

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

AGUSTINA VELAZQUEZ and OMAR)
SEGUNDO URBINA a/k/a one person)
named ROBERTO CARLOS DE LEON RAMOS,)
MOISES SEGUNDO URBINA a/k/a MANUEL)
LOPEZ, and LUIS FERNANDO VELAZQUEZ)
a/k/a ALFONSO REYNOSO GONZALEZ on)
behalf of themselves and all other)
similarly situated persons,)

Plaintiffs,)

v.)

BURCH EQUIPMENT, L.L.C., BURCH)
FARMS, L.L.C., JAMES P. BURCH,)
MANAGER of both BURCH EQUIPMENT,)
L.L.C. and BURCH FARMS, L.L.C.,)
WILLIAM E. BURCH, MANAGER of BURCH)
EQUIPMENT, L.L.C., FRANCIS T.)
BURCH, MANAGER of BURCH EQUIPMENT,)
L.L.C., and TERESA BURCH, MEMBER of)
BURCH FARMS, L.L.C.,)

Defendants.)

COMPLAINT

CLASS ACTION

Civil Action No.:

I. PRELIMINARY STATEMENT

1. This is a class action by four former employees of Burch Equipment, L.L.C., Burch Farms, L.L.C., the agricultural enterprise operated by Burch Equipment, L.L.C. and Burch Farms, L.L.C., and the principals and/or day-to-to operators of those same defendants and that same enterprise for unpaid wages at the minimum rate required by the Fair Labor Standards Act ("FLSA") and liquidated damages under 29 U.S.C. §216(b), failure to pay all wages when due, and other

related violations of the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA"), 29 U.S.C. §§ 1801 *et seq.*, and the North Carolina Wage and Hour Act ("NCWHA"), N.C.Gen.Stat. § 95-25.6.

2. Based upon their claims and the claims of the classes and collective action under 29 U.S.C. § 206(a) and N.C. Gen. Stat. §§ 95-25.6 and 95-25.22, the plaintiffs and the members of the collective actions and classes that they seek to represent seek payment of back wages, an equal amount of liquidated damages, actual or statutory damages, attorney fees, and costs under 29 U.S.C. §§ 216(b) and 1854(c)(1), and N.C. Gen. Stat. §§ 95-25.22(a), (a1), and (d) against Burch Equipment, L.L.C., Burch Farms, L.L.C., the agricultural enterprise operated by Burch Equipment, L.L.C. and Burch Farms, L.L.C., James P. Burch as Manager of both Burch Equipment, L.L.C. and Burch Farms, L.L.C., William E. Burch as Manager of Burch Equipment, L.L.C., Francis T. Burch as Manager of Burch Equipment, L.L.C., and Teresa Burch as a Member of Burch Farms, L.L.C.

II. JURISDICTION

3. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331, 1337, and 1367(a), and 29 U.S.C. §§ 216(b) and 1854(a). This Court has the power to

grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

III. VENUE

4. Venue over this action lies in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1391(c), and 29 U.S.C. §§ 216(b) and 1854(a). At the time this action was filed against defendants Burch Equipment, L.L.C., Burch Farms, L.L.C., the agricultural enterprise operated by Burch Equipment, L.L.C. and Burch Farms, L.L.C. (hereinafter referred to as the "LLC defendants"), James P. Burch as Manager of both Burch Equipment, L.L.C. and Burch Farms, L.L.C., William E. Burch as Manager of Burch Equipment, L.L.C., Francis T. Burch as Manager of Burch Equipment, L.L.C., and Teresa Burch as a Member of Burch Farms, L.L.C. (hereinafter referred to as the "individual Burch defendants"), the LLC defendants and all of the individual Burch defendants resided in Duplin County or Sampson County, North Carolina. At all times relevant to this action, the LLC defendants were and are closely held, for profit, business entities organized under the laws of the State of North Carolina. Regular and substantial business activities of all defendants occurred in both Duplin and Sampson County, North Carolina, at the time this action was commenced, and a substantial part of the events that gave rise to this action occurred in both Duplin and Sampson

County and/or other counties that are listed in 28 U.S.C. § 113(a).

IV. NAMED PLAINTIFFS

5. The named plaintiffs were and/or are jointly and severally employed (as the term "employ" is defined by N.C. Gen. Stat. § 95-25.2(3) and 29 U.S.C. § 203(g)) by the LLC defendants and the individual Burch defendants for the following periods of time to perform the following activities:

(a) From in or about the middle of June 2014 through in or about the middle or end of October 2014, plaintiff Agustina Velazquez (hereinafter "Agustina") and her husband plaintiff Omar Segundo Urbina (hereinafter "Omar") were jointly and severally employed as migrant agricultural workers to perform varying types of hand labor in North Carolina in the harvesting of jalapeño peppers, and the weeding and hand harvesting of sweet potatoes. During that same employment, the LLC defendants and individual Burch defendants paid plaintiffs Agustina and Omar under the name of Robert Carlos De Leon Ramos and recorded their work as one person under that same name.

(b) From in or about the middle of June 2014 through in or about the middle or end of October 2014, plaintiff Moises Segundo Urbina (hereinafter "Moises") was jointly and

severally employed as a migrant agricultural worker to perform varying types of hand labor in North Carolina in the harvesting of jalapeño peppers, and the weeding and hand harvesting of sweet potatoes. During that same employment, the LLC defendants and individual Burch defendants paid plaintiff Moises under the name of Manuel Lopez and recorded his work under that same name.

(c) From in or about the middle of June 2014 through in or about the middle or end of October 2014, plaintiff Luis Fernando Velazquez (hereinafter "Luis") was jointly and severally employed as a migrant agricultural worker to perform varying types of hand labor in North Carolina in the harvesting of jalapeño peppers, and the weeding and hand harvesting of sweet potatoes. During that same employment, the LLC defendants and individual Burch defendants paid plaintiff Luis under the name of Alfonso Reynoso Gonzalez and recorded his work under that same name.

V. DEFENDANTS

6. At all times relevant to this complaint, defendant Burch Equipment, L.L.C. (hereinafter "Equipment") is and has been a limited liability corporation that was and is organized under the laws of the state of North Carolina, for the purpose of, among others, producing and marketing

tobacco, sweet potatoes and other agricultural products within and without North Carolina.

