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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSE GUADALUPE PEREZ-FARIAS,)	
et al.,)	
)	
Plaintiffs,)	NO. CV-05-3061-MWL
)	
v.)	ORDER RE: CLASS CERTIFICATION
)	
GLOBAL HORIZONS, INC., et al.,)	
)	
Defendants.)	
_____)	

On July 5, 2006, Plaintiffs' motion for class certification came on for hearing with oral argument. Mirta Laura Contreras, Lori A. Jordan Isley, and Richard W. Kuhling appeared on behalf of the Plaintiffs and Howard W. Foster, Eric Ben-Ezra and Ryan M. Edgley appeared for the Defendants.

On October 13, 2005, the parties consented to proceed before a magistrate judge. (Ct. Rec. 27). Plaintiffs filed their motion for class certification on February 3, 2006. (Ct. Rec. 60). Defendants Global Horizons and Platte River Insurance Company filed a response in opposition on May 9, 2006. (Ct. Rec. 99). Plaintiffs filed a reply on May 19, 2006. (Ct. Rec. 108). It is significant to note, as indicated in Plaintiffs' reply brief (Ct. Rec. 108, p. 2), Defendants Green Acre Farms and Valley Fruit Orchards provided no opposition or other response to Plaintiffs' motion for class certification. Local Rule 7.1(h)(5) holds that

1 "[a] failure to timely file a memorandum of points and authorities
2 in support of or in opposition to any motion may be considered by
3 the Court as consent on the part of the party failing to file such
4 memorandum to the entry of an Order adverse to the party in
5 default." Accordingly, the undersigned finds that Defendants
6 Green Acre Farms and Valley Fruit Orchards have acquiesced to the
7 entry of an order granting Plaintiffs' motion for class
8 certification.

9 **I. CLASS DEFINITIONS**

10 **A. Plaintiffs' Motion:** Plaintiffs seek to represent one
11 class (**U.S. Resident Workers**) with each named Plaintiff
12 representing three distinct sub-classes (**Denied Work, Green Acre,**
13 **and Valley Fruit**). (Ct. Rec. 60).

14 **PROPOSED CLASS**

15 **U.S Resident Workers:** All workers who were U.S. residents and
16 who sought employment through defendant Global Horizons to
17 work at either Green Acre Farms or Valley Fruit Orchards in
18 2004, and all U.S. residents who, in the future, seek
19 employment with or obtain employment with Global, Green Acre,
20 or Valley Fruit.

19 **PROPOSED SUB-CLASSES**

20 **Denied Work (Represented by Plaintiff Betancourt):** All
21 workers who were U.S. residents and who sought and were
22 denied employment through defendant Global to work at either
23 Green Acre Farms or Valley Fruit Orchards in Washington state
24 in 2004, and all U.S. residents who, in the future, seek
25 employment with or obtain employment with Global, Green Acre,
26 or Valley Fruit.

24 **Green Acre (Represented by Plaintiff Sanchez):** All workers
25 who were U.S. residents and who were employed through
26 defendant Global to work at Green Acre Farms in 2004, and all
27 U.S. residents who, in the future, seek employment with or
28 obtain employment with Global and Green Acre.

27 **Valley Fruit (Represented by Plaintiff Perez-Farias):** All
28 workers who were U.S. residents and who were employed through
defendant Global Horizons to work at Valley Fruit in 2004,
and all U.S. residents who, in the future, seek employment
with or obtain employment with Global or Valley Fruit.

1 **B. Defendants:** Defendants allege in their response that
2 Plaintiffs' motion for class certification should be denied
3 because Plaintiffs' proposed class definition is vague, imprecise,
4 and largely unintelligible. (Ct. Rec. 99, p. 24).

5 A class proposed under Rule 23(b)(3) must be sufficiently
6 well defined so that the Court may provide individual notice to
7 all members who can be identified through reasonable effort.
8 *Mendoza v. Zirkle Fruit Co.*, 222 F.R.D. 439, 442 (E.D. Wash.
9 2004).

10 Defendants claim that the term "U.S. Resident" is imprecise.
11 Defendants assert that it is unclear which individuals would
12 actually qualify as a "U.S. Resident" because the phrase can have
13 various meanings under different immigration and tax laws. Even
14 if the Court were to utilize the test provided in *LeClerc v. Webb*,
15 419 F.3d 405, 427 (5th Cir. 2005), its application evidences the
16 difficulty of determining whether workers qualify as "U.S.
17 Residents" and numerous individual inquiries would be necessary to
18 determine whether a worker satisfies the requisite residency
19 durational requirements. (Ct. Rec. 99, p. 26). Defendants argue
20 that Plaintiffs failed to address how they would conduct such
21 inquiries.

22 Defendants also claim that the proposed class is overbroad
23 because the "future employees" included in the class definition
24 are not limited to only workers who sought employment to work at
25 Green Acres or Valley Farm (through Global). (Ct. Rec. 99, p.
26 27). Defendants argue that the definition is overbroad because it
27 includes any person, migrant worker or otherwise, who applies to
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1 work at any Global location throughout the world, including
2 management, in-house counsel, technology personnel, janitors, etc.

3 Finally, Defendants assert that the time period for the class
4 is also vague, especially with regard to future workers.

5 Defendants argue that it is unclear when "the future" is being
6 measured from. (Ct. Rec. 99, p. 28).

7 **C. Plaintiffs' Reply:** Plaintiffs respond that Plaintiffs'
8 proposed class and subclasses are clear and precise. (Ct. Rec.
9 108, pp. 3-4). Plaintiffs indicate that each of the class
10 definitions states that the claims are "presently limited to the
11 year 2004." (Ct. Rec. 108, p. 3). Accordingly, the phrase
12 "future workers" does not include workers in 2005. Plaintiffs
13 assert that the class covers all future U.S. Resident workers
14 employed by Defendants in agriculture in Washington state. (Ct.
15 Rec. 108, p. 3). In their reply brief, Plaintiffs agree with
16 Defendants that the workers covered by the proposed class should
17 be only those U.S. Residents "who are employed by Defendant Global
18 in agricultural work in Washington State." (Ct. Rec. 108, p. 4).

