

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABEL CÁNTARO CASTILLO,

Appellant,

vs.

WESTERN RANGE ASSOCIATION,

Respondent.

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CHRONOLOGICAL ORDER

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8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF NEVADA**

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

12 Plaintiff,

13 vs.

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

16 Defendants.
17

Case No. 3:16-cv-00237-RJC-CLB

**OPPOSITION TO PLAINTIFF'S MOTION FOR
CLASS CERTIFICATION**

[FILED UNDER SEAL]

18
19 Defendant WESTERN RANGE ASSOCIATION ("Western Range"), by and through its counsel, ELLEN
20 JEAN WINOGRAD, ESQ., and KELSEY E. GUNDERSON, ESQ., of WOODBURN AND WEDGE, file this
21 OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS CERTIFICATION.¹

22 Western Range's Opposition to Plaintiff's Motion for Class Certification is supported by the pleadings
23 and papers on file herein, the Points and Authorities filed herewith, the exhibits attached hereto and such oral
24 arguments if the Court requests.

25
26
27
28 ¹ Pursuant to this Court's Protective Orders [Doc # 93,184], this Opposition and all exhibits are is filed under seal.

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- 11 37. FRCP 30(b)(6) Deposition of Green Goat Restoration (Blake Lambert) (Unofficial)
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- 14 40. Declaration of FRCP (30)(b)(6) Witness for F.I.M. Corporation
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I

INTRODUCTION

Currently before this Court, is Plaintiff's Motion for Class Certification under Federal Rules of Civil Procedure ("FRCP") Rule 23. Due to either a presumably innocent misunderstanding of the sheep and goat range herding cultures in Nevada or perhaps due to a misplaced belief that the entire State of Nevada is demographically, topographically, geographically, and climatically similar, Plaintiff appears to be pursuing FRCP Rule 23 Class Certification arguing "commonality" and "typicality" of the "class", utilizing information, witnesses, and evidence to the contrary in an industry (sheep and goat herding) in which wages and duties vary greatly and are incapable of ever being subject to typicality and commonality. Most of Plaintiff's authority for wage and hour certification involved homogenous "class" such as retail, warehouse, restaurant and hospitality industry, sheep herding and goat herding are different.

By way of background, Western Range was created as a product of the shortage of agricultural range herding labor during and after World War II which created a crisis in the sheep industry and the American West, causing sheep ranchers to drastically reduce the size of the grazing operations. Sheep ranchers then organized to pass immigration laws (H-2A Regulations) in order to hire Basque sheep herders from the Pyrenees region of Spain and France. *See, Shepherders of Northern Nevada, University of Nevada, Reno, Mathieson-IGT Knowledge Center Special Collections.*

Plaintiff would have this Court believe that one H-2A range sheep herder on a range located primarily in the Ruby Mountains of Nevada performs job duties that are identical, or even similar to an H-2A range herder located in the Mojave Desert. Plaintiff or perhaps its experts and counsel, are significantly unfamiliar with both the sheep herding industry and the job duties that vary between and among the various ranches, even within a given member operation. This misunderstanding or misconception regarding Nevada H-2A sheep herder duties, casts doubts upon whether the requisite "commonality" and "typicality" of FRCP 23 can ever be found within the realm of sheep and goat range herding.

The Plaintiff's Motion for FRCP Class Certification should start, end, and be defeated solely on Plaintiff's economist expert's information or lack thereof. Realistically, the entire FRCP Class Certification analysis currently before this Court can be decided in favor of Western Range denying

1 class certification, based solely on Plaintiff's own expert Jeffrey Petersen's report and deposition
2 testimony. Dr. Petersen- an economist states he could not and would not make "class-wide"
3 inferences (regarding job duties and hours worked) because of his inadequate "survey response".
4 Dr. Petersen, a Ph.D. who often testifies for Plaintiff's in (corporate) wage and hour cases, stated:

5 By Ms. Winograd:

6 Q: An as you sit here today, having 11 responses, you are
7 confident
You can define how duties are typically done?

8 By Dr. Petersen:

9 A: That's not what it says in my report. My main conclusion
10 was that if herders or members of the class are contacted
on the telephone, they can provide estimates of the number
of hours that they spend doing...
* * *

11 Q: Are there differences between and among the procedures
and the job duties within the ranches?

12 A: That may be possible, but that's something I can look at
13 when the full sample is collected, to see if the survey
participants are representative of the different ranches that
are the subject of this Class.

14 Q: So, you can't answer that right now; correct?

15 A: I can't answer that right now . . .

16 Q: Of these 11 survey participants, how many were sheepherders
and how many were goatherders?

17 A: I think nine were sheepherders and two worked with other
livestock.

18 Q: Goats?

19 A: I can't recall that the other two stated in terms of the other
livestock.

20 Q: Were any of them- -

21 A: I don't think they said goats. I think it was cows.

22 Q: So, you believe that two of the survey participants were cattle
herders?

23 A: I'd have to look at my spreadsheet to tell you exactly what
they stated were their job duties or what animals they were
working with.
* * *

24 Q: And that would have been contained, as to the survey responses
you did receive, in your report; correct?

25 A: As I said, I'm not drawing any class wide inferences from the
26 survey responses except that the questions that I'm asking are
the correct questions and that people can answer them if we can
27 get them on the telephone.
28

* * *

Q. And, similarly, your expert opinion, because of the sample size you have, doesn't take into consideration differences between and among sheep breeds; correct?

A. At this stage, if there were some variances based upon different types of sheep that the shepherds may be caring for, it's possible we have oversampled one type of sheep compared to another. That's why we would need to get a larger sample. That's why I'm not making any class wide inference from a data set of nine individuals.

* * *

A. To be able to do class wide inference regarding liability and damages, I'd need a larger sample size.

Q. And so, you cannot do that as you sit here today; correct?

A. Only in regards- - the only conclusions that I drew are clearly stated in my report, that it's my opinion that the survey instrument as it is specified currently will produce valid and reliable results if it can be applied to a larger group of herders.

Q. "Will", which is both future tense and subjunctive, if I'm not mistaken, meaning [only] if you get those results, it will provide that information; correct?

Q. Is that correct?

A. Yes. My opinion is that we can use this survey instrument on a broader group of herders with more recent contact information to get a large enough sample to be able to determine class wide inferences.

Excerpts from Deposition of Plaintiff's Expert Jeffrey Petersen, Ph.D.'s Deposition, pp. 17, 30-31, 41, 54, 81-82 at 85, filed herewith as Exhibit 2 (emphasis added).

Plaintiff's own expert cannot now for purposes of Plaintiff's FRCP 23 Class Certification motion, provide estimates of herder hours worked and define herder job duties. *See, Excerpts of Plaintiff's Expert Jeffrey Petersen, Ph.D.'s Deposition, filed herewith as Exhibit 2. IF NOT NOW—WHEN?*

By contrast, actual unique herders declared under penalty of perjury, that there are great variances in job duties and work hours. *See, Declarations of H-2A Herders filed herewith as Exhibits 11-23.*

Accordingly, Plaintiff and his economist expert have defeated their own motion.

II

CASE OVERVIEW

Plaintiff was a sheep herder on the El Tejon Ranch from around October 2007, until June 8, 2014, until he voluntarily left El Tejon Ranch while still under contract, in violation of his H-2A Visa. *See, excerpts of Abel Cantaro Castillo's Deposition, pp. 27-28; 87, filed herewith as Exhibit 4; see also Plaintiff's*

Memorandum of Point and Authorities in Support of Motion for Class Certification, p. 1, ¶ 23-25. At the time Plaintiff left, in the middle of the night, without notice, he still had a month remaining on his contract that gave rise to his ability to work within the United States under his H-2A visa. See, *Declaration of Monica Youree and Deposition Excerpts of Monica Youree*, pp. 256-257, filed herewith as Exhibit 5 and 7; See also Abel Cantaro Castillo's Mandatory Report by Western Range to the United States Immigration and Customs Enforcement (ICE) Agency submitted, filed herewith as Exhibit 6. While it is unknown exactly how long Plaintiff remained in the United States after his H-2A Visa was no longer in force, it appears that he was here, at least until 2016. When he filed suit and possibly until November 2018. See, 12/08/2014, U.S. Customs and Border Form I-94 Admission Number Retrieval Form filed herewith as Exhibit 8 and Handwritten letter from Plaintiff (showing a Colorado Return Address), filed herewith as Exhibit 10.

At issue in this litigation, however, are only the Member Ranches who have H-2A labor in Nevada. From June 10, 2010, to May 3, 2016 when plaintiff filed suit. [Doc.# 1] Some of the prior member ranches have subsequently gone out of business, however, but Plaintiff is still hoping and attempting to include the H-2A herders who worked for said Nevada Members in a "class."² Currently, not a single member ranch is a party to this litigation only Western Range, who does not control day-to-day member ranch operations in Nevada or elsewhere. See, *Declaration of Monica Youree*, filed herewith as Exhibit 5.

Plaintiff would have this Court believe that one H-2A range sheep herder on a range located primarily in the Ruby Mountains of Nevada³ performs identical, or similar job duties and has similar hours to an H-2A range herder located in the Mojave Desert.⁴ Plaintiff, or perhaps his counsel, seem unfamiliar with

² It is ironic that Plaintiff ignores that different ranches within and outside of Nevada control the actions, job duties, payroll, and work procedures of the members. See, *Declaration of Monica Youree*, filed herewith as Exhibit 5 and *Deposition Excerpts*, filed herewith as Exhibits 24-27. The base wage rates, however, are dictated by the Department of Labor Regulations.

³ The Ruby Mountains are a mountain range, primarily located within Elko County, with an extension into White Pine County in Nevada. The range is in the Humboldt-Toiyabe National Forest and the peaks reach a maximum elevation of 11,386 feet. The Ruby Mountains include glaciers, gouged out basins that are now Alpine Lakes. The Eastern Great Basin is wetter than the Western part in the range shadow of the Western Sierra Nevada Mountain Range. See U.S.D.A. Humboldt Toiyabe National Forest Description, <https://www.fs.usda.gov/hnfi/>; The significance of the topography, geography and ecology of the Ruby Mountains illustrates ways in which goats and sheep are herded. See, e.g., (for a summary, albeit not a source of authority) Wikipedia, https://en.wikipedia.org/wiki/Ruby_Mountains.

⁴ The Mojave Desert is named for the indigenous Mojave people and some portions extend into Arizona and Nevada. The climate of the Mojave Desert is characterized by extremes in temperatures throughout the seasons. Freezing temperatures as well as strong winds, rain and snow sometime occur in the Winter. In the Summer, temperatures above 100°F very often occur as well as strong thunderstorms which bring heavy showers or cloud bursts, resulting in flash flooding. See e.g., Rundel, Phillip W. and Arthur C. Gibson, *Ecological Communities and Processes in a Mojave Desert Eco System*. Cambridge University Press 2005.

1 both the sheep herding industry, the geography/topography of Nevada, and the job duties and hours worked
 2 that vary between, among, and within the Western Range Member Ranches. This misunderstanding or
 3 misconception regarding Nevada H-2A herder duties casts doubt upon whether the requisite "commonality"
 4 or "typicality" of FRCP 23 can ever be found within the realm of sheep and goat range herding.⁵ And while
 5 not even considered by Plaintiff's economist expert Jeffrey Petersen, his own "conclusions" are that he still
 6 cannot draw "class wide" inferences. See, *Excerpts from Deposition of Plaintiff's Expert Witness, Dr.*
 7 *Petersen, filed herewith as Exhibit 2.*

8 While Plaintiff appears to rely upon incomplete directed "survey" response to its Experts' targeted
 9 responses from 8 or 9 herders to extrapolate or surmise that all 500+ Nevada herders were "underpaid"
 10 based on purported hours "worked," Western Range does not need to do so. Western Range has actual
 11 declarations under oath from Nevada H-2A Herders, past and present that more accurately and thoroughly
 12 detail the herder's job duties, actual hours worked, and Ranch management practices of several different
 13 ranches. These show that each Western Range Nevada H-2A herder has particularized, individualized and
 14 variable job duties and hours, thus defeating any "class" consideration or certification. See, *In re Wal-Mart*
 15 *Wage & Hour Emp. Pracs. Litig.*, No. 206-CV-00225-PMP-PAL, 2008 WL 3179315, at *20 (D. Nev. June 20,
 16 2008); *Dueker v. CSRT (sic) Expedited Inc.*, 218CV08751MCSFFM, 2020 WL 7222095 (C.D. Cal. Dec. 7,
 17 2020); *Wal-Mart Stores, Inc., v. Dukes*, 564 U.S. 338 (2011); see also, *Introduction §1, above.*

18 To mix livestock colloquialisms, the herder declarations obtained by Western Range are "from the
 19 horse's mouth". In contrast, the survey data, even were it adequate and satisfactory (8 responses from a
 20 putative "class" of over 500), is the "Ivory Tower" Economist's conclusory extrapolation in a field (livestock
 21 herders) about which he appears to know woefully little.⁶

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⁵ Unlike a relatively interchangeable retail, restaurant or warehouse workforce such as could exist at Home Depot, Costco, Amazon, Starbucks and Wal-Mart, the workforce and the concomitant H-2A herder duties and hours are vastly different within Nevada and even vary within a single H-2A Nevada Western Range Association Member Ranch Operation. Each herder must therefore be considered separately, and his duties, hours worked and pay calculated individually.

⁶ In fact, as set forth *infra*, plaintiff's own \$650 per hour economist Jeffrey Petersen was excluded by a Federal Court Judge in another wage and hour case. *Dueker v. CSRT Expedited, Inc.*, *supra*.

III

THE PARTIES

Western Range is a California non-profit association currently with its principal place of business in Twin Falls, Idaho and formerly located in Salt Lake City, Utah. [Doc #111, p. 7, ¶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. Western Range currently has approximately one hundred and ninety-five ("195") members ranches that are located in thirteen ("13") states which include: Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. See, *Declaration of Monica Youree, filed herewith as Exhibit 5*.⁸

"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]. Defendant El Tejon, a Western Range member, paid Plaintiff the higher California H-2A rate of \$1,422 per month during plaintiff's course of employment [Doc #45, p. 16, ¶ 97]. The \$1,422 monthly rate paid to Plaintiff was considerably higher than the prevailing Nevada wage rate at the time, pursuant to the then-current Federally Imposed monthly Adverse Effect Wage Rate ("AEWR") [Doc #111, p. 20, ¶ 105]. See also 20 CFR § 655. This higher \$1,422 California rate was paid, despite the fact

⁷ For purposes of the H-2A Visa Program (only), Western Range Association is deemed a joint employer. While Plaintiff has dedicated over 30 pages to arguing that Western Range Association is a joint employer, it is admittedly so, but only for purposes of the H-2A Non-Immigrant Temporary Foreign Worker Visa Program that is administered by numerous federal agencies, most significantly, the Department of Labor (DOL). As set forth in the Declaration 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 Ranch has different pay and internal procedures in compliance with statutes and Federal Law.

⁸ From 2010 to 2016 (on 208), the numbers changed somewhat.

1 that Castillo was dividing his time between California and Nevada during his work as a herder [Doc #111,
2 p. 7, ¶¶ 13, 15].⁹

3 IV

4 FACTUAL BACKGROUND

5 The instant action now unrealistically seeks to be a "class action" lawsuit, on behalf of Plaintiff and
6 "all of those similarly situated." Plaintiff Abel Cantaro Castillo originally sued Western Range and former
7 Defendants El Tejon Sheep Company ("El Tejon") and Melchor Gragirena ("Gragirena"); former Plaintiff
8 Ramos sued former Defendants Mountain Plains Agricultural Service ("MPAS") and Estill Ranches, LLC ("Estill
9 Ranches"); and former Plaintiff De La Cruz sued former Defendant MPAS [Doc #111, pp. 120,184] for
10 wage underpayment.

11 V

12 PROCEDURAL BACKGROUND

13 Initially, Plaintiff Abel Cantaro Castillo filed a Fair Labor Standards Act ("FLSA") suit against Western
14 Range, El Tejon and Gragirena on May 3, 2016 [Doc #1]. On September 10, 2016, Western Range,
15 Gragirena and El Tejon all filed Motions to Dismiss [Docs #35, #37]. On October 13, 2016, Plaintiff Abel
16 Cantaro Castillo, plus newly-named Plaintiff Ramos filed the First Amended Complaint ("FAC"), wherein
17 additional Defendants were added. Seventeen ("17") new causes of action also appeared [Doc #45]. The
18 FAC omitted the Fair Labor Standards Act ("FLSA") cause of action previously asserted in the original
19 Complaint [Doc #1, pp. 21-22].

20 On Defendants' Motions, [Doc ## 55, 65 and 66] the Court dismissed Plaintiffs' First Amended
21 Complaint and granted Plaintiffs leave to amend again. [Doc # 107]. Plaintiff filed the Second Amended
22 Complaint ("SAC") on May 15, 2017 [Doc #111], and after extensive oral argument on October 23, 2017, the
23 case was again dismissed by this Court on February 13, 2018, in another opinion that addressed some
24 elements of Class Action Fairness Act "CAFA") jurisdiction [Doc #140]. Plaintiffs appealed the District Court's
25

26 ⁹ Employer El Tejon could have prorated between the California AEW and the lower Nevada AEW. Employer El Tejon chose
27 not to do so, having paid the higher California AEW for the entire year. The "Representative" and only Plaintiff thus far, therefore,
28 earned a different wage rate from Nevada-only H-2A Range Herders. El Tejon chose not to do so, having paid the higher California
AEW for the entire year.

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) in an unpublished decision and remitted the action back to this Court. Extensive written and deposition discovery has now been conducted by both parties.¹⁰

On October 29, 2021, Plaintiff filed the instant Motion for FRCP Class Certification. This opposition follows.

VI

PLAINTIFF'S APPARENT ARGUMENT FOR FRCP 23(b) CLASS CERTIFICATION

Plaintiff claims in his Class Certification Motion that "because of the H-2A regulations, all herders who worked for Western Ranch Association have employment contracts with the same terms, based on (*sic*) the same job order filed by Western Range Association and the H-2A regulations." [Doc # 264, p. 3]

Plaintiff's very reference to the regulatory provisions dictated by Department of Labor ("DOL")

¹⁰ The parties completed the following Depositions:

Date	Deposition
06/24/2020	Plaintiff Abel Cantaro Castillo's Deposition
08/11/2020	FRCP 30(b)(6) Deposition of Western Range Association (Monica Youree)
02/01/2021	FRCP 30(b)(6) Deposition of K & N Livestock (Sierra Knudsen)
04/30/2021	FRCP 30(b)(6) Deposition of Southern Nevada Water Authority (Kerry Wright)
06/01/2021	FRCP 30(b)(6) Deposition of Need More Sheep Company (Henry Vogler IV)
06/02/2021	FRCP 30(b)(6) Deposition of Ellison Ranching Company (Ira Wines)
06/14/2021	FRCP 30(b)(6) Witness for Silver Creek Ranch, Inc.
07/08/2021	FRCP 30(b)(6) Deposition of David & Bonnie Little (Bonnie Little)
07/12/2021	FRCP 30(b)(6) Deposition of Eureka Livestock (Nick Etcheverry)
07/16/2021	FRCP 30(b)(6) Deposition of John Espil Sheep Company Inc. (John Espil)
08/06/2021	FRCP 30(b)(6) Deposition of Dufurrena Sheep Company (Hank Dufurrena)
08/09/2021	FRCP 30(b)(6) Deposition of Gary Snow Livestock (Gary Snow)
08/20/2021	FRCP 30(b)(6) Deposition of Borda Land & Sheep Company (Ted Borda)
08/24/2021	FRCP 30(b)(6) Deposition of Rafter 7 Sheep Company (Tom Filbin)
08/26/2021	FRCP 30(b)(6) Deposition of F.I.M. Corporation (Kristofor Leinassar)
11/03/2021	Deposition of Plaintiff's Expert Witness, Jeffrey Petersen, Ph.D.
11/10/2021	Deposition of Western Range's Expert Witness, William Payne, Ph.D.
11/17/2021	FRCP 30(b)(6) Deposition of Green Goat Restoration (Blake Lambert)

In addition, 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 about 110,000 pages of documents, including Western Range records pertaining to Nevada Member herders. See, *Declaration of Ellen Jean Winograd filed herewith as Exhibit 1*. Plaintiff filed his Motion for Class Certification pursuant to FRCP 23 on October 29, 2021 [Doc #264]. Even with all the discovery, Plaintiff has not and cannot meet his burden of proving the requisite elements of FRCP necessary under rigorous analysis, for class certification. And conspicuously absent from Plaintiff's discovery, is any direct testimony from any Nevada herder besides Plaintiff.

("because of the H-2A regulations") should defeat individual claims and more importantly, class certification. But even if the State and Federally regulated contracts and job orders are similar or identical for regulatory reasons, class certification will depend, *inter alia*, on actual jobs performed and wages paid.

As set forth herein, Plaintiff cannot show the requisite "typicality" and "commonality" of herder duties, hours worked, or wages rates to obtain FRCP 23 Class Certification.

VII

SUMMARY OF WESTERN RANGE ASSOCIATION'S POSITION

FRCP Class Certification has been addressed and denied in the Nevada Federal District Court. In *In re Wal-Mart Wage & Hour Emp. Pracs. Litig.*, 2008 WL 3179315 (D. Nev. 2004), the Nevada Federal District Court addressed and analyzed class certification in the context of a wage and hour employment practices litigation pending in Nevada¹¹ and it will be cited extensively herein. Denying class certification in the *Wal-Mart Wage & Hour Emp. Pracs. Litig.*, Judge Pro concluded:

Nevertheless, class treatment is not superior because these actions essentially will amount to many Trials for each class member and each instance of alleged time shaving. As discussed above with respect to predominance, resolving plaintiff's substantive claims when involving particularized inquiry into each alleged instance of unpaid time to determine if the time records accurately reflected employee behavior or instead documented an instance of unpaid time the employee worked. **The Court therefore will deny Plaintiff's Motion for Class Certification.**

Id at *21, Emphasis added.

Even with *Wal-Mart's* similar employment practices addressed by Judge Pro in 2008, the Nevada Federal District Court rejected Plaintiff's contention that common questions predominate over individualized questions and denied FRCP 23 Class Certification.¹²

¹¹ *In re Wal-Mart Wage & Hour Emp. Pracs. Litig.*, was multi district litigation in which the Nevada District Court noted that, class treatment was inappropriate even in a corporate retail work force, because the actions "essentially will amount to many trials for each class member. . ." *In re Wal-Mart Wage & Hour Emp. Pracs. Litig.*, *supra* at 18.

¹² Incredibly ironic is the fact that perceived similarities between and among Wal-Mart wage employees, whether or not actual, was still insufficient to fulfill the Rule 23 requirements for class certification. If Wal-Mart retail employees could not be certified as a class, sheep and goats herders performing different duties with differing hours and wage rates, in different terrains, certainly are not subject to FRCP 23 class certification.

VIII

ARGUMENT

A. The Applicable Standard for FRCP 23 Certification Requires This Court to Rigorously Analyze Plaintiff's Claims.

FRCP 23 governs the circumstances under which Class Certification may be granted by this Court.

FRCP 23 provides in pertinent part:

(a) **Prerequisites.** One or more members of a class may sue or be sued as representative parties on behalf of all members only if;

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

FRCP Rule 23 governs class actions and requires the party seeking class certification to

"affirmatively demonstrate his compliance with the rule—that is, he must be prepared to prove that there are

in fact sufficiently numerous parties, common questions of law or fact, etc." *Wal-Mart Stores, Inc. v. Dukes*,

564 U.S. 338, 339 (2011) (emphasis in original). *See, also In re Wal-Mart Wage & Hour Emp. Pracs. Litig.*,

supra. This requires a district court to conduct "rigorous analysis" that frequently "will entail some overlap

with the merits of the plaintiff's underlying claim." *Id.* A plaintiff must first demonstrate that the four

requirements of Rule 23(a) are met: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of

representation. These requirements effectively "limit the class claims to those fairly encompassed by the

named plaintiff's claims." *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 156 (1982) (citation omitted). If the

Rule 23(a) requirements are met, the court must consider whether the class is maintainable under one of the

three alternatives set forth in Rule 23(b). *Wal-Mart v. Dukes, supra*.

Plaintiff seeks class certification herein under FRCP 23(b)(3), which requires "that questions of law

or fact common to class members predominate over any questions affecting only individual members, and

that a class action is superior to other available methods for fairly and efficiently adjudicating the

controversy." Emphasis added. In evaluating predominance and superiority, the court must consider the four

factors of Rule 23(b)(3): (1) the interests that members in the class have in individually controlling the

prosecution or, defense of separate actions; (2) the extent and nature of any litigations concerning the

controversy already commenced by or against members of the class; (3) the desirability or undesirability of

1 concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely encountered in
2 the management of a class action. *Id.*

3 In the instant case as set forth below and as enunciated by the Nevada Federal District Court
4 opinion *In re Wal-Mart Wage & Hour Emp. Pracs. Litig., supra*, the instant matter involves different types of
5 individual claims, subject to individual damages; a common questions do not predominate over individualized
6 wage and hour questions. *In re Wal-Mart Wage & Hour Emp. Pracs. Litig., supra*.

7 **B. Plaintiff's Wage Claims Involve Western Range Association Members' Lawful**
8 **Application of the H-2A Adverse Effect Wage Rates Promulgated by the United States**
9 **Department of Labor.**

10 *In Llacua, et al., v. Western Range Association, et al.*, 930 F 3d 1161 (10th Cir. 2019), (also cited by
11 Plaintiff) the Court noted and analyzed the significance of the regulatory impact upon Defendants (including
12 Western Range Association) alleged conduct.¹³ Therein, the Court stated:

13 The DOL can promulgate exceptions to the H-2A Visa Program, known as
14 "Special Procedures" for particular agricultural industries. See 20 C.F.R. §
15 655.102. The DOL has implemented special procedures governing the
16 minimum wage for H-2A shepherds.

17 * * *

18 Moreover, in reaching this conclusion, the District Court correctly concluded the
19 H-2A regulations play an important role. The regulatory overlay is a critical back
20 drop that provides relevant economic context to the association defendants and
21 the rancher defendants alleged conduct. . . For example, Federal law governing
22 the H-2A Program explicitly and specifically authorizes associations to coordinate
23 with members to submit "Master Applications" and to act as Joint Employers of
24 H-2A shepherds.

25 *Id.* at 1170, 1181, *emphasis added*.

26 While the precedential value of *Llacua v. Western Range* will ultimately go to the merit, of the
27 individual herder claims, if any, it also has a dramatic impact on the ability to certify a class. Surely, if the
28 "regulatory overlay is a critical back drop that provides relevant economic context to the association
defendants conduct", then in the instant case, a class action lawsuit appears to be preempted by the fact that
the AEWR's are dictated, regulated and enforced by the DOL and applications reviewed by the Nevada

¹³ *In Llacua v. Western Range Association, supra*, Plaintiff Llacua was also represented by Alexander N. Hood, Esq. and "Toward Justice" out of Colorado, both of which represent Plaintiff Abel Cantaro Castillo.

1 Department of Training and Rehabilitation ("DETR"). Clearly, the non-immigrant temporary range herders
 2 who come to Nevada through Western Range are highly and extensively regulated by numerous state and
 3 federal agencies. *See, Declaration of Monica Youree, filed herewith as Exhibit 5.* Given the oversight,
 4 enforcement, and over all regulation by these State and Federal agencies, most specifically the Federal
 5 Department of Labor, Wage and Hour Division ("DOL-WHD") and the Federal Department of Labor
 6 Employment Training Administration ("DOL-ETA"), it is counter-intuitive to believe that an out-of-status
 7 former Peruvian here would be better able to bring a "class action" on behalf of an elusive group of herders,
 8 in a program the DOL so strictly enforces and regulates.

9 **C. Even Assuming Numerosity Exists, Individualized Issues Predominate and Preclude**
 10 **FRCP 23**

11 In *Dueker v. CSRT (sic) Expedited Inc.*, plaintiff sought certification under Rule 23(b)(3), which
 12 requires that questions of law or fact common to class members predominate over any questions affecting
 13 only individual members. 218CV08751MCSFFM, 2020 WL 7222095 (C.D. Cal. Dec. 7, 2020); FRCP
 14 23(b)(3). In evaluating predominance and superiority, the court must consider the four factors of Rule
 15 23(b)(3): (1) the interests that members in the class have in individually controlling the prosecution or
 16 defense of separate actions; (2) the extent and nature of any litigations concerning the controversy already
 17 commenced by or against members of the class; (3) the desirability or undesirability of concentrating the
 18 litigation of the claims in the particular forum; and (4) the difficulties likely encountered in the management of
 19 a class action.

20 The commonality requirement is met [only] where "the class members' claims depend upon a
 21 common contention such that determination of its truth or falsity will resolve an issue that is central to the
 22 validity of each [claim] with one stroke." *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 588 (9th Cir. 2012)
 23 (internal quotation and citation omitted). The predominance test is "far more demanding" than the
 24 commonality test and due to the tests' similarities, courts often address commonality and predominance
 25 together, as the Court does here. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 624, (1997); *see also*
 26 *Ubaldi v. SLM Corp.*, 2014 WL 1266783, at *10 (N.D. Cal. Mar. 24, 2014) ("emphasis added. ["The
 27 predominance standard is similar to and more stringent than the commonality standard"). The "predominance
 28 inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation."

1 *Id.* "[M]ore important questions apt to drive the resolution of the litigation are given more weight in the
 2 predominance analysis over individualized questions which are of considerably less significance to the
 3 claims of the class." *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016). In determining
 4 whether FRCP Rule 23's requirements are met, the court considers the legal theories on which the plaintiffs'
 5 claims are based. *Jimenez v. Allstate Ins. Co.*, 765 F. 3d 1161, 1165 (9th Cir. 2014)

6 Denying certification, the Court noted in *Dueker v. CSRT*, *supra*, stated:

7 [E]ven if Dueker's legal theory is sound, the record before the Court makes
 8 clear that it raises individualized issues that are not susceptible to common
 9 proof. *Hootkins v. Chertoff*, 2009 WL 57031, at *8 (C.D. Cal. Jan. 6, 2009)
 10 ("The greater the number of individual issues to be litigated, the more difficult
 11 it will be for the court to manage the class action.") Dueker's theory depends
 12 on class-wide evidence of drivers' presence in the sleeper berth of a truck
 13 moving in California. As the Court has excluded Dueker's unreliable expert
 14 testimony and Dueker obtained no Rule 30(b)(6) testimony, Dueker's evidence
 15 to prove drivers' confinement to the sleeper berth of a moving truck is driver
 16 logs and driver testimony.

12 * * *

13 [B]ecause common questions of fact and law do not predominate over
 14 questions affecting only individual drivers, Dueker's Certification Motion fails
 15 and the Court need not address Rule 23's additional requirements. Even
 16 accepting his legal theory, Dueker has insufficient evidence to establish
 17 liability on a class-wide basis.

15 * * *

16 For the foregoing reasons, the Expert Motion is **GRANTED** and the Certification Motion is
 17 **DENIED. IT IS SO ORDERED.**

18 *Id.* at 7-8 (emphasis added).¹⁴

19 In the instant case, each putative class member had different job duties, hours worked, workplaces
 20 and often bonus structures. Therefore, common issues cannot factually or legally "predominate".

21 **1. Herder's Actual Jobs Duties Very Greatly Between, Among, and Within the Different**
 22 **Nevada Western Range Member Ranches.**

23 As this Court knows, Nevada is a physically large state, encompassing 110,567 square miles,
 24 with numerous topographical and geographical differences throughout the state. The vast differences, per se,
 25 between Mojave Desert and the Ruby Mountains and how these topographies and geographies obviously
 26 dictate herder job duties, necessitate differences between and among job functions of H-2A herders. This

27
 28 ¹⁴ Not only did the Court in *Dueker* deny certification, it also Granted Defendant's Motion to Exclude the Plaintiff's Expert Jeffrey Petersen, the same "expert" whom Plaintiff relies on in this case. *Id.* at 4-5.

1 was a significant portion of the Western Range's Expert Dr. William Payne's analysis. *See, William Payne*
 2 *Rebuttal Report, filed herewith as Exhibit 3.* This is discussed in further detail in sections i-iv, below.

3 **i. There are Vast Differences in the Geography and Topography Between,**
 4 **Among, and Within the Different Nevada Range Member Ranches.**

5 As this Court well knows, Nevada is a big state with deserts, mountains, forests, lakes, streams and
 6 urban areas. The geography and the topography of Nevada Member Ranch grazing, trailing, lambing
 7 practices and hours worked varies greatly between, among, and within the different Nevada operations
 8 based upon where herding occurs. All Western Range Nevada Member Ranches are located and trail, lamb,
 9 herd, and care for sheep (and goats) in different Nevada locations, as well as locations in other States. The
 10 following are examples from member evidence, that show these differences.

11 Member Borda Land and Sheep Co., LLC herders are in Nevada in Lyon, Storey, Douglas, Carson
 12 City, and Washoe County seven months and in California for five months. *See, Borda Land and Sheep Co.*
 13 *FRCP 30(b)(6) Deposition Excerpts, filed herewith as Exhibit 24.* By contrast, Member Southern Nevada
 14 Water Authority is located in White Pine County, Nevada. *See, FRCP 30(b)(6) Southern Nevada Water*
 15 *Authority Deposition Excerpts, filed herewith as Exhibit 36,*

16 Member David and Bonnie Little Ranch is based in Elko County and grazes sheep in the high-
 17 altitude Ruby Mountains in the summer and in the desert near Duckwater in the winter. *See, FRCP 30(b)(6)*
 18 *David and Bonnie Little Ranch Deposition Excerpts, filed herewith as Exhibit 25.* Member Dufurrena Sheep
 19 Company, is located near Denio, in Humboldt County, Nevada. *See, Declaration of FRCP 30(b)(6) Witness*
 20 *for Dufurrena Sheep Co., filed herewith as Exhibit 38.* Member Ellison Ranch is based in seven different
 21 locations including Lander and Elko County, Nevada, *See, FRCP 30(b)(6) Ellison Ranch Deposition, filed*
 22 *herewith as Exhibit 27; see also, Declaration of FRCP 30(b)(6) Witness for Ellison Ranch, filed herewith as*
 23 *Exhibit 39.*

24 When Member Eureka Livestock previously had sheep, herders would spend spends four months in
 25 Bakersfield, California for lambing and docking, and return to Elko and Eureka Counties for the remaining
 26 months of the year. *See, FRCP 30(b)(6) Eureka Livestock Deposition Excerpt, filed herewith as Exhibit 28.*
 27 Member F.I.M. Corporation is headquartered in two places: Smith Valley and Lyon County, Nevada. *See,*
 28 *Declaration of FRCP 30(b)(6) Witness for F.I.M. Corp., filed herewith as Exhibit 40.* F.I.M. grazes sheep in

1 the high deserts of Nevada and the Eastern Sierra Nevadas, with some allotments located on or near the
2 California border. *Id.*

3 Former Member Gary Snow Livestock was headquartered in central Nevada and grazed sheep in
4 Pumpnickel Valley in Humboldt County in the winter and on different grazing allotments near Eureka in
5 Eureka County, Nevada in the summer. See, *Declaration of FRCP 30(b)(6) Witness for Gary Snow*
6 *Livestock, filed herewith as Exhibit 46.* In the summer/fall drought years, Gary Snow would graze sheep on
7 private land in Utah. See, *FRCP 30(b)(6) Gary Snow Livestock Deposition Excerpts, filed herewith as Exhibit*
8 *30.*

9 Member John Espil Sheep Company is based in multiple locations in Nevada, one being in Lovelock,
10 Nevada, and it operates three or four months in California. See, *FRCP 30(b)(6) John Espil Sheep Company*
11 *Deposition Excerpts, filed herewith as Exhibit 31.*

12 When Member K & N Livestock was previously range herding **goats**, they were located in Ruby
13 Valley in Elko County, Nevada. See, *FRCP 30(b)(6) K & N Livestock Deposition Excerpts, filed herewith as*
14 *Exhibits 32.*

15 Member Silver Creek Ranch, Inc. is based near Austin, Nevada in Lander County, with grazing
16 allotments in Central Nevada, and it recently pastured sheep near Fallon which is located in Churchill
17 County, Nevada. See, *Declaration of FRCP 30(b)(6) Witness for Silver Creek Ranch, filed herewith as*
18 *Exhibit 41.* Member Rafter 7 Merinos, Inc. which breeds primarily for the quality of Merino Wool,
19 grazes sheep in and around Diamond Valley, Eureka County, Nevada. See, *Declaration of FRCP 30(b)(6)*
20 *Witness for Rafter 7 Merinos, Inc., filed herewith as Exhibit 42; see also, FRCP 30(b)(6) Rafter 7 Merinos,*
21 *Inc. Deposition Excerpts, filed herewith as Exhibit 34.*

22 When asked whether the geography and topography varies from ranch to ranch in Nevada, most
23 Western Range Nevada Member Ranches agreed there are vast differences, not only from place to place,
24 but from year to year.¹⁵ As stated by FRCP 30(b)(6) Witness Henry Vogler of Need More Sheep Co., "[e]very
25 ranch is different . . . as different as night and day." See, *FRCP 30(b)(6) Need More Sheep Co. Deposition*
26

27
28 ¹⁵ See, *FRCP 30(b)(6) Need More Sheep Deposition Excerpts; See, FRCP 30(b)(6) Borda Deposition Excerpts; See, FRCP*
30(b)(6) Southern Nevada Water Authority Deposition Excerpt; filed herewith as Exhibits 33, 24, and 36.

1 *Excerpts, filed herewith as Exhibit 33.*

2 When asked if herders in the Mojave Desert have unique duties at Member Southern Nevada Water
3 Authority, (located in White Pine County, is considered [high] desert conditions), FRCP 30(b)(6) Witness
4 Kerri Wright stated, "I expect there would be differences in the duties due to terrain, different terrain . . .
5 different weather, different conditions, different elevations. . . A lot of different situations with herding sheep .
6 . . differences in the duties per season." See, *FRCP 30(b)(6) Southern Nevada Water Authority Deposition*
7 *Excerpts, filed herewith as Exhibit 36 (emphasis added)*. Similarly, when asked if there are differences based
8 upon whether an operation is based in the Ruby Mountains versus the Mojave Desert, the FRCP 30(b)(6)
9 Witness for F.I.M. Corp. stated based on personal experience, "[t]he terrain, the feed, those are all different."
10 See, *FRCP 30(b)(6) F.I.M. Corporation Deposition Excerpts, filed herein as Exhibit 29.*

11 Yet other examples of topographical and geographical variations are present within a single ranch.
12 Borda Land and Sheep Company is located in five different Nevada counties: Lyon, Storey, Douglas, Carson
13 City, and Washoe. See, *FRCP 30(b)(6) Borda Deposition Excerpts, filed herewith as Exhibit 24*. Ted Borda
14 discussed the significant differences in geography/topography among the various locations, when he stated,
15 "the valley is a very large valley . . . compared to "the top of Mt. Rose. It's all timbers and small meadows . . .
16 the desert conditions near Topaz Lake, and . . . the Reno and Carson City metropolitan areas." *Id.* When
17 asked whether the duties of his herders are different depending on where they're located, Borda responded
18 unequivocally "[y]es, the duties are always changing" even within a single operation. *Id. at 104-105.*

19 **ii. There are Vast Differences in the Herder Job Duties and Hours Worked**
20 **Between, Among, and Within the Different Nevada Range Member Ranches.**

21 Plaintiff claims that all of the H-2A herders in the putative "class" have the same or similar
22 employment contracts, which means they *actually* perform the same job duties, and work the same hours.
23 Despite claiming the putative "class" all perform the same job duties, Plaintiff himself testified that two fellow
24 H-2A herders, William Archi Lozano and Isario Yaur Garcia, that worked with at El Tejon with the Plaintiff
25 had different job duties than he performed during his employment at El Tejon. See, *Deposition of Plaintiff*
26 *Abel Cantaro Castillo, filed herewith as Exhibit 4 (emphasis added)*. Further, as set forth below, other H-2A
27 herders and members agree that even within a single operation there are significant differences in herder job
28 duties and hours worked, depending on numerous factors.

