

This H-2A Consulting Services, Agency Representation and Indemnification Agreement (the "Agreement") entered into by and between National Agricultural Consultants LLC (the "Agent/Consultant"), an agricultural labor consultant and agent with an expertise in the H-2A Governing Regulations at 20 CFR § 655 in its entirety and the U.S. DOL ESA Wage and Hour H-2A enforcement regulations at 29 CFR § 501, in the state of and under the laws of North Carolina and Sun Valley Orchards, a fixed site agricultural producer(s)/employer(s), by definition at 20 CFR 655.103(b) in the state of NC (the "Agricultural Employer, 'AGER'") who is a client of the Consultant.

WHEREAS, the Agent/Consultant is qualified and capable as an Agent/Consultant of rendering agent and consulting services, certain specific administrative services, and other limited services (necessary to assist facilitation of the AGER in obtaining domestic and/or supplementary foreign workers to participate in the H-2A program (8 USC 1101(a)(15)(H)(ii)(a); 8 USC 1188) ("H-2A workers") to meet the AGER's seasonal agricultural labor requirements; and

WHEREAS, the AGER acknowledges, understands and agrees that it is personally and solely responsible for compliance with all applicable farm employee labor and employment laws and provisions of the H-2A program, including the application for Temporary Employment Certification, the Clearance Order, and the Worker Agreement; and

WHEREAS, the AGER desires to avail themselves of the Agent and Consulting services, administrative services, and other limited services provided by the Agent/Consultant in order to secure domestic and/or supplementary foreign workers to meet the AGER's seasonal agricultural labor requirements for the calendar year beginning January 1, 2025;

NOW THEREFORE, in consideration of the payment(s) made by the AGER of the established dues, admission fees and other assessments and such costs as are charged/assessed from time to time for providing the services requested by the AGER, and for other good and sufficient consideration, including the mutual promises contained in this Agreement, pursuant to the applicable requirements of 20 CFR § 655, The Agent/Consultant will provide Agent and Consulting services to represent, prepare and/or assist the AGER, as necessary, to interact with all appropriate government agencies involved in the H-2A program application processes, including but not limited to US Department of Labor ("DOL"), US Department of Homeland Security ("DHS"), US State Department ("DOS"), and the respective State Workforce Agency(s) ("SWA"). The parties hereto further agree as follows:

**A. The Consultant's Obligations**

- (1) The Agent/Consultant, with input and review from AGER, will prepare and submit to the AGER to review, modify, approve, and/or execute, and authorize submission to the applicable government agency for processing, all forms and documents, required, pursuant to applicable laws and DOL, DHS, and State Department regulations, to obtain US workers and/or H-2A workers from the Republic of Mexico. The AGER provides explicit authorization to Consultant to prepare all necessary forms and documents, with emphasis added, for the Consultant to populate and prepare the I-129 petition on behalf of the AGER who will then review, modify, approve, execute and submit, or authorize submission, to U.S. CIS per the petition filing instructions.
- (2) The Consultant, on behalf of the AGER, will provide certain administrative supportive services associated with the domestic recruitment requirements established by DOL regulations. Such tasks shall be limited exclusively to preparing the ETA 780 Form and attachments, subject to review, modification, approval, and execution by the AGER, and to be submitted by the AGER, or authorize Agent/Consultant to submit, in order to list the domestic job order with the appropriate State Workforce Agency ("SWA"), preparing ad copy for the AGER to review, modify and authorize the Agent/Consultant to place advertisements in newspapers on behalf of the AGER as directed by DOL, providing certain supportive services to AGER when/if needed by AGER to prepare AGER to properly interview and document US referrals made directly to the AGER from a SWA, and preparing and submitting to AGER for review, approval, execution and submitting, or authorization for Agent/Consultant to submit, the necessary recruitment report with DOL. The AGER agrees that it, solely, is soliciting employees as required by the Federal Regulation and the AGER has reviewed the required ad and approved the content before Agent/Consultant submits it to the newspaper for print on behalf of AGER. The AGER and DOL determine, solely and exclusively, the terms and conditions disclosed in the ad, when and where it is placed. By preparing ad copy for AGER consideration and authorization, the Agent/Consultant IS NOT performing or engaging in MFLPA related Farm Labor Contracting activities such as soliciting. I, the AGER, am exclusively soliciting employees for myself as required by Federal law.
- (3) The Agent/Consultant will maintain, or, assist the AGER to maintain contacts that may be needed, from time to time, by the Agent/Consultant or AGER, either directly or through its designated representatives, with SWA's, DOL, DHS, and DOS; and, other state and federal governmental agencies, and government contractors acting on behalf of or performing administrative actions on behalf of government agencies necessary to effectuate the successful administrative participation in the H-2A program and for other purpose(s) described in this Agreement.
- (4) The Agent/Consultant has not sought or received payment of any kind from any employee subject to 8 USC 1188 for any activity related to obtaining the H-2A labor certification in compliance with 20 CFR § 655.135(j).
- (5) The Agent/Consultant, who IS NOT an attorney and is not providing legal advice to the AGER, MAY, under the limited terms of this agreement, act as the agent of the employer, with any government or private entity, as necessary, to assist the employer with participating in the H-2A program. This document IS NOT, nor should it be construed, as a Power of Attorney, limited or otherwise. The AGER acknowledges understanding and agreement that they should always consult with a qualified attorney to have H-2A / Consulting Services and Indemnification Agreement



all of their legal questions answered, if any.

### B. The Agricultural Employer's Obligations

(1) The AGER agrees to comply timely with all reasonable policies, procedures, and schedules established by the Agent/Consultant which it considers essential for the proper operation of the program to obtain domestic workers and/or H-2A workers, successful participation, and to promote compliance with applicable laws and regulations.

(2) The AGER acknowledges that it is familiar with the regulations and requirements of the H-2A program and agrees to comply with all of the terms and conditions of employment described in the AGER's Agricultural and Food Processing Clearance Order, ETA Form 790 and attachments, and Application for Temporary Employment Certification, ETA 9142 and attachments, (collectively the "Job Order") and with the agricultural work agreement, which describes all the material terms and conditions of employment and that is entered into with both U.S. and H-2A workers by the AGER. The AGER agrees to comply with all obligations imposed on the AGER as an employer of domestic and/or H-2A workers found in applicable law and regulations, including without limitation, those at 20 CFR Part 653 (DOL Interstate Clearance Order regulations); 20 CFR Part 655 (DOL H-2A Regulations); 29 CFR Part 501 (DOL Wage and Hour Enforcement Regulations); and applicable provisions at 8 CFR Parts 214, 215, and 274a (DHS regulations); and to always cooperate with all government agencies with jurisdiction. The AGER agrees to comply with ALL applicable laws and relevant regulations and specifically, but not limited to, 20 C.F.R. 655.120(wages), 122(content of job offer), 135(assurances and obligations), 153(contact former US workers), 155(referral of US workers), 167(document retention requirements) of the H-2A regulations.

(3) In particular, but not limiting the foregoing, the AGER agrees a) to pay their worker's required wages and benefits; b) to make only those deductions from their worker's paychecks that are required by law and only those deductions allowed by law; c) to provide housing as required by law that meets all applicable standards in effect at the time of occupancy; d) to timely reimburse required transportation and daily subsistence costs; e) to provide written detailed wage statements of their worker's total earnings, start time and stop time, nature of work each day, hourly rate and/or piece rate of pay, the hours of employment which had been offered to their worker, the hours actually worked by their worker, and itemization of all deductions made from their worker's wages and, if piece rates are used, the units produced daily, the AGER's name, address and Federal Tax Identification or Social Security Number; f) to terminate their worker only for lawful job related reasons; g) to secure and maintain workers' compensation coverage for each worker for the entire period of employment, with no lapses in coverage; h) to employ any qualified US worker(s), or to interview and hire any qualified US worker(s) who applies directly to the AGER in accordance with the applicable regulations at 20 CFR 655; i) that the Agent/Consultant and the AGER are not and shall not be joint employers with respect to any of the AGER's employees. The Agent/Consultant does not exercise any control over any of the AGER's employees and does hold any locus of employment with respect to the AGER's employees. The AGER is the sole and exclusive employer.

(4) The AGER agrees to pay timely any judgment or penalty entered against the AGER and arising out of the AGER's violation of its obligations under applicable law or regulation, and to indemnify and hold harmless the Agent/Consultant and any of its other AGER Clients for such judgments or penalties and any attorneys' fees and costs incurred by the Agent/Consultant or other AGER Clients in defending against such alleged violation. The AGER acknowledges that the laws and regulations governing the employment of domestic agricultural workers and H-2A workers are subject to disputed and differing legal interpretations in various jurisdictions. Therefore, the AGER agrees that in matters in which a claim is made or litigation is instituted against the Agent/Consultant, the Agent/Consultant may exercise its discretion a) to settle such matters on behalf of the Agent/Consultant and the AGER on terms it deems appropriate; b) to litigate such matters; and c) to determine whether such settlements, judgments, penalties, costs and attorneys fees will be borne by the AGER out of whose alleged action or inaction the claim was based or, what amount, if any, will be borne by the Agent/Consultant and/or shared among its other AGER Clients. The terms of this Paragraph B.(4) survive any future separation from AGER and the Agent/Consultant by the AGER and the term of this Agreement.

(5) The AGER agrees to pay the Agent/Consultant any assessment levied by the Agent/Consultant as the AGER's share of legal and any other expense or liability incurred by the Agent/Consultant in defending, prosecuting or settling any dispute relating to an application for H-2A certification, claim, litigation, or administrative complaint or appeal, whether or not arising out of claims against the AGER or arising out of the fault of the AGER, in accordance with a formula approved by the Agent/Consultant. The terms of this paragraph B.(5) survive any future separation from AGER and the Consultant by the AGER and the term of this Agreement.

AGRICULTURAL EMPLOYER'S SIGNATURE

Consultant

By:   
National Agricultural Consultants LLC

Please PRINT NAME CLEARLY on this line.

DATE



**U.S. Department Labor  
Employment and Training Administration**

OMB Control No. 1205-0134  
Expiration Date: October 31, 2015

**Agricultural and Food Processing Clearance Order ETA Form 790  
Orden de Empleo para Obreros/Trabajadores Agrícolas y Procesamiento de Alimentos**

(Print or type in each field block - To include additional information, go to block # 28 - Please follow Step-By-Step Instructions)  
(Favor de usar letra de molde en la solicitud - Para incluir información adicional ver el punto # 28 - Favor de seguir las instrucciones paso-a-paso)

<p>1. Employer's and/or Agent's Name and Address (Number, Street, City, State and Zip Code / Nombre y Dirección del Empleador/Patrón y/o Agente (Número, Calle, Ciudad, Estado y Código Postal):</p> <p>Sun Valley Orchards LLC 29 Vestry Rd Swedesboro NJ 08085</p> <p>C/O NAC 685 US Hwy 15 501 Carrhage, NC 28327</p> <p>a) Federal Employer Identification Number (FEIN) / Número federal de identificación del Empleador: [REDACTED]</p> <p>b) Telephone Number / Número de Teléfono: Employer (856) 769-5280 NAC (910) 947-6004</p> <p>c) Fax Number / Número de Fax: Employer: (856) 769-5213 NAC (910) 947-6006</p> <p>d) E-mail Address / Dirección de Correo Electrónico: N/A</p>	<p><b>Nos. 1 through 8 for STATE USE ONLY Números 1 a 8 para USO ESTATAL</b></p>																
<p>2. Address and Directions to Work Site / Domicilio y Direcciones al lugar de trabajo: 29 Vestry Rd, Swedesboro, NJ 08085 See attached spreadsheet for additional worksites all of which are owned/leased by employer. Employer provides daily transportation from main location to each work site.</p>	<p>4. Code / Código Industrial: 11219</p> <p>5. Job Order No. / Num. de Orden de Empleo: NJ0994838</p> <p>a. SOC (ONET/OES) Occupational Title / Título Ocupacional: Farmworkers and laborers-Crops, 45-2092.02</p> <p>6. Address of Order Holding Office (include Telephone number) / Dirección de la Oficina donde se radica la oferta (incluya el número de teléfono): One-Stop Career Center 215 Crown Point Rd Thornfare NJ, 08088</p> <p>a. Name of Local Office Representative (include direct dial telephone number) / Nombre del Representante de la Oficina Local (incluya el número de teléfono de su línea directa): Manager, 856-384-3700</p>																
<p>3. Address and Directions to Housing / Domicilio y Direcciones al lugar de vivienda: 1329 Rt 45 South, Harrisonville, NJ 08085</p>	<p>7. Clearance Order Issue Date / Fecha de Emisión de la Orden de Empleo: 04/02/2015</p> <p>8. Job Order Expiration Date / Fecha de Vencimiento o Expiración de la Orden de Empleo: 08/05/2015</p> <p>9. Anticipated Period of Employment / Periodo anticipado o previsto de Empleo: From / Desde: 06/01/2015 To / Hasta: 10/10/2015</p> <p>10. Number of Workers Requested / Número de Trabajadores Solicitados: 50</p>																
<p>a) Description of Housing / Descripción de la vivienda: Block Building Capacity: 170</p>	<p>11. Anticipated Hours of Work per Week / Horas Anticipadas/Previstas de Trabajo por Semana Total: 40</p> <table border="0"> <tr> <td>Sunday / Domingo</td> <td>5</td> <td>Thursday / Jueves</td> <td>7</td> </tr> <tr> <td>Monday / Lunes</td> <td>7</td> <td>Friday / Viernes</td> <td>7</td> </tr> <tr> <td>Tuesday / Martes</td> <td>7</td> <td>Saturday / Sábado</td> <td>0</td> </tr> <tr> <td>Wednesday / Miércoles</td> <td>7</td> <td></td> <td></td> </tr> </table> <p>12. Anticipated range of hours for different seasonal activities: / Rango previsto de horas para las diferentes actividades de la temporada: 7:00am-3:00pm hours vary: See attachment to ETA 790 for more complete details / las horas 7:00am-3:00pm varían Ver fijación a ETA 790 para detalles más completos</p> <p>13. Collect Calls Accepted from: / Aceptan Llamadas por Cobrar de: Employer / Empleador: Yes / Si <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	Sunday / Domingo	5	Thursday / Jueves	7	Monday / Lunes	7	Friday / Viernes	7	Tuesday / Martes	7	Saturday / Sábado	0	Wednesday / Miércoles	7		
Sunday / Domingo	5	Thursday / Jueves	7														
Monday / Lunes	7	Friday / Viernes	7														
Tuesday / Martes	7	Saturday / Sábado	0														
Wednesday / Miércoles	7																

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Appx233

14. Describe how the employer intends to provide either 3 meals a day to each worker or furnish free and convenient cooking and kitchen facilities for workers to prepare meals / Describa cómo el empleador tiene la intención de ofrecer, ya sea 3 comidas al día a cada trabajador, o proporcionar gratuitamente instalaciones para cocinar.

Employers will furnish free cooking and kitchen facilities to those workers who are entitled to live in the employers' housing so that workers may prepare their own meals. Workers will buy their own groceries. Once a week the employers will offer to provide (on a voluntary basis by the workers) free transportation to assure workers access to the closest store where they can purchase groceries.

Housing is provided at no cost to workers who are not reasonably able to return the same day to their place of residence. This paragraph applies to such workers only. Housing is not provided to non-workers. Housing capacity is strictly regulated by the US Department of Labor, and no person, other than the eligible employees authorized by the employer, may occupy or remain overnight in employer-provided housing. Employer-provided housing must meet the full set of DOL Occupational Safety and Health Administration (OSHA) standards set forth at 29 CFR 1910.142, or the full set of standards set at §§ 654.404 through 654.417, whichever are applicable under § 654.401. The housing is offered as temporary in-season (during the employment period only) housing provided for migrant agricultural workers while they are employed at farms beyond normal commuting distance from their residence. Workers provided housing by the employer must promptly vacate the housing upon termination of employment. No charge will be made for beds or cooking utensils and similar items furnished to workers to whom housing is provided. All housing is group housing in which all workers will share kitchens and common areas without regard to gender. Female workers, however, will be provided with sleeping facilities shared only with other family members or with other females. Sex-segregated toilet facilities will be provided. Workers who reside in such housing agree to be responsible for maintaining the housing in a neat and clean manner. Workers residing in employer's housing may have mail directed to them at the employer's address on attached addendum. Rental housing will comply with all applicable regulations. SEE ETA 790 attachments

Los empleadores proporcionarán facilidades libres de cocina y cocina a esos trabajadores que tienen derecho para vivir en los empleadores que albergan para que trabajadores puedan preparar sus propias comidas. Los trabajadores comprarán sus propios comestibles. Una vez a la semana los empleadores ofrecerán proporcionar (en una base voluntaria por los trabajadores) libreta transporte para asegurarse de que trabajadores conseguir acceso a la tienda más cercana donde pueden comprar comestibles.

Albergar es proporcionado en ningún costo a trabajadores que no son razonablemente capaces de regresar el mismo día a su domicilio. Este párrafo aplica a tales trabajadores sólo. Albergar no es proporcionado a no-trabajadores. La capacidad de la envoltura es regulada estrictamente por la Secretaría de Trabajo de EEUU, y por ninguna persona, de otra manera que los empleados elegibles autorizado por el empleador, puede ocupar ni pueden quedarse por la noche en albergar de empleador-proporcionó. Albergar de empleador-proporcionó debe encontrar el conjunto lleno de DOL la Administración Profesional de la Seguridad y la Salud (OSHA) estándares exponen en 29 CFR 1910.142, o el conjunto lleno de estándares pone en §§ 654.404 por 654.417, el que son aplicables abajo § 654.401. La envoltura es ofrecida como en-temporada temporaria (durante el periodo de empleo sólo) albergando previo trabajadores agrícola migratorios mientras son empleados en granjas más allá de conmutar normal distancia de su residencia. Los trabajadores proporcionaron albergar por el empleador debe desocupar inmediatamente la envoltura sobre la cesantía. Ninguna carga será causada camas ni útiles de cocina y artículos semejantes proporcionaron a trabajadores a quien albergar es proporcionado. Toda la envoltura es envoltura de grupo en la que todos los trabajadores compartirán cocinas y áreas comunes sin consideración al género. Los trabajadores femeninos serán proporcionados sin embargo con facilidades durmientes compartidas sólo con otros miembros de la familia o con otras hembras. Las facilidades de lavabos de sexo-segregó serán proporcionadas. Los trabajadores que residen en tal envoltura concuerdan en ser responsables de mantener la envoltura en una manera ordenada y limpia. Los trabajadores que residen en la envoltura de empleador pueden tener correo dirigido a ellos en la dirección del empleador en el apéndice conectado. Alquiler de viviendas va a cumplir con todas las regulaciones aplicables VEA ETA 790 fijaciones



15. Referral Instructions and Hiring Information / Instrucciones sobre cómo Referir Candidatos/Solicitantes - (Explain how applicants are to be hired or referred, and the Employer's/Agent's available hour to interview workers / Explique cómo los candidatos serán contratados o referidos, y las horas disponibles del empleador/agente para entrevistar a los trabajadores). See instructions for more details / Vea las instrucciones para más detalles

Workers are screened for compliance with the following criteria: 1) confirm ability, availability, qualifications and willingness to perform work described and confirm intention to work the entire season, 2) local workers confirm availability of reliable daily transportation to and from the job site for the entire season. Non local workers confirm availability of transportation to job site to begin work, 3) confirmation of full disclosure of all terms, condition, and nature of work-job by local employment staff, 4) affirmative confirmation of legal qualifications to work in the US as described below. The employer may terminate the worker (foreign and/or domestic) with notification to the employment service if employer discovers a criminal conviction record or status as a registered sex offender that employer reasonably believes, consistent with current law, will impair the safety and living conditions of other workers. Workers recruited against the Job Offer from within normal commuting distance will not be provided with housing, subsistence and transportation.

Only workers legally entitled to work in the United States and who possess original identity and employment eligibility documents sufficient to complete INS Form I-9, as required by the Immigration and Nationality Act, will be permitted to complete the hiring process. Workers referred against this order should be informed that they must have these documents in their possession when they arrive at the place of employment. Provided that workers complete section 1 of form I-9, workers will have three business days to produce the required documentation to complete section 2 of form I-9, as provided in the Act. Workers not providing this documentation will not be allowed to go to work on the fourth business day of employment, or any subsequent days until the documentation is provided, as provided in the Act.

SEE ETA 790 ATTACHMENTS FOR DETAILS.

para Los trabajadores son investigados para la conformidad con los criterios siguientes: 1) confirma capacidad, la disponibilidad, los requisitos y el consentimiento para realizar el trabajo descritos y confirman intención trabajar la temporada entera, 2) trabajadores locales confirman la disponibilidad de transporte diario seguro a y del sitio de trabajo para la temporada entera. Los trabajadores no locales confirman la disponibilidad de transporte al sitio del trabajo para empezar el trabajo, 3) confirmación de revelación plena de todos los términos, de la condición, y de la naturaleza de trabajo-trabajo por el personal local de empleo, 4) confirmación afirmativa de requisitos legales trabajar en EEUU como descrito abajo. El empleador puede terminar al trabajador (extranjero y/o doméstico) con notificación al servicio del empleo si empleador descubre un registro criminal de convicción o estatus como un delincuente sexual registrado que empleador cree razonablemente, coherente con la ley actual, dañará la seguridad y las condiciones de vida de otros trabajadores. Los trabajadores alistaron contra la Oferta de empleo de dentro de conmutar normal que distancia no será proporcionada con albergar, la subsistencia y el transporte.

Sólo trabajadores permitieron legalmente trabajar en Estados Unidos y en que elegibilidad original de identidad y empleo de fuerzas armadas documento suficiente para completar EN Formas yo-9, como necesario por la Inmigración y Acto de Nacionalidad, será permitido completar el proceso que empleo. Los trabajadores referidos contra esta orden deben ser informados que deben tener estos documentos en su posesión cuando llegan en el lugar de empleo. Con tal de que trabajadores completan sección 1 de forma yo-9, los trabajadores tendrán tres días hábiles para producir la documentación necesaria para completar sección 2 de forma yo-9, como proporcionado en el Acto. Los trabajadores que no proporcionan esta documentación no serán permitidos ir a trabajar en el cuarto día hábil de empleo, ni de ningún día subsiguiente hasta que la documentación sea proporcionada, como proporcionado en el Acto.

VEA ETA 790 FIJACIONES PARA DETALLES.

16. Job description and requirements / Descripción y requisitos del trabajo:

Workers will harvest Asparagus, Zucchini, Pickles, Cucumbers, Eggplant, Peppers and peaches. Sometimes this will occur at top a 6ft ladder. Workers must take care when working a top ladder.

SEE ETA 790 ATTACHMENTS

Los trabajadores de cosecha Espárragos, calabacín, encurtidos, pepinos, berenjenas, pimientos y los melocotones. A veces esto ocurre en la parte superior un 6 pies escalera los trabajadores deben tener cuidado al trabajar una escalera.

VER ETA 790 ARCHIVOS ADJUNTOS

1. Is previous work experience preferred? / Se prefiere previa experiencia? Yes / Si ☒ No ☐ If yes, number of months preferred: / Si es así, numero de meses de experiencia: 3 months / 3 meses de experiencia. Applicants must be able to furnish affirmative job references from recent employers operating comparable operations establishing acceptable previous experience. See attachments for more details. La cosecha de una experiencia comprobable de cultivos parecidos. Los solicitantes deben estar en condiciones de proporcionar referencias de trabajo positivas de los últimos los empleadores comparables establecer niveles aceptables de experiencia previa. Consulte los documentos adjuntos para obtener más detalles.

