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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

14 PEREZ-FARIAS, et. al.,  
15 Plaintiffs,  
16 vs.  
17 GLOBAL HORIZONS, INC., et. al.,  
18 Defendants.

CLASS ACTION

No. 05 CV 3061 RHW

PLAINTIFFS' PHASE II  
MEMORANDUM ON CLASS  
MEMBERSHIP, INJUNCTIVE  
RELIEF & DAMAGES

**I. INTRODUCTION**

21 Plaintiffs submit this memorandum regarding the issues to be determined in  
22 the second phase of this action: class membership, injunctive relief, statutory  
23

1 damages for violations of the Farm Labor Contractors Act (FLCA), and the  
2 distribution of punitive damages awarded at trial. *See Proposed Course of Action*  
3 *for Damages Phase* (Ct. Rec. 910).

## 4 **II. PROCEDURAL BACKGROUND**

5 The Court granted Plaintiffs' Motions for Class Certification and to  
6 Bifurcate the Trial. (Ct. Recs. 136 & 137.) The Court granted Plaintiffs' Motions  
7 for Summary Judgment and awarded judgment. (Ct. Rec. 507.) The Court set  
8 aside the judgment, but denied Global Defendants motion for reconsideration of  
9 the summary judgment Order.<sup>1</sup> (Ct. Rec. 597.)

10 The jury found Global and Mordechai Orian<sup>2</sup> violated the FLCA by failing  
11 to employ the Denied Work Subclass and by discharging or laying off the Green  
12 Acre and Valley Fruit Subclasses in violation of an applicable Clearance Order.  
13 (Ct. Rec. 474 at 1-2.) The jury also found that Global and Mr. Orian discriminated  
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16 <sup>1</sup> Grower Defendants conceded Global committed the violations of FLCA and  
17 AWWPA established at summary judgment and did not ask the Court to reconsider  
18 the summary judgment Order on liability; instead they only requested the Court  
19 reconsider the amount of statutory damages awarded. (Ct. Rec. 597 at 6-7.)

20 <sup>2</sup> The Court subsequently ruled that Mr. Orian could not be held individually liable  
21 under the FLCA. (Ct. Rec. 863 at 15-19.)  
22  
23

1 against the Denied Work, Green Acre and Valley Fruit Subclasses based on race in  
2 violation of § 1981 and the Washington Law Against Discrimination, and awarded  
3 a total of \$300,000 in punitive damages, \$100,000 to each subclass. *Id.* at 2-5.

4 The claims against the Grower Defendants were tried by the Court. (Ct. Rec.  
5 700 at 1.) The Court reached its own conclusion that the Global Defendants did not  
6 discriminate against the subclasses based on race and dismissed Plaintiffs'  
7 discrimination claims against the Grower Defendants. (Ct. Rec. 863 at 7-13.) The  
8 Court upheld the jury verdict against the Global Defendants. *Id.* at 14-15.

9 With respect to the FLCA claims, the Court found: “the Global Defendants  
10 were found to have failed to hire qualified local workers and to have fired qualified  
11 local workers in violation of their contract. Those findings are supported by the  
12 evidence.” (Ct. Rec. 863 at 8.) The Court also found that the evidence showed:  
13 “Global favored the hiring of foreign workers over local workers and fired local  
14 workers to permit foreign workers to take their place .... Global had a strong  
15 economic motive to favor foreign workers .... Global moved foreign workers from  
16 other states to Washington without complying with the H-2A regulations and, in  
17 doing so, denied jobs to local workers.” *Id.* at 10. The Court concluded: “[t]his  
18 evidence presented a strong case that the Global Defendants abused the H-2A  
19 program and breached the contracts offered to local workers, and had an economic  
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1 incentive to do so.” *Id.* While the Court did not specifically rule that the Grower  
2 Defendants are liable for the FLCA violations proven at trial, the Court’s findings  
3 combined with the ruling at summary judgment that the Grower Defendants were  
4 liable for all FLCA violations (Ct. Rec. 507 at 27) are sufficient to establish  
5 Grower Defendant liability for the FLCA violations at trial. *See Pls. Reply Memo*  
6 *in Support of Relief under Rule 59(e)* (Ct. Rec. 880 at 3-11) (summarizing proof of  
7 FLCA violations presented at trial).  
8

### 9 III. CLASS MEMBERSHIP

10 The class is comprised of three subclasses, Denied Work, Green Acre and  
11 Valley Fruit. (Ct. Rec. 136 at 2 & 29; Ct. Rec. 731, Inst. No 12.) Plaintiffs rely  
12 primarily on records provided by Global to establish class membership. Because  
13 Global provided incomplete and inaccurate records, some workers should be  
14 entitled to a presumption they are class members. *See Six Mexican Workers v.*  
15 *Arizona Citrus Growers*, 904 F.2d 1301, 1306 n. 3 (9th Cir. 1990) (“[w]here [the  
16 contractor’s] records were absent or inaccurate, specific employees were rebuttably  
17 presumed to qualify for the relevant statutory damages”). Evidence of class  
18 membership in each of the three subclasses is described below.  
19  
20

21 ///

22 ///

1           **A. Membership in the Denied Work Subclass**

2           At class certification, the Court defined the Denied Work Subclass as farm  
3 workers living in the United States who applied at Global Horizons for agricultural  
4 employment in Washington State at Green Acre or Valley Fruit in 2004, but who  
5 were not employed by Global in 2004. (Ct. Rec. 136 at 2, 5 & 29.) At trial, the  
6 Court modified the definition as follows: “U.S. Resident farm workers who claim  
7 they were offered employment, but were not employed by Global Horizons.” (Ct.  
8 Rec. 731, Inst. No. 12.) The Court clarified the definition by subsequent Order to:  
9 “U.S. Resident farm workers who claim they were offered employment by Global  
10 Horizons to work at Green Acre Farms, Inc. or Valley Fruit Orchards, LLC in  
11 2004, but were not employed by Global Horizons in 2004.” (Ct. Rec. 883 at 4.)  
12

13           Plaintiffs have identified 402 members of the Denied Work Subclass. The  
14 most significant source of evidence establishing subclass membership is a  
15 spreadsheet produced by Global Defendants identified as Exhibit A. A copy of  
16 Exhibit A with the relevant columns showing is attached as Exhibit 3 to the  
17 Declaration of Lori Isley. *Isley Decl.* ¶ 15; *Katell Decl.* ¶¶ 2-5, 29-30. Plaintiffs  
18 identified approximately eighty (80) percent of Denied Work Subclass members  
19 through Global’s Exhibit A. The process Plaintiffs used to identify Denied Work  
20 Subclass members from Global’s Exhibit A is described in supporting declarations.  
21  
22  
23

1 *Isley Decl.* ¶¶ 3-13; *Katell Decl.* ¶¶ 2-28; *Bueno Decl.* ¶¶ 2-8. A chart of the class  
2 members identified through Global's Exhibit A is attached as Plaintiffs' Exhibit A.  
3 Plaintiffs' Exhibit A also includes eighty-eight (88) additional subclass members  
4 identified primarily from other documents provided by Global; the supporting  
5 documents are attached as Exhibits C through F as discussed below.  
6

7 There are five categories of evidence that demonstrate the workers' claim  
8 they were offered employment and therefore are members of the Denied Work  
9 Subclass as defined in the Amended Judgment.

10 **1. Workers on Global's Exhibit A who are documented as having**  
11 **accepted the job are class members.**

12 Global's Exhibit A included many columns of information for each  
13 individual worker, including a column marked "Accept Job." *Isley Decl.* ¶ 15, Ex.  
14 3, Column AK; *Katell Decl.* ¶¶ 22-23. Plaintiffs' Exhibit B is a chart listing 301  
15 workers who were identified as class members from Global's Ex. A and who in  
16 addition had the "accept job" column marked. *Katell Decl.* ¶¶ 22-28; *Bueno Decl.*  
17 ¶ 8. Global's records document both that the workers in this category applied with  
18 Global to work at Green Acre or Valley Fruit in 2004 and that the workers  
19 accepted a job. Since workers could not accept the job unless they had been  
20 offered the job, this evidence is sufficient to show that workers on Global's Ex. A  
21  
22  
23

1 with “accept job” marked claim they were offered employment and therefore are  
2 members of the Denied Work Subclass.

