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19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE DISTRICT OF NEVADA**

21 ABEL CÁNTARO CASTILLO;
ALCIDES INGA RAMOS, RAFAEL DE LA
CRUZ, and those similarly situated,

22 Plaintiffs,

23 v.

24 WESTERN RANGE ASSOCIATION;
25 EL TEJON SHEEP COMPANY; MELCHOR
GRAGIRENA; MOUNTAIN PLAINS
26 AGRICULTURAL SERVICE; and ESTILL
RANCHES, LLC,

27 Defendants.

Civil Case No. 3:16-cv-00237-MMD-VPC
SECOND AMENDED COMPLAINT

INTRODUCTION

1
2 1. Plaintiffs Abel Cántaro Castillo and Rafael De La Cruz were paid a shockingly low
3 wage of as little as one or two dollars an hour for their work as shepherds in Nevada. This is well
4 below the minimum wage of \$8.25 per hour that these men should have been paid under Nevada law
5 and the \$8.25 minimum hourly wage required by the nonimmigrant temporary visa program under
6 which they were employed.¹

7 2. These Plaintiffs are not alone in suffering either of these violations for the many
8 hours of work they provided to the ranching industry in a single week. This is because their
9 employers—Defendants here—have a policy of paying all shepherds they employ a low *monthly*
10 salary that has the effect of creating illegally low *hourly* rates of pay, in light of the actual number of
11 hours shepherds engage in compensable work.

12 3. This illegal pay policy principally manifests in two ways at issue in this case. First,
13 Defendants Western Range Association (“WRA”) and Mountain Plains Agricultural Service
14 (“MPAS”) each have policies of setting the wages of all Nevada shepherds, including Plaintiffs
15 Cántaro and De La Cruz, at a rate of as little as \$800 per month, despite the fact that this translates to
16 an effective wage rate of between one and two dollars an hour—much less than the Nevada
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19 ¹ In dismissing the First Amended Complaint, the Court held that the statute of limitations for
20 Plaintiffs’ contract claims for failure to pay minimum wages is the two-year period set out in
21 Nevada’s Minimum Wage Amendment, not the six-year period for state contract claims. Doc. No.
22 107, at 16-17. An interlocutory appeal on this issue is not available. *See Est. of Kennedy v. Bell*
23 *Helicopter Textron, Inc.*, 283 F.3d 1107, 1111 (9th Cir. 2002). Because Plaintiff Alcides Inga
24 Ramos ended his employment outside of the two-year statute of limitations, he cannot succeed on his
25 contract claims against Defendants Estill Ranches or MPAS based on failure to pay minimum wage
26 absent reconsideration of this ruling or reversal on appeal. However, Plaintiff Inga (along with
27 Plaintiffs Cántaro and De La Cruz) has added contract claims for failure to pay costs associated with
28 obtaining H-2A labor certifications—claims that clearly fall under Nevada’s six-year limitations
period for contract claims. Thus, Inga remains a proper Plaintiff in the case, and reserves his right to
pursue on appeal the argument that the six-year contract claims limitations period also applies to his
minimum wage claims and those of the proposed MPAS Class.

1 minimum of \$8.25 per hour. Defendants El Tejon Sheep Company and Melchor Gragirena adopted
2 and implemented this same illegal pay policy in acting as Mr. Cántaro’s joint employers.

3 4. Second, Defendants violated the terms of the employment contracts required of
4 employers who are granted permission to employ workers under what is commonly referred to as the
5 “H-2A” visa program. This program, authorized by 8 U.S.C. § 1101(a)(15)(H)(ii)(a) and the
6 implementing regulations promulgated at 20 C.F.R. Part 655 Subpart B, requires that Nevada
7 ranchers employing H-2A workers pay those workers and any U.S. workers similarly employed at
8 least \$8.25 per hour (Nevada’s minimum wage). Defendants violated this contractual obligation by
9 choosing to pay a significantly lower hourly rate.

10 5. Defendants also violated the terms of their employment contracts by failing to
11 reimburse Plaintiffs for the costs associated with obtaining the labor certifications necessary to work
12 legally in the United States. Defendant WRA and MPAS, on behalf of its member ranches, provide
13 assurances to state and federal agencies that ranches will not deduct certain expenses from
14 shepherds’ wages and will reimburse shepherds for various expenses, including costs associated with
15 obtaining labor certifications and other travel expenses. Defendants, as a matter of policy, fail to
16 make these promised reimbursement, which amounts to a violation of their contractual obligations,
17 as well as 8 U.S.C. § 1101(a)(15)(H)(ii)(a) and the implementing regulations promulgated at 20
18 C.F.R. § 655.135.

19 6. Plaintiffs, on their own behalf and those similarly situated, seek damages including
20 the difference between the lawful hourly wages Defendants should have paid and what they were
21 actually paid under Defendants’ illegal pay policies, as well as for costs associated with obtaining
22 Plaintiffs’ H-2A labor certifications. Plaintiffs also seek statutory and/or liquidated damages and
23 attorneys’ fees.

24 **JURISDICTION AND VENUE**

25 7. This Court has jurisdiction over the principal class-action state-law claims against
26 WRA pursuant to 28 U.S.C. § 1332(d) because the amount in controversy for those claims exceeds
27 the sum or value of \$5 million, exclusive of interest and costs, and at least one member of the
28 plaintiff class is a citizen of a foreign state or a state different from any defendant. This Court also

1 has jurisdiction over the principal class-action state-law claims against MPAS pursuant to 28 U.S.C.
2 § 1332(d) because the amount in controversy for those claims also exceeds the sum of \$5 million,
3 exclusive of interest and costs, and at least one member of the plaintiff class is a citizen of a foreign
4 state or a state different from any defendant.

5 8. In particular, WRA employed between at least 98 and 173 Nevada shepherds each
6 year in the 154 weeks between May 3, 2014 (two years before the initial Complaint in this action
7 was filed) and the filing of the Second Amended Complaint on May 15, 2017.² As discussed below,
8 WRA's H-2A job orders specified that the work hours were 24 hours a day and seven days per week.
9 Multiplying the number of Nevada herders WRA employed each year by the number of hours
10 worked, WRA herders worked a total of 3,775,152 hours in the statutory period, entitling them to
11 \$31,145,004.00 in wages (3,775,152 hours x \$8.25). Subtracting the pay actually received (\$800 per
12 month, then \$1,206.31 per month from November 2015 to September 2016, then \$1,390 from
13 January 2017 to present),³ WRA herders claim at least \$25,990,220.21 in lost wages. This damages
14 calculation does not include Plaintiffs' contract claims for failure to pay costs associated with
15 obtaining labor certifications. *See infra* at ¶ 29. The calculation also does not include damages for
16 claims by former WRA herders for failure to pay separated employees' wages when due under
17 N.R.S. § 608 et seq. *See infra* at ¶¶ 223-232.

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22 ² According to "Disclosure Data" from the Department of Labor, accessible by clicking on
23 the "Disclosure Data" tab available at <http://www.foreignlaborcert.doleta.gov/performance/cfm>,
24 WRA certified 173 herders to work for Nevada ranches in 2014, 153 in 2015, 147 in 2016 and 98 in
25 2017. Because WRA certified many herders, including Mr. Cántaro, to work for California ranches
like El Tejon, they show up on the Disclosure Data as California herders, even though they worked
in Nevada. The number of herders who worked for WRA in Nevada is therefore likely much higher.

26 ³ Despite the fact that Mr. Cántaro was paid the higher California AEW rate of
27 approximately \$1,422.55 per month rather than \$800 per month, he was certified as a California
28 herder. He was therefore not included in the Labor Department's Disclosure Data as a Nevada
herder and his damages are not included in Plaintiffs' calculations.

YEAR ⁴	NUMBER OF HERDERS	WEEKS WORKED	TOTAL HOURS WORKED	FULL PAY DUE	PAY RECEIVED	TOTAL LOST WAGES
2014	173	21.43	622,800	\$5,138,100.00	\$684,395.60	
2015	153	52	1,336,608	\$11,027,016.00	\$1,468,800.00	
2016	147	52	1,284,192	\$10,594,584.00	\$2,045,169.97	
2017	98	32.29	531,552	\$4,385,304.00	\$956,418.22	
TOTAL			3,775,152	\$31,145,004.00	\$5,154,783.79	\$25,990,220.21

9. As for the herders working for MPAS, their statute of limitations was tolled by a previously-filed case and therefore extends beyond the two-year limitations period for this case. On October 28, 2015, Plaintiff De La Cruz filed a First Amended Complaint in the United States District Court for the District of Colorado on behalf of himself and a class of Nevada MPAS herders, alleging Nevada minimum wage claims identical to those made in the case at bar. *Llacua, et al. v. W. Range Ass'n et al.*, No. 15-CV-01889-REB-CBS (D. Colo. 2015), Doc. No. 32 at 24 (Oct. 28, 2015). The statute of limitations was tolled for the MPAS herder class during the pendency of their wage claims in *Llacua*. See *Am. Pipe & Const. Co. v. Utah*, 414 U.S. 538, 553-54 (1974) (filing of a class-action complaint tolls the statute of limitations for all members of the putative class until the court decides the suit is not appropriate for class action treatment). The MPAS herders' Nevada minimum wage class claims were still pending in *Llacua* when Plaintiffs here brought wage claims against MPAS in the First Amended Complaint, and therefore these claims continued to toll when MPAS was brought into this case. See *Cath. Soc. Servs., Inc. v. I.N.S.*, 232 F.3d 1139, 1149 (9th Cir. 2000) (*American Pipe* tolling applies to a subsequent class claim where "[t]he substantive claims asserted are within the scope of those asserted" in the earlier class action, and where plaintiffs are

⁴ The yearly DOL Disclosure Data from which the number of herders per year was pulled goes from October of the prior year through September of the next year. For example, the 2014 data shows the number of herders working from October 1, 2013 until September 30, 2014. The "weeks worked" shown in the table above reflect these dates and uses the applicable two-year statute of limitations period for Plaintiffs' wage claims.