19 **D. Analysis:** A class does not have to be defined with
20 precision at the outset. 7A C. Wright et al., Federal Practice &
21 Procedure § 1760, at 117 (2d ed. 1986). The test is whether the
22 description of the class is "sufficiently definite so that it is
23 administratively feasible for the court to determine whether a
24 particular individual is a member." *Id.* at 121. In this case,
25 Defendants' response does not preclude the certification of the
26 class and subclasses proposed by Plaintiffs.

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1 While Defendants claim that the term "U.S. Resident" is
2 imprecise (Ct. Rec. 99, p. 24), a class proposed under Rule
3 23(b)(3) must only be sufficiently well defined so that the Court
4 may provide individual notice to all members who can be identified
5 through reasonable effort. *Mendoza*, 222 F.R.D. at 442. The Court
6 gives weight to Plaintiffs' reply brief and finds that the term
7 "U.S. Residents" is sufficiently precise for the court to
8 determine whether a particular individual is a member. (Ct. Rec.
9 108, p. 4). It is apparent that the workers covered by the
10 proposed class include those workers who live in the United States
11 and were employed by Global Horizons. Furthermore, as asserted at
12 the hearing on the motion, as well as in Plaintiff's reply brief,
13 the class should be limited to only farm workers living in the
14 United States (with the exception of guest workers) who applied,¹
15 or who may apply in the future, at Global Horizons for
16 agricultural employment in Washington State at Green Acres or
17 Valley Farm. The Court finds that "application," as opposed to
18 using the terms employees who "sought" or who may "seek"
19 employment, is necessary in order to more easily identify and
20 define the class. The class and subclasses shall therefore be
21 limited and defined in this fashion.

22 **II. MATCHING SOCIAL SECURITY NUMBERS**

23 **A. Defendants:** Defendants allege in their response that,
24 to the extent that a class is certified, it should be limited to
25 individuals with only matching social security numbers. (Ct. Rec.

26
27 ¹For purposes of membership in the class, "application" at
28 Global Horizons for agricultural employment must be supported by
documentation or other record in order to verify that he or she
applied for employment at Global Horizons for work at Green Acres
or Valley Farm.

1 99, pp. 28-30). Global believes individuals with non-matching
2 social security numbers (264 potential class members provided non-
3 matching social security numbers) are illegal aliens who are not
4 authorized to work in this country. Applicants were terminated by
5 Global if they were not able to correct this "mismatch" within 30
6 days. (Ct. Rec. 99, p. 28).

7 Employees who are discharged because they are illegal aliens
8 do not have a claim for discrimination under federal or state law.
9 *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1072 (9th Cir. 2004) (an
10 employer's decision to terminate an undocumented worker is a
11 defense to Title VII claims if the employer can show the firing
12 was based on illegal status); *Anderson v. Conboy*, 156 F.3d 167,
13 180 (2d Cir. 1998) ("If an employer refuses to hire a person
14 because that person is in the country illegally, that employer is
15 discriminating on the basis not of alienage but of noncompliance
16 with federal law"). Defendants thus contend that 264 putative
17 class members do not have valid claims against Global and cannot
18 assert the same theories of liability as the rest of the putative
19 class. Defendants therefore assert that the class should be
20 limited strictly to those individuals who have matching social
21 security numbers.

22 **B. Plaintiffs' Reply:** Plaintiffs respond that all workers
23 are entitled to pursue all claims regardless of their immigration
24 status. (Ct. Rec. 108, pp. 4-6). As noted by Plaintiffs, this
25 Court previously ruled that the immigration status of Plaintiffs
26 was not relevant to class certification issues. (Ct. Rec. 50, pp.
27 11-12). There is no basis to limit or exclude class members based
28 on immigration status because all workers have the right to pursue

1 claims for violations of the laws alleged in this case. (Ct. Rec.
2 108, pp. 5-6). Plaintiffs assert that; moreover, the fact that
3 Defendants contend that certain class members have non-matching
4 social security numbers does not establish that class members are
5 undocumented workers or provide any other reason for limiting the
6 class. Plaintiffs contend that a non-matching social security
7 number does not make any statement about an employee's immigration
8 status, nor is it a basis for taking any adverse action against
9 the employee. (Ct. Rec. 108, p. 6).

10 **C. Analysis:** The Court agrees with Plaintiffs that the
11 fact that Defendants contend that certain class members have non-
12 matching social security numbers does not establish that class
13 members are undocumented workers or provide any other reason for
14 limiting the class. See, Social Security Administration, *Employer*
15 *Reporting Instructions & Information*, (December 7, 2005),
16 <http://www.ssa.gov/employer/ssnvrestrict.htm> ("A mismatch [of
17 social security numbers] does not make any statement about an
18 employee's immigration status and is not a basis, in and of
19 itself, for taking any adverse action against an employee. Doing
20 so could subject you to anti-discrimination or labor law
21 sanctions.") The Court finds that, at this stage in the
22 litigation, the immigration status of individual plaintiffs is not
23 relevant and certainly does not provide a basis to limit or
24 exclude class members. Accordingly, the undersigned declines to
25 limit the definition of the class strictly to those individuals
26 who have matching social security numbers.

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1 **III. RULE 23(a) PREREQUISITES:**

2 Class actions are authorized by Fed. R. Civ. P. 23. All
3 class actions under Rule 23 must meet four prerequisites of Fed.
4 R. Civ. P. 23(a), Numerosity, Commonality, Typicality, and
5 Adequacy of Representation, and at least one of the requirements
6 of Fed. R. Civ. P. 23(b). *Blake v. Arnett*, 663 F.2d 906, 912 (9th
7 Cir. 1981).

