

**Proposed Settlement Agreement in *Recinos-Recinos, et. al v. Express Forestry, et. al.* Case No. 05-1355**

I. Monetary Relief

1. The total monetary payment shall be \$220,000. It shall be paid according to the following schedule:

<u>Date</u>	<u>Amount</u>
April 1, 2007	\$135,000
June 1, 2007	\$8,000 (The first two payments cover distribution for three class representatives plus 36 Guatemalan seasons and 46 Mexican seasons for opt ins)
December 1, 2007	\$38,500 (to cover class member distributions)
June 1, 2008	\$38,500 (to cover class member distributions)

2. All payments must be *received* by Plaintiffs' counsel, in the form of a check made payable to "Southern Poverty Law Center Client Trust Account" by the dates specified.
3. The parties agree that if the 12/1/07 and 6/1/08 payments set forth above are not timely received by Plaintiffs' counsel, Plaintiffs' counsel will immediately and promptly notify Defendants in writing if a scheduled payment is late. The parties agree that if the 12/1/07 and 6/1/08 payments are not timely received by Plaintiffs' counsel, the following penalties shall apply:
- a. For payments 10 or fewer days late, Defendants shall pay liquidated damages of \$100 per day to Plaintiffs, and
- b. For payments more than 10 days late, Defendants shall pay liquidated damages of \$500 per day. This increased penalty shall be retroactive, meaning that if Defendants fail to pay and more than 10 days pass, Defendants shall have to pay damages of \$500 per day for each late day, including for each of the initial 10 days in which the payment was late.

Weekends and any holidays shall not be excluded from the calculation of the 10 day period. The proceeds of any liquidated damages for late payments shall be applied to the general class member payments fund.



4. Defendants further agree that if the 4/1/07 and 6/1/07 scheduled payment are more than 10 days late, Plaintiffs shall have the right to immediately re-open this case and to proceed with discovery and other preparation for trial and all terms of this agreement shall be null and void. Any payments made by Defendants may be deducted from the damages determined by the Court in a final judgment.
5. Class representative Hugo Martin Recinos-Recinos will be paid \$15,000. Class representatives Pablo Recinos-Alvarado and Alberto Alvarado shall be paid \$5,000 each.
6. All Opt-in Plaintiffs from Mexico shall be paid \$1,000 for each season in which they have worked for Defendants.
7. All Opt-in Plaintiffs from Guatemala or any other nations shall be paid \$2,000 for each season in which they have worked for Defendants.
8. All AWWA class members from Mexico shall be shall be paid \$200 for each season in which they have worked for Defendants.
9. All AWWA class members from Guatemala or any other nations shall be shall be paid \$300 for each season in which they have worked for Defendants.
10. Where a Plaintiff, Opt-in Plaintiff, or class member is deceased, payment will be made to the class member's heirs or estate or in the event there is no estate, to the class member's next of kin in the following priority: (a) spouse; (b) children; (c) parents; (d) siblings; and (e) other relatives.
11. After the class member claims period has expired, any remaining class member or opt-in funds shall be distributed as follows:
  - a. All Guatemalan Plaintiffs (class representatives and Opt-in Plaintiffs) who signed opt-in statements prior to this Court's issuance of a protective order will each receive \$1,000 of the remaining class funds. If not enough funds remain to pay each of the eligible Guatemalan Plaintiffs \$1,000 each, all the remaining funds shall be divided evenly among the Guatemalan Plaintiffs who filed their claims with the Court prior to this Court's issuance of a protective order.
  - b. After allocating the distributions described in subparagraph a, all remaining funds shall be divided evenly among all Opt-in Plaintiffs.
  - c. Any remaining funds subject to the distributions in subparagraph a and b that are unclaimed by Opt-in Plaintiffs shall be subject to a cy pres arrangement benefiting one or more non-profit organizations that aid low wage migrant or

immigrant workers, not to include the Southern Poverty Law Center. The appropriate beneficiary organizations shall be determined by Plaintiffs' counsel in consultation with Plaintiffs. Funds shall be considered unclaimed if, one year after mailed notice is sent to the Opt-in Plaintiff concerning the availability of funds, an Opt-in Plaintiff has not indicated orally or in writing that he intends to collect the available funds.