7. At all times relevant to this complaint, defendant Burch Farms, L.L.C. (hereinafter "Farms") is and has been a limited liability corporation that was and is organized under the laws of the state of North Carolina, for the purpose of, among others, producing and marketing tobacco, sweet potatoes and other agricultural products within and without North Carolina.

8. At all times relevant to this action, Equipment and Farms and each of the individual defendants engaged in and continue to engage in related activities in the production, processing, packing, and marketing of various agricultural commodities, and performed (either through an unified operations at 685 Burch Road in Faison, North Carolina, or by common control of Equipment and Farms exercised by James P. Burch, Sr. and his wife, Teresa Burch, James P. Burch, Jr., William E. Burch, and Francis T. ("Teddy") Burch) for the common business purpose of producing, processing, and/or selling jalapeño peppers, tobacco, sweet potatoes and other agricultural commodities.

9. At all times relevant to this complaint, defendant James P. Burch, Sr. has been and continues to be a principal, part-owner, and manager of both Equipment and Farms.

10. At all times relevant to this complaint, defendant Teresa P. Burch, the wife of defendant James P. Burch, Sr., has been and continues to be a principal, part-owner, and co-operator of both Equipment and Farms. During that same time period, Teresa P. Burch is and has been a Member of Farms.

11. At all times relevant to this complaint, defendant James P. Burch, Jr., son of defendants James P. Burch, Sr. and Teresa Burch, has been and continues to be a principal, part-owner, and co-operator of both Equipment and Farms.

12. At all times relevant to this complaint, defendant William E. Burch has been and continues to be a principal, part-owner, and co-operator of both Equipment and Farms. During that same time period, William E. Burch is and has been a Manager of Equipment.

13. At all times relevant to this complaint, defendant Francis T. ("Teddy") Burch has been and continues to be a principal, part-owner, and co-operator of both Equipment and Farms. During that same time period, William E. Burch is and has been a Manager of Equipment.

14. At all times relevant to this complaint as alleged in ¶¶5(a)-(c) above, the LLC defendants and all of the individual defendants were the "employer" of each plaintiff and the persons that they seek to represent within the meaning of N.C.Gen.Stat. § 95-25.2(5), 29 U.S.C. § 203(d),

and 29 U.S.C. §§ 1802(2) and 1802(5), and "jointly employed" them within the meaning of 29 C.F.R. §§ 500.20(h)(5) and 791.2.

15. Upon information and belief, at all times relevant to this action, the LLC defendants, both in combination and severally, were and are enterprises that were and are engaged in interstate commerce within the meaning of 29 U.S.C. § 203(s)(1)(A).

16. Upon information and belief, during each calendar year falling in the four year time period immediately preceding the date on which this action was filed, both Equipment and Farms and the enterprise operated by Equipment and Farms had an annual gross volume of sales made or business done of not less than \$500,000 exclusive of excise taxes at the retail level that were separately stated.

17. During each calendar year falling in the four year time period immediately preceding the date on this action was filed, one or more employees of both Equipment and Farms and, in 2014, the named plaintiffs handled goods or equipment that had moved in interstate commerce within the meaning of 29 U.S.C. § 203(s)(1)(A).

18. Defendants James P. Burch, Sr., Teresa Burch, William E. Burch, Francis T. Burch, and James P. Burch, Jr.

all participated in the day-to-day operation of the LLC defendants.

19. Either personally and/or through their personal agents and employees, defendants James P. Burch, Sr., Teresa Burch, James P. Burch, Jr., William E. Burch, and Francis T. Burch (hereinafter referred to as the "individual Burch defendants") all directed, controlled, and supervised the work of the plaintiffs and the workers that plaintiffs Agustina, Omar, Moises, and Luis seek to represent as part of their regular involvement in the day-to-day operations of the LLC defendants.

20. The registered agent for service of process on the defendant business Burch Equipment, L.L.C. is defendant James P. Burch, Sr., 685 Burch Farms Road, Faison, North Carolina 28341.

21. The registered agent for service of process on the defendant business Burch Farms, L.L.C. is defendant James P. Burch, Sr., 685 Burch Farms Road, Faison, North Carolina 28341.

VI. FLSA COLLECTIVE ACTION ALLEGATIONS (§ 206(a)) (FLSA)

22. Pursuant to the collective action procedure specified at 29 U.S.C. §216(b) and the First Claim for Relief, plaintiffs Agustina, Omar, Moises, and Luis file this collective action for each similarly situated person

jointly and/or severally employed by the LLC defendants and one or more of the individual Burch defendants at any time in the time period starting with the first date in the three (3) year time period immediately preceding the date on which such person files a Consent to Sue in this action pursuant to 29 U.S.C. §216(b), and ending with the date final judgment is entered in this action.

23. This FLSA collective action for the First Claim for Relief is on behalf of those members of the FLSA collective action for all workweeks that occurred in whole or in part during the time periods described in ¶22 above in which plaintiffs Agustina, Omar, Moises, and Luis and the members of this FLSA collective action performed or will perform any piece rate field work for the LLC defendants and one or more of the individual Burch defendants when the weekly wages that those same named plaintiffs and those collective action members received free and clear for that hand labor field work did not equal or exceed the minimum rate required by 29 U.S.C. § 206(a).

24. During the time period described in ¶23 above, the LLC defendants and/or one or more of the individual Burch defendants jointly or severally employed plaintiffs Agustina, Omar, Moises, and Luis and in excess of fifty other migrant or seasonal agricultural workers to perform

various forms of agricultural hand labor that was compensated on a piece rate basis in the production and hand harvest of jalapeño peppers, sweet potatoes, and/or other agricultural crops.

25. This collective action is based upon the willful failure of the LLC defendants and the individual Burch defendants to pay plaintiffs Agustina, Omar, Moises, and Luis and the members of this collective action wages free and clear on or before their regular payday for each workweek for the piece rate field work that is described in ¶23 above in an amount that was equal to or exceeded the minimum rate required by 29 U.S.C. § 206(a) for each hour worked or part of an hour worked that plaintiffs Agustina, Omar, Moises, and Luis and each member of this collective action worked during each of those same workweeks.