1 El Tejon H-2A herder William Archi Lozano spent three months in Nevada, worked often eight hours
 2 per day, received a discretionary bonus of five hundred dollars, and worked north of Rendon, Nevada and in
 3 the Columbia basin. *See, Declaration of El Tejon Herder William Archi Lozano, filed herewith as Exhibit 23.*
 4 Mr. Lozano described in a general sense, an example of how he would spend a day working at El Tejon as
 5 follows:

6 "I get up around 4 am and make breakfast. I start walking to where the sheep are at about 5
 7 am and it takes me 30-60 minutes to get to the sheep. I direct the flock to feed and water. I
 8 typically head back to camp around 10 am or a bit before or after, depending on
 9 circumstances. The sheep bed down after they have morning food and water and sleep for
 10 4-6 hours depending on how hot it is. The hotter it is, the more they sleep. They do not need
 11 my attention when they sleep (during the day or at night), so I head back to camp and make
 12 my meal, clean my possessions, wash my clothes and myself, etc. Later in the afternoon, I
 13 direct them to where I want them that night, I spend about 2-3 hours with them before I walk
 14 back to camp.

15 *Declaration of Herder William Archi Lozano, filed herewith as Exhibit 23 (emphasis added).*

16 By contrast, El Tejon H-2A herder Cesario Yauri Garcia stated that he spent six months in Nevada
 17 and moved the sheep from the Mojave Desert to Elko County, then to the Columbia basin and Jack creek
 18 areas. *See, Declaration of El Tejon Herder Cesario Yauri Garcia, filed herewith as Exhibit 18.* Mr. Garcia
 19 sometimes worked fifty-six hours per week. . . eight hours a day. *Id.* Mr. Garcia received a discretionary
 20 bonus of one thousand dollars from El Tejon. *Id.* Mr. Garcia described in a very general sense, an example
 21 of how he would spend a day working at El Tejon as follows:

22 "The sheep bed down from just after sunset until just before sunrise. Obviously, the time of
 23 sunrise/set varies with the time of year. The sheep need no attention from me during this
 24 time period. Around 5 am I get up and go where the sheep are sleeping. I check on them
 25 and direct them to water. The sheep are at water 8-9 am. I leave them and go back and eat
 26 and take a nap at the same time they do. Around 2-3 pm I go to the sheep and direct them
 27 toward the area I want them to move that night. I am with the sheep about 2-3 hours and go
 28 back to camp and I can east sleep. This can be longer or shorter.

29 *Declaration of Herder Cesario Yauri Garcia, filed herewith as Exhibit 18 (emphasis added).*

30 El Tejon H-2A herder Elmer Alcides Cantaro Oteo stated that he has worked in the Snow Canyon
 31 and Columbia Basin Nevada Allotments, west of Bakersfield, California, the Mojave Desert, and north of
 32 Rendon, Nevada. *See, Declaration of El Tejon Herder Elmer Alcides Cantaro Oteo, filed herewith as Exhibit*
 33 *20.* In 2016, Mr. Oteo was promoted to a supervisory position. *Id.*

34 The only herder to claim he "worked" 24 hours every day was Plaintiff. Plaintiff Abel Cantaro Castillo

1 testified that he spent six months in Nevada and six months in California. *See, Plaintiff's Deposition Excerpts,*
 2 *filed herewith as Exhibit 4.* He worked in various locations including, Spring Ranch, Moss Creek, Mojave
 3 Desert, and the Sierra Nevada Mountains. *Ibid.* Plaintiff testified that he "was always on guard . . . everyday. .
 4 . [he] worked the 24 hours, all guarding . . . as sheepherders all the time." *See, Abel Cantaro Castillo*
 5 *Deposition Excerpts, filed herewith as Exhibit 4.* Contrary to the Plaintiff's allegation that he worked 24 hours,
 6 7 days a week, five other El Tejon H-2A herders stated working significantly fewer hours. *See also,*
 7 *Declaration of Gilmar Jhonny Melo Castillo and Elias Maximo Alania, filed herewith as Exhibits 22 and 19.*

8 Those are only El Tejon herders; there are additional differences in herder job duties and hours
 9 worked between, among, and within the other Nevada operations.¹⁶ As 30(b)(6) Witness Ted Borda stated,
 10 "the duties are always changing. And that's within a single operation." *See, FRCP 30(b)(6) Borda Land and*
 11 *Sheep Co., Inc. Deposition Excerpts, filed herewith as Exhibit 24.*

12 Borda Land & Sheep Co. H-2A herder Raul Ulloa stated, "I started working for Ted Borda in 2015. . .
 13 I primarily tend sheep in Nevada. I occasionally am able to do sheepherding in California depending on
 14 where my flock is. . . **My hours vary according to mainly on where my flock happens to be, what the**
 15 **sheep are doing each day and the season of the year. On an average, during the five months that I do**
 16 **sheepherding in the open pasture, I work approximately 4 to 6 hours daily. On the average, I work**
 17 **approximately 35 hours weekly.** *See, Declaration of Raul Gamaliel Ulloa Isidro, filed herewith as Exhibits*
 18 *24 and 17.*

19 FRCP 30(b)(6) Witness Kristofor Leinassar of F.I.M. Corp. testified, "there are noticeable difference
 20 in our operations. I mean, just the explanation of what I got from the transfer alone kind of says that there's
 21 different things happening over there in California where he came from than what we do and how we operate
 22 . . . The terrain, the feed, those are all different. *See, FRCP 30(b)(6) F.I.M. Corporation Deposition Excerpts,*
 23 *filed herewith as Exhibit 29 (emphasis added).*

24 FRCP 30(b)(6) Witness for Southern Nevada Water Authority Kerri Wright stated, "there are a lot of
 25 things that can change the duties and the workday, and the time spent of a herder. Those being feed, water,
 26

27 ¹⁶ In addition to the herder declarations discussed below, Western Range has two additional herder declarations from Jose Jesus
 28 Salazar and Louis Armando Diaz Naba which are currently in the mail. Western Range will provide these to the Court when
 received.

1 weather, whether they have to haul water or whether they're near a stream, whether they have to move them
2 far out on a range or whether they're in close, what season it is, all those things. *See, FRCP 30(b)(6)*
3 *Southern Nevada Water Authority Deposition Excerpts, filed herewith as Exhibit 36.*

4 David and Bonnie Little Ranch H-2A herder Erasmo Vera Arteaga stated, "I have worked for the
5 Littles from approximately 2016 to the present . . . I only herd sheep in Nevada. I do not do any lambing work
6 and I do little or no ranch work. I have a herding partner that I share responsibilities with all year." *See,*
7 *Declaration of Herder, Erasmo Vera Arteaga, filed herewith as Exhibit 13.* Fellow David and Bonnie Little
8 Ranch H-2A herder Armando Macha Damian stated, "I have worked for the Littles from approximately 2007
9 to the present . . . The Littles pair the herders in twos, so throughout the year I have a herding partner with
10 whom I share responsibilities with in caring for the sheep." *See, Declaration of Herder, Armando Macha*
11 *Damian, filed herewith as Exhibit 11.* Mr. Damian described in a generic way how he would spend a day
12 working:

13 "The sheep bed down from just after sunset until just before sunrise. The sheep need no
14 attention from me during this time period when they sleep. There are dogs provided by the
15 Littles that sleep during the day that protect the sheep at night. We all know that at nighttime
16 the dogs are responsible for protecting the sheep. Additionally, the sheep sleep so far from
17 our camp that I can rarely hear any barking coming from the dogs protecting them at night. I
18 get up at approximately 5:00 a.m. and make breakfast. Around 7:00 a.m. my herding partner
19 and I head towards the sheep on horseback. The sheep are usually about 15 minutes away
20 on horseback from where we sleep. Because I work with one other herder, we divide up our
21 responsibilities. This means that when we head out to the sheep in the morning, one of us
22 returns to our camp at approximately 9 a.m. once the sheep are accounted for. The person
23 who returns at 9 a.m. will usually cook lunch, chop wood, and otherwise rest. The one who
24 stays with the sheep looks to see if any sheep were killed overnight, and cares for the sheep
25 as they drink, graze, and begin napping. Usually, the herder who stays with the sheep will
26 head back to camp at approximately 11:30 a.m. to 12:00 p.m. The sheep need no attention
27 from us when we head back to camp, since they drink water, sleep, and graze during this
28 time period. While the sheep are grazing, sleeping, and drinking, my herding partner and I
stay at our camp and eat and rest. Usually I am able to take naps during this time. We also
play games such as chess, or soccer if we have a ball. There is time to do these things
because we are not working during these hours. In the afternoon when it is time to go back to
the sheep, only one of us goes and the other stays at the camp. The herder whose turn it is to
be with the herd will ride towards the sheep at approximately 2 p.m. and will stay until
approximately 5:00-5:30 p.m. as the sheep wake up, drink, eat, and begin finding their place
to sleep for the night. The herder who stays with the sheep in the afternoon will usually be
back at camp at approximately 5:00-5:30 p.m. For the remainder of the evening and night, I
do no work and instead cook, eat, rest, or do other personal activities."

Declaration of David and Bonnie Little Ranch Herder, Armando Macha Damian, filed herewith as Exhibit 11.

1 Mr. Damian further stated, "[m]y hours vary depending on whether it is my week to primarily
 2 stay with the herd or whether I am the herder heading back to camp early. I estimate that my average
 3 number of hours worked per week is between 35-48 hours." *Ibid.* (emphasis added).

4 Ellison Ranch H-2A herder Oscar Taipei stated, "I primarily work for Ellison Ranch . . . in the pasture,
 5 although I occasionally work at the ranch . . . My schedule varies depending on the season and what the
 6 sheep are doing . . . I estimate that I work between 47 and 48 hours a week." See, *Declaration of Herder,*
 7 *Oscar Taipei, filed herewith as Exhibit 15.* In contrast, fellow Ellison Ranch H-2A herder Marcial Jorge Motta
 8 described in a generic way, an example of how he would spend a day working:

9 [D]uring the 9 months when they are not birthing or corralled, the sheep at Ellison Ranch
 10 have the following routine in the desert: The sheep lay down to sleep a little after sunset
 11 until just before early morning. The Ellison Ranch provided white dogs to protect the sheep
 12 at night. I don't sleep outside with the sheep because it would be too dangerous with the
 13 possibility of predators such as snakes or coyotes. If I suspect that the sheep are in danger
 14 at night, I check the flock in the morning, but I know that I must not walk towards the flock
 15 at night. Depending on the time of the year, I wake up at approximately 5:00 – 6:00 a.m.
 16 and prepare breakfast. At about 6:00 a.m., I walk towards the sheep. The distance between
 17 my trailer in the camp and the location of the sheep depends on the feeding conditions and
 18 where the sheep may have grazed. I normally walk between 40 minutes and one hour to
 19 get to the sheep. If I were to request a horse, Ellison Ranch would provide me with one, but
 20 I choose to walk because I would have to take care of the horse. I stay with the sheep in
 21 the morning until approximately 10:30 – 11:00 a.m. while the sheep drink, graze and start
 22 to nap. That is when I returned to my trailer at the sheep camp. When I am in my trailer at
 23 the sheep camp during lunchtime, I do not tend the sheep because they drink water, sleep
 24 and graze during that time period. The amount of time that I have free during lunch varies
 25 according to the time of the year. In the afternoon, after I finish cooking, eating and doing
 26 my laundry, or things like that, I use my long-range visor to watch the sheep. If I see that
 27 the sheep are already at the location where they'll spend the night and don't need anything
 28 else from me, my work is done for the day and I stay in my trailer at the sheep camp for the
 rest of the night. If I use my long-range visor and I see that they sheep require attention, I
 walk towards them. I **stay in my trailer at the sheep camp and don't walk to where the**
sheep are in the afternoon approximately 2 days per week. On the days that I spend
 the afternoon with the sheep, I stay with them a few hours while they eat, drink and start
 looking for a place to sleep for the night. On the average, I spend 2 to 3 hours with the
 sheep in the afternoon. Once the sheep have found the place where they'll sleep that night
 and don't require further attention from me, I head towards my trailer at the sheep camp. . .
 Those hours are my spare time and I know that no one expects me to work.

25 *Declaration of Herder, Marcial Jorge Motta, filed herewith as Exhibit 14 (emphasis added).*

26 Eureka Livestock H-2A herder Celso Sosa Tumialan stated, "I have worked for Eureka Livestock
 27 since approximately 2001 up to the present time first as a sheep herder and then a livestock herder . . . I
 28

1 initially herded sheep in Nevada and performed very few birthing duties. Occasionally, I traveled to California
 2 to herd sheep from approximately mid-December until the beginning of April . . . **I estimate that I actually**
 3 **worked an average of 4-5 hours daily as a sheep herder. These hours were consistent throughout the**
 4 **entire year. I do not recall any weeks that I worked more than 35-40 hours."** See, *Declaration of Celso*
 5 *Sosa Tumialan, filed herewith as Exhibit 12, (emphasis added)*. Mr. Tumialan described in a general sense,
 6 an example of how he would spend a day working as follows:

7 The sheep laid down to sleep a little after sunset until just before sunrise. (Obviously,
 8 sunrise and sunset times varied according to the season of the year). The sheep did not
 9 require any of my attention while they were asleep. I got up at approximately 8:00 a.m. and
 10 prepared breakfast. At approximately 9:00 a.m., I would walk towards the flock, and the
 11 trailer was about 15-20 minutes from the sheep camp. Many mornings the flock was already
 12 in the watering and grazing area when I walked towards them, so I simply remained in the
 13 camp. Most days I stayed with the flock from 9:30 a.m. until 11:00 a.m. or a little later. Then,
 14 the sheep went to the water and did not need my care, since they were drinking water,
 15 sleeping and grazing during this time period. I would return to my trailer to eat and rest,
 16 leaving the sheep camp while they were grazing, sleeping and drinking. I also watched
 17 movies, videos, talked to my family on the phone and surfed some Internet apps, such as
 18 Facebook and WhatsApp, because I wasn't performing work duties. I would go back to the
 19 flock at approximately 3:00 or 4:00 p.m. and stay with the flock while they woke up, ate and
 20 drank. Most days this meant that I was with the flock until approximately 4:30 to 5:00 p.m.
 21 Afterwards, I would leave the sheep camp and return to my trailer at approximately 4:30-
 22 5:00 p.m. I didn't do any work for the rest of the evening and night. I cooked, ate, rested or
 23 engaged in personal activities, such as doing my laundry.

24 *Declaration of Celso Sosa Tumialan, filed herewith as Exhibit 12. (emphasis added)*.

25 Significant differences arise in the putative "class" between herding sheep or "herding" goats. As
 26 FRCP 30(b)(6) Witness Sierra Knudsen for K & N stated, "[o]ne of the big differences is sheep and goat.
 27 While they may look the same, they're totally different. So that's going to be a big difference in operation and
 28 how it's run. . . Just like what was mentioned before with the lambs, that's going to involve the docking and
 the shearing. That's one less thing we have to do. And . . . we've heard from herders that sheep and goats
 are different to herd . . . they say that goats walk a lot more and a lot faster." See, *FRCP 30(b)(6) K & N*
Livestock Deposition Excerpts, filed herewith as Exhibit 32.

Another Nevada goat operation, FRCP 30(b)(6) Witness for Green Goat Restoration Blake Lambert
 stated: "we don't dock and we don't shear, we don't lamb. . . We shear no goats. . . they have hair, not wool .
 . . all goats get a scrapie tag in the state they're originally from. Male and female . . . We run on deeded
 grounds . . . with perimeter fencing. . . it's not like [open] range sheep. These are goats. They're confined. It's

1 not a like a sheep operation. I have been in the sheep business." See, *FRCP 30(b)(6) Green Goat*
 2 *Restoration Livestock Deposition (Unofficial) Excerpts, filed herewith as Exhibit 37 (emphasis added).*

3 Each of the Nevada Member Ranches has different standard procedures and goals which
 4 necessarily lead to differences in herder job duties and hours worked. Rafter 7 Merinos, Inc. focuses on
 5 improving the genetics of its sheep. *FRCP 30(b)(6) Witness Tom Filbin of Rafter 7 Merinos Inc. stated:*

6 "[O]ur sheep, because we're a feedstock operation, there is a difference. . . because we're
 7 tracking genetics and striving for better production toward the commercial sheep pen.
 8 Commercial sheep pen's main job or duty or enterprise is to produce meat and wool but with
 9 the emphasis on the meat. In the Merino sheep operation you have a totally different outlook
 10 on things, and you're improving not only the meat qualities but also the wool qualities. Wool
 11 qualities help offset a lot of the expense because it brings a superior price because it is a
 12 superior product . . . It's absolutely different. It's the best in the world. There's nothing that
 13 can equal it."

14 See, *FRCP 30(b)(6) Rafter 7 Merinos Deposition Excerpts, filed herewith as Exhibit 34 (emphasis added).*

15 Plaintiff heavily relies on the "job description" as set forth in Job Order Form 790 and the Application
 16 for Temporary Employment Certification Form 9142 for the allegation that all of the H-2A herders in the
 17 "class" have essentially the same binding employment contracts, perform the same job duties, and work 24
 18 hours a day, 7 days a week. However, when asked whether the "job description" provided an accurate
 19 description of the duties actually performed by the H-2A herders or required by the Nevada Member
 20 Ranches, the majority testified it was not accurate for their specific operation. Further, it is actual duties, not
 21 job descriptions that must be considered for FRCP 23 certification.

22 Western Range Executive Director Monica Youree testified about the DOL's submitted job duties as
 23 follows:

24 CHRISTINE WEBBER:

25 Q: Is that an accurate description of things that sheep herders are expected to do?

26 MONICA YOUREE:

27 A: This is, yeah, I think part of a description of what they do. It talks about the different terrain and the different
 28 elevation and topography, you know, that varies among the herders. It also talks about desert conditions. It
 doesn't refer to the winter conditions, but that's definitely another factor that, you know, could be within the job
 duty depending on the ranch location and what the ranchers are doing. So, generally, it does talk about the
 duties, and on paper may look like you can take this as a cookie-cutter to everybody, this is what everybody
 does. But when you look at ranch to ranch, what this means on each ranch is a little bit different.

29 *FRCP 30(b)(6) Western Range Association Deposition Excerpts, filed herewith as Exhibit 7.*

30 Similarly, Ted Borda testified:

31 MEGAN REIF:

32 Q: Would you say this job description is accurate for your expectations for your herders?

TED BORDA:

A. Well, it's only comprehensive, it's not accurate.

Q. In what way is it not accurate?

A. Well, my guys are not on call 24 hours, seven days a week. That's just not true.

Q. Could you define for me what you mean by "on call"?

A. Well for example, during lambing time, my guys split up into shifts and they work different shifts. When they're done, they're done. So they're not on call. When they go to bed . . . their shift's over, they're done. . . right now my guys are bored to death. They are absolutely bored to death; they work about two hours a day. And when they go to bed, same thing, they're not on call. We have guard dogs, we have two guard dogs with each man. We haven't shot a predator in years. . . When my guys go to bed, they're done. We have guard dogs that take care of all our problems, We haven't lost an animal to predator in years; we haven't shit a predator in years, They're not on call. They're just not."

FRCP 30(b)(6) Borda Land and Sheep Co. Deposition Excerpts, filed herewith as Exhibit 2, Emphasis added.

When asked whether the job description was accurate, FRCP 30(b)(6) Nick Etcheverry stated, "I mean they don't need to be on call for 24 hours. . . I don't have them drench the sheep. We would probably have no drenching." See, *FRCP 30(b)(6) Eureka Livestock Deposition Excerpts, filed herewith as Exhibit 28.*

FRCP 30(b)(6) Witness for F.I.M. Kristofor Leinassar stated as follows:

CHRISTINE WEBBER"

Q: Are there additional duties you have for the herders that were not listed in that job description that we haven't talked about already?

KRISTOFOR LEINASSAR:

A Yeah. If someone is not familiar with a sheep operation and how things can be done, lambing in general can be pretty vague compared to someone that lambs openly out on the desert versus somebody that lambs enclosed in corrals like we do. So, there are some different job duties to that, as far as preparing jug corrals; cleaning jug corrals; assessing whether lambs are ready to be processed and pushed out to the next series of corrals. They have to assess whether that lamb is strong enough and the bond is there between the lamb and the mother, whether she accepts it or she wants to butt it away. If they get out in the little alleyway behind the night shed or in between the next series of corrals and the relationship and the bond isn't there, you have to bring them back in and button them back up into the jug corrals and just kind of wait for that connection to occur. And it takes being around sheep and experience with sheep to see that. And your experienced herders understand that, have been trained for that, taught that. So . . . Jug corrals. They are very small, just the ewe and her lambs.

FRCP 30(b)(6) F.I.M. Corporation Deposition Excerpts, filed herewith as Exhibit 29.

In the instant case, as is abundantly evident from Nevada Member Ranch testimony and herder declarations, there are no generic or general sheep or goat herding job duties. Neither is there uniformity (or even similarity) in hours worked between and among various herders so commonality cannot predominate.

iii. There are Vast Differences in the Tools and the Transportation Utilized Between, Among, and Within the Different Nevada Range Member Ranches.

As discussed above there are vast differences in geography and topography between, among, and within the different Nevada Member Ranches. This necessarily leads to additional differences in the tools, procedures and the transportation utilized by the herders and members. When Western Range Nevada Member Ranches were asked as to whether the tools utilized by herders at different ranches would be

1 different, most stated that they would be different.¹⁷ This is important because it again demonstrates the lack
2 of "commonality" and "typicality" of job duties and hours worked.

3 FRCP 30(b)(6) Witness Monice Youree Executive Director of Western Range, stated, "[a]ll herders
4 are provided somewhat different tools." See, *FRCP 30(b)(6) Western Range Deposition Excerpt*, filed
5 herewith as Exhibit 7. When asked to explain why Need More Sheep believed the tools would be different
6 among operations, Hank Volger IV of Need More Sheep explained the differences he would expect between
7 his operation and Ted Borda's operation:

8 "I've sold a lot of sheep to Ted Borda. He's over on the other side of the state. There's lots of
9 alfalfa fields and private properties that are close to his operation to where he can go to in
10 the fall and put his ewes and things like that. He has a complete different set of dynamics to
11 deal with. . . Probably tools for electric -- all kinds of things ... Electric fence tools, trucks to
12 haul hay. I think he works out of a shed. The lamb, they would haul hay into the shed, haul
13 manure out of the shed. Just all sorts of things, the nuances that go along with shed lambing
14 and being able to -- we're so far away from alfalfa fields, and because alfalfa is very valuable
15 for the dairy, they cut the alfalfa fields so short it doesn't pay to go on them, so it's
16 completely different . . . We have a pickup. They're hauling hay every day into the sheds,
17 into the day pens, into the sun pens, completely different. . . my men, my camp tender or
18 myself, to restock the men on the range or even during lambing, haul a couple bales in the
19 back of a pickup. Where Ted Borda is lambing in sheds and 4,000 sheep are probably
20 eating five pounds a piece, which is several tons a day. . . Then you've got to get water into
21 your shed, sun pens, day pens, night pens. You've got night men, you've got day men,
22 you've got all sorts of things going on, whereas we're on the range . . . Forest service
23 permits, he's doing some rehabilitation around some of the houses that burned down around
24 Carson City, he's having some concentrated grazing there which would be completely
25 different from what we do. Very different, different organization."

18 *FRCP 30(b)(6) Need More Sheep Co., Inc. Hank Vogler Deposition Excerpts*, filed herewith as
19 Exhibit 33.

20 The transportation utilized by the herders also varies greatly between, among, and within Nevada
21 Member Ranches. Some of the Nevada operations herders utilize horses on the range, some use burros or
22 mules. Some don't use any pack animals for transportation. FRCP 30(b)(6) Witness Bonnie Little stated, "I
23 think it varies. . . sometimes there's more than one herder in the bands. I'm pretty sure that the nonbreeding
24 band herder does not always have a horse." See, *FRCP 30(b)(6) Bonnie Little Deposition Excerpts*, filed here
25 as Exhibit 25.

26
27 ¹⁷ See, *FRCP 30(b)(6) Need More Sheep Deposition Excerpts*; See, *FRCP 30(b)(6) K & N Livestock Deposition Excerpts*; See,
28 *FRCP 30(b)(6) Southern Nevada Water Authority Deposition Excerpts*; See, *FRCP 30(b)(6) Western Range Association
Deposition Excerpts*, filed herewith as Exhibits 33, 32, 36, and 7.

1 Some of the herders employed by El Tejon didn't use any pack animals for transportation and
 2 "work[ed] the rugged area by walking." See, *Declaration of El Tejon Herder Cesario Yauir Garcia*, filed
 3 herewith as Exhibit 18. Big contrast, at Eureka Livestock, the FRCP 30(b)(6) Witness Nick Etcheverry stated
 4 that "one guy has a horse and two mules." See, *FRCP 30(b)(6) Eureka Livestock Deposition Excerpts*, filed
 5 herewith as Exhibit 28. At Gary Snow Livestock, the FRCP 30(b)(6) Witness testified that the herders used
 6 horses when they moved throughout the range. See, *FRCP 30(b)(6) Gary Snow Livestock Deposition*
 7 *Excerpts*, filed herewith as Exhibit 30. The FRCP 30(b)(6) Need More Sheep witness stated, "[t]he ones that
 8 need them . . . If they can ride a horse." See, *FRCP 30(b)(6) Need More Sheep Deposition Excerpts*, filed
 9 herewith as Exhibit 33. The FRCP 30(b)(6) Witness for Silver Creek Ranch, Inc. Pauline Inchauspe confirmed
 10 that all its herders use horses. See, *FRCP 30(b)(6) Silver Creek Deposition Excerpts*, filed herewith as Exhibit
 11 35.

12 When discussing the differences among Nevada Member Ranches, Hank Dufurrena summed it up:

13 "Each one of us run a completely different operation. Some people lamb outside,
 14 inside . . . I'm very hands on with my guys, and it's a smaller, richer piece of country,
 15 so I don't cover the areas that a lot of them do. And in that sense, it's easier. I handle
 16 my sheep different. They camp right in the camp. That's one reason it's not a -- they're
 17 not out there chasing sheep all the time. My sheep stay right there. Not many people
 18 do it that way. We move tent and burro right to the spot the sheep camp, so that's how
 19 I say I'm different . . . they're very much different. They don't have to get on horse and
 20 ride to the sheep or any of that in my operation. They're right there. So, there's
 21 a lot of differences."

22 *FRCP 30(b)(6) Need More Sheep Company Deposition Excerpts*, filed herewith as Exhibit 33.

23 In the case at bar, it is abundantly clear that each Nevada Member operates as dictated not only by
 24 State and Federal Law, but also by utilizing the tools and transportation necessitated by conditions specific to
 25 that member ranch.

26 **iv. There are Vast Differences in the Management Policies Between, and within**
 27 **Different Nevada Western Range Member Ranches.**

28 All Western Range Nevada Member Ranches have vastly different management policies, including
 but not limited to, differences in the size of bands, differences in the number of herders needed at certain
 locations or times of year, differences in how lambing or kidding is handled, differences in the frequency and
 type of food and supplies provided to the H-2A herders, differences in the housing provided to the H-2A
 herders, differences in how dogs are utilized in conjunction with the H-2A herders herding duties and how

1 many are utilized, differences in how predations is handled and if bounties are paid to the H-2A herders,
 2 differences in if and when guns or rifles are provided to H-2A herders, differences in the amount or if any H-
 3 2A herders received bonuses, differences in whether the H-2A herders are permitted alcohol, and differences
 4 in how often or at what times H-2A herders are permitted to go into town at each operation. Each of these
 5 differences is further discussed below.

6 **a. Size of Bands**

7 All Western Range Nevada Member Ranches have very different management policies and there
 8 are differences in the size of bands needed at different operations. Witness Ted Borda testified "we ran three
 9 bands of sheep for a very long time . . . then two of those bands were always in California. Well, I didn't go to
 10 five bands until 2020. So, prior to 2020, I had four bands, one band would have been in California all the
 11 time." See, *FRCP (30)(b)(6) Borda Land and Sheep Co. Deposition Excerpts, filed herewith as Exhibit 24.*

12 K & N Livestock testified "[w]e ran goats. We had at smallest, we had 700 head of goats. At largest,
 13 we had two bands of, so that would equal 2,000 head of goats." See, *FRCP (30)(b)(6) K & N Livestock*
 14 *Deposition Excerpts, filed herewith as Exhibit 32.*

15 Hank Dufurrena testified that he runs "a herd of approximately 1,600 ewes." See, *Declaration of*
 16 *FRCP (30)(b)(6) Witness for Dufurrena Sheep Company, filed herewith as Exhibit 38.* Aulene Ratliff for
 17 Ellison Ranching Co. stated, "[w]e run a herd of approximately 8,000 ewes. During the winter, these ewes
 18 are usually broken into 5 bands on the winter range near Battle Mountain." See, *Declaration of FRCP*
 19 *(30)(b)(6) Witness for Ellison Ranching Co., filed herewith as Exhibit 39.*

20 Former party, John Estill stated, "[w]e run a herd of approximately 3,500 ewes. During the winter,
 21 these ewes are usually broken into two or three bands, each band is accompanied by a herder." See,
 22 *Declaration of FRCP (30)(b)(6) Witness for Estill Sheep Co., filed herewith as Exhibit 43.*

23 Gary Snow stated, "[w]e graze bands of 800 to 1000 ewes. Typically, these are accompanied by one
 24 herder." See, *Declaration of FRCP (30)(b)(6) Witness for Gary Snow Livestock, filed herewith as Exhibit 30.*

25 Hank Vogler of Need More Sheep Co. stated, "[d]uring the winter months, our sheep are typically
 26 divided into 5 bands of approximately 2,000 sheep each. Each band is attended to by one sheep herder and
 27 one water truck driver." See, *Declaration of FRCP (30)(b)(6) Witness for Need More Sheep Co. filed herewith*
 28 *as Exhibit 44.*

1 Rafter 7 Merinos declarant Rick Powers stated, "[w]e currently graze 1,800 to 2,000 ewes on public
 2 land and private alfalfa fields in and around Diamond Valley, near the town of Eureka, Nevada. Depending
 3 on the time of year and the availability of forage and water, we will divide these in to 2 to 4 bands." See,
 4 *Declaration of Declarant for Rafter 7 Merinos*, filed herewith as Exhibit 42.

5 Declarant Pauline Inchauspe of Silver Creek Ranch, Inc. stated, "I run a herd of approximately 3,000
 6 sheep." See, *Declaration of Silver Creek Ranch, Inc.*, filed herewith as Exhibit 35.

7 **b. Number of Herders**

8 Western Range Nevada Member Ranches differ significantly in the numbers of herders each
 9 employs.

10 Ellison Ranch Declarant Aulene Ratliff stated, "Ellison typically employs between fifteen and
 11 seventeen H-2A herders at a time. Each band is accompanied by two herders." See, *Declaration of FRCP*
 12 *(30)(b)(6) Witness for Ellison Ranching Co.*, filed herewith as Exhibit 39. FRCP 30(b)(6) Witness John Estill
 13 stated, "I typically employ about 5 herders in the winter and 8 to 10 herders in the spring and summer." See,
 14 *Declaration of FRCP (30)(b)(6) Witness for Estill Sheep Co.*, filed herewith as Exhibit 43.

15 By contrast, Nick Etcheverry of Eureka Livestock stated, "[w]hen we ran a sheep herd, Eureka
 16 Livestock typically employed four or five H-2A herders at a time." See, *Declaration of FRCP (30)(b)(6)*
 17 *Witness for Eureka Livestock*, filed herewith as Exhibit 45. Kristofor Leinassar of F.I.M. stated, "F.I.M.
 18 employs six to nine H-2A workers at a time. During the fall and winter, we typically have about 6 guest
 19 workers. In Spring and Summer, we typically have nine." See, *Declaration of FRCP (30)(b)(6) Witness for*
 20 *F.I.M. Corp.*, filed herewith as Exhibit 40. Declarant Connie Olagaray of Five-O Ranch stated, "Five-O
 21 employs four or five H-2A workers at a time." See, *Declaration of Declarant for Five-O Ranch*, filed herewith
 22 *as Exhibit 47*. FRCP 30(b)(6) Witness Gary Snow stated, "I typically employ 4-5 sheep herders." See,
 23 *Declaration of FRCP (30)(b)(6) Witness for Gary Snow Livestock*, filed herewith as Exhibit 46.

24 Hank Vogler of Need More Sheep Co. stated, "Need More Sheep employs up to 26 H2A workers at
 25 a time, depending upon a number of factors." See, *Declaration of FRCP (30)(b)(6) Witness for Need More*
 26 *Sheep Co.* filed herewith as Exhibit 44. Yet Rafter 7 Merinos declarant stated, "Rafter 7 typically employs
 27 five to six H2A workers at a time, and sometimes as few as four – depending on the time of year." See,
 28

1 Declaration of Declarant for Rafter 7 Merinos., filed herewith as Exhibit 42.

2 Given these differences, there is hardly commonality among the ranches or their employees'
3 dictates- the putative class members.

4 **c. Lambing/Kidding**

5 Lambing or kidding is handled differently at different Nevada operations, as are herder duties and
6 Hours.

7 Ted Borda stated, "during lambing time, my guys split up into shifts and they work -- they work
8 different shifts. . . So, they're not on call. When they go to bed -- when their shift's over, they're done. See,
9 FRCP (30)(b)(6) Borda Land and Sheep Co. Deposition Excerpts, filed herewith as Exhibit 24. Mr. Borda
10 further stated that all of his lambing takes place in California. *Id.* Eureka Livestock also lambs entirely in
11 California in November every year. See, FRCP (30)(b)(6) Eureka Livestock Deposition Excerpts, filed
12 herewith as Exhibit 28.

13 Hank Dufurrena stated, "[s]ome people lamb outside, inside. I run -- I'm very hands on with my guys,
14 and it's a smaller, richer piece of country, so I don't cover the areas that a lot of them do." See, FRCP
15 (30)(b)(6) Dufurrena Sheep Company Deposition Excerpts, filed herewith as Exhibit 26. FRCP 30(b)(6)
16 Witness Hank Dufurrena continued and testified:

17 MEGAN REIF:

18 Q: What are your herders' responsibilities during lambing?

19 HANK DUFURRENA:

20 A: That varies quite a bit. They all have a little bit different jobs through there. But we move the lambs
21 into the barn. Some of them feed them, some of them watch the different ones. There's a big
22 variance in there of what they do.

23 Q: Do you have a day crew and a night crew?

24 A: Yes, I do.

25 Q: Okay. How many on the day crew versus the night crew?

26 A: They're all on the day crew except one, maybe two a night. When I say "crew," I mean a couple
27 hours a night. They don't stay all night with the sheep.

28 Q: To be clear, the night crew does not stay up all night?

A: No.

Q: When they are attending to the sheep at night, what are they doing?

A: * * *

A: So they lead the ewes into the barn and put them in little corrals, and that's basically what they do.
Look them over.

Q: Sure. Do they assist the ewes in giving birth or is that something the ewe handles on her own?

A: Yeah, it's possible they could, if they need it, yes.

Q: Okay. How often would you say an ewe needs assistance giving birth?

A: Maybe one a night, but that could take five minutes, maybe.

28 FRCP (30)(b)(6) Dufurrena Sheep Company Deposition Excerpts, filed herewith as Exhibit 26.

1 Kristofor Leinassar of F.I.M. Corp. testified that F.I.M. Corp. paid H-2A herders extra for night
2 lambling. See, *FRCP 30(b)(6) F.I.M. Corp. Deposition Excerpts, filed herewith as Exhibit 29*.

3 FRCP 30 (b)(6) Witness Gary Snow testified:

4 CHRISTINE WEBBER:

Q: How about during lambing season? Did they set up, I think I have heard them called jugs, little sort of
5 bits of shelter to use going into lambing? Did you have them do anything like that?

6 GARY SNOW:

A: No. Most of our ewes lamb out in the hills. Some inside if we had problems.

Q: Were there some that you knew were likely to have difficulty that you kept closer to a shelter?

7 A: Only the thin ones or the poor ones, yes.

8 *FRCP 30 (b)(6) Gary Snow Livestock Deposition Excerpts, filed herewith as Exhibit 30*.

9 FRCP 30(b)(6) Witness Sierra Knudsen of K & N Livestock testified:

10 CHRISTINE WEBBER:

Q: Turning back to Exhibit 7 and the position description, it also lists, "assisting in lambing, docking, and
11 sheering." Since you ran goats, I assume that the proper term is "kidding" rather than "lambing"; is
that right?

12 SIERRA KNUDSEN:

A: That's correct. That's correct.

Q: But the herders did assist in that; is that right?

A: They did, yes.

Q: Okay. And "docking," is that the -- I think you referred to clipping the ears. Is that what the docking
14 refers to or does docking involve the tail?

15 A: No. That -- sorry. That's referring to tails on lambs. So, docking and shearing were not -- not relative
to what we did with goats.

16 Q: Understood.

17 *FRCP 30 (b)(6) K & N Livestock Deposition Excerpts, filed herewith as Exhibit 32, Emphasis added.*

18 Hank Vogler testified:

19 CHRISTINE WEBBER:

Q: And as you said, you have lambing take place wherever the good feed is that year, not back at the
20 ranch, correct?

A: The only ones that land here at the ranch are the ones that are in the artificial insemination program
21 with Australian blood.

Q: Yep.

A: Dohne, D-o-h-n-e.

22 *FRCP 30 (b)(6) Need More Sheep Co. Deposition Excerpts, filed herewith as Exhibit 33.*

23 Ira Wines of Ellison Ranching Co. testified:

24 MEGAN REIF:

Q: So if we move to lambing season, does lambing season take place after shearing?

