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8
9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11 BACILIO RUIZ TORRES and JOSE
AMADOR, as individuals and on behalf of all
12 other similarly situated persons,

13 Plaintiffs,

14 vs.

15 MERCER CANYONS, INC.,

16 Defendant.

CLASS ACTION

JURY DEMANDED

No.

COMPLAINT FOR DAMAGES

17 **PRELIMINARY STATEMENT**

18 1. This is an employment and consumer protection class action on behalf
19 of local farm workers who allege that in 2013 Mercer Canyons failed to inform
20 them about the availability of H-2A vineyard laborer jobs that paid \$12 an hour.
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1 2. The lawsuit also alleges that Mercer Canyons underpaid a class of
2 local farm workers who were employed as vineyard laborers in 2013 but were paid
3 less than \$12 an hour in violation of federal and state law.

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5 **JURISDICTION AND VENUE**

6 3. This Court has jurisdiction over this action pursuant to 28 U.S.C.
7 § 1331 (Federal Questions).

8 4. This Court has jurisdiction over this action pursuant to 29 U.S.C.
9 § 1854 (AWPA).

10 5. This Court has jurisdiction over this action pursuant to 28 U.S.C.
11 § 1367 (Supplemental Jurisdiction).

12 6. The proper venue for this action is in the Eastern District of
13 Washington pursuant to 28 U.S.C. § 1391.

14
15 **PARTIES**

16 7. Plaintiff Bacilio Ruiz lives in Yakima County, Washington.

17 8. Plaintiff Jose Amador lives in Yakima County, Washington.

18 9. Defendant Mercer Canyons, Inc. (Mercer Canyons), is a Washington
19 corporation with its principal place of business in Alderdale, Washington located
20 in Klickitat County.
21

1 **STATEMENT OF FACTS**

2 **AWPA Coverage**

3 1. In 2013, Mercer Canyons was an agricultural employer pursuant to
4 the statutory definition of 29 U.S.C. §1802(2).
5

6 2. In 2013, Plaintiff Ruiz was a seasonal agricultural worker pursuant to
7 the statutory definition of 29 U.S.C. §1802(10)(a).
8

9 3. In 2013, at the time Plaintiff Amador applied for work at Mercer
10 Canyons he met the statutory definition of seasonal agricultural worker pursuant to
11 29 U.S.C. §1802(10)(a).
12

13 **Mercer Canyon's H-2A Application**

14 4. In 2013, Mercer Canyons, by and through its agent Washington Farm
15 Labor Association, applied to the federal Department of Labor to employ H-2A
16 workers.
17

18 5. On January 16, 2013, Ryan Ayers, CFO of Mercer Canyons, signed
19 the H-2A application on behalf of Mercer Canyons.
20

21 6. The application submitted by Mercer Canyons sought forty-four (44)
22 H-2A workers from March 24, 2013 through September 1, 2013, as set forth in the
23 Clearance Order (ETA 790 Form) attached to the application.

1 7. As part of the H-2A application, Mercer Canyons assured the federal
2 government that it would comply with all federal and state employment laws.

3 8. Pursuant to federal regulations governing the H-2A program, Mercer
4 Canyons was required to notify all vineyard laborers it employed in 2012 to solicit
5 their return to the job in 2013.
6

7 9. Mercer Canyons failed to notify all vineyard laborers it employed in
8 2012 to solicit their return to the job in 2013.

9 10. As part of the H-2A application, specifically paragraph 14 of the
10 Clearance Order, Mercer Canyons promised that, “Job seekers w[ould] be
11 informed of the terms and conditions of the job by information listed on the ETA
12 790 Form and attachment.”
13

14 11. In 2013, Mercer Canyons failed to inform job seekers of the terms and
15 conditions of the job listed on the ETA 790 Form.
16

17 12. On or about late March or early April 2013, Mercer Canyons hired
18 approximately 22 local workers referred by the Sunnyside WorkSource office to
19 work as vineyard laborers.

20 13. Mercer Canyons paid the WorkSource workers \$12 an hour pursuant
21 to the H-2A Clearance Order.
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1 14. Upon information and belief, the Department of Labor ultimately
2 approved Mercer Canyons for twenty-two (22) H-2A workers to perform vineyard
3 labor.

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5 15. In early May 2013, approximately twenty-two (22) H-2A workers
6 from Mexico began working at Mercer Canyons as vineyard laborers.

7 16. Until approximately early October 2013, the H-2A workers were
8 provided full-time employment at Mercer Canyons.

9
10 17. Upon information and belief, all H-2A workers were paid \$12 an hour
11 for all work performed at Mercer Canyons in 2013.

12 **Factual Allegations of Plaintiff Amador**

13 18. On or about March 19, 2013, Plaintiff Jose Amador and two family
14 members drove to the main office of Mercer Canyons in Alderdale, Washington
15 from his home in Grandview, Washington to ask for work.

16
17 19. Plaintiff Amador, on behalf of himself and two other family members,
18 inquired at the front desk whether work was available at Mercer Canyons.