1 “not attempting to relitigate an earlier denial of class certification, or to correct a procedural
2 deficiency in an earlier would-be class.”). Thus, the time period encompassed by the MPAS
3 herders’ wage claims goes back to October 28, 2013—two years from the *Llacua* First Amended
4 Complaint.

5 10. MPAS employed between at least 26 and 43 shepherds each year in the 184 weeks
6 between October 28, 2013 and the filing of the Second Amended Complaint.⁵ As discussed below,
7 MPAS’ H-2A job orders specified that the work hours were 24 hours a day and seven days per week.

8 11. Using the same calculations as those used above for WRA, MPAS herders claim
9 \$7,319,415.10 in lost wages. This damages calculation does not include Plaintiffs’ contract claims
10 for failure to pay costs associated with obtaining labor certifications. *See infra* at ¶ 29. The
11 calculation also does not include damages for claims by former WRA herders for failure to pay
12 separated employees’ wages when due under N.R.S. § 608 et seq. *See infra* at ¶¶ 261-69.

YEAR ⁶	NUMBER OF HERDERS	WEEKS WORKED	TOTAL HOURS WORKED	FULL PAY DUE	PAY RECEIVED	TOTAL LOST WAGES
2014	43	48.14	347,784	\$2,869,218.00	\$382,182.22	
2015	33	52	288,288	\$2,378,376.00	\$316,800.00	
2016	32	52	279,552	\$2,306,304.00	\$445,207.07	
2017	26	32.29	141,024	\$1,163,448.00	\$253,743.61	
TOTAL			1,056,648	\$8,717,346.00	\$1,397,930.90	\$7,319,415.10

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23 ⁵ MPAS certified 43 Nevada herders in 2014, 33 in 2015, 32 in 2016, and 26 in 2017. *See*
24 “Disclosure Data,” available at <http://www.foreignlaborcert.doleta.gov/performance/cfm>.
Because MPAS likely certified many herders to work for California ranches, even though they also
worked in Nevada, the number of MPAS class members is likely much higher.

25 ⁶ As with the WRA data, the yearly DOL Disclosure Data from which the number of herders
26 per year was pulled goes from October of the prior year through September of the next year. For
27 example, the 2014 data shows the number of herders working from October 1, 2013 until September
28 30, 2014. The “weeks worked” shown in the table above reflect these dates and the applicable
statute of limitations period.

1 12. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial portion of
2 the events giving rise to Plaintiffs’ and the classes’ claims to unpaid wages occurred while they were
3 working as shepherds in Nevada.

4 **PARTIES**

5 13. Plaintiff Abel Cántaro Castillo is a former shepherd. He worked as a shepherd in
6 California and Nevada for Defendants Western Range Association, El Tejon Sheep Co. and Melchor
7 Gragirena from around October 2007 until around June 2014.

8 14. Plaintiff Rafael De La Cruz is a former shepherd. He worked as a shepherd in
9 Nevada for Defendant Mountain Plains Agricultural Service from around March 2009 until late
10 2014.

11 15. Plaintiff Alcides Inga Ramos is a former shepherd. He worked as a shepherd in
12 Nevada for Defendants Mountain Plains Agricultural Service and Estill Ranches from around April
13 2012 until around February 2013.

14 16. Defendant Western Range Association (“WRA”) is a California non-profit
15 corporation with its principal place of business at 161 Fifth Avenue South, Suite 100, Twin Falls,
16 Idaho 83301. WRA transacts business in Nevada by, among other things, recruiting and employing
17 foreign shepherds, such as Mr. Cántaro, who work in Nevada.

18 17. Defendant El Tejon Sheep Co. (“El Tejon”) is a California corporation with its
19 principal place of business at 5616 Hooper Way, Bakersfield, CA 93308, and is registered to do
20 business in Nevada as a foreign corporation. Defendant El Tejon transacts business in Nevada by,
21 among other things, employing shepherds such as Mr. Cántaro, who spend a substantial portion of
22 the year grazing sheep on land outside of cities such as Elko, Nevada.

23 18. Defendant Melchor Gragirena resides in California and is the owner of El Tejon.
24 Defendant Gragirena transacts business in Nevada by, among other things, employing shepherds
25 who spend a substantial part of the year grazing sheep on land in Nevada.

26 19. Together, Defendants WRA, El Tejon and Mejchor Gragirena will be referred to as
27 “WRA Defendants.”
28

1 “job order,” that complies with applicable regulations. 20 C.F.R. § 655.121(a)(1). These regulations
2 establish the minimum benefits, wages, and working conditions that the employer must offer to the
3 employee in order to avoid adversely affecting similarly-situated United States workers. 20 C.F.R.
4 §§ 655.120(a)(2), 655.122, 655.135, and 655.210.

5 26. In almost all material respects, both groups of Defendants use identically worded job
6 orders when they seek to employ H-2A shepherds. Examples of such job orders are attached as
7 Exhibits A and C.

8 27. The H-2A program regulations also specify that H-2A employers must agree to pay
9 their workers the higher of the Adverse Effect Wage Rate (AEWR), the prevailing wage for work in
10 the geographic area where the work is to be performed, the federal minimum wage, the state
11 minimum wage, the agreed-upon collectively bargained wage rate, or a wage set by judicial order.
12 Accordingly, if—as is the case here—an hourly minimum wage requirement established by state law
13 requires the payment of a higher wage than a monthly AEWR (in light, for example, of the number
14 of hours that the worker has labored), the H-2A regulations require that the state minimum wage be
15 paid.

16 28. The H-2A program regulations require that each foreign worker receive a copy of an
17 employment contract no later than the time that the worker applies for a visa to enter the United
18 States under the H-2A program. U.S. workers employed by WRA or its member ranches, or by
19 MPAS or its member ranches, must be provided the contract no later than the first day of work. In
20 the absence of a contract containing all the required terms and conditions of employment, the job
21 order required by the USDOL will be deemed to be the required employment contract or will
22 supplement the contract provided by the employer. *See* 20 CFR §655.122(q). That job order
23 includes the promise to comply with governing law, including the Nevada law setting the minimum
24 wage.

25 29. The H-2A regulations also specify that participating employers provide assurances
26 that “the employer and its agents have not sought or received payment of any kind from any
27 employee subject to [H-2A] for any activity related to obtaining H-2A labor certification.” 20
28 C.F.R. § 655.135(j). Employers are prohibited from shifting costs of any kind for any activity

1 related to obtaining the labor certification, such as “application fees[] or recruitment costs.” *Id.*
2 Thus, under the plain language of the regulation, recruitment costs, including visa application fees
3 and costs associated with the application, must be borne by the H-2A employer. And, as the
4 preamble to the February 2010 Final Rule states, government-mandated fees such as visa application
5 fees are integral to the employer’s choice to use the H-2A program to bring foreign workers into the
6 country. Temporary Agricultural Employment of H-2A Aliens in the United States, 75 Fed. Reg.
7 6884, 6925 (Feb. 12, 2010). Such expenses provide no benefit to the employee other than for that
8 particular limited employment situation. Requiring employers to bear the full cost of their decision
9 to import foreign workers is a necessary step toward preventing the exploitation of foreign workers,
10 with its concomitant adverse effect on U.S. workers. Temporary Agricultural Employment of H-2A
11 Aliens in the United States; Modernizing the Labor Certification Process and Enforcement, 73 Fed.
12 Reg. 8538, 8547 (Feb. 13, 2008).

13 30. In the contracts they enter into with all H-2A shepherds, including with Plaintiffs and
14 other Class Members, all Defendants explicitly agree to comply with all H-2A program
15 regulations—including the H-2A program’s requirement that an employer pay the state minimum
16 wage if that is higher than the AEW, and to pay all costs associated with obtaining H-2A labor
17 certifications.

18 31. A requirement to comply with the H-2A rules is a term of the employment agreement
19 WRA Defendants enter into with all H-2A shepherds. For example, a sample of a form contract,
20 which is similar to the one Plaintiff Cántaro entered into with the WRA Defendants, is attached as
21 Exhibit B. As this contract states, the H-2A shepherd’s employer “agrees to comply with all
22 applicable laws of the United States and the individual states, including but not limited to
23 compliance with all immigration laws.” Ex. B at 1. Further, in the job orders for H-2A shepherds,
24 such as the one included as Exhibit A, WRA Defendants agree “to abide by the regulations at 20
25 C.F.R. [§] 655.135.” Ex. A at 7. In turn, 20 C.F.R. § 655.135(e) requires that during the period of
26 employment covered by the H-2A certification, “the employer must comply with all applicable
27 Federal, State and local laws and regulations”
28

1 32. MPAS Defendants make a similar commitment in job orders, which “serve as the
2 work contract for workers employed by Mountain Plains Agricultural Service members,” Ex. C at 5,
3 and which accordingly require employers to pay a state minimum wage if that wage is higher than a
4 wage set by DOL and to abide by all assurances contained in 20 C.F.R. § 655.135.

5 **PLAINTIFF CÁNTARO’S EMPLOYMENT AS AN H-2A SHEPHERD**

6 33. In 2007, a representative of Defendant WRA in Peru first recruited Mr. Cántaro to be
7 a shepherd in the United States while Mr. Cántaro was living near Huancayo, Peru.

8 34. The WRA representative made Mr. Cántaro sign a document in which WRA
9 established many of the conditions under which Mr. Cántaro would work in the United States.

10 35. In the United States, Mr. Cántaro was employed by one particular WRA ranch,
11 Defendant El Tejon Sheep Company, which is owned and managed by Defendant Gragirena.

12 36. Subject to confirmation through discovery, when Mr. Cántaro arrived at El Tejon
13 ranch, Mr. Cántaro signed another contract, similar to the one included as Exhibit B, which was
14 prepared by Defendant WRA and set additional terms of employment with which Mr. Cántaro had to
15 comply. One such requirement was that Mr. Cántaro work at any ranch managed by Defendant
16 WRA and that he agree to be transferred to another WRA ranch at any time—regardless of whether
17 it was his preference to stay on the ranch to which he was originally assigned and regardless of
18 whether the individual WRA ranch on which he worked agreed to the transfer.