II. Permanent Certification of the Class and Class Notice

12. Defendants shall agree to permanent certification of the class certified by the Court's January 2006 order.
13. Plaintiffs shall have two years from the date of Court approval of this settlement agreement to provide class-wide notice of the settlement and to distribute these funds. Notice may be accomplished by any means Plaintiffs deem appropriate, including mailing, in-person meetings, word-of-mouth, and advertisement in radio, television and/or print media.
14. The protective order currently in effect will remain in effect for the duration of this Court's jurisdiction of the settlement agreement.
15. Class members shall be able to register their claims to class funds by furnishing their names, contact information, and data regarding seasons worked to Plaintiffs' counsel only. Plaintiffs agree to verify the membership of all claimants in the class using reliable methods, such as searching the Solomon payroll data extracted from Defendants' computer, or viewing copies of workers' visas, pay stubs, or other employment-related documents to verify facts of employment.
16. Defendants will not in any manner discuss or provide advice regarding the instant lawsuit or terms of the settlement with their H-2B workforce. Defendants shall not in any way attempt to influence and/or interfere with individuals' decisions regarding claims to settlement money. Defendants shall refer all inquiries about this case to Plaintiffs' counsel.
17. Defendants shall instruct their supervisory staff regarding the prohibitions outlined above and the requirement that all questions about this lawsuit and/or settlement be referred to Plaintiffs' counsel.

III. Contractual Agreement to Comply with Federal Law

18. Defendants agree to abide by the FLSA, AWPA, and any other applicable laws in their employment of any and all workers, including foreign guest workers, recruited and/or hired for any kind of work.

IV. Injunctive Relief

19. Defendants shall agree to entry of an injunction, under the Migrant and Seasonal Agricultural Worker Protection Act, ordering that Defendants shall, in the course of any employment or labor contracting activities with any seasonal or migrant agricultural worker, such as their forestry workers, do the following:
  - a. With respect to each migrant or seasonal worker, provide them with a written disclosure statement in their primary language complying fully with 29 U.S.C. § 1821, ensuring that each worker is provided a copy of any statement regarding working terms or conditions to retain for their personal records;
  - b. With respect to each migrant or seasonal agricultural worker, make, keep and preserve for six years at least one set of hard copies, plus computer information showing for each workweek the following data: the worker's name, full permanent address (to include the town, municipality, state and country), Social Security number, daily starting and stopping times (hard copies only due to data entry issues), the piece-rate or hourly rate paid, the number of piece-work units earned, the total pay period earnings, and any withholdings from wages and the purpose for each such withholding;
  - c. With respect to each migrant or seasonal agricultural worker, make, keep and preserve for six years at least one set of hard copies of the following types of documents: weekly and daily field tally sheets, ledgers, and any documents filled out manually by Express Forestry personnel for the purposes of keeping track of employees' hours of work; piece rate production, determination/calculation of piece rates and quantity of piece work for which employees were actually paid, deductions to worker pay or piece rate production, or any other information related to determination of worker pay;
  - d. At all times, keep at least one set of the hard copy records referenced in subparts a, b, and c, stored in a secure and readily accessible location in Defendants' Arkansas office;
  - e. Provide to each migrant or seasonal agricultural worker at each payday a written statement relating to his or her employment during the pay period showing the following information in Spanish: the employer's name, address and Internal Revenue Service employer identification number, daily starting and stopping times (hard copies only due to data entry issues), the piece-rate or hourly rate paid, the number of piece-work units earned, the total pay period earnings, and any withholdings or deductions from wages and the purpose for each such withholding;