8 The burden on the motion for class certification is on the
9 party seeking to maintain the class action. In this case,
10 Plaintiffs must establish a prima facie showing of each of the
11 elements of Rule 23(a) prerequisites and the appropriate 23(b)
12 ground for a class action. *Taylor v. Safeway stores, Inc.* 524
13 F.2d 263, 270 (10th Cir. 1975). Plaintiffs need only present
14 sufficient proof to allow the court to come to a "reasonable
15 judgment" on each requirement. *Blackie v. Barrack*, 524 F.2d 891,
16 901 (9th Cir. 1975).

17 **A. Numerosity:** The class must be so numerous that
18 joinder of all members individually is "impracticable." Fed. R.
19 Civ. P. 23(a)(1). No specific numerical threshold is required;
20 each case must be examined. *General Tel.C. v. E.E.O.C.*, 446 U.S.
21 318, 330 (1980). Generally, 40 or more members will satisfy the
22 numerosity requirement. *Consolidated Rail Corp. v. Town of Hyde*
23 *Park*, 47 F.3d 473, 483 (2nd Cir. 1995).

24 **1. U.S Resident Workers (CLASS):** Plaintiffs allege in
25 their amended complaint that approximately 600 U.S. workers were
26 denied work or employed by Defendants in 2004. (Ct. Rec. 77, p.
27 7). Although undetermined at this time, Plaintiffs assert that
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1 future workers who will seek employment or be employed by
2 Defendants will likely be in the thousands. (Ct. Rec. 60, p. 6).

3 **2. Denied Work (Sub-Class):** Plaintiffs allege in their
4 amended complaint that approximately 300 U.S. workers are in their
5 Denied Work subclass. (Ct. Rec. 77, pp. 9-10).

6 **3. Green Acre (Sub-Class):** Plaintiffs allege in their
7 amended complaint that approximately 150 U.S. workers are in their
8 Green Acre subclass. (Ct. Rec. 77, p. 11).

9 **4. Valley Fruit (Sub-Class):** Plaintiffs allege in
10 their amended complaint that approximately 150 U.S. workers are in
11 their Valley Fruit subclass. (Ct. Rec. 77, p. 14).

12 Defendant Global **did not** specifically challenge Plaintiffs'
13 motion for class certification on the ground of numerosity (Fed.
14 R. Civ. P. 23(a)(1)). (Ct. Rec. 99).

15 **B. Commonality:** There must be questions of law or fact
16 common to the class. Fed. R. Civ. P. 23(a)(2). Commonality
17 exists "where the question of law linking the class members is
18 substantially related to the resolution of the litigation even
19 though the individuals are not identically situated." *Jordan v.*
20 *County of Los Angeles*, 669 F.2d 1311, 1320 (9th Cir. 1982). A
21 "common nucleus of operative facts" is usually enough to satisfy
22 the commonality requirement. *Rosario v. Livaditis*, 963 F.2d 1013,
23 1017-18 (7th Cir. 1992).

24 **1. U.S Resident Workers (CLASS):** Plaintiffs seeks
25 claims under the Migrant and Seasonal Agricultural Worker
26 Protection Act ("AWPA") and the Farm Labor Contractor's Act
27 ("FLCA"). Plaintiffs' amended complaint sets forth the following
28 questions of law and fact common to members of the proposed class:

1 whether Defendants provided false and misleading information about
2 the job offers, whether Defendant Global was an unlicensed labor
3 contractor, whether Defendants Green Acre and Valley Fruit
4 knowingly used the services of Defendant Global, an unlicensed
5 contractor, and whether Defendant Global failed to provide
6 adequate disclosure of the terms and conditions of employment.
7 (Ct. Rec. 77, pp. 8-9). Based on Plaintiffs' assertions at
8 argument on the underlying motion, the Court understands that
9 Plaintiffs contend that Defendants provided false and misleading
10 "written" information about job offers.

11 **2. Denied Work (Sub-Class):** Plaintiffs' amended
12 complaint sets forth the following questions of law and fact
13 common to members of the proposed subclass: whether Defendants
14 violated the working arrangement and whether Defendants
15 discriminated against Plaintiffs on the basis of race or national
16 origin. (Ct. Rec. 77, p. 10).

17 **3. Green Acre (Sub-Class):** Plaintiffs' amended
18 complaint sets forth the following questions of law and fact
19 common to members of the proposed subclass: whether Defendants
20 failed to comply with the terms and conditions of employment or
21 violated the working arrangement, whether Defendants made unlawful
22 deductions and provided inaccurate pay stubs, and whether
23 Defendants discriminated against the subclass on the basis of race
24 or national origin. (Ct. Rec. 77, pp. 12-13).

25 **4. Valley Fruit (Sub-Class):** Plaintiffs' amended
26 complaint sets forth the following questions of law and fact
27 common to members of the proposed subclass: whether Defendants
28 failed to comply with the terms and conditions of employment or

1 violated the working arrangement, whether Defendants made unlawful
2 deductions and provided inaccurate pay stubs, and whether
3 Defendants discriminated against the subclass on the basis of race
4 or national origin. (Ct. Rec. 77, pp. 14-16).

5 Defendant Global **did not** specifically challenge Plaintiffs'
6 motion for class certification on the ground of commonality (Fed.
7 R. Civ. P. 23(a)(2)). (Ct. Rec. 99).

8 **C. Typicality:** The claims or defenses of the class
9 representative must be typical of the claims or defenses of the
10 class. Fed. R. Civ. P. 23(a)(3). The fact that damage claims
11 will vary among workers, however, does not defeat typicality.
12 Typicality may exist even though "there is a disparity in the
13 damages claimed by the representative parties and the other
14 members of the class." 7A Charles A. Wright, et al., Federal
15 Practice and Procedure § 1764, at 235-236, 241 (1986). The test
16 of typicality is whether (1) other members have the same or
17 similar injury; (2) the action is based on conduct which is not
18 unique to the named plaintiffs; and (3) other class members have
19 been injured by the same course of conduct. *Hanon v. Dataproducts*
20 *Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). The named Plaintiff
21 must be a member of the class. *Bailey v. Patterson*, 362 U.S. 31.
22 32 -33, 82 S.Ct. 549 (1962).