19 37. Defendant El Tejon was also a party to this WRA-prepared contract. Upon
20 information and belief, based on it being the policy of WRA, Defendant El Tejon signed a contract
21 similar to the one attached here as Exhibit B. That contract identifies Defendant El Tejon as Mr.
22 Cántaro’s employer and obligated Defendant El Tejon to comply with a number of contractual
23 provisions, such as paying Mr. Cantaro’s wages, keeping records of his employment and wages, and
24 providing him with tools and equipment to perform his work. *See* Ex. B.

25 38. All shepherds employed by Defendant WRA are subject to the same employment
26 policies as those described above because all WRA shepherds sign the same or substantially similar
27 employment contracts as a condition of working for Defendant WRA. *See* Ex. B. The terms of
28 WRA employment contracts are described in *Ruiz v Fernandez*, 949 F. Supp. 2d 1055, 1063-71

1 (E.D. Wash. 2013), where another court in this Circuit concluded that Defendant WRA was a joint
2 employer of shepherds such as Mr. Cántaro.

3 39. WRA self-declares in the certifications required by the H-2A program and provided
4 to the USDOL that it is a joint employer, along with its member ranches, for purposes of the
5 employment of H-2A shepherds and United States workers similarly employed. *See* Ex. A at 1.

6 40. Defendants El Tejon and Gragirena also entered into employment agreements with
7 Plaintiff Cántaro.

8 41. Defendant Gragirena employed Mr. Cántaro by establishing a reasonable degree of
9 oversight over Mr. Cántaro's work. For example, for a substantial portion of each year, Defendant
10 Gragirena would often observe and direct how Mr. Cántaro would perform specific tasks as a
11 shepherd, indicating, for example, which sheep Mr. Cántaro should focus on birthing or directing
12 Mr. Cántaro to perform a specific task, such as to repair a fence to prevent sheep from escaping from
13 a specific area or to work with a specific pregnant ewe that Defendant Gragirena predicted would
14 have a complicated pregnancy or would have trouble producing milk.

15 42. Defendant Gragirena would also instruct H-2A shepherds, including Mr. Cántaro,
16 how to perform certain tasks at his ranch, and would then have the shepherd repeat the tasks he had
17 performed. Defendant Gragirena would observe the H-2A shepherds performing these tasks until
18 they had performed them to his satisfaction.

19 43. Defendant Gragirena also gave Mr. Cántaro detailed instructions to be followed
20 throughout the course of a workweek. For example, Defendant Gragirena would tell Mr. Cántaro to
21 graze his sheep on one specific plot of land for a specific period of time and then asked that Mr.
22 Cántaro move to a specific different plot of land. Similarly, Defendant Gragirena would
23 communicate by phone with Mr. Cántaro and ask him to make sure to move his sheep to a specific
24 meeting point in the mountains near Elko on a specific day, in preparation for the sale of the lambs.

25 44. On other occasions, Defendant Gragirena used an intermediary—normally Defendant
26 Gragirena's foreman—to direct that Mr. Cántaro perform specific tasks, such as to move sheep from
27 one location to another in the mountains near Elko, Nevada.

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1 45. Defendant Gragirena would also bring Mr. Cántaro his checks on the pay days or
2 have an intermediary perform this same function.

3 46. Mr. Cántaro worked for the WRA Defendants from 2007 until June 2014, generally
4 returning to Peru for short periods of time every three years but otherwise working as a U.S.-based
5 shepherd.

6 47. For all of Mr. Cántaro's time as a shepherd, he generally worked from approximately
7 mid-October until approximately early to mid-April near Bakersfield, California, assisting with
8 lambing and other work as assigned. Then, from approximately mid-April until approximately late
9 September or early October, Mr. Cántaro grazed his herd alone on public lands near Elko, Nevada.

10 48. This case only concerns the time Mr. Cántaro, or others similarly situated, worked in
11 Nevada.

12 49. The WRA H-2A job orders specified that the work hours were 24 hours a day and
13 seven days per week; the work hours are among the terms and conditions of employment that must
14 be contained in the contract and job order and disclosed to any shepherd employed by WRA or its
15 member ranches, including Defendant El Tejon Sheep Company and Defendant Gragirena.

16 50. Under the terms of the H-2A program, the employer must pay for the work offered in
17 the job order or employment contract, in this instance 24 hours of work a day, seven days per week.

18 51. During all of his time as a shepherd in Nevada, Mr. Cántaro almost never declined
19 work and was often engaged by the WRA Defendants to be on duty in his workplace 24 hours a day,
20 seven days a week.

21 52. During every week of his employment by the WRA Defendants, including for
22 example, the month of May 2014, Mr. Cántaro worked well over 40 hours per week, and was on
23 duty in his workplace 24 hours per day, seven days per week pursuant to the terms of the job order
24 and Defendants' requirement that he remain near the flock and guard them from predators. Thus,
25 during each week in the month of May 2014, Mr. Cántaro worked 168 hours, but he was paid only
26 approximately \$1422.55 for that entire month. This monthly wage amounts to \$331.93 per week,
27 which works out to only \$1.98 per hour.

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1 53. All or almost all of the other shepherds working with Mr. Cántaro worked according
2 to the same or similar schedule as the one described above. Mr. Cántaro knows this because he
3 would meet the other shepherds at various times during the year: for example, during the time he
4 was assisting with lambing and during the time when he was preparing the lambs for sale.

5 54. Mr. Cántaro began his last work contract with the WRA Defendants in or around late
6 October 2013, after returning from an approximately three-month stay in Peru. Upon arrival, he
7 again performed his work near Bakersfield, CA from October 2013 until around early April 2014.

8 55. The WRA Defendants then transported Mr. Cántaro to public lands near Elko,
9 Nevada, in April 2014.

10 56. During this time, Mr. Cántaro developed a severe infection in a tooth that required
11 immediate medical attention.

12 57. As a result, Mr. Cántaro repeatedly requested that Defendant Gragirena or his
13 foreman provide him with access to medical attention, but neither complied with the request.

14 58. This medical condition was exacerbated by the poor conditions in which Mr. Cántaro
15 was living, where he had insufficient access to water, adequate shelter, and a balanced diet.

16 59. In or about June 2014, Mr. Cántaro feared that if he did not obtain medical attention
17 immediately, he could be seriously injured or worse. He was also concerned that he would shortly
18 be required by Defendant Gragirena to travel to a more isolated region in the mountains near Elko,
19 where medical attention would be even more difficult to obtain. He therefore left Mr. Gragirena's
20 employ and sought medical attention for his worsening condition.

21 60. Mr. Cántaro was not paid any wages for approximately the last ten days of his work
22 with the WRA Defendants.

23 61. Under the terms of the H-2A program, Defendants WRA and El Tejon were required
24 to pay for any costs and expenses related to Mr. Cántaro's labor certifications. Defendants failed to
25 do so. Specifically, in 2013, Mr. Cántaro paid for his visa application fees, passport fees, and fees
26 for a medical examination that was a condition of employment, as well as multiple trips from
27 Pampas, Peru to Lima, Peru to secure his visa, take the medical examinations, and attend a WRA-

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1 directed interview to determine if he had the skills necessary to work as a shepherd. Defendants
2 never reimbursed Mr. Cántaro for these costs, which amounted to at least \$300.

3 **PLAINTIFF DE LA CRUZ’S EMPLOYMENT AS AN H-2A SHEPHERD**

4 62. In late 2008 or early 2009, a representative of Defendant MPAS in Peru first recruited
5 Mr. De La Cruz to be a shepherd in the United States.

6 63. The MPAS representative made Mr. De La Cruz sign a form contract in which MPAS
7 established many of the conditions under which Mr. De La Cruz would work in the United States,
8 including his monthly salary, the location of his work, and certain requirements he had to meet to
9 continue working as a shepherd for MPAS.

10 64. The MPAS representative directed how Mr. De La Cruz should obtain an H-2A visa
11 to work in the United States. Mr. De La Cruz was required to complete a visa application and take
12 several trips from his home in Concepcion, Peru, to the American consulate in Lima, Peru, in order
13 to complete his visa application.

14 65. In the United States, Mr. De La Cruz was employed by one particular MPAS ranch,
15 Double-U-Livestock.

16 66. Subject to confirmation through discovery, when Mr. De La Cruz arrived at Double-
17 U-Livestock, Mr. De La Cruz signed another contract, which was prepared by Defendant MPAS,
18 which set additional terms of employment with which Mr. De La Cruz had to comply.

19 67. All or almost all shepherds employed by Defendant MPAS are subject to the same
20 employment policies as those described above because all or almost all MPAS shepherds sign the
21 same or substantially similar employment contracts as a condition of working for Defendant MPAS.

22 68. MPAS also self-declared in the certifications required by the H-2A program and
23 provided to the USDOL that it was a shepherd employer, along with its member ranches, for
24 purposes of the employment of H-2A shepherds and United States workers similarly employed. For
25 example, in one job order from the period when Mr. De La Cruz worked for MPAS, which is
26 attached as Exhibit C, the Executive Director of MPAS signed the “employer’s certification” that the
27 MPAS-prepared job order complied with the requirements of the H-2A visa program. *See Ex. C at*
28 2.

1 69. MPAS also prepared a uniform attachment for all of its Nevada H-2A job orders
2 establishing terms of employment for all H-2A shepherds it recruited to work in Nevada. *See* Ex. C
3 at 3-6.

4 70. Mr. De La Cruz worked for MPAS from March 2009 until late 2014. He believes he
5 worked all of this time in Nevada.

6 71. The MPAS H-2A job orders specified that the work hours were 24 hours a day and
7 seven days per week; the work hours are among the terms and conditions of employment that must
8 be contained in the contract and job order and disclosed to any shepherd employed by MPAS or its
9 member ranches.

10 72. Under the terms of the H-2A program, the employer must pay for the work offered in
11 the job order or employment contract, in this instance 24 hours of work per day, seven days per
12 week. *See* Ex. C at 3.

13 73. During all of his time as a shepherd, Mr. De La Cruz almost never declined work and
14 was often engaged by Defendant to be on duty in his workplace 24 hours a day, seven days a week.
15 Mr. De La Cruz was often awakened at night, and would customarily have to get up at least once or
16 twice each night to tend to the sheep.

