

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

ERNESTO CARRILLO-RAMIREZ, JOSE)	
DELGADO-PALOMERA, NESTOR DELGADO-)	
ZAMORANO, OSCAR PACHECO-SANTANA,)	
VICTOR SANCHEZ-JAIMES, JOEL)	
TAPIA-RUIZ, and ADAN ESPARZA-HARO)	
)	
Plaintiffs,)	CIVIL ACTION
)	NO. 3:15-CV-00409-CWR-FKB
v.)	
)	
CULPEPPER ENTERPRISES, INC., KATHY)	
CULPEPPER, NORTH AMERICAN)	
LABOR SERVICES, INC., JON CLANCY,)	
and CHERI CLANCY,)	
)	
Defendants.)	
)	

FIRST AMENDED COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiffs are Mexican workers who were admitted to the United States under the H-2B temporary foreign worker visa program. Plaintiffs were employed by Defendants Kathy Culpepper, doing business as Culpepper Enterprises, Inc., (“Culpepper Enterprises”) and by Jon Clancy and Cheri Clancy, doing business as North American Labor Services, Inc. (“NALS”) (collectively referred to as “Defendants”) in various past years. While employed by Defendants, Plaintiffs worked for illegally low wages on contracts with the Mississippi Department of Transportation maintaining and performing groundskeeping on right-of-ways on Mississippi roads and highways. Plaintiffs seek redress for Defendants Kathy Culpepper, Jon Clancy, and Cheri Clancy’s violations of their rights under the Racketeer Influenced and Corrupt

Organizations Act, 18 U.S.C. §§ 1960, *et seq.* (“RICO”); and for all Defendants’ violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (“FLSA”) and Mississippi contract law.

2. Plaintiffs are low-wage temporary workers brought by Defendants to the United States on time-limited work visas because of a claimed shortage of U.S. workers to fill Defendants’ available jobs. For years, Plaintiffs have left their homes and families in Mexico and spent considerable money and effort to come to the United States to work for Defendants.

3. Defendants Kathy Culpepper, Jon Clancy, and Cheri Clancy, through their enterprise, defrauded the U.S. government and the plaintiffs by promising – year after year – wages they had no intention of paying. Defendants not only failed to pay the promised wages. They also did not properly pay Plaintiffs even the federal minimum wage as required by the FLSA. Defendants also charged Plaintiffs an excessive amount for employer-arranged and controlled housing, far in excess of the reasonable cost of that housing, and charged Plaintiffs for tools, protective gear, and uniforms. In addition, Defendants failed to pay Plaintiffs the proper FLSA overtime wage rate.

4. Defendants breached employment contracts with Plaintiffs. Furthermore, Defendants breached their contracts with the U.S. Department of Labor (“DOL”), which were entered into for the benefit of Plaintiffs and/or such benefit was the direct result of the performance within the contemplation of Defendants and DOL, including guaranteeing the wages Plaintiffs would be paid.

5. Plaintiffs seek an award of money damages, declaratory and injunctive relief, statutory and/or actual damages, liquidated damages for FLSA claims, trebled damages for RICO claims, punitive damages, and pre- and post-judgment interest for the injuries each of them

suffered due to Defendants' violations of the law. Plaintiffs seek declaratory and injunctive relief to ensure that they and others are not subjected to similar practices in the future.

JURISDICTION

6. Jurisdiction is conferred upon this Court by 18 U.S.C. § 1964(c), this action arising under the RICO; 29 U.S.C. § 216(b), this action arising under the FLSA; and by 28 U.S.C. § 1331, this action arising under the laws of the United States. Jurisdiction over the contract claims is conferred by 28 U.S.C. § 1367 because these state claims are so closely related to the federal claim that they form part of the same case or controversy.

7. Declaratory relief is authorized pursuant to 28 U.S.C. §§ 2201 and 2202.

VENUE

8. Venue is proper in this district pursuant to 28 U.S.C. §§1391(b) and (c). A substantial part of the events giving rise to Plaintiffs' claims occurred in this district.

PARTIES

9. At all times relevant to this action, Plaintiffs were admitted to the United States under the H-2B temporary foreign worker visa program, 8 U.S.C. § 1101(a)(15)(H)(ii)(b), administered in part by the United States Department of Labor ("DOL").

