

- B. Class Plaintiffs asserted claims against Defendants for violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1) and (2) and the New York Human Rights Law, N.Y. Exec. Law § 296(1)(a) (McKinney's 2001).
- C. U.S. District Judge Carlton Tilley, Jr. certified a plaintiff class on November 7, 2007. Plaintiff Olvera-Morales was certified to represent "[a]ll female H-2B workers recruited, procured or referred for employment by the Defendants or their agents, or whose H-2B employment opportunity was procured by Defendants or their agents, from 1999 to the present." *See* Memorandum Opinion, November 7, 2007 (ECF No. 122).
- D. Defendants have denied and continue to deny any liability. Nothing in this agreement shall constitute any admission or evidence of any violation of the law or other wrongful activity.
- E. The Class Plaintiffs and the Defendants wish to resolve all claims and controversy between them arising out of this action and hereby enter into this Agreement for that express purpose.

NOW, THEREFORE, in consideration of the mutual covenants, the promises and other good and valuable considerations, the sufficiency of which hereby are acknowledged, the undersigned parties agree that the above-captioned action shall be compromised and settled, subject to the approval of the Court, in accordance with the following terms and conditions:

1. **Filing of Settlement Agreement and Payment of Settlement Funds.** On or within thirty (30) business days of the Parties' execution of this Agreement, the Parties will file an executed copy of this Agreement with the Court and jointly

request the Court to grant its preliminary approval to the Agreement, approve a Notice of Proposed Class Action Settlement, authorize the dissemination of said Notice to Class Members, appoint a the settlement administrator, and conduct a fairness hearing and grant its final approval to the Agreement.

- Defendants will pay a total of \$100,000 in settlement funds. On or within five (5) business days of the date after which the Court grants its final approval of the Agreement, the Defendants will deliver funds equaling this amount to be deposited in the Trust Account of the North Carolina Justice Center The Parties will ask the Court to award \$12,000 of this amount to the class representative as an incentive award. The Defendants agree to pay this amount subject to the Court's approval;
- Class Counsel will petition the Court for an Order approving the recovery of expenses for the prosecution of this action in the sum of \$13,000 out of the above settlement fund. The Defendants agree to pay this amount subject to the Court's approval. Any funds remaining after the approval of the incentive award to the class representative and litigation expenses to class counsel will be distributed as a *cy pres* award to the Red de Mujeres del Bajio (Network of Women in the Lowlands), a Mexican non-profit organization that provides training and advising to rural women;
- *Cy pres* Recipients, pursuant to paragraph 4 hereof, shall be solely responsible for payment of any taxes on any distributions from the Settlement Fund that they receive.

2. **Settlement Administration.** In addition to the payment of settlement funds outlined in the preceding paragraph, Defendants will pay the following expenses, up to \$10,000, associated with administering this settlement agreement:
- Mailing of settlement notice to Class Plaintiffs;
 - Mailing of six communications (three annual mailings for each Defendant) to hired H-2A and H-2B workers as outlined in Paragraph 4(a) below;
 - Costs associated with use of the settlement administrator to handle each of the above mailings.
 - Defendants agree to pay the costs, if any, that exceed \$10,000, in the event that this excess is due to fees of the settlement logistics provider.
3. **Attorney fees and costs.** Except as expressly provided herein, each of the Parties shall bear their own attorneys' fees, costs, disbursements and expenses incurred in prosecuting the above captioned civil action.
4. **Settlement Monitoring.** Defendants shall report the following information in electronic format to counsel for Class Plaintiffs, Andrew Stillufsen of Kaye Scholer, LLP, in Excel or the equivalent format:
- for each H-2A and H-2B worker hired by Defendants' members and/or clients, the individual worker identification number, passport number, gender, preferred worker status, and member/client identification number.
 - for each member/client of Defendants who hired H-2A and H-2B workers, the member/client identification number, location, number of workers requested (including preferred worker status), and position for which hired.