3  
4 **2. Workers who completed a Job Service Questionnaire and  
agreed to commit to the job are class members.**

5 The second type of evidence that demonstrates membership in the Denied  
6 Work Subclass is a completed Job Service Questionnaire with an affirmative  
7 response to question 12: “Do you want this job and are you willing to commit right  
8 now to accept this job?” Plaintiffs identified fifty-five (55) workers who were not  
9 identified on Global’s Exhibit A as having accepted the job, yet Global produced a  
10 completed questionnaire for these workers with an affirmative response to question  
11 12. Only one (1) of these fifty-five (55) workers was listed on Global’s Exhibit A,  
12 but this one worker was not identified as having accepted the job. Global’s failure  
13 to record fifty-four (54) of these workers applied for work and that all of them had  
14 accepted the job, demonstrates Global failed to keep or produce accurate records of  
15 workers seeking employment. A chart identifying these fifty-five (55) workers and  
16 copies of the questionnaires are attached as Plaintiffs’ Exhibit C.<sup>3</sup>

17  
18  
19  
20 <sup>3</sup> Plaintiffs included the Job Service Questionnaire for Erika Gutierrez even though  
21 there is no response indicated to question 12. A note on the document reads: “5/3  
22 confirmed with Erika.” Plaintiffs have no further evidence for Ms. Gutierrez so  
23

1 Mr. Orian testified that Global used Job Service Questionnaires in its  
2 application process. Trial Tr. Day 6 at 99-101:21-22. A worker who was asked by  
3 Global if he was willing to commit right now to accept the job would reasonably  
4 believe he had been offered a job. This is also consistent with Mr. Orian's trial  
5 testimony that Global's practice was to offer workers a job at the end of the phone  
6 interview. Trial Tr., Day 6 at 102:18-22. A Job Service Questionnaire with an  
7 affirmative response to question 12 is sufficient evidence of a worker's claim he  
8 was offered employment and therefore is a member of the Denied Work subclass.  
9

10 **3. Workers who signed an Acknowledgment of Receipt of**  
11 **Clearance Order are class members.**

12 The third type of evidence documenting membership in the Denied Work  
13 Subclass is signed forms prepared by Global called Acknowledgment of Receipt of  
14 Clearance Order. Plaintiffs identified eleven (11) additional class members based  
15 on forms they signed acknowledging they received a clearance order and would  
16 not be terminated prior to receiving two written warnings. A chart identifying these  
17 workers and copies of the Acknowledgments are attached as Plaintiffs' Exhibit D.  
18 Only one of these workers was included on Global's Exhibit A as a worker who  
19

20  
21 this document is submitted in support of her membership in the Denied Work  
22 Subclass.  
23



1 had contacted Global, again demonstrating Global's failure to keep track of  
2 workers seeking employment.

3         The text of the Acknowledgment contemplates that the worker is hired when  
4 the form is signed. Workers who acknowledged they will receive two written  
5 warnings prior to being terminated would reasonably conclude they had been  
6 offered a job. In addition, Mr. Orian testified at trial that after a worker was  
7 offered a job he was required to sign an Acknowledgment to become an employee.  
8 Trial Tr., Day 6 at 102-103:18-12. The text of the Acknowledgment and Mr.  
9 Orian's testimony are sufficient to show workers who signed Acknowledgments  
10 are members of the Denied Work Subclass.  
11  
12

13                 **4. Workers who attended Global orientation or safety training  
14 are class members.**

15         The fourth type of evidence that demonstrates membership in the Denied  
16 Work Subclass is proof the worker attended orientation at which safety training  
17 occurred. Grower Defendants provided safety training sign-in sheets that identify  
18 three additional workers who were not included on Global's Exhibit A. A chart  
19 identifying the workers and copies of the sign-in sheets are attached as Plaintiffs'  
20 Exhibit E.

21         Ms. Menchaca testified that safety training was conducted during the  
22 orientation sessions. Trial Tr. Day 2 at 203:15-18. Additional evidence from  
23

1 WorkSource documented safety trainings were part of the orientation sessions.  
2 Trial Ex. 37, VF00423. Global's foreman, Jose Cuevas, and Plaintiff Perez-Farias  
3 also testified that safety training took place at orientations. Trial Tr., Day 3 at 219-  
4 20:25-2; Day 4 at 63:15-22; Day 5 at 246:13-18 & 249:23-25.

5  
6 Mr. Orian testified at trial that *after* Global offered workers a job in the  
7 interview process, workers were required to attend an orientation. Trial Tr., Day 6  
8 at 102-103:18-12. Global had a practice of restricting participation in orientation  
9 sessions to workers who Global had invited. Trial Tr. Day 2 at 213:8-12; Trial Ex.  
10 37 at VF000423, VF000437. Based on Mr. Orian's testimony and other supporting  
11 evidence, workers who have proof they attended an orientation also have sufficient  
12 evidence to show they are members of the Denied Work Subclass.

13  
14 **5. Workers who Global reported as hired are class members.**

15 The final category of evidence that demonstrates membership in the Denied  
16 Work Subclass is a list of workers who were hired based on information Global  
17 provided to WorkSource. A chart identifying these workers and the ESD  
18 (WorkSource) referral report showing the workers who were hired (previously  
19 filed as part of Trial Ex. 38) are attached as Plaintiffs' Exhibit F.

20  
21 At trial, Ms. Menchaca testified that ESD prepared the report identified as  
22 Trial Ex. 38 based on the referral status information Global provided to ESD. Trial  
23

1 Tr., Day 3 at 42-43:21-11; 46-47:2-12. Only one of the twenty four (24) workers  
2 identified in this category was included on Global's Exhibit A and none were  
3 shown on Exhibit A as having accepted the job, again demonstrating Global's  
4 failure to properly document workers seeking employment. Workers who Global  
5 hired meet the definition of the Denied Work Subclass because a worker must be  
6 offered employment in order to be hired.  
7

8 **6. Workers who applied with Global for work at Green Acre or**  
9 **Valley Fruit, should at a minimum be awarded damages for**  
10 **violations proven at summary judgment.**<sup>4</sup>

11 Plaintiffs have identified nine (9) workers from Global's Exhibit A who do  
12 not have supporting documentation in one of the categories listed above. A chart  
13 identifying these workers is attached as Exhibit G. Each of these workers was  
14 included on Global's Exhibit A indicating the workers applied with Global for  
15 work at Green Acre or Valley Fruit in 2004.

16 Plaintiffs have demonstrated that Global failed to keep or produce accurate  
17 records of workers seeking employment. Because of this failure, these workers  
18

19 <sup>4</sup> Plaintiffs asked the Court to clarify that the definition in the Amended Judgment  
20 only applied to claims determined by the jury and does not limit the relief granted  
21 at summary judgment. (Ct. Rec. 867 at 3-6.) The Court decided to consider the  
22 issue after subsequent briefing, but has not yet ruled. (Ct. Rec. 883 at 3-4.)  
23

1 should be entitled to a presumption they are members of the Denied Work  
2 Subclass. *See Six Mexican Workers*, 904 F.2d at 1306 n. 3. At a minimum, the  
3 Court should find the workers identified here are entitled to statutory damages for  
4 the violations proven at summary judgment since they met the definition of the  
5 class at that time. *See Pls. Request for Clarification of Denied Work Subclass*  
6 *Definition* (Ct. Rec. 867 at 3-6); *Pls. Reply Memo in Support of Request for*  
7 *Clarification* (Ct. Rec. 882).

9 **B. Membership in the Green Acre and Valley Fruit Subclasses**

10 As with the Denied Work Subclass, Plaintiffs identified the majority of class  
11 members through documents Global provided. Global claimed to identify all  
12 workers employed by Global at Green Acre and Valley Fruit in 2004 in its  
13 document identified as Exhibit B. *Isley Decl.* ¶ 3. Plaintiffs identified fifteen  
14 additional members of the Green Acre and Valley Fruit Subclass who were not  
15 included on Exhibit B. A chart summarizing all of the evidence used to identify  
16 members of the Green Acre and Valley Fruit Subclasses and a copy of Global's  
17 Exhibit B is attached as Plaintiffs' Exhibit H.

18  
19  
20 Plaintiffs relied primarily on another document Global produced, identified  
21 as Plaintiffs' Deposition Exhibit 50, for evidence of the farm where class members  
22 were employed. Global prepared Exhibit 50 to identify all domestic workers  
23

1 employed by Global at Green Acre and Valley Fruit in 2004 for the Department of  
2 Labor & Industries. Trial Ex. 5A at 3-4; *Isley Decl.* ¶ 16 A chart identifying all  
3 workers and whether they were included on the Green Acre (GA), Valley Fruit  
4 (VF) or both (VF &GA) spreadsheets in Exhibit 50 and copies of those  
5 spreadsheets are attached as Exhibit I. Plaintiffs identified five additional workers  
6 from Exhibit 50, three from Green Acre and two from Valley Fruit, who were not  
7 identified by Global's Exhibit B.  
8

9         The information Global provided in Exhibit 50 was also not complete.  
10 Plaintiffs have provided additional documentation for fifteen (15) class members,  
11 eleven (11) at Green Acre and four (4) at Valley Fruit who were not included on  
12 Exhibit 50. Of these fifteen, five were included on Global's Exhibit B, but  
13 additional documentation was needed to show their membership in the Green Acre  
14 or Valley Fruit Subclasses. This additional evidence is described in the Green Acre  
15 and Valley Fruit sections below.  
16

17         At summary judgment, Plaintiffs prevailed on their claim that Global  
18 unlawfully deducted Washington State income tax from Green Acre and Valley  
19 Fruit Subclass members. (Ct. Rec. 507 at 18.) Plaintiffs identified one hundred and  
20 twenty two (122) workers affected by examining Attachment B to Global's  
21 Settlement Agreement with the State of Washington which was filed in support of  
22  
23

1 Plaintiffs' motion for summary judgment. (Ct. Rec. 467-3 at 81-103.) A chart  
2 identifying these workers and a copy of Attachment B to the Settlement Agreement  
3 are attached as Exhibit J.