17 74. During every week of his employment by Defendant, including for example, the
18 month of January 2014, Mr. De La Cruz worked well over 40 hours per week, and was on duty in his
19 workplace 24 hours per day, seven days per week pursuant to the terms of the job order and
20 Defendant's requirement that he remain near the flock and guard them from predators. Thus, during
21 each week in the month of January 2014, Mr. De La Cruz worked 168 hours, but he was paid only
22 approximately \$800 for that entire month. This monthly wage amounts to \$184.76 per week, which
23 works out to only \$1.09 per hour.

24 75. All or almost all of the other shepherds working with Mr. De La Cruz worked
25 according to the same or similar schedule as the one described above. Mr. De La Cruz knows this
26 because he would meet the other shepherds at various times during the year: for example, back at the
27 ranches just before or after the ranches' lambing season.

28

1 76. Under the terms of the H-2A program, Defendant MPAS was required to pay for any
2 costs and expenses related to Mr. De La Cruz's labor certifications. Defendant failed to do so. For
3 instance, Mr. De La Cruz paid the cost of travel from his hometown in Concepcion, Peru to Lima,
4 Peru, in order to secure his visa.

5 **PLAINTIFF INGA'S EMPLOYMENT AS AN H-2A SHEPHERD**

6 77. In the first few months of 2012, a representative of Defendant MPAS in Peru first
7 recruited Mr. Inga to be a shepherd in the United States while Mr. Inga was living near Huancayo,
8 Peru.

9 78. The MPAS representative made Mr. Inga sign a form contract in which MPAS
10 established many of the conditions under which Mr. Inga would work in the United States, including
11 his monthly salary, the location of his work, and certain requirements he had to meet to continue
12 working as a shepherd for MPAS.

13 79. In the United States, Mr. Inga was employed by one particular MPAS ranch,
14 Defendant Estill Ranches, which is owned and managed by John Estill.

15 80. Subject to confirmation through discovery, when Mr. Inga arrived at Estill Ranches,
16 Mr. Inga signed another contract, which was prepared by Defendant MPAS, and which set additional
17 terms of employment with which Mr. Inga had to comply.

18 81. Upon information and belief, Defendant Estill Ranches was also a party to this
19 MPAS-prepared contract.

20 82. All or almost all shepherds employed by Defendant MPAS are subject to the same
21 employment policies as those described above because all or almost all MPAS shepherds sign the
22 same or substantially similar employment contracts as a condition of working for Defendant MPAS.

23 83. MPAS also self-declared in the certifications required by the H-2A program and
24 provided to the USDOL that it was a shepherd employer, along with its member ranches, for
25 purposes of the employment of H-2A shepherds and United States workers similarly employed. For
26 example, in one job order from the relevant period when Mr. Inga worked at Estill Ranches, which is
27 attached as Exhibit C, the Executive Director of MPAS signed the "employer's certification" that the
28

1 MPAS-prepared job order for Estill Ranches complied with the requirements of the H-2A visa
2 program. *See* Ex. C at 2.

3 84. MPAS also prepared a uniform attachment for all of its Nevada H-2A job orders
4 establishing terms of employment for all H-2A shepherds it recruited to work in Nevada. *See* Ex. C
5 at 3-6.

6 85. Defendant Estill Ranches also employed Mr. Inga. It did so by establishing a
7 reasonable degree of oversight over Mr. Inga's work. For example, for a substantial portion of each
8 year, Estill Ranches owner John Estill would observe and direct how Mr. Inga would perform
9 specific tasks as a shepherd, indicating, for example, which sheep Mr. Inga should focus on moving
10 around the range or directing Mr. Inga to perform a specific task, such as to repair a fence.

11 86. On other occasions and because he did not speak fluent Spanish and Mr. Inga did not
12 speak English, John Estill used an agent—normally one of his foremen—to direct that Mr. Inga
13 perform specific tasks, such as to move sheep from one location to another.

14 87. John Estill would also bring Mr. Inga his checks on pay days or have an agent
15 perform this same function on his behalf.

16 88. Mr. Inga worked for MPAS and Estill Ranches from April 2012 until February 2013.
17 He believes he worked all of this time in or near Gerlach, Nevada.

18 89. The MPAS H-2A job orders specified that the work hours were 24 hours per day and
19 seven days per week; the work hours are among the terms and conditions of employment that must
20 be contained in the contract and job order and disclosed to any shepherd employed by MPAS or its
21 member ranches, including Defendant Estill Ranches.

22 90. Under the terms of the H-2A program, Defendants MPAS and Estill Ranches were
23 required to pay for any costs and expenses related to Mr. Inga's labor certifications. Defendants
24 failed to do so. Specifically, in early 2012, Mr. Inga paid for his visa application fees, as well as
25 multiple trips from Huancayo, Peru to Lima, Peru to secure his visa. Defendants never reimbursed
26 Mr. Inga for these costs, which amounted to at least \$250.

27 91. Mr. Inga was also living in dangerous and unsanitary conditions when he was
28 working for MPAS and Estill Ranches. He had insufficient access to water, adequate shelter, and a

1 balanced diet. In particular, Mr. Inga lived in a camper with insufficient heating and no place to
2 store any perishable items. The camper was also insufficiently insulated and had holes through
3 which rodents and wind would pass. MPAS and Estill Ranches also provided Mr. Inga with
4 insufficient food: he often mainly ate potatoes and sometimes had to share his food with his sheep
5 dogs, as they had insufficient food themselves.

6 92. In or around February 2013, Mr. Inga had had enough of the bad conditions. In part
7 because of the bad conditions and the poor pay, Mr. Inga ended his employment relationship with
8 MPAS and Estill Ranches.

9 **THE H-2A VISA PROGRAM FOR SHEPHERDS AND DEFENDANTS' WAGE POLICIES**

10 93. As described above, most shepherds, including Plaintiffs, work in the United States
11 under the H-2A program, which is administered by the USDOL and the Department of Homeland
12 Security.

13 94. The USDOL has implemented special rules regulating H-2A workers in the
14 shepherding industry. As part of these special rules, the USDOL, among other things, sets a wage
15 floor which must be paid to the workers admitted under the labor certification, or it will not approve
16 H-2A visa applications.

17 95. As is relevant here, the USDOL-established wage floor for shepherds requires the
18 payment of the *highest* of (i) the Adverse Effect Wage Rate (AEWR) determined for every state
19 where the work will be performed; (ii) the federal minimum wage; (iii) the state minimum wage for
20 the state where the work is performed; or, (iv) an agreed-upon collectively bargained wage. All
21 employers under the H-2A program are required to both promise to pay and to actually pay the
22 higher of the above specified pay rates. *See* 20 C.F.R. § 655.120 and 655.210.

23 96. The Nevada state minimum wage for the work performed by the shepherds in Nevada
24 is \$8.25.

25 97. Under the terms of the H-2A program and the contract provisions applicable to the
26 shepherds, a higher state minimum wage law necessarily supersedes any lower wage floor specified
27 by the USDOL.

28

1 98. As noted above, Defendants WRA and MPAS each have a policy and practice of only
2 paying the AEWL established by the USDOL, regardless of whether a higher wage is required under
3 state law, the H-2A program, or federal law.

4 99. Defendants El Tejon and Mr. Gragirena adopted and implemented this same policy
5 and practice of paying per month, based on the AEWL established by the USDOL, albeit paying the
6 California AEWL even for the months that Plaintiffs worked in Nevada, rather than paying the
7 higher hourly wage required by state law.

8 100. In light of this policy, the wage offered and normally paid by the WRA Defendants
9 varies only based on the state in which a ranch is located. For example, if the ranch on which a
10 shepherd works is based in California (as is the case with Mr. Cántaro in some instances), the wage
11 Defendants pay is the AEWL for California. On the other hand, if the ranch is located in Nevada,
12 Defendant WRA has a policy of paying the Nevada AEWL, which has been as low as \$800 per
13 month.

14 101. The MPAS Defendants adhere to the same policy. The wage offered to all H-2A
15 shepherds in Nevada is the monthly minimum of as low as \$800 per month.

16 102. The existence of these policies is evident from a review of the USDOL's Fiscal Year
17 2014 through 2017 "Disclosure Data," which is a data set that provides information about each H-2A
18 Visa Application submitted to the USDOL by Defendants.

19 103. The data for Fiscal Years 2014 through 2017 cover the period from October 1, 2013
20 to the present. This is the most recent and comprehensive data available on H-2A certifications.

21 104. The Disclosure Data is accessible by clicking on the "Disclosure Data" tab available
22 at <http://www.foreignlaborcert.doleta.gov/performancecdm>. To access the Fiscal Year 2014
23 through 2017 data, download a Microsoft Excel file available for H-2A workers for Fiscal Year
24 2014, 2015, 2016 or 2017 under this tab.

25 105. The 2014 through 2017 data reveal that the minimum wage offered to all WRA
26 shepherds and all MPAS shepherds in Nevada is uniformly \$800 per month initially, then \$1,206.31
27
28

1 per month from November 2015 to September 2016, then \$1,390 from January 2017 to present.⁸

2 The wage offered to all California WRA shepherds is uniformly the AEWL set by the USDOL for
3 that state for the relevant period of time (*i.e.*, \$1,422.55, \$1,600.34, or \$1,777.98 per month).

4 106. Mr. Cántaro was offered approximately the AEWL established by the USDOL for
5 California.

6 107. Mr. Cántaro was paid approximately \$1422.55 per month—or slightly more than this
7 sum—for every month that he worked as a shepherd for the WRA Defendants. (Plaintiff will have
8 to determine the exact amount he was paid through discovery as his employment records are in the
9 possession of the WRA Defendants.)

10 108. Mr. De La Cruz was offered approximately the AEWL established by the USDOL for
11 Nevada.

12 109. Mr. De La Cruz was paid approximately \$800 per month for every month that he
13 worked as a shepherd for MPAS. (Mr. De La Cruz will have to determine the exact amount he was
14 paid through discovery as his employment records are in the possession of MPAS.)