The above information shall be provided by Defendant NCGA in January of each year, for three years, with the first report provided by January 31, 2009. The above information shall be provided by Defendant ILMC in July of each year, for three years, with the first report provided by July 31, 2009.

a) Communications with Hired H-2A and H-2B Workers.

i) Counsel for Class Plaintiffs shall be entitled to send a “settlement monitoring letter” to the hired H-2A and H-2B workers once each year for a period of three years. Counsel for Class Plaintiffs shall provide to Defendants, no later than 30 days before the letter is to be sent, an outline of the settlement monitoring letter that will be sent to the hired H-2A and H-2B workers. The content of the letter shall be limited to class settlement issues only.

ii) Defendants shall provide contact information for each of the hired H-2A and H-2B workers to a mutually agreed-upon third party administrator, which shall mail the settlement monitoring letter to the hired H-2A and H-2B workers.

iii) For any hired H-2A or H-2B worker for whom only incomplete address information is available, Defendants shall provide the worker’s name and the available address information to Class Plaintiffs’ counsel at the time contact information for the other hired H-2A and H-2B workers is provided to the third party administrator.

iv) If any settlement monitoring letter is returned to the third party administrator as undeliverable, the letter and envelope and any other relevant information as to why the letter was not delivered shall be provided to Class Plaintiffs’ counsel within 10 business days.

v) If recipients of the settlement monitoring letter contact Class Plaintiffs' counsel regarding issues unrelated to the settlement, Class Plaintiffs' counsel may respond to the issues raised.

b) **Requests for Documentation.** Class Plaintiffs may request underlying documentation for any request for H-2A or H-2B workers placed by Defendants' clients and/or members, up to 10% of the total number of NCGA's members and up to 10% of the total number of ILMC's clients during the calendar year in which the H-2A or H-2B workers worked for the client/member. Any request to NCGA or to ILMC shall be made within 60 days of the receipt by Class Counsel of the report described in Paragraph 4..

c) **Confidentiality.** Except to enforce the terms of this agreement, Class Plaintiffs shall not share the monitoring reports provided by Defendants pursuant to this agreement with any other person or entity, or disclose the information contained therein. Nothing herein shall be construed to restrict Class Counsel's communications with Plaintiff Class members.

5. **Anti-Discrimination Policies.**

a) Defendants and their agents shall not discriminate on the basis of sex in violation of Mexican or United States law, as applicable, in any aspect of the recruitment or hiring of individuals for H-2A or H-2B employment.

b) Defendants' staff shall participate in mutually agreeable anti-discrimination training that addresses sex discrimination. Defendants shall instruct in writing that Manpower of the Americas, Inc. ("MOAI"), Consular Services International ("CSI") or any other entity that provides defendants visa processing or recruitment services in

Mexico (hereinafter referred to as “Defendants’ visa processors and recruiters”) to require their employees and any and all recruiters used in Mexico to undergo such training. If the mutually agreed upon provider ceases to offer such training during the time period covered by this agreement, the training shall be provided by a mutually agreed upon online provider and shall cover material that is mutually agreed upon by the parties. The training shall be provided annually for three years, starting 2009.

Defendants shall arrange for the training and shall pay for the cost of the training. The training shall be available to the relevant persons throughout the year. Defendants shall provide to Class Plaintiffs’ counsel a report listing, by name, each Defendant staff member, employee of the visa processing agent and/or recruiter who underwent the training on a quarterly basis. Defendants shall make every effort to ensure that the employees of Defendants’ visa processors and recruiters in Mexico actually complete such training, including by requiring such visa processors to certify to Defendants, in writing, that their employees have completed such training and have instructed the recruiters to undergo such training. Defendants shall provide copies of these certifications to Class Counsel. In any enforcement proceeding to enforce this provision of the Agreement, Defendants may raise as a defense that they have taken all good faith efforts to assure full compliance with this provision.

c) If a Defendants’ client or member requests H-2A or H-2B workers of a specific gender, either directly or indirectly, Defendants shall respond that gender-specific requests are unlawful and will not be accommodated.

d) Every person who recruits H-2A or H-2B workers in Mexico for employment with Defendants’ clients or members shall be instructed to provide the written educational

statement attached as Exhibit 1 in Spanish and English, to every prospective worker with whom they have contact. Defendants shall make every effort to ensure that the recruiters in Mexico actually comply with this requirement, including by requiring such visa processors to certify to Defendants, in writing, that their employees have complied with this requirement and have instructed the recruiters to comply. Defendants shall provide copies of these certifications to Class Counsel. In any enforcement proceeding to enforce this provision of the Agreement, Defendants may raise as a defense that they have taken all good faith efforts to assure full compliance with this provision.

