UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

WEST PALM BEACH DIVISION

Case No. 01-9013-CIV.-RYSKAMP
Magistrate Judge Vitunac

Luz-Carranza, et. al.,
individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

Mecca Farms, Inc., et. al.,

Defendants.
_____/

Complaint--Class Action

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

INTRODUCTION

This is an action by eight migrant and seasonal agricultural workers who were not fully paid their wages for work performed on Mecca Farms' fields between August 1997 and November 2001. Mecca Farms Inc. is one of the largest vegetable growers in the southeastern United States. Based in Lantana, Florida, Mecca Farms grows tomatoes and other vegetables in Palm Beach, Martin, and Broward counties. Mecca Farms did not directly employ the workers who harvested its crops; rather it relied on farm labor contractors to furnish it with the needed labor. The eight Plaintiffs worked on Mecca's operations as members of a crew operated by Maria Sanchez and her husband Rogerio Rodriguez, doing business as M. Sanchez & Son, Inc.

The hand harvesting of tomatoes is strenuous and tedious work. In order to harvest the tomatoes, the workers moved between the tomato rows, picking the tomatoes from the plants and

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dropping them into a bucket. The workers carried the buckets when full to a truck in the field. Each truck had two "dumpers" who took the buckets from the workers and emptied or "dumped" the buckets into the large bins on the back of the truck. The pickers were given one token for each bucket dumped, which the workers later redeemed for 40 cents. At the end of the week, Sanchez paid the workers their wages, less deductions for Social Security taxes and certain food purchases.

The farmworkers complain that the Defendants' practices over four growing seasons violated the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801-1872 (1999) ("AWPA") in a number of ways, including:

- **Waiting Time**

Every day of the harvest, the workers were told to arrive at the Mecca Farms' fields at daybreak, usually between 6:00 and 6:30 A.M. The majority of workers traveled to the fields in vans operated by Sanchez's drivers. If the tomatoes were wet when they arrived, either with rain or the morning dew, the workers could not start picking immediately. Tomatoes can only be picked when dry; if harvested while wet they will quickly rot and are of little commercial value. Mecca's on-site supervisor evaluated the moisture on the crop each day and only after he determined that the fields were sufficiently dry did the daily picking begin. On average, the workers waited two hours between the time they arrived at the field and the time picking started.

At the end of the day, the workers waited in line to individually hand in their accumulated picking tokens to a supervisor, who counted them. The counting process lasted approximately 30 to 40 minutes. The time spent waiting in the morning for the tomatoes to dry and in the afternoon for the tokens to be counted was not considered part of the compensable work day. Rather, the workers were credited only for the time they were actually picking.

The morning and afternoon waiting times lengthened the total hours worked each day and as a result, many workers did not earn sufficient piece rate earnings, i.e. pick enough buckets, to reach the mandated minimum wage. The workers contend that they are owed the difference between the amount due them at the minimum wage and the piece-rate earnings.[1]

- **Adjusted Bucket Totals**

Mecca Farms paid Sanchez $27 for each bin of tomatoes harvested by her crews. In order to realize a profit, Sanchez calculated that not more than 32 tokens were to be distributed per bin. (Maria Sanchez dep. at 338-339).[2] Sometimes, however, the buckets were not filled to capacity, thereby requiring more than 32 buckets to fill the bin. If an average of more than 32 tokens per bin were handed out, Sanchez systematically lowered the total amount of buckets credited to each worker on the daily field sheets until the 32 bucket per bin ratio was reached. These reductions were applied evenly to all of the workers harvesting that day, regardless of who or what actually caused the over-distribution.(See attached daily field sheet from 1/4/01)[3] Consequently, the payroll records and the wage statements show the "adjusted total" of buckets picked, rather than the actual number harvested. The workers contend that they should be compensated for each bucket they filled, rather than the lower, "adjusted" total.

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[1] This differential is sometimes referred to as "build-up pay,"i.e. the amount needed to "build-up" the workers' piece-rate earnings to equal the minimum wage.

[2] Maria Sanchez's deposition was conducted on June 11, 2002 and continued on June 20, 2002. Defendants' counsel have yet to conduct the cross examination.

