UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 01-9013-Civ. Ryskamp/Vitunac

LUZ-CARRANZA, et al.,

Plaintiffs,

v.

MECCA FARMS, INC., et al.,

Defendants.
_____/

Complaint—Class Action

MECCA FARMS, INC., MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Defendant, Mecca Farms, Inc. ("Mecca Farms"), files this memorandum in opposition to class certification. In this putative class action, eight seasonal agricultural workers allege that the defendants violated the Migrant and Seasonal Agricultural Worker Protection Act ("MSPA"), among other things, during plaintiffs' employment at Mecca Farms' Lantana, Florida fields. They seek to certify a class consisting of "all migrant and seasonal agricultural workers furnished to Mecca Farms, Inc. by M. Sanchez & Son, Inc., Maria T. Sanchez, or Rogerio T. Rodriquez from August 1997 through November 2001, inclusive." (Plaintiffs' Memorandum in Support of Motion for Class Certification at 5). Plaintiffs seek class certification only of their MSPA claims. As shown below, however, no class at all should be certified.

FACTUAL BACKGROUND

Mecca Farms. Mecca Farms grows tomatoes and other vegetables. It does not directly employ the workers who harvest its crops. Instead, it contracted with a farm labor contractor to supply the necessary agricultural labor. Plaintiffs acknowledge that putative class members were employed by M. Sanchez & Son, Inc. ("Sanchez"), not directly by Mecca Farms. (Plaintiffs' Memorandum in Support of Motion for Class Certification at p. 1).

Plaintiffs' Claims. Plaintiffs allege that the plaintiffs' employer Sanchez (and Mecca as a supposed "joint employer") violated MSPA in a number of respects. They first allege that, at harvesting time, Sanchez failed to compensate field laborers for time spent in the morning waiting for tomatoes to dry before picking could begin. However, some workers drove their own cars to work so they could begin working as soon as they arrived rather than ride with a van driver. (Hernandez Dep. at 108-109; Perez Dep. at 77). Others did not engage in harvesting. For example, one named plaintiff testified that she picked tomatoes only three days during the class period. (Caranza Dep. at 109). Another testified that sometimes workers were taken off tomatoes to pick peppers, at which time they could start working immediately upon arrival. (Hernandez Dep. at 86, 180). Even when there was a waiting period, it varied from day to day. (Mattias Dep. at 5-6).[1] Moreover, many workers have no records of the time for which they claim they should have been paid. (*E.g.*, Perez Dep. at 191; Roblero Dep. at 136-139, 165-66, 170-71, 189-90). At least one named plaintiff asserted that she was underpaid only infrequently (variously testifying that it occurred "on three occasions" and "maybe" more than ten occasions during the entire class period) – and on several occasions when she complained about the underpayment, she was reimbursed for the missing time. (*Id.* at 194-197).

Plaintiffs also allege that Sanchez failed to compensate laborers for time at the end of the day waiting in line for a supervisor to count picking tokens. For some the wait could be "an hour, an hour and a half." (Hernandez Dep. at 106). For others it was "[m]ore or less about a half an hour." (*Id.* at 107; Matias Dep. at 19). For still others, the wait was miniscule. Workers who drove their own cars left right after their tokens were counted. (Hernandez Dep. at 109). One plaintiff testified that she considered the time that would elapse between stopping work in the fields and departing in the van to be "short." (*Id.* at 110).

Plaintiffs also allege that Sanchez systematically lowered the total amount of buckets credited to each worker on daily field sheets. However, the workers did not make or retain any

[1] Even among the named plaintiffs, the testimony differed as to when workers would arrive and when they would commence work – times which varied from day to day as well as among the workers. (Compare Matias Dep. at 11 with Hernandez Dep. at 84; Perez Dep. at 77; A. Perez Dep. at 31).

independent records reflecting the number of buckets they picked or the number of hours they worked in any given day or any given year. (Perez Dep. at 191; Matias Dep. at 84, 187; Hernandez Dep. at 142, 159-161). Moreover, the workers knew they would not receive credit for picking small tomatoes or peppers. (Perez Dep. at 136; Matias Dep. at 9, 25-26). The workers were told each day what size was acceptable and what was not. (*Id.* at 106-107; Perez Dep. at 136). One plaintiff testified that she knew she would not receive credit for small tomatoes but picked them anyway. (Hernandez Dep. at 190).[2]

Plaintiffs also allege that Sanchez improperly allowed a lunch wagon operator to deduct from workers' pay envelopes amounts owed to the operator for meals purchased on credit. However, many, if not most, workers did not did not buy their lunch, but brought their meals to the fields. (Perez Dep. at 167; Hernandez Dep. at 90). "All of the people, they would take their meals." (*Id.*) Others paid the operator in cash. (*Id.* at 96; Matias Dep. at 54). Still others who purchased on credit believed the operator deducted the correct amount. (*Id.* at 33, 178-179). Even when workers purchased food on credit and believe the wrong amount was deducted, they have no records to substantiate their claim that the operator improperly deducted money from their pay. (Perez Dep. at 170; Hernandez Dep. at 167-168; Roblero Dep. at 159-60).[3]

The Plaintiffs. Each of the named plaintiffs is an illegal alien with no right to work or live in the United States.[4]

Delma Luz Carranza is a citizen of Honduras. (Carranza Dep. at 39, 57). She does not have a passport. (*Id.* at 57). She entered the United States illegally in January 1989 by crossing over the Mexican border at Laredo, Texas. (*Id.* at 9). She had a "false paper" that she showed to

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[2] Mecca insisted that workers only pick larger tomatoes for commercial reasons. Tomatoes are priced differently depending on their quality and size, and larger tomatoes are more valuable than smaller ones. (Perez Dep. at 142). If product was picked contrary to instructions given, it was unusable. (*Id.* at 147).

[3] Plaintiffs further allege that Sanchez failed to pay social security taxes due on laborers' earnings.

[4] Plaintiffs' counsel has represented that named plaintiff Hermilinda Ramos is being dropped as a putative class representative. In addition, named plaintiffs Rafael Gonzalez and Carlos Ramos have moved to Guatemala and Chicago, respectively, and have not been deposed. However, plaintiffs' counsel has stipulated that they are illegal aliens with no right to work or reside in the United States. In addition, plaintiffs' counsel has stipulated that they have the same knowledge (or lack of knowledge) as to the issues in this action and their responsibilities as class representatives as the named plaintiffs who were deposed. (*See* Correspondence between counsel for plaintiffs and counsel for Mecca Farms, attached hereto as Exhibit 1).

employers to be able to work in this country. (*Id.* at 33, 77-78). She either is currently or was at one time under a deportation order from the Immigration and Naturalization Service. (*Id.* at 17). She obtained work at Mecca Farms under false pretenses, using a false identification card and work permit. (*Id.* at 70-71, 77-78).

