

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

WEST PALM BEACH DIVISION

Case No. 01-9013-CIV.-RYSKAMP
Magistrate Judge Vitunac

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U.S. DISTRICT COURT
S.D. OF FLA. - WPB
D.C.

Delma Luz Carranza,
Francelia Hernandez,
Virginia Perez,
Hermelinda Ramos,
Carlos Ramos,
Adolfo Perez,
Gloria Roblero,
David Matias, and
Rafael Gonzales
individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

Complaint--Class Action

Mecca Farms, Inc.,
M. Sanchez & Son, Inc.,
Maria T. Sanchez, and
Rogerio T. Rodriguez,

Defendants.

AMENDED COMPLAINT FOR DAMAGES,
DECLARATORY RELIEF, INJUNCTIVE RELIEF,
COSTS OF LITIGATION AND ATTORNEY'S FEES

PRELIMINARY STATEMENT

1. This is an action by eight migrant or seasonal farmworkers on behalf of themselves and others similarly situated to redress and vindicate rights afforded them by the Migrant and

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Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801-1872 (1999) ("AWPA"), the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (1998) ("FLSA"), and the Federal Insurance Contributions Act, 26 U.S.C. §§ 3101-3128 (1989) ("FICA").

2. At various points between 1997 and November 2001, inclusive, the Plaintiffs and other class members were employed or jointly employed on a seasonal basis by Mecca Farms, Inc., M. Sanchez & Son, Inc, Maria T. Sanchez, and Rogerio T. Rodriguez planting, cultivating, preparing and harvesting tomatoes and other crops in south Florida on the operations of Mecca Farms, Inc. Throughout the period relevant to this action, the Defendants violated the AWPA's provisions relating to recordkeeping, wage statements, payment of wages, and transportation. During portions of their tenure with the Defendants, the Plaintiffs were paid less than the federally-mandated minimum wage for their labor in violation of the FLSA. The Defendants also failed to pay or ensure payment of Social Security (FICA) taxes on the labor of the Plaintiffs and other class members.

3. The Plaintiffs seek money damages, declaratory relief, injunctive relief, costs of litigation and attorney's fees to redress these violations of law.

JURISDICTION

4. Jurisdiction is conferred upon this Court by 29 U.S.C. § 1854(a), this action arising under the AWPA; by 29 U.S.C. § 216(b), this action arising under the FLSA; by 28 U.S.C. § 1331, this action arising under the laws of the United States; and by 28 U.S.C. § 1337, this action arising under Acts of Congress regulating commerce.

5. The Court is empowered to grant declaratory relief pursuant to 28 U.S.C. §§ 2201-2202.

VENUE

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(1)-(2), (c) because all of the Defendants reside in the district, the events or omissions giving rise to the claim occurred in the district, and all the Defendant corporations are subject to personal jurisdiction in this district.

PARTIES

7. At all times relevant to this action, the Plaintiffs and the other class members were migrant or seasonal agricultural workers within the meaning of the AWPA, 29 U.S.C. § 1802(8)(A), (10)(A). At all times relevant to this action, each of the Plaintiffs was engaged in the production of goods for sale in interstate commerce.

8. Defendant Mecca Farms, Inc. is a closely-held Florida corporation based in Lantana, Florida. Mecca Farms, Inc. is engaged in the production of tomatoes and other commodities in South Florida for sale in interstate commerce. At all times relevant to this action, Mecca Farms, Inc. was an agricultural employer of the Plaintiffs and other class members within the meaning of the AWPA, 29 U.S.C. § 1802(2), in that it operated a farm and employed the Plaintiffs and other migrant or seasonal agricultural workers. At all times relevant to this action, Mecca Farms, Inc. employed the Plaintiffs and other class members within the meaning of the FLSA, 29 U.S.C. § 203(d).

9. Defendant M. Sanchez & Son, Inc. is a closely-held Florida corporation headquartered in Lantana, Florida. At all times relevant to this action, M. Sanchez & Son, Inc. acted as a farm labor contractor within the meaning of the AWPA, 29 U.S.C. § 1802(7), in that, for a fee, it

recruited, solicited, hired, furnished, or transported agricultural workers for agricultural employment within the meaning of the AWP. At all times relevant to this action, M. Sanchez & Son, Inc. employed Plaintiffs and other class members within the meaning of the FLSA, 29 U.S.C. § 203(d).