23 **1. U.S Resident Workers (CLASS):** Plaintiffs assert that
24 all Plaintiffs and putative class members in this action have an
25 interest in ensuring that Defendant Global obtains a license
26 before it does business in the state of Washington and complies
27 with farm labor contracting laws. (Ct. Rec. 60, pp. 10-11).

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1 **2. Denied Work (Sub-Class)**: Plaintiffs assert that
2 Plaintiff Betancourt's facts mirror those of the Denied Work
3 subclass: he was hired by Defendant Global after a telephone
4 interview, was told by Defendant Global he would receive a return
5 call with a starting date, and Defendant Global failed to contact
6 him thereafter. (Ct. Rec. 77, pp. 26-27).

7 **3. Green Acre (Sub-Class)**: Plaintiffs allege that
8 Plaintiff Sanchez shares a common interest with those of other
9 U.S. workers who were employed at Green Acre. Plaintiffs allege
10 that Sanchez, and a crew of 20 to 30 workers, were illegally fired
11 by Defendants on the basis of race or national origin. (Ct. Rec.
12 77, pp. 28-31).

13 **4. Valley Fruit (Sub-Class)**: Plaintiffs assert that
14 Plaintiff Perez shares a common interest with others in the Valley
15 Fruit subclass as Perez, and approximately 32 to 33 other farm
16 workings in his crew, were illegally discharged by Defendants on
17 the basis of race or national origin. (Ct. Rec. 77, pp. 31-34).

18 Defendant Global **did not** specifically challenge Plaintiffs'
19 motion for class certification on the ground of typicality (Fed.
20 R. Civ. P. 23(a)(3)). (Ct. Rec. 99).

21 **D. Adequacy of Representation**: The person representing the
22 class must be able "fairly and adequately to protect the
23 interests" of all members in the class. Fed. R. Civ. P. 23(a)(4).
24 The representation is "adequate" if the attorney representing the
25 class is qualified and competent and the class representatives are
26 not disqualified by interests antagonistic to the remainder of the
27 class. *Lerwill v. Inflight Motion Pictures, Inc.* 582 F.2d 597,
28 512 (9th Cir. 1978).

1 **1. Plaintiffs:** Plaintiff state that there is no
2 evidence that this litigation is collusive or that the interests
3 of the class representatives are not aligned with those of the
4 proposed class and the three subclasses. (Ct. Rec. 60, p. 13).
5 Plaintiff assert that the class representatives and counsel are
6 prepared to vigorously represent the class in this case. (Ct.
7 Rec. 60, p. 14).

8 **2. Defendants:** Defendant Global argues that none of
9 the three class representatives are adequate in this case. (Ct.
10 Rec. 108, pp. 9-15). Although Defendants specifically challenge
11 only adequacy of representation and not the other three
12 prerequisites of Fed. R. Civ. P. 23(a) (numerosity, commonality,
13 and typicality), Defendants' arguments pertaining to adequacy of
14 representation, as discussed below, raise similar issues.

15 **a. Valley Fruit (Sub-Class):** Defendants asserts that
16 Perez-Farias is not an adequate class representative because he
17 does not share the subclass' discrimination claim. (Ct. Rec. 99,
18 p. 9). Defendants provide an excerpt of Perez-Farias' deposition
19 testimony which allegedly shows that he did not believe that he,
20 or any of the Valley Fruit workers, were fired because they were
21 Hispanic. (Ct. Rec. 99, p. 10). Defendants argue that Perez-
22 Farias is not an adequate representative of this subclass because
23 he admitted that he was not discriminated against and therefore
24 has no claim against Global for discrimination. Global also
25 indicates that they would call Perez-Farias as an adverse witness
26 at trial to establish there was no discrimination - - thus his
27 interests would be adverse to those of the subclass. (Ct. Rec.
28 99, p. 10).

1 Defendants also argue that Plaintiffs' motion for class
2 certification failed to address (even in a cursory fashion) how
3 Perez-Farias is an adequate representative for the claims under
4 the AWPA and FLCA.

5 Plaintiffs reply that Perez-Farias can fairly and adequately
6 protect the interests of the Valley Fruit Subclass. (Ct. Rec.
7 108, pp. 10-14). Plaintiffs point to additional deposition
8 testimony of Perez-Farias, as well as a public statement made by
9 Perez-Farias, to support their claim that he is an adequate class
10 representative in regard to the discrimination claims raised by
11 the Valley Fruit subclass.

12 Plaintiffs additionally argue that Global attempts to take
13 advantage of Perez-Farias' lack of sophistication and knowledge.
14 Plaintiffs allege that Perez-Farias has the requisite basic
15 knowledge of the claims to affectively represent the subclass.
16 (Ct. Rec. 108, p. 14).

17 **b. Denied Work (Sub-Class)**: Defendant Global argues
18 that Betancourt is not even a member of the subclass he seeks to
19 represent, because he failed to show up for work. (Ct. Rec. 99,
20 p. 11). Global contends that their records indicate that it
21 attempted to contact Betancourt by phone on three occasions but
22 Betancourt never answered the call and, even though Betancourt was
23 aware of the start date and the location of the Green Acres Farm,
24 Betancourt failed to show up for work. (Ct. Rec. 99, p. 12).
25 Defendants allege that, because Plaintiffs are without an adequate
26 representative who was "denied employment," class certification
27 cannot be granted with respect to this subclass.

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1 Plaintiffs argue that the court does not have "authority to
2 conduct a preliminary inquiry into the merits of a suit in order
3 to determine whether it may be maintained as a class action."
4 *Dukes v. Wal-Mart*, 222 F.R.D. 137, 144 (N.D. Cal. 2004). In
5 resolving a motion for class certification, a court must accept
6 the substantive allegations of the complaint as true. *Blackie v.*
7 *Barrack*, 524 F.2d 891, 901, n. 17 (9th Cir. 1975).