Ms. Carranza has never read the complaint or even seen it except one occasion when Maria Sanchez showed the first page of it to her. (*Id.* at 208). When first asked for her understanding of the nature of the claims, she said she thought the lawsuit was to force her employer to clean the bathrooms, provide toilet paper and make water available for drinking and washing hands. (*Id.* at 193-194). Later, she opined that the basis of the lawsuit is that "they just go ahead and cash the checks without one's authorization." (*Id.* at 196). However, she never asked her employer not to cash her check. (*Id.* at 213). With the exception of three days in 1997 in which she worked as a picker, she is not complaining that the hours recorded for her were inaccurate. (*Id.* at 214-217, 229-230). She believes she was paid accurately for days in which she worked doing planting. (*Id.* at 217). She does believe M. Sanchez & Son improperly deducted money from her paycheck for transportation to and from the fields. (*Id.* at 161-162). She believes this because her pay records show a deduction for FICA. (*Id.* at 168-169). "All of us think about it, the ones that we all work in labor, all of us." (*Id.* at 164). "That's what the people say." (*Id.* at 169). She believes her responsibilities in the lawsuit are "to defend all of the workers from the field as well as my rights." (*Id.* at 212). She understands that a class representative is a person in "the same position that I am in right now, to do the same thing, to be able to struggle for all the people, for all the rights of the workers." (*Id.*)

Virginia Perez Abad (called Virginia Perez in the complaint) is a citizen of Mexico. (Perez Dep. at p. 39). She has no passport. (*Id.*) She does not know how to read. (*Id.* at 9). She came into this country illegally in approximately 1995 (though she can't remember exactly when it was). (*Id.* at 10, 25). She has never applied for legal residency in the United States or for consent to work in this country. (*Id.* at 81-82). She used a fraudulent Social Security card to gain employment at Mecca Farms. (*Id.* at 92, 96-98, 107). When asked whether she used a fake Social Security card for other purposes, she asserted a Fifth Amendment privilege not to answer.

(*Id.* at 107). Since being in this country, she has been charged and convicted of shoplifting in the Rines Supermarket in Indiantown, Florida. (*Id.* at 75).

Ms. Perez worked for Sanchez at Mecca Farms from 1995 through 2000. (*Id.* at 60). She believes this lawsuit complains that her contractor would not let people go to the bathroom or drink water as "punishment" for poor work and that "if another one would do the job wrong...they would just go ahead and take us out." (*Id.* at 204). She contradicted the allegations of the complaint that workers had to wait around in the mornings before being able to commence work, declaring that she could start work right away. (*Id.* at 77). She said her signature on the lawsuit represented only "that I also am included in this program ... that's what I can tell you." (*Id.* at 75). She did not remember signing her interrogatories. (*Id.* at 207-208). She does not know what the duties of a class representative are. (*Id.* at 214-215). She gave contradictory or erroneous testimony several times in her deposition. She asserted both that she never lived anywhere else in the United States except Florida and that she lived for a year or two in Virginia. (*Id.* at 36). She denied having worked for a company in North Carolina for which she produced pay stubs. (*Id.* at 105).

Francelia Hernandez Perez (called Francelia Hernandez in the complaint) is a citizen of Mexico and the daughter of Virginia Perez. (Hernandez Dep. at 46-47, 60). She first entered the United States by crossing the Mexican border in 1997. (*Id.* at 7-8). She has never spoken to immigration officials; nor did she have permission to come here. (*Id.* at 10-11). Even now, she has no right to work or live in the United States. (*Id.* at 11, 54). She has never obtained any form of U.S. legal identification. When asked whether she has obtained identification through illegal means, she asserted a Fifth Amendment privilege not to answer. (*Id.* at 47, 51-53). She has never applied for residency in the United States or filed a tax return. (*Id.* at 40-41).

Ms. Hernandez cannot read or write Spanish or understand English. (*Id.* at 54). She could not recount any of the allegations contained in the complaint. (*Id.* at 124). She had no understanding of her own sworn interrogatory answers and does not know why she signed the document. (*Id.* at 57-59). She believes that "they should pay the person more because, because what they pay is very little" but she has no idea what she should have been paid (*Id.* at 145,

147). She has no records of the time she claims to have worked without compensation. Her statements that she arrived to work at seven but did not begin working until twelve or twelve thirty was based solely on her recollection. (*Id.* at 85). Yet like her mother, she had difficulty recalling basic information. For example, she did not remember whether the complaint was translated into Spanish for her. (*Id.* at 123). Nor could she remember who first worked for Sanchez – her or her mother. (*Id.* at 64). She did not remember whether she provided immigration/naturalization papers for her children to the Florida Department of Children and Families. (*Id.* at 178). She does not know what a class representative is or the obligations of a class representative. (*Id.* at 127). She does not know what she is asking the Court to do for her in this case. (*Id.* at 127-128).

Gloria Roblero (also known by four other pseudonyms) is a 20 year old citizen of Guatemala. (Roblero Dep. at 6-7, 13, 78-79).[5] She entered this country illegally in 1995 or 1996 and, except for a month-long visit to Guatemala in 2001, she has been here continuously since then. (*Id.* at 19, 22-23, 30). She has never applied for permission to stay in the United States. (*Id.* at 110). She has no identification other than a Guatemalan passport in her real name. (*Id.* at 17). When asked whether she has picture identification in another name, she refused to answer on Fifth Amendment grounds. (*Id.*)

Ms. Roblero has never attended school and does not read or write Spanish or English. (*Id.* at 79-81). She believes a class representative is simply responsible to "represent all the people." (*Id.* at 194). In her deposition, questions were translated into Spanish. Even then, however, she had great difficulty answering basic questions. For example, she did not know who owned the farm at which she worked. (*Id.* at 98). She doesn't remember when she started work at Mecca (even though she inexplicably remembers the exact time she arrived and started working on the first day). (*Id.* at 116-117). She could not describe with any specificity the injuries she received in a bus accident. (*Id.* at 87-93). She did not know the year in which she

[5] When asked why she uses different names, she asserted a Fifth Amendment privilege and refused to answer. (*Id.* at 8).

entered the country. (*Id.* at 19). She could not even coherently describe where she lived and with whom during her time in the United States. (*Id.* at 33-47, 52-55).

Adolpho Perez is a citizen of Guatemala. (A. Perez Dep. at 14). He entered this country illegally in 2001. (*Id.* at 7). He has not attempted to apply for legal entry into the United States. (*Id.*) He has not obtained any document giving him the right to work or live here. (*Id.* at 8). He has a North Carolina identification card obtained through false pretenses. (*Id.* at 11-12).