15 110. Finally, in addition to Defendants MPAS and WRA adhering to the policy described
16 in ¶¶ 93-109 for all the shepherds each has employed in Nevada, Defendants El Tejon and Gragirena
17 have adopted and implemented this same policy for all shepherds employed by Defendant
18 Gragirena’s ranch who worked in Nevada, paying them the California AEWL both for months when
19 they worked in California and for months when they worked in Nevada, where state law mandated
20 higher pay.

21 **NEVADA MINIMUM WAGE**

22 111. As noted above, Plaintiffs worked in Nevada for Defendants.

23
24
25 ⁸ One can view the underlying Disclosure Data by matching the ETA case number included
26 with each record in the Disclosure Data and reviewing the individual H-2A applications associated
27 with these numbers. These H-2A records are viewable at <https://icert.doleta.gov/>, where one can
28 perform a search by ETA case number. A review of numerous individual H-2A Applications at this
website confirms that Defendants have a policy of uniformly paying the same monthly minimum
wage to shepherds.

1 112. Plaintiffs Cántaro and De La Cruz were paid illegally low wages for their work in
2 Nevada. Even though Mr. Cántaro was paid approximately \$1,422.55 per month (or slightly more
3 than this sum), he should have been paid much more than this amount based on the number of
4 compensable hours he worked. Even though Mr. De La Cruz was paid approximately \$800 per
5 month, he should have been paid much more than this amount based on the number of compensable
6 hours worked.

7 113. The Nevada minimum wage is established in Section 16 of the Nevada Constitution.
8 This is an hourly minimum wage that applies regardless of the industry in which the employee is
9 working. *See Thomas v. Nevada Yellow Cab Corp.*, 327 P.3d 518 (Nev. 2014).

10 114. At present, the hourly minimum wage for all employees in Nevada is \$7.25 per hour
11 for workers who are covered by an employer's medical insurance and \$8.25 per hour for workers
12 who do not have insurance coverage.

13 115. Upon information and belief, foreign shepherds, including Plaintiffs Cántaro and De
14 La Cruz, employed by either the WRA Defendants or MPAS, have not been covered by medical
15 insurance meeting the requirements of Section 16 of the Nevada Constitution.

16 116. All foreign shepherds, including Plaintiffs, are accordingly entitled to an hourly wage
17 of at least \$8.25 per hour for each hour of work completed in Nevada.

18 117. In order for the wage of \$1,422.55 per month to be a lawful payment, Mr. Cántaro
19 would have had to have worked fewer than 40 hours per week and, in order for \$800 per month to be
20 a lawful payment, Mr. De La Cruz would have had to have worked well under 40 hours in a week.
21 But both Plaintiffs worked much more than 40 hours a week: they were engaged by the WRA
22 Defendants and MPAS respectively to work 24 hours a day, seven days per week under the terms of
23 the job orders.

24 118. Plaintiffs' work was standard operating procedure for a shepherd. Nevada shepherds
25 were engaged to work 24 hours a day, seven days per week.

26 119. All shepherds are accordingly always working in excess of 40 hours per week and are
27 being underpaid for the hourly minimum value of their labor as established in the Nevada
28 Constitution.

RULE 23 CLASS ALLEGATIONS

WRA Nevada Classes

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3 120. Plaintiff Cántaro asserts Counts I, III, IV, V and IX against Defendant WRA as a
4 Class Action pursuant to Federal Rule of Civil Procedure 23.

5 121. He brings these claims on behalf of the “WRA Nevada Class,” which, pending any
6 modifications necessitated by discovery, is defined as follows:

7 All persons whom WRA employed as shepherds through the H-2A
8 program, who worked in Nevada during the applicable statute of
9 limitations.

10 122. Plaintiff Cántaro defines the “WRA Former Employee Sub-Class” as follows:

11 All persons whom WRA employed as shepherds through the H-2A
12 program, who worked in Nevada during the applicable statute of
13 limitations and who are no longer employed by WRA.

14 123. The members of the putative classes are so numerous that joinder of all potential
15 Class Members is impracticable. Plaintiff Cántaro does not know the exact size of the classes since
16 that information is within the control of WRA. However, according to publicly available data from
17 the USDOL (namely, the aforementioned “Disclosure Data”), Defendant WRA employed hundreds
18 of shepherds in Nevada between 2014 and 2017. WRA employed hundreds more herders in the
19 years encompassing Plaintiffs’ contract claims, which have a six-year statute of limitations.

20 124. There are questions of law or fact common to the classes that predominate over any
21 individual issues that might exist—including, (a) whether WRA was obligated to pay shepherds
22 working in Nevada at least the Nevada minimum wage instead of paying the monthly wage
23 established by the USDOL; (b) whether WRA fulfilled its obligation to pay the Nevada minimum
24 wage; (c) whether any health insurance was offered by WRA to putative Class Members which
25 qualified for the lower, \$7.25/hour minimum wage; (d) whether WRA was a joint employer of the
26 H-2A shepherds; (e) whether WRA paid Plaintiffs for all compensable hours; (f) whether WRA paid
27 all wages when due following termination of employment of shepherds in Nevada; (g) whether
28 WRA was obligated to pay Nevada shepherds for any expenses associated with obtaining visas and
permits to work for Defendants in the United States; and (h) whether WRA fulfilled its contractual
obligation to pay these expenses.

1 125. The claims asserted by Mr. Cántaro are typical of the claims of all of the potential
2 Class Members. All potential Class Members who worked within the statute of limitations period
3 for the wage claims allege they were paid less than the applicable Nevada minimum wage by
4 Defendants, that WRA was their joint employer, and that they worked 168 hours per week (24
5 hours/day, seven days/week). All potential Class Members who worked within the statute of
6 limitations period for the contract claims allege that WRA violated its employment contracts by
7 failing to reimburse Plaintiffs for the costs associated with obtaining the labor certifications
8 necessary to work for WRA in the United States.

9 126. Mr. Cántaro suffered from the same illegally low wage as the class. Mr. Cántaro also
10 suffered the same injury as the class for failure to reimburse visa-related expenses.

11 127. Mr. Cántaro will fairly and adequately protect and represent the interests of the class.

12 128. Mr. Cántaro is represented by counsel experienced in litigation on behalf of low-wage
13 workers and in class actions who will adequately represent the class.

14 129. A class action is superior to other available methods for the fair and efficient
15 adjudication of this controversy because numerous identical lawsuits alleging similar or identical
16 causes of action would not serve the interests of judicial economy. It is also superior because the
17 putative Class Members lack the resources and language ability to locate and retain competent
18 counsel.

19 130. The prosecution of separate actions by the individual potential Class Members would
20 create a risk of inconsistent or varying adjudications with respect to individual potential Class
21 Members that would establish incompatible standards of conduct for Defendant WRA.

22 131. Mr. Cántaro is unaware of any members of the putative class who are interested in
23 presenting their claims in a separate action, though he is aware of a separate class action based on
24 Nevada law against another Defendant: MPAS. *See Llacua et al v. W. Range Ass'n et al.*, 1:15-cv-
25 01889-REB-CBS (D. Colo. 2015). This other case contains no Nevada-based wage claims against
26 WRA. Plaintiffs' understanding is that the claims in that case for failure to pay the Nevada
27 minimum wage and for failure to reimburse labor certification-related expenses have been
28 dismissed.

1 132. Mr. Cántaro is unaware of any pending litigation commenced by members of the
2 Class concerning the instant controversies.

3 133. It is desirable to concentrate this litigation in this forum because many of the
4 Defendants and Plaintiffs are located in, or do business in, Nevada, and shepherds operate
5 exclusively in the western United States.

6 134. This class action will not be difficult to manage due to the uniformity of claims
7 among the Class Members and the susceptibility of the claims to class litigation and the use of
8 representative testimony and representative documentary evidence.

9 135. The contours of the classes will be easily defined by reference to Defendants' records
10 and government records.

11 **El Tejon Classes**

12 136. Plaintiff Cántaro asserts Counts II, VI, VII, VIII, and X as a Class Action pursuant to
13 Federal Rule of Civil Procedure 23.

14 137. In particular, he asserts Counts II and X against Defendants Gragirena and El Tejon,
15 and he asserts Counts VI-VIII against only Defendant El Tejon.

16 138. Pending any modifications necessitated by discovery, Plaintiff defines the "El Tejon
17 Class" as follows:

18 All persons whom Defendants El Tejon and Gragirena employed
19 through the H2A program as shepherds during the applicable statute
20 of limitations.

21 139. Pending any modifications necessitated by discovery, Plaintiff defines the "El Tejon
22 Former Employee Sub-Class" as follows:

23 All persons whom Defendants El Tejon and Gragirena employed
24 through the H2A program as shepherds during the applicable statute of
25 limitations who are no longer employed by Defendants El Tejon and
26 Gragirena.

27 140. The members of the putative classes are so numerous that joinder of all potential
28 Class Members is impracticable. Plaintiff Cántaro does not know the exact size of the classes, since
that information is within the control of the Defendants. However, according to publicly available

1 data from the USDOL (namely, the aforementioned “Disclosure Data”), Defendants El Tejon and
2 Gragirena employed approximately 48 herders during the two-year statutory period for Plaintiffs’
3 wage claims. El Tejon employed many more herders during the six-year statutory period for
4 Plaintiffs’ contract claims.

5 141. There are questions of law or fact common to the classes that predominate over any
6 individual issues that might exist—including (a) whether Defendants El Tejon and Gragierena were
7 obligated to pay Nevada shepherds at least the Nevada minimum wage instead a of paying the
8 monthly wage floor established by the USDOL; (b) whether Defendants El Tejon and Gragierena
9 fulfilled their obligation to pay the Nevada minimum wage; (c) whether any health insurance was
10 offered by Defendants El Tejon and Gragierena to putative Class Members which qualified for the
11 lower, \$7.25/hour minimum wage; (d) whether Defendants El Tejon and Gragierena were joint
12 employers, with WRA, of the H-2A shepherds; (e) whether Defendants El Tejon and Gragierena
13 paid plaintiffs for all compensable hours; (f) whether Defendants El Tejon and Gargierena are jointly
14 and severally liable for WRA’s violations; (g) whether El Tejon was obligated to pay Nevada
15 shepherds for any expenses associated with obtaining visas and permits to work for Defendants in
16 the United States; and (h) whether El Tejon fulfilled its contractual obligation to pay these expenses.