10. Defendant Maria T. Sanchez is an individual residing in Boynton Beach, Florida, and is the President, Vice President, Secretary, and Treasurer of M. Sanchez & Son, Inc. At all times relevant to this action, Maria T. Sanchez acted as a farm labor contractor within the meaning of the AWP, 29 U.S.C. § 1802(7), in that, for a fee, she recruited, solicited, hired, furnished, or transported agricultural workers for agricultural employment. At all times relevant to this action, she was an employer or joint employer of the Plaintiffs and other class members within the meaning of the FLSA, 29 U.S.C. § 203(d).

11. Defendant Rogerio T. Rodriguez is an individual residing in Palm Beach County, Florida. At all times relevant to this action, Rogerio T. Rodriguez acted as a farm labor contractor within the meaning of the AWP, 29 U.S.C. § 1802(7), in that, for a fee, he recruited, solicited, hired, furnished, or transported agricultural workers for agricultural employment. At all times relevant to this action, he was an employer or joint employer of the Plaintiffs and other class members within the meaning of the FLSA, 29 U.S.C. § 203(d).

12. At all times relevant to this action, the Defendants employed the Plaintiffs and the other class members within the meaning of 29 U.S.C. § 1802(5) and 29 U.S.C. § 203(g).

CLASS ACTION ALLEGATIONS

13. All claims set forth in Count I are brought by the Plaintiffs on behalf of themselves and all other similarly situated persons pursuant to Fed. R. Civ. P. 23(b)(3).

14. All claims set forth in Count II and V are brought by the Plaintiffs on behalf of themselves and all other similarly situated persons pursuant to Fed. R. Civ. P. 23(b)(2).

15. The named Plaintiffs seek to represent a class consisting of all migrant and seasonal agricultural workers furnished to Mecca Farms, Inc. by M. Sanchez & Son, Inc., Maria T. Sanchez, or Rogerio T. Rodriguez from August 1997 through November 2001, inclusive.

16. Only the Defendants know the precise number of individuals in the class. The class is believed to include over 1,000 individuals. The class is comprised of indigent migrant or seasonal workers who are not fluent in the English language and who maintain their residences at various locations throughout the United States, Mexico, and Central America. The relatively small size of the individual claims and the indigence of the class members makes the maintenance of separate actions by each class member economically infeasible. Joinder of all class members is impracticable.

17. There are questions of fact common to the class. The common questions of fact include: whether the Defendants made, kept, and preserved payroll records, provided wage statements, and paid wages when due in accordance with the AWPAs; and whether the earnings of the Plaintiffs and other class members were reported to the Social Security Administration.

18. There are questions of law common to the class. The common legal questions include: whether Mecca Farms, Inc. is an employer or joint employer of the Plaintiffs and class members, and whether the Defendants' actions violated the AWPAs.

19. The claims of the named Plaintiffs are typical of those of the class, and these typical, common claims predominate over any questions affecting only individual class members. The named Plaintiffs have the same interests as do the other members of the class and will vigorously prosecute these interests on behalf of the class.

20. Plaintiffs' counsel have handled numerous class actions in the federal courts, including class actions under the AWPAs. Plaintiffs' counsel are prepared to advance litigation costs necessary to vigorously litigate the action.

21. With respect to the Plaintiffs' AWPAs claims set forth in Count I, certification is sought under Fed. R. Civ. P. 23(b)(3). A class action under Rule 23(b)(3) is superior to other available methods of adjudicating this controversy, because, inter alia:

a. The common issues of law and fact, as well as the relatively small size of the individual class members' claims, substantially diminish the interest of members of the class in individually controlling the prosecution of separate actions;

b. Many members of the class are unaware of their rights to prosecute these claims and lack the means or resources to secure legal assistance;

c. There has been no litigation already commenced against the Defendants by the class members to determine the questions presented;

d. It is desirable that the claims be heard in this forum since the Defendants reside in this District, and the actions giving rise to the claim occurred in this District;

e. A class action can be managed without undue difficulty because the Defendants have regularly committed the violations complained of herein, and are required to maintain detailed records concerning each class member.