10. Plaintiff Ernesto Carrillo-Ramirez is an individual who maintains his permanent residence in Mexico. Mr. Carrillo-Ramirez was employed by Defendants pursuant to an H-2B visa during the 2013 and 2014 seasons.

11. Plaintiff Jose Delgado-Palomera is an individual who maintains his permanent residence in Mexico. Mr. Delgado-Palomera was employed by Defendants pursuant to an H-2B visa during the 2013 and 2014 seasons.

12. Plaintiff Nestor Delgado-Zamorano is an individual who maintains his permanent residence in Mexico. Mr. Delgado-Zamorano was employed by Defendants pursuant to an H-2B visa during the 2014 season.

13. Plaintiff Oscar Pacheco-Santana is an individual who maintains his permanent residence in Mexico. Mr. Pacheco-Santana was employed by Defendants pursuant to an H-2B visa during the 2012, 2013, and 2014 seasons.

14. Plaintiff Victor Sanchez-Jaimes is an individual who maintains his permanent residence in Mexico. Mr. Sanchez-Jaimes was employed by Defendants pursuant to an H-2B visa during the 2011, 2012, 2013 and 2014 seasons.

15. Plaintiff Joel Tapia-Ruiz is an individual who maintains his permanent residence in Mexico. Mr. Tapia-Ruiz was employed by Defendants pursuant to an H-2B visa during the 2014 season.

16. Plaintiff Adan Esparza-Haro is an individual who maintains his permanent residence in Mexico. Mr. Esparza-Haro was employed by Defendants pursuant to an H-2B visa during the 2014 season.

17. Defendant Culpepper Enterprises, Inc. is an administratively dissolved Mississippi corporation that conducts business in this district. Defendant Culpepper Enterprises has contracts with the Mississippi Department of Transportation (“DOT”) to cut grass and maintain the shoulders and medians of state highways in various counties in Mississippi. The Mississippi Secretary of State dissolved Defendant Culpepper Enterprises on December 20, 2014. To date, Culpepper Enterprises has not requested reinstatement as a corporation.

18. Defendant Kathy Culpepper is an individual, does business as, and is the President, Vice-President, and Registered Agent of Defendant Culpepper Enterprises. Kathy Culpepper also serves as a Director of Defendant Culpepper Enterprises.

19. Defendants Culpepper Enterprises and Kathy Culpepper collectively will be referred to herein as “the Culpepper Defendants.”

20. At all times relevant to this action, the Culpepper Defendants were engaged in commerce or in the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(A), in that they operated a landscaping and maintenance business and is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000.

21. Defendant Jon Clancy is an individual and is listed on ETA Form 9142 as the agent for North American Labor Services, Inc. (“NALS”).

22. Defendant Cheri Clancy is the registered agent and incorporator of NALS.

23. Defendants Jon Clancy and Cheri Clancy do business as Defendant NALS. The Mississippi Secretary of State administratively dissolved NALS on December 22, 2009. To date, NALS has not requested reinstatement as a corporation.

24. NALS, Jon Clancy, and Cheri Clancy collectively will be referred to herein as “the NALS Defendants.”

25. At all times relevant to this action, the NALS Defendants were engaged in commerce or in the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(A), in that they operated a transnational labor recruitment business and provided recruitment and/or supervisory services to the Culpepper Defendants.

26. Upon information and belief, the NALS Defendants are an enterprise whose annual gross volume of sales made or business done is not less than \$500,000.

27. At all times relevant to this action, the NALS Defendants acted as agents for the Culpepper Defendants and acted within the scope of their agency.

28. At all times relevant to this action, Plaintiffs were employees of Defendants within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

29. At all times relevant to this action, Plaintiffs were employed by Defendants within the meaning of the FLSA, 29 U.S.C. § 203(g).

30. At all relevant times, Plaintiffs were “persons” within the meaning of that term as defined by RICO, 18 U.S.C. § 1961(3).

31. At all relevant times, Defendants Kathy Culpepper, Jon Clancy, and Cheri Clancy (collectively, “the Individual Defendants”) were “persons” within the meaning of that term as defined by RICO, 18 U.S.C. § 1961(3).

32. At all relevant times, Defendants Kathy Culpepper, Jon Clancy, and Cheri Clancy were an association-in-fact, and therefore an enterprise (“the RICO enterprise”), within the meaning of 18 U.S.C. § 1961(4).