Mr. Perez worked for Sanchez picking tomatoes at a Mecca farm for a total of 16 days in 2001. (*Id.* at 25, 27). Other than one sheet of paper recording the number of buckets he picked on one day, he has no records of the number of buckets picked, hours worked or wages paid. (*Id.* at 34-35, 41). "I lost them." (*Id.* at 34). He does not remember how many hours he waited in the morning before starting work. (*Id.* at 96). He also does not remember how many times he did not receive tickets he believes he should have received. (*Id.* at 88). He does not even remember which month or dates or days of the week he worked at Mecca in 2001. (*Id.* at 42, 44). He does not recall the number of hours he worked. (*Id.* at 47, 82).

He believes he is suing Mecca "to be able to solve the problems and to be able to help all of the people that have lost money in that company." (*Id.* at 78). Until his deposition, he did not know the lawsuit claims an alleged failure to pay Social Security taxes. (*Id.* at 86). He believes his role as a class representative is "to be able to help, to help all of the other people" and "to solve the problem or to recuperate the money that all of the people missed out on." (*Id.* at 79).

David Matias is a citizen of Guatemala. (Matias Dep. at 58). He came to the United States illegally. (*Id.* at 61). He has never filed an income tax return. (*Id.* at 67). He has no permanent residence visa or work permit. (*Id.* at 61). He has no Social Security number or Florida driver's license. (*Id.* at 67). He obtained work at Mecca using false papers. (*Id.* at 31).

At his February 2002 deposition, he stated he would leave for Guatemala in the spring "to visit over there to vacation there," and he did not know how long he would stay. (*Id.* at 31, 65) He also did not know if he would return to the United States. "If the borders are open just the way they are right now, I would come back; otherwise, no." (*Id.* at 62). He does not plan to

come back to appear in court proceedings if the borders are closed. (*Id.*) To come back to the U.S. to participate in the case, he would have to come back illegally. (*Id.* at 63).

Mr. Matias does not understand English and at deposition did not know he was a class representative. (*Id.* at 36-37, 68). He believes the responsibilities of a class representative are to "be on behalf of all the people." (*Id.* at 37). When asked how he could do this from Guatemala, he responded, "I speak to them by phone." (*Id.* at 62). He admitted that he does not have pay records, and that without them, he cannot remember what days he worked and did not work. "Yeah, I remember for the last few days, but not from a year ago." (*Id.* at 104).

ARGUMENT

I. The Rule 23 Requirements

Class certification is governed by Federal Rule of Civil Procedure 23. To maintain a class action, plaintiffs must first demonstrate that: (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a); *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1005 n.9 (11th Cir. 1997).

Since plaintiffs seek class certification under Rule 23(b)(3), the Court must additionally find that questions of law or fact common to the class predominate over questions affecting only individual class members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Subsumed within the requirement for finding superiority is the rule that trial as a class action must be manageable. *See* Fed. R. Civ. P. 23(b)(3)(D); *Andrews v. AT&T Co.*, 95 F.3d 1014, 1023 (11th Cir. 1996) (overturning class certification because the district court "underestimated the management difficulties" in allowing the lawsuits to proceed as class actions).

Rule 23(b)(2) certification is even more demanding than (b)(3) certification. The Eleventh Circuit has ruled that no class can be certified under (b)(2) when plaintiffs predominantly seek money damages. *Murray v. Auslander*, 244 F.3d 807, 812 (11th Cir. 2001). In addition, (b)(2) provides that the plaintiffs must prove that the defendants must have "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." A natural consequence of this explicit requirement is that a (b)(2) class must be cohesive and homogeneous to be certifiable. *See, e.g., Id.* at 812; *Holmes v. Continental Can Co.*, 706 F.2d 1144, 1155 (11th Cir. 1983). A (b)(2) class cannot be certified if significant individual issues merely exist. The presence of disparate factual circumstances alone precludes (b)(2) certification. *See, e.g., Murray*, 244 F.3d at 812 ((b)(2) class not certifiable when "inherently individual injuries compels an inquiry into each class member's individual circumstances"); *Barnes v. American Tobacco Co., Barnes v. American Tobacco Co.*, 161 F.3d at 142 (3d Cir. 1998) (same).

Class certification is a determination within the sound discretion of the district court. However, this determination is not boundless. It must be guided by several salient principles. First, the named plaintiff bears the burden of proving that each and every one of the Rule 23 requirements are satisfied. *Heaven v. Trust Company Bank*, 118 F.3d 735, 737 (11th Cir. 1997). Indeed, a named plaintiff's failure to establish any one factor is fatal to a class certification motion. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 615-18 (1997). The Court must undertake a "rigorous analysis" to determine whether these requirements are met. *General Telephone Co. v. Falcon*, 457 U.S. 147, 161 (1982).

Second, it is not sufficient for plaintiffs to simply rely on the allegations of the complaint to satisfy their burden. The Court should conduct its own independent analysis to determine whether each Rule 23 element has been met. *See Andrews v. AT&T Co.*, 95 F.3d 1014, 1023 (11th Cir. 1996); *Morrison v. Booth*, 763 F.2d 1366 (11th Cir. 1985) (plaintiffs "must prove more than bare allegations that they satisfy the requirements of Rule 23 for class certification").

Third, this is not the time for determining the merits of the lawsuit. *Eisen v. Carlisle & Jacquelyn*, 417 U.S. 156 (1974). This means that the Court is not supposed to prejudge the defendants' liability. At the same time, the Court must go beyond the pleadings to make whatever legal and factual determinations are necessary to determine whether the Rule 23 requirements are met. *See Falcon*, 457 U.S. at 160 ("it may be necessary for the court to probe

behind the pleadings before coming to rest on the certification question"); *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469 (1978) ("[t]he class determination generally involves considerations that are 'enmeshed in the factual and legal issues comprising the plaintiff's cause of action'" and "[t]he more complex determinations . . . entail even greater entanglement with the merits") (citations omitted); *Rutstein v. Avis Rent-a-Car Systems, Inc.*, 211 F.3d 1228, 1234 (11th Cir. 2000) ("Going beyond the pleadings is necessary, as a court must understand the claims, defenses, relevant facts, and applicable substantive law in order to make a meaningful determination of the certification issues.").

With these principles in mind, Mecca Farms turns to the central requirements of Rule 23 that defeat certification here.

