IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
CASE NO: 4:15-cv-00196

José Carmen Gallegos Gallegos, Individually and on behalf of all others Similarly situated,	)	
Plaintiffs,	)	
v.	)	COMPLAINT
Becerra Enterprises, Inc. and Luis Alfonso Becerra,	)	
Defendants.	)	

PRELIMINARY STATEMENT

1. This is an action by a migrant agricultural worker who was recruited from his home in Mexico to perform labor for Defendants in Florida and North Carolina planting and harvesting citrus, sweet potatoes, cucumbers and tobacco. He brings this action on behalf of himself and his former coworkers for the Defendants' violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq*. ("FLSA"), the minimum wage provisions of the Florida Constitution, Article 10 § 24, ("FMWA") and the North Carolina Wage and Hour Act, N.C.G.S. §§ 95-25.1, *et seq*. ("NCWHA"). In addition, the Plaintiff seeks damages for the Defendants' breaches of numerous provisions of their work contracts with the Plaintiff and his coworkers in both Florida and North Carolina, including the Defendants' failure to pay wages as promised in the workers' contracts and as required by applicable federal regulations.

2. Along with approximately 45 other Mexican nationals, the Plaintiff entered the United States pursuant to an H-2A visa for employment with Defendants from December 2013 until November 2014. 8 U.S.C. § 1101(a)(15)(H)(ii)(a). The Defendants paid the Plaintiff and his coworkers wages below those required by the FLSA, the FMWA, the NCWHA, their employment contracts and applicable H-2A regulations.

3. The Plaintiff seeks an award of money damages and declaratory relief to make him and his coworkers whole for damages suffered due to the Defendants' violations of law.

JURISDICTION

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1337 (interstate commerce), 28 U.S.C. § 1331 (federal question jurisdiction), 29 U.S. C. § 216(b) (FLSA), and 28 U.S.C. § 1367 (supplemental jurisdiction).

5. This Court has supplemental jurisdiction over the claims arising under state law because these claims are so related to the federal claims that they form part of the same case or controversy.

6. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S. C. §§ 2201 and 2202.

VENUE

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

PARTIES

8. Plaintiff José Carmen Gallegos Gallegos is a citizen of Mexico who was admitted to the United States on a temporary basis pursuant to 8 U.S.C. § 1101(a)(15)(H)(ii)(a) ("H-2A visa") to perform agricultural labor beginning in December 2013. At all times relevant to this action, the Plaintiff was engaged in commerce or in the production of goods for commerce,

or was employed in an enterprise engaged in commerce or in the production of goods for interstate commerce, within the meaning of the FLSA.

9. At all times relevant to this action, Defendant Becerra Enterprises, Inc., ("Becerra Enterprises") was and is a corporation organized under the laws of Florida with its principal office in Arcadia, Florida.

10. At all times relevant to this action, Defendant Becerra Enterprises was registered with the U.S. Department of Labor as and operated as a farm labor contractor in that, for a fee, it recruited, solicited, hired, furnished or employed migrant agricultural workers.

11. At all times relevant to this action, Defendant Becerra Enterprises employed the Plaintiff and other class members within the meaning of the FLSA, 29 U.S.C. § 203(d) and was an employer within the meaning of 20 C.F.R. § 655.100(b).

12. At all times relevant to this action, Defendant Luis Alfonso Becerra ("Becerra") was and is a resident of Arcadia, Florida.

13. At all times relevant to this action, Defendant Becerra was registered with the U.S. Department of Labor as and operated as a farm labor contractor in that, for a fee, he recruited, solicited, hired, furnished or employed migrant agricultural workers.

14. At all times relevant to this action, Defendant Becerra employed the Plaintiff and other class members within the meaning of the FLSA, 29 U.S.C. § 203(d) and was an employer within the meaning of 20 C.F.R. § 655.100(b).

15. At all times relevant to this action, Defendant Becerra was and is president and owner of Becerra Enterprises, Inc.

FLSA COLLECTIVE ACTION ALLEGATIONS

16. The named Plaintiff seeks to bring his claims under the Fair Labor Standards Act on behalf of himself individually, and all other similarly situated employees of Defendants who worked in any pay period falling within the three chronological years immediately preceding the date on which this action was filed and continuing thereafter through the date on which final judgment is entered in this action and who timely file (or have already filed) a written consent to be a party to this action pursuant to 29 U.S.C. § 216(b) ("FLSA class"). They seek unpaid minimum wages and liquidated damages.

17. Plaintiff and the members of the FLSA class are similarly situated. Plaintiff and other class members came to work for Defendants as H-2A workers in 2013 and continuing thereafter pursuant to a visa issued under 8 U.S.C. § 1101(a)(15)(H)(ii)(a). Plaintiff and FLSA class members all worked as migrant agricultural workers for Defendants in Florida and/or North Carolina.