A: Yes.

25 Q: And is that in the same location?

A: There is one band we lamb right there at Fish Creek inside. The rest of them are lambed out on the
26 range which, oh, it's within 30 miles of there.

Q: What are the duties of herders assisting with shed lambing?

27 A: There is a day crew and a night crew. It's ewes that are having their first lambs and they require quite
a bit more help because they have never done it before, they don't know what -- they get scared and
28 don't know what's going on. So, it requires -- they require more help, that's why we lamb them inside

so we can watch them closer. So, we split the crew up into daytime and nighttime.

FRCP 30 (b)(6) Ellison Ranching Co. Deposition Excerpts, filed herewith as Exhibit 27.

d. Food and Supplies

There are also differences among Western Range members in the frequency and type of food and supplies provided to the H-2A herders at different operations.

Witness Nick Etcheverry of Eureka Livestock stated, "[t]he herders are provided food and other supplies every week by a camp tender. The supplies include canned goods, fresh meat and fruits and vegetables. The herders can request particular supplies or provisions, and these are provided. We provide our herders with boots and rain gear. We provide the sheep herders with the tools they need to perform their job duties and to live comfortably in the wilderness." *See, Declaration of FRCP (30)(b)(6) Witness for Eureka Livestock, filed herewith as Exhibit 28.*

Witness Kristofor Leinassar of F.I.M. Corp. stated, "[w]e also provide the sheep herders with the tools they need, including a sheep hook, shovel, knives, veterinary supplies, camp supplies, and a cell phone." *See, Declaration of FRCP (30)(b)(6) Witness for F.I.M. Corp., filed herewith as Exhibit 40, p. 2.*

Hank Vogler IV of Need More Sheep Co. testified stated:

CHRISTINE WEBBER:

Q: Am I correct that you supplied groceries to the herders at the sheep camps so that they could cook their meals?

A: My commissary looks like Walmart. And it's the -- when I need groceries for my house, I go to their commissary. Unless it's filet mignon or Beluga caviar, it's in the commissary. They eat better than me.

Q: How does the food get from the commissary in the bunkhouse to the herders out in the range?

A: In a pickup truck, along with water, along with hay, along with grain, along with dog feed, along with other things -- salt -- all the things that it takes to be a shepherd.

Q: And how often do food and other provisions get delivered to the herders when they're out on the range?

A: Every three days somebody in that -- maybe they don't need all the food and all the water and all the stuff like that, but there's somebody going by, whether it's the trapper, whether it's me, whether it's another person. But three days.

FRCP (30)(b)(6) Need More Sheep Co. Deposition Excerpts, filed herewith as Exhibit 33.

Ted Borda testified:

MEGAN REIF:

Q: And so, in your declaration the herders are provided food at least once a week or every four to five days. Is it you who provides that food or do you have some sort of a camp tender or someone else?

A: I have a camp tender that assists me but I do 90 percent of that.

Q: Okay.

A: ... As far as acquiring the food, I do that. My sister does that, actually. And as far as actually delivering the food, I share that with the camp tender. We split it up, so during the wintertime, I do it all the time. In the summertime, when I have five bands, then he'll do some and I'll do some, and we go opposite directions every other week, so I make sure I see those people at least once every two weeks.

FRCP (30)(b)(6) Borda Land and Sheep Co. Deposition Excerpts, filed herewith as Exhibit 24, pp. 69-70.

FRCP 30(b)(6) Witness Pauline Inchauspe of Silver Creek Ranch testified:

CHRISTINE WEBBER:

Q: ... you referred to providing provisions to the herders once every seven days. Is that when you have occasion to see what's going on with them and their sheep?

A: Yes.

A: In my father's time it was every six days. Since I've taken over, they get groceries once a week.

Q: Okay.

A: Not always seven days, sometimes it is six. If we're driving 200 miles they get groceries that day and I won't go the sixth day in the wintertime. We use a little bit of sense.

Q: Of course.

A: It's once a week.

Q: Understood. And I take it you are one of the individuals whose may be making those grocery deliveries to the herders out at their camps; is that right?

A: Yes, I am.

Q: And are there other individuals who assist in that as well, or is it always your responsibility?

A: It's my responsibility.

Q: Okay. And how much time do you spend with each herder when you are dropping off the groceries?

A: As much time as we need.

A: I spend the whole day with them when I'm down there.

Q: Okay. So even with all the driving that you have to do to get there and get back, you are still able to spend --

A: It's the day. It takes me an hour or two to get down there. I spend the majority of the day hauling water to the sheep in the wintertime, and wintertime is a long time there from November to March I'm there every other day, and the whole day is dedicated to sheep that day.

A: And there are two bands, so I do spend quite a bit of time with those men.

Q: In the winter you are down to two bands. So, you can alternate one day with one band and one day with the other band?

A: I do them both at the same time. It's 200 miles.

Q: Understood. So, you spend like half the day with one band and half the day with the other band?

A: Yes.

FRCP (30)(b)(6) Silver Creek Ranch Deposition Excerpts, filed herewith as Exhibit 35.

e. Housing

Western Range Nevada Member Ranches provide different housing to the H-2A herders, within the dictates of 20 C.F.R. § 655.120, *et seq.*

Ted Borda testified:

MEGAN REIF:

Q: I want to talk a bit about housing and living conditions for the herders. So I understand that they have sheep camps for much of the year. Is it correct that from 2010 to the present at least one of your herders each year has packed for part of the year?

A: No, that is not correct.
* * *

A: We did not start -- we have one permit that we pack into, and we started that maybe five, maybe six years ago, and we don't it every year in those six years. So there is one permit that we use for maybe, at the maximum, 30 days, closer to probably 25 days where we will pack in, yes.

Q: And is that all of your herders or just some of them that are packing?

A: When we do that -- when we do that, we will put two herders together. It's just more convenient for them, more comfortable for the two of them. Like I have the two brothers together right now.

Q: When they are doing the sheep camps, do they have some sort of refrigeration?

A: Yes, every camp has an icebox and freezer in it.

Q: Okay. And that's true from 2010 to the present?

A: Yes.

Q: Okay. What is the plumbing situation?

A: There is no plumbing.

1 *FRCP (30)(b)(6) Borda Land and Sheep Co. Deposition Excerpts, filed herewith as Exhibit 24.*

2 Pauline Inchauspe of Silver Creek Ranch testified:

3 CHRISTINE WEBBER:

4 Q: And when they're trailing, is the herder then able to use the sheep camps that you described? I think you said
the Timberline sheep camps or are they using a packed tent during the time when they're on the trail?
5 A: They use a packed tent.
6 Q: And then in the summer months, when they're out on the range, they continue to use the tents; is that correct?
7 A: Yes.
8 Q: And when you are trailing south to the winter grounds, I assume if you are doing it over the course of a couple
weeks, that's still with a tent because you can't be setting up camp?
9 A: No.
10 Q: You do have the sheep camp there?
11 A: Yes. They have a sheep camp. They usually get a sheep camp in September when it starts getting cool
12 Q: ...
13 A: And obviously through the winter everybody's home base is the sheep camp, no more camp tents; right?
14 Q: Yes.

15 *FRCP (30)(b)(6) Silver Creek Ranch Deposition Excerpts, filed herewith as Exhibit 35.*

16 Kristofor Leinassar of F.I.M. Corp. testified:

17 CHRISTINE WEBBER:

18 Q: Do you use sheep camps all year or do you pack at some time during the year?
19 A: ...
20 Q: Yes.
21 Q: It looks like for 2010, the response given was, "Sheep camp for seven months and pack for five months." Is that
consistent with your recollection of how FIM divided the year in 2010?
22 A: Yes, it is.
23 Q: Is that something that's pretty consistent over time, that four or five months out of the year you have herders
packing in tents and the rest of the time in sheep camp?
24 A: ...
25 Q: Fairly consistent, depending on any situation we have to deal with such as fires, but we also do have fixed
housing on our ranch.
26 Q: And herders are in that fixed housing during lambing season; is that correct?
27 A: Yes.
28 Q: And then for most of the rest of the year, they would be in sheep camps, meaning something like a trailer; is that
correct?
29 A: Yes.
30 Q: Then for about four or five months out of the year, depending on exact weather or fire circumstances, they would
be using tents; is that right? That's what it's referring to when it says "pack"?
31 A: Yes.

32 *FRCP (30)(b)(6) F.I.M. Corp. Deposition Excerpts, filed herewith as Exhibit 29.*

33 John Espil of John Espil Sheep Co. testified:

34 CHRISTINE WEBBER:

35 Q: When the herders are in Nevada as opposed to California, is there housing for the entire part of the year they're
in Nevada in sheep camps or trailers?
36 A: Yes.
37 Q: And do all of your sheep camps have a stove for them to use for cooking?
38 A: Yes.
39 Q: And do they have refrigeration?
40 A: Yes.

1 Q: Is that propane-powered refrigerators?
 2 A: Yes.
 3 Q: Do they have any sort of toilet or shower facilities?
 4 A: Showers . . .
 5 Q: In the sheep camps, do they have electricity for lights or anything else?
 6 A: Yes.
 7 Q: And how is that powered?
 8 A: Solar panels.

9 *FRCP (30)(b)(6) John Espil Sheep Co. Deposition Excerpts, filed herewith as Exhibit 31.*

10 Hank Vogler stated, "I provide them with telephones, the entire crew, Wi-Fi, telephones. They even
 11 have wide-screen TV, DISH Network all provided in the bunkhouse. I take care of my men; they take care of
 12 me . . . They come in and out of the bunkhouse. They want to take a shower, they get tired of taking a bath in
 13 a pan in the sheep camp. Sheep are bedded at night; they're certainly welcome . . . if they want to go to town
 14 for a couple of days. . . There's only two bunches that are not attended by Wilson Camps with refrigerators,
 15 stoves, solar panels, everything. Only two of them go into the camps in the wilderness." See, *FRCP*
 16 *(30)(b)(6) Need More Sheep Co. Deposition Excerpts, filed herewith as Exhibit 33.*

17 f. Herd Safety. Use of Guns

18 In conjunction with geography there are differences in how herd safety is handled, if bounties are
 19 paid to the H-2A herders, and if and when guns or rifles are provided to H-2A herders at different operations.

20 Sierra Knudsen for K & N Livestock testified as follows:

21 CHRISTINE WEBBER:

22 Q: Do you have an understanding of how often the herders would have to deal with predators coming after your
 23 goats?
 24 A: That depended on location, mainly. You know, it's always a worry. The actual incident, I would say probably less
 25 than ten in the whole time that we had goats, that we ever had -- actually, probably less than five. Five incidents
 26 at night where, you know, things were scattered or something got caught in the fence.
 27 Q: And you don't -- and you don't know how many other times coyotes or other predators may have come by and --
 28 and, then, been deterred by the fence from -- from trying to get at your goats?
 A: Well, not only the fence -- because we have guard dogs. We had Pyrenees and Anatolian dogs that did a pretty
 dang good job of keeping those predators out. So I would say that, yeah, under five times that there were
 incidents. And that was in the whole time that we ran goats, which were several years.
 Q: Okay. Are the Pyrenees dogs the same ones that you referred to, that were used in rounding up strays, or were
 those different dogs?
 A: Those are different. Those, we refer to them as working dogs.
 Q: Okay. And you mentioned that not all of the herders were comfortable working with a working dog. Did all the
 herders have the Pyrenees or other dogs to assist in guarding in the evenings?
 A: Yes, they did.

29 *FRCP (30)(b)(6) K & N Livestock Deposition Excerpts, filed herewith as Exhibit 32.*

30 Kerri Wright for Southern Nevada Water Authority testified:

31 CHRISTINE WEBBER:

1 Q: Do your herders go out with any dogs to assist them?
 2 A: They do.
 3 Q: Okay. And all one kind of dog or just one -- or -- or do they have multiple types?
 4 A: Multiple types that they have, herding dogs and guard dogs.

5 *FRCP (30)(b)(6) Southern Nevada Water Authority Deposition Excerpts, filed herewith as Exhibit 36.*

6 Kristofor Leinassar of F.I.M. Corp. stated, "the herders also are provided with a rifle for protection
 7 from predators. If the herders report significant incidents. . . (such as a mountain lion, which may kill multiple
 8 lambs in a night,) we will engage an independent contractor for predator control." See, *Declaration of FRCP*
 9 *(30)(b)(6) Witness for F.I.M. Corp., filed herewith as Exhibit 40.* FRCP 30 (b)(6) Witness Kristofor Leinassar
 10 for F.I.M. Corp. further testified that F.I.M. Corp. pays its H-2A herders a "bounty" for killing coyotes,
 11 mountain lions, and in rare cases bears. See, *FRCP (30)(b)(6) F.I.M. Deposition Excerpts, filed herewith as*
 12 *Exhibit 29.*

13 By contrast, Ted Borda stated, "when they go to bed, . . . , they're not on call. We have guard dogs,
 14 we have two guard dogs with each man. We haven't shot a predator in years. . . When my guys go to bed,
 15 they're done. We have guard dogs that take care of all our problems." See, *FRCP (30)(b)(6) Borda Land and*
 16 *Sheep Co. Deposition Excerpts, filed herewith as Exhibit 24.*

17 FRCP 30(b)(6) Witness Gary Snow testified as follows:

18 CHRISTINE WEBBER:

19 Q: Okay, but in terms of guarding the flock from predatory animals, is that something that you would expect the
 20 sheepherders to do?
 21 A: I expect my night guard dogs to do that job.
 22 Q: So in addition to having herding dogs you sent some guard dogs out with them?
 23 A: Yes. White Pyrenees. Always had them with them.

24 *FRCP 30 (b)(6) Gary Snow Livestock Deposition Excerpts, filed herewith as Exhibit 30.*

25 Eureka Livestock Declarant stated, "[e]ach band is accompanied by two guard dogs and two herding
 26 dogs." See, *Declaration of FRCP (30)(b)(6) Witness for Eureka Livestock, filed herewith as Exhibit 42.* FRCP
 27 30(b)(6) Witness Nick Etcheverry also testified that only one of his herders is given a gun and the rest don't
 28 have guns. See, *FRCP (30)(b)(6) Eureka Livestock. Deposition Excerpts, filed herewith as Exhibit 28.*

As is evident from the member testimony, predators, if any, are handled differently and many (or
 most) Nevada ranchers required no herder response.

g. Pay and Bonuses

As demonstrated below, all Western Range Nevada Member Ranches have very different

1 management policies and there are differences in the amount or if any H-2A herders received bonuses at
2 different operations.

3 Plaintiff Abel Cantaro Castillo himself testified that he received a discretionary bonus during his
4 employment at El Tejon. *See, Plaintiff's Deposition Excerpts, filed herewith as Exhibit 4, p. 44.*

5 Ira Wines of Ellison Ranching Co. stated, "there's some of the guys on this list that have been with
6 the company for a long time, so they're going to make more money than the guys that haven't been with the
7 company that long . . . Herders that are good at their jobs get paid a little more than herders that aren't good
8 at their jobs." *See, FRCP (30)(b)(6) Ellison Ranching Co. Deposition Excerpts, filed herewith as Exhibit 27.*
9 FRCP 30(b)(6) Witness Ira Wines continued and testified that it was Ellison Ranching Co.'s practice to pay
10 Christmas bonuses at all H-2A herders that were "determined by what caliber of employee they are and how
11 many years they've been with us." *Ibid.*

12 Kristofor Leinassar of F.I.M. Corp testified that F.I.M. Corp. followed a framework. . to justify above
13 and beyond what a typical eight-hour workday would be and to compensate for those situations. . . And that's
14 the choice that we had made to compensate our men for that." *See, FRCP (30)(b)(6) F.I.M. Corp. Deposition*
15 *Excerpts, filed herewith as Exhibit 29.*

16 Hank Vogler testified: "[w]hen it came time for income tax, if they had been a loyal employee and
17 were still working for me, I paid for their income tax preparation." *See, FRCP (30)(b)(6) Need More Sheep*
18 *Co. Deposition Excerpts, filed herewith as Exhibit 33.* Pauline Inchauspe of Silver Creek Ranch, Inc. also
19 testified as to paying some of her H-2A herders bonuses in varied amounts. *See, FRCP (30)(b)(6) Silver*
20 *Creek Ranch, Inc. Deposition Excerpts, filed herewith as Exhibit 35.*

21 Nick Etcheverry testified:

22 ANTHONY HALL:

23 Q: We were talking about in your deposition earlier the bonuses that you pay.
24 A: Yes.
25 Q: One of the bonuses that we discussed was your seniority or longevity bonus that you paid once they
26 hit three years. Do you recall that?
27 A: Yes.
28 Q: With regard to that bonus, is that something you talked to your employees about?
A: Yes.
Q: Is that something you felt obligated to pay?
A: Yes.
Q: So did you feel it was discretionary?
A: No, I didn't.

1 *FRCP (30)(b)(6) Eureka Livestock Co. Deposition Excerpts, filed herewith as Exhibit 28.*

2 On the contrary, FRCP 30(b)(6) Witness Gary Snow testified that he did not pay his H-2A herders
3 any bonuses. *See, FRCP (30)(b)(6) Gary Snow Livestock Deposition Excerpts, filed herewith as Exhibit 30.*

4 The bonus payment differences are probably the most dramatic as to wage rate actual
5 payment and demonstrate the need for a herder-by- herder analysis of wages that defeat any wage
6 and hour class certification.

7 **h. Use of Alcohol**

8 There are differences in whether the H-2A herders are permitted alcohol at different operations.
9 FRCP 30(b)(6) Witness Hank Dufurrena doesn't allow alcohol on his ranch. *See, FRCP (30)(b)(6) Dufurrena*
10 *Sheep Co. Deposition Excerpts, filed herewith as Exhibit 26.* Ira Wines of Ellison Ranching Co. also testified
11 that Ellison Ranching Co. does not allow its H-2A herders to have alcohol. *See, FRCP (30)(b)(6) Ellison*
12 *Ranching Co. Deposition Excerpts, filed herewith as Exhibit 27.*

13 By contrast, Nick Etcheverry of Eureka Livestock testified that some small amounts of alcohol were
14 permissible for off duty hours. *See, FRCP (30)(b)(6) Eureka Livestock Deposition Excerpts, filed herewith as*
15 *Exhibit 28.*

16 **i. Trips Into Town**

17 There are differences in how often or at what times H-2A herders were permitted to go into town at
18 each operation at different operations. Obviously, most if not all trips into town are personal to and
19 recreational for the herders.

20 Kristofor Leinassar for F.I.M. Corp. stated, "we provide transportation to and from town for personal
21 needs such as doctor and dentist appointments, banking, etc." *See, Declaration of FRCP (30)(b)(6) Witness*
22 *for F.I.M. Corp., filed herewith as Exhibit 29.*

23 Kerri Wright of Southern Nevada Water Authority testified:

24 MEGAN REIF:

25 Q: How many of your herders are typically able to obtain a driver's license?

26 A: Almost all of them.

27 Q: Okay. And under what circumstances do you need your herders to be able to drive?

28 A: Well, our ranch is very large. So they may have to travel from range to range. They may have to haul water, which includes driving. They like to be able to go into town, and they're able to drive to do that if they get a driver's license.

1 *FRCP (30)(b)(6) Southern Nevada Water Authority Deposition Excerpts, filed herewith as Exhibit 36.*

2 Pauline Inchauspe stated, "when they ask to go to town for something I take them to town, I pay
3 them the same. I don't deduct anything." *See, FRCP (30)(b)(6) Silver Creek Ranch Deposition Excerpts, filed*
4 *herewith as Exhibit 35.*

5 Hank Dufurrena testified that he takes herders for groceries, doctor visits, Wal-Mart shopping, lunch
6 and Christmas dinner with Hank Dufurrena's family. *See, FRCP (30)(b)(6) Dufurrena Sheep Co. Deposition*
7 *Excerpts, filed herewith as Exhibit 26.* So too, does David Little. *See, FRCP (30)(b)(6) David and Bonnie*
8 *Little Ranch Deposition Excerpts, filed herewith as Exhibit 25.*

9 Time away from the range varies greatly between operations, often as a result of location.
10 Accordingly, this is one area where work duties and hours lack commonality.

11 **2. Plaintiff's Claims Do Not Demonstrate Commonality That Predominates**
12 **Questions of Law or Fact Over Questions Only Affecting (If at all), Individual H-2A**
Sheep or Goat Range Livestock Herder in Nevada

13 As set forth above, the Court must conduct a "rigorous analysis" to determine whether Plaintiff has
14 met his burden to "affirmatively demonstrate" the prerequisites of Rule 23(a) and (b). *Comcast Corp. v.*
15 *Behrend*, 569 U.S. 27, 27 (2013); *Wal-Mart v. Dukes*, *supra* at 350. This analysis frequently "will entail some
16 overlap with the merits of the plaintiff's underlying claim." *Id.* at 351. To meet the burden, Plaintiff must satisfy
17 Rule 23(a) by showing, among other things, that: (1) there are questions of law or fact common to the class,
18 and (2) the claims of the representative are typical of the class's claims. *Wal-Mart v. Dukes*, *supra* at 2545.
19 Plaintiff must also satisfy Rule 23(b)(3) by establish[ing] that the questions of law or fact common to class
20 members predominate over any questions affecting only individual members. *See, FRCP 23(b)(3).*

21 In other words, Plaintiff's "claims must depend upon a common contention ... of such a nature that it
22 is capable of class wide resolution—which means that determination of its truth or falsity will resolve an issue
23 that is central to the validity of each one of the claims in one stroke." *Wal-Mart v. Dukes*, *supra* at 2545.
24 Simply put, there must be "common answers" to common questions. Indeed, "the key inquiry is not whether
25 the plaintiffs have raised common questions, 'even in droves,' but rather whether class treatment will
26 'generate common answers apt to drive the resolution of the litigation.'" *Heredia v. Eddie Bauer LLC*, No. 16-
27 CV-06236-BLF, 2020 WL 127489, at *5 (N.D. Cal. Jan. 10, 2020). Dissimilarities within the proposed class
28

1 preclude the finding of "common answers." *Dukes*, 564 U.S. at 350. Emphasis added. As the Ninth Circuit
 2 confirmed, "Rule 23(b)(3) requires that questions of law or fact be shared by substantially all the class
 3 members." *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 993 F. 3d 774, 784 (9th Cir.
 4 2021) (rehearing en banc granted, Aug. 3, 2021). There cannot be a class action where there is no liability
 5 for some employees because "a class that includes those who have not been harmed is both imprecise and
 6 overbroad." *In re AutoZone, Inc., Wage & Hour Emp. Pracs. Litig.*, 289 F.R.D. 526, 545 (N.D. Cal. 2012),
 7 aff'd, 789 F. App'x 9 (9th Cir. 2019).

8 In the instant case, the key issue herein is whether the Nevada Member employers properly paid
 9 their Nevada H-2A herders for all time the employees worked and were subject to the employers' control.
 10 "Pursuant to" the Nevada minimum wage amendment, See, Article 15 § 16(a), *Mendiola v. CPS Security*
 11 *Solutions, Inc.*, 60 Cal. 4th 833, 839 (2015). In other words, the analysis is whether each employee is lawfully
 12 paid for time they actually worked. *AHMC Healthcare, Inc. v. Superior Court*, 234 Cal. Rptr. 3d 804, 808
 13 (2018). If the employees were paid for more time than they actually worked, simply was no violation.

14 As is evident herein, the pay practices varied among Western Range member ranches and by
 15 position amongst the putative class members within the regulatory constraints dictated by 20 CFR § 655.120,
 16 et seq. With varying hours in this case and bonuses paid, some herders **were even compensated beyond**
 17 **the time they actually worked**.

18 In the case at bar, range livestock workers, as demonstrated by the declarations of herders, the
 19 depositions of the Nevada Members, and the exhibits filed herein range sheep herders and goat herders,
 20 regardless of the DOL required job description, vary enormously in their job duties and hours works. See,
 21 *Argument C, supra*. Accordingly, if Wal-Mart workers cannot be certified as a FRCP 23 "class" in Nevada it
 22 would be ludicrous to think that range sheep herders and goat herders could be. *In Re Walmart v. Dukes*,
 23 *supra*.

24 3. Western Range Association's Joint Employer Status

25 Plaintiff devotes significant briefing to the status of Western Range a "joint employer," presumably,
 26 that is because he perceives Western Range to have deep pockets, indemnity exposure or he simply cannot
 27 obtain class certification as to the few Nevada Member Ranches just employee sheep herders and goat
 28

1 herders.¹⁸

2 The definition who is a joint employer and what control it exercises (or doesn't) has been a topic of
3 discussion for many years. The DOL has joined in the discussion. It is important to note there are existing
4 and proposed rules for joint employment that pertain, in different forms, to the fair labor standards act
5 ("FLSA") the National Labor Relations Board ("NLRB"). The DOL-WHD rules differ from other agencies.

6 In general, for purposes of H-2A labor during the applicable time frames herein at issue preceding
7 Plaintiff's Complaint, Western Range was, for H-2A purposes only, a joint employer. Although "Joint
8 Employer" is not even defined under the FLSA, a full assessment of joint employment depends upon whether
9 an employer:

- 10 1. Hires or fires an employee;
- 11 2. Supervises and controls an employee's work schedule or conditions of employment;
- 12 3. Determines an employee's rate and method of payment;
4. Maintains the employee's employment records.

13 See e.g., *Current Joint Employer FLSA Regulations*, 40 CFR 791.2

14 In the instant case, Western Range does not dispute that it is a joint employer for H-2A purposes.
15 See *Declaration of Monica Youree*, filed herewith as Exhibit 2. Although it clearly does not supervise
16 workers or maintain payroll records. Notwithstanding that acknowledgement, however, Western Range does
17 not actually control the conditions of employment: those are dictated by the various agencies including the
18 United States DOL-WHD, DETR and other agencies. See, *Declaration of Monica Youree*, filed herewith as
19 Exhibit 5.

20 As is evident from the various management policies of Western Range Member ranches, each ranch
21 determines work conditions (in compliance with DOL regulations) depending upon the demographics,
22 geography/topography and workplace in which that employer located, the type of herding that occurs and
23 numerous other factors.

24 And as is abundantly evident from the declarations of the herders themselves, there are huge
25 variations in work hours and conditions between and among the ranches including, but not limited to housing,

26

27

28 ¹⁸ Western Range will not speculate on Plaintiff or his counsels' motivations. Suffice it to say, that Plaintiff dismissed 2 member ranches (Estill and El Tejon) as well as the Mountain Plains Association, all of whom were previously named. [Doc # 11]

1 tools, geography, topography, band size, live-stock type (goat vs. sheep), number of herders assigned to
 2 bands and many other factors. *See, Nevada Member Depositions Excerpts, filed herewith as Exhibits 24 -37.*

3 Accordingly, while Western Range is, for H-2A purposes, admittedly a "joint employer," it is an
 4 association and it may not be an appropriate Defendant in this "class action" suit brought for alleged wage
 5 and hour violations.

6 **D. Plaintiff Abel Cantaro Castillo Cannot Represent the Class, Even if One Were**
 7 **Otherwise Certifiable Under FRCP 23**

8 Plaintiff is bringing this action on behalf of himself and "several hundred other sheep herders who
 9 were employed by defendant Western Range under the H-2A temporary worker program, and who worked in
 10 the State of Nevada. Plaintiff's points and authorities in support of Motion for Certification [Doc # 264, p. 1].
 11 Plaintiff goes on to state that "these workers spent virtually all their working days 'on the range', in remote
 12 parts of Nevada..." [Doc # 264, p. 1].

13 When addressing the FRCP 23 Class Certification requirement that the named plaintiff will fairly and
 14 adequately protect the interest of the class and that adequacy is satisfied when the named representative
 15 shares identical interest with the class, Plaintiff devotes a sum total of 2 paragraphs to the adequacy of
 16 representation. Plaintiff summarily concludes that Abel Cantaro Castillo is "adequate" by utilizing conclusory
 17 statements such as "[f]urther, Mr. Cantaro Castillo and his lawyers in this case have demonstrated that they
 18 will act vigorously on behalf of the entire class of plaintiff-sheep herders to resolve all issues presented in this
 19 matter, based on (sic) their efforts in the litigation to date. [Doc #264, pp. 28-29].

20 Conspicuously absent from Plaintiff's summary conclusions, is any showing that he has anything
 21 whatsoever in common with those he purports to represent other than the title H-2A sheep herder.
 22 Specifically, Plaintiff is hardly an appropriate representative because he was employed by the El Tejon
 23 Ranch in which he was a range herder in both California and Nevada. Further, Plaintiff quit his job,
 24 permanently left the ranch in the middle of the night, without notice and remained in the United States
 25 unlawfully for 2 to 3 years without any Western Range (or other association) transfer and without adequate
 26 H-2A Visa. *See, Declaration of Monica Youree, filed herewith as Exhibit 5.* Plaintiff appears to have remained
 27 in the United States for 2 to 3 years following his June 2014 late-night departure (without notice) and he
 28 appears not to have returned to Peru until after suit was filed and could not obtain a Visa thereafter to return.

1 See, Declaration of Monica Youree, filed herewith as Exhibit 5 and USCIS 1-94" Admission Date (through
2 July 19, 2014) filed herewith as Exhibit 8.

3 If an "adequate representative plaintiff" is someone who himself violated the very contract he seeks
4 to enforce (on behalf of a "class" of perhaps 500 or more) and if the "representative" plaintiff is someone who
5 knowingly remained within the United States unlawfully and apparently cannot return here because of
6 embassy and consulate restrictions imposed upon him, (See, Declaration of Monica Youree, filed herewith as
7 Exhibit 2), then the class would be limited to those herders who in fact, absconded from their H-2A work and
8 either are or were in the United States unlawfully.

9 In reality, the vast majority of Western Range Association Member Ranch Herder employees are
10 hard workers, they comply with the terms of their contracts and appear to share no identical interest, certainly
11 none demonstrated by Plaintiff Abel Cantaro Castillo, pertaining to the wage and hour issues that Plaintiff is
12 seeking to conglomerate "class" wide. The Nevada H-2A herders (many of whom have been with the same
13 Nevada member ranches for decades) are better examples of H-2A herders than is Abel Cantaro Castillo.
14 That fact alone probably explains why Plaintiff's own expert Jeffrey Petersen cannot at this point (or probably
15 ever), obtain even enough survey results to make conclusions on class.

16 Accordingly, without more information about the way in which Plaintiff can potentially "act vigorously"
17 on behalf of the class, from Peru, having not worked in H-2A livestock herding since 2014, the adequacy of
18 his representation is entirely unsatisfied, unsupported and Plaintiff completely fails to meet his burden of
19 proving that he is the appropriate representative, or in fact that anyone is. See, e.g., *In re Wal-Mart Wage &*
20 *Hour Emp. Pracs. Litig.*, *supra*.¹⁹

21 IX

22 CONCLUSION

23 If there are violations of Nevada Wage and Hour requirements, each is unique to a particular herder.
24 Each herder claiming he was not paid for time worked, must be analyzed on an individualized basis, not in a
25

26
27 ¹⁹ Western Range will not comment on the adequacy of Plaintiff's Washington D.C. and Denver Legal counsel. Western Range
28 simply notes that while Plaintiff's counsel are obviously well educated at prestigious East-coast Ivy League Schools, they
demonstrated a lack of understanding of range herding in general, Nevada geography in general and Nevada H-2A Range
Herding.

1 class.

2 This matter has been pending since June 6, 2016. [Doc # 111]. Since suit was filed, Plaintiff has
3 devoted significant effort to finding or "creating" a class of Nevada sheep herders where there clearly is none.
4 The "commonality" and "typicality" that Plaintiff so desperately seeks, is simply belied by the declarations of
5 actual Nevada sheep herders who indicate under oath and under penalty of perjury, that there is significant
6 variation between and among sheep herder duties, numbers of hours worked and rates of pay. In fact,
7 Plaintiff's own Expert testified that he does not even have an adequate sample size from which to make
8 conclusions on hours worked and job duties as well as Plaintiff's own expert, who cannot even get more than
9 8-9 survey responses from over 500 herders.

10 Accordingly, the individual herders may have remedies available to them if, in fact, they were paid
11 less than the applicable wage rate. They do not, however, constitute a "class".

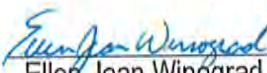
12 Based on the foregoing, therefore, Western Range respectfully submits that Plaintiff has failed to
13 meet his burden of showing the requisite elements for FRCP 23 Class Certification. This Court must
14 therefore deny Plaintiff's Motion for Class Certification.

15 The undersigned does hereby affirm pursuant to NRS 239B.030 that the preceding document does
16 not contain the social security number of any person.

17 Respectfully submitted.

18 WOODBURN and WEDGE

19
20 By:




Ellen Jean Winograd, Esq.

Kelsey E. Gunderson, Esq.

Attorneys for Western Range Association

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of November 2021, 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.


An Employee of Woodburn and Wedge

Pretrial Motions / Injunctive Relief3:16-cv-00237-RCJ-CLB Castillo v. Western Range Association et al

United States District Court

District of Nevada

Notice of Electronic Filing

The following transaction was entered by Winograd, Ellen on 11/22/2021 at 7:00 PM PST and filed on 11/22/2021

Case Name: Castillo v. Western Range Association et al

Case Number: 3:16-cv-00237-RCJ-CLB

Filer: Western Range Association

Document Number: 270**Docket Text:**

SEALED RESPONSE to [264] Motion to Certify Class,,, by Defendant Western Range Association. Replies due by 11/29/2021.
 (Attachments: # (1) Exhibit, # (2) Exhibit, # (3) Exhibit, # (4) Exhibit, # (5) Exhibit, # (6) Exhibit, # (7) Exhibit, # (8) Exhibit, # (9) Exhibit, # (10) Exhibit, # (11) Exhibit, # (12) Exhibit, # (13) Exhibit, # (14) Exhibit, # (15) Exhibit, # (16) Exhibit, # (17) Exhibit, # (18) Exhibit, # (19) Exhibit, # (20) Exhibit, # (21) Exhibit, # (22) Exhibit, # (23) Exhibit, # (24) Exhibit, # (25) Exhibit, # (26) Exhibit, # (27) Exhibit, # (28) Exhibit, # (29) Exhibit, # (30) Exhibit, # (31) Exhibit, # (32) Exhibit, # (33) Exhibit, # (34) Exhibit, # (35) Exhibit, # (36) Exhibit, # (37) Exhibit, # (38) Exhibit, # (39) Exhibit, # (40) Exhibit, # (41) Exhibit, # (42) Exhibit, # (43) Exhibit, # (44) Exhibit, # (45) Exhibit, # (46) Exhibit, # (47) Exhibit, # (48) Exhibit) (Winograd, Ellen)

3:16-cv-00237-RCJ-CLB **No electronic public notice will be sent because the case/entry is sealed.**

The following document(s) are associated with this transaction:

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Original filename:n/a

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Original filename:n/a

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Original filename:n/a

Electronic document Stamp:

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Original filename:n/a

Electronic document Stamp:

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Original filename:n/a

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Original filename:n/a

Electronic document Stamp:

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Original filename:n/a

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Original filename:n/a

Electronic document Stamp:

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Original filename:n/a

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Original filename:n/a

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Document description:Exhibit

Original filename:n/a

Electronic document Stamp:

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Original filename:n/a

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Document description:Exhibit

Original filename:n/a

Electronic document Stamp:

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Document description:Exhibit

Original filename:n/a

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Document description:Exhibit

Original filename:n/a

Electronic document Stamp:

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EXHIBIT 1

FILED UNDER SEAL

EXHIBIT 1

RA 01539

DECLARATION OF ELLEN JEAN WINOGRAD

I, Declarant, ELLEN JEAN WINOGRAD hereby affirm as follows:

1. Declarant is an attorney duly licensed to practice law in the State of Nevada and is counsel for Western Range Association the Defendant in this instant action.

2. All documents attached hereto are true and correct copies of the items they purport to be.

I swear under penalty of perjury under the laws of the State of Nevada that the foregoing statements in this Declaration are true.

DATED this 22nd day of November 2021.


ELLEN JEAN WINOGRAD, ESQ.

EXHIBIT 2

FILED UNDER SEAL

EXHIBIT 2

RA 01541

In the Matter Of:

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

JEFFREY S. PETERSEN, PH.D.

November 03, 2021

Job Number: 814404

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

-oOo-

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

Case No.
3:16-cv-00237-RJC-CLB

Plaintiffs,

vs.

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

Defendants.

=====

DEPOSITION OF JEFFREY S. PETERSEN, Ph.D.

VIA ZOOM VIDEOCONFERENCE

Wednesday, November 3, 2021

Job No.: 814404

Reported By: Peggy B. Hoogs, CCR #160, RDR, CRR

-oOo- APPEARANCES -oOo-

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3 FOR THE PLAINTIFFS:

4 COHEN MILSTEIN SELLERS & TOLL PLLC
By: CHRISTINE E. WEBBER, ESQ.
5 MEGAN REIF, ESQ.
1100 New York Avenue NW, Suite 500
6 Washington, DC 20005

7

8 FOR THE DEFENDANTS:

9 WOODBURN WEDGE
By: ELLEN JEAN WINOGRAD, ESQ.
10 KELSEY GUNDERSON, ESQ.
6100 Neil Road, Suite 500
11 Reno, Nevada 89511

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1 implying a definition has been set forth by the
2 Department of Labor when, in fact, they have not.

3 BY MS. WINOGRAD:

4 Q Please answer if you can.

5 A I'm sorry. I can't remember your question.

6 Can you --

7 Q I can't either.

8 Why don't we read it back, please.

9 (The record was read by the reporter.)

10 MS. WEBBER: Same objection.

11 THE WITNESS: Yes, that's correct.

12 BY MS. WINOGRAD:

13 Q And so for purposes of interpreting and opining
14 on the survey data and providing your opinions, you do
15 not specifically define "work," you define "job duties";
16 correct?

17 A Yes. I was concerned with gathering data on
18 job duties that are typically done.

19 Q And as you sit here today, having 11 responses,
20 you are confident you can define how duties are typically
21 done?

22 A That's not what it says in my report. My main
23 conclusion was that if herders or members of the class
24 are contacted on the telephone, they can provide
25 estimates of the number of hours that they spend doing

1 different job duties that are typical for them.

2 Q For those 11; correct?

3 A My report states that I can competently state
4 we could do that on a larger scale if more herder class
5 members -- if the class definition is expanded to include
6 individuals who worked after 2018 so that we could get
7 more phone numbers to get them on the phone to answer
8 questions.

9 Q In forming your conclusions and your opinions,
10 I should say, did you review any of the declarations from
11 herders that are already a part of the record in this
12 case?

13 A No.

14 Q In reviewing documentation and forming your
15 opinions as to what is typical -- your word -- did you
16 review the deposition transcripts of the member ranch
17 employers?

18 A No.

19 Q As a general matter, do you think it would be
20 helpful to know what specific herders under the H-2A
21 nonimmigrant range livestock herding program have stated
22 under oath in declarations?