4  
5 **1. Membership in the Green Acre Subclass**

6 Plaintiffs identified one hundred and thirty (130) members of the Green Acre  
7 Subclass. The majority of workers were identified based on Global's Exhibit B  
8 and Exhibit 50. Plaintiffs identified eight (8) class members who were not  
9 included on Exhibit B or Exhibit 50 and three (3) additional class members who  
10 were not included on Exhibit 50. Plaintiffs also identified fifteen (15) class  
11 members with evidence demonstrating they worked at both Green Acre and Valley  
12 Fruit. Plaintiffs identified these class members based on Global's wage and hour  
13 records, an analysis of data included in Global's Exhibit B, and crew logs produced  
14 by the Grower Defendants as discussed below. A chart identifying all of the  
15 members in the Green Acre Subclass is attached as Exhibit K.

16  
17 a. **Global's Wage & Hour Records**

18 Plaintiffs identified nineteen (19) Green Acre Subclass members from  
19 Global's wage and hour records including payroll, time sheets and time cards. A  
20 chart identifying the documents and copies of the documents are attached as  
21 Exhibit L. Four (4) of these class members were not identified by Global's Exhibit  
22  
23

1 B or Exhibit 50. The remaining fifteen (15) class members were identified by  
2 Exhibit 50 as working only at Valley Fruit, but additional wage and hour  
3 documents show they were also employed at Green Acre.<sup>5</sup>  
4

5 b. Additional Information in Global's Exhibit B.

6 Plaintiffs identified three additional class members who were not included  
7 on Exhibit 50 by analyzing the information included in Global's Exhibit B and  
8 comparing it to information compiled for the Green Acre Subclass. Global's  
9 Exhibit B contains a source column labeled "BSA." Plaintiffs identified three  
10 workers who had "BSA" in the source column who were not included on Exhibit  
11 50. Plaintiffs compared all the workers identified on Exhibit B with BSA in the  
12 source column and found all of the other workers, had evidence demonstrating they  
13 were members of the Green Acre Subclass. A chart identifying the three workers  
14 and comparing the evidence is attached as Exhibit M. The three additional  
15 workers identified with BSA in the source column from Exhibit B should be  
16 rebuttably presumed to be members of the Green Acre Subclass.  
17  
18

19 <sup>5</sup> All the workers, except Francisco Castro, have additional evidence they were  
20 employed by Global at Valley Fruit. Plaintiffs were unable to find additional  
21 evidence of Mr. Castro's employment at Valley Fruit. *See Pls. Exhibit L* (chart  
22 identifying workers employed at both farms and supporting evidence).  
23

1 c. Green Acre Crew Lists

2 Finally, Plaintiffs identified four Green Acre Subclass members by  
3 comparing crew lists produced by Grower Defendants with Global's wage and  
4 hour documents. A chart identifying the workers and copies of the crew lists are  
5 attached as Exhibit N. These documents are evidence that the workers are  
6 members of the Green Acre Subclass for the following reasons.  
7

8 First, all of the crew lists appear to indicate the crew boss for all four class  
9 members was Ignacio Ramos. Ignacio Ramos was Global's supervisor at Green  
10 Acre. Trial Tr. Day 2 at 112: 9-24. A number of the references to Mr. Ramos on  
11 the crew lists appear to be phonetic spellings of his first name including "Inico"  
12 (GA00076) and "Inejo" (GA00069).  
13

14 Second, Global payroll documents correspond very closely to the workers  
15 listed on the crew sheets for the dates indicated with the exception of the four  
16 missing workers. Copies of Global's payroll documents are attached following the  
17 crew sheet to which they correspond in Exhibit N. For example, on the crew list  
18 dated June 14, 2004 (GA00076), for hours worked from June 10<sup>th</sup> through 13<sup>th</sup>, all  
19  
20  
21  
22  
23



1 of the workers<sup>6</sup> except Susana Salinas are included on Global's payroll document  
2 (GH\*NB001861) on these dates. Similarly, all of the workers on the June 16, 2004  
3 crew list (GA00069), except Jose I. Gonzalez, are included on Global's payroll  
4 document (GH\*NB001862) for this date showing they worked for ten hours. In  
5 addition, on the crew list covering work performed on August 23rd through August  
6 25th (GA00665), all of the workers except Bernardo Bernal are include on  
7 Global's payroll document (GH\*NB001874) covering these dates.

9 Finally, while one of the crew lists lacks a date (GA00121), preventing  
10 comparison with Global's payroll documents by date, all of the workers, except for  
11 Manuel Ramirez, are included on Global's payroll document for May 31<sup>st</sup> through  
12 June 5<sup>th</sup>. A chart identifying the workers included on the crew list and the payroll  
13 document is attached as Exhibit O.  
14

15 It appears that all four workers listed on Exhibit N were apparently omitted  
16 from Global's wage and hour documents, yet they all have evidence they were  
17 employed by Global at Green Acre. Accordingly all four workers are members of  
18 the Green Acre Subclass.  
19

20 <sup>6</sup> Many of the names on GA00076 are spelled phonetically. Plaintiffs conclude  
21 Abraham Ochoa on GA00076 is the same person as Abraham Macias on  
22 GH\*NB001861.  
23

1                   **2.     Membership in the Valley Fruit Subclass**

2                   Plaintiffs identified one hundred and sixty nine (169) members in the Valley  
3 Fruit Subclass. The majority of workers were identified based on Global’s Exhibit  
4 B and Exhibit 50. Plaintiffs identified two (2) class members who were not  
5 included on Exhibit B or Exhibit 50, and two (2) additional class members who  
6 were not identified on Exhibit 50 from Global’s time cards for the cherry harvest at  
7 Valley Fruit. In addition, Plaintiffs identified twenty-five (25) class members who  
8 were identified on Exhibit 50 as working for Green Acre, but who also have  
9 evidence they worked at Valley Fruit from Global’s wage and hour records. A  
10 chart identifying all of the members in the Valley Fruit Subclass and supporting  
11 evidence are attached as Exhibit P.<sup>7</sup>

- 12  
13  
14                   a.     Valley Fruit Subclass Members who worked in the  
15                   cherry harvest.

16                   At summary judgment, Plaintiffs prevailed on their claim that Global failed  
17 to keep adequate pay statements based on Global’s concession that it failed to  
18 itemize the pieces done when work was paid on a piece rate basis at Valley Fruit.

19  
20 <sup>7</sup> If the worker was identified through wage and hour documents related to the  
21 cherry or pear harvests at Valley Fruit, the supporting documentation is attached  
22 with Pls. Exhibits Q and R.

1 (Ct. Rec. 507 at 19.) John Verbrugge testified at trial that he agreed to pay Global  
2 workers at Valley Fruit the piece rate in the cherry harvest. Trial Tr., Day 8 at  
3 33:21 – 36:12. Plaintiffs identified ninety eight (98) members of the Valley Fruit  
4 Subclass who worked in the cherry harvest at Valley Fruit from Global's time  
5 cards. A chart identifying the members of the Valley Fruit Subclass who worked  
6 in the cherry harvest and copies of the time cards are attached as Exhibit Q.

8 b. Valley Fruit Subclass Members who worked in the pear  
9 harvest.

10 Plaintiffs also prevailed on their claim at summary judgment that Global  
11 failed to pay the piece rate in the pear harvest at Valley Fruit. (Ct. Rec. 507 at 18.)  
12 Plaintiffs identified twenty-four (24) members of the Valley Fruit Subclass who  
13 worked in the pear harvest at Valley Fruit from a Global timesheet. A chart  
14 identifying the workers in this group and a copy of the timesheet is attached as  
15 Exhibit R.

17 **3. Membership in Both Green Acre and Valley Fruit**  
18 **Subclasses**

19 Based on the information reviewed above, Plaintiffs have identified forty-  
20 three (43) class members who were employed by Global at both Green Acre and  
21 Valley Fruit in 2004. A chart identifying these class members and summarizing  
22  
23

1 the evidence supporting their membership in both groups, and if not attached  
2 previously, the supporting documents are attached as Exhibit S.