II. The Named Plaintiffs Lack Standing to Bring Their Claims for Monetary Remedies.

The threshold question when considering whether an action should be certified as a class action must necessarily be whether the named plaintiffs have standing to sue on their own behalf. *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 40 n.20 (1976); *Murray v. Auslander*, 244 F.3d 807 (11th Cir. 2001). Here, the named plaintiffs are undocumented, illegal aliens. *See supra* at 3-8. As such, they lack standing to seek the damages remedies demanded in the complaint under MSPA, the statute under which they seek class certification.[6]

Congress is invested with plenary power to control immigration, admission, and deportation of aliens. *Reno v. Flores*, 507 U.S. 292, 305-306 (1993); *Kleindienst v. Mandel*, 408 U.S. 753, 769-770 (1972). Indeed, in this particular area "Congress regularly makes rules that would be unacceptable if applied to citizens." *Reno*, 507 U.S. at 305-306, *quoting Matthew v. Diaz*, 426 U.S. 67, 79-80 (1976). In exercise of this broad power, Congress has passed extensive legislation protecting America's borders and workers from unlawful entrants. Thus, "entering or remaining unlawfully in this country is itself a crime." *INS v. Lopez-Mendoza*, 468 U.S. 1032,

[6] Mecca Farms does not take the position that an undocumented alien cannot come within MSPA's literal definition of "an individual" employed in agricultural work. *See* 29 U.S.C. § 1802(8)(A). Nor does Mecca Farms argue that illegal aliens can no longer file complaints with the NLRB. Rather, as explained below, Mecca Farms contends that undocumented aliens cannot avail themselves of the *remedy* provisions of MSPA.

1038 (1984); *see also Plyer v. Doe*, 457 U.S. 202 (1982); 18 U.S.C. § 1325. And, of course, aliens who enter this country illegally are subject to deportation. 8 U.S.C. § 1227(a).

In 1986, amidst the backdrop of an unparalleled influx of illegal aliens, Congress enacted the Immigration Reform and Control Act ("IRCA"), codified in 8 U.S.C. § 1324a, making employment of unauthorized aliens unlawful. IRCA "forcefully" made combating the employment of illegal aliens central to "[t]he policy of immigration law." *INS v. National Center for Immigrants' Rights, Inc.*, 502 U.S. 183, 194 & n.8 (1991). It did so by establishing an extensive "employment verification system," § 1324a(a)(1), designed to deny employment to aliens who (a) are not lawfully present in the United States or (b) are not lawfully authorized to work in the United States. § 1324a(h)(3). Thus, if an alien applicant is unable to present the required documentation, the unauthorized alien cannot be hired. § 1324a(a)(1).

IRCA also makes it a crime for an unauthorized alien to subvert the employer verification system by tendering fraudulent documents – as the named plaintiffs did in seeking employment at Mecca. § 1324c(a). It thus prohibits aliens from using or attempting to use "any forged, counterfeit, altered, or falsely made document" or "any document lawfully issued to or with respect to a person other than the possessor" for purposes of obtaining employment in the United States. §§ 1324c(a)(1)-(3). Aliens who use or attempt to use such documents are subject to fines and criminal prosecution. 18 U.S.C. § 1546(b).

IRCA thus illustrates a uniform, deeply entrenched national policy aimed at dissuading illegal aliens from entering, or if already here, remaining in this country. Plaintiffs' efforts to seek class certification under MSPA must be read with IRCA in mind. *See generally, FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) ("[t]he meaning of one statute may be affected by other Acts, particularly where Congress has spoken subsequently and more specifically to the topic at hand."); *Hohn v. U.S.*, 524 U.S. 236, 249 (1998) (court should not adopt statutory construction rendering another statutory provision superfluous).

Indeed, three months ago, the U.S. Supreme Court issued a decision precluding illegal aliens from recovering back pay for violations of the National Labor Relations Act. *Hoffman Plastic Compounds, Inc. v. NLRB*, 122 S. Ct. 1275, 535 U.S. ___ (March 27, 2002). Under the

holding of *Hoffman*, plaintiffs – as undocumented aliens – are precluded from recovering the remedies they seek under MSPA, an analogous statute. In *Hoffman*, employees began a union organizing campaign at a plastic production plant. The employer terminated their employment in order to subvert the union organization effort, a plain violation of § 8(a)(3) of the National Labor Relations Act ("NLRA"). *Id.* at 1278. The National Labor Relations Board ("NLRB") ordered their reinstatement with back pay. *Id.* at 1279. As it turned out, one of the employees, Jose Castro, was an illegal alien who admitted to using someone else's birth certificate in order to fraudulently obtain a driver's license and social security card, and then later, to obtain employment at the plastic plant. *Id.* Based upon this evidence, the ALJ ruled that an award of backpay or reinstatement would run directly contrary to the Supreme Court's holding in *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883 (1984) as well as the enactment of IRCA. *Id.* However, on a subsequent hearing, the Board reversed itself with respect to the back pay issue, and an en banc panel of the D.C. Circuit Court of Appeals denied the employer's petition for review, enforcing the Board's order. *Id., citing* 237 F.3d 639 (2001).

The Supreme Court reversed the Board's back pay award, sending a clear signal about the importance of immigration policy in relation to remedial labor statutes such as MSPA. Chief Justice Rehnquist, writing for the majority, noted that Congress, in enacting IRCA, "expressly made it criminally punishable for an alien to obtain employment with false documents." *Id.* at 1283. He concluded that there was no reason to believe Congress intended to permit a back pay remedy where "an alien-employee would have remained in the United States illegally, and continued to work illegally, all the while successfully evading apprehension by immigration authorities." *Id.* The Board's position "discounting the misconduct of illegal alien employees" subverted the purpose of IRCA. *Id.* at 1284.

Moreover, the Court purposely styled its holding to have sweeping applicability. Chief Justice Rehnquist stated that the issue was not simply one of mere application of precedent to slightly different factual circumstances, or even an extension of an existing legal rule:

> [w]hether isolated sentences from *Sure-Tan* definitively control, or count merely as persuasive dicta in support of petitioner, we think the question presented here

> better analyzed through a wider lens, focused as it must be in a legal landscape now significantly changed.

Id. at 1282.[7] Thus it became clear that the Court's decision rested on fundamental issues of national policy and effectuating recent enactments of Congress. As the Court declared:

> Under the IRCA regime, it is impossible for an undocumented alien to obtain employment in the United States without some party directly contravening explicit congressional policies. Either the undocumented alien tenders fraudulent identification, which subverts the cornerstone of IRCA's enforcement mechanism, or the employer knowingly hires the undocumented alien in direct contradiction of its IRCA obligations. The Board asks that we overlook this fact and allow it to award backpay to an illegal alien for years of work not performed, for wages that could not lawfully have been earned, and for a job obtained in the first instance by a criminal fraud. We find, however, that awarding backpay to illegal aliens runs counter to policies underlying IRCA.

Id. at 1283. Simply put: "Awarding backpay in a case like this not only trivializes immigration laws, it also condones and encourages future violations." *Id.* at 1284.[8]

Significantly, the Court's analysis did not proceed from a cramped distinction between backpay and remedies for uncompensated labor, as plaintiffs attempt to draw here. Unlike earlier lower court decisions,[9] the majority in *Hoffman* did not attempt to draw such a distinction. The *Hoffman* decision is sweeping and represents much more than a passing nod towards U.S.

