IN THE SUPREME COURT FOR THE STATE OF NEVADA

ABEL CÁNTARO CASTILLO, Appellant, vs. WESTERN RANGE ASSOCIATION, Respondent.	**CASE NO. 85926** U.S. District Court Case No.: 3:16-cv-00237-RCJ-CLB

APPELLANT'S APPENDIX VOLUME 1 OF 5

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

ABEL CÁNTARO CASTILLO, and those similarly situated, Plaintiffs, v. WESTERN RANGE ASSOCIATION, MELCHOR GRAGIRENA; and EL TEJON SHEEP COMPANY, Defendants.	Civil Case No. **COMPLAINT** 3:16-cv-00237

Plaintiff Abel Cántaro Castillo was paid a shockingly low wage of as little as one or two dollars an hour for his work as a shepherd in California and Nevada. This is well below the minimum wage of $8.25 per hour that Mr. Cántaro should have been paid under Nevada law and the minimum of $7.25 per hour he should have been paid pursuant to the Fair Labor Standards Act (FLSA).

Mr. Cántaro is not alone in suffering either of these violations for the hundreds of hours of work he has sometimes provided to the ranching industry in a single week. This is because his employers—Defendants here—have a policy of paying all shepherds they employ a low *monthly* wage that has the effect of creating illegally low *hourly* rates of pay, in light of the actual number of hours shepherds are working.

This illegal monthly-pay policy manifests in two ways at issue in this case. First, Defendant Western Range Association (WRA) has a policy of setting the wages of all Nevada shepherds, including Mr. Cántaro, at a rate of as little as $800 per month, despite the fact that this translates to an effective wage rate of between one and two dollars an hour—much less than the Nevada minimum of $8.25 per hour. Defendants El Tejon Sheep Company and Melchor Gragirena adhered to the same illegal monthly wage policy in acting as Mr. Cántaro's joint employers.

Second, in addition to violating Nevada state law, Defendants violated FLSA by paying Mr. Cántaro and all other shepherds at Defendant Gragirena's ranch less than the FLSA minimum wage of $7.25 per hour. To be sure, FLSA contains a narrowly-construed exception from its minimum wage protections for those principally engaged in herding work at locations so remote and isolated that it would be difficult for an employer to calculate the number of hours worked. But the exception cannot apply here because work at El Tejon was not principally remote: for the majority of the time Mr. Cántaro and all other shepherds worked at El Tejon, they were performing farming or other non-herding work just off well-trafficked highways and on cultivated farmland—often under the direct supervision Defendant Gragirena or his foreman. Given the type of work El Tejon shepherds were performing—and the locations where the work

was performed—the FLSA exception cannot apply and Mr. Cántaro is entitled to the hourly FLSA minimum wage for the entirety of time he was working as a shepherd.

Mr. Cántaro on his own behalf and those similarly situated seeks damages including the difference between the right hourly wages Defendants should have paid, and what he was actually paid under Defendants' illegal monthly wage policies, statutory and/or liquidated damages, and attorneys' fees.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this suit pursuant to 28 U.S.C. § 1331 for the claim brought under the Fair Labor Standards Act and has supplemental jurisdiction over the state-law claims under 28 U.S.C. § 1367.

2. In addition and in the alternative, this Court has jurisdiction over the principal class-action state-law claim against WRA pursuant to 28 U.S.C. § 1332(d) because the matter in controversy for that claim exceeds the sum or value of $5 million, exclusive of interest and costs, and at least one member of the plaintiff class is a citizen of a state different from any defendant. In particular, as described in greater detail below, at least 170 members of the class Mr. Cántaro seeks to represent were underpaid at least two thousand dollars per month for—at the least—a period of over three years, for a total of over $12 million in unpaid wages.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial portion of the events giving rise to Plaintiff's and the classes' claims to unpaid wages occurred while they were working as shepherd in or near Elko, Nevada.

PARTIES

4. Plaintiff Abel Cántaro is a former shepherd. He worked as a shepherd in California and Nevada from around October 2007 until around June 2014.

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

6. Defendant Melchor Gragirena resides in California and is the owner of El Tejon. Defendant Gragirena transacts business in Nevada by, among other things, employing shepherds who spend part of the year grazing sheep on land outside of cities such as Elko, Nevada.

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

STATEMENT OF FACTS

Mr. Cántaro's Work

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

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

10. The WRA representative directed how Mr. Cántaro should obtain a visa to work in the United States and required Mr. Cántaro to take a number of trips from Huancayo to Lima, Peru, to comply with the policies WRA had established for hiring foreign shepherds to work in the United States. These policies included a WRA-ordered medical exam that was a condition of employment, a WRA-ordered review of Mr. Cántaro's criminal records, and a WRA-directed interview to determine if Mr. Cántaro had the skills necessary to work as a shepherd.

11. In the United States, Mr. Cántaro worked with one particular WRA ranch, Defendant El Tejon Sheep Company, which is owned by Defendant Gragirena.

12. Subject to confirmation through discovery, when Mr. Cántaro arrived at El Tejon ranch, Mr. Cántaro signed another document prepared by Defendant WRA that set additional terms of employment with which Mr. Cántaro had to comply. One such requirement was that Mr. Cantaro work at any ranch managed by Defendant WRA and that he agree to be transferred to another WRA ranch at any time—regardless of whether it was his preference to stay on the ranch to which he was originally assigned and regardless of whether the individual WRA ranch on which he worked agreed to the transfer.

13. All or almost all shepherds employed by Defendant WRA are subject to the same employment policies as those described above because all or almost all WRA shepherds sign the same or substantially similar employment contracts as a condition of working for Defendant WRA. Although to be confirmed through discovery, Plaintiff believes the terms of all WRA employment contracts at issue in this case are similar to those described in *Ruiz v. Fernandez*, 949 F. Supp. 2d 1055, 1063-71 (E.D. Wash. 2013), where another Court in this Circuit concluded that Defendant WRA was a joint employer of shepherds such as Mr. Cántaro.

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

15. For all of Mr. Cántaro's time as a shepherd, he generally worked according to the following schedule, to be confirmed with greater precision through discovery:

a. **Veterinary Work:**

16. From approximately mid-October until approximately early to mid-April, Mr. Cántaro worked on well-cultivated farmland—normally alfalfa fields that were surrounded by temporary electric and regular wire fences that Mr. Cántaro often helped to set up.

17. The land was generally in suburban areas around Bakersfield, California, and normally within walking distance of three- or four-lane highways. In fact, for some of this period, Mr. Cantaro appears to have worked just beside the athletic fields at Independence High School, a school of several thousand in the Kern County school district.

18. All of these locations were easily accessible by Plaintiffs' employer. And all these work locations appear to have been a short drive from Defendant Gragirena's home in suburban Bakersfield.

19. During a large portion of this time, Mr. Cántaro was effectively a full-time veterinarian as he managed all aspects of the birthing of thousands of new lambs managed by Defendants. In addition to the veterinary work, Mr. Cántaro repaired and constructed other structures (such as fencing and corrals) at El Tejon ranch.

20. It would have been easy for Defendants to calculate the number of hours Mr. Cántaro worked because he was laboring in such accessible places, often under Defendants' direct supervision or the supervision of foremen employed by Defendants.

a. **Lamb Fattening Work:**

21. From approximately mid-April until approximately early or mid-June, after being transported to Elko, Nevada, Mr. Cántaro maintained his herd alone on public lands near Elko.

22. During this time, he tried to fatten up the lambs in his charge in preparation for their sale.

a. **Sale of Lambs:**

23. For an approximately a two-week period in early or mid-June, Mr. Cántaro would assemble corrals and manage his herd close to the corrals in preparation for the sale of the lambs.

24. During this time, he was under the direct supervision of Defendant Gragirena or a foreman employed by Defendants.

25. It would not have been difficult to calculate the number of hours that Mr. Cántaro was working during this period, in light of this direct supervision of his work.

a. **Autumn Herding Work:**

26. From approximately mid-June until late September or early October, Mr. Cántaro grazed his herd alone on public lands near Elko, Nevada. .

27. For a majority of his time working as a shepherd, Mr. Cántaro was not in isolated mountain locations herding sheep but rather working on well-cultivated farmland and focused on non-herding work (*e.g.*, birthing sheep or repairing ranch equipment, such as fences and posts on the ranch).

28. It would not have been difficult to calculate the number of hours Mr. Cántaro worked during most of the year principally because he was working under the direct supervision of one of his bosses.

29. During all of his time as a shepherd, Mr. Cántaro almost never worked less than 70 hours a week and was often engaged by Defendants to work 24 hours a day seven days a week.

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

31. Some of the shepherds in fact never left California to work in Nevada. These workers spent most or all of their time on non-herding work, principally as ranch-hands working at the headquarter ranch for Defendants.

32. One of the shepherds employed by Defendants does not conduct any shepherding work—rather, he works as a full-time foreman, supervising the work of the other shepherds and providing them with supplies.

33. Mr. Cántaro began his last work contract with Defendants in or around late October 2013, after returning from an approximately three-month stay in Peru. Upon arrival, he again performed his veterinary work from October 2013 until around early April 2014.

34. Defendants then transported Mr. Cántaro to public lands near Elko, Nevada, in April 2014.

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

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

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

38. Mr. Cántaro was not paid any wages for approximately the last ten days of his work with Defendants.

The H-2A Visa Program for Shepherds and Defendants' Monthly Wage Policy

39. Most shepherds, including Mr. Cántaro, work in the United States under the H-2A program, which is administered by the Departments of Labor and Homeland Security. The H-2A program takes its name from the statutory provision, 8 U.S.C. § 1101(a)(15)(H)(ii)(a), which describes the visa category for nonimmigrant foreign workers who come to the United States to perform agricultural work on a temporary or seasonal basis.

40. DOL has implemented special rules regulating H-2A workers in the sheepherding industry. As part of these special rules, DOL, among other things, sets a wage floor below which it will not approve H-2A visa applications for shepherds.

41. As relevant here, the DOL-established wage floor for shepherds is as follows:

Wage Floor	State	Dates
$800 per month	Nevada	Until November 16, 2015
$1206.31 per month	Nevada	November 16, 2015-Present
$1422.55 per month	California	Until June 30, 2014
$1600.34 per month	California	July 1, 2014-January 1, 2016
$1777.98 per month	California	January 1, 2016-Present

42. The Nevada state minimum wage controls in the event that it is higher than the DOL set minimum because there is no preemption.

43. This is enshrined in the DOL regulations. A higher state minimum wage law necessarily supersedes a lower wage floor set by DOL: by regulation, H-2A employers must agree to pay H-2A workers at least the DOL wage floor (called the Adverse Effect Wage Rate (AEWR)), the prevailing wage, the federal or state minimum wage or the agreed-upon collective bargaining rate—whichever is highest. See 20 C.F.R. § 655.120.

44. As noted above, the problem here is that Defendant WRA has a policy of only paying the minimum monthly wage established by DOL, regardless of whether there is a higher wage is required under state or federal law because of the number of hours the shepherds are actually working or the type of work they are performing.

45. Defendant WRA's monthly minimum wage policy only varies based on the state in which a ranch is located. For example, if the ranch on which a shepherd works is located in California (as is the case with Mr. Cántaro), the wage Defendants pay is the DOL wage-floor for California. On the other hand, if the ranch is located in Nevada, Defendant WRA has a policy of paying the Nevada wage floor, which has been as low as $800 per month.

46. The existence of this policy is evident from a review of the Department of Labor's Fiscal Year 2014 and 2015 "Disclosure Data," which is a data set that provides information across a

number of fields about each H-2A Visa Application submitted to the Department of Labor by Defendants.

47. The data for Fiscal Years 2014 and 2015 cover the period from October 1, 2013 to September 30, 2015. This is the most recent and comprehensive data set on H-2A certifications.

48. The Disclosure Data is accessible by clicking on the "Disclosure Data" tab available at http://www.foreignlaborcert.doleta.gov/performancedata.cfm. To access the FY 2014 or 2015 data, download a Microsoft Xcel file available for H-2A workers for Fiscal Year 2014 or 2015 under this tab.

49. The 2014 and 2015 Data reveal that if one filters out all job references for jobs other than "sheepherder" or a similar job title, the minimum wage offered to all shepherds in Nevada is uniformly $800 per month.[1] The wage offered to all California shepherds is uniformly the wage floor set by DOL for that state for the relevant period of time (*i.e.*, $1422.55, $1600.34, or $1777.98 per month).

50. Plaintiff Cántaro was offered approximately the wage floor established by DOL.

51. Further, subject to discovery from Defendants, Plaintiff estimates that he was paid approximately $1422.55 per month—or slightly more than this sum—for every month that he

[1] At times, DOL has erroneously reported the correct offered wage. This error is evident based on a review of the underlying H-2A applications associated with each record contained in the Disclosure Data. One can view this underlying data by matching the ETA case number included with each record in the disclosure data and reviewing the individual H-2A applications associated with these numbers. These H-2A records are viewable at https://icert.doleta.gov/, where one can 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.

worked as a shepherd for Defendants. (Plaintiff will have to determine the exact amount he was paid through discovery as his employment records are in the possession of Defendants.)

52. Finally, in addition to Defendant WRA adhering to this policy for all the shepherds it has employed in Nevada, Defendants El Tejon and Gragirena have adhered to this same policy for all shepherds employed at Defendant Gragirena's ranch who worked in Nevada.

Nevada Minimum Wage

53. As noted above, Plaintiff worked in Nevada for Defendants from approximately early to mid-April until October.

54. Plaintiff was paid an illegally low wage for his work in Nevada. Even though he was paid approximately $1422.55 per month (or slightly more than this sum), he should have been paid much more than this amount based on the number of hours he worked.

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

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

57. Plaintiff was not covered by his employers' medical insurance. Further, upon information and belief, no foreign shepherds employed by Defendants have been covered by Defendants' medical insurance.

58. All foreign shepherds, including Mr. Cántaro, are accordingly entitled to an hourly wage of at least $8.25 per hour.

59. To be paid only $1422.55 per month, Mr. Cántaro could have worked just under 40 hours per week. But Mr. Cántaro worked many more hours than this every week: he never worked less than 70 hours a week and was often engaged by Defendants to work 24 hours a day seven days a week. Beyond the time he was engaged to wait by the employer (namely, by being ready to respond to a problem with his flock late at night), he often was actively working in excess of 100 hours per week.

60. Mr. Cántaro's work was hardly irregular for a shepherd. Most Nevada shepherds work roughly the same number of hours and according to the same schedule as Mr. Cántaro.

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

Fair Labor Standards Act

62. Beyond being entitled to the hourly minimum wage for his work in Nevada, Plaintiff is entitled to the hourly minimum wage guaranteed under FLSA for his work in both California and Nevada.

63. Defendants are covered by FLSA because, upon information and belief, they are enterprises with an excess of $500,000 in annual revenues.

64. Plaintiff is also covered by FLSA because his work regularly involves him in commerce between States or the production of goods for commerce: namely, the sheep that are transported between states such as Nevada and California.

65. Defendants are Plaintiff's employers, given the control over work and authority to hire and fire they exerted over Plaintiff, and their control over the terms of Plaintiff's employment conditions, as detailed above.

66. Plaintiff is entitled to the minimum wage accorded under FLSA.

67. Further, because his work was generally not remote and generally focused on non-herding work, Mr. Cántaro does not fit within the "range production of livestock" exception to the FLSA minimum wage. *See* 29 U.S.C. § 213(a)(6)(E).

68. This range exception is designed for work that is in isolated and mountainous locales where the terrain is rugged, the forage is naturally growing, and the inaccessibility of the work site makes it difficult for an employer to calculate the exact number of hours worked. *See* 29 C.F.R. § 780.323, *et seq*.

69. A majority of Mr. Cántaro's work—especially in his last period of work from October 2013 until June 2014—does not fit within what is contemplated by the exception. Rather, for a majority of his time as a shepherd, Mr. Cántaro: (1) was working on land under the direct supervision of one of his employers, and those employers could easily have calculated the time he was working; (2) was working generally on cultivated alfalfa fields in suburban Bakersfield; and (3) was working not far from his employer—indeed, much of the time he was working in the same city as his employer's ranch and his home.

70. Accordingly, even though Mr. Cántaro performed some work that might fit within the FLSA exception, most of his work does not fall within what is required for the exception to apply and he is entitled to the FLSA minimum wage given that the majority of his work falls outside the exception.

RULE 23 CLASS ALLEGATIONS

Nevada Wage Class

71. Plaintiff Cántaro asserts Count I against Defendant WRA as a Class Action pursuant to Federal Rule of Civil Procedure 23.

72. He brings this claim on behalf of the "NV Minimum Wage Class," which, pending any modifications necessitated by discovery, is defined as follows:

> ALL PERSONS WHOM WRA EMPLOYED AS SHEPHERDS IN NEVADA DURING THE RELEVANT STATUTE OF LIMITATIONS.

73. The members of the putative class are so numerous that joinder of all potential class members is impracticable. Plaintiff Cántaro does not know the exact size of the class since that information is within the control of WRA. However, according to publicly available data from the Department of Labor (namely, the aforementioned "Disclosure Data"), Defendant WRA employed approximately 180 shepherds in Nevada in fiscal years 2014 and 2015. Plaintiff has no reason to believe that WRA employed a substantially different number of shepherds in Nevada in any of the other years within the relevant statute of limitations.

74. There are questions of law or fact common to the classes that predominate over any individual issues that might exist—namely, whether the WRA failed to pay Nevada shepherds at least Nevada minimum wage by instead adhering to their policy of paying the monthly wage floor established by DOL.

75. The class claims asserted by Mr. Cántaro are typical of the claims of all of the potential Class Members because all potential Class Members allege they were paid less than the Nevada minimum wage by Defendants.

76. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because numerous identical lawsuits alleging similar or identical causes of action would not serve the interests of judicial economy.

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

78. Mr. Cántaro also suffered from the same illegally low wage as the class.

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

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

81. Mr. Cántaro is unaware of any members of the putative class who are interested in presenting their claims in a separate action, though he is aware of a separate class action based on Nevada law against another employer of shepherds: Mountain Plains Agricultural Service. *See Llacua et al v. Western Range Association et al.*, 1:15-cv-01889-REB-CBS (D. Colo. 2015). This other case contains no Nevada-based wage claims against Defendants named here.

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

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

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

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

El Tejon Wage Class

86. Plaintiff Cántaro asserts Count II against Defendants Gragirena and El Tejon as a Class Action pursuant to Federal Rule of Civil Procedure 23.

87. Pending any modifications necessitated by discovery, Plaintiff defines the "El Tejon NV Minimum Wage Sub-Class" as follows:

> ALL PERSONS WHOM DEFENDANTS EL TEJON AND GRAGIRENA EMPLOYED AS SHEPHERDS IN NEVADA DURING THE RELEVANT STATUTE OF LIMITATIONS.

88. The members of the putative class are so numerous that joinder of all potential class members is impracticable. Plaintiff Cántaro does not know the exact size of the class since that information is within the control of the Defendants. However, according to publicly available data from the Department of Labor (namely, the aforementioned "Disclosure Data"), Defendants El Tejon and Gragirena employed an average of nine shepherds per year for a total of at least around thirty shepherds for the relevant statute of limitations.

89. There are questions of law or fact common to the class that predominate over any individual issues that might exist—namely, whether Defendants El Tejon and Gragirena failed to pay Nevada shepherds at least Nevada minimum wage by instead adhering to their policy of paying the monthly wage floor established by DOL.

90. The class claims asserted by Mr. Cántaro are typical of the claims of all of the potential Class Members because all potential Class Members allege they were paid less than the Nevada minimum wage by Defendants El Tejon and Gragirena. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because numerous identical lawsuits alleging similar or identical causes of action would not serve the interests of judicial economy.

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

92. Mr. Cántaro also suffered from the same illegally low wage as the class.

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

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

95. Mr. Cántaro is unaware of any members of the putative class who are interested in presenting their claims in a separate action, though he is aware of a separate class action based on Nevada law against another employer of shepherds: Mountain Plains Agricultural Service. *See Llacua et al v. Western Range Association et al.*, 1:15-cv-01889-REB-CBS (D. Colo. 2015). This other case contains no FLSA or Nevada-based wage claims against Defendants named here.

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

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

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

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

29 U.S.C. § 216(B) COLLECTIVE ACTION ALLEGATIONS

100. Mr. Cántaro brings his FLSA claim as a collective action pursuant to 29 U.S.C. § 216(b) on behalf of himself and all other similarly situated current and former employees of Defendants.

101. Pending any modifications necessitated by discovery, Mr. Cántaro preliminarily defines the "216(b) Class" as follows:

> ALL CURRENT AND FORMER EMPLOYEES OF THE DEFENDANTS WHO WORKED ON DEFENDANT EL TEJON RANCH AND/OR FOR DEFENDANT GRAGIRENA AS SHEPHERDS.

102. All potential FLSA Class Members are similarly situated because, among other things, they were all employees of these Defendants and, upon information and belief, all suffered from the same policies of these Defendants, including the failure to pay at least the minimum hourly wage required under FLSA.

I. FIRST COUNT: SECTION 16 OF THE NEVADA CONSTITUTION

(Plaintiff Cántaro and the NV Minimum Wage Class Against Defendant WRA)

103. As noted above, Plaintiff Cántaro asserts this count on his own behalf and on behalf of the NV Minimum Wage Class pursuant to Fed. R. Civ. P. 23.

104. WRA employed Plaintiff Cántaro and the NV Minimum Wage Class in Nevada during the relevant statute of limitations and paid him less than the Nevada minimum wage—Plaintiff Cántaro was usually paid only $1422 per month or $2-3 per hour of work. Many fellow WRA employees were paid even less—as little as $800 per month—for the same number of hours of work.

105. As a result, the Plaintiffs are entitled to the difference between the wages paid and the Nevada minimum wage and attorneys' fees pursuant to Nev. Const. art. 15, § 16.

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

II. SECOND COUNT: SECTION 16 OF THE NEVADA CONSTITUTION

(Plaintiff Cántaro and the El Tejon Minimum Wage Class Against Defendants El Tejon and Gragirena)

107. As noted above, Plaintiff Cántaro asserts this count on his own behalf and on behalf of the El Tejon Minimum Wage Class pursuant to Fed. R. Civ. P. 23.

108. Defendants El Tejon and Gragirena employed Plaintiff Cántaro and the NV Minimum Wage Class in Nevada during the relevant statute of limitations and paid him less than the Nevada minimum wage—Plaintiff Cántaro was usually paid only $1422 per month or $2-3 per hour of work at some times.

109. As a result, the Plaintiffs are entitled to the difference between the wages paid and the Nevada minimum wage and attorneys' fees pursuant to Nev. Const. art. 15, § 16.

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

III. THIRD COUNT: FAIR LABOR STANDARDS ACT

(Plaintiff Cántaro Against All Defendants)

111. As noted above, Mr. Cántaro asserts this count on his own behalf and on behalf of all other similarly situated employees pursuant to 29 U.S.C. § 216(b).

112. Mr. Cántaro and those similarly situated were engaged in the production of goods for commerce pursuant to 29 U.S.C. § 203(b) and 29 U.S.C. § 206(a) because they assisted in raising sheep that moved, or could reasonably be expected to move, in interstate commerce.

113. Mr. Cántaro and all others similarly situated were "employees" as that term is defined by 29 U.S.C § 203 (e) because each entered into an employment contract with Defendants, and each Defendant had the ability to exert significant control over Mr. Cantaro and all other Defendants, including by directing him to work in different states and on different WRA ranches, controlling the terms and conditions of his employment, and having the authority to hire and fire him.

114. Defendants "employed" Mr. Cántaro and all others similarly situated as that term is defined by 29 U.S.C. § 203(g) because each was suffered or permitted to work by the Defendants.

115. Defendant Gragirena and WRA employed Plaintiff and the similarly situated members of the § 216(b) Class pursuant to FLSA 29 U.S.C. § 203(d) because they acted directly or indirectly in the interest of El Tejon in relation to Mr. Cántaro and the members of the 216(b) Class by, among other things, controlling when, where, and how they worked; maintaining their

employment records; setting the terms of their employment; and having the power to hire and fire them.

116. Defendants violated FLSA when they failed to pay Mr. Cántaro and all others similarly situated at least minimum wage for some of the hours they worked. 29 U.S.C. § 206.

117. Defendants' violations of FLSA were willful under 29 U.S.C. § 255(a) because they knew or should have known that Mr. Cántaro and all others similarly situated were entitled to minimum wage under FLSA, and/or, upon information and belief, they failed to make adequate inquiry regarding whether the Plaintiff and others similarly situated were covered by FLSA.

118. Mr. Cántaro and all others similarly situated are entitled to recover unpaid minimum wages, liquidated damages, attorneys' fees, costs, and post-judgment interest. 29 U.S.C. §§ 206; 216(b).

PLAINTIFFS DEMAND A JURY TRIAL

PRAYER FOR RELIEF

119. Plaintiff respectfully requests that judgment be entered in his favor and in favor of those similarly situated and that this Court:

a. Declare Defendants in violation of each of the counts set forth above;

b. Certify and maintain this action as a class action, with Plaintiff Cántaro as designated class representative and with his counsel appointed as class counsel;

c. Award damages for Defendants' failure to pay the Nevada minimum wage;

d. Award damages for Defendants' failure to pay the minimum wage under FLSA and award liquidated damages pursuant to 29 U.S.C. §216(b);

e. Award pre-judgment, post-judgment, and statutory interest, as permitted by law;

f. Award attorneys' fees;

g. Award costs;

h. Order equitable relief, including a judicial determination of the rights and responsibilities of the parties;

i. Certify the FLSA claims against Defendants to proceed as a collective action under 29 U.S.C § 216(b), and provide that appropriate notice of this suit and the opportunity to opt into it be provided to all potential members of the 216(b) Class

j. Award such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/Alexander Hood
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Attorneys for the Plaintiffs

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Nevada

Abel Cántaro Castillo, and those similarly situated

Plaintiff(s)

v.

Western Range Association, Melchor Gragirena, and El Tejon Sheep Company

Defendant(s)

Civil Action No. 3:16-cv-00237

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Western Range Association
161 Fifth Avenue South
Suite 100
Twin Falls, Idaho 83301

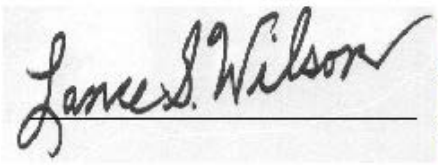
A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) ð or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) ð you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiffôs attorney, whose name and address are: Don Springmeyer
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP,
5594-B Longley Lane, Reno, NV 89511
775-853-6787
dspringmeyer@wrslawyers.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Lance S. Wilson
Clerk

June 6, 2016
Date



UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Abel Cantaro Castillo
vs.
Western Range Association, et al.

STATE OF IDAHO)
:ss
County of Twin Falls)

AFFIDAVIT OF SERVICE

Case No: 3:16-cv-00237

Received by Tenacious Legal Support on 7/27/2016 at 6:21 PM to be served on Western Range Association.