- f. Provide to each migrant and seasonal worker accurate and detailed receipts for any deductions, advances, debt payments, or any other non-wage amounts paid to or by workers, and keep copies of such documentation stored as referenced in subpart c;
  - g. Properly record and compensate all compensable hours worked at the correct wage rate, specifically including time spent traveling between worksites, time engaged to be waiting at the worksites, and time spent on any compensable preparatory or clean-up work;
  - h. From the date that the District Court of the Eastern District of Louisiana decides the Arriaga v. Fla. Pac. Farms, 305 F.3d 1228 (11<sup>th</sup> Cir. 2002) issues, the Defendants will abide by that decision as to the payment or reimbursement of the travel and visa expenses incurred by each migrant and seasonal worker for all workers hired thereafter. In the event that the District Court does not rule on the merits of the Arriaga issue by June 30, 2007, the Defendants will abide by the Arriaga decision until the District Court or the Fifth Circuit Court of Appeals rules otherwise;
  - i. No later than September 1, 2007, with respect to each migrant or seasonal worker employed by Defendants, shall select and begin utilizing a computerized and/or electronic timekeeping system that will provide computerized record keeping of start and stop times at the point of entry or exist (field or cooler);
  - j. No later than September 1, 2007, Defendants will inform Plaintiffs' counsel of the identity of the program selected pursuant to subparagraph i; and
  - k. Pay each and every migrant or seasonal agricultural worker, at least the proper prevailing wage for all compensable hours worked and at least the proper overtime wage for all compensable hours worked in excess of forty (40) in a given workweek.
20. Defendants agree to the Court retaining jurisdiction of this settlement for three years from the date of entry of the injunction.

V. Agreement Not to Retaliate

- 21. Defendants shall acknowledge and abide by the provisions of the FLSA and the AWPB prohibiting them from blacklisting, discharging threatening or discriminating against Plaintiffs, Opt-In Plaintiffs, and any other employees.
- 22. Defendants agree to add to their disclosures/contracts provided to workers in future seasons a notice in the workers' native language(s) stating that any threats are

unlawful and that workers are free to assert their rights under federal law without fear of retaliation or discrimination. Such notice shall be subject to review and editing by Plaintiffs' counsel prior to its distribution to Defendants' workers, and a draft of the notice provided to Plaintiffs' counsel at least two weeks prior to distribution of disclosures by Defendants to afford them this opportunity.

23. Defendants further agree not to report any named or Opt-in Plaintiffs to the U.S. Department of Homeland Security, U.S. Consulate, or any other law enforcement or government officials for malfeasance, except as required by law.
24. Defendants agree that within thirty (30) days of entry of this agreement, they will inform all individuals who recruit or recommend workers to Defendants that this lawsuit has been resolved and will further specifically instruct all such individuals, as well as all foremen, crew leaders, or any other supervisory or managerial personnel that this lawsuit has been resolved and that it was and is illegal for them to discharge, failure to hire, or in any manner discriminate against Plaintiffs, Opt-in Plaintiffs, or any other employees for asserting their rights: (1) to be paid the minimum applicable wage timely and correctly; (2) to have Defendants comply with oral or written statements it makes about the conditions and terms of employment; and (3) to any other minimum working terms or conditions guaranteed under applicable federal or state law. This communication need not be made to Plaintiffs or Opt-in Plaintiffs.
25. Defendants agree that neither they nor their agents will initiate any communications with any representative Plaintiffs or Opt-in Plaintiff in any way related to employment or this lawsuit. Defendants further agree that they will not direct anyone else to engage in such communications and that they will instruct their supervisors and anyone recruiting or recommending persons for work with Defendants not to initiate such conversations. This will not bar Defendants or their agents from engaging in communications initiated by Plaintiffs or Opt-in Plaintiffs, particularly where Plaintiffs or Opt-in Plaintiffs are seeking employment with Defendants and their agents. This restriction does not include any persons other than the representative Plaintiffs or Opt-in Plaintiffs.

V. Agreement Regarding Collateral and Document Holding

26. Defendants shall agree to continue to specifically instruct their supervisors, recruiters, and any other agents they permit or authorize to do anything with respect to the recruitment, hiring, processing, interviewing, transportation or supervision of any current or future guest workers employed by Defendants (or applicants for guest worker jobs with the Defendants) that they shall not seek, obtain or accept deeds, deposits of money or any other kind of collateral from Defendants' current, future or prospective workers. Defendants will include a statement in their disclosures that no one is permitted to require employees to provide deeds, deposits or any other kind of collateral as a condition of obtaining employment with Defendants. Defendants

further agree to include a provision in their disclosures that that failure or refusal to comply with all directives of this paragraph will result in disciplinary action up to and including the non-compliant employee's or agent's termination and discharge from any employment with the Defendants.

