

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOSE GUADALUPE PEREZ-FARIAS,	)	NO. CV-05-3061-AAM
et al.,	)	
	)	ORDER
Plaintiffs,	)	
	)	
v.	)	
	)	
GLOBAL HORIZONS, INC., et al.,	)	
	)	
Defendants.	)	
	)	

On May 25, 2007, Plaintiffs filed motions for partial summary judgment claiming that Defendants violated FCLA, AWPA and Washington Wage Payment law (Ct. Rec. 465) and that Defendants Green Acre Farms, Inc., and Valley Fruit Orchards, LLC, are liable for violations of AWPA and FLCA (Ct. Rec. 459). The motions were noted for hearing, with oral argument, on June 28, 2007. However, on June 1, 2007, the Court granted Defendants' motion to reset the hearing date on Plaintiffs' motions for partial summary judgment. (Ct. Rec. 490). The Court reset the hearing date for July 24, 2007, but explicitly stated that Defendants must comply with the Court's local rules with respect to timely filing responsive memorandums. (Ct. Rec. 490). Defendants did not request additional time in which to respond to Plaintiffs' motions. (Ct. Rec. 482). No Defendant filed a timely response to Plaintiffs' motions for partial summary judgment in this matter. In fact, to

1 date, the Court has received no response to Plaintiffs' motions  
2 for partial summary judgment from any Defendant. Accordingly, all  
3 Defendants are in default with respect to Plaintiffs' motions for  
4 partial summary judgment.

5 In addition, on June 22, 2007, Plaintiffs filed a motion,  
6 pursuant to Fed. R. Civ P. 39(a), to strike Defendants' jury  
7 demand with respect to Plaintiffs' AWPAs and FLCA summary judgment  
8 claims. (Ct. Rec. 498). Plaintiffs moved for a Court  
9 determination of statutory damages under FLCA for their summary  
10 judgment claims. (Ct. Rec. 498). Again, no Defendant filed a  
11 timely response to Plaintiffs' June 22, 2007 motion. All  
12 Defendants are additionally in default with regard to this motion.

13 As stated by this Court in numerous previous orders, Local  
14 Rule 7.1(h)(5) holds that "[a] failure to timely file a memorandum  
15 of points and authorities in support of or in opposition to any  
16 motion may be considered by the Court as consent on the part of  
17 the party failing to file such memorandum to the entry of an Order  
18 adverse to the party in default." In addition, pursuant to Local  
19 Rule 56.1(d), the failure to file a statement of specific facts in  
20 opposition to a motion for summary judgment allows the Court to  
21 assume the facts as claimed by the moving party exist without  
22 controversy.

23 Based on the lack of a timely response to the instant motions  
24 (Ct. Rec. 459, 465 and 498) by any Defendant, and pursuant to this  
25 Court's authority under Local Rule 7.1(h)(3), **IT IS HEREBY ORDERED**  
26 that the hearing date of July 24, 2007, is **VACATED**. The Court  
27 shall address these motions without oral presentation.

28 / / /

**SANCTIONS**

1  
2 Despite several orders issued by this Court requiring  
3 Defendants Global Horizons, Inc., Mordechai Orian and Jane Doe  
4 Orian to produce discovery and pay sanctions, these defendants  
5 have repeatedly failed to respond as directed.<sup>1</sup>

6 Following the April 17, 2007 hearing on Plaintiffs' motion  
7 for contempt and sanctions, the Court issued an order for  
8 Defendants to comply with this Court's previous orders and produce  
9 all documents previously ordered no later than the close of  
10 business on April 23, 2007. (Ct. Rec. 404). Defendants were  
11 advised that their failure to comply in this manner would result  
12 in daily sanctions of \$500.00 until they fully complied with the  
13 Court's order. (Ct. Rec. 404). Despite this warning, Attorney  
14 for Defendants, Mr. Shiner, indicated in a declaration on May 14,  
15 2007, that Defendants had still not produced all previously  
16 ordered discovery.<sup>2</sup> (Ct. Rec. 452). On May 18, 2007, based on  
17 the admitted lack of compliance by Defendants, the Court ordered  
18 sanctions against Defendants in the amount of \$12,500.00,  
19 calculated at \$500.00 per day for each calendar day from April 23,  
20 2007 to the date of that order. (Ct. Rec. 458). In addition, the  
21 Court warned that Defendants' continued failure to comply with  
22 this Court's orders would result in continued monetary sanctions,  
23 in the amount of \$500.00 a day, for each calendar day, until there

24  
25 \_\_\_\_\_  
26 <sup>1</sup>Defendants have failed to fully comply with seven separate  
27 orders of this Court regarding the production of discovery. (Ct.  
28 Rec. 274; Ct. Rec. 298; Ct. Rec. 329; Ct. Rec. 351; Ct. Rec. 363;  
Ct. Rec. 404; Ct. Rec. 458).

<sup>2</sup>Counsel for Defendants admitted that they had still not  
"turned over" the emails which had been ordered to be produced.  
(Ct. Rec. 452, pp. 8-9).

1 was full compliance, and could result in other sanctions as  
2 determined by the Court. (Ct. Rec. 458). Defendants were  
3 forewarned that "continued noncompliance with this Court's orders  
4 may result in case dispositive sanctions." (Ct. Rec. 458, p. 8).

5 The Court ordered counsel for Plaintiffs and counsel for  
6 Defendants to meet and confer and file a statement that provides  
7 an outline of what items have not been produced as previously  
8 ordered by the Court. (Ct. Rec. 458). Plaintiffs filed a timely  
9 statement on May 29, 2007 (Ct. Rec. 472), and Defendants filed an  
10 untimely statement on May 31, 2007 (Ct. Rec. 486).

11 Plaintiffs' statement indicates that, in addition to not  
12 paying the Court ordered costs to Plaintiffs, Defendants had still  
13 not provided complete and unredacted email and had not provided  
14 all communication with Holt, Schwartz, Gonnene and the recruitment  
15 agencies. (Ct. Rec. 472; Ct. Rec. 473, p. 5). Plaintiffs  
16 additionally asserted that Defendants had still not provided  
17 supplemental responses with respect to Defendants' violations of  
18 AWPAs and H-2As, the documentation related to Bruce Schwartz and  
19 Taft Farms was incomplete, and Defendants had provided no contract  
20 for services with James Holt and no contracts for services with  
21 Amnon Gonnene for 2003 and 2004. (Ct. Rec. 472).

22 Defendants untimely statement admits that Defendants had not  
23 supplemented responses to an interrogatory request and request for  
24 production as ordered by the Court. (Ct. Rec. 486, p. 5).  
25 Counsel for Defendants indicated that his goal was to have those  
26 items completed by June 1, 2007, but it did not appear likely that  
27 he would reach that goal. (Ct. Rec. 486, pp. 5-6). It was  
28 further admitted that Defendants had not produced email between

1 Ms. Tubchumpol and recruiting agencies. (Ct. Rec. 486, p. 8).  
2 Despite this Court's repeated orders for Defendants to produce all  
3 relevant email, counsel for Defendants indicated that "Global  
4 would endeavor, in short order, to look for and produce all of  
5 said relevant email." (Ct. Rec. 486, p. 8). Defendants asserted  
6 that they had delivered all documents related to Taft Farms and  
7 Bruce Schwartz on May 31, 2007, they had produced all email  
8 regarding Holt, Schwartz, and Gonnene (with certain redactions),  
9 and there was no contract for services with Holt, nor any  
10 contracts for services in 2003 and 2004 with Gonnene, to be  
11 produced.