FACTS

Defendants’ Participation in the H-2B Visa Program

33. An employer in the United States may sponsor foreign guest workers to perform unskilled labor of a temporary nature if DOL certifies that (1) there are insufficient available workers within the United States to perform the jobs, and (2) the employment of foreign guest workers will not adversely affect the wages or working conditions of similarly situated U.S. workers. 8 U.S.C. § 1101(a)(15)(H)(ii)(b).

34. An employer seeking the admission of H-2B workers must first file a temporary labor certification application with DOL. 20 C.F.R. § 655.20 (2008).¹ This application must include an attestation from the employer that it will abide by applicable regulatory requirements, including:

- a. Payment to all workers of at least the applicable prevailing wage during the entire period of the H-2B labor certification. 20 C.F.R. § 655.22(e) (2008); and
- b. Limiting deductions from wages to only those that are “reasonable.” DOL has determined that expenses related to the worker’s procurement of a visa and travel from his home to the employer’s worksite primarily benefit the employer and are not “reasonable” within the meaning of the FLSA. Accordingly, an employer may not shift these costs to the worker when doing so would effectively bring the worker’s earnings below the applicable minimum and/or prevailing wage for the first workweek of employment. 20 C.F.R. § 655.22(g)(1) (2008); Field Assistance Bulletin No. 2009-2, August 21, 2009.

35. The Culpepper Defendants, operating as Culpepper Enterprises, applied for temporary labor certifications to employ foreign workers in 2012, 2013, and 2014. These temporary labor certification applications identified Culpepper Enterprises as the prospective employer of H-2B workers and sought certification for the following time periods:

- a. April 10 to December 15, 2012 (“2012 Culpepper 9142B Form”);²

¹ The DOL application for temporary employment certification of H-2B workers is titled the “ETA Form 9142B” and may be found at http://www.foreignlaborcert.doleta.gov/pdf/ETA_Form_9142B.pdf. The accompanying attestations are located on Form 9142B Appendix B.1, which can be found at http://www.foreignlaborcert.doleta.gov/pdf/Form_9142_AppendixB_1_012309.pdf.

² In 2012, Culpepper Enterprises, Inc. was granted partial certification to import 41 H-2B workers. *See* Ex. B.

- b. March 1 to December 15, 2013 (“2013 Culpepper 9142B Form”);³ and
- c. March 15 to December 15, 2014 (“2014 Culpepper 9142B Form”).⁴

36. Each of these temporary labor certification applications contained an attestation pursuant to 20 C.F.R. § 655.20 that Defendant Culpepper Enterprises would abide by applicable regulatory requirements pertaining to the H-2B temporary work program and federal and state laws, including the requirement that Defendant Culpepper Enterprises pay Plaintiffs at least the H-2B prevailing wage.

37. The 2012 Culpepper 9142B Form indicated that Defendant Culpepper Enterprises’s offered basic rate of pay to the H-2B workers was \$10.26 per hour, and the overtime rate of pay was \$15.39 per hour.

38. The 2013 Culpepper 9142B Form indicated that Defendant Culpepper Enterprises’s offered basic rate of pay to the H-2B workers was \$8.25 per hour, and the overtime rate of pay was \$12.38 per hour.

39. The 2014 Culpepper 9142B Form indicated that Defendant Culpepper Enterprises’s offered basic rate of pay to the H-2B workers was \$11.11 per hour, and the overtime rate of pay was \$16.67 per hour.

40. Each of these temporary labor certifications listed Defendant Jon Clancy and NALS as Defendant Culpepper Enterprises’s agent. *See* Ex. B (2012 Culpepper 9142B Form); Ex. C (2013 Culpepper 9142B Form); Ex. D (2014 Culpepper 9142B Form).

³ In 2013, Culpepper Enterprises, Inc. requested and was granted certification to import 28 H-2B workers. *See* Ex. C (2013 Culpepper 9142B Form).

⁴ In 2014, Culpepper Enterprises requested and was granted certification to import 38 H-2B workers. *See* Ex. D (2014 Culpepper 9142B Form).

41. Defendant Kathy Culpepper signed each of these temporary labor certification applications as the “Owner/President” of Culpepper Enterprises. *See* Ex. B (2012 Culpepper 9142B Form); Ex. C (2013 Culpepper 9142B Form); Ex. D (2014 Culpepper 9142B Form).