22. With respect to the Plaintiffs' claims in Counts II and V certification is sought under Fed. R. Civ. P. 23(b)(2). By failing, inter alia, to report to the Social Security Administration the earnings of the class members, the Defendants have refused to act on grounds that are generally applicable to the class. Final injunctive relief with respect to the class as a whole is appropriate.

COUNT I
(Migrant and Seasonal Agricultural Worker Protection Act)
(Class Claims)
(All Defendants)

23. This count sets forth class claims under Fed. R. Civ. P. 23(b)(3) by the Plaintiffs and other class members for damages and declaratory relief to the AWPA violations and its attendant regulations by the Defendants.

24. The Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 22 of the complaint.

25. The Defendants failed to make, keep and maintain records regarding the work of the Plaintiffs and other class members as required by the AWPA, 29 U.S.C. §§ 1821(d)(1), 1831(c)(1), and its attendant regulation, 29 C.F.R. § 500.80(a). Among other things, the Defendants failed to make, keep and maintain records accurately reflecting the number of piecework units earned, compensable hours worked, and the specific sums withheld from the wages and the purpose of each sum withheld.

26. In violation of the AWPA, 29 U.S.C. §§ 1821(d)(2), 1831(c)(2) and its attendant regulations, 29 C.F.R. § 500.80(d), the Defendants failed to provide the Plaintiffs and the other class members each pay period with a written statement accurately showing the number of

piecework units earned, the hours worked, the specific sums withheld and the purpose of each sum withheld.

27. The Defendants failed to compensate the Plaintiffs and the other class members at the stated piece rate wage for all units of produce harvested and to pay minimum wages due them under the FLSA, 29 U.S.C. § 206(a)(1). These actions violate the AWP, 29 U.S.C. §§ 1822(a), 1832(a) and its attendant regulations, 29 C.F.R. § 500.72.

28. The Defendants used or caused to be used vehicles that failed to conform to applicable Federal and State safety standards to transport the Plaintiffs and other class members to and from the Defendants' job sites in violation of the AWP, 29 U.S.C. § 1841(b)(1)(A) and its attendant regulations, 29 C.F.R. §§ 500.104, 500.105(b). Among other things, the vehicles did not provide securely fastened seats for each passenger.

29. The violations of the AWP and its attendant regulations as set forth in this count were the natural consequences of the conscious and deliberate actions of the Defendants and were intentional within the meaning of the AWP, 29 U.S.C. § 1854(c)(1).

30. As a result of the Defendants' violations of the AWP and its attendant regulations as set forth in this count, the Plaintiffs and other class members have suffered damages.

COUNT II
(Migrant and Seasonal Agricultural Worker Protection Act)
(Class Claims)
(All Defendants)

31. This count sets forth class claims under Fed. R. Civ. P. 23(b)(2) by the Plaintiffs and other class members for damages and declaratory relief to the AWP violations and its attendant regulations by the Defendants.

32. The Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 30 of the complaint.

33. The Defendants failed to pay Social Security (FICA) taxes on the Plaintiffs' labor and that of the other class members, and to ensure the filing of the forms W-2 and W-3 so as to properly credit the Plaintiffs and other class members' Social Security earnings records for their labor, in violation of the AWPA, 29 U.S.C. §§ 1822(a), 1832(a) and its attendant regulations, 29 C.F.R. § 500.72.

34. The violations of the AWPA and its attendant regulations as set forth in this count were the natural consequences of the conscious and deliberate actions of Defendants and were intentional within the meaning of the AWPA, 29 U.S.C. § 1854(c)(1).

35. As a result of the Defendants' violations of the AWPA and its attendant regulations as set forth in this count, the Plaintiffs and other class members have not been properly credited their Social Security earnings.

COUNT III
(Migrant and Seasonal Worker Protection Act)
(Individual Claims)
(All Defendants)

36. This count sets forth a claim by Plaintiffs Gloria Roblero, David Matias and Rafael Gonzales for expanded statutory damages under the AWPA, 29 U.S.C. 1854(e) and its attendant regulations.