12 The statements of the parties reveal that, despite this  
13 Court's order for Defendants to produce all documents previously  
14 ordered no later than the close of business on April 23, 2007, in  
15 the face of daily monetary sanctions (Ct. Rec. 404), Defendants  
16 have still not fully complied with this Court's orders to produce  
17 all discovery and had not complied with this Court's orders to pay  
18 Plaintiffs' costs of bringing prior discovery motions.

19 On June 8 and June 11, 2007, the Court received declarations  
20 from Plaintiffs' counsel (Ct. Rec. 493-495), as well as a  
21 declaration from Mr. Shiner (Ct. Rec. 496), that reveal that there  
22 has been continued difficulty with Defendants' ability to comply  
23 with this Court's orders. Despite the continued imposition of  
24 monetary sanctions, the Court has received no information since  
25 that time regarding Defendants' compliance.

26 On June 1, 2007, the Court also received a declaration of  
27 Mordechai Orian which stated that Defendants refused to pay to the  
28 ///

1 Court the monetary sanctions imposed for Defendants' continued  
2 refusal to comply with the Court's orders. (Ct. Rec. 491).

3 Where it is determined that counsel or a party has acted  
4 willfully or in bad faith in failing to comply with rules of  
5 discovery or with Court orders enforcing the rules or in flagrant  
6 disregard of those rules or orders, it is within the discretion of  
7 the Court to dismiss the action or to render judgment by default  
8 against the party responsible for noncompliance. Fed. R. Civ. P.  
9 37(b). The Court will impose a default judgment as a sanction  
10 when a party's violations are due to the "willfulness, bad faith,  
11 or fault" of the party, and where lesser sanctions are considered  
12 by the Court to be inadequate. *Hyde & Drath v. Baker*, 24 F.3d  
13 1162, 1167 (9<sup>th</sup> Cir. 1994) (citing *Fjelstad v. Am. Honda Motor*  
14 *Co.*, 762 F.2d 1334, 1341 (9<sup>th</sup> Cir. 1985)); *United Artists Corp. v.*  
15 *La Cage Aux Folles, Inc.*, 771 F.2d 1265, 1270-71 (9<sup>th</sup> Cir. 1985).  
16 "Disobedient conduct not shown to be outside the control of the  
17 litigant is sufficient to demonstrate willfulness, bad faith, or  
18 fault." *Hyde & Drath*, 24 F.3d at 1166.

19 "Litigants who are willful in halting the discovery process  
20 act in opposition to the authority of the court and cause  
21 impermissible prejudice to their opponents. It is even more  
22 important to note, in this era of crowded dockets, that they also  
23 deprive other litigants of an opportunity to use the courts as a  
24 serious dispute-settlement mechanism . . . . As the Supreme Court  
25 stated in upholding a dismissal for failure to comply with a  
26 discovery order, [although] it might well be that these  
27 [litigants] would faithfully comply with all future discovery  
28 orders entered by the District Court in this case . . . [if the

1 order of dismissal were overturned] other parties to other  
2 lawsuits would feel freer than we think Rule 37 contemplates they  
3 should feel to flout other discovery orders of other district  
4 courts." *G-K Properties v. Redevelopment Agency of City of San*  
5 *Jose*, 577 F.2d 645, 647-648 (9<sup>th</sup> Cir. 1978) (quoting *National*  
6 *Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643  
7 (1976)).

8       There is no dispute in this case concerning Defendants'  
9 failure to fully comply with the Court's repeated orders regarding  
10 discovery. It is undisputed that Defendants have not produced all  
11 discovery as ordered by the Court in the context of seven separate  
12 discovery orders. (Ct. Rec. 274; Ct. Rec. 298; Ct. Rec. 329; Ct.  
13 Rec. 351; Ct. Rec. 363; Ct. Rec. 404; Ct. Rec. 458). Defendants  
14 have provided no valid basis to persuade this Court that  
15 circumstances outside Defendants' control have caused their  
16 repeated transgressions. Furthermore, the Court has imposed  
17 lesser sanctions, with warnings of greater sanctions, in an  
18 attempt to achieve Defendants' compliance. As noted above, these  
19 lesser sanctions have had no effect with respect to garnering  
20 Defendants' full compliance. Defendants' actions in this case are  
21 unacceptable.

22       While the Court has considered issuing case dispositive  
23 sanctions against Defendants Global Horizons, Inc., Mordechai  
24 Orian and Jane Doe Orian for their continued refusal to obey this  
25 Court's orders with respect to discovery, the Court has instead  
26 decided to merely address Plaintiffs' motions for partial summary  
27 judgment and for statutory damages, in light of Defendants'  
28 failure to oppose said motions.

1 However, Defendants Global Horizons, Inc., and Mordechai  
2 Orian are compelled to comply with the May 18, 2007 order of the  
3 Court regarding monetary sanctions. (Ct. Rec. 458). Although,  
4 Defendant Mordechai Orian stated on June 1, 2007, that Defendants  
5 refused to pay the monetary sanctions imposed by the Court for  
6 Defendants' continued refusal to comply with the Court's orders  
7 (Ct. Rec. 491), that baseless refusal is unacceptable.

8 **IT IS HEREBY ORDERED** that Defendants Global Horizons, Inc.,  
9 and Mordechai Orian, shall pay to the Court the monetary sanctions  
10 previously imposed, in the amount of **\$12,500.00**, as well as the  
11 additional amount of **\$27,000.00**, calculated at \$500.00 per day for  
12 each calendar day since the initial imposition of sanctions to the  
13 date of this order, for Defendants' continued refusal to comply  
14 with the Court's orders. **A check payable to the United States**  
15 **District Court, Eastern District of Washington, from Defendants**  
16 **Global Horizons, Inc., and Mordechai Orian, in the amount of**  
17 **\$39,500.00 is due immediately.** Moreover, monetary sanctions, in  
18 the amount of \$500.00 a day, for each calendar day, shall continue  
19 until Defendants provide full payment to the Court.

20 Should Defendants fail to make payment to the Court in the  
21 above amount, Defendant Mordechai Orian shall appear before the  
22 Court on July 24, 2007 at 2:00 p.m., to face the charge of  
23 criminal contempt pursuant to this Court's authority under 18  
24 U.S.C. § 401(3).

25 **SUMMARY JUDGMENT**

26 Summary judgment is appropriate when it is demonstrated that  
27 there exists no genuine issue as to any material fact, and that  
28 the moving party is entitled to judgment as a matter of law.



1 Fed. R. Civ. P. 56(c). Under summary judgment practice, the  
2 moving party

3 [A]lways bears the initial responsibility of informing the  
4 district court of the basis for its motion, and identifying  
5 those portions of "the pleadings, depositions, answers to  
6 interrogatories, and admissions on file, together with the  
7 affidavits, if any," which it believes demonstrate the  
8 absence of a genuine issue of material fact.

9 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[W]here the  
10 nonmoving party will bear the burden of proof at trial on a  
11 dispositive issue, a summary judgment motion may properly be made  
12 in reliance solely on the 'pleadings, depositions, answers to  
13 interrogatories, and admissions on file.'" *Id.* Indeed, summary  
14 judgment should be entered, after adequate time for discovery and  
15 upon motion, against a party who fails to make a showing  
16 sufficient to establish the existence of an element essential to  
17 that party's case, and on which that party will bear the burden of  
18 proof at trial. *Celotex Corp.*, 477 U.S. at 322. "[A] complete  
19 failure of proof concerning an essential element of the nonmoving  
20 party's case necessarily renders all other facts immaterial." *Id.*  
21 In such a circumstance, summary judgment should be granted, "so  
22 long as whatever is before the district court demonstrates that  
23 the standard for entry of summary judgment, as set forth in Rule  
24 56(c), is satisfied." *Id.* at 323.