VII. RULE 23(b)(3) CLASS ALLEGATIONS (NCWHA)

26. The First Claim for Relief is brought under the NCWHA by plaintiffs Agustina, Omar, Moises, and Luis on behalf of themselves and all other similarly situated persons pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

27. In the Second Claim for Relief based on the NCWHA, named plaintiffs Agustina, Omar, Moises and Luis seek to represent a class consisting of all employees of

one or more of the LLC defendants and one or more of the individual Burch defendants who were and will not be paid all wages when due on their regular payday for hand labor, piece rate agricultural field work at the wage rate disclosed to them pursuant to N.C.Gen.Stat. §§ 95-25.13(1)-(2) for that same work that they performed when the total wages they earned at the piece rate disclosed to them was less than the hourly rate disclosed to them in any workweek that occurred in whole or in part at any time in the two (2) year time period immediately preceding the date on which this action was filed and continuing thereafter until the date on which final judgment is filed in this action.

28. The members of the class alleged in ¶27 above are so numerous and so geographically dispersed as to make joinder impractical. The precise number of individuals in this class is known only to the defendants. However, the class is believed to include over one hundred (100) individuals. This class is comprised of indigent migrant and seasonal agricultural workers many of whom maintain no permanent residence in the United States. Many of the class members in this class are not fluent in the English language and are unfamiliar with the American judicial system. The relatively small size of the individual claims and the indigence of the class members in this class make

the maintenance of separate actions by each class member of this class infeasible.

29. There are questions of law and fact common to the class alleged in ¶27 above. These common legal and factual questions are, among others:

(a) Pursuant to N.C.Gen.Stat. §§ 95-25.13(1)-(2) and 13 N.C.A.C. Tit. 12 § .0803, did and will the LLC defendants and/or the individual Burch defendants disclose to named plaintiffs Agustina, Omar, Moises, Luis, and the members of the class defined in ¶27 above that the LLC defendants would pay wages free and clear to those same workers at a specified minimum hourly rate for all hours worked by all workers doing that piece rate field work if the total amount earned by any such worker at the disclosed piece rate for any such work in a particular workweek was less than the specified hourly rate that the LLC defendants and/or one or more of the individual Burch defendants disclosed to those same workers for the total hours worked in that same workweek?

(b) Did the defendants violate the wage payment provisions of N.C.Gen.Stat. § 95-25.6 of the North Carolina Wage and Hour Act ("NCWHA") applicable to named plaintiffs Agustina, Omar, Moises, Luis, and the class defined in ¶27 above by failing to pay wages free and clear at the specified and disclosed hourly rate for all hours worked in a

substantial number of workweeks when the total amount earned by any such worker at the piece rate for any work in any such workweek that the LLC defendants and one or more of the individual Burch defendants disclosed to those same workers was less than that same specified hourly rate for the total hours worked in those same workweeks?

30. The claim in the Second Claim for Relief of named plaintiffs Agustina, Omar, Moises, and Luis is typical of the claims of the members of the class defined in ¶27 above, and those typical, common claims predominate over any questions affecting only individual class members. Named plaintiffs Agustina, Omar, Moises and Luis have the same interests as do other members of the class defined in ¶27 above and will vigorously prosecute these interests on behalf of the class defined in ¶27 above.

31. Named plaintiffs Agustina, Omar, Moises, and Luis will fairly and adequately represent the interests of the class defined in ¶27 above.

32. The undersigned counsel Robert J. Willis of the Law Office of Robert J. Willis, P.A. for named plaintiffs Agustina, Omar, Moises, and Luis is experienced litigators who have been named counsel for many class actions. Plaintiffs' counsel is prepared to advance litigation costs necessary to vigorously litigate this action and to provide

notice to the members of the class defined in ¶27 above under Rule 23(b)(3).

33. A class action under Rule 23(b)(3) is superior to other available methods of adjudicating the class claim defined in ¶27 above this controversy because, *inter alia*:

(a) The common issues of law and fact, as well as the relatively small size of the individual claims of each member of the class defined in ¶28 above, substantially diminish the interest of members of the class defined in ¶28 above in individually controlling the prosecution of separate actions;

(b) Many members of each of the class defined in ¶27 are unaware of their rights to prosecute these claims and lack the means or resources to secure legal assistance;

(c) There has been no litigation already commenced against the LLC defendants and/or any of the individual Burch defendants by the members of the class defined in ¶27 above to determine the questions presented;

(d) It is desirable that the claims be heard in this forum because the LLC defendants and the individual Burch defendants all reside in this district and the cause of action arose in this district;

(e) A class action can be managed without undue difficulty because the LLC defendants and the individual Burch defendants regularly committed the violations

complained of herein, and were required to and did maintain detailed records concerning each member of the class defined in ¶27 above.

VIII. RULE 23(b)(3) AWP CLASS ALLEGATIONS

34. The Third Claim for Relief is brought under the AWP by plaintiffs Agustina, Omar, Moises and Luis on behalf of themselves and all other similarly situated persons pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

35. In the Third Claim for Relief based on the AWP, named plaintiffs Agustina, Omar, Moises and Luis seek to represent a class consisting of all migrant and seasonal agricultural workers (as the terms "migrant agricultural worker" and "seasonal agricultural worker" are defined in 29 U.S.C. §§ 1802(8) and 1802(10) and 29 C.F.R. §§ 500.20(p) and 500.20(r)) who performed temporary or seasonal work in agriculture as a employee of the LLC defendants and one or more of the individual Burch defendants at any time in the three (3) year time period immediately preceding the date on which this action was filed and continuing thereafter until the date on which final judgment is filed in this action. This class consists of the following subclasses for each separate agricultural season that occurred in that same time period:

(a) plaintiffs Agustina, Omar, Moises and Luis and those workers to whom the LLC defendants and one or more of the individual Burch defendants failed to pay weekly wages that were due when they were due for all hours worked when the gross compensation paid pursuant to the piece rate compensation rate did not equal or exceed the product of the hours worked and the specific hourly rate disclosed to those same workers in violation of 29 U.S.C. §§ 1822(a) and 1832(a), and

