

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS E. PEREZ, Secretary of Labor,)
United States Department of Labor,)

Plaintiff,)

v.)

MIGUEL ROSALES RUIZ,)
an individual,)

Defendant.)

Case No. 1:15-cv-00820-RJJ-PJG
Hon. Robert J. Jonker

CONSENT JUDGMENT

Plaintiff, **THOMAS E. PEREZ**, Secretary of Labor, United States Department of Labor, having filed his Complaint, and Defendant **MIGUEL ROSALES RUIZ**, an individual, (“Defendant”), acknowledge receipt of a copy of the complaint and waive service thereof, agree to the entry of this Consent Judgment without contest under the Fair Labor Standards Act of 1938, as Amended, 29 U.S.C. § 201 *et seq.* (“FLSA”), and the Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. § 1801, *et seq.*) (“MSPA”).

Defendant hereby acknowledges that Defendant **MIGUEL ROSALES RUIZ**, individually, acted directly or indirectly in his own interest in relation to his employees, and thereby is an “employer” under section 3(d) of the FLSA.

NOW, therefore, upon motion of attorneys for Plaintiff and Defendant, and for cause shown:

JUDGMENT IS HEREBY ENTERED against Defendant pursuant to sections 16(c) and 17 of the FLSA, as follows.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, pursuant to section 17 of the FLSA, that Defendant, his agents, servants, employees, and all other persons in active concert or participation with him are hereby permanently enjoined and restrained from violating the provisions of the FLSA in any of the following manners.

I

Defendant shall not, contrary to sections 6 and 15(a)(2) of the FLSA, pay any of his employees who in any workweek are engaged in commerce or in the production of goods for commerce or who are employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the FLSA, wages at a rate less than \$7.25 per hour (or at a rate less than such other applicable minimum rate as may hereafter be established by amendment to the FLSA).

II

Defendant shall not, contrary to sections 7 and 15(a)(2) of the FLSA, employ any employees who in any workweek are engaged in commerce or the production of goods for commerce, or who are employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the FLSA, for workweeks longer than 40 hours, unless such employee receives compensation for his employment in excess of 40 hours at a rate not less than one and one-half times the regular rates at which he is employed.

III

Defendant shall not fail to make, keep and preserve records of his employees and of the wages, hours, and other conditions and practices of employment maintained by him as prescribed by the regulations issued, and from time to time amended, pursuant to section 11(c) of the FLSA and 29 C.F.R. Part 516.

IV

Defendant shall not request, solicit, suggest, or coerce, directly, or indirectly, any employee to return or to offer to return to the Defendant or to someone else for the Defendant, any money in the form of cash, check, or any other form, for wages previously due or to become due in the future to said employee under the provisions of this Consent Judgment or the FLSA; nor shall Defendant accept, or receive from any employee, either directly or indirectly, any money in the form of cash, check, or any other form, for wages heretofore or hereafter paid to said employee under the provisions of this Consent Judgment or the FLSA; nor shall Defendant discharge or in any other manner discriminate, nor solicit or encourage anyone else to discriminate, against any such employee because such employee has received or retained money due to him from the Defendant under the provisions of this Consent Judgment or the FLSA.

V

A. Defendant shall use a sign in/sign out sheet for each field worker who shall be required to record the time he/she entered the field to begin work and time that he/she left the field for the day;

B. Defendant shall maintain a time card for each field worker that includes the following: first and last name, day of the week and corresponding date, time of the first and last principal activity of the day, start and ending time of lunch period if taken, total hours worked each day, and total piece units earned each day, if paid on a piece-rate basis. At the end of each pay period, a copy of the time card shall be provided to each field worker so he/she can verify their earnings and pieces with their corresponding pay.

C. Defendant shall keep such time cards for a period of two years and make them available to the United States Department of Labor, Wage and Hour Division, ("DOL") for inspection within 72 hours of request;

D. Defendant shall display the following posters by posting them at the entrance to each field during the duration of the entire season and immediately replace them if damaged:

1. “Agriculture under the Fair Labor Standards Act” poster (*available at <http://www.dol.gov/whd/regs/compliance/posters/wh1386Agrcltr.pdf>*);

2. “Wage and Hour We Can Help” poster (*available at <http://www.dol.gov/wecanhelp/lightbox2/images/poster-1.jpg>*); and

3. “Migrant and Seasonal Agricultural Protection Act (MSPA) Poster (*available at <http://www.dol.gov/whd/regs/compliance/posters/mspaensp.htm>*).

E. Defendant shall maintain personnel records for each worker he hires and employs that includes the following: first and last name(s), permanent home address, current temporary address, current phone number, date of hire, first date of employment, job position, place of employment, rate of pay, last date of employment. Defendant shall preserve the original records for a period of three years and make them available for inspection by DOL within 72 hours of request; and

F. If Defendant determines that his field workers are exempt from overtime pay after taking reasonable steps to confirm that the exemption applies, Defendant shall inform each worker, in writing, that the exemption is being claimed and the basis for claiming the exemption along with the phone number of the nearest office of the DOL.