42. Defendant Jon Clancy signed each of these temporary labor certification applications as the agent of Culpepper Enterprises. *See* Ex. B (2012 Culpepper 9142B Form); Ex. C (2013 Culpepper 9142B Form); Ex. D (2014 Culpepper 9142B Form).

43. Defendants Kathy Culpepper and Jon Clancy used the mail and/or wires to transmit the temporary labor certification application materials between themselves and to the U.S. Department of Labor.

44. Defendants Kathy Culpepper and Jon Clancy used the mail and/or wires in furtherance of their scheme to provide false information to the U.S. Department of Labor.

45. At the time Defendants Kathy Culpepper and Jon Clancy signed each of these temporary labor certification applications, they knew Culpepper Enterprises would not pay the offered wage rates set forth in the applications.

46. DOL reviewed and, in reliance on Defendants Kathy Culpepper’s and Jon Clancy’s false attestations, ultimately certified or partially certified each of Defendant Culpepper Enterprises’s temporary labor certification applications pursuant to 20 C.F.R. § 655.23(b), allowing the Culpepper Defendants, operating as Culpepper Enterprises, to import H-2B workers to fill the labor needs set out in their temporary labor certification applications for the years 2012 to 2014.

47. The DOL-approved temporary labor certification (ETA Form 9142B), the accompanying attestations, and the applicable regulatory requirements formed a contract between Defendants on the one hand and Plaintiffs on the other, with enforceable terms and

conditions of employment, including an enforceable guarantee of wages no less than the federal minimum and H-2B prevailing wages.

48. The DOL-approved labor certifications also formed valid and enforceable contracts between Defendants and DOL, which were entered into for the benefit of Plaintiffs and/or such benefit was the direct result of the performance within the contemplation of the Culpepper Defendants, operating as Culpepper Enterprises, and DOL, including the guarantee that Plaintiffs would not be paid less than the federal minimum and H-2B prevailing wages.

49. Defendants and DOL both owed Plaintiffs a legal obligation and/or duty.

50. Defendant Culpepper Enterprises's and DOL's legal obligation and/or duty to Plaintiffs connect Plaintiffs with the contracts between Defendant Culpepper Enterprises and DOL.

51. The Culpepper Defendants sponsored Plaintiffs' H-2B visas in order to fill their claimed labor shortages. Plaintiffs' H-2B visas allowed them to work only for the Culpepper Defendants, operating as Defendant Culpepper Enterprises.

**Defendants Underpaid Their H-2B Employees by Charging Them
Recruitment and Travel Fees**

52. Plaintiffs spent considerable sums of money to obtain their H-2B work visas and travel from their hometowns in Mexico to the United States to work for Defendants in Mississippi. Plaintiffs incurred these costs, which were primarily for the benefit of their employers.

53. Prospective H-2B workers must undertake a lengthy process to obtain an H-2B visa sponsored by the Culpepper Defendants, operating as Culpepper Enterprises. Prospective workers must interview with Defendant Cheri Clancy in Mexico, pay her hundreds of dollars to be included on the recruitment list, travel to the city of Monterrey, Mexico for appointments at

the U.S. Consulate to obtain H-2B visas, and travel from Monterrey to Mississippi to begin work for Defendants.

54. At the time of their recruitment, Defendant Cheri Clancy – on behalf of the NALS Defendants and within the scope of the NALS Defendants’ agency to the Culpepper Defendants – made promises to the Plaintiffs listed below about the wages they would earn while employed with the Defendants. Specifically, Defendant Cheri Clancy:

- a. Told Plaintiff Ernesto Carrillo-Ramirez in or about March 2013 that he would earn approximately \$10.60 per hour working for the Defendants, and told Plaintiff Ernesto Carrillo-Ramirez in or about the beginning of March 2014 that he would earn approximately \$11.20 per hour working for the Defendants;
- b. Told Plaintiff Nestor Delgado-Zamorano in or about February 2014 that he would earn approximately \$11.10 per hour working for the Defendants;
- c. Told Plaintiff Victor Sanchez-Jaimes in or about April 2012 that he would earn approximately \$8.00 per hour working for the Defendants, told Plaintiff Victor Sanchez-Jaimes in or about April 2013 that he would earn approximately \$9.00 per hour working for the Defendants, and told Plaintiff Victor Sanchez-Jaimes in or about March 2014 that he would earn approximately \$9.00 per hour working for the Defendants; and
- d. Told Plaintiff Joel Tapia-Ruiz in or about March 2014 that he would earn approximately \$10.00 or \$11.00 per hour working for the Defendants.