18. Defendants' policy or practice was to not report all hours worked by Plaintiff and the FLSA class members during each workweek on their paychecks and, therefore, to not compensate them for all hours worked. As a result, Plaintiff and the statutory class he seeks to represent under 29 U.S.C. §216(b) were each paid wages less than those required by 29 U.S.C. § 206(a) during various weeks in 2013 and 2014 that they were employed by Defendants. Upon information and belief, this occurred in 2015 as well to members of the FLSA class.

19. Plaintiff and members of the FLSA class also had their pay brought below the minimum wage required by 29 U.S.C. § 206(a) as a result of deductions and *de facto* deductions made by Defendants during various weeks in 2013 and 2014. Upon information and belief, this

occurred in 2015 as well to members of the FLSA class. These deductions were for travel, visa and border crossing expenses, which were primarily for the benefit of Defendants.

20. Upon information and belief, Defendants failed to keep accurate records of the daily and weekly hours they suffered or permitted Plaintiff and members of the FLSA class to work in 2013 and 2014 and continuing thereafter.

21. Upon information and belief, Defendants knew that they were required to pay Plaintiff and members of the FLSA collective action at least minimum wage for each hour worked during a work week. As such, Defendants' failure to pay the Plaintiff and the members of the FLSA collective action minimum wage was willful.

CLASS ACTION ALLEGATIONS

North Carolina Class

22. The named Plaintiff seeks to represent a class of persons under Rule 23(b)(3), Fed.R.Civ.P., for back wages and liquidated damages under the NCWHA, and for damages and declaratory relief under North Carolina's common law of contracts ("NC Class"). The NC Class consists of all non-supervisory workers who were, are and/or shall be jointly or severally employed by Defendants in North Carolina at any time from July 7, 2013 and continuing thereafter through the date on which final judgment is entered in this action, who performed and/or shall perform any work for Defendants pursuant to a petition by Defendants for H-2A labor certification for work to be performed in North Carolina.

23. The class members are so numerous and so geographically dispersed as to make joinder impracticable. The precise number of individuals in the class is known only to the Defendants; however, Defendants were certified to employ forty-nine (49) H-2A workers in North Carolina in 2013, sixty-four (64) H-2A workers in North Carolina in 2014 and ninety-

four (94) in 2015. The class is comprised of indigent migrant agricultural workers who are mostly citizens of Mexico. The class members are not fluent in English and are unfamiliar with the American judicial system. The relatively small size of the individual claims and the indigence of the class members make the maintenance of separate actions by each class member economically infeasible.

24. There are questions of law and fact common to the NC Class which predominate over any other questions affecting only individual members of the class under Rule 23(a)(2) and Rule 23(b)(3), Fed.R.Civ.P. These common legal and factual questions include a) whether Defendants failed to pay the named Plaintiff and the class members all the wages they had agreed to pay when those wages were due for each hour or part of an hour that each such worker was employed by the Defendants in accordance with N.C.G.S. § 95-25.6, when the Defendants failed to report and compensate employees for all hours worked, and b) whether Defendants breached the terms of their employment contracts with the class members, as embodied in the Applications for Temporary Employment Certification and the accompanying Clearance Orders filed by Defendants.

25. The Plaintiff's claims are typical of those of the other NC Class members in that Plaintiff claims that Defendants failed to comply with their agreement to pay wages when due to Plaintiff and to the class members at the promised rate for work performed for the Defendants by, among other things, failing to pay employees for all hours worked.

26. The Plaintiff's claims are additionally typical of the claims of the NC Class in that Plaintiff claims Defendants breached their employment contract with Plaintiff by not complying with the terms outlined in the clearance order, such as failing to pay the contract wage rate.

27. The Plaintiff has the same interest as do other members of the NC Class and will vigorously prosecute these interests on behalf of the class. The undersigned counsel are experienced litigators. Ms. Ripley and Ms. Brooke have each been named counsel in several wage and hour class actions.

Florida Class

28. The second class of persons that Plaintiff seeks to represent under Rule 23(b)(3), Fed.R.Civ.P.., is for back wages and liquidated damages under the Florida Minimum Wage Act, and for damages and declaratory relief under Florida's common law of contract ("FL Class"). The FL Class consists of all employees of Defendants who worked for Defendants in Florida at any time after November 24, 2013 and continuing thereafter through the date on which final judgment is entered in this action, who performed and/or shall perform any work for Defendants pursuant to a petition by Defendants for H-2A labor certification for work to be performed in Florida.