I Sean Capps, being duly sworn, depose and say: I have been duly authorized to make service of the document(s) listed herein in the above mentioned case. I am over the age of 18, and am not a party to or otherwise interested in this matter.

That on 7/28/2016 at 11:58 AM, I executed service of a SUMMONS IN A CIVIL ACTION and COMPLAINT on Western Range Association at 236 River Vista Pl, Ste 301, Twin Falls ID 83301

By Personal Service to: Evan Roth Registered Agent

I declare under penalties of perjury that the information contained herein is correct to the best of my knowledge.

Subscribed and sworn to before me on this _____ day of _____,2016 before me a Notary Public, the affiant personally appeared, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that they executed the same.

Sean Capps

MELISSA CAPPS
Notary Public
State of Idaho

ID: 2872

NOTARY PUBLIC
Residing at Twin Falls, Idaho
Commission Expires: May 15, 2020

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

ABEL CÁNTARO CASTILLO; ALCIDES INGA RAMOS, and those similarly situated,

Plaintiffs,

v.

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

Defendants.

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

FIRST AMENDED COMPLAINT

INTRODUCTION

1. Plaintiffs Abel Cántaro Castillo and Alcides Inga Ramos were paid a shockingly low wage of as little as one or two dollars an hour for their work as shepherds in Nevada. This is well below the minimum wage of $8.25 per hour that these men should have been paid under Nevada law and the $8.25 minimum hourly wage required by the nonimmigrant temporary visa program under which he was employed.

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

3. This illegal pay policy principally manifests in two ways at issue in this case. First, Defendants Western Range Association (WRA) and Mountain Plains Agricultural Service (MPAS) each have policies of setting the wages of all Nevada shepherds, including Plaintiffs, at a rate of as little as $800 per month, despite the fact that this translates to an effective wage rate of between one and two dollars an hour—much less than the Nevada minimum of $8.25 per hour. Defendants El Tejon Sheep Company and Melchor Gragirena adopted and implemented this same illegal pay policy in acting as Mr. Cántaro's joint employers. And Defendants Estill Ranches, and John Estill adopted and implemented this same illegal policy in acting as Mr. Inga Ramos's joint employers.

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

5. Plaintiffs, on their own behalf and those similarly situated, seek damages including

the difference between the lawful hourly wages Defendants should have paid and what they were actually paid under Defendants' illegal pay policies. Plaintiffs also seek statutory and/or liquidated damages and attorneys' fees.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this suit pursuant to 28 U.S.C. § 1331 for the claims brought under the contracts, which require the Court to resolve significant and serious questions of federal law under 8 U.S.C. § 1101(a)(15)(H)(ii)(a) and the regulations promulgated by the Department of Labor at 20 C.F.R. Part 655 Subpart B. It has supplemental jurisdiction over the state-law claims under 28 U.S.C. § 1367.

7. In addition and in the alternative, this Court has jurisdiction over the principal class-action state-law claims against WRA pursuant to 28 U.S.C. § 1332(d) because the matter in controversy for those claims exceeds the sum or value of $5 million, exclusive of interest and costs, and at least one member of the plaintiff class is a citizen of a foreign state or a state different from any defendant. In particular, as described in greater detail below, at least 100 members of the class Mr. Cántaro seeks to represent were underpaid at least two thousand dollars per month for—at the least—a period of over six years, for a total of over $10 million in unpaid wages.[1] Further, as described in greater detail below, approximately 27 of the class Mr. Inga Ramos seeks to represent were underpaid at least two thousand dollars per month for—at the least—a period of over six years, for a total of over $2 million in unpaid wages.[2]

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

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[1] While there were an average of approximately 100 shepherds employed each year, given that many shepherds did not work all six years, many more individuals are members of the class.

[2] While there were an average of approximately 27 shepherds employed each year, given that many shepherds did not work all six years, many more individuals are members of the class.

PARTIES

9. Plaintiff Abel Cántaro is a former shepherd. He worked as a shepherd in California and Nevada from around October 2007 until around June 2014.

10. Plaintiff Alcides Inga Ramos is a former shepherd. He worked as a shepherd in Nevada from around April 2012 until around February 2013.

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

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

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

14. Together, Defendants El Tejon, Mejchor Gragirena, and WRA will be referred to as "WRA Defendants."

15. Defendant Mountain Plains Agricultural Service ("MPAS") is a Wyoming non-profit corporation with its principal place of business at 811 N Glenn Rd, Casper, WY 82601. The MPAS transacts business in Nevada by, among other things, recruiting and employing foreign shepherds, such as Mr. Inga Ramos, who work in Nevada.

16. Defendant Estill Ranches, LLC, ("Estill Ranches") is a Nevada Limited Liability Company with its principal place of business in Gerlach, Nevada.

17. Defendant John Estill is an owner or operator of Estill Ranches, LLC. He also employed Mr. Inga.

18. Together, Defendants Estill Ranches and John Estill will be referred to as the "Estill

Ranch Defendants."

19. Together, Defendants MPAS, Estill Ranches, and John Estill will be referred to as "MPAS Defendants."

STATEMENT OF FACTS

The H-2A Program and the Obligations of H-2A Employers

20. This is a case about the H-2A temporary agricultural worker program, which is administered jointly by the Departments of Labor ("USDOL") and Homeland Security. H-2A workers come to the United States on temporary agricultural visas, commonly referred to as H-2A visas.

21. An agricultural employer in the United States may only employ H-2A workers if the USDOL certifies that: (1) there are insufficient workers available in the United States to perform the work, and (2) the employment of the nonimmigrant temporary aliens will not adversely affect the wages and working conditions of United States workers similarly employed.

22. Agricultural employers or agricultural associations seeking the admission of H-2A workers must first file a temporary labor certification application with the USDOL. 20 C.F.R. § 655.130. This application must include a job offer, commonly referred to as a "clearance order" or "job order," that complies with applicable regulations. 20 C.F.R. § 655.121(a)(1). These regulations establish the minimum benefits, wages, and working conditions that the employer must offer to the employee in order to avoid adversely affecting similarly-situated United States workers. 20 C.F.R. §§ 655.120(a)(2), 655.122, 655.135, and 655.210.

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

24. The H-2A program regulations also specify that H-2A employers must agree to pay their workers the higher of the Adverse Effect Wage Rate (AEWR), the prevailing wage for the work in the geographic area where the work is to be performed, the federal minimum wage, the state minimum wage, the agreed-upon collectively bargained wage rate, or a wage set by judicial order.

Accordingly, if—as is the case here—an hourly minimum wage requirement established by state law requires the payment of a higher wage than a monthly AEWR (in light, for example, of the number of hours that the worker has labored), the H-2A regulations require that the state minimum wage be paid.

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

26. In the contracts they enter into with all H-2A shepherds, including with Plaintiffs. and other Class Members, all Defendants explicitly agree to comply with all H-2A program regulations—including the H-2A program's requirement that an employer pay the state minimum wage if that is higher than the AEWR.

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

28. MPAS Defendants make a similar commitment in job orders, which "serve as the

work contract for workers employed by Mountain Plains Agricultural Service members." Ex. C at 5, and which accordingly require employers to pay a state minimum wage if that wage is higher than a wage set by DOL.

Plaintiff Cántaro's Employment as an H-2A Shepherd

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

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

31. The WRA representative directed how Mr. Cántaro should obtain an H-2A visa to work in the United States and required Mr. Cántaro to take a number of trips from Huancayo to Lima, Peru, to comply with the policies WRA had established for hiring foreign shepherds to work in the United States. These policies included a WRA-ordered medical exam that was a condition of employment, a WRA-ordered review of Mr. Cántaro's criminal records, and a WRA-directed interview to determine if Mr. Cántaro had the skills necessary to work as a shepherd.

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

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

34. Defendant El Tejon was also a party to this WRA-prepared contract. Upon information and belief, based on it being the policy of WRA, Defendant El Tejon signed a contract similar to the one attached here as Exhibit B. That contract identifies Defendant El Tejon as Mr. Cántaro's employer and obligated Defendant El Tejon to comply with a number of contractual

provisions, such as paying Mr. Cantaro's wages, keeping records of his employment and wages, and providing him with tools and equipment to perform his work. *See* Ex. B.

35. All shepherds employed by Defendant WRA are subject to the same employment policies as those described above because all WRA shepherds sign the same or substantially similar employment contracts as a condition of working for Defendant WRA. *See* Ex. B. The terms of WRA employment contracts are described in *Ruiz v. Fernandez*, 949 F. Supp. 2d 1055, 1063-71 (E.D. Wash. 2013), where another court in this Circuit concluded that Defendant WRA was a joint employer of shepherds such as Mr. Cántaro.

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

37. Defendants El Tejon and Gragirena also entered into employment agreements with Plaintiff Cántaro.

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

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

40. Defendant Gragirena also gave Mr. Cántaro detailed instructions to be followed throughout the course of a workweek. For example, Defendant Gragirena would tell Mr. Cántaro to graze his sheep on one specific plot of land for a specific period of time and then asked that Mr.

Cántaro move to a specific different plot of land. Similarly, Defendant Gragirena would communicate by phone with Mr. Cántaro and ask him to make sure to move his sheep to a specific meeting point in the mountains near Elko on a specific day, in preparation for the sale of the lambs.

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

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

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

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

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

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

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

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

49. During every week of his employment by the WRA Defendants, including for

example, the time period of June 1-30, 2013, Mr. Cántaro worked well over 40 hours per week, and was on duty in his workplace 24 hours per day, seven days per week pursuant to the terms of the job order and Defendants' requirement that he remain near the flock and guard them from predators. Thus, during each week in the month of June 2013, Mr. Cántaro worked 168 hours, but he was paid only approximately $1422.55 for that entire month.[3] This monthly wage amounts to $331.93 per week, which works out to only $1.98 per hour.

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

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

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

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

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

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

56. By failing to provide medical attention or adequate living conditions, the WRA Defendants violated numerous laws, including the H-2A regulations designed to protect H-2A workers. The WRA Defendants accordingly breached the employment agreements they entered into

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[3] As noted above, he might have been paid a little more than this sum, and Plaintiffs will confirm this through discovery.

with Mr. Cántaro.

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

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

Plaintiff Inga Ramos's Employment as an H-2A Shepherd

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

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

61. The MPAS representative directed how Mr. Inga should obtain an H-2A visa to work in the United States and required Mr. Inga to take a number of trips from near Huancayo, Peru, to Lima, Peru, to comply with the policies MPAS had established for hiring foreign shepherds to work in the United States. These policies included visiting a DHL office on various days to send documents to or receive documents from the United States embassy. They also included instructions on how and when Mr. Inga would travel to the United States and types of documents or other items he would need at various stages of the visa-acquisition and travel process.

62. In the United States, Mr. Inga was employed by one particular MPAS ranch, Defendant Estill Ranches, LLC ("Estill Ranches"), which is owned and managed by Defendant John Estill.

63. Subject to confirmation through discovery, when Mr. Inga arrived at Estill Ranches,

Mr. Inga signed another contract, which was prepared by Defendant MPAS, which set additional terms of employment with which Mr. Inga had to comply.

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

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

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

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

68. Defendants Estill Ranches and John Estill also employed Mr. Inga.

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

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

71. Defendant John Estill would also bring Mr. Inga his checks on pay days or have an

agent perform this same function on their behalf.

72. Mr. Inga worked for the MPAS Defendants from April 2012 until February 2013. He believes he worked all of this time in or near Gerlach, Nevada.

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

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

75. During all of his time as a shepherd, Mr. Inga almost never declined work and was often engaged by Defendants to be on duty in his workplace 24 hours a day, seven days a week.

76. During every week of his employment by Defendants, including for example, the time period of January 1-31, 2013, Mr. Inga worked well over 40 hours per week, and was on duty in his workplace 24 hours per day, seven days per week pursuant to the terms of the job order and the MPAS Defendants' requirement that he remain near the flock and guard them from predators. Thus, during each week in the month of June 2013, Mr. Inga worked 168 hours, but he was paid only approximately $800 for that entire month. This monthly wage amounts to $184.76 per week, which works out to only $1.09 per hour.

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

78. Mr. Inga was also living in dangerous and unsanitary conditions when he was working for the MPAS Defendants. He had insufficient access to water, adequate shelter, and a balanced diet. In particular, Mr. Inga lived in a camper with insufficient heating and no place to store any perishable items. The camper was also insufficiently insulated and had holes through

which rodents and wind would pass. The MPAS Defendants also provided Mr. Inga with insufficient food: he often mainly ate potatoes and sometimes had to share his food with his sheep dogs, as they had insufficient food themselves.

79. By failing to provide adequate living conditions, the MPAS Defendants violated numerous laws, including the H-2A regulations designed to protect H-2A workers. The MPAS Defendants accordingly breached the employment agreements they entered into with Mr. Inga.

80. In or around February 2013, Mr. Inga had had enough of the bad conditions. In part because of the bad conditions and the poor pay, Mr. Inga ended his employment relationship with the MPAS Defendants.

81. Mr. Inga was not paid any wages for approximately the last 15 days of his work with the MPAS Defendants.

The H-2A Visa Program for Shepherds and Defendants' Wage Policies

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

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

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

85. The Nevada state minimum wage for the work performed by the shepherds in Nevada is $8.25.

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

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

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

89. Defendants Estill Ranches and John Estill adopted and implemented this same policy and practice of paying per month, based on the monthly AEWR established by the USDOL.

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

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

92. The existence of these policies is evident from a review of the USDOL's Fiscal Year 2014 and 2015 "Disclosure Data," which is a data set that provides information about each H-2A Visa Application submitted to the USDOL by Defendants.

93. The data for Fiscal Years 2014 and 2015 cover the period from October 1, 2013 to September 30, 2015. This is the most recent and comprehensive data available on H-2A certifications.

94. The Disclosure Data is accessible by clicking on the "Disclosure Data" tab available

at http://www.foreignlaborcert.doleta.gov/performancedata.cfm. To access the Fiscal Year 2014 or 2015 data, download a Microsoft Excel file available for H-2A workers for Fiscal Year 2014 or 2015 under this tab.

95. The 2014 and 2015 data reveal that the minimum wage offered to all WRA shepherds and all MPAS shepherds in Nevada is uniformly $800 per month.[4] The wage offered to all California WRA shepherds is uniformly the AEWR set by the USDOL for that state for the relevant period of time (*i.e.*, $1422.55, $1600.34, or $1777.98 per month).

96. Mr. Cántaro was offered approximately the AEWR established by the USDOL for California.

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

98. Mr. Inga was offered approximately the AEWR established by the USDOL for Nevada.

99. Mr. Inga was paid approximately $800 per month—or slightly more than this sum—for every month that he worked as a shepherd for the MPAS Defendants. (Mr. Inga will have to determine the exact amount he was paid through discovery as his employment records are in the possession of the MPAS Defendants.)

100. Finally, in addition to Defendants MPAS and WRA adhering to the policy described

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[4] At times, DOL has erroneously reported the offered wage for shepherds in Nevada, by noting in the Disclosure Data that a shepherd is being paid a higher wage than $800 per month (for example, sometimes Nevada shepherds are erroneously reported as earning a lower wage of $750 per month, which until recently was the wage earned by shepherds). This error is evident based on a review of the underlying H-2A applications associated with each record contained in the Disclosure Data. One can view this underlying data by matching the ETA case number included with each record in the disclosure data and reviewing the individual H-2A applications associated with these numbers. These H-2A records are viewable at https://icert.doleta.gov/, where one can 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.

in ¶¶ 87-91 for all the shepherds each has employed in Nevada, Defendants El Tejon and Gragirena have adopted and implemented this same policy for all shepherds employed by Defendant Gragirena's ranch who worked in Nevada, paying them the California AWER both for months when they worked in California and for months when they worked in Nevada, where state law mandated higher pay. Finally, Defendants Estill Ranches and John Estill adopted and implemented this same policy for all shepherds employed at Estill Ranch in Nevada.

NEVADA MINIMUM WAGE

101. As noted above, Plaintiffs worked in Nevada for Defendants.

102. Plaintiffs were paid illegally low wages for their work in Nevada. Even though Mr. Cantaro was paid approximately $1422.55 per month (or slightly more than this sum), he should have been paid much more than this amount based on the number of compensable hours he worked. Even though Mr. Inga was paid approximately $800 per month, he should have been paid much more than this amount based on the number of compensable hours worked.

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

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

105. Upon information and belief, foreign shepherds, including Plaintiffs, employed by either the WRA or MPAS Defendants have not been covered by medical insurance meeting the requirements of Section 16 of the Nevada Constitution.

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

107. In order for the wage of $1422.55 per month to be a lawful payment, Mr. Cántaro would have had to have worked under 40 hours per week and, in order for $800 per month to be a lawful payment, Mr. Inga would have had to have worked well under 40 hours in a week. But both

Plaintiffs worked much more than 40 hours a week: they were engaged by the WRA Defendants and the MPAS Defendants respectively to work 24 hours a day, seven days per week under the terms of the job orders.

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

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

RULE 23 CLASS ALLEGATIONS

WRA Nevada Classes

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

111. He brings these claims on behalf of the "WRA Nevada Class," which, pending any modifications necessitated by discovery, is defined as follows:

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

112. Plaintiff Cántaro defines the "WRA Former Employee Sub-Class" as follows:

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

113. The members of the putative classes are so numerous that joinder of all potential Class Members is impracticable. Plaintiff Cántaro does not know the exact size of the classes since that information is within the control of WRA. However, according to publicly available data from the USDOL (namely, the aforementioned "Disclosure Data"), Defendant WRA employed an average of more than 100 shepherds in Nevada in each year from 2010 through 2016.

114. There are questions of law or fact common to the classes that predominate over any individual issues that might exist—including, (a) whether the WRA was obligated to pay shepherds working in Nevada at least Nevada minimum wage instead of paying the monthly wage established

by the USDOL; (b) whether WRA fulfilled its obligation to pay the Nevada minimum wage; (c) whether any health insurance was offered by WRA to putative Class Members which qualified for the lower, $7.25/hour minimum wage; (d) whether WRA was a joint employer of the H-2A shepherds; (e) whether the WRA paid plaintiff for all compensable hours; and (f) whether the WRA paid all wages when due following termination of employment of shepherds in Nevada.

115. The claims asserted by Mr. Cántaro are typical of the claims of all of the potential Class Members because all potential Class Members allege they were paid less than the applicable Nevada minimum wage by Defendants, that WRA was their joint employer, and that they worked 168 hours per week (24 hours/day, seven days/week).

116. Mr. Cántaro also suffered from the same illegally low wage as the class.

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

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

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

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

121. Mr. Cántaro is unaware of any members of the putative class who are interested in presenting their claims in a separate action, though he is aware of a separate class action based on Nevada law against another employer of shepherds: Mountain Plains Agricultural Service. *See Llacua et al v. Western Range Association et al.*, 1:15-cv-01889-REB-CBS (D. Colo. 2015). This other case contains no Nevada-based wage claims against WRA.

122. Mr. Cántaro is unaware of any pending litigation commenced by members of the

Class concerning the instant controversies.

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

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

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

El Tejon Classes

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

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

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

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

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

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

130. The members of the putative classes are so numerous that joinder of all potential 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 data from the USDOL (namely, the aforementioned "Disclosure Data"), Defendants El Tejon and Gragirena employed an average of eight shepherds per year for a total of at least 54 shepherds during

the statutory period, if new shepherds came each year, and likely at least thirty 30 shepherds if some returned repeatedly to El Tejon.

131. There are questions of law or fact common to the classes that predominate over any individual issues that might exist—including (a) whether Defendants El Tejon and Gragierena were obligated to pay Nevada shepherds at least the Nevada minimum wage instead a of paying the monthly wage floor established by the USDOL; (b) whether Defendants El Tejon and Gragierena fulfilled their obligation to pay the Nevada minimum wage; (c) whether any health insurance was offered by Defendants El Tejon and Gragierena to putative Class Members which qualified for the lower, $7.25/hour minimum wage; (d) whether Defendants El Tejon and Gragierena were joint employers, with WRA, of the H-2A shepherds; (e) whether Defendants El Tejon and Gragierena paid plaintiffs for all compensable hours; and (f) whether Defendants El Tejon and Gargierena are jointly and severally liable for WRA's violations.

132. The claims asserted by Mr. Cántaro are typical of the claims of all of the potential Class Members because all potential Class Members allege they were paid less than the Nevada minimum wage by Defendants El Tejon and Gragirena.

133. Mr. Cántaro also suffered from the same illegally low wage as the class.

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

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

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

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

Gragirena.

138. Mr. Cántaro is unaware of any members of the putative class who are interested in presenting their claims in a separate action, though he is aware of a separate class action based on Nevada law against another employer of shepherds: Mountain Plains Agricultural Service. *See Llacua et al v. Western Range Association et al.*, 1:15-cv-01889-REB-CBS (D. Colo. 2015). This other case contains no Nevada-based wage claims against the WRA or El Tejon Defendants.

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

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

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

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

MPAS Nevada Classes

143. Plaintiff Inga asserts Counts XI to XV against Defendant MPAS as a Class Action pursuant to Federal Rule of Civil Procedure 23.

144. He brings these claims on behalf of the "MPAS Nevada Class," which, pending any modifications necessitated by discovery, is defined as follows:

> All persons whom MPAS employed as shepherds through the H-2A program, who worked in Nevada at any time during the applicable statute of limitations.[5]

[5] Plaintiffs assert that the statute of limitations is tolled for this class on its Nevada minimum wage claim based on *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974) and the Nevada minimum wage claim brought against MPAS in *Llacua et al v. Western Range Association et al.*, No. 15-cv-01889-REB-CBS (D. Colo. 2015).

145. Plaintiff Inga defines the "MPAS Former Employee Sub-Class" as follows:

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

146. The members of the putative classes are so numerous that joinder of all potential Class Members is impracticable. Plaintiff Inga does not know the exact size of the classes since that information is within the control of MPAS. However, according to publicly available data from the USDOL (namely, the aforementioned "Disclosure Data"), Defendant MPAS employed an average of more than 27 shepherds in Nevada in each year from 2011 through 2016.

147. There are questions of law or fact common to the classes that predominate over any individual issues that might exist—including, (a) whether the MPAS was obligated to pay shepherds working in Nevada at least Nevada minimum wage instead of paying the monthly wage established by the USDOL; (b) whether MPAS fulfilled its obligation to pay the Nevada minimum wage; (c) whether any health insurance was offered by MPAS to putative Class Members which qualified for the lower, $7.25/hour minimum wage; (d) whether MPAS was a joint employer of the H-2A shepherds; (e) whether the MPAS paid plaintiff for all compensable hours; and (f) whether the MPAS paid all wages when due following termination of employment of shepherds in Nevada.

148. The claims asserted by Mr. Inga are typical of the claims of all of the potential Class Members because all potential Class Members allege they were paid less than the applicable Nevada minimum wage by Defendants, that MPAS was their joint employer, and that they worked 168 hours per week (24 hours/day, seven days/week).

149. Mr. Inga also suffered from the same illegally low wage as the class.

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

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

152. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because numerous identical lawsuits alleging similar or identical causes of action would not serve the interests of judicial economy. It is also superior because the

putative Class Members lack the resources and language ability to locate and retain competent counsel.

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

154. Mr. Inga is aware of a separate class action based on Nevada law against Mountain Plains Agricultural Service. *See Llacua et al v. Western Range Association et al.*, 1:15-cv-01889-REB-CBS (D. Colo. 2015). Mr. Inga's understanding is that the Nevada minimum wage claim in that case is likely to soon be dismissed.

155. Mr. Inga is unaware of any other pending litigation commenced by members of the Class concerning the instant controversies.

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

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

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

Estill Ranches Classes

159. Plaintiff Inga also asserts Counts XVI to XX as a Class Action pursuant to Federal Rule of Civil Procedure 23.

160. In particular, he asserts Counts XVI to XX against Defendant Estill Ranches. He asserts Counts XVI and XX against all the Estill Defendants.

161. Pending any modifications necessitated by discovery, Plaintiff defines the "Estill Ranches Class" as follows:

> All persons whom Defendants Estill Ranches and John Estill employed through the H2A program as shepherds in Nevada at any time during the applicable statute of limitations.

162. Pending any modifications necessitated by discovery, Plaintiff defines the "Estill Ranches Former Employee Sub-Class" as follows:

> All persons whom Defendants Estill Ranches and John Estill employed through the H2A program as shepherds in Nevada at any time during the applicable statute of limitations and who are no longer employed by Defendants Estill Ranches and John Estill.

163. The members of the putative classes are so numerous that joinder of all potential Class Members is impracticable. Plaintiff Inga does not know the exact size of the classes, since that information is within the control of the Defendants. However, according to publicly available data from the USDOL (namely, the aforementioned "Disclosure Data"), Defendants Estill Ranches employed an average of eleven shepherds per year (through a combination of MPAS and WRA), for a total of over 70 shepherds during the statutory period, if new shepherds came each year, and likely at least 30 shepherds if some returned repeatedly to Estill Ranches during the applicable statute of limitations.

164. There are questions of law or fact common to the classes that predominate over any individual issues that might exist—including (a) whether the Estill Ranch Defendants were obligated to pay Nevada shepherds at least the Nevada minimum wage instead a of paying the monthly wage floor established by the USDOL; (b) whether the Estill Ranch Defendants fulfilled their obligation to pay the Nevada minimum wage; (c) whether any health insurance was offered by the Estill Ranch Defendants to putative Class Members which qualified for the lower, $7.25/hour minimum wage; (d) whether the Estill Ranch Defendants were joint employers, with MPAS, of the H-2A shepherds; (e) whether the Estill Ranch Defendants paid plaintiffs for all compensable hours; and (f) whether the Estill Ranch Defendants are jointly and severally liable for MPAS's violations.

165. The claims asserted by Mr. Inga are typical of the claims of all of the potential Class Members because all potential Class Members allege they were paid less than the Nevada minimum wage by Defendants Estill Ranches and John Estill.

166. Mr. Inga also suffered from the same illegally low wage as the class.

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

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

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

170. The prosecution of separate actions by the individual potential Class Members would create a risk of inconsistent or varying adjudications with respect to individual potential Class Members that would establish incompatible standards of conduct for Defendants Estill Ranches and John Estill.

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

172. Mr. Inga is unaware of any pending litigation commenced by members of the class concerning the instant controversies.

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

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

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

COUNT ONE

Failure to Pay Minimum Wages in Violation of the Nevada Constitution

(On Behalf of Plaintiff Cántaro and the WRA Nevada Class Against Defendant WRA)

176. Plaintiff incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein. As noted above, Plaintiff Cántaro asserts this count on his own behalf and on behalf of the WRA Nevada Class pursuant to Fed. R. Civ. P. 23.

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

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

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

COUNT TWO

Failure to Pay Minimum Wages in Violation of the Nevada Constitution

(On Behalf of Plaintiff Cántaro and the El Tejon Class Against Defendants El Tejon and Gragirena)

180. Plaintiff incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein. As noted above, Plaintiff Cántaro asserts this count on his own behalf and on behalf of the El Tejon Class pursuant to Fed. R. Civ. P. 23.