(b) plaintiffs Agustina, Omar, Moises and Luis and those workers to whom the LLC defendants and one or more of the individual Burch defendants failed to pay weekly wages that were due when they were due for each unit of jalapeño peppers, sweet potatoes, and/or other agricultural commodity that those same workers harvested by hand at the piece rate that was disclosed to them pursuant to N.C.Gen.Stat. §§ 95-25.13(1)-(2) and 13 NCAC Tit. 12 § .0803 when the LLC defendants or person(s) acting for the LLC defendants confiscated picking tokens that they had distributed to plaintiffs Agustina, Omar, Moises and Luis and those same workers for crops that those same workers had already harvested on a piece rate basis as a disciplinary measure for alleged improper picking procedure or some other alleged

work-related improper action in violation of 29 U.S.C. §§ 1822(a) and 1832(a), and

(c) plaintiffs Agustina, Omar, Moises and Luis and those workers for whom the LLC defendants and one or more of the individual Burch defendants failed to maintain accurate wage records as to the number of piecework units earned, the number of hours worked, and the total pay period earnings for each such worker during each separate agricultural season that occurred in that same time period in violation of 29 U.S.C. §§ 1821(d)(1)(B)-(D) and 1831(d)(1)(B)-(D), and

(d) plaintiffs Agustina, Omar, Moises and Luis and those workers to whom the LLC defendants and one or more of the individual Burch defendants failed to provide an itemized wage statement including accurate information as to the number of piecework units earned, the number of hours worked, and the total pay period earnings for each such worker during each separate agricultural season that occurred in that same time period in violation of 29 U.S.C. §§ 1821(d)(2) and 1831(d)(2), and

(e) plaintiffs Agustina, Omar, Moises and Luis and those workers with whom Burch Farms and one or more of the individual Burch defendants violated, without justification, the working arrangement of the LLC defendants with those same workers to pay the specific hourly rate disclosed and

promised to pay them when the gross compensation paid pursuant to the piece rate compensation rate did not equal or exceed the product of the hours worked and the specific hourly rate disclosed to those same workers during each separate agricultural season that occurred in that same time period in violation of 29 U.S.C. §§ 1822(c) and 1832(c), and

(f) plaintiffs Agustina, Omar, Moises, Luis, and those workers with whom the LLC defendants and one or more of the individual Burch defendants violated, without justification, the working arrangement that the LLC defendants had with those same workers to pay them for all units of hand-harvested crops at the piece rate that the LLC defendants and/or one of the Burch individual defendants disclosed to those same workers pursuant to N.C.Gen.Stat. §§ 95-25.13(1)-(2) and 13 NCAC Tit. 12 § .0803 when the LLC defendants or person(s) acting for the LLC defendants confiscated picking tokens that they had distributed to those same workers for units of crops that plaintiffs Agustina, Omar, Moises and Luis and those same workers had already harvested as a disciplinary measure for alleged improper picking procedure or some other alleged work-related improper action in violation of 29 U.S.C. §§ 1822(c) and 1832(c), and

(g) plaintiffs Agustina, Omar, Moises, Luis, and those migrant agricultural workers to whom all defendants

failed to ascertain and accurately disclose in writing to each such worker who was or will be recruited at the time of recruitment the wage rates to be paid for their employment by all defendants in the type of employment that is described in ¶¶5(a)-(c) above in violation of 29 U.S.C. § 1821(a)(2).

36. The class and each subclass alleged in ¶¶35(a)-(g) above are so numerous and so geographically dispersed as to make joinder impractical for the same reasons alleged in ¶28 above.

37. There are questions of law and fact common to the class and each of the subclasses alleged in ¶¶35(a)-(g) above. These common legal and factual questions are, among others:

(a) for each separate agricultural season that occurred in the time period described in ¶35 above, did the LLC defendants and one or more of the individual Burch defendants employ plaintiffs Agustina, Omar, Moises, Luis, and/or the persons described in ¶35 above as migrant or seasonal agricultural workers under the AWPA?

(b) for each separate agricultural season that occurred in the time period described in ¶35 above, for the workers described in ¶¶35 and 35(c)-(d) above did the LLC defendants and one or more of the individual Burch defendants violate

the recordkeeping and wage statement provisions of 29 U.S.C. §§ 1821(d)(1)(B)-(D), 1821(d)(2), 1831(d)(1)(B)-(D), 1831(d)(2) of the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA") applicable to named plaintiffs Agustina, Omar, Moises, Luis and the class and subclasses defined in ¶¶35 and 35(c)-(d) above by failing to disclose, make, and preserve wage statements and records which accurately disclosed and recorded the number of piecework units earned, the hours worked, and the total pay period earnings for the named plaintiffs Agustina, Omar, Moises, Luis and the members of the class and subclasses defined in ¶¶35(c)-(d)?

(c) for each separate agricultural season that occurred in time period described in ¶35 above, did the LLC defendants and one or more of the individual Burch defendants violate the rights of named plaintiffs Agustina, Omar, Moises, Luis and the members of the class and subclasses defined in ¶¶35, 35(b), and 35(f) above under the payment when due requirements of 29 U.S.C. §§ 1822(a) and 1832(a) as described in ¶35(b) above, and the working arrangement requirements of 29 U.S.C. §§ 1822(c) and 1832(c) as described in ¶35(f) above in the manner alleged in ¶¶35(b) and 35(f) above?

(d) for each separate agricultural season that occurred in time period described in ¶35 above, did the LLC defendants

and one or more of the individual Burch defendants violate the rights of named plaintiffs Agustina, Omar, Moises, Luis and the members of the class and subclasses defined in ¶¶35, 35(a), and 35(e) above under the payment when due requirements of 29 U.S.C. §§ 1822(a) and 1832(a) as described in ¶35(a) above, and the working arrangement requirements of 29 U.S.C. §§ 1822(c) and 1832(c) as described in ¶35(e) above in the manner alleged in ¶¶35(a) and 35(e) above?