29. The class members are so numerous and so geographically dispersed as to make joinder impracticable. The precise number of individuals in the classes is known only to the Defendants; however, Defendants were certified to employ forty-seven (47) H-2A workers in Florida beginning in 2013 and seventy-two (72) beginning in 2014. The classes are comprised of indigent migrant agricultural workers who are citizens of Mexico. The class members are not fluent in English and are unfamiliar with the American judicial system. The relatively small size of the individual claims and the indigence of the class members make the maintenance of separate actions by each class member economically infeasible.

30. The question of law and fact common to the FL Class and which predominate over any other questions affecting only individual members of the class under Rule 23(a)(2) and Rule

23(b)(3), Fed.R.Civ.P., are a) whether Defendants failed to pay the named Plaintiff and members of the FL Class in compliance with the minimum wage provisions of Florida's Constitution, Art. 24, § 10 by failing to pay them for all hours worked, b) whether Defendants failed to pay the named Plaintiff and members of the FL Class in compliance with the minimum wage provisions of Florida's constitution, Art 24, § 10, by failing to reimburse members of the FL Class in the first workweek for visa and transportation expenses, and c) whether Defendants breached the terms of their employment contracts with the class members, as embodied in the Applications for Temporary Employment Certification and accompanying Clearance Orders filed by Defendants.

31. The Plaintiff's claims are typical of those of other FL Class members in that Plaintiff claims Defendants failed to pay him and members of the FL Class for all hours worked, resulting in violations of Florida's minimum wage requirements.

32. The Plaintiff's claims are additionally typical of other FL Class members in that Plaintiff claims Defendants failed to reimburse him in the first workweek for incoming visa and transportation costs which resulted in payment below the wage rate required by Florida's minimum wage requirements.

33. The Plaintiff's claims are additionally typical of other FL Class members in that Plaintiff claims Defendants breached their employment contracts with Plaintiff by not complying with the terms outlined in the clearance order, such as failing to pay the contract wage rate.

34. The Plaintiff has the same interest as do other members of the FL Class and will vigorously prosecute these interests on behalf of the class.

THE H-2A STATUTORY AND REGULATORY SCHEME

35. Under the H-2A Program, created by 8 U.S.C. §§1188, an agricultural employer may request temporary foreign agricultural workers, or H-2A workers, if the U.S. Department of Labor ("USDOL") certifies that two conditions are met: 1) there are insufficient available workers within the United States to perform the job and 2) that the employment of aliens will not adversely affect the wages and working conditions of similarly-situated U.S. workers. 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a) and 1188(a)(1). At all times relevant to this action, the H-2A Program was implemented pursuant to regulations published in 75 Federal Register 6884 (Feb. 12, 2010) and codified at 20 C.F.R. §§ 655.100-655.185 (2010).

36. Employers seeking to employ H-2A workers must file an Application for Temporary Employment Certification (ETA Form 9142A), with USDOL that includes a job offer, known as a Clearance Order (ETA Form 790), that contains the terms set forth in 20 C.F.R. § 655.122 no later than sixty (60) days before the first date of need for such workers. 20 C.F.R. § 655.121(a)(1).

37. Agricultural employers who employ H-2A workers are required to pay the higher of the adverse effect wage rate ("AEWR"), the prevailing hourly wage or piece rate, the agreed-upon collective bargaining wage, or the Federal or State minimum wage for each hour of work performed to all H-2A workers and other workers performing the work identified in the clearance order during the time period for which the employer has received H-2A certification. 20 C.F.R. § 655.120(a).

38. The employer who seeks to employ H-2A workers must agree to abide by the assurances contained in 20 C.F.R.§ 655.135, including the assurance that the employer will comply with

all applicable Federal, State and local laws and regulations, including health and safety laws. 20 C.F.R. § 655.135(e).

39. The terms and conditions of the clearance order constitute an employment contract between the employer and the H-2A workers which must be disclosed when a worker applies for the visa. 20 C.F.R. § 655.103(b).

40. Farm labor contractors, such as Defendants, are permitted to apply to USDOL for temporary labor certification to employ H-2A workers if they meet all the requirements of the definition of an employer in 20 C.F.R. § 655.103(b) and comply with all of the assurances and obligations required of H-2A employers. 20 C.F.R. § 655.132. Farm labor contractors who receive H-2A labor certification are known as H-2A Labor Contractors or H-2ALCs.

41. Applications submitted by H-2ALCs must be limited to a single area of intended employment in which the fixed-site employer(s) to whom an H-2ALC is furnishing employees will be utilizing the employees, and must include the name and location of all fixed-site agricultural employers to whom the workers will be furnished and copies of all fully executed contracts with each fixed-site employer. 20 C.F.R. § 655.132(a), (b)(1), and (b)(4).