3 **IV. INJUNCTIVE RELIEF AND DAMAGES**

4 **A. Injunctive Relief**

5  
6 Plaintiffs previously requested injunctive relief in their trial brief. (Ct. Rec.  
7 630 at 41-43.) Pursuant to the FLCA, Plaintiffs seek a permanent injunction  
8 against Global Horizons to prevent them from operating as a farm labor contractor  
9 in Washington until the company obtains valid federal and state contracting  
10 licenses. Plaintiffs request that any injunction remain in place until Global has  
11 paid in full all sums owing from this lawsuit and any other money judgments owed  
12 to farm workers they employed in Washington. Plaintiffs also seek a permanent  
13 injunction against the Grower Defendants to enjoin them from using the services of  
14 any unlicensed farm labor contractor.  
15

16 **1. Standard for Awarding Injunctive Relief**

17 The FLCA allows a person to:

18 [E]njoin any person using the services of an unlicensed farm labor contractor  
19 or to enjoin any person acting as a farm labor contractor in violation of this  
20 chapter, or any rule adopted under this chapter, from committing future  
21 violations.  
22  
23

1 RCW 19.30.180. There are no reported Washington State FLCA cases addressing  
2 injunctive relief. The U.S. Supreme Court has ruled that in order to obtain a  
3 permanent injunction a plaintiff must demonstrate:

4 (1) that it has suffered an irreparable injury; (2) that remedies available at  
5 law, such as monetary damages, are inadequate to compensate for that  
6 injury; (3) that, considering the balance of hardships between the plaintiff  
7 and defendant, a remedy in equity is warranted; and (4) that the public  
interest would not be disserved by a permanent injunction.

8 *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S.Ct. 1837 (2006). A  
9 recent federal district court decision granted a permanent injunction after extensive  
10 analysis of the impact the *eBay* and its impact on prior Ninth Circuit injunction  
11 decisions. *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 518 F.Supp.2d  
12 1197(C.D. Cal. 2007)(copyright infringement case enjoining defendant from  
13 selling software that allowed illegal downloading and copying of audio and video).  
14 The reasoning used in *Metro-Goldwyn* will be followed here.

## 16 2. Irreparable Injury and Adequate Remedy at Law

17 Judge Wilson noted that the analysis used in the first two *eBay* factors,  
18 irreparable injury and adequate remedy at law, “inevitably overlaps.” *Id.* at 1219.  
19 The court determined that both factors weighed in favor of issuing an injunction  
20 due to: 1) the defendant’s likely inability to pay for past violations; and, 2) that  
21 future violations would require multiple lawsuits and leave plaintiffs in an  
22  
23

1 “untenable position.” *Id.* at 1219-1220 (“damages are no remedy at all if they  
2 cannot be collected”).

3 Plaintiffs face similar problems with Global Horizons. Affidavits filed by  
4 Mr. Orian indicate there are multiple lawsuits and judgments from numerous  
5 courts around the country along with a \$4 million federal tax lien. Trial Tr. Day 6  
6 at 185; Ct. Rec. 565. Global has repeatedly violated orders of this Court and  
7 refused to pay sanctions imposed on the company. (Ct. Recs. 458, 597 at 16, 900 &  
8 913.) These patterns indicate an open hostility toward this Court’s orders and an  
9 inability, or unwillingness, to pay monies owed.  
10

11 Future violations by Global and the Grower Defendants would also leave the  
12 Plaintiffs in an untenable position. Grower Defendants should be enjoined from  
13 using unlicensed farm labor contractors in the future, as the harm caused here  
14 would have been prevented if the Grower Defendants had not contracted with  
15 Global. Plaintiffs should not be put in the position of hoping Global and the  
16 Grower Defendants will comply with the FLCA in the future and, when they do  
17 not, be forced to spend scarce resources litigating for years against them. For these  
18 reasons, Plaintiffs believe the first two factors weigh in favor of a permanent  
19 injunction.  
20  
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23

### 3. Balance of Hardships Favors Plaintiffs.

In looking at the balance of hardships factor, the *Metro-Goldwyn* court ruled evidence of past violations “may give rise to an inference that there will be future violations.” *Id.* at 1221. In that case “overwhelming” evidence of the defendant’s illegal objectives merited issuing an injunction. *Id.* The evidence presented at summary judgment and trial proved Global’s serial violations of labor laws in Washington and other states. Trial Exs. 9 & 37 at VF000437; Ct. Recs. 507 & 747. That evidence gives rise to the inference that Global is likely to violate the FLCA in the future. The evidence of Global’s illegal scheme to abuse and profit off low-wage workers also indicates a permanent injunction is warranted. The balance of hardships also favors an injunction against Grower Defendants because they were complicit in Global’s unlawful objectives to replace local workers with H-2A workers.

### 4. Public Interest Would be Served.

There is no public interest in allowing Global to operate as farm labor contractor in Washington unless farm workers have been made whole regarding past abuses. *See Id.* at 1222 (“no public interest will be disserved by enjoining the Defendant from [violating the copyright laws]”). Similarly, the public interest would be served in enjoining the Grower Defendants from using unlicensed farm

1 labor contractors in the future. Accordingly, this factor also weighs heavily in  
2 favor of a permanent injunction.

3         This Court and the jury have determined that ten FLCA violations occurred  
4 in 2004. While Global Defendants are not presently licensed, the company  
5 continues to appeal the loss of its federal license. Trial Exs. 9, 82 & 91; Trial Tr.  
6 Day 6 at 208:12-18. Therefore, the possibility exists that Global will try to re-  
7 establish business in Washington in the future. If that occurs, there is a strong  
8 likelihood that Global will commit future violations of the FLCA. To defeat a  
9 request for injunctive relief, it must be “absolutely clear” that a defendant will not  
10 return to its old ways of doing business. *LGS Architects, Inc. v. Concordia Homes*  
11 *of Nevada*, 434 F.3d 1150, 1153 (9<sup>th</sup> Cir. 2006); *Braam ex rel. Braam v. State*, 150  
12 Wash.2d 689, 709, 81 P.3d 851(2003). Moreover, conditioning the dissolution of a  
13 permanent injunction against Global on the payment of monies owed to  
14 Washington farm workers “insures future compliance where it is assured a  
15 wrongdoer is compelled to restore illegal gains.” *State v. Ralph Williams' North*  
16 *West Chrysler Plymouth, Inc.*, 87 Wash.2d 298, 319, 553 P.2d 423 (1976)(car  
17 dealership enjoined from committing future unfair and deceptive sales practices  
18 and required to pay restitution to defrauded customers). Plaintiffs have met the  
19  
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1 standard for issuance of a permanent injunction and request the Court enjoin the  
2 Defendants as set forth above.

3 **B. FLCA Statutory Damages**

4 **1. Summary of Plaintiffs' Previous FLCA Briefing And Related**  
5 **Court Orders**

6 Plaintiffs have extensively briefed the issue of the Global's multiple  
7 violations of the FLCA. (Ct. Rec. 460, 466, 561, 630, 761, & 806.) Plaintiffs'  
8 have documented undisputed facts which relate to each FLCA violation and these  
9 facts should assist the Court with damage determinations. (Ct. Rec. 461 & 467.)  
10 In light of this record, Plaintiffs will try to limit repetition of previous arguments.  
11 An updated chart of the ten (10) FLCA violations and the proposed damage awards  
12 is attached as Exhibit T.<sup>8</sup>

13 **2. Standard for Awarding FLCA Damages**

14 This Court has determined that the amount of FLCA damages to be awarded  
15 shall be determined using the seven factors set forth in *Six (6) Mexican Workers v.*  
16 904 F.2d 1301, 1301 (9<sup>th</sup> Cir. 1990). (Ct. Rec. 597 at 13.) Those factors are: 1) the  
17  
18

19  
20 <sup>8</sup> Plaintiffs have updated the previous chart filed (Ct. Rec. 761, Ex. A at 13) based  
21 on the information submitted here in support of class membership. *See* Pls. Exs.  
22 A, J, K, Q, R & S.  
23

1 amount of award to each plaintiff, 2) the total award, 3) the nature and persistence  
2 of the violations, 4) the extent of the defendant's culpability, 5) damage awards in  
3 similar cases, 6) the substantive or technical nature of the violations, and 7) the  
4 circumstances of each case.

5  
6 a. Total Award, Amount Awarded To Each Plaintiff, and Damage  
Awards in Similar Cases – Factors 1, 2, and 5.

7 Plaintiffs propose a total FLCA award of \$ 2,006,000. This amounts to \$  
8 2,500 for each member of the Denied Work Subclass, \$ 3,500 to \$ 4,000 for each  
9 member of the Green Acre Subclass, and \$ 3,500 to \$ 5,000 for each member of  
10 the Valley Fruit Subclass. These awards are not disproportionately punitive based  
11 on similar awards in other cases as Plaintiffs' have argued in previous filings. (Ct.  
12 Rec. 630 at 30-32; Ct. Rec. 761 at 6-8.)

13  
14 b. Substantive Nature of the Violations – Factor 6.