2. Check all requirements that apply:

- ☐ Certification/License Requirements / Certificación/Licencia Requisitos
- ☐ Driver Requirements / Requisitos del conductor
- ☐ Employer Will Train / Empleador entrenará o adiestrará
- ☒ Extensive Sitting / Estar sentado largos ratos
- ☒ Exposure to Extreme Temp. / Expuesto a Temperaturas Extremas
- ☒ Lifting requirement / Levantar o Cargar 75 lbs./libras
- ☒ Repetitive Movements / Movimientos repetitivos

- ☐ Criminal Background Check / Verificación de antecedentes penales
- ☒ Drug Screen / Detección de Drogas (random)
- ☒ Extensive Pushing and Pulling / Empujar y Jalar Extensamente
- ☒ Extensive Walking / Caminar por largos ratos
- ☒ Frequent Stooping / Inclínándose o agachándose con frecuencia
- ☒ OT/Holiday is not mandatory / Horas Extras (sobre tiempo) / Dias Feriados no obligatorio

17. Wage Rates, Special Pay Information and Deductions / Tarifa de Pago, Información Sobre Pagos Especiales y Deducciones (Rebajas)							
Crop Activities	Hourly Wage	Piece Rate / Unit(s)	Special Pay (bonus, etc.)	Deductions*	Yes/Si	No	Pay Period / Periodo de Pago
Cultivos	Salario por Hora	Pago por Pieza / Unidad(es)	Pagos Especiales (Bono, etc.)	Deducciones			
Vegetables	\$ 11.29	\$		Social Security / Seguro Social	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Weekly / Semanal
	\$	\$		Federal Tax / Impuestos Federales	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	\$	\$		State Tax / Impuestos Estatales	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bi-weekly / Quincenal
	\$	\$		Meals / Comidas	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	\$	\$		Other (specify) / Otro (especifica)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Monthly/Mensual
see attachments vea fijaciones							Other/Otro
							<input type="checkbox"/>
18. More Details About the Pay / Mas Detalles Sobre el Pago:							
<p>In the event that the Department Of Labor promulgates a new AENR applicable to any portion of the period of employment covered by this job order which is higher or lower than the AENR herein, the employer will pay the higher AENR, and may at the employer's discretion pay the lower AENR, beginning with the effective date of the new AENR. Employer will pay the highest of the AENR, prevailing wage, the piece rate, the agreed-upon collective bargaining wage or the Federal or State minimum wage at the time the work is performed.</p> <p>In the tasks where there is no prevailing practice to pay a piece rate the employer, at his sole discretion, may opt to pay per hour to ensure a good quality product. At no time will the workers be paid less than the highest available wage. See Attachments for complete wage information.</p> <p>En caso de que la Secretaría de Trabajo promulgue un nuevo AENR aplicable a cualquier porción del período de empleo cubierto por esta orden de trabajo que es más alta o más bajo que el AENR en su caso, el empleador pagará el AENR más alto, y may en la discreción del empleador paga el AENR más bajo, empezando con la fecha de vigencia del nuevo AENR. El empleador pagará el más alto del AENR, prevaleciendo el sueldo, el precio a destajo, el aceptó el sueldo de negociación colectiva o el Federal o salario mínimo de Estado en aquel momento el trabajo es realizado.</p> <p>En las tareas donde no hay práctica predominante pagar un precio a destajo al empleador, en su única discreción, puede optar por pagar por hora de asegurar un producto bueno de calidad. En ningún tiempo haga a los trabajadores son pagados menos que el sueldo disponible más alto. Vea Fijaciones para la información completa del sueldo.</p>							
19. Transportation Arrangements / Arreglos de Transportación							
<p>The Employer will not advance transportation and subsistence costs to Workers for transportation to the place of employment. This subparagraph applies only to Workers who cannot reasonably return to their residence the same day. After the workers has completed 50% of the work contract. All eligible applicants will have their inbound reasonable transportation expenses reimbursed, one time only. Domestic applicants from outside of the normal commuting distance that voluntary chose not to reside in the employer provided housing, the employer will pay for the initial inbound transportation reimbursement. However, the employer will not reimburse any workers for daily transportation cost whether commuting from inside or outside of the area of intended employment. Employer will not pay for voluntary trips back to their residence due to family emergencies, or vacations. SEE ATTACHMENTS TO ETA 790 FOR MORE COMPLETE DETAILS.</p> <p>El Empleador no avanzará transporte y subsistencia costos a Trabajadores para el transporte al lugar de empleo. Este subpárrafo aplica sólo a Trabajadores que pueden no regreso de razonability a su residencia el mismo día. Después de que los trabajadores hayan completado 50% del contrato del trabajo. Todos los solicitantes elegibles tendrán sus gastos razonables de entrada de transporte reembolsados, un tiempo sólo. Los solicitantes domésticos de fuera de de la distancia normal que conmuta que voluntario escogió no residir en el empleador proporcionó albergar, el empleador pagará por el reembolso de entrada inicial de transporte. Sin embargo, el empleador no reembolsará a ningún trabajador para el costo diario de transporte si conmutando de dentro de ni fuera del área de empleo destinado. El empleador no pagará por viajes voluntarios atrás a su residencia debido a emergencias familiares, ni debido a licencias.</p> <p>VEA FIJACIONES A ETA 790 PARA DETALLES MAS COMPLETOS.</p>							

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<p>20. Is it the prevailing practice to use Farm Labor Contractors (FLC) to recruit, supervise, transport, house, and/or pay workers for this (these) crop activity (ies)? / ¿Es la práctica habitual usar Contratistas de Trabajo Agrícola para reclutar, supervisar, transportar, dar vivienda, y/o pagarle a los trabajadores para este(s) tipo(s) de cosecha(s)? Yes / Si <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If you have checked yes, what is the FLC wage for each activity? / Si contesto "Si," cuál es el salario que le paga al Contratista de Trabajo Agrícola por cada actividad?</p>	
<p>21. Are workers covered for Unemployment Insurance? / ¿Se le proporcionan Seguro de Desempleo a los trabajadores? Yes/Si <input checked="" type="checkbox"/> No <input type="checkbox"/> *if applicable</p>	
<p>22. Are workers covered by workers' compensation? / ¿Se le provee seguro de compensación/indemnización al trabajador? Yes/Si <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	
<p>23. Are tools, supplies, and equipment provided at no charge to the workers? / ¿Se les proveen herramientas y equipos sin costo alguno a los trabajadores? Yes/Si <input checked="" type="checkbox"/> No <input type="checkbox"/> see attached</p>	
<p>24. List any arrangements which have been made with establishment owners or agents for the payment of a commission or other benefits for sales made to workers. (If there are no such arrangements, enter "None".) / Enumere todos los acuerdos o convenios hechos con los propietarios del establecimiento o sus agentes para el pago de una comisión u otros beneficios por ventas hechas a los trabajadores. (Si no hay ningún acuerdo o convenio, indique "Ninguno".)</p> <p>none/ninguno</p>	
<p>25. List any strike, work stoppage, slowdown, or interruption of operation by the employees at the place where the workers will be employed. (If there are no such incidents, enter "None".) / Enumere toda huelga, paro o interrupción de operaciones de trabajo por parte de los empleados en el lugar de empleo. (Si no hay incidentes de este tipo, indique "Ninguno".)</p> <p>none/ninguno</p>	

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25. Is this job order to be included in connection with a future Application for Temporary Employment Certification for H-2A workers? / ¿Esta orden de trabajo ha sido puesta en conexión con una futura solicitud de certificación de empleo temporal para trabajadores H-2A?

Yes/SÍ: ☐ No ☐

27. Employer's Certification: This job order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job. / Certificación del Empleador: Esta orden de trabajo describe los términos y condiciones de empleo que se ofrecen y contiene todos los términos y condiciones materiales ofrecidos.

Respectful Service Inc. OWNER/MANAGER  
Employer's Printed Name & Title / Título en Letra de Mano del Empleador

[Signature]  
Employer's Signature / Firma y Título del Empleador

12/7-14  
Date / Fecha

**READ CAREFULLY:** In view of the statutorily established basic function of the Employment Service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the Employment and Training Administration (ETA) nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the American Job Center constitute a contractual job offer to which the American Job Center, ETA or a State agency is in any way a party.

**LEE CON CUIDADO:** En vista de la función básica del Servicio de Empleo establecido por ley, como una entidad de intercambio laboral sin comisiones, es decir, como un foro para reunir a los empleadores y los solicitantes de empleo, ni ETA ni las agencias del estado pueden garantizar la exactitud o veracidad de la información contenida en las órdenes de trabajo sometidas por los empleadores. Ninguna orden de trabajo aceptada o contratada en el Centro de Carreras (American Job Center) constituye una oferta contractual a las que el American Job Center, ETA o un organismo estatal es de ninguna manera una de las partes.

#### PUBLIC BURDEN STATEMENT

The public burden for responding to ETA Form 790, which is required to obtain or retain benefits (44 USC 3501), is estimated to be approximately 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and reviewing the collection. The public need not respond to this collection of information unless it displays a currently valid OMB Control Number. This is public information and there is no expectation of confidentiality. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Room C-4510, 200 Constitution Avenue, NW, Washington, DC 20210.

#### DECLARACION DE CARGA PUBLICA

La carga de información pública para responder a la Forma ETA 790, que se requiere para obtener o retener beneficios (44 USC 3501), se estima en aproximadamente 60 minutos por respuesta, incluyendo el tiempo para leer las instrucciones, buscar fuentes de datos existentes, recopilar y revisar la colección. El público no tiene que responder a esta recopilación de información a menos que muestre un número de control OMB válido. Esta información es pública y no hay ninguna expectativa de confidencialidad. Envíe sus comentarios acerca de esta carga o cualquier otro aspecto de esta colección, incluyendo sugerencias para reducir esta carga, al U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Room C-4510, 200 Constitution Avenue, NW, Washington, DC 20210.

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28. Use this section to provide additional supporting information (including section Box number) Include attachments, if necessary. / Utilice esta sección para proporcionar información adicional de apoyo; incluya el número de la sección e incluya archivos adjuntos, si es necesario.

SEE ATTACHMENTS TO THE ETA 790 FOR DETAILS CONCERNING THIS JOB OPENING.

VEA FIJACIONES A LA ETA 790 PARA DETALLES CON RESPECTO A ESTA APERTURA de TRABAJO

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**20 CFR 653.501**  
**Assurances**

**INTRASTATE AND INTERSTATE CLEARANCE ORDER**

The employer agrees to provide to workers referred through the clearance system the number of hours of work per week cited in Item 10 of the clearance order for the week beginning with the anticipated date of need, unless the employer has amended the date of need at least 10 working days prior to the original date of need by so notifying the Order-Holding Office (OHO). If the employer fails to notify the OHO at least 10 working days prior to the original date of need, the employer shall pay eligible workers referred through the intrastate/interstate clearance system the specified hourly rate or pay, or in the absence of a specified hourly rate or pay, the higher of the Federal or State minimum wage rate for the first week starting with the original anticipated date of need. The employer may require workers to perform alternative work if the guarantee is invoked and if such alternative work is stated on the job order.

The employer agrees that no extension of employment beyond the period of employment shown on the job order will relieve the employer from paying the wages already earned, or specified in the job order as a term of employment, providing transportation or paying transportation expenses to the worker's home.

The employer assures that all working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration and other employment-related laws.

The employer agrees to expeditiously notify the OHO or State agency by telephone immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over recruitment, or other factors have changed the terms and conditions of employment.

The employer, if acting as a farm labor contractor, has a valid farm labor contractor registration certificate.

The employer assures the availability of no cost or public housing which meets applicable Federal and State standards and which is sufficient to house the specified number of workers requested through the clearance system.

The employer also assures that outreach workers shall have reasonable access to the workers in the conduct of outreach activities pursuant to 20 CFR 653.107.

Employer's Name

*Regina-Marie Tr*

Date:

*12/22/14*

Employer's Signature

*[Handwritten Signature]*

Includes the material terms and conditions of the employment, the employer must agree to these assurances if the job order is to be placed as part of the Agricultural Recruitment System. This assurance statement must be signed by the employer, and it must accompany the ETA Form 790.

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ATTACHMENT TO ETA 790

Workers recruited under this Job Order are recruited to work on the employer's farm shown on the addendum in the certified occupation during the period of employment shown in Item 9. The employer/member will offer US workers at least the same opportunities, wages, benefits, and working conditions as those which the employer offers or intends to offer to non-immigrant foreign workers. \*Use of the masculine pronoun herein is for convenience of reference only.

1. Name and address of employer: Sun Valley Orchards LLC; 29 Vestry Rd, Swedesboro NJ 08085.

9. Anticipated dates of employment: 06/01/2015 until 10/10/2015.

10. The number of workers shown is the aggregate number of foreign workers that will be employed by the employer under this temporary employment certification. The approximate maximum number of workers (foreign and domestic) to be employed in the certified occupation is shown on the addendum. The numbers shown are approximations provided for the governing administrative agencies. The actual number of workers employed in the certified job opportunities of the grower at any given time may be more or less than the approximate numbers shown in the addendum, depending upon crop conditions, weather, markets or other circumstances that develop during the season.

11. Anticipated Hours of Work: Worker will report to work at the designated time and place as directed by the Grower each day. The standard workweek of 7 hours per day Monday-Friday, and 5 hours on Saturday is normal; however, workers may be requested to work 12+ hours per day depending upon the conditions in the fields and maturity of the crops but will not be required to do so. Also, the workers may be requested to work on federal holidays and on their Sabbath but will not be required to do so. Workers may volunteer to work additional hours when work is available. Down Time: Workers should expect occasional periods of little or no work because of weather, crop or other conditions beyond the employer's control. These periods can occur anytime throughout the season.

Starting and ending times will change due to weather and crop conditions. During certain times of the season workers are required to work at night. Workers will be given as much notice as possible when the changing of shifts is required. If a worker is offered and agrees to work more than the scheduled hours during the workweek, they must still report to work on their other scheduled days, unless arrangements are approved in advance with the owner or supervisor. Choosing to work longer hours during the week does not exclude workers from working each scheduled work day. Not reporting for work on your scheduled work day will be counted as an unexcused absence.

14. Employers will furnish free cooking and kitchen facilities to those workers who are entitled to live in the employers' housing so that workers may prepare their own meals. Workers will buy their own groceries. Once a week the employers will offer to provide (on a voluntary basis by the workers) free transportation to assure workers access to the closest store where they can purchase groceries.

Housing is provided at no cost to workers who are not reasonably able to return the same day to their place of residence. This paragraph applies to such workers only. Housing is not provided to non-workers. Housing capacity is strictly regulated by the US Department of Labor, and no person, other than the eligible employees authorized by the employer, may occupy or remain overnight in employer-provided housing. The housing is offered as temporary in-season (during the employment period only) housing provided for migrant agricultural workers while they are employed at farms beyond normal commuting distance from their residence. Workers provided housing by the employer must promptly vacate the housing upon termination of employment. No charge will be made for beds, cooking utensils and similar items furnished to workers to whom housing is provided hereunder unless unlawfully removed or damaged beyond normal wear and tear. All housing is group housing in which all workers will share kitchens and common areas without regard to gender. Female workers, however, will be provided with sleeping facilities shared only with other family members or with other females. Sex-segregated toilets facilities will be provided. Workers who reside in such housing agree to be responsible for maintaining the housing in a neat and clean manner. Reasonable repair costs of damage or loss of property, other than that caused by normal wear and tear will be charged to the worker if he is found to be responsible for damage or loss to housing or furnishings. Workers residing in employer's housing may have mail directed to them at the employer's address on attached addendum. All housing or public accommodations will comply with applicable State, Federal, Local, or health regulations. Employer-provided housing will meet the full set of DOL Occupational Safety and Health Administration (OSHA) standards set forth at 29 CFR 1910.142, or the full set of standards set at §§ 654.404 through 654.417, whichever are applicable under § 654.401.

15. Interested candidates should contact their local State Workforce Office to receive a copy of the ETA 790 and applicable attachments. Once the applicant has a copy of the job order they may apply directly to employer by calling (856) 769-5280 ext 7. Applicants are encouraged to fax applications or resumes to (856) 769-5213 attn Farmworker Job. Group interviews for local applicants will be held Tuesdays and Fridays from 8am – 11am. Applicants are encouraged to arrive 15-20 minutes early to complete/review an application packet at 29 Vestry Rd, Swedesboro NJ 08085.

All interstate (out of state) and intrastate (in state) applicants interested in this job offer should first contact the order holding office prior to contacting the employer for information and permission to refer. Workers should be fully apprised by their local employment office of the terms, conditions and nature of employment prior to referral. This will enable applicants to review all the information and make an informed decision about the job and will ensure compliance with disclosure requirements. Interstate (out of state) and intrastate (in state)

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candidates will be interviewed over the phone once employer has received written confirmation that all required disclosures have been made. Completing an application is part of the interview process.

Workers should be fully apprised by the local employment office of the terms, conditions and nature of employment prior to referral. Workers are screened for compliance with the following criteria: a) confirm ability, availability, qualifications and willingness to perform work described and confirm intention to work the entire season, 2) local workers confirm availability of reliable daily transportation to and from the job site for the entire season. Non local workers confirm availability of transportation to job site to begin work, 3) confirmation of full disclosure of all terms, condition, and nature of work-job by local employment staff, 4) affirmative confirmation of legal qualifications to work in the US as described below. The employer may terminate the worker (foreign and/or domestic) with notification to the employment service if employer discovers a criminal conviction record or status as a registered sex offender that employer reasonably believes, consistent with current law, will impair the safety and living conditions of other workers.

Only workers legally entitled to work in the United States and who possess original identity and employment eligibility documents sufficient to complete INS Form I-9, as required by the Immigration and Nationality Act, will be permitted to complete the hiring process. Workers referred against this order should be informed that they must have these documents in their possession when they arrive at the place of employment. Provided that workers complete section 1 of form I-9, workers will have three business days to produce the required documentation to complete section 2 of form I-9, as provided in the Act. Workers not providing this documentation will not be allowed to go to work on the fourth business day of employment, or any subsequent days until the documentation is provided, as provided in the Act.

16. Job Specifications: Must have three months' verifiable experience hand harvesting a perishable crop. Applicants must be able to furnish affirmative job references from recent employers operating comparable operations establishing acceptable previous experience.

Worker must possess requisite physical strength and endurance to repeat the harvest process throughout the workday, working quickly and skillfully to perform activities for which they were hired. Workers must work at a sustained, vigorous pace and make bona fide efforts to work efficiently and consistently that are reasonable under the climatic and other working conditions, considering also the amount, quality, and efficiency of work accomplished by their coworkers. Workers may not leave trash, or other discarded items in work areas or vehicles but must dispose of such items in provided receptacles. Workers must wash hands with soap and water after all bathroom and meal breaks. Allergies to varieties of ragweed, goldenrod, insecticides, related agricultural chemicals, etc, may affect workers ability to perform the work described herein. Workers should be physically able to do the worker described with or without reasonable accommodation. Must display the ability to move, place, climb and work from orchard ladders up to 6 feet in height, making the necessary adjustments for various procedures while carrying up to 30 pounds.

**Sanitation Requirements:** For food and general personal safety purposes, all workers will be required and expected to follow common sanitary practices at all times. This is particularly critical when hand harvesting crops for human consumption. Employees are required to cleanse their hands by washing them thoroughly with soap and water after using the bathroom and before entering the fields for harvest activities or the packing facility for packing operations.

Workers will plant, cultivate, and harvest Asparagus, Zucchini, Pickles, Cucumbers, Egg Plant, and Peppers.

**Asparagus:** Workers will move along assigned row, stopping, bending and reaching to cut asparagus spears at ground level may operate self-propelled harvesting aid on which workers ride while stopping to cut spears at ground level. Spears which are less than ¼ inch in diameter (measured at butt) are discarded. Spears over ¼ inch in diameter which exceed 12 inches in length will be re-broken at the butt end. Any spearhead which has begun to open will be discarded. Spears meeting harvest specification will be placed in a straight fashion in field buckets and carried to trucks or trailers for dumping. Workers will be required to stay on their assigned row. Workers must use care while using knives to prevent injury to themselves and other workers.

**Zucchini, Pickles, Cucumbers, Egg Plant, and Peppers:** Workers will plant, cultivate and harvest vegetables. Workers will be required to remove weeds by hand or with a hoe. Workers will bend and stoop to pick vegetables according to size, color, shape and degree of maturity and place into field containers. Workers may carry full container weighing approximately fifty (50) lbs. and empty into field bin or load onto trailer. May be required to pull and discard culls as directed by supervisor. Pickers will take care not to bruise or scar produce. Pre-harvest activities may include staking, tying, transplanting and pruning. Workers will stand on feet for long periods of time. Workers are required to work in fields when plants are wet with dew or rain. Temperatures in fields during working hours can range from forty (40) to over one hundred (100) degrees.

**Peaches:** Workers will perform various duties associated with thinning and picking peaches. Worker will be assigned a row, usually with a partner, and is responsible for picking all the proper fruit from that row, or half row. Fruit are selected from the tree according to size and/or color standard set by the picking supervisor. In some instances, fruit harvest will be done from a six-foot ladder weighing up to 30 lbs. All workers must be able to lift, carry, and work from the top of the ladder. The entire tree must be checked to ensure removal of all fruit meeting-picking requirements. Fruit are placed gently in the picking container until container is full. The full picking container weighing up to 25 lbs. is then taken to fruit wagon and gently emptied into a field bin, taking care of not to spill or bruise the fruit in the container or in the field bin. Workers are to stay on their assigned row unless directed by a supervisor to change, or to

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help someone out sporadically. Picking units will be kept free of limbs, leaves or mushy fruit. Fruit harvested specifically for sale at a roadside stand as fresh market specialty baskets in peck or half bushel containers must be field graded. For fruit harvest for sale at a roadside stand, extra care must be used to insure that each piece of fruit is undamaged and perfect. Workers will be required to pick up and return picking ladders to the ladder wagon provided by the grower at the end of each workday or as directed by the grower or designated supervisor.

**Farm Equipment Operation:** Workers may be required to operate tractors and other farm equipment during daily operations, as an incidental activity. Before any worker is required to operate any farm equipment, workers will be instructed in the safety and operation of the tractor before driving the tractor. Tractors should be driven in a manner to protect operator, other workers, products, trees, crops, and equipment. Repeated failure to obey safety requirements and operating instructions may result in termination.

**Orchard Maintenance:** Workers will be responsible for general orchard clean up. They will rake up debris from the land such as sticks, straw, etc. Workers involved in orchard maintenance may be required to hoe trees, girdle, spread fertilizer, pick up roots and limbs, strip suckers or unwanted growth from trees, dig root suckers, knock fruit off trees, use hand sprayer, remove vines, lay irrigation pipe, repair and maintain drip system, and strap and tie fruit trees. Employer will provide all equipment. Instruction will be given for each task and standards of performance communicated to workers. The specific standards for a job will be disclosed and demonstrated by the supervisor before the work begins.

**Orchard Clean Up:** They may be responsible for the removal of old and unproductive peach trees. They must take care to not damage or destroy any other trees or property in the area.

**Forklift Operation during Packing Operations:** Workers may be required to operate forklifts during packing operations as an incidental. Before any worker is required to operate a forklift, the worker will be instructed in the proper and safe operation. Workers will be required to operate forklifts according to instructions and in a manner that protects the operator, other workers and equipment. Repeated failure to obey operating and safety instructions may result in termination.

**Farm and Field Sanitation**

All workers will be responsible for picking up trash, cleaning bathrooms, sweeping floors and other farm sanitation duties.

This employer may grow one or more other crops. Farmers frequently decide whether to plant these crops and what additional crops they will plant after this application is submitted. Information on crops planted after submission of this application will be disclosed in writing to the U.S. Department of Labor for approval as soon as it is known.

**GENERAL CONDITIONS APPLICABLE TO ALL CROPS:** Fieldwork begins at assigned time shortly after daylight. Work may be performed during light rain and in high humidity and in temperatures ranging from 110+ degrees to below 20 degrees F. Workers will perform the majority of tasks standing in the upright position and can expect to stand on their feet for extended periods of time. Some tasks, however, require workers to perform activities on their feet in stooped or crouched position for long periods of time. Workers will supply their own work clothes. All the tasks in this Job Description constitute one (1) job; the employer may assign workers to different tasks on any day or to multiple tasks during the same day in the sole judgment of the employer. Workers may be required to perform work, on the farm, that is incidental to farming the crops listed in the application, such as performing hand cultivation tasks, packing, weeding or hoeing, cleaning and repairing farm buildings, grounds, set up and move equipment, cleaning and maintaining drip irrigation systems, weeding, etc. This is a very demanding and competitive business in which quality specifications must be rigorously adhered to. Sloppy work cannot and will not be tolerated.

**Full Crop Commitment:** This is regular work, seven hours per day, Monday-Friday, and five on Saturday for the full remainder of the period of employment. The worker agrees to work for assigned employer(s) whenever work is available during the full remaining period of employment even though work may be slack at times. The worker understands that if the worker quits or is terminated for cause prior to the end of the period of employment, the worker will not receive the 3/4 guarantees discussed below and will not receive certain transportation reimbursements discussed below. Excessive tardiness and/or absences will not be tolerated and will result in termination.

Daily individual work assignments, crew assignments, and location of work, will be determined by and at the sole discretion of the farm manager and/or farm supervisor as the needs of the farming operation dictate. Workers may be assigned a variety of duties in any given day and/or different tasks on different days. Workers will be expected to perform any of the listed duties and work on any crop as assigned by the worker's supervisor.

Harvesting specifications, in particular, can change from time to time during the season due to crop or market conditions, even on the same crop. Workers will be expected to conform to the specific instructions given for each day's work.

The farm owner/supervisor or a designated employee will provide instructions and general supervision. However, field workers will be expected to perform their duties in a timely and proficient manner without close supervision.

17. Wage Rates, Special Pay Information and Deductions: The tasks in the crops listed below will be paid at the piece rates listed. All other work will be paid the adverse effect wage rate (AEWR) of \$ 11.29 per hour. Employer will pay the highest of the AEWR, prevailing

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wage, the agreed-upon collective bargaining wage or the Federal or State minimum wage when the work is performed. In the event that the Department Of Labor promulgates a new AEWR applicable to any portion of the period of employment covered by this job order which is higher or lower than the AEWR herein, the employer will pay the higher AEWR, and may, at the employer's discretion pay the lower AEWR, beginning with the effective date of the new AEWR.