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

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

183. Although not necessary to obtain fees under the Nevada Constitution, Plaintiff Cántaro sent a written demand for wages at least five days prior to bringing this claim and is entitled

to attorneys' fees and costs if he prevails in this action.

COUNT THREE

Breach of Contract of Quasi-Contract

(Plaintiff Cántaro and the WRA Nevada Class Against Defendant WRA)

184. Plaintiff incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein.

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

186. Plaintiff and the WRA Nevada Class entered into contracts with the WRA that explicitly incorporated the requirements of 20 C.F.R. §§ 655.122 and 655.210 through the H-2A Applications and job orders, which constitute job offers accepted by Plaintiff and those similarly situated. In the alternative, Plaintiff and members of the WRA Nevada Class entered into contracts with WRA, which were drafted by WRA, and which included as implied terms of the contracts the requirements of 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210.

187. These contracts provide that each worker employed by WRA will be paid the higher of the monthly AEWR, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, in effect at the time work is performed, whichever is highest, for every month of the job order period or portion thereof. WRA failed to pay the required wage when they failed to pay the minimum wage required by Article 15, section 16 of the Nevada Constitution for each hour worked, a violation of Nevada state law, the above cited regulations, and the employment contract.

188. As a result of the breach of contract, the Plaintiff and the WRA Nevada Class suffered damages for the relevant time period alleged herein.

COUNT FOUR

Promissory Estoppel

(Plaintiff Cántaro and the WRA Nevada Class Against Defendant WRA)

189. Plaintiff incorporates by reference paragraphs 1 to 175 of this Complaint as if fully

re-written herein.

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

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

192. Plaintiff Cántaro and the WRA Nevada Class relied on this promise to their detriment by traveling to WRA member ranches to work as shepherds, where the WRA and its members illegally failed to pay wages as promised by WRA. Plaintiff Cántaro and the WRA Nevada Class are entitled to damages, including all wages owed but not paid for the relevant time period alleged herein.

COUNT FIVE

Unjust Enrichment and Quantum Meruit

(Plaintiff Cántaro and the WRA Nevada Class Against Defendant WRA)

193. Plaintiff Cántaro incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein.

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

195. In the alternative to a contract claim, Plaintiff Cántaro and the WRA Nevada Class are also entitled to relief in unjust enrichment and quantum meruit. A benefit was conferred on the WRA when the Plaintiff and the WRA Nevada Class performed work as specified by the WRA for which the WRA failed to pay the required compensation in violation of 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210.

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

197. Plaintiff Cántaro and the WRA Nevada Class reasonably expected to be paid all wages owed when due under 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210, and those wages were not paid according to that expectation.

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

COUNT SIX

Breach of Contract or Quasi Contract

(Plaintiff Cántaro and the El Tejon Class Against Defendant El Tejon)

199. Plaintiff incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein.

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

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

202. These contracts provide that each worker employed by Defendant El Tejon will be paid the higher of the monthly AEWR (adverse effect wage rate), the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, in effect at the time work is performed, whichever is highest, for every month of the job order period or portion thereof. Defendant El Tejon failed to pay the required wage when it failed to pay the minimum wage required by Article 15, section 16 of the Nevada Constitution for each hour worked, a violation of Nevada state law and of the above cited regulations.

203. As a result of the breach of contract, the Plaintiff and the El Tejon Class suffered

damages for the relevant time period alleged herein.

COUNT SEVEN

Promissory Estoppel

(Plaintiff Cántaro and the El Tejon Class Against Defendant El Tejon)

204. Plaintiff incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein.

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

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

207. Plaintiff Cántaro and the El Tejon Class relied on this promise to their detriment by traveling to the ranch operated by Defendant El Tejon to work as shepherds, where Defendant El Tejon illegally failed to pay wages as promised by Defendant El Tejon. Plaintiff Cántaro and the El Tejon Class are entitled to damages, including all wages owed but not paid for the relevant time period alleged herein.

COUNT EIGHT

Unjust Enrichment and Quantum Meruit

(Plaintiff Cántaro and the El Tejon Class Against Defendant El Tejon)

208. Plaintiff Cántaro incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein.

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

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

655.122 and 20 C.F.R. § 655.210.

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

212. Plaintiff Cántaro and the El Tejon Class reasonably expected to be paid all wages owed when due under 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210 and those wages were not.

213. As a result, Plaintiff Cántaro and the El Tejon Class are entitled to the full value of the services provided and Defendant El Tejon should be disgorged of the illegally withheld wages for the relevant time period alleged herein.

COUNT NINE

Failure to Pay Separated Employees Wages When Due

(On Behalf of Plaintiff Cántaro and the WRA Former Employee Sub-Class Against Defendant WRA)

214. Plaintiff Cántaro incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein.

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

216. Mr. Cántaro and many other members of the WRA Former Employee Sub-Class are no longer employed by WRA, whether due to resignation or termination.

217. N.R.S. § 608.140 provides that an employee has a private right of action for unpaid wages.

218. N.R.S. § 608.020 provides that "[w]henever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately."

219. N.R.S. § 608.040(1)(a-b), in relevant part, impose a penalty on an employer who

fails to pay a discharged or quitting employee: "Within 3 days after the wages or compensation of a discharged employee becomes due; or on the day the wages or compensation is due to an employee who resigns or quits, the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit, or was discharged until paid for 30-days, whichever is less."

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

221. By failing to pay Plaintiff and all members of the WRA Former Employee Sub-Class for all hours worked in violation of state law, Defendant WRA has failed to timely remit all wages due and owing to Plaintiff and all members of the Sub-Class.

222. Despite demand, Defendant willfully refuses and continues to refuse to pay Plaintiff and all WRA Former Employee Sub-Class Members who are former employees their full wages due and owing to them.

223. Wherefore, Plaintiff demands thirty (30) days wages under N.R.S. 608.140 and 608.040, and an additional thirty (30) days wages under N.R.S. 608.140 and 608.050, for all members of the WRA Former Employee Sub-Class, together with attorneys' fees, costs, and interest as provided by law.

COUNT TEN

Failure to Pay Separated Employees Wages When Due

(On Behalf of Plaintiff Cántaro and the El Tejon Former Employee Class Against Defendant El Tejon and Gragirena)

224. Plaintiff Cántaro incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein.

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

226. Mr. Cántaro and many other Class Members are no longer employed by El Tejon and Gragirena, whether due to resignation or termination.

227. N.R.S. 608.140 provides that an employee has a private right of action for unpaid wages.

228. N.R.S. 608.020 provides that "[w]henever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately."

229. N.R.S. 608.040(1)(a-b), in relevant part, imposes a penalty on an employer who fails to pay a discharged or quitting employee: "Within 3 days after the wages or compensation of a discharged employee becomes due; or on the day the wages or compensation is due to an employee who resigns or quits, the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit, or was discharged until paid for 30-days, whichever is less."

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

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

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

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

COUNT ELEVEN

Failure to Pay Minimum Wages in Violation of the Nevada Constitution

(On Behalf of Plaintiff Inga and the MPAS Nevada Class Against Defendant MPAS)

234. Plaintiff incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein. As noted above, Plaintiff Inga asserts this count on his own behalf and on behalf of the MPAS Nevada Class pursuant to Fed. R. Civ. P. 23.

235. MPAS employed Plaintiff Inga and other members of the MPAS Nevada Class in Nevada during the relevant statute of limitations and paid him less than the Nevada minimum wage.

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

COUNT TWELVE

Promissory Estoppel

(Plaintiff Inga and the MPAS Nevada Class Against Defendant MPAS)

237. Plaintiff incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein.

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

239. In the alternative to a contract claim, Plaintiff Inga and the MPAS Nevada Class are entitled to relief in promissory estoppel. The MPAS promised the Plaintiff and members of the MPAS Nevada Class that it would adhere to 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210.

240. Plaintiff Inga and the MPAS Nevada Class relied on this promise to their detriment by traveling to MPAS member ranches to work as shepherds, where the MPAS and its members illegally failed to pay wages as promised by MPAS. Plaintiff Inga and the MPAS Nevada Class are entitled to damages, including all wages owed but not paid for the relevant time period alleged herein.

COUNT THIRTEEN

Unjust Enrichment and Quantum Meruit

(Plaintiff Inga and the MPAS Nevada Class Against Defendant MPAS)

241. Plaintiff Inga incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein.

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

243. In the alternative to a contract claim, Plaintiff Inga and the MPAS Nevada Class are also entitled to relief in unjust enrichment and quantum meruit. A benefit was conferred on the MPAS when the Plaintiff and the MPAS Nevada Class performed work as specified by the MPAS for which the MPAS failed to pay the required compensation in violation of 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210.

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

245. Plaintiff Inga and the MPAS Nevada Class reasonably expected to be paid all wages owed when due under 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210, and those wages were not paid according to that expectation.

246. As a result, Plaintiff Inga and the MPAS Nevada Class are entitled to the full value of the services provided, and the MPAS should be disgorged of the illegally withheld wages for the relevant time period alleged herein.

COUNT FOURTEEN

Breach of Contract of Quasi-Contract

(Plaintiff Inga and the MPAS Nevada Class Against Defendant MPAS)

247. Plaintiff incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein.

248. As set forth above, Plaintiff Inga asserts this count on his own behalf and on behalf of

all those similarly situated pursuant to Fed. R. Civ. P. 23.

249. Plaintiff and the MPAS Nevada Class entered into contracts with the MPAS that explicitly incorporated the requirements of 20 C.F.R. §§ 655.122 and 655.210 through the H-2A Applications and job orders, which constitute job offers accepted by Plaintiff and those similarly situated. In the alternative, Plaintiff and members of the MPAS Nevada Class entered into contracts with MPAS, which were drafted by MPAS, and which included as implied terms of the contracts the requirements of 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210.

250. These contracts provide that each worker employed by MPAS will be paid the higher of the monthly AEWR, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, in effect at the time work is performed, whichever is highest, for every month of the job order period or portion thereof. MPAS failed to pay the required wage when they failed to pay the minimum wage required by Article 15, section 16 of the Nevada Constitution for each hour worked, a violation of Nevada state law, the above cited regulations, and the employment contract.

251. As a result of the breach of contract, the Plaintiff and the MPAS Nevada Class suffered damages for the relevant time period alleged herein.

COUNT FIFTEEN

Failure to Pay Separated Employees Wages When Due

(On Behalf of Plaintiff Inga and the MPAS Former Employee Sub-Class Against Defendant MPAS)

252. Plaintiff Inga incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein.

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

254. Mr. Inga and members of the MPAS Former Employee Sub- Class are no longer employed by MPAS, whether due to resignation or termination.

255. N.R.S. § 608.140 provides that an employee has a private right of action for unpaid wages.

256. N.R.S. § 608.020 provides that "[w]henever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately."

257. N.R.S. § 608.040(1)(a-b), in relevant part, impose a penalty on an employer who fails to pay a discharged or quitting employee: "Within 3 days after the wages or compensation of a discharged employee becomes due; or on the day the wages or compensation is due to an employee who resigns or quits, the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit, or was discharged until paid for 30-days, whichever is less."

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

259. By failing to pay Plaintiff and all members of the MPAS Former Employee Sub-Class who are former employees for all hours worked in violation of state law, Defendant MPAS has failed to timely remit all wages due and owing to Plaintiff and all members of the Sub-Class.

260. Wherefore, Plaintiff demands thirty (30) days wages under N.R.S. 608.140 and 608.040, and an additional thirty (30) days wages under N.R.S. 608.140 and 608.050, for all members of the MPAS Former Employee Sub-Class, together with attorneys' fees, costs, and interest as provided by law.

COUNT SIXTEEN

Failure to Pay Minimum Wages in Violation of the Nevada Constitution

(On Behalf of Plaintiff Inga and the Estill Class Against Defendants Estill Ranches and John Estill)

261. Plaintiff incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein. As noted above, Plaintiff Inga asserts this count on his own behalf and on behalf of the Estill Ranches Class pursuant to Fed. R. Civ. P. 23.

262. Defendants Estill Ranches and John Estill employed Plaintiff Inga and members of

the Estill Ranches Class in Nevada during the relevant statute of limitations and paid him less than the Nevada minimum wage.

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

COUNT SEVENTEEN
Breach of Contract or Quasi Contract

(Plaintiff Inga and the Estill Ranches Class Against Defendant Estill Ranches)

264. Plaintiff incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein.

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

266. Plaintiff and the Estill Ranches Class entered into contracts with Defendant Estill Ranches that explicitly incorporated the requirements of 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210 through the H-2A Applications and job orders, which constitute job offers accepted by Plaintiff and those similarly situated. In the alternative, Plaintiff and the Estill Ranches Class entered into contracts with Defendant Estill Ranches that included as implied terms of the contracts the requirements of 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210.

267. These contracts provide that each worker employed by Defendant Estill Ranches will be paid the higher of the monthly AEWR (adverse effect wage rate), the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, in effect at the time work is performed, whichever is highest, for every month of the job order period or portion thereof. Defendant Estill Ranches failed to pay the required wage when it failed to pay the minimum wage required by Article 15, section 16 of the Nevada Constitution for each hour worked, a violation of Nevada state law and of the above cited regulations.

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

COUNT EIGHTEEN
Promissory Estoppel

(Plaintiff Inga and the Estill Ranches Class Against Defendant Estill Ranches)

269. Plaintiff incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein.

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

271. In the alternative to a contract claim, Plaintiff Inga and the Estill Ranches Class are entitled to relief in promissory estoppel. Defendant Estill Ranches promised Plaintiff Inga and the Estill Ranches Class that it would adhere to 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210.

272. Plaintiff Inga and the Estill Ranches Class relied on this promise to their detriment by traveling to the ranch operated by Defendant Estill Ranches to work as shepherds, where Defendant Estill Ranches illegally failed to pay wages as promised by Defendant Estill Ranches. Plaintiff Inga and the Estill Ranches Class are entitled to damages, including all wages owed but not paid for the relevant time period alleged herein.

COUNT NINETEEN
Unjust Enrichment and Quantum Meruit

(Plaintiff Inga and the Estill Ranchces Class Against Defendant Estill Ranches)

273. Plaintiff Inga incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein.

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

275. In the alternative to a contract claim, Plaintiff Inga and the Estill Ranches Class are also entitled to relief in unjust enrichment and quantum meruit. A benefit was conferred on Defendant Estill Ranches when the Plaintiff and the Estill Ranches Class performed work as specified by Defendant Estill Ranches for which Defendant Estill Ranches failed to pay the required compensation in violation of 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210.

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

277. Plaintiff Inga and the Estill Ranches Class reasonably expected to be paid all wages owed when due under 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210 and those wages were not.

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

COUNT TWENTY

Failure to Pay Separated Employees Wages When Due

(On Behalf of Plaintiff Inga and the Estill Ranches Former Employee Sub-Class Against Defendants Estill Ranches and John Estill)

279. Plaintiff Inga incorporates by reference paragraphs 1 to 175 of this Complaint as if fully re-written herein.

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

281. Mr. Inga and many other Class Members are no longer employed by Estill Ranches and John Estill, whether due to resignation or termination.

282. N.R.S. 608.140 provides that an employee has a private right of action for unpaid wages.

283. N.R.S. 608.020 provides that "[w]henever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately."

284. N.R.S. 608.040(1)(a-b), in relevant part, imposes a penalty on an employer who fails to pay a discharged or quitting employee: "Within 3 days after the wages or compensation of a discharged employee becomes due; or on the day the wages or compensation is due to an employee

who resigns or quits, the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit, or was discharged until paid for 30-days, whichever is less."

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

286. By failing to pay Plaintiff and all members of the Estill Ranches Former Employee Sub-Class for all hours worked in violation of state law, Defendants Estill Ranches and John Estill have failed to timely remit all wages due and owing to Plaintiff and all members of the Estill Ranches Former Employee Sub-Class.

287. Wherefore, Plaintiff demands thirty (30) days wages under N.R.S. 608.140 and 608.040, and an additional thirty (30) days wages under N.R.S. 608.140 and 608.050, for all members of the Estill Ranches Former Employee Sub-Class, together with attorneys' fees, costs, and interest as provided by law.

PRAYER FOR RELIEF

Plaintiffs respectfully requests that judgment be entered in their favor and in favor of those similarly situated and that this Court:

1. Declare Defendants in violation of each of the counts set forth above;
2. Certify and maintain this action as a class action, with Plaintiff Cántaro as designated class representative for the WRA and El Tejon Classes, 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: October 3, 2016

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

SECOND AMENDED COMPLAINT

INTRODUCTION

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

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

3. This illegal pay policy principally manifests in two ways at issue in this case. First, Defendants Western Range Association ("WRA") and Mountain Plains Agricultural Service ("MPAS") each have policies of setting the wages of all Nevada shepherds, including Plaintiffs Cántaro and De La Cruz, at a rate of as little as $800 per month, despite the fact that this translates to an effective wage rate of between one and two dollars an hour—much less than the Nevada

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[1] In dismissing the First Amended Complaint, the Court held that the statute of limitations for Plaintiffs' contract claims for failure to pay minimum wages is the two-year period set out in Nevada's Minimum Wage Amendment, not the six-year period for state contract claims. Doc. No. 107, at 16-17. An interlocutory appeal on this issue is not available. *See Est. of Kennedy v. Bell Helicopter Textron, Inc.*, 283 F.3d 1107, 1111 (9th Cir. 2002). Because Plaintiff Alcides Inga Ramos ended his employment outside of the two-year statute of limitations, he cannot succeed on his contract claims against Defendants Estill Ranches or MPAS based on failure to pay minimum wage absent reconsideration of this ruling or reversal on appeal. However, Plaintiff Inga (along with Plaintiffs Cántaro and De La Cruz) has added contract claims for failure to pay costs associated with 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.

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

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

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

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

JURISDICTION AND VENUE

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

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

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

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[2] According to "Disclosure Data" from the Department of Labor, accessible by clicking on the "Disclosure Data" tab available at http://www.foreignlaborcert.doleta.gov/performancedata.cfm, WRA certified 173 herders to work for Nevada ranches in 2014, 153 in 2015, 147 in 2016 and 98 in 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.

[3] Despite the fact that Mr. Cántaro was paid the higher California AEWR rate of approximately $1,422.55 per month rather than $800 per month, he was certified as a California 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

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[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.

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

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

11. Using the same calculations as those used above for WRA, MPAS herders claim $7,319,415.10 in lost wages. This damages calculation does not include Plaintiffs' contract claims for failure to pay costs associated with obtaining labor certifications. *See* infra at ¶ 29. The calculation also does not include damages for claims by former WRA herders for failure to pay 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

[5] MPAS certified 43 Nevada herders in 2014, 33 in 2015, 32 in 2016, and 26 in 2017. *See* "Disclosure Data," available at http://www.foreignlaborcert.doleta.gov/performancedata.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.

[6] As with the WRA data, 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 the applicable statute of limitations period.

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

PARTIES

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

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

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

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

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

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

19. Together, Defendants WRA, El Tejon and Mejchor Gragirena will be referred to as "WRA Defendants."

20. Defendant Mountain Plains Agricultural Service ("MPAS") is a Wyoming non-profit corporation with its principal place of business at 811 N Glenn Rd, Casper, WY 82601. MPAS transacts business in Nevada by, among other things, recruiting and employing foreign shepherds, such as Mr. Inga and Mr. De La Cruz, who work in Nevada.

21. Defendant Estill Ranches, LLC ("Estill Ranches") is a Nevada Limited Liability Company with its principal place of business in Gerlach, Nevada. Defendant Estill Ranches transacts business in Nevada by, among other things, employing shepherds such as Mr. Inga, who graze sheep on land in Nevada.

22. Together, Defendants MPAS and Estill Ranches will be referred to as "MPAS Defendants."[7]

STATEMENT OF FACTS

THE H-2A PROGRAM AND THE OBLIGATIONS OF H-2A EMPLOYERS

23. This is a case about the H-2A temporary agricultural worker program, which is administered jointly by the Departments of Labor ("USDOL") and Homeland Security. H-2A workers come to the United States on temporary agricultural visas, commonly referred to as H-2A visas.

24. An agricultural employer in the United States may only employ H-2A workers if the USDOL certifies that: (1) there are insufficient workers available in the United States to perform the work, and (2) the employment of the nonimmigrant temporary aliens will not adversely affect the wages and working conditions of United States workers similarly employed.

25. Agricultural employers or agricultural associations seeking the admission of H-2A workers must first file a temporary labor certification application with the USDOL. 20 C.F.R. § 655.130. This application must include a job offer, commonly referred to as a "clearance order" or

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[7] Although Mr. Inga worked only for MPAS and Estill Ranches, both MPAS and WRA recruited and employed herders for Estill Ranches, according to the DOL Disclosure Data and documents already produced by Estill Ranches in this litigation. Thus, Estill Ranches is a joint employer with MPAS for some herders (including Mr. Inga), and with WRA for other herders.

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

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

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

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

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

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

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

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

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

PLAINTIFF CÁNTARO'S EMPLOYMENT AS AN H-2A SHEPHERD

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PLAINTIFF DE LA CRUZ'S EMPLOYMENT AS AN H-2A SHEPHERD

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

per month from November 2015 to September 2016, then $1,390 from January 2017 to present.[8] The wage offered to all California WRA shepherds is uniformly the AEWR set by the USDOL for that state for the relevant period of time (*i.e.*, $1,422.55, $1,600.34, or $1,777.98 per month).

106. Mr. Cántaro was offered approximately the AEWR established by the USDOL for California.

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

108. Mr. De La Cruz was offered approximately the AEWR established by the USDOL for Nevada.

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

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

NEVADA MINIMUM WAGE

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

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[8] One can view the underlying Disclosure Data by matching the ETA case number included with each record in the Disclosure Data and reviewing the individual H-2A applications associated with these numbers. These H-2A records are viewable at https://icert.doleta.gov/, where one can 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.

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

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

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

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

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

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

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

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

RULE 23 CLASS ALLEGATIONS

WRA Nevada Classes

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

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

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

122. Plaintiff Cántaro defines the "WRA Former Employee Sub-Class" as follows:

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

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

124. There are questions of law or fact common to the classes that predominate over any individual issues that might exist—including, (a) whether WRA was obligated to pay shepherds working in Nevada at least the Nevada minimum wage instead of paying the monthly wage established by the USDOL; (b) whether WRA fulfilled its obligation to pay the Nevada minimum wage; (c) whether any health insurance was offered by WRA to putative Class Members which qualified for the lower, $7.25/hour minimum wage; (d) whether WRA was a joint employer of the H-2A shepherds; (e) whether WRA paid Plaintiffs for all compensable hours; (f) whether WRA paid all wages when due following termination of employment of shepherds in Nevada; (g) whether 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.

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

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

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

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

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

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

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

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

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

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

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

El Tejon Classes

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

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

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

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

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

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

140. The members of the putative classes are so numerous that joinder of all potential 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

data from the USDOL (namely, the aforementioned "Disclosure Data"), Defendants El Tejon and Gragirena employed approximately 48 herders during the two-year statutory period for Plaintiffs' wage claims. El Tejon employed many more herders during the six-year statutory period for Plaintiffs' contract claims.

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

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

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

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

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

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

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

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

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

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

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

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

MPAS Nevada Classes

153. Plaintiff De La Cruz asserts Counts XI and XV against Defendant MPAS as a Class Action pursuant to Federal Rule of Civil Procedure 23. Plaintiffs De La Cruz and Inga both assert Counts XII to XIV against Defendant MPAS as a Class Action pursuant to Federal Rule of Civil Procedure 23.[9]

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

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

155. Plaintiffs define the "MPAS Former Employee Sub-Class" as follows:

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

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

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

[10] As discussed above, *see supra* at ¶ 9, Plaintiffs assert that the statute of limitations is tolled for this Class based on *American Pipe*, 414 U.S. 538 (1974), and the Nevada minimum wage claim 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.

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

157. There are questions of law or fact common to the classes that predominate over any individual issues that might exist—including, (a) whether MPAS was obligated to pay shepherds working in Nevada at least Nevada minimum wage instead of paying the monthly wage established by the USDOL; (b) whether MPAS fulfilled its obligation to pay the Nevada minimum wage; (c) whether any health insurance was offered by MPAS to putative Class Members which qualified for the lower, $7.25/hour minimum wage; (d) whether MPAS was a joint employer of the H-2A shepherds; (e) whether MPAS paid Plaintiffs for all compensable hours; (f) whether the MPAS paid all wages when due following termination of employment of shepherds in Nevada; (g) whether MPAS 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 MPAS fulfilled its contractual obligation to pay these expenses.

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

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

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

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

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

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

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

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

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

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

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

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

Estill Ranches Class

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

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

171. Pending any modifications necessitated by discovery, Plaintiff Inga defines the "Estill Ranches Class" as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT ONE

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

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

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

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

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

COUNT TWO

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

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

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

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

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

COUNT THREE

Breach of Contract or Quasi-Contract
(Plaintiff Cántaro and the WRA Nevada Class Against Defendant WRA)

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

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

195. Plaintiff and the WRA Nevada Class entered into contracts with WRA that explicitly incorporated the requirements of 20 C.F.R. §§ 655.122, 655.210 and 655.135 through the H-2A Applications and job orders, which constitute job offers accepted by Plaintiff and those similarly situated. In the alternative, Plaintiff and members of the WRA Nevada Class entered into contracts with WRA, which were drafted by WRA, and which included as implied terms of the contracts the requirements of 20 C.F.R. § 655.122, 20 C.F.R. § 655.210 and 20 C.F.R. § 655.135.

196. These contracts provide that each worker employed by WRA will be paid the higher of the monthly AEWR, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, in effect at the time work is performed, whichever is highest, for every month of the job order period or portion thereof. WRA failed to pay the required wage when they failed to pay the minimum wage required by Article 15, section 16 of the Nevada Constitution for each hour worked, a violation of Nevada state law, the above cited regulations, and the employment contract. These contracts also provide that employers are not permitted to shift costs for any activity related to obtaining an H-2A labor certification, including visa application fees and any related costs. Any of these costs borne by workers must then be reimbursed by the employer. Defendant WRA failed to reimburse its herders for these costs.

197. As a result of the breach of contract, the Plaintiff and the WRA Nevada Class suffered damages for the relevant time period alleged herein.

COUNT FOUR

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

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

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

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

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

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

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

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

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

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

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

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

COUNT SIX

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

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

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

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

Defendant El Tejon that included as implied terms of the contracts the requirements of 20 C.F.R. § 655.122, 20 C.F.R. § 655.210 and 20 C.F.R. § 655.135.