17 142. The claims asserted by Mr. Cántaro are typical of the claims of all of the potential
18 Class Members. All potential Class Members who worked within the statute of limitations period
19 for the wage claims allege they were paid less than the applicable Nevada minimum wage by
20 Defendants, that El Tejon and Melchor Gragirena were their joint employers, and that they worked
21 168 hours per week (24 hours/day, seven days/week). All potential Class Members who worked
22 within the statute of limitations period for the contract claims allege that El Tejon violated its
23 employment contracts by failing to reimburse Plaintiffs for the costs associated with obtaining the
24 labor certifications necessary to work for El Tejon in the United States.

25 143. Mr. Cántaro suffered from the same illegally low wage as the class. Mr. Cántaro also
26 suffered the same injury as the class for failure to reimburse visa-related expenses.

27 144. Mr. Cántaro will fairly and adequately protect and represent the interests of the class.
28

1 145. Mr. Cántaro is represented by counsel experienced in litigation on behalf of low-wage
2 workers and in class actions.

3 146. A class action is superior to other available methods for the fair and efficient
4 adjudication of this controversy because numerous identical lawsuits alleging similar or identical
5 causes of action would not serve the interests of judicial economy. It is also superior because the
6 putative Class Members lack the resources and language ability to locate and retain competent
7 counsel.

8 147. The prosecution of separate actions by the individual potential Class Members would
9 create a risk of inconsistent or varying adjudications with respect to individual potential Class
10 Members that would establish incompatible standards of conduct for Defendants El Tejon and
11 Gragirena.

12 148. Mr. Cántaro is unaware of any members of the putative class who are interested in
13 presenting their claims in a separate action, though he is aware of a separate class action based on
14 Nevada law against another Defendant: MPAS. *See Llacua et al v. W. Range Ass'n et al.*, 1:15-cv-
15 01889-REB-CBS (D. Colo. 2015). This other case contains no Nevada-based wage claims against
16 the WRA or El Tejon Defendants.

17 149. Mr. Cántaro is unaware of any pending litigation commenced by members of the
18 class concerning the instant controversies.

19 150. It is desirable to concentrate this litigation in this forum because many of the
20 Defendants and Plaintiffs are located in, or do business in, Nevada, and shepherds operate
21 exclusively in the western United States.

22 151. This class action will not be difficult to manage due to the uniformity of claims
23 among the Class Members and the susceptibility of the claims to class litigation and the use of
24 representative testimony and representative documentary evidence.

25 152. The contours of the class will be easily defined by reference to Defendants' records
26 and government records.

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MPAS Nevada Classes

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2 153. Plaintiff De La Cruz asserts Counts XI and XV against Defendant MPAS as a Class
3 Action pursuant to Federal Rule of Civil Procedure 23. Plaintiffs De La Cruz and Inga both assert
4 Counts XII to XIV against Defendant MPAS as a Class Action pursuant to Federal Rule of Civil
5 Procedure 23.⁹

6 154. Plaintiffs De La Cruz and Inga bring these claims on behalf of the “MPAS Nevada
7 Class,” which, pending any modifications necessitated by discovery, is defined as follows:

8 All persons whom MPAS employed as shepherds through the H-2A
9 program, who worked in Nevada at any time during the applicable
10 statute of limitations.¹⁰

11 155. Plaintiffs define the “MPAS Former Employee Sub-Class” as follows:

12 All persons whom MPAS employed as shepherds through the H-2A
13 program, who worked in Nevada during the applicable statute of
14 limitations and who are no longer employed by the MPAS.

15 156. The members of the putative classes are so numerous that joinder of all potential
16 Class Members is impracticable. Plaintiffs do not know the exact size of the classes since that
17 information is within the control of MPAS. However, according to publicly available data from the
18 USDOL (namely, the aforementioned “Disclosure Data”), Defendant MPAS employed over 100
19 Nevada shepherds during the statutory period for Plaintiff De La Cruz’s wage claims. The statute of
20 limitations for Mr. De La Cruz’s and Mr. Inga’s contract claims for failure to reimburse Plaintiffs’

21 ⁹ As noted above, Plaintiff Inga understands the Court has ruled that a two-year statute of
22 limitations applies to contract claims tied to the Nevada Minimum Wage Amendment claims.
23 However, Plaintiff Inga raises timely contract claims against MPAS for failure to reimburse labor
24 certification-related expenses. *See supra* at ¶ 1 n.1. Mr. De La Cruz’s claims encompass those
25 contract claims as well as claims against MPAS for failure to pay minimum wages.

26 ¹⁰ As discussed above, *see supra* at ¶ 9, Plaintiffs assert that the statute of limitations is tolled
27 for this Class based on *American Pipe*, 414 U.S. 538 (1974), and the Nevada minimum wage claim
28 brought against MPAS in *Llacua*, No. 15-cv-01889-REB-CBS (D. Colo. 2015). For the MPAS
Class’ wage claims, the limitations period goes back to October 28, 2013; for the contract claims for
failure to pay labor certification expenses, which were also made in *Llacua* against MPAS, the
period goes back to October 28, 2009.

1 labor certification costs go back another four years, and therefore the size of the putative class for
2 those claims is much higher.

3 157. There are questions of law or fact common to the classes that predominate over any
4 individual issues that might exist—including, (a) whether MPAS was obligated to pay shepherds
5 working in Nevada at least Nevada minimum wage instead of paying the monthly wage established
6 by the USDOL; (b) whether MPAS fulfilled its obligation to pay the Nevada minimum wage; (c)
7 whether any health insurance was offered by MPAS to putative Class Members which qualified for
8 the lower, \$7.25/hour minimum wage; (d) whether MPAS was a joint employer of the H-2A
9 shepherds; (e) whether MPAS paid Plaintiffs for all compensable hours; (f) whether the MPAS paid
10 all wages when due following termination of employment of shepherds in Nevada; (g) whether
11 MPAS was obligated to pay Nevada shepherds for any expenses associated with obtaining visas and
12 permits to work for Defendants in the United States; and (h) whether MPAS fulfilled its contractual
13 obligation to pay these expenses.

14 158. The claims asserted by Mr. De La Cruz and Mr. Inga are typical of the claims of all of
15 the potential Class Members. All potential Class Members who worked within the statute of
16 limitations period for the wage claims allege they were paid less than the applicable Nevada
17 minimum wage by Defendants, that MPAS was their joint employer, and that they worked 168 hours
18 per week (24 hours/day, seven days/week). All potential Class Members who worked within the
19 statute of limitations period for the contract claims allege that MPAS violated its employment
20 contracts by failing to reimburse Plaintiffs for the costs associated with obtaining the labor
21 certifications necessary to work for MPAS in the United States.¹¹

22 159. Mr. De La Cruz suffered from the same illegally low wage as the class. Mr. Inga and
23 Mr. De La Cruz suffered the same injury as the class for failure to reimburse visa-related expenses.

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26 ¹¹ Mr. Inga represents the class of herders bringing contract claims under the six-year statute
27 of limitations. Mr. De La Cruz represents the class of herders bringing contract claims, but also the
28 wage claims under the two-year statute of limitations.

1 160. Mr. Inga and Mr. De La Cruz will fairly and adequately protect and represent the
2 interests of the class.

3 161. Mr. Inga and Mr. De La Cruz are represented by counsel experienced in litigation on
4 behalf of low-wage workers and in class actions who will adequately represent the class.

5 162. A class action is superior to other available methods for the fair and efficient
6 adjudication of this controversy because numerous identical lawsuits alleging similar or identical
7 causes of action would not serve the interests of judicial economy. It is also superior because the
8 putative Class Members lack the resources and language ability to locate and retain competent
9 counsel.

10 163. The prosecution of separate actions by the individual potential Class Members would
11 create a risk of inconsistent or varying adjudications with respect to individual potential Class
12 Members that would establish incompatible standards of conduct for Defendant MPAS.

13 164. Mr. Inga and Mr. De La Cruz are aware of a separate class action based on Nevada
14 law against Mountain Plains Agricultural Service. *See Llacua et al v. W. Range Ass'n et al.*, 1:15-
15 cv-01889-REB-CBS (D. Colo. 2015). Plaintiffs' understanding is that the claims in that case for
16 failure to pay the Nevada minimum wage and for failure to reimburse labor certification-related
17 expenses have been dismissed.

18 165. Mr. Inga and Mr. De La Cruz are unaware of any other pending litigation commenced
19 by members of the Class concerning the instant controversies.

20 166. It is desirable to concentrate this litigation in this forum because many of the
21 Defendants and Plaintiffs are located in, or do business in, Nevada, and shepherds operate
22 exclusively in the western United States.

23 167. This class action will not be difficult to manage due to the uniformity of claims
24 among the Class Members and the susceptibility of the claims to class litigation and the use of
25 representative testimony and representative documentary evidence.

26 168. The contours of the class will be easily defined by reference to Defendants' records
27 and government records.

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Estill Ranches Class

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2 169. Plaintiff Inga asserts Counts XVI to XVIII as a Class Action pursuant to Federal Rule
3 of Civil Procedure 23.

4 170. In particular, he asserts these Counts against Defendant Estill Ranches.

5 171. Pending any modifications necessitated by discovery, Plaintiff Inga defines the “Estill
6 Ranches Class” as follows:

7 All persons whom Defendant Estill Ranches employed through the
8 H2A program as shepherds in Nevada at any time during the
9 applicable statute of limitations.

10 172. The members of the putative classes are so numerous that joinder of all potential
11 Class Members is impracticable. Plaintiff Inga does not know the exact size of the classes, since that
12 information is within the control of the Defendants. However, according to publicly available data
13 from the USDOL (namely, the aforementioned “Disclosure Data”), Defendant Estill Ranches
14 employed at least 50 shepherds during the statutory period for Mr. Inga’s contract claims for failure
15 to pay for labor certification-related expenses.

