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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11 BACILIO RUIZ TORRES and JOSE
12 AMADOR, as individuals and on behalf
of all other similarly situated persons,

13 Plaintiffs,

14 vs.

15 MERCER CANYONS, INC.,

16 Defendant.

CLASS ACTION

No. 1:14-CV-03032-SAB

DECLARATION OF GARRET
BENTON IN SUPPORT OF
PLAINTIFFS' CLASS
CERTIFICATION MOTION

17
18 I, Garret Benton, declare under penalty of perjury:

19 1. I am over the age of 18 and am competent to testify as to the contents
20 of this declaration.

21 2. I worked for Mercer Canyon for several years. I started out working in
22 potatoes and after a few years worked my way up to a manager's position working
23 directly under the owner, Rob Mercer.

DECLARATION OF GARRET BENTON IN
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1 3. In 2008, I began working in the grape department. Mercer Canyons
2 was beginning to develop large tracts of vineyards and I was involved in making
3 that happen. I eventually became the manager of the grape department and later
4 earned the title of viticulturist. As the manager, I worked directly for John Derrick.
5
6 Both Mr. Mercer and Mr. Derrick are officers of Mercer Canyon.

7 4. I maintained that title until I left my job at Mercer Canyon on May 6,
8 2013. I was forced out of my job because it became clear after a meeting with Rob
9 Mercer and John Derrick that Mercer Canyons was going to continue to harm our
10 current employees in order to make the H2A worker program function.

11 5. In short, I left because Mercer Canyon was not being honest with
12 local farm workers. They did not tell former agricultural workers employed at the
13 company in 2012 about these jobs, they failed to tell local farm workers who
14 applied for work in 2013 about their right to apply for jobs, and they failed to tell
15 2013 employees of the company that they were entitled to the H-2A jobs.

16 6. During my work in the grape department, Alvaro Vazquez was my
17 lead foreman who ran the work crews for me on a daily basis. I speak Spanish
18 proficiently and was able to communicate with both him and the local workers we
19 employed who were almost entirely monolingual, Spanish-speakers. On a daily
20 basis, I would direct the work of Mr. Vazquez and all the employees in the grape
21 department.
22
23

1 7. One of my primary jobs in the grape department was to determine
2 how much labor was needed. After making those determinations, I communicated
3 those needs to John Derrick and also to Veronica Montoya, who was in charge of
4 recruiting and hiring workers.
5

6 8. During all the years that I worked at Mercer Canyon, I cannot recall
7 any significant problems obtaining labor. In fact, in my personal experience we
8 generally seemed to have a surplus of labor. Over the years, I was routinely
9 approached by farm workers in the fields or in the main office to ask if there was
10 work available at Mercer Canyon. I also was routinely approached by current
11 employees asking if their friends or family members could be hired.
12

13 9. Quite frequently I had to tell farm workers that there was no work
14 available at that time, but they could go to the office and put their name on a call-
15 back list that was maintained by Ms. Montoya.

16 10. My office space was close to the front entrance where workers came
17 and asked for work. Whenever I worked in the office, I also routinely overheard
18 and directly observed farm workers coming into the office and asking for work. If I
19 was the only one in the office at the time, I would speak with the worker and have
20 them put their name and telephone number on the call-back list.
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1 11. As part of my job, I had regular contact with John Derrick. We had
2 regular meetings to discuss the work needs of the grape department as well as a
3 variety of other work-related topics.

4 12. In 2013, I recall Washington Farm Labor Association representatives
5 coming to the office and providing a training to explain the H-2A program. I
6 attended the meeting along with John Derrick, Veronica Montoya, and other front-
7 office staff involved with the hiring of farm workers – Adriana Rios and Jennifer
8 Flores. I also recall Ryan Ayers attending the meeting.

9 13. At that meeting, I recall WAFLA representatives advising us that if
10 local farm workers inquired about work they had to be interviewed. I also recall
11 that we were told that local farm workers had to be told about the availability of
12 the H-2A jobs.

13 14. Either during that meeting or shortly thereafter, I was provided with a
14 work plan for the grape department authored by John Derrick. The plan separated
15 out work to be done by the H-2A workers and work to be done by the local farm
16 workers. It left very little work for the local farm workers. Based on the plan and
17 the presentation by the WAFLA people, I believed it was a done deal that the
18 company would be bringing in H-2A workers in 2013.

19 15. After reviewing the plan, I spoke individually with Ryan Ayers and
20 then John Derrick. I told both of them that the plan was unworkable and would
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22
23

1 result in Mercer not having sufficient work available for the local farm workers
2 because virtually all of the work in the grape department was being designated for
3 the H-2A workers. Mr. Derrick told me not to worry about it.

4
5 16. I understood that the original plan was to have H-2A workers start
6 work in the grape department at Mercer toward the end of March and that they
7 would be employed until September. However, at no time during the WAFLA
8 meeting or after was I provided with a copy of the H-2A work contract.

9
10 17. I cannot recall any discussion during the WAFLA meeting or at any
11 time afterward that we were required to provide local workers with a written copy
12 of the work that was being offered to H-2A worker.

13
14 18. At no time was I provided with a written document regarding the
15 work that was being offered to the H-2A workers, nor was I ever instructed to hand
16 out information to local farm workers who inquired about work at Mercer Canyon
17 in 2013.

18
19 19. I was never instructed to tell my grape department workers to spread
20 the word about the availability of work under the 2013 H-2A contract. I was never
21 asked to spread the word with growers to recruit local workers for work under the
22 2013 H-2A contract.