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[7] The "wider lens" and sweeping scope of the decision undermines the rationale of decisions like *Patel v. Quality Inn South*, 846 F.2d 700 (11th Cir. 1988), in which some lower courts read IRCA narrowly, as not affecting the coverage of undocumented aliens under the Fair Labor Standards Act. The Court need not address the status of *Patel* and like decisions, however, since the Fair Labor Standards Act is not in issue for purposes of plaintiffs' motion. It is worthy of note, however, that the Supreme Court rejected the *Patel* court's perspective on IRCA's legislative history, dismissing the dissent's invocation of "a single Committee Report from one House of a politically divided Congress" as a "rather slender reed." *Hoffman*, 122 S.Ct. at 1283, n.4. The majority preferred to rest its analysis on the plain language of the statute, observing that IRCA "expressly criminalizes the only employment relationship at issue in this case." *Id.* at 1285 n.5.

[8] The Court was quick to point out that an employer could not violate the NLRA "scot-free." *Id.* at 1285. Notwithstanding the removal of backpay liability, "traditional remedies," such as the threat of contempt sanctions for failing to comply with the NLRB's cease and desist order or for failing to post requisite notices in the plant would adequately effectuate national labor policy. *Id.* Such reasoning applies with even greater force to a statute like MSPA which contains an arsenal of remedial provisions—including the threat of imprisonment, injunctive relief, and civil fines—any one of which would foster MSPA's goals without undermining IRCA. Moreover, consistent with the view in *Hoffman*, MSPA violators would still face individual liability so long as the plaintiffs are lawfully present (and hence, lawfully employed) in this country. Of course, the issue of whether Mecca Farms is a joint employer with Sanchez or violated MSPA in the first instance is not germane to the class certification inquiry. As discussed above, the Court may not predetermine the merits at the class certification stage.

[9] *Compare Patel v. Quality Inn South*, 846 F.2d 700 (11th Cir. 1988) *with Del Rey Tortilleria, Inc. v. NLRB*, 976 F.2d 1115 (7th Cir. 1992).

immigration policy. It is a mandate that the courts to give due regard for Congress' clear and unequivocal policy pronouncements with respect to the employment of unlawful aliens. To allow these individuals who, like the claimant in *Hoffman*, could not legally be employed in this country to recover under MSPA would undermine IRCA and its underlying national policy just as much as an award of back pay would under the NLRA. In both instances, an illegal employee is attempting to secure a benefit that, as a matter of law, can only be afforded by virtue of the employment he or she wrongfully obtained.

In their motion for class certification, plaintiffs cite to a handful of decisions certifying MSPA classes. *See* Cases cited at pp. 18 of plaintiffs' Memorandum In Support of Motion for Class Certification. The vast majority of those cases do not discuss whether putative class members included illegal aliens, making them inapposite here.

It is true that some courts have concluded that the protections of MSPA are to apply to undocumented aliens. *See, e.g. In re Reyes*, 814 F.2d 168 (5th Cir. 1987); *Escobar v. Baker*, 814 F. Supp. 1491 (W.D. Wash. 1993) (relying on *Reyes* as "persuasive authority"). However, none of those decisions considered the effects of IRCA in so ruling. Nor did these courts have the benefit of the Supreme Court's reasoning in *Hoffman*. Indeed, in *Hoffman*, the Court implicitly approved the reasoning of Judge Jones's dissent in *Reyes*:

> I also take issue with the majority's conclusion that the [MSPA] and the Fair Labor Standards Act do not distinguish between citizens and illegal alien employees. Previously, no court has explicitly permitted an undocumented alien to recover the damages and penalties provided for in those statutes. Moreover, the [MSPA] specifically prohibits the employment of undocumented aliens by farmers and farm labor contractors. 29 U.S.C. § 1816. The entire thrust of the [MSPA] is to enhance and create minimum standards for the working conditions of American and a very limited class of documented foreign workers employed in domestic agriculture. To the extent the statute's prohibition on hiring undocumented aliens is intended to discourage illegal migration of farm workers from other countries, that purpose is undercut by allowing those farm workers to sue and recover benefits on a par with legally employed workers.

Reyes, 814 F.2d at 171 (Jones, J., dissenting).

In short, the rationale of the *Reyes* majority and other cases cited by plaintiffs has been abrogated by the Supreme Court and is no longer valid. Pursuant to IRCA and the *Hoffman*

decision, plaintiffs, as unlawful aliens, lack standing to bring their MSPA claims. Because the named plaintiffs lack standing, plaintiffs' motion for class certification should be denied.

III. Plaintiffs Cannot Satisfy the Rule 23(a)(3) Typicality and Rule 23(a)(4) Adequacy of Representation Requirements.

The class certification motion also should be denied because plaintiffs cannot satisfy Rule 23(a)(3)'s typicality and Rule 23(a)(4)'s adequacy requirements.[10] Rule 23(a)(4), in particular, requires that the named plaintiffs fairly and adequately protect the interests of absent class members. In this context "'[a]dequacy of representation' means that the class representative has common interests with unnamed class members and will vigorously prosecute the interests of the class through qualified counsel." *Piazza v. Ebsco Industries, Inc.*, 273 F.3d 1341, 1345 (11th Cir. 2001); *R.W. Brooks v. Southern Bell Tel. & Telegraph Co.*, 133 F.R.D. 54, 58 (S.D. Fla. 1990). "It is axiomatic that a putative representative cannot adequately protect the class if his interests are antagonistic to or in conflict with the objectives of those he purports to represent." *Pickett v. Iowa Beef Processors*, 209 F.3d 1276, 1280 (11th Cir. 2000)(citation omitted). "[A] class cannot be certified when its members have opposing interests or when it consists of members who benefit from the same acts alleged to be harmful to other members of the class." *Id.*

Here, the facts of this case demonstrate that none of the proposed class representatives satisfy Rule 23(a)'s adequacy requirement. This is true for the following four reasons:

A. As Illegal Aliens, Plaintiffs Lack Standing to Bring MSPA Claims.

A putative class representative must possess standing in order to represent a class. *Wooden v. Board of Regents of University of Georgia*, 247 F.3d 1262, 1287 (11th Cir. 2001); *Griffin v. Dugger*, 823 F.2d 1476, 1482 (11th Cir. 1987). As discussed *supra* at 3-8, each of the named plaintiffs is an undocumented illegal alien who lack standing to bring MSPA claims for monetary damages.