23 A It's possible, but in this matter I had
24 sufficient information from Ms. Webber and Dr. Acker to
25 feel confident that I had understood the main categories

1 Q Okay. Let's do that, then.

2 You've been to Starbucks. I've been to
3 Starbucks. I think anyone has now.

4 In terms of Starbucks, are the baristas
5 generally performing the same tasks, in your opinion?

6 A Yes. They have -- they have typical tasks that
7 they would perform.

8 Q So utilizing that example, my next question is,
9 is it your understanding, based upon your conferences
10 with these various people, including plaintiffs' counsel,
11 that the duties for sheepherders are similarly typical?

12 A My opinion as stated in my report is that the
13 categories that I've listed and asked the survey
14 respondents about are their typical categories, and
15 they're able to provide estimates of the number of hours
16 that they worked on those job categories on a typical
17 day.

18 Q And of these 11 interviews that were performed,
19 what ranches did those interviewees work on?

20 A I can't recall off the top of my head. I'd
21 have to look at the spreadsheet.

22 Q Are there differences between and among the
23 procedures and the job duties within the ranches?

24 A That may be possible, but that's something I
25 can look at when the full sample is collected, to see if

1 the survey participants are representative of the
2 different ranches that are the subject of this class.

3 Q So you can't answer that right now; correct?

4 A I can't answer that right now. That would be
5 something that I would typically do, is to look at
6 potential differences in management practices, and I do
7 that through a statistical analysis to see if the class
8 members are representative of the larger group -- I'm
9 sorry -- the survey participants are representative of
10 the larger group.

11 Q Of these 11 survey participants, how many were
12 sheepherders and how many were goatherders?

13 A I think nine were sheepherders and two worked
14 with other livestock.

15 Q Goats?

16 A I can't recall what the other two stated in
17 terms of the other livestock.

18 Q Were any of them --

19 A I don't think that they said goats. I think it
20 was cows.

21 Q So you believe that two of the survey
22 participants were cattle herders?

23 A I'd have to look at my spreadsheet to tell you
24 exactly what they stated were their job duties or what
25 animals they were working with.

1 Q But you did consider livestock workers on the
2 range under the H-2A program who worked with animals
3 other than sheep and goats; correct?

4 A No.

5 Q Where did the cattle come in? Cows coming in,
6 it was just a joke. Sorry.

7 A Sorry. That one went past me, but that's
8 pretty funny.

9 Question 2 of the survey asks: Did you work as
10 a shepherd with a flock of sheep or goats you were
11 responsible for?" And there's three options. There's
12 sheep, goats, or other livestock.

13 Two of the respondents answered other
14 livestock, so their responses were not included in the
15 tables in my report.

16 Q So the tables in your report, then, are
17 diminished from 11 to 9?

18 A Yes. The tables show the responses of the nine
19 individuals who stated that they worked with sheep, but
20 one participant terminated the survey questions after
21 answering a couple of questions. So you'll see that the
22 number shifts from nine down to eight due to the
23 mid-interview termination.

24 Q Do you know why that interview was terminated?

25 A Not off the top of my head. I don't know if

1 gather the larger sample.

2 Q Was that considered when formulating the
3 questions?

4 A I don't think so. I don't think it was
5 considered to be a factor. Like I said, it's something
6 that will come out in the responses to the questions
7 since there will be herders working with different band
8 sizes.

9 Q Is that a factor that is or has any
10 significance with determining the typical job duties, the
11 band size?

12 A All that would come out in the survey response.
13 If a herder was working with -- if you had herders
14 working with different band sizes, they might report
15 variations in the number of hours they spent on those
16 different job duties. But, again, if we get a larger
17 sample, that will be accounted for in the survey
18 responses.

19 Q And that would have been contained, as to the
20 survey responses you did receive, in your report;
21 correct?

22 A As I said, I'm not drawing any classwide
23 inferences from the survey responses except that the
24 questions that I'm asking are the correct questions and
25 that people can answer them if we can get them on the

1 telephone.

2 Q When you say that the questions represent those
3 data needed for determining typical job duties, you are
4 forming a conclusion that the questions are appropriate
5 in terms of making that determination; correct?

6 A Yes.

7 Q Without giving me a legal conclusion, are you
8 aware that there is a presumption within the Department
9 of Labor regulations that presumes a 48-hour workweek?

10 MS. WEBBER: Objection. Assumes facts and law
11 not in evidence.

12 BY MS. WINOGRAD:

13 Q Please answer.

14 A No.

15 Q Are you aware that the Department of Labor has
16 the authority to audit Western Range Association records
17 to determine whether there's compliance with applicable
18 wage rates?

19 A No.

20 Q Are you aware that that the SWA, the State
21 Workforce Authority in Nevada -- it's DETR, the
22 Department of Employment, Training and Rehabilitation --
23 I love these acronyms -- DETR has also the right to audit
24 Western Range Association records?

25 A No.

1 right.

2 Can you read that back, please.

3 (The record was read by the reporter.)

4 MS. WEBBER: Same objection.

5 THE WITNESS: That's correct. I'm not going to
6 talk about differences in sheep. That's not my expert
7 opinion.

8 BY MS. WINOGRAD:

9 Q And, similarly, your expert opinion, because of
10 the sample size you have, doesn't take into consideration
11 differences between and among sheep breeds; correct?

12 A At this stage, if there were some variances
13 based upon different types of sheep that the shepherds
14 may be caring for, it's possible we have oversampled one
15 type of sheep compared to another. That's why we would
16 need to get a larger sample. That's why I'm not making
17 any classwide inference from a dataset of nine
18 individuals.

19 Q Do you know, of those nine individuals, what
20 breeds they were hired to herd?

21 A No.

22 Q As we sit here today, do you know any breeds of
23 sheep?

24 A I did not review different breeds of sheep in
25 preparing for this project.

1 mean right now. I don't even know where I am right now.

2 Do you know whether he's still in the United
3 States?

4 A No.

5 Q Cesar Jose Rodriguez, does that name sound
6 familiar?

7 A Same as my previous answers, not off the top of
8 my head. I'd have to look at my spreadsheet.

9 Q Do you know his country of origin?

10 A No.

11 Q Do you know what ranch he worked for?

12 A Not without looking at the spreadsheet.

13 Q Do you know whether he ever worked in Nevada?

14 A As I explained, it was not part of the survey
15 questions, so I can't answer that from the survey data,
16 and that's the data I'm familiar with in this process.

17 Q I know. I just like to hear you say it.

18 You indicated earlier that if you are unable to
19 to -- that you needed more survey responses; right?

20 A To be able to do classwide inference regarding
21 liability and damages, I'd need a larger sample size.

22 Q And so you cannot do that as you sit here
23 today; correct?

24 A Only in regards -- the only conclusions that I
25 drew are clearly stated in my report, that it's my

1 opinion that the survey instrument as it is specified
2 currently will produce valid and reliable results if it
3 can be applied to a larger group of herders.

4 Q "Will," which is both future tense and
5 subjunctive, if I'm not mistaken, meaning if you get
6 those results, it will provide that information; correct?

7 MS. WEBBER: Objection. Misstates the prior
8 testimony.

9 BY MS. WINOGRAD:

10 Q Is that correct?

11 A Yes. My opinion is that we can use this survey
12 instrument on a broader group of herders with more recent
13 contact information to get a large enough sample to be
14 able to determine classwide inferences.

15 Q And that broader group of herders would include
16 herders that were affiliated with Western Range and in
17 the state of Nevada after December 31, 2018; correct?

18 A That's my understanding of the data that would
19 be provided, yes.

20 Q And those herders, if you could obtain
21 information from them, would also include Nevada-based
22 Western Range Association-affiliated herders prior to --
23 I'm sorry -- subsequent to 2016; correct?

24 A I don't know what your question was. You're
25 going to have to ask that again.

1 to obtain and gather more survey responses; correct?

2 A Well, it's not my intention. It's not my hope.
3 It's my opinion that if the class is broadened or the
4 time period for which defendants provide contact
5 information is broadened from December of 2018 to the
6 present, then we'll be able to gather a large enough
7 sample for projecting classwide inferences.

8 Q If you're unable to gather more survey
9 responses, are you able to make classwide inferences
10 regarding the hours worked?

11 A That's clearly stated in my report, but I'm not
12 going to do any classwide inference from the current data
13 except to state that individuals can answer the survey
14 questions.

15 Q If you are unable to gather more survey
16 responses, are you able to make classwide inferences
17 regarding job duties?

18 A That's clearly stated in my report, that I said
19 I would not do that.

20 Q Are you aware that Western Range Association
21 provided approximately 455 herder contact information
22 numbers or addresses?

23 A My understanding is that there were 445
24 individuals listed, and there were 383 of them that had a
25 potential telephone number, and the specific accounting

1 of how many of those could potentially be reached over
2 the telephone was done by Davis Research, listed in their
3 report, and I summarized those numbers in my report as
4 well.

5 Q And when you use the word "potential" or
6 "potentially reached," what does that mean?

7 A You have a potentially valid telephone number
8 where you could contact them.

9 Q Do you know what Davis Research did if the
10 telephone number was not current or if the herder refused
11 to answer?

12 MS. WEBBER: Objection. Compound.

13 THE WITNESS: Well, you're asking two
14 questions. I think I can answer them both off the top of
15 my head.

16 The first one was if we determined they did not
17 have a valid telephone number. If it was subsequently
18 determined that they had an address where they may be
19 able to receive a package, a FedEx letter with
20 instructions about how to contact them and take the
21 survey, then that letter was sent to them.

22 The individuals who refused to participate,
23 Davis Research just asked them their reason for refusal,
24 and then they're done with them at that point.

25 /////

REPORTER'S CERTIFICATION

I, PEGGY B. HOOGS, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

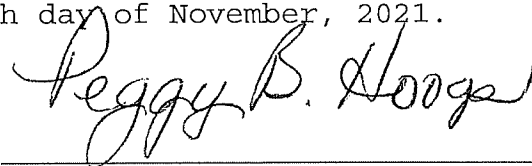
That on Wednesday, the 4th day of November, 2021, remotely appeared JEFFREY S. PETERSEN, Ph.D., who was duly sworn by me and deposed in the matter entitled herein;

That I am not a relative, employee or independent contractor of counsel for any of the parties, or a relative, employee or independent contractor of any of the parties to the proceedings, or a person financially interested in the proceedings;

That said deposition was taken in verbatim stenographic notes by me, a Certified Court Reporter, and transcribed into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 126 of the deposition, is a full, true and correct transcription of my stenographic notes of said deposition.

Dated this 7th day of November, 2021.



Peggy B. Hoogs
CSR #5958, RDR, CRR

EXHIBIT 3

FILED UNDER SEAL

EXHIBIT 3

RA 01558

Castillo v. Western Range Association

United States District Court

District of Nevada

Case Number: 3:16-cv-00237-RJC-VPC

Expert Witness Rebuttal Report

Introduction

My name is William (Bill) Payne. Since February of 2014, I have served as Dean and Professor of the College of Agriculture, Biotechnology, and Natural Resources, at the University of Nevada, Reno. As Dean, I also serve as Administrative Head of both the Nevada Agricultural Experiment Station and University of Nevada Cooperative Extension. Until January 2014, I served as Director of the CGIAR Research Program on Dryland Systems, a multi-institutional, \$150 million research endeavor aimed at improving food security and livelihoods in the dry areas of the world, and as Chair of the Scientific Advisory Committee (“Global Expert”) of United Nations Convention to Combat Desertification’s 3rd Scientific Conference. I was Professor in the Department of Soil and Crop Sciences at Texas A&M University, and Assistant Director for Research at the Norman Borlaug Institute for International Agriculture. I have spent much of my career working abroad in dry areas of the world, including living for a total of thirteen years in Africa and the Middle East. I have authored or co-authored more than 120 journal articles and book chapters, edited three books, and been named Fellow of five international scientific societies, including the American Association for the Advancement of Science. Every research paper I have published used some form of statistical design, analysis, and inference using a number of methodologies, including surveys. An example of a recent survey study is the manuscript currently under review entitled “Farm Household Head Characteristics and Perceptions of Factors Related to Sustainable Management of Fogera Wetlands in Five Kebeles of South Gondar, Ethiopia.” In this study, we surveyed 385 households out of a total of more than 10,000, which were distributed among five villages or “kebeles,” to characterize socioeconomic profiles and attitudes towards sustainable wetland management, and formally test whether there were any differences among kebeles.

Much of my work has been devoted to dryland agriculture, including pastoral systems. Recent examples are: In September of this year, I gave a keynote address entitled “Why Drylands Matter to the United States and Other Advanced Economies” to the International Conference of Arid Lands, hosted by the Japanese Association for Arid Land Studies; In August, I served as a panel member at the United Nations High-Level Political Forum on Sustainable Development Side Event, entitled “Sustainable Pastoralism and Rangelands: Impacts of COVID, and How Not to Leave Them Behind in the 2030 Agenda for Sustainable Development”; And in July, I authored and presented virtually a white paper for the Society for Range Management titled “Why the International Year of Rangelands and Pastoralists Should Matter to the United States.” The purpose of the event was to persuade US agencies, including United States Department of Agriculture and the State Department, to support the United Nations’ proclamation of an International Year of Rangelands and Pastoralists.

Rangelands, described as uncultivated lands that include grasslands, savannahs, steppes, shrub lands, deserts, and tundra, make up about 770 million acres, or 30% of US land cover, including 53% of the land in western states. Rangelands are primarily used for livestock production through nomadic and transhumance systems. They are diverse ecosystems that provide several economic benefits. Principal among these are livestock production and wildlife habitat, but they also afford tourism, recreation, production of minerals and energy, renewable energy, and more. A rough estimate of the value of global rangeland ecosystem services, made by Costanza and colleagues in 2011 in a paper that has been cited thousands of times, is \$18.4 trillion per year, implying a U.S. value of about \$1.3 trillion. Poor stewardship, inappropriate policies, and climate change are some of the factors that can degrade the value of rangeland ecosystem services, and this degradation can be manifested through fire, drought, soil degradation, invasive and threatened species, and biodiversity loss. The annual cost from wildfire alone in the US is estimated to be between \$71.1 billion and \$347.8 billion. In the past decade, nearly every Western State has experienced a rangeland fire that has exceeded 100,000 acres, with some surpassing 500,000 acres. These massive fires reduce ecosystem services and necessitate substantial investments in rehabilitation projects to combat erosion, impede invasive species, and restore habitat.

Rangeland production systems in the western U.S., including Nevada range sheep ranches, consist of transhumant seasonal grazing on appropriate winter, spring, summer and fall ranges, much of which is on public lands. Approximately 65% of the sheep in the U.S. are in the western states, where approximately 80% of US fine wool is produced. But it is important to understand that about half of the earth's land surface is made up of dryland range similar to Nevada, and that rangeland health, productivity and environmental sustainability are critical to the livelihoods and cultures of more than 500 million pastoralists in the world. Billions of people, mostly poor, live in such areas, and depend upon ecosystem services provided by pastoralists, including habitat provisioning, nutrient cycling, and control of weeds, fine fuels, and bush encroachment.

It is within that global context that the college I lead recently purchased the Rafter⁷ merino sheep, launched the Great Basin Research and Extension Center in Eureka, Nevada, and created the International Center for Sustainable Dryland Agriculture, in Reno, Nevada. In poor dryland countries of the world, sheep are proportionately more important than cattle, desertification is occurring at unprecedented rates, and aquifer depletion from unsustainable irrigation methods is severe. In fact, the highest rates of groundwater depletion are in the world's largest food-growing regions: California's Central Valley, the Ogallala Aquifer in the

US Great Plains, the plains of northern China and northwest India, and the Tigris and Euphrates River Basin. Natural resource depletion has consequences, including food insecurity and conflict. For example, a recent study by Famiglietti in *Nature Climate Change* concluded "Further declines in groundwater availability may well trigger more civil uprising and international violent conflict in the already water-stressed regions of the world, and new conflict in others." For these reasons, the Great Basin Research and Extension Center has three broad goals: 1) improve sheep genetics and management to cope with and thrive under harsh dryland rangeland conditions, 2) to restore and better manage rangeland, and 3) improve water-use efficiency of crop production systems. That is, the research and Extension missions of the centers are meant to have international relevance as well as state and regional relevance.

The Rafter 7 sheep headquartered at the Great Basin Research and Extension Center were genetically developed by the college under the leadership of a former faculty member, Hudson Glimp, with generous financial support from the locally known Weigand Foundation. My purpose in reacquiring the sheep was not solely to support the Nevada or western US sheep industry, although those are certainly part of its goals, but more broadly to conduct genetic and management studies to better adapt sheep to arid and semiarid regions of the world, despite increasingly harsh climate, including intense solar radiation, high diurnal temperatures, low precipitation, and scarce water and feed. Compared to cattle, sheep can better access vegetation on steep slopes, eat noxious weeds cattle will not, and in poor countries they are more affordable and cheaper to maintain. Sheep numbers have increased steadily throughout the world over the past 50 years, especially in developing countries, and now are at more than 1.1 billion. Genetic traits that our recently hired sheep geneticist will address include thermo-tolerance, body size and development, energy and digestive metabolism, and nervous and autoimmune response.

Finally, range sheep production has had an important role in Nevada history. Basque culture is central to northern Nevada history, and range sheep production was central to Basque culture. The University of Nevada, Reno houses the William A. Douglass Center for Basque Studies, which has the Jon Bilbao Basque Library, one of the world's largest collections of Basque-related materials, with 55,000 volumes. Political and business leaders include a long list of Basque names — Erquiaga, Parraguirre, Ernaut, Goicoechea, Ascuaga, and Laxalt. Senator Pat McCarran, for whom buildings, roads, and the Las Vegas airport were named, was also a sheep rancher. In fact, it was McCarran who sponsored legislation in 1950 to allow foreign shepherders to enter the United States for three-year periods.

I have scant experience as an expert witness, and have never been paid to be one. But when I read of the Plaintiff's efforts to destroy the Nevada range sheep industry through 1) an inappropriate method of calculating wages that ignores or selectively interprets the Department of

Labor's Education and Training Administration's H-2A Herder Rule, 2) efforts to treat highly variable roles among herders and heterogeneous ranches that respond to changing environments as if they were homogeneous retail workers working 24 hour shifts, 3) use of a woefully inadequate survey response rate from sampling and characterizing herder respondents, and finally 4), the use of statistically meaningless results presented in Expert Witness Petersen's Tables, which were apparently presented to justify a fishing expedition to collect data collected after the December 31, 2018 cutoff set by Magistrate Baldwin, I decided to accept the role of rebuttal.

In my opinion, the Plaintiff's suit poses a threat to the livelihoods of hundreds of herders, mainly from three developing countries, who have come repeatedly in good faith for several years, often times ten to twenty years, to do meaningful, needed work in the US and to benefit their families back home. The Plaintiff absconded and breached his faith and contract, but nonetheless now seeks outlandishly calculated damages that would wreck families in the industry that took him in. The suit is a threat to the range sheep industry in Nevada and the Western United States, an industry that, in addition to providing economic benefits to rural communities, provides countless beneficial ecosystem services to all citizens, not the least of which is reducing fuels to mitigate wildfire and protect communities. It is not for nothing that Ted Borda uses his sheep contractually with two federal agencies, Bureau of Land Management and US Forest Service, who collectively manage millions of acres in Nevada, not to mention Carson City, to reduce threat of peri-urban fires. And the suit threatens the operation of the Great Basin Research and Extension Center in Eureka, in which I have invested millions of dollars with a view towards addressing serious challenges of food security and sustainable natural resource use in the western US but also in developing countries of the dry world, where land degradation and water shortages threaten political stability.

Finally, any proceeds I receive as Expert Witness will be donated to my college's Student Emergency Fund. This fund was created to help students in immediate financial need due to COVID-19, helping them purchase food, pay rent, buy textbooks and more. About 20% of CABNR's 1500 students are food insecure. This equates to an hourly rate of approximately \$210.

Facts or data considered by the witness in forming opinions.

1) My personal experience as:

- a. An international researcher in dryland agriculture, including sheep pastoral systems in dozens of countries in North, West, East, and Southern Africa; Central, East, and South Asia; and the Middle East; and

- b. Dean of the College of Agriculture, Biotechnology, and Natural Resources, and Administrative Head of Nevada Agricultural Experiment Station and University of Nevada Cooperative Extension. In this capacity, I regularly interact with Nevada's sheep ranching community, e.g. through Nevada Woolgrowers, American Sheep Industry meetings, annual visits to rural counties as part of our "Cattlemen's Update" tour, and attendance at other relevant meetings such as those of Nevada Farm Bureau, Nevada Agriculture Outlook, and Nevada Association of Conservation Districts.
- 2) Review of declarations made by herders and depositions made by ranchers;
- 3) Ongoing review of new declarations and affidavits, and interviews of herders and ranchers; and
- 4) Relevant publications from the U.S. Department of Labor.

Opinions I will express:

1. Inappropriate method of calculating wages and interpretation of Department of Labor's Education and Training Administration's H-2A Herder Rule

The Plaintiff appears to attempt to inflate the actual number of hours that herders typically work to 24 hours per day, 7 days per week, 365 days per year. This may stem from the Department of Labor's Employment and Training Administration's "H-2A Final Rule: Range Herding or Production of Livestock in the United States," which states that "Separate standards and procedures are necessary for these occupations because some requirements of the general H-2A Final Rule (published in 2010 and 2015) do not readily apply to these unique occupations, which are located in remote areas and require an other than regular work schedule involving workers *generally being on call 24 hours per day, 7 days per week.*" The Final Rule also "Defines 'range' as any area located away from the ranch headquarters where the herder *is required to constantly attend* to the livestock, evaluated based on the totality of the circumstances using a multi-factor test. Factors include whether the land is uncultivated, involves wide expanses, such as thousands of acres, and/or is located in remote, isolated areas; and whether the work typically requires range housing *to enable the herder to constantly attend* to the herd." (Italics added). But the Final Rule calculates minimum wages based on a 48-hour week. Herder declarations and rancher affidavits that I have read support the notion of an approximate 40-hour work-week, with some variation according specific circumstances such as type of range, time of year, distance from camp to sheep, temperature, elevation, topography, and seasonal work periods such as lambing. The Department of Labor's Form 24-01a, "Special Procedures Labor Certification Process for Sheepherders and Goatherders under the H-2a Program" stipulates "The description of

anticipated hours of work in Item No. 9 on ETA-790 must show 'on call for up to 24 hours per day, 7 days per week.'" Plaintiff's attempt to equate "on call" with "at work" would seem at odds with Labor's relating "*being on call 24 hours per day*" to a 48-hour work week.

I note further that a) Defendant has never been cited for violation of labor laws, even though there have been investigations, and b) when reviewing H2A applications, Department of Labor's Employment and Training Administration has never found a violation.

2. Treating high variability among herder roles and ranching operations in different environments and working conditions as if they are retail workers in homogeneous environments

I have read declarations from several herders and depositions two ranchers, and continue to review additional declarations and depositions. These documents, which were *not* obtained anonymously, make clear that, not only did herders not work 24-hour days, but that the number of hours worked per day, the tasks performed, and the amount of time devoted to those various tasks depended on a number of factors. These included, but were not limited to, the type of range that was being grazed, elevation, topography, the time of year, daylength, the amount of plant-available moisture and therefore the amount of available feed, how hot or cold it was, whether water was available to animals or had to be trucked in, whether there were generators or plumbing available at camp, and the distance of the sheep from camp. There were labor-intensive periods, such as lambing and shearing, in which labor was divided in ways that differed among ranches. There were also times when little labor was needed, such as when sheep were grazing harvested fields during winter months. These tasks and the time devoted to them, such as time required to walk from the sheep camp to the herd, differed not only among ranches, but within ranches, particularly if there was more than one band and more than one grazing allotment or lease that differed for any of the aforementioned characteristics. Over and over again, herders and ranchers used the expression "it depends," or "my routine varies depending upon the situation," referring to the myriad of conditions that they face when managing sheep in spatially and temporally highly variable environments.

It is worth noting some of the ways in which ranches differed substantially. One rancher did not face predation issues, unless camped too close to a town, where guard dogs and guns couldn't be used. Another faced frequent predation issues. At one ranch, herders can and do leave their sheep to travel for social visits or go into town, and are permitted alcohol. In another, herders seldom go to town and alcohol is prohibited. One ranch lets herders use ATVs in some months, while in another they are entirely on foot. One ranch has its own shearers among herders, whereas another contracts out shearing entirely. Lambing occurred anywhere from October to

April. In one operation, herders must perform drenching and deworming regularly on their sheep; on another, the environment is sufficiently arid that drenching and deworming aren't needed at all.

The variability of herding tasks and ranch operations can hardly be compared to a retail worker, such as a greeter or cashier, who has stable hours and comfortable indoor working conditions, and whose role in one store would be more or less typical of that in another store.

3. A failed survey with woefully inadequate response from herder respondents

Peterson adequately lays out "...a pilot study of the potential class members regarding unpaid work time" using standard survey methodology. He correctly stresses the importance of the "objectivity and relevance of the questions on the survey and the appropriateness of the definition of the population." According to Peterson, the Defendant provided him with contact information for about 445 herder respondents. The Plaintiff apparently hired Davis Research, who "loaded 717 telephone numbers for 383 individuals and determined that approximately 60 individuals could potentially be surveyed because one of their listed phone numbers was potentially current. Davis Research subsequently determined that 55 individuals that could not be reached via telephone could potentially be contacted via mail. These individuals were sent a letter which asked them to contact Davis Research to take the survey."

Despite offering \$20 to respondents as incentive, only nine survey responses were obtained, and the completeness with which they answered questions varied. Peterson states that these were likely nine "random responses" but in fact we know that among respondents, some had returned to their home country, one had absconded, some were working in the USA on H2A visas, one had never worked in Nevada, and another worked in both California and Nevada. In other words, one can legitimately question the degree of randomness in their responses and whether responses were biased.

Petersen uses the appropriate formula

$$n = (Z^2(p(1-p))N) / (Z^2(p(1-p)) + (N-1)ME^2)$$

to show the relation between sample size, population size, confidence level, and acceptable margin of error. Online calculators are also available to quickly calculate this relationship:

<https://www.qualtrics.com/experience-management/research/determine-sample-size/>

<https://www.surveymonkey.com/mp/sample-size-calculator/>

I used the online calculators to show what ideal sample size would be needed to achieve various confidence levels and margins of error for a population of 445, the number of contacts that the Defendant provided to the Plaintiff (see Table). To attain a 95% confidence level and 5% margin of

error, the Plaintiff would have to have 207 responses. To attain a 90% level of confidence the Plaintiff would have to have 169 responses for a 5% margin of error, or 59 responses for a 10% margin of error. The very low number of responses that the Plaintiff actually did attain would have a very large margin of error of somewhere between 20% and 25%, at the very low confidence level of 80%.

This is why Petersen rightly states “Due to the current sample size, no class-wide inference can be made regarding liability and damages from these responses.” When one adds to this the fact that there are different categories of the herders, i.e. in-home country, absconded, currently working under H2A, never worked in Nevada, or worked in both California and Nevada, which likely introduced bias into the response, one easily grasps the very low amount of confidence that can be placed in these data.

ConfiLevel (%)	Population	Margin of Error (%)	IdealSize
95	445	5	207
90	445	5	169
90	445	10	59
80	445	20	11
80	445	25	7

Petersen’s solution to such low-confidence results appears to be to enter a second phase of the survey project, in which contact information would be provided by the Defendant for individuals who worked from 2019 to the present. Petersen gives no reason to think that the response rate will be greater. But in any case, this time frame would seem to be past the December 31, 2018 cutoff set by Magistrate Baldwin for period of inquiry. The Plaintiff’s very poor survey response rate is no justification for an fishing expedition carried out beyond the period of inquiry, in my opinion.

4. Statistically Meaningless Results Presented in Expert Witness Tables

Respondents were asked whether they worked with sheep or goats, to account for a typical workday, whether they thought they were responsible for the flock during sleep, meal preparation, or no matter what they were doing, whether they ever left the flock, to provide a 24-hour time accounting during lambing, and so on. Survey results are presented in Petersen’s Tables 1-5. In addition to the previous section’s description of how little confidence can be placed in these results based on low confidence levels and high margins of error, and the description of the bias likely inherent in the data due to the different statuses of herders, one should also look at the response rate variability between questions. In Table 1, 10 to 11 herders responded to questions. We are told that two of the respondents did not work with sheep or goats,

but instead with other livestock, and thus fell outside the scope of the claims in this case. We don't know how many respondents were used in Tables 2 or 4 to calculate mean values, but we know that we can have low confidence in those values. In Table 3, 8 to 9 responded, and in Table 5, only 6 responded.

I submit that the 6-9 responses that the Plaintiff used to produce Tables 1-5 are statistically meaningless and that there is very low confidence that they represent the views and responses of the 445 herders that worked for the Defendant.

Cases in which during the previous 4 years, the witness testified as an expert at trial or by deposition

The only case in which I have testified as an expert witness was US v J-M Mfg. Co., as part of a Subpoena to University of Nevada, Reno, in 2016.

EXHIBIT 4

FILED UNDER SEAL

EXHIBIT 4

RA 01569

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IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF NEVADA

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ABEL CANTARO CASTILLO; ALCIDES

Case No.

INGA RAMOS; RAFAEL DE LA CRUZ,

3:16-cv-00237-MMD-VPC

10

and those similarly situated,

11

Plaintiffs,

12

vs.

13

WESTERN RANGE ASSOCIATION;

EL TEJON SHEEP COMPANY; MELCHOR

14

GRAGIRENA; MOUNTAIN PLAINS

AGRICULTURAL SERVICE; and ESTILL

15

RANCHES, LLC,

16

Defendants.

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VIDEOTAPED DEPOSITION VIA ZOOM VIDEOCONFERENCE OF

19

ABEL CANTARO CASTILLO

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VOLUME I

21

Wednesday, June 24, 2020

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Reno, Nevada

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Job No. 633092

25

Reported By: PEGGY B. HOOGS, CCR #160, RDR, CRR

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OLIVIA BEAUFORD

THE VIDEOGRAPHER:

DANIEL PAYAN

ALSO PRESENT:

JOSE TAFOYA
MONICA YOUREE
JESUS LOAYZA
JHON FRANKLIN CANTARO BONIFACIO

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1 not work.

2 Q Let's make this easier, then.

3 During your valid H-2A visa for nonimmigrant
4 temporary shepherding agricultural work, did you work
5 anywhere other than El Tejon Sheep Company?

6 MR. HOOD: I again would instruct my client to
7 not respond -- and, again, not responding means saying
8 nothing -- if it reveals your physical location after
9 leaving El Tejon Sheep Company.

10 MS. WINOGRAD: I understand your objection,
11 Mr. Hood. I am going to repeat the question because I
12 was not asking about that.

13 BY MS. WINOGRAD:

14 Q My question was, for the duration when you had
15 a valid H-2A visa that allowed you to work as a
16 shepherd in temporary nonimmigrant labor, did you work
17 anywhere other than El Tejon Ranch?

18 MR. HOOD: I'll make the same objection, and I
19 would instruct my client not to answer to the extent it
20 reveals his physical location after he left El Tejon
21 Ranch, but I would otherwise instruct him to answer.

22 BY MS. WINOGRAD:

23 Q Please answer.

24 A No.

25 Q When did you leave El Tejon Sheep Company?

1 A June 2016. The first -- the first weeks of
2 June 2016.

3 Q During what years did you work at El Tejon
4 Sheep Company?

5 A 2007 up to 2016, to the date of 2016.

6 Q Who is Estill Ranches?

7 A Excuse me. I want to clarify. I have
8 forgotten a little bit. To the -- to the first week of
9 June, that's where I worked, yes.

10 Q So that we have a good --

11 MR. HOOD: Objection as to translation.

12 BY MS. WINOGRAD:

13 Q So that we have a good record, I am going to
14 ask the question again, the one that I understand
15 Mr. Hood may have objected to, and his objection is duly
16 noted, but my question is, during what years did you work
17 at the El Tejon Ranch?

18 A 2007 to 2014 [sic], to the first week of June.

19 Q Thank you.

20 Who is Estill Ranches?

21 A I don't understand.

22 Q Have you ever heard of Estill Ranches?

23 A No.

24 Q When you worked at El Tejon, did your pay come
25 from El Tejon?

1 BY MS. WINOGRAD:

2 Q You answered a moment ago that you were not
3 aware that Western Range Association offered to settle
4 this matter with you for \$30,000; correct?

5 A Yes. Correct.

6 Q Is it your testimony as you sit here today that
7 Western Range Association owes you more than 105,200 sol?

8 A I am not in agreement with that.

9 Q It wasn't anything to agree. I am asking
10 you --

11 THE INTERPRETER: I'm sorry. At the same time.

12 MS. WINOGRAD: My apologies.

13 THE INTERPRETER: It's okay.

14 BY MS. WINOGRAD:

15 Q As you sit here today, is it your position, yes
16 or no, that Western Range Association owes you more than
17 \$30,000 or 105,200 soles?

18 A Yes. Yes, but it's a very small amount. It's
19 very little amount.

20 Q How much, as you sit here today, does Western
21 Range Association owe you?

22 A Because the work that I had, it's a lot, it's
23 24 hours. I worked during the 24 hours, all day and all
24 night. It's very little money that Western Range offers
25 me.

1 MR. HOOD: Objection as to translation.
2 was a lot missed.

3 MS. WINOGRAD: Let me make sure because he
4 didn't answer the question that I asked.

5 BY MS. WINOGRAD:

6 Q My question was, how much does Western Range
7 Association owe you?

8 MR. HOOD: Objection.

9 THE WITNESS: For my hours of work, all the
10 expenses that I --

11 BY MS. WINOGRAD:

12 Q Are you finished with your answer?

13 A Yes.

14 Q How much --

15 MR. HOOD: Objection.

16 THE WITNESS: I cannot say the amount, but --

17 BY MS. WINOGRAD:

18 Q But it's more than --

19 MR. HOOD: Objection to translation.

20 THE INTERPRETER: I can't hear. I can't hear.

21 MR. HOOD: We're missing a lot of words here.
22 I can hear perfectly, and we're missing like half of
23 answers.

24 THE INTERPRETER: I cannot hear the latter part
25 of what he says because he tapers off.

1 THE WITNESS: Yes.

2 BY MS. WINOGRAD:

3 Q Slow, please. Slow, please.

4 MR. HOOD: I'd instruct my client to repeat his
5 answer slowly.

6 BY MS. WINOGRAD:

7 Q Let me clarify something.

8 This is not a conversation because we have a
9 court reporter, so I break up my questions into sections,
10 and you need to please not give long answers but break
11 your answers up so that we get a good record.

12 And you have been instructed by your counsel to
13 go ahead and answer.

14 A I cannot tell you the amount, Miss. I see the
15 attorneys that help me in that.

16 Q Okay. So as you sit here today, you don't have
17 a number amount; correct?

18 THE INTERPRETER: It's too mumbly. I can't
19 hear.

20 MR. HOOD: I totally disagree. He's very clear
21 on my end. I mean, I'd be happy to translate his answer
22 if you'd like me to. I can hear him very clearly.

23 I will instruct him during the break to try and
24 talk -- speak more slowly and to leave time for the
25 translator.

1 MR. HOOD: I disagree and -- could we go off
2 the record? We don't need -- this does not need to be on
3 the record and it's taking a lot of time because we're
4 translating.

5 MS. WINOGRAD: It is, but I never got an answer
6 to my question.

7 MR. HOOD: He answered your question multiple
8 times. I understand you didn't get the answer you
9 wanted, but --

10 MS. WINOGRAD: No, I didn't get any answer.
11 Let me try it a different way once it's a yes-or-no
12 question.

13 MR. HOOD: Ellen, could I instruct him just on
14 the record through the translator with respect to
15 breaking up his answers? Ellen, is that okay, if I speak
16 directly to my client to give that instruction?

17 MS. WINOGRAD: Not on the record, but I'm going
18 to ask the question a little differently.

19 BY MS. WINOGRAD:

20 Q Is it accurate that as you sit here today you
21 have not calculated how much you believe Western Range
22 Association owes you?

23 MR. HOOD: Objection to form and foundation.

24 THE WITNESS: The amount?

25 /////

1 BY MS. WINOGRAD:

2 Q Correct. Have you calculated it?

3 A The amount is done by the attorney, Miss, his
4 personnel. I don't know is a lot or little. With the
5 help of the attorney, Miss.

6 Q Okay. Fair enough.

7 MR. HOOD: Objection to translation.

8 BY MS. WINOGRAD:

9 Q You, Mr. Cantaro, have not calculated it;
10 correct?

11 A Correct.

12 MS. WINOGRAD: Now we go off the record.

13 THE VIDEOGRAPHER: Off the record. The time is
14 11:44 a.m.

15 (A recess was taken.)

16 THE VIDEOGRAPHER: We are back on the record.
17 The time is 12:33 p.m.

18 BY MS. WINOGRAD:

19 Q Okay. We've all taken a break, and one of the
20 things I'm going to -- two things I'm going to reiterate
21 is, Mr. Cantaro, if you need a break for any reason,
22 including a drink of water or the restroom, then let me
23 know, please, and if there's a question pending, you'll
24 be required to answer it, but you are absolutely entitled
25 to any breaks you need.

1 And now you can see me, I assume?

2 A Yes.

3 Q Great. Let's go back on the record, then.

4 Actually, that was on the record, wasn't it?

5 We just talked about that. Oh, yay.

6 Okay. I'm going to start with a few questions,
7 and then we're going to go to documents.

8 And we've tested the document share, Mr. Hood?

9 MR. HOOD: You've done it with Abel in practice
10 sessions on his technology, and we just, both with you
11 here and without you, just with the court reporter, and
12 it is working, yes.

13 MS. WINOGRAD: Excellent.

14 BY MS. WINOGRAD:

15 Q Here's the reminder I'm going to give you again
16 on the record, and that is, please break up your answers.
17 Speak slowly. It is not conversational because it's
18 going into the record, and I will tell you it's human
19 nature to just speak in long sentences. I do it. So I
20 will remind you if the answer is too long before I get a
21 translation. Okay?

22 A That's fine.

23 Q Who is William Archi Lozano?

24 A It's a co-worker.

25 Q Did he have the same position that you had?

1 A Yes. At the ranch.

2 Q Is he an honest and truthful person?

3 A Yes.

4 Q Did his duties differ from yours in any
5 significant ways?

6 A Yes.

7 Q How so?

8 A At work, he worked with the car, he had
9 provisions, and he would bring -- he would bring us
10 medicine for the sheep.

11 Q Were there any other things that he did that
12 you --

13 A No.

14 Q Were there any things that you did that he
15 didn't?

16 A Yes.

17 Q What things did you do that he did not?

18 A I was a parishioner --

19 THE INTERPRETER: I'm sorry. I do not know
20 what that means.

21 THE WITNESS: I saved the babies, yeah.

22 BY MS. WINOGRAD:

23 Q Lambing?

24 A Yes.

25 Q Is there anything else that you did that he

1 didn't do besides the lambing?