37. The Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 though 35 of the complaint.

38. On April 25, 2001, the Defendants caused Plaintiffs Gloria Roblero, David Matias

and Rafael Gonzales to be transported to Mecca Farms' job site in a van operated by Isabel Ramirez.

39. While en route to the job site on April 25, 2001, the van was involved in a collision, resulting in bodily injuries to Plaintiffs Gloria Roblero, David Matias, and Rafael Gonzales.

40. In violation of the AWP, 29 U.S.C. § 1841(b) and its attendant regulations 29 C.F.R. § 500.105(b)(3), the Defendants caused the transportation of Plaintiffs Gloria Roblero, David Matias, and Rafael Gonzales as described in paragraph 38 without first ensuring that the van conformed to applicable federal and state safety standards. Among other things, the van lacked seats for each of the passengers.

41. The safety violation described in paragraph 40 resulted in injuries to Plaintiffs Gloria Roblero, David Matias, and Rafael Gonzales. The injuries arose out of and in the course of employment as determined under Florida workers' compensation law.

42. At the time of the accident, Isabel Ramirez, the vehicle driver, was an unregistered farm labor contractor, in violation of the AWP, 29 U.S.C. § 1811(a).

43. The Defendants utilized the services of Isabel Ramirez, an unregistered farm labor contractor, without taking reasonable steps to determine that Ramirez possessed a valid certificate of registration authorizing the performance of the farm labor contractor activities which he was requested or permitted to perform, in violation of the AWP, 29 U.S.C. § 1842.

44. As a result of the AWP violations by the Defendants as set forth in this count, Plaintiffs Gloria Roblero, David Matias, and Rafael Gonzales suffered bodily injuries and other damages and are entitled to recover expanded statutory damages pursuant to the AWP, 29 U.S.C. § 1854(e).

COUNT IV
(Fair Labor Standards Act)
(All Defendants)

45. This count sets forth a claim by the Plaintiffs for damages for the Defendants' violations of the minimum wage provisions of the FLSA from August 1997 through November 2001, inclusive.

46. The Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 44 of the complaint.

47. At no time relevant to this action did the Defendants post in a conspicuous place a poster or other written statement advising the Plaintiffs of their right to the minimum wage under the FLSA. Such posting is required by regulations issued under the FLSA, 29 C.F.R. § 516.4.

48. The Defendants failed to pay the Plaintiffs at least \$5.15 for each compensable hour they worked during each pay period they were employed or jointly employed by the Defendants, in violation of the FLSA, 29 U.S.C. § 206(a)(1).

49. The violations of the FLSA set forth in paragraph 48 resulted, in part, from Defendants' failure to credit the Plaintiffs with all compensable hours worked.

50. The FLSA violations set forth in paragraph 48 resulted, in part, from the Defendants' failure to supplement the Plaintiffs' piece-rate earnings so as to raise them to the minimum level required by the FLSA.

51. At all times relevant to this action, the Defendants regularly withheld employee Social Security (FICA) contributions in accordance with the FICA from Plaintiffs' wages.

52. The violations of the FLSA described in paragraph 48 resulted, in part, from the

Defendants' failure to deposit with the Internal Revenue Service all sums withheld from the Plaintiffs' wages for the purpose of employee Social Security taxes pursuant to the FICA.

53. The violations of the FLSA described in paragraph 48 resulted, in part, from the Defendants' unlawful charges for facilitating the payment of wages.

54. As a result of the FLSA violations described in this count, the Plaintiffs are entitled to recover the amount of unpaid minimum wages due each of them and an equal amount as liquidated damages, pursuant to 29 U.S.C. § 216 (b).

COUNT V
(Federal Insurance Contributions Act)
(Class Claims)
(Defendants M. Sanchez & Son, Inc. and Maria T. Sanchez)

55. This count sets forth class claims under Fed. R. Civ. P. 23(b)(2) by the Plaintiffs and the other members of the class for declaratory relief and injunctive relief with respect to violations of the Federal Insurance Contributions Act by Defendants M. Sanchez & Son, Inc. and Maria T. Sanchez from August 1997 through November 2001, inclusive.