8 Plaintiffs assert that Global raises purely factual issues in
9 direct contradiction with the allegations regarding Betancourt's
10 hiring as set forth in the Complaint. (Ct. Rec. 108, pp. 9-10).
11 Plaintiffs argue that they have alleged sufficient facts to
12 demonstrate that Betancourt is an adequate class representative
13 for the Denied Work subclass.

14 **c. Green Acre (Sub-Class)**: Defendants argue that
15 Sanchez is seeking to represent a subclass of workers from Green
16 Acres with common AWPAs and FLCA claims; however, he was actually
17 provided with more work than he was guaranteed. (Ct. Rec. 99, pp.
18 13-14). Because Global's records indicate that Sanchez worked
19 1,208.75 hours, Sanchez cannot claim that Global failed to comply
20 with the terms of employment which allegedly guaranteed Sanchez at
21 least 1200 hours, or 3/4 of the 1600 hours provided in the work
22 contract for the period at issue. (Ct. Rec. 99, pp. 13-14).

23 Plaintiffs contend that Sanchez was hired by Global to work
24 at Green Acre and promised work from February 2, 2004 until
25 November 5, 2004. (Ct. Rec. 108, p. 14). Regardless of the
26 number of hours worked, Plaintiffs allege he was wrongly
27 terminated from his work in August of 2004, replaced by H-2A
28 workers from Thailand. Plaintiffs argue that workers are entitled

1 to seek AWPAs damages for the full amount of work promised under
2 the terms of the job order and the 3/4 guarantee does not absolve
3 an employer of liability for wrongful termination, discriminatory
4 practices and other violations of the law. (Ct. Rec. 108, pp. 15-
5 16). Plaintiffs claim that Sanchez is an adequate class
6 representative of the Green Acres subclass.

7 **3. Analysis:** Representation is deemed adequate if the
8 named plaintiffs and their attorneys do not have conflicts with
9 absent members and they will prosecute this action vigorously on
10 behalf of the entire class. *Hanlon v. Chrysler Corp.*, 150 F.3d
11 1011, 1020 (9th Cir. 1998). While Defendant has alleged factual
12 disputes (*see supra*), in resolving a motion for class
13 certification, a court must accept the substantive allegations of
14 the complaint as true. *Blackie*, 524 F.2d at 901, n. 17. Taking
15 the allegations of the complaint as true (*Blackie*, 524 F.2d at
16 901, n. 17), the Court finds that the class representatives and
17 counsel are adequate to represent the class in this case. *See*,
18 Fed. R. Civ. P. 23(a)(4). Furthermore, Defendant Global has not
19 established a conflict between the named plaintiffs and any absent
20 members of the class. Based on the record before the Court, the
21 undersigned finds that the named representatives are able to
22 "fairly and adequately" protect the interests of all members in
23 the class. Fed. R. Civ. P. 23(a)(4).

24 **E. Conclusion RE: Rule 23(a):** Based on the foregoing
25 analysis, the undersigned concludes that the prerequisites of Rule
26 23(a) are satisfied in this case.

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1 **IV. RULE 23(b)**

2 **A. Rule 23(b)(2): Equitable Relief**

3 An action may be maintained as a class action if the
4 prerequisites of subdivision (a) are satisfied and at least one of
5 the three requirements of Fed. R. Civ. P. 23(b) are met. After
6 Plaintiffs satisfy the four initial prerequisites imposed by Rule
7 23(a), the focus shifts to Rule 23(b). In this case, Plaintiffs
8 primarily allege that the matter should be certified as a class
9 under Rule 23(b)(2) and secondarily under Rule 23(b)(3).

10 **1. Plaintiffs:** Plaintiffs first, and primarily, argue
11 that each of the classes should be certified pursuant to Fed. R.
12 Civ. P. 23(b)(2). (Ct. Rec. 60, p. 14). Fed. R. Civ. P. 23(b)(2)
13 holds that an action may be maintained as a class action if "the
14 party opposing the class has acted or refused to act on grounds
15 generally applicable to the class, thereby making appropriate
16 final injunctive relief or corresponding declaratory relief with
17 respect to the class as a whole."

18 Plaintiffs seek relief to stop illegal race and national
19 origin discrimination in Defendants employment practices. (Ct.
20 Rec. 77, p. 43). They also seek injunctive relief pursuant to
21 AWPA and FLCA. (Ct. Rec. 77, pp. 2-3). Plaintiffs indicate that
22 the Court should certify this class so that all future U.S.
23 workers who seek or obtain employment with Defendants can be
24 assured that Defendants will comply with written disclosure
25 requirements and will not provide false and misleading
26 information. (Ct. Rec. 60, p. 15).

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1 **2. Defendants:** Defendants argue that, since Global had
2 its Washington State Farm Labor Contractor's License revoked in
3 2005, it can no longer operate its business in Washington state
4 and, thus, there is no threat of re-injury to any of the named
5 Plaintiffs or to future employees. Therefore, Global alleges that
6 Plaintiffs' claims for injunctions are moot and certification
7 under Rule 23(b)(2) is not appropriate. (Ct. Rec. 99, pp. 5-7).

8 Additionally, Defendants assert that certification under Rule
9 23(b)(2) is improper because Plaintiffs are primarily seeking
10 monetary damages. (Ct. Rec. 99, p. 7). Certification under Rule
11 23(b)(2) is not appropriate where the relief requested appears to
12 relate "exclusively or predominately to money damages." *Nelsen v.*
13 *King County*, 895 F.2d 1248, 1255 (9th Cir. 1990). Certification
14 under Rule 23(b)(2) is proper only if "injunctive relief appeared
15 to be the primary goal in the litigation." *Molski v. Gleich*, 318
16 F.3d 937, 950 (9th Cir. 2003).