[10] The typicality and adequacy requirements are similar in that they both evaluate the sufficiency of the named plaintiffs, and thus, are frequently evaluated together, as Mecca Farms does here. *See Amchem*, 521 U.S. at 626 n.20 (quoting *Falcon*, 457 U.S. at 157 n.13); *Rink v. Cheminova, Inc.*, 203 F.R.D. 648, 662 n.12 (M.D. Fla. 2001).

B. Plaintiffs' Immigration Status Makes Them Inadequate Representatives.

Even if the Court disagrees with Mecca Farms' position that the named plaintiffs, as illegal aliens, have standing to bring their MSPA claims, and therefore participate as class members, that does not mean they are adequate to serve as class representatives. To the contrary, plaintiffs' undocumented status, which makes them subject to deportation at any time, renders them uniquely unsuited to serve as class representatives.[11]

The former Fifth Circuit has noted that "the court may take into account outside entanglements that render it likely that the representative may disregard the interests of the other class members." *Blum v. Morgan Guarantee Trust Co. of New York*, 539 F.2d 1388, 1390 (5th Cir. 1976). The named plaintiffs' inherently unstable position in this country and possible deportation constitutes such an "outside entanglement." In *Hagen v. City of Winnemucca*, 108 F.R.D. 61 (D. Nev. 1985), the court denied class certification on this precise ground. There, the plaintiff, a citizen of Great Britain and a former Winnemucca prostitute, sought to bring a class action on behalf of all Winnemucca prostitutes against the city and various government officials. She was, however, subject to deportation, and this constituted an "outside entanglement." It "seriously damage[d] plaintiff's ability to represent adequately the interests of all class members," and therefore caused her to fail both typicality and adequacy requirements. *Id.* at 65. In addition, it "would most certainly distract the plaintiff's attention from the vigorous prosecution of this lawsuit, which would seriously prejudice the rights of the unnamed parties." *Id.* It further would forcibly remove the named plaintiff from the United States, making her unable to return to participate effectively in the lawsuit. *Id.* The fact that the plaintiff "would not be capable of returning to the country if needed" was "a serious disability, and prevents this Court from allowing plaintiff to act as a class representative." *Id. at 66.*

[11] It is an axiomatic class action principle that the presence of unique defenses destroys a named representative's typicality to represent unnamed class members. *See e.g., Gary Plastic Packaging Corp. v. Merrill Lynch*, 903 F.2d 176, 180 (2d Cir. 1990) ("there is a danger that absent class members will suffer if their representative is preoccupied with defenses unique to it"); *Warren v. Reserve Fund, Inc.*, 728 F.2d 741, 747 (5th Cir. 1984) ("[t]he rationale behind this hesitance is a concern that representation will suffer if the named plaintiff is preoccupied with a defense which is applicable only to himself").

Here, at least two of the named plaintiffs already have left the country and cannot legally return to participate in the lawsuit. As in *Hagen*, this is a serious disability that prevents them from acting as class representatives.

Here as well, if the remaining named plaintiffs obey the immigration laws and leave the country, they would be unavailable to return and participate in the litigation. If they disobey the law and remain in the country, but are discovered by immigration authorities and deported, they would be distracted by deportation proceedings, forced to leave the country, unable to return, and therefore unable to serve as a class representative. (Named plaintiff Carranza already is or was under a deportation order). Even their ability to recover damages would be in doubt. *Cf. Hoffman*, 122 S.Ct. at 1284 ("awarding backpay in a case like this not only trivializes the immigration laws, it also condones and encourages future violations. The Board admits that had the INS detained Castro, or had Castro obeyed the law and departed to Mexico, Castro would have lost his right to backpay"). And, of course, the constant threat of discovery and deportation, particularly when acting as high profile class representatives, undoubtedly would hang over their heads, distracting their attention from the vigorous prosecution of the lawsuit. All of these things give rise to the impermissible specter of "clientless litigation."

Moreover, even if the named plaintiffs to manage to stay here until trial, because they are illegal aliens, their credibility may be fatally undermined. This Court has stated: "In assessing the adequacy of the named representatives, the court must look to factors such as their honesty, conscientiousness, and other affirmative personal qualities." *Hall v. Burger King Corp.*, 1992 WL 372354 * 9 (S.D. Fla. 1992). The danger to absent class members is that a fact finder may question the testimony of class representatives suing for violation of federal labor laws when the class representative themselves were employed in violation of the federal labor and immigration laws. For this reason as well, the named plaintiffs are inadequate class representatives.

C. None Of The Plaintiffs Posses Sufficient Level Of Knowledge And Understanding To Be Capable Of Controlling the Litigation.

Plaintiffs are inadequate representatives for still another reason as well. Rule 23(a) requires that the proposed representatives "posses a sufficient level of knowledge and

understanding to be capable of controlling or prosecuting the litigation." *Berger v. Compaq Computer Corp.*, 257 F.3d 475, 482-83 (5th Cir. 2001); *see also Horton v. Goose Creek Independent School Dist.*, 690 F.2d 470, 484 (5th Cir. 1982) ("adequacy requirement mandates an inquiry into . . . the willingness and ability of the representatives to take an active role in and control the litigation and to protect the interests of the absentees."); *In the Matter of American Commercial Lines,* LLC, 2002 WL 1066743 (E.D. La. May 28, 2002) (denying certification in part because "[n]ot one named class representative fostered the impression that he or she has or had his or her hands on the pulse of the case"); *In Re Telectronics Paging Systems, Inc.*, 168 F.R.D. 203 (S.D. Ohio 1996) ("In order to be a class representative who will vigorously prosecute a class action, the representative must have more knowledge than a lay person about the class action"); *Greenspan v. Brassler*, 78 F.R.D. 130 (S.D.N.Y. 1978) ("Plaintiffs' limited personal knowledge of the facts underlying this suit, as well as their apparently superfluous role in this litigation to date, indicate their inadequacy as class representatives.").

Here, the named plaintiffs have demonstrated a level of knowledge and understanding insufficient to confer class representative status on them. They clearly have no more knowledge than a lay person about the case. As demonstrated by their deposition testimony, the proposed class representatives do not understand the legal relationships or comprehend the business transactions described in the amended complaint. *See supra* at 3-8. As such, they do not "posses a sufficient level of knowledge and understanding to be capable of controlling or prosecuting the litigation." *Berger*, 257 F.3d at 482-483.

While plaintiffs will undoubtedly argue that the standard for adequacy under Rule 23(a) is a light one, to certify this class would be effectively to hold that the standard is nonexistent. But as the *Berger* court recently explained, the applicable case law does not stand for the proposition that a class representative who does not understand any of the legal relationships or comprehend any of the business transactions described in the complaint can be adequate for purposes of class certification. *Berger*, 257 F.3d at 482. Here, plaintiffs possess insufficient familiarity with the most basic issues, making them wholly inadequate representatives under Rule 23(a)(4).