[3] The daily field sheet shows that Sanchez reduced the total number of buckets picked by the Isabel Ramirez crew, which included the named Plaintiffs David Matias and Rafael Gonzales. Mr. Matias picked 30 buckets but was paid for 25. Mr. Gonzales picked 40 buckets and was paid for 35.

- **Social Security Taxes**

In addition to hiring the workers, Sanchez paid them their wages and, under her contractors' agreement with Mecca Farms, was responsible for payment of the Social Security taxes due on the crews' earnings. Although Sanchez routinely withheld Social Security taxes from her crews' wages, instead of paying the government the taxes, she simply retained them.

- **Meal Deductions**

For the midday meal break, a lunch wagon arrived to offer food to the workers. Many workers purchased meals on credit. In order to ensure that the lunch wagon operator received the money owed for these purchases, on payday Sanchez gave the lunch operator the workers' cash wages, which Sanchez had already pre-sorted into individual envelopes. Only after the lunch operator withdrew from the envelopes the amount she considered was due, did the workers receive their wages. The workers assert that these charges cannot be counted as part of their wages because they unquestionably included a profit to the lunch wagon operator.

In sum, the workers claim that each of Sanchez's methods described above resulted in an underpayment of wages in violation of the AWPA's wage payment provisions. 29 U.S.C. §§ 1822(a), 1832(a). To conceal this underpayment, the payroll records and wage statements provided to the workers were inaccurate and violated AWPA's recordkeeping, 29 U.S.C. §§ 1821(d)(1), 1831(c)(1), and wage statement provisions 29 U.S.C. §§ 1821(d)(2), 1831(c)(2).

THE PROPOSED CLASS

The Plaintiffs seek class certification under Rule 23(b)(3) with respect to the claims presented

in Count I and under Rule 23(b)(2) with respect to Count II of the Amended Complaint. [4] The proposed class consists of:

> all migrant and seasonal agricultural workers furnished to Mecca Farms, Inc. by M. Sanchez & Son, Inc., Maria T. Sanchez, or Rogerio T. Rodriguez from August 1997 through November 2001, inclusive.

ARGUMENT

I. A Definable Class Exists

Although not specifically mentioned in Rule 23, an essential prerequisite of a class action is that there must be a "class." See In re A.H. Robins Co., 880 F.2d 709, 728 (4th Cir. 1989); White v. National Football League, 822 F. Supp. 1389, 1402 (D. Minn. 1993); C. Wright, A. Miller and M. Kane, 7A Federal Practice and Procedures §1760 (2d ed. 1986). In keeping with the liberal construction of Rule 23, the class does not have to be so ascertainable that every potential member can be identified at the commencement of the action. See Doe v. Charleston Area Med. Ctr., Inc., 529 F.2d 638, 644-45 (4th Cir. 1975); Ashe v. Board of Elections, 124 F.R.D. 45, 47 (E.D.N.Y. 1989). If the outlines of the membership of the class are determinable at the outset of the litigation, a class should be deemed to exist. The class description only need be sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member. See C. Wright, A. Miller and M. Kane, 7A Federal Practice and Procedures, §1760.

The proposed class consists of an easily-distinguishable group of workers which Sanchez and Rodriguez supplied to Mecca Farms to cultivate and harvest vegetables over a period of four

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[4] In light of the recent ruling in McDonald v. Southern Farm, 291 F.3d 718 (11th Cir. 2002), the Plaintiffs are dropping Count V which asserted class claims under the Federal Insurance Contributions Act.

growing seasons. Since M. Sanchez and Son, Inc. began exclusively contracting with Mecca Farms in 1995, it has maintained weekly payroll records of its employees. From these payroll records, a roster of class members can be constructed with relative ease. See In re Vesta Ins. Group, Inc. Sec. Litig., No. 98-AR-1407-S, 1999 U.S. Dist. LEXIS 22233, at *8 (N.D. Ala. Oct. 25, 1999) (noting that members of the class were ascertainable where their names were "readily available" from the defendant's transfer agent). Thus, the precisely defined class requirement is met. See Haywood v. Barnes, 109 F.R.D. 568, 576 (E.D.N.C. 1986) (class of migrant workers employed by a farmer during a specific time period certified by the court).