23 20. After the WAFLA meeting, I routinely observed or overheard the
front office staff (Veronica Montoya, Adriana Rios, and Jennifer Flores) tell local

1 farm workers who came to the office looking for work that there was no work
2 available.

3 21. From what I observed, local workers who inquired about work at
4 Mercer Canyon in 2013 were uniformly told there was no work available, but they
5 could put their name and phone number on the sign-in sheet. I never saw local
6 farm workers being provided with a written summary of the work being offered to
7 H-2A workers, nor did I hear workers being verbally advised that there were jobs
8 available in the grape department paying \$12 an hour.
9

10 22. In 2013, local farm workers approached me and inquired about work
11 both in the field and while I was working in the office. I always told them there
12 was no work available, but they could put their names on the call-back list. I never
13 provided any of these local farm workers with any written information, nor did I
14 instruct them to apply for the H-2A jobs.
15

16 23. During the early part of 2013, I informed John Derrick that his plan to
17 save the vast majority of the work in the grape department for H-2A workers was
18 not working. At that time, there was a large need for labor to tie grape vines to the
19 trellis wires. I informed Mr. Derrick that we needed more workers to get the job
20 done. He told me we could not hire local workers to fill those jobs because the
21 work needed to be saved for the H-2A workers.
22
23

1 24. I approached Mr. Derrick about a week later and told him the problem
2 was getting worse and I needed more labor now to accomplish the work. I believe
3 there was a delay getting the H-2A workers into the country and the company did
4 not get as many H-2A workers as they had hoped. However, the H-2A workers
5 eventually arrived although I do recall the exact date of their arrival. Mr. Derrick
6 told me he would solve the problem.
7

8 25. Within a short period of time, a Pasco-based labor contractor, M&L,
9 brought in local farm workers to do the vine tying work in Princeton and Cavalie.
10 The M&L crews were doing vine tying work that my local worker crews had done
11 in the past.
12

13 26. The M&L crews were highly supervised by myself and two Mercer
14 crew leaders I assigned to monitor their work - Roberto Barajas and Ernesto
15 Ramirez. John Derrick specifically instructed me to have our guys there in charge
16 of the M&L crews. As the vineyard supervisor, I decided where the M&L crews
17 would work and the hours they worked. I made sure Mr. Barajas and Mr. Ramirez
18 had the M&L crews take rest and lunch breaks consistent with Mercer workers.
19

20 27. Before the M&L crews did any work, I showed them all how we
21 wanted the work done. For example, I gave a short class to the M&L crews so they
22 knew how we wanted the vines tied to the trellis. I had my crew leaders stay with
23 the M&L crews the entire time to monitor the quality of the work, correct any

1 mistakes, and report back to me. I also personally checked the M&L crews once or
2 twice a day to make sure the work met Mercer's standards.

3 28. If I found any problems with the work performed by M&L crews I
4 immediately pointed it out to get the problem corrected. Throughout the time M&L
5 crews were on site, I retained the authority to direct their work and determine
6 whether M&L crew members continued to work at Mercer.
7

8 29. I was very surprised that the M&L crews were brought in given the
9 number of local farm workers who were applying for work. In the past we had
10 used M&L crews if we had a spot shortage and needed a small crew for a short
11 period of time. That all changed in 2013 when the M&L crews were brought in for
12 continued work.
13

14 30. Around the same time period, I recall a grape department meeting at
15 the office with Mr. Derrick. At that meeting, he stated that the company planned to
16 reduce the hours of the local vineyard workers in order to get them to quit their
17 jobs. I recall the hours of the local workers being cut shortly after that meeting.
18

19 31. I do not recall these local vineyard workers ever being told they had a
20 right to stay in the vineyard work and earn \$12 an hour, or that they had the option
21 of staying in vineyard work. I do not believe they were ever informed about their
22 rights to work under the 2013 H-2A contract.
23

1 32. Working conditions got so bad for the local workers that they
2 eventually went on strike on May 1, 2013. I recall going out to the strike area and
3 listening to the workers' concerns. They said that they wanted to do the same work
4 the H-2A workers were being given and they wanted to be given the same pay and
5 hours. They felt strongly that they were being given harder, less desirable work for
6 less pay. I recall Ms. Montoya and Mr. Derrick being present and talking with the
7 workers. I also recall Ms. Montoya getting very animated with the spokesperson
8 for the workers, Carmen Sosa.
9

10 33. The strike went on for the remainder of the day. I was not at work the
11 following day so I am not aware of the details of how it got worked out. However,
12 it is my understanding that the workers were given a slight pay increase from the
13 minimum wage they were earning and a gas incentive payment.
14

15 34. On my last day of work, I recall Teresa Orozco coming to the
16 vineyard and inquiring about work. She was employed in the grape department in
17 2012. I told Mr. Derrick that she was asking for a job. He told me Mercer would
18 not hire her. I later told Ms. Montoya the same information. She gave me the same
19 response.
20

21 35. From what I observed in 2013, Mercer Canyon was doing everything
22 it could to discourage local farm workers from gaining employment by not telling
23 them about their right to apply for the jobs that were being given to the H-2A

1 workers. The company was also doing all it could, short of firing them, to
2 encourage local workers to quit their jobs.

3
4 Dated this 14th day of November, 2014 in Santa Cruz, Costa Rica.

5 

6 Garret Benton
7 *Garrett Benton*

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- Lori Jordan Isley lori.isley@columbialegal.org,
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And I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: None.


Elvia F. Bueno