2 A No.

3 Q Are you aware that -- let me ask you this: Did
4 you work -- go ahead -- did you work more hours than
5 Mr. Archi Lozano?

6 A We all worked the same hours.

7 Q Okay. So you didn't work any more than he did?

8 A No.

9 Q And he didn't work any more than you did?

10 A We all worked the 24 hours, all the guards --
11 guarding.

12 MR. HOOD: Objection to translation.

13 THE INTERPRETER: All guarding, as sheepherders
14 all the time.

15 BY MS. WINOGRAD:

16 Q Did you receive two weeks of paid vacation each
17 year?

18 A Yes.

19 Q Did you receive any discretionary bonuses
20 during your time at El Tejon?

21 A Yes.

22 Q If Mr. William Archi Lozano indicated that he
23 worked an average of eight hours per day, do you believe
24 he was lying?

25 MR. HOOD: Objection to form and foundation.

1 THE WITNESS: We all worked 24 hours
2 as sheep -- as guardian. That's the way the work was.

3 BY MS. WINOGRAD:

4 Q You were on call 24 hours; correct?

5 MR. HOOD: Objection to form and foundation.

6 THE WITNESS: Yes.

7 BY MS. WINOGRAD:

8 Q Did you ever sleep?

9 A I was sleeping, but I was spending as being a
10 guard. It's a lot.

11 Q Fair enough. And did you ever take --

12 THE INTERPRETER: I'm sorry. That question
13 broke up. Can you repeat that?

14 MS. WINOGRAD: I interrupted him. I'm sorry.
15 My apologies.

16 BY MS. WINOGRAD:

17 Q Did you ever take naps during the day?

18 A Twenty minutes or so, around there.

19 Q If Mr. William Archi Lozano indicated that he
20 worked eight hours per day, was he lying?

21 MR. HOOD: Objection to form and foundation.

22 THE WITNESS: Miss, he -- pardon me. Miss, he
23 only --

24 THE INTERPRETER: He's really breaking up.

25 /////

1 BY MS. WINOGRAD:

2 Q Slower, please. Slower, please, and divide
3 your answer.

4 A Twenty-four hours we all worked.

5 Q I understand your answer on that, but that
6 wasn't -- but that was not my question.

7 My question is, if he indicated that he worked
8 eight hours per day on average, was he lying?

9 MR. HOOD: Objection to form and foundation.

10 MS. WINOGRAD: Your objection is preserved.
11 I'm sorry.

12 MR. HOOD: I'm sorry, Ellen. Yeah, I
13 understand. I apologize.

14 THE WITNESS: Yes.

15 BY MS. WINOGRAD:

16 Q He was lying?

17 A Yes.

18 Q Who is Gilmar Jhonny Melo Castillo?

19 A From another ranch.

20 Q Did you ever work with him?

21 A No.

22 Q Did you know him?

23 A No.

24 Q Who is Filomeno Leonardo Lapa Pomahuali? And I
25 am butchering the name.

1 A May 2014?

2 Q Yes. He did?

3 MR. HOOD: Objection to translation.

4 THE WITNESS: I don't remember.

5 BY MS. WINOGRAD:

6 Q So you don't remember Mr. Ascanoa Alanya?

7 A I don't remember, Miss.

8 Q And you don't remember anybody by the name of
9 Elias Maximo?

10 A No.

11 Q Who is Isario Yauri Garcia?

12 A He is -- he is a co-worker, a worker at
13 El Tejon.

14 Q Did you work at the same time that he did?

15 A Yes.

16 Q Was he an honest and truthful man?

17 A Yes.

18 Q In what ways, if any, were his job duties
19 different than yours?

20 A He was a person in charge at the ranch.

21 Q He was a supervisor?

22 A Simply -- he was in charge.

23 Q Did he work more hours than you?

24 A At the ranch? He worked more than eight hours
25 because we worked different.

1 Q Okay. I believe my question was, did he work
2 more hours than you?

3 A At the ranch, yes.

4 Q What was your understanding of his job duties?

5 A He did everything that the boss did and -- and
6 feed the dogs and water the alfalfa.

7 Q Anything else?

8 A That's all.

9 Q Were there any things that you --

10 A The cleaning in general.

11 Q Okay. Were there any things that you did that
12 he didn't do?

13 A He also did what I did. He also helped in the
14 birthing.

15 Q In your lawsuit against Western Range
16 Association and El Tejon, you alleged that you were paid
17 below Nevada's minimum wage.

18 A The pay was 1,422.

19 Q Yes. What was Nevada's minimum range during
20 the times that you were in Nevada working at El Tejon?

21 A They would pay us -- they would pay us that
22 amount.

23 Q What amount?

24 A 1,422.

25 Q Okay. I believe my question was, what was

1 Nevada's minimum wage during the time frame when you were
2 working at El Tejon Ranch?

3 MR. HOOD: Objection to form.

4 THE WITNESS: I could not tell you.

5 BY MS. WINOGRAD:

6 Q You have alleged that you were paid less than
7 or below Nevada's minimum wage.

8 How do you know that if you don't know what
9 Nevada's minimum wage was at the time you worked here?

10 MR. HOOD: Objection. To the extent that the
11 response requires him to reveal discussions with his
12 attorney, I'd instruct him not to answer. To the extent
13 he can answer without revealing discussions with his
14 attorneys, I instruct him to answer.

15 THE WITNESS: Yes.

16 MR. HOOD: But I don't think -- otherwise I
17 instruct him to answer.

18 THE WITNESS: Yes. I worked 24 hours in
19 Nevada, and they paid me 1,422, but that didn't count the
20 hours that I worked.

21 BY MS. WINOGRAD:

22 Q Okay. I understand that.

23 Without telling me anything that was knowledge
24 based upon anything your attorney told you, what makes
25 you think, without knowing what Nevada's minimum wage

1 was, that you were paid less than Nevada's minimum wage?

2 A The work hours -- according to the -- they
3 should pay me for the hours worked, but they did not pay
4 me according to the hours worked because I worked -- I
5 worked 24 hours.

6 Q Were you working when you were sleeping?

7 A I was always -- I was always on guard.
8 Sometimes I would not sleep.

9 Q So of those 24 hours every day when you --

10 A Every day. There's no rest. Not one day. Not
11 one day.

12 Q I didn't finish my question. Let me start it
13 again.

14 A Okay. Ask me again.

15 Q Of the 24 hours that you worked every single
16 day, did you take meals?

17 A Every night.

18 THE INTERPRETER: Finish the question.

19 MS. WINOGRAD: I did.

20 THE INTERPRETER: I'm sorry. He spoke a little
21 bit ahead.

22 MS. WINOGRAD: My bad. Try again.

23 BY MS. WINOGRAD:

24 Q Of the 24 hours a day that you worked every
25 single day, did you take meals?

1 A Yes.

2 MR. HOOD: Ellen, could I go off the record for
3 one minute? My children just turned music on very
4 loudly, and I'd like to go tell them to turn it down. I
5 apologize.

6 MS. WINOGRAD: No worries. Go ahead.

7 THE VIDEOGRAPHER: Off the video record at
8 1:02 p.m.

9 (A recess was taken.)

10 THE VIDEOGRAPHER: We are back on the record.
11 The time is 1:03 p.m.

12 MS. WINOGRAD: I am going to disclose to
13 Mr. Hood that while we were off the record for the short
14 period of time, Olivia thanked Mr. Cantaro for being
15 slower and for breaking up his answers.

16 MR. HOOD: Thank you for disclosing that, and
17 we are all trying.

18 MS. WINOGRAD: And I thank you as well.

19 BY MS. WINOGRAD:

20 Q How many days on average did you work in Nevada
21 in any given calendar year when you were with El Tejon?

22 A I worked from April until the end of the month
23 of September in Nevada.

24 Q So is it accurate that you worked approximately
25 five months per year in Nevada?

1 A Six months.

2 Q I can't count.

3 A Half a year in Nevada and California.

4 Q Did you work anywhere besides California and
5 Nevada?

6 A No.

7 Q Where in Nevada did you work?

8 A In Nevada.

9 Q Big state.

10 A Spring Ranch. Spring Ranch. That's the --
11 that's the Sierra of the company home chief -- Mesquite.

12 Q Mesquite?

13 A Moss Creek.

14 Q Was it Northern Nevada or Southern Nevada?

15 A Let's see.

16 Q Was it in the desert?

17 A Mountain.

18 Q Was it in the mountains of the Mohave Desert?

19 THE INTERPRETER: You're breaking up. I didn't
20 hear that question.

21 MS. WINOGRAD: I didn't hear the answer either.

22 BY MS. WINOGRAD:

23 Q Was it in the mountains of the Mohave Desert?

24 A Also Mohave and also in the mountains of -- in
25 Nevada itself.

1 Q Including the Sierra Nevadas?

2 A Sierra Nevada, yes.

3 Q And the mountains in Mohave also?

4 MR. HOOD: Objection. Foundation.

5 BY MS. WINOGRAD:

6 Q Is the weather different, based upon your
7 observation, between the mountains in the Mohave Desert
8 and the Sierra Nevadas?

9 A In Nevada, I was there six months, all the
10 time.

11 Q Okay.

12 THE INTERPRETER: If I may, when we say "the
13 weather," we say "tiempo," and I think he misunderstood
14 as in duration, and we need to clarify climatewise?

15 MS. WINOGRAD: Let me ask it better, then.
16 We'll start all over on that one.

17 THE INTERPRETER: Okay.

18 BY MS. WINOGRAD:

19 Q Is it warmer in Southern Nevada in the Mohave
20 Desert than it is in the Sierra Nevadas?

21 A Nevada is colder.

22 Q Okay. But as between the two places you
23 identified?

24 THE INTERPRETER: That kind of broke up.

25 BY MS. WINOGRAD:

1 BY MS. WINOGRAD:

2 Q My question was, were you working at El Tejon
3 when you went to the dentist?

4 A No. I left there.

5 Q Approximately when did you leave El Tejon?
6 You've given me the date of June 10, 2014. Is that your
7 last date?

8 A Yes.

9 Q Why did you leave El Tejon?

10 A I already explained it to you, Miss.

11 Q No, you didn't.

12 MR. HOOD: Objection.

13 THE WITNESS: I told you I had the accident
14 with the molar, all of that.

15 BY MS. WINOGRAD:

16 Q Okay. You explained that you had an accident,
17 and then after that you had a problem with your tooth,
18 and they happened at different times; correct?

19 A When I had my infected tooth, those days --
20 those days -- the 10th of June I left with the infected
21 tooth.

22 Q I understand that.

23 Was the infected tooth related to the accident,
24 if you know?

25 A No.

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABEL CÁNTARO CASTILLO,

No. 85926

Appellant,

vs.

WESTERN RANGE ASSOCIATION,

Respondent.

RESPONDENT WESTERN RANGE ASSOCIATION'S
APPENDIX VOLUME 8, PART 2

ELLEN JEAN WINOGRAD, ESQ.

Nevada State Bar No. 815

JOSE TAFOYA, ESQ.

Nevada State Bar No. 16011

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ATTORNEYS FOR RESPONDENT
WESTERN RANGE ASSOCIATION

1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

4 I, PEGGY B. HOOGS, a Certified Court Reporter
5 in and for the State of Nevada, do hereby certify:

6 That on Wednesday, the 24th day of June, 2020,
7 at Woodburn and Wedge, 6100 Neil Road, Suite 500, Reno,
8 Nevada, remotely appeared via Zoom videoconference
9 ABEL CANTARO CASTILLO, who was duly sworn by me and
10 deposited in the matter entitled herein;

11 That I am not a relative, employee or
12 independent contractor of counsel for any of the parties,
13 or a relative, employee or independent contractor of any
14 of the parties to the proceedings, or a person
15 financially interested in the proceedings;

16 That said deposition was taken in verbatim
17 stenographic notes by me, a Certified Court Reporter, and
18 transcribed into typewriting as herein appears;

19 That the foregoing transcript, consisting of
20 pages 1 through 130 of the deposition, is a full, true
21 and correct transcription of my stenographic notes of
22 said deposition.

23 Dated at Reno, Nevada, this 8th day of July,
24 2020.

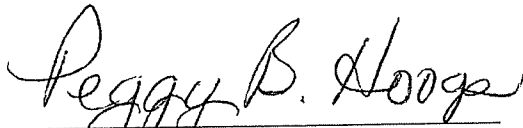
25 
Peggy B. Hoogs
CCR #160, RDR, CRR

EXHIBIT 5

FILED UNDER SEAL

EXHIBIT 5

DECLARATION OF MONICA YOUREE

I, Declarant, Monica Youree, hereby declare under penalty of perjury as follows:

1. Declarant is the current Executive Director of Western Range Association.

2. Declarant is located in Twin Falls, Idaho and manages Western Range operations involving state and federal agencies, members, herder travel and education of members regarding wage rates, from Twin Falls, Idaho. Training, meetings and visits are often held off-site of the Idaho headquarters.

3. This Declaration tends to matters that Plaintiff's Counsel did not ask Declarant during her several hour deposition.

4. Declarant oversees the paperwork required by, submitted to and prepared in accordance with State and Federal law, and has dealings with several Federal and (Nevada) State agencies including in the course of declarant's duties as Western Range Association's Executive Director:

- United States Department of Labor (DOL);
- United States Department of Labor, Wage and Hour Division (DOL-WHD);
- United States Department of Labor, Employment Training Administration (DOL-ETA);
- United States Citizenship and Immigration Services (USCIS);
- United States Department of Immigration and Customs Enforcement (ICE);
- United States Embassies and Consulates;
- Peruvian Embassy;
- United States Homeland Security;
- United States Bureau of Land Management (BLM);
- United States Department of Forestry;
- Nevada Department of Employment, Training and Rehabilitation (DETR); and
- Federal Equal Opportunity Employment Commission (EEOC).

5. Western Range Association currently has 195 member ranches in 13 states, only one of which is Nevada. The others include:

- Arizona
- California
- Colorado
- Idaho
- Montana
- Nebraska
- Oklahoma
- Oregon
- South Dakota
- Utah
- Washington
- Wyoming

6. Although many of the governmental form job orders, job descriptions and contracts look similar or identical, that is for several reasons. First, the DOL dictates and prints the blank forms on which

EXHIBIT 5

1 Form 790 and 9142 are processed for Labor Certification. Second, certain requirements are contained within
2 the government produced forms, including the requirement that H-2A Range livestock employees are
3 deemed to be "on-call 24 hours per day, 7 days a week". Member deposition testimony and their declarations
4 submitted herewith illustrate that hours actually worked vary from ranch to ranch and from herder to herder.
5 The job orders themselves and H-2A contracts were addressed by the 10th Circuit Court of Appeals in *Llacua*
6 *v. Western Ranch Association, et al.*, 930 F. 3d 1161(10th Cir. 2019) and in 2019 the Court referred to special
7 procedures governing the minimum wage for H-2A sheep herders.

8 7. The actual job duties and wages vary between and among the various member ranches
9 (both within and outside of Nevada) and in many cases, vary within a given Nevada Ranch based upon
10 geography, topography, climate, band size, type of animal and member ranch procedures.

11 8. The number of hours worked by H-2A Range Herders varied and were individual between
12 and among the ranches even within Nevada.

13 9. The DOL has determined that regardless of wage rates, H-2A Range Livestock Herders are
14 deemed to work a 48-hour work week. See 20 CFR § 655.122 and DOL comments and decisions. Declarant
15 is informed by herders and Nevada Member Ranches, that worker's hours vary greatly, dictated by
16 numerous factors.

17 10. In declarant's capacity as Executive Director of Western Range Association, declarant's
18 review of records, declarant's participation in DOL trainings, and meeting presentations, declarant's
19 discussions with DOL supervisors and declarant's personal knowledge gained through visitation of numerous
20 Member Ranches in Nevada and elsewhere, it should be abundantly clear to anyone with Agricultural and
21 Range Livestock experience, that there is no prototypical H-2A herder (sheep or goat) under the H-2A Non-
22 Immigrant, Temporary Range Livestock program; each herder has highly individualized actual duties.

23 11. In cases in which DOL-ETA finds that a Western Range submitted application has errors in
24 job description, wage rates or housing, it issues an "exception" which Western Range and/or the member
25 then corrects. ETA does this with the State SWA. According to regulation the SWA reviews the application
26 for wage and working conditions to be within the State Law (DETR). There has never been a wage rate
27 exception issued for a Nevada operation, except a single matter in which the member ranch was in Nevada,
28 but grazed some months in California, a contiguous state.

EXHIBIT 5

12. From 2010 to 2018 Western Range was deemed to be an H-2A Joint Employer for its Nevada Member Ranches. Although the DOL deemed Western Range to be a Joint Employer for H-2A purposes, other than arranging travel, providing Visa and certification assistance and working to maximize member compliance with wage and hour rates and other assisting with DOL, USCIS, ICE and Embassy/Consulate requirements, Western Range is not involved in nor does it control day-to-day operations of its members, unless Western Range knows of or becomes concerned about a compliance issue.

13. Each individual Western Range Association Member Ranch completes its own payroll in accordance with DOL regulations. Western Range and the DOL WHD regularly meet with members to maximize compliance with H-2A regulations.

14. Each individual Western Range Association Member Ranch procures its own workers' compensation Insurance for herding in compliance with the applicable state agency.

15. Sole Plaintiff Abel Cantaro Castillo, who is designated to "adequately represent" the class of herders [Doc # 264 p. 28] is hardly an appropriate representative. Declarant was informed by Plaintiff's employer, El Tejon Ranch that Plaintiff Abel Cantaro Castillo permanently left after dark without notice and declarant reported that to ICE as required. Declarant is further informed from homeland security departure information that plaintiff remained in the United States for 2 to 3 years without an H-2A Visa before returning to Peru on or about December 2, 2016. Unless the purported class is herders leaving without notice, breaching their contract and remaining in the United States unlawfully without the ability to return for 10 years, he is not a representative of the class plaintiff seeks to certify.

16. Plaintiff does not share identical interests with the "class" of Nevada herders, some of whom work solely in Nevada and most of whom remain law abiding employees in the United States, with proper H-2A Visa status.

17. Plaintiff Abel Cantaro Castillo is the only herder declarant knows of who claims to "work" 24 hours per day, 7 days per week, (*See, Plaintiff's Deposition, p. 42-52 filed herewith as Exhibit "4"*)

I declare under penalty of perjury that the forgoing is true and correct.

DATED this 22 day of November, 2021.


MONICA YOUREE
Executive Director
Western Range Association

EXHIBIT 5

RA 01597

EXHIBIT 6

FILED UNDER SEAL

EXHIBIT 6

RA 01598

EXHIBIT 6



United States Dept. of Homeland Security
California Service Center
Attn: Div X/BCU ACD
P.O. Box 30050
Laguna Niguel, CA 92607-3004

Dear Sirs:

Please be advised that we are placing the following named individual under the jurisdiction of the Bureau of Citizenship and Immigration Service as of this date **June 11th, 2014**. We did remove him from our list of contract herders working for Western Range Association. He has violated the terms of his contract and is in the United States in violation of his status.

NAME: **Abel Cantaro Castillo**
DATE OF BIRTH: **10/26/1968**
ARRIVAL DATE: **10/26/2013**
SSN: [REDACTED]

FILE# **WAC13 181 50859**
PLACE OF BIRTH: **Peru**
I-94: **09939600030**

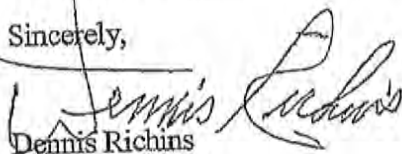
Last assigned member of Western Range Association:

EL TEJON SHEEP CO
13950 OLD RIVER ROAD
BAKERSFIELD, CA 93311

Other comments: This worker abandoned his place of employment without notifying his employer or Western Range Association on **June 8th, 2014**.

Your prompt attention to this matter will be greatly appreciated.

Sincerely,


Dennis Richins
Executive Director

cc: State Office- California
Region- Chicago
USCIS- Laguna Niguel

CONFIDENTIAL

EXHIBIT 7

FILED UNDER SEAL

EXHIBIT 7

RA 01600



Deposition of:
Monica Youree

August 11, 2020

In the Matter of:
**Castillo, Abel Cántaro v. Western
Range Association**

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

:
ABEL CANTARO CASTILLO on :
behalf of himself and :
those similarly situated, :
:
Plaintiff, : Case No.
: 3:16-cv-00237-MMD-VPC
vs. :
:
WESTERN RANGE ASSOCIATION:
:
Defendant. :
_____:

Tuesday, August 11, 2020

30(b)(6) deposition of MONICA YOUREE,
taken virtually via Zoom, with the witness
participating from the Law Offices of Woodburn &
Wedge, 6100 Neil Road, Suite 500, Reno, Nevada,
beginning at 11:02 a.m., before Ryan K. Black,
a Registered professional Reporter, Certified
Livenote Reporter and Notary Public in and for
the Commonwealth of Pennsylvania.

A P P E A R A N C E S:

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ewinograd@woodburnandwedge.com

Representing - Western Range Association

1 the Department of Labor, specifically, this
2 paragraph on Page 3, accurately describe the
3 work of the herders who were the subject of the
4 comment?

5 A. To me it looks like they're describing
6 the -- are you talking just about the second
7 paragraph?

8 Q. I'm talking about the paragraph that
9 begins, "Whether individually or as part of a
10 team, herders contend a large band or herd of
11 1,000 head of livestock or more, often in
12 rugged, high-altitude terrain or dry desert
13 conditions, hauling water for the animals,
14 herding them to grazing areas and making sure
15 they have enough to eat, keeping them from going
16 astray and protecting them from the constant
17 threat of natural predators like coyotes
18 mountain lions and wolves, harmful or poisonous
19 plants and manmade dangers, like highways and
20 domesticated dogs."

21 Is that an accurate description of
22 things that sheep herders are expected to do?

23 A. Thank you for reading that for me,
24 because I was on the wrong paragraph, so I
25 appreciate that.

1 This is, yeah, I think part of a
2 description of what they do. It talks about
3 the different terrain and the different
4 elevation and topography, you know, that varies
5 among the herders. It also talks about desert
6 conditions. It doesn't refer to the winter
7 conditions, but that's definitely another factor
8 that, you know, could be within the job duty
9 depending on the ranch location and what the
10 ranchers are doing.

11 So, generally, it does talk about the
12 duties, and on paper may look like you can take
13 this as a cookie-cutter to everybody, this is
14 what everybody does. But when you look at ranch
15 to ranch, what this means on each ranch is a
16 little bit different.

17 Q. But, surely, Western Range, in
18 submitting its comments to the Department of
19 Labor, would not have given the Department of
20 Labor an inaccurate portrayal of what the sheep
21 herders were doing, would it?

22 A. I didn't say that they did at all.

23 Q. Okay.

24 A. This is accurate, but it look --

25 Q. And -- sorry. Didn't mean to cut you

1 off.

2 A. It -- what I was saying is that these
3 duties could look different, and I think it's a
4 summarized list of duties that herders do. And
5 they can definitely look different depending on
6 -- you know, the job duties on paper look the
7 same, but, in action, vary from ranch to ranch.

8 Q. But Western Range did not choose to
9 highlight any such differences in its comments
10 to the Department of Labor, correct?

11 A. I think they did, because they talk
12 about, you know, the high altitude or dry desert
13 conditions. I mean, those are two totally
14 different scenarios there.

15 Q. Well, those are two different
16 climates, but they don't say there's any
17 variation in having the duty of protecting the
18 herd from the constant threat of natural
19 predators, correct?

20 A. There's a lot of predators listed, and
21 all of those predators aren't going to be found
22 in both of those places.

23 Q. So sometimes you're protecting from
24 coyotes and sometimes you're protecting from
25 wolves, but, either way, the herder is

1 constantly protecting from natural predators,
2 correct?

3 A. But they're doing it in different
4 ways. There may be different methods in order
5 to protect from coyotes versus mountain lions or
6 bears. Some scenarios may, you know, have the
7 help of guard dogs to help facilitate that,
8 while others may use guns to do that.

9 Q. So they may use different tools, but
10 they still have the same job responsibility,
11 correct?

12 MS. WINOGRAD: I'm going to object
13 to that characterization. She said different
14 methods, not different tools.

15 BY MS. WEBBER:

16 Q. And you then described, might use a
17 gun, might use a dog, not that I don't love dogs
18 in their own right, but in that case they're
19 really being used as a tool by the herder to
20 accomplish the task, correct?

21 A. They're protective animals of the
22 herd, and they're there to help alert the herder
23 of issues, as well as to deter predators from
24 taking livestock and preying on the lambs and
25 the ewes.

1 A. And what was the question there? I
2 gotta quit trying to read while you're asking.
3 I'm sorry.

4 Q. That's okay.

5 Do you agree with the comments
6 submitted by Western Range back in 2015 that
7 responding to health emergencies experienced by
8 the animals can occur at any time of the day or
9 night as can responding to threats from
10 predators?

11 A. Yes.

12 Q. And those are responsibilities that
13 the herders are entrusted with, correct,
14 responding both to threats from predators and
15 any health emergencies experienced by the
16 animals?

17 A. Yes.

18 Q. And while herders are out on the
19 range, they don't have anybody else they can
20 hand off responsibility for the herd to,
21 correct?

22 A. Correct. Some of these areas they're
23 in are remote locations.

24 Q. And so they -- and herders,
25 additionally, in some locations, or sometimes

1 during the year, may also have to haul water to
2 provide water to the animals.

3 A. Ask that one more time.

4 Q. In some places, or at some point in
5 the year, a herder may be required to haul water
6 to water the animals?

7 A. Yes.

8 Q. Herders may also be required to
9 administer medication or deworming sorts of
10 procedures for the animals?

11 A. They may need to do that.

12 Q. They may have to spend time setting
13 up temporary fencing to keep sheep out of a
14 particularly dangerous section; is that right?

15 MS. WINOGRAD: Okay. You fixed it.
16 I was just going to say, you were simply reading
17 back the document, but there wasn't actually a
18 question pending. But that time there was, so
19 thank you.

20 BY MS. WEBBER:

21 Q. I, actually, am looking at my outline,
22 I'm not reading from a document at all, but,
23 anyway, is it correct that that is one of the
24 responsibilities that herders are asked to
25 fulfill?

1 A. And which responsibility was that
2 again?

3 Q. Setting up temporary fencing to keep
4 sheep out of a dangerous section.

5 A. Yes. That's correct.

6 Q. And herders might have to haul water
7 for their own use, as well, not just for the
8 sheep, but for their own washing or cooking,
9 correct?

10 A. I believe so.

11 Q. And while herders are out on the
12 range, they don't have the opportunity to go to
13 a restaurant, go to the movies, go to, really,
14 anyplace away from the herd that they're
15 responsible for, correct?

16 MS. WINOGRAD: I'm going to object to
17 the form of the question in terms of time frame.
18 I don't think many of us are going to
19 restaurants or bars or movies right about now,
20 but go ahead and answer if you can.

21 THE WITNESS: Yes. While they're,
22 typically, in such remote locations that, yeah,
23 they wouldn't be able to do that.

24 BY MS. WEBBER:

25 Q. And being in remote locations and

1 having to move from time to time, they wouldn't
2 have, you know, flush toilets or, you know, hot
3 water showers either, correct?

4 A. I don't think I can make a blanket
5 statement that says that about all herders.
6 All herders are provided with somewhat different
7 tools. I don't know if you've ever been
8 camping, but even when you go camping they have
9 tools that you can have a warm shower available
10 to you. So I think it varies.

11 MS. WEBBER: Actually, can we take a
12 short break? I just want to make sure I haven't
13 lost track of my next document, and it's
14 actually -- we've been going, it looks like, a
15 little over an hour. So let's go off the
16 record.

17 (Recess taken.)

18 MS. WEBBER: I'm going to mark as
19 Exhibit 15 the contents of Envelope B, so if you
20 could open up that?

21 (Exhibit No. 15, a printout of the
22 Code of Federal Regulations Labor Certification
23 Process, was introduced electronically.)

24 BY MS. WEBBER:

25 Q. Have you got Exhibit B?

1 A. It's even, you know, hard to
2 determine, you know, how many herders we have in
3 the country during a year, because you have
4 herders coming and going and multiple -- you
5 know, sometimes they're coming back. And so
6 count how many herders we have in a year and
7 guess a percentage, I don't think I can
8 accurately do that. But it's a small percent.
9 I would guess it's a small percent.

10 Q. Small meaning less than 15 percent?

11 A. I probably can't estimate it.

12 MS. WEBBER: I'm just trying to get a
13 sense of what small meant to you.

14 Okay. Let's go ahead and mark as
15 Exhibit 19 the document in Envelope U, as in
16 umbrella.

17 (Exhibit No. 19, a letter from Western
18 Range Association to Department of Homeland
19 Security, regarding Abel Cantaro Castillo, was
20 introduced electronically.)

21 THE WITNESS: I see the document.

22 BY MS. WEBBER:

23 Q. Okay. This is a letter that Western
24 Range sent to the Department of Homeland
25 Security in -- actually, I don't know if there's

1 a date on the letter, but some point in 2014,
2 correct?

3 A. Correct.

4 It's a requirement of USCIS that we
5 notify them of workers who do not report or that
6 we're unsure of where their location is at.

7 Q. Okay. And that was -- thank you,
8 because that was going to be my next question,
9 is this something that you do routinely whenever
10 a worker quits without, as far as you know,
11 actually returning to their home country?

12 A. Yes. That's required by USCIS.

13 Q. Okay. And, specifically, in Exhibit
14 19, Western Range's executive director Dennis
15 Richens wrote, with respect to the herder listed
16 in the letter about Cantaro Castillo we did
17 remove him from our list of contract herders
18 working for Western Range Association, correct?

19 A. Correct.

20 Q. So prior to June 11th of 2014,
21 Mr. Cantaro Castillo had been a herder working
22 for Western Range Association; is that right?

23 A. He was a herder, yes.

24 Q. Western Range has periodically been
25 audited by the Department of Labor, correct?

Monica Youree

C E R T I F I C A T E

I do hereby certify that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

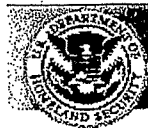
WITNESS my hand and official seal this
24th day of August 2020.



Ryan K. Black

EXHIBIT 8

FILED UNDER SEAL



U.S. Customs and Border Protection

Securing America's Borders

OMB No. 1651-0111
Expiration Date: 11/30/2014

Admission (I-94) Number Retrieval

70166

WAC 4318150859

Admission (I-94) Record Number: 09939600030

Admit Until Date: 2014 July 19

Details provided on Admission (I-94) form:

Last/Surname: CANTARO CASTILLO

First (Given) Name: ABEL

Birth Date: 1968 October 26

Passport Number: 6140483

Passport Country of Issuance: Peru

Most Recent Date of Entry: 2013 October 26

Class of Admission: H2A

► Effective April 26, 2013, DHS began automating the admission process. An alien lawfully admitted or paroled into the U.S. is no longer required to be in possession of a preprinted Form I-94. A record of admission printed from the CBP website constitutes a lawful record of admission. See 8 CFR § 1.4(d).

► If an employer, local, state or federal agency requests admission information, present your admission (I-94) number along with any additional required documents requested by that employer or agency.

► Note: For security reasons, we recommend that you close your browser after you have finished retrieving your I-94 number.

For inquiries or questions regarding your I-94, please click here.

Accessibility

RECEIVED

DEC 09 2013

BY: _____

EXHIBIT 9

FILED UNDER SEAL

EXHIBIT 9

RA 01617

WESTERN RANGE ASSOCIATION

1245 E Brickyard Rd Suite 190
Salt Lake City, UT 84106
Phone (801) 486-2004 Fax (801) 486-2315

LIQUIDATION OF EARLY DEPARTURE

Herder Name	Abel Cantaro Castillo	#	70166
Arrival Date	10/26/13		
Date of Departure	6/8/14		
Months Worked	8		
Employer	El Tejon Sheep Company		00941

ACTUAL EARLY DEPARTURE TO BILL TO MEMBER

Early Departure: (Calculate remaining months to closest week times monthly bill rate)

Months	Monthly Rate	
10	\$63.75	\$ 637.50

Out going ticket cost	REPORTED TO ICE	
-----------------------	-----------------	--

BALANCE DUE TO BE BILLED TO MEMBER:

\$ 637.50

INCOMING EXPENSES: (actual cost)

Ticket		\$ 992.42
Other		

First 18 months billing covers the incoming ticket

OUTGOING EXPENSES: (actual cost)

Ticket		
Other		
Total		\$ 992.42

Last 18 months billing covers the departing ticket. If member chooses to purchase ticket home for herder NO credits will be issued for months worked over 18.

LESS: (actual cost)

Collected from member(s)

Total Paid by Member

\$ 520.26

Balance Actual Cost Over or Short:

\$ 472.16

RA 01618

EXHIBIT 10

FILED UNDER SEAL

you owe me at least \$ 1000 in
unpaid wages for my work in Nevada.

Please send it to me at 1535 High
Street Denver, CO 80218

Sincerely,



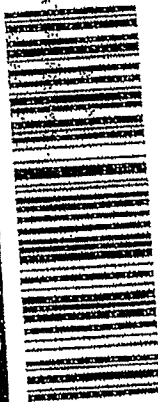
Abel Cantaro

CONFIDENTIAL

RA 01620
VRA000578

1535 High St.
Denver, CO 80218

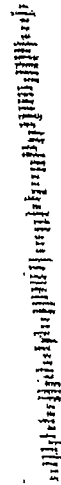
CERTIFIED MAIL



7014 2120 0001 8068 4624

Melchor Gragirena &
El Tejon Sheep Co.
5616 Hooper Way
Bakersfield, CA 93308

95030302516



U.S. POSTAGE
\$3.94
FOR LETTER
80401
Date of sale
04/04/16
06 2500
08346894



FOLD HERE



April 22, 2016

**Via Registered Mail,
Restricted Delivery**
Mr. Abel Cantaro Castillo
1535 High Street
Denver, CO 80218

Via Priority Mail
Mr. Abel Cantaro Castillo
JR. Amazonas #397
Achipampa Yanacancha
Huancayo, Peru 12004

Dear Mr. Cantaro Castillo:

A copy of this letter translated into Spanish is also enclosed.

I am counsel for Western Range Association and I am in receipt of your undated handwritten letter to El Tejon Sheep Company and/or Western Range Association. It is unclear when you sent this or to what periods of time you are referring. If you are represented by counsel, please advise immediately and I will speak only with your lawyer.

We take all inquiries regarding past due wages quite seriously and are attempting to recreate a comprehensive wage payment history for the time frame during which you worked for the El Tejon Sheep Company. In fact, the records are very complete and payroll records show that you were paid at the California (higher) wage rate. It is therefore unclear why you would believe you are entitled to \$1,000 for a Nevada wage rate, when Nevada's prevailing adverse wage rate is and was less than California's. Further, we do not have a current address at which you can be reached, since our records indicate that you left the El Tejon Sheep Company in early June, 2014, in violation of your visa. It is therefore difficult if not impossible to determine where you are currently located, but we assume you returned to Peru. We therefore send this letter to the last known address in your file.

We have each and every wage record, including those illustrating that you were paid a bonus in addition to the contracted amounts. Of course, if you have additional information we will consider same. If not, please advise and we will close our

WOODBURN AND WEDGE
Attorneys and Counselors at Law

6100 Neil Road | Suite 500 | Reno, Nevada 89511
P.O. Box 3311 | Reno, NV 89503
Phone (775) 688-3000, Facsimile (775) 688-3088

John H. Woodburn
J. H. Woodburn
J. H. Woodburn
J. H. Woodburn

Robert H. Gifford
Robert H. Gifford
Robert H. Gifford
Robert H. Gifford

David J. Pugh
David J. Pugh
David J. Pugh
David J. Pugh

Thomas W. Rutter
Thomas W. Rutter
Thomas W. Rutter
Thomas W. Rutter

James B. St. Paul
James B. St. Paul
James B. St. Paul
James B. St. Paul

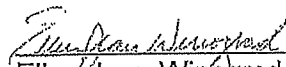
WOODBURN | WEDGE

April 22, 2016
Page 2

investigation because based on the information you provided there is inadequate basis on which to determine there are any wage amounts due. Quite the opposite, it appears that not only were you paid the contracted wage rates (for California) but you also received additional sums as incentives and bonuses.

Very truly yours,

WOODBURN AND WEDGE


Ellen Jean Winograd
Attorney at Law

EJW/jcb
Enc.

cc: Lane W. Jensen

22 de Abril de 2016

Por Correo Certificado,
Entrega Restringida

Sr. Abel Cantaro Castillo
c/o The Gathering Place
1535 High Street
Denver, CO 80218

Sr. Abel Cantaro Castillo
JR. Amazonas #397
Achipampa Yanacancha
Huancayo, Peru

Estimado Sr. Cantaro Castillo:

Yo soy la abogada de Western Range Association y he recibido su carta manuscrita sin fecha dirigida al El Tejo Sheep Company y/ o al Western Range Association. No está muy claro cuando fue que usted envió esta carta o los periodos de tiempo a los cuales Ud. se está refiriendo. Si usted está siendo representado por un abogado favor de avisar de inmediato y yo hablaré solamente con su abogado.

Nosotros tomamos muy seriamente todas las consultas relacionadas a salarios atrasados y estamos tratando de reconstruir un historial completo del pago de salarios que recibió durante el tiempo que usted trabajó para El Tejon Sheep Company. De hecho los registros están bastante completos y el registro de nómina demuestra que a usted se le pagó la tarifa salarial de California (más alta). Por lo tanto no queda claro la razón por la que usted piensa que tiene derecho a \$1000 dólares por la tarifa salarial de Nevada, cuando el salario prevaleciente en Nevada fue y sigue siendo menor que el de California. Además, no tenemos su dirección actual donde podemos comunicarnos con Ud. ya que nuestros registros indican que usted dejó de trabajar para El Tejon Sheep Company al principio de Junio del 2014, en incumplimiento con su visa. Por lo tanto, es muy difícil o más bien imposible determinar donde usted se encuentra actualmente, pero asumimos que regresó al Perú. Por este motivo le estamos enviando esta carta a la última dirección conocida que tenemos en su expediente.

Tenemos todos y cada uno de los registros de salario, incluyendo los que muestran que a usted se le pagó una bonificación adicional a cantidad acordada. Por supuesto, si usted tiene información adicional nosotros la consideraremos. Si no, favor

WOODBURN | WEDGE

22 de Abril de 2016

Página 2

de informarnos y cerraremos nuestra investigación porque basados en la información que usted proporcionó no existe un fundamento adecuado para determinar que se le debe algún monto salarial. Muy por el contrario, parece que a usted no solamente le pagaron el salario acordado (por California) pero que además recibió sumas adicionales como incentivos y bonificaciones.