25 If the moving party meets its initial responsibility, the  
26 burden then shifts to the opposing party to establish that a  
27 genuine issue as to any material fact actually does exist.  
28 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,  
586 (1986). In attempting to establish the existence of this  
factual dispute, the opposing party may not rely upon the denials  
of its pleadings, but is required to tender evidence of specific

1 facts in the form of affidavits, and/or admissible discovery  
2 material, in support of its contention that the dispute exists.  
3 Fed. R. Civ. P. 56(e); *Matsushita*, 475 U.S. at 586 n. 11. The  
4 opposing party must demonstrate that the fact in contention is  
5 material, i.e., a fact that might affect the outcome of the suit  
6 under the governing law, *Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
7 242, 248 (1986); *T.W. Elec. Serv., Inc. v. Pacific Elec.*  
8 *Contractors Ass'n*, 809 F.2d 626, 630 (9<sup>th</sup> Cir. 1987), and that the  
9 dispute is genuine, i.e., the evidence is such that a reasonable  
10 jury could return a verdict for the nonmoving party, *Wool v.*  
11 *Tandem Computers, Inc.*, 818 F.2d 1433, 1436 (9<sup>th</sup> Cir. 1987).

12 In the endeavor to establish the existence of a factual  
13 dispute, the opposing party need not establish a material issue of  
14 fact conclusively in its favor. It is sufficient that "the  
15 claimed factual dispute be shown to require a jury or judge to  
16 resolve the parties' differing versions of the truth at trial."  
17 *T.W. Elec. Serv.*, 809 F.2d at 631. Thus, the "purpose of summary  
18 judgment is to 'pierce the pleadings and to assess the proof in  
19 order to see whether there is a genuine need for trial.'" *Matsushita*,  
20 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)  
21 advisory committee's note on 1963 amendments).

22 In resolving the summary judgment motion, the court examines  
23 the pleadings, depositions, answers to interrogatories, and  
24 admissions on file, together with the affidavits, if any. Fed. R.  
25 Civ. P. 56(c). The evidence of the opposing party is to be  
26 believed, *Anderson*, 477 U.S. at 255, and all reasonable inferences  
27 that may be drawn from the facts placed before the court must be  
28 drawn in favor of the opposing party, *Matsushita*, 475 U.S. at 587

1 (citing *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)  
2 (per curiam). Nevertheless, inferences are not drawn out of the  
3 air, and it is the opposing party's obligation to produce a  
4 factual predicate from which the inference may be drawn. *Richards*  
5 *v. Nielsen Freight Lines*, 602 F. Supp. 1224, 1244-45 (E.D. Cal.  
6 1985), *aff'd*, 810 F.2d 898, 902 (9<sup>th</sup> Cir. 1987).

7 Finally, to demonstrate a genuine issue, the opposing party  
8 "must do more than simply show that there is some metaphysical  
9 doubt as to the material facts. Where the record taken as a whole  
10 could not lead a rational trier of fact to find for the nonmoving  
11 party, there is no 'genuine issue for trial.'" *Matsushita*, 475  
12 U.S. at 587 (citation omitted).

13 **I. Ct. Rec. 465**

14 By way of Ct. Rec. 465, Plaintiffs move the Court for an  
15 order of partial summary judgment finding that Defendants Global  
16 Horizons, Inc. ("Global"), Green Acre Farms, Inc. ("Green Acre"),  
17 and Valley Fruit Orchards, LLC ("Valley Fruit"), violated the  
18 following provision of the Farm Labor Contractors Act ("FLCA"),  
19 RCW 19.30, *et seq.*, and the Migrant and Seasonal Agricultural  
20 Workers Protection Act ("AWPA"), 29 U.S.C. §§ 1801, *et seq.*:  
21 (1) failing to provide required disclosures, (2) providing false  
22 and misleading information about the terms of employment,  
23 (3) violating the terms of the working agreement, (4) failing to  
24 pay wages due, and (5) failing to provide adequate written pay  
25 statements. (Ct. Rec. 465). Plaintiffs also seek summary  
26 judgment against Defendant Mordechai Orian ("Orian") for AWPA  
27 violations and against Global and Orian for the willful  
28 withholding of wages under RCW 49.52.050. (Ct. Rec. 465). As

1 noted above, Defendants failed to file an opposition memorandum to  
2 Plaintiffs' motion for partial summary judgment.

3 A. Failure To Provide Required Disclosures

4 FLCA requires farm labor contractors to provide disclosures  
5 to workers about the terms and conditions of employment at the  
6 time of hiring, recruiting, soliciting, or supplying, whichever  
7 occurs first, on a form provided by the State of Washington. RCW  
8 19.30.110(7). The written statement must be in English and any  
9 other language common to workers who are not fluent or literate in  
10 English. RCW 19.30.110(7).

11 Plaintiffs' statement of material facts, which has not been  
12 disputed by Defendants, indicates that Global took applications  
13 from over one-hundred U.S. Resident Workers who were Spanish  
14 speaking. (Ct. Rec. 467, p. 4). Global failed to provide U.S.  
15 Resident Workers with the disclosures on the form required by the  
16 State of Washington and failed to provide the statement in  
17 Spanish. (Ct. Rec. 467, pp. 4-6).<sup>3</sup>

18 The evidence presented by Plaintiffs is undisputed.  
19 Therefore, Summary judgment with respect to Plaintiffs' claim that  
20 Global failed to provide adequate disclosures in violation of  
21 FLCA, RCW 19.30.110(7), is appropriate.

22 ///

---

23  
24 <sup>3</sup>As part of a settlement agreement Global entered with the  
25 State of Washington, Global stipulated that it did not provide any  
26 employees with the required Washington State FLC-Worker agreement  
27 forms in 2004, an attorney for Global wrote in January of 2005  
28 that Global "was not aware that it was required to provide a copy  
of the Washington State 'Farm Labor Contractor and Worker  
Agreement' to H-2A and domestic workers in their language," and  
Plaintiffs requested in this lawsuit that Global and Orian produce  
all Washington State FLC-Worker agreement forms provided to U.S.  
Resident Workers in 2004, to which they responded "none." (Ct.  
Rec. 467, pp. 5-6).

1 B. Providing False And Misleading Information About The  
2 Terms Of Employment

3 Providing false and misleading information regarding any of  
4 the terms or conditions of employment to either a migrant or a  
5 seasonal worker is a violation of AWP. 29 U.S.C. §§ 1821(f),  
6 1831(e). AWP requires each farm labor contractor, agricultural  
7 employer, and agricultural association to provide written  
8 disclosures of the terms and conditions of employment and to post  
9 in a conspicuous place a poster provided by the Secretary setting  
10 forth the rights and protections afforded to the workers under  
11 AWP, including the terms and conditions, if any, of occupancy of  
12 housing. 29 U.S.C. §§ 1821(a)-(c), 1831(a)-(c). AWP holds that  
13 "[n]o farm labor contractor, agricultural employer, or  
14 agricultural association shall knowingly provide false or  
15 misleading information to any migrant agricultural worker  
16 concerning the terms, condition, or existence of agricultural  
17 employment required to be disclosed." 29 U.S.C. §§ 1821(f),  
18 1831(e). FLCA prohibits any person acting as a farm labor  
19 contractor from making or causing to be made, to any person,  
20 false, fraudulent, or misleading information concerning the terms  
21 or conditions of employment. RCW 19.30.120(2).