15 The ten FLCA violations can be divided into four separate categories:  
16 recruitment violations; working arrangement violations; failing to pay wages; and,  
17 failing to provide adequate pay statements. All of these categories have been  
18 determined by the Ninth Circuit to be substantive violations of the AWWA. In  
19 *Martinez v. Shinn*, 992 F.2d 997 (9<sup>th</sup> Cir. 1993), the grower sought to reduce a  
20 statutory damage award arguing the violations were technical rather than  
21 substantive. The Ninth Circuit refused, ruling that nearly identical provisions of  
22  
23

1 the AWWA: failure to make written disclosures; failure to keep pay records; failure  
2 to pay wages; failure to abide by the terms of the working arrangement; and  
3 unlawful firings, were all *substantive* violations of the Act. *Id.* at 999-1000. The  
4 only violation found to be technical was the failure to post the rights of the workers  
5 in a conspicuous location. *Id.* This Court should find that all violations committed  
6 by Global in this case are substantive.  
7

8 c. Culpability of Defendants, Extraordinary Circumstances, and  
9 Nature and Persistence of the Violations – Factors 3, 4, and 7.

10 It is hard to imagine more extraordinary circumstances and a more culpable  
11 defendant than Global Horizons. Global's wholesale violations of the FLCA  
12 allowed it to charge exorbitant recruitment fees to H-2A workers as well as bill the  
13 Grower Defendants nearly \$ 4 million dollars, a significant portion of which was  
14 paid to H-2A workers that should have been paid to local workers who were  
15 denied jobs or unjustifiably terminated from work. Trial Exs. 4, 5 & 8A.  
16 Moreover, the serious nature of the violations and the number of states where  
17 Global violated the rights of workers prior to arriving in Washington demonstrates  
18 the extraordinary circumstances and Global's culpability.  
19

20 Global Horizons had a plan that it sold to the Grower Defendants – replace a  
21 large portion of the local workforce with submissive workers from Thailand. Trial  
22 Exs. 1 & 2. And, between January and August, 2008, the Defendants worked  
23

1 together to carry out the plan. However, when hundreds of local workers sought or  
2 applied for work, the only way to carry out the plan was to violate the FLCA in  
3 myriad ways: not provide required disclosures; fail to call workers for  
4 employment; lie to workers in the recruitment process; provide false and  
5 misleading information about the terms and conditions of employment; violate  
6 federal law by bringing in H-2A replacement workers without approval; fire and  
7 lay off local workers without following disciplinary procedures; and commit wage  
8 fraud by deducting non-existent state taxes from workers' paychecks. While the  
9 Grower Defendants may not have known all the details of Global's wrongdoing,  
10 they made the decision to retain Global, continued using the services of an  
11 unlicensed contractor and were too involved in the day-to-day operations of their  
12 respective orchards to be without blame.

### 15 **3. Global's Culpability**

16 Mordechai Orian built Global Horizons on two premises: greed and breaking  
17 the law. Former Global employee Ebony Williams described Mr. Orian:

18 He's a crook. He's a shady guy....[H]e will try to make a million dollars off  
19 a dollar and he'll do whatever he...has to do to get it. Cutting corners, you  
20 know, cheating DOL. He's just – one word – a crook.

21 Williams Testimony, Day 1 at 31:4-12. Mr. Zhou described how those dollars  
22 came to Global primarily in cash recruitment fees paid by H-2A workers. Orian  
23

1 instructed Mr. Zhou to provide no receipts and that Global received the money  
2 through “special channels.” Zhou Testimony, Day 2 at 37:16 – 38:4 and 47:25 –  
3 48:9. Furthermore, Mr. Zhou testified that Mr. Orian knew that taking cash from  
4 H-2A workers was illegal, but that a policy was in place to do so in 2004 & 2005.  
5 *Id.* at 42:23-9 and 63:20 - 64:9.  
6

7 Mr. Orian also gave his employees financial incentives to violate the law by  
8 instituting practices to encourage the hiring of H-2A workers over local workers,  
9 contrary to the preference the law provides for local workers. 8 U.S.C. §  
10 1188(a)(1)(A); *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez* 458 U.S.  
11 592, 596, (1982) (“obvious point of this somewhat complicated statutory and  
12 regulatory framework is to provide...United States workers...a preference over  
13 foreign workers for jobs”).  
14

15 Bruce Steen was paid a \$50-100 commission for every H-2A worker placed  
16 in the United States. Trial Tr. Day 2 at 83:16 – 84:5. Mr. Steen pressured Maria  
17 Fernandez and Ebony Williams to get H-2A workers in place at Green Acre and  
18 Valley Fruit. Trial Tr. Day 2 at 84:10-85:1. Mr. Steen also felt pressure from John  
19 Verbrugge who was “impatient” to get H-2A workers at Valley Fruit. Trial Tr.  
20 Day 2 at 87:3-17.  
21  
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23

1 Mr. Orian also pressured his workers to violate the law. Ebony Williams  
2 testified in detail about the “elimination process” employed by Mr. Orian to get rid  
3 of local workers. As part of that process, Mr. Orian told Ms. Williams and other  
4 Global employees not to provide local workers with information about their rights  
5 to transportation and housing. Williams Testimony, Day 1 at 82:3-5. Mr. Orian  
6 also told Ms. Williams to lie about the reasons local workers were terminated in  
7 Washington State. *Id.* at 33:1–35:2. She also lied to the Department of Labor and  
8 forged documents for Mr. Orian. *Id.* at 31:13-32:12 and 55:3-14; *see also* Trial Ex.  
9 37 at VF000419 (memo regarding lies of Bruce Schwartz to state officials  
10 regarding Global’s violations of the law in Washington State). She further testified  
11 that all of these practices were the business plan the entire two years she worked  
12 for Global. Williams Testimony, Tr. Day 1 at 35:15-17 and 15:2-7. Moreover,  
13 Ms. Williams testified that Mr. Morford and Mr. Verbrugge were aware of the  
14 elimination process: “[t]hey knew that we wouldn’t be able to get the H-2A  
15 approved if we kept all the local workers and they didn’t want that to happen....”  
16 Williams Testimony, Day 1 at 183:10-12.  
17  
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19

20 All of these improper business practices were employed in other states prior  
21 to Global’s arrival in Washington. The Department of Labor has been  
22 investigating Global’s violations of worker rights in Texas, Arizona, Hawaii and,  
23

1 California. Williams Testimony, Day 1 at 20:9-20 and 22:11–25:5 (Texas); Trial  
2 Tr. Day 6 at 219:17- 220:13 (Arizona & Hawaii); 220:14- 224:3 (Taft Farms,  
3 California). Global has also been debarred by the federal government from using  
4 the H-2A program. Trial Tr. Day 6 at 195:12-17.  
5

6 Global’s extreme culpability is demonstrated by the fact that the company  
7 had the financial resources to comply with the law, but chose to violate the law  
8 instead. Global retained the Washington, D.C. labor law firm of McGuiness,  
9 Norris & Williams, to provide training and oversight. Mr. Orian described the  
10 close relationship Global had with Dr. James Holt, specialist in H-2A regulations  
11 at the firm: “*Every application, every question, everything – every question we*  
12 *had all the people at the office had direct contact with [Dr. Holt]....*” Trial Tr.  
13 Day 6 at 34:11-13. (emphasis and bold added)  
14

15 Dr Holt testified he had worked with Global since late 1999 or early 2000.  
16 Trial Tr. Day 7 at 14:19-24. He trained Global staff on “all of the regulations and  
17 procedures...and how to conduct their activities in compliance with the Labor  
18 Department’s regulations, policies, and practices and procedures.” Trial Tr. Day 7  
19 at 23:6-14. He provided a two-day training session in Los Angeles at which  
20 Global staff, including Mr. Orian and Mr. Schwartz, were present. Trial Tr. Day 7  
21 at 67:12-15 and 68:3-9.  
22  
23

1 At that training, Dr. Holt informed Global staff that the company could not  
2 bring in H-2A workers unless there was an approved Clearance Order. Trial Tr.  
3 Day 7 at 68:10-13. He told staff they could not bring in more H-2A workers than  
4 the Clearance Order allowed. Trial Tr. Day 7 at 71:4-14. He advised staff that  
5 they could not transfer H-2A workers to other employers unless additional  
6 approval had been obtained. Trial Tr. Day 7 at 71:15-22.

8 Yet at every key juncture in 2004 when Global violated H-2A regulations,  
9 and thus the FLCA, Dr. Holt was never consulted. Dr. Holt testified that had he  
10 been asked about Global paying commissions based on the number of H-2A  
11 workers employed in the U.S. he would have advised the company it was “not a  
12 good practice.” Trial Tr. Day 7 at 76:15 – 77:7. Dr. Holt was not consulted about  
13 transportation issues in Washington State. Trial Tr. Day 7 at 26:16-18. When  
14 Global illegally employed H-2A workers at Valley Fruit, Green Acre, and Zirkle  
15 Fruit in 2004, Dr. Holt could not recall ever being consulted by Mr. Orian or  
16 anyone else at Global. Trial Tr. Day 7 at 79:1-80:6. If he had been asked, Dr. Holt  
17 would have informed Global that they could not employ workers above the number  
18 approved in the Green Acre Clearance Order. (Ct. Rec. 467 ¶92.)