Workers are guaranteed that their total earnings will be at least equal to the AEWR of \$11.29 per hour for all hours worked in a pay period. If a worker's total earnings in any pay period in which the worker has worked at a piece rate are less than the AEWR of \$11.29 for all hours worked in the pay period, the employer will increase the worker's pay to the guaranteed minimum of \$11.29 per hour for the total hours worked in the pay period.

<u>Commodity</u>	<u>Rate</u>	<u>Unit</u>
Asparagus	\$7.00	Packed out 28# crate
Zucchini	\$1.00	Packed out 1/2bu equivalent
Pickles	\$1.50	Packed out 1.0bu equivalent
Cucumber	\$1.00	Packed out 1 1/9bu equivalent
Eggplant	\$0.60	Packed out 1 1/9bu equivalent
Pepper	\$0.60	Packed out 1 1/9bu equivalent
Peaches	Hourly + POB	Packed out 1/2bu equivalent

\*POB= Packed  
Out Bonus

All jobs performed hourly will be compensated at \$11.29/hr

\*Peaches: \$11.29/hr + \$3.50/bin + Pack out bonus

Pack out bonus may vary; 2014 bonus was \$3.42/bin

Due to weather and crop conditions, the employer reserves the right to temporary increase the listed piece rates, or add a piece rate. The employer also reserves the right to completely do away with the piece rate all together to ensure a quality product and fair earnings. Employer reserves the right to add a piece rate, with notification to workers, prior to adding the rate.

All activities not listed as paid by piece rate will be paid by the hour.

18. More details concerning pay: Employer reserves the right to pay higher than the stated wage rate to any worker foreign or domestic. This is not promised or guaranteed. The decision to pay above the stated rates will be made by the employer, at their sole discretion, and will be based on factors including the recipients' performance and tenure.

A). The employer will make the following deductions from the worker's wages: FICA taxes, State (if applicable) and Federal Income tax as required by law. Workers will be charged for the following: cash advances and repayment of loans, repayment of overpayment of wages to the worker, payment for articles which the Worker has voluntarily purchased from the Employer, long-distance telephone charges, recovery of any loss to the Employer due to the Worker's damage (beyond normal wear and tear) or loss of equipment or housing items where it is shown that the Worker is responsible, and any other charges expressly authorized by the Worker in writing. If the grower reimburses the worker prior to the 50% date, and the worker is terminated for cause or abandons prior to the 50% date, the grower reserves the right to recapture that reimbursement. No deduction not required by law will be made that brings the worker's hourly earnings below the statutory federal or state minimum wage. There may be deductions that reduce your pay below the stated contract wage; but will not reduce your pay below Federal or State Minimum Wage, whichever is higher. FICA, State and Federal taxes will not be deducted from those worker's wages that are working under a temporary, agricultural visa, unless it's discovered it is required or if the worker request withholding.

B) Employers guarantee to offer employment for the hourly equivalent of 3/4 of the workdays of the total specified period during which the work contract and all amendments thereof are in effect, beginning with the first workday after the workers' arrival at the assigned Grower's farm, ready, willing, able, and eligible to work and ending on the expiration date specified in the work contract and all extensions thereof or upon the termination of this employment as provided below. For purposes of this guarantee, a "workday" consists of seven hours Monday-Friday and five hours on Saturday. The worker is not required to work on his Sabbath or on federal holidays

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which are New Year's Day, January 1; Martin Luther King, Jr.'s birthday, the third Monday in January; Presidents Day, the third Monday in February; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veteran's Day, November 11; Thanksgiving Day, the fourth Thursday in November; and Christmas Day, December 25. On certain of these days, work may be available. If the worker at the conclusion of his work agreement has been afforded less employment opportunity than required under this provision, the worker will be paid at his average hourly rate for the hours, in addition to those actually offered, up to the hourly equivalent of the guaranteed number of days. In determining whether the guarantee of employment has been met, any hours which the Worker fails to work during a workday, when the Employer offers him the opportunity to work, and all hours of work actually performed shall be counted toward meeting this guarantee.

C). This employment guarantee shall be terminated before the end of the Period of Employment if the services of the workers are no longer required for reasons beyond the control of the Employer due to fire, frost, flood, drought, hail, other Act of God (AOG) which makes fulfillment of this contract impossible. (CO will be notified and employer will seek approval for AOG's) In such cases, the employer will make efforts to transfer workers to other comparable employment acceptable to workers. If such transfer is not effective, workers will be returned at Employer's expense to the place from which Worker, without intervening employment, came to work for employer. In the event of such termination, the 3/4-guarantee period ends on the date of termination. The guarantee shall be void from the beginning should the Worker voluntarily abandon this employment before the end of the contract period or in the event the Worker is terminated for a lawful job-related reason, and the employer notifies the NPC, and DHS in the case of an H-2A worker, in writing or by any other method specified by the Department or DHS in a manner specified in a notice published in the Federal Register not later than 2 working days after such abandonment occurs and this will relieve the employer from subsequent transportation and subsistence costs and the 3/4<sup>th</sup> guarantee.

D). The payroll period shall be weekly. Workers will be paid weekly with a 1 week holding period.

E). Employer will provide a worker referred through the SWA Interstate System forty (40) hours of work for the week beginning with the anticipated date of need, unless the employer has amended the date of need by notifying the local employment service office at least 10 working days prior to the original date of need. If the employer fails to notify the order-holding office, then employer shall pay an eligible worker referred through the interstate clearance system \$11.29 per hour for the first week, starting with the original anticipated date of need. 40 hrs x \$11.29 = \$451.60 gross (before taxes). The employer may require the worker to perform alternative work if the guarantee cited in this section is invoked. If the worker fails to notify the order-holding office of his continuing interest in the job no sooner than nine working days and no later than five working days before the date of need, the worker will be disqualified from the above-mentioned assurance.

F). The Employer will furnish to the worker, on or before each payday one or more written statements showing the worker's total earnings for the pay period, his hourly rate or piece rate (if applicable); the hours of work which have been offered to the worker, the total hours actually worked by the worker, beginning and ending times, an itemization of all deductions made from the worker's wages; the worker's net pay; the employer's name, address and IRS identification number. Employer will abide by all regulations at 20 CFR 655.122(j)(k).

19. Transportation: The Employer will not advance transportation and subsistence costs to Workers for transportation to the place of employment.

This subparagraph applies only to Workers who cannot reasonably return to their residence the same day. After the workers have completed 50% of the work contract. All eligible applicants will have their inbound reasonable transportation expenses reimbursed, one time only. Domestic applicants from outside of the normal commuting distance that voluntary chose not to reside in the employer provided housing, the employer will pay for the initial inbound transportation reimbursement. However, the employer will not reimburse any workers for daily transportation cost whether commuting from inside or outside of the area of intended employment. Employer will not pay for voluntary trips back to their residence due to family emergencies, or vacations.

The amount of such transportation payment will be equal to the Worker's actual transportation costs not to exceed the most economical and reasonable common carrier transportation charges for the distance involved. In lieu of the above payments to the workers for transportation, the employer reserves the right to charter or otherwise arrange to provide for transportation at the employer's election. Subsistence reimbursement shall be \$11.86 per day, without producing documentation of actual expenses, or will otherwise be paid as per 20 CFR 655.122(h) only to those employees who are eligible under the H-2A program regulations for subsistence pay. Maximum Amount to be reimbursed with receipts is \$46.00. By way of illustration and not in limitation of the foregoing, the employer will not pay transportation for such worker if he does not have suitable documents to comply with proof of identity and employment eligibility requirements of IRCA, if he is discharged for lawful job-related reasons, if he has knowledge at the place of recruitment that he cannot perform the duties of the job as described above or if he abandons this employment when he is needed by the Grower. If the grower reimburses the worker prior to the 50% date, and the worker is terminated for cause or abandons prior to the 50% date, the grower reserves the right to recapture that reimbursement.

Employer will provide, pay, or reimburse transportation and subsistence under this agreement if the worker is terminated because of work related injury caused by this/these crop activities and is so certified by a doctor acceptable to employer before leaving employers farm, or termination resulting from an Act of God, as outlined in 655.122(o), which makes fulfillment of this contract impossible as provided in paragraph 18C or if the worker is displaced by a U.S. worker under DOL's 50% rule.

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Employer will offer free transportation for workers living in employer's housing facility both to and from the daily work site. The use of the transportation by the worker is voluntary; no worker will be required as a condition of employment to utilize the transportation offered by the employer. Workers are free to choose their own means of transportation at their own expense.

For US workers who complete the work contract and are eligible for the outbound transportation benefit, or if the employee is terminated without cause, and the worker has no immediate subsequent H2a employment, or an H2a workers that is displaced due the employers obligation under the USDOL 50% rule, the Employer will provide or pay for the worker's reasonable cost of return transportation and subsistence from the place of employment to the place from which the worker departed to work for the employer, except when the worker will not be returning to the place of recruitment due to subsequent employment with another employer. If the subsequent employer has not agreed to provide or pay for the worker's transportation to the subsequent place of employment, the Employer will provide or pay for the transportation and subsistence to the subsequent place of employment in lieu of providing or paying for such expenses from the place of employment to the place from which the worker departed to work for the employer. If the subsequent employer has agreed to provide or pay for the worker's transportation and subsistence to the subsequent place of employment the Employer will not provide or pay for such expenses. The Employer reserves the right to arrange charter or other return transportation. Workers eligible for this benefit who do not wish to avail themselves of employer arranged return transportation would be provided their outbound transportation and subsistence by check. If a worker choses to not use the employer arrange transportation then they will only be reimbursed for the transportation not included in the employer arranged (Mexican transportation, border crossing and daily subsistence.) In those circumstances, the grower will distribute the checks, as soon as all work is completed, as determined by the employer, and the worker is ready to depart. Workers may select any means of transportation home they choose, however, the reimbursement is limited to the most economical and reasonable common carrier transportation cost for the distance involved. Workers who arrange their own transportation understand they assume all liability and hold harmless the grower/association for any damages, injuries, and personal or property losses.

21. U.S. workers may or may not be covered by unemployment insurance and may or may not be eligible under current unemployment regulations. Workers employed under this job order are designated as seasonal employees.

22. Injuries: Worker will be covered by Worker's Compensation Insurance or equivalent employer provided Insurance for injuries arising out of and in the course of employment. Employer assures that there will be no lapse in coverage for workers compensation. The employers workers compensation will be provided throughout the entire length of the contract period. Employer's proof of insurance coverage will be provided to the Regional Administrator before certification is granted. All workers must report all injuries and illnesses to their employer. Failure not to do so may result in termination.

23. Employers will provide tools and equipment at no cost for workers to perform the above tasks. Workers will be charged for any willful damage to or loss of such tools and equipment.

24. For workers covered by MSPA 29 CFR 500.075(8) there are not any arrangements made with establishment owners or agents for the payment of a commission or other benefits for sales made to the workers.

#### 28. Other Conditions of Employment:

A). Discipline and/or Termination: Employer may discipline and/or terminate the worker for lawful job-related reasons and so notify the Job Service local office of the termination if the worker: a) refuses without justified cause to perform work for which the worker was recruited and hired; b) commit serious act(s) of misconduct or serious or repeated violation(s) of Work Rules attached hereto; c) fails after completing the training period to perform the work as specified in Item 16 and Attachment; d) malingers or otherwise refuses without justified cause to perform as directed the work for which the Worker was recruited and hired; e) provides other lawful job-related reason(s) for termination of employment; f) abandons his employment; g) fails to meet applicable production standards or keep up with fellow workers; h) falsifies identification, personnel, medical, production or other work related records; i) fails or refuses to take a drug test; or j) commits acts of insubordination, k) the employer may terminate the worker (foreign or domestic) with notification to the employment service if employer discovers a criminal conviction record or status as a registered sex offender that employer reasonably believes, consistent with current law, will impair the safety and living conditions of other workers. Reason beyond employer's control" includes termination of workers, if he not a U.S. worker because a U.S. worker makes himself available for the job under DOL's 50% rule. Workers must notify the employer prior to voluntarily terminating their employment. All wages due will be forwarded to the last known address for Workers that leave without providing notice. It is imperative that workers provide a complete and accurate address to the employer no later than the first day of employment. These employers have a no complete, no rehire policy. Termination for lawful job related reasons before the specified ending date listed in this application will disqualify the employee from future employment opportunities with this employer. Workers who abandon their employment without notice during the period covered by this work agreement will be disqualified from future employment opportunities with this employer. Voluntary resignation before the specified ending date listed in this application may disqualify the employee from future employment opportunities with this employer. For workers who resign their employment voluntarily, the employer will consider and evaluate special circumstances and hardship cases on a case-by-case basis. Employees, without exception, are required to notify appropriate supervisory staff prior to voluntarily terminating their employment to be considered and eligible for exemption to the no complete - no rehire policy.

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B). The employer may discipline the worker, including requiring the worker to leave the field ("time out") for a period determined by the foreman, suspension from employment for up to three days, or termination of employment as described in termination (A) above.

C). Employer Obligation if Employment Extended: No extension of employment beyond the Period of Employment specified in the job order shall relieve the Employer from paying the wages already earned, or if specified in the job order as a term of employment, providing return transportation or paying return transportation expenses to the Worker.

D). Employer Notification of Changes in Employment Terms and Conditions: Employers will expeditiously notify the order-holding local office or State agency by email immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over recruitment, or other factors have changed the terms and conditions of employment. The terms of this Work Agreement thereafter may be changed upon posted notice to the Worker.

E). Outreach Workers: Outreach workers shall have reasonable access to the Worker in the conduct of outreach activities pursuant to 20 CFR 653.107 and 20 CFR 653.501.

F). Training: There will be a short demonstration period (up to 1 hr.) to familiarize workers with job specifications, to demonstrate proper methods and other crop specific issues. The employer will not provide separate formal orientation or training periods for each different crop or each different type of task or job assignment covered within the job description. After completion of the training period the employer will expect all workers to possess the skills to work in the production of the crops above. For purposes of this section seven or more hours will be considered one day.

G). Work Agreement: A copy of the contract or Job Clearance Order and work rules (copy attached) will be provided to the worker by the employer no later than on the day the time at which the worker applies for the visa (for foreign workers), or to a worker in corresponding employment no later than when the when employment is offered.

H). Employer agrees to abide by the regulations at 20 CFR 655.135.

I). The employer as a part of positive recruitment as per 20 CFR 655.154 is willing, if and when any substantial number of applicants are available, to coordinate group transportation arrangements (to facilitate their purchase of bus tickets etc.), where appropriate, and to provide any additional information that workers need to coordinate their arrival.

J) We are an equal opportunity employer. Women and minorities are encouraged to apply to these positions.

K). SUBSTANCE ABUSE POLICY: This employer will strive to provide a safe and healthful work environment, free of substance abuse, for the protection of our associates, employees and visitors. The use, possession or being under the influence of illegal drugs or alcohol during working time is prohibited. (Alcohol may be permitted in the housing facility outside work hours.) Employees may also be requested to take random drug tests at no cost to the worker. Workers are subject to random drug testing effective their first date of work. Failure to comply with the request or testing positive will result in immediate termination.

L). Pursuant to 20 CFR 655.135(i)(1), each employee that enters the United States with an H-2A temporary work visa must return at the end of the period listed in this contract and certified by the U.S. Department of Labor or upon separation from the employer, whichever is earlier, unless the employee is being sponsored by another subsequent H-2A employer.

M) Grievance Policy: If any area of your work is causing you concern, you have the responsibility to address your concern with your immediate supervisor. Most problems can and should be solved in discussion with your immediate supervisor; if after these attempts there is no satisfactory resolution, you should bring your concerns to upper management.

This employer strongly urges the reporting of all incidents of discrimination, harassment or retaliation, regardless of the offender's identity or position. Individuals who believe they have experienced any of these or who have concerns about such matters should file their complaints before the conduct becomes severe or pervasive. Individuals should not feel obligated to file their complaints with their immediate supervisor first before bringing the matter to the attention of upper management.

Our goal is to have a work environment where we all treat each other respectfully and professionally. Any unprofessional or disrespectful behavior, even if not illegal, that interferes with that goal and will not be tolerated. The employer reserves the right to respond to inappropriate behavior even where no one has complained or indicated they have been offended

N) The employer is committed to providing a safe, flexible and respectful environment for employees, staff, clients, or anyone you come into contact with on company business, free from all forms of sexual harassment. Any type of sexual harassment is grounds for immediate termination. Sexual harassment is a specific and serious form of harassment. It is defined as: unwelcome sexual behavior, which could be expected to make a person feel offended, humiliated or intimidated. Sexual harassment can be physical, spoken or written. It can include: a) comments about a person's private life or the way they look, b) sexually suggestive behaviour, such as leering or staring, c) brushing up against someone, touching, fondling or hugging, d) sexually suggestive comments or jokes e) displaying

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offensive screen savers, photos, calendars or objects, f) repeated requests to go out, g) requests for sex, h) sexually explicit emails, text messages or posts on social networking sites.

Just because someone does not object to inappropriate behavior in the workplace at the time, it does not mean that they are consenting to the behavior.

Sexual harassment is covered in the workplace when it happens at work, at work-related events, between people sharing the same workplace, or between colleagues outside of work.

#### FARM, HARVESTING, AND FIELD FOOD SAFETY RULES

1. Worker must practice good personal hygiene.
2. Worker should wash and sanitize hands for at least 20 seconds:
  - a. Before and after working
  - b. Before beginning work in a different area
  - c. Before and after eating
  - d. After visiting the restrooms, toilets and port-a-johns
  - e. Before and after treating an open wound or cut
  - f. Before and after treating an individual with a cut or wound
  - g. After blowing of nose
  - h. After touching the hair or face
  - i. After sneezing or coughing
  - j. After touching anything which can cause contamination or performing maintenance
  - k. After any break
  - l. After handling any dirty raw material or garbage
  - m. After touching animals or animal feces
3. All jewelry (ring with stones, watches, earrings, etc) must be removed before entering any work area. Wedding bands without stones are permitted (supervisor's authorization is required).
4. Eating food, drinking beverages, chewing gum and using tobacco products are strictly prohibited in all work areas.
5. Worker should use proper hand washing and toilet facilities.
6. Report any active case of illness to crew leader or supervisors before beginning work. Workers with bad colds, contagious diseases, boils or sores will not be allowed to contact product, equipment, boxes and containers.
7. If worker cuts him or herself while working, worker should stop work immediately, cover the wound, and report it to the supervisor. Keep wounds covered so that you do not contaminate the product, equipment, boxes and containers with body fluids.
8. All workers shall maintain neatness while in working areas.
9. Personal items such as pens, pencils, keys, tobacco products, cell phones, snacks, etc., shall not be carried in pockets while in working areas.
10. Animals are prohibited on all farm premises.
11. Only employer personnel and registered visitors are allowed on the employer's premises. Visitors must sign in at designated area prior to entering the premises.
12. Workers families and children are not allowed in any work area.
13. Tools, knives and sheaths must be sanitized upon entering each field, leaving each field, with each crop change and after each break. Worker should wear knife sheath at all times when working. Knife should be stored in sheath.
14. If issued, worker should change and have laundered at least every other day his/her uniforms, and protective clothing. If required, worker should use personal protective equipment correctly.
15. No glass is allowed in any work areas.

- 8 -

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JX 3 Page 57

AR - 1559

Appx248

U.S. Department of Labor      **Employment and Training Administration**  
Office of Foreign Labor Certification  
Chicago National Processing Center  
11 West Quincy Court  
Chicago, IL 60604



May 1, 2015

Theresa L Ward  
685 Us Hwy 15-501  
Carthage, NC 28327

Case Number: H-300-15106-786261

**RE: Sun Valley Orchards LLC**

Dear Sir/Madam:

Your application seeking temporary labor certification under the H-2A temporary agricultural program has been **certified**. On April 23, 2015, this office accepted for consideration an application from you requesting H-2A temporary labor certification for 60 Farmworker and Laborer, Crop, Nursery, And Greenhouse job opportunities. In accordance with Departmental regulations at 20 Code of Federal Regulations (CFR) § 655, Subpart B, it has been determined that a sufficient number of able, willing and qualified U.S. workers have not been identified as being available at the time and place needed to fill all of the job opportunities for which certification has been requested and that employment of the H-2A workers will not adversely affect the wages and working conditions of workers in the United States similarly employed.

Therefore, the Department grants certification for 60 Farmworker and Laborer, Crop, Nursery, And Greenhouse job opportunities. You must comply with all assurances, guarantees and other requirements contained in Departmental regulations at 20 CFR § 655, Subpart B and 20 CFR § 653, Subpart F.

Upon receipt of this notification, you will need to submit to the U.S. Citizenship and Immigration Service (USCIS) California Service Center the I-129 Form that is required in conjunction with an H-2A application. The USCIS petition can be obtained at <http://www.uscis.gov>.

**IMPORTANT NOTE:** The employer must sign and date the ETA Form 9142 prior to submission to USCIS California Service Center.

Enclosed is a bill for fees assessed for the H-2A certification. Non-payment or untimely payment may be considered a substantial violation subject to the procedures in Departmental regulations at 20 CFR § 655.182.

**Important Reminders:**



- In accordance with Departmental regulations at 20 CFR § 655.120(b), if the prevailing hourly wage or piece rate is adjusted during a work contract, and is higher than the highest of the AEWR, the prevailing wage, the agreed-upon collective bargaining wage, or the Federal or State minimum wage, in effect at the time the work is performed, the employer must pay at least that higher prevailing wage or piece rate upon notice to the employer by the Department. The Department posts all current prevailing hourly wages and piece rates to the Department of Labor's Agricultural On-Line Wage Library (AOWL). You are encouraged to visit the AOWL website at <http://www.foreignlaborcert.doleta.gov/aowl.cfm> for the updated wage rates.
- You must continue to cooperate with the State Workforce Agency (SWA) by accepting all referrals of eligible U.S. workers who apply (or on whose behalf an application is made) for the job opportunity until the end of the recruitment period as set forth in Departmental regulations at 20 CFR § 655.135(d). The end date of your obligation to consider all referrals under the 50 percent rule is calculated by the SWA based on the date the H-2A worker departed for the employer's place of business, which is assumed to be three days prior to the first date of need. However, if the H-2A worker will not depart for your place of employment three days prior to the first date of need, Departmental regulation 20 CFR § 655.135(c) requires you to inform the SWA in writing of the new expected departure date.
- You must update and maintain the recruitment report throughout the recruitment period including the 50 percent period as specified in Departmental regulations at 20 CFR § 655.156(b). This supplement to the recruitment report must meet the requirements of Departmental regulations at 20 CFR § 655.156(a)(1)-(4). The employer must sign and date this supplement to the recruitment report and retain it for a period of no less than three (3) years. The supplement to the recruitment report must be provided upon request.
- You are also reminded that in accordance with Departmental regulations at 20 CFR § 655.122(n), the termination of workers for cause and abandonment of the job by workers are to be reported in writing to the Department and to the Department of Homeland Security (DHS) within two (2) business days of the termination or discovering abandonment. To make compliance with this requirement simple and fast, the employer may e-mail the notification directly to the Chicago NPC using [TLC.Chicago@dol.gov](mailto:TLC.Chicago@dol.gov). Your requests will be handled as expeditiously as possible. Employers without internet access may also send written notification by facsimile to (312) 886-1688 (ATTN: H-2A Abandonment and Termination) or U.S. mail to the following address:

U.S. Department of Labor  
Employment and Training Administration  
Office of Foreign Labor Certification  
Chicago National Processing Center  
11 West Quincy Court

Chicago, IL 60604  
ATTN: H-2A Abandonment and Termination

- In accordance with Departmental regulations at 20 CFR § 655.135(i), employers must inform H-2A workers of the requirement that they must leave the United States at the end of the period certified by the Department or separation from the employer, whichever is earlier, unless the H-2A worker is being sponsored by another subsequent employer.
- In accordance with Departmental regulations at 20 CFR § 655.122(q), employers must provide to H-2A workers no later than the time at which the workers apply for the visa, or to workers in corresponding employment no later than on the day work commences, a copy of the work contract between the employer and the workers in a language understood by the worker as necessary or reasonable. For H-2A workers going from an H-2A employer to a subsequent H-2A employer, the copy must be provided no later than the time an offer of employment is made by the subsequent H-2A employer.
- In accordance with Departmental regulations at 20 CFR § 655.135(l), employers must post and maintain in a conspicuous location at the place of employment, a poster provided by the Secretary of the Department of Labor in English, and to the extent necessary, any language common to a significant portion of the workers if they are not fluent in English, which sets out the rights and protections for workers. A copy of the poster is available at <http://www.dol.gov/whd/resources/posters.htm>.
- Departmental regulations at 20 CFR § 655.180, allow the Department to conduct audit examinations of certified H-2A applications. The applications selected for audit will be chosen within the sole discretion of the Department. If your certification has been selected for audit, you are reminded that you must submit the documentation requested in the audit letter within the specified timeframe. Failure to comply with the audit process may result in a finding by the Certifying Officer to revoke the labor certification and/or debarment of the employer from future filings of H-2A temporary labor certification applications. Additionally, the audit findings and underlying documentation may be provided to the Department of Homeland Security or another appropriate enforcement agency. Referrals of any findings that an employer discouraged an eligible U.S. worker from applying, or failed to hire, discharged, or otherwise discriminated against an eligible U.S. worker, to the Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Immigration Related Employment Practices.
- In accordance with Departmental regulations at 20 CFR § 655.170, employers may request to extend (by more than two (2) weeks) the period of employment on certified H-2A applications in writing, to the Chicago NPC. The employer may e-mail the request directly to the Chicago NPC using the address:

TLC.Chicago@dol.gov, with the words "H-2A Extension Request" contained in the subject line of the e-mail. Employers without internet access may send a written request by facsimile to (312) 886-1688 (ATTN: H-2A Extension Request) or by U.S. mail to the following address:

U.S. Department of Labor  
Employment and Training Administration  
Office of Foreign Labor Certification  
Chicago National Processing Center  
11 West Quincy Court  
Chicago, IL 60604  
ATTN: H-2A Extension Request

- Requests for changes in the period of employment lasting two (2) weeks or less can be directly filed with the USCIS California Service Center.