17 Defendants contend that money damages is the primary form of
18 relief sought because Plaintiffs admit that they are only seeking
19 injunctive relief for a portion of the putative class members.
20 (Ct. Rec. 108, p. 7). Pursuant to Plaintiff's complaint, the
21 injunctive and declaratory relief sought under Rule 23(b)(2) does
22 not apply to any current or former workers (only future workers
23 for each subclass) therefore it does not apply to the entire
24 class.

25 **3. Plaintiffs' Reply:** Plaintiffs respond that their
26 injunctive claims are not moot. (Ct. Rec. 108, p. 7). "[A]
27 defendant's voluntary cessation of a challenged practice does not
28 deprive a federal court of its power to determine the legality of

1 the practice' unless it is '*absolutely clear* that the allegedly
2 wrongful behavior *could not reasonably be expected to recur.*'"
3 *Parents Involved in Community Schools v. Seattle School District*,
4 377 F.3d 949, 959 (9th Cir. 2002) (quoting *Buckhannon Bd. & Care*
5 *Home v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 609
6 (2001) (emphasis added).

7 Plaintiffs claim that, although Global has been forced to
8 stop conducting business in Washington state, the heavy burden of
9 proof remains the same. Furthermore, Global is actively appealing
10 the loss of its Washington license, Global is actively lobbying
11 Governor Christine Gregoire to reinstate the license, and
12 Washington state law allows Global the right to reapply for a
13 license three years after it has been revoked. Therefore,
14 Plaintiffs allege that it is not "absolutely clear" that Global's
15 illegal behavior will never recur in the future and, thus, their
16 claims are not moot. (Ct. Rec. 108, pp. 8-9).

17 Plaintiffs additionally respond that certification under Rule
18 23(b)(2) is appropriate in class actions seeking monetary damages
19 as long as such damages are not the predominant relief sought, but
20 are secondary to claims for declaratory or injunctive relief.
21 (Ct. Rec. 108, p. 19). Plaintiffs argue that the court may
22 consider whether Plaintiffs' would bring the suit to obtain the
23 declaratory and injunctive relief even in the absence of damages,
24 *Molski*, 318 F.3d at 950, n. 15, and assert that they would have
25 brought suit to obtain injunctive relief even if they could not
26 obtain monetary recovery. (Ct. Rec. 108, pp. 24-25).

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1 Plaintiffs contend that the claims for declaratory or
2 injunctive relief are the predominant relief sought in order to
3 ensure that U.S. resident workers will be able to obtain work and
4 will not suffer from Defendants' unlawful and discriminatory
5 practices in the future and to ensure Defendants' future
6 compliance with the law. (Ct. Rec. 108, p. 20).

7 **4. Analysis:** With regard to Defendant Global's
8 assertion that Plaintiffs' requested equitable relief is moot, the
9 undersigned finds to the contrary. As noted by Plaintiffs, unless
10 it is "*absolutely clear* that the allegedly wrongful behavior *could*
11 *not reasonably be expected to recur*," a federal court may
12 determine the legality of the challenged practice. *Buckhannon Bd.*
13 *& Care Home*, 532 U.S. at 609 (emphasis added). Since Global is
14 actively appealing the loss of its Washington license, Global is
15 actively lobbying Governor Christine Gregoire to reinstate the
16 license, and Washington state law allows Global the right to
17 reapply for a license three years after it has been revoked, it is
18 not "absolutely clear" that Global's alleged illegal behavior will
19 never recur in the future. Therefore, the Court finds that
20 Plaintiffs' equitable claims are not moot.

21 A class may be certified under Rule 23(b)(2) where "the party
22 opposing the class has acted or refused to act on grounds
23 generally applicable to the class, thereby making appropriate
24 final injunctive relief or corresponding declaratory relief with
25 respect to the class as a whole." Plaintiffs' amended complaint
26 alleges that Defendants acted on grounds generally applicable to
27 the class, thereby making the injunctive and declaratory relief
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1 sought appropriate with respect to the class as a whole.
2 Plaintiffs seek declaratory and injunctive relief for all class
3 members and money damages only for class members who sought
4 employment or who were employed with Defendants in 2004. (Ct.
5 Rec. 108, p. 17 n. 2). Plaintiffs do not seek money damages for
6 future workers. (*Id.*) Accordingly, the undersigned finds that
7 Plaintiffs' claims for declaratory or injunctive relief are the
8 predominant relief sought, and certification under Rule 23(b)(2)
9 is appropriate.

10 **B. Rule 23(b)(3): Common questions Predominate**

11 Although the Court's analysis above indicates that
12 certification in this case is proper under Rule 23(b)(2), the
13 Court shall additionally review Plaintiffs' claim for
14 certification under Rule 23(b)(3).

15 Fed. R. Civ. P. 23(b)(3) permits a class action if common
16 questions of law or fact predominate over individuals' questions:

17 . . . the questions of law or fact common to the members of
18 the class predominate over any questions affecting only
19 individual members, and that a class action is superior to
20 other available methods for the fair and efficient
21 adjudication of the controversy. The matters pertinent to
22 the findings include: (A) the interest of members of the
23 class in individually controlling the prosecution or defense
24 of separate actions; (B) the extent and nature of any
25 litigation concerning the controversy already commenced by or
26 against members of the class; (C) the desirability or
27 undesirability of concentrating the litigation of the claims
28 in the particular forum; (D) the difficulties likely to be
encountered in the management of a class action.

24 Therefore, to bring an action under Rule 23(b)(3), first,
25 common questions of law or fact must predominate over the
26 individual issues presented in the dispute. Next, it must be
27 shown that class treatment is a superior form of relief,
28 considering the four criteria listed in Rule 23(b)(3).

1 **1. Plaintiffs:**

2 **a. U.S. Resident Workers Class:** Common issues include
3 unlawful recruitment practices and the failure to comply with
4 state licensing requirements. (Ct. Rec. 77, pp. 8-9). In
5 addition, the AWPA and FLCA claims are common for all members of
6 the potential class.