e) Defendants shall post the general anti-discrimination poster furnished by the Equal Employment Opportunity Commission the United States Department of Labor, and/or a state Department of Labor in Spanish and English.

f) Defendants shall post the anti-discrimination policy attached as Exhibit 2 at any offices they maintain in Mexico and shall instruct any visa-processing agents to post the policy at their in Mexico. These notices shall remain posted for at least three years from the date this agreement is signed. Defendants shall make every effort to ensure that Defendants' visa processors in Mexico actually comply with this requirement, including by requiring such visa processors to certify to Defendants, in writing, that they have complied with this requirement. Defendants shall provide copies of these certifications to Class Counsel. In any enforcement proceeding to enforce this provision of the Agreement, Defendants may raise as a defense that they have taken all good faith efforts to assure full compliance with this provision.

g) Every person or entity who recruits H-2A or H-2B workers in Mexico for employment with Defendants' clients or members shall be instructed to include in any

written or oral advertisement for those positions a statement that the positions are open to qualified applicants regardless of sex. Defendants shall make every effort to ensure that Defendants' visa processors in Mexico actually comply with this requirement, including by requiring such visa processors to certify to Defendants, in writing, that they have instructed the recruiters to comply. Defendants shall provide copies of these certifications to Class Counsel. In any enforcement proceeding to enforce this provision of the Agreement, Defendants may raise as a defense that they have taken good faith efforts to assure full compliance.

6. **Release.** Upon the Court's final approval of this Settlement Agreement, Class representative Marcela Olvera-Morales shall execute the attached individual release, translated into Spanish (Exhibit 3), and any federal, state, local, statutory or common law claims related to sex discrimination that were asserted or could have been asserted in this action by the class members will be deemed released. The notice to Class Plaintiffs shall include this class release.

7. **Press Release.** The parties shall release a mutually agreeable joint press release within 10 days of the Court's final approval of this Settlement Agreement. Apart from the press release, neither the parties nor their counsel will initiate contact with any member of the media. However, if contacted by the media, the parties and their counsel may comment on the case and the settlement.

8. **Appeal.** Class Plaintiffs and Defendants waive any right to appeal they may have with regard to any aspect of the above-referenced case, without exception.

9. **Stipulated Order and Joint Memoranda.** The parties shall submit a joint memorandum for preliminary and final approval of the Settlement Agreement to the U.S.

District Court for the Middle District of North Carolina, along with a stipulated Consent Decree based upon the above agreed upon provisions.

10. **Continuing Jurisdiction.** The parties shall jointly request that the U.S. District Court for the Middle District of North Carolina assume and retain continuing jurisdiction over this action for purposes of any motion, action or proceeding that may be brought by the named Plaintiff, any member of the Plaintiff Class, and Defendants to enforce any term of the Settlement Agreement and Consent Decree that are entered in this case.

11. **Dismissal.** After a final order is issued and all monetary relief has been paid by the Defendants, the parties shall file a Stipulation of Dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure, dismissing all claims against the Defendants in this lawsuit.

12. **Binding.** It is understood and agreed by the parties that this Agreement shall be binding and inure to the benefit of the Plaintiffs and Defendants and their respective heirs, representatives, successors and assigns.

13. **Authority.** Plaintiffs' Counsel and Defendants' Counsel each affirm that they have full authority to bind the respective parties whom they represent in this action and to enter into this Agreement on behalf of those parties.

14. **Modification.** This Agreement may be modified only by a written document signed by all parties that makes specific reference to this Agreement.

15. **Multiple Originals and Counterparts.** This Agreement may be executed in multiple originals and separate counterparts each of which shall constitute an original and all of which taken together shall constitute the whole Agreement.

16. **Arms' Length Negotiations.** This Settlement Agreement is the result of arms' length negotiations, and the Named Plaintiff and her counsel consider this Settlement Agreement to be fair, reasonable, adequate and in the best interests of the Class.

17. **Choice of Law.** This Settlement Agreement shall be governed by and construed under the laws of North Carolina, irrespective of choice of law provisions.