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

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

COUNT SEVEN

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

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

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

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

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

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

COUNT EIGHT

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

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

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

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

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

221. Plaintiff Cántaro and the El Tejon Class reasonably expected to be paid all wages owed when due under 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210 and those wages were not. Plaintiffs likewise reasonably expected to be reimbursed for all application fees and recruitment costs associated with obtaining their H-2A labor certifications due under 20 C.F.R. § 655.135, and those costs were not reimbursed according to that expectation.

222. As a result, Plaintiff Cántaro and the El Tejon Class are entitled to the full value of the services provided and Defendant El Tejon should be disgorged of the illegally withheld wages and reimbursement costs for the relevant time period alleged herein.

COUNT NINE

Failure to Pay Separated Employees Wages When Due
(On Behalf of Plaintiff Cántaro and the WRA Former Employee Sub-Class Against Defendant WRA)

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

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

225. Mr. Cántaro and many other members of the WRA Former Employee Sub-Class are no longer employed by WRA, whether due to resignation or termination.

226. N.R.S. § 608.140 provides that an employee has a private right of action for unpaid wages.

227. N.R.S. § 608.020 provides that "[w]henever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately."

228. N.R.S. § 608.040(1)(a-b), in relevant part, impose a penalty on an employer who fails to pay a discharged or quitting employee: "Within 3 days after the wages or compensation of a discharged employee becomes due; or on the day the wages or compensation is due to an employee who resigns or quits, the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit, or was discharged until paid for 30-days, whichever is less."

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

230. By failing to pay Plaintiff and all members of the WRA Former Employee Sub-Class for all hours worked in violation of state law, Defendant WRA has failed to timely remit all wages due and owing to Plaintiff and all members of the Sub-Class.

231. Despite demand, Defendant willfully refuses and continues to refuse to pay Plaintiff and all WRA Former Employee Sub-Class Members who are former employees their full wages due and owing to them.

232. Wherefore, Plaintiff demands thirty (30) days wages under N.R.S. 608.140 and 608.040, and an additional thirty (30) days wages under N.R.S. 608.140 and 608.050, for all members of the WRA Former Employee Sub-Class, together with attorneys' fees, costs, and interest as provided by law.

COUNT TEN

Failure to Pay Separated Employees Wages When Due
(On Behalf of Plaintiff Cántaro and the El Tejon Former Employee Class Against Defendant El Tejon and Gragirena)

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

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

235. Mr. Cántaro and many other Class Members are no longer employed by El Tejon and Gragirena, whether due to resignation or termination.

236. N.R.S. 608.140 provides that an employee has a private right of action for unpaid wages.

237. N.R.S. 608.020 provides that "[w]henever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately."

238. N.R.S. 608.040(1)(a-b), in relevant part, imposes a penalty on an employer who fails to pay a discharged or quitting employee: "Within 3 days after the wages or compensation of a discharged employee becomes due; or on the day the wages or compensation is due to an employee

who resigns or quits, the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit, or was discharged until paid for 30-days, whichever is less."

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

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

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

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

COUNT ELEVEN

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

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

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

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

COUNT TWELVE

Promissory Estoppel
(Plaintiffs De La Cruz and Inga and the MPAS Nevada Class Against Defendant MPAS)

246. Plaintiffs incorporate by reference paragraphs 1 to 184 of this Complaint as if fully re-written herein.

247. As set forth above, Plaintiffs De La Cruz and Inga assert this count on their own behalf and on behalf of all those similarly situated pursuant to Fed. R. Civ. P. 23.

248. In the alternative to a contract claim, Plaintiffs De La Cruz and Inga and the MPAS Nevada Class are entitled to relief in promissory estoppel. MPAS promised Plaintiffs and members of the MPAS Nevada Class that it would adhere to 20 C.F.R. § 655.122, 20 C.F.R. § 655.210 and 20 C.F.R. § 655.135.

249. Plaintiffs Inga and De La Cruz and the MPAS Nevada Class relied on this promise to their detriment by traveling to MPAS member ranches to work as shepherds, where MPAS and its members illegally failed to pay wages as promised. The Class Members also relied on this promise to their detriment by paying their own visa application fees and recruitment costs, which MPAS failed to pay. Plaintiffs De La Cruz and Inga and the MPAS Nevada Class are entitled to damages, including all wages owed but not paid for the relevant time period alleged herein, and for all costs borne by Class Members to obtain the labor certifications needed to work for MPAS and its members.

COUNT THIRTEEN

Unjust Enrichment and Quantum Meruit
(Plaintiffs De La Cruz and Inga and the MPAS Nevada Class Against Defendant MPAS)

250. Plaintiffs incorporate by reference paragraphs 1 to 184 of this Complaint as if fully re-written herein.

251. As set forth above, Plaintiffs De La Cruz and Inga assert this count on their own behalf and on behalf of all those similarly situated pursuant to Fed. R. Civ. P. 23.

252. In the alternative to a contract claim, Plaintiffs De La Cruz and Inga and the MPAS Nevada Class are also entitled to relief in unjust enrichment and quantum meruit. A benefit was conferred on MPAS when Plaintiffs and the MPAS Nevada Class performed work as specified by MPAS for which MPAS failed to pay the required compensation in violation of 20 C.F.R. § 655.122, 20 C.F.R. § 655.210 and 20 C.F.R. § 655.135.

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

254. Plaintiff De La Cruz and the MPAS Nevada Class reasonably expected to be paid all wages owed when due under 20 C.F.R. § 655.122 and 20 C.F.R. § 655.210, and those wages were not paid according to that expectation. Plaintiffs De La Cruz and Inga and the MPAS Nevada Class likewise reasonably expected to be reimbursed for all application fees and recruitment costs associated with obtaining their H-2A labor certifications due under 20 C.F.R. § 655.135, and those costs were not reimbursed according to that expectation.

255. As a result, Plaintiffs De La Cruz and Inga and the MPAS Nevada Class are entitled to the full value of the services provided, and MPAS should be disgorged of the illegally withheld wages and reimbursement costs for the relevant time period alleged herein.

COUNT FOURTEEN

Breach of Contract of Quasi-Contract
(Plaintiffs De La Cruz and Inga and the MPAS Nevada Class Against Defendant MPAS)

256. Plaintiffs incorporate by reference paragraphs 1 to 184 of this Complaint as if fully re-written herein.

257. As set forth above, Plaintiffs De La Cruz and Inga assert this count on their own behalf and on behalf of all those similarly situated pursuant to Fed. R. Civ. P. 23.

258. Plaintiffs and the MPAS Nevada Class entered into contracts with MPAS that explicitly incorporated the requirements of 20 C.F.R. §§ 655.122, 655.210 and 655.135 through the H-2A Applications and job orders, which constitute job offers accepted by Plaintiff and those similarly situated. In the alternative, Plaintiffs and members of the MPAS Nevada Class entered into contracts with MPAS, which were drafted by MPAS, and which included as implied terms of the contracts the requirements of 20 C.F.R. § 655.122, 20 C.F.R. § 655.210 and 20 C.F.R. § 135.

259. These contracts provide that each worker employed by MPAS will be paid the higher of the monthly AEWR, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, in effect at the time work is performed, whichever is highest, for every month of the job order period or portion thereof. MPAS failed to pay the required wage when they failed to pay the minimum wage required by Article 15, section 16 of the Nevada Constitution for each hour worked, a violation of Nevada state law, the above cited regulations, and the employment contract. These contracts also provide that employers are not permitted to shift costs for any activity related to obtaining an H-2A labor certification, including visa application fees and any related costs. Any of these costs borne by workers must then be reimbursed by the employer. Defendant MPAS failed to reimburse its herders for these costs.

260. As a result of the breach of contract, Plaintiffs and the MPAS Nevada Class suffered damages for the relevant time period alleged herein.

COUNT FIFTEEN

Failure to Pay Separated Employees Wages When Due (On Behalf of Plaintiff De La Cruz and the MPAS Former Employee Sub-Class Against Defendant MPAS)

261. Plaintiff De La Cruz incorporates by reference paragraphs 1 to 184 of this Complaint as if fully re-written herein.

262. As set forth above, Plaintiff De La Cruz asserts this count on his own behalf and on behalf of all those similarly situated pursuant to Fed. R. Civ. P. 23.

263. Mr. De La Cruz and members of the MPAS Former Employee Sub- Class are no longer employed by MPAS, whether due to resignation or termination.

264. N.R.S. § 608.140 provides that an employee has a private right of action for unpaid wages.

265. N.R.S. § 608.020 provides that "[w]henever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately."

266. N.R.S. § 608.040(1)(a-b), in relevant part, impose a penalty on an employer who fails to pay a discharged or quitting employee: "Within 3 days after the wages or compensation of a discharged employee becomes due; or on the day the wages or compensation is due to an employee who resigns or quits, the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit, or was discharged until paid for 30-days, whichever is less."

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

268. By failing to pay Plaintiff and all members of the MPAS Former Employee Sub-Class who are former employees for all hours worked in violation of state law, Defendant MPAS has failed to timely remit all wages due and owing to Plaintiff and all members of the Sub-Class.

269. Wherefore, Plaintiff demands thirty (30) days wages under N.R.S. 608.140 and 608.040, and an additional thirty (30) days wages under N.R.S. 608.140 and 608.050, for all members of the MPAS Former Employee Sub-Class, together with attorneys' fees, costs, and interest as provided by law.

COUNT SIXTEEN

Breach of Contract or Quasi Contract
(Plaintiff Inga and the Estill Ranches Class Against Defendant Estill Ranches)

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

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

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

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

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

COUNT SEVENTEEN

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

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

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

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

278. Plaintiff Inga and the Estill Ranches Class relied on this promise to their detriment by paying for their own application fees and recruitment costs, which Estill Ranches failed to pay. Plaintiff Inga and the Estill Ranches Class are entitled to damages, including all costs borne by Class 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)

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

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

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

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

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

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

PRAYER FOR RELIEF

Plaintiffs respectfully requests that judgment be entered in their favor and in favor of those similarly situated and that this Court:

1. Declare Defendants in violation of each of the counts set forth above;

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

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Attorneys for the Plaintiffs

PROOF OF SERVICE

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

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Attorneys for Defendant
WESTERN RANGE ASSOCIATION

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No. 3:16-cv-00237-RCJ-VPC

ANSWER TO SECOND AMENDED COMPLAINT

COMES NOW Defendant WESTERN RANGE ASSOCIATION ("Western Range"), by and through its attorneys of record Woodburn and Wedge, and for its Answer to the Second Amended Complaint ("Complaint") on file herein, admits, denies, alleges and avers as follows:

INTRODUCTION

1. Responding to paragraph 1 of Plaintiff's Complaint, Defendant admits that Plaintiff Abel Cántaro Castillo, a citizen of Peru, was part of the nonimmigrant temporary guest worker visa program (H-2A), having come to the United States from Peru under a temporary visa. This Defendant denies each and every other allegation contained therein.

2. Responding to paragraphs 2, 3, and 5 of Plaintiff's Complaint, this Defendant denies each and every allegation contained therein.

3. Responding to paragraph 4 of Plaintiff's Complaint, this Defendant admits that Plaintiff Abel Cántaro Castillo was a citizen of Peru who came from Peru to work in California and Nevada as part of the H-2A nonimmigrant temporary guest worker visa program. This Defendant denies each and every other allegation contained therein.

4. Responding to paragraph 6 of Plaintiff's Complaint, this Defendant is without information or knowledge sufficient to form a belief as to what damages Plaintiff seeks and therefore denies the allegations in paragraph 6 of Plaintiff's Complaint.

JURISDICTION AND VENUE

5. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 4 of this Answer as if fully set forth herein.

6. Responding to paragraphs 7, 8, and 12 of Plaintiff's Complaint, this Defendant denies each and every allegation contained therein.

7. Responding to paragraphs 9, 10, and 11 of Plaintiff's Complaint, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

PARTIES

8. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 7 of this Answer as if fully set forth herein.

9. Responding to paragraph 13 of Plaintiff's Complaint, this Defendant admits that Plaintiff Abel Cántaro Castillo was a shepherd and a citizen of Peru, who came from Peru to work for the El Tejon Sheep Company as a temporary worker with the H-2A nonimmigrant temporary guest worker visa program. This Defendant denies that Plaintiff worked for Western Range Association. This Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained therein and therefore denies said allegations.

10. Responding to paragraphs 14, 15, 18, 19, 20, 21, and 22 of Plaintiff's Complaint, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

11. Responding to paragraph 16 of Plaintiff's Complaint, this Defendant admits that Defendant Western Range Association is a California non-profit corporation with its principle place of business in Idaho. This Defendant denies each and every other allegation contained therein.

12. Responding to paragraph 17 of Plaintiff's Complaint, this Defendant admits Defendant El Tejon Sheep Company employed Peruvian citizen Abel Cántaro Castillo as a temporary guest worker under the H-2A nonimmigrant temporary guest worker visa program. This Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained therein and therefore denies said allegations.

STATEMENT OF FACTS

THE H-2A PROGRAM AND THE OBLIGATIONS OF H-2A EMPLOYERS

13. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 12 of this Answer as if fully set forth herein.

14. Responding to paragraph 23 of Plaintiff's Complaint, this Defendant admits that H-2A workers come to the United States from foreign countries on temporary H-2A nonimmigrant temporary guest worker visas. This Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained therein and therefore denies said allegations.

15. Responding to paragraph 24 of Plaintiff's Complaint, this Defendant admits that an agricultural employer in the United States may only employ H-2A nonimmigrant temporary guest workers if the U.S. Department of Labor and/or other agencies approve certain certifications.

16. Responding to paragraph 25 of Plaintiff's Complaint, this Defendant admits that employers seeking admission of foreign H-2A nonimmigrant temporary guest workers must obtain labor certification(s) from the U.S. Department of Labor, United States Citizenship and Immigration Services and/or other agencies. This Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained therein and therefore denies said allegations.

17. Responding to paragraphs 26 and 32 of Plaintiff's Complaint, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

18. Responding to paragraphs 27 and 28 of Plaintiff's Complaint, this Defendant denies each and every allegation contained therein.

19. Responding to paragraph 29 of Plaintiff's Complaint, this Defendant admits that the H-2A regulations specify that employers may not seek or receive payment of any kind from an H-2A employee. This Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained therein and therefore denies said allegations.

20. Responding to paragraphs 30 and 31 of Plaintiff's Complaint, this Defendant admits that Western Range Association, to the extent that it contracts with any parties, agrees to comply with H-2A (U.S. Department of Labor, U.S. Citizenship and Immigration Services, and U.S. Immigration and Customs Enforcement) regulations. This Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained therein and therefore denies said allegations.

PLAINTIFF CÁNTARO'S EMPLOYMENT AS AN H-2A SHEPHERD

21. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 20 of this Answer as if fully set forth herein.

22. Responding to paragraph 33 of Plaintiff's Complaint, this Defendant admits that Abel Cántaro Castillo was and is a citizen of Peru. This Defendant denies that it recruited Abel Cántaro Castillo. This Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained therein and therefore denies said allegations.

23. Responding to paragraphs 34, 36, 38, 49, 50, 51, 52, and 61 of Plaintiff's Complaint, this Defendant denies each and every allegation contained therein.

24. Responding to paragraph 35 of Plaintiff's Complaint, this Defendant admits that Abel Cántaro Castillo was employed by El Tejon Sheep Company until approximately June 2014 and self-terminated and was not assigned to or working for any other Western Range Association

member ranch for the remainder of his H-2A nonimmigrant temporary guest worker visa or thereafter.

25. Responding to paragraphs 37, 41, 42, 43, 44, 45, 47, 48, 53, 56, 57, 58, and 60 of Plaintiff's Complaint, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

26. Responding to paragraph 39 of Plaintiff's Complaint, this Defendant admits that under some H-2A provisions, Western Range Association may have been legally deemed to be a joint-employer. This Defendant further admits that it accurately makes all necessary certifications for U.S. Department of Labor and United States Citizenship and Immigration Services declarations required under H-2A.

27. Responding to paragraph 40 of Plaintiff's Complaint, this Defendant admits El Tejon Sheep Company entered into an agreement with Abel Cántaro Castillo. This Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained therein and therefore denies said allegations.

28. Responding to paragraph 46 of Plaintiff's Complaint, this Defendant admits that Plaintiff Abel Cántaro Castillo was a citizen of Peru, herded sheep and worked for the El Tejon Sheep Company as a temporary worker with the H-2A nonimmigrant temporary guest worker visa program. This Defendant denies that Abel Cántaro Castillo was "U.S. based," as he was a Peruvian citizen who worked for El Tejon Sheep Company solely as an H-2A nonimmigrant temporary guest worker. This Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained therein and therefore denies said allegations.

29. Responding to paragraph 54 of Plaintiff's Complaint, this Defendant admits that Abel Cántaro Castillo returned from Peru in 2013 and began another job herding sheep in the United States pursuant to an H-2A nonimmigrant temporary guest worker visa. This Defendant admits Plaintiff did not complete his agreement to remain employed with El Tejon Sheep Company, at which time he self-terminated his employment and violated the terms of his H-2A nonimmigrant temporary guest worker visa, thus losing his guest worker status.

30. Responding to paragraph 55 of Plaintiff's Complaint, this Defendant denies the allegations as to Western Range. This Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained therein and therefore also denies said allegations as to all other Defendants.

31. Responding to paragraph 59 of Plaintiff's Complaint, this Defendant admits that Plaintiff Abel Cántaro Castillo self-terminated his employment and violated the terms of his H-2A nonimmigrant temporary guest worker visa, thus losing his H-2A nonimmigrant temporary guest worker status. This Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained therein and therefore denies said allegations.

PLAINTIFF DE LA CRUZ'S EMPLOYMENT AS AN H-2A SHEPHERD

32. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 31 of this Answer as if fully set forth herein.

33. Responding to paragraphs 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, and 76 of Plaintiff's Complaint, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

PLAINTIFF INGA'S EMPLOYMENT AS ASN H-2A SHEPHERD

34. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 33 of this Answer as if fully set forth herein.

35. Responding to paragraphs 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, and 92 of Plaintiff's Complaint, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

THE H-2A VISA PROGRAM FOR SHEPHERDS AND DEFENDANT'S WAGE POLICIES

36. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 35 of this Answer as if fully set forth herein.

37. Responding to paragraphs 93, 99, 101, 104, 106, 107, 108, 109, and 110 of Plaintiff's Complaint, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

38. Responding to paragraph 94 of Plaintiff's Complaint, this Defendant admits that the U.S. Department of Labor currently implements special procedures for Range Sheepherders and goatherders working as H-2A nonimmigrant temporary guest workers. This Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained therein and therefore denies said allegations as to all others.

39. Responding to paragraphs 95, 96, 97, 100, 102, and 105 of Plaintiff's Complaint, this Defendant denies each and every allegation contained therein.

40. Responding to paragraph 98 of Plaintiff's Complaint, this Defendant denies these allegations as to Western Range Association. This Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained therein and therefore denies said allegations as to all other Defendants.

41. Responding to paragraph 103 of Plaintiff's Complaint, this Defendant denies that the fiscal year 2014 data is the most comprehensive available on H-2A certifications. This Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained therein and therefore denies said allegations.

NEVADA MINIMUM WAGE

42. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 41 of this Answer as if fully set forth herein.

43. Responding to paragraphs 111 and 115 of Plaintiff's Complaint, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

44. Responding to paragraphs 112, 116, 117, 118, and 119 of Plaintiff's Complaint, this Defendant denies each and every allegation contained therein.

45. Responding to paragraph 113 of Plaintiff's Complaint, this Defendant admits that Section 16 of the Nevada Constitution pertains to minimum wage in certain circumstances. This Defendant denies each and every other allegation contained therein.

46. Responding to paragraph 114 of Plaintiff's Complaint, this Defendant denies that the minimum wage is for "all" employees in Nevada. This Defendant admits the other allegations contained therein, as to the current minimum wage.

RULE 23 CLASS ALLEGATIONS
WRA Nevada Classes

47. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 46 of this Answer as if fully set forth herein.

48. Responding to paragraphs 120, 121, 123, 124, 125, 126, 127, 128, 129, 130, 132, 133, 134, and 135 of Plaintiff's Complaint, this Defendant denies each and every allegation contained therein.

49. Responding to paragraph 122 of Plaintiff's Complaint, this Defendant admits Plaintiff defines the sub-class as stated, but Defendant denies that such a sub-class exists.

50. Responding to paragraphs Responding to paragraph 131 of Plaintiff's Complaint, this Defendant admits *Llacua et al v. W Range Ass'n, et al.* involved, inter alia, claims under Nevada law. This Defendant denies each and every other allegation contained therein.

El Tejon Classes

51. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 50 of this Answer as if fully set forth herein.

52. To the extent that Plaintiff's allegations in paragraphs 136, 137, 138, 139, 145, and 149 are still viable, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

53. To the extent that Plaintiff's allegations in paragraphs 140, 141, 142, 143, 144, 146, 147, 150, 151, and 152 are still viable, this Defendant denies each and every allegation contained therein.

54. To the extent that Plaintiff's allegations in paragraph 148 of Plaintiff's Complaint are still viable, this Defendant admits *Llacua et al v. W Range Ass'n et al.* involved, inter alia, claims under Nevada law. This Defendant denies each and every other allegation contained therein.

MPAS Nevada Classes

55. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 54 of this Answer as if fully set forth herein.

56. To the extent that Plaintiff's allegations in paragraphs 153, 154, 155, 156, 157, 158, 159, 160, 161, 164, 165, 166, 167, and 168 are still viable, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

57. To the extent that Plaintiff's allegations in paragraphs 162 and 163 are still viable, this Defendant denies each and every allegation contained therein.

Estill Ranches Class

58. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 57 of this Answer as if fully set forth herein.

59. To the extent that Plaintiff's allegations in paragraphs 169, 170, 171, 172, 173, 174, 175, 176, 177, 180, 181, 182, 183, and 184 are still viable, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

60. To the extent that Plaintiff's allegations in paragraphs 178 and 179 are still viable, this Defendant denies each and every allegation contained therein.

COUNT ONE

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

61. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 60 of this Answer as if fully set forth herein.

62. Responding to paragraphs 185, 186, 187, and 188 of Plaintiff's Complaint, this Defendant denies each and every allegation contained therein.

COUNT TWO

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

63. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 62 of this Answer as if fully set forth herein.

64. To the extent that Plaintiff's allegations in paragraph 189 are still viable, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

65. To the extent that Plaintiff's allegations in paragraphs 190, 191, and 192 are still viable, this Defendant denies each and every allegation contained therein.

COUNT THREE

Breach of Contract or Quasi-Contract (Plaintiff Cántaro and the WRA Nevada Class Against Defendant WRA)

66. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 65 of this Answer as if fully set forth herein.

67. Responding to paragraph 193 of Plaintiff's Complaint, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

68. Responding to paragraphs 194, 196, and 197 of Plaintiff's Complaint, this Defendant denies each and every allegation contained therein.

69. Responding to paragraph 195 of Plaintiff's Complaint, this Defendant admits that Western Range Association agreements, if any were entered into, were in compliance with the regulations of 20 C.F.R. § 655 et seq. This Defendant denies each and every other allegation contained therein.

COUNT FOUR

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

70. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 69 of this Answer as if fully set forth herein.

71. Responding to paragraph 198 of Plaintiff's Complaint, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

72. Responding to paragraphs 199, 200, and 201 of Plaintiff's Complaint, this Defendant denies each and every allegation contained therein.

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

73. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 72 of this Answer as if fully set forth herein.

74. Responding to paragraph 202 of Plaintiff's Complaint, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

75. Responding to paragraphs 203, 204, 205, 206, and 207 of Plaintiff's Complaint, this Defendant denies each and every allegation contained therein.

COUNT SIX
Breach of Contract of Quasi Contract
(Plaintiff Cántaro and the El Tejon Class Against Defendant El Tejon)

76. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 75 of this Answer as if fully set forth herein.

77. To the extent that Plaintiff's allegations in paragraphs 208, 209, and 210 are still viable, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

78. To the extent that Plaintiff's allegations in paragraphs 211 and 212 are still viable, this Defendant denies each and every allegation contained therein.

COUNT SEVEN
Promissory Estoppel
(Plaintiff Cántaro and the El Tejon Class Against Defendant El Tejon)

79. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 78 of this Answer as if fully set forth herein.

80. To the extent that Plaintiff's allegations in paragraphs 213 and 214 are still viable, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

81. To the extent that Plaintiff's allegations in paragraphs 215 and 216 are still viable, this Defendant denies each and every allegation contained therein.

COUNT EIGHT

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

82. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 81 of this Answer as if fully set forth herein.

83. To the extent that Plaintiff's allegations in paragraphs 217 and 218 are still viable, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

84. To the extent that Plaintiff's allegations in paragraphs 219, 220, 221, and 222 are still viable, this Defendant denies each and every allegation contained therein.

COUNT NINE

Failure to Pay Separated Employees Wages When Due
(On Behalf of Plaintiff Cántaro and the WRA Former Employee Sub-Class Against Defendant WRA)

85. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 84 of this Answer as if fully set forth herein.

86. Responding to paragraph 223 of Plaintiff's Complaint, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

87. Responding to paragraph 225 of Plaintiff's Complaint, this Defendant admits that Abel Cántaro Castillo is no longer employed by El Tejon, having self-terminated and having remained in the United States in violation of his H-2A nonimmigrant temporary guest worker visa. This Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained therein and therefore denies said allegations.

88. Responding to paragraphs 224, 226, 229, 230, 231, and 232 of Plaintiff's Complaint, this Defendant denies each and every allegation contained therein.

89. Responding to paragraph 227 of Plaintiff's Complaint, this Defendant admits that at the time Plaintiff Abel Cántaro Castillo filed his complaint(s) N.R.S. 608.020 provided that "[w]henever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately."

90. Responding to paragraph 228 of Plaintiff's Complaint, this Defendant admits that N.R.S. 605.020 contains the following language: "Within 3 days after the wages or compensation of a discharged employee becomes due; or on the day the wages or compensation is due to an employee who resigns or quits, the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit, or was discharged until paid for 30-days, whichever is less." This Defendant denies each and every other allegation contained therein.

COUNT TEN

Failure to Pay Separated Employees Wages When Due
(On Behalf or Plaintiff Cántaro and the El Tejon Former Employee Class Against Defendant El Tejon and Gragirena)

91. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 90 of this Answer as if fully set forth herein.

92. To the extent that Plaintiff's allegations in paragraph 233 are still viable, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

93. To the extent that Plaintiff's allegations in paragraphs 234, 236, 238, 239, 240, 241, and 242 are still viable, this Defendant denies each and every allegation contained therein.

94. To the extent that Plaintiff's allegations in paragraph 235 are still viable, this Defendant admits that Abel Cántaro Castillo is no longer employed by El Tejon, having self-terminated and having remained in the United States in violation of his H-2A nonimmigrant temporary guest worker visa. This Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained therein and therefore denies said allegations.

95. To the extent that Plaintiff's allegations in paragraph 237 are still viable, this Defendant admits that at the time Plaintiff Abel Cántaro Castillo filed his complaint(s) N.R.S. 608.020 provided that "[w]henever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately."