FACTS

42. Defendants applied for and were granted temporary labor certification to employ 49 H-2A workers from July 7, 2013 through November 8, 2013 and to furnish them to fixed site employer Richard C. Anderson d/b/a Anderson Farms ("Anderson Farms") in Tarboro, North Carolina.

43. Defendants prepared and submitted a clearance order in connected with the H-2A Application described in ¶ 42 ("NC 2013 Order"). The adverse effect wage rate ("AEWR")

disclosed in Defendants' NC 2013 Order was $ 9.68 per hour. In the NC 2013 Order, Defendants guaranteed that all workers employed pursuant to that order would be paid $ 9.68 per hour as a minimum for all hours worked.

44. Defendants applied for and were granted temporary labor certification to employ 47 H-2A workers from November 24, 2013 through May 24, 2014 and to furnish them to fixed site employer Chapman Fruit Co., Inc. ("Chapman Fruit") at several work locations around Arcadia, Florida.

45. Defendants prepared and submitted a clearance order in connection with the H-2A Application described in ¶ 44 ("Florida 2013 Order"). The AEWR disclosed in Defendants' Florida 2013 Order was $9.97 per hour. In the Florida 2013 Order, Defendants guaranteed that that all workers employed pursuant to that order would be paid $9.97 as a minimum for all hours worked.

46. Defendants applied for and were granted temporary labor certification to employ 64 H-2A workers from April 15, 2014 through November 15, 2014 and to furnish them to fixed site employer Anderson Farms in Tarboro, North Carolina.

47. Defendants prepared and submitted a clearance order ("NC 2014 Order") in connection with the H-2A Application described in ¶ 46. The AEWR disclosed in Defendants' NC 2014 Order was $9.87 per hour. In the NC 2014 Order Defendants guaranteed that all workers employed pursuant to that order would be paid $9.87 as a minimum for all hours worked.

48. Defendants applied for and were granted temporary labor certification to employ 72 H-2A workers from November 28, 2014 through June 6, 2015 and to furnish them to fixed site employer Chapman Fruit at several work locations around Arcadia, Florida.

49. Defendants prepared and submitted a Clearance Order ("Florida 2014 Order") in connection with the H-2A Application described in ¶ 48. The AEWR disclosed in Defendants' Florida 2014 Order was $10.26 per hour. In the Florida 2014 Order Defendants guaranteed that all workers employed pursuant to that order would be paid $10.26 as a minimum for all hours worked.

50. Defendants applied for and were granted temporary labor certification to employ 74 H-2A workers from April 15, 2015 through November 27, 2015 and to furnish them to fixed site employer Anderson Farms in Tarboro, North Carolina.

51. Defendants prepared and submitted a Clearance Order ("NC 2015 Order") in connection with the H-2A Application described in ¶ 50. The AEWR disclosed in Defendants' NC 2015 Order was $10.32 per hour. In the NC 2015 Order Defendants guaranteed that all workers employed pursuant to that order would be paid $10.32 as a minimum for all hours worked.

52. Each of Defendants' Applications for Temporary Employment Certification, ETA Form 9142A, described above lists Defendant Becerra Enterprises. as the employer and the employer declaration section is signed by Defendant Becerra.

53. In addition to the promises regarding pay described above, in each of the Defendants' Clearance Orders they promised the following terms, which are dictated by federal regulations at 20 C.F.R. § 655.122:

    a. to provide free and convenient cooking and kitchen facilities, or to provide three meals a day at a rate not to exceed the rates set by 20 C.F.R. § 655.173;

    b. to keep accurate and adequate records of hours worked and earnings including the time the worker began and ended each workday, the rate of pay (both piece rate and hourly), and the amount of and reason for any deductions;

c. to provide each worker with an hours and earnings statement that meets Federal and State requirements on or before each pay day, including, among other things, total earnings for the pay period, hourly rate and or piece rate of pay, hours of employment offered to the worker, hours actually worked by the worker, and if piece rates are used, the units produced daily;

d. to reimburse workers hired from beyond normal commuting distance after completion of 50 percent of the work contract for costs incurred for transportation and daily subsistence from the place from which the worker has come to work for the employer to the place of employment; and

e. to provide or pay for workers' transportation and daily subsistence costs from the place of employment to the place from which the worker came to work for the employer for all workers who complete the work contract or who are terminated without cause.

54. In each of Defendants' clearance orders described above, Defendant Becerra executed a certification that the order described the actual terms and conditions of the job.

55. Plaintiff was recruited by Defendants and received an H-2A visa to work for Defendants pursuant to the Florida 2013 Order and Defendants' certification by USDOL to employ H-2A workers.