Sincerely,

OFLC Certifying Officer

Enclosures: Invoice for Certification; ETA Form 9142

CC: Sun Valley Orchards LLC  
NJ DEPT OF LABOR - LWD

Public Burden Statement: OMB control number 1205-0466, expiration date 03/31/2016. This reporting instruction has been approved under the Paperwork Reduction Act of 1995. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Obligations to respond are mandatory (20 CFR 655.122, 655.135, 655.145, and 655.156). Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Room C-4312, 200 Constitution Ave., NW, Washington, DC 20210. **DO NOT send any of the above listed notices to this address.**

OMB Approval: 1205-0466  
Expiration Date: 03/31/2016H-2A Application for Temporary Employment Certification  
ETA Form 9142A  
U.S. Department of Labor

Please read and review the filing instructions carefully before completing the ETA Form 9142i. A copy of the instructions can be found at <http://www.foreignlaborcert.doleta.gov/>. In accordance with Federal Regulations, incomplete or obviously inaccurate applications will not be certified by the Department of Labor. If submitting this form non-electronically, ALL required fields/items containing an asterisk (\*) must be completed as well as any fields/items where a response is conditional as indicated by the section (§) symbol.

## A. Employment-Based Nonimmigrant Visa Information

1. Indicate the type of visa classification supported by this application (Write classification symbol): \*

H-2A

## B. Temporary Need Information

1. Job Title * Farmworker, Diversified	
2. SOC (ONET/OES) code * 45-2092	3. SOC (ONET/OES) occupation title * Farmworkers and Laborers, Crop, Nursery, and Greenhouse
4. Is this a full-time position? * <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Period of Intended Employment
	5. Begin Date * 06/01/2015 (mm/dd/yyyy)
	6. End Date * 10/10/2015 (mm/dd/yyyy)
7. Worker positions needed/basis for the visa classification supported by this application	
<input type="text" value="60"/> Total Worker Positions Being Requested for Certification *	
Basis for the visa classification supported by this application (Indicate the total workers in each applicable category based on the total workers identified above)	
<input type="text" value="60"/> a. New employment *	<input type="text" value="0"/> d. New concurrent employment *
<input type="text" value="0"/> b. Continuation of previously approved employment * without change with the same employer	<input type="text" value="0"/> e. Change in employer *
<input type="text" value="0"/> c. Change in previously approved employment *	<input type="text" value="0"/> f. Amended petition *
8. Nature of Temporary Need: (Choose only one of the standards) *	
<input checked="" type="checkbox"/> Seasonal <input type="checkbox"/> Peakload <input type="checkbox"/> One-Time Occurrence <input type="checkbox"/> Intermittent or Other Temporary Need	
9. Statement of Temporary Need *	
N/A	

ETA Form 9142A

FOR DEPARTMENT OF LABOR USE ONLY

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Case Number: H-300-15105-788261

Case Status: CERTIFIED

Validity Period: 06/01/2015 to 10/10/2015

OMB Approval: 1205-0466  
Expiration Date: 03/31/2016H-2A Application for Temporary Employment Certification  
ETA Form 9142A  
U.S. Department of Labor**C. Employer Information**

**Important Note:** Enter the full name of the individual employer, partnership, or corporation and all other required information in this section. For joint employer or master applications filed on behalf of more than one employer under the H-2A program, identify the main or primary employer in the section below and then submit a separate attachment that identifies each employer, by name, mailing address, and total worker positions needed, under the application.

1. Legal business name *		
Sun Valley Orchards LLC		
2. Trade name/Doing Business As (DBA), if applicable		
N/A		
3. Address 1 *		
29 Vestry Rd		
4. Address 2		
N/A		
5. City *	6. State *	7. Postal code *
Swedesboro	NJ	08085
8. Country *	9. Province	
UNITED STATES OF AMERICA	N/A	
10. Telephone number *	11. Extension	
856-769-5280	N/A	
12. Federal Employer Identification Number (FEIN from IRS) *		13. NAICS code (must be at least 4-digits) *
460542793		111339
14. Number of non-family full-time equivalent employees	15. Annual gross revenue	16. Year established
0		N/A
17. Type of employer application (choose only one box below) *		
<input checked="" type="checkbox"/> Individual Employer <input type="checkbox"/> Association – Sole Employer (H-2A only)		
<input type="checkbox"/> H-2A Labor Contractor or Job Contractor <input type="checkbox"/> Association – Joint Employer (H-2A only)		
<input type="checkbox"/> Association – Filing as Agent (H-2A only)		

**D. Employer Point of Contact Information**

**Important Note:** The information contained in this Section must be that of an employee of the employer who is authorized to act on behalf of the employer in labor certification matters. The information in this Section must be different from the agent or attorney information listed in Section E, unless the attorney is an employee of the employer. For joint employer or master applications filed on behalf of more than one employer under the H-2A program, enter only the contact information for the main or primary employer (e.g., contact for an association filing as joint employer) under the application.

1. Contact's last (family) name *	2. First (given) name *	3. Middle name(s) *
Marino Jr	Russell	James
4. Contact's job title *		
Owner/Manager		
5. Address 1 *		
29 Vestry Rd		
6. Address 2		
N/A		
7. City *	8. State *	9. Postal code *
Swedesboro	NJ	08085
10. Country *	11. Province	
UNITED STATES OF AMERICA	N/A	
12. Telephone number *	13. Extension	14. E-Mail address
856-769-5280	N/A	N/A

ETA Form 9142A

FOR DEPARTMENT OF LABOR USE ONLY

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Case Number: H-300-15106-786281

Case Status: CERTIFIED

Validity Period: 06/01/2015 to 10/10/2015



OMB Approval: 1205-0466  
Expiration Date: 03/31/2016H-2A Application for Temporary Employment Certification  
ETA Form 9142A  
U.S. Department of Labor

## E. Attorney or Agent Information (If applicable)

1. Is/are the employer(s) represented by an attorney or agent in the filing of this application (including associations acting as agent under the H-2A program)? If "Yes", complete Section E. *			<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Attorney or Agent's last (family) name § Ward	3. First (given) name § Theresa	4. Middle name(s) § L		
5. Address 1 § 685 US Hwy 15-501				
6. Address 2 N/A				
7. City § Carthage		8. State § NC	9. Postal code § 28327	
10. Country § UNITED STATES OF AMERICA		11. Province N/A		
12. Telephone number § 910-947-6004	13. Extension N/A	14. E-Mail address tward.nac@gmail.com		
15. Law firm/Business name § National Agricultural Consultants LLC		16. Law firm/Business FEIN § 471490898		
17. State Bar number (only if attorney) § N/A		18. State of highest court where attorney is in good standing (only if attorney) § N/A		
19. Name of the highest court where attorney is in good standing (only if attorney) § N/A				

## F. Job Offer Information

## a. Job Description

1. Job Title * Farmworker; Diversified	
2. Number of hours of work per week Basic *: 40 Overtime: 0	3. Hourly Work Schedule * A.M. (h:mm): 7 : 00 P.M. (h:mm): 3 : 00
4. Does this position supervise the work of other employees? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
4a. If yes, number of employees worker will supervise (if applicable) § 0	
5. Job duties – A description of the duties to be performed <b>MUST</b> begin in this space. If necessary, add attachment to continue and complete description. * Workers will perform a variety of duties with harvesting vegetable crops grown by employer See 9142 attachments for more complete details.	

ETA Form 9142A

FOR DEPARTMENT OF LABOR USE ONLY

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Case Number: H-300-15106-786261

Case Status: CERTIFIED

Validity Period: 06/01/2015 to 10/10/2015



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ETA Form 9142A  
U.S. Department of Labor

## F. Job Offer Information (continued)

## b. Minimum Job Requirements

1. Education; minimum U.S. diploma/degree required *	
<input checked="" type="checkbox"/> None <input type="checkbox"/> High School/GED <input type="checkbox"/> Associate's <input type="checkbox"/> Bachelor's <input type="checkbox"/> Master's <input type="checkbox"/> Doctorate (PhD) <input type="checkbox"/> Other degree (JD, MD, etc.)	
1a. If "Other degree" in question 1, specify the diploma/degree required § N/A	1b. Indicate the major(s) and/or field(s) of study required § (May list more than one related major and more than one field) N/A
2. Does the employer require a second U.S. diploma/degree? *	
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
2a. If "Yes" in question 2, indicate the second U.S. diploma/degree and the major(s) and/or field(s) of study required § N/A	
3. Is training for the job opportunity required? *	
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
3a. If "Yes" in question 3, specify the number of months of training required § 0	3b. Indicate the field(s)/name(s) of training required § (May list more than one related field and more than one type) N/A
4. Is employment experience required? *	
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
4a. If "Yes" in question 4, specify the number of months of experience required § 3	4b. Indicate the occupation required § verifiable experience harvesting a perishable crop
5. Special Requirements - List specific skills, licenses/certifications, and requirements of the job opportunity. *	
SEE ADDENDUM	
Applicants must be able to furnish affirmative job references from recent employers operating comparable operations establishing acceptable previous experience. Workers	

## c. Place of Employment Information

1. Worksite address 1 *	
29 Vestry Rd	
2. Address 2 N/A	
3. City *	4. County *
Swedesboro	Gloucester
5. State/District/Territory *	6. Postal code *
NJ	08085
7. Will work be performed in multiple worksites within an area of intended employment or a location(s) other than the address listed above? *	
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
7a. If Yes in question 7, identify the geographic place(s) of employment with as much specificity as possible. If necessary, submit an attachment to <u>continue and complete</u> a listing of all anticipated worksites. §	
1. New Jersey Other see attached spreadsheet	
2. New Jersey Other all of which are owned/leased by employer.	
3. New Jersey Other employer provides daily transportation from main location to each work site.	

ETA Form 9142A

FOR DEPARTMENT OF LABOR USE ONLY

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Case Number: H-300-15105-766261

Case Status: CERTIFIED

Validity Period: 06/01/2015 to 10/10/2015

OMB Approval: 1205-0466  
Expiration Date: 03/31/2016H-2A Application for Temporary Employment Certification  
ETA Form 9142A  
U.S. Department of Labor

## G. Rate of Pay

1. Basic Rate of Pay Offered *		1a. Overtime Rate of Pay (if applicable) \$	
From: \$ 11 . 29 To (Optional): \$ 0 . 00		From: \$ 0 . 00 To (Optional): \$ 0 . 00	
2. Per. (Choose only one) * <input checked="" type="checkbox"/> Hour <input type="checkbox"/> Week <input type="checkbox"/> Bi-Weekly <input type="checkbox"/> Month <input type="checkbox"/> Year <input type="checkbox"/> Piece Rate			
2a. If Piece Rate is indicated in question 2, specify the wage offer requirements: \$ N/A			
3. Additional Wage Information (e.g., multiple worksite applications, itinerant work, or other special procedures). If necessary, add attachment to <u>continue and complete</u> description. \$ SEE ADDENDUM			
In the event that the Department Of Labor promulgates a new AEWR applicable to any portion of the period of employment covered by this job order which is higher or lower than the AEWR herein, the employer will pay the higher AEWR, and may, at the			

## H. Recruitment Information

1. Name of State Workforce Agency (SWA) serving the area of intended employment *		
New Jersey Department of Employment & Workforce		
2. SWA job order identification number *	2a. Start date of SWA job order *	2b. End date of SWA job order * (In H-2A this date is 50% of contract period)
NJ0994838	04/02/2015	08/05/2015
3. Is there a Sunday edition of a newspaper (of general circulation) in the area of intended employment? *		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Name of Newspaper/Publication (in area of intended employment for H-2B only) *		Dates of Print Advertisement \$
4. TBA		From: To:
5. N/A		From: To:
6. Additional Recruitment Activities for H-2B program. Use the space below to identify the type(s) or source(s) of recruitment, geographic location(s) of recruitment, and the date(s) on which recruitment was conducted. If necessary, add attachment to <u>continue and complete</u> description. *		
Attempt to re-contact former workers. Advertise in local newspaper. Advertise by word of mouth. Publicize through employment service. Solicit help through Ag Extension and Farm Bureau.  The employers will engage in positive recruitment of U.S. workers to the same extent (with respect to both effort and location) no less than that of non H-2A employers of comparable or smaller size in the area of employment in accordance with 655.135.		

ETA Form 9142A

FOR DEPARTMENT OF LABOR USE ONLY

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Case Number: H-300-15105-786281

Case Status: CERTIFIED

Validity Period: 06/01/2015 to 10/10/2015

OMB Approval: 1205-0466  
Expiration Date: 03/31/2016H-2A Application for Temporary Employment Certification  
ETA Form 9142A  
U.S. Department of Labor**I. Declaration of Employer and Attorney/Agent**

In accordance with Federal regulations, the employer must attest that it will abide by certain terms, assurances and obligations as a condition for receiving a temporary labor certification from the U.S. Department of Labor. Applications that fail to attach Appendix A or Appendix B will be considered incomplete and not accepted for processing by the ETA application processing center.

1. For H-2A Applications ONLY, please confirm that you have read and agree to all the applicable terms, assurances and obligations contained in Appendix A. §	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
2. For H-2B Applications ONLY, please confirm that you have read and agree to all the applicable terms, assurances and obligations contained in Appendix B. §	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

**J. Preparer**

Complete this section if the preparer of this application is a person other than the one identified in either Section D (employer point of contact) or E (attorney or agent) of this application.

1. Last (family) name § N/A	2. First (given) name § N/A	3. Middle initial § N/A
4. Job Title § N/A		
5. Firm/Business name § N/A		
6. E-Mail address § N/A		

**K. U.S. Government Agency Use (ONLY)**

Pursuant to the provisions of Section 101 (a)(15)(h)(ii) of the Immigration and Nationality Act, as amended, I hereby certify that there are not sufficient U.S. workers available and the employment of the above will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. By virtue of the signature below, the Department of Labor hereby acknowledges the following:

This certification is valid from 06/01/2015 to 10/10/2015

Department of Labor, Office of Foreign Labor Certification

05/01/2015  
Determination Date (date signed)

H-300-15106-786261  
Case number

CERTIFIED  
Case Status

**L. Public Burden Statement 1205-0466**

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 1 hour to complete the form and 20 minutes per response for all other H-2A information collection requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this data collection is required to obtain/retain benefits (Immigration and Nationality Act, 8 U.S.C. 1101, et seq.). Please send comments regarding this burden estimate or any other aspect of this information collection to the Office of Foreign Labor Certification \* U.S. Department of Labor \* Room C4312 \* 200 Constitution Ave., NW, \* Washington, DC \* 20210 or by email [ETA.OFLC.Forms@dol.gov](mailto:ETA.OFLC.Forms@dol.gov). Please do not send the completed application to this address.

ETA Form 9142A

FOR DEPARTMENT OF LABOR USE ONLY

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Case Number: H-300-15106-786261Case Status: CERTIFIEDValidity Period: 06/01/2015 to 10/10/2015

OMB Approval: 1205-0466  
Expiration Date: 03/31/2016


## H-2A Application for Temporary Employment Certification

ETA Form 9142A – APPENDIX A  
U.S. Department of Labor

For Use In Filing Applications Under the H-2A Agricultural Program ONLY

## A. Attorney or Agent Declaration

*I hereby certify that I am an employee of, or hired by, the employer listed in Section C of the ETA Form 9142A, and that I have been designated by that employer to act on its behalf in connection with this application. If I am an agent and not an employee of the employer, then I have attached a Letter of Representation from the employer. I also certify that to the best of my knowledge the information contained herein is true and correct. I understand that to knowingly furnish false information in the preparation of this form and any supplement hereto or to aid, abet, or counsel another to do so is a felony punishable by a \$250,000 fine or 5 years in a Federal penitentiary or both (18 U.S.C. 1001).*

1. Attorney or Agent's last (family) name Ward	2. First (given) name Theresa	3. Middle Initial L
4. Firm/Business name National Agricultural Consultants LLC		
5. E-Mail address tward.nac@gmail.com		
6. Signature 		7. Date signed 05/04/2015

## B. Employer Declaration

By virtue of my signature below, I HEREBY CERTIFY the following conditions of employment:

- The job opportunity is a full-time temporary position, the qualifications for which do not substantially deviate from the normal and accepted qualifications required by non-H-2A employers in the same or comparable occupations and crops.
- The worksite for which the employer is requesting H-2A certification does not currently have workers on strike or being locked out in the course of a labor dispute.
- The job opportunity is and will continue to be open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, handicap, or citizenship, and the employer has conducted and will continue to conduct the required recruitment, in accordance with regulations, and has been unsuccessful in locating sufficient numbers of qualified U.S. applicants for the job opportunity for which certification is sought. Any U.S. workers who applied or apply for the job were or will be rejected only for lawful, job-related reasons, and the employer must retain records of all rejections as required by 20 CFR 655.167.
- The job opportunity offers U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers and complies with the requirements at 20 CFR 655, Subpart B.
- The employer understands that it must offer, recruit at, and pay a wage that is the highest of the adverse effect wage rate in effect at the time the job order is placed, the prevailing hourly or piece rate, the agreed-upon collective bargaining rate (CBA), or the Federal or State minimum wage, and, furthermore, that if a new Adverse Effect Wage Rate is published, or the employer is notified of a new prevailing wage rate during the contract period, and that new rate is higher than the wage determined by the NPC (except the CBA) during the application process the employer will increase the pay of all employees in the same job occupation to the higher rate.
- There are no U.S. workers available in the area(s) capable of performing the temporary services or labor in the job opportunity, and the employer will conduct positive recruitment as specified by the NPC and continue to cooperate with the SWA by accepting referrals of all eligible U.S. workers who apply (or on whose behalf an application is made) for the job opportunity until completion of 50 percent of the contract period calculated from the first date of need indicated in Section B.5 of ETA Form 9142A.
- All fees associated with processing the temporary labor certification will be paid in a timely manner.

ETA Form 9142A – Appendix A

FOR DEPARTMENT OF LABOR USE ONLY

Page A.1 of A.3

Case Number: H-300-16106-788261

Case Status: CERTIFIED

Period of Employment: 06/01/2015 to 10/10/2015



OMB Approval: 1205-0466  
Expiration Date: 03/31/2016



# H-2A Application for Temporary Employment Certification

ETA Form 9142A – APPENDIX A  
U.S. Department of Labor

8. During the period of employment that is the subject of the labor certification application, the employer:
  - (i) Will comply with applicable Federal, State and local employment-related laws and regulations, including health and safety laws;
  - (ii) Will provide for or secure housing for workers who are not reasonably able to return to their permanent residence at the end of the work day that complies with the applicable local, State, or Federal standards and guidelines for housing without charge to the worker;
  - (iii) Where required, has timely requested a preoccupancy inspection of the housing and received certification;
  - (iv) Will provide insurance, without charge to the worker, under a State workers' compensation law or otherwise, that meets the requirements of 20 CFR 655.122(e).
  - (v) Will provide transportation in compliance with all applicable Federal, State or local laws and regulations between the worker's living quarters (i.e., housing provided by the employer under 20 CFR 655.122(h)) and the employer's worksite without cost to the worker.
9. The employer has not laid off and will not lay off any similarly employed U.S. worker in the occupation that is the subject of the Application for Temporary Employment Certification in the area of intended employment except for lawful, job related reasons within 60 days of the date of need, or if the employer has laid off such workers, it has offered the job opportunity that is the subject of the application to those laid-off U.S. worker(s) and the U.S. worker(s) refused the job opportunity, was rejected for the job opportunity for lawful, job-related reasons, or was hired.
10. The employer and its agents have not sought or received payment of any kind from the H-2A worker for any activity related to obtaining labor certification, including payment of the employer's attorneys' fees, application fees, or recruitment costs. For purposes of this paragraph, payment includes, but is not limited to, monetary payments, wage concessions (including deductions from wages, salary, or benefits), kickbacks, bribes, tributes, in kind payments, and free labor.
11. The employer has and will contractually forbid any foreign labor contractor or recruiter whom the employer engages in international recruitment of H-2A workers to seek or receive payments from prospective employees...
12. The employer has not and will not intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, and has not and will not cause any person to intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, any person who has with just cause:
  - (i) Filed a complaint under or related to Sec. 218 of the INA (8 U.S.C. 1168), or any Department regulation promulgated under Sec. 218 of the INA;
  - (ii) Instituted or caused to be instituted any proceeding under or related to Sec. 218 of the INA, or any Department regulation promulgated under Sec. 218 of the INA;
  - (iii) Testified or is about to testify in any proceeding under or related to Sec. 218 of the INA or any Department regulation promulgated under Sec. 218 of the INA;
  - (iv) Consulted with an employee of a legal assistance program or an attorney on matters related to Sec. 218 of the INA or any Department regulation promulgated under Sec. 218 of the INA; or
  - (v) Exercised or asserted on behalf of himself/herself or others any right or protection afforded by Sec. 218 of the INA, or any Department regulation promulgated under Sec. 218 of the INA.
13. The employer has not and will not discharge any person because of that person's taking any action listed in paragraph 12(i) through (v) listed above.
14. The employer will inform H-2A workers of the requirement that they leave the U.S. at the end of the period certified by the Department or separation from the employer, whichever is earlier, as required under 20 CFR 655.135(i), unless the H-2A worker is being sponsored by another subsequent employer.
15. The employer has posted the Notice of Workers' Rights as required by 20 CFR 655.135(i) in a conspicuous place frequented by all employees.
16. If the application is being filed as an H-2A Labor Contractor the following additional attestations and obligations apply under 20 CFR 655.132:
  - (i) The H-2A Labor Contractor has provided a copy of the MSPA Farm Labor Contractor (FLC) certificate of registration if required under MSPA, 1801 U.S.C. et seq., to have such a certificate identifying the specific farm labor contracting activities it is authorized to perform;
  - (ii) The H-2A Labor Contractor has provided with this application a list of the names and locations of each fixed-site agricultural business to which the H-2A Labor Contractor expects to provide H-2A workers, the expected beginning and ending dates when the H-2A Labor Contractor will be providing the workers to each fixed site, a description of the crops and activities the workers are expected to perform at such fixed site, and copies of the fully-executed work contracts with each fixed-site agricultural business so identified;
  - (iii) The H-2A Labor Contractor is able to provide proof of its ability to discharge financial obligations under the H-2A program and has secured a surety bond as required by 29 CFR 501.9, the original of which is attached and shows the name, address, phone number, and contact person for the surety, and provides the amount of the bond (as calculated pursuant to 29 CFR 501.9);

ETA Form 9142A – Appendix A

FOR DEPARTMENT OF LABOR USE ONLY

Page A.2 of A.3

Case Number: H-300-13106-766261

Case Status: CERTIFIED

Period of Employment: 06/01/2015 to 10/10/2015

OMB Approval: 1205-0466  
Expiration Date: 03/31/2016



H-2A Application for Temporary Employment Certification  
ETA Form 9142A – APPENDIX A  
U.S. Department of Labor

- (iv) The H-2A Labor Contractor has engaged in and will engage in recruitment efforts in each area of intended employment in which it has listed a fixed-site agricultural business as required in 20 CFR 655.121, 655.150-155; and
- (v) Where the fixed-site agricultural business(es) will provide housing or transportation to the workers, proof that:
- All housing used by workers and owned, operated, or secured by the fixed-site agricultural business complies with the applicable housing standards in 20 CFR 655.122(d);
  - All transportation between the worksite and the workers' living quarters that is provided by the fixed-site agricultural business complies with all applicable Federal, State, or local laws and regulations and that it will provide, at a minimum, the same vehicle safety standards, driver licensure, and vehicle insurance as required under 29 U.S.C. 1841 and 29 CFR part 500, except where workers' compensation is used to cover such transportation as described in § 655.122(e); and
  - Certificates of occupancy from the SWA for all employer owned housing and copies of all drivers' licenses, vehicle registration, and insurance policies for all drivers and vehicles used to transport H-2A workers.

I hereby acknowledge that the agent or attorney identified in section E (if any) of the ETA Form 9142A and section A above is authorized to represent me for the purpose of labor certification and, by virtue of my signature in Block 5 below, I take full responsibility for the accuracy of any representations made by my agent or attorney.