COUNT ELEVEN

Failure to Pay Minimum Wages in Violation of the Nevada Constitution

(On Behalf of Plaintiff De La Cruz and the MPAS Nevada Class Against Defendant MPAS)

96. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 95 of this Answer as if fully set forth herein.

97. To the extent that Plaintiff's allegations in paragraphs 243, 244, and 245 are still viable, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

COUNT TWELVE

Promissory Estoppel

(Plaintiffs De La Cruz and Inga and the MPAS Nevada Class Against Defendant MPAS)

98. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 97 of this Answer as if fully set forth herein.

99. To the extent that Plaintiff's allegations in paragraphs 246, 247, 248, and 249 are still viable, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

COUNT THIRTEEN

Unjust Enrichment and Quantum Meruit

(Plaintiffs De La Cruz and Inga and the MPAS Nevada Class Against Defendant MPAS)

100. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 99 of this Answer as if fully set forth herein.

101. To the extent that Plaintiff's allegations in paragraphs 250, 251, 252, 253, 254, and 255 are still viable, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

COUNT FOURTEEN
Breach of Contract of Quasi-Contract
(Plaintiffs De La Cruz and Inga and the MPAS Nevada Class Against Defendant MPAS)

102. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 101 of this Answer as if fully set forth herein.

103. To the extent that Plaintiff's allegations in paragraphs 256, 257, 258, 259, and 260 are still viable, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

COUNT FIFTEEN
Failure to Pay Separated Employees Wages When Due
(On Behalf of Plaintiff De La Cruz and the MPAS Former Employee Sub-Class Against Defendant MPAS)

104. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 103 of this Answer as if fully set forth herein.

105. To the extent that Plaintiff's allegations in paragraphs 261, 262, 263, 268, and 269 are still viable, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

106. To the extent that Plaintiff's allegations in paragraphs 264, 266, and 267 are still viable, this Defendant denies each and every allegation contained therein.

107. To the extent that Plaintiff's allegations in paragraph 265 are still viable, this Defendant admits that at the time Plaintiff Abel Cántaro Castillo filed his complaint(s) N.R.S. 608.020 provided that "[w]henever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately."

COUNT SIXTEEN
Breach of Contract of Quasi Contract
(Plaintiff Inga and the Estill Ranches Class Against Defendant Estill Ranches)

108. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 107 of this Answer as if fully set forth herein.

109. To the extent that Plaintiff's allegations in paragraphs 270, 271, 272, 273, and 274 are still viable, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

COUNT SEVENTEEN

Promissory Estoppel

(Plaintiff Inga and the Estill Ranches Class Against Defendant Estill Ranches)

110. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 109 of this Answer as if fully set forth herein.

111. To the extent that Plaintiff's allegations in paragraphs 275, 276, 277, and 278 are still viable, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

COUNT EIGHTEEN

Unjust Enrichment and Quantum Meruit

(Plaintiff Inga and the Estill Ranches Class Against Defendant Estill Ranches)

112. This Defendant repeats and realleges all admissions, denials and averments as set forth in paragraphs 1 through 111 of this Answer as if fully set forth herein.

113. To the extent that Plaintiff's allegations in paragraphs 279, 280, 281, 282, 283, and 284 are still viable, this Defendant is without information or knowledge sufficient to form a belief as to the allegations contained therein and therefore denies said allegations.

AFFIRMATIVE DEFENSES

For its Affirmative defenses Defendant states and avers as follows:

1. Plaintiff's Complaint fails to state a claim or cause of action upon which relief can be granted.

2. Plaintiff's claims are or may be reduced or denied based upon Plaintiff's unclean hands in intentionally violating one or more state or federal immigration, H-2A, United States Citizenship and Immigration Services (U.S.C.I.S.), U.S. Immigration and Customs Enforcement (I.C.E.) or U.S. Department of Labor (D.O.L.) statutes or regulations.

3. This Court lacks personal and/or subject matter jurisdiction over one or more Defendants and this action.

4. Plaintiff, as a citizen of Peru, cannot invoke Diversity of Citizenship jurisdiction under CAFA or any other 28 U.S.C. § 1332 provision as he is not a citizen or resident of another state, nor is he a citizen of Nevada. See, e.g., *King v Great American Chicken Corporation*, 903 F.3d 75 (9th Cir. 2018).

5. This matter is improperly venued in Nevada.

6. Plaintiff has misnamed and/or mis-designated parties who are not and cannot be liable to Plaintiff as a matter of law.

7. Plaintiff has failed to exhaust administrative remedies as to some or all claims, remedies or Defendants.

8. Plaintiff has failed to mitigate damages, if any, and to the extent of such failure to mitigate, is precluded from recovery herein.

9. Plaintiff's claims brought on behalf of himself and the putative class members, fail to state a claim against Defendant upon which attorney's fees or costs can be awarded. Further, any award of attorney fees must be limited to reasonable fees actually and necessarily incurred.

10. Plaintiff's claims brought on behalf of himself and the putative class members, fail to allege a sufficient legal or factual basis allowing Plaintiff to recover any liquidated or punitive damages, penalties, or pre-judgment interest.

11. The applicability of the Statutes of Limitations and Laches require individualized determinations for each putative class member, thereby precluding class-wide resolution.

12. Plaintiff's claims brought on behalf of himself and the putative class members, cannot and should not be maintained on a class-action or representative action because: plaintiff is not similarly situated with other putative Plaintiffs, Plaintiff cannot fairly represent the interests of the putative claims members; the claims fail to meet the necessary requirements for class certification, including, class ascertainability, typicality, commonality, numerosity, manageability, superiority, and adequacy of the class representative. Further, there is lack of a community of interest between and among the putative class members.

13. Defendant at all times acted in good faith and with reasonable grounds that it had not violated Nevada, California or federal law. Defendant's actions regarding Plaintiff were taken

with the good-faith belief that such actions complied with and conformed to and relied upon all applicable state and federal laws and regulations, administrative regulations and rulings, orders and administrative practices as well as industry customs and standards.

14. Plaintiff's claims brought on behalf of himself and the putative class members, are barred, in whole or in part, under the doctrines of waiver, ratification, acquiescence, fraud, accord and satisfaction, payment, settlement, consent, release, and/or estoppel.

15. Defendant has no knowledge of, nor should it have had knowledge of, any alleged uncompensated work by the Plaintiff or putative class members, and Defendant did not authorize, require, request, ratify, or permit such activity to occur.

16. The Complaint, and each cause of action therein, is barred, or the damages flowing therefrom reduced, because Plaintiff and putative class members failed to notify Defendant of the alleged statutory or regulatory violations at the time such violations allegedly occurred, which prevented Defendant from taking remedial action, to prevent allegedly undercompensated work and/or to resolve any alleged claims regarding uncompensated work.

17. Any overtime compensation sought is subject to credit or offset.

18. Neither Plaintiff nor any other members of the putative "class," is entitled to the relief sought, because the hours claimed, in whole or in part, were not "hours worked" as defined under the applicable H-2A regulations.

19. Plaintiff lacks standing to bring this action.

20. Plaintiff's claims are barred because Plaintiff has not suffered any injury and has not sufficiently pleaded that this Defendant "caused" any injury alleged.

21. Plaintiff's contract claims are barred by Plaintiff's failure to perform.

22. Plaintiff's equitable claims of unjust enrichment and Promissory estoppel are barred by the existence of work orders and/or job descriptions and/or H-2A regulations.

23. One or more indispensable party is missing from this action.

24. Plaintiff's claims, or some of them, involve issues of public policy that are more properly decided by the Legislative branch, not the judiciary, pursuant to Constitutional Separation of Powers doctrine. This Court should therefore abstain from adjudicating such matters.

25. Defendants reserve the right to assert additional defenses or defenses of which they become knowledgeable during the course of discovery.

PRAYER

WHEREFORE, Defendants pray as follows:

1. That Plaintiff's Complaint be dismissed with prejudice;

2. That Plaintiff take nothing by way of his Complaint;

3. For costs of suit incurred herein; and

4. For such other and further relief as the Court may deem just and proper.

The undersigned affirms that this document does not contain the personal information of any person.

DATED this 31 day of October, 2019.

WOODBURN AND WEDGE

Ellen Jean Winograd, Esq.
State Bar No. 815
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, Nevada 89511
Attorneys for Defendant

CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing **ANSWER TO SECOND AMENDED COMPLAINT** was made through the Court's CM/ECF (Case Management/Electronic Court Filing) system.

DATED this 31st day of October, 2019.

Haleigh Valenta

Haleigh Valenta
An employee of Woodburn and Wedge

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Attorneys for Western Range Association

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

ABEL CÁNTARO CASTILLO; ALCIDES INGA RAMOS, and those similarly situated,

Plaintiff,

vs.

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

Defendants.

Case No. 3:16-cv-00237-RCJ-CLB

WESTERN RANGE ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT AS TO COUNTS ONE, THREE, FOUR, FIVE, AND NINE OF THE SECOND AMENDED COMPLAINT

FILED UNDER SEAL

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Defendant WESTERN RANGE ASSOCIATION ("Western Range"), by and through its counsel, WOODBURN AND WEDGE and SIMONS, HALL, JOHNSTON, P.C., files this MOTION FOR SUMMARY JUDGMENT AS TO COUNTS ONE, THREE, FOUR, FIVE, and NINE OF THE SECOND AMENDED COMPLAINT ("Motion for Summary Judgment") pursuant to Federal Rule of Civil Procedure ("FRCP") Rule 56 on the grounds that after extensive discovery there are no genuine issues of material fact and Western Range is entitled to judgment as a matter of law.

This Motion for Summary Judgment is supported by the pleadings and papers on file herein, the Points and Authorities filed herewith, the exhibits attached hereto, Western Range's Opposition to FRCP 23 Class Certification, and such oral arguments as the Court requests.

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2.	6/24/2020	Excerpts of Plaintiff Abel Cántaro Castillo's Deposition
3.	11/22/2021	Declaration of Monica Youree
4.	2014	Mandatory Report by Western Range to the United States Immigration and Customs Enforcement (ICE) Agency
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POINTS AND AUTHORITIES

I

INTRODUCTION

This is a wage-and-hour lawsuit wherein H-2A temporary livestock worker Abel Cántaro Castillo ("Plaintiff") alleges he was underpaid wages pursuant to Nevada's Minimum Wage Amendment (Article 15 § 16 of the Nevada Constitution.)[1] [Doc #111, ¶ 191].[2] Although Plaintiff has failed to establish that he was paid less than the applicable H-2A wage rate for hours actually worked, Plaintiff asserts that because agreements approved by the Department of Labor ("DOL") require H-2A non-immigrant temporary range livestock herders, including Plaintiff, to be "on-call for 24/7", that is what Plaintiff claims he actually "worked".

II

THE RELIEF SOUGHT BY DEFENDANT WESTERN RANGE IN THIS SUMMARY JUDGMENT MOTION

As set forth herein, Western Range seeks summary judgment on all remaining claims against it: Counts One, Three, Four, Five, and Nine of the Second Amended Complaint ("SAC"). [Doc #111]. Western Range seeks Summary Judgment on both procedural and substantive grounds. Summary Judgment is justified on either of these grounds. Summary Judgment is fatal to the viability of Plaintiff's SAC; either of these grounds requires Summary Judgment in favor of Western Range.[3]

Most significantly, Plaintiff cannot, and has not, adduced any credible evidence of hours he actually worked or the damages he individually suffered.

III

CASE OVERVIEW

Plaintiff was a Peruvian sheep herder on the El Tejon Ranch from "around October 2007," until June 8,

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[1] Plaintiff is attempting to pursue this as a "class action" case on behalf of all Nevada non-immigrant temporary foreign H-2A Visa Range Livestock herders from 2010 to 2016. [Doc #111, ¶ 191].

[2] This Court is considering Western Range's Summary Judgment Motion as to Plaintiff's most recent Complaint: the SAC. [Doc #111]. The original Complaint was a Fair Labor Standards Act Complaint. [Doc #1]. The next two Complaints, the First Amended Complaint [Doc #45] and the SAC [Doc #111] were based on wage-and-hour and "contract" related claims sounding primarily or exclusively in Nevada State Law.

[3] This is true whether or not Plaintiff attains FRCP 23 Class Certification as sought. In fact, if FRCP 23 certification is denied, this Court loses subject matter jurisdiction over this matter. This case is before the Court on 28 USC § 1332(d) Class Action Fairness Act ("CAFA") jurisdiction. It is axiomatic that if there is no "class" there can be no subject matter jurisdiction under CAFA.

2014, after which he left the El Tejon operation in violation of his H-2A Visa.[4] [Doc #111, ¶ 13]; *see also*, Excerpts of Plaintiff Abel Cántaro Castillo's Deposition, pp. 27-28, 87, and Declaration of Monica Youree, filed herewith as Exhibits 2 and 3. Plaintiff left in the middle of the night in 2014, without notice when he still had a month remaining on the H-2A agreement that gave rise to his ability to work within the United States under his H-2A visa. [Doc #111, ¶ 59]; *see also,* Declaration of Monica Youree, filed herewith as Exhibits 3; *see also,* Mandatory Report by Western Range to the United States Immigration and Customs Enforcement (ICE) Agency, filed herewith as Exhibit 4.

While it is unknown exactly how long Plaintiff remained in the United States without a valid visa, it appears that he was here in 2016, when he filed suit. According to Plaintiff's counsel, Plaintiff was here until at least November 2016. *See,* 12/08/2014, U.S. Customs and Border Form I-94 Admission, filed herewith as Exhibit 5. As of November 1, 2016, Plaintiff was still in the United States as indicated by his own counsel in the Stipulated Discovery Plan and Scheduling Order. [Doc #91, p. 7].[5] *See*, Excerpts of Stipulated Discovery Plan and Scheduling Order filed herewith as Exhibit 6.

At issue in this litigation, is the applicable federally defined wage rates paid to Plaintiff as a non-immigrant temporary labor range herder in the H-2A labor program pursuant to 20 CFR § 655. This lawsuit is a putative class action against Western Range pertaining to Nevada H-2A Member Ranches from June 10, 2010, to May 3, 2016, when Plaintiff filed his original Complaint. [Doc #1]. Some of the prior Nevada member ranches have subsequently gone out of business, however, Plaintiff is still desperately attempting to include the H-2A herders who worked for now non-existent Nevada Members in his putative "class" against Western Range.[6] Not a single Member Ranch is a party to this litigation, only Western Range.

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[4] El Tejon was previously a named Defendant in this matter, having been dismissed following this Court's approval of resolution. [Doc #196 & 198]. Plaintiff left the El Tejon Ranch without notice during the term of his then-valid H-2A Visa. *See,* Mandatory Report to U.S. Immigration and Customs Agency (ICE), filed herewith as Exhibit 4.

[5] November 2016 was already two years and six months after the expiration of Plaintiff's H-2A Visa. *See*, Mandatory Report to U.S. Immigration and Customs Agency (ICE), filed herewith as Exhibit 4.

[6] Plaintiff ignores that the different ranches themselves (within and outside of Nevada) control the actions, job duties, payroll, and work procedures of the members. The base wage rates, however, are dictated by the DOL Regulations, which have also changed overtime. *See*, Declaration of Monica Youree, filed herewith as Exhibit 3.

IV

THE PARTIES

Western Range is a California non-profit association with its principal place of business in Twin Falls, Idaho; it was formerly located in Salt Lake City, Utah. [Doc #111, ¶ 16]. Western Range is not a direct employer of H-2A non-immigrant temporary foreign sheep herders,[7] but rather facilitates the recruitment and employment of skilled guest workers under H-2A visas from countries primarily within South and Central America. During 2010 to 2016 Western Range had approximately one hundred and ninety-five ("195") members ranches that are located in thirteen ("13") states which included: Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. *See*, Declaration of Monica Youree, filed herewith as Exhibit 3.

"Representative" Plaintiff himself alleged that he was a H-2A herder at Western Range Member Ranch El Tejon, dividing his time between California and Nevada. [Doc #111, ¶ 13]. Plaintiff claims to have worked from about October to mid-April (approximately seven months out of the year) in California, and from mid-April to September or early October (approximately five months of the year) in Nevada. [Doc #111, ¶ 47]. **Previously named Defendant El Tejon, a Western Range member, paid Plaintiff the higher California H-2A rate of $1,422 per month during Plaintiff's entire course of employment. [Doc #45, ¶ 97]. This $1,422 monthly rate Plaintiff received was significantly higher than the applicable *Nevada* wage rate at the time, pursuant to the then-current, Federally Imposed monthly Adverse Effect Wage Rate ("AEWR"). [Doc #111, ¶ 105]; *see also*, 20 CFR § 655.** This higher California rate was paid, despite the fact that Plaintiff divided his time between California and Nevada during his work as a herder. [Doc #111, ¶¶ 13, 15].[8] Other ways in which this Plaintiff's employment differs from other Nevada putative "class members" are discussed and briefed in full in Western Range's Opposition to Plaintiff's FRCP

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[7] For purposes of the H-2A visa program (only), Western Range is deemed a joint employer for purposes of the H-2A non-immigrant temporary foreign worker visa program that is administered by numerous federal agencies, most significantly, the DOL. As set forth in the Declarations of Monica Youree and the various Member Ranch FRCP 30(b)(6) witnesses, each Nevada Member Ranch maintains its own payroll records (in different manners), each maintains its own workers' compensation insurance for the herders and each Member Ranch has different pay and internal procedures it implemented in compliance with Federal and State Law and regulatory provisions. *See,* Declaration of Monica Youree, filed herewith as Exhibit 3.

[8] Employer El Tejon could have prorated between the California AEWR and the lower Nevada AEWR. Employer El Tejon chose not to do so.

23 Motion for Class Certification and Defendant Western Range's exhibits thereto. [Doc #270, filed under seal].

V

FACTUAL BACKGROUND AND PLAINTIFF'S CLAIMS

The action before this Court unrealistically seeks to be a "class action" lawsuit, on behalf of Plaintiff and "all of those similarly situated." [Doc #111]. Plaintiff had sued Western Range and former Defendants El Tejon Sheep Company ("El Tejon") and Melchor Gragirena ("Gragirena"); former Plaintiff Ramos sued former Defendants Mountain Plains Agricultural Service ("MPAS") and Estill Ranches, LLC ("Estill Ranches"); and former Plaintiff De La Cruz sued former Defendant MPAS for alleged wage underpayment. [Doc #111]. The action now is brought solely by Plaintiff, not against his actual member ranch employer El Tejon, but against Western Range only. As set forth herein, the Complaint currently before the Court is the Plaintiff's SAC. The SAC [Doc #111], contains several causes of action that only involved dismissed parties, both Plaintiffs and Defendants. [Doc #196,198].[9] **What remains against Western Range, are five claims that sound in contract and/or derive entirely from Plaintiff's claim that Western Range allegedly failed to comply with the Nevada State Minimum Wage Amendment (Nevada Constitution Article 16, § 15)**. [Doc #111]. The causes of action specifically pertaining to or against Western Range are only the following:

COUNT ONE:
Failure to pay minimum wages in violation in the Nevada Constitution [Doc #111, ¶¶ 185-188].

COUNT THREE:
Breach of Contract or Quasi Contract [Doc #111, ¶¶ 193-197].[10]

COUNT FOUR:
Promissory Estoppel [Doc #111, ¶¶ 198-201].

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[9] The Joint Motion for Approval of Good Faith Settlement [Doc #160, 162, 167], was never approved by this Court, but apparently all other Defendants were dismissed by Stipulation (not signed by Western Range) and subsequent Order. [Doc #198]. Another (dismissed) association, Mountain Plains Agricultural Service ("MPAS"), was also alleged to "have a policy and practice of only paying the adverse employment wage rate ("AEWR") established by the DOL, regardless of whether a higher wage rate is required under State law, the H-2A program, or Federal law. [Doc #111, ¶ 98]. Plaintiff and former Plaintiffs Alcides Inga Ramos and Rafeal DeLaCruz alleged a total 18 counts against several Defendants, including El Tejon Sheep Company, Melchor Gragirena, Mountain Plains Agricultural Service, and Estill Ranches, LLC, as well as Western Range. [Doc #111], only five of which remain.

[10] Plaintiff's breach of contract claim is curious, at best. Conspicuously absent from Plaintiff's breach of contract claim is his actual employment contract which he claimed was with Western Range, but which he failed to attach. Plaintiff and his counsel apparently did not have a copy of the contract that he claims to have signed or that he claims that El Tejon signed. Rather, the contract attached to the SAC as Exhibit B purports to be a contract between Pines Vivas Moreno and Colorado member James Craig Bair Ranch, in Greenwood Springs, Colorado. [Doc #111, Exhibit B].

COUNT FIVE:
Unjust Enrichment and Quantum Meruit [Doc #111, ¶¶ 202-207].

COUNT NINE:
Failure to pay separated employees' wages when due [Doc #111, ¶¶ 223-232].

The remainder of the 18 causes of action were against other former Defendants El Tejon Sheep Company, Melchor Gragirena, Mountain Plains Agricultural Service and Estill Ranches. These claims and parties were dismissed by Stipulation, to which Western Range was not a signatory. [Doc #196, 198].

Defendant El Tejon was also a party to this DOL form approved contract.

VI

PROCEDURAL BACKGROUND

Initially, Plaintiff filed a FLSA suit against Western Range, El Tejon, and Gragirena on May 3, 2016. [Doc #1]. On September 10, 2016, Western Range, Gragirena, and El Tejon all filed Motions to Dismiss. [Doc #35, 37]. On October 13, 2016, Plaintiff, plus newly named Plaintiff Ramos filed the First Amended Complaint ("FAC"), wherein additional Defendants were added and seventeen ("17") new causes of action also appeared. [Doc #45]. The FAC omitted the FLSA cause of action previously. [Doc #45].

On Defendants' Motions, [Doc #55, 65, 66], this Court dismissed Plaintiffs' FAC and granted leave to amend again. [Doc #107]. Plaintiff then filed the SAC on May 15, 2017 [Doc #111], and after extensive oral argument on October 23, 2017, the case was again dismissed by this Court on February 13, 2018, in another opinion that addressed many elements of CAFA jurisdiction. [Doc #140].

Plaintiff appealed the District Court's dismissal to Ninth Circuit Court of Appeals on March 9, 2018. [Doc #147]. On June 19, 2019, in a 2-1 decision, with a dissenting opinion, the Ninth Circuit Court of Appeals reversed the District Court dismissal (based on the jurisdictional issues) and remanded this action back to this Court. [Doc #168, 169]. Extensive written and deposition discovery has now been conducted by both parties, set forth in detail. *See*, Declaration of Ellen Jean Winograd, filed herewith as Exhibit 1.

Following discovery, Plaintiff moved for FRCP 23 Class Certification on October 29, 2021. Western Range opposed that motion, it is fully briefed and ripe for adjudication by this Court. [Doc #264, 270, 273].

VII

DISCOVERY COMPLETED

Western Range has responded to numerous sets of Interrogatories and Requests for Production of Documents and has, in the context of numerous supplements, produced to Plaintiff over 110,000 pages of documents. Plaintiff also took depositions of 15 Member Ranches and Western Range's Executive Director, Monica Youree. *See*, Declaration of Ellen Jean Winograd, filed herewith as Exhibit 1.

Even with all the completed discovery, Plaintiff **has not** and **cannot** meet his burden of proving the requisite elements necessary for his claims. Conspicuously absent from Plaintiff's discovery, is any non-speculative testimony or other evidence of alleged underpayment. [Doc # 270]. The following is a brief synopsis of discovery provided to Plaintiff. A full roster of discovery is included in the Declaration of Ellen Jean Winograd, filed herewith as Exhibit 1.

- Western Range produced or supplemented Thirteen FRCP 26.1 Disclosures;
- Western Range responded to Plaintiff's First Set of Interrogatories;
- Western Range responded and supplemented 32 times to Plaintiff's Second Set of Interrogatories;
- Western Range responded and supplemented responses twice to Plaintiff's Third Set of Interrogatories;
- Western Range responded and supplemented responses 17 times to Plaintiff's First Set of Request for Production; and
- Western Range responded to Plaintiff's Request for Admission.
- Plaintiff has taken fifteen FRCP 30(b)(6) Member Ranch depositions, one Western Range FRCP 30(b)(6) deposition and one Western Range Expert Deposition.

VIII

ARGUMENT

A. The Standard for Summary Judgment

As this Court is aware, pursuant to FRCP 56 summary judgment is appropriate whenever there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. "An issue is 'genuine' if there is a sufficient evidentiary basis on which a reasonable fact-finder could find for the nonmoving party and a dispute is 'material' if it could affect the outcome of the suit under the governing law. *Hazelett v. Wal-Mart Stores, Inc.*, 829 F. App'x 197, 200 (9th Cir. 2020) [citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)]. Further, a "material" fact is one that is relevant to an element of a claim or defense, and whose existence might affect the outcome of the suit. *See, T.W. Elec. Serv.*

v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987). The party asserting the existence of a material fact must show "sufficient evidence supporting the claimed factual dispute... to require a jury or judge to resolve the parties' differing versions of the truth at trial." *T.W. Elec. Serv. v. Pacific Elec. Contractors Ass'n, supra*; *First National Bank v. Cities Serv. Co.,* 391 U.S., 253 (1968). Rule 56 (c) mandates the entry of Summary Judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at Trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Disputes over irrelevant or unnecessary facts will not defeat Summary Judgment. *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, supra.* In the instant case Western Range has done "both".

Once the moving party meets his burden, the burden shifts to the nonmoving party to "set out specific facts showing a genuine issue for trial." *Celotex Corp. v. Catrett, supra at* 324. The non-moving party may not rely on [the pleadings] but must produce specific evidence. . . admissible material evidence to show that the dispute exists. *See, e.g., Bhan v. NME Hosps., Inc.,* 929 F.2d 1404, 1409 (9th Cir. 1991). A mere scintilla of evidence is insufficient to establish a genuine issue of material fact. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 252 (1986). The nonmoving party cannot defeat summary judgment merely by demonstrating "that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574, 586 (1986); *Triton Energy Corp. v. Square D Co.,* 68 F.3d 1216, 1221 (9th Cir. 1995). The nonmoving party must go beyond the pleadings . . . to designate specific facts showing that there is a genuine issue for trial." *Celotex v. Catrett, supra.*

1. The Specific Standard for Summary Judgment in a Wage-and-Hour Case

Specifically in an alleged underpayment case, the Court in *Ihegword v Harris County Hosp. Dist.,* 555 Fed.Appx. 372 (5th Cir. 2014), explained the burden of proof necessary to survive a defense Motion for Summary Judgment on the FLSA wage and hour issues. Discussing both the analysis and the public policy, the Court in *Ihegword v. Harris County, supra,* affirmed the lower District Court's summary judgment in favor of Defendant and dismissed Plaintiff's claims with prejudice and stated:

> Plaintiff-Appellant Edith Ihegword brought suit under the Fair Labor Standards Act ("FLSA") against Defendant Appellee Harris County Hospital District ("HCHD"). The district court granted summary judgment in favor of HCHD and dismissed Ihegword's claims with prejudice. **We affirm**.