19 20. An employee of Mercer Canyons told Plaintiff Amador that no work
20 was available.

1 21. Plaintiff Amador and his family members were never informed that
2 work was available as a vineyard laborer that paid \$12 an hour pursuant to the H-
3 2A Clearance Order.

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5 **Factual Allegations of Plaintiff Ruiz**

6 22. From February through December 2012, Plaintiff Bacilio Ruiz
7 worked as a vineyard laborer at Mercer Canyons.

8 23. Mercer Canyons did not solicit Mr. Ruiz's return to work as a
9 vineyard laborer pursuant to the H-2A Clearance Order that paid \$12 an hour.

10 24. From early January through the middle of September in 2013,
11 Plaintiff Ruiz worked as a vineyard laborer for Mercer Canyons.

12 25. In 2013, Plaintiff Ruiz was primarily paid \$9.88 per hour for his work
13 as a vineyard laborer at Mercer Canyons.

14 26. In 2013, Plaintiff Ruiz and other vineyard laborers performed
15 corresponding work under the H-2A Clearance Order and were not paid \$12 an
16 hour for all hours performed.

17 27. Mercer Canyons never informed Plaintiff Ruiz that work was
18 available as a vineyard laborer pursuant to the H-2A Clearance Order that paid \$12
19 an hour.
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1 28. As a result of Defendant's actions alleged herein, the Plaintiffs
2 suffered economic damages.

3 **CLASS ACTION ALLEGATIONS**

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5 A. **PLAINTIFF CLASS – DECEIVED WORKERS**

6 29. Plaintiffs Bacilio Ruiz and Jose Amador ("Representative Plaintiffs")
7 bring this action on their own behalf and on behalf of a class of persons similarly
8 situated, pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3), consisting
9 of all migrant and seasonal farm workers who: 1) were employed by Mercer
10 Canyons in 2012; 2) sought employment at Mercer Canyons in 2013 before fifty
11 percent of the Clearance Order period elapsed; or, 3) were hired at Mercer
12 Canyons in 2013 prior to fifty percent of the Clearance Order period and were not
13 referred by WorkSource.
14

15 30. The class is so numerous that joinder of all members is impracticable.
16 The exact size of the class is not known; however on information and belief the
17 class consists of over 100 persons.
18

19 31. Representative Plaintiffs are represented by experienced counsel who
20 will vigorously prosecute the litigation on behalf of the class.

21 32. Questions of law and fact common to the members of the class
22 predominate over any questions affecting only individual members, and a class
23

1 action is superior to other available methods for the fair and efficient adjudication
2 of the controversy because:

3 a. Members of the class do not have an overriding interest in
4 individually controlling the prosecution of separate actions:
5

6 b. No litigation concerning this controversy has been commenced
7 by any member of the class;

8 c. Concentration of the litigation in this forum is desirable in order
9 to have all claims resolved in one case; and

10 d. A class action can be managed without undue difficulty because
11 the issues presented are common to the class, Defendants are required to maintain
12 detailed records concerning each member of the class, and Plaintiffs' counsel have
13 experience prosecuting cases of this nature.
14

15 33. Common questions of law and fact include:

16 a. Whether Mercer Canyons had a practice of making or causing
17 to be made false or misleading representations concerning the terms, conditions or
18 existence of employment, when it failed to inform local farm workers about the
19 availability of \$12 an hour vineyard jobs in 2013, in violation of 29 U.S.C. §
20 1831(e) or 29 U.S.C. § 1832(f);
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1 b. Whether Mercer Canyons engaged in unfair or deceptive
2 practices in trade or commerce when it failed to inform local farm workers of the
3 availability of \$12 an hour vineyard jobs in 2013, in violation of RCW 19.86.020.

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5 34. The claims of Representative Plaintiffs are typical of the claims of the
6 Plaintiff class they seek to represent, and they will fairly and adequately protect the
7 interests of the class.

8 **B. PLAINTIFF CLASS – 2013 EMPLOYED WORKERS**

9 35. Plaintiff Bacilio Ruiz seeks certification of an additional class on
10 behalf of all persons similarly situated, pursuant to Federal Rules of Civil
11 Procedure 23(a) and (b)(3), consisting of all non H-2A farm workers who were
12 hired at Mercer Canyons in 2013 and who were not paid \$12 an hour for all
13 corresponding work performed under the 2013 Clearance Order.
14

15 36. The class is so numerous that joinder of all members is impracticable.
16 The exact size of the class is not known; however on information and belief the
17 class consists of over 50 persons.
18

19 37. Representative Plaintiff is represented by experienced counsel who
20 will vigorously prosecute the litigation on behalf of the class.