22 Plaintiffs' statement of material facts, which, again, has  
23 not been disputed by Defendants, indicates that the Clearance  
24 Orders used by Defendants in the State of Washington in 2004  
25 provide that "[d]aily transportation from the employer-provided  
26 housing to the fields, if necessary, will be offered to workers by  
27 the employer at no cost to workers. Local workers, may, but are  
28 not required, to use this transportation." (Ct. Rec. 467, p. 6).  
Global did not advise applicants of the availability of

1 transportation benefits, as promised in the Clearance Orders.  
2 (Ct. Rec. 467, pp. 6-8). In fact, Global used the application  
3 process to exclude prospective employees who did not have their  
4 own transportation. (Ct. Rec. 467, pp. 6-8).<sup>4</sup>

5 The Clearance Orders used by Global in Washington State in  
6 2004 contain no information with respect to production standards.  
7 (Ct. Rec. 467, p. 8). Production standards were, however, set and  
8 communicated to Global by Valley Fruit and Green Acres. (Ct. Rec.  
9 467, p. 9). Global did not inform U.S. Resident Workers that they  
10 would have to meet specific production standards at the time of  
11 their recruitment, nor were U.S. Resident Workers' applications  
12 modified to include additional terms to their job orders once  
13 production standards were communicated. (Ct. Rec. 467, p. 9).  
14 Defendants imposed specific production standards on U.S. Resident  
15 Workers and fired U.S. Resident Workers for failing to meet those  
16 standards. (Ct. Rec. 467, p. 9).

17 Based on the foregoing undisputed material facts, it is  
18 apparent that Global provided false and misleading information to  
19 Plaintiffs regarding the availability of transportation and with  
20 respect to the existence of production standards. Plaintiffs are  
21 therefore entitled to summary judgment against Global for  
22 providing false and misleading information regarding the terms and  
23

---

24 <sup>4</sup>Maria Ramirez, who was employed by Global and involved with  
25 recruiting workers in 2004, stated that she would never advise  
26 applicants about the availability of transportation, and, instead,  
27 an applicant would be told they would have to provide their own  
28 transportation. (Ct. Rec. 467, p. 7). Ebony Williams, an  
employee of Global in 2004, stated that Global never provided or  
offered transportation to workers. (Ct. Rec. 467, p. 8). Ms.  
Williams indicated that the rationale for asking applicants  
whether they had their own transportation, was to determine who  
they would hire based on the fact that they were not able to  
provide transportation if an employee requested it. (*Id.*).

1 conditions of employment in violation of AWP (29 U.S.C. §§  
2 1821(f), 1831(e)) and in violation of FLCA (RCW 19.30.120(2)).

3 C. Violating The Terms Of The Working Agreement

4 Pursuant to AWP, an agricultural employer is prohibited from  
5 violating the terms of any working arrangement with a worker  
6 without justification. 29 U.S.C. §§ 1822(c), 1832(c). Under  
7 FLCA, a farm labor contractor must comply with the terms and  
8 provisions of all legal and valid agreements and contracts. RCW  
9 19.30.110(5).

10 Plaintiffs' statement of material facts indicates that the  
11 Clearance Orders, approved by the DOL and used by Global in  
12 Washington State in 2004, called for a progressive discipline  
13 process requiring workers to be provided with a written reprimand  
14 upon a second violation of a work rule. (Ct. Rec. 467, p. 10).  
15 Despite the uncontested fact that U.S. Resident Workers were  
16 terminated for not keeping up with production standards, Global  
17 did not provide written reprimands or warnings prior to the  
18 workers' terminations. (Ct. Rec. 467, pp. 11-12). Global has not  
19 produced a single written reprimand from 2004. (*Id.*).

20 Plaintiffs' undisputed facts also reveal that Global employed  
21 H-2A workers without approval from the DOL. (Ct. Rec. 466; Ct.  
22 Rec. 467). Nonimmigrant foreign workers cannot be employed in the  
23 United States unless the employer has obtained prior certification  
24 from the DOL. 8 U.S.C. §1188(a)(1). The certification process  
25 requires an employer to submit clearance orders that include the  
26 material terms of the job and an agreement to comply with  
27 employment related laws and regulations. 20 C.F.R. §§  
28 655.101(b)(1), 655.101(b)(2), 655.102 and 655.103(b).

1 Global's Clearance Orders used in Washington State in 2004  
2 state that "[t]he employer agrees to abide by the assurances  
3 required at 20 C.F.R. Part 655, Subpart B, including the  
4 regulations at 20 C.F.R. § 655.103 and 20 C.F.R. § 653.501. This  
5 Clearance Order describes the actual terms and conditions of the  
6 employment being offered by Global . . . and contains all the  
7 material terms and conditions of employment." (Ct. Rec. 467, p.  
8 12).

9 An employer may not change the terms or working conditions,  
10 including increasing the number of workers requested without  
11 approval from the DOL. 20 C.F.R. § 655.101(c), (d), and (e); 20  
12 C.F.R. § 655.106(c). Job opportunities may not be transferred  
13 from one employer to another. 20 C.F.R. § 655.106(c)(1). The  
14 only exception that allows an employer to transfer workers from  
15 one farm to another farm is if the initial application was made on  
16 behalf of an association of member farms, not an individual farm.  
17 8 U.S.C. § 1188(c)(3)(B)(iv); 20 C.F.R. § 655.106(c)(2)(ii).  
18 Plaintiffs' undisputed facts reveal that Defendants did not apply  
19 to the DOL for H-2A workers as an association of member farms in  
20 Washington State in 2004. (Ct. Rec. 467, p. 13).

21 The undisputed facts demonstrate that, on February 23, 2004,  
22 Global obtained approval from the DOL to employ up to twelve H-2A  
23 workers at Valley Fruit between February 23 and April 1, 2004,  
24 and, on August 6, 2004, Global obtained additional approval from  
25 the DOL to employ up to sixty-two H-2A workers at Valley Fruit  
26 between August 15 and October 31, 2004. (Ct. Rec. 467, pp. 13-  
27 14). Global did not obtain any other approval from the DOL to  
28 employ H-2A workers at Valley Fruit in 2004. Nevertheless, Global



1 had crews of H-2A workers from Thailand working at Valley Fruit  
2 between June 20 and August 11, 2004. (Ct. Rec. 467, pp. 14-15).

3 The undisputed facts also show that, on March 18, 2004,  
4 Global obtained approval from the DOL to bring in a maximum of 131  
5 H-2A foreign workers at Green Acre between March 18 and November  
6 5, 2004. (Ct. Rec. 467, p. 16). However, during the week of  
7 August 8-14, 2004, 154 H-2A workers from Thailand were working at  
8 Green Acre; during the week of August 15-21, 2004, 151 H-2A  
9 workers were working at Green Acre; during the week of August 29-  
10 September 4, 2004, 145 H-2A workers were working at Green Acre;  
11 during the week of September 5-11, 2004, 145 H-2A workers were  
12 working at Green Acre; during the week of September 12-18, 2004,  
13 145 H-2A workers were working at Green Acre; during the week of  
14 September 19-25, 2004, 145 H-2A workers were working at Green  
15 Acre; during the week of September 26-October 2, 2004, 172 H-2A  
16 workers were working at Green Acre; and during the week of October  
17 3-9, 2004, 172 H-2A workers were working at Green Acre. (Ct. Rec.  
18 467, pp. 16-17). Accordingly, despite the cap of 131 H-2A workers  
19 placed on Global by the DOL, Global employed a greater number of  
20 H-2A foreign workers at Green Acre between August 8 and October 9,  
21 2004.