II. The Prerequistes To A Class Action Are Satisfied

A. Numerosity and impracticability of joinder

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Impracticality refers not to the impossibility of joinder, but rather to difficulty or inconvenience. See Rodriguez by Rodriguez v. Berrybrook Farms, Inc., 672 F. Supp. 1009, 1013 (W.D. Mich. 1987) (plaintiffs need only demonstrate that it is extremely inconvenient or difficult to join the members of the class); Hively v. Northlake Foods, Inc., 191 F.R.D. 661, 666 (M.D. Fla. 2000) (impracticality does not mean impossibility). Rather, impracticality is dependent upon the circumstances of a particular case. See Johnson v. Georgia Highway Express, Inc., 417 F.2d 1122, 1123 (5th Cir. 1969).

No definite standard exists as to what size class satisfies the requirements of Rule 23(a). See Hively, 191 F.R.D. at 666; Haywood, 109 F.R.D. at 576. However, the modern trend is to adopt as a rule of thumb that classes normally should contain more than 21 members. If the class has over 40 members, it almost always satisfies the numerosity requirements of Rule 23(a)(1). See Cox v.

American Cast Iron Co., 784 F.2d 1546, 1553 (11th Cir. 1986); Rodriguez by Rodriguez, 673 F. Supp. at 1013. See also C.Wright, A. Miller and M. Kane, 7A Federal Practice and Procedures § 1762 (2d ed.1986) (classes of less than 26 have frequently been found too small to satisfy the numerosity requirement).

The proposed class unquestionably satisfies the numerosity requirements of Rule 23(a)(1). Defendants M. Sanchez & Son, Inc. and Sanchez admit that the class includes over 1,000 individuals. (Answer and Affirmative Defenses of M. Sanchez & Son, Inc. Maria T. Sanchez, and Rogerio Rodriguez ¶ 16). During the height of the harvest season, Sanchez supplied between 80 and 100 workers per day to Mecca. (Sanchez depo. at 101).

B. Common questions of law and fact

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." This requirement is expressed in the disjunctive and is satisfied by either a showing of common questions of law or common questions of fact. See Dujanovic v. Mortgage America, Inc., 185 F.R.D. 660, 667 (N.D. Ala. 1999). It is not necessary that all questions of law or fact raised in the litigation be common so long as least one issue is common to all class members. See Fuller, 197 F.R.D. at 700; Hively, 191 F.R.D. at 666; Powers v. GEICO, 192 F.R.D. 313, 317 (S.D. Fla. 1998) ("The threshold for commonality is not high.")

The legal and factual questions common to class include:

whether Defendant Mecca Farms, Inc. was an employer or joint employer of the class members;

whether the time the workers spent in the morning waiting for the tomatoes to dry is compensable;

whether the time the workers spent in the afternoon having their tokens counted is

compensable;

whether the workers must be paid for the buckets picked for which they were not compensated due to Sanchez's downward adjustment procedures; and

whether the Defendants' failure to deposit the Social Security taxes due on the class members' earnings violated the AWPA.

The status of Defendant Mecca Farms, Inc. as an employer under the AWPA is a common issue of law and fact, and a central issue in the case.[5] Mecca denies that it employed the Plaintiffs and the other workers furnished by the labor contractors. (Defendant Mecca Farms, Inc.'s Amended Answer, Defenses, and Affirmative Defenses to Plaintiffs' Amended Complaint ¶ 2). Unless it "employed" the agricultural workers within the meaning of the AWPA, Mecca has no liability whatsoever in this action. The nature of the employment relationship between the class members and Defendant Mecca Farms, Inc. presents a common legal question. See Haywood, 109 F.R.D. at 577 (commonality established where a "central issue" concerned the defendant grower's status as an employer of the plaintiff farmworkers); See also, Kelly v. Sabretech, Inc., 195 F.R.D. 48, 53 (S.D. Fla. 1999) (common questions included whether the defendant was an employer within the meaning of the Worker Adjustment and Retraining Notification Act).