* * *

> Ihegword contends that the district court erred in finding that she had failed to produce sufficient evidence for a jury to find that she performed uncompensated overtime work and that HCHD was aware that Ihegword had performed the uncompensated overtime work. **We disagree.**
>
> * * *
>
> Moreover, the district judge noted the complete lack of evidence, other than Ihegword's unsubstantiated assertions speculated from memory, to prove she actually worked overtime for which she was not compensated. . . . As noted by the district judge, "an unsubstantiated and speculative estimate of uncompensated overtime does not constitute evidence sufficient to show the amount and extent of that work as a matter of just and reasonable inference." *Ihegword v. Harris Cnty. Hosp. Dist.*, 929 F.Supp.2d 635, 668 (S.D. Tex. 2013) (citing *Harvill*, 433 F.3d at 441); *see also* 29 U.S.C. § 207(a)(1). Accordingly, we hold that the district court did not err in granting summary judgment in favor of HCHD.
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> * * *
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> After considering the parties' arguments as briefed on appeal, and after reviewing the record, the applicable statutory and case law, and the district court's judgment and reasoning, we AFFIRM the district court's summary judgment in favor of Defendant-Appellee Harris County Hospital District and adopt its analysis in full.

Id. at 375, *emphasis added.*

B. Plaintiff has Substantive Deficiencies in His Claims that Cannot be Overcome

Without weighing facts or credibility, Plaintiff's case is fatally deficient in that it lacks merit as a matter of law on claims One, Three, Four, Five, and Nine, the only claims currently pending against Western Range. [Doc #111]. As this Court will recall, there is no class in this case. This Motion is not addressing the arguments for class certification. Instead, this Motion is addressing Plaintiff's failure to satisfy his individual burden for his claims. As to Plaintiff individually, he failed to demonstrate evidence of his damages other than broad speculative assertions. As a result, Western Range is entitled to Summary Judgment as to Plaintiff's claims, separate and apart from a decision being made as to class certification.

1. Plaintiff has Submitted No Facts, Material or Otherwise That Would Allow This Matter to Proceed to the Trier of Fact

Conclusory or speculative allegations are insufficient to create genuine issues of fact and defeat summary judgment. *See, Thornhill Pub. Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir.1979). District Courts with the Ninth Circuit have followed this rule in wage and hour cases, granting summary judgment in favor of employer-defendants when there is no evidence in the record supporting the Plaintiff's wage and hour

claims or when the evidence supporting the wage and hour claims is based on speculation and conjecture. *See, Elliot v. Spherion Pac. Work, LLC*, 368 F. App'x 761, 763 (9th Cir. 2010); *see also, Cleveland v. Groceryworks.com, LLC*, 200 F. Supp. 3d 924, 945 (N.D. Cal. 2016).

Awarding summary judgment when a party has not shown credible or competent evidence of damages is rooted in Ninth Circuit precedent. In *Weinberg v. Whatcom Cty.*, 241 F.3d 746, 751 (9th Cir. 2001), the Court stated Plaintiff's failure to offer competent evidence of damages made summary judgment appropriate because the Plaintiff had the burden of proving the amount of harm suffered. The evidence provided by Plaintiffs must be such that the jury does not have to speculate or guess the amount of damages to award. *Ibid.*

In *Cleveland v. Groceryworks.com, supra*, Plaintiff claimed the defendant-employer failed to pay him for work. Plaintiff claimed he gave the employer constructive knowledge as to his work "off-the-clock". *Cleveland*, 200 F. Supp. 3d at 943. However, the Court rejected Plaintiff's argument and rejected the evidence proffered by the Plaintiff. The Court found the "evidence" amounted to "little more than speculation and conjecture" and granted Defendant's motion for Summary Judgment against Plaintiff. *Id.* at 945.

In the case at bar, Plaintiff's SAC allegations are unsupported by non-evidence in the record. From the onset of this litigation, through two amendments, multiple motions, and extensive discovery, Plaintiff has still failed to introduced any non-speculative evidence that would create a genuine issue of material fact as to his alleged wage "underpayment". The undisputed facts don't even rise to the level of conjecture regarding damages, because Plaintiff was paid the higher California H-2A rate. *Cleveland v. Groceryworks, supra*..

Despite many months of discovery, Plaintiff has still failed to provide direct testimony from any source other than himself. As incredible as it seems, Plaintiff himself stated:

By Plaintiff:

A: I have always worked the 24 hours

By Ms. Winograd:

Q: Every single day?
A: Every day. Every day, yes.

* * *

Q: While you were sleeping at El Tejon, were you working?
A: Yes
Q: When you were eating meals as an employee of El Tejon, were you working?
A: Yes

* * *

Q: At the time you were establishing your Facebook account, were you working?
A: Yes

See, Excerpts of Plaintiff Abel Cántaro Castillo's Deposition, pp. 144-45, filed herewith as Exhibit 2.

Plaintiff's testimony constitutes the sole "evidence" of his claims. Plaintiff further testified:

By Ms. Winograd:

Q: Do you have any documents that indicate what hours you were working?

By Plaintiff:

A: I think it's enough with my testing - - I think it's enough with my testimony that I say I worked 24 hours.
Q: I'm not questioning that that is your testimony. I'm asking whether you have documents that show how many hours you actually worked.
A. Documents, no.
Q. Do you know of any witnesses who can testify as to how many hours you actually worked at El Tejon?
A. All the workers are witnesses of the hours that we worked.

See, Excerpts of Plaintiff Abel Cántaro Castillo's Deposition, p. 207, filed herewith as Exhibit 2.[11]

Based on the foregoing and given that Plaintiff testified in a way stretching all bounds of credibility, the record is devoid of any credible evidence that would create a genuine issue of material fact or otherwise, upon which a reasonable jury could rely on to find in favor of Plaintiff that he worked 24 hours every day and Plaintiff was paid under the applicable wage rate.

Plaintiff further cannot even provide evidence of his damages that would support his theory of wage underpayment. Nor can his experts. At this juncture, after receiving over 110,000 pages of documents from Western Range and after receiving herder payroll records from Nevada Member Ranches, taking Western Range Member Ranches' FRCP 30(b)(6) depositions and retaining two experts, Plaintiff has still failed to establish evidence of his damages that would support his claim of wage underpayment.

Furthermore, even if Plaintiffs have introduced some evidence of damages, Western Range is still entitled to summary judgment as a matter of law. 20 CFR §§ 655.210(g) and 655.211 outline the rates of pay for H-2A sheep herders, including Plaintiff. Section 255.210(g) states:

> The employer must pay the worker at least the monthly AEWR, as specified in § 655.211, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action, in effect at the time work is performed, whichever is highest, for every month of the job order period or portion thereof.

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[11] To date, Plaintiff has not produced or identified a single worker to state, let alone testify to the "24-hour" workday Plaintiff claims.

20 CFR § 655.210.

The DOL, not Western Range, sets the applicable H-2A wage floor (AEWR) for each state, while accounting for state wage differences. Even though Plaintiff is asserting unpaid wages under Nevada's Minimum Wage Amendment, Plaintiff was paid the higher prevailing California rate of $1,422.00 rather than the $800.00 prevailing rate Nevada had in 2015, even though Plaintiff divided his work between both Nevada and California. [Doc #45, ¶ 102]. Plaintiff's claim that Western Range failed to pay Nevada's applicable wage rate is facially implausible based upon Plaintiff's own Complaint, wherein he admits he was paid California's higher rate of $1,422.00. [Doc #111, ¶ 106,107]. Plaintiff's claim of differences between wages allegedly "due" for hours actually completed versus the wages actually "paid" have not been calculated, which is Plaintiff's burden. Therefore, any alleged underpayment is a mere unsubstantiated allegation, it's speculation, and it is nothing more than a "metaphysical" estimate. *See, generally, Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., supra.*

Plaintiff has individually failed to demonstrate with evidence that he was underpaid. As a factual matter, the only thing supporting Plaintiff's claims are his own conclusory allegations, Plaintiff has failed to introduce other evidence supporting his claim for damages. Accordingly, Western Range is entitled to summary judgment as a matter of law against Plaintiff's claims.

2. Plaintiff Cannot, as a Matter of Law, Present the Requisite Elements for a Breach of Contract Claim

a. Breach of Contract Claims Cannot Survive Summary Judgment Solely on Plaintiff's Allegations that Western Range Breached a "Legal Duty"

Plaintiff's THIRD COUNT alleges a breach of contract and/or quasi contract. Nevada law requires the plaintiff in a breach of contract action to show: (1) the existence of a valid contract; (2) a breach by the defendant; and (3) damage as a result of the breach. *Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919-20 (D. Nev. 2006) [*citing Richardson v. Jones*, 1 Nev. 405, 1865 WL 1066 (Nev. 1865)]. "An alleged violation of any purportedly applicable law does not constitute a breach of contract." *Berger v. Home Depot U.S.A., Inc.*, 476 F. Supp.2d 1174, 1176 (C.D. Cal. 2007).

In *Berger v. Home Depot*, *supra,* the Plaintiff alleged that the Home Depot's contract, which incorporated consumer protection laws, rendered any alleged violation of those laws a breach of contract.

The Court rejected the Plaintiff's argument, stating:

> "[I]t is not evident that the statutes allegedly violated in this case . . . were intended to provide a basis for a Breach of Contract action." *Id.* at 1177. If the court found otherwise, such a holding would create two claims for relief, something that is not provided by the statute. Plaintiff's novel theory would create a new Breach of Contract claim in all circumstances where a statute was allegedly violated. Plaintiff's claim would thus significantly change the core principles of contract law. This expansion of liability is not and should not be part of our jurisprudence. While the [statutes] do[] not necessarily provide plaintiffs with an exclusive remedy, plaintiffs must be required to do something more to allege a breach of contract claim than merely point to allegations of a statutory violation.

Berger v. Home Depot, supra at 1177; see also, Goldwell of N.J., Inc. v. KPSS, Inc., 622 F. Supp. 2d 168, 195 (D.N.J. 2009).

In Nevada generally, a violation of a statutory right is considered a tort, independent of contract. *See, e.g., Bernard v. Rockhill Dev. Co.*, 734 P.2d 1238 (Nev. 1987). Therein the Court noted that a breach of contract may be said to be a "material failure of performance of a duty arising under or imposed by agreement. A tort, on the other hand, is a violation of a duty imposed by law .... independent of contract." *Id.* at 1240; *see also, Malone v. Univ. of Kan. Med. Ctr.*, 552 P.2d 885 (Kan. 1976) [quoted by the Nevada Supreme Court in *Bernard v. Rockhill Dev. Co., supra*].

In *In Re Anthem, Inc, Data Breach Litig.*, 162 F. Supp. 3d 953, 982 (N.D. Cal. 2016), the Court held that a breach of contract claim based solely upon a pre-existing legal obligation to comply with HIPAA cannot survive dismissal. *Id.; see also, Dixon v. Wells Fargo Bank, N.A.*, 2012 WL 4450502, at *8 (E.D. Mich. Sept. 25, 2012).

Plaintiff's breach of contract claim against Western Range in this case fails as a matter of law. The SAC [Doc #111] premises the breach of contract claim upon Western Range's alleged failure to comply with the CFR or more specifically, Nevada's Minimum Wage Amendment. As to the alleged wage-violations, Plaintiff's breach of contract claim is duplicative of his Nevada's Minimum Wage Amendment claims. In fact, it is not even clear whether the Nevada's Minimum Wage Amendment claim, as alleged by Plaintiff, is an appropriate private civil cause of action. [Doc #111]. To wit: Nevada's Minimum Wage Amendment does not provide for a breach of contract cause of action. *See,* Nev. Const. art. 15, § 16. Plaintiff's breach of contract claim based on the unpaid wages theory, is an inappropriate attempt to seek duplicative compensation for the

same alleged harm—such bootstrapping of claims is not allowed. *Goldwell of N.J., Inc. v. KPSS, Inc., supra.* As was the case in *In re Anthem*, supra, a breach of contract does not occur based on a preexisting duty to comply with 20 CFR. § 655.135.

Accordingly, for both theories underlying the breach of contract claim, Plaintiff is simply alleging a tort claim under the guise of a breach of contract. Accordingly, Plaintiff cannot bootstrap a "breach of contract claim" onto a cause of action based on a violation of a statute, particularly when the statute does not provide for private remedies.

3. Plaintiff Cannot, as a Matter of Law, Present the Requisite Elements for Promissory Estoppel

Plaintiff's claim for relief against Western Range for promissory estoppel, which as the Court knows, is a *consideration* substitute, not a contract substitute. *See, Vancheri v. GNLV Corp.*, 777 P.2d 366, 369 (Nev. 1989) ["The doctrine of promissory estoppel, which embraces the concept of detrimental reliance, is intended as a substitute for consideration, and not as a substitute for an agreement between the parties,"] [citing *Kruse v. Bank of Am.*, 248 Cal. Rptr. 217 (Ct. App. 1988); *Pink v. Busch*, 691 P.2d 456, 459 (Nev. 1984)].

To establish a claim of promissory estoppel, a plaintiff must prove four elements: (1) the party to be estopped must be apprised of the true facts; (2) he must intend that its conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped. *Pink v. Busch*, *supra* at 459-60 [quoting *Cheqer, Inc. v. Painters & Decorators Joint Comm., Inc.*, 655 P.2d 996, 998-99 (Nev. 1982)]. A claim for promissory estoppel must be pled with particularity. *Leftenant v. Blackmon*, No. 2019 WL 4247147, at *6 (D. Nev. Sept. 6, 2019) (observing "promissory estoppel must be pled with specificity in compliance with Fed. R. Civ. P. 9(b)") (citations omitted).

By contrast, if an express agreement exists between the parties promissory estoppel is not applicable. *See, Morgan v. Aurora Loan Servs., LLC*, 646 F. App'x 546, 551 (9th Cir. 2016) ["Promissory estoppel applies only in the absence of an express agreement between the parties."]. *See also, Am. Sav. & Loan Ass'n v. Stanton-Cudahy Lumber Co.*, wherein the Court held that the doctrine of promissory estoppel may be applicable in a case where traditional consideration is lacking, reliance which is foreseeable, reasonable, and requires enforcement to avoid injustice cannot otherwise be avoided. 455 P.2d 39, 41 (Nev. 1969). In the

instant case, the allegation of an express agreement between the parties defeats Plaintiff's cause of action for promissory estoppel. Although pleaded in the alternative, Plaintiff cannot have it both ways. It appears that Plaintiff's promissory estoppel claim is based on Western Range's alleged promise to Plaintiff to adhere to the supposed implied incorporation of the CFR into the Agreement. [Doc #111, ¶ 199, 200, 201].

Importantly, Plaintiff failed to plead justifiable and reasonable reliance, which is necessary to maintain a claim for promissory estoppel. *See, Pellegrini v. State*, 34 P.3d 519, 531 (Nev. 2001); *Am. Sav. & Loan Ass'n v. Stanton-Cudahy Lumber Co., supra.*In the instant case, Plaintiff's reliance is neither justifiable nor reasonable, since the alleged unarticulated promise was based upon Western Range's DOL language and Western Range is intent to comply with all applicable laws. Plaintiff never pleaded that Western Range's compliance with 20 CFR. §§ 655.122, 655.210, 655.135, constituted a "promise" upon which he actually relied. In fact, as to Western Range, it is undisputed that it works with its members ranches to maximize State and Federal compliance. *See*, Declaration of Monica Youree, filed herewith as Exhibit 3.

As promissory estoppel is required to be pleaded with particularity, Plaintiff's unsupported and vague allegations of detrimental reliance are conclusory. As a result, summary judgment is proper against Plaintiff's promissory estoppel claim in favor of Western Range.

4. Plaintiff Cannot as a Matter of Law, Present the Requisite Elements for an Unjust Enrichment Claim

As with Plaintiff's claim of promissory estoppel, his claim for unjust enrichment/quantum meruit also fails because a DOL written agreement is alleged by Plaintiff. In *WuMac, Inc. v. Eagle Canyon Leasing, Inc.*, 2013 WL 593396, at *4 (D. Nev. Feb. 14, 2013) the Court dismissed Plaintiff's quantum meruit claim and held that a claim for quantum meruit is not actionable when the claim is based on an express contract. An action based on a theory of unjust enrichment is unavailable when there is an express, written contract, because no agreement can be implied when there is an express agreement. *Leasepartners Corp. v. Robert L. Brooks Tr. Dated Nov. 12, 1975*, 942 P.2d 182, 187 (Nev. 1997) ["The doctrine of unjust enrichment or recovery in quasi contract applies to situations where there is no legal contract. . . "]; *see also*, 66 Am. Jur. 2d Restitution § 11 (1973); s*ee also*, *Lipshie v. Tracy Inv. Co.*, 566 P.2d 819, 824 (Nev. 1977). In this instant case, Plaintiff has pleaded an express contract exists. [Doc #111, ¶ 36].

Again, Plaintiff cannot have it both ways. Either there is a contract or there isn't. Plaintiff's unjust enrichment/quantum meruit claim fails as a matter of law and must be dismissed.

IX

CONCLUSION

Based on the foregoing, therefore, Western Range respectfully submits that Plaintiff has no genuine issues of material fact and pursuant to FRCP 56 Western Range is entitled to judgment as a matter of law.

The undersigned does hereby affirm pursuant to NRS 239B.030 that the preceding document does not contain the social security number of any person.

DATED this 13 day of April, 2022.

Respectfully submitted.
WOODBURN and WEDGE

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2022, a true and correct copy of the foregoing was served via the United States District Court CM/ECF system on all parties or persons requiring notice.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ABEL CANTARO CASTILLO on behalf of himself and those similarly situated, Plaintiff, vs. WESTERN RANGE ASSOCIATION Defendant.	CASE NO. 3:16-cv-00237-RCJ-CLB

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

Defendant Western Range Association ("WRA") asks this Court to grant summary judgment on Plaintiff's contract and Nevada Minimum Wage Amendment claims on the grounds that Plaintiff cannot prove he was paid less that the minimum wage, without presenting any evidence to show that it is undisputed that Plaintiff *was* paid the minimum wage. WRA flouts Local Rule 56.1 requiring that a party seeking summary judgment set forth "each fact material to the disposition of the motion that the party claims is or is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, admission, or other evidence on which the party relies." WRA barely acknowledges small portions of Plaintiff's deposition testimony, but none of the remaining extensive evidence in the record, and then asks the Court to flagrantly violate governing Rule 56 standards by weighing the credibility of that deposition testimony in order to justify summary judgment. Defendant's motion could not be further from satisfying Rule 56 standards. As set forth below, Plaintiff has ample evidence—his own testimony, testimony of other herders, a rich documentary record, and deposition and declaration testimony from herders—which would establish at trial that he was paid less than minimum wage based upon the hours he worked, and the undisputed amount of his monthly salary. Defendant fails to address Plaintiff's contention, of which it is well aware, that under governing authority Plaintiff's on call time was compensable. But even if that argument were set aside there is ample evidence supporting 56-81 hours of active work per week, and even at the lowest possible number of hours, Plaintiff was paid well below Nevada's minimum wage. WRA's other arguments fair no better.

II. FACTUAL BACKGROUND

A. Procedural Background

Plaintiff worked in Nevada as an H-2A herder until June 2014. He filed this case as a putative class action on May 3, 2016. While originally additional parties were named, the parties are currently limited to Plaintiff, who seeks to represent a class, and Defendant Western Range Association, which Plaintiff alleges was a joint employer of him and other H-2A herders. After the issue of this Court's jurisdiction were resolved, discovery has been completed, and Plaintiff's motion for class certification is fully briefed and awaiting ruling. Plaintiff filed a motion for partial

summary judgment on the issue of WRA's status as joint employer of Plaintiff and other H-2A herders. ECF 303. Defendant filed the instant motion seeking summary judgment against Plaintiff.[1]

B. WRA Entered Contractual Agreement to Pay Plaintiff

The H-2A temporary agricultural worker program requires employers seeking approval to bring in temporary foreign workers to file an application with the DOL. This application must include a job offer ("job order") that complies with applicable federal regulations, including specific commitments with respect to the minimum benefits, wages, and working conditions that the employer must offer. 20 C.F.R. §§ 655.121(a)(1), 655.130, 655.120(a)(2), 655.122, 655.135, and 655.210. The job orders include "Assurances" promising that "all working conditions comply with applicable Federal and State minimum wage . . . .and other employment-related laws." Macker Decl. ¶ 7, Ex. 1; *see generally* Job Orders, Ex. 2. An officer or managing agent of Western Range signed the Employer's Certification on each Form ETA-790 under penalty of perjury. *Id.* The H-2A petitions also included an Employer's Declaration stating that "[t]he employer understands that it must offer, recruit at, and pay a wage that is the highest of the adverse effect wage rate in effect at the time the job order is placed, the prevailing hourly or piece rate, the agreed upon collective bargaining rate (CBA), or the Federal or State minimum wage." Macker Decl. ¶ 13, Ex. 1. An officer or managing agent of Western Range signed the Employer's Declaration on each Form ETA-9142/9142A, under penalty of perjury. *Id.* Nevada Constitution's Minimum Wage Amendment, Nev. Const. art. 15, § 16, unlike some state statutes and the FLSA, does not include any exemption for agricultural workers or those working out "on the range," as herders do. Thus, Nevada's minimum wage, considering the number of hours worked, is higher than the AEWR, and is the minimum WRA is contractually obligated to pay to herders, like Plaintiff, working in Nevada.

[1] Defendant devotes two-thirds of its "Case Overview" to accusing Plaintiff of leaving his herding job one month before his contract was up and remaining unlawfully in the United States through 2016. Mot. at 1-2. Indeed, Defendant has made a greater attempt to locate and cite evidence supporting these allegations than it has with respect to the issues upon which its summary judgment motion turns. As any events post-dating Plaintiff's employment are no defense to Defendant's failure to pay Plaintiff Nevada's minimum wage, and indeed are entirely irrelevant to this case, as well as to WRA's pending motion for summary judgment, Plaintiff will not address these claims.

In the absence of a contract containing all the required terms and conditions of employment, the job order and H-2A petition required by the DOL are deemed to be the required employment contract.[2] That job order—and thus the contract at issue here—includes the promise to comply with governing law, including the applicable laws regarding wages; the H-2A petition—also part of the contract—includes the promise to pay state minimum wage if it is higher than the AEWR.[3] *See also* Order on First Motion to Dismiss, ECF 107 at 12 ("as a matter of law, Plaintiffs' H-2A shepherd contracts included a promise to pay the applicable state minimum wage, if higher than the applicable AEWR") (citing *Ruiz v. Fernandez*, 949 F.Supp.2d 1055, 1072 (E.D. Wash. 2013). Western Range is a party to this H-2A created contract, and is a joint employer of Plaintiff. *See* Plaintiff's Motion for Partial Summary Judgment on Joint Employer Status.

Indeed, WRA has produced many of the job orders, H-2A petitions, and individual herder visa applications that it filed in order to obtain visas for its H-2A workers, including ones specific to Plaintiff Cántaro Castillo. These documents provide the substance of the contract. These documents set forth the herders' job duties,[4] monthly salary,[5] required hours,[6] WRA's commitment to pay state minimum wage when it was higher than the AEWR,[7] and WRA's commitment to "comply with

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[2] 20 C.F.R. § 655.122(q); *see also Arriaga v. Fla. Pac. Farms, LLC*, 305 F.3d 1228, 1233 n.5 (11th Cir. 2002); *Frederick Cnty. Fruit Growers Ass'n, Inc. v. Martin*, 968 F.2d 1265, 1268 (D.C. Cir. 1992); *Salazar-Calderon v. Presidio Valley Farmers Ass'n*, 765 F. 2d 1334, 1342 (5th Cir. 1985).

[3] *Id.*; § 655.121(a)(1); Macker Decl. ¶¶ 7, 13, Ex. 1.

[4] WRA000034 at WRA000036, Ex. 12; *see also* Form 9142 at WRA008318 (Nevada Master Job Order for 8/1/2009-7/31/2010), Ex. 4. Although this 2009-2010 Nevada Master Job Order slightly predates Plaintiff's October 20, 2010 contract, WRA did not produce its 2010-2011 Nevada Master Job Order. Nevertheless, all of the Nevada Master Job Orders produced by WRA were filled out as a matter of course, with all key terms built into the Department of Labor ETA Form 790, and the information provided by WRA on each form is substantially similar. Macker Decl. ¶¶ 6-11, Ex. 1; *see also* Youree Dep. 99:9-17 (Youree is not aware of any information that WRA typically modifies in filling out its Form 790s from year to year), 147:4-11 (similarly testifying that Form I-129 has changed over the years, but there have not been any significant changes to the way WRA has filed Form I-129s during the proposed class period), Ex. 5.

[5] Form 9142 (2009-2010) at WRA008319, Ex. 4; Form 9142 at WRA000038, Ex. 12; *see also* WRA000019 at WRA000023, Ex. 6.

[6] Form 9142 (2009-2010) at WRA008318, Ex. 4; Form 9142 at WRA000036, Ex. 12; *see also* I-129 at WRA000023, Ex. 6.

[7] Form 9142 at WRA000040, Ex. 12.

applicable Federal, State and local employer-related laws and regulations;"[8] these elements of the job order and H-2A petitions are consistent in relevant respects over the entire time period.[9]

C. Plaintiff's Job Duties, and Hours

1. Required Hours of Work

All of the relevant job orders and H-2A petitions state that Plaintiff was on call for up to 24 hours/day, 7 days/week.[10] If the H-2A petitions did not specify that the herders needed to be available 24/7, then the visas could not have been issued under the special procedures for herders, and would have had to comply with the usual H-2A requirements of recording all hours worked, and paying the minimum wage rate for each hour worked.[11] The job orders and H-2A petitions filed by WRA and produced in this litigation consistently include the assertion that the herders will be on call 24/7.[12] Further, the I-129 forms prepared and submitted by WRA (the request for a visa made to DHS after DOL has approved issuance) states: "Hours per week: 24/7 Hours per week" *see*, *e.g.*, I-129 at WRA010894, Ex. 9. When these special procedures for sheepherders apply, the employer does not have to keep track of hours worked.[13] In reliance on these provisions, neither WRA nor its

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[8] Form 9142 at WRA000041, Ex. 12; *see also* Macker Decl. ¶ 7, Ex. 1 (beginning in 2013 [while Plaintiff still worked for WRA], Form 790s submitted by WRA uniformly contained an "Assurances" page stating "all working conditions comply with applicable Federal and State minimum wage…and other employment-related laws").

[9] *See* Macker Decl. ¶¶ 6-17, Ex. 1; Job Orders, Ex. 2; H-2A Petitions, Ex. 8.

[10] *See, e.g.*, Form 9142 at WRA008318 ("On Call** 24 hours"), Ex. 4; Form 9142 (2009-2010) at WRA000036 ("ON CALL 24/7"), Ex 12; *see also* I-129 at WRA000023 ("24/7 Hours per week") (Plaintiff's visa application), Ex. 6; *see also* Macker Decl. ¶¶ 9, 15 (other WRA forms across the proposed class period are substantially similar), Ex. 1.