22 The failure to comply with the statutory and regulatory  
23 requirements noted above, by using unapproved H-2A workers at  
24 Valley Fruit and exceeding the DOL limit for H-2A workers at Green  
25 Acre, is a violation of the specific assurance made in the  
26 Clearance Orders in 2004 that indicated Global would comply with  
27 the law. Therefore, Plaintiffs are entitled to summary judgment  
28 on their AWPA and FLCA claims for Global's violations of the

1 working arrangements and violations of legal and valid agreements  
2 and contracts.

3 D. Failure To Pay Wages Due

4 Pursuant to AWPAA, an agricultural employer must pay to each  
5 worker the wages owed when due. 29 U.S.C. §§ 1822(a), 1832(a).  
6 Under FLCA, a farm labor contractor must pay or distribute to the  
7 individuals entitled thereto all moneys owed promptly when due.  
8 RCW 19.30.110(4).

9 Global admits that, for a limited period of time and "due to  
10 clerical error," Global deducted from the pay of certain employees  
11 taxes that were not required by the State of Washington. (Ct.  
12 Rec. 467, pp. 17-18). While U.S. Resident Workers may have been  
13 reimbursed by Global for the deductions in 2005, Global admittedly  
14 failed to pay Plaintiffs the wages they were owed when due in  
15 violation of AWPAA and FLCA. (Ct. Rec. 467, pp. 17-24).

16 On July 30, 2004, the DOL accepted Global's temporary labor  
17 certification application for work to be performed at Valley  
18 Fruit. (Ct. Rec. 467, p. 24). The Valley Fruit Clearance Order  
19 included a piece rate of \$19 per bin for the pear harvest which  
20 commenced at Valley Fruit in August of 2004. (Ct. Rec. 467, p.  
21 25). Workers at Valley Fruit were thus entitled to be paid the  
22 piece rate of \$19 per bin in the pear harvest in 2004. The  
23 uncontested facts show that Plaintiffs were not paid a piece rate  
24 for the pear harvest at Valley Fruit in August of 2004. (Ct. Rec.  
25 467, pp. 25-27).

26 Based on the foregoing, Plaintiffs are entitled to summary  
27 judgment for Defendants failure to pay Plaintiffs the wages they  
28 were owed when due in violation of AWPAA and FLCA.

1        E. Failure To Provide Adequate Written Pay Statements

2        According to AWPA, an agricultural employer must provide to  
3 each worker, for each pay period, an itemized written statement  
4 that includes the basis on which wages are paid, the number of  
5 piecework units earned, the number of hours worked, the total pay  
6 period earnings, the specific sums withheld and the purpose of  
7 each sum withheld, and the net pay. 29 U.S.C. §§ 1821(d),  
8 1831(c). Under FLCA, a farm labor contractor must furnish to each  
9 worker a written statement itemizing the total payment and the  
10 amount and purpose of each deduction therefrom, hours worked, rate  
11 of pay, and pieces done if the work is done on a piece rate basis.  
12 RCW 19.30.110(8).

13        In response to Plaintiffs' request for copies of all pay  
14 statements provided to U.S. Resident Workers in 2004, Global  
15 responded "none." (Ct. Rec. 467, p. 28). Global nevertheless  
16 concedes that it failed to itemize the pieces done on the pay  
17 statement when work was paid on a piece rate basis at Valley Fruit  
18 in 2004. (Ct. Rec. 467, p. 27). Based on the undisputed facts,  
19 Plaintiffs are entitled to summary judgment for Global's failure  
20 to provide adequate pay statements in violation of AWPA and FLCA.

21        II. Ct. Rec. 465 (Willful Withholding of Wages)

22        A violation of RCW 49.52.050(2) occurs when an employer or  
23 officer, vice principal or agent of any employer "[w]illfully and  
24 with intent" deprives an employee of any part of his wages. RCW  
25 49.52.050(2). Any employer and any officer who violates RCW  
26 49.52.050 "shall be liable in a civil action by the aggrieved  
27 employee . . . to judgment for twice the amount of the wages

28        ///

1 unlawfully rebated or withheld . . . cost of suit and a reasonable  
2 sum for attorney's fees." RCW 49.52.070.

3 Plaintiffs allege that Global, as the employer, and Orian, as  
4 an officer of the employer, are liable under RCW 49.52.070 for the  
5 willful failure to pay wages. (Ct. Rec. 466, pp. 13-16). "There  
6 are two instances when an employer's failure to pay wages is not  
7 willful: the employer was careless or erred in failing to pay, or  
8 a 'bona fide' dispute existed between the employer and employee  
9 regarding the payment of wages." *Schilling v. Radio Holdings,*  
10 *Inc.*, 136 Wash.2d 152, 159 (1998).

11 Although Plaintiffs assert that Global's unlawful deductions  
12 of Washington State income tax may not, as a matter of law, be  
13 considered the result of carelessness or error, the facts  
14 presented by Plaintiffs compel a different conclusion.

15 Global admits that, for a limited period of time and "due to  
16 clerical error," Global deducted from the pay of certain employees  
17 taxes that were not required by the State of Washington. (Ct.  
18 Rec. 467, pp. 17-18). The uncontested facts of Plaintiffs show  
19 that Global "unintentionally" withheld money from the workers'  
20 paychecks due to computer programming problems. (Ct. Rec. 467, p.  
21 18). The facts show that the software Global starting using in  
22 June 2004 deducted state taxes when it should not have. (Ct. Rec.  
23 467, p. 20). On September 22, 2005, Global entered into a  
24 settlement agreement with the State of Washington and stipulated  
25 that it had withheld \$3,235.64 in wages from U.S. Resident Workers  
26 for Washington State income tax in 2004 and that Washington State  
27 does not have a state income tax. (Ct. Rec. 467, p. 18). The  
28 error was discovered in late 2004 or early 2005 and refunds were

1 administered in September of 2005. (Ct. Rec. 467, pp. 17-23).  
2 The problem with the deductions for taxes was corrected in late  
3 2005 when Orian purchased a different software system. (Ct. Rec.  
4 467, p. 24).

5 Based on the foregoing, the Court finds the existence of an  
6 issue of fact regarding the willfulness of the withholding of  
7 wages. Plaintiffs are thus denied summary judgment on their  
8 claim, pursuant to RCW 49.52.070, that Global and Orian  
9 intentionally deprived employees of their wages.

10 **III. Ct. Rec. 459**

11 By way of Ct. Rec. 459, Plaintiffs move the Court for an  
12 order of partial summary judgment finding that Defendants Green  
13 Acre and Valley Fruit are liable for alleged violations of FLCA,  
14 RCW 19.30, *et seq.*, and AWPA, 29 U.S.C. §§ 1801, *et seq.* (Ct.  
15 Rec. 459). Plaintiffs assert that Green Acre and Valley Fruit are  
16 jointly liable for all AWPA violations as joint employers of  
17 Plaintiffs and because an agency relationship existed with Global.  
18 Plaintiffs additionally assert that Green Acre and Valley Fruit  
19 are liable for all FLCA violations because they illegally employed  
20 Global as an unlicensed farm labor contractor in 2004. (Ct. Rec.  
21 460). Again, as noted above, no Defendant has filed an opposition  
22 memorandum to Plaintiffs' motion.

23 A. Joint Employment Relationship

24 Plaintiffs argue that Defendants Green Acre and Valley Fruit  
25 are liable for AWPA damages as joint employers along with Global.  
26 (Ct. Rec. 460, pp. 2-17).