Muy atentamente,

WOODBURN AND WEDGE

English Version signed

Ellen Jean Winograd
Abogada

EJW/jcb

cc: Lane W. Jensen

7015 0640 0003 488 2978

OFFICIAL USE

Certified Mail Fee \$
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☒ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$
Postage \$
Total Postage and Fees \$

Postmark
Here

Mr. Abel Cantaro Castillo
1535 High Street
Denver, CO 80218

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

EXHIBIT 11

FILED UNDER SEAL

DECLARACIÓN DE ARMANDO MACHA DAMIAN

Armádo Macha Damian declara y dice lo siguiente:

1. Soy mayor de dieciocho años y tengo conocimiento personal de lo expuesto en esta Declaración. Entiendo que hago estas declaraciones bajo pena de perjurio. He proporcionado esta información en español.
2. Doy esta declaración libremente. No ha sido resultado de coacción, amenazas o promesas de ningún beneficio para mí o mi familia, ni temo represalias por parte de Western Range Association o mis empleadores Bonnie y David Little.
3. Puedo hablar, leer y escribir en español. Proporcioné información para esta declaración en español y pude hacer todos los cambios necesarios para ser completamente veraz. Esto se me leyó línea por línea y pude hacer que se repitiera todo lo que quería, y pude cambiar todo lo que consideré que debía cambiarse.
4. Soy un empleado de pastor de ovejas. He trabajado para Bonnie y David Little desde aproximadamente 2007 hasta el presente (14 años).
5. La Western Range Association me comunicó una oferta de empleo formal. Antes de trabajar como pastor de ovejas para Bonnie y David Little, trabajé como pastor de ovejas en Idaho para otra compañía.
6. Como he trabajado para Bonnie y David Little durante aproximadamente 14 años, y no puedo recordar fechas exactas, estoy dando mi memoria general de mi horario diario y semanal como pastor de ovejas, ya que es bastante similar cada año.
7. Me dedico exclusivamente a pastorear ovejas en Nevada y también hago algunos trabajos de parcelón en Nevada. Yo trabajo principalmente en el campo y hago poco o ningún trabajo en el rancho. Los Littles emparejan a los pastores de dos en dos, por lo que a lo largo del año tengo un compañero de pastoreo con el que comparto responsabilidades en el cuidado de las ovejas.
8. En general, y no durante la temporada de partos, las ovejas tienen una rutina bastante estándar, como sigue:

- 1 a. Las ovejas se acuestan desde justo después de la puesta de sol hasta justo antes del
2 amanecer. Las ovejas no necesitan ninguna atención por mi parte durante este periodo de
3 tiempo en el que duermen. Hay perros proporcionados por los Little que duermen durante el
4 día y que protegen a las ovejas por la noche. Todos sabemos que por la noche los perros se
5 encargan de proteger a las ovejas. Además, las ovejas duermen tan lejos de nuestro
6 campamento que rara vez oigo los ladridos de los perros que las protegen por la noche.
- 7 b. Me levanto aproximadamente a las 5:00 a.m. y preparo el desayuno. Alrededor de las 7:00
8 a.m. mi compañero de pastoreo y yo nos dirigimos hacia las ovejas en caballo. Las ovejas
9 suelen estar a unos 15 minutos a caballo de donde dormimos.
- 10 c. Como trabajo con otro pastor, nos repartimos las responsabilidades. Esto significa que,
11 cuando salimos a buscar a las ovejas por la mañana, uno de nosotros regresa a nuestro
12 campamento aproximadamente a las 9 de la mañana, una vez que las ovejas han sido
13 contabilizadas. La persona que regresa a las 9 de la mañana suele cocinar el almuerzo,
14 cortar leña y descansar. El que se queda con las ovejas comprueba si se ha matado alguna
15 oveja durante la noche y culda las ovejas mientras beben, pastan y empiezan a echar la
16 siesta. Por lo general, el pastor que se queda con las ovejas regresa al campamento entre
17 las 11:30 a.m. y las 12:00 p.m.
- 18 d. Las ovejas no necesitan nuestra atención cuando volvemos al campamento, ya que beben
19 agua, duermen y pastan durante este periodo de tiempo.
- 20 e. Mientras las ovejas pastan, duermen y beben, mi compañero de pastoreo y yo nos
21 quedamos en nuestro campamento para comer y descansar. Por lo general, puedo tomar
22 una siesta durante este tiempo. También jugamos a juegos como el ajedrez o el fútbol si
23 tenemos una pelota. Hay tiempo para hacer estas cosas porque no estamos trabajando
24 durante estas horas.
- 25 f. Por la tarde, cuando llega la hora de volver con las ovejas, sólo va uno de nosotros y el otro
26 se queda en el campamento. El pastor al que le toque estar con el rebaño irá hacia las
27 ovejas aproximadamente a las 2 p.m. y se queda hasta aproximadamente las 5:00-5:30
28 p.m., mientras las ovejas se despiertan, beben, comen y empiezan a encontrar su lugar para
dormir por la noche.
- g. El pastor que se queda con las ovejas por la tarde suele volver al campamento
aproximadamente a las 5:00-5:30 p.m.. Durante el resto de la tarde y la noche, no hago
ningún trabajo y, en cambio, cocino, como, descanso o hago otras actividades personales.
9. Mi horario varía en base a la temporada, de lo que hagan las ovejas y de cómo mi compañero de
pastoreo y yo dividimos el trabajo de la semana. Mi compañero de pastoreo y yo alternamos cada
semana quién será el que regrese al campamento temprano y quién es el principal responsable de estar
con las ovejas. El horario es un fiel reflejo de lo que es un día normal para mí como pastor de ovejas.
10. Me han dado un rifle los Littles. Este rifle tiene una mira normal, y no tiene ningún otro visor o
mira con capacidad de visión nocturna. Por lo tanto, el rifle sólo es útil durante el día y sé que no se me
permite utilizarlo en la oscuridad.
11. Cuando hay un problema significativo de coyotes, que suele ocurrir durante la temporada de
partos, nuestro patrón llama a los tramperos del gobierno especializados en matar a los coyotes. Si nos
damos cuenta del problema de los coyotes, se lo notificamos a nuestro patrón para que llame a los

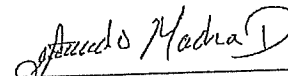
1 tramperos, pero a veces él mismo se da cuenta del problema de los coyotes y llama a los tramperos sin
2 que nosotros le avisemos.

3 12. Me pagan aproximadamente \$885.00 dólares dos veces al mes como pastor de ovejas en
4 Nevada.

5 13. Mis horas varían dependiendo de si es mi semana para permanecer principalmente con el
6 rebaño o si soy el pastor que regresa al campamento temprano. Calculo que mi promedio de horas
7 trabajadas por semana es entre 35 y 48 horas.

8 Por la presente declaro, bajo pena de perjurio en virtud de las leyes de los Estados Unidos y del
9 Estado de Nevada, que lo anterior es cierto y correcto a mi mejor saber y entender.

10 Fecha: Este 8 de 11, 2021

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12 Armando Macha Damian
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1 charge of protecting the sheep at night. Additionally, the sheep sleep so far from our camp
2 that there usually aren't sounds of barking dogs heard while they guard them at night.

3 b. I get up at approximately 5:00 a.m. and prepare breakfast. At about 7:00 a.m., my co-
4 worker Sheepherder and I ride horses and head towards the sheep. It takes about 15
5 minutes to get to the sheep on horseback from the place where we sleep.

6 c. Since I work with a fellow Sheepherder, we share the responsibilities. This means that,
7 when we go out to look for the sheep in the morning, one of us returns to our camp at
8 approximately 9:00 a.m., after the sheep have been counted. The person who returns at
9 9:00 a.m. usually cooks lunch, chops wood and rests. The person who stays with the sheep
10 checks to see if any sheep has been killed during the night and cares for the sheep while
11 they drink, graze and start to nap. Generally, the Sheepherder who stays with the flock
12 returns to the camp between 11:30 a.m. and 12:00 p.m.

13 d. The sheep do not need our care when we return to the camp since they drink water, sleep
14 and graze during this time period.

15 e. My co-worker Sheepherder and I stay in our camp to eat and rest while the sheep graze,
16 sleep and drink water. I can generally take a nap during that time. We also play games
17 such as chess or if we have a ball, soccer. There is time to do these things because we are
18 not working during those hours.

19 f. In the afternoon when it is time to bring the sheep back, only one of us goes and the other
20 remains in the camp. The herder whose turn it is to be with the flock, will head towards
21 the sheep at approximately 2:00 p.m. and stay until approximately 5:00 - 5:30 p.m. while
22 the sheep wake up, drink, eat and start to find the spot where they will sleep at night.

23 g. The Sheepherder who stays with the sheep in the afternoon will usually return to the camp
24 at approximately 5:00 - 5:30 p.m. During the rest of the afternoon and night, I do not do
25 any work. I cook, eat, rest or do other personal activities instead.

26 9. My schedule varies a little depending on the season, what the sheep were doing and how
27 my fellow Sheepherder and I divide the work for the week. My fellow Sheepherder and I
28 alternate each week as to who will return to the camp early and who is the main person
responsible for tending the sheep. The schedule accurately reflects a normal day for me as a
Sheepherder.

10. The Littles gave me a rifle. The rifle has a normal sight and doesn't have any other
visor or a sight with night vision capacity. Therefore, the rifle can only be used during the day
and I know that I am not allowed to use in when it is dark.

1 11. Whenever there's a significant coyote problem, which often happens during the
2 birthing season, our boss calls the government trappers who specialize in killing coyotes.
3 Whenever we realize there's a coyote problem, we notify our boss so he'll call the trappers.
4 However, sometimes he is the one who realizes that there is a coyote problem and he calls the
5 trappers without us informing him.

6 12. I am paid approximately \$885.00 twice a month as a Sheepherder in Nevada.

7 13. My hours vary depending on whether it is my week to stay primarily with the flock or
8 if I am the Sheepherder who returns early to the camp. I calculate that I work an average of between
9 35 and 48 hours per week.

10 I declare, under penalty of perjury pursuant to the laws of the United States and the State of
11 Nevada, that the above is true and correct to the best of my knowledge and understanding.

12 Dated: this 8th day of the month of 11, 2021.

13 [Signature]

14 Armando Macha Damian
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**DECLARATION AND CERTIFICATION OF
CERTIFIED COURT INTERPRETER**

I, **JANET GREEN**, hereby declare that I am a Certified Court Interpreter. I successfully passed the Nevada Court Certification exam and am certified by the State of California Judicial Council to interpret from English to Spanish and Spanish to English. My Certification Number is **300785**.

I further verify that the following document and was correctly translated from Spanish into English.

DECLARATION OF ARMANDO MACHA DAMIAN

I declare to the best of my abilities and belief, that these documents are a true and correct translation of the Spanish text of the original documents, as supplied to me by:

Ruben Burnias

Lily Regalado

services@languagelit.com

Language Litigation Services

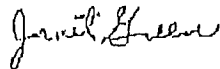
P.O. Box 1203

Pebble Beach, CA 93953

855-484-8377

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

This declaration is signed this **11th day of November 2021 (11/11/2021)**, in Menifee, California.



[Signature]

JANET GREEN 11/11/2021

This is a true and correct
translation by JANET GREEN
Court Interpreter - Spanish
Judicial Council Certification #300785

EXHIBIT 12

FILED UNDER SEAL

EXHIBIT 12

RA 01635

DECLARACIÓN DE CELSO SOSA TUMIALAN

Celso Sosa Tumialan declara y dice lo siguiente:

1. Soy mayor de dieciocho años y tengo conocimiento personal de los asuntos expuestos en esta Declaración. Entiendo que estoy haciendo estas declaraciones bajo pena de perjurio. He proporcionado esta información en español.
2. Esta declaración es dada libremente por mí y no como resultado de coacción, amenazas o promesas de cualquier beneficio para mí o mi familia, ni temo represalias por parte de Western Range Association o mi empleador Eureka Livestock.
3. Puedo hablar y escribir en español. Proporcioné información para esta declaración en español y puede hacer todos los cambios necesarios para ser completamente veraz. Se me leyó línea por línea y puede hacer que se repitiera todo lo que quería, y puede cambiar todo lo que consideré que debía cambiarse.
4. Soy un empleado de Eureka Livestock. He trabajado para Eureka Livestock desde aproximadamente 2001 hasta el presente (20 años), primero pastoreando ovejas y luego Ganado.
5. Fui contratado por Western Range Association y se me comunicó una oferta formal de empleo, y durante el período anterior de 20 años, no he trabajado en los Estados Unidos como pastor de ovejas para ninguna otra compañía que no sea Eureka Livestock.
6. Dado que he trabajado para Eureka Livestock durante aproximadamente 20 años, y no puedo recordar fechas exactas, estoy dando mi memoria general de mi horario diario y semanal como pastor de ovejas, ya que era bastante similar cada año.
7. Principalmente pastoreaba ovejas en Nevada y hacía muy poco trabajo de parición. A veces viajaba a California para pastorear ovejas aproximadamente desde mediados de diciembre hasta principios de abril.
8. Generalmente y no durante la temporada de partos, las ovejas tenían una rutina bastante estándar, como sigue:
 - a. Las ovejas se acostaban desde justo después de la puesta de sol hasta justo antes del amanecer. (Obviamente, la hora de salida y puesta del sol varía según el tiempo del año). Las ovejas no necesitaban ninguna atención de mi parte durante este período de tiempo en el que dormían.
 - b. Me levantaba aproximadamente a las 8:00 a.m. y preparaba el desayuno. Aproximadamente a las 9:00 a.m. caminaba hacia el rebaño, que estaba a unos 15-20 minutos del remolque del campamento de ovejas. Algunas mañanas el rebaño ya estaba en el área de agua y pastoreo cuando yo caminaba hacia él, así que simplemente me quedaba en el campamento.
 - c. La mayoría de los días me quedaba con el rebaño desde las 9:30 a.m. hasta las 11:00 a.m. o poco después. Las ovejas iban entonces al agua y no necesitaban mi atención, ya que bebían agua, dormían y pastaban durante este período de tiempo.
 - d. Mientras las ovejas pastaban, dormían y bebían, yo volvía a mi remolque del campamento de ovejas para comer y descansar. También veía películas, videos, hablaba con mi familia por teléfono y navegaba por varias aplicaciones de Internet, como Facebook y WhatsApp, porque no estaba trabajando.
 - e. Regresaba al rebaño aproximadamente a las 3:00 o 4:00 p.m. y me quedaba con el rebaño mientras se despertaba, comía y bebía. La mayoría de los días esto significaba que estaba con el rebaño hasta aproximadamente las 4:30-5:00 p.m.
 - f. Después volvía a mi remolque del campamento de ovejas aproximadamente a las 4:30-5:00 p.m. Durante el resto de la tarde y la noche no hacía ningún trabajo, y cocinaba, comía, descansaba o hacía otras actividades personales, como lavar mi ropa.

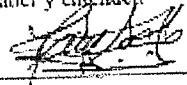
9. Mi horario variaba un poco dependiendo de lo que hacían las ovejas, pero es un reflejo exacto de lo que era un día normal para mí cuando era pastor de ovejas.

10. Durante mi empleo en Eureka Livestock mi salario aumentó desde que empecé a trabajar como pastor de ovejas en 2001. Aunque no estoy seguro de cuál fue mi salario exacto durante todos los años que trabajé como pastor de ovejas, estimo que me pagaron aproximadamente \$1,100.00 dos veces al mes como pastor de ovejas mientras en Nevada. También recibí bonos discrecionales una vez al año de aproximadamente \$500.00.

11. Estimo que en realidad realicé un promedio de 4-5 horas de trabajo por día como pastor de ovejas. Estas horas fueron consistentes durante todo el año. No recuerdo ningunas semanas en las que haya trabajado más de 35-40 horas.

12. También me daban la mayoría de los domingos libres. Eureka Livestock permitía a los pastores alternar quiénes trabajaban el domingo cada semana, de modo que la mayoría de nosotros teníamos el domingo libre durante la mayoría de las semanas.

Declaro, bajo pena de perjurio bajo las leyes de los Estados Unidos y del Estado de Nevada, que lo anterior es cierto y correcto a mi mejor saber y entender.
Fecha: Este 25 de Octubre, 2021.


Celso Sosa Tumilian

1 STATEMENT OF CELSO SOSA TUMIALAN

2 Celso Sosa Tumialan made the following statement:

3 1. I am over the age of eighteen and I have personal knowledge of the items expressed in this
4 Statement. I understand that I am making these statements under penalty of perjury. I have provided
5 this information in Spanish.

6 2. I am making this statement freely and have not been subjected to coercion, threats or promised
7 any benefit for myself or my family, and I am not in fear of retaliation by Western Range
8 Association or my employer, Eureka Livestock.

9 3. I am able to speak and write Spanish. I provided information for this statement in Spanish
10 and was able to make all the changes needed so that it is completely true. This was read to me line
11 by line and I could request a repetition whenever I wanted one; I could also change everything that
12 I considered that had to be changed.

13 4. I am an employee of Eureka Livestock. I have worked for Eureka Livestock since
14 approximately 2001 up to the present time (20 years), first as a sheep herder and then a livestock
15 herder.

16 5. I was hired by Western Range Association and received a formal offer of employment.
17 Additionally; I haven't worked in the United States as a sheep herder for any company other than
18 Eureka Livestock in the last 20 years.

19 6. Since I have worked for Eureka Livestock for approximately 20 years, and can't remember
20 the exact dates; I am providing my general recollection of my daily and weekly schedule as a sheep
21 herder, since every year was very similar.

22 7. I initially herded sheep in Nevada and performed very few birthing duties. Occasionally, I
23 traveled to California to herd sheep from approximately mid-December until the beginning of April.

24 8. Generally, when it's not during the birthing season, the sheep followed a routine that was
25 quite standard, as follows:

26 a. The sheep laid down to sleep a little after sunset until just before sunrise. (Obviously, sunrise
27 and sunset times varied according to the season of the year). The sheep did not require any of
my attention while they were asleep.

28 b. I got up at approximately 8:00 a.m. and prepared breakfast. At approximately 9:00 a.m., I
would walk towards the flock, and the trailer was about 15-20 minutes from the sheep camp.

1 Many mornings the flock was already in the watering and grazing area when I walked towards
2 them, so I simply remained in the camp.

3 c. Most days I stayed with the flock from 9:30 a.m. until 11:00 a.m. or a little later. Then, the
4 sheep went to the water and did not need my care, since they were drinking water, sleeping
5 and grazing during this time period.

6 d. I would return to my trailer to eat and rest, leaving the sheep camp while they were grazing,
7 sleeping and drinking. I also watched movies, videos, talked to my family on the phone and
8 surfed some Internet apps, such as Facebook and WhatsApp, because I wasn't performing
9 work duties.

10 e. I would go back to the flock at approximately 3:00 or 4:00 p.m. and stay with the flock while
11 they woke up, ate and drank. Most days this meant that I was with the flock until
12 approximately 4:30 to 5:00 p.m.

13 f. Afterwards, I would leave the sheep camp and return to my trailer at approximately 4:30-5:00
14 p.m. I didn't do any work for the rest of the evening and night. I cooked, ate, rested or
15 engaged in personal activities, such as doing my laundry.

16 9. My schedule varied a little depending on what the sheep were doing; but this accurately
17 reflects a normal day for me as a sheep herder.

18 10. During my employment at Eureka Livestock, my salary increased after I started working as
19 a sheep herder in 2001. Although I am not sure how much my exact wage was during all the years
20 I worked as a sheep herder, I estimate that I was paid approximately \$1,100.00 twice monthly as a
21 sheep herder in Nevada. I also received approximately \$500.00 in annual discretionary bonuses.

22 11. I estimate that I actually worked an average of 4-5 hours daily as a sheep herder. These
23 hours were consistent throughout the entire year. I do not recall any weeks that I worked more than
24 35-40 hours.

25 12. I also had most of my Sundays off. Eureka Livestock allowed the herders to alternate who
26 would work on Sunday each week. Therefore, most weeks, the majority of us were off on Sunday.

27 I declare, under penalty of perjury pursuant to the laws of the United States and the State of
28 Nevada, that the above is true and correct to the best of my knowledge and understanding.

Dated: this ____ day of the month of _____, 20__.

Celso Sosa Tumialan

**DECLARATION AND CERTIFICATION OF
CERTIFIED COURT INTERPRETER**

I, **JANET GREEN**, hereby declare that I am a Certified Court Interpreter. I am certified by the State of California Judicial Council to interpret from English to Spanish and Spanish to English. My California Certification Number is **300785**.

I further verify that the following document and was correctly translated from Spanish into English.

DECLARATION OF CELSO SOSA TUMIALAN

I declare to the best of my abilities and belief, that these documents are a true and correct translation of the Spanish text of the original documents, as supplied to me by:

Ruben Burnias

Lily Regalado

services@languagelit.com

Language Litigation Services

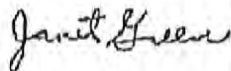
P.O. Box 1203

Pebble Beach, CA 93953

855-484-8377

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

This declaration is signed this **27th day of October 2021 (10/27/2021)**, in Menifee, California.



[Signature]

JANET GREEN 10/27/2021

**This is a true and correct
translation by JANET GREEN
Court Interpreter - Spanish
Judicial Council Certification #300785**

EXHIBIT 13

FILED UNDER SEAL

EXHIBIT 13

RA 01641

DECLARACIÓN DE ERASMO VERA ARTEAGA

Erasmus Vera Arteaga declara y dice lo siguiente:

1. Soy mayor de dieciocho años y tengo conocimiento personal de lo expuesto en esta Declaración. Entiendo que hago estas declaraciones bajo pena de perjurio y sé que debo decir la verdad. He proporcionado esta información en español.

2. Doy esta declaración libremente. No ha sido resultado de coacción, amenazas o promesas de ningún beneficio para mí o mi familia, ni temo represalias por parte de Western Range Association o mis empleadoras Bonnie y David Little.

3. Puedo hablar, leer y escribir en español. Proporcioné información para esta declaración en español y pude hacer todos los cambios necesarios para ser completamente veraz. Esto se me leyó línea por línea y pude hacer que se repitiera todo lo que quería, y pude cambiar todo lo que consideré que debía cambiarse.

4. Soy un empleado de Bonnie y David Little. He trabajado para los Little desde aproximadamente 2016 hasta el presente (5 años) como pastor de ovejas, principalmente en la pradera.

5. Me ofrecieron un empleo formal comunicado por los agentes de Western Range Association, y durante el período de tiempo anterior de 5 años, no he trabajado en los Estados Unidos como pastor de ovejas para nadie más que Bonnie y David Little.

6. Dado que he trabajado para los Littles durante aproximadamente 5 años, y no puedo recordar fechas exactas, estoy dando mi memoria general de mi horario diario y semanal como pastor de ovejas. Cada año es diferente, pero mis horas y deberes no han cambiado mucho.

7. Sólo pastoreo ovejas en Nevada. No hago ningún trabajo de parición y hago poco o ningún trabajo de rancho. Tengo un compañero de pastoreo con el que comparto responsabilidades todo el año. Sólo hay unas dos semanas al año en las que trabajo solo, y eso es porque paso algunos días trabajando en las montañas. Salvo esas dos semanas, siempre tengo un compañero de pastoreo.

8. En general, y no durante la época de partos, las ovejas tienen una rutina bastante estándar,

1 como sigue:

2 a. Las ovejas se acuestan desde justo después de la puesta de sol hasta justo antes del
3 amanecer. Las ovejas no necesitan ninguna atención por mi parte durante este período de
4 tiempo en el que duermen. No soy responsable de las ovejas por la noche porque hay perros
5 proporcionados por los Littles que protegen a las ovejas por la noche. Sé que no soy
6 responsable de las ovejas por la noche porque los perros blancos están entrenados para
7 proteger a las ovejas por la noche de depredadores como los coyotes. Las ovejas normalmente
8 duermen lejos de donde yo duermo, así que rara vez oigo ladrar a los perros. Incluso cuando
9 oigo los ladridos de los perros, no me fijo en las ovejas porque está oscuro y están demasiado
10 lejos.

11 b. La mayoría de los días, me levanto aproximadamente a las 5:00 a.m. y preparo el
12 desayuno. Aproximadamente entre las 6:30 y las 7:00 de la mañana, mi compañero de pastoreo
13 y yo nos dirigimos hacia las ovejas montados a caballo. Las ovejas suelen estar a unos 30
14 minutos a caballo de donde dormimos si vamos a paso lento.

15 c. Mi compañero de pastoreo y yo solemos dividir nuestras responsabilidades. Una vez
16 que contamos todas las ovejas, uno de nosotros regresa a nuestro campamento
17 aproximadamente a las 8:30-9:00 a.m. El pastor que regresa primero al campamento suele
18 cocinar el almuerzo, cortar leña y descansar. El que se queda con las ovejas espera mientras las
19 ovejas pastan, beben y empiezan a echar la siesta. Si me quedo con las ovejas y he oído
20 ladridos la noche anterior, también miraré si se ha matado alguna oveja durante la noche.
21 Normalmente, el pastor que se queda con las ovejas vuelve al campamento aproximadamente a
22 las 10:30-11:00 am. Las ovejas no necesitan nuestra atención cuando volvemos al campamento,
23 ya que beben agua, duermen y pastan durante este período de tiempo.

24 d. Mientras las ovejas pastan, duermen y beben, mi compañero de pastoreo y yo nos
25 quedamos en nuestro campamento y comemos, descansamos y hacemos actividades
26 recreativas. Puedo tomar siestas durante este tiempo. A menudo también me ducho, lavo mi
27 ropa o hablo con mi familia por teléfono porque no estoy trabajando.

28 e. Por la tarde, aproximadamente entre las 2:00 y 3:00 p.m., mi compañero de pastoreo y
yo montamos a caballo hacia las ovejas. Nos quedamos con las ovejas mientras se despiertan,
pastan y beben. Uno de nosotros suele volver al campamento aproximadamente a las 4:00 p.m.
para empezar a preparar la cena. El pastor que se queda con las ovejas se queda hasta
aproximadamente las 5:00 a 5:30 p.m. cuando las ovejas terminan de pastar y beber y
encuentran su área para acostarse por la noche.

f. El pastor que se queda con las ovejas por la tarde normalmente regresa al campamento
aproximadamente a las 5:00-5:30 p.m. Después de esa hora, no realizo ningún trabajo y soy
libre para descansar, comer, jugar o hacer otras actividades personales.

9. Mi horario varía un poco dependiendo de lo que hagan las ovejas y de cómo mi compañero de
pastoreo y yo dividimos el trabajo. Por lo general, yo soy el pastor que se queda con las ovejas mientras
mi compañero es el que vuelve antes a nuestro campamento, pero no siempre es así. A menudo hay
días en los que soy yo quien regresa al campamento temprano mientras mi compañero se queda con las
ovejas. Ese es mi día promedio.

10. Durante el verano me dan un rifle para los depredadores del día. Este rifle tiene una mira

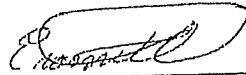
1 normal, y no tiene ningún otro visor o mira con capacidad de visión nocturna. Por lo tanto, el rifle sólo es
2 útil durante el día. Sé que no se me permite utilizar el rifle en la oscuridad.

3 11. Cuando hay un problema de coyotes que matan muchas ovejas, mi patrón llama a los tramperos
4 del gobierno para que vengan a matar a los coyotes. Normalmente utilizan un helicóptero para encontrar
5 y matar a los coyotes. Yo y los demás empleados solemos ser los que notamos los problemas con los
6 coyotes y avisamos a nuestro patrón.

7 12. Me pagan aproximadamente \$850.00 dólares dos veces al mes como pastor de ovejas en
8 Nevada. Además, aproximadamente una vez al año, antes de regresar a Perú, recibo un bono de
9 aproximadamente \$3,000 dólares.

10 Por la presente declaro bajo pena de perjurio bajo las leyes de los Estados Unidos y del Estado de
11 Nevada que lo anterior es verdadero y correcto a mi mejor saber y entender.

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13 Fecha: Este 09 de Noviembre 2021.

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15 Erasmo Vera Arteaga
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STATEMENT OF ERASMO VERA ARTEAGA

Erasmo Vera Arteaga made the following Statement:

1. I am over the age of eighteen and I have personal knowledge of the items expressed in this Statement. I understand that I am making these Statements under penalty of perjury and I know I must tell the truth. I have provided this information in Spanish.

2. I am making this Statement freely and have not been subjected to coercion, threats or promised any benefit for myself or my family and I am not in fear of retaliation by Western Range Association or my employers, Bonnie and David Little.

3. I am able to speak, read and write Spanish. I provided information for this Statement in Spanish and was able to make all the changes needed so that it is completely true. This was read to me line by line and I could request a repetition whenever I wanted one; I could also change everything that I considered should be changed.

4. I am an employee of Bonnie and David Little. I have worked for the Littles since approximately 2016 up to the present time (5 years) as a Sheepherder and I mainly worked in the pasture.

5. I was contacted by the Western Range Association agents who made me a formal offer of employment. I haven't worked for anyone in the United States as a Sheepherder in the last 5 years except for Bonnie and David Little.

6. Since I have worked for the Littles for approximately 5 years, and I can't remember the exact dates; I am providing my general recollection of my daily and weekly schedule as a Sheepherder. Each year is different but my hours and duties haven't changed much.

7. I only do sheep herding in Nevada. I don't perform any birthing duties and I do little ranch work or none at all. I work with a co-worker and I share the sheepherding duties with him throughout the entire year. I only work alone about two weeks of the year, and that is because I spend some days working in the mountains. With the exception of those two weeks, I always work with another Sheepherder.

8. Generally, when it's not the birthing season, the sheep have the following routine that is quite standard:

- 1 a. The sheep lay down to sleep a little after sunset until just before early morning. I don't
2 need to watch the sheep during this time period, since they are asleep. At night, I am not
3 responsible for the sheep because the Littles provide dogs to guard the sheep at night. I
4 know that I am not responsible for the sheep during the night because the white dogs are
5 trained to guard the sheep at night from predators, such as coyotes. The sheep normally
6 sleep far from the place where I sleep, so I rarely hear the dogs barking. I don't even focus
7 on the sheep when I hear the dogs barking because it is dark and they are too far away.
- 8 b. Most days I get up at approximately 5:00 a.m. and prepare breakfast. At about 6:30 to 7:00
9 a.m., my co-worker Sheepherder and I head towards the sheep on horseback. It takes about
10 30 minutes to get to the sheep on horseback from the place where we sleep if we ride at a
11 slow pace.
- 12 c. The other Sheepherder and I often split our responsibilities. After we count all the sheep,
13 one of us returns to our camp at approximately 8:30 - 9:00 a.m. The Sheepherder who
14 returns to camp first usually cooks lunch, chops wood and rests. The person who stays
15 with the sheep waits while the sheep drink, graze and start to nap. If I tend to the sheep
16 and heard barking the night before, I also check to see if any sheep were killed during the
17 night. Normally the Sheepherder who stays to watch the sheep will return to the camp at
18 approximately 10:30 a.m. to 11:00 a.m. The sheep do not need our care when we return to
19 the camp, since they drink water, sleep and graze during this time period.
- 20 d. My fellow Sheepherder and I stay in our camp to eat, rest and engage in recreational
21 activities while the sheep graze, sleep and drink water. I can take a nap during that time.
22 I often shower, do my laundry or talk on the phone with my family also, since I am not
23 working.
- 24 e. In the afternoon, between approximately 2:00 and 3:00 p.m., the other Sheepherder and I
25 head towards the sheep on horseback. We tend the sheep while they wake up, graze and
26 drink water. Usually, one of us returns to the camp at approximately 4:00 p.m. to start
27 supper. The Sheepherder who stays with the sheep remains there until approximately 5:00
28 - 5:30 p.m. while the sheep finish grazing, drinking and find the area where they will lay
down for the night.
- f. The Sheepherder who stays with the sheep in the afternoon usually returns to camp at
approximately 5:00 - 5:30 p.m. I do not do any work after that time and I am free to rest,
eat, play or engage in other personal activities.

9. My schedule varies a little depending on what the sheep are doing and how the other
Sheepherder and I divide the work. I am generally the Sheepherder who stays with the sheep
while my co-worker returns to our camp early, but that is not always the case. Frequently there

1 are days when I am the one who returns to the camp early while my co-worker stays with the
2 sheep. That is my typical day.

3 10. I receive a rifle to use against predators during the day in summer. The rifle has a normal
4 sight and doesn't have any other [rifle] visor or a sight with night vision capacity. Therefore, the
5 rifle can only be used during the day. I know that I am not allowed to use it when it is dark out.

6 11. Whenever there's a coyote problem and they kill lots of sheep, my boss calls the government
7 trappers to come out to kill the coyotes. They normally use a helicopter to locate and kill the
8 coyotes. The other employees and I are frequently the ones who notice the coyote problems and
9 we notify our boss.

10 12. I am paid approximately \$850.00 twice a month as a Sheepherder in Nevada. I also receive
11 a bonus of approximately \$3,000 about once a year, before I return to Peru.

12 I declare, under penalty of perjury pursuant to the laws of the United States and the State of
13 Nevada, that the above is true and correct to the best of my knowledge and understanding.

14 Dated: this 9th day of November, 2021.

[Signature]

Erasmo Vera Arteaga

**DECLARATION AND CERTIFICATION OF
CERTIFIED COURT INTERPRETER**

I, JANET GREEN, hereby declare that I am a Certified Court Interpreter. I successfully passed the Nevada Court Certification exam and am certified by the State of California Judicial Council to interpret from English to Spanish and Spanish to English. My Certification Number is 300785.

I further verify that the following document and was correctly translated from Spanish into English.

DECLARATION OF ERASMO VERA ARTEAGA

I declare to the best of my abilities and belief, that these documents are a true and correct translation of the Spanish text of the original documents, as supplied to me by:

Ruben Burnias

Lily Regalado

services@languagelit.com

Language Litigation Services

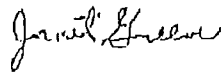
P.O. Box 1203

Pebble Beach, CA 93953

855-484-8377

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

This declaration is signed this 11th day of November 2021 (11/11/2021), in Menifee, California.



[Signature]

JANET GREEN 11/11/2021

This is a true and correct
translation by JANET GREEN
Court Interpreter - Spanish
Judicial Council Certification #300785

EXHIBIT 14

FILED UNDER SEAL

EXHIBIT 14

RA 01649

DECLARACIÓN DE MARCIAL JORGE MOTTA

Marcial Jorge Motta declara y dice lo siguiente:

1. Soy mayor de dieciocho años y tengo conocimiento personal de los asuntos en esta Declaración. Entiendo que hago estas declaraciones bajo pena de perjurio. Proporcioné esta información en español.

2. Doy esta declaración libremente. No es el resultado de coerción, amenazas o promesas de ningún beneficio para mí o mi familia, y no temo represalias por parte de Western Range Association o mi empleador Ellison Ranch.

3. Puedo hablar, leer y escribir en español. Mi ciudad de origen es Arequipa en Peru. He dado la información para esta declaración en español y pude hacer todos los cambios necesarios para ser completamente veraz. Pude cambiar todo lo que consideré necesario.

4. Estoy empleado como pastor de ovejas para Ellison Ranch. He trabajado para Ellison Ranch desde aproximadamente 2018 al presente (3 años).

5. Western Range Association me extendió una oferta de empleo formal. En mi primer año en Ellison Rancho, hice mucho trabajo en el rancho, pero ahora soy principalmente un pastor de ovejas.

6. He trabajado para Ellison Ranch por aproximadamente 3 años, pero no puedo recordar fechas exactas. Estoy dando mi memoria general de mis horarios como pastor de ovejas en Ellison Ranch.

7. Yo pastoreo ovejas en Nevada y también hago algunos trabajos ocasionales de parición y ganadería según sea necesario.

8. Mi año se divide principalmente entre meses en los que pastoreo ovejas en el desierto y meses en los que cuido ovejas que están en un corral. Normalmente, esto se divide en aproximadamente 9 meses pastoreando ovejas en el desierto y 3 meses cuidando ovejas que están acorraladas.

9. Generalmente, durante los 9 meses en que no están pariendo o acorraladas, las ovejas de Ellison Ranch tienen una rutina en el desierto, como sigue:

- a. Las ovejas se acuestan desde justo después de la puesta de sol hasta justo antes del amanecer. Perros blancos proporcionados por Ellison Ranch protegen a las ovejas por la noche. No duermo afuera con las ovejas porque sería demasiado peligroso con posibles depredadores como culebras o coyotes. Si sospecho que las ovejas están en peligro durante la noche, revisaré el rebaño por la mañana, pero sé que no debo caminar hacia el rebaño por la noche.

- b. Dependiendo de la época del año, me despierto aproximadamente a las 5:00 -6:00 a.m. y preparo el desayuno. Aproximadamente a las 6:00 a.m. caminaré hacia las ovejas. La distancia a la que se encuentran las ovejas de mi remolque de campamento dependerá de las condiciones de alimentación y de dónde hayan pastado las ovejas. Normalmente, caminaré entre 40 minutos y una hora para llegar a las ovejas. Si pidiera un caballo, Ellison Ranch me proporcionaría uno, pero elijo caminar porque tendría que cuidar del caballo.
- c. Me quedo con las ovejas por la mañana hasta aproximadamente las 10:30-11:00 a.m. mientras las ovejas beben, pastan y comienzan a echarse una siesta. A esa hora vuelvo a mi remolque del campamento de ovejas.
- d. Cuando estoy en mi remolque de campamento de ovejas durante las horas de almuerzo, no atiendo a las ovejas porque ellas beben agua, duermen y pastan durante este período.
- e. Mientras las ovejas pastan, duermen y beben, tengo tiempo para preparar el almuerzo, comer, lavar mi ropa o llamar a mi familia por teléfono si tengo servicio de celular. El tiempo libre que tengo durante el almuerzo varía según la época del año.
- f. En la tarde, después de haber terminado de cocinar, comer, lavar mi ropa, o hacer otras cosas similares, usaré un visor de larga vista que tengo para mirar a las ovejas. Si veo que las ovejas ya están donde tienen que estar para pasar la noche y no requieren nada más de mí, he terminado con el trabajo del día y me quedo en el remolque del campamento de ovejas para el resto de la noche. Si miro a través de mi visor de larga vista y veo que las ovejas requieren atención, caminaré hacia ellas. Me quedo en mi remolque del campamento de ovejas y no camino hacia las ovejas por la tarde aproximadamente 2 días de la semana.
- g. Los días en los que voy con las ovejas por la tarde, me quedo con ellas durante unas horas mientras comen, beben y empiezan a encontrar su lugar para dormir por la noche. En promedio, estaré con las ovejas por la tarde de 2 a 3 horas.
- h. Una vez que las ovejas han encontrado su lugar para dormir durante la noche y no requieren más atención de mi parte, me dirijo a mi remolque de campamento de ovejas. Durante el resto de la tarde y la noche, preparo la cena, como y descanso. Estas horas son mi tiempo libre y sé que no se espera que trabaje.