(e) for each separate agricultural season that occurred in the time period alleged in ¶35 above, did Burch Farms and/or the individual Burch defendants violate the rights of plaintiffs Agustina, Omar, Moises, Luis and the members of the class and subclass defined in ¶¶35 and 35(g) above with respect to the defendants' failure to ascertain and accurately disclose in writing to each such migrant agricultural worker who was or will be recruited at the time of recruitment the wage rates to be paid for their employment by the LLC defendants in the type of employment that is described in ¶¶5(a)-(c) and ¶35(g) above in violation of 29 U.S.C. §§ 1821(a)(2) as described in ¶35(g) above in the manner alleged in ¶35(g) above.

38. The claims of plaintiffs Agustina, Omar, Moises, Luis in the Third Claim for Relief are typical of the claims of the members of the class and subclasses defined in ¶¶35

and 35(a)-(g) above, and those typical, common claims predominate over any questions affecting only individual class and/or subclass members. Named plaintiffs Agustina, Omar, Moises, Luis have the same interests as to other members of the class and subclasses defined in ¶¶35 and 35(a)-(g) above and will vigorously prosecute these interests on behalf of the class and subclasses defined in ¶¶35 and 35(a)-(g) above.

39. Named plaintiffs Agustina, Omar, Moises, Luis will fairly and adequately represent the interests of the class and subclasses defined in ¶¶35 and 35(a)-(g) above.

40. The undersigned counsel Robert J. Willis of the Law Office of Robert J. Willis, P.A. for all Plaintiffs is an experienced litigator who has been named counsel for many class actions. Plaintiffs' counsel is prepared to advance litigation costs necessary to vigorously litigate this action and to provide notice to the members of the class and subclass defined in ¶¶35 and 35(a)-(g) above under Rule 23(b)(3).

41. The reasons, *inter alia*, that a class action under Rule 23(b)(3) is superior to other available methods of adjudicating the controversy alleged with respect to the class and subclasses defined in ¶¶35 and 35(a)-(g) above are

the same as those alleged in ¶33(a)-(e) above with respect to the class defined in ¶27 above.

IX. FACTUAL ALLEGATIONS

42. For each jalapeño pepper, bell pepper, asparagus, broccoli, and sweet potato growing and harvest season that occurred in calendar years 2012 through and including the date the Court enters final judgment in this action, the LLC defendants and one or more of the individual Burch defendants jointly and severally employed named plaintiffs Agustina, Omar, Moises, Luis and/or the members of the collective action and classes and subclasses of migrant and seasonal agricultural workers defined in ¶¶22-23, 27, 35, and 35(a)-(g) above that plaintiffs Agustina, Omar, Moises, and Luis seek to represent to perform planting, growing, harvesting, weeding, and other hand labor agricultural field work in one or more of those crops for the LLC defendants and one or more of the individual Burch defendants.

43. Upon information and belief, pursuant to N.C.Gen.Stat. §§ 95-25.13(1)-(2), for each jalapeño pepper, bell pepper, broccoli, asparagus, and sweet potato harvest season that occurred in each year from 2012 forward, the LLC defendants and one or more of the individual Burch defendants disclosed to plaintiffs Agustina, Omar, Moises, Luis, and the class defined in ¶27 above by both written individual

disclosure forms and posted statements that were and are maintained in a place accessible to plaintiffs Agustina, Omar, Moises, Luis, and the members of the classes defined in ¶¶27, 35, 35(a)-(b), and 35(e)-(f) above that the LLC defendants would pay wages free and clear when those weekly wages were due to those same workers at a specified hourly rate for all hours worked for all workers doing that piece rate work if the total amount earned by any such worker at the disclosed piece rate for any such work in a particular workweek was less than the specified hourly rate that the defendants disclosed to those same workers for the total hours worked in that same workweek.

44. Upon information and belief, pursuant to N.C.Gen.Stat. §§ 95-25.13(1)-(2), for each jalapeño pepper, bell pepper, broccoli, asparagus, and sweet potato harvest season that occurred in each year from 2012 forward, the LLC defendants and the individual Burch defendants disclosed to plaintiffs Agustina, Omar, Moises, Luis, and the class and subclasses defined in ¶¶35, 35(b), and 35(f) above by both written individual disclosure forms and posted statements that were and are maintained in a place accessible to plaintiffs and the members of the class and subclasses defined in ¶¶35 35(b), and 35(f) above that the LLC defendants would pay them wages free and clear when those

weekly wages were due to those same workers at the higher of the unit rate disclosed to those workers for all units harvested or the specified hourly rate for all hours worked by all workers doing that piece rate work if the total amount earned by any such worker at the disclosed unit rate for any such work in a particular workweek was less than the specified hourly rate that the defendants disclosed to those same workers for the total hours worked in that same workweek.

45. In each of the calendar years described in ¶42 above, farm labor contractor field supervisors Zenaida Perez, her family members Darlene and Adrian, and upon information and belief, other farm labor contractor field supervisors employed by the LLC defendants confiscated picking tokens that they had distributed to plaintiffs Agustina, Omar, Moises, Luis, and the members of the class and subclasses defined in ¶¶35, 35(b), and 35(f) for crops that those same workers had already harvested on a piece rate basis as a disciplinary measure for some alleged improper picking procedure or some other alleged work-related improper action.

46. Based at least in part upon the disclosures described in ¶¶43-44 above, plaintiffs Agustina, Omar, Moises, and Luis, and, as alleged in ¶¶27, 35, 35(a)-(b), and 35(e)-(f), the members of the classes and/or subclasses

described in ¶¶27, 35, 35(a)-(b), and 35(e)-(f) had an agreement and working arrangement with the LLC defendants and one or more of the Burch defendants to pay promised wages to plaintiffs Agustina, Omar, Moises, Luis, and the members of the classes and subclasses defined in ¶¶27, 35, 35(a)-(b), and 35(e)-(f) pursuant to the terms of those disclosures.