16 173. There are questions of law or fact common to the classes that predominate over any
17 individual issues that might exist—including (a) whether Estill Ranches was obligated to pay
18 Nevada shepherds for any expenses associated with obtaining visas and permits to work for
19 Defendants in the United States; (b) whether Estill Ranches fulfilled its contractual obligation to pay
20 these expenses; (c) whether Estill Ranches was a joint employer, with MPAS, of the H-2A
21 shepherds; (d) whether Estill Ranches repaid Plaintiffs for their out-of-pocket expenses related to
22 obtaining their H-2A labor certifications; and (e) whether Estill Ranches is jointly and severally
23 liable for MPAS’s violations.

24 174. The claims asserted by Mr. Inga are typical of the claims of all of the potential Class
25 Members because all potential Class Members allege that the Estill Ranches failed to reimburse
26 them for the costs of obtaining labor certifications necessary to work for Estill Ranches.

27 175. Mr. Inga suffered the same injury for failure to reimburse visa-related expenses as the
28 class.

1 176. Mr. Inga will fairly and adequately protect and represent the interests of the class.

2 177. Mr. Inga is represented by counsel experienced in litigation on behalf of low-wage
3 workers and in class actions.

4 178. A class action is superior to other available methods for the fair and efficient
5 adjudication of this controversy because numerous identical lawsuits alleging similar or identical
6 causes of action would not serve the interests of judicial economy. It is also superior because the
7 putative Class Members lack the resources and language ability to locate and retain competent
8 counsel.

9 179. The prosecution of separate actions by the individual potential Class Members would
10 create a risk of inconsistent or varying adjudications with respect to individual potential Class
11 Members that would establish incompatible standards of conduct for Defendant Estill Ranches.

12 180. Mr. Inga is unaware of any members of the putative class who are interested in
13 presenting these claims in a separate action, though—as noted above—he is aware of a separate class
14 action based on Nevada law against MPAS. *See Llacua et al v W. Range Ass'n et al.*, 1:15-cv-
15 01889-REB-CBS (D. Colo. 2015).

16 181. Mr. Inga is unaware of any pending litigation commenced by members of the Class
17 concerning the instant controversies.

18 182. It is desirable to concentrate this litigation in this forum because many of the
19 Defendants and Plaintiffs are located in, or do business in, Nevada, and shepherds operate
20 exclusively in the western United States.

21 183. This class action will not be difficult to manage due to the uniformity of claims
22 among the Class Members and the susceptibility of the claims to class litigation and the use of
23 representative testimony and representative documentary evidence.

24 184. The contours of the class will be easily defined by reference to Defendants' records
25 and government records.

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1 **COUNT ONE**

2 **Failure to Pay Minimum Wages in Violation of the Nevada Constitution**
3 **(On Behalf of Plaintiff Cántaro and the WRA Nevada Class Against Defendant WRA)**

4 185. Plaintiff incorporates by reference paragraphs 1 to 184 of this Complaint as if fully
5 re-written herein. As noted above, Plaintiff Cántaro asserts this count on his own behalf and on
6 behalf of the WRA Nevada Class pursuant to Fed. R. Civ. P. 23.

7 186. WRA employed Plaintiff Cántaro and other members of the WRA Nevada Class in
8 Nevada during the relevant statute of limitations and paid him less than the Nevada minimum wage.

9 187. As a result, the Plaintiffs are entitled to the difference between the wages paid and the
10 Nevada minimum wage, and attorneys' fees, pursuant to Nev. Const. art. 15, § 16, for the relevant
11 time period alleged herein.

12 188. Although not necessary to obtain fees under the Nevada Constitution, Plaintiff
13 Cántaro sent a written demand for wages at least five days prior to bringing this claim and is entitled
14 to attorneys' fees and costs if he prevails in this action.

15 **COUNT TWO**

16 **Failure to Pay Minimum Wages in Violation of the Nevada Constitution**
17 **(On Behalf of Plaintiff Cántaro and the El Tejon Class Against Defendants El Tejon and**
18 **Gragirena)**

19 189. Plaintiff incorporates by reference paragraphs 1 to 184 of this Complaint as if fully
20 re-written herein. As noted above, Plaintiff Cántaro asserts this count on his own behalf and on
21 behalf of the El Tejon Class pursuant to Fed. R. Civ. P. 23.

22 190. Defendants El Tejon and Gragirena employed Plaintiff Cántaro and members of the
23 El Tejon Class in Nevada during the relevant statute of limitations and paid him less than the Nevada
24 minimum wage.

25 191. As a result, the Plaintiffs are entitled to the difference between the wages paid and the
26 Nevada minimum wage and attorneys' fees pursuant to Nev. Const. art. 15, § 16, for the for the
27 relevant time period alleged herein.
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COUNT FOUR

**Promissory Estoppel
(Plaintiff Cántaro and the WRA Nevada Class Against Defendant WRA)**

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3 198. Plaintiff incorporates by reference paragraphs 1 to 184 of this Complaint as if fully
4 re-written herein.

5 199. As set forth above, Plaintiff Cántaro asserts this count on his own behalf and on
6 behalf of all those similarly situated pursuant to Fed. R. Civ. P. 23.

7 200. In the alternative to a contract claim, Plaintiff Cántaro and the WRA Nevada Class
8 are entitled to relief in promissory estoppel. WRA promised the Plaintiff and members of the
9 Nevada Class that it would adhere to 20 C.F.R. § 655.122, 20 C.F.R. § 655.210 and 20 C.F.R. §
10 655.135.

11 201. Plaintiff Cántaro and the WRA Nevada Class relied on this promise to their detriment
12 by traveling to WRA member ranches to work as shepherds, where the WRA and its members
13 illegally failed to pay wages as promised. The Class Members also relied on this promise to their
14 detriment by paying their own visa application fees and recruitment costs, which WRA failed to pay.
15 Plaintiff Cántaro and the WRA Nevada Class are entitled to damages, including all wages owed but
16 not paid for the relevant time period alleged herein, and for all costs borne by Class Members to
17 obtain the labor certifications needed to work for WRA and its member ranches.

COUNT FIVE

**Unjust Enrichment and Quantum Meruit
(Plaintiff Cántaro and the WRA Nevada Class Against Defendant WRA)**

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22 202. Plaintiff Cántaro incorporates by reference paragraphs 1 to 184 of this Complaint as if
23 fully re-written herein.

24 203. As set forth above, Plaintiff Cántaro asserts this count on his own behalf and on
25 behalf of all those similarly situated pursuant to Fed. R. Civ. P. 23.

26 204. In the alternative to a contract claim, Plaintiff Cántaro and the WRA Nevada Class
27 are also entitled to relief in unjust enrichment and quantum meruit. A benefit was conferred on the
28 WRA when the Plaintiff and the WRA Nevada Class performed work as specified by the WRA for

1 which the WRA failed to pay the required compensation in violation of 20 C.F.R. § 655.122, 20
2 C.F.R. § 655.210 and 20 C.F.R. § 655.135.

3 205. That benefit was appreciated by the WRA as it had the advantage of the Plaintiff's
4 and Class Members' labor without paying for that labor as required; it is unjust for the WRA to be
5 permitted to benefit from the illegally obtained labor; and WRA engaged in unfair competition with
6 other Nevada businesses that abide by Nevada's wage and hour laws and contract laws.

7 206. Plaintiff Cántaro and the WRA Nevada Class reasonably expected to be paid all
8 wages owed when due under 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210, and those wages were
9 not paid according to that expectation. Plaintiff and the WRA Class likewise reasonably expected to
10 be reimbursed for all application fees and recruitment costs associated with obtaining their H-2A
11 labor certifications due under 20 C.F.R. § 655.135, and those costs were not reimbursed according to
12 that expectation.

13 207. As a result, Plaintiff Cántaro and the WRA Nevada Class are entitled to the full value
14 of the services provided, and the WRA should be disgorged of the illegally withheld wages and
15 reimbursement costs for the relevant time period alleged herein.

16 **COUNT SIX**

17 **Breach of Contract or Quasi Contract**
18 **(Plaintiff Cántaro and the El Tejon Class Against Defendant El Tejon)**

19 208. Plaintiff incorporates by reference paragraphs 1 to 184 of this Complaint as if fully
20 re-written herein.

21 209. As set forth above, Plaintiff Cántaro asserts this count on his own behalf and on
22 behalf of all those similarly situated pursuant to Fed. R. Civ. P. 23.

23 210. Plaintiff and the El Tejon Class entered into contracts with Defendant El Tejon that
24 explicitly incorporated the requirements of 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210 through the
25 H-2A Applications and job orders, which constitute job offers accepted by Plaintiff and those
26 similarly situated. In the alternative, Plaintiff and the El Tejon Class entered into contracts with
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1 Defendant El Tejon that included as implied terms of the contracts the requirements of 20 C.F.R. §
2 655.122, 20 C.F.R. § 655.210 and 20 C.F.R. § 655.135.

3 211. These contracts provide that each worker employed by Defendant El Tejon will be
4 paid the higher of the monthly AEW (adverse effect wage rate), the agreed-upon collective
5 bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial
6 action, in effect at the time work is performed, whichever is highest, for every month of the job order
7 period or portion thereof. Defendant El Tejon failed to pay the required wage when it failed to pay
8 the minimum wage required by Article 15, section 16 of the Nevada Constitution for each hour
9 worked, a violation of Nevada state law and of the above cited regulations. These contracts also
10 provide that employers are not permitted to shift costs for any activity related to obtaining an H-2A
11 labor certification, including visa application fees and any related costs. Any of these costs borne by
12 workers must then be reimbursed by the employer. Defendant El Tejon failed to reimburse its
13 herders for these costs.

14 212. As a result of the breach of contract, the Plaintiff and the El Tejon Class suffered
15 damages for the relevant time period alleged herein.

16 **COUNT SEVEN**

17 **Promissory Estoppel**
18 **(Plaintiff Cántaro and the El Tejon Class Against Defendant El Tejon)**

19 213. Plaintiff incorporates by reference paragraphs 1 to 184 of this Complaint as if fully
20 re-written herein.

21 214. As set forth above, Plaintiff Cántaro asserts this count on his own behalf and on
22 behalf of all those similarly situated pursuant to Fed. R. Civ. P. 23.