27. Defendants shall not require that any of their workers surrender (either temporarily or permanently) passports, visas, social security cards, or other identification documents to the Defendants or any of their employees or agents. Defendants agree to include in their disclosures given to all employees a statement that they shall not require that any of Defendants' H-2B workers surrender (either temporarily or permanently) passports or other identification documents to the Defendants or any of their employees or agents. This restriction shall not apply to security deposits or prepayments that are required by a hotel or other place of lodging where the H-2B workers are to stay while they are performing work for Defendants, so long as these payments are made to the hotel.

#### VI. Recruitment Practices and Kickbacks

28. Defendants further agree to directly compensate any person, including any independent contractor, who refers, recruits, coordinates, or prepares a list of, persons to be hired, obtain visas, and/or travel for to work with Defendants' company. Defendants agree to bar the recruiting/referring/or list-preparing persons from charging any fees for their referral, recommendation, or recruitment of workers. If fees are charged by the recruiting/referring/or list-preparing individuals, Defendants agree to reimburse hired workers for any such fees unless Defendants are not liable as principals according to applicable common law agency principles.
29. Except for the hotel deposit exceptions set forth in paragraph 24, Defendants agree to add to any disclosures or contracts they provide to employees a statement affirming that workers will not be required to make any payments to any representative of Defendants in order to obtain or keep employment with Defendants.
30. Defendants agree to reimburse any payments made by hired workers at the behest of Defendants' representatives for the purposes of obtaining or keeping employment with Defendants unless Defendants are not liable as principals according to applicable common law agency principles.

#### VII. Monitoring and Reporting of Hotel Information

31. From this Court's final approval of the settlement, Plaintiffs' Counsel shall have to right to audit the employment practices of the Defendants. Plaintiffs' Counsel shall have the right to audit the employment practices of Defendants under the FLSA and/or AWPA periodically from the date of this Court's final approval of the

settlement for a period of three years:

- a. Every two weeks during the tree-planting season (defined for the purposes of this agreement as December 15 through April 15) Defendants shall fax a list to Plaintiffs' counsel setting forth the name, address, and telephone numbers of the locations where Defendants' employees are currently residing. If Plaintiffs' counsel fails to timely receive this report, Plaintiffs' counsel will inform Defendants of this fact and Defendant shall have two business days from the date of notification to provide the report to Plaintiffs' counsel. For each day beyond the 2 business days after which Plaintiffs' counsel has notified Defendants that they have filed to provide the required hotel information and Defendants have not provided the required lists in their entirety, Defendants shall pay liquidated damages of \$500 per day. This provision shall not apply to an actual and independently verifiable "Act of God" that reasonably prevents Plaintiffs' timely receipt of the required information;
- b. For each period listed above, Defendants agree to provide necessary assistance to enable Plaintiffs' Counsel to conduct three audits per period of Defendants' employment practices. The documentation that will be provided will be as follows:
  1. I-9;
  2. W-4
  3. Copies of visa, passport, and I-94;
  4. Company disclosure;
  5. Check stubs;
  6. Signed time card;
  7. Weekly time and production record;
  8. Daily time and production record;
  9. Computer generated payroll record which contains crew members name, hours, pieces, hour rate, piece amount, hourly amount, OT hours, OT pieces, and if pay is determined from hourly or piece rate.
  10. Arriaga compliance records, if applicable.
- c. These audits may be conducted by Plaintiffs' counsel through in-person visits to Defendants' office except that Defendants agree that not more than one of the three audits may be done by Defendants mailing the records identified above by mail, fax, computer disk (or other storage device compatible with Plaintiffs' computer system);
- d. All information, documentation or computer data to conduct an audit shall be provided in complete and unaltered form within ten (10) days of Plaintiffs' request for an in person audit and within 20 days for a mail audit;



- e. For each day beyond the 10 day notice period in which Defendants have not provided the requested in-person access to their records, Defendants shall pay liquidated damages of \$500 per day.