I declare under penalty of perjury that I have read and reviewed this application and that to the best of my knowledge the information contained therein is true and accurate. I understand that to knowingly furnish false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by a \$250,000 fine or 5 years in the Federal penitentiary or both (18 U.S.C. 1001).

1. Last (family) name Marino Jr	2. First (given) name Russell	3. Middle initial James.
4. Title Owner/Manager		
5. Signature <i>Russell Marino Jr. by Theresa Ward, NAC</i>		6. Date signed 05/04/2015

Public Burden Statement (1205-0466) *Attorney In Fact*

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 1 hour to complete the form and 20 minutes per response for all other H-2A information collection requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this data collection is required to obtain/retain benefits (Immigration and Nationality Act, 8 U.S.C. 1101, et seq.). Please send comments regarding this burden estimate or any other aspect of this information collection to the Office of Foreign Labor Certification \* U.S. Department of Labor \* Room C4312 \* 200 Constitution Ave., NW, \* Washington, DC \* 20210 or by email [ETA.OFLC.Forms@dol.gov](mailto:ETA.OFLC.Forms@dol.gov). Please do not send the completed application to this address.

ETA Form 9142A – Appendix A

FOR DEPARTMENT OF LABOR USE ONLY

Page A.3 of A.3

Case Number: H-300-15106-786261

Case Status: CERTIFIED

Period of Employment: 06/01/2015 to 10/10/2015



OMB Approval: 1205-0466  
Expiration Date: 03/31/2016

H-2A Application for Temporary Employment Certification  
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U.S. Department of Labor



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**ADDENDUM**

**ADDENDUM SECTION F.b.5: Special Requirements**

must be able to bend, stoop, lift and stand on feet for long periods of time. Must be physically able to meet and perform all job specifications stated in job order, including lifting between 35-75 lbs. Must be able to work in hot humid weather for extended periods of time. Workers are also subject to random drug testing at no cost to employee. All drug testing will occur after the worker begins his or her employment. Failing or refusing a drug test will have a negative result in your employment status. see attachment for more complete details.

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ETA Form 9142A

**FOR DEPARTMENT OF LABOR USE ONLY**

Page 7 of 8

Case Number: H-300-15106-786261

Case Status: CERTIFIED

Validity Period: 06/01/2015 to 10/10/2015

OMB Approval: 1205-0466  
Expiration Date: 03/31/2015

H-2A Application for Temporary Employment Certification  
ETA Form 9142A  
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**ADDENDUM**

ADDENDUM SECTION G.3: Additional Wage Information

employer's discretion pay the lower AEWR, beginning with the effective date of the new AEWR. Employer will pay the highest of the AEWR, prevailing wage, the piece rate, the agreed-upon collective bargaining wage or the Federal or State minimum wage at the time the work is performed.

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ETA Form 9142A

FOR DEPARTMENT OF LABOR USE ONLY

Page 8 of 8

Case Number: H-300-15106-756261

Case Status: CERTIFIED

Validity Period: 06/01/2015 to 10/10/2015



## Sun Valley Orchards LLC- H-300-15106-786261

Attachments to ETA 9142

**F A 3: Starting and ending times** may vary according to weather and crop conditions. If a worker is offered and agrees to work more than the scheduled hours during any work day, they must still report to work on their other scheduled days, unless arrangements are approved in advance with the owner or supervisor. Choosing to work longer hours during the week does not exclude you from working each scheduled work day. Not reporting for work on your scheduled work day will be counted as an unexcused absence.

**F A 5: Job Specifications:** Must have three months' verifiable experience hand harvesting a perishable crop. Applicants must be able to furnish affirmative job references from recent employers operating comparable operations establishing acceptable previous experience.

Worker must possess requisite physical strength and endurance to repeat the harvest process throughout the workday, working quickly and skillfully to perform activities for which they were hired. Workers must work at a sustained, vigorous pace and make bona fide efforts to work efficiently and consistently that are reasonable under the climatic and other working conditions, considering also the amount, quality, and efficiency of work accomplished by their coworkers. Workers may not leave trash, or other discarded items in work areas or vehicles but must dispose of such items in provided receptacles. Workers must wash hands with soap and water after all bathroom and meal breaks. Allergies to varieties of ragweed, goldenrod, insecticides, related agricultural chemicals, etc., may affect workers ability to perform the work described herein. Workers should be physically able to do the worker described with or without reasonable accommodation. Must display the ability to move, place, climb and work from orchard ladders up to 6 feet in height, making the necessary adjustments for various procedures while carrying up to 30 pounds.

**Sanitation Requirements:** For food and general personal safety purposes, all workers will be required and expected to follow common sanitary practices at all times. This is particularly critical when hand harvesting crops for human consumption. Employees are required to cleanse their hands by washing them thoroughly with soap and water after using the bathroom and before entering the fields for harvest activities or the packing facility for packing operations.

Workers will plant, cultivate, and harvest Asparagus, Zucchini, Pickles, Cucumbers, Egg Plant, and Peppers.

**Asparagus:** Workers will move along assigned row, stopping, bending and reaching to cut asparagus spears at ground level may operate self-propelled harvesting aid on which workers ride while stopping to cut spears at ground level. Spears which are less than ¼ inch in diameter (measured at butt) are discarded. Spears over ¼ inch in diameter which exceed 12 inches in length will be re-broken at the butt end. Any spearhead which has begun to open will be discarded. Spears meeting harvest specification will be placed in a straight fashion in field buckets and carried to trucks or trailers for dumping. Workers will be required to stay on their assigned row. Workers must use care while using knives to prevent injury to themselves and other workers.

**Zucchini, Pickles, Cucumbers, Egg Plant, and Peppers:** Workers will plant, cultivate and harvest vegetables. Workers will be required to remove weeds by hand or with a hoe. Workers will bend and stoop to pick vegetables according to size, color, shape and degree of maturity and place into field containers. Workers may carry full container weighing approximately fifty (50) lbs. and empty into field bin or load onto trailer. May be required to pull and discard culls as directed by supervisor. Pickers will take care not to bruise or scar produce. Pre-harvest activities may include staking, tying, transplanting and pruning. Workers will stand on feet for long periods of time. Workers are required to work in fields when plants are wet with dew or rain. Temperatures in fields during working hours can range from forty (40) to over one hundred (100) degrees.

**Peaches:** Workers will perform various duties associated with thinning and picking peaches. Worker will be assigned a row, usually with a partner, and is responsible for picking all the proper fruit from that row, or half row. Fruit are selected from the tree according to size and/or color standard set by the picking supervisor. In some instances, fruit harvest will be done from a six-foot ladder weighing up to 30 lbs. All workers must be able to lift, carry, and work from the top of the ladder. The entire tree must be checked to ensure removal of all fruit meeting-picking requirements. Fruit are placed gently in the picking container until container is full. The full picking container weighing up to 25 lbs. is then taken to fruit wagon and gently emptied into a field bin, taking care of not to spill or bruise the fruit in the container or in the field bin. Workers are to stay on their assigned row unless directed by a supervisor to change, or to help someone out sporadically. Picking units will be kept free of limbs, leaves or mushy fruit. Fruit harvested specifically for sale at a roadside stand as fresh market specialty baskets in peck or half bushel containers must be field graded. For fruit harvest for sale at a roadside stand, extra care must be used to insure that each piece of fruit is undamaged and perfect. Workers will be required to pick up and return picking ladders to the ladder wagon provided by the grower at the end of each workday or as directed by the grower or designated supervisor.

**Farm Equipment Operation:** Workers may be require to operate tractors and other farm equipment during daily operations, as an incidental activity. Before any worker is require to operate any farm equipment, workers will be instructed in the safety and operation of the tractor before driving the tractor. Tractors should be driven in a manner to protect operator, other workers, products, trees, crops, and equipment. Repeated failure to obey safety requirements and operating instructions may result in termination.

NOT APPROVED  
BY THE NATIONAL  
LABOR RELATIONS BOARD

## Sun Valley Orchards LLC- H-300-15106-786261

**Orchard Maintenance:** Workers will be responsible for general orchard clean up. They will rake up debris from the land such as sticks, straw, etc. Workers involved in orchard maintenance may be required to hoe trees, girdle, spread fertilizer, pick up roots and limbs, strip suckers or unwanted growth from trees, dig root suckers, knock fruit off trees, use hand sprayer, remove vines, lay irrigation pipe, repair and maintain drip system, and strap and tie fruit trees. Employer will provide all equipment. Instruction will be given for each task and standards of performance communicated to workers. The specific standards for a job will be disclosed and demonstrated by the supervisor before the work begins.

**Orchard Clean Up:** They may be responsible for the removal of old and unproductive peach trees. They must take care to not damage or destroy any other trees or property in the area.

**Forklift Operation during Packing Operations:** Workers may be required to operate forklifts during packing operations as an incidental. Before any worker is required to operate a forklift, the worker will be instructed in the proper and safe operation. Workers will be required to operate forklifts according to instructions and in a manner that protects the operator, other workers and equipment. Repeated failure to obey operating and safety instructions may result in termination.

**Farm, and Field Sanitation**

All workers will be responsible for picking up trash, cleaning bathrooms, sweeping floors and other farm sanitation duties.

This employer may grow one or more other crops. Farmers frequently decide whether to plant these crops and what additional crops they will plant after this application is submitted. Information on crops planted after submission of this application will be disclosed in writing to the U.S. Department of Labor for approval as soon as it is known.

**GENERAL CONDITIONS APPLICABLE TO ALL CROPS:** Fieldwork begins at assigned time shortly after daylight. Work may be performed during light rain and in high humidity and in temperatures ranging from 110+ degrees to below 20 degrees F. Workers will perform the majority of tasks standing in the upright position and can expect to stand on their feet for extended periods of time. Some tasks, however, require workers to perform activities on their feet in stooped or crouched position for long periods of time. Workers will supply their own work clothes. All the tasks in this Job Description constitute one (1) job; the employer may assign workers to different tasks on any day or to multiple tasks during the same day in the sole judgment of the employer. Workers may be required to perform work, on the farm, that is incidental to farming the crops listed in the application, such as performing hand cultivation tasks, packing, weeding or hoeing, cleaning and repairing farm buildings, grounds, set up and move equipment, cleaning and maintaining drip irrigation systems, weeding, etc. This is a very demanding and competitive business in which quality specifications must be rigorously adhered to. Sloppy work cannot and will not be tolerated.

**Full Crop Commitment:** This is regular work, seven hours per day, Monday-Friday, and five on Sunday for the full remainder of the period of employment. The worker agrees to work for assigned employer(s) whenever work is available during the full remaining period of employment even though work may be slack at times. The worker understands that if the worker quits or is terminated for cause prior to the end of the period of employment, the worker will not receive the 3/4 guarantees discussed below and will not receive certain transportation reimbursements discussed below. Excessive tardiness and/or absences will not be tolerated and will result in termination.

Daily individual work assignments, crew assignments, and location of work, will be made by and at the sole discretion of the farm manager and/or farm supervisor as the needs of the farming operation dictate. Workers may be assigned a variety of duties in any given day and/or different tasks on different days. Workers will be expected to perform any of the listed duties and work on any crop as assigned by the worker's supervisor.

Harvesting specifications, in particular, can change from time to time during the season due to crop or market conditions, even on the same crop. Workers will be expected to conform to the specific instructions given for each day's work.

The farm owner/supervisor or a designated employee will provide instructions and general supervision. However, field workers will be expected to perform their duties in a timely and proficient manner without close supervision.

**Other Conditions of Employment:** A). Discipline and/or Termination: Employer may discipline and/or terminate the worker for lawful job-related reasons and so notify the Job Service local office of the termination if the worker: a) refuses without justified cause to perform work for which the worker was recruited and hired, b) commit serious act(s) of misconduct or serious or repeated violation(s) of Work Rules c) fails after completing the training period to perform the work as specified in Item F-5 and Attachment, d) malingers or otherwise refuses without justified cause to perform as directed the work for which the Worker was recruited and hired; e) provides other lawful job-related reason(s) for termination of employment, f) abandons his employment. h) falsifies identification, personnel, medical, production or other work related records, i) fails or refuses to take a drug test, or j) commits acts of insubordination, k) the employer may terminate the worker (foreign or domestic) with notification to the employment service if employer discovers a criminal conviction record or status as a registered sex offender that employer reasonably believes, consistent with current law, will impair the safety and living conditions of other workers. Reason beyond employer's control" includes termination of workers, if he not a U.S. worker because a U.S. worker makes himself available for the job under DOL's 50% rule. Workers must notify the employer prior to voluntarily terminating their employment. All wages due will be forwarded to the last known address for Workers that leave without providing notice. It is imperative that workers provide a complete and accurate address to the employer no later than the first day of employment. These employers have a no complete, no rehire policy. Termination for lawful job related reasons before

## Sun Valley Orchards LLC- H-300-15106-786261

the specified ending date listed in this application will disqualify the employee from future employment opportunities with this employer. Workers who abandon their employment without notice during the period covered by this work agreement will be disqualified from future employment opportunities with this employer. Voluntary resignation before the specified ending date listed in this application may disqualify the employee from future employment opportunities with this employer. For workers who resign their employment voluntarily, the employer will consider and evaluate special circumstances and hardship cases on a case-by-case basis. Employees, without exception, are required to notify appropriate supervisory staff prior to voluntarily terminating their employment to be considered and eligible for exemption to the no complete - no rehire policy.

Workers are guaranteed that their total earnings will be at least equal to the AEWR of \$11.29 per hour for all hours worked in a pay period. If a worker's total earnings in any pay period in which the worker has worked at a piece rate are less than the AEWR of \$11.29 for all hours worked in the pay period, the employer will increase the worker's pay to the guaranteed minimum of \$11.29 per hour for the total hours worked in the pay period.

Due to weather and crop conditions, the employer reserves the right to temporary increase the listed piece rates, or add a piece rate. The employer also reserves the right to completely do away with the piece rate all together to ensure a quality product and fair earnings. Employer reserves the right to add a piece rate, with notification to workers, prior to adding the rate.

<u>Comodity</u>	<u>Rate</u>	<u>Unit</u>
Asparagus	\$7.00	Packed out 28# crate
Zucchini	\$1.00	Packed out 1/2bu equivalent
Pickles	\$1.50	Packed out 1.0bu equivalent
Cucumber	\$1.00	Packed out 1 1/9bu equivalent
Eggplant	\$0.60	Packed out 1 1/9bu equivalent
Pepper	\$0.60	Packed out 1 1/9bu equivalent
Peaches	Hourly + POB	Packed out 1/2bu equivalent

\*POB= Packed Out  
Bonus

All jobs performed hourly will be compensated at \$11.29/hr

\*Peaches: \$11.29/hr + \$3.50/bin + Pack out bonus

Pack out bonus may vary; 2014 bonus was \$3.42/bin

18. More details concerning pay: Employer reserves the right to pay higher than the stated wage rate to any worker foreign or domestic. This is not promised or guaranteed. The decision to pay above the stated rates will be made by the employer, at their sole discretion, and will be based on factors including the recipients' performance and tenure.

Training: There will be a short demonstration period (up to 1 hr.) to familiarize workers with job specifications, to demonstrate proper methods and other crop specific issues. The employer will not provide separate formal orientation or training periods for each different crop or each different type of task or job assignment covered within the job description. After completion of the training period the employer will expect all workers to possess the skills to work in the production of the crops above. For purposes of this section seven or more hours will be considered one day.

\*Use of the masculine pronoun herein is for convenience of reference only.



## Sun Valley Orchards LLC- H-300-15106-786261

Sun Valley Orchards 2015 Field Locations				
field location	city	state	zip	county
Burlington / Garrison Rd	Elmer	NJ	08318	Salem
Biddle Rd	Mannington Twp	NJ	08079	Salem
Halltown Rd	Mannington Twp	NJ	08079	Salem
Pt Airy Rd	Woodstown	NJ	08098	Salem
Vestry Rd	Swedesboro	NJ	08085	Gloucester
St Rt 45	Harrisonville	NJ	08085	Gloucester
Marl Rd	Harrisonville	NJ	08085	Gloucester
Swedesboro / Harrisonville Rd	Harrisonville	NJ	08085	Gloucester
Harrisonville/Woodstown Rd	Harrisonville	NJ	08085	Gloucester
Harrisonville/Woodstown Rd	Woodstown	NJ	08098	Salem
Cty Rd 538	Swedesboro	NJ	08085	Gloucester
High St	Swedesboro	NJ	08085	Gloucester

**LIMITED POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS that the undersigned does constitute and appoint National Agricultural Consultants LLC to be its true and lawful attorney-in-fact with respect to the following:

To act as the authorized representative for SUN VALLEY OPERATIONS, LLC [client name] in all matters relating to the filing and execution of an H-2A Labor Certification Application with the U.S. Department of Labor, including a Clearance Order with the relevant State Workforce Agency, and a Petition for a Nonimmigrant Worker with the U.S. Department of Homeland Security.

I hereby vest and appoint said attorney-in-fact with full power, authority and discretion to perform any act whatsoever to accomplish the foregoing as fully and with the same force and effect as I could or might do myself.

This Limited Power of Attorney shall be effective as of the date of execution hereof and all persons may rely upon this power as being in full force and effect without any further inquiry whatsoever. This Limited Power of Attorney shall be governed by the laws of the State of North Carolina.

IN WITNESS WHEREOF, I have executed this Limited Power of Attorney this

22 day of DEC, 2014.

By: [Signature] (signature)

Name: RUSSELL MARINO JR (client name)

Title: OWNER/MANAGER

[Signature]

Sworn to and subscribed  
before me this  
22 day of DEC, 2014

Notary Public

CELESTE ANNE KEEN  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires: 8/4/2016

**NATIONAL AGRICULTURAL CONSULTANTS LLC**  
**H-2A CONSULTING SERVICES, AGENCY REPRESENTATION AND INDEMNIFICATION AGREEMENT**

This H-2A Consulting Services, Agency Representation and Indemnification Agreement (the "Agreement") entered into by and between National Agricultural Consultants LLC (the "Agent/Consultant"), an agricultural labor consultant and Agent with an expertise in the H-2A Governing Regulations at 20 CFR § 655 in its entirety and the U.S. DOL ESA Wage and Hour H-2A enforcement regulations at 29 CFR § 501, in the state of and under the laws of North Carolina and Sun Valley Orchards, a fixed site agricultural producer(s)/employer(s), by definition at 20 CFR 655.103(b) in the state of NJ (the "Agricultural Employer, 'AGER'") who is a client of the Consultant.

WHEREAS, the Agent/Consultant is qualified and capable as an Agent/Consultant of rendering agent and consulting services, certain specific administrative services, and other limited services (necessary to assist facilitation of the AGER in obtaining domestic and/or supplementary foreign workers to participate in the H-2A program (8 USC 1101(a)(15)(H)(ii)(a); 8 USC 1188) ("H-2A workers") to meet the AGER's seasonal agricultural labor requirements; and

WHEREAS, the AGER acknowledges, understands and agrees that it is personally and solely responsible for compliance with all applicable farm employee labor and employment laws and provisions of the H-2A program, including the application for Temporary Employment Certification, the Clearance Order, and the Worker Agreement; and

WHEREAS, the AGER desires to avail themselves of the Agent and Consulting services, administrative services, and other limited services provided by the Agent/Consultant in order to secure domestic and/or supplementary foreign workers to meet the AGER's seasonal agricultural labor requirements for the calendar year beginning January 1, 2015;

NOW THEREFORE, in consideration of the payment(s) made by the AGER of the established dues, admission fees and other assessments and such costs as are charged/assessed from time to time for providing the services requested by the AGER, and for other good and sufficient consideration, including the mutual promises contained in this Agreement, pursuant to the applicable requirements of 20 CFR § 655. The Agent/Consultant will provide Agent and Consultative services to represent, prepare and/or assist the AGER, as necessary, to interact with all appropriate government agencies involved in the H-2A program application processes, including but not limited to US Department of Labor ("DOL"), US Department of Homeland Security ("DHS"), US State Department ("DOS"), and the respective State Workforce Agency(s) ("SWA"). The parties hereto further agree as follows:

**A. The Consultant's Obligations**

- (1) The Agent/Consultant, with input and review from AGER, will prepare and submit to the AGER to review, modify, approve, and/or execute, and authorize submission to the applicable government agency for processing, all forms and documents, required, pursuant to applicable laws and DOL, DHS, and State Department regulations, to obtain US workers and/or H-2A workers from the Republic of Mexico. The AGER provides explicit authorization to Consultant to prepare all necessary forms and documents, with emphasis added, for the Consultant to populate and prepare the I-129 petition on behalf of the AGER who will then review, modify, approve, execute and submit, or authorize submission, to U.S. CIS per the petition filing instructions.
- (2) The Consultant, on behalf of the AGER, will provide certain administrative supportive services associated with the domestic recruitment requirements established by DOL regulations. Such tasks shall be limited exclusively to preparing the ETA 780 Form and attachments, subject to review, modification, approval, and execution by the AGER, and to be submitted by the AGER, or authorize Agent/Consultant to submit, in order to list the domestic job order with the appropriate State Workforce Agency ("SWA"), preparing ad copy for the AGER to review, modify and authorize the Agent/Consultant to place advertisements in newspapers on behalf of the AGER as directed by DOL, providing certain supportive services to AGER when/if needed by AGER to prepare AGER to properly interview and document US referrals made directly to the AGER from a SWA, and preparing and submitting to AGER for review, approval, execution and submitting, or authorization for Agent/Consultant to submit, the necessary recruitment report with DOL. The AGER agrees that it, solely, is soliciting employees as required by the Federal Regulation and the AGER has reviewed the required ad and approved the content before Agent/Consultant submits it to the newspaper for print on behalf of AGER. The AGER and DOL determine, solely and exclusively, the terms and conditions disclosed in the ad, when and where it is placed. By preparing ad copy for AGER consideration and authorization, the Agent/Consultant IS NOT performing or engaging in MFLPA related Farm Labor Contracting activities such as soliciting. I, the AGER, am exclusively soliciting employees for myself as required by Federal law.
- (3) The Agent/Consultant will maintain, or, assist the AGER to maintain contacts that may be needed, from time to time, by the Agent/Consultant or AGER, either directly or through its designated representatives, with SWA's, DOL, DHS, and DOS; and, other state and federal governmental agencies, and government contractors acting on behalf of or performing administrative actions on behalf of government agencies necessary to effectuate the successful administrative participation in the H-2A program and for other purpose(s) described in this Agreement.
- (4) The Agent/Consultant has not sought or received payment of any kind from any employee subject to 8 USC 1188 for any activity related to obtaining the H-2A labor certification in compliance with 20 CFR § 655.135(j).
- (5) The Agent/Consultant, who IS NOT an attorney and is not providing legal advice to the AGER, MAY, under the limited terms of this agreement, act as the agent of the employer, with any government or private entity, as necessary to assist the employer with participating in the H-2A program. This document IS NOT, nor should it be construed, as a Power of Attorney, limited or otherwise. The AGER acknowledges understanding and agreement that they should always consult with a qualified attorney to have H-2A / Consulting Services and Indemnification Agreement

all of their legal questions answered, if any.

#### B. The Agricultural Employer's Obligations

(1) The AGER agrees to comply timely with all reasonable policies, procedures, and schedules established by the Agent/Consultant which it considers essential for the proper operation of the program to obtain domestic workers and/or H-2A workers, successful participation, and to promote compliance with applicable laws and regulations.

(2) The AGER acknowledges that it is familiar with the regulations and requirements of the H-2A program and agrees to comply with all of the terms and conditions of employment described in the AGER's Agricultural and Food Processing Clearance Order, ETA Form 790 and attachments, and Application for Temporary Employment Certification, ETA 9142 and attachments, (collectively the "Job Order") and with the agricultural work agreement, which describes all the material terms and conditions of employment and that is entered into with both U.S. and H-2A workers by the AGER. The AGER agrees to comply with all obligations imposed on the AGER as an employer of domestic and/or H-2A workers found in applicable law and regulations, including without limitation, those at 20 CFR Part 653 (DOL Interstate Clearance Order regulations); 20 CFR Part 655 (DOL H-2A Regulations); 29 CFR Part 501 (DOL Wage and Hour Enforcement Regulations); and applicable provisions at 8 CFR Parts 214, 215, and 274a (DHS regulations); and to always cooperate with all government agencies with jurisdiction. The AGER agrees to comply with ALL applicable laws and relevant regulations and specifically, but not limited to, 20 C.F.R. 655.120(wages), 122(contact of job offer), 135(assurances and obligations), 153(contact former US workers), 155(referral of US workers), 167(document retention requirements) of the H-2A regulations.