Another common issue is whether the time waiting for the tomatoes to dry in the morning was compensable. Defendant Sanchez admits that the workers were told to report to the tomato fields at daybreak. (Sanchez Dep. at 85). She also admits that the workers could not start picking until a Mecca representative determined that the fields were sufficiently dry. (Id. at 109, 111). If

[5] For this reason, this action has been bifurcated so that the Court can first resolve this threshold issue.

this time benefitted the employer, it was compensable. See Sedano v. Mercado, 124 Lab. Cas. ¶ 35,756 (D.N.M. 1992) (waiting for fields to dry primarily benefits employer); Fields v. Luther, 108 Lab. Cas. ¶ 35,072 (D. Md. 1987) (time spent waiting for dew to dry on tomatoes is compensable).

There is a common legal question as to whether the time waiting for the tokens to be counted at the end of each harvest day was compensable. Sanchez admits that the workers waited 30 to 60 minutes to have their tokens counted. (Sanchez Dep. at 147). Again, if this time primarily benefitted the employer, it was compensable. Sedano v. Mercado, 124 Lab. Cas. ¶ 35,756 (D.N.M. 1992) (time spent waiting for tokens to be counted is compensable).

The underpayment for buckets of tomatoes picked is another issue common to the class. There is no factual dispute that Sanchez paid the workers for fewer buckets than they actually picked in order to establish the sought-after profit margin. (Sanchez Dep. at 338-339). This practice was common to all the workers in her crews. The common legal question is whether the failure to compensate the workers for each bucket filled constitutes a violation of the AWPA, 29 U.S.C. §§ 1822(a), 1832(a), 1821(d)(1), 1831(c)(1),1821(d)(2), 1831(c)(2).

The class also seeks relief for the Defendants' failure to deposit with the Internal Revenue Service the Social Security taxes withheld from the workers' wages. There is a common legal question as to whether this failure constitutes a violation of the AWPA. See Saintida v. Tyre, 783 F.Supp. 1368, 1376 (S.D. Fla. 1992) (failing to deposit Social Security taxes violates AWPA's wage payment provisions).

Finally, the propriety of the lunch wagon charges is also a question common to all class members. For the workers who purchased food on credit, the lunch wagon operator directly withdrew from the workers' wages the outstanding charges. (Sanchez Dep. at 136). The system was

instituted to ensure that the lunch operator would be paid. (Id. at 137). The common legal question is whether these charges may be properly considered part of the wages paid. See Frenel v. Freezeland Orchard Co., 108 Lab. Cas. ¶ 35,016 (E.D.Va.1987)(meal charges may not be considered part of legally-required wage).

As illustrated above, the Defendants engaged in common practices toward the class members which resulted in multiple common issues of law and fact.

C. Typicality of Plaintiffs' claims

Rule 23(a)(3) requires that "the claims . . . of the representative parties [be] typical of the claims . . . of the class." The class representative must possess the same interest and suffer the same injury as the class members. Murray v. Auslander, 244 F.3d 807, 811 (11th Cir. 2001). The claims of the class representatives are typical if they may reasonably be expected to be raised by members of the proposed class. See In re Commercial Tissue Prods., 183 F.R.D. 589, 593 (N.D. Fla. 1998). The claims of the representative parties need to be similar enough to those of the class so that they will adequately represent the absent class members. See Powers v. Stuart-James Co., 707 F.Supp. 499, 503 (M.D. Fla. 1989) ("The reasoning behind this requirement is that where all interests are sufficiently parallel, all interests will enjoy vigorous and full presentation."); C. Wright, A. Miller and M. Kane, 7A Federal Practice and Procedures, § 1764.[6]

The Plaintiffs have suffered the same injuries as the other class members and their claims are

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[6] In many ways, the commonality and typicality requirements of Rule 23(a) overlap, with both focusing on whether a sufficient nexus exists between the legal claims of the named class representatives and those of the class members to warrant certification. Traditionally, commonality refers to the group characteristics of the class as a whole and typicality refers to the individual characteristics of the named plaintiffs in relation to the class. See Prado-Steiman v. Bush, 221 F.3d 1266, 1278-79 (11th Cir. 2000).