Plaintiffs' counsel shall promptly notify Defendants if Defendants have failed to timely provide complete documentation. Up to and including the tenth day beyond the 20 day notice period in which Defendants have not provided the requested documentation, Defendants shall pay liquidated damages of \$100 per day. For mailings more than 10 days late, Defendants shall pay liquidated damages of \$500 per day. This increased penalty shall be retroactive, meaning that if Defendants fail to pay and more than 10 days pass, Defendants shall have to pay damages of \$500 per day for each late day, including for each of the initial 10 days in which the payment was late. This provision shall not apply to an actual and independently verifiable "Act of God" that reasonably prevents Plaintiffs' timely receipt of auditing materials.

VIII. Costs and Attorneys' Fees

32. Plaintiffs' counsel agrees to waive all claims to attorneys' fees and costs related to work performed prior to signing of this agreement by the parties.
33. Defendants will pay any costs or attorneys' fees arising from and/or related to Plaintiffs' successful efforts to enforce this agreement.

IX. Declaratory Relief

34. Defendants shall agree that Plaintiffs retain the right to seek declaratory relief on the basis of evidence submitted through motions for summary judgment as to whether costs incurred by Plaintiffs prior to employment, such as expenses related to travel, visa processing, recruitment, must be reimbursed by Defendants in order comply with the Fair Labor Standards Act.
35. Defendants and Plaintiffs shall cooperate in the development of a list of uncontested facts for use in these motions, so as to effectively narrow and delineate the issues to be decided by the Court.

X. Court Jurisdiction to Enforce the Settlement Agreement

36. To facilitate enforcement of the settlement agreement, the Court will retain jurisdiction of this case for three years from entry of the Court's order approving the settlement agreement.

XI. Other Issues

37. The parties agree to a court finding that Plaintiffs' claims under Fair Labor Standards Act and the Agricultural Worker Protection Act constitutes nondischargeable debts according to 11 U.S.C. § 523(a)(2) and (a)(6). This provision will not be utilized by Plaintiffs or Plaintiffs' counsel in any manner and for any other purpose (including but not limited to publicity, press releases or other statements made about Defendants) unless Defendants have filed a petition for bankruptcy prior to final payment of this agreement.
38. The parties recognize that Opt-in Plaintiffs Vides Velsain de Leon Castillo from Guatemala and Gilfredo Ortiz D'avila from Mexico were unable to timely file their FLSA consent-to-sue forms with the Court because notice to them was substantially delayed by Defendants' failure to produce complete and accurate addresses for their workforce. Accordingly, the parties agree that Vides Velsain de Leon Castillo and Gilfredo Ortiz D'avila shall be included in any relief specified above for Opt-in Plaintiffs who joined the case after the Court's January 2006 entry of a protective order.
39. Plaintiffs' counsel will provide Defendants a letter that states that the litigation has been satisfactorily resolved between the parties. Defendants may use this letter for any purposes in its sole discretion.
40. The parties agree that in any written announcements about this case that the parties will note, "Defendants have stated that they decided to settle this case to avoid the costs and hassles of future litigation."
41. While the Court retains jurisdiction of the injunction described in Part IV. of this agreement, should Plaintiffs' counsel determine that the settlement agreement has been breached, they will notify Defendants of the breach with sufficient detail for Defendants to correct the breach and will provide Defendants thirty days from the receipt of the letter to correct the identified breach. This notice and cure provision applies only to the injunction set forth in Part IV, and does not apply to any allegations of retaliation by Plaintiffs or Opt-in Plaintiffs.
42. In consideration for the obligations assumed herein by Defendants, Plaintiffs shall release Defendants from any further liability for all claims raised or asserted in this action, or which could have been raised or asserted in this action with regard to the matters encompassed therein, or any related administrative proceedings.