56. While Plaintiff was in Mexico, Defendant Becerra gave him instructions on how to apply for and get an H-2A visa and when to report to the U.S. Consulate for his visa interview.

57. Pursuant to those instructions, Plaintiff travelled from his home in Guanajuato, Mexico to the U.S. Consulate in Monterrey, Mexico in order to get his visa. Because of the timing of his visa interview, Plaintiff had to spend one night in a hotel in Monterrey. Plaintiff spent

approximately 1000 pesos traveling to Monterrey and 150 pesos on the hotel room. Upon information and belief, Plaintiff's H-2A coworkers also incurred costs traveling to the Consulate to obtain their visas and for lodging near the Consulate.

58. Plaintiff paid $200 dollars for his H-2A visa. Upon information and belief, Plaintiff's coworkers also paid $200 for their H-2A visas.

59. Plaintiff traveled from Monterrey, Mexico to Arcadia, Florida by bus with approximately 45-50 other workers who were also going to work for Defendants on H-2A visas. Plaintiff's bus ticket from Monterrey, Mexico to Arcadia, Florida was arranged and paid for by Defendants. Upon information and belief, Defendants also arranged and paid for the bus tickets of Plaintiff's coworkers who traveled with him.

60. While traveling from Mexico to Florida, Plaintiff had to pay for daily subsistence, a hotel room, and a border crossing fee. Upon information and belief, Plaintiff's coworkers who traveled with him incurred similar costs. It took two days for Plaintiff and his coworkers with whom he was traveling to get from Mexico to Arcadia, Florida.

Work in Florida

61. Plaintiff and his coworkers arrived in Arcadia, Florida around December 12, 2013 and began working the following day.

62. Plaintiff was not reimbursed during the first workweek for his inbound subsistence costs, border crossing fee, transportation within Mexico, hotel costs, or visa expenses. Upon information and belief, Plaintiff's H-2A coworkers in Florida were not reimbursed for those costs either.

63. Plaintiff and his coworkers worked at Chapman Fruit, a citrus farm, primarily picking oranges.

64. Plaintiff and his coworkers lived in trailers provided by Defendants.

65. Plaintiff and his coworkers regularly worked from 7 am until 6 pm Monday through Sunday and took a one hour lunch break each day. Therefore, Plaintiff and his coworkers usually worked approximately 70 hours per week.

66. Plaintiff and his coworkers were compensated by the hour for some types of work and by the piece for other types of work.

67. The applicable wage rates for work performed by the Plaintiff and members of Fl Class are:

    a. AEWR of $ 9.97 from November 24, 2013 through January 6, 2014;

    b. AEWR of $ 10.26 from January 7, 2014 through December 19, 2014;

    c. AEWR of $ 10.19 from December 20, 2014 to the present;

    d. Florida minimum wage of $7.79 through December 31, 2013;

    e. Florida minimum wage of $7.93 from January 1, 2014 through December 31, 2014;

    f. Florida minimum wage of $8.05 from January 1, 2015 to the present;

    g. and the FLSA minimum wage was $7.25 at all times relevant to this lawsuit.

68. Defendants regularly underreported the hours worked by Plaintiff and his coworkers during each workweek on their earnings statements either by simply not reporting all hours worked or by only reporting the hours worked by Plaintiff and his coworkers when the work was being compensated by the hour, and not reporting the hours worked when the Plaintiff and his coworkers were being paid a piece rate. For example, for the week of April 28, 2014 through May 4, 2014 Plaintiff's paycheck shows that he was compensated by the hour for 25 hours of work and that he was compensated by the piece for other work: $1.25 for 140 units, $1.60 for 20 units, and $1.05 for 130 units. The paycheck does not report the total hours worked during that workweek.

69. For the workweek described in ¶ 68, Plaintiff's net pay was $343.50. Based on Plaintiff's regular schedule, his average hourly pay for that workweek was only $4.91 ($343.50/70), which is below the federal minimum wage, the Florida minimum wage and the AEWR.

Work in North Carolina

70. Around June 8, 2014 Plaintiff traveled from Arcadia, Florida to Tarboro, North Carolina by bus with approximately 30-40 others who had been working for Defendants in Florida to work pursuant to Defendants' NC 2014 Order for Anderson Farms.

71. Defendants applied for an extension of Plaintiff's H-2A visa so that he could work for Defendants in North Carolina pursuant to the NC 2014 Order. Plaintiff received a visa extension through November 15, 2014. Upon information and belief, Defendants also applied for an extension of the H-2A visas of some of his coworkers from Florida so that they could continue working for Defendants in North Carolina.