21 Mr. Orian was directly aware of these violations. He was present in  
22 Washington 7-10 times in 2004, stayed 2-3 days each visit, and talked to Mr.  
23



1 Verbrugge and Mr. Morford during the visits. Trial Tr. Day 6 at 113:8-17. He was  
2 called daily by Mr. Schwartz who told him “exactly [what was] going on.” Trial  
3 Tr. Day 6 at 113:21-22. Mr. Orian admitted on cross-examination that “it was  
4 possible” he knew that H-2A workers were illegally employed by Valley Fruit  
5 beginning in June, 2004. Trial Tr. Day 6 at 151:6-8. When Mr. Schwartz raised  
6 concerns about violating the law by moving H-2A workers from Green Acre to  
7 Valley Fruit, Mr. Orian responded to by telling him, “[W]e can move them from  
8 farm to farm as needed, so don’t worry about that.” Trial Ex. 77 at GHEM000438.  
9 Yet for all this constant contact with Mr. Schwartz, Mr. Orian and Global kept  
10 other key staff in the dark about information that would have informed local  
11 workers about their rights. José Cuevas testified he was never provided H-2A  
12 training. Trial Tr. Day 3 at 194:21 - 195:1. Mr. Cuevas only saw Clearance Orders  
13 that were in English and he never translated them. Trial Tr. Day 3 at 197:13-24.  
14 Mr. Cuevas laid off local workers in March, 2004 at Valley Fruit, but was never  
15 told that Global was filing a Clearance Order for 110 workers at that same time.  
16 Trial Tr. Day 4 at 71:3 – 72:12. He further testified that he was never told about  
17 the August, 2004 Valley Fruit Clearance Order that required Global to pay \$19 a  
18 bin to harvest pears. Trial Tr. Day 3 at 214:20 - 215:19.  
19  
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1 Based on Global's ability to comply with the law and Mr. Orian's  
2 knowledge that Global was violating the law, there can be no question of Global  
3 Horizon's culpability and the magnitude of that culpability.

4 **4. Valley Fruit's Culpability**

5 Valley Fruit is jointly liable with Global of all violations of FLCA because it  
6 knowingly used the services of an unlicensed farm labor contractor. (Ct. Rec. 507  
7 at 27.) "[N]either Mr. Morford nor Mr. Verbrugge investigated whether Global  
8 possessed a valid Washington State farm labor contractor license, and, after they  
9 were each advised that no license existed in July of 2004, they continued to use  
10 Global's services." *Id.* In addition, Valley Fruit and Mr. Verbrugge were involved  
11 with Global's violations in the following ways.

12 Mr. Verbrugge was "extremely knowledgeable about the H-2A program."  
13 Trial Tr. Day 2 at 83:1-5. As of 2003, he understood that H-2A workers could not  
14 be employed at Valley Fruit unless there was prior approval from the federal  
15 government. Trial Tr. Day 8 at 56:16-25. Despite this personal knowledge, Mr.  
16 Verbrugge worked in concert with Global to employ H-2A workers at Valley Fruit  
17 in violation of the law.

18 Mr. Verbrugge worked with Bruce Steen to create a spread-sheet used by  
19 Global to apply to the federal government for H-2A workers that included an  
20  
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1 inflated number of workers needed at Valley Fruit. Trial Exhibit 3; Trial Tr. Day 8  
2 at 58:13 – 59:1. By the end of June, Mr. Verbrugge signed a letter requesting an  
3 additional 20 H-2A workers *above* the inflated number he previously provided to  
4 Global. Trial Tr. Day 8 at 81:12-23. Even though Valley Fruit’s actual labor  
5 demand for pear and apple harvest was 40 workers, Mr. Verbrugge gave an  
6 inflated number to Global of 50 workers, then later signed paperwork authorizing  
7 Global to apply to bring in 70 H-2A workers. Trial Exhibit 3; Trial Tr. Day 8 at  
8 81:12-23. Mr. Verbrugge admitted that he did not know where he was going to  
9 employ these workers. Trial Tr. Day 8 at 82:12-22.

11           Additionally, Mr. Verbrugge permitted Global to illegally employ H-2A  
12 workers without prior approval from the federal government for over 13,000 hours  
13 at Valley Fruit beginning in June, 2004. Trial Tr. Day 8 at 78:15-21. Mr.  
14 Verbrugge testified that during the June, 2004 cherry harvest, he knew there were  
15 problems with Global’s H-2A application process for Valley Fruit. Trial Tr. Day 8  
16 at 77:16-25. He stated, “Mr. Schwartz and Mr. Orian told me there w[ere] a lot of  
17 problems.” Trial Tr. Day 8 at 78:4-9. Most tellingly, Mr. Verbrugge admitted in  
18 his deposition and confirmed at trial he knew it was wrong to employ H-2A  
19 workers at Valley Fruit without approval. “***I should not have been doing what I***  
20 ***was doing.***” Trial Tr. Day 8 at 78:24-79:1 (emphasis and bold added).

1 Finally, Mr. Verbrugge was directly involved with the August, 2004 firing  
2 of Global's local Perez crew during the pear harvest. Trial Tr. Day 8 at 28:17-25.  
3 Mr. Verbrugge did not contradict Dr. Schotzko's testimony that the local crew Mr.  
4 Verbrugge fired was replaced by the less productive H-2A Boonlue crew. Trial Tr.  
5 Day 5 at 56:2 - 59:13. Also unrebutted was Dr. Schotzko's testimony that the  
6 Boonlue crew was illegally employed at Valley Fruit in November 2004, *after* the  
7 H-2A contract expired on October 31, 2004. Trial Ex. 5; Trial Tr. Day 5 at 60:5-  
8 62:15. Valley Fruit was a willing participant in Global's lawlessness.  
9

#### 10 **5. Green Acre's Culpability**

11 Green Acre is also jointly liable with Global for all violations of FLCA  
12 because it knowingly used the services of an unlicensed farm labor contractor as  
13 determined at summary judgment. As with Valley Fruit and Mr. Verbrugge, Green  
14 Acre and Jim Morford were also involved with Global's violations by employing  
15 H-2A workers in excess of the Clearance Order and terminating local crews at the  
16 same time H-2A workers were arriving at Green Acre.  
17

18 Mr. Morford was also "very knowledgeable" about the H-2A program. Trial  
19 Testimony Day 2 at 83:6-9. Mr. Morford raised no defense about why he allowed  
20 more H-2A workers to be employed at Green Acre during an eight week period,  
21 between August and October, 2004, than the Clearance Order legally permitted.  
22  
23

1 Trial Exs. 4 & 5; Ct. Rec. 467 at ¶¶ 83-92. Mr. Morford kept track of all crews  
2 working at Green Acre. He testified that he had a large “command board” in his  
3 office that allowed him to track “all the crews out in the field every day, how many  
4 people were out there. On that command board, there’s also each crew, *and we*  
5 *kn[ew] how many people were with each crew.*” Trial Tr. Day 7 at 190:21-23  
6 (emphasis and bold added); Ct. Rec. 461 at ¶ 19. Bruce Scwhartz told Mr. Morford  
7 that Green Acre had been approved for H-2A workers in the first part of March,  
8 2004. Trial Tr. Day 7 at 195:5-10. As of that date, Mr. Morford should have  
9 ascertained the exact number of H-2A workers that had been approved and taken  
10 steps to ensure that number was never exceeded. He failed to do so.  
11

12  
13 Moreover, Mr. Morford’s close scrutiny of all crews told him that local  
14 crews were being terminated at times when H-2A workers were arriving.

15 Rafael Zepeda was terminated from Green Acre on July 2, 2004 during the apple  
16 thinning. Trial Tr. Day 5 at 13:11 and 21:14-15. This was two days before Wisit  
17 Kampilo arrived in Washington to begin work at Green Acre. Trial Tr. Day 2 at  
18 41:3-7. Mr. Zepeda was not given any prior warnings for poor work performance.  
19 Trial Tr. Day 5 at 14:5-8. Instead, he was told there was “a lot of Thai people, and  
20 that there were more on the way.” Trial Tr. Day 5 at 21:1-10. Mr. Zepeda was  
21  
22  
23

1 “laid off” despite the fact there was still a lot of thinning work left to do. Trial Tr.  
2 Day 5 at 21:16-20.

3 Mr. Morford was aware of the reduction in the Global Horizons domestic  
4 crew during the thinning. “I don’t know the exact numbers, but they did drop  
5 [during the thinning]....” Trial Tr. Day 7 at 201:22-24. Furthermore, Mr. Morford  
6 did not observe any performance problems from Global’s local workers during the  
7 thinning. “They had a pretty decent crew going there.” Trial Tr. Day 7 at 201:18.