27 ///

28 ///

1 A grower's liability under AWPAs depends on whether it  
2 "employed" workers. 29 U.S.C. § 1802(2). An entity "employs" a  
3 person under AWPAs if it "suffers or permits" the individual to  
4 work. 29 U.S.C. § 1802(5) (AWPA holds that the term "employ" has  
5 the meaning given such term under section 3(g) of the Fair Labor  
6 Standards Act of 1938 ("FLSA")); *Antenor v. D & S Farms*, 88 F.3d  
7 925 (11<sup>th</sup> Cir. 1996). AWPAs's adoption of FLSA's definition of  
8 employment "was deliberate and done with the clear intent of  
9 adopting the 'joint employer' doctrine as a central foundation of  
10 this new statute; it is the indivisible hinge between certain  
11 important duties imposed for the protection of migrant and  
12 seasonal workers and those liable for any breach of these duties."  
13 *Antenor*, 88 F.3d at 929-930 (quoting H.R.Rep. No. 97-885, 97<sup>th</sup>  
14 Cong., 2d Sess. 1982) 6, reprinted in 1982 U.S.C.C.A.N 4547,  
15 4552); 29 C.F.R. § 500.20(h)(5)(ii).

16 The concept of joint employment, in the context of an AWPAs  
17 case, maintains that two or more employers may jointly employ an  
18 individual, and every employer is individually liable for any  
19 violations that may occur. *Zhao v. Bebe Stores, Inc., et al.*, 247  
20 F.Supp.2d 1154, 1157 (C.D. Cal. 2003).

21 To determine whether a joint employment relationship exists,  
22 a court applies the "economic reality" test. *Torres-Lopez v. May*,  
23 111 F.3d 633, 638 (9<sup>th</sup> Cir. 1997). Under the economic reality  
24 tests, "[a] court should consider all those factors which are  
25 'relevant to [the] particular situation' in evaluating the  
26 'economic reality' of an alleged joint employment relationship."  
27 *Torres*, 111 F.3d at 639 (quoting, *Bonnette v. California Health &*  
28 *Welfare Agency*, 704 F.2d 1465, 1470 (9<sup>th</sup> Cir. 1983)). In making

1 its joint employment determination, the Ninth Circuit in *Torres*  
2 considered five "regulatory factors"<sup>5</sup> as well as the following  
3 "nonregulatory" factors: (1) whether the work was a specialty job  
4 on the production line, (2) whether responsibility under the  
5 contracts between a labor contractor and an employer pass from one  
6 labor contractor to another without material changes, (3) whether  
7 the premises and equipment of the employer are used for the work,  
8 (4) whether the employees had a business organization that could  
9 or did shift as a unit from one worksite to another, (5) whether  
10 the work was piecework and not work that required initiative,  
11 judgment or foresight, (6) whether the employee had an opportunity  
12 for profit or loss depending upon the alleged employer's  
13 managerial skill, (7) whether there was permanence in the working  
14 relationship, and (8) whether the service rendered is an integral  
15 part of the alleged employer's business." *Torres*, 111 F.3d at  
16 639. The *Torres* Court considered the foregoing regulatory and  
17 non-regulatory factors and concluded, as a matter of law, that a  
18 grower (Bear Creek Farms) was a joint employer along with its farm  
19 labor contractor (Ag-Labor) for purposes of FLSA and AWPA.  
20 *Torres*, 111 F.3d at 644-645.

21 Following the *Torres* decision, new regulations were issued to  
22 remedy the "overly restrictive" court interpretations of the  
23 regulations in defining the concept of "joint employer." *Torres*,

---

24  
25 <sup>5</sup>The "regulatory factors" considered by the Court were as  
26 follows: (A) the nature and degree of control of the workers; (B)  
27 the degree of supervision, direct or indirect, of the work; (C)  
28 the power to determine the pay rates or the methods of payment of  
the workers; (D) the right, directly or indirectly, to hire, fire,  
or modify the employment conditions of the workers; and (E)  
preparation of payroll and the payment of wages. *Torres*, 111 F.3d  
at 639-640; former 29 C.F.R. § 500.20(h)(4)(ii).

1 111 F.3d at 641 n. 6. The new AWPAs regulations regarding joint  
2 employment contain the following seven non-exhaustive factors to  
3 be analyzed:

4 (A) Whether the agricultural employer has the power, either  
5 alone or through control of the farm labor contractor to  
direct, control or supervise the workers or work performed;

6 (B) Whether the agricultural employer has the power, either  
7 alone or in addition to another employer, directly or  
indirectly, to hire or fire, modify the employment  
8 conditions, or determine the pay rates or the methods of wage  
payments for workers;

9 (C) The degree of permanency and duration of the relationship  
10 of the parties;

11 (D) The extent to which the services rendered by the workers  
are repetitive, rote tasks requiring skills which are  
12 acquired with relatively little training;

13 (E) Whether the activities performed by the workers are an  
integral part of the overall business operation of the  
14 agricultural employer;

15 (F) Whether the work is performed on the agricultural  
employer's premises, rather than on the premises owned or  
16 controlled by another business entity; and,

17 (G) Whether the agricultural employer undertakes  
responsibilities in relation to the workers which are  
18 commonly performed by employers.

19 29 C.F.R. § 500.20(h) (5) (iv) (A) - (G).

20 The undisputed facts establish that the contracts with Green  
21 Acre and Valley Fruit required them to tell Global how many  
employees were needed and what to do on a daily basis. (Ct. Rec.  
22 461, p. 3). Green Acre and Valley Fruit made all decisions  
23 regarding when to start and stop all work tasks performed by  
24 Global crews and had the right to inspect the work of Global crews  
25 at all times. (Ct. Rec. 461, p. 4). Both Jim Morford, the co-  
26 owner of Green Acre, and John Verbrugge, a manager at Valley  
27 Fruit, constantly reviewed the quality and quantity of the work  
28 performed by the Global crews. (Ct. Rec. 461, pp. 5-20). Mr.



1 Morford and Mr. Verbrugge set forth performance standards for  
2 Global crews. (Ct. Rec. 461, pp. 7, 15, 22). Global provided  
3 both Mr. Morford and Mr. Verbrugge with daily reports to keep them  
4 apprised of costs. (Ct. Rec. 461, pp. 8-9, 15). Green Acre and  
5 Valley Fruit closely tracked the progress and performance of  
6 Global's workers. (Ct. Rec. 461, pp. 5-20).

7 Green Acre and Valley Fruit set the productivity standards,  
8 and some of Global's workers were terminated because Green Acre  
9 and Valley Fruit were not happy with the production. (Ct. Rec.  
10 461, pp. 12-13, 22). With respect to Green Acre, a crew of Global  
11 workers "didn't come back" after Mr. Morford complained about the  
12 productivity of the crew to Global employees. (Ct. Rec. 461, pp.  
13 12-13). With respect to Valley Fruit, based on instructions from  
14 Stan Buechler, a manager at Valley Fruit, a Global employee gave  
15 workers written warnings and fired workers for not meeting  
16 expectations. (Ct. Rec. 461, pp. 19-20). Mr. Verbrugge testified  
17 that he individually fired a crew of Global's workers for lack of  
18 productivity at Valley Fruit. (Ct. Rec. 461, p. 20). In  
19 addition, Mr. Verbrugge agreed to a change to a piece rate rather  
20 than an hourly rate, as requested by Global's workers, during the  
21 2004 cherry harvest at Valley Fruit. (Ct. Rec. 461, p. 19)  
22 Therefore, Valley Fruit exercised authority regarding changes in  
23 wages, as well.