10. Mi horario varía dependiendo de la época del año, de lo que hagan las ovejas cada día y de si estoy cuidando a las ovejas en campo libre o en un corral. Sin embargo, el horario que he proporcionado es un reflejo exacto de lo que son muchos días para mí como pastor de ovejas mientras las ovejas están en campo libre.

11. Ellison Ranch no me ha dado un rifle.

12. Me pagan aproximadamente 1,750 dólares al mes como pastor de ovejas. Además, a menudo recibo un bono una vez al año de aproximadamente 350 a 450 dólares.

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1 13. Mis horas varían según la época del año. No puedo dar una estimación precisa de cuántas horas
2 trabajo en un día o una semana en promedio porque eso no es algo que haya considerado o contado.

3 Por la presente declaro bajo pena de perjurio bajo las leyes de los Estados Unidos y el estado de
4 Nevada que lo anterior es verdadero y correcto a mi mejor saber y entender.

5 Fecha: Este 16 de Noviembre, 2021.

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7 Marcel Jorge Motta
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STATEMENT OF MARCIAL JORGE MOTTA

Marcial Jorge Motta made the following Statement:

1. I am over the age of eighteen and I have personal knowledge of the things expressed in this Statement. I understand that I am making these Statements under penalty of perjury. I have provided this information in Spanish.

2. I am making this Statement freely and have not been subjected to coercion, threats or promised any benefit for myself or my family, and I am not in fear of retaliation by Western Range Association or my employer, Ellison Ranch.

3. I am able to speak, read and write Spanish. I am originally from the city of Arequipa, Peru. I have provided information for this Statement in Spanish and was able to make all the changes so that it is completely true. I could change anything if I considered that it needed to be changed.

4. I am employed as a Sheepherder for Ellison Ranch. I have worked for Ellison Ranch from approximately 2018 to the present time (3 years).

5. Western Range Association made me a formal offer of employment. During my first year at Ellison Ranch, I did a lot of work on the ranch, but I am now primarily a Sheepherder.

6. I have worked for Ellison Ranch for approximately 3 years, but I can't remember the exact dates. I am providing my general recollection of my schedules as a Sheepherder on Ellison Ranch.

7. I tended sheep in Nevada and I also occasionally perform some birthing duties and work with livestock when it's necessary.

8. My year is primarily divided into months that I tended sheep in the desert and months when I cared for corralled sheep. Normally this is divided into approximately 9 months tending sheep in the desert and 3 months to care for the corralled sheep.

9. Generally, during the 9 months when they are not birthing or corralled, the sheep at Ellison Ranch have the following routine in the desert:

- a. The sheep lay down to sleep a little after sunset until just before early morning. The Ellison Ranch provided white dogs to protect the sheep at night. I don't sleep outside with the sheep because it would be too dangerous with the possibility of predators such as snakes or coyotes. If I suspect that the sheep are in danger at night, I check the flock in the morning, but I know that I must not walk towards the flock at night.

- 1 b. Depending on the time of the year, I wake up at approximately 5:00 – 6:00 a.m. and prepare
2 breakfast. At about 6:00 a.m., I walk towards the sheep. The distance between my trailer in
3 the camp and the location of the sheep depends on the feeding conditions and where the sheep
4 may have grazed. I normally walk between 40 minutes and one hour to get to the sheep. If I
5 were to request a horse, Ellison Ranch would provide me with one, but I choose to walk
6 because I would have to take care of the horse.
- 7 c. I stay with the sheep in the morning until approximately 10:30 – 11:00 a.m. while the sheep
8 drink, graze and start to nap. That is when I returned to my trailer at the sheep camp.
- 9 d. When I am in my trailer at the sheep camp during lunchtime, I do not tend the sheep because
10 they drink water, sleep and graze during that time period.
- 11 e. I have time to prepare lunch, eat, do my laundry or call my family if I have cell service, while
12 the sheep graze, sleep and drink. The amount of time that I have free during lunch varies
13 according to the time of the year.
- 14 f. In the afternoon, after I finish cooking, eating and doing my laundry, or things like that, I use
15 my long-range visor to watch the sheep. If I see that the sheep are already at the location
16 where they'll spend the night and don't need anything else from me, my work is done for the
17 day and I stay in my trailer at the sheep camp for the rest of the night. If I use my long-range
18 visor and I see that they sheep require attention, I walk towards them. I stay in my trailer at
19 the sheep camp and don't walk to where the sheep are in the afternoon approximately 2 days
20 per week.
- 21 g. On the days that I spend the afternoon with the sheep, I stay with them a few hours while they
22 eat, drink and start looking for a place to sleep for the night. On the average, I spend 2 to 3
23 hours with the sheep in the afternoon.
- 24 h. Once the sheep have found the place where they'll sleep that night and don't require further
25 attention from me, I head towards my trailer at the sheep camp. I spent the rest of the afternoon
26 and the night preparing supper, eating and resting. Those hours are my spare time and I know
27 that no one expects me to work.

28 10. My schedule varies depending on the season of the year, what the sheep are doing
each day and if I am tending the sheep on the open range or in a corral. Nevertheless, the schedule
I provided is an accurate reflection of my many days as a Sheepherder while the sheep are on the
open range.

11. Ellison Ranch has not given me a rifle.

12. I am paid approximately \$1,750.00 a month as a Sheepherder. In addition, I often
receive a yearly bonus of approximately \$350.00 to \$450.00.

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13. My hours vary according to the season of the year. I can't give an exact estimate of how many hours I work in an average day or one week because it's not something I have considered or counted.

I declare, under penalty of perjury pursuant to the laws of the United States and the State of Nevada, that the above is true and correct to the best of my knowledge and understanding.

Dated: this 11th day of the month of November, 2021.

[Signature]

Marcial Jorge Motta

**DECLARATION AND CERTIFICATION OF
CERTIFIED COURT INTERPRETER**

I, JANET GREEN, hereby declare that I am a Certified Court Interpreter. I successfully passed the Nevada Court Certification exam and am certified by the State of California Judicial Council to interpret from English to Spanish and Spanish to English. My Certification Number is 300785.

I further verify that the following document and was correctly translated from Spanish into English.

DECLARATION OF MARCIAL JORGE MOTTA

I declare to the best of my abilities and belief, that these documents are a true and correct translation of the Spanish text of the original documents, as supplied to me by:

Ruben Burnias

Lily Regalado

services@languagelit.com

Language Litigation Services

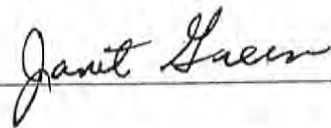
P.O. Box 1203

Pebble Beach, CA 93953

855-484-8377

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

This declaration is signed this 14th day of November 2021 (11/14/2021), in Menifee, California.



[Signature]

JANET GREEN 11/14/2021

**This is a true and correct
translation by JANET GREEN
Court Interpreter - Spanish
Judicial Council Certification #300785**

EXHIBIT 15

FILED UNDER SEAL

EXHIBIT 15

RA 01657

DECLARACIÓN DE OSCAR TAIPE

Oscar Taipe declara y dice lo siguiente:

1. Soy mayor de dieciocho años y tengo conocimiento personal de los asuntos expuestos en esta Declaración. Entiendo que hago estas declaraciones bajo pena de perjurio. He proporcionado esta información en español.

2. Doy esta declaración libremente. No es el resultado de la coerción, amenazas o promesas de cualquier beneficio para mí o mi familia, ni temo represalias por parte de Western Range Association o mi empleador Ellison Ranch.

3. Puedo hablar, leer y escribir en español. Proporcioné información para esta declaración en español y pude hacer todos los cambios necesarios para ser completamente veraz. Pude cambiar todo lo que consideré necesario.

4. Trabajo para Ellison Ranch principalmente como pastor de ovejas de la pradera, aunque ocasionalmente trabajo en el rancho. He trabajado para Ellison Ranch desde aproximadamente 2013 hasta el presente (8 años). Vine aquí desde Huancayo, Perú.

5. Antes de trabajar como pastor de ovejas en Ellison Ranch, trabajé como pastor de ovejas de pradera y de rancho para una compañía en California.

6. He trabajado para Ellison Ranch por aproximadamente 8 años, así que no puedo recordar fechas exactas y estoy dando mi memoria general de mi horario diario y semanal como pastor de ovejas, aunque puede diferir de un año a otro.

7. Me dedico exclusivamente al pastoreo de ovejas en Nevada y también a la cría de ovejas y a la ganadería en Nevada. Mi trabajo principal es el de pastor de ovejas.

8. Generalmente y no durante la temporada de partos, las ovejas del Ellison Ranch tienen una rutina bastante estándar que es generalmente, pero no siempre:

- a. Las ovejas se acuestan desde justo después de la puesta de sol hasta justo antes del amanecer. Hay perros proporcionados por Ellison Ranch que se encargan de proteger a las ovejas por la noche. Si las ovejas están lo suficientemente cerca de mi remolque de campamento de ovejas y oigo una conmoción con las ovejas o los perros en la noche, puedo salir y tratar de determinar lo que está causando la conmoción. No salgo hacia las ovejas para ver si hay algún peligro, ya que suelen estar a una milla de distancia, lo que me llevaría 30 minutos a pie. Esto no es una ocurrencia frecuente.
- b. Me levanto aproximadamente a las 5:00 -6:00 a.m. dependiendo de la época del año y preparo el desayuno. Alrededor de las 6:00 - 7:00 a.m., camino hacia las ovejas. El tiempo

1 para caminar hacia las ovejas puede cambiar dependiendo de lo lejos que duerman las
2 ovejas, pero en promedio el tiempo para caminar hacia ellas cuando están a una milla de
3 distancia es aproximadamente 30 minutos.

- 4 c. Normalmente, estaré físicamente con las ovejas hasta aproximadamente las 10:30-11:00
5 a.m. mientras las ovejas beben, pastan y comienzan a echarse una siesta. Vuelvo a mi
6 remolque del campamento de ovejas, lejos de las ovejas, alrededor de las 11:00 a.m.
7 d. Las ovejas no necesitan mi atención cuando vuelvo al campamento, ya que beben agua,
8 duermen y pastan durante este periodo mientras estoy alejado de ellas.
9 e. Mientras las ovejas pastan, duermen y beben, yo cocino, almuerzo, descanso, lavo mi ropa
10 y, si tengo cobertura de teléfono móvil, hablo con mi familia por teléfono. No trabajo durante
11 estas horas en mi campamento.
12 f. En la tarde, empiezo a caminar hacia las ovejas cuando empiezan a despertarse de su
13 siesta. Aunque esta hora cambia en relación con el tiempo del año, lo común es que sea
14 entre las 2:00 p.m. y las 2:30 p.m. Me quedaré con las ovejas durante unas horas mientras
15 pastan, beben y se preparan para ir a dormir.
16 g. Una vez que las ovejas terminan de beber, pastar y han encontrado su lugar para dormir por
17 la noche, me dirijo a mi campamento. Durante el resto de la tarde y la noche, no hago ningún
18 trabajo, sino que cocino, como, descanso o hago otras actividades personales.
19 h. Entiendo que no se espera que yo trabaje por la noche después de que las ovejas se
20 acuesten.

21 9. Mi horario varía según la temporada y lo que hagan las ovejas. Sin embargo, el horario
22 que he proporcionado es un reflejo preciso de lo que muchos días son para mí como un pastor de ovejas
23 en Ellison Ranch.

24 10. Ellison Ranch no me ha dado un rifle.

25 11. A final de mes, mi patrón me lleva a la ciudad, donde puedo comprar ropa, o usar el
26 banco para enviar dinero a mi familia en mi casa.

27 12. Me pagaban aproximadamente 1,750 dólares al mes como pastor de ovejas en Nevada.
28 Además, yo recibí un bono una vez al año de aproximadamente 400 a 500 dólares.

13. Mi horario varía según la época del año. Estimo que trabajo entre 47 y 48 horas a la
semana.

Por la presente declaro, bajo pena de perjurio en virtud de las leyes de los Estados Unidos y del
Estado de Nevada, que lo anterior es cierto y correcto a mi mejor saber y entender.

Fecha: Este 11 de 11, 2021

Oscar Taipei

Oscar Taipei

STATEMENT OF OSCAR TAIPE

Oscar Taipe made the following Statement:

1. I am over the age of eighteen and I have personal knowledge of the subjects expressed in this Statement. I understand that I am making these Statements under penalty of perjury. I have provided this information in Spanish.

2. I am making this Statement freely and have not been subjected to coercion, threats or promised any benefit for myself or my family, and I am not in fear of retaliation by Western Range Association or my employer, Ellison Ranch.

3. I am able to speak, read and write Spanish. I have provided information for this Statement in Spanish and was able to make all the changes so that it is completely true. I could change anything if I considered it necessary.

4. I primarily work for Ellison Ranch for a Shepherd in the pasture, although I occasionally work at the ranch. I have worked for Ellison Ranch from approximately 2013 to the present time (8 years). I came here from Huancayo, Peru.

5. Prior to working as a Shepherd at Ellison Ranch, I worked as a Shepherd for pastured and ranched sheep for a company in California.

6. I have worked for Ellison Ranch for approximately 8 years, but I can't remember the exact dates, so I am providing my general recollection of my daily and weekly schedules as a Shepherd, although one year can differ from another.

7. I exclusively worked tending sheep in Nevada and I also raised sheep and livestock in Nevada. My primary job was a Shepherd.

8. Generally, outside of the birthing season, the Ellison Ranch sheep generally follow a standard routine which was almost always:

- a. The sheep laid down to sleep a little after sunset until just before early morning. The Ellison Ranch provided dogs to protect the sheep at night. If the sheep were close enough to my trailer at the sheep camp and I hear a commotion from the sheep or the dogs at night, I can go out to try to determine what's causing the commotion. I do not go out towards the sheep to check for danger since they are often one mile away, and it would take me 30 minutes to get there on foot. This doesn't happen often.
- b. Depending on the time of the year, I wake up at approximately 5:00 – 6:00 a.m. and prepare breakfast. At about 6:00 - 7:00 a.m., I walk towards the sheep. The time it takes

- 1 to walk to the sheep may change, depending on how far away the sheep sleep, but on the
2 average, they are one mile away and it takes approximately 30 minutes.
3 c. Normally, I am with the sheep until approximately 10:30 – 11:00 a.m. while the sheep
4 drink, graze and start to nap. At approximately 11:00 a.m., I returned to my trailer at the
5 sheep camp, far from the sheep.
6 d. When I return to camp, the sheep don't need my attention, since they drink, sleep and
7 graze during this time, while I'm away from them.
8 e. While the sheep graze, sleep and drink, I cook, have lunch, rest, do my laundry or talk to
9 my family on the phone, if I have cell service. I don't work during the hours I am at my
10 camp.
11 f. In the afternoon, I start walking towards the sheep when they start awakening from their
12 nap. Although the time varies depending on the time of the year, it is usually between
13 2:00 p.m. and 2:30 p.m. I stay with the sheep for a few hours while they graze, drink and
14 get ready to sleep.
15 g. When the sheep are done drinking, grazing and have found where they'll sleep for the
16 night, I head back to my camp. I don't do any work for the rest of the afternoon and night.
17 Instead, I cook, eat, rest or engage in other personal activities.
18 h. I understand that no one expects me to work at night after the sheep lay down to sleep.
19
20 9. My schedule varies depending on the season and what the sheep are doing. Nevertheless,
21 the schedule I provided is an accurate reflection of how I spend many days as a Sheepherder on
22 Ellison Ranch.
23 10. Ellison Ranch has not given me a rifle.
24 11. My boss takes me into town at the end of the month, where I can purchase clothes or make
25 a bank transaction to send money to my family at home.
26 12. They pay me approximately \$1,750.00 a month as a Sheepherder in Nevada. In addition,
27 I received a yearly bonus of approximately \$400.00 to \$500.00.
28 13. My schedule varies according to the season of the year. I estimate that I work between 47 and
48 hours a week.

I hereby declare, under penalty of perjury pursuant to the laws of the United States and the
State of Nevada, that the above is true and correct to the best of my knowledge and understanding.
Dated: this 11th day of the month of 11, 2021.

[Signature]

Oscar Taipe

**DECLARATION AND CERTIFICATION OF
CERTIFIED COURT INTERPRETER**

I, **JANET GREEN**, hereby declare that I am a Certified Court Interpreter. I successfully passed the Nevada Court Certification exam and am certified by the State of California Judicial Council to interpret from English to Spanish and Spanish to English. My Certification Number is **300785**.

I further verify that the following document and was correctly translated from Spanish into English.

DECLARATION OF OSCAR TAIPE

I declare to the best of my abilities and belief, that these documents are a true and correct translation of the Spanish text of the original documents, as supplied to me by:

Ruben Burnias

Lily Regalado

services@languageit.com

Language Litigation Services

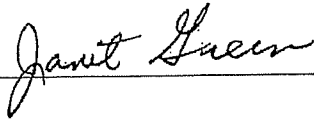
P.O. Box 1203

Pebble Beach, CA 93953

855-484-8377

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

This declaration is signed this **14th day of November 2021 (11/14/2021)**, in Menifee, California.



[Signature]

JANET GREEN 11/14/2021

This is a true and correct
translation by JANET GREEN
Court Interpreter - Spanish
Judicial Council Certification #300785

**DECLARATION AND CERTIFICATION OF
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Lily Regalado

services@languagelit.com

Language Litigation Services

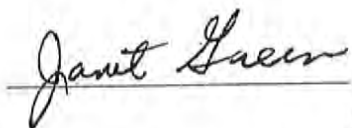
P.O. Box 1203

Pebble Beach, CA 93953

855-484-8377

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

This declaration is signed this **14th day of November 2021 (11/14/2021)**, in Menifee, California.



[Signature]

JANET GREEN 11/14/2021

**This is a true and correct
translation by JANET GREEN
Court Interpreter - Spanish
Judicial Council Certification #300785**

EXHIBIT 16

FILED UNDER SEAL

EXHIBIT 16

RA 01664

DECLARACIÓN DE FRANCISCO RIVERA SANCHEZ

Francisco Rivera Sánchez declara y dice lo siguiente:

1. Soy mayor de dieciocho años y tengo conocimiento personal de los asuntos expuestos en esta Declaración. Entiendo que hago estas declaraciones bajo pena de perjurio. He proporcionado esta información en español.

2. Doy esta declaración libremente y no como resultado de coerción, amenazas o promesas de cualquier beneficio para mí o mi familia. No temo represalias por parte de Western Range Association o de mi empleador Borda Land and Sheep.

3. Puedo hablar, leer y escribir en español. Soy de Zacatecas, México. He dado la información para esta declaración en español y pude hacer todos los cambios necesarios para ser completamente veraz. Pude cambiar todo lo que consideré necesario.

4. Empecé a trabajar para Ted Borda en 2020 después de que la Western Range Association me ofreció empleo formal. Desde que me contrataron, he trabajado como pastor de ovejas para Ted Borda.

5. No puedo recordar fechas exactas de los dos últimos años que he trabajado para Borda. Por lo tanto, estoy dando mi memoria general de mi horario como pastor de ovejas porque las horas y los deberes han sido bastante constantes los últimos 2 años.

6. Pastoreo ovejas principalmente en Nevada. De los 7.5 meses que pastoreo ovejas en la pradera, estimo que 3 de esos meses son en California.

7. Mi horario de trabajo a lo largo del año es de aproximadamente 7.5 meses pastoreando ovejas en campo abierto y 1.5 meses cuidando ovejas en el rancho.

8. En general, durante los 7.5 meses que pastoreo ovejas en la pradera, y no durante la temporada de partos, las ovejas tienen una rutina bastante estándar como sigue:

- a. Las ovejas se acuestan desde justo después de la puesta de sol hasta justo antes del amanecer. Normalmente las ovejas duermen a poca distancia de mi remolque de campamento de ovejas. Hay dos perros proporcionados por Ted Borda que se encargan de proteger a las ovejas por la noche. Si los perros ladran durante la noche, no me fijo en si hay algún peligro porque los perros suelen ladrar por motivos ajenos a ellos y no tendría sentido que me fijara en las ovejas cada vez que los perros ladran. Los perros están entrenados para proteger a las ovejas durante la noche, por lo que no es mi responsabilidad cuidarlas durante la noche.
- b. Me despierto alrededor de la hora en que sale el sol y preparo y como el desayuno. Esta hora cambia a lo largo del año. Después de desayunar, me fijo en dónde están las ovejas.

1 Si las ovejas están cerca de mi remolque y ya están pastando y bebiendo, no tengo que salir
2 de mi remolque y puedo simplemente volver a realizar mis actividades personales.
3 c. A frecuencia, las ovejas estarán a una distancia de hasta 1 hora caminando. Iré hacia las
4 ovejas y me quedaré con ellas durante aproximadamente 4 horas mientras beben, pastan y
5 empiezan a encontrar una zona para echar la siesta.
6 d. Normalmente vuelvo a mi remolque del campamento de ovejas aproximadamente a las 10
7 a.m. No tengo que estar con las ovejas ni cuidarlas durante este tiempo porque están
8 pastando, bebiendo y durmiendo solas.
9 e. Mientras las ovejas pastan, duermen y beben, yo cocino, como, lavo mi ropa o llamo a mi
10 familia. Este es mi tiempo libre, ya que no estoy trabajando. Aunque puede cambiar en base
11 a la época del año y a lo que hagan las ovejas en un día en particular, mi tiempo libre
12 durante este periodo en el que las ovejas duermen la siesta es de entre 5 y 6 horas.
13 f. Por la tarde, caminaré hacia las ovejas para asegurarme de que están en la zona en la que
14 tienen que dormir por la noche. Suelo estar entre 1 y 2 horas con las ovejas por la tarde
15 antes de volver a mi campamento mientras las ovejas terminan de pastar, beber y empiezan
16 a encontrar su lugar para dormir por la noche.
17 g. Una vez que vuelvo a mi remolque del campamento de ovejas, soy libre para realizar
18 actividades personales, como cocinar, comer o descansar. Mi trabajo del día ha terminado,
19 ya que los perros protegen a las ovejas por la noche.
20 9. Mi horario varía en función de la época del año y de hacia dónde se mueven las ovejas a lo largo
21 del día. El horario que he proporcionado es un reflejo preciso de lo que son la mayoría de los días para
22 mí como pastor de ovejas cuando pastoreo ovejas en el campo abierto.
23 10. Tengo un rifle proporcionado por mi patrón que puedo utilizar para protegerme de los
24 depredadores de día, como los coyotes. Este rifle está equipado con una mira normal, no tiene ninguna
25 capacidad de visión nocturna, y sólo es útil para el uso de día. Si hay un coyote que amenace a al
26 rebaño por la noche, será responsabilidad de los perros.
27 11. Trabajo solo la mayor parte del año como pastor de ovejas. En ocasiones, cuando mis ovejas
28 están en un terreno que dificulta el pastoreo, o cuando las ovejas están cerca de un pueblo, mi patrón me
asigna a otro pastor para que me ayude durante algunos días o semanas, según sea necesario. Mi
horario no cambia cuando recibo esta ayuda.
12. Me pagan aproximadamente 1,156 dólares cada dos semanas como pastor de ovejas. Mi patrón
también me da dos semanas de vacaciones pagadas al año.

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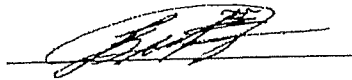
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1 13. Mis horas varían en función de la época del año y de lo que hagan las ovejas cada día. En
2 promedio, trabajo aproximadamente 6 horas al día, 42 horas a la semana.

3 Por el presente, declaro bajo pena de perjurio, de conformidad con las leyes de los Estados
4 Unidos y del Estado de Nevada, que lo anterior es cierto y correcto a mi mejor saber y entender.

5
6 Fecha: Este 12 de Noviembre, 2021.



Francisco Rivera Sanchez

STATEMENT OF FRANCISCO RIVERA SANCHEZ

Francisco Rivera Sanchez made the following Statement:

1. I am over the age of eighteen and I have personal knowledge of the matters expressed in this Statement. I understand that I am making these Statements under penalty of perjury. I have provided this information in Spanish.

2. I am making this Statement freely and have not been subjected to coercion, threats or promised any benefit for myself or my family, and I am not in fear of retaliation by Western Range Association or my employer, Borda Land and Sheep.

3. I am able to speak, read and write Spanish. I am from Zacatecas, Mexico. I have provided information for this Statement in Spanish and was able to make all the changes necessary so that it is completely true. I could change anything if I considered that it was necessary.

4. I started working for Ted Borda in 2020 after the Western Range Association made me a formal offer of employment. I have worked as a sheepherder for Ted Borda ever since I was hired.

5. I can't remember the exact dates for the last two years I have worked for Borda. Therefore, I am providing my general recollection of my schedule as a Shepherdherd because the hours and duties have been quite constant in the last 2 years.

6. I mainly tend sheep in Nevada. Out of the 7.5 months that I tend the sheep in the pasture, I estimate that 3 of those months are in California.

7. My work schedule throughout the year is approximately 7.5 months tending sheep on the open range and 1.5 months tending sheep on the ranch.

8. In general, during the 7.5 months when I tend sheep in the pasture, and not during the birthing season, the sheep have the following routine which is pretty standard:

a. The sheep lay down to sleep a little after sunset until just before early morning. Normally the sheep sleep pretty close to my trailer in the sheep camp. Ted Borda provided two dogs to protect the sheep at night. If the dogs bark at night, I don't check for danger because the dogs often bark for other reasons and it wouldn't make sense for me to check on the sheep every time dogs bark. The dogs are trained to protect the sheep at night, and it is not my responsibility to care for them at night.

- 1 b. I wake up at approximately sunrise and I prepare my breakfast and eat. This time changes
2 throughout the year. After breakfast, I check to see where the sheep are. If the sheep are
3 near my trailer and they're grazing and drinking, I don't have to leave my trailer and I can
4 simply resume my personal activities.
5 c. Frequently, it takes 1 hour to get to the sheep on foot. I head towards the sheep and stay
6 with them for approximately 4 hours while they drink, graze and start to locate the place
7 where they'll take their nap.
8 d. Normally, I return to my trailer at the sheep camp at approximately 10:00 a.m. I don't have
9 to be with the sheep or take care of them during this time because they graze, drink and sleep
10 by themselves.
11 e. I cook, eat, do my laundry or call my family while the sheep graze, sleep and drink. This is
12 my free time, since I am not working. Though this is subject to change based on the season
13 of the year and whatever the sheep are doing on a particular day; my free time during that
14 period while the sheep are napping is between 5 and 6 hours.
15 f. In the afternoon, I walk towards the sheep to make sure they're in the area where they have
16 to sleep at night. I usually spend between 1 and 2 hours with the sheep in the afternoon,
17 before returning to my camp while the sheep finish grazing, drinking and start to find the
18 spot where they'll sleep that night.
19 g. Once I return to my trailer at the sheep camp, I am free to engage in personal activities, such
20 as cooking, eating or resting. I am done working for the day, because the dogs guard the
21 sheep at night.

22 9. My schedule varies according to the season of the year and where the sheep move
23 throughout the day. The schedule I have provided accurately reflects the majority of my days as a
24 shepherd when I tend the sheep on the open range.

25 10. My boss provided me with a rifle which I can use to protect myself from predators
26 during the day, such as coyotes. This rifle is equipped with a normal sight, it doesn't have night
27 vision capacity and is only for use during the day. If a coyote threatens the flock at night, it is the
28 dogs' responsibility.

11. I only work the majority of the year as a shepherd. Occasionally, when my sheep
are on land where shepherding is difficult, or when the sheep are near a town, my boss assigns
another shepherd to assist me for some days or weeks, as necessary. My schedule doesn't change
when I receive that assistance.

12. I am paid approximately \$1,156.00 every two weeks as a Shepherd. In addition,
my boss gives me two weeks paid vacation per year.

13. My hours vary according to the season of the year and what the sheep are doing each day. I work approximately an average of 6 hours daily, 42 hours per week.

I declare, under penalty of perjury pursuant to the laws of the United States and the State of Nevada, that the above is true and correct to the best of my knowledge and understanding.

Dated: this 12th day of the month of November, 2021.

[Signature]

Francisco Rivera Sanchez

**DECLARATION AND CERTIFICATION OF
CERTIFIED COURT INTERPRETER**

I, JANET GREEN, hereby declare that I am a Certified Court Interpreter. I successfully passed the Nevada Court Certification exam and am certified by the State of California Judicial Council to interpret from English to Spanish and Spanish to English. My Certification Number is 300785.

I further verify that the following document and was correctly translated from Spanish into English:

DECLARATION OF FRANCISCO RIVERA SANCHEZ

I declare to the best of my abilities and belief, that these documents are a true and correct translation of the Spanish text of the original documents, as supplied to me by:

Lily Regalado

services@languagelit.com

Language Litigation Services

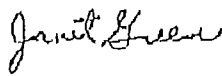
P.O. Box 1203

Pebble Beach, CA 93953

855-484-8377

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

This declaration is signed this 18th day of November 2021 (11/18/2021), in Menifee, California.



[Signature]

JANET GREEN 11/18/2021

This is a true and correct
translation by JANET GREEN
Court Interpreter - Spanish
Judicial Council Certification #300785

EXHIBIT 17

FILED UNDER SEAL

EXHIBIT 17

RA 01672

DECLARACIÓN DE RAÚL ULLOA

Raúl Ulloa declara y dice lo siguiente:

1. Soy mayor de dieciocho años y tengo conocimiento personal de los asuntos de esta Declaración. Entiendo que estoy haciendo estas declaraciones bajo pena de perjurio. He proporcionado esta información en español.

2. Doy esta declaración libremente. No es el resultado de la coerción, amenazas o promesas de cualquier beneficio para mí o mi familia, y no temo represalias por parte de Western Range Association o mi empleador Ted Borda.

3. Puedo hablar, leer y escribir en español. Soy de Zacatecas, México. Proporcioné esta información en español y pude hacer todos los cambios necesarios para ser completamente veraz. Pude cambiar todo lo que consideré necesario.

4. Empecé a trabajar para Ted Borda en 2015. Entre 2015 y el presente, he trabajado para Borda durante aproximadamente 4 años porque hubo dos años en los que no vine a Estados Unidos a trabajar.

5. Western Range Association me hizo una oferta formal de empleo. He trabajado como ovejero desde que empecé a trabajar para Ted Borda.

6. He trabajado para Ted Borda durante aproximadamente 4 años y por lo tanto no puedo recordar fechas exactas. Estoy dando mi memoria general de mi horario diario y semanal como un pastor de ovejas para Ted Borda como las horas y los deberes son bastante consistentes en los 6 meses que trabajo.

7. Pastoreo ovejas principalmente en Nevada. Ocasionalmente puedo pastorear ovejas en California dependiendo de donde esté pastando mi rebaño, pero no puedo distinguir si cruzo las fronteras estatales y cuándo lo hago.

8. Vengo a Estados Unidos para trabajar para Ted Borda desde aproximadamente finales de mayo y principios de junio hasta finales de noviembre o principios de diciembre. De estos seis meses, paso aproximadamente 5 meses pastoreando ovejas en campo abierto, y 1 mes cuidando ovejas que pueden estar cerca del rancho o encerradas. No hago ningún trabajo de parición ni de rancho.

9. En general, durante los 5 meses que pastoreo ovejas en campo abierto, las ovejas tienen una rutina bastante estándar de la siguiente manera:

- 1 a. Las ovejas se acuestan desde justo después de la puesta de sol hasta justo antes del
2 amanecer. Hay perros grandes proporcionados por Ted Borda que protegen a las ovejas por
3 la noche. Si escucho los ladridos de los perros por la noche no salgo a revisar porque los
4 perros pueden ladrar por otras razones que no sean para alertar de posibles peligros.
5 Incluso si los perros ladran para alertar de un depredador, no salgo afuera porque está
6 demasiado oscuro para ver a las ovejas con seguridad. Confío en que los perros protegerán
7 a las ovejas durante la noche.
- 8 b. Me despierto aproximadamente a las 6:00 a.m. y preparo el desayuno, aunque esta hora
9 puede variar dependiendo de dónde estén las ovejas. Normalmente, las ovejas duermen al
10 lado, o a la vista, de mi remolque de campamento para ovejas. Si termino de desayunar,
11 miro afuera y veo que las ovejas ya están donde deben estar y están pastando y bebiendo,
12 no hay necesidad de que esté con ellas y simplemente me quedaré en mi remolque
13 haciendo actividades personales
- 14 c. Sin embargo, la mayoría de las veces tendré que llevar a las ovejas a una zona donde
15 puedan pastar, beber y echar una siesta. Me quedo con las ovejas por la mañana durante
16 aproximadamente 2.5 a 3 horas mientras empiezan a echarse la siesta.
- 17 d. Cuando las ovejas están pastando, bebiendo y durmiendo la siesta, vuelvo a mi remolque de
18 campamento porque las ovejas no requieren mi cuidado durante este tiempo.
- 19 e. Mientras las ovejas pastan, duermen y beben, yo preparo el almuerzo, como, lavo mi ropa o
20 llamo a mi familia por teléfono. El tiempo libre que tengo durante el almuerzo varía según la
21 época del año, pero puede ser de hasta 7 ó 8 horas cuando los días son calurosos y las
22 ovejas duermen hasta muy tarde.
- 23 f. Por la tarde, cuando anticipo que las ovejas se están despertando, camino hacia ellas y me
24 quedo con ellas mientras se despiertan, pastan y beben. Normalmente estaré con las ovejas
25 por la tarde entre 2 y 3 horas.
- 26 g. A veces las ovejas se dirigen solas a la zona cercana a mi remolque de campamento de
27 ovejas donde van a dormir. Si no lo hacen, las llevaré al lugar donde quiero que duerman.
28 Normalmente es una distancia corta de mi remolque de campamento.
- h. Una vez que las ovejas están en la zona adecuada para dormir, vuelvo a mi remolque de
campamento para ovejas. Durante el resto de la tarde y la noche no estoy trabajando y soy
libre para realizar actividades personales, como cocinar, comer o simplemente descansar.
10. Mi horario varía según la época del año y lo que hagan las ovejas. Sin embargo, el horario que

he proporcionado es un reflejo preciso de lo que son la mayoría de los días para mí como pastor de
ovejas en los 5 meses que mi rebaño está en la pradera.

11. Ted Borda me proporciona un rifle para la protección contra los depredadores del día. No uso
este rifle por la noche porque las miras no tienen ninguna función en la oscuridad y porque es más
seguro para mí simplemente permanecer en mi remolque si sospecho que hay un depredador afuera.
Los perros son los encargados de proteger a las ovejas por la noche.

12. Me pagan aproximadamente 1,156 dólares cada dos semanas como pastor de ovejas. También
recibo dos semanas de vacaciones pagadas cada año. Además, Ted Borda me da aproximadamente 40
dólares al mes para que pueda pagar un teléfono celular.

1 13. Mis horas varían dependiendo principalmente de dónde se encuentre mi rebaño, de lo que
2 hagan las ovejas cada día y la época del año. En promedio, durante los cinco meses que estoy
3 pastoreando ovejas en la pradera abierta, trabajo aproximadamente de 4 a 6 horas al día. En promedio,
4 trabajo aproximadamente 35 horas a la semana.

5 Por el presente, declaro, bajo pena de perjurio, en virtud de las leyes de los Estados Unidos y del
6 Estado de Nevada, que lo que antecede es cierto y correcto a mi mejor saber y entender.

7 Fecha: Este 12 de noviembre 2021.

8 Raul Gamaliel Ulloa Isidro

9 Raul Ulloa

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1. I am over the age of eighteen and I have personal knowledge of the things expressed in this Statement. I understand that I am making these Statements under penalty of perjury. I have provided this information in Spanish.

3. I am able to speak, read and write Spanish. I am from Zacatecas, Mexico. I provided information for this Statement in Spanish and was able to make all the necessary changes so that it is completely true. I could change anything if I considered that it necessary.

5. Western Range Association made me a formal offer of employment. I have worked as a Sheepherder since I started working for Ted Borda.

7. I primarily tend sheep in Nevada. I occasionally am able to do shepherding in California depending on where my flock is grazing, but I cannot distinguish if I cross over state boundary lines and when I do so.

28

1 9. Generally, during the 5 months that I tend sheep on the open range, the sheep have the
2 following routine which is quite standard:

- 3 a. The sheep lay down to sleep after sunset until just before just before early morning.
4 Ted Borda provided big dogs to protect the sheep at night. If I hear dogs barking, I
5 don't go outside because the dogs may bark for other reasons besides to warn of
6 possible dangers. Also, if the dogs bark to warn that there is a predator, I don't go
7 outside because it is too dark to see the sheep safely. I trust the dogs to guard the sheep
8 at night.
9 b. I wake up at approximately 6:00 a.m. and prepare breakfast, although this time may
10 vary depending on where the sheep may be. Normally, the sheep sleep to one side
11 from my trailer in the sheep camp, or in sight. If I finish breakfast, look outside and
12 see that the sheep are already where they ought to be and they're grazing and drinking;
13 they're no need to be with them and I simply stay in my trailer engaging in personal
14 activities.
15 c. Nevertheless, most of the time I have to guide the sheep to an area where they can
16 graze, drink and take a nap. I stay with the sheep in the morning for approximately
17 2.5 to 3 hours while they start to take their nap.
18 d. I return to my trailer at the camp while the sheep are grazing, drinking and napping
19 because the sheep do not require my care during that time.
20 e. I prepare lunch, eat, do my laundry or call my family while the sheep graze, sleep and
21 drink. The amount of time that I have free during lunch varies according to the time
22 of the year, but it may be up to 7 or 8 hours when days are hot days and the sheep sleep
23 very late.
- 24 f. In the afternoon, when I anticipate that the sheep are waking up, I walk towards them
25 and stay with them while they wake up, graze and drink. Normally, I am with the
26 sheep between 2 and 3 hours in the afternoon.
27 g. Sometimes the sheep guide themselves to the area near my trailer on the sheep camp
28 where they'll sleep. If they don't, I take them to the location where I want them to
29 sleep. It is normally a short distance from my trailer in the camp.
30 h. Once the sheep have found the appropriate place to sleep, I return to my trailer at the
31 sheep camp. I don't work for the rest of the afternoon and night and I am free to
32 engage in personal activities such as cooking, eating or simply resting.

33 10. My schedule varies depending on the season of the year, what the sheep are doing.
34 Nevertheless, the schedule I provided is an accurate reflection of most of my days as a Sheepherder
35 during the 5 months that my flock is in the pasture.

36 11. Ted Borda provides me with a rifle as protection against predators during the day. I
37 don't use this rifle at night because the sights don't work in the darkness and because it is safer for
38 me to have the rifle with me during the day.

1 me to simply stay in my trailer if I suspect there's a predator outside. The dogs are in charge of
2 guarding the sheep at night.

3 12. I am paid approximately \$1,156.00 every two weeks as a Sheepherder. In addition, I
4 receive two weeks of vacation pay each year. Ted Borda also gives me approximately \$40.00
5 monthly to pay for a cell phone.