7 **b. Three Proposed Subclasses:** Common issues for each of
8 the proposed three subclasses include the AWPA and FLCA claims and
9 the race and national origin claims.

10 With respect to whether class treatment is a superior form of
11 relief, Plaintiffs argue as follows:

12 (A) the interest of members of the class in individually
13 controlling the prosecution or defense of separate actions: it is
14 hard to imagine that any of the unnamed members of the class or
15 subclasses have a strong interest in initiating and independently
16 controlling their own actions. It is highly unlikely that farm
17 worker plaintiffs, with their lack of English, limited
18 understanding of the legal system, and generally indigent status,
19 would pursue this litigation if class certification were not
20 allowed. (B) the extent and nature of any litigation concerning
21 the controversy already commenced by or against members of the
22 class and (C) the desirability or undesirability of concentrating
23 the litigation of the claims in the particular forum: there is
24 presently no other litigation regarding this controversy commenced
25 by members of the class and it is in all the parties' interests to
26 concentrate the litigation in this Court. (D) the difficulties

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1 likely to be encountered in the management of a class action:
2 there does not appear to be any extraordinary difficulties in
3 managing this particular case as a class action.

4 **2. Defendants:** Defendants assert that the numerous
5 statutory claims and myriad damage theories that Plaintiffs allege
6 create individual issues that predominate this case and render it
7 unsuitable for class-wide adjudication under Rule 23(b)(3). (Ct.
8 Rec. 99, p. 15). They argue that certification under Rule
9 23(b)(3) is not proper because numerous individual issues
10 predominate over common issues as evidenced by simply looking at
11 the complaint. Defendants assert that the complaint alleges
12 numerous individual, separate, and unrelated issues as opposed to
13 the alleged common questions at issue. (Ct. Rec. 99, p. 16).
14 Examples given by Defendants are as follows: a worker who was
15 never hired cannot share common issues of fact or law with a
16 worker who was employed, but failed to receive adequate payment
17 statements, or who was provided with misleading terms of
18 employment, and a worker cannot claim that Global failed to
19 provide individuals with the terms and conditions of work, but
20 also provided workers with false and misleading disclosures. (Ct.
21 Rec. 99, pp. 17-18). Defendants argue that the resolution of
22 these issues will require distinctly case-specific inquiries into
23 the facts surrounding each alleged claim - which precludes
24 certification.

25 Defendants also contend that Plaintiffs fail to allege the
26 existence of any common discriminatory policy in their complaint
27 or motion, instead, each putative class members' employment may
28 have ended for a number of different reasons; such as, failure to

1 show up for work, quitting, job related terminations, and
2 mismatched social security numbers. Predominance requires more
3 than alleging violations of the same statute. *Monreal v. Potter*,
4 367 F.3d 1244, 1237 (10th Cir. 2004) ("Plaintiffs do not allege
5 any common issues of fact, and the only common issue of law they
6 assert is a violation of Title VII").

7 Defendants next assert that determining individual class
8 member damages will be unmanageable because Plaintiffs have failed
9 to produce any class wide method. (Ct. Rec. 99, p. 20). Although
10 Plaintiffs summarily contend that there are no manageability
11 problems, such conclusory statements do not satisfy the
12 manageability requirements for Rule 23. Defendants allege that
13 Plaintiffs are ignoring the complexity of the damages they are
14 seeking (1. actual damages and lost wages for race discrimination
15 under 42 U.S.C. § 1981, 2. actual damages and lost wages for race
16 discrimination under RCW 49.60.030(2), 3. emotional distress and
17 punitive damages for race discrimination, 4. actual or statutory
18 damages, whichever is greater, for each violation of the AWPAs, 5.
19 actual or statutory damages, whichever is greater, for each
20 violation of the FLCA, and 6. twice the amount of wages willfully
21 withheld as exemplary damages pursuant to RCW 49.52.070), and as a
22 practical matter, mini-trials must be conducted for each class
23 member to determine the amount of damages each is entitled to
24 recover under each of the myriad of federal and state statutes.
25 (Ct. Rec. 99, pp. 21-22).

26 Defendants also separately argue that the fact that
27 Plaintiffs seek "emotional distress damages" renders the class
28 action unmanageable. (Ct. Rec. 99, pp. 23-24). Defendants assert

1 that these type of damages would require each individual plaintiff
2 to establish that Defendants actions caused her personal injury
3 and would need to show the magnitude of injury to determine
4 compensatory damages (subjective differences of each plaintiff's
5 circumstances with an individual remedy).

6 **3. Plaintiffs' Reply:** Plaintiffs respond that it is
7 entirely possible for an agricultural employer to be held liable
8 for both failing to provide written disclosures and providing
9 false and misleading verbal information about the working
10 arrangement. *Herrera v. Singh*, 103 F.Supp.2d 1244, 1247 (E.D.
11 Wash. 2000) (awarding AWPAs damages for failure to provide written
12 disclosures and finding that verbal promises were false and
13 misleading and the agricultural employer violated those verbal
14 promises). (Ct. Rec. 108, p. 26).

15 Plaintiffs next contend that they have more than satisfied
16 the requirement that their class claims regarding a common
17 discriminatory purpose are not frivolous or insubstantial. (Ct.
18 Rec. 108, p. 27). Plaintiffs assert that, from the very first
19 paragraph of the complaint, they have stated that Defendants
20 "systematically and intentionally preferred H-2A workers from
21 Thailand in violation of federal and state law." (Ct. Rec. 108,
22 p. 27; Ct. Rec. 77, p. 2).