56. The Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 54.

57. At all times relevant to this action, Defendants M. Sanchez & Son, Inc. and Maria T. Sanchez were the employers of the Plaintiffs and other class members for purposes of the FICA, 26 U.S.C. § 3121(o).

58. At all times relevant to this action, Defendants M. Sanchez & Son, Inc. and Maria T. Sanchez regularly withheld employee Social Security (FICA) contributions in accordance with the FICA from the wages of the Plaintiffs and other members of the class.

59. Defendants M. Sanchez & Son, Inc. and Maria T. Sanchez failed to deposit with the Internal Revenue Service all of the sums withheld from the wages of the Plaintiffs and class members as described in Paragraph 58 above, along with a matching employer's share. On information and belief, Defendants M. Sanchez & Son, Inc. and Maria T. Sanchez converted all or a portion of these monies to their own use. In addition, Defendants M. Sanchez & Son, Inc. and Maria T. Sanchez failed to file with the Social Security Administration forms W-2 and W-3 with regard to all of the labor performed by the Plaintiffs and other class members, thereby preventing the Social Security Administration from properly crediting the individual Social Security earnings records of the workers with the wages.

60. By the actions described in Paragraph 58 and 59, Defendants M. Sanchez & Son, Inc. and Maria T. Sanchez violated the FICA.

61. As a result of the violations of the FICA described in this count, the Plaintiffs and the other members of the class have been denied Social Security benefits to which they are lawfully entitled.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that the Court will enter an order:

- (a) Certifying the case as a class action in accordance with Fed. R. Civ. P. 23(b)(3) with respect to the claims set forth in Count I.
- (b) Certifying the case as a class action in accordance with Fed. R. Civ. P. 23(b)(2) with respect to the claims set forth in Count II and V.
- (c) Declaring that Defendants Mecca Farms, Inc., M. Sanchez & Son, Inc., Maria T.

Sanchez and Rogerio T. Rodriguez have intentionally violated the AWPAs, as set forth in Counts I, II, and III;

(d) Declaring that the Defendants have violated the FLSA, as set forth in Count IV;

(e) Declaring that Defendants M. Sanchez & Son, Inc. and Maria T. Sanchez have violated the FICA as set forth in Count V;

(f) Granting judgment for the Plaintiffs and the other class members and against the Defendants, jointly and severally, on the AWPAs claims as set forth in Count I and awarding the Plaintiffs and each of each of the class members his or her actual damages or statutory damages of \$500, whichever is greater, for every AWPAs violation and its attendant regulations set forth in the count;

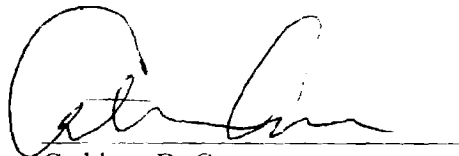
(g) Granting judgment for the Plaintiffs and the other class members and against the Defendants, jointly and severally, on the AWPAs claims as set forth in Count II, and enjoining the Defendants from failing to file with the Social Security Administration forms W-2 and W-3 relating to the Plaintiffs and the other class members for the Defendants during the period of the action;

(h) Granting judgment for Plaintiffs Roblero, Matias, and Gonzales and against the Defendants, jointly and severally, on the AWPAs claim as set forth in Count III and awarding each of the Plaintiffs \$10,000 in expanded statutory damages;

(i) Granting judgment for the Plaintiffs and the other class members against the Defendants, jointly and severally, on the FLSA claims as set forth in Count IV and awarding each of the Plaintiffs his or her unpaid minimum wages and an equal amount as liquidated damages;

- (j) Granting judgment in favor of the Plaintiffs and the other class members and against Defendants M. Sanchez & Son, Inc. and Maria T. Sanchez on the FICA claims as set forth in Count V, and enjoining these Defendants from failing to file with the Social Security Administration forms W-2 and W-3 relating to the labor of the Plaintiffs and the other class members for these Defendants during the period relevant to this action;
- (k) Awarding the Plaintiffs the costs of the action;
- (l) Awarding the Plaintiffs a reasonable attorney's fee with respect to the claims under the FLSA and the wage payment provisions of the AWPA;
- (m) Granting such further relief as this Court deems just and equitable.

Respectfully submitted,



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