18. **Notices.** All notices, demands, requests and other communications (collectively "Notices") given or served by any party in connection with this Settlement Agreement shall be in writing. Notices shall be given by hand delivery, with receipt, or by nationally recognized overnight courier, with receipt, as follows:

Notices to Named Plaintiff and Class:

Carol Brooke, Esq.
North Carolina Justice Center
Post Office Box 28068
Raleigh, North Carolina 27611

Andrew D. Stillufsen, Esq.
Sheila S. Boston, Esq.
KAYE SCHOLER LLP
425 Park Avenue New York, NY 10022-
3598

Timothy Casey, Esq.
Jennifer K. Brown, Esq. Legal Momentum
395 Hudson Street, 5th Floor
New York, NY 10014

Notices to Defendants:

W.R. Loftis, Jr., Esq..
Constangy, Brooks, & Smith, LLC
100 N. Cherry Street, Suite 300
Winston-Salem, NC 27101

Any party may change the person to whom Notice shall be given or served by sending notice of such change to all parties by hand delivery, with receipt, or by nationally recognized overnight courier, with receipt.

19. Mutual Drafting of Agreement. None of the parties to this Settlement Agreement shall be considered its drafter for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

AGREED AND EXECUTED by the parties, acting by and through their respective counsel.

This the _____ day of _____, 2008.

COUNSEL FOR DEFENDANTS

COUNSEL FOR PLAINTIFFS

CONSTANGY, BROOKS & SMITH, LLC

Date _____

Date _____

BY: _____

BY: _____

W.R. Loftis, Jr., Esq.
N.C. State Bar # 2774
100 N. Cherry Street, Suite 300
Winston-Salem, NC 27101
(336) 721-1001

Exhibit 1 – Notice to be distributed by recruiters to prospective workers.

ALL JOBS IN THE U.S. ARE OPEN TO BOTH WOMEN AND MEN

All jobs in the U.S. are open to both women and men. An employer cannot recruit only men for certain types of work, such as field or farm work, or only women for other types of work, such as hotel or hospitality work.

If you are hired for a job in the U.S., you will receive either an H-2A visa or an H-2B visa. Farm or field work is usually “H-2A” work. Other work, like in hotels or hospitality, is usually H-2B work. Work in processing sheds on farms is usually H-2B work. H-2A work includes free housing, a guaranteed work period, and payment of travel costs. H-2A workers do not receive overtime pay. H-2B work does not include free housing, a guaranteed work period, or payment of travel costs, but H-2B workers do receive overtime pay if they work more than 40 hours in a workweek. These are not “men’s” and “women’s” jobs – men and women have equal rights to be considered for H-2A or H-2B positions. You may refer both men and women to any open position.

Sex discrimination is against the law in both Mexico and the United States. If you think you were given an H-2A or H-2B visa based on your sex, you can contact, in the United States, the United States EEOC toll-free at 1-800-669-4000 or 1-800-669-6820 (TTY) or, in Mexico, the National Council for the Prevention of Discrimination at 01-800- 543-0033 toll-free and 5203-3355 in Mexico City.

Exhibit 2 – Notice to be posted in Defendants agents’ offices in Mexico

Mexican Constitution provides, in its article 1, equal protection rights, and forbids discrimination based on ethnic or national origin, gender, disability, social conditions, health conditions, religion, opinions, preferences, civil status, or any other discrimination against human dignity or individual rights or liberties.

Article 3 of the Mexican Federal Labor Law provides there can be no distinction between employees based on race, sex, age, religious beliefs, political doctrine, and/or social condition.

Article 9, section III, of the Federal Law to Prevent and Eliminate Discrimination, provides that discriminatory conducts include, among others, prohibiting the free choice of employment, or restricting opportunities of access, standing, and promotion within same.

For information and advice and/or to report any discrimination conducts and file claims, you may contact:

The National Council for the Prevention of Discrimination at www.conapred.org.mx, and at 01 (800) 543-0033 tollfree nationwide and 5203-3355 in Mexico City.

Sex discrimination is against the law in both Mexico and the United States. If you think you were given an H-2A or H-2B visa based on your sex, you can contact, in the United States, the United States EEOC toll-free at 1-800-669-4000 or 1-800-669-6820 (TTY) or, in Mexico, the National Council for the Prevention of Discrimination at 01-800-543-0033 toll-free and 5203-3355 in Mexico City.

The Federal Worker Protection Agency
at www.stps.gob.mx and at 01 (800) 7172-942.

La Constitución Política de los Estados Unidos Mexicanos dispone, en su artículo 1, garantías de igualdad y prohíbe discriminación motivada por origen étnico o nacional,

género, discapacidades, condición social, condiciones de salud, religión, religión, opiniones, preferencias, estado civil, o cualquier otra que atente contra la dignidad humana y tenga por objeto anular o menoscabar los derechos y libertades de las personas.