(3) In particular, but not limiting the foregoing, the AGER agrees a) to pay their worker's required wages and benefits; b) to make only those deductions from their worker's paychecks that are required by law and only those deductions allowed by law; c) to provide housing as required by law that meets all applicable standards in effect at the time of occupancy; d) to timely reimburse required transportation and daily subsistence costs; e) to provide written detailed wage statements of their worker's total earnings, start time and stop time, nature of work each day, hourly rate and/or piece rate of pay, the hours of employment which had been offered to their worker, the hours actually worked by their worker, and itemization of all deductions made from their worker's wages and, if piece rates are used, the units produced daily, the AGER's name, address and Federal Tax Identification or Social Security Number; f) to terminate their worker only for lawful job related reasons; g) to secure and maintain workers' compensation coverage for each worker for the entire period of employment, with no lapses in coverage; h) to employ any qualified US worker(s), or to interview and hire any qualified US worker(s) who applies directly to the AGER in accordance with the applicable regulations at 20 CFR 655; i) that the Agent/Consultant and the AGER are not and shall not be joint employers with respect to any of the AGER's employees. The Agent/Consultant does not exercise any control over any of the AGER's employees and does hold any interest of employment with respect to the AGER's employees. The AGER is the sole and exclusive employer.

(4) The AGER agrees to pay timely any judgment or penalty entered against the AGER and arising out of the AGER's violation of its obligations under applicable law or regulation, and to indemnify and hold harmless the Agent/Consultant and any of its other AGER Clients for such judgments or penalties and any attorneys' fees and costs incurred by the Agent/Consultant or other AGER Clients in defending against such alleged violation. The AGER acknowledges that the laws and regulations governing the employment of domestic agricultural workers and H-2A workers are subject to disputed and differing legal interpretations in various jurisdictions. Therefore, the AGER agrees that in matters in which a claim is made or litigation is instituted against the Agent/Consultant, the Agent/Consultant may exercise its discretion a) to settle such matters on behalf of the Agent/Consultant and the AGER on terms it deems appropriate; b) to litigate such matters; and c) to determine whether such settlements, judgments, penalties, costs and attorneys fees will be borne by the AGER out of whose alleged action or inaction the claim was based or, what amount, if any, will be borne by the Agent/Consultant and/or shared among its other AGER Clients. The terms of this Paragraph B.(4) survive any future separation from AGER and the Agent/Consultant by the AGER and the term of this Agreement.

(5) The AGER agrees to pay the Agent/Consultant any assessment levied by the Agent/Consultant as the AGER's share of legal and any other expense or liability incurred by the Agent/Consultant in defending, prosecuting or settling any dispute relating to an application for H-2A certification, claim, litigation, or administrative complaint or appeal, whether or not arising out of claims against the AGER or arising out of the fault of the AGER, in accordance with a formula approved by the Agent/Consultant. The terms of this paragraph B.(5) survive any future separation from AGER and the Consultant by the AGER and the term of this Agreement.

  
AGRICULTURAL EMPLOYER'S SIGNATURE

Consultant

By:   
National Agricultural Consultants LLC

Russell J. Marine  
Please PRINT NAME CLEARLY on this line.

12/22-14  
DATE

**Joint Exhibit 5**  
**H-2A and domestic workers employed by Sun Valley during 2015**

	<b>Last Name</b>	<b>First Name</b>
1	Aguilar Caldera	Eliseo
2	Aguilar Marques	Irineo
3	Aguilar Soto	Trinidad
4	Aponte Rodriguez	Daniel
5	Aponte Rodriguez	Johnny
6	Arias	Baltazar
7	Arias	Ricardo
8	Arias Maya	German
9	Arroyo Alonso	Nicolas
10	Asencion Flores	Eusebio
11	Baltazar	Chequez J
12	Blanco Aguilar	Oscar J
13	Carrera Cortez	Martin
14	Carrera Hernandez	Camilo
15	Castaneda	David
16	Cervantes Aguilar	Griseldo
17	Cervantes Cumplido	Rafael
18	Cervantes Ramirez	Carlos
19	Chargoy Escudero	Pedro
20	Cinta Tegoma	Hugo L
21	Cruz	Delmar
22	Cruz Lopez	Javier
23	Cruz Perez	Antonio
24	Cruz Reyes	Carlos
25	Cruz Reyes	Jose D
26	Cuellar Romero	Gustavo
27	Cumplido Aguilar	Juan M
28	De La Cruz Martinez	Eduardo
29	De La Cruz Morales	Rogelio
30	Del Angel Salas	Geovani de Jesus
31	Dominguez Cruz	Humberto
32	Elizondo Soto	Miguel A
33	Escovar	Jorge
34	Flores Flores	David
35	Flores Montero	Gilberto
36	Franco Varga	Oscar R
37	Galindo Cervantes	Honorato



38	Galindo Cervantes	Juan E
39	Galindo Reyes	Alfredo
40	Garcia Cardos	Erick G
41	Garcia Cervantes	Norberto
42	Garcia Delgado	Manuel
43	Garcia Dominguez	Hector M
44	Garcia Olarte	Demetrio
45	Garcia Ramirez	Omar
46	Garcia Raya	Jorge L
47	Godinez Barcenaz	Adan
48	Gomes	Francisco J
49	Gomez Lopez	Fernando
50	Gonzalez Jaimas	Amadeo
51	Gonzalez Jaimas	Gaspar
52	Grijalva Ramos	Celso
53	Guillen Segovia	Armando
54	Hernandez	Fabian
55	Hernandez	Francisco
56	Hernandez	Roberto
57	Hernandez Hernandez	Felix Arturo
58	Hernandez Perez	Herlindo
59	Hernandez Perez	Jeronimo
60	Hernandez Perez	Rufino
61	Hernandez Sanchez	Ines
62	Hernandez Zavala	Luis A
63	Hurtado Olvera	Martin
64	Ibanez	Francisco A
65	Islas Larraga	Jose D
66	Jacobo Ramirez	Jose M
67	Jimenez	Raul
68	Jimenez Osornio	Jose Erick
69	Juarez Hernandez	Javier
70	Justiniano Soto	Carlos R
71	Lara Amador	Reymundo
72	Lara Amador	Vicente
73	Leon Hernandez	Ruben
74	Lopez	Ranulfo
75	Lopez Carrera	Modesto E
76	Lopez Carrera	Yreneo C
77	Lopez Cruz	Ricardo
78	Lopez Cruz	Victor
79	Lopez Lopez	Conrado
80	Lopez Lopez	Domingo
81	Lopez Mendez	Jose
82	Lugo Morales	Gabriel



83	Luna Gonzalez	Luis A
84	Magallanes Hernandez	Carlos
85	Maldonado Maldonado	Marco G
86	Marquez Perez	Gustavo
87	Martinez Antonio	Valentin
88	Martinez Areliano	Efrain
89	Martinez Arellano	Cesar
90	Martinez Cervantes	Manuel
91	Martinez Paulino	Jose
92	Mendez Hernandez	Cristian
93	Mendoza Soto	Esteban
94	Morales Acosta	Dario
95	Ortega Vargas	Marcelo
96	Perez	Ramiro
97	Perez	Tomas
98	Perez Lopez	Domingo
99	Perez Vasquez	Conrado
100	Pinon	Jose L
101	Pinon Rangel	Francisco J
102	Pinon Roque	Omar
103	Ramirez	Lorenzo Domingo
104	Ramirez	Matias
105	Ramirez Chavez	Juan
106	Raya	Jose
107	Raya Garcia	Adan
108	Raya Tapia	Rodrigo
109	Reyes	Delfino Antonio
110	Reynoso	Adonias O
111	Reynoso Rodriguez	Elias
112	Reynoso Rodriguez	Jose L
113	Rios Bautista	Mateo
114	Rodriguez Jaimes	Armando
115	Rodriguez Velasquez	Jeines
116	Rodriguez Velasquez	Salvador
117	Romero Arrendondo	Alejandro
118	Rosales Lopez	Lucio
119	Sanchez Dolores	Venustiano
120	Sanchez Villasenor	Alejandro
121	Sanchez Villasenor	Saul
122	Santi Lopez	Carmelino
123	Santiago Mendoza	Isau
124	Santis Morales	Francisco
125	Santiz Perez	Rogelio
126	Santos Urquiza	Juan
127	Santoyo Castro	Ricardo

128	Silva	Alfredo L
129	Silva Llaguno	Andres
130	Silva Llaguno	Carlos
131	Silva Lopez	Jose L
132	Sonalo Guerrero	Tomas
133	Soto Gurrola	J Santos
134	Tapia Barbosa	Armando
135	Vallejo Rojas	Nocolas
136	Vargas	Diego
137	Vargas	Juan
138	Vargas Vargas	Octavio
139	Vargas Venegas	Alvaro
140	Vazquez Desion	Adrian
141	Velasquez	Esdras
142	Velasquez	Leny
143	Villasenor	Frediberto
144	Villasenor Vargas	Jose M
145	Zavala Almanza	Pedro
146	Zavala Jaimes	Humberto
147	Zeveleta Hernandez	Marcos

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
empna meldx	empid	First Name	Middle	Last Name	pho ne	Address	City	State	Zip	H2A Flag	Last Day Worked	Home Crew	homec rewna				Hire Date
1	374 1006	Ballazar		Arias	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field	Arias, Ballazar		1006	2/4/2015 0:00
2	343 2000	Agustin		Hernandez		P.O. Box 283	Mullica Hill	NJ	08062	N	9/29/2015 0:00	Augustin	Field	Hernandez, Agustin		2000	2/10/2015 0:00
3	344 2001	Alfredo	L	Silva		1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field	Silva, Alfredo L		2001	2/10/2015 0:00
4	346 2002	Frediberto		Villasenor		713 Tomlin Station Road	Mullica Hill	NJ	08062	N	9/22/2015 0:00	Augustin	Field	Villasenor, Frediberto		2002	2/10/2015 0:00
5	347 2003	Ricardo		Arias		1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field	Arias, Ricardo		2003	2/10/2015 0:00
6	349 2004	Francisco	A	Ibanez		713 Tomlin Station Road	Mullica Hill	NJ	08062	N	9/29/2015 0:00	Augustin	Field	Ibanez, Francisco A		2004	2/23/2015 0:00
7	351 2005	Jose Erick		Jimenez Osornio		1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field	Jimenez Osornio, Jose Erick		2005	2/10/2015 0:00
8	353 2006	Omar		Pinon Roque		1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field	Pinon Roque, Omar		2006	2/10/2015 0:00
9	354 2007	Adan		Raya Garcia		1321 Route 45	Swedesboro	NJ	08085	N	9/29/2015 0:00	Augustin	Field	Raya Garcia, Adan		2007	2/16/2015 0:00
10	355 2008	Octavio		Vargas Vargas		1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field	Vargas Vargas, Octavio		2008	2/10/2015 0:00
11														Hernandez Hernandez, Felix			
12	357 2009	Felix Arturo		Hernandez Hernandez		1321 Route 45	Swedesboro	NJ	08085	N	7/12/2015 0:00	Augustin	Field	Arturo		2009	2/10/2015 0:00
13	358 2010	Carlos		Silva Llaguno		1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field	Silva Llaguno, Carlos		2010	2/10/2015 0:00
14	359 2011	Andres		Silva Llaguno		1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field	Silva Llaguno, Andres		2011	2/10/2015 0:00
15	361 2012	Miguel		Pinon		1321 Route 45	Swedesboro	NJ	08085	N	3/17/2015 0:00	Augustin	Field	Pinon, Miguel		2012	2/10/2015 0:00
16	364 2013	Fabian		Hernandez		1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field	Hernandez, Fabian		2013	2/23/2015 0:00
17	375 2014	Martin		Carrera Cortez	(0)	713 Tomlin Station Road	Mullica Hill	NJ	08062	N	9/29/2015 0:00	Augustin	Field	Carrera Cortez, Martin		2014	3/11/2015 0:00
18	377 2015	Jose	L	Pinon	(0)	P.O. Box 124	Rosenhayn	NJ	08352	N	8/22/2015 0:00	Augustin	Field	Pinon, Jose L		2015	3/17/2015 0:00
19	385 2016	Valentin		Martinez Antonio	(0)	1321 Route 45	Swedesboro	NJ	08062	N	9/29/2015 0:00	Augustin	Field	Martinez Antonio, Valentin		2016	3/30/2015 0:00
20	391 2017	David		Castaneda	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/29/2015 0:00	Augustin	Field	Castaneda, David		2017	4/14/2015 0:00
21	392 2018	Leny		Velasquez	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/29/2015 0:00	Augustin	Field	Velasquez, Leny		2018	4/14/2015 0:00
22	394 2019	Reymundo		Lara Amador	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/29/2015 0:00	Augustin	Field	Lara Amador, Reymundo		2019	4/14/2015 0:00
23	395 2021	Carmelino		Santi Lopez	(0)	P.O. Box 1791	Indiantown	FL	34958	N	9/29/2015 0:00	Augustin	Field	Santi Lopez, Carmelino		2021	4/14/2015 0:00
24	398 2022	Francisco		Hernandez	(0)	P.O. Box 1791	Indiantown	FL	34958	N	9/29/2015 0:00	Augustin	Field	Hernandez, Francisco		2022	4/14/2015 0:00
25	435 2024	Carlos		Cruz Reyes	(0)	Rural	Veracruz	VE	91709	Y	8/4/2015 0:00	H2A	H2A	Cruz Reyes, Carlos		2024	4/15/2015 0:00
26	436 2025	Yreneo	C	Lopez Carrera	(0)	C Morelos 30 Santa Cruz Xitla Rural	Oaxaca	OA	70823	Y	9/29/2015 0:00	H2A	H2A	Lopez Carrera, Yreneo C		2025	4/15/2015 0:00
27	437 2026	Saul		Sanchez Villasenor	(0)	Ocampo	Michoacan	MC	59660	Y	9/29/2015 0:00	H2A	H2A	Sanchez Villasenor, Saul		2026	4/15/2015 0:00
28	438 2027	Ruben		Leon Hernandez	(0)	Ocampo	Michoacan	MC	59660	Y	9/29/2015 0:00	H2A	H2A	Leon Hernandez, Ruben		2027	4/15/2015 0:00
29	439 2028	Modesto	E	Lopez Carrera	(0)	Santa Cruz Xitla	Oaxaca	OA	70823	Y	9/29/2015 0:00	H2A	H2A	Lopez Carrera, Modesto E		2028	4/15/2015 0:00
30	452 2029	Amadeo		Gonzalez Jaimes	(0)	Rural	Edom	ED	99999	Y	9/29/2015 0:00	H2A	H2A	Gonzalez Jaimes, Amadeo		2029	4/15/2015 0:00
31	440 2030	Mateo		Rios Bautista	(0)	Xochicoatlan	Hidalgo	HG	42083	Y	8/4/2015 0:00	H2A	H2A	Rios Bautista, Mateo		2030	4/15/2015 0:00
32	442 2031	German		Arias Maya	(0)	Rural	Hidalgo	HG	42083	Y	9/29/2015 0:00	H2A	H2A	Arias Maya, German		2031	4/15/2015 0:00
33	402 2032	Geovani de Jesus		Del Angel Salas	(0)	Rural	Veracruz	VE	91709	Y	8/4/2015 0:00	H2A	H2A	Del Angel Salas, Geovani de Jesus		2032	4/15/2015 0:00
34	443 2033	Francisco	J	Pinon Rangel	(0)	Ocampo	Michoacan	MC	59660	Y	8/4/2015 0:00	H2A	H2A	Pinon Rangel, Francisco J		2033	4/15/2015 0:00
35	444 2034	Cesar		Martinez Arellano	(0)	Rural	Edom	ED	99999	Y	9/29/2015 0:00	H2A	H2A	Martinez Arellano, Cesar		2034	4/15/2015 0:00
36	447 2035	Celso		Grijalva Ramos	(0)	Rural	Veracruz	VE	91709	Y	5/6/2015 0:00	H2A	H2A	Grijalva Ramos, Celso		2035	4/15/2015 0:00
37	450 2036	Alejandro		Sanchez Villasenor	(0)	Ocampo	Michoacan	MC	59660	Y	9/29/2015 0:00	H2A	H2A	Sanchez Villasenor, Alejandro		2036	4/15/2015 0:00
38	453 2037	Eduardo		De La Cruz Martinez	(0)	Rural	Veracruz	VE	91709	Y	8/4/2015 0:00	H2A	H2A	De La Cruz Martinez, Eduardo		2037	4/15/2015 0:00
39	454 2038	Armando		Rodriguez Jaimes	(0)	Ocampo	Michoacan	MC	59660	Y	9/29/2015 0:00	H2A	H2A	Rodriguez Jaimes, Armando		2038	4/15/2015 0:00
40	421 2053	Jose	L	Reynoso Rodriguez	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field	Reynoso Rodriguez, Jose L		2053	4/20/2015 0:00
41	422 2054	Ranulfo		Lopez	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/29/2015 0:00	Augustin	Field	Lopez, Ranulfo		2054	4/20/2015 0:00
42	423 2055	Efrain		Martinez Arellano	(0)	Rural	Edom	ED	99999	Y	9/29/2015 0:00	H2A	H2A	Martinez Arellano, Efrain		2055	4/20/2015 0:00
43	424 2056	Humberto		Zavala Jaimes	(0)	Ocampo	Michoacan	MC	59660	Y	9/29/2015 0:00	H2A	H2A	Zavala Jaimes, Humberto		2056	4/20/2015 0:00
44	426 2057	Conrado		Perez Vasquez	(0)	P.O. BOX 359	Hastings	FL	32145	N	9/22/2015 0:00	Augustin	Field	Perez Vasquez, Conrado		2057	4/20/2015 0:00
45	456 2063	Jorge		Escovar	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field	Escovar, Jorge		2063	4/23/2015 0:00
46	458 2064	Roberto		Hernandez	(0)	345 N 8th Street	Reading	PA	19604	N	6/26/2015 0:00	Augustin	Field	Hernandez, Roberto		2064	4/23/2015 0:00
47	475 2065	Venustiano		Sanchez Dolores	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A	Sanchez Dolores, Venustiano		2065	4/23/2015 0:00
48	476 2066	Tomas		Solano Guerrero	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A	Solano Guerrero, Tomas		2066	4/24/2015 0:00
49	477 2067	Marcos		Zaveleta Hernandez	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A	Zaveleta Hernandez, Marcos		2067	4/24/2015 0:00

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	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
50	478 2068	Marco		G	Maldonado Maldonado	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A		Maldonado Maldonado, Marco G	2068	4/24/2015 0:00
51	480 2069	Marcelo			Ortega Vargas	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A		Ortega Vargas, Marcelo	2069	4/24/2015 0:00
52	481 2070	Cheguez		J	Baltazar	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A		Baltazar, Cheguez J	2070	4/24/2015 0:00
53	482 2071	Jose		D	Islas Larraga	(0)	Rural	Veracruz	VE	91709	Y	6/15/2015 0:00	H2A	H2A		Islas Larraga, Jose D	2071	4/24/2015 0:00
54	483 2072	Lucio			Rosales Lopez	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A		Rosales Lopez, Lucio	2072	4/24/2015 0:00
55	485 2073	Jose			Martinez Paulino	(0)	Rural	Veracruz	VE	91709	Y	8/4/2015 0:00	H2A	H2A		Martinez Paulino, Jose	2073	4/24/2015 0:00
56	486 2074	Javier			Juarez Hernandez	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A		Juarez Hernandez, Javier	2074	4/24/2015 0:00
57	487 2075	Isau			Santiago Mendoza	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A		Santiago Mendoza, Isau	2075	4/24/2015 0:00
58	488 2076	Ines			Hernandez Sanchez	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A		Hernandez Sanchez, Ines	2076	4/24/2015 0:00
59	489 2077	Humberto			Dominguez Cruz	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A		Dominguez Cruz, Humberto	2077	4/24/2015 0:00
60	490 2078	Hugo		L	Cinta Tegoma	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A		Cinta Tegoma, Hugo L	2078	4/24/2015 0:00
61	491 2079	Hector		M	Garcia Dominguez	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A		Garcia Dominguez, Hector M	2079	4/24/2015 0:00
62	493 2080	Gustavo			Marquez Perez	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A		Marquez Perez, Gustavo	2080	4/24/2015 0:00
63	494 2081	Demetrio			Garcia Olarte	(0)	Rural	Veracruz	VE	91709	Y	8/4/2015 0:00	H2A	H2A		Garcia Olarte, Demetrio	2081	4/24/2015 0:00
64	495 2082	Delfino			Antonio Reyes	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A		Antonio Reyes, Delfino	2082	4/24/2015 0:00
65	496 2083	Cristian			Mendez Hernandez	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A		Mendez Hernandez, Cristian	2083	4/24/2015 0:00
66	497 2084	Carlos			Cervantes Ramirez	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A		Cervantes Ramirez, Carlos	2084	4/24/2015 0:00
67	499 2085	Adrian			Vazquez Desion	(0)	Rural	Veracruz	VE	91709	Y	5/7/2015 0:00	H2A	H2A		Vazquez Desion, Adrian	2085	4/24/2015 0:00
68	512 2097	Tomas			Perez	(0)	45 Irving Ave	Bridgeton	NJ	08302	N	5/12/2015 0:00	Augustin	Field		Perez, Tomas	2097	5/12/2015 0:00
69	513 2098	Brian		H	Hernandez	(0)	744 Tomlin Station Road	Mullica Hill	NJ	08067	N	9/13/2015 0:00	Augustin	Field		Hernandez, Brian H	2098	5/12/2015 0:00
70	527 2102	Domingo			Perez Lopez	(0)	P O BOX 132 Route 45	Swedesboro	NJ	08085	N	9/29/2015 0:00	Augustin	Field		Perez Lopez, Domingo	2102	5/18/2015 0:00
71	528 2103	Jose		D	Cruz	(0)	P O Box 1278	Indiantown	FL	34956	N	9/29/2015 0:00	Augustin	Field		Cruz, Jose D	2103	5/18/2015 0:00
72	530 2104	Javier			Cruz Lopez	(0)	P O Box 1278	Indiantown	FL	34956	N	9/29/2015 0:00	Augustin	Field		Cruz Lopez, Javier	2104	5/18/2015 0:00
73	567 2105	Rufino			Hernandez Perez	(0)	P O Box 1278	Indiantown	FL	34956	N	9/22/2015 0:00	Augustin	Field		Hernandez Perez, Rufino	2105	5/18/2015 0:00
74	531 2106	Ricardo			Lopez Cruz	(0)	P O Box 1278	Indiantown	NJ	34956	N	9/29/2015 0:00	Augustin	Field		Lopez Cruz, Ricardo	2106	5/18/2015 0:00
75	533 2107	Victor			Lopez Cruz	(0)	P O Box 1278	Indiantown	FL	34956	N	9/29/2015 0:00	Augustin	Field		Lopez Cruz, Victor	2107	5/18/2015 0:00
76	535 2110	Salvador		B	Rodriguez Velasquez	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field		Rodriguez Velasquez, Salvador B	2110	5/26/2015 0:00
77	537 2111	Jeiner		A	Rodriguez Velasquez	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/29/2015 0:00	Augustin	Field		Rodriguez Velasquez, Jeiner A	2111	5/26/2015 0:00
78	539 2112	Jose			Raya	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/1/2015 0:00	Augustin	Field		Raya, Jose	2112	5/26/2015 0:00
79	540 2113	Elias			Reynoso Rodriguez	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field		Reynoso Rodriguez, Elias	2113	5/26/2015 0:00
80	541 2114	Adonias		O	Reynoso	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field		Reynoso, Adonias O	2114	5/26/2015 0:00
81	542 2115	Alfredo			Galindo Reyes	(0)	C Sin Nombre S/N Loc	Mezquitil	DG	34971	Y	8/4/2015 0:00	H2A	H2A		Galindo Reyes, Alfredo	2115	5/26/2015 0:00
82	543 2116	Carlos		E	Magallanes Hernandez	(0)	Loc Los Charcos	Mezquitil	DG	34980	Y	8/4/2015 0:00	H2A	H2A		Magallanes Hernandez, Carlos	2116	5/26/2015 0:00
83	546 2117	David			Flores Flores	(0)	C Sin Nombre sn Loc Los	Mezquitil	DG	34986	Y	8/4/2015 0:00	H2A	H2A		Flores Flores, David	2117	5/26/2015 0:00
84	547 2118	Eliseo			Aguilar Caldera	(0)	C sin nombre sn Loc Las	Mezquitil	DG	34976	Y	8/4/2015 0:00	H2A	H2A		Aguilar Caldera, Eliseo	2118	5/26/2015 0:00
85	549 2119	Esteban			Mendoza Solo	(0)	C sin nombre sn Loc	Mezquitil	DG	34971	Y	8/4/2015 0:00	H2A	H2A		Mendoza Soto, Esteban	2119	5/26/2015 0:00
86	550 2120	Gabriel			Lugo Morales	(0)	Maria Ocotan	Mezquitil	DG	34973	Y	8/4/2015 0:00	H2A	H2A		Lugo Morales, Gabriel	2120	5/26/2015 0:00
87	551 2121	Griseldo			Cervantes Aguilar	(0)	C sin nombre sn Loc Los	Mezquitil	DG	34989	Y	8/4/2015 0:00	H2A	H2A		Cervantes Aguilar, Griseldo	2121	5/26/2015 0:00
88	553 2122	Honorato			Galindo Cervantes	(0)	Mesa de San Buena	Mezquitil	DG	34973	Y	8/4/2015 0:00	H2A	H2A		Galindo Cervantes, Honorato	2122	5/26/2015 0:00
89	554 2123	Irineo			Aguilar Marques	(0)	C sin nombre sn Loc San	Mezquitil	DG	34989	Y	8/4/2015 0:00	H2A	H2A		Aguilar Marques, Irineo	2123	5/26/2015 0:00
90	555 2124	J Santos			Soto Gurrola	(0)	C sin nombre sn Loc	Mezquitil	DG	34970	Y	8/4/2015 0:00	H2A	H2A		Soto Gurrola, J Santos	2124	5/26/2015 0:00
91	556 2125	Juan		E	Galindo Cervantes	(0)	C Sin Nombre S7N Loc	Mezquitil	DG	34970	Y	8/4/2015 0:00	H2A	H2A		Galindo Cervantes, Juan E	2125	5/26/2015 0:00
92	557 2126	Juan		M	Cumplido Aguilar	(0)	Loc Los Alisos	Mezquitil	NJ	34970	Y	8/4/2015 0:00	H2A	H2A		Cumplido Aguilar, Juan M	2126	5/26/2015 0:00
93	559 2127	Manuel			Martinez Cervantes	(0)	Loc Agua Prieta	Mezquitil	DG	34987	Y	8/4/2015 0:00	H2A	H2A		Martinez Cervantes, Manuel	2127	5/26/2015 0:00
94	560 2128	Norberto			Garcia Cervantes	(0)	Loa Gavilanes	Mezquitil	DG	34989	Y	8/4/2015 0:00	H2A	H2A		Garcia Cervantes, Norberto	2128	5/26/2015 0:00
95	561 2129	Oscar		J	Blanco Aguilar	(0)	Loc Hoyas del Agostadero	Mezquitil	DG	34974	Y	8/4/2015 0:00	H2A	H2A		Blanco Aguilar, Oscar J	2129	5/26/2015 0:00
96	563 2130	Rafael			Cervantes Cumplido	(0)	Calle sin nombre Loc Los	Mezquitil	DG	349989	Y	8/4/2015 0:00	H2A	H2A		Cervantes Cumplido, Rafael	2130	5/26/2015 0:00
97	565 2131	Rogelio			De La Cruz Morales	(0)	Joya de Toyana	Mezquitil	DG	34990	Y	8/4/2015 0:00	H2A	H2A		De La Cruz Morales, Rogelio	2131	5/26/2015 0:00
98	566 2132	Trinidad			Aguilar Soto	(0)	Calle Sin Nombre Loc Los	Mezquitil	DG	34972	Y	8/4/2015 0:00	H2A	H2A		Aguilar Soto, Trinidad	2132	5/26/2015 0:00
99	572 2134	Esdras			Velasquez	(0)	1321 Route 45	Swedesboro	NJ	08085	N	7/8/2015 0:00	Augustin	Field		Velasquez, Esdras	2134	6/1/2015 0:00
100	576 2135	Eusebio			Asencion Flores	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field		Asencion Flores, Eusebio	2135	6/1/2015 0:00
101	575 2136	Roberto			Ruiz	(0)	1321 Route 45	Swedesboro	NJ	08085	N		Augustin	Field		Ruiz, Roberto	2136	6/1/2015 0:00