55. Upon information and belief, Defendant Cheri Clancy knew the statements described in paragraph 54 were false. At the time Defendant Cheri Clancy made these statements, Defendants knew they would not pay the Plaintiffs the promised wages.

56. Upon information and belief, Defendants used the mails and wires in furtherance of the scheme to defraud Plaintiffs about the promised wages.

57. The majority of Plaintiffs maintain their permanent residences in and around the city of Tepic, in the Pacific coast state of Nayarit, Mexico, where they learned of the job opportunity with Defendants. Plaintiff Victor Sanchez-Jaimes maintains his permanent residence in Tijuana, in the state of Baja California, Mexico.

58. The Culpepper Defendants contracted with the NALS Defendants to act as the Culpepper Defendants' agents to assist them in obtaining H-2B workers from Mexico, including the Plaintiffs.

59. The Culpepper Defendants chose to recruit workers in Mexico and secure H-2B visas by utilizing the NALS Defendants as their exclusive representative.

60. The Culpepper Defendants required prospective H-2B workers to go through Defendant Cheri Clancy, their designated representative, to seek employment through the H-2B program with the Culpepper Defendants.

61. Defendant Cheri Clancy, the Culpepper Defendants' designated representative, charged prospective H-2B workers, including the Plaintiffs, a recruitment fee each year of several hundred dollars per worker to have their names included on the list of workers requested by the Culpepper Defendants. This money was never reimbursed to the Plaintiffs.

62. The Plaintiffs paid the recruitment fees described in paragraph 61 in reliance on the false promises Defendant Cheri Clancy made about the wages the Plaintiffs would earn while employed by the Defendants.

63. Plaintiffs were required to travel from in and around Tepic, in the state of Nayarit, to Monterrey, in the northeastern Mexico state of Nuevo Leon, for their H-2B visa interviews at

the U.S. Consulate. An interview with a visa officer at a U.S. Consulate or Embassy is a prerequisite to a prospective H-2B worker beginning work for the sponsoring employer. The Plaintiffs paid approximately \$115 per person each year for their trips to Monterrey and for lodging during their stays in Monterrey, which was never reimbursed to them.

64. Following the approval of their H-2B visas by the U.S. Consulate, Plaintiffs traveled by bus from Monterrey, Mexico to the Jackson, Mississippi area to begin work for Defendants.

65. Plaintiffs were required to pay for one-way travel from Monterrey, Mexico to the housing complex arranged and controlled by Defendants outside Jackson, Mississippi, and to pay a border crossing fee when they entered the United States. The Plaintiffs paid approximately \$155 per person each year in travel and border crossing expenses to travel from Monterrey, Mexico to Defendants' chosen housing site outside Jackson. This money was never reimbursed to Plaintiffs.

66. The Plaintiffs paid the travel and border crossing expenses described in paragraphs 63 and 65 in reliance on the false promises Defendant Cheri Clancy made about the wages the Plaintiffs would earn while employed by the Defendants.

67. The travel and border crossing expenses Plaintiffs incurred to come work for Defendants, as set out in paragraphs 63 and 65, were primarily for the benefit of Defendants within the meaning of the FLSA, 29 C.F.R. §§ 531.32(c) and 778.217.

68. Defendants did not reimburse Plaintiffs for the travel and border crossing expenses they incurred to come to the U.S. to work for Defendants, as set out in paragraphs 63 and 65, above.

69. The travel and border crossing expenses described in paragraphs 63 and 65 operated as *de facto* involuntary deductions from, and/or a kickback of, Plaintiffs' first workweek's wages.

70. The above *de facto* deductions for costs that were primarily for the benefit of Defendants caused the wages of Plaintiffs to fall below the minimum level required by the FLSA and the federal prevailing wage mandated under the H-2B program during their first workweek.