typical of those of the other class members. Defendants M. Sanchez & Son, Inc. and Sanchez admit that the class representatives worked with their crews. (Answer and Affirmative Defenses of M. Sanchez & Son, Inc. Maria T. Sanchez, and Rogerio Rodriguez ¶ 12.). The named Plaintiffs suffered, as well as the rest of the class members, from the Defendants' failure to treat the morning and afternoon waiting periods as compensable time. Like their fellow crew members, the Plaintiffs did not have their earnings reported to the Social Security Administration. As with the rest of the M. Sanchez & Son crews, the Plaintiffs were not paid for all the buckets they picked because of Sanchez's system of adjusting downward the recorded number of buckets picked. The Plaintiffs and the other class members were all subjected to the same sort of wage deductions for lunch wagon purchases. In order to prove their individual claims, the class representatives will use the same evidence that will establish these claims for the other class members. For example, if the evidence demonstrates that Mecca "employed" the named Plaintiffs, Mecca will necessarily have "employed" the other class members as well.

D. Adequacy of protection of class interests

Rule 23(a)(4) requires that "the representative parties . . . fairly and adequately protect the interests of the class." Thus, the class representatives' interests should not be antagonistic to those of the class members. See Pickett v. Iowa Beef Processors, 209 F.3d 1276, 1280 (11th Cir. 2000) (citing C. Wright, A. Miller and M. Kane 7A Federal Practice and Procedures § 1768). A party's claim to representative status is defeated only if the conflict between the representative and the class is a fundamental one, going to the specific issues in controversy. See Pickett, 209 F.3d at 1280 (citing H. Newberg and A. Conte, 1 Newberg on Class Actions §3.25).

In this case, the interests of the named plaintiffs are in no way antagonistic to those of the

other class members. All of the class members will benefit from the relief sought by receiving restitution of their unpaid wages and having their earnings reported to the Social Security Administration. The named plaintiffs will not benefit in any way from actions that will prove harmful to the interests of the class members. See Pickett, 209 F.3d at 1280.

Rule 23(a)(4) also requires that the representative parties provide adequate financing and competent counsel in support of the litigation. See Fuller, 197 F.R.D. at 700. The Plaintiffs and their counsel will vigorously and competently prosecute this action on behalf of the class. Counsel for the Plaintiffs have already paid for the transcription of several depositions and for the reproduction of numerous documents produced by the Defendants during the course of discovery. The Plaintiffs' counsel have litigated numerous actions under the AWPA, including each of the three cases reviewed by the Eleventh Circuit construing the joint employment doctrine under the Act--Charles v. Burton, 169 F.3d 1322 (11th Cir. 1999), Antenor v. D & S Farms 88 F.3d 925 (11th Cir. 1996), and Aimable v. Long & Scott Farms, 20 F.3d 434 (11th Cir. 1994). Counsel for the Plaintiffs have litigated a number of additional cases under the AWPA, including Caro-Galvan v. Curtis Richardson, Inc., 993 F.2d 1500 (11th Cir. 1993), Cochran v. Vann, 963 F.2d 384 (11th Cir. 1992), Leach v. Johnston, 812 F. Supp. 1198 (M.D. Fla. 1992), Stewart v. Everett, 804 F. Supp. 1198 (M.D. Fla. 1992), Saintida v. Tyre, 783 F. Supp. 1368 (S.D. Fla. 1992), Stewart v. Woods, 730 F. Supp. 1096 (M.D. Fla. 1990), Osias v. Marc, 700 F. Supp. 842 (D. Md. 1988). The Plaintiffs' counsel have also handled a number of class actions before the federal courts, including Antenor v. D & S Farms, 88 F.3d 925 (11th Cir. 1996), Frederick County Fruit Growers Ass'n v. Martin, 968 F.2d 1265 (D.C. Cir. 1992); Bertrand v. Jorden, 672 F. Supp. 1417, (M.D. Fla.1986); Fields v. Luther, 108 Lab. Cas. ¶ 35,072 (D. Md. 1987), and Phillips v. Brock, 652 F. Supp. 1372 (D. Md. 1987).