23 Lastly, Plaintiffs respond that any difficulties that may be
24 associated with Plaintiffs' claims for damages are not
25 extraordinary or substantial enough to warrant a denial of
26 certification. (Ct. Rec. 108, p. 28). Plaintiffs assert that
27 their claims for damages are manageable and that individualized
28 proof that may be required on damages should not preclude a

1 finding that common questions of law or fact predominate over
2 individual questions. (Ct. Rec. 108, pp. 28-29). Plaintiffs
3 indicate as follows: punitive damages may be awarded based on
4 evidence of conduct that is directed to the class; claims for
5 emotional distress damages have been certified through a hybrid
6 Rule 23(b)(3) class; should they prevail on their AWPAs and FLCA
7 claims, courts usually award statutory damages which are easily
8 calculated on behalf of class members; the appointment of a
9 special master to process the claims and assess damages or a lump
10 sum award among class members is an option; and the Court may
11 consider the appointment of a committee of workers employed during
12 the relevant period in order to assist in processing proof of
13 claims. (Ct. Rec. 108, pp. 28-29).

14 Plaintiffs have also filed a motion to bifurcate the trial in
15 this case. (Ct. Rec. 115). Plaintiffs have moved to hold a trial
16 on liability before a separate trial on damages "to conform to the
17 standard approach taken in employment discrimination class
18 actions." (Ct. Rec. 115). This may additionally assist in the
19 manageability of the case.

20 **4. Analysis:** The complaint alleges a course of
21 discriminatory conduct against U.S. resident workers and in favor
22 of foreign workers and further alleges there are common statutory
23 provisions which have been violated with respect to U.S. resident
24 workers. Under the *Blackie* Court's analysis, such allegations are
25 sufficient to present common questions of fact and law to support
26 class certification.

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1 In this case it is alleged that Defendants used similar
2 misrepresentations or practice regarding working conditions with
3 respect to U.S. resident workers. It has been noted that "a fraud
4 perpetrated on numerous persons by the use of similar
5 misrepresentations may be an appealing situation for a class
6 action" Advisory Comm. on Rule 23, Proposed Amendments to
7 the Rules of Civil Procedure, 39 F.R.D. 69, 103 (1966); See, also,
8 *Oppenheimer v. F.J. Young & Co., Inc.*, 144 F.2d 387 (2nd Cir.
9 1944). Where it is alleged that a business practice or course of
10 conduct operates to create illusions or false expectations, there
11 is a basis for class determination on that liability issue.

12 The assertions in the complaint allege common issues of fact
13 and law for the representative and putative class members of the
14 proposed class and subclasses. The questions of law or fact
15 common to the class members predominate over any questions
16 affecting only individual members. Defendants' argument does not
17 persuade the Court to find otherwise. Accordingly, the
18 undersigned finds that common questions of law or fact predominate
19 over the individual issues presented in the dispute.

20 Next, taking into consideration the criteria set forth in
21 Rule 23(b)(3),² it is apparent that, absent class certification,
22 it is unlikely that individual plaintiffs will challenge
23 Defendants practices. Absent class members have little incentive
24 to bring actions on their own. Many may not understand English or

25
26 ²(A) the interest of members of the class in individually
27 controlling the prosecution or defense of separate actions; (B)
28 the extent and nature of any litigation concerning the controversy
already commenced by or against members of the class; (C) the
desirability or undesirability of concentrating the litigation of
the claims in the particular forum; (D) the difficulties likely to
be encountered in the management of a class action.

1 the American legal system, and, even if they could find attorneys
2 willing to represent their individual claims, repeatedly
3 litigating the same disputes against the same defendants does not
4 promote judicial economy. Finally, the undersigned agrees that,
5 with regard to managing this particular case as a class action,
6 any potential difficulties likely to be encountered due to the
7 relief requested by Plaintiffs will be effectively managed by
8 bifurcating the trial and holding separate trials on liability and
9 damages. (See, this Court's separate order regarding Plaintiff's
10 motion for bifurcation). Therefore, the undersigned finds that
11 class treatment is a superior form of relief, considering the four
12 criteria listed in Rule 23(b)(3).

13 Based on the foregoing, the Court finds that certification of
14 the class in this case is proper under Rule 23(b)(2) and,
15 alternatively and additionally, under Rule 23(b)(3). Accordingly,
16 the undersigned concludes that the prerequisites of Rule 23(a) are
17 satisfied as well as the requirements of Rule 23(b).

18 **V. CLASS COUNSEL**

19 A court that certifies a class must appoint class counsel.
20 Fed. R. Civ. P. 23(g)(1)(A). In evaluating Plaintiffs' motion,
21 the Court has considered the following factors to the extent they
22 are reflected in the record: "the work counsel has done in
23 identifying or investigating potential claims in the action,"
24 "counsel's experience in handling class actions, other complex
25 litigation, and claims of the type asserted in the action,"
26 "counsel's knowledge of the applicable law," and "the resources
27 counsel will commit to representing the class." Fed. R. Civ. P.
28 23(g)(1)(C). Having considered these factors, the Court is

1 satisfied that Plaintiffs' counsel of record will fairly and
2 adequately represent the interests of the class. Fed. R. Civ. P.
3 23(g)(1)(B). Accordingly, it is ordered that Plaintiffs' counsel
4 of record shall serve as class counsel in this matter.

5 **VI. CONCLUSION**

6 Based on the foregoing, **IT IS HEREBY ORDERED** as follows:

7 1. Plaintiffs' Motion for Class Certification (**Ct.**
8 **Rec. 60**) is **GRANTED**.

9 2. The class and subclasses are limited to include only
10 farm workers living in the United States (with the exception of
11 guest workers) who applied, or who may apply in the future, at
12 Global Horizons for agricultural employment in Washington State at
13 Green Acres or Valley Farm. However, the class shall not be
14 limited strictly to those individuals who have matching social
15 security numbers.

16 3. Plaintiffs' counsel of record shall serve as class
17 counsel in this matter.

18 4. The District Court Executive is directed to file this
19 Order and provide a copy to counsel for Plaintiffs and Defendants.

20 **IT IS SO ORDERED.**

21 DATED this 28th day of July, 2006.

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23

S/Michael W. Leavitt
MICHAEL W. LEAVITT
UNITED STATES MAGISTRATE JUDGE

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