[11] TEGL No. 32-10, Att. A, § I.C.1, Ex. 7 at WRA000806 ("If an application file for a sheepherder or goatherder does not include the requirements of being on call 24 hours per day, 7 days per week, the Chicago NPC may not process the employer's application under the special procedures enumerated in this TEGL, and must instead require compliance with all the requirements of the H-2A regulations outlined in 20 C.F.R. 655, Subpart B."); 20 C.F.R. § 655.200 (b)(3) ("These procedures apply to job opportunities with the following unique characteristics . . . .The work activities generally require the workers to be on call 24 hours per day, 7 days a week.").

[12] Macker Decl. ¶¶ 9, 15, Ex. B, C, Ex. 1; Forms 790 at WRA008338, P000651, Ex. 2; H-2A Petitions at WRA008325, WRA009977, Ex. 8.

[13] 20 C.F.R. § 655.210(f)(1) ("The employer is exempt from recording the hours actually worked each day, the time the worker begins and ends each workday, as well as the nature and amount of work performed, but all other regulatory requirements in § 655.122(j) and (k) apply."); TEGL No. 32-10, Att. A, § I.C.7, Ex. 7 at WRA000807 ("Because the unique circumstances of

member ranches such as El Tejon, where Plaintiff worked, maintained a record of hours worked.[14]

While neither WRA nor its member ranches tracked hours worked, the similarity of the job duties, the requirements of H-2A, and fundamentally the requirements of open range sheepherding combine to provide substantial corroboration for Plaintiff's testimony regarding his hours worked.[15] The analysis is made easier by the principles of wage and hour law which dictate that, except for sleeping time, nearly all of the herders' waking hours are hours worked.

2. Plaintiff's Job Responsibilities

WRA has used virtually identical job descriptions in all of its job orders and H-2A petitions since 2010, including on the forms specifically covering Plaintiff Cántaro Castillo. *See, e.g.*, WRA000034 at WRA000036; *see also* Macker Decl. ¶¶ 8, 14, Ex. 1. This is no surprise since it closely tracks the job description included in the TEGL special regulations. *Id.* The TEGL, Att. A, § I.C.1 provides the following job description:

> Attends sheep and/or goat flock grazing on the range or pasture. Herds flock and rounds up strays using trained dogs. Beds down flock near evening campsite. Guards flock from predatory animals and from eating poisonous plants. Drenches sheep and/or goats. May examine animals for signs of illness and administer vaccines, medications, and insecticides according to instructions. May assist in lambing, docking, and shearing. May perform other farm or ranch chores related to the production and husbandry of sheep and/or goats on an incidental basis.

WRA000806, Ex. 7. WRA's member ranches, including El Tejon where Plaintiff worked, agreed that the job description was generally accurate as to herders working on their ranches.[16]

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employing sheepherders and/or goatherders (i.e., on call 24/7 in remote locations) prevent the monitoring and recording of hours actually worked each day as well as the time the worker begins and ends each workday, the employer is exempt from reporting on these two specific requirements of 20 C.F.R. § 655.122(j) and (k). However, all other regulatory requirements related to earnings records and statements apply.").

[14] Gragirena Decl. ¶¶ 17-18, Ex. 10; Youree Dep. 224:11-226:4, 228:14-24 (it was not possible for ranches to track hours, WRA made no record of hours and did not expect ranches to do so), Ex. 5.

[15] Plaintiff's proposed expert, Dr. Petersen, performed a pilot survey and wrote an expert report demonstrating the feasibility of scaling up his pilot survey in order to make class-wide projections of hours worked, post-class certification. *See* Petersen Report ¶ 4, Ex. 11. The responses to the survey provide corroboration from randomly selected herders identifying their job responsibilities and hours worked on the range which further corroborates Plaintiff Cántaro Castillo's testimony.

[16] Gragirena Decl. ¶ 15, Ex. 10. This is consistent with evidence from all the other ranches,

Melchor Gragirena, owner of El Tejon, specifically noted that herders guarded sheep from predators, sought to prevent the sheep from eating poisonous plants, and herded sheep to stay within the boundaries of their permitted range and avoid overgrazing.[17] Plaintiff Cántaro Castillo testified that he assisted with lambing, and otherwise was out on the range with his band of sheep, responsible for guarding them.[18]

A report commissioned by WRA describes sheepherders' responsibilities as follows:

> The open range sheepherder lives and travels with this band of sheep day and night, protecting the sheep from predators and from eating poisonous plants, moving the band to new grazing land each day and bedding them down at night. Typically, during a portion of the year the sheep range is in the mountains or desert, often in exceedingly remote areas.
>
> …
>
> A herder's "work day" typically consists of moving the sheep to new pasture in the morning, observing the sheep during the day as they graze to assure that there are no problems, bedding the band down at night, and being alert during the night for possible indications of predators. The presence of predators is usually signaled by the actions of the guard dogs or signs of restiveness among the sheep that experienced herders have learned to recognize.

Holt Report at WRA001035-36, Ex. 14.[19] The report author, Dr. Holt, also provided testimony, in which he concluded that, "open range sheepherding, where the open range is used for pasture, is a labor-intensive undertaking because of the fact that it does require these herders to be with the sheep constantly." Holt Testimony at P000037-38, Ex. 3. This is consistent with the H-2A regulations for

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as cited in Plaintiff's Motion for Class Certification at 13-14, ECF 264, filed under seal on October 29, 2021 ("ECF 264, Class Cert. Mot.").

[17] Gragirena Decl. ¶¶ 10, 15, Ex. 10. This is consistent with evidence from all the other ranches, ECF 264, Class Cert. Mot.

[18] Cántaro Castillo Dep. 43:17-24, 44:10-14, 45:4-10, 51:6-8, 144:4-24, Ex. 13.

[19] James S. Holt, Ph.D. was retained by WRA to prepare a report on sheepherding and testify before California's Industrial Wage Commission on behalf of WRA about the work that herders engage in; the Holt report was reviewed and approved by WRA. James S. Holt, Ph.D, The Open Range Sheep Industry ("Holt Report"), Ex. 14; Richins Dep. 181-83, 193-94, 195, Ex. 15. WRA submitted a letter to DOL, in response to proposed revisions to the H-2A regulations in 2015, and provided a similar description: "Whether individually or as part of a team, herders can tend a large "band" or "herd" of 1,000 head of livestock or more, often in rugged high altitude terrain or dry desert conditions, hauling water for the animals, herding them to grazing areas and making sure they have enough to eat, keeping them from going astray, and protecting them from the constant threat of natural predators like coyotes, mountain lions, and wolves, harmful or poisonous plants, and man-made dangers like highways and domesticated dogs. During lambing, calving or kidding season, the herders assist the animals in the birthing process, and at all times, the herders provide for the health and medical needs of the herd." WRA Comments at WRA000883, Ex. 16.

herders, which make explicit that the special regulations apply only to positions in which the herder will be "on the range" for most of the workdays, and defines "range" to exclude "any area where a herder is not required to be available constantly to attend to the livestock and to perform tasks, including but not limited to, ensuring the livestock do not stray, protecting them from predators, and monitoring their health." 20 C.F.R. §§ 655.200(b)(2), 655.201. Plaintiff's joint employer confirmed that he was "on the range" for all of the days he was in Nevada.[20]

The descriptions provided by the H-2A regulations, WRA's prior expert witness Dr. Holt, WRA's signed statements in H-2A requests it has filed, and WRA member El Tejon's declaration in this case all describe duties consistent with Plaintiff Cántaro Castillo's testimony that "we all worked … all guarding as sheepherders all the time." Cántaro Castillo Dep. 44:10-14, Ex. 13.

During the ten to twelve months per year that the herders are out on the range with their band of sheep, the herders are on duty every day.[21] The sheep do not take weekends off—and neither do the predators—so the herders must be with them, day in, day out, as their contract requires. Moreover, they must be on the lookout for and available to address any issues for the entirety of the day, even if they are not called upon to be active every moment of the day.[22] WRA has described

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[20] Gragirena Decl. ¶ 8, Ex. 10 (on range all days in Nevada).

[21] Cántaro Castillo Dep. 51:9-11, Ex. 13 (he worked every day); Filbin Dep. 47:13-48:15, Ex. 17; Espil Dep. 29:18-23, Ex. 18 (sheep do not take weekends off so herders must watch over them every day); Knudsen Dep. 106:4-12, Ex. 19; Borda Dep. 66:9-24, Ex. 20; Dufurrena Dep. 80:24-81:5, Ex. 21; Inchauspe Dep. 58:10-20, Ex. 22; Wines Dep. 40:10-20, Ex. 23; Snow Dep. 35:10-16, Ex. 24; Little Decl. ¶ 16, Ex. 25; Olagaray Decl. ¶ 13, Ex. 26; Wright Dep. 76:4-11, Ex. 27.

[22] Espil Dep. 30:11-19, Ex. 18; Knudsen Dep. 41:21-42:8, Ex. 19; Inchauspe Dep. 58:10-20, 77:12-78:6, 127:14-128:25 (expect herders to be available and cover job responsibilities except at night when sleeping, even then would be available if called for wildfire or other danger, pays bounty on killing coyotes); 108:8-12, 109:17-110:2 (herder should pay attention to any changes in weather, etc., that could impact the sheep; herders should pay attention to sheep because there are always a few who will stray and needed to be brought back), 118:24-119:22 (if herder hears thunder which could disturb the sheep, rancher hopes the herder will go out to make sure the storm doesn't scatter the sheep), Ex. 22; Wines Dep. 40:10-20 (the herders live with the sheep so they are there 24 hours/day and are expected to be available if needed at any time during the 24 hour day), Ex. 23; Snow Dep. 50:12-52:14 (other than weekly break of 7-8 hours to travel to bunkhouse for shower and clean clothes, herders were expected to be on range with sheep they were responsible for), Ex. 24; Dufurrena Dep. 27:23-28:9 (herders expected to be available in event of emergency), Ex. 21; Etcheverry Dep. 43:21-45:5 (not on call at night), Ex. 28; Filbin Dep. 64:11-21 (expected to contact him about emergencies, any time day or night), 75:8-23 (expected to kill predators, or at least fire a round to scare them away if is night time), 113:11-17 (when on call herders are available for anything that arises, not always engaged in active work), Ex. 17; Leinassar Dep. 56:21-57:13, 88:15-

the 24/7 on call requirement as a requirement to be "available" for performing work as needed 24/7, while not expecting herders will be active for the entire time.[23] Like many jobs—security guards, firefighters, babysitters—a big part of the herder's job responsibility is to be constantly alert to any problems and able to quickly respond, a scenario referred to as "engaged to wait." As WRA represented to DOL, "Responding to health emergencies experienced by the animals can occur at any time of the day or night, as can responding to threats from predators." WRA Comments at WRA000899, Ex. 16. *See also* Richins Dep. 185:2-7 (open range herders are exempt from federal minimum wage because they are on call 24/7), Ex. 15; Cántaro Castillo Dep. 44:10-14, 45:4-10, 51:6-8, 144:4-24 (herders were responsible for guarding the sheep at all times, 24 hours/day, even when they slept at night, they were still responsible for guarding the sheep), Ex. 13. Ranchers pointed out that the sheepherders had agreed to accept this constant responsibility, stating, e.g.:

> I believe in that job description, which is I believe in their native language, when we sign up for the program, all the issues are out there, they're out there to protect the sheep. They're out there to practice good animal husbandry, whether it's a poisonous plant, a predator, or finding the sheep good feed and water. It's not a surprise for them.

Vogler Dep. 40:15-21, Ex. 30. The same rancher noted that a "poor sheepherder can cost you everything," and described poor sheepherders as:

> Ones that sit in their camp and feel sorry for themselves, don't do their job, don't watch their sheep, let them stray off, let the coyotes eat them. There's many people -- not many people that herd sheep, ma'am; it takes a special individual. And when you've got that special individual, you take care of them.

Vogler Dep. 22:3-13, Ex. 30. If there were any question that herders are "engaged to wait"—that having to be ready and able to respond to any issues, while not always having activities to fill their time is one of the hard parts of the job—rancher testimony made clear that is the case:

> I am paying them to go bored out their gourds for about 20 hours a day and then getting out and tending the sheep, and on different days, it's a little longer one way or the other.

89:8, 114:19-115:4 (herders' contract requires them to protect the sheep including from predators, but he also pays bounty for killing predators as incentive to be alert, aware, and watch the sheep; herders should be paying attention to the sheep regardless of where they are and what they are doing, except at night when it is too dark to move around safely), Ex. 29; Vogler Dep. 22:3-13, 30:16-32:2, 40:15-24 (bad sheepherders sit in their camp and don't watch the sheep as they should; good herders will protect their sheep, even if it means sleeping out with the sheep, instead of in their sheep camp, to keep lambs from getting killed), Ex. 30.

[23] WRA Comments at WRA0912, Ex. 16.

> That's what I am paying them for.
>
> …
>
> There's an outfit in Eastern Idaho. They have trouble getting herders because it was so boring herding sheep there because the feed base was so large, several of them committed suicide. Just absolutely -- you just don't understand until you wake up at 2 o'clock in the morning and you hear chuh-chuh-chuh and it's the blood coursing through your veins. And you hear doop-doop-doop. That's your heartbeat. And you tell me you're working? The next day you're darn sure going to put in some time to stop that crap or you'll go nuts. You get sagebrushed, as it's called in the industry.

Vogler Dep. 133:15-19, 173:6-19, Ex. 30. *See also* Inchauspe Dep. 130:12-131:12 (the part of the herder's job that is really tough is the isolation), Ex. 22.

While many WRA member ranchers stated that when the sheep napped in the middle of the day, that herders did not need to stay with them, contrary to Dr. Holt's testimony and H-2A regulations, even then, the herders are not only required to be available, *see* nn.21-22 *supra*, but may have additional responsibilities. For example, they may have "housework" or "chores" to maintain the campsite,[24] and, as one rancher noted, they should be evaluating the condition of the range, thinking about their next move with the sheep, and discussing those plans with the camp tender.[25] Plaintiff was also required to answer phone calls from the ranch inquiring about the sheep.[26] During dry periods, herders had to haul water for the sheep. Gragirena Decl. ¶ 15, Ex. 10. Plaintiff Cántaro Castillo and other herders were also permitted to slaughter a lamb to eat as part of the meals which must be provided to herders under the H-2A requirements.[27] However, slaughtering a lamb for basic subsistence represents a much more labor-intensive activity than merely cooking groceries delivered by camp tenders; relying on a slaughtered lamb for meals added to the work Plaintiff (and other herders) had to perform in order to fulfill their other job requirements.

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[24] Borda Dep. 72:22-73:4, Ex. 20 (expected to pick up trash, so nothing is left behind); Wright Dep. 171:7-14, Ex. 27 (they have chores to do after sheep bed down).

[25] Leinassar Dep. 122:10-24, Ex. 29; *see also* Yauri Garcia Decl. (an El Tejon herder) ¶ 18(c) (discussing the process of evaluating the area where the herder will direct the sheep the next day), Ex. 32.

[26] Cántaro Castillo Dep. 142:12-14, Ex. 13.

[27] *See, e.g.*, Lapa Pomahuali Decl. ¶ 19 (estimating he slaughters a lamb once a month), Ex. 31; *see also* Cántaro Castillo Dep. 148:10-11 (testifying the El Tejon provided him with very little food), Ex. 13.

Indeed, "[t]he remote and demanding nature of this work makes it unattractive to U.S. workers." WRA Comments at WRA000883, Ex. 16. WRA member ranchers agreed. Moreover, as one testified, even when offered a U.S. worker, the ranchers did not want to hire them because "I don't think they're able to do that job. … It's the isolation and there's no domestics that are going to go up on the mountain and take care of sheep." Inchauspe Dep. 51:16-52:8, *see also* 131:3-12, Ex. 22. Herders "spend most or all of their time in remote areas and therefore do not tend to frequent stores or restaurants or bars." WRA Comments at WRA000903, Ex. 16. While WRA framed this as an advantage—that herders rarely have any opportunity to spend their salaries, and thus save more than other H-2A workers—it provides further evidence that herders are never actually relieved from duty. Very rarely, such as with a medical emergency, the member ranch may be able to have another employee take over from the assigned herder for a day or two, and only slightly less rarely—just a few times a year—a herder may be permitted to take an afternoon off.[28] This was a particularly rare occurrence in Plaintiff Cántaro Castillo's case. Not only did he never have any days off or chance to go into town,[29] but even when he needed medical attention he was not allowed to seek treatment, even when he specifically asked—his supervisors responded "Who's going to be

[28] Cántaro Castillo Dep. 144:25-145:8, Ex. 13 (he never had any days off, he never got to go into town); Inchauspe Dep. 82:22-83:17, 84:1-4, Ex. 22 (occasionally herders are close enough to walk to town, but it is a problem if they leave the sheep to go to town, and it doesn't happen often; if herder needed to go to town, rancher would take them, but it does not happen often); Borda Dep. 51:9-52:25, Ex. 20 (during nine months of year, only way to get to town would be for herder to ask Borda for a ride, and that doesn't happen except rare instances of medical appointments; they also may bring one back to the ranch for shower, clean clothes once in a while); Dufurrena Dep. 52:15-53:4, Ex. 21 (herders in remote areas, can't do things like order a pizza delivery); Etcheverry Dep. 70:4-72:18, Ex. 28 (they are 50 miles from town, can't just walk there, they would have to ask him for a ride, but they do not do so, except in October when they are near a small town and have access to a truck); Filbin Dep. 65:13-66:7, Ex. 17 (herders would have to ask for transport to town, and he cannot recall the last time anyone asked to go); Knudsen Dep. 95:24-96:20, 101:8-21, Ex. 19 (herders are at least an hour's drive from town, would have to ask ranch for a ride, it's not common; too far to order pizza or anything like that); Little Dep. 143:16-144:9, Ex. 33 (most herders do not ask to go to town or any place else for more than 14 days in year, the amount of vacation time they had); Vogler Dep. 158:21-160:2, Ex. 30 (not common for herder to ask to take any time away from range to go to town, the most anyone asked was 4 times/year); Wines Dep. 89:17-90:8, Ex. 23 (herders have the chance to go to town for an afternoon about once/month); Wright Dep. 187:8-12, Ex. 27 (not sure any went to town, no record).

[29] Cántaro Castillo Dep. 144:25-145:8, Ex. 13.

with the sheep?"[30] Plaintiff further testified that while on the range he would sleep little, as he was guarding the sheep even at night, emphasizing that being in constant attendance to the herder was "a lot" of responsibility.[31]

Herders are evaluated based upon their ability to keep all the sheep and lambs entrusted to them healthy, and thus they have ample incentive to be attentive to the sheep.[32]

3. Plaintiff Worked in Remote Areas, With Rudimentary Housing

Herders, including Plaintiff Cántaro Castillo, spend most of the year living in "sheep camps,"[33] (essentially a trailer outfitted with bed, propane powered cooking burners and, for Mr. Cántaro Castillo at least, a propane powered refrigerator).[34] The sheep camps do not have electricity, toilets, or modern bathing facilities.[35] Often there are a few months in the summer when the sheep graze in mountains or other land where the sheep camps cannot be hauled to, and the herders must use tents with even fewer facilities.[36] The only electricity comes from batteries or solar panels sufficient to charge the herder's cell phone.[37] As noted above, herders are expected to be

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[30] Cántaro Castillo Dep. 81:23-82:4; 83:11-84:13 (emphasizing that he was in the mountains by himself, with a severe infection, and despite being told he would be taken to seek medical treatment, he was not), Ex. 13.

[31] Cántaro Castillo Dep. 144:9-12, 45:8-10, Ex. 13.

[32] Inchauspe Dep. 92:13-93:1, Ex. 22; Vogler Dep. 143:24-147:7, Ex. 30; Wright Dep. 72:9-20, Ex. 27; Dufurrena Dep. 86:7-12, Ex. 21; Filbin Dep. 94:21-95:3, Ex. 17; Little Dep. 86:20-87:2, Ex. 33; Espil Dep. 94:1-10, Ex. 18; Wines Dep. 23:9-13, Ex. 23; Borda Dep. 78:7-79:5, Ex. 20; Etcheverry Dep. 92:8-16, Ex. 28; Snow Dep. 55:15-56:9, Ex. 24.

[33] Archi Lozano Decl. ¶ 7 (herder lived in a towed trailer on the range), Ex. 34; Cantaro Oteo Decl., ¶ 9 (same), Ex. 35 Yauri Garcia Decl. ¶ 8 (same), Ex. 32; Ascanoa Alania Decl. ¶ 13 (same), Ex. 36; Lapa Pomahuali Decl. ¶ 13 (same), Ex. 31; Melo Castillo Decl. ¶ 10 ("range housing is required"), Ex. 37; Gragirena Decl. ¶ 9, Ex. 10.

[34] *See* El Tejon Housing Inspections, Ex. 38; *see also*, ECF 264, Class Cert. Mot. at 20, n.61.

[35] Gragirena Decl. at ¶ 9, Ex. 10. The conditions are similar at other ranches. *See* ECF 264, Class Cert. Mot. at 20, n.62.

[36] See El Tejon herder declarations: Archi Lozano Decl. ¶ 8 (herder lived in a tipi on the range), Ex. 34; Cantaro Oteo Decl. ¶ 11 (same), Ex. 35; Yauri Garcia Decl. ¶ 9 (same), Ex. 32; Ascanoa Alania Decl. ¶¶ 8-9 (same), Ex. 36; Lapa Pomahuali Decl. ¶¶ 8-9 (same), Ex. 31; Melo Castillo Decl. ¶ 8 (same), Ex. 37.

[37] Gragirena Decl. ¶ 9, Ex. 10; *see also* Melo Castillo Decl. ¶ 8 (there is no electricity), Ex. 37; Archi Lozano Decl. ¶ 9 (same), Ex. 34; Yauri Garcia Decl. ¶ 9 (same), Ex. 32; Ascanoa Alania Decl. ¶ 9 (same), Ex. 36. The conditions are similar at other ranches, as described in the cert brief at 20, n.64.

available to attend the sheep at any time, nn.21-22 *supra*, and thus even if they do not have active duties, they cannot simply take off for town or other more enjoyable venues—indeed, Plaintiff could not even leave to get needed medical care, *supra* at 10-11. Given their usually remote locations, one member rancher testified, the herders have "no place to go." Filbin Dep. 48:8-15, Ex. 17. Additionally, Plaintiff was far from free to spend his time making extensive personal calls, testifying that he could only call his family for a few minutes, or message them on Facebook, at the same time that he was eating dinner.[38] Plaintiff was even restricted in the phone calls he was allowed to make, testifying that El Tejon did not allow him to contact his joint employer, WRA.[39] Thus, even when not actively engaged with the sheep, feeding dogs and horses, or engaged in other chores to maintain the camp, Plaintiff and other herders are *not* free to pursue their own activities.

III. ARGUMENT

A. Plaintiff Properly Presents a Contract Claim

It is well established that H-2A workers may bring contract claims when their H-2A employer (or joint employer) fails to compensate them consistent with the H-2A contractual guarantees. *See Lopez v. Fish*, No. 11-cv-113, 2012 WL 2126856, at *2 (E.D. Tenn. May 21, 2012) ("there are federal cases too numerous to count which have held that H-2A workers may pursue state breach of contract claims against employers who fail to comply with clearance orders.") (collecting authorities). WRA's attack on Plaintiff's contract claim raises purely legal arguments, rather than ones turning on the evidentiary record, echoing arguments made in the motion to dismiss briefing years ago. *Compare* ECF 117 at 18 *with* Mot. at 11-12. Its arguments are no more tenable now than when raised during motion to dismiss briefing.

Specifically, WRA argues that because the contract requires WRA to pay Nevada minimum wage if higher than the AEWR, that the claim is violation of a statutory right, not a contract claim, asserting that a mere violation of an allegedly applicable law does not give rise to a breach of

[38] Cántaro Castillo Dep. 145:19-146:6, Ex. 13.

[39] Cántaro Castillo Dep. 148:12-149:4, Ex. 13.

contract, and should be more properly considered a tort.[40] This argument was wrong on the law when Defendants first made it in their Motion to Dismiss briefing, and it continues to be wrong today. *See Tyus v. Wendy's of Las Vegas, Inc.*, No. 14-cv-0729, 2015 WL 5021644, at *4 (D. Nev. Aug. 21, 2015) ("[W]hen a statute imposes additional obligations on an underlying contractual relationship, a breach of statutory obligation *is a breach of contract* ….") (emphasis added); *see also Cántaro Castillo v. W. Range Ass'n*, 777 F.App'x 866, 867 (9th Cir. 2019) (rejecting the analogy to *Crabb v. Harmon Enters., Inc.*, No. 60634, 2014 WL 549834, at *2 (Nev. Feb. 10, 2014), wherein the statute of limitations was determined based on a breach of implied contract claim sounding in tort, because the case at bar is a breach of contract claim).

WRA does not cite a single case in which a court dismissed the contract claims of an H-2A worker on the grounds that claims sounded in tort, not contracts. In fact, this very argument was made in *Lopez*, 2012 WL 2126856, at *1-2, and rejected as "a gross misunderstanding of the law" and "completely unsubstantiated and devoid of merit." *See id*. at *2 (citing *Arriaga*, 305 F.3d at 1235;*Martin*, 968 F.2d at 1268; *Salazar–Calderon*, 765 F.2d at 1342; *Perez–Benites v. Candy Brand, LLC*, No. 07-cv-1048, 2011 WL 1978414 at *15–16 (W.D. Ark. May 20, 2011); *Vazquez v. Lamont Fruit Farm, Inc*., No. 06-cv-582S, 2011 WL 4572066 at * 11 (W.D.N.Y. Sept. 30, 2011); *Garcia-Celestino v. Ruiz Harvesting, Inc*., No. 10-cv-542, 2012 WL 602728 at *7 (M.D. Fla. Feb. 24, 2012), all holding that H-2A workers may bring state breach of contact claims against employers for failure to comply with DOL clearance orders.[41]

WRA's citation to *Berger* in support of its argument that violations of an allegedly applicable

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[40] Mot. at 11-12 (citing *Berger v. Home Depot U.S.A., Inc.*, 476 F.Supp.2d 1174, 1176-77 (C.D. Cal. 2007) ("it is not evident that the statutes allegedly violated in this case…were intended to provide a basis for a breach of contract action") (internal quotations omitted).