72. A group of approximately 14 U.S. workers from Puerto Rico came to Tarboro, North Carolina around April 15, 2014 to work pursuant to Defendants' NC 2014 Order and a group of H-2A workers arrived in Tarboro, North Carolina from Mexico around May 15, 2014 to work pursuant to Defendants' NC 2014 Order.

73. Plaintiff and his coworkers lived in housing provided by Defendants and owned by Richard Anderson. The housing was located at 2374 Bethlehem Church Road, 1179 Maple Swamp Road, and 746 Maple Swamp Road, Tarboro, North Carolina. Plaintiff lived in the housing at 746 Maple Swamp Road.

74. Defendants transported Plaintiff and their other employees from their housing to the fields each work day by bus. One bus carried workers from the housing on Bethlehem Church Road

and the other bus carried workers from the housing on Maple Swamp Road. The bus ride took between 5 and 30 minutes depending on which fields they were going to.

75. Plaintiff and his coworkers in North Carolina performed agricultural labor on property owned by Anderson Farms. They worked in cucumbers, sweet potatoes and tobacco.

76. The applicable wage rates for work performed by Plaintiff and members of the NC Class are:

    a. AEWR of $ 9.68 from July 7, 2013 through January 6, 2014;

    b. AEWR of $ 9.87 from January 7, 2014 through December 19, 2014;

    c. AEWR of $ 10.32 from December 20, 2014 to the present;

    d. and FLSA minimum wage of $7.25 at all times relevant to this lawsuit.

77. The typical work schedule for Plaintiff and his coworkers in North Carolina was from 6 am until 7 or 8 pm with a one hour lunch break. On Sundays they would only work from 6 am until noon. Plaintiff and the other H-2A workers worked the same hours as each other Monday through Saturday and those workers who chose to work on Sunday also worked the same hours as each other. Although work on Sunday was optional, Plaintiff usually worked on Sundays.

78. Plaintiff and his coworkers normally worked at least 70 hours each workweek, but Defendants regularly reported and compensated them for a lower, incorrect number of hours listed on the paystubs.

79. For example, the week of June 30, 2014 through July 6, 2014, Plaintiff estimates that he worked 78 hours. However, Plaintiff's paycheck shows that he worked only 53 hours for a net pay of $523.11.

80. Plaintiff's average hourly wage for the week of June 30, 2014 through July 6, 2014 was approximately $ 6.71, ($523.11/78), which is below the rate required by the FLSA and AEWR.

81. For some part of their employment in North Carolina, Plaintiff and his coworkers were denied access to the kitchen in their housing to prepare their own meals. Instead, Plaintiff and his coworkers were required to purchase meals from a relative of Becerra for $72 per week for 12 meals.

82. The Plaintiff was reimbursed by Defendants for a portion of his visa expenses in November 2014, many months after his first workweek with Defendants. Upon information and belief, Plaintiff's H-2A coworkers were also reimbursed for part of their visa expenses around this time.

83. Plaintiff returned to Mexico in November 2014, after Defendants told him there was no more work for him in North Carolina. Plaintiff had to pay his own return transportation expenses and was never reimbursed for those costs. Upon information and belief, Plaintiff's coworkers also paid for their own return transportation costs and were not reimbursed for those costs.

FIRST CLAIM FOR RELIEF

(FAIR LABOR STANDARDS ACT)

84. Paragraphs 1 through 83 are realleged and incorporated by reference by the named Plaintiff and each member of the collective action described in ¶ 16 which the named Plaintiff seeks to represent under 29 U.S.C. § 216(b).

85. Defendants failed to pay the named Plaintiff and the members of the statutory class at least the required federal minimum wage for each hour or part of an hour that they worked in each workweek, in violation of 29 U.S.C. § 206. This violation resulted from Defendants' failure to reimburse expenses which were incurred by Plaintiff and other similarly situated workers

primarily for the benefit or convenience of Defendants during Plaintiff's and other similarly situated workers' first week of work, as specified in ¶¶ 58-60 and 62. When these expenses are calculated as deductions from Plaintiff's and other similarly situated workers' first week's pay, as required by law, they cause Plaintiff's and other similarly situated workers' first week's earnings to be less than the federal minimum wage, $7.25 per hour.

86. Defendants also failed to pay the named Plaintiff and the members of the statutory class for all hours worked during many workweeks that Plaintiff and the FLSA Class were employed by Defendants, which resulted in an hourly wage of less than $7.25 for each hour worked by the Plaintiff and members of the FLSA Class during some workweeks.

87. As a result of Defendants' action, Plaintiff and members of the FLSA Class have suffered damages in the form of unpaid wages and liquidated damages that may be recovered from Defendants jointly and severally pursuant to 29 U.S.C. § 216(b).