21 38. Questions of law and fact common to the members of the class
22 predominate over any questions affecting only individual members, and a class
23

1 action is superior to other available methods for the fair and efficient adjudication
2 of the controversy because:

3 a) Members of the class do not have an overriding interest in
4 individually controlling the prosecution of separate actions;

5 b) No litigation concerning this controversy has been commenced
6 by any member of the class;

7 c) Concentration of the litigation in this forum is desirable in order
8 to have all claims resolved in one case; and

9 d) A class action can be managed without undue difficulty because
10 the issues presented are common to the class, Defendants are required to maintain
11 detailed records concerning each member of the class, and Plaintiffs' counsel have
12 experience prosecuting cases of this nature.

13 39. Common questions of law and fact include:

14 a) Whether Mercer Canyons had a practice of failing to pay \$12
15 an hour to seasonal or migrant agricultural workers it employed in 2013 when
16 those wages were due in violation of 29 USC §1832(a) and 29 USC §1822(a);

17 b) Whether Mercer Canyons engaged in unfair or deceptive
18 practices in trade or commerce when it failed to pay \$12 an hour to local farm
19 workers during the H-2A Clearance Order period;

1 c) Whether Mercer Canyons had a practice of wilfully withholding
2 wages from farm workers in 2013 by failing to pay them \$12 an hour in violation
3 of RCW 49.52.050(2).
4

5 40. The claims of Plaintiff Bacilio Ruiz are typical of the claims of the
6 class he seeks to represent, and he will fairly and adequately protect the interests of
7 the class.

8 CAUSES OF ACTION

9 A. PLAINTIFF CLASS – DECEIVED WORKERS

10 AWPA - 29 U.S.C. § 1831(e) & 29 U.S.C. § 1821(f)

11
12 41. Mercer Canyons had a practice of making or causing to be made false
13 or misleading representations concerning the terms, conditions or existence of
14 employment, by failing to inform local farm workers about the availability of \$12
15 an hour vineyard laborer jobs in 2013, in violation of 29 U.S.C. § 1831(e) and 29
16 U.S.C. § 1821(f) .
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18 WASHINGTON CPA - RCW 19.86.020

19 42. In 2013, Mercer Canyons engaged in unfair or deceptive practices in
20 trade or commerce when it failed to inform local farm workers of the availability
21 of \$12 an hour vineyard laborer jobs, in violation of RCW 19.86.020. Such
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1 conduct affects the public interest and has caused injury to the named Plaintiffs and
2 Plaintiff class.

3 **B. PLAINTIFF CLASS – 2013 EMPLOYED WORKERS**

4 **AWPA - 29 U.S.C. § 1832(a) & 29 U.S.C. § 1822(a)**

5
6 43. In 2013, Mercer Canyons had a practice of failing to pay \$12 an hour
7 to Plaintiff Ruiz and similarly situated class members it employed as seasonal
8 workers when those wages were due in violation of 29 USC §1832(a) and 29
9 U.S.C. § 1822(a).

10 **WASHINGTON CPA - RCW 19.86.020**

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12 44. In 2013, Mercer Canyons engaged in unfair or deceptive practices in
13 trade or commerce when it failed to pay \$12 an hour to Plaintiff Ruiz and similarly
14 situated class members during the H-2A Clearance Order. Such conduct affects
15 the public interest and has caused injury to the named Plaintiff and Plaintiff class.

16 **WASHINGTON WPA - RCW 49.52.050(2)**

17
18 45. In 2013, Mercer Canyons had a practice of wilfully withholding
19 wages owed from Plaintiff Ruiz and similarly situated class members by failing to
20 pay them \$12 an hour during the H-2A Clearance Order in violation of RCW
21 49.52.050(2).

PRAYER FOR RELIEF

1
2 Plaintiffs ask this Court to grant them the following relief:

3 1. Certify this action as a class action pursuant to Fed. R. Civ. P.
4 23(b)(3);
5

6 2. Designate the named Plaintiffs as class representatives pursuant to
7 Fed. R. Civ. P. 23(a);

8 3. Appoint Columbia Legal Services and Schroeter Goldmark & Bender
9 as class counsel pursuant to Fed. R. Civ. P. 23(g);
10

11 4. Award each of the Plaintiffs and the other members of the class their
12 statutory damages for violations of AWWPA pursuant to 29 U.S.C. § 1854(c)(1);

13 5. Award each of the Plaintiffs and the other members of the class
14 damages for harm to their property pursuant to RCW 19.86.090;

15 6. Award each of the Plaintiffs and the other members of the class treble
16 damages up to \$25,000 per class member for harm to their property pursuant to
17 RCW 19.86.090;
18

19 7. Award each of the Plaintiffs and the other members of the class their
20 unpaid wages pursuant to RCW 49.52.070;
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1 8. Award each of the Plaintiffs and the other members of the class twice
2 the amount of the wages unlawfully withheld by way of exemplary damages
3 pursuant to RCW 49.52.070;

4
5 9. Award attorney fees and costs pursuant RCW 19.86.090, RCW
6 49.48.030, and RCW 49.52.070;

7 10. Grant other further relief as just and appropriate.

8 DATED this 14th day of March, 2014.

9 COLUMBIA LEGAL SERVICES

SCHROETER GOLDMARK & BENDER

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s/ Adam Berger

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