D. Plaintiffs' Additional Credibility Problems Precludes a Finding That They Are Adequate Representatives.

Fourth, each of the putative class representatives will have substantial credibility problems at trial (even setting aside their status as illegal aliens). If the class is certified, the claims of absent class members would rise or fall on the success or failure of the claims of the putative class representatives. In this context, courts have found the adequacy requirement to be lacking where the named plaintiffs have credibility problems. *See Kline v. Wolf*, 702 F.2d 400, 403 (2d Cir. 1983) (plaintiff was inadequate due to lack of credibility when testimony on a critical issue was "subject to sharp attack"); *Panzirer v. Wolf*, 663 F.2d 365 (2d Cir. 1981) (plaintiff was inadequate due to lack of credibility where she gave four versions of a conversation with her broker), *vacated on other grounds*, 458 U.S. 1105 (1982); *Margaret Hall Foundation, Inc. v. Atlantic Financial Management, Inc.*, 1987 WL 15884 (D. Mass. 1987) (plaintiffs were inadequate because their credibility was subject to question when they gave conflicting testimony on important issues); *Darvin v. International Harvester Co.*, 610 F. Supp. 255 (S.D.N.Y. 1985) (plaintiff was inadequate when inconsistent testimony and poor memory "could create serious problems with respect to plaintiff's credibility and could become the focus of cross examination ... at trial"). Here, the putative class representatives' repeated inconsistent testimony and failure to remember even basic facts about their lives and their claims will likely affect their credibility at trial, thereby possibly compromising claims of absent class members. This as well makes them inadequate representatives.

IV. Plaintiffs Cannot Satisfy Rule 23(b)(2)'s Cohesiveness Requirement and Rule 23(b)(3)'s Predominance and Manageability Requirements.

Rule 23(b)(3) certification is permissible only when "questions of law or fact common to the members of the class predominate over any questions affecting only individual members." This predominance inquiry is "far more demanding" than Rule 23(a)'s commonality requirement and "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc. v.* Windsor, 521 U.S. 591 (1997). The Rule 23(b)(2) cohesiveness requirement is even more demanding than the (b)(3) predominance requirement.

Clay, 188 F.R.D. at 495 ("A Rule 23(b)(2) class should actually have more cohesiveness than a Rule 23(b)(3) class"); *Hammett v. American Bankers Ins. Co. of Florida*, 203 F.R.D. 690 (S.D. Fla. 2001) (a greater degree of cohesiveness distinguishes (b)(2) classes from (b)(3) classes). Under (b)(2), the mere presence of individual issues defeats certification. *See supra* at 3-8.

Here, as noted above, the named plaintiffs lack standing because of their undocumented alien status. Determining which other absent class members are also illegal aliens who lack standing to bring claims for damages will necessitate individualized inquiries and mini-trials as to each putative class member's immigration status. This too precludes class certification.

In addition, determining whether violations were committed and computing wages and hours for the undocumented workers will require individualized analysis and create substantial manageability problems. As demonstrated supra at 3-8, many of the workers (1) kept no records of the hours they worked or the wages they claim they are owed; (2) kept records but destroyed them; or (3) rely on faulty memories to reconstruct this fundamental data. Moreover, any determination as to whether the plaintiffs were properly paid minimum wage for the picking work would require factual determinations specific to each class member. Under the argument put forth by Plaintiffs, it is possible that two workers worked the same hours in the field and one could have received more than minimum wage while the other would not since the compensation for picking work was provided on a piece rate basis (i.e., the faster one worked, the more one could earn). The lack of reliable data to prove plaintiffs' claims creates a manageability nightmare. At a minimum, it destroys any ability plaintiffs may otherwise have to present their claims on a common basis since Mecca will require, and due process will necessitate, discovery from and cross-examination of each worker on these issues.

Finally, (b)(2) certification should be denied where, as here, monetary relief is the predominant relief sought. *See Murray*, 244 F.3d at 812.

CONCLUSION

For all the foregoing reasons, plaintiffs' motion for class certification should be denied.

Respectfully submitted,

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By: _____
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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Defendant's Mecca Farms, Inc., Memorandum of Law in Opposition to Plaintiffs' Motion for Class Certification was served via facsimile and U.S. Mail this 16th day of August, 2002 to **Cathleen D. Caron, Esq.**, counsel for Plaintiffs, Migrant Farmworkers Justice Project, 508 Lucerne Avenue, Lake Worth, Florida 33460; and **Don R. Boswell, Esq.**, Counsel for Co-Defendants, Akers & Boswell, P.A., 2875 South Ocean Boulevard, Suite 200, Palm Beach, Florida 33480.

_____
Attorney

CARLTON FIELDS

ATTORNEYS AT LAW

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July 16, 2002

Cathleen Caron, Esq.
Migrant Farmworker Justice Project
Florida Legal Services, Inc.
508 Lucerne Avenue
Lake Worth, Florida 33460

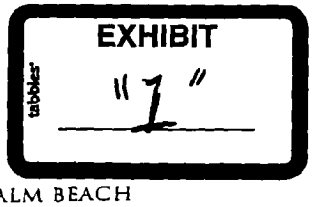
VIA FACSIMILE (582-4884)
And U.S. MAIL

Re: *Carranza v. Mecca Farms, Inc.*; Case No. 01-9013-CIV-Ryskamp

Dear Ms. Caron:

The purpose of this correspondence is to memorialize our understanding of the agreement reached with counsel for the Plaintiffs regarding Defendant's, Mecca Farms, Inc., Motion for Extension of Time to Respond to Respond to Motion for Class Certification (the "Motion for Extension") and the scheduling of depositions in the above-referenced matter.

Due to the fact that Plaintiffs, Rafael Gonzalez and Carlos Ramos (collectively, the "Unavailable Plaintiffs"), are currently located outside the Southern District of Florida, an issue has arisen as to the Unavailable Plaintiffs making themselves available for deposition prior to the date for Defendants to respond to Plaintiffs' Motion for Class Certification. As part of the agreement resolving this issue, Plaintiffs have agreed to produce the named Plaintiffs, other than the Unavailable Plaintiffs and David Matias, for deposition prior to August 6, 2002. In addition, the Plaintiffs will file a response to the Motion for Extension consenting to an extension of the deadline to respond to the Motion for Class Certification through August 16, 2002. Our agreement to proceed forward without the depositions of the Unavailable Plaintiffs at this juncture shall be without prejudice to our right to notice their depositions in the Southern District of Florida after October 1, 2002 but the Unavailable Plaintiffs would need to be made available prior to the deadline for Defendants to respond to the motion for summary judgment. We understand that you may contest Mecca Farms, Inc.'s right to take Mr. Gonzalez's and Mr. Ramos' depositions in Florida, but this agreement shall not be construed as a waiver of any rights that Mecca Farms, Inc. has to depose the Unavailable Plaintiffs in the jurisdiction where they have brought suit. We understand that the issue of where Mr. Gonzalez and Mr. Ramos must make themselves available for deposition may have to be resolved by the Court.