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	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
102	573	2137	Ramiro		Perez	(0)	1321 Route 45	Swedesboro	NJ	08085	N	8/8/2015 0:00	Augustin	Field		Perez, Ramiro	2137	6/2/2015 0:00
103	579	2139	Matias		Ramirez	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field		Ramirez, Matias	2139	6/7/2015 0:00
104	580	2140	Pedro		Chargoy Escudero	(0)	Rural	Hidalgo	HG	420836	Y	8/4/2015 0:00	H2A	H2A		Chargoy Escudero, Pedro	2140	6/8/2015 0:00
105	581	2141	Alvaro		Vargas Venegas	(0)	Rural	Michoacan	MC	59660	Y	8/4/2015 0:00	H2A	H2A		Vargas Venegas, Alvaro	2141	6/8/2015 0:00
106	582	2142	Aramando		Tapia Barbosa	(0)	Rural	Guanajuato	GU	36044	Y	8/4/2015 0:00	H2A	H2A		Tapia Barbosa, Aramando	2142	6/8/2015 0:00
107	583	2143	Alejandro		Romero Arrendondo	(0)	Rural	Guanajuato	GU	36044	Y	8/4/2015 0:00	H2A	H2A		Romero Arrendondo, Alejandro	2143	6/8/2015 0:00
108	584	2144	Jose	L	Silva Lopez	(0)	Rural	Guanajuato	GU	36044	Y	8/4/2015 0:00	H2A	H2A		Silva Lopez, Jose L	2144	6/8/2015 0:00
109	586	2145	Tomas	A	Gutierrez Cisneros	(0)	Rural	Guanajuato	GU	36044	Y	6/9/2015 0:00	H2A	H2A		Gutierrez Cisneros, Tomas A	2145	6/8/2015 0:00
110	590	2146	Gustavo		Cuellar Romero	(0)	Rural	Guanajuato	GU	36044	Y	8/4/2015 0:00	H2A	H2A		Cuellar Romero, Gustavo	2146	6/8/2015 0:00
111	591	2147	Oscar	R	Franco Varga	(0)	Rural	Guanajuato	GU	36044	Y	6/24/2015 0:00	H2A	H2A		Franco Varga, Oscar R	2147	6/8/2015 0:00
112	592	2148	Jorge	L	Garcia Raya	(0)	Rural	Guanajuato	GU	36044	Y	6/26/2015 0:00	H2A	H2A		Garcia Raya, Jorge L	2148	6/8/2015 0:00
113	593	2149	Marlin		Hurtado Olvera	(0)	Rural	Guanajuato	GU	36044	Y	8/4/2015 0:00	H2A	H2A		Hurtado Olvera, Marlin	2149	6/8/2015 0:00
114	594	2150	Manuel		Garcia Delgado	(0)	Rural	Guanajuato	GU	36044	Y	6/9/2015 0:00	H2A	H2A		Garcia Delgado, Manuel	2150	6/8/2015 0:00
115	595	2151	Jesus	A	Rojas Contrerasaa	(0)	Rural	Guanajuato	GU	36044	Y	6/9/2015 0:00	H2A	H2A		Rojas Contrerasaa, Jesus A	2151	6/8/2015 0:00
116	596	2152	Luis	A	Hernandez Zavala	(0)	Rural	Guanajuato	GU	36044	Y	8/4/2015 0:00	H2A	H2A		Hernandez Zavala, Luis A	2152	6/8/2015 0:00
117	597	2153	Luis	A	Luna Gonzalez	(0)	Rural	Guanajuato	GU	36044	Y	8/4/2015 0:00	H2A	H2A		Luna Gonzalez, Luis A	2153	6/8/2015 0:00
118	598	2154	Adan		Godinez Barcenaa	(0)	Rural	Guanajuato	GU	36044	Y	8/4/2015 0:00	H2A	H2A		Godinez Barcenaa, Adan	2154	6/8/2015 0:00
119	599	2155	Nicolas		Arroyo Alonso	(0)	Rural	Guanajuato	GU	36044	Y	8/4/2015 0:00	H2A	H2A		Arroyo Alonso, Nicolas	2155	6/8/2015 0:00
120	600	2156	Jose	M	Jacobo Ramirez	(0)	Rural	Guanajuato	GU	36044	Y	6/9/2015 0:00	H2A	H2A		Jacobo Ramirez, Jose M	2156	6/8/2015 0:00
121	617	2157	Erick	G	Garcia Cardoso	(0)	Rural	Guanajuato	GU	36044	Y	8/4/2015 0:00	H2A	H2A		Garcia Cardoso, Erick G	2157	6/8/2015 0:00
122	601	2158	Joel		Rios Gomez	(0)	Rural	Guanajuato	GU	36044	Y	6/9/2015 0:00	H2A	H2A		Rios Gomez, Joel	2158	6/8/2015 0:00
123	602	2159	Juan		Ramirez Chavez	(0)	Rural	Guanajuato	GU	36044	Y	8/4/2015 0:00	H2A	H2A		Ramirez Chavez, Juan	2159	6/8/2015 0:00
124	603	2160	Miguel	A	Elizondo Soto	(0)	Rural	Guanajuato	GU	36044	Y	8/4/2015 0:00	H2A	H2A		Elizondo Soto, Miguel A	2160	6/8/2015 0:00
125	604	2161	Pedro		Zavalz Almanza	(0)	Rual	Guanajuato	GU	36044	Y	8/4/2015 0:00	H2A	H2A		Zavalz Almanza, Pedro	2161	6/8/2015 0:00
126	605	2162	Nocolas		Vallejo Rojas	(0)	Rural	Guanajuato	GU	36044	Y	6/25/2015 0:00	H2A	H2A		Vallejo Rojas, Nocolas	2162	6/8/2015 0:00
127	606	2163	Oscar		Martinez Vazquez	(0)	Rural	Guanajuato	GU	36044	Y	6/9/2015 0:00	H2A	H2A		Martinez Vazquez, Oscar	2163	6/8/2015 0:00
128	607	2164	Rodrigo		Raya Tapia	(0)	Rural	Guanajuato	GU	36044	Y	8/4/2015 0:00	H2A	H2A		Raya Tapia, Rodrigo	2164	6/8/2015 0:00
129	609	2165	Vicente		Lara Amador	(0)	Rural	Hidalgo	HG	36044	Y	9/29/2015 0:00	H2A	H2A		Lara Amador, Vicente	2165	6/8/2015 0:00
130	611	2166	Omar		Garcia Ramirez	(0)	Rural	Guanajuato	GU	36044	Y	8/4/2015 0:00	H2A	H2A		Garcia Ramirez, Omar	2166	6/8/2015 0:00
131	612	2167	Dario		Morales Acosta	(0)	Rural	Guanajuato	GU	36044	Y	8/4/2015 0:00	H2A	H2A		Morales Acosta, Dario	2167	6/8/2015 0:00
132	613	2168	Armando		Guillen Segovia	(0)	Rural	Michoacan	MC	36044	Y	9/29/2015 0:00	H2A	H2A		Guillen Segovia, Armando	2168	6/8/2015 0:00
133	615	2169	Jose	M	Villasenor Vargas	(0)	Rrual	Michoacan	MC	36044	Y	9/29/2015 0:00	H2A	H2A		Villasenor Vargas, Jose M	2169	6/8/2015 0:00
134	616	2170	Ricardo		Santoyo Castro	(0)	Rural	Michoacan	MC	36044	Y	9/29/2015 0:00	H2A	H2A		Santoyo Castro, Ricardo	2170	6/8/2015 0:00
135	636	2176	Delmar		Cruz	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/15/2015 0:00	Augustin	Field		Cruz, Delmar	2176	6/15/2015 0:00
136	638	2177	Antonio		Cruz Perez	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/29/2015 0:00	Augustin	Field		Cruz Perez, Antonio	2177	6/15/2015 0:00
137	627	2183	Camilo		Carrera Hernandez	(0)	1321 Route 45 RR 11 Box 5829	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field		Carrera Hernandez, Camilo	2183	6/22/2015 0:00
138	658	2185	Daniel		Aponte Rodriguez	(0)	Suite 39 Ave Arterial Hostos Cnd	Bayamon	PR	00956	Y	7/8/2015 0:00	H2A	H2A		Aponte Rodriguez, Daniel	2185	7/1/2015 0:00
139	656	2186	Carlos	R	Justiniano Soto	(0)	Parg Centro Apt M10	San Juan	PR	00918	Y	8/4/2015 0:00	H2A	H2A		Justiniano Soto, Carlos R	2186	7/1/2015 0:00
140	659	2187	Johnny		Aponte Rodriguez	(0)	RR 11 Box 5829	Bayamon	PR	00956	Y	7/9/2015 0:00	H2A	H2A		Aponte Rodriguez, Johnny	2187	7/1/2015 0:00
141	660	2188	Gaspar		Gonzalez Jaimes	(0)	Rural	Estado de	ED		Y	9/29/2015 0:00	H2A	H2A		Gonzalez Jaimes, Gaspar	2188	7/3/2015 0:00
142	662	2189	Juan		Santos Urquiza	(0)	rural	Estado De	ED		Y	9/29/2015 0:00	H2A	H2A		Santos Urquiza, Juan	2189	7/3/2015 0:00
143	647	2194	Francisco	J	Gomez	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field		Gomez, Francisco J	2194	7/7/2015 0:00
144	648	2195	Juan		Vargas	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field		Vargas, Juan	2195	7/7/2015 0:00
145	650	2196	Lorenzo	Domingo	Ramirez	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field		Ramirez, Lorenzo Domingo	2196	7/7/2015 0:00
146	651	2197	Diego		Vargas	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field		Vargas, Diego	2197	7/7/2015 0:00
147	684	2204	Jeronimo		Hernandez Perez	(0)	1321 Route 45	Swedesboro	NJ	08085	N	9/22/2015 0:00	Augustin	Field		Hernandez Perez, Jeronimo	2204	7/14/2015 0:00
148	685	2209	Rogelio		Santiz Perez	(0)	Sin Nombre sn	Las Margaritas	CH	30187	Y	9/29/2015 0:00	H2A	H2A		Santiz Perez, Rogelio	2209	7/20/2015 0:00
149	686	2210	Jose	R	Lopez Mendez	(0)	la piedad sn, Piedad	Chilapas	CH	30187	Y	9/18/2015 0:00	H2A	H2A		Lopez Mendez, Jose R	2210	7/19/2015 0:00
150	687	2211	Herlindo		Hernandez Perez	(0)	Sin Nombre sn	Las Margaritas	CH	30187	Y	9/18/2015 0:00	H2A	H2A		Hernandez Perez, Herlindo	2211	7/19/2015 0:00
151	688	2212	Gilberto		Flores Montero	(0)	Rural	Michoacan	MC	59660	Y	9/29/2015 0:00	H2A	H2A		Flores Montero, Gilberto	2212	7/19/2015 0:00
152	689	2213	Francisco		Santis Morales	(0)	Sin Nombre sn	Las Margaritas	CH	30187	Y	9/29/2015 0:00	H2A	H2A		Santis Morales, Francisco	2213	7/19/2015 0:00
153	690	2214	Fernando		Gomez Lopez	(0)	Sin Nombre sn	Las Margaritas	CH	30187	Y	9/29/2015 0:00	H2A	H2A		Gomez Lopez, Fernando	2214	7/19/2015 0:00
154	691	2215	Domingo		Lopez Lopez	(0)	Sin nombre sn, San	Las Margaritas	CH	30187	Y	9/29/2015 0:00	H2A	H2A		Lopez Lopez, Domingo	2215	7/19/2015 0:00
155	692	2216	Conrado		Lopez Lopez	(0)	Sin Nombre sn	Las Margaritas	CH	30187	Y	9/29/2015 0:00	H2A	H2A		Lopez Lopez, Conrado	2216	7/19/2015 0:00
156	698	2217	Raul		Jimenz	(0)	1321 Route 45	Swedesboro	NJ	08085	N	8/16/2015 0:00	Augustin	Field		Jimenz, Raul	2217	7/19/2015 0:00

DOL01604

## Joint Exhibit 7

H-2A employees whose work with Sun Valley ended by May 7, 2015

	Name
1	Jose Manuel Baltazar Chequez
2	Carlos Cervantes Ramirez
3	Hugo Leonel Cinta Tegoma
4	Humberto Dominguez
5	Hector M. Garcia Dominguez
6	Celso Grijalva Ramos
7	Ines Hernandez Sanchez
8	Javier Juarez Hernandez
9	Marco G. Maldonado
10	Gustavo Marquez Perez
11	Cristian Mendez Hernandez
12	Marcelo Ortega Vargas
13	Delfino Antonio Reyes
14	Lucio Rosales Lopez
15	Venustiano Sanchez Dolores
16	Isau Santiago Mendoza
17	Tomas Sonalo Guerrero
18	Adrian Vazquez Desion
19	Marcos Zaveleta



My name is CRISTIAN RAMOS, CELSO. I do hereby resign my job with  
SLU (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☒ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: CELSON CRISTIAN RAMOS

Signature: CR

Date: 5/6/15

Print name of witness: JOSS MARINO TR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is ORTEGA VARGAS, MARCELO. I do hereby resign my job with  
SJC (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☒ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Marcelo Ortega Vargas

Signature: Marcelo Ortega Vargas Date: 5/6-15

Print name of witness: \_\_\_\_\_

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is MALDONADO MALDONADO, MARCE <sup>(C-1004411)</sup> I do hereby resign my job with  
S-20 (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☒ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Marce Maldonado Maldonado

Signature: Marce Maldonado Maldonado Date: 5/6-16

Print name of witness: Ross Maldonado JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is BALTAR, CHEQUEZ JOSE MANUEL I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☒ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Jose Manuel Baltar Chequez

Signature: [Signature] Date: 5/6/15

Print name of witness: R. S. / MANUEL JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is DOMINGUEZ CRUZ, ALBERTO. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☒ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Alberto Dominguez Cruz

Signature: [Signature] Date: 9/6-15

Print name of witness: Ross Macdonald Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is CELVANTES FERNANDEZ, CARLOS. I do hereby resign my job with  
ME (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☒ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: CELVANTES FERNANDEZ

Signature: [Signature] Date: 5/6/15

Print name of witness: ROSS MARCHETTI

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified

\*\*\*\*\*



My name is CINTA TECOMA, HUGO LEONEL. I do hereby resign my job with \_\_\_\_\_ (farm name). I hereby acknowledge that I have been offered additional work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☒ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: HUGO LEONEL CINTA TECOMA

Signature: [Signature] Date: 5/6-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my resignation is effect today, and US. Government agencies will be notified.

My name is JUANES HERNANDEZ JAVIER I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☒ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: JUANES HERNANDEZ JAVIER

Signature: JAVIER Date: 9/6-15

Print name of witness: Ross M. A. ...

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is ROSALBA LUCIO LUCIO. I do hereby resign my job with  
GNO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☒ I need to return to my home country because a family member is sick or injured or has died.

☒ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: ROSALBA LUCIO LUCIO

Signature: ROSALBA LUCIO LUCIO Date: 5/6-15

Print name of witness: ROSALBA LUCIO LUCIO

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is HERNANDEZ SANCHEZ, JAMES. I do hereby resign my job with  
SAUL (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☒ I need to return to my home country because a family member is sick or injured or has died.

☒ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: JAMES HERNANDEZ SANCHEZ

Signature: [Signature] Date: 5/6-15

Print name of witness: R-12 JUAN V. JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is ZAVALETA HERNANDEZ, MARCOS I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☒ I need to return to my home country because a family member is sick or injured or has died.

☒ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Marcos Zavaleta Hernandez

Signature: [Signature] Date: 5/6-15

Print name of witness: Ross Martinez Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is VANQUEZ DESIGN, ADRIAN. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☒ I need to return to my home country because a family member is sick or injured or has died.

☒ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Adrian Vanquez Design

Signature: [Signature] Date: 5/6-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*



My name is GARCIA DOMINGUEZ HECTOR <sup>WISHAEI</sup> I do hereby resign my job with  
SUC (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☒ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Hector Wishael Garcia Dominguez

Signature: [Signature] Date: 5/6/15

Print name of witness: Ross Martin Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is MENDEZ FERNANDEZ CRISTIAN do hereby resign my job with

SJD (farm name). I hereby acknowledge that I have been offered additional work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☒ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Cristian Mendez Hernandez

Signature: [Signature] Date: 9/6-15

Print name of witness: Ross Martinez Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is SANTIAGO MENDOZA, ICAI. I do hereby resign my job with  
SNO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

- ☐ I am sick or I have been injured.
- ☐ I need to return to my home country because a family member is sick or injured or has died.
- ☒ I need to return to my home country because of personal reasons.
- ☐ I want to quit my job.
- ☐ Work has slowed down, and I would like to return home.
- ☐ Other: \_\_\_\_\_

Print Name: X T. San Santiago mendaza

Signature: X [Signature] Date: 5/6-15

Print name of witness: ROS MARIANO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_ I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is MARQUEZ PETER GUSTAVO. I do hereby resign my job with  
SVA (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☒ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: Gustavo Marquez Perez

Print Name: Gustavo

Signature: \_\_\_\_\_ Date: 5/6-15

Print name of witness: Russ MARQUEZ - JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is SANCHEZ RUIZ, VERO STIAN  
SVO I do hereby resign my job with

SVO (farm name). I hereby acknowledge that I have been offered additional work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☒ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Veronica Sanchez DOLORES

Signature: [Signature] Date: 9/6-15

Print name of witness: Rosario Martinez Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is ANTONIO REYES, DAFINU. I do hereby resign my job with  
SVA (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☒ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: DAFINU ANTONIO REYES

Signature: [Signature] Date: 9/6-15

Print name of witness: R-22 MACIN JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.



My name is SIANO GUERRERO, TOMAS. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☒ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☐ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Tomas Siano Guerrero

Signature: Tomas Siano Guerrero Date: 5/6-15

Print name of witness: Ross Marino Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is Dario Morales Acosta. I do hereby resign my job with  
SVO (farm name).

I hereby acknowledge that I have been offered additional work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: DARIO MORALES ACOSTA

Signature: Dario M. A.

Date: \_\_\_\_\_

8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is Carlos Magallanes Hernandez. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Carlos Eduardo Magallanes Hdez

Signature: [Signature] Date: 8/8-15

Print name of witness: Ross MARINO Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Gabriel Lugo Morales. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Gabriel Lugo Morales

Signature: [Signature] Date: 8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Eliseo Aguilar Caldera. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Eliseo Aguilar Caldera

Signature: Eutul

Date: \_\_\_\_\_

8/8-15

Print name of witness: Ross MARINO Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Oscar Javier Blanco A.. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Oscar Javier Blanco A.

Signature: Oscar Javier Blanco A. Date: 8/8-15

Print name of witness: Ross MARINO Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.



My name is Luis Antonio LG. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: i

Print Name: LUIS ANTONIO LUNA GONZALEZ

Signature: Luis Antonio LG.

Date: 8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is Miguel Angel Elizondo Soto. I do hereby resign my job with

SVO (farm name). I hereby acknowledge that I have been offered additional work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: MIGUEL ANGEL ELIZONDO SOTO

Signature: MAL

Date: 8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is David Flores Flores. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: David Flores Flores

Signature: [Signature] Date: 8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is J. Santos Soto Gurrola. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: J. Santos Soto Gurrola

Signature: [Signature] Date: 8/8-15

Print name of witness: Ross MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is Norberto Garcia Cervantes. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Norberto Garcia Cervantes

Signature: [Signature]

Date: 8/8-15

Print name of witness: Ross MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Rogelio De la Cruz Morales. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Rogelio De la Cruz Morales

Signature: [Signature]

Date: 8/8-15

Print name of witness: Ross Marino Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.



My name is Juan Manuel Campido Aguilar. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Juan Manuel Campido Aguilar

Signature: [Signature] Date: 8/8-15

Print name of witness: Ross MARINO Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Esteban Mendoza Soto. I do hereby resign my job with

SVO (farm name). I hereby acknowledge that I have been offered additional work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Esteban Mendoza Soto

Signature: [Signature] Date: 8/8-15

Print name of witness: Ross MARINO Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my resignation is effect today, and US. Government agencies will be notified.

My name is Rafael Cervantes Ampico. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Rafael Cervantes Ampico

Signature: [Signature]

Date: 8/9-15

Print name of witness: Ross MARINO Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Adan Godinez Barcenas. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

- ☐ I am sick or I have been injured.
- ☐ I need to return to my home country because a family member is sick or injured or has died.
- ☐ I need to return to my home country because of personal reasons.
- ☐ I want to quit my job.
- ☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Adan Godinez Barcenas

Signature: Adan Godinez Barcenas

Date: 8/8-15

Print name of witness: Ross MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Martin Hurtado Olvera. I do hereby resign my job with  
SVC (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☒ Other: \_\_\_\_\_

Print Name: MARTIN HURTADO OLVERA

Signature:  Date: 8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Giseldo Cervantes Aguilar. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Giseldo Cervantes Aguilar

Signature: [Signature]

Date: 8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.