6 13. My hours vary according mainly on where my flock happens to be, what the sheep are
7 doing each day and the season of the year. On an average, during the five months that I do
8 shepherding in the open pasture, I work approximately 4 to 6 hours daily. On the average, I work
9 approximately 35 hours weekly.

10 I hereby declare, under penalty of perjury pursuant to the laws of the United States and the
11 State of Nevada, that the above is true and correct to the best of my knowledge and understanding.

12 Dated: this 12th day of the month of November, 2021.

13 [Signature]

14 Raul Ulloa
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**DECLARATION AND CERTIFICATION OF
CERTIFIED COURT INTERPRETER**

I, JANET GREEN, hereby declare that I am a Certified Court Interpreter. I successfully passed the Nevada Court Certification exam and am certified by the State of California Judicial Council to interpret from English to Spanish and Spanish to English. My Certification Number is 300785.

I further verify that the following document and was correctly translated from Spanish into English:

DECLARATION OF RAUL ULLOA

I declare to the best of my abilities and belief, that these documents are a true and correct translation of the Spanish text of the original documents, as supplied to me by:

Lily Regalado

services@languagelit.com

Language Litigation Services

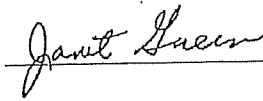
P.O. Box 1203

Pebble Beach, CA 93953

855-484-8377

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

This declaration is signed this 18th day of November 2021 (11/18/2021), in Menifee, California.



[Signature]

JANET GREEN 11/18/2021

This is a true and correct
translation by JANET GREEN
Court Interpreter - Spanish
Judicial Council Certification #300785

EXHIBIT 18

FILED UNDER SEAL

EXHIBIT 18

RA 01680

DECLARATION OF CESARIO YAURI GARCIA

Cesario Yauri Garcia hereby deposes and says as follows:

1. I am over eighteen years of age and have personal knowledge of the matters set forth in this Declaration, except as to the matters stated upon information and belief, and as to those matters, I believe them to be true. I am competent to testify to the matters contained herein and if called as a witness, I could and would competently testify to the information that this Declaration contains.

2. This declaration is freely given by me and not as a result of coercion, threats or promises of any benefit to me or my family.

3. I am able to speak and write in Spanish. Through an interpreter, I was able to make any and all changes that I felt were necessary or appropriate to this Declaration before I signed it. Specifically, the interpreter read it to me, line by line, and I was able to have the interpreter repeat anything that I requested and I was able to change anything that I felt needed to be changed.

4. I am an employee of El Tejon Sheep Company (hereinafter "El Tejon"). I have been working for El Tejon since July 20, 2006 to the present. During that time I have had all promises made to me by El Tejon fulfilled.

5. Other than the fact that I was recruited by and given the formal employment offer from Western Range Association, during the prior 3 year time period, I have not worked in the United States as a sheep herder for any other company than El Tejon.

6. Since I have worked for El Tejon for almost 10 years, and I cannot recall the exact dates we moved sheep from one location to another, I am giving my general memory of the schedule since it is similar each year, depending on feed and other environmental factors.

7. It is my understanding that the government issued permit allows El Tejon to graze sheep in the Mojave Desert, in California, from March 1 to June 1. However, based on feed conditions, the sheep are normally moved to Elko county around April 1 of each year.

8. This Mojave Desert area, in California, is very rural range land, it is the desert. There are no permanent structures, the roads that we take to get close to our herding areas are dirt and some

1 require 4x4 trucks to travel on these roads, our housing is a trailer that must be brought in by trucks
2 and there is no power. I work this rugged area by walking. This area is uncultivated and I do not
3 know acres or other means to measure how large it is. This area does not include feedlots or corrals,
4 they feed on natural habitat (grass, leaves, etc.). The grazing area is not near El Tejon's headquarters,
5 this is far away from the office. We work this area in pairs of two, he tends one set of sheep and I
6 care for another and we do not camp together. There is a far distance from each other. A supervisor
7 brings food and water in the morning and only stays about 2 hours. The rest of the day I am alone
8 and my activities are not monitored. Thus, no one but me can testify as to my daily work activities or
9 work time. Similarly, since I am alone, I cannot testify as to the work time or work activities of
10 other sheep herders working for El Tejon, much less herders working for other employers.

11 9. Depending on feed conditions, we move the sheep by truck from the Mojave Desert to
12 Elko county around early April. The sheep remain in this area from April 1 up to the end of May.
13 Specifically, we are about 1 hours north of Rendon, Nevada, and it is all dirt roads. You have to
14 drive slow. There are no permanent structures. My housing consists of a tipi tents and items that can
15 be brought in by 4x4 and there is no power. I work this rugged area by walking. This area is
16 uncultivated. The area is too big for me to estimate its size. This area does not include feedlots or
17 corrals, the sheep eat natural grass and leaves. It is not near El Tejon's headquarters.

18 10. From the end of May or early June through approximately October, the sheep are
19 moved to Columbia basin and Jack creek areas. The specific area that I worked on during this time
20 period is in a very remote location in the mountains with only dirt roads. The roads that I took to get
21 close to my herding area was dirt and required a 4x4 truck to travel on these roads. My housing
22 consists of tents, a cot and must be brought in by 4x4 trucks. There is no power. I work this rugged
23 area by walking. This area is uncultivated and is about 8-10 square miles. This area does not include
24 feedlots or corrals, and is not near El Tejon's headquarters.

25 11. There are no other herders with me in the Nevada locations. A supervisor brings food
26 and checks on me, according to weather and how others are doing, about every other day. When the
27 supervisor visits he typically stays about 1 hour. Thus, no one but me can testify as to my daily work
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1 activities or work time. Similarly, since I am alone, I cannot testify as to the work time or work
2 activities of other sheep herders working for El Tejon, much less herders working for other
3 employers.

4 12. Between October 1 to October 15 all the sheep are trucked back to California. The
5 nearest large city is Bakersfield and is about a 1/2 hour drive away. El Tejon's headquarters is not
6 located where we are grazing. The area is completely rural and consist of dirt roads. The
7 accommodations are portable units that have to be towed to the grazing areas. We do not have
8 electricity. The sheep and herders are here from October 1-15 through approximately the end of
9 January.

10 13. The lambing season starts about mid November and lasts until the end of December.
11 All of this varies with the weather and how dry/wet it is that particular year.

12 14. During February and March, depending on availability of feed, the sheep are moved
13 to rural areas west of Bakersfield, about 1 hour and 45 mins away from Bakersfield. Specifically, the
14 leases are mostly on oil fields and is not cultivated. While there are some dirt roads and no
15 permanent housing. We use the same housing we use in the Mojave Desert. This area does not
16 include feedlots or corrals, and is not near El Tíjon's headquarters. There are no other herders with
17 me in this location and the supervisor situation is the same as I described in the Mojave desert, since
18 like the desert there is no water and water has to be brought out to the sheep in a big water truck. In
19 Nevada, the areas all have natural streams and water is not brought in for the sheep.

20 15. As mentioned above, at the end of March, we move the sheep to the Mojave desert or
21 Nevada, depending on feed and weather, and the cycle starts again.

22 16. To be specific, this breaks down to about 6 months in Nevada and 6 months in
23 California. The exact time may vary, but this is a fair general characterization. About 1 month in
24 California is spent in the Mojave Desert. Further, about 2 months in California are spent on rural oil
25 field lands. The remaining time in California (only about 3 months) is spent on cultivated fields.

26 17. From my personal experience, I conclude that I worked in range land (e.g.,
27 uncultivated land which consists of thousands of acres, is located in a remote and isolated area, range
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1 housing is required, there are no feedlots or corrals, and are not near El Tejon's headquarters) for
2 significantly more than 50% of every year that I worked for El Tejon. As I mentioned above, for
3 almost the entire year each herder works alone and in different geographic locations. This means that
4 while I personally worked on range land, other herders were not with me and my area of work is not
5 the same as another sheep herder's area of work. Thus, while I worked on range land, this says
6 nothing about other herders working for El Tejon and certainly my work locations and time in each
7 location cannot be equated to herders working for other employers.

8 18. In a very general sense, and not during lambing season, while in Nevada and the
9 Mojave Desert in California, the sheep have a pretty standard routine, as follows:

- 10 a. The sheep bed down from just after sunset until just before sunrise. Obviously, the
11 time of sunrise/set varies with the time of the year. The sheep need no attention from
12 me during this time period.
- 13 b. Around 5 am I get up and go the where the sheep are sleeping. I check on them and
14 direct them to the water. The sheep are at water 8-9 am. I leave them and go back and
15 eat and take a nap at same time they do.
- 16 c. Around 2-3 pm I go to the sheep and direct them toward the area I want them to move
17 that night. I am with the sheep about 2-3 hours and go back to camp and I can eat
18 sleep. This can be longer or shorter, based on where I plan to send them the next day,
19 by checking out that area.
- 20 d. The tipi is normally located where a vehicle can get to it and the sheep are 30-45
21 minutes away.

22 19. The schedule set forth above varies a little when I am in California, not including
23 lambing season, in that it is less work.

24 20. During lambing season, the time worked is a little more than the time in Nevada.

25 21. During my employment, I was paid the same wage rate for the time periods that I
26 worked in California that I was paid when I worked in Nevada. Specifically, during 2014 and 2015,
27 I was paid \$1,661.72 per month. Beginning on January 1, 2016, I was paid twice a month at a rate of
28



1 \$888.99 per pay period. In addition, part of my wage is room and board. This was explicitly agreed
2 to as part of my compensation in my employment offer. I am also permitted to slaughter a lamb to
3 eat. I am supplied with meals every day and a place to stay. I believe that it is a fair estimate to say
4 that the value of my food is \$12/day or \$82/week. I also believe that a fair value for my housing is
5 \$300-400/month.

6 22. I estimate that I actually perform work an average of 56 hours per week, taking the
7 full year into account. I truly believe I work an average of 8 hours per day.

8 23. I was also given 2 weeks of paid vacation time each year by El Tejon. I have also
9 received surprise discretionary bonus, based on their judgment of my work, of about \$1,000 in 2014
10 and 2015.

11 24. As a result, I do not believe that I was paid below Nevada's minimum wage of
12 \$8.25/hour during any time period that I worked in Nevada.

13 I hereby declare under penalty of perjury under the laws of the United States and the State of
14 Nevada that the foregoing is true and correct to the best of my knowledge.

15 Date: This 18th day of July, 2016.

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18 CESARIO YAURI GARCIA
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DECLARATION OF INTERPRETATION

Ruben Burnias, hereby deposes and says as follows:

1. I am over eighteen years of age and have personal knowledge of the matters set forth in this Declaration, except as to the matters stated upon information and belief, and as to those matters, I believe them to be true. I am competent to testify to the matters contained herein and if called as a witness, I could and would competently testify to the information that this Declaration contains.

2. This declaration is freely given by me and not as a result of coercion, threats or promises of any benefit to me or my family.

3. I hereby certify that I am currently working with Interpreting Enterprises and have previously worked as a State and Federal Court Interpreter for over 25 years. I have also served in my capacity of Spanish Court Interpreter in over 1800 depositions.

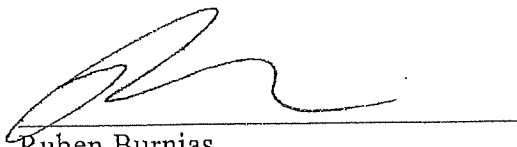
4. I am fluent in both English and Spanish languages and I am competent to translate from Spanish to English and English to Spanish.

5. I personally attended the witness interview of Cesario Yauri Garcia ("Garcia") in Elko, Nevada, along with Anthony L. Hall, Esq. I have acted as an interpreter throughout the witness interview in order to ensure accuracy.

6. Following the witness interview, I certify that I read the Declaration of Garcia to him in a language that he understood (Spanish), and that he was given the opportunity to ask any questions and to make any changes or corrections that he felt were appropriate. I also certify that my translation of his declaration to him was true and correct. I certify that Garcia confirmed that he understood and agreed with his Declaration before signing it.

I hereby declare under penalty of perjury under the laws of the United States and the State of Nevada that the foregoing is true and correct to the best of my knowledge.

Date: This 19th day of July, 2016.



Ruben Burnias
Interpreting Enterprises

EXHIBIT 19

FILED UNDER SEAL

EXHIBIT 19

RA 01687

DECLARATION OF ELIAS MAXIMO ASCANOA ALANIA

Elias Maximo Ascanoa Alania hereby deposes and says as follows:

1. I am over eighteen years of age and have personal knowledge of the matters set forth in this Declaration, except as to the matters stated upon information and belief, and as to those matters, I believe them to be true. I am competent to testify to the matters contained herein and if called as a witness, I could and would competently testify to the information that this Declaration contains.

2. This declaration is freely given by me and not as a result of coercion, threats or promises of any benefit to me or my family.

3. I am able to speak and write in Spanish. Through an interpreter, I was able to make any and all changes that I felt were necessary or appropriate to this Declaration before I signed it. Specifically, the interpreter read it to me, line by line, and I was able to have the interpreter repeat anything that I requested and I was able to change anything that I felt needed to be changed.

4. I am an employee of El Tejon Sheep Company (hereinafter "El Tejon"). I have been working for El Tejon since May 22, 2014 to the present. During that time I have had all promises made to me by El Tejon fulfilled.

5. Other than the fact that I was recruited by and given the formal employment offer from Western Range Association, during the prior 3 year time period, I have not worked in the United States as a sheep herder for any other company than El Tejon.

6. Since I have worked for El Tejon for more than 2 years, and I cannot recall the exact dates we moved sheep from one location to another, I am giving my general memory of the schedule since it is similar each year, depending on feed and other environmental factors.

7. I, personally, have not herded sheep in the Mojave Desert. Instead, I stayed in the oil field area, that I will describe below.

8. Depending on feed conditions, we move the sheep by truck from California to Nevada. The sheep remain in this area from April 1 up to first weeks of June. This area is about 40 minutes north of Rendon, by truck. The roads are all dirt in the area that we herd the sheep. There

1 are no permanent structures. My housing consists of tents and items that can be brought in by 4x4
2 and there is no power. This area is uncultivated and unfenced. This area does not include feedlots or
3 corrals, and is not near El Tejon's headquarters. Sheep feed on natural grass in this area and water
4 from streams. There are no other herders with me in this location.

5 9. From the beginning of June, I moved with my sheep to the Jack Creek area of
6 Nevada. I stayed in this area to mid-October. Specifically, me and my band of sheep were in the
7 Snow Canyon allotment. The specific area that I worked on during this time period is in a very
8 remote location in the mountains with only dirt roads. My housing consists of tents and a cot. There
9 is no power. This area is uncultivated. This area does not include feedlots or corrals, and is not near
10 El Tejon's headquarters.

11 10. For both areas in Nevada, the supervisor comes around every other day or so and only
12 stays about 20-30 minutes. Thus, no one but me can testify as to my daily work activities or work
13 time. Similarly, since I am alone, I cannot testify as to the work time or work activities of other
14 sheep herders working for El Tejon, much less herders working for other employers.

15 11. In mid-October all the sheep are trucked back to California and are in an area that is
16 East of Bakersfield. They sheep stay here until mid to late January.

17 12. The lambing season starts about November 10 and lasts until the end of December.

18 13. During February and March, depending on availability of feed, the sheep are moved
19 to rural areas west of Bakersfield to oil fields. This area is also very rural. While there are some
20 roads (mostly dirt) near the grazing areas that I worked and there is no power. This area is
21 uncultivated. We live in a trailer that is towed to the location. This area does not include feedlots or
22 corrals, and is not near El Tijen's headquarters. The sheep eat natural grown (not cultivated) grass.
23 Water for the sheep is brought in by truck. There are no other herders with me in this location and
24 my daily activities are not monitored. The supervisor visits daily to bring water and he typically stays
25 about 1 hour. Thus, no one but me can testify as to my daily work activities or work time. Similarly,
26 since I am alone, I cannot testify as to the work time or work activities of other sheep herders
27 working for El Tijen, much less herders working for other employers.

1 14. As mentioned above, my band moved back to Nevada each year around April 10.

2 15. To be specific, this breaks down to about 6 months in Nevada and 6 months in
3 California. The exact time may vary, but this is a fair general characterization. For me, I spent about
4 2 months in California in uncultivated oil field lands.

5 16. From my personal experience, I conclude that I worked in range land (e.g.,
6 uncultivated land that is located in a remote and isolated area, range housing is required, there are no
7 feedlots or corrals, and are not near El Tejon's headquarters) for significantly more than 1/2 of every
8 year that I worked for El Tejon. As I mentioned above, for almost the entire year each herder works
9 alone and in different geographic locations. This means that while I personally worked on range
10 land, other herders were not with me and my area of work is not the same as another sheep herder's
11 area of work. Thus, while I worked on range land, this says nothing about other herders working for
12 El Tejon and certainly my work locations and time in each location cannot be equated to herders
13 working for other employers.

14 17. In a very general sense, and not during lambing season, while in Nevada and the oil
15 fields of California, the sheep have a pretty standard routine, as follows:

- 16 a. The sheep bed down from just after sunset until just before sunrise. Obviously, the
17 time of sunrise/set varies with the time of the year. The sheep need no attention from
18 me during this time period.
- 19 b. I get up around 4-4:30 am and prepare my breakfast. I start walking to the sheep
20 around 5 am. The walk to the sheep is normally around 20-25 minutes.
- 21 c. I direct the flock to food and water and check on them. My routine varies depending
22 on the situation. I prepare my lunch when the sheep sleep during the day. The sheep
23 sleep about 5 hours or more each mid-day. I also go back to camp to eat during the
24 day and sleep during this time period.
- 25 d. The sheep need no attention from me, since they drink water, nap and graze during
26 this time period.
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1 e. I go back to the sheep around 2 pm and stay with them about 2 hours, to direct them
2 to where I want them heading for the evening.

3 18. The schedule set forth above varies a little when I am in California, on cultivated
4 land, my day is shorter. This is mostly because this is winter and the day light hours are shorter.

5 19. During my employment, I was paid the same wage rate for the time periods that I
6 worked in California that I was paid when I worked in Nevada. Specifically, in 2015 I earned
7 \$1,661.72 per month. Beginning on January 1, 2016, I was paid twice a month at a rate of \$888.99
8 per pay period. In addition, part of my wage is room and board. This was explicitly agreed to as part
9 of my compensation in my employment offer. I am also allowed to slaughter lamb for food. I am
10 supplied with meals every day and a place to stay. I believe that it is a fair estimate to say that the
11 value of my food is \$10/day or \$70/week. I also believe that a fair value for my housing is \$150-
12 200/month.

13 20. I estimate that I actually perform work an average of 8 hours each day.

14 21. I was also given 2 weeks of paid vacation time each year by El Tejon. I have also
15 received surprise discretionary bonus of \$1,000 each year.

16 22. As a result, believe that I was paid above Nevada's minimum wage of \$8.25/hour
17 during all time periods that I worked in Nevada.

18 I hereby declare under penalty of perjury under the laws of the United States and the State of
19 Nevada that the foregoing is true and correct to the best of my knowledge.

20 Date: This 18th day of July, 2016.

21 

22 ELIAS MAXIMO ASCANOA ALANIA

DECLARATION OF INTERPRETATION

Ruben Burnias, hereby deposes and says as follows:

1. I am over eighteen years of age and have personal knowledge of the matters set forth in this Declaration, except as to the matters stated upon information and belief, and as to those matters, I believe them to be true. I am competent to testify to the matters contained herein and if called as a witness, I could and would competently testify to the information that this Declaration contains.

2. This declaration is freely given by me and not as a result of coercion, threats or promises of any benefit to me or my family.

3. I hereby certify that I am currently working with Interpreting Enterprises and have previously worked as a State and Federal Court Interpreter for over 25 years. I have also served in my capacity of Spanish Court Interpreter in over 1800 depositions.

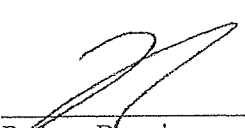
4. I am fluent in both English and Spanish languages and I am competent to translate from Spanish to English and English to Spanish.

5. I personally attended the witness interview of Elias Maximo Ascanoa Alania ("Alania") in Elko, Nevada, along with Anthony L. Hall, Esq. I have acted as an interpreter throughout the witness interview in order to ensure accuracy.

6. Following the witness interview, I certify that I read the Declaration of Alania to him in a language that he understood (Spanish), and that he was given the opportunity to ask any questions and to make any changes or corrections that he felt were appropriate. I also certify that my translation of his declaration to him was true and correct. I certify that Alania confirmed that he understood and agreed with his Declaration before signing it.

I hereby declare under penalty of perjury under the laws of the United States and the State of Nevada that the foregoing is true and correct to the best of my knowledge.

Date: This 18th day of July, 2016.



Ruben Burnias
Interpreting Enterprises

ETS000072

RA 01692

EXHIBIT 20

FILED UNDER SEAL

EXHIBIT 20

RA 01693

DECLARATION OF ELMER ALCIDES CANTARO OTEO

Elmer Alcides Cantaro Oteo hereby deposes and says as follows:

1. I am over eighteen years of age and have personal knowledge of the matters set forth in this Declaration, except as to the matters stated upon information and belief, and as to those matters, I believe them to be true. I am competent to testify to the matters contained herein and if called as a witness, I could and would competently testify to the information that this Declaration contains.

2. This declaration is freely given by me and not as a result of coercion, threats or promises of any benefit to me or my family.

3. I am able to speak and write in Spanish. Through an interpreter, I was able to make any and all changes that I felt were necessary or appropriate to this Declaration before I signed it. Specifically, the interpreter read it to me, line by line, and I was able to have the interpreter repeat anything that I requested and I was able to change anything that I felt needed to be changed.

4. I am an employee of El Tejon Sheep Company (hereinafter "El Tejon"). I have been working for El Tejon since September 18, 2014 to the present. During that time I have had all promises made to me by El Tejon fulfilled. I was initially a sheepherder and I became a supervisor in January of 2016.

5. Other than the fact that I was recruited by and given the formal employment offer from Western Range Association, during the prior 3 year time period, I have not worked in the United States as a sheep herder for any other company than El Tejon.

6. Since I have worked for El Tejon for almost 2 years, and I cannot recall the exact dates we moved sheep from one location to another, I am giving my general memory of the schedule since it is similar each year, depending on feed and other environmental factors.

7. I started in Nevada in the Snow Canyon and Columbia Basin allotments. I worked these areas from September through early October. The areas are not cultivated. The roads that we take to get close to our herding areas are dirt and require trucks to travel on these roads for about 40 minutes. This area does not include feedlots or corrals, and is not near El Tejon's headquarters. My



1 Supervisor visited me 2-3 times per week and would stay with me about 2-3 hours, depending on
2 what needs to be accomplished.

3 8. Between October 1 to October 15, all the sheep are trucked back to California. 3
4 months were on cultivated land as a shepherd, until about the end of January.

5 9. At the end of January, we moved the sheep and myself to oil fields west of
6 Bakersfield. We were on these fields until March 17, 2015. This area is also very rural. Our range
7 housing is a towed trailer. The area is uncultivated. This area does not include feedlots or corrals,
8 and is not near El Tijon's headquarters. The sheep eat naturally growing grasses. There are no other
9 herders with me in this location and my daily activities are not monitored. Thus, no one but me can
10 testify as to my daily work activities or work time. My supervisor visited me daily since he had to
11 bring water for the sheep and would typically stay only about 1-1 1/2 hours. Unlike in Nevada,
12 where the sheep have streams, the water must be brought in. Similarly, since I am alone I cannot
13 testify as to the work time or work activities of other sheep herders working for El Tijon, much less
14 herders working for other employers.

15 10. After March 17, 2015 until April 19, 2015, we were on the Mojave Desert, in
16 California. This area is also very rural. Our range housing is a towed trailer. The area is
17 uncultivated. This area does not include feedlots or corrals, and is not near El Tijon's headquarters.
18 The sheep eat naturally growing grasses. There are no other herders with me in this location and my
19 daily activities are not monitored. Thus, no one but me can testify as to my daily work activities or
20 work time. My supervisor visited me daily since he had to bring water for the sheep and would
21 typically stay only about 1-1 1/2 hours. Unlike in Nevada, where the sheep have streams, the water
22 must be brought in. Similarly, since I am alone I cannot testify as to the work time or work activities
23 of other sheep herders working for El Tijon, much less herders working for other employers.

24 11. April 19 through the beginning of October, 2015, I was in Nevada. My first location
25 was in an area I call La Cantina (which is about an hour north of Rendon by dirt road). The second
26 area was Snow Canyon area (moved here at beginning of June). These areas are also very rural. Our
27 range housing is a tipi tent. The areas are uncultivated. This areas do not include feedlots or corrals,
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1 and are not near El Tijon's headquarters. The sheep eat naturally growing grasses. There are no other
2 herders with me in this location and my daily activities are not monitored. Thus, no one but me can
3 testify as to my daily work activities or work time. My supervisor visited me 2-3 days per week and
4 would typically stay only about 2-3 hours. Since I am alone I cannot testify as to the work time or
5 work activities of other sheep herders working for El Tijon, much less herders working for other
6 employers.

7 12. From the end of October 2015 through December 2015, I was a herder on cultivated
8 land.

9 13. On January 2016, I became a supervisor.

10 14. As a supervisor, I help the herder decide where to direct the sheep, ship water to the
11 sheep when needed, supply food and water for herders, help tend for sick sheep and when camps are
12 moved I tow the trailers and move gear.

13 15. As a supervisor, I only spend a few hours a day with each herder, depending on what
14 is going on. I cannot say what they do except for the limited time I am with them. Since the area is
15 so rural and the roads are so rough, I spend a lot of my time traveling from one herder's area to the
16 other.

17 16. I have to get supplies from Elko about 3 times every two weeks. I have to go to Elko
18 to get provisions. When my herders are in the Columbia basin and Snow Mountain areas, it takes me
19 1 hour and 50 minutes to get to Elko. When my herders are in El Cantina area, it takes me about 1
20 hour and 10 minutes to get to Elko. The vast majority of both trips is dirt roads.

21 17. As a herder, I conclude that I worked in range land (e.g., uncultivated land, is located
22 in a remote and isolated area, range housing is required, there are no feedlots or corrals, and are not
23 near El Tejon's headquarters) for significantly more than 1/2 of every year that I worked for El
24 Tejon.

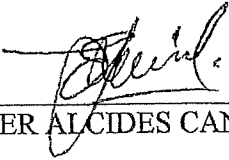
25 18. In a very general sense, while in Nevada, the oil fields and the Mojave Desert in
26 California, the sheep and I have a pretty standard routine, as follows:

- 1 a. I would wake up around 3:30 or 4 am, and I make breakfast. I would typically start
2 walking to the sheep anywhere from 4:30 – 5 am. The walk to the sheep would take
3 30 minutes – 1 1/2 hours, depending on circumstances.
- 4 b. When I get to the sheep, I feed the dogs first. I then start moving the sheep and
5 watching for any that are hurt or sick. I direct them to water and food.
- 6 c. I typically start walking back to camp 9 – 10:30 am, depending. It totally depends on
7 the circumstances.
- 8 d. When I get back to camp, I would make a meal, sleep, read, wash clothes, etc.
- 9 e. I start the walk back to the sheep around 2 or later. I arrive to sheep and give them
10 direction and watch to see how they are proceeding, I am with them from 1-2 hours
11 and then walk back to camp.
- 12 19. As a supervisor, I start my day around earlier, but I work about the same total hours as
13 I did as a herder.
- 14 20. During my employment, I was paid the same wage rate for the time periods that I
15 worked in California that I was paid when I worked in Nevada. Specifically, during 2014 and 2015,
16 I was paid \$1,661.72 per month. Beginning on January 1, 2016, I was paid twice a month at a rate of
17 \$888.99 per pay period. In addition, part of my wage is room and board. This was explicitly agreed
18 to as part of my compensation in my employment offer. I can also slaughter a lamb for food and I do
19 this about twice per month. I am supplied with meals every day and a place to stay. As the supervisor
20 I buy the food, and I believe that it is a fair estimate to say that the value of the food I give to the
21 herders is \$11-12/day. I also believe that a fair value for my housing is \$300-320/month.
- 22 21. I estimate that I actually perform work, both as a herder and a supervisor, an average
23 of 8 hours per day, taking the full year into account.
- 24 22. I was also given 2 weeks of paid vacation time each year by El Tejon. I have also
25 received surprise discretionary bonus of \$1,000 at the end of 2015.
- 26 23. I do not believe that I was paid below Nevada's minimum wage of \$8.25/hour during
27 any time period that I worked in Nevada.
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1 I hereby declare under penalty of perjury under the laws of the United States and the State of
2 Nevada that the foregoing is true and correct to the best of my knowledge.

3 Date: This 19th day of July, 2016.

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6 ELMER ALCIDES CANTARO OTEO
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Holland & Hart LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

DECLARATION OF INTERPRETATION

Ruben Burnias, hereby deposes and says as follows:

1. I am over eighteen years of age and have personal knowledge of the matters set forth in this Declaration, except as to the matters stated upon information and belief, and as to those matters, I believe them to be true. I am competent to testify to the matters contained herein and if called as a witness, I could and would competently testify to the information that this Declaration contains.

2. This declaration is freely given by me and not as a result of coercion, threats or promises of any benefit to me or my family.

3. I hereby certify that I am currently working with Interpreting Enterprises and have previously worked as a State and Federal Court Interpreter for over 25 years. I have also served in my capacity of Spanish Court Interpreter in over 1800 depositions.

4. I am fluent in both English and Spanish languages and I am competent to translate from Spanish to English and English to Spanish.

5. I personally attended the witness interview of Elmer Alcides Cantaro Oteo ("Oteo") in Elko, Nevada, along with Anthony L. Hall, Esq. I have acted as an interpreter throughout the witness interview in order to ensure accuracy.

6. Following the witness interview, I certify that I read the Declaration of Oteo to him in a language that he understood (Spanish), and that he was given the opportunity to ask any questions and to make any changes or corrections that he felt were appropriate. I also certify that my translation of his declaration to him was true and correct. I certify that Oteo confirmed that he understood and agreed with his Declaration before signing it.

I hereby declare under penalty of perjury under the laws of the United States and the State of Nevada that the foregoing is true and correct to the best of my knowledge.

Date: This ___ day of July, 2016.

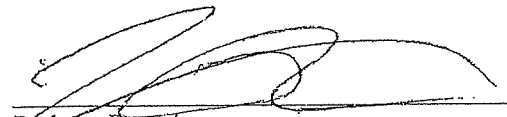

Ruben Burnias
Interpreting Enterprises

EXHIBIT 21

FILED UNDER SEAL

DECLARATION OF FILOMENO LEONARDO LAPA POMAHUALI

Filomeno Leonardo Lapa Pomahuali hereby deposes and says as follows:

1. I am over eighteen years of age and have personal knowledge of the matters set forth in this Declaration, except as to the matters stated upon information and belief, and as to those matters, I believe them to be true. I am competent to testify to the matters contained herein and if called as a witness, I could and would competently testify to the information that this Declaration contains.

2. This declaration is freely given by me and not as a result of coercion, threats or promises of any benefit to me or my family.

3. I am able to speak and write in Spanish. Through an interpreter, I was able to make any and all changes that I felt were necessary or appropriate to this Declaration before I signed it. Specifically, the interpreter read it to me, line by line, and I was able to have the interpreter repeat anything that I requested and I was able to change anything that I felt needed to be changed.

4. I am an employee of El Tejon Sheep Company (hereinafter "El Tejon"). I have been working for El Tejon since September 20, 2014, to the present. During that time I have had all promises made to me by El Tejon fulfilled.

5. Other than the fact that I was recruited by and given the formal employment offer from Western Range Association, during the prior 3 year time period, I have not worked in the United States as a sheep herder for any other company than El Tejon.

6. Since I have worked for El Tejon for almost 2 years, and I cannot recall the exact dates we moved sheep from one location to another, I am giving my general memory of the schedule since it is similar each year, depending on feed and other environmental factors.

7. I have not personally herded sheep in the Mojave Desert, in California. I worked in the Oil field area that I will describe below during the time period others worked in the Mojave Desert.

8. Depending on feed conditions, we move the sheep by truck from the oil fields to Elko county around April 1. The sheep remain in two areas of this area from April 1 up to the end of

1 May. We are north of Rendon. The area is a full hour from Rendon. My housing consists of tents
2 and items that can be brought in by 4x4 and there is no power. This area is uncultivated. This area
3 does not include feedlots or corrals, and is not near El Tejon's headquarters. The sheep eat natural
4 growing grass.

5 9. From the end of May until October, we move the sheep further north in Nevada, near
6 Jacks Creek. I am personally in the Snow Canyon allotment. The specific area that I worked on
7 during this time period is in a very remote location in the mountains with only dirt roads. My
8 housing consists of tents, a cot and must be brought in by 4x4 trucks. There is no power. This area is
9 uncultivated and the sheep eat natural grass. This area does not include feedlots or corrals, and is not
10 near El Tejon's headquarters.

11 10. During the periods in Nevada and the oil fields, there are no other herders with me in
12 this location and my daily activities are not monitored. There is a supervisor that comes every other
13 day or so and he stays with me only about 2-3 hours. Thus, no one but me can testify as to my daily
14 work activities or work time. Similarly, since I am alone, I cannot testify as to the work time or
15 work activities of other sheep herders working for El Tejon, much less herders working for other
16 employers.

17 11. In October all the sheep are trucked back to California.

18 12. The lambing season starts about November 10 and lasts until the end of December.

19 13. During February and March, depending on availability of feed, the sheep are moved
20 to rural areas west of Bakersfield. Specifically, the oil fields. This area is also very rural and only
21 has dirt roads. There is no power. This area is uncultivated. The housing is a tow trailer. This area
22 does not include feedlots or corrals, and is not near El Tijen's headquarters. There are no other
23 herders with me in this location and my daily activities are not monitored. My supervisor comes out
24 daily to bring the sheep water and he stays about 1-2 hours.

25 14. As mentioned above, on April 1, we move the sheep to Nevada and the cycle starts
26 again.

1 15. To be specific, this breaks down to about 6 months in Nevada and 6 months in
2 California. The exact time may vary, but this is a fair general characterization. Further, about 2
3 months in California are spent on rural oil field lands.

4 16. From my personal experience, I conclude that I worked in range land (e.g.,
5 uncultivated land, is located in a remote and isolated area, range housing is required, there are no
6 feedlots or corrals, and are not near El Tejon's headquarters) for significantly more than 1/2 of every
7 year that I worked for El Tejon. As I mentioned above, for almost the entire year each herder works
8 alone and in different geographic locations. This means that while I personally worked on range
9 land, other herders were not with me and my area of work is not the same as another sheep herder's
10 area of work. Thus, while I worked on range land, this says nothing about other herders working for
11 El Tejon and certainly my work locations and time in each location cannot be equated to herders
12 working for other employers.

13 17. In a very general sense, and not during lambing season, while in Nevada and the oil
14 fields of California, the sheep have a pretty standard routine, as follows:

- 15 a. The sheep bed down from just after sunset until just before sunrise. Obviously, the
16 time of sunrise/set varies with the time of the year. The sheep need no attention from
17 me during this time period.
- 18 b. I get up from 4-5 am or later, I get up and make breakfast. I then walk to the flock,
19 which is about 15-20 mins away.
- 20 c. Then I will be with the flock until about a little before 10 am or just after. They go to
21 the water and then the sheep need no attention from me, since they drink water, sleep
22 and graze during this time period.
- 23 d. I go back to my camp and eat and rest, bathe, wash clothes, etc.
- 24 e. I go back to flock about 3 pm and move them. If it is hot, I will go even later, since
25 when hot the sheep sleep longer.
- 26 f. I am with them from about 3 until maybe 5-5:30.

1 18. The schedule set forth above varies a little when I am in California, on cultivated
2 fields, and it is shorter. Since, we have fences on cultivated fields.

3 19. During my employment, I was paid the same wage rate for the time periods that I
4 worked in California that I was paid when I worked in Nevada. Specifically, during 2014 and 2015,
5 I was paid \$1,661.72 per month. Beginning on January 1, 2016, I was paid twice a month at a rate of
6 \$888.99 per pay period. In addition, part of my wage is room and board. This was explicitly agreed
7 to as part of my compensation in my employment offer. I can also slaughter a lamb and I do this
8 about 1 time per month. I am supplied with meals every day and a place to stay. I believe that it is a
9 fair estimate to say that the value of my food is \$12/day. I also believe that a fair value for my
10 housing is \$300/month.

11 20. I estimate that I actually perform work an average of 8 per day, taking the full year
12 into account.

13 21. I was also given 2 weeks of paid vacation time each year by El Tejon. I have also
14 received surprise discretionary bonus of \$1,000 around each year.

15 22. As a result, I do not believe that I was paid below Nevada's minimum wage of
16 \$8.25/hour during any time period that I worked in Nevada.

17 I hereby declare under penalty of perjury under the laws of the United States and the State of
18 Nevada that the foregoing is true and correct to the best of my knowledge.

19 Date: This 18th day of July, 2016.

20 
21 _____
22 FILOMENO LEONARDO LAPA POMAHUALI
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DECLARATION OF INTERPRETATION

Ruben Burnias, hereby deposes and says as follows:

1. I am over eighteen years of age and have personal knowledge of the matters set forth in this Declaration, except as to the matters stated upon information and belief, and as to those matters, I believe them to be true. I am competent to testify to the matters contained herein and if called as a witness, I could and would competently testify to the information that this Declaration contains.

2. This declaration is freely given by me and not as a result of coercion, threats or promises of any benefit to me or my family.

3. I hereby certify that I am currently working with Interpreting Enterprises and have previously worked as a State and Federal Court Interpreter for over 25 years. I have also served in my capacity of Spanish Court Interpreter in over 1800 depositions.

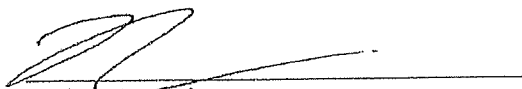
4. I am fluent in both English and Spanish languages and I am competent to translate from Spanish to English and English to Spanish.

5. I personally attended the witness interview of Filomeno Leonardo Lapa Pomahuali ("Pomahuali") in Elko, Nevada, along with Anthony L. Hall, Esq. I have acted as an interpreter throughout the witness interview in order to ensure accuracy.

6. Following the witness interview, I certify that I read the Declaration of Pomahuali to him in a language that he understood (Spanish), and that he was given the opportunity to ask any questions and to make any changes or corrections that he felt were appropriate. I also certify that my translation of his declaration to him was true and correct. I certify that Pomahuali confirmed that he understood and agreed with his Declaration before signing it.

I hereby declare under penalty of perjury under the laws of the United States and the State of Nevada that the foregoing is true and correct to the best of my knowledge.

Date: This 18 day of July, 2016.


Ruben Burnias
Interpreting Enterprises

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RA 01705