23 215. In the alternative to a contract claim, Plaintiff Cántaro and the El Tejon Class are
24 entitled to relief in promissory estoppel. Defendant El Tejon promised Plaintiff Cántaro and the El
25 Tejon Class that it would adhere to 20 C.F.R. § 655.122, 20 C.F.R. § 655.210 and 20 C.F.R. §
26 655.135.

27 216. Plaintiff Cántaro and the El Tejon Class relied on this promise to their detriment by
28 traveling to the ranch operated by Defendant El Tejon to work as shepherds, where Defendant El

1 Tejon illegally failed to pay wages as promised, and by paying for their own visa application fees
2 and recruitment costs, which Defendant El Tejon failed to pay. Plaintiff Cántaro and the El Tejon
3 Class are entitled to damages, including all wages owed but not paid for the relevant time period
4 alleged herein, and for all costs borne by Class Members to obtain labor certifications needed to
5 work for El Tejon.

6 **COUNT EIGHT**

7 **Unjust Enrichment and Quantum Meruit**
8 **(Plaintiff Cántaro and the El Tejon Class Against Defendant El Tejon)**

9 217. Plaintiff Cántaro incorporates by reference paragraphs 1 to 184 of this Complaint as if
10 fully re-written herein.

11 218. As set forth above, Plaintiff Cántaro asserts this count on his own behalf and on
12 behalf of all those similarly situated pursuant to Fed. R. Civ. P. 23.

13 219. In the alternative to a contract claim, Plaintiff Cántaro and the El Tejon Class are also
14 entitled to relief in unjust enrichment and quantum meruit. A benefit was conferred on Defendant El
15 Tejon when the Plaintiff and the El Tejon Class performed work as specified by Defendant El Tejon
16 for which Defendant El Tejon failed to pay the required compensation in violation of 20 C.F.R. §
17 655.122, 20 C.F.R. § 655.210 and 20 C.F.R. § 655.135.

18 220. That benefit was appreciated by Defendant El Tejon as it had the advantage of the
19 Plaintiff's and Class Members' labor without paying for that labor as required; it is unjust for the
20 Defendant El Tejon to be permitted to benefit from the illegally obtained labor; and Defendant El
21 Tejon engaged in unfair competition with other Nevada businesses that abide by Nevada's wage and
22 hour laws and contract laws.

23 221. Plaintiff Cántaro and the El Tejon Class reasonably expected to be paid all wages
24 owed when due under 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210 and those wages were not.
25 Plaintiffs likewise reasonably expected to be reimbursed for all application fees and recruitment
26 costs associated with obtaining their H-2A labor certifications due under 20 C.F.R. § 655.135, and
27 those costs were not reimbursed according to that expectation.
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1 who resigns or quits, the wages or compensation of the employee continues at the same rate from the
2 day the employee resigned, quit, or was discharged until paid for 30-days, whichever is less.”

3 239. N.R.S. 608.050 grants an “employee lien” to each discharged or laid-off employee
4 for the purpose of collecting the wages or compensation owed to them “in the sum agreed upon in
5 the contract of employment for each day the employer is in default, until the employee is paid in full,
6 without rendering any service therefor; but the employee shall cease to draw such wages or salary 30
7 days after such default.”

8 240. By failing to pay Plaintiff and all members of the El Tejon Class who are former
9 employees for all hours worked in violation of state law, Defendants El Tejon and Gragirena have
10 failed to timely remit all wages due and owing to Plaintiff and all members of the El Tejon Class
11 who are former employees.

12 241. Despite demand, Defendants willfully refuse and continue to refuse to pay Plaintiff
13 and all El Tejon Class Members who are former employees their full wages due and owing to them.

14 242. Wherefore, Plaintiff demands thirty (30) days wages under N.R.S. 608.140 and
15 608.040, and an additional thirty (30) days wages under N.R.S. 608.140 and 608.050, for all
16 members of the El Tejon Class who are former employees, together with attorneys’ fees, costs, and
17 interest as provided by law.

18 **COUNT ELEVEN**

19 **Failure to Pay Minimum Wages in Violation of the Nevada Constitution**
20 **(On Behalf of Plaintiff De La Cruz and the MPAS Nevada Class Against Defendant MPAS)**

21 243. Plaintiff incorporates by reference paragraphs 1 to 184 of this Complaint as if fully
22 re-written herein. As noted above, Plaintiff De La Cruz asserts this count on his own behalf and on
23 behalf of the MPAS Nevada Class pursuant to Fed. R. Civ. P. 23.

24 244. MPAS employed Plaintiff De La Cruz and other members of the MPAS Nevada
25 Class in Nevada during the relevant statute of limitations and paid him less than the Nevada
26 minimum wage.

1 271. As set forth above, Plaintiff Inga asserts this count on his own behalf and on behalf of
2 all those similarly situated pursuant to Fed. R. Civ. P. 23.

3 272. Plaintiff and the Estill Ranches Class entered into contracts with Defendant Estill
4 Ranches that explicitly incorporated the requirements of 20 C.F.R. § 135 through the H-2A
5 Applications and job orders, which constitute job offers accepted by Plaintiff and those similarly
6 situated. In the alternative, Plaintiff and the Estill Ranches Class entered into contracts with
7 Defendant Estill Ranches that included as implied terms of the contracts the requirements of 20
8 C.F.R. § 135.

9 273. These contracts provide that employers are not permitted to shift costs for any activity
10 related to obtaining an H-2A labor certification, including visa application fees and any related costs.
11 Any of these costs borne by workers must then be reimbursed by the employer. Defendant Estill
12 Ranches failed to reimburse its herders for these costs.

13 274. As a result of the breach of contract, Plaintiff Inga and the Estill Ranches Class
14 suffered damages for the relevant time period alleged herein.

15 **COUNT SEVENTEEN**

16 **Promissory Estoppel**
17 **(Plaintiff Inga and the Estill Ranches Class Against Defendant Estill Ranches)**

18 275. Plaintiff incorporates by reference paragraphs 1 to 184 of this Complaint as if fully
19 re-written herein.

20 276. As set forth above, Plaintiff Inga asserts this count on his own behalf and on behalf of
21 all those similarly situated pursuant to Fed. R. Civ. P. 23.

22 277. In the alternative to a contract claim, Plaintiff Inga and the Estill Ranches Class are
23 entitled to relief in promissory estoppel. Defendant Estill Ranches promised Plaintiff Inga and the
24 Estill Ranches Class that it would adhere to 20 C.F.R. § 655.135.

25 278. Plaintiff Inga and the Estill Ranches Class relied on this promise to their detriment by
26 paying for their own application fees and recruitment costs, which Estill Ranches failed to pay.
27 Plaintiff Inga and the Estill Ranches Class are entitled to damages, including all costs borne by Class
28 Members associated with obtaining labor certifications needed to work for Estill Ranches.

COUNT EIGHTEEN

**Unjust Enrichment and Quantum Meruit
(Plaintiff Inga and the Estill Ranches Class Against Defendant Estill Ranches)**

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4 279. Plaintiff Inga incorporates by reference paragraphs 1 to 184 of this Complaint as if
5 fully re-written herein.

6 280. As set forth above, Plaintiff Inga asserts this count on his own behalf and on behalf of
7 all those similarly situated pursuant to Fed. R. Civ. P. 23.

8 281. In the alternative to a contract claim, Plaintiff Inga and the Estill Ranches Class are
9 also entitled to relief in unjust enrichment and quantum meruit. A benefit was conferred on
10 Defendant Estill Ranches when Plaintiff and the Estill Ranches Class performed work as specified
11 by Defendant Estill Ranches for which Defendant Estill Ranches failed to pay the required costs in
12 violation of 20 C.F.R. § 655.135.

13 282. That benefit was appreciated by Defendant Estill Ranches as it had the advantage of
14 the Plaintiff's and Class Members' labor without paying for that labor as required; it is unjust for the
15 Defendant Estill Ranches to be permitted to benefit from the illegally obtained labor; and Defendant
16 Estill Ranches engaged in unfair competition with other Nevada businesses that abide by Nevada's
17 contract laws.

18 283. Plaintiff Inga and the Estill Ranches Class reasonably expected to be reimbursed for
19 all application fees and recruitment costs associated with obtaining their H-2A labor certifications,
20 and those costs were not reimbursed according to that expectation.

21 284. As a result, Plaintiff Inga and the Estill Ranches Class are entitled to the full value of
22 the services provided and Defendant Estill Ranches should be disgorged of the illegally withheld
23 reimbursement costs for the relevant time period alleged herein.

PRAYER FOR RELIEF

24 Plaintiffs respectfully requests that judgment be entered in their favor and in favor of those
25 similarly situated and that this Court:
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- 27 1. Declare Defendants in violation of each of the counts set forth above;
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2. Certify and maintain this action as a class action, with Plaintiff Cántaro as designated class representative for the WRA and El Tejon Classes, with Plaintiff De La Cruz as designated class representative for the MPAS Class, and with Plaintiff Inga as designated class representative for the MPAS and Estill Ranches Classes, and with their counsel appointed as class counsel;
3. Award damages for Defendants’ failure to pay the Nevada minimum wage, as required by contract, by state law, and the principles of unjust enrichment, quantum meruit, and promissory estoppel, and to pay wages in a timely fashion upon conclusion of employment;
4. Award pre-judgment, post-judgment, and statutory interest, as permitted by law;
5. Award attorneys’ fees;
6. Award costs;
7. Order equitable relief, including a judicial determination of the rights and responsibilities of the parties;
8. Award such other and further relief as the Court may deem just and proper; and
9. Grant Plaintiffs a jury trial.

Dated: May 15, 2017

Respectfully submitted,

/s/ Christine E. Webber
Christine E. Webber (*pro hac vice*)
Brian Corman (*pro hac vice*)
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Attorneys for the Plaintiffs

PROOF OF SERVICE

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I, Heijin McIntire, declare:

I am employed in Washington D.C. by the law office of Cohen Milstein Sellers & Toll, P.L.L.C. located at 1100 New York Avenue, N.W., Suite 500, Washington, D.C. 20005. I am over the age of 18 and not a party to this action.

On this day, May 15, 2017, I served the foregoing Second Amended Complaint by causing the above named document to be served via the electronic service through the Court's ECF program to all parties who have appeared in this case.

/s/ Heijin C. McIntire