My name is Trinidad Aguilar Soto. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Trinidad Aguilar Soto

Signature: [Signature] Date: 8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Honorato Galindo Cervantes. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Honorato Galindo Cervantes

Signature: [Signature]

Date: 8/9-15

Print name of witness: Ross MAEIRO Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is Alfredo Galindo Reyes. I do hereby resign my job with  
SVD (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Alfredo Galindo Reyes

Signature: [Signature] Date: 8/8-15

Print name of witness: Ross MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is Alvaro Vargas Venegas. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Alvaro Vargas Venegas

Signature: Alvaro Vargas Venegas

Date: 8/9-15

Print name of witness: Ross MARINO Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Juan Ernesto Galindo Cervantes. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Juan Ernesto Galindo Cervantes

Signature: [Signature]

Date: 8/9-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is Manuel Martinez Cervantes. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Manuel Martinez Cervantes

Signature:  Date: 8/8-15

Print name of witness: Ross MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*



My name is Trinco Aguilar Marquez. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Trinco Aguilar Marquez

Signature: [Signature]

Date: \_\_\_\_\_

8/8-15

Print name of witness: Ross MARINO Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Jose Mtz Daulino. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: JOSE MARTINEZ DAULINO

Signature: [Signature]

Date: 8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Gustavo Cuellar Romero. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Gustavo Cuellar Romero

Signature: [Signature] Date: 8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Geovanni de Jesus del Angel Sales. I do hereby resign my job with  
SVD (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Geovanni de Jesus del Angel Sales

Signature: Geovanni de Jesus del Angel Sales Date: 8/8-15

Print name of witness: Ross MARINO Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is Daniel Garcia Olvera. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Daniel Garcia Olvera

Signature: Daniel Garcia Olvera

Date: 8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is Pedro Churugoy Escudero. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Pedro Churugoy Escudero

Signature: \_\_\_\_\_ Date: 8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*



My name is Carlos Cruz Reyes. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Carlos Cruz Reyes

Signature: Carlos Cruz Reyes Date: 8/9-15

Print name of witness: Ross MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Luis Alberto Hernandez Zavala. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: LUIS ALBERTO HERNANDEZ ZAVALA

Signature: [Signature]

Date: \_\_\_\_\_

8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Armando Tapia Barbosa. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: ARMANDO TAPIA BARBOSA

Signature: Armando Tapia Barbosa Date: 8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Juan Ramirez Chavez I do hereby resign my job with

SVO (farm name). I hereby acknowledge that I have been offered additional work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Juan Ramirez Chavez

Signature: Juan Ramirez Date: 8/9-15

Print name of witness: Ross Marino Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my resignation is effect today, and US. Government agencies will be notified.

\*\*\*\*\*

My name is Omar Garcia Ramirez. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: OMAR GARCIA RAMIREZ

Signature: Omar G. R.

Date: 8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Erin Guadalupe Garcia Cardoso. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Erin Guadalupe Garcia Cardoso

Signature: Erin Guadalupe Garcia Cardoso Date: 8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.



My name is Alejandro Romero Arredondo I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: ALEJANDRO ROMERO ARREDONDO

Signature: Alejandro Romero Arredondo Date: 8/8-15

Print name of witness: Ross MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is PEDRO ZABALA ALMANZA do hereby resign my job with  
SVD (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: PEDRO ZABALA ALMANZA

Signature: Pedro Z.A

Date: 8/8-15

Print name of witness: Ross MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is José Manuel Sacaba Ramirez. I do hereby resign my job with  
SVD (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: José Manuel Sacaba Ramirez

Signature: José Manuel Sacaba Ramirez Date: 8/8-15

Print name of witness: Ross MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Dario Morales Alosta. I do hereby resign my job with

SVO (farm name). I hereby acknowledge that I have been offered additional work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: Se termina el trabajo

Print Name: DARIO MORALES ALOSTA

Signature: Dario M. Al.

Date: 8/8-15

Print name of witness: Ross MARINO Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my resignation is effect today, and US. Government agencies will be notified.

My name is NICOLAS ARROYO ALONZO. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: NICOLAS ARROYO ALONZO

Signature: NICOLAS ARROYO ALONZO Date: 8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Jose Luis Silva Lopez. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: JOSE LUIS SILVA LOPEZ

Signature: Jose Luis Silva Lopez

Date: 8/9-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.



My name is Eduardo de la cruz Martinez. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Eduardo de la cruz Martinez

Signature: Eduardo de la cruz Martinez Date: 8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is Francisco Javier Piñon R. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: Francisco Javier Piñon Rangel

Signature: Francisco Javier Piñon Date: 8/9-15

Print name of witness: Ross MARINO Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.

My name is MATEO RIOS BAUTISTA. I do hereby resign my job with  
SVO (farm name). I hereby acknowledge that I have been offered additional  
work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal  
law to return home immediately and US Government agencies will be notified.

☐ I am sick or I have been injured.

☐ I need to return to my home country because a family member is sick or injured or has died.

☐ I need to return to my home country because of personal reasons.

☐ I want to quit my job.

☒ Work has slowed down, and I would like to return home.

☐ Other: \_\_\_\_\_

Print Name: MATEO RIOS BAUTISTA

Signature: MATEO RIOS BAUTISTA Date: 8/8-15

Print name of witness: ROSS MARINO JR

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with  
my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my  
resignation is effect today, and US. Government agencies will be notified.



My name is SVO I do hereby resign my job with SVO (farm name). I hereby acknowledge that I have been offered additional work for the balance of my contract, however I resign for the reason listed below. I understand I am required by federal law to return home immediately and US Government agencies will be notified.

- ☐ I am sick or I have been injured.
- ☐ I need to return to my home country because a family member is sick or injured or has died.
- ☐ I need to return to my home country because of personal reasons.
- ☐ I want to quit my job.
- ☐ Work has slowed down, and I would like to return home.
- ☐ Other: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: 8/9-15

Print name of witness: Ross MARINO Jr

☐ Expect to return to my job once I finish my unexpected business. I understand that I need to stay in contact with my employer during my absence. I expect to return on: \_\_\_\_\_. I understand that if I do not, my resignation is effect today, and US. Government agencies will be notified.

Mi nombre es SVO Creo que queda renunciar a mi trabajo con SVO (nombre de la granja). Reconozco que me han ofrecido trabajo adicional para el resto de mi contrato, sin embargo, renunciar a la razón a continuación. Entiendo que estoy es requerido por la ley federal para regresar a su hogar inmediatamente y organismos del Gobierno de US será notificado. Estoy enfermo o ME han resultado heridos.

- ☐ Tengo que volver a mi país porque un miembro de la familia está enfermo o lesionado, ha muerto.
- ☐ Tengo que volver a mi país con azada por motivos personales.
- ☐ QUIERO dejar mi trabajo.
- ☐ Trabajo ha disminuido, y me gustaría volver a casa.
- ☐ Otros: \_\_\_\_\_

Nombre en letra de imprenta: \_\_\_\_\_

Firma: \_\_\_\_\_

Que Fecha: 8/9-15

nombre del testigo: Ross MARINO Jr

☐ Esperar a regresar a mi trabajo una vez que ya he acabado mi inesperado. Entiendo que tengo que estar en contacto con mi empleador durante mi ausencia. Espero volver en: \_\_\_\_\_. Entiendo que si no lo hago, mi renuncia es efecto hoy, y los US Agencias de gobierno será notificado.

DOL02363



UNITED STATES DEPARTMENT OF LABOR  
NEW YORK, NY

IN THE MATTER OF:

SUN VALLEY ORCHARDS, LLC,

Respondent.

CASE NO. 2016-TAE-\_\_\_\_\_

**ORDER OF REFERENCE**

TO: CHIEF ADMINISTRATIVE LAW JUDGE  
Office of the Administrative Law Judges  
United States Department of Labor

Pursuant to a timely request by Respondent for a hearing on the assessment of \$369,703.22 in unpaid wages and \$212,250.00 in civil money penalties, a hearing has been duly determined to be appropriate and pursuant to regulations is therefore required to be held to inquire into matters arising under the provisions of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101, *et seq.* as amended by the Immigration Reform Control Act of 1986, Pub. L. 99-603, § 301, 100 Stat. 3359, 3411 and the implementing regulations.

The unpaid wages and civil money penalties were assessed on June 22, 2016, pursuant to 29 C.F.R. § 501.16(a)(1) as a result of alleged violations of regulations, as described in the June 22, 2016 Notice of Determination, including but not limited to 20 C.F.R. § 655.122(g) (failure to comply with meals requirement), § 655.122(p) (failure to comply with requirements regarding paycheck deductions), and § 655.122(i) (failure to comply with the three-fourths guarantee). The Administrator hereby amends the June 22, 2016 Notice of Determination to allege that Respondent also violated: (1) § 655.122(p) by making unreasonable deductions from workers' paychecks, insofar as Respondent sold workers beverages and other goods at a profit and/or in violation of state law; (2) § 655.122(i) by terminating workers without cause; and 3) 29 C.F.R. §

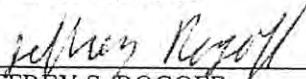
501.5 insofar as Respondent improperly sought to have terminated workers waive their rights. The Administrator also hereby amends the June 22, 2016 Notice of Determination to allege that Respondent owes a total of \$376,697.61 in unpaid wages and \$212,250.00 in CMPs.

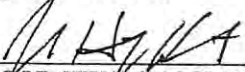
The matter is accordingly hereby referred to the Chief Administrative Law Judge for designation and hearing in accordance with the INA, its implementing regulations, and 29 C.F.R. § 501.37(a).

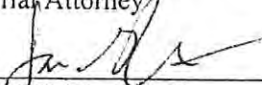
Enclosed hereto for filing of record pursuant to 29 C.F.R. § 501.37(a) are copies of: (1) the Notice of Determination issued to Sun Valley Orchards, LLC on June 22, 2016; and (2) Respondent's timely request for a hearing dated July 20, 2016.

Dated and signed at New York, New York, on this 23<sup>rd</sup> day of December 2016.

JENNIFER S. BRAND  
Associate Solicitor of Labor for  
Fair Labor Standards

  
JEFFREY S. ROGOFF  
Regional Solicitor

  
JACOB HEYMAN-KANTOR  
Trial Attorney

  
JASON E. GLICK  
Trial Attorney

Office of the Solicitor  
201 Varick St, Room 983  
New York, NY 10014

Attorneys for the Administrator  
Wage and Hour Division  
United States Department of Labor



United States Department of Labor

Wage and Hour Division  
3131 Princeton Pike  
Building 5, Room 216  
Lawrenceville, New Jersey 08648  
Tel. (609) 538-8310  
Fax (609) 538-8314



Date: June 22, 2016

CERTIFIED MAIL RETURN RECEIPT REQUESTED: 7013 1710 0001 5882 0376

To: Sun Valley Orchards, LLC  
Attn: Mr. Russell J. Marino, Jr.  
29 Vestry Road  
Salem, New Jersey 08085

Subject: Notice of Determination of Wages Owed and Assessing Civil Money Penalties

Case Reference Number: 1765359

Dear Sir(s):

An investigation conducted by this office of Sun Valley Orchards, LLC d/b/a Sun Valley Orchards, relating to the requirements applicable to the employment of H-2A and other workers under the Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act (IRCA) (8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c) and 1186) in Flemington, New Jersey, covering the period from April 13, 2015 through October 10, 2015, disclosed that Sun Valley Orchards, LLC failed to comply with Section 218 of the INA and applicable regulations at 20 C.F.R. Part 655 and 29 C.F.R. Part 501.

As a consequence of these H-2A violations, \$369,703.22 in unpaid wages are owed to one hundred and forty seven workers. The specific violations and the wages owed associated with them are set forth in the attached matrix entitled *Summary of Violations*.

In addition, pursuant to Section 218(g)(2) of the INA and its implementing regulations at 29 C.F.R. Part 501, civil money penalties are hereby assessed in the amount of \$212,250.00. The specific violations and the civil money penalties associated with them are set forth in the attached matrix entitled *Summary of Violations*.

The full amount(s) reflected above \$581,953.22 is due and payable within 30 days to "Wage and Hour Division, U.S. Department of Labor." Payments by certified check or money order should be delivered or mailed to:

U.S. Department of Labor  
Wage and Hour Division  
The Curtis Center, Suite 850 West  
170 S. Independence Mall West  
Philadelphia, PA 19106-3317

The fact that the above sanctions/remedies are being imposed for the H-2A violations found at this time does not preclude the taking of other enforcement action as is deemed appropriate by the Department of Labor, or the additional assessments of back wages or civil money penalties for violations of the H-2A provisions found at some future time. Such other enforcement action may include the pursuit of unpaid wages, injunctive action, specific performance of the work contract, and denial or revocation of temporary alien agricultural labor certification.

The dollar amount(s) reflected above constitute a debt owed to the Federal government. This debt is subject to the assessment of interest, administrative cost charges and penalties in accordance with the Debt Collection Act of 1982, and departmental policies. Interest will be assessed at the Treasury Tax and Loan Account Rate on any balance outstanding from the date of this notice, accruing from the notice date. Administrative cost charges will be assessed to help defray the Government's cost of collecting this debt. A penalty at the rate of 6% will be assessed on any portion of the debt remaining delinquent for more than 90 days. In order to avoid these charges, forward payments to the office listed above by the indicated due date.

You have the right to request a hearing on the determination that any or all of the violations occurred. Such request must be dated and in writing; must contain specific reasons why you believe that the violations for which you have been charged did not occur; and must be received within 30 days from the date of this letter by the Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-3502, Washington, D.C. 20210, with a copy to this office. The procedure for requesting a hearing is provided in Section 501.33 of Regulations, 29 CFR 501. If a request for a hearing is not received within the time specified, the determination of the Administrator shall become the final and unappealable Order of the Secretary.

We would like to call to your attention that when a request for a hearing is filed with the Wage and Hour Administrator, the matter is referred to the Chief Administrative Law Judge. A formal hearing is then scheduled for a final determination with respect to the alleged violations. At such hearing you may, by yourself or through an attorney retained by you, present such witnesses, introduce such evidence and establish such facts as you believe will support your position.

Copies of Section 218 of INA and Regulations, 20 CFR Part 655 and 29 CFR Part 501 can be viewed at [www.dol.gov](http://www.dol.gov).

Finally, we wish to point out that there may be a question as to the deductibility of civil money penalties paid as a business expense under the Internal Revenue Code. In this regard, you may wish to contact the Internal Revenue Service.

Sincerely,



Charlene Rachor  
District Director

cc: Regional Administrator, Mark Watson, Jr.

Enclosures: Summary of Violations

U.S. Department of Labor  
Wage and Hour Division

Case ID: 1765359  
ACT: H-2A  
EIN: 46-0542793  
Name: Sun Valley Orchards, LLC  
ER Address: 29 Vestry Road  
Salem, NJ 08085

Unpaid Wages  
Amount Due: \$369,703.22

THIS SHEET MUST BE INCLUDED WITH PAYMENT  
YOU MUST WRITE YOUR TAX ID ON YOUR CHECK

MAIL TO:

U.S. Department of Labor  
Wage and Hour Division  
The Curtis Center, Suite 850 West  
170 S. Independence Mall West  
Philadelphia, PA 19106-3317

AMOUNT PAID: \$ \_\_\_\_\_

- - Regional Office Copy - -

U.S. Department of Labor  
Wage and Hour Division

Case ID: 1765359  
ACT: H-2A  
EIN: 46-0542793  
Name: Sun Valley Orchards, LLC  
ER Address: 29 Vestry Road  
Salem, NJ 08085

Amount Due  
In Civil Money  
Penalty: \$212,250.00

THIS SHEET MUST BE INCLUDED WITH PAYMENT  
YOU MUST WRITE YOUR TAX ID ON YOUR CHECK

MAIL TO:

U.S. Department of Labor  
Wage and Hour Division  
The Curtis Center, Suite 850 West  
170 S. Independence Mall West  
Philadelphia, PA 19106-3317

AMOUNT PAID: \$ \_\_\_\_\_  
DATE OF PMT: \_\_\_\_\_  
CHECK NO. \_\_\_\_\_  
SIGNATURE: \_\_\_\_\_

- - District Office Copy - -

## Summary of Violations

Regulatory Requirement Violated	Summary Description	Unpaid Wages Owed	Civil Money Penalty
20 C.F.R. §655.122(d)(1)	Employer failed to provide for or secure housing for those workers who are not reasonably able to return to their permanent residence at the end of the work day, without charge to the worker, that complies with the applicable housing safety and health standards. Specifically, the investigation disclosed that the housing facility provided for workers was missing window screens and had screen doors not in good repair contributing to the insect infestation throughout the camp. Several bathroom sinks did not have hot water, refuse containers throughout facility were missing fly tight lids and multiple mattresses used by occupants for sleeping purposes were directly on the floor without a bed frame.	\$0.00	\$3,600.00
20 C.F.R. §655.122(g)	Failure to comply with "meals" requirement(s). Specifically, the investigation disclosed that the employer failed to provide free and convenient cooking and kitchen facilities to the workers that would enable them to prepare their own meals. The job offers for these contracts specifically stated that these facilities would be provided to workers. When the employer provides a meal plan, the job offer for the contract must state the charge for such meals, including drinks. The job offer for these contracts does not contain disclosure of meal charges and as such all meal and drink charges must be returned to the workers resulting in back wages being due to 147 affected workers.	\$234,079.28	\$198,450.00
20 C.F.R. §655.122(h)(4)	Failure to provide transportation in compliance with all applicable Federal, State, or local laws and regulations between the worker's living quarters and the employer's worksite without cost to the worker. Specifically, the investigation disclosed that three of the five vehicles used to	\$0.00	\$7,500.00



	transport workers had insufficient tread on the tires for safe operation and one had a non-functioning rear directional. Additionally, the five vehicles used to transport H-2A and corresponding workers were operated by drivers who failed to possess valid, unexpired driver's licenses recognized by the State of New Jersey for operation of same.		
20 C.F.R. §655.122(i)	<b>Failure to comply with the three-fourths guarantee.</b> Specifically, the investigation disclosed that 19 of the H-2A workers on the first contract of 2015 did not meet the $\frac{3}{4}$ guarantee since they were constructively forced to return home prior to the end of the contract period due to the myriad of misrepresentations on the contract, poor housing conditions, lack of transportation and general mistreatment by the employer and or his farm labor contractor. Additionally, 6 other workers employed in 2015 did not meet the $\frac{3}{4}$ guarantee based on a review of payroll records.	\$135,623.94	\$1,350.00
20 C.F.R. §655.122(q)	<b>Failure to comply with requirement to disclose the work contract.</b> Specifically, the investigation disclosed that the employer provided a copy of the worker contract that did not contain the actual conditions of employment. The contracts do not address the "meal plan" charges and misrepresent that free cooking facilities will be provided to the workers along with free transportation to purchase food. The kitchen facilities were locked, workers had no access to the kitchen for preparation of meals and transportation to purchase food was not provided.	\$0.00	\$0.00
20 C.F.R. §655.122(p)	<b>Failure to comply with "deductions" requirement(s).</b> Specifically, the investigation disclosed that the job offer did not specify "all" the deductions not required by law which the employer will make from workers' pay checks. The "meal plan" was not disclosed in the job offer or the contract. The back wages associated with this violation and penalty for same are addressed above in 20 CFR 655.122(g).	\$0.00	\$0.00

29 C.F.R. §501.5	The investigation disclosed that Russell J. Marino sought to have covered workers waive rights conferred under sec. 218 of the INA, regulations at 20 C.F.R. § 655, or regulations at 29 C.F.R. § 501. Specifically, the investigation disclosed that the employer and or his farm labor contractor coerced workers leaving the contracts prior to the ending date to sign a form created by Sun Valley Orchards, LLC stating that they were leaving early for "personal reasons" in an attempt to have them waive their $\frac{3}{4}$ guarantee rights as party to the contracts. Workers left the job early due to the conditions stated above in 20 CFR 655.122(i) and/or because of misrepresentations by the employer and/or his farm labor contractor.	\$0.00	\$1,350.00
Total		\$369,703.22	\$212,250.00

S

*J. Lake*

July 20, 2016

By Federal Express

Dr. David Weil  
Administrator  
Wage and Hour Division  
United States Department of Labor  
200 Constitution Avenue, N.W.  
Room S-3502  
Washington, D.C. 20210

Ms. Charlene Rachor  
District Director  
Wage and Hour Division  
United States Department of Labor  
3131 Princeton Pike, Building 5, Room 216  
Lawrenceville, NJ 08648

Re: Request For Hearing Regarding Notice of Determination of Wages Owed  
and Assessment of Civil Money Penalties, No. 1765359 dated June 22, 2016

Dear Dr. Weil and Ms. Rachor:

Sun Valley Orchards, LLC ("Sun Valley") has retained this firm in connection with the above-referenced matter. Sun Valley requests a hearing as to every factual and legal issue raised by the Notice of Determination of Wages Owed and Assessment of Civil Money Penalties, No. 1765359 dated June 22, 2016 ("Notice").

Sun Valley Orchards is a family farm operated by 4 generations of the Marino family dating back almost 100 years. Sun Valley grows, packs, and distributes fresh market freestone peaches, cucumbers, squash, pickles, peppers, and asparagus on more than 2,000 acres of farmland in Swedesboro, New Jersey. Sun Valley is one of the largest growers, shippers, and packers in New Jersey.

The 2015 growing season was Sun Valley's first in the H-2A program after it was unable to find and hire enough qualified people to perform the seasonal work. For the 2015 season, which was the season giving rise to the current case, the Department of Labor ("DOL") certified Sun Valley for 40 workers for the period of April 13, 2015 to October 10, 2015 and 60 workers for the period of June 1, 2015 to October 10, 2015.

Dr. David Weil  
Ms. Charlene Rachor  
July 20, 2016  
Page 2 of 3

The Wage and Hour Division of DOL (WHD) investigated Sun Valley with respect to the H-2A certifications for the period of April 13, 2015 through October 10, 2015. The WHD Notice dated June 22, 2016 contends the Sun Valley failed to comply with the requirements of the DOL H-2A regulations. The Notice provides few details but has two primary allegations against Sun Valley: (1) that workers were not offered three-fourths of the hours of work as set forth in the job orders; and (2) the workers were provided a meal plan instead of cooking facilities for them to use on their own. The Notice also seeks civil money penalties (CMPs) related to allegations of minor housing and local transportation issues, and claiming that workers were asked to waive their rights under the H-2A program. There are also allegations for which no back wages or civil money penalties are associated in the Notice. In all, WHD seeks \$369,703.22 in back wages for 147 workers and \$212,250.00 in CMPs.

Sun Valley requests a hearing on every factual and legal issue raised by the Notice. The Notice alleges the violations described above, but fails to identify any of the workers or offer any information that would support those allegations. Sun Valley denies that it committed any of the violations alleged, and will defend itself vehemently against these charges. The allegations are false and the assessment of back wages and CMPs are legally unsupportable and erroneous.

The Notice appears (although it is impossible to discern with certainty, given the lack of information provided) to assess back wages for 100% of the DOL-approved meal rate that the workers paid for the 3 prepared meals per day for 6 months that the workers ate without raising an issue - not the difference between the fair market value of the meals provided and the cost of purchasing their own groceries and preparing their own meals (which would exceed the cost of the actual meals provided). The H-2A regulations absolutely do not require double-payment of this sort - essentially providing 6 meals per day per worker for the entire season. To the extent that the Administrative Law Judge finds any violation of the terms and conditions of the job order regarding meals for workers, the method used by WHD for calculating back wages and CMPs is clearly erroneous.

With respect to the three-fourths guarantee allegations, 20 C.F.R. § 655.122(n) provides that the obligation to offer (or pay for) the hours in question ends if the worker voluntarily terminates employment and the employer reports the early termination to DOL's Chicago National Processing Center (CNPC) and DHS. Here, there were two groups of workers who terminated employment before the end of the period-of-need in the job order. One group left very early in the season, but turned in their employee ID cards and signed documents explaining their reason for terminating their employment early. Sun Valley timely provided the required notice of these departures to CNPC and DHS, as required in the regulations. The workers were not asked to "waive their rights," since they had already decided to terminate their employment voluntarily (at great disadvantage to Sun Valley, which needed a full complement of workers to perform the work on the farm), they were simply asked to execute a document explaining why they had made their decision, as part of Sun Valley's reporting to CNPC and DHS on the

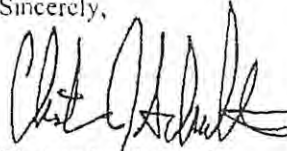
Dr. David Weil  
Ms. Charlene Rachor  
July 20, 2016  
Page 3 of 3

voluntary terminations. For workers who terminated their employment late in the season, they had already worked and been compensated for at least three-fourths of the hours offered in the job order. Thus, no back wages (or CMPs) are owed for either group of workers, pursuant to DOL's own regulations.

In addition to the factual and legal arguments set forth above, Sun Valley reserves its right to challenge the June 22 Notice based on all legal grounds available to it. Beyond these arguments, which will establish that Sun Valley has no liability for any of the alleged violations, Sun Valley challenges the calculation and assessment of CMPs. None are warranted because there were no violations, but the amounts assessed are at or near the maximum possible. The Notice offers neither explanation nor factual basis for these calculations. Application of the factors listed in 29 C.F.R. § 501.19(b) for determining appropriate CMPs shows that the CMPs are too high, assuming for the sake of argument, that there is an underlying back wage liability. Sun Valley demands strict proof that the CMPs were properly assessed and assessed in the correct amount.

For all of the foregoing reasons, Sun Valley Orchards denies all of the allegations asserted in the WHD Notice dated June 22, 2016, requests an evidentiary hearing before an Administrative Law Judge on these charges, and demands strict proof of any of the alleged violations and calculation of back wages and civil money penalties.

Sincerely,



Christopher J. Schulte  
CJ Lake, LLC  
525 Ninth Street, N.W.  
Suite 800  
Washington, D.C. 20004  
(202) 465-3000 (p)  
(202) 347-3664 (f)  
cschulte@cj-lake.com

cc: Joe Marino, Sun Valley Orchards