47. As part of the work described in ¶42 above for the defendants during a substantial number of each of the time periods and workweeks in each calendar year that is described in ¶¶22-23, 27, and 35 above, the defendants employed and/or employ the named plaintiffs Agustina, Omar, Moises, Luis, and at least 50 other members of the collective action described in ¶¶22-23, and the class and subclasses described in ¶¶27, 35, 35(a), and 35(e) above to perform hand labor in the harvest of jalapeño peppers, bell peppers, broccoli, asparagus, and/or sweet potatoes at the piece rate disclosed to them by the LLC defendants and one or more of the individual Burch defendants.

48. During many if not all of those same workweeks that are described in ¶47 above, the gross amount of wages earned by and paid to the plaintiffs Agustina, Omar, Moises, Luis, and the members of the collective action and the members of the class and subclasses defined in ¶¶22-23, 27, 35, 35(a), and 35(e) above at the applicable piece rate for work that is

described in ¶47 above was less than the amount that those same workers had earned if compensated at the specific hourly rate that the LLC defendants disclosed to those same workers for the total hours worked in that same workweek.

49. For the work that is described in ¶¶45 and 47 above, the LLC defendants and one or more of the individual Burch defendants intentionally did not compensate named plaintiffs Agustina, Omar, Moises, Luis, and the members of the class and subclasses defined in 35, 35(b), and 35(f) above at the piece rate they were due when those wages were due pursuant to the terms of the disclosures described in ¶44 above and in violation of the agreement and working arrangement described in ¶46 above and in violation of their duty under N.C.Gen.Stat. § 95-25.6 to pay all wages when due.

50. For the work that is described in ¶¶47-48 above, the LLC defendants and one or more of the individual Burch defendants intentionally did not compensate named plaintiffs Agustina, Omar, Moises, Luis, and the members of the classes and subclasses defined in ¶¶27, 35, 35(a), and 35(e) above at the hourly wage rate they were due when those wage were due pursuant to the terms of the disclosures described in ¶43 above and in violation of the agreement and working arrangement described in ¶46 above.

51. For the work that is described in ¶48 above, the

LLC defendants and the individual Burch defendants did not compensate named plaintiffs Agustina, Omar, Moises, Luis, or any member of the collective action that is defined in ¶¶22-23 above at the minimum rate required by 29 U.S.C. § 206(a).

52. During each agricultural season that occurred in the 3-year time period immediately preceding the date on which this action was filed and continuing, on information and belief, through the date that final judgment is entered in this action, the LLC defendants and one or more of the individual Burch defendants intentionally did not and will not keep or maintain any accurate records as to the number of hours worked, number of piecework units earned, and total pay period earnings for any work of the type that is described in ¶47 above that was performed by named plaintiffs Agustina, Omar, Moises, Luis, and the members of the collective action, class, and subclasses defined in ¶¶22-23, 27, 35, 35(a)-(c), and 35(e)-(f) above.

53. During each agricultural season that occurred in the 3-year time period immediately preceding the date on which this action was filed and continuing, on information and belief, through the date that final judgment is entered in this action, the LLC defendants and one or more of the individual Burch defendants intentionally did not and will not provide to named plaintiffs Agustina, Omar, Moises,

Luis, and the members of the collective action, and the members of the class and subclasses defined in ¶¶22-23, 27, 35, 35-(a)-(b), and 35(d)-(f) above itemized wage statements with accurate information as to the number of hours worked, number of piecework units earned, and total pay period earnings for any work of the type that is described in ¶47 above that was performed by named plaintiffs Agustina, Omar, Moises, Luis, and the members of the collective action, class and subclasses defined in ¶¶22-23, 27, 35, 35-(a)-(b), and 35(d)-(f) above.

54. During each agricultural season that occurred in the 3-year time period immediately preceding the date on which this action was filed and continuing, on information and belief, through the date that final judgment is entered in this action, through the actions that are described in ¶¶43, 46, and 48 above, the LLC defendants and one or more of the individual Burch defendants intentionally failed, without any justification, to comply with the terms of the working arrangement and disclosure that are described in ¶¶43 and 46 above.

55. During each agricultural season that occurred in the 3-year time period immediately preceding the date on which this action was filed and continuing, on information and belief, through the date that final judgment is entered

in this action, through the actions that are described in ¶¶44-46, and 49 above, the LLC defendants and one or more of the individual Burch defendants intentionally failed, without any justification, to comply with the terms of the working arrangement and disclosure that are described in ¶¶44 and 46 above.

56. The LLC defendants and one or more of the individual Burch defendants intentionally failed to or, upon information and belief, will fail to ascertain and accurately disclose in writing to the named plaintiffs Agustina, Omar, Moises, Luis, and the members of the class and subclass defined in ¶¶27, 35, 35(g) above at the time that each such worker was or will be recruited the wage rates to be paid for their employment by the LLC defendants and one or more of the individual Burch defendants in the type of employment that is described in ¶47 above in violation of 29 U.S.C. § 1821(a)(2).

57. Upon information and belief, as experienced agricultural employers who have participated in more than one session to educate them as to their obligations under the FLSA, the NCWHA, and the AWP, all defendants were on notice of their obligations under the FLSA, the NCWHA, and the AWP, and acted in reckless disregard of those obligations in 2012, 2013, and 2014.

X. FIRST CLAIM FOR RELIEF (FLSA § 206(a))

58. Paragraphs 3 through 25 and 42-72, inclusive, above are realleged and incorporated herein by reference by plaintiffs Agustina, Omar, Moises, Luis, and each member of the collective action defined in ¶¶22-23 above of this complaint that the plaintiffs Agustina, Omar, Moises, and Luis seek to represent pursuant to 29 U.S.C. § 216(b) against the LLC defendants and each of the individual Burch defendants under §§ 206(a) and 216(b) of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*

59. As alleged in ¶¶42, and 47-48 above, the LLC defendants and the individual Burch defendants violated their duty to plaintiffs Agustina, Omar, Moises, Luis, and the members of the collective action defined in ¶¶22-23 above to pay wages at the minimum rate required by 29 U.S.C. § 206(a) for the work described in ¶¶42, and 47-48 above that plaintiffs Agustina, Omar, Moises, Luis, and the members of the collective action defined in ¶¶22-23 above performed for the LLC defendants and the individual Burch defendants.