III. The Class Action is Maintainable

In order to have a class certified, the Plaintiffs must not only satisfy Rule 23(a), but also meet one of the alternative requirements under Rule 23(b). See Pickett v. Iowa Beef Processors, 209 F.3d 1276, 1279 (11th Cir. 2000).

A. The requirements of Rule 23(b)(3) are met

1. The common questions of law predominate

In order for a matter to be certified under 23(b)(3), it is necessary that "the questions of law or fact common to the members of the class predominate over any questions affecting only individual members." The issues that are subject to generalized proof, and thus applicable to the class as a whole, must predominate over those matters which are subject only to individualized proof. Jackson v. Motel 6 Multipurpose, Inc., 130 F.3d 999, 1005 (11th Cir. 1997). Although efficiency and uniformity of decision are among the objectives underlying Rule 23(b)(3), they do not alone establish predominance. Predominance exists only when resolution of an overarching common issue does not break down into an unmanageable variety of individual legal and factual issues. Id. at 1006.

The class claims predominate over any question affecting the individual members. In fact, the individual Plaintiffs' legal claims are subsumed within the class claims. A single adjudication can resolve the issues raised by the class. Whether Defendant Mecca Farms is a joint employer is an overarching issue that affects the whole class. Mecca's status as an employer does not depend on the Plaintiffs' individual relationship with Mecca. Rather, the employment relationship is one that is uniform with all the farmworkers. Likewise, individual factors simply have no role in proving the morning and afternoon waiting time issue because Defendants' policies affected the whole class

in an equal manner. The reduction of buckets to ensure Sanchez a profit will not require individual adjudication because the policy was evenly applied and the damages are apparent from Defendant Sanchez's own records. Also, the failure to deposit the Social Security taxes is not a claim that varies between the individual Plaintiffs, to the contrary, it reflects Defendants' standard business practice applied to all the class members. Finally, the predominant issue concerning the lunch wagon is not the individual purchases, but the common practice of deducting the meal charges from the wages. In sum, Defendants' uniform treatment of the class members means that the individual claims can be proven within the class claims and do not require individual analysis.

2. A class action is superior to other methods of adjudication

For certification under Rule 23(b)(3), the Court must also find that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." In making this determination, the Court is to focus on the four factors enumerated in Rule 23(b)(3): the interest of class members in individually controlling the prosecution of separate actions, the extent and nature of any litigation concerning the controversy already commenced, the desirability of having the litigation of the claims in the particular forum where it has been filed, and the difficulties likely to be encountered in management of the class action. See Fed. R. Civ. P. 23(b)(3)(A)-(D). Taking into account all four of these factors, a class action is superior to any other method of adjudicating this controversy.

With respect to the first factor, it is extremely unlikely that individual class members have any interest in instituting or controlling their own individual actions. Indeed, most of the class members, for various reasons, would probably be unable to bring their own actions. This is especially true given their lack of proficiency in English, their indigent status, and the relatively

small amount of individual recovery. This has been found to be the case in several AWPA class action claims brought by migrant workers. See, e.g., Rodriguez v. Carlson, 166 F.R.D. 465, 480 (E.D. Wash. 1996); Leyva v. Buley, 125 F.R.D. 512, 518 (E.D. Wash. 1989); Haywood, 109 F.R.D. at 592.

With regard to the second criterion, no other litigation concerning this controversy has been commenced by members of the class. Maintenance of a class action will not, therefore, disrupt any ongoing litigation or lead to conflicting decisions on the same set of facts.

Third, it is desirable to conduct the litigation in this forum. The Defendants are subject to suit in this district and the employment at issue occurred within this district. The records and other evidence pertaining to the class members' employment with the Defendants are also located in this district.

With respect to the final factor to be considered, although every class action presents administrative difficulties, the benefits of maintaining this action on a class basis far outweigh any administrative burdens. In order to ultimately prevail, the class must be able to prove the factual allegations underlaying the legal claims and then the damages. All of the claims can de proven in a manageable, efficient manner. Although there are thousands of potential class members, their individual testimony will not be required. Most allegations will be proven through the Defendants' own records and testimony. For example, Mecca's status as an "employer" of the workers will be determined primarily on evidence provided by Mecca's employees, the labor contractors' and their supervisors. In the few instances where additional evidence is required, representative testimony will suffice because of the Defendants' uniform procedures and policies.