El artículo 3 de la Ley Federal del Trabajo, en México, establece que no se podrán establecerse distinciones entre los trabajadores por motivos de raza, sexo, edad, credo religioso, doctrina política o condición social.

El artículo 9, inciso III, de la Ley Federal para Prevenir y Eliminar la Discriminación, establece que se consideran como conductas discriminatorias, entre otras, prohibir la libre elección de empleo o restringir las oportunidades de acceso, permanencia y ascenso en el mismo.

Para información y consultas, y/o para reportar cualquier conducta discriminatoria y presentar reclamaciones, usted puede contactar a:

El Consejo Nacional para la Prevención de la Discriminación en www.conapred.org.mx, y al 01 (800) 543-0033 lada sin costo y 5203-3355 en el Distrito Federal.

La Procuraduría Federal para la Defensa del Trabajo en www.stps.gob.mx y al 01 (800) 7172-942 lada sin costo.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MARCELA OLVERA-MORALES,	:	
ON BEHALF OF HERSELF AND	:	
ALL OTHERS SIMILARLY	:	Civ. Action No.
SITUATED	:	1:05-cv-559(NCT-PTS)
	:	
<i>Plaintiffs,</i>	:	
	:	
v.	:	
	:	
INTERNATIONAL LABOR	:	
MANAGEMENT CORPORATION,	:	
INC.; NORTH CAROLINA GROWERS'	:	
ASSOCIATION, INC.;	:	
	:	
<i>Defendants.</i>	:	
	:	

INDIVIDUAL RELEASE

1. I, the undersigned Plaintiff and Class Representative, sign the following release for the purpose of fully and finally settling all my claims as a Plaintiff in the above lawsuit.

2. In consideration for the Settlement Agreement reached in this case, I, the undersigned Plaintiff, on behalf of myself, my agents, heirs, executors, administrators, counsel, successors and assigns, hereby release and forever discharge completely and for all purposes Defendants North Carolina Growers' Association, Inc. and International Labor Management Corporation, Inc. ("Defendants"), and any and all of their past, present or future subsidiaries, parents, affiliates, officers, directors, employees, representatives, insurers, agents, counsel, successors, heirs, assigns, executors,

administrators, and affiliated entities from any and all claims, grievances, charges, complaints, demands, damages, costs, expenses (including attorneys' fees and costs), or causes of action which I alleged or could have alleged as of the date the Settlement Agreement in this lawsuit is executed, except for any claim for worker's compensation benefits against Defendants or their insurers. I agree that I am releasing any claims or causes of action which I alleged or could have alleged as of the date the Settlement Agreement in this lawsuit is executed under any United States or Mexican federal, state or local authority or any common law theory, including but not limited to, 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Civil Rights Act of 1991, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the North Carolina Persons with Disabilities Protection Act, the North Carolina Wage and Hour Act, the North Carolina Retaliatory Employment Discrimination Act, the Employee Retirement Income Security Act of 1974, the Family and Medical Leave Act, or any similar legislation, constitutional provision, executive order or regulation, or any common law theory (whether founded in tort or contract), except for any claim for worker's compensation benefits against Defendants or their insurers. I recognize that I am specifically releasing any claims under the Age Discrimination in Employment Act of 1967 and all amendments.

4. I am not waiving rights or claims that may arise after the date the Settlement Agreement is executed.

6. I have read this Release or have had this Release read to me, or both, and I fully understand it to be a compromise in settlement and release of all my claims. I affirm and guarantee that I am of legal age and legally competent to sign this Release, which I have

done of my own free will and without reliance on any representation of any kind which is not expressly stated in this document or the Settlement Agreement.

7. I have been given at least twenty-one (21) days in which to consider this Release.

8. I understand that I have the right to consult with an attorney before executing this Release and I acknowledge that I have had the opportunity to consult with an attorney.

9. I understand that I have seven (7) days following the date I sign this Release to revoke this Release. To revoke this Release, I understand that I should advise the Defendants in writing of my decision to revoke it immediately upon the conclusion of the seven (7) day period.

Lo antedicho me ha sido traducido por escrito o oralmente al español. (Translation: the foregoing has been translated in writing or orally to me in Spanish).

Name

Date