24 The Clearance Orders used by Global in 2004 at Green Acre and  
25 Valley Fruit did not require job applicants to have prior orchard  
26 experience, nor did the jobs of pruning, thinning and harvesting  
27 require great "initiative, judgment, or foresight." *Torres*, 111  
28 F.3d at 644; (Ct. Rec. 461, p. 14).

1 Plaintiff's work was an "integral part" of the business of  
2 Green Acre and Valley Fruit. Without Global's workers tending and  
3 harvesting the orchards, neither Green Acre nor Valley Fruit would  
4 have realized any economic benefits.

5 Green Acre and Valley Fruit owned or controlled the land upon  
6 which Global's workers worked in 2004, paid the costs associated  
7 with applying fertilizers and pesticides and for transporting the  
8 harvested fruit from the fields to the packing sheds, and owned  
9 the orchard equipment utilized for the various orchard tasks.

10 (Ct. Rec. 461, p. 3-4).

11 Based on these uncontested facts, which demonstrate that  
12 Green Acre and Valley Fruit had control and oversight over the  
13 day-to-day working conditions of Global's workers, and taking into  
14 consideration the AWPAs regulations regarding joint employment (29  
15 C.F.R. § 500.20(h)(5)(iv)(A)-(G)), it is determined, as a matter  
16 of law, that Green Acre and Valley Fruit were joint employers with  
17 Global for purposes of Plaintiffs' AWPAs claims. Plaintiffs are  
18 thus entitled to summary judgment with respect to this issue.

19 B. Global as Agent for Green Acre and Valley Fruit

20 Plaintiffs assert that Defendant Global was the agent for  
21 Defendants Green Acre and Valley Fruit, and; therefore, Green Acre  
22 and Valley Fruit are liable for all AWPAs recruitment violations  
23 committed by Global. (Ct. Rec. 460, pp. 17-18).

24 The uncontested facts show that both Green Acre and Valley  
25 Fruit contracted with Global, in or about December of 2003, to  
26 recruit and provide labor at their respective fruit orchards in  
27 2004. (Ct. Rec. 461, p. 2). It is undisputed that Green Acre and  
28 Valley Fruit contracted with Global for the purpose of recruiting

1 labor to their orchards. Accordingly, Plaintiffs are entitled to  
2 judgment, as a matter of law, that Global served as the agent for  
3 Green Acre and Valley Fruit for recruitment purposes during the  
4 relevant time period.

5 C. Hiring Unlicensed Farm Labor Contractor

6 Plaintiffs contend that Green Acre and Valley Fruit are  
7 liable under FLCA for hiring Global, an unlicensed farm labor  
8 contractor. (Ct. Rec. 460, pp. 18-19).

9 FLCA holds that "[a]ny person who knowingly uses the services  
10 of an unlicensed farm labor contractor shall be personally,  
11 jointly, and severally liable with the person acting as a farm  
12 labor contractor." RCW 19.30.200.

13 It is undisputed that Global operated as an unlicensed farm  
14 labor contractor in Washington State on behalf of Green Acre and  
15 Valley Fruit from January to October 6, 2004. (Ct. Rec. 461, p.  
16 23). The uncontested facts reveal that neither Mr. Morford nor  
17 Mr. Verbrugge investigated whether Global possessed a valid  
18 Washington State farm labor contractor license, and, after they  
19 were each advised that no license existed in July of 2004, they  
20 continued to use Global's services. (Ct. Rec. 461, pp. 23-26).  
21 Green Acre and Valley Fruit continued to use the services of  
22 Global between July and October of 2004. (Ct. Rec. 461, p. 26).

23 Based on these undisputed facts, Plaintiffs are entitled to  
24 summary judgment on their claim that Green Acre and Valley Fruit  
25 knowingly used the services of an unlicensed farm labor contractor  
26 in 2004. Accordingly, Green Acre and Valley Fruit are jointly and  
27 severally liable with Global, the farm labor contractor, for all  
28 violations of FLCA.

STATUTORY DAMAGES

As noted above, on June 22, 2007, Plaintiffs filed a motion, pursuant to Fed. R. Civ P. 39(a), to strike Defendants' jury demand with respect to Plaintiffs' AWPAs and FLCA summary judgment claims. (Ct. Rec. 498). Plaintiffs moved for a Court determination of statutory damages under FLCA. (Ct. Rec. 498). Defendants did not respond to this motion. Accordingly, as indicated above, the Court vacated the July 24, 2007 hearing on Plaintiffs' motion. Plaintiffs filed a reply memorandum and supporting documentation on July 10, 2007. (Ct. Rec. 505; Ct. Rec. 506).

Pursuant to this Court's local rules, Defendants had eleven (11) calendar days, from service, to file a timely responsive memorandum. LR 7.1(c). No response from Defendants has been received by the Court. Local Rule 7.1(h)(5) holds that "[a] failure to timely file a memorandum of points and authorities in support of or in opposition to any motion may be considered by the Court as consent on the part of the party failing to file such memorandum to the entry of an Order adverse to the party in default."

A. Jury Demand

Based on the above award of summary judgment by the Court on Plaintiffs' AWPAs and FLCA claims (*see, supra*), Defendants' failure to oppose those motions, and Defendants' failure to oppose Plaintiffs' motion to strike Defendants' jury demand, Plaintiffs' motion, pursuant to Fed. R. Civ P. 39(a), to strike Defendants' jury demand with respect to Plaintiffs' AWPAs and FLCA summary judgment claims (**Ct. Rec. 498**) is **GRANTED**. Defendants' jury

1 demand with respect to Plaintiffs' AWPAs and FLCA summary judgment  
2 claims is therefore **STRICKEN**.

3 B. Statutory Damages

4 Plaintiffs elect to seek recovery of only statutory damages  
5 under FLCA, as opposed to the federal statute.<sup>6</sup> (Ct. Rec. 498).  
6 Pursuant to FLCA, the Court may award the prevailing party, in  
7 addition to costs and reasonable attorney fees, actual damages or  
8 statutory damages of five hundred dollars per plaintiff per  
9 violation, whichever is greater. RCW 19.30.170(1), (2). While  
10 the more modest damage structure under AWPAs<sup>7</sup> appears reasonable  
11 based on the bizarre circumstances the Court is currently  
12 presented with, Defendants' failure to contest Plaintiffs' motion  
13 for damages under FLCA directs otherwise. The Court **GRANTS**  
14 Plaintiffs' request for statutory damages under FLCA (**Ct. Rec.**  
15 **498**).

16 Plaintiffs have produced uncontested evidence in the form of  
17 pleadings and exhibits which demonstrate the following number of  
18 persons in each of the three subclasses: U.S. Resident Workers  
19 Denied Work - 423; Valley Fruit - 169; and Green Acre - 138 (38  
20

---

21 <sup>6</sup>Plaintiffs indicate that they seek only statutory damages  
22 under FLCA, because the statutory award remedies under the state  
23 statute is more generous (automatic \$500.00 award for each  
24 violation, separate awards for multiple violations of a  
subsection, no cap for class action awards, and attorneys' fees  
and costs available). Compare RCW 19.30.170 with 29 U.S.C. §  
1854(c).

25 <sup>7</sup>Pursuant to AWPAs, if the court finds that a defendant has  
26 intentionally violated any provision of the Act, it may award  
27 actual damages or statutory damages of up to \$500 per plaintiff  
28 per violation except that multiple infractions of a single  
provision constitute only one violation for purposes of  
determining the amount of statutory damages and, the court shall  
make an award no greater than \$500,000.00 if certified as a class  
action. 29 U.S.C. § 1854(c)

1 members of the Green Acre subclass also worked at Valley Fruit and  
2 will be considered part of the Valley Fruit subclass for purposes  
3 of assessing statutory damages). (Ct. Rec. 498; Ct. Rec. 499; Ct.  
4 Rec. 505; Ct. Rec. 506).