The waiting time claims can also be proven in manageable parts. Testimony from Mecca's employees, representative workers, the farm labor contractor, and its supervisors will establish average morning and afternoon waiting times. Once the length of the workday has been determined, the damages can be easily computed by deducting the wages paid from the amount due when the waiting time is treated as compensable.

The downward adjustment of the bucket totals can be easily tracked from the contractor's own records. As previously noted, Sanchez's daily field sheets reflect both the number of buckets picked and the reduced amount which was the basis of the workers' pay. If the farmworkers prevail in establishing the Defendants' obligation to pay the promised piece-rate of 40 cents for each bucket picked, it will be a simple arithmetic computation to determine the amount of additional pay due each class member for the violation.

Whether the Social Security taxes were paid to the government can also be proven through the contractor's records. The Defendants' W-2 forms will show if FICA taxes were in fact paid. In the absence of W-2 forms, the amount of the unpaid FICA taxes due is evident from the contractor's payroll records. See Frenel v. Freezeland Orchard Co., 108 Lab. Cas. ¶ 35,016 (E.D.Va.1987) (employer entitled to no wage credit for FICA taxes allegedly paid in absence of W-2 Forms).

The lunch wagon operator's records will quantify the amount of meal charges withheld from the wages. Detailed records were kept by the lunch wagon operator on the credit purchases of each worker. These charges cannot be considered part of the minimum wage paid to the workers unless records were maintained demonstrating that the charges included no profit whatsoever. Leach v. Johnston, 812 F. Supp. 1198, 1213 (M.D.Fla. 1992). Damages for this violation can be calculated by comparing the lunch wagon records to the payroll records.

In sum, the class claims can be proven in a manageable fashion without the need for testimony and evidence from the individual class members. As noted, most elements can be proven exclusively through the Defendants' own records, with the resulting damages determined through simple calculations using data from the contractor's payroll records.

B. The requirements of Rule 23(b)(2) are also satisfied

The Plaintiffs also seek to have their claim in Count II of the Complaint certified as a class action under Rule 23(b)(2). They seek a declaration that the Defendants have violated the AWPA and an injunction barring the Defendants from continuing to violate the AWPA.

Rule 23(b)(2) authorizes the maintenance of a class action when "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." As has already been discussed, the Defendants routinely deducted Social Security taxes from the workers' wages yet failed to deposit those sums with the appropriate governmental agency. By failing to deposit the taxes for the workers, the Defendants have acted in a manner that is generally applicable to the class. The class members seek to enjoin the Defendants from failing to file with the Social Security Administration Forms W-2 and W-3 for the time covered by the instant lawsuit. Other courts have considered this an appropriate remedy under the AWPA. See Saintida v. Tyre, 783 F. Supp. 1368, 1376 (S.D. Fla. 1992) (failing to deposit Social Security taxes violates AWPA's wage payment provisions); Sanchez v. Overmeyer, 845 F. Supp. 1183,1187 (N.D. Ohio 1993) (failing to pay agricultural worker's FICA taxes violates AWPA's wage payment provision); Fields v. Luther, 108 Lab. Cas. ¶ 35,072 (D.Md. 1988)(enjoining farm labor contractor to file and remit FICA taxes due).

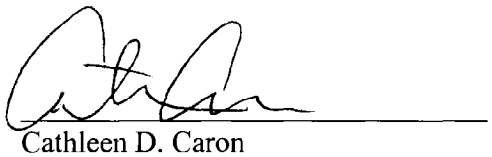
IV. Treatment of Similar Class Actions Under the AWPA