9 Mr. Morford’s claim to be unaware that local workers were being let go  
10 while H-2A workers were arriving during the apple thinning is not consistent with  
11 his testimony that he tracked the crews on a daily basis. The *Green Acre Crew*  
12 *Hours* chart in Trial Exhibit 5 shows a dramatic decrease in local workers and a  
13 corresponding spike in H-2A workers during the thinning. During a five week  
14 span from June 20-July 25, 2004, Global’s domestic crew dropped almost 50%  
15 (from 38 to 18), while the number of H-2A workers at Green Acre nearly tripled  
16 (from 43 to 123). Trial Ex. 5. The number of H-2A crews also doubled – from 2  
17 to 4; adding the Wichai and Narong crews to the already present Prinya and  
18 Boonlue crews. *Id.* There was no testimony that Mr. Morford stopped tracking  
19 crews and the number of workers on his command board. There was no testimony  
20 that he stopped paying attention to the information on his command board. He  
21  
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23

1 must have known and taken note of all these crew changes on his command board.  
2 He must have known and taken note of the fact that local workers were being  
3 replaced by H-2A workers.

4 Mr. Morford was also directly involved in the mass August firing of the  
5 local Global Ramos crew that eliminated all but a skeleton local crew whose  
6 primary job after the firing was to drive the buses for the H-2A workers. Trial Tr.  
7 Day 3 at 211:22 - 212:8. The Ramos crew was fired without any written warnings,  
8 and, in fact, Mr. Scwhartz told them they were his “best workers.” Trial Tr. Day 3  
9 at 208:11-12.

10  
11 Mr. Morford’s testimony that he simply didn’t want Global’s local crew  
12 working in Block 19 of the Gala harvest, but they had other assignments on his  
13 command board that could have been accomplished, is not credible. Trial Tr. Day  
14 7 at 218:2-22. Additionally, Mr. Morford’s testimony that he received a call from  
15 José Cuevas asking where to start the crew, and he responded by saying, “[T]alk to  
16 Bruce. I can’t tell you what to do with that crew.” likewise lacks credibility. Trial  
17 Tr. Day 7 at 218:11-15. That testimony indicates that Mr. Morford delegated some  
18 decision making to Mr. Schwartz which directly contradicts facts found at  
19 summary judgment that Mr. Morford made “*all* the decisions about when to start  
20 or stop particular work tasks performed by Global’s crews” by telling Mr.  
21  
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1 Schwartz daily when and where tasks needed to happen. (Ct. Rec. 461 at ¶ 12 &  
2 20.) Mr. Cuevas testified that Bruce Schwartz told him “the general” wanted the  
3 crew to stop work, and the general was Mr. Morford. Trial Tr. Day 3 at 208:1-4.  
4 Mr. Cuevas explained the charade, “[T]hat seemed to me that they were being  
5 discharged, but they weren’t being told that directly.” Trial Tr. Day 3 at 209:17-18.  
6

7 Mr. Morford, as Green Acre’s “general,” with his command board and daily  
8 oversight of all crews, had too much control and knowledge to be ignorant of  
9 Global’s violations of the law. He failed to take steps to stop the violations. As  
10 with Valley Fruit, Green Acre was a willing participant in Global’s trampling of  
11 state and federal law.  
12

### 13 **6. Time Value of Damage Award**

14 Plaintiffs have previously raised the issue that the Court should consider the  
15 time value of money when setting the FLCA damage awards. (Ct. Rec. 630 at 32;  
16 Ct. Rec. 761 at 7.) The FLCA became law in 1985 – 23 years ago. At least two  
17 federal courts have recognized the need to take this into account when setting  
18 statutory damage awards in AWPAs cases. Writing in 2000 in this district, Judge  
19 Nielsen reasoned,  
20

21 *Six Mexican Workers* was decided in 1990, and addressed violations that  
22 occurred during the 1976-77 picking season. The bench trial at which  
23 damages were awarded occurred in 1984. The intervening 16 years between  
the *Six Mexican Workers*' decision and this Court's determination of



1 statutory damages have witnessed a dramatic change in the value of money.  
2 While an individual class member award of between \$400 and \$1,600 may  
3 have over-compensated a plaintiff for a few hours work in 1984, that award  
would be much less significant today.

4 *Herrera v. Singh*, 103 F.Supp.2d 1244, 1249 (E.D. Wash. 2000); *see also Castillo*  
5 *v. Case Farms of Ohio, Inc.*, 96 F.Supp.2d 578, 631 n.64 (W.D.Tex., 1999) (“\$500  
6 damage award might be necessary to achieve the same level of deterrence as \$300  
7 in 1983”). Plaintiffs believe all violations of the FLCA warrant a \$500 award,  
8 however, should this Court rule that certain violations merit lower awards, those  
9 awards should be adjusted upward based on the principle outlined in *Herrera* and  
10 *Castillo*.

11  
12 **C. Defendants Jim Morford and John Verbrugge are Personally**  
13 **Liable for FLCA Violations.**

14 “Any person who knowingly uses the services of an unlicensed farm labor  
15 contractor shall be personally, jointly, and severally liable with the person acting as  
16 a farm labor contractor to the same extent and in the same manner as provided in  
17 this chapter.” RCW 19.30.200. Consistent with the Court’s ruling that Defendants  
18 Green Acre and Valley Fruit knowingly used the services of an unlicensed farm  
19 labor contractor in 2004 and therefore are jointly and severally liable, the Court  
20 should also find that Mr. Morford and Mr. Verbrugge are personally liable with  
21 Global for all violations of FLCA.  
22  
23

1 Similar to FLCA, the Agricultural Worker Protection Act (AWPA) provides:

2 “No *person* shall utilize the services of any farm labor contractor ... unless the  
3 person first takes reasonable steps to determine that the farm labor contractor  
4 possesses a certificate of registration which is valid and which authorizes the  
5 activity for which the contractor is utilized.” 29 U.S.C. § 1842 (emphasis added).

6 Courts interpreting this provision, as well as similar language in the predecessor  
7 statute to AWPA<sup>9</sup>, found individual corporate officers who dealt with the farm  
8 labor contractors, were jointly liable with their corporations for using the services  
9 of an unlicensed farm labor contractor. *See Avila v. A. Sam & Sons*, 856

10 F.Supp.763, 773-74 (W.D.N.Y. 1994) (individual who served as the President of  
11 the Board of Directors and recruited farm labor contractors was liable with his  
12 corporation under AWPA); *DeLeon v. Ramirez*, 465 F. Supp. 698, 706 (S.D.N.Y.

13 1979) (individual who served as director, president and general manager of a  
14 corporation who was responsible for dealing with the contractor, was jointly liable,

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18 <sup>9</sup> AWPA’s predecessor, the Farm Labor Contractor Registration Act (FLCRA),  
19 provided that “no *person* shall engage the services of any farm labor contractor to  
20 supply farm laborers unless he first determines that the farm labor contractor  
21 possesses a certificate from the Secretary that is in full force and effect at the time  
22 he contracts with the farm labor contractor.” 7 U.S.C. § 2043(c) (emphasis added).

1 along with the corporation, under FLCRA even if the individual acted ostensibly  
2 for the corporation). Other state labor laws similarly make officers liable with their  
3 corporations for violations of wage payment laws. *See Schilling v. Radio*  
4 *Holdings, Inc.*, 136 Wash.2d 152, 158-59 (1998) (holding president of corporation  
5 individually responsible for failure to pay wages under RCW 49.52.050 which  
6 provides any employer or officer is liable).

8 Mr. Morford and Mr. Verbrugge are both officers or partners of their  
9 respective corporations and were personally engaged in retaining the services of  
10 Global. Trial Tr. Day 7 at 146:13-20; 242: 3-17; Day 8 at 5: 20-22; at 22: 9-14;  
11 24: 1-14; 37:10-23. The Court already determined that “neither Mr. Morford nor  
12 Mr. Verbrugge investigated whether Global possessed a valid Washington State  
13 farm labor contractor license, and, after they were each advised that no license  
14 existed in July of 2004, they continued to use Global’s services.” (Ct. Rec. 507 at  
15 27.) Accordingly, the Court should also find Mr. Morford and Mr. Verbrugge are  
16 jointly liable with their corporations for all violations of FLCA.