5 As determined above, Plaintiffs are entitled to judgment  
6 against Global, as a matter of law, for Global's failure to  
7 provide adequate disclosures in violation of FLCA, for Global's  
8 violation of AWPA and FLCA by providing false and misleading  
9 information regarding the terms and conditions of employment, for  
10 Global's violations of the working arrangements and violations of  
11 legal and valid agreements and contracts in violation of AWPA and  
12 FLCA, for Global's failure to pay Plaintiffs the wages they were  
13 owed when due in violation of AWPA and FLCA, and for Global's  
14 failure to provide adequate pay statements in violation of AWPA  
15 and FLCA. *Supra*. Furthermore, Green Acre and Valley Fruit are  
16 liable, as a matter of law, as joint employers with Global for  
17 purposes of Plaintiffs' AWPA claims, it is established that Global  
18 served as the agent for Green Acre and Valley Fruit for  
19 recruitment purposes, and it is established that Green Acre and  
20 Valley Fruit knowingly used the services of an unlicensed farm  
21 labor contractor in 2004 in violation of FLCA. *Supra*.

22 Plaintiffs' uncontested motion reveals that four of the above  
23 violations affected the U.S. Resident Workers Denied Work subclass  
24 (failure to provide required disclosures, providing false and  
25 misleading information about transportation benefits, providing  
26 false and misleading information about production standards, and  
27 failure to comply with the working arrangement by not complying  
28 with the law); nine violations affected the Valley Fruit subclass

1 (failure to provide required disclosures, providing false and  
2 misleading information about transportation benefits, providing  
3 false and misleading information about production standards,  
4 failure to comply with the working arrangement by not complying  
5 with the law, failure to comply with the working arrangement by  
6 not complying with the disciplinary procedures, failure to pay  
7 wages due, failing to provide adequate pay statements in violation  
8 of WAC 296-131-015, failing to provide adequate pay statements by  
9 not itemizing the piece rate units earned (only 115 members of the  
10 Valley Fruit subclass), and failing to pay wages due by not paying  
11 the approved bin rate (only 24 members of the Valley Fruit  
12 subclass)); and seven violations affected the Green Acre subclass  
13 (failure to provide required disclosures, providing false and  
14 misleading information about transportation benefits, providing  
15 false and misleading information about production standards,  
16 failure to comply with the working arrangement by not complying  
17 with the law, failure to comply with the working arrangement by  
18 not complying with the disciplinary procedures, failure to pay  
19 wages due, and failing to provide adequate pay statements in  
20 violation of WAC 296-131-015).

21 Plaintiffs are entitled to statutory damages, pursuant to  
22 FLCA, calculated as follows: U.S. Resident Workers Denied Work -  
23 423 workers x 4 violations x \$500 = \$846,000.00; Valley Fruit -  
24 169 workers x 7 violations x \$500 = \$591,500.00; Valley Fruit -  
25 115 workers x 1 violation x \$500 = \$57,500.00; Valley Fruit - 24  
26 workers x 1 violation x \$500 = \$12,000.00; and Green Acre - 100  
27 workers x 7 violations x \$500 = \$350,000.00. Therefore, judgment  
28 / / /

1 in favor of Plaintiffs and against Defendants is ordered in the  
2 total amount of **\$1,857,000.00**.

3 **CONCLUSION**

4 Based upon the foregoing reasons, **IT IS ORDERED** as follows:

5 1. The hearing date on Plaintiffs' Motions for Partial  
6 Summary Judgment (Ct. Rec. 459, 465) and to Strike Defendants'  
7 Jury Demand (Ct. Rec. 498) previously set for July 24, 2007, is  
8 **VACATED**.

9 2. Defendants Global Horizons, Inc., and Mordechai Orian,  
10 shall pay to the Court the monetary sanctions previously imposed,  
11 in the amount of **\$12,500.00**, as well as the additional amount of  
12 **\$27,000.00**, calculated at \$500.00 per day for each calendar day  
13 since the initial imposition of sanctions to the date of this  
14 order, for Defendants' continued refusal to comply with the  
15 Court's orders. A check payable to the United States District  
16 Court, Eastern District of Washington, from Defendants Global  
17 Horizons, Inc., and Mordechai Orian, in the amount of \$39,500.00  
18 is due immediately. **Monetary sanctions, in the amount of \$500.00**  
19 **a day, for each calendar day, shall continue until Defendants**  
20 **provide full payment to the Court.**

21 Should Defendants fail to make payment to the Court in the  
22 above amount, Defendant Mordechai Orian shall appear before the  
23 Court on **July 24, 2007 at 2:00 p.m.**, in Yakima, Washington, to  
24 face the charge of criminal contempt pursuant to this Court's  
25 authority under 18 U.S.C. § 401(3).

26 3. Plaintiffs' Motion for Partial Summary Judgment (Ct.  
27 **Rec. 465**) is **GRANTED in part and DENIED in part**.

28 / / /



1 Plaintiffs are entitled to judgment against Global, as a  
2 matter of law, for Global's failure to provide adequate  
3 disclosures in violation of FLCA, for Global's violation of AWPA  
4 and FLCA by providing false and misleading information regarding  
5 the terms and conditions of employment, for Global's violations of  
6 the working arrangements and violations of legal and valid  
7 agreements and contracts in violation of AWPA and FLCA, for  
8 Global's failure to pay Plaintiffs the wages they were owed when  
9 due in violation of AWPA and FLCA, and for Global's failure to  
10 provide adequate pay statements in violation of AWPA and FLCA.

11 However, Plaintiffs are denied summary judgment on their  
12 claim, pursuant to RCW 49.52.070, that Global and Orian  
13 intentionally deprived employees of wages.

14 4. Plaintiffs' Motion for Partial Summary Judgment (**Ct.**  
15 **Rec. 459**) is **GRANTED**.

16 Plaintiffs are awarded judgment, as a matter of law,  
17 that Green Acre and Valley Fruit were joint employers with Global  
18 for purposes of Plaintiffs' AWPA claims, that Global served as the  
19 agent for Green Acre and Valley Fruit for recruitment purposes,  
20 and that Green Acre and Valley Fruit knowingly used the services  
21 of an unlicensed farm labor contractor in 2004 in violation of  
22 FLCA.

23 5. Plaintiffs's June 22, 2007 motion to strike Defendants'  
24 jury demand with respect to Plaintiffs' AWPA and FLCA summary  
25 judgment claims (**Ct. Rec. 498**) is **GRANTED**. Defendants' jury  
26 demand with respect to Plaintiffs' AWPA and FLCA summary judgment  
27 claims is **STRICKEN** and Plaintiffs are entitled to statutory  
28 damages, pursuant to FLCA, in the total amount of **\$1,857,000.00**.

1           **IT IS SO ORDERED.** The District Court Executive shall enter  
2 judgment accordingly and forward copies to counsel for Plaintiffs  
3 and Defendants and the Court's Financial Administrator.

4           **DATED** this \_\_\_\_\_ 11<sup>th</sup> \_\_\_\_\_ day of July, 2007.

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

s/ Alan A. McDonald  
\_\_\_\_\_  
ALAN A. MCDONALD  
SENIOR UNITED STATES DISTRICT JUDGE