VI

FURTHER, JUDGMENT IS HEREBY ENTERED, pursuant to section 16(c) of the FLSA, in favor of Plaintiff and against Defendant in the total amount of \$14,628.02.

A. Defendant shall pay to Plaintiff the sum of \$7,314.01, which represents the unpaid compensation hereby found to be due the present and former employees named in Exhibit A,

attached hereto and made a part hereof, in the amounts set forth therein for the period covered by workweek ending dates August 22, 2013, to September 12, 2013.

B. Defendant shall pay to Plaintiff, as liquidated damages, the additional sum of \$7,314.01 hereby found to be due the present and former employees named in Exhibit A, attached hereto and made a part hereof, in the amounts set forth therein for the period covered by workweek ending dates August 22, 2013, to September 12, 2013.

VII

The monetary provisions of Paragraph VI of this Consent Judgment shall be deemed satisfied by Defendant, upon delivery of the following along with the signed judgment:

A. A schedule, in duplicate, showing the names, last-known address, social security number, gross amount of wages due, amounts deducted from gross wages for employees' share of social security and withholding taxes, the net amount, and the gross amount of liquidated damages due for each employee named in Exhibit A. Said deductions shall be paid by Defendant to the appropriate State and Federal revenue authorities.

B. For the first set of checks, separate certified checks or a cashier's checks for each employee named in Exhibit A made payable to the order of the employee or "Wage and Hour Div., Labor," as alternative payees (*e.g.*, "PAY TO THE ORDER OF JANE DOE or WAGE AND HOUR DIV., LABOR") and equal to the net amount due each employee after deducting the amount of legal deductions from the gross amounts listed on Exhibit A. The second set of checks for liquidated damages, checks equal to the gross amount of liquidated damages due to each such employee (totaling \$7,314.01) as listed opposite his name in Exhibit A. Defendant shall deliver the aforesaid checks to Plaintiff at the United States Department of Labor, Office of the Solicitor, 230 S. Dearborn St., Suite 844, Chicago, IL 60604

C. Plaintiff shall distribute the proceeds of the checks referred to in subparagraph (B) hereof to the persons enumerated in Exhibit A, or to their estates if that be necessary, and any amount of unpaid compensation and liquidated damages not so paid within a period of three (3) years from the date of receipt thereof shall, pursuant to section 16(c) of the Act, be covered into the Treasury of the United States as miscellaneous receipts.

VIII

IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED, pursuant to section 502 of the MSPA, that Defendant, his agents, servants, employees, and all other persons in active concert or participation with him are hereby permanently enjoined and restrained from violating the provisions of the MSPA in any of the following manners.

A. Defendant shall not fail to disclose, in writing, the information required by section 201(a) of the MSPA to migrant agricultural workers employed by them;

B. Defendant shall not fail to provide an itemized written statement containing the information required by section 201(d)(1) of the MSPA to migrant agricultural workers they employ;

C. Defendant shall not fail to pay wages when due to migrant agricultural workers they employ, as required by section 202(a) of the MSPA;

D. Defendant shall not fail to disclose, in writing, the information required by section 301(a) of the MSPA to seasonal agricultural workers they employ;

E. Defendant shall not fail to provide an itemized written statement, in writing, containing the information required by section 301(d)(1) of the MSPA to seasonal agricultural workers they employ; and

F. Defendant shall not fail to pay wages when due to seasonal agricultural workers they employ, as required by section 302(a) of the MSPA.

G. Defendant shall provide a full disclosure of terms and conditions of employment as required by the MSPA and containing all of the items outlined on Form WH-516 (*available at <https://www.dol.gov/whd/forms/wh516.pdf>*), in both English and in the worker's native language;

H. Defendant shall provide each migrant and seasonal agricultural worker a copy of the terms and conditions of employment on his/her first day of work and sign a declaration of receipt in the worker's native language;

I. Defendant shall retain all such declarations of receipt of the terms and conditions of employment for a period of three years following execution and make them available to the DOL for inspection within 72 hours of request;

J. Defendant shall make and keep wage statements (to be provided each pay period to each migrant and seasonal agricultural worker and accompanied by a copy of the worker's record of daily and weekly hours corresponding to that pay period) showing date of payment, pay period covered by the check, number of daily and weekly hours worked, number of piece rate units completed, gross wages earned, each deduction (if any) made and the reason for each deduction, net pay, and the Defendant's name, address, and Defendant's Employer Identification Number;

K. Defendant shall retain all such wage statements for three years from the date issued and make them available to the DOL for inspection within 72 hours of request;