Due to the unavailability of Mr. Gonzalez and Mr. Ramos to sit for their depositions and ~~the need for Defendants to take their depositions~~ on the issue of their adequacy as class representatives, Plaintiffs have agreed to stipulate that Mr. Gonzalez and ~~Mr. Ramos are illegal~~ aliens with no right to work or reside in the United States. In addition, Plaintiffs will stipulate that Mr. Gonzalez and Mr. Ramos have the same knowledge as to the issues in this action and their responsibilities as class representatives as will be demonstrated by the remaining named Plaintiffs. In return, Mecca Farms, Inc. agrees to drop its objection that the Unavailable Plaintiffs be produced for deposition prior to the deadline to respond to the Motion for Class Certification.

In return for making the Plaintiffs available for deposition before August 6, 2002 and agreeing to the extension of the deadline on the Motion for Class Certification through August 16, 2002, Mecca Farms, Inc. agrees to drop its demand that the Unavailable Plaintiffs be produced for deposition in the Southern District of Florida prior to the time to respond to the Motion for Class Certification, drop any objection that Plaintiffs failed to timely produce the documents listed in their Initial Disclosures and agrees to produce certain employees of Mecca Farms, Inc. for deposition prior to September 1, 2002. Those persons which are to be made available for deposition by Mecca Farms, Inc. are Tommy Mecca, Mark Mecca, Mike Macari, Mark Shaw, Lori Schwab, and Eila Granfors.

Please review this correspondence and provide us your comments thereto at your earliest possible opportunity. Should the terms discussed above not comport with your understanding of the agreement between the Plaintiffs and Mecca Farms, Inc., please contact me immediately.

Very truly yours,

Henry S. Wulf

HSW:kn
cc: Don R. Boswell, Esq.
Joseph Ianno, Jr., Esq.

FLORIDA LEGAL SERVICES, INC.
Migrant Farmworker Justice Project
508 LUCERNE AVENUE LAKE WORTH, FLORIDA 33460
(561) 582-3921
(561) 582-4884 Fax

STEPHEN EMMANUEL
PRESIDENT

KENT R. SPUHLER
DIRECTOR

Transmittal by Fax and U.S. Mail

July 16, 2002

Henry S. Wulf, Esq
Carlton Fields
222 Lakeview Avenue, Suite 1400
West Palm Beach, FL 33401-6149

RE: Luz-Carranza v. Mecca Farms, Inc.
Case No. 01-9013-CIV.- RYSKAMP

Dear Henry:

I write in response to the letter you sent to me this afternoon regarding the tentative agreement discussed yesterday afternoon. For the most part, we are in agreement with your summary, yet a few clarifications are needed.

You agreed to make Tommy Mecca, Mark Mecca, Mike Macari, Mark Shaw, Lori Schwab, and Eila Granfors available for depositions by September 1, 2002. The Plaintiffs, however, are not limited to deposing only the aforementioned Mecca employees. During the course of discovery, the Plaintiffs may learn of additional Mecca employees they wish to depose. The Defendant must be willing to cooperate in scheduling more depositions before September 1, 2002, if necessary.

In your letter you state that you will need to depose Ramos and Gonzales prior to the Defendant's response to Plaintiffs' motion for summary judgment. The Plaintiffs will agree to have Ramos available in Chicago and Gonzales available in Guatemala for depositions prior to October 18, 2002, the deadline for Defendant's response to Plaintiffs' motion for summary judgment. The Plaintiffs will pay the travel and lodging expenses to Chicago for the opposing counsel and in the case of Guatemala, the court reporter and interpreter. If the Defendants fail to complete these depositions (or receive the deposition transcripts timely) by October 18, this will not be used as grounds for seeking an enlargement of time to respond to Plaintiffs' motion for summary judgment.

The Plaintiffs will stipulate that Ramos and Gonzales did not have proper work authorization while employed by M. Sanchez & Son, Inc. and that they have the same knowledge of the issues in this action and responsibilities as class representatives as will be demonstrated by the

remaining named Plaintiffs. The fact that Ramos and Gonzales will not be deposed before August 16 will not be construed against them. In opposing class certification, the Defendants may only state that Plaintiffs Ramos and Gonzales have yet to be deposed. No reasons may be stated regarding their unavailability.

Although we agree to supporting an extension, we do so based on the agreement above, not for the reasons stated in your motion to extend time. There are two possible ways to petition the court: withdrawing your opposed motion and filing a joint motion based on the above; or the Plaintiffs' filing an answer supporting an extension. If I draft a response, however, I will be compelled to counter the reasons you stated in your motion. In recognition of the time constraint you are under, I look forward to finalizing the agreement with you as soon as possible.

Sincerely,

Kathleen Caron
Attorney at Law

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DIRECTOR

Transmittal by Fax and U.S. Mail

July 17, 2002

Henry S. Wulf, Esq
Carlton Fields
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West Palm Beach, FL 33401-6149

RE: Luz-Carranza v. Mecca Farms, Inc.
Case No. 01-9013-CIV.- RYSKAMP

Dear Henry:

It appears that we have reached an agreement as to supporting the Defendants' extension until August 18 to respond to the Plaintiffs' Class Certification Motion. Your letter dated July 16 and my clarifying response dated July 16 will serve as the basis of our agreement, except for the few issues we resolved today earlier on the phone which I have outlined below:

- The Defendants agree to travel to Guatemala and Chicago to conduct the depositions of Plaintiffs Gonzales and Ramos under the conditions noted in my July 16 correspondence. The Defendants, however, reserve the right to challenge the Plaintiffs' recoupment of these costs from the Defendants at a later date.

- In the Defendants' opposition to the Plaintiffs' Class Certification, the Defendants will not state that Plaintiffs Ramos and Gonzales are unavailable for depositions and use that as grounds to challenge their ability to serve as class representatives. Otherwise, the Defendants are at liberty to mention their current residences and use that fact as they will in their opposition.

- Defendant Mecca will withdraw its motion to extend time and file a joint motion asking the court to grant an extension to August 16 for the Defendants to file a motion in opposition to the Plaintiffs' Class Certification.

If I have not understood correctly our final agreement, please call me immediately. Of course, I must review the joint motion before you file it with the court. I will be in the office until 8:00 P.M. today. I am glad that we were able to find some common ground on these issues.

Sincerely,

Cathleen Caron
Attorney at Law

cc: Don Boswell, Esq.