[41] *See also Cuellar-Aguilar v. Deggeller Attractions, Inc*., 812 F.3d 614, 620 (8th Cir. 2015), *reh'g denied* (Feb. 10, 2016) ("[T]he workers' allegation that [defendant] failed to pay the prevailing wage stated a valid claim for breach of their employment contracts."); *Mencia v. Allred*, 808 F.3d 463, 472 (10th Cir. 2015) ("[Plaintiff's] complaint alleges his contract … included the [defendants'] promise to obey the H–2A regulations …. The factual and legal bases for Mr. Saenz's claim are plainly stated, and we see no basis for affirming the district court's decision because of any flaw in the complaint."); *Rodriguez v. SGLC, Inc*., No. 08-cv-01971, 2012 WL 5705992, at *25 (E.D. Cal. Nov. 15, 2012) (defendants' summary judgment motion denied with respect to plaintiff's contract claim); *Salazar-Martinez v. Fowler Bros*., 781 F.Supp.2d 183, 198 (W.D.N.Y. 2011) (same).

law should be more properly considered a tort is severely misplaced. *See Serrano v. GMAC Mortgage*, No. 09-861, 2010 WL 11508955, at *6 (C.D. Cal. Mar. 18, 2010) ("Indeed, *every other* case in the Ninth Circuit that has since applied *Berger* acknowledges that its holding is limited to circumstances in which the express terms of the contract are ***not at issue*** but a defendant(s) nonetheless alleges a breach of contract by virtue of the statute's implied incorporation of certain statutes.") (citations omitted) (original emphasis). This is so because, unlike in the sparse caselaw cited by Defendant, including *Berger*, the statutory provisions at issue here are required terms *explicitly incorporated* into the contract. *See* 20 C.F.R. § 655.122 (titled: "Contents of job offers"); 20 C.F.R. § 655.210 (titled: "Contents of herding and range livestock job orders"); 20 C.F.R. § 655.135 (titled: "Assurances and obligations of H-2A employers"). *See also De Luna-Guerrero v. N.C. Grower's Ass'n, Inc.*, 338 F.Supp.2d 649, 652 (E.D.N.C. 2004) ("The terms of H2A visas are controlled by statute, 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a) and 1188, as well as DOL regulations applicable to the temporary labor certification process. 20 C.F.R. § 655.100 et seq."); Order on First Motion to Dismiss, ECF 107 at 12 ("as a matter of law, Plaintiffs' H-2A shepherd contracts included a promise to pay the applicable state minimum wage, if higher than the applicable AEWR"). A violation of the H-2A regulations is therefore a violation of the terms of the contract.

WRA secondarily complains that the Nevada Minimum Wage Amendment does not provide for a breach of contract cause of action. Mot. at 12. Plaintiff does not claim that the Nevada Minimum Wage Amendment authorizes a state breach of contract claim. Nevada state law authorizes the breach of contract claim, and the H-2A regulations, job order, and petition create the contract at issue (including the terms requiring compliance with the Nevada Minimum Wage Amendment). Because the contract requires compliance with the Nevada Minimum Wage Amendment, violation of the Nevada Minimum Wage Amendment is an *element* of his breach of contract claim.[42]

[42] Separate from Plaintiff's breach of contract claim, violation of the Nevada Minimum Wage Amendment also gives rise to a separate private cause of action for Defendant's violation of the statute. *See* Nevada Constitution's Minimum Wage Amendment, Nev. Const. art. 15, § 16(B) (allowing employees to sue employers for failure to pay the state minimum wage, and providing for back pay, damages, reinstatement or injunctive relief, and attorneys' fees). The fact that the Nevada

Finally, WRA argues that Plaintiff's breach of contract claim is duplicative of his Minimum Wage Amendment claim, and thus seeks improper duplicative compensation. Mot. at 12-13. This is incorrect. Firstly, Plaintiffs are permitted to cite multiple causes of action applicable to the same conduct. *See, e.g., DFR Apparel Co. v. Triple Seven Promotional Prods., Inc.*, No. 11-cv-01406, 2014 WL 4891230, at *3 (D. Nev. Sept. 30, 2014) (a plaintiff may "seek both equitable remedies and breach of contract in the alternative"); *see also* Fed. R. Civ. P. 8(a)(3) (a claim for relief may include relief in the alternative). That does not mean that Plaintiff expects to recover duplicative damages. Secondly, Plaintiff's contract claim and Nevada Minimum Wage claim have different statute of limitations periods, and different remedies. The Nevada Minimum Wage Amendment, for example, provides for "all remedies available under the law or in equity" including "back pay, damages, reinstatement or injunctive relief," additionally promising a prevailing employee a separate award of attorneys' fees. Nevada Constitution's Minimum Wage Amendment, Nev. Const. art. 15, § 16(B). Damages under the contract claim are not so expansive. Thus, while Plaintiff may only be paid his unpaid minimum wages once, any damages or attorneys' fees awardable under the NV MWA are available for violations of that provision, even if not available when the same conduct gives rise to his contract claim. Thus, pleading both claims is not duplicative.

B. Plaintiff Has Sufficient Evidence to Establish His Damages for Contract and Minimum Wage Amendment Claims

1. Plaintiff's Evidence He Was on Duty When on Call is Ample to Proceed to Trial

Plaintiff Cántaro Castillo clearly testified that he was with the sheep 24/7, responsible for their welfare.[43] He further testified that he did not have days off or the chance to go into town,[44] he had to answer phone calls from the ranch inquiring about the sheep,[45] and that he would sleep little,

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Minimum Wage Amendment provides for specific remedies makes WRA's bizarre argument that Plaintiff cannot "bootstrap a 'breach of contract claim' onto a cause of action based on a violation of a statute, *particularly when the statute does not provide for private remedies*" even more of a non sequitur. Mot. at 13 (emphasis added).

[43] *See*, *supra*, n.18.

[44] *See, supra*, n.29.

[45] *See, supra*, n.26.

as he was guarding the sheep even at night.[46] Despite this testimony, which is consistent with H-2A regulations and the H-2A job orders and petitions submitted by WRA requiring him to be "on call" 24/7, WRA argues without citation to any contrary evidence that Plaintiff's testimony regarding his hours worked is not credible. Mot. at 10. But Defendant has failed to set forth *any* facts regarding the hours Plaintiff worked; nor has WRA addressed Plaintiff's evidence and legal argument that he was on call 24/7 under circumstances that make his time compensable. Plaintiff has presented ample evidence that shows there are, at minimum, disputes of fact as to whether all of Plaintiff's waking hours out on the range were compensable time.[47]

In addition to the many hours of active labor required of herders, Plaintiff's job duties and the requirement to be on call 24 hours a day, seven days a week, *supra* at 7-9 and nn.21-22, as well as the practical limitation on what he could do, stationed "on the range," in remote areas for the entirety of his employment in Nevada, provides substantial evidence that he was "engaged to wait" and thus entitled to minimum wage for each hour of each day he worked, with the possible exception of sleep time.[48]

The Supreme Court has held that the time an employee spends waiting at the disposal of the employer, ready to respond as needed—that is, when an employee has been "engaged to wait"—is compensable time. *See Armour & Co. v. Wantock*, 323 U.S. 126, 133 (1944) ("time spent lying in

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[46] *See, supra*, n.31.

[47] The substantially similar declarations of herders who worked for El Tejon set forth facts indicating that the herders performed active job duties amounting to eight hours of work per day, seven days per week. *See* Yauri Garcia Decl. ¶ 22, Ex. 32; Ascanoa Alania Decl. ¶20, Ex. 36; Cantaro Oteo Decl. ¶ 21, Ex. 35; Lapa Pomahuali Decl. ¶ 20, Ex. 31; Archi Lozano Decl. ¶ 16, Ex. 34. The difference in the time reported by Plaintiff as compared to the herders whose declarations were submitted by El Tejon turns on the legal definition of compensable work, which neither Plaintiff nor the other El Tejon herder declarants should be expected to be expert in applying.

[48] While the Ninth Circuit has held that even sleep time is compensable for on call workers required to remain on the employer's premises while on call, *General Electric Co. v. Porter*, 208 F.2d 805, 815 (9th Cir. 1953), more commonly courts have held that since the worker would spend 8 hours asleep whether on duty or not, whether on the employer's premises or not, so that as long as reasonable facilities were provided for the worker to sleep, and the sleep was not regularly interrupted, that sleep time is excluded from compensable hours. See, e.g., *Skidmore*, 323 U.S. at 134. Plaintiff has adduced evidence that, in fact, he slept little while being responsible for the sheep, creating a dispute of fact as to whether his sleep time should be deducted from compensable work time. *See, supra*, n.31.

wait for threats to the safety of the employer's property may be treated … as a benefit to the employer" and thus compensable time); *see also Skidmore v. Swift & Co.*, 323 U.S. 134, 139 (1944) ("even though [on call or waiting time was] pleasurably spent," there was no evidence that "it was spent in the ways the men would have chosen had they been free to do so").[49] DOL regulations regarding the compensability of on call time hold that "[a]n employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while 'on call.'" 29 C.F.R. § 785.17. Plaintiff was waiting at the disposal of his employer, ready to respond to threats to the employer's property (the sheep), and unable to use time not needed for active duties for his own purposes, and thus fits squarely within Supreme Court and regulatory definitions of compensable work time.

Courts in the Ninth Circuit rely on a two part test in determining whether an employee has been "engaged to wait": (1) "the degree to which the employee is free to engage in personal activities, and (2) the agreements between the parties." *Berry v. Cnty. of Sonoma*, 30 F.3d 1174, 1180 (9th Cir. 1994) (citation omitted); *Roces v. Reno Hous. Auth.*, 300 F.Supp.3d 1172, 1194 (D. Nev. 2018). In evaluating the workers freedom to engage in personal activities, courts in this circuit look to several factors:

> (1) whether there was an on-premises living requirement; (2) whether there were excessive geographical restrictions on employee's movements; (3) whether the frequency of calls was unduly restrictive; (4) whether a fixed time limit for response was unduly restrictive; (5) whether the on-call employee could easily trade on-call responsibilities; (6) whether use of a pager could ease restrictions; and (7) whether the employee had actually engaged in personal activities during call-in time.

Owens v. Loc. No. 169, Ass'n of W. Pulp & Paper Workers, 971 F.2d 347, 351 (9th Cir. 1992), as amended (Aug. 18, 1992); *Roces*, 300 F.Supp.3d at 1194. These factors strongly weigh in favor of finding Plaintiff was not free to engage in personal activities.

Under the first factor, on-premises living requirement, there clearly was one. See *supra* at 11-12. Moreover, under factor two, the restrictions were excessive. The premises where Plaintiff was required to remain were out on the range in isolated areas. Plaintiff had no vehicle permitting

[49] There is no evidence here, however, that Plaintiff's time on call was "pleasurably spent."

him to leave the sheep camp and area where sheep were grazing in order to go anyplace else, and in any event was required by his duties to stay at the location on the range where the sheep were, he could not leave.[50] He was under restrictions even more severe than in *Skidmore*, 323 U.S. at 135–36, let alone the plaintiffs in *Roces*, 300 F.Supp.3d at 1195 ("Plaintiffs were free to leave RHA premises during on-call hours"). His conditions were more onerous than the workers in *Skidmore* who were provided "a brick fire hall equipped with steam heat and air-conditioned rooms. It provided sleeping quarters, a pool table, a domino table, and a radio," and workers could do whatever they wanted as long as they were on site to respond to alarms described as "rare." *Skidmore*, 323 U.S. at 135-36. *See also Brigham v. Eugene Water & Elec. Bd.*, 357 F.3d 931, 937 (9th Cir. 2004) (although workers could "watch television, help their children with homework, play games, maintain their homes and yards, work on their motorcycles, and entertain guests" while on call, because they had to stay at their homes, within ear shot of the phone that might call them to address an emergency). Plaintiff had neither the company nor the facilities for such entertainments.

The next two factors, the frequency of calls and the time limit to respond, do not fully capture the nature of Plaintiff's responsibilities. He was not primarily responding to phone calls—although he did get regular calls from the ranch asking him to report on the sheep—he was responsible for guarding the sheep and being alert to avoid sheep wandering off, eating poisonous plants, or being attacked by predators. Unlike residents calling in maintenance requests (*see, e.g., Roces*, 300 F.Supp.3d at 1177-78), sheep could not call to alert Plaintiff that they were going to leave the main herd, were being followed by coyotes, or any of the myriad other things Plaintiff needed to keep an eye out for. For the same reasons, the sixth factor, whether a pager could ease restrictions, is inapplicable here—no pager could alter the restrictions Plaintiff lived under throughout his entire time in Nevada.

Significantly, under factor five, Plaintiff had no ability to trade on-call responsibilities with anyone else, and he was on call every hour he was not actively engaged in duties throughout his

[50] Nor did Plaintiff have any days off or freedom to go into town. *See, supra*, n.29.

five-to-six-month stints in Nevada, not just on certain days or weeks each month.[51] Even when Plaintiff asked to see a doctor he was denied the opportunity to leave the range.[52] Ultimately, Plaintiff was not free to engage in personal activities: he testified he was only able to call or message his family on Facebook while eating dinner, *supra*, n.38, and was not even allowed to call his joint employer, WRA, *supra* n. 39. The ability to use time for one's own purpose when one cannot leave the open range, and can only retreat to a tent or sheep camp is in stark contrast to plaintiffs with an apartment with all their furnishings, entertainment, and belongings, as well as the freedom to leave to "coach a youth soccer league team, play in an adult soccer league, socialize with family and friends, prepare and eat meals, dine out, shop, attend regular church services, go to the movies, read, watch television, sleep, write poetry, work in the yard, pursue hobbies" as described in *Roces*, 300 F.Supp.3d at 1195. None of those types of activities (but for sleep) were feasible for Plaintiff. [53]

The second part of the test, the agreements between the parties, is confirmed by WRA's expectation, set forth in the H-2A petition and elsewhere, that Plaintiff would be "on call for up to 24 hours per day, seven days per week," and be paid a monthly salary which encompassed all work, rather than being paid only for certain hours deemed compensable.[54] Such agreements have been found to indicate that compensation is due for waiting time. *Skidmore,* 323 U.S. at 135, 137 (firefighters were paid weekly salaries for mix of regular duties and on call time; in evaluating agreements to help determine if waiting time was work, court should consider whether compensation covers both waiting time and tasks, or only tasks, and payment of salary suggests compensation covers both); *Brigham v. Eugene Water & Elec. Bd.*, 357 F.3d 931, 933-34, 939 (9th Cir. 2004) (agreement specified 10 hours of pay for a 24 hour shift which included 6 hours of active duty, with remaining hours on call, establishing that on call time was considered work, since there was at least

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[51] Plaintiff was also required to respond to phone calls from the ranch asking how the sheep were doing. *See, supra*, n.26 .

[52] *See supra* n.30 (testifying that when he requested to go to the doctor, his supervisors responded, "Who's going to be with the sheep?" and did not honor his request).

[53] Even his sleep was impacted. Plaintiff testified that he would sleep little, as he was guarding the sheep, emphasizing that being in constant attendance to the herder was "a lot" of responsibility. *See, supra*, n.31.

[54] *See* Form 9142 at WRA000036, WRA000038, Ex. 12.

some compensation for it); *Porter*, 208 F.2d at 815 ("[P]ayment of the monthly wage without indicating that the compensation was for only sixteen of the twenty-four hours spent at the fire station indicates a belief on the part of General Electric that it employed the firemen for the full twenty-four hour shift.").[55]

2. Plaintiff's Hours of Active Duty Are Also Supported by Ample Evidence

Even if Plaintiff's claim that he was on duty, and due compensation, when he was "on call" rather than actively working were rejected, the number of hours he actively worked can be established with his testimony and corroborated by declarations from other herders who worked for El Tejon,[56] and El Tejon's admission that the hours actively on duty were accurately reflected by those herder declarations.[57] The declarations that El Tejon procured from its then-current herder employees are very similar to each other, and all but one confirm they worked 8 hours/day, 7 days/week while on the range (while one estimated 7 hours/day), supporting a finding of 56 hours/week worked.[58] Dr. Petersen's pilot survey, while not yet a large enough sample to make class-wide projections, nonetheless provides corroboration from eight randomly selected herders, who, on average, reported working 11.39 hours per day when on the range, which would support a finding of 79.73 hours/week.[59]

Where, as here, an employer does not keep records of hours worked,[60] then workers may

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[55] Even where an agreement is explicit that the parties do not consider waiting time to be compensable, courts must still consider whether that agreement is reasonable. That is done based on the same factors as used to evaluate the degree to which employees are free to engage in personal activities. *See Brigham,* 357 F.3d at 941.

[56] Plaintiff testified that the other El Tejon herders are able to attest to the hours all herders worked. Cántaro Castillo Dep. 207:10-22, Ex. 13.

[57] *See* Gragirena Decl. ¶ 17, Ex. 10.

[58] *See* Yauri Garcia Decl. ¶ 22, Ex. 32; Ascanoa Alania Decl. ¶ 20, Ex. 36; Cantaro Oteo Decl. ¶ 21, Ex. 35; Lapa Pomahuali Decl. ¶ 20, Ex. 31; Archi Lozano Decl. ¶ 16, Ex. 34; Melo Castillo Decl. ¶ 14, Ex. 37.

[59] Petersen Report ¶ 57 (nine survey respondents reported working on the range with sheep). Similarly, a survey previously done of Colorado-based herders found they worked an average of 11.57 hours/day (81 hours/week). Temporary Agricultural Employment of H-2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States, 80 Fed. Reg. 62958-01 (Oct. 16, 2015) at 14.

[60] Neither WRA nor member ranches tracked hours worked. *Supra* at n.14.

present "sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference," and employers may not complain about the lack of precision or benefit from their lack of records. *Anderson v. Mt. Clemens Pottery Co*, 328 U.S. 680, 687-88 (1946); *Senne v. Kan. City Royals Baseball Corp.*, 934 F.3d 918, 939 n.16 (9th Cir. 2019). Rather, once a just and reasonable estimate of hours worked has been presented, the burden "shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence." *Mt. Clemens*, 328 U.S. at 687-88. If an employer fails to rebut the employee's evidence, damages are awarded to the employee "even though the result be only approximate." *Id*. at 688.

Among the evidence that can provide that "just and reasonable inference" of hours worked is representative testimony or representative proof from a sample, such as a survey or statistical study. *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 455 (2016) ("In many cases, a representative sample is 'the only practicable means to collect and present relevant data' establishing a defendant's liability.") (quoting Manual for Complex Litigation § 11.493 (4th ed. 2004)); *McLaughlin v. Ho Fat Seto*, 850 F.2d 586, 589 (9th Cir. 1988) (back wages may be awarded based on representative testimony). The Supreme Court in *Bouaphakeo* held that if the representative sample introduced were admissible and "could have sustained a reasonable jury finding as to hours worked in each employee's individual action, that sample is a permissible means of establishing the employees' hours worked in a class action." *Id. See also Guifu Li v. A Perfect Day Franchise, Inc.*, No. 10-cv-01189, 2012 WL 2236752, at *13 (N.D. Cal. June 15, 2012) (damages were established based on "reasonable inferences provided by a representative sample," specifically a survey of class members performed by Plaintiff's proposed expert, Dr. Petersen); *Senne*, 934 F.3d at 945 (affirming the predominance finding for one of the sub-classes, where a survey and other representative evidence could demonstrate hours worked). *Bouaphakeo* thus confirms that a plaintiff is not limited to his own testimony to establish his hours worked, but can also rely upon a sample demonstrating hours worked by others doing the same duties.

Given this legal framework, the El Tejon declarations plainly establish that Plaintiff worked

at least 56 hours per week while he was on the range in Nevada.[61] As WRA admitted, Plaintiff was paid only $1422 per month. Mot. at 11.[62] A month has, on average, 4.3 weeks (365 days divided by 12 (months per year), divided by 7 (days per week)). Thus, the $1422 paid to Plaintiff each month had to compensate him for at *least* 240.8 hours of work (56 x 4.3). That equates to $5.90/hour ($1422 divided by 240.8)—below Nevada's minimum wage. If Plaintiff's evidence that he was on duty 24/7 prevails, even subtracting 8 hours/day for sleep time, then he worked 112 hours/week (16 hours/day x 7 days), and 481.6 hours/month (112 x 4.3), and was paid only $2.95/hour ($1422 divided by 481.6). The *only* evidence in the record regarding hours worked has been presented by Plaintiff and shows the range is 56 to 112 hours per week. Wherever in that range the fact finder determines is the best estimate of hours worked, Plaintiff has established damages.[63]

Defendant's claim that Plaintiff has not presented competent evidence of his hours worked and subsequent damages (Mot. at 10) cannot be sustained in the face of the above evidence. Defendant's cases stand for innocuous principles, such as the need for competent evidence of damages, if damages are an element of a claim (*Weinberg v. Whatcom Cnty.*, 241 F.3d 746, 751 (9th Cir. 2001)), and that at the summary judgment stage evidence such as testimony or affidavits are required rather than the allegations of a complaint (*Thornhill Publ'g. Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979)). While WRA quotes extensively from an unpublished, out of circuit case, *Ihegword*, in that case the plaintiff's declaration claiming she worked 12 hours of overtime per week was undermined by her deposition testimony that she could not remember when she worked overtime, or how many extra hours she worked when she did work past her shift, particularly when

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[61] As noted above at 20, Plaintiff was "on the range" for the entire time he worked in Nevada.

[62] To the extent Defendant suggests, by referring to the AEWR established by the Department of Labor, Mot. at 10-11, that the AEWR rather than the higher Nevada minimum wage rate was applicable, that argument has already been rejected by this Court. *See* Order on First Motion to Dismiss, ECF 107 at 12 ("as a matter of law, Plaintiffs' H-2A shepherd contracts included a promise to pay the applicable state minimum wage, if higher than the applicable AEWR") (citing *Ruiz v. Fernandez*, 949 F.Supp.2d 1055, 1072 (E.D. Wash. 2013). As Plaintiff's calculation shows, even with the lowest number of hours supported by the evidence, Plaintiff was paid less than the Nevada minimum wage, and thus the H-2A requirement to pay the state minimum wage if it is higher than the AEWR is in full force.

[63] *See also Cántaro Castillo,* 777 F.App'x at 868 (noting that the District Court had accepted a 56-hour work week as a reasonable estimate).

combined with her time card showing she usually worked fewer than 40 hours per week, so that even if she did work a few unrecorded hours, that would not mean the total hours were over 40. *Ihegword v. Harris Cnty. Hosp. Dist.*, 555 F. App'x 372, 375 (5th Cir. 2014). However, Plaintiff Cántaro Castillo has not given contradictory testimony, nor are there any written records of his hours that contradict his testimony as in *Ihegworld*. Similarly inapposite is *Elliot v. Spherion Pacific Work, LLC*, 368 F. App'x 761 (9th Cir. 2010), a case in which the plaintiff acknowledge she was paid for all time she recorded and was satisfied that the time sheets were accurate, thus there was no evidence supporting any unpaid time. Here, Plaintiff has made not such admissions that would undermine his claim.[64]

Finally, Defendant repeatedly invites this Court to evaluate the credibility of Plaintiff's evidence. Mot. at 1, 9, 10. Such an argument ignores the bedrock principle of summary judgment: the Court shall not make credibility determinations. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *His & Her Corp. v. Shake-N-Go Fashion, Inc.*, 572 F. App'x 517, 518 (9th Cir. 2014); *Mathison v. Countrywide Home Loans, Inc.*, No. 11-CV-479, 2012 WL 3205854, at *2 (D. Nev. Aug. 3, 2012). Notably, the evidence presented on hours worked is not simply the deposition testimony of Plaintiff Cántaro Castillo, but testimony of former defendant Melchor Gragirena of El Tejon, along with six herders whose declarations El Tejon obtained and submitted to this Court, a record full of documents authored or endorsed by WRA, and deposition testimony of most WRA member ranches in Nevada. This record should be evaluated in trial, where witnesses' credibility may be assessed, not disregarded simply because Defendant declares the evidence to be not credible. *Roces*, 300 F.Supp.3d at 1198 ("In wage-and-hour cases, the number of hours actually worked by an

[64] *Ihegword* and *Cleveland* also raise the question of whether plaintiffs there presented evidence that their employer knew or should have known of they were not paid for all their work. *Ihegword*, 555 F. Appx. at 374; *Cleveland v. Groceryworks.com, LLC*, 200 F.Supp.3d 924, 934 (N.D. Cal. 2016). WRA has not articulated such an argument in support of its motion, likely because such a claim would be untenable in this case. WRA itself prepared the job description with the 24/7 on call requirement; WRA solicited the report of Dr. James S. Holt who clearly described the responsibilities and working conditions of herders; WRA members, who meet and discuss regularly with WRA staff, all acknowledged the responsibilities and conditions of sheepherders, as cited above at II.C. WRA cannot deny it was aware of the facts underlying Plaintiff's claim that his on call time was compensable.

employee is a question of fact best left to a jury. … at the summary judgment stage, without the benefit of a factfinder, the best approach the Court can take is to give full credit to Plaintiffs' estimates of their actual hours worked.").

C. Promissory Estoppel and Unjust Enrichment Claims Were Pled in Alternative

Defendant makes the same arguments regarding promissory estoppel and unjust enrichment, which Plaintiff pleaded in the alternative to his contract claims, that Defendant made in the Motion to Dismiss briefing in 2016. Mot. at 13-15; *see also* ECF 117 at 20-23. With the benefit of discovery and now at the summary judgment state, Plaintiff is confident in his claims regarding the clear existence of a contract between himself and WRA, and between individual members of the putative class and WRA. Given the existence of an explicit contract, the promissory estoppel and unjust enrichment claims are no longer necessary to Plaintiff's case, and thus are moot. *See* Order on First Motion to Dismiss, ECF 107 at 12 ("Under the applicable regulations, Plaintiffs' work contracts, by definition, literally consisted of "[a]ll the material terms and conditions of employment relating to wages, hours, working conditions, and other benefits…."); *Cántaro Castillo*, 777 F.App'x at 867 (finding a six-year statute of limitations applied to Plaintiff's breach of contract claims as it was "founded upon an instrument in writing" and noting the applicability of six-year statute of limitations to other H-2A farmworkers' claims under employment contracts).

D. WRA has Waived Any Arguments Regarding Count Nine: Failure to Pay Separated Employees' Wages When Due

Despite listing Count Nine (failure to pay separate employee's wages when due) as one of Plaintiff's claims at issue in WRA's Motion for Summary Judgment, *see* Mot. at 1, 5, WRA failed to make any argument whatsoever regarding this claim. On that basis, WRA has waived any potential arguments, and should not be allowed to supplement its briefing in any way.

Nevertheless, Plaintiff's NRS 608.020-.050 claims are derivative of his NRS 608.016, 608.018, and minimum wage claims. Plaintiff's underlying claims are for unpaid wages due and owed; these are continuation wages owed for worked performed but not compensated. Plaintiff, and any putative class member who has a valid wage claim under any of these theories and who is no longer employed by Defendant, is entitled to the continuation wages imposed by NRS 608.020-.050.

IV. CONCLUSION

For the foregoing reasons, Defendant's motion for summary judgment should be denied.

Dated: May 4, 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2022, a true and correct copy of the foregoing was served via the United States District Court CM/ECF system or email on all parties or persons requiring notice.

By: */s/ Christine E. Webber*
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