60. As a result of the willful actions or omissions of LLC defendants and the individual Burch defendants that are described or referred to in ¶¶22-25, and 42-72 inclusive, above of this complaint, plaintiffs Agustina, Omar, Moises,

Luis, and each person who is a member of the collective action defined in ¶¶22-23 above of this complaint have suffered damages in the form of underpayment of wages and liquidated damages that may be recovered under 29 U.S.C. §§ 206(a) and 216(b).

XI. SECOND CLAIM FOR RELIEF (NCWHA)

61. Paragraphs 5 through 21, 25-33, and 42-72, inclusive, above are realleged and incorporated herein by reference by plaintiffs Agustina, Omar, Moises, Luis, and each member of the class defined in ¶27 of this complaint that named plaintiffs Agustina, Omar, Moises, and Luis seek to represent pursuant to Rule 23(b)(3), Fed.R.Civ.P., against the LLC defendants and the individual Burch defendants under the North Carolina Wage and Hour Act, N.C.Gen.Stat. §§ 95-25.1 *et seq.*

62. As alleged in ¶¶47-49 above, defendant Burch Farms and the individual Burch defendants violated their duty to plaintiffs Agustina, Omar, Moises, Luis, and the class defined in ¶27 above to pay all wages under N.C.Gen.Stat. § 95-25.6 when those wages were due pursuant to the terms of the agreement and disclosures that are described in ¶¶43 and 46 above that the LLC defendants and one or more of the individual Burch defendants made to and has and had with

plaintiffs Agustina, Omar, Moises, Luis, and the members of the class defined in ¶27.

63. As a result of the actions or omissions of the LLC defendants and one or more of the individual Burch defendants that are described or referred to in ¶¶26-33 and 42-72 above of this complaint, plaintiffs Agustina, Omar, Moises, Luis, and each person who is a member of the class defined in ¶27 above of this complaint have suffered damages in the form of unpaid wages and liquidated damages that may be recovered under N.C.Gen.Stat. §§ 95-25.6, 95-25.22(a), and 95-25.22(a1).

XII. THIRD CLAIM FOR RELIEF (AWPA)

64. Paragraphs 5 through 21, and 34-72, inclusive, above are realleged and incorporated herein by reference by plaintiffs Agustina, Omar, Moises, Luis, and each member of the classes and subclasses defined in ¶¶35 and 35(a)-(g) above of this complaint that plaintiffs Agustina, Omar, Moises and Luis seek to represent pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure against the LLC defendants and the individual Burch defendants under the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA"), 29 U.S.C. §§ 1801 et seq.

65. During each agricultural season that occurred in the 3-year time period immediately preceding the date on

which this action was filed and continuing, on information and belief, through the date that final judgment is entered in this action, the LLC defendants and the individual Burch defendants intentionally violated the AWPAA and its implementing regulations in the following ways with respect to the named plaintiffs Agustina, Omar, Moises, Luis, and the members of the subclasses of the class defined in ¶¶35 and 35(a)-(g) above in the following ways:

(a) failed to pay weekly wages that were due when they were due for all hours worked when the gross compensation paid pursuant to the piece rate compensation rate did not equal or exceed the product of the hours worked and the specific hourly rate disclosed to those same workers in violation of 29 U.S.C. §§ 1822(a) and 1832(a), and

(b) failed to pay weekly wages that were due when they were due for each unit of jalapeño peppers, sweet potatoes, and/or other agricultural commodity that those same workers harvested by hand at the piece rate that was disclosed to them pursuant to N.C.Gen.Stat. §§ 95-25.13(1)-(2) and 13 NCAC Tit. 12 § .0803 when the LLC defendants or person(s) acting for the LLC defendants confiscated picking tokens that they had distributed to the named plaintiffs and those same workers for crops that those same workers had already harvested on a piece rate basis as a disciplinary measure for

alleged improper picking procedure or some other alleged work-related improper action in violation of 29 U.S.C. §§ 1822(a) and 1832(a), and

(c) failed to maintain accurate wage records as to the number of piecework units earned, the number of hours worked, and the total pay period earnings for each such worker during each separate agricultural season that occurred in that same time period in violation of 29 U.S.C. §§ 1821(d)(1)(B)-(D) and 1831(d)(1)(B)-(D), and

(d) failed to provide an itemized wage statement including accurate information as to the number of piecework units earned, the number of hours worked, and the total pay period earnings for each such worker during each separate agricultural season that occurred in that same time period in violation of 29 U.S.C. §§ 1821(d)(2) and 1831(d)(2), and

(e) violated, without justification, the working arrangement of the LLC defendants with those same workers to pay the specific hourly rate disclosed and promised to pay them when the gross compensation paid pursuant to the piece rate compensation rate did not equal or exceed the product of the hours worked and the specific hourly rate disclosed to those same workers during each separate agricultural season that occurred in that same time period in violation of 29 U.S.C. §§ 1822(c) and 1832(c), and

(f) violated, without justification, the working arrangement that the LLC defendants had with those same workers to pay them for all units of hand-harvested crops at the piece rate that the LLC defendants and/or one of the Burch individual defendants disclosed to those same workers pursuant to N.C.Gen.Stat. §§ 95-25.13(1)-(2) and 13 NCAC Tit. 12 § .0803 when the LLC defendants or person(s) acting for the LLC defendants confiscated picking tokens that they had distributed to those same workers for units of crops that those same workers had already harvested as a disciplinary measure for alleged improper picking procedure or some other alleged work-related improper action in violation of 29 U.S.C. §§ 1822(c) and 1832(c), and

(g) failed to ascertain and accurately disclose in writing to each such worker who was or will be recruited at the time of recruitment the wage rates to be paid for their employment by all defendants in the type of employment that is described in ¶¶5(a)-(c) above in violation of 29 U.S.C. § 1821(a)(2).

66. As a result of the intentional actions or omissions of the LLC defendants and the individual Burch defendants that are described or referred to in ¶¶34-72, inclusive, above of this complaint, the named plaintiffs and each person who is a member of the class and subclasses defined in ¶¶35

and 35(a)-(g) above of this complaint have suffered damages, and are entitled to payment of statutory damages pursuant to 29 U.S.C. § 1854(c)(1) for each agricultural season that occurred in the 3-year time period immediately preceding the date on which this action was filed and continuing, on information and belief, through the date that final judgment is entered in this action.