L. Defendant shall designate an employee to check the drinking water, cups, toilet and hand-washing facilities to ensure that facilities are adequately stocked and appropriately placed and to correct any deficiencies. Such self-inspections shall be conducted at the start of each workday, at the mid-way point of the workday, and at any time when workers change locations;

M. Defendant shall not perform any of the named activities of recruiting, soliciting, hiring, employing, furnishing, or transporting of any migrant or seasonal agricultural workers unless he is in possession of a valid certificate of registration issued by the DOL and shall not hire or use any individual to engaged in any of the named activities who does not otherwise possess a valid certificate of registration issued by DOL;

N. Defendant's Farm Labor Contractor certificate shall be revoked if he is found not to be in compliance with the terms and conditions of this Consent Order and Judgment in any future investigations conducted by the DOL within five years of the entry of this Consent Order and Judgment;

O. Defendant's Farm Labor Contractor certificate may be suspended or revoked at any time in the future if he is found in violation of the applicable requirements of the MSPA or the regulations at 29 C.F.R. Part 500; and

P. Defendant shall provide a handout to each migrant or seasonal agricultural worker with the telephone number of the State Monitor Advocate for the state in which the work is being performed (*available at www.doleta.gov*).

IX

FURTHER, it is agreed by the parties herein and hereby **ORDERED** that each party bears its own fees and other expenses incurred by such party in connection with any stage of this proceeding to date with no costs, including, but not limited to, any and all costs referenced under

the Equal Access to Justice Act, as Amended.

DATED April 22, 2016

/s/ Robert J. Jonker
HON. ROBERT J. JONKER
UNITED STATES DISTRICT CHIEF JUDGE

The parties hereby consent to the entry of this Consent Judgment:

FOR THE SECRETARY OF LABOR:

LOCAL COUNSEL:

M. PATRICIA SMITH
Solicitor of Labor

PATRICK A. MILES JR.
United States Attorney

CHRISTINE Z. HERI
Regional Solicitor

s/ Kevin M. Wilemon
KEVIN M. WILEMON
Attorney
Office of the Solicitor
U.S. Department of Labor
230 S. Dearborn St., Room 844
Chicago, IL 60604

s/ W. Francesca Ferguson
W. FRANCESCA FERGUSON
Assistant U.S. Attorney
330 Ionia NW
5th Floor
P.O. Box 208
Grand Rapids, MI 49501-0208

Dated: April 18, 2016

FOR THE DEFENDANT:


MIGUEL ROSALES RUIZ
Defendant

Dated: 4/12/2016, 2016

Exhibit A

Employee Name	Gross Back Wages Due	Liquidated Damages Due	Total Amount Due
Enserdo Arce	\$458.91	\$458.91	\$917.82
Colin Brown	\$123.66	\$123.66	\$247.32
Nicolas Calles	\$295.83	\$295.83	\$591.66
Lance Casalleno	\$144.50	\$144.50	\$289.00
Julio Corona	\$194.66	\$194.66	\$389.32
Alcuter David	\$21.25	\$21.25	\$42.50
Sergio Garcia	\$264.24	\$264.24	\$528.48
Jose Gasca	\$204.39	\$204.39	\$408.78
Enrique Gomez	\$295.83	\$295.83	\$591.66
Francisca Gomez	\$172.17	\$172.17	\$344.34
Luis Gutierrez	\$172.17	\$172.17	\$344.34
Israel Guzman	\$458.91	\$458.91	\$917.82
Armando Hernandez	\$123.66	\$123.66	\$247.32
Katy Hernandez	\$59.28	\$59.28	\$118.56
Maurio Hernandez	\$366.84	\$366.84	\$733.68
Tiofina Hernandez	\$231.17	\$231.17	\$462.34
Celia Johnson	\$75.92	\$75.92	\$151.84
Christina Lara	\$172.17	\$172.17	\$344.34
Roel Lopez	\$46.00	\$46.00	\$92.00
Benita Luna	\$123.66	\$123.66	\$247.32
Wilbur McCoy	\$295.83	\$295.83	\$591.66
Juan Mejia	\$295.83	\$295.83	\$591.66
Blanca Melendez	\$295.83	\$295.83	\$591.66
Manuel Miranda	\$194.66	\$194.66	\$389.32
Lucrasia Palmaque	\$123.66	\$123.66	\$247.32
Erica Ramirez	\$354.83	\$354.83	\$709.66
Angelica Rivera	\$295.83	\$295.83	\$591.66
Jose Rodriguez	\$299.66	\$299.66	\$599.32
Carlos Rosales	\$93.00	\$93.00	\$186.00
Pablo Torres	\$295.83	\$295.83	\$591.66
Alberto Valsco	\$295.83	\$295.83	\$591.66
Julian Velasquez	\$172.17	\$172.17	\$344.34
Lance Wright	\$295.83	\$295.83	\$591.66
Totals	\$7,314.01	\$7,314.01	\$14,628.02