18 **D. The Court Should Not Require Proof of Immigration Status**  
19 **for FLCA Damages.**

20 Plaintiffs requested the Court rule whether class members would be required  
21 to present proof of immigration status prior to the issuance of class notice. (Ct.  
22 Rec. 931 at 2.) The Court requested additional argument at the September 2, 2008  
23

1 hearing. *Id.* at 5. During the hearing, Grower Defendants conceded that proof of  
2 immigration status is not required for members of the Green Acre and Valley Fruit  
3 Subclasses. The Court did not rule at the hearing, but ordered the parties to meet  
4 and confer regarding notice to the class. (Ct. Rec. 942 at 1.) The Court approved  
5 notices to the class.<sup>10</sup> (Ct. Rec. 942.) The Notice to the Green Acre and Valley  
6 Fruit Subclass informed all class members that the decision to pursue statutory  
7 damages for FLCA means that “people who worked at Green Acre or Valley Fruit  
8 will NOT have to show proof of their immigration status.” (Ct. Rec. 939-3 at 3.)  
9 Accordingly, Plaintiffs treat this issue as resolved for the Green Acre and Valley  
10 Fruit Subclasses and only address whether proof of immigration status should be  
11 required for FLCA violations for the Denied Work Subclass.  
12

13  
14 Plaintiffs have previously briefed this issue. (Ct. Rec. 868 at 5-7; 897 at 18-  
15 21.) The Court observed that one may conclude that immigration status may not  
16 be relevant to FLCA violations for failure to provide disclosures and providing  
17 false and misleading information since the violations occurred prior to the offer  
18 and acceptance of employment. (Ct. Rec. 931 at 3-4.) The two remaining FLCA  
19

20 <sup>10</sup> The Court concluded Global Defendants waived any objections to the proposed  
21 Notice to the Class based on their failure to meet and confer and participate in the  
22 hearing on September 3, 2008. (Ct. Rec. 942 at 2.)  
23

1 violations for the Denied Work Subclass are the violation of RCW 19.30.110(5)  
2 proven at summary judgment for employing H-2A workers in violation of federal  
3 law (Ct. Rec. 507 at 15-17) and the violation of subsection (5) proven at trial for  
4 failure to employ class members (Ct. Rec. 747 at 1). Even if the Court concludes  
5 that the violation of subsection (5) involves the enforcement of provisions in the  
6 clearance order, immigration status is still not relevant as discussed below.  
7

8         The Denied Work Subclass is comprised of class members who never  
9 worked for Global in 2004. Class members are only required to show “they claim  
10 they were offered employment” or for violations established at summary judgment  
11 that they applied at Global. To comply with federal immigration law, employers  
12 are required to verify that a person is authorized to work at “the actual  
13 commencement of employment of an employee for wages or other remuneration.”  
14 *Collins Foods Int’l, Inc. v. U.S.I.N.S.*, 948 F.2d 549, 551-52 (9th Cir. 1991)  
15 (quoting federal regulation and concluding employer who offered a job over the  
16 phone without having seen documentation did not violate 8 U.S.C. § 1324a(1)(A)’s  
17 prohibition against hiring unauthorized alien). As the Ninth Circuit recognized,  
18 waiting to verify immigration status until the day a person commences  
19 employment is the preferable approach since pre-employment questioning of  
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1 citizenship exposes employers to charges of discrimination under Title VII or the  
2 unfair immigration related employment practices contained in IRCA. *Id.* at 552.

3 Because Global was not required to verify authorization to work prior to  
4 Denied Work Subclass members actually starting work, the Court should not now  
5 impose verification requirements to recover statutory damages for FLCA  
6 violations. Global violated RCW 19.30.110(5) by employing H-2A workers  
7 without approval from the federal government and by failing to employ class  
8 members. A class member would not have been required to show proof of  
9 authorization to work until they commenced work; an opportunity Global denied  
10 for all subclass members. The purpose of statutory damages is to promote  
11 enforcement and deter violations. *Martinez v. Shinn*, 992 F.2d 997, 999 (9th Cir.  
12 1993). The Court should award statutory damages to all members of the Denied  
13 Work subclass and send a clear message that employers may not unlawfully refuse  
14 to employ local workers based on discriminatory *pre-employment* practices.  
15

16  
17 **E. The Court Should Distribute Punitive Damages to All Subclass**  
18 **Members on a Pro Rata Basis.**

19 The jury awarded punitive damages to each of the three subclasses for  
20 violating 42 U.S.C. § 1981. “All persons ... shall have the same right in every  
21 State and Territory to make and enforce contracts...and to the full and equal  
22 benefit of all laws....” 42 U.S.C. § 1981(a). Accordingly, § 1981 protects pre-  
23

1 employment violations as well as termination of contracts. Punitive damages focus  
2 on the conduct of the person violating the law, not the victims of discrimination.  
3 *See Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1191 n. 16 (9th Cir. 2007) (plaintiffs  
4 are entitled to punitive damages where an employer's pattern and practice of  
5 discrimination was undertaken maliciously or recklessly in the face of a perceived  
6 risk that such actions would violate federal law).

8 All of the members of the Green Acre and Valley Fruit subclasses were  
9 employed by Global. Post-*Hoffman*, courts have concluded that undocumented  
10 workers who have performed work for their employer are entitled to punitive  
11 damages under the Fair Labor Standards Act. *Singh v. Jutla & C.D. & R's Oil,*  
12 *Inc.*, 214 F.Supp.2d 1056, 1061 (N.D. Cal. 2002). In addition, Mr. Orian testified  
13 that Global verified whether class members were legally authorized to work. Trial  
14 Tr., Day 6 at 206:2-4. As Grower Defendants conceded with respect to FLCA  
15 violations for the Green Acre and Valley Fruit Subclasses, Global should be  
16 precluded from now arguing class members must prove they were authorized to  
17 work to share in an award of punitive damages when Global asserts it already  
18 verified work authorization.  
19

21 Because § 1981 prohibits pre-employment discrimination, members of the  
22 Denied Work Class should also be entitled to share in the award of punitive  
23

1 damages without proving they were authorized to work. As set forth above, an  
2 employer is not required to verify authorization to work until the person begins  
3 working. Global's unlawful discrimination deprived Denied Work Subclass  
4 members of the opportunity to work and commensurate obligation to prove their  
5 authorization to work. The Court should not now impose this additional burden on  
6 class members.  
7

8 The Court should order the punitive damages awarded by the jury to be  
9 distributed on a pro-rata basis to all subclass members. *See, Hilao v. Estate of*  
10 *Marcos*, 103 F.3d 789, 791 (9th Cir. 1996) (district court ruled that jury verdict of  
11 \$1.2 billion in exemplary damages was an aggregate award to be divided pro rata  
12 amount all plaintiffs); *see also, In re Northern Dist. of California Dalkon Shield*  
13 *IUD Products Liability Litigation*, 526 F.Supp. 887, 920 (N.D. Cal. 1981)  
14 (punitive damages awarded by a jury in personal injury case would be established  
15 as a fund from which all successful claimants would be entitled to a pro-rata share  
16 based either on the total number of claimants or based on the amount actually  
17 awarded in actual damages). A pro rata distribution of punitive damages is also  
18 supported by the Ninth Circuit's approach to damages in *Domingo v. New England*  
19 *Fish Co.*, 727 F.2d 1429, 1444 (9th Cir. 1994). The Court found a class-wide  
20 approach to the determination of back pay was warranted where an individual  
21  
22  
23



1 approach to damages would lead to a “quagmire of hypothetical judgment.”  
2 *Domingo v. New England Fish. Co.*, 727 F.2d 1429, 1444 (9th Cir. 1994) *citing*  
3 *Pettway v. American Cast Iron Pipe Co.*, 494 F.2d 211, 261 (5th Cir. 1974). Here it  
4 would be very difficult to determine the comparative value of an individual class  
5 member’s lost opportunity and suffering relative to that of the other class members  
6 as a result of the Global Defendants’ discriminatory conduct. Therefore, the court  
7 should distribute the punitive damage award among subclass members on a pro  
8 rata basis.  
9

## 10 V. CONCLUSION

11 The Court should approve membership in the three subclasses as proposed.  
12 The Court should enter a permanent injunction against Global and the Grower  
13 Defendants to prevent workers from being similarly harmed in the future and to  
14 promote payment of the damages awarded. The Court should enter judgment in  
15 the amount of \$ 2,006,000 for FLCA statutory damages against Global, Green  
16 Acre, Jim Morford, Valley Fruit and John Verbrugge. The Court should order that  
17 punitive damages be disbursed on a pro-rata basis to all class members and that  
18 proof of authorization to work will not be required for any class members to  
19 recover the statutory and punitive damages awarded.  
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1 Finally, the Court should order Platte River Insurance Co. to tender to the  
2 Court the full amount of all applicable bonds, not to exceed the damages awarded  
3 to Plaintiffs, and to notify the Department of Labor and Industries of its intent to  
4 tender this amount to the Court pursuant to RCW 19.30.170(6). The Court should  
5 order this amount to be disbursed to Plaintiffs to satisfy the judgment for FLCA  
6 damages.  
7

8 Respectfully submitted this 14th day of November, 2008.

9 COLUMBIA LEGAL SERVICES

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CERTIFICATE OF SERVICE

I hereby certify that on this 14<sup>th</sup> day of November, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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