SECOND CLAIM FOR RELIEF

(MINIMUM WAGE PROVISIONS OF FLORIDA CONSTITUTION)

88. Paragraphs 1 through 87 are realleged and incorporated by reference by the named Plaintiff and members of the FL Class.

89. By letter dated November 20, 2015, Plaintiff notified Defendants that he believes he and his coworkers were paid less than wage required by the Florida Minimum Wage Act while employed by Defendants in Florida and of his intention to initiate a lawsuit. Defendants have not responded to that letter.

90. During various workweeks throughout Defendants' employment of Plaintiff and members of the FL Class, Defendants failed to pay Plaintiff and members of the FL Class at all for some hours worked in violation of the Florida Constitution, Article 10, § 24.

91. In addition, Defendants failed to reimburse the named Plaintiff and members of the FL Class for all of their visa, transportation and subsistence costs during the first workweek as described in ¶¶ 58-60 and 62. When those expenses are calculated as deductions from the Plaintiff's and FL Class members' first workweek's pay, they cause their earnings for that week to be below the minimum wage rate required by the Florida Constitution, Article 10, § 24.

92. Plaintiff and members of the FL Class suffered damages in the form of unpaid minimum wage damages and liquidated damages that may be recovered from Defendants jointly and severally.

THIRD CLAIM FOR RELIEF

(FLORIDA COMMON LAW OF CONTRACT)

93. Paragraphs 1 through 92 are realleged and incorporated by reference by the named Plaintiff and members of the FL Class.

94. The terms and conditions of employment contained in the Defendants Florida 2013 and Florida 2014 Orders constituted employment contracts between Defendants and the H-2A workers who were employed pursuant to those clearance orders.

95. Defendants breached their employment contracts with the Plaintiff and members of the FL Class by providing terms and conditions of employment that were materially different from those described in the Florida 2013 and Florida 2014 Order, including the following:

    a. The workers were not paid at least the applicable adverse effect wage rate for their labor;

    b. Defendants failed to comply with the minimum wage provisions of the FLSA, as set out in the First Claim for Relief;

c. Defendants failed to comply with the minimum wage provisions of the Florida Constitution, as set out in the Second Claim for Relief;

d. Defendants failed to keep accurate and adequate records of hours worked and earnings including the time the worker began and ended each workday and the rate of pay;

e. Defendants failed to provide to every worker on each pay day an hours and earnings statement that meets Federal and State requirements and showing accurate hours worked;

f. Defendants failed to pay or reimburse the workers for their full transportation and subsistence costs from their homes in Mexico to Florida;

96. Defendants' breaches of their employment contract with Plaintiff and members of the FL Class have caused these workers grave financial and other serious injuries.

FOURTH CLAIM FOR RELIEF

(NORTH CAROLINA WAGE AND HOUR ACT)

97. Paragraphs 1 through 96 are realleged and incorporated by reference by the named Plaintiff and members of the NC Class.

98. Defendants paid Plaintiff and members of the NC Class less than the applicable Adverse Effect Wage Rate for all hours worked, which Defendants promised and were required to pay, in violation of N.C.G.S. § 95-25.6.

99. As a result of this failure by Defendants in violation of their rights under N.C.G.S. § 95-25.6, Plaintiff and members of the NC Class suffered damages in the form of unpaid wages and liquidated damages that may be recovered from Defendants jointly and severally, under N.C.G.S. §§ 95-25.22(a) and 95-25.22(a1).

FIFTH CLAIM FOR RELIEF

(NORTH CAROLINA COMMON LAW OF CONTRACT)

100. Paragraphs 1 through 99 are realleged and incorporated by reference by the named Plaintiff and members of the NC Class.

101. The terms and conditions of employment contained in the Defendants NC 2013, NC 2014, and NC 2015 Orders constituted employment contracts between Defendants and the H-2A workers who were employed pursuant to those clearance order.

102. Defendants breached their employment contracts with the Plaintiff and members of the NC Class by providing terms and conditions of employment that were materially different from those described in the NC 2013, NC 2014, and NC 2015 Order, including the following:

a. The workers were not paid at least the applicable adverse effect wage rate for their labor;

b. Defendants failed to comply with the minimum wage provision of the FLSA, as set out in the First Claim for Relief;

c. Defendants failed to comply with the promised wages provisions of the NCWHA, as set out in the Fourth Claim for Relief;

d. Defendants failed to keep accurate and adequate records of hours worked and earnings including the time the worker began and ended each workday and the rate of pay;

e. Defendants failed to provide to every worker on each pay day an hours and earnings statement that meets Federal and State requirements and showing accurate hours worked Defendants failed to provide free and convenient cooking facilities, or to provide three meals a day at a rate not to exceed the rates set by 20 C.F.R. § 655.173;

f. Defendants failed to pay for return transportation at the end of the contract period as required by 20 C.F.R. § 655.122(o)(3).