On many occasions, courts have certified class actions brought by migrant workers under the AWPA and its predecessor statute, the Farm Labor Contractor Registration Act. See, e.g., Antenor v. D & S Farms, 88 F.3d 925 (11th Cir. 1996); Six (6) Mexican Workers v. Arizona Citrus Growers, 904 F.2d 1301 (9th Cir. 1990) (class consisting of 1,349 workers); De La Fuente v. Stokely-Van Camp, Inc., 713 F.2d 225 (7th Cir. 1983) (class of approximately 1,500); Alvarez v. Joan of Arc, 658 F.2d 1217 (7th Cir. 1981); Perez-Perez v. Progressive Forestry Servs., Inc., No. 98-1474-KI, 2000 U.S. Dist. LEXIS 414 (D. Ore. Jan. 19, 2000); Medrano v. D'Arrigo Brothers Co. of California, 125 F. Supp. 2d 1163 (N.D. Cal. 2000); Rodriguez v. Carlson, 166 F.R.D. 465 (E.D. Wash. 1996); Leyva v. Buley, 125 F.R.D. 512 (E.D. Wash. 1989); Hardy v. Ross, 113 Lab. Cases (CCH) ¶ 35,284 (D.S.C. 1989); Fields v. Luther, 108 Lab. Cases (CCH) ¶ 35,072 (D. Md. 1988); Rodriguez by Rodriguez v. Berrybrook Farms, Inc., 672 F. Supp. 1009 (W.D. Mich. 1987); Haywood v. Barnes, 109 F.R.D. 568 (E.D.N.C. 1986); Bertrand v. Jorden, 672 F. Supp. 1417, (M.D. Fla.) (class of 200 migrant workers); Aguirre v. Bustos, 89 F.R.D. 645 (D.N.M. 1981); Juarez v. Quintero, 530 F. Supp. 267 (N.D. Cal. 1981); Cantu v. Owatonna Canning Co., Inc., 90 Lab. Cases (CCH) ¶ 33,965 (D. Minn. 1978).

CONCLUSION

Based on the foregoing authority, the Court should grant the Plaintiffs' Motion for Class Certification and permit this matter to proceed as a class action under Rule 23(b)(3) with respect to Count I and under Rule 23(b)(2) with respect to Count II of the Amended Complaint.

Respectfully submitted,



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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by fax and first class United States mail, postage prepaid, to counsel of record Henry Wulf, Esq., Carlton Fields, 222 Lakeview Avenue, Suite 1400, West Palm Beach, FL 33401 and Don R. Boswell, Esq., Akers & Boswell, P.A., 2875 South Ocean Boulevard, Suite 200, Palm Beach, FL 33480 on this 1st day of July, 2002.

Cathleen D. Caron

CONTRACTOR FIELD INVOICE

FROM Stuart DATE 1/4/00

CONTRACTOR Mo Sanches APPROVED BY

Con Isabel;

WAGE PER Tomate

WORKER'S NAME	HOUR	START	FINISH	JOB DESCRIPTION	HOURS
1. Isabel Ramires	6	9.30	5.00	T. D.	(2) 40
2. Ebelicia Lopez	6.00	11	11	T. T.	40
3. Santos Ribera	16	39	25		1.6
4. Ricardo Ramos	13.00	38	34		2.6
5. Luis Lopez	13.00	39	34		2.6
6. Mardoqueo Ortiz	10	20	15	42.00x2=	1.2
7. Jorge Brevo	8.10	26	21	84.00	1.6
8. Marcos Juarez	11.00	64	29	Tomate =	2.3
9. Venancio Velazquez	12	35	30	174.40	2.3
10. Alfredo Romero	7.00	23	18		1.4
11. David Matias	10	30	25	258.40	1.9
12. Andres Mendoza	16	45	40		3.1
13. Manuel Sen	8	25	20		1.6
14. Otoniel Vazquez	10	30	25		1.9
15. Rafael Gonsales	14	40	35		2.7
16. Antelmo Morales	11.00	33	28		2.2
17. Nemias Ribera	10	30	25		1.9
18. Armando Lopez	5.00	18	13		1.0
19. Alex Ribera	7.60	24	19		1.5
20.		501	436		
21. Con Enrique				1/4/00	
22. Juan Castillo		7.30	6.30	T. L.	
23. Rolando Perez		9.30	5.00	T. D.	
24. Alejandra Ruiz		9.30	5.00	T. K.	

PLAINTIFF'S EXHIBIT 19 G