XIII. CLAIM FOR DECLARATORY RELIEF

67. Paragraphs 3 through 84 above are realleged and incorporated herein by reference by plaintiffs, the members of the collective action and class and subclasses defined in ¶¶22-23, 27, 35, and 35(a)-(g) seek to represent against the LLC defendants and the individual Burch defendants.

68. The parties named in this action and members of the classes and collective actions that plaintiffs Agustina, Omar, Moises, and Luis seek to represent are in dispute as to their respective rights, privileges, obligations, and liabilities under the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act, and require declaratory relief as to what those respective rights, privileges, obligations, and liabilities are.

WHEREFORE Plaintiffs Agustina, Omar, Moises, and Luis respectfully requests that the Court:

(a) Grant a jury trial on all issues so triable;

(b) Pursuant to Rule 23(b)(3), Fed.R.Civ.P., certify named plaintiffs Agustina, Omar, Moises, and Luis as representatives of the classes and subclasses alleged in ¶¶27, 35, and 35(a)-(g) above with respect to the Second and Third Claims for Relief based upon the factors alleged in ¶¶26-33, and 34-41, inclusive, above of this Complaint;

(c) Pursuant to 29 U.S.C. § 216(b), certify named plaintiffs Agustina, Omar, Moises, and Luis as the representatives of the collective action alleged in ¶¶22-23 above with respect to the First Claim for Relief;

(d) Enter judgment against each defendant Burch Farms, L.L.C., Burch Equipment, L.L.C., the enterprise operated by Burch Farms, L.L.C. and Burch Equipment, L.L.C., and each of the individual Burch defendants, jointly and severally, and in favor of named plaintiffs Agustina, Omar, Moises, and Luis, and each member of the class defined in ¶¶27 above for unpaid back wages, liquidated damages where allowed by law, plus pre- and post-judgment interest at the full amount allowed by law under the Second Claim for Relief;

(e) Enter judgment against each defendant Burch Farms, L.L.C., Burch Equipment, L.L.C., the enterprise operated by Burch Farms, L.L.C. and Burch Equipment, L.L.C., and each of the individual Burch defendants, jointly and severally, and in favor of named plaintiffs Agustina, Omar, Moises, and

Luis, and each member of the collective actions defined in ¶¶22-23 above for unpaid back wages, liquidated damages where allowed by law, plus pre- and post-judgment interest at the full amount allowed by law under the First Claim for Relief;

(f) For each separate agricultural season that occurred in the 3-year time period immediately preceding the date on which this action was filed and continuing through the date that final judgment is entered in this action, enter judgment against each defendant Burch Farms, L.L.C., Burch Equipment, L.L.C., the enterprise operated by Burch Farms, L.L.C. and Burch Equipment, L.L.C., and each of the individual Burch defendants, jointly and severally, and in favor of named plaintiffs Agustina, Omar, Moises, and Luis, and each member of the class and subclasses defined in ¶¶42 and 42(a)-(g) above for statutory damages in the full amount authorized by 29 U.S.C. § 1854(c)(1), plus pre- and post-judgment interest at the full amount allowed by law under the Third Claim for Relief;

(g) Enter judgment against each defendant Burch Farms, L.L.C., Burch Equipment, L.L.C., the enterprise operated by Burch Farms, L.L.C. and Burch Equipment, L.L.C., and each of the individual Burch defendants, jointly and severally, and in favor of named plaintiffs Agustina, Omar, Moises, and Luis, and each member of the classes and collective actions

defined in ¶¶22-23, 27, and 35 above for costs and a reasonable attorney's fee pursuant to 29 U.S.C. § 216(b) and N.C.Gen.Stat. § 95-25.22(d);

(h) Enter judgment against each defendant Burch Farms, L.L.C., Burch Equipment, L.L.C., the enterprise operated by Burch Farms, L.L.C. and Burch Equipment, L.L.C., and each of the individual Burch defendants, jointly and severally, and in favor of named plaintiffs Agustina, Omar, Moises, and Luis, and each member of the classes subclasses defined in ¶42 and 42(a)-(g) above for costs pursuant to 28 U.S.C. §§ 1854(a) and 1920;

(i) Grant named plaintiffs Agustina, Omar, Moises, and Luis, and the members of the collective actions and classes that they seek to represent declaratory relief that each defendant Burch Farms, L.L.C., Burch Equipment, L.L.C., the enterprise operated by Burch Farms, L.L.C., and each of the individual Burch defendants, jointly and severally, have violated the rights of named plaintiffs Agustina, Omar, Moises, and Luis, and those other employees under the NCWHA, the FLSA, and the AWPA;

(j) Award such other relief as may be just and proper in this action.

Respectfully submitted, this the 31st day of December
2014.

LAW OFFICE OF ROBERT J. WILLIS, P.A.

BY:/s/Robert J. Willis
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CONSENT TO SUE

I, Agostina Velazquez, hereby consent to be a party under 29 U.S.C. §216(b) to this lawsuit to assert my right to the lawful wage required by the Fair Labor Standards Act.

Agostina Velazquez
SIGNATURE

10/21/16
DATE

CONSENT TO SUE

I, Omar Segundo Urbina, hereby consent to be a party under 29 U.S.C. §216(b) to this lawsuit to assert my right to the lawful wage required by the Fair Labor Standards Act.

Omar Segundo Urbina
SIGNATURE

10/7/14
DATE

CONSENT TO SUE

I, Moises Segundo Urbina, hereby consent to be a party under 29 U.S.C. §216(b) to this lawsuit to assert my right to the lawful wage required by the Fair Labor Standards Act.

Moises Segundo Urbina
SIGNATURE

10/7/14
DATE

CONSENT TO SUE

I, Luis Fernando, hereby consent to be a party under 29 U.S.C. §216(b) to this lawsuit to assert my right to the lawful wage required by the Fair Labor Standards Act.

Luis Fernando
SIGNATURE

10/7/14
DATE