103. Defendants' breaches of their employment contract with Plaintiff and members of the NC Class have caused these workers grave financial and other serious injuries.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter an order:

1. Finding that this Court has jurisdiction over Plaintiff's claims;
2. Certifying this action as a collective action under 29 U.S.C. § 216(b) with respect to the FLSA classes defined in ¶ 16 of this Complaint;
3. Certifying this case as a class action in accordance with Rule 23(b)(3) of the Federal Rules of Civil Procedure with respect to the claims set forth in the Second, Third, Fourth and Fifth Claims for Relief;
4. Declaring that Defendants violated the minimum wage provisions of the FLSA as set forth in the First Claim for Relief;
5. Granting judgment against Defendants Becerra Enterprises, Inc., and Luis Alfonso Becerra, jointly and severally, and in favor of the named Plaintiff and all other similarly situated employees of Defendants described in ¶ 16 of this Complaint for compensatory damages under the First Claim for Relief in an amount equal to the total of the unpaid minimum wages due to the named Plaintiff and each of those other similarly situated employees of Defendants under 29 U.S.C. § 207, plus an equal amount as liquidated damages under 29 U.S.C. § 216(b);
6. Declaring that Defendants violated the minimum wage provisions of the Florida Constitution, as set forth in the Second Claim for Relief;

7. Granting judgment against Defendants Becerra Enterprises, Inc., and Luis Alfonso Becerra, jointly and severally, and in favor of the named Plaintiff and all other members of the FL Class described in ¶ 28 of this Complaint on the claims under the minimum wage provisions of the Florida Constitution as set forth in the Second Claim for Relief, awarding the Plaintiff and FL Class members the amount of their respective unpaid minimum wages and an equal amount as liquidated damages;
8. Declaring that Defendants breached their employment contracts with the Plaintiff and members of the FL Class as set forth in the Third Claim for Relief;
9. Granting judgment against Defendants Becerra Enterprises, Inc., and Luis Alfonso Becerra, jointly and severally, and in favor of the named Plaintiff and all other members of the FL Class described in ¶ 28 of this Complaint on the contract claims as set forth in the Third Claim for Relief, awarding the Plaintiff and FL Class members their actual and compensatory damages;
10. Declaring that Defendants violated the promised wage provisions of the North Carolina Wage and Hour Act as set forth in the Fourth Claims for Relief;
11. Granting judgment against Defendants Becerra Enterprises, Inc., and Luis Alfonso Becerra, jointly and severally, and in favor of the named Plaintiff and all other members of the NC Class described in ¶ 22 of this Complaint on the claims under the promised wage provisions of the North Carolina Wage and Hour Act as set forth in the Fourth Claim for Relief, awarding the Plaintiff and NC Class members the amount of their respective unpaid promised wages and an equal amount as liquidated damages;

12. Declaring that Defendants violated their employment contracts with the named Plaintiff and members of the NC Class as set forth in the Fifth Claim for Relief;
13. Granting judgment against Defendants Becerra Enterprises, Inc., and Luis Alfonso Becerra, jointly and severally, and in favor of the named Plaintiff and all other members of the NC Class described in ¶ 22 of this Complaint on the contract claims as set forth in the Fifth Claim for Relief, awarding the Plaintiff and NC Class members their actual and compensatory damages;
14. Award Plaintiff the costs of this action against Defendants Becerra Enterprises, Inc., and Luis Alfonso Becerra, jointly and severally;
15. Award Plaintiffs reasonable attorneys' fees under 29 U.S.C. § 216(b), N.C.G.S. § 95-25.22(d), and N.C.G.S. § 95-243 against Defendants Becerra Enterprises, Inc., and Luis Alfonso Becerra, jointly and severally;
16. Award Plaintiff and the classes of workers he seeks to represent prejudgment and postjudgment interest as allowed by law; and
17. Grant such other relief as the Court may deem just and proper.

This the 11th day of December, 2015.

Respectfully submitted,

NORTH CAROLINA JUSTICE CENTER
P.O. Box 28068
Raleigh, NC 27611
919-856-2154
919-856-2175 (fax)

BY: /s/ Clermont F. Ripley
Clermont F. Ripley
clermont@ncjustice.org.
Attorney at Law
NC Bar # 36761

Carol L. Brooke
carol@ncjustice.org
Attorney at Law
NC Bar # 29126