**Defendants Underpaid Their H-2B Employees by Failing to Pay Them
the Prevailing Wage or the Correct Overtime Wage**

71. In each of the temporary labor certifications filed by the Culpepper Defendants and the NALS Defendants and certified or partially certified by DOL, Defendant Kathy Culpepper on behalf of the Culpepper Defendants, and Jon Clancy on behalf of the NALS Defendants, attested pursuant to 20 C.F.R. § 655.20 that they would abide by applicable regulatory requirements pertaining to the H-2B temporary work program and federal and state laws, including the requirement that the Culpepper Defendants, operating as Culpepper Enterprises, pay Plaintiffs at least the H-2B prevailing wage.

72. Defendants Kathy Culpepper and Jon Clancy knew the attestations that the Culpepper Defendants, operating as Culpepper Enterprises, Inc., would pay Plaintiffs at least the H-2B prevailing wages were false at the time the Defendants Kathy Culpepper and Jon Clancy made them. Defendants Kathy Culpepper and Jon Clancy knew at the time the attestations were signed that the Culpepper Defendants would not pay Plaintiffs the H-2B prevailing wages.

73. Employers of H-2B workers are required to pay them at least the applicable prevailing wage during the entire period of the H-2B labor certification. 20 C.F.R. § 655.22(e) (2008).

74. In 2012, in reliance on false attestations made in the temporary labor certifications, DOL certified Defendant Culpepper Enterprises to employ 48 H-2B workers at a prevailing wage of \$10.26 per hour and an overtime rate of \$ 15.39 per hour.

75. In 2012, the Culpepper Defendants paid their H-2B worker employees, including Plaintiffs, \$7.25 per hour and an overtime rate of \$10.88 per hour, a difference from the certified prevailing wage of \$3.01 per hour at the regular rate and \$4.51 per hour at the overtime rate.

76. In 2013, in reliance on false attestations made in the temporary labor certifications, DOL certified Defendant Culpepper Enterprises to employ 28 H-2B workers at a prevailing wage of \$8.25 per hour and an overtime rate of \$12.38 per hour.

77. In 2013, the Culpepper Defendants paid their H-2B worker employees, including Plaintiffs, \$7.25 per hour and an overtime rate of \$10.88 per hour, a difference from the certified prevailing wages of \$1.00 per hour at the regular rate and \$1.50 per hour at the overtime rate.

78. In 2014, in reliance on false attestations made in the temporary labor certifications, DOL certified Defendant Culpepper Enterprises to employ 38 H-2B workers at a prevailing wage of \$11.11 per hour and an overtime rate of \$16.67 per hour.

79. In 2014, the Culpepper Defendants paid their H-2B worker employees, including Plaintiffs, \$7.25 per hour and an overtime rate of \$10.88 per hour, a difference from the certified prevailing wages of \$3.86 per hour at the regular rate and \$5.79 per hour at the overtime rate.

Defendants Underpaid Their H-2B Employees by Overcharging Them for Housing

80. Plaintiffs lived in an apartment complex called “The Vineyard” in Brandon, Mississippi, on the outskirts of Jackson, in the 2014 season. Defendants located, arranged for, and controlled the housing for Plaintiffs.

81. Plaintiffs shared apartments with other Culpepper Enterprises H-2B workers. Two-bedroom apartments were shared by five workers, with one worker sleeping in the living room. Defendants managed specific details of the Plaintiffs' housing, including assigning them to live in specific apartments and distributing keys to those apartments.

82. Every two weeks, Defendants deducted approximately \$120 per worker in 2013 and \$130 per worker in 2014 from Plaintiffs' paychecks for housing. The housing deduction was made from each worker's check irrespective of the number of paychecks in a given month.

83. Defendants also deducted \$50.00 from Plaintiffs' final paychecks for a housing cleaning fee, although Defendants also required Plaintiffs to clean the apartments at the end of the season. Defendants never reimbursed Plaintiffs for this fee.

84. The amounts deducted from Plaintiffs' paychecks for housing were higher than the market value of such housing.

85. The amounts deducted from Plaintiffs' paychecks for housing were not reasonable within the meaning of the FLSA. 29 C.F.R. § 531.3(b).

86. The unreasonable housing deductions contributed to the wages of Plaintiffs falling below the minimum level required by the FLSA and the federal prevailing wage mandated under the H-2B program during various workweeks, including the first workweek.

Defendants Underpaid Their H-2B Employees by Charging Them for Tools, Protective Gear, and Uniforms

87. Plaintiffs performed maintenance and groundskeeping work along the shoulders and in the medians of state highways in various counties in Mississippi.

88. This work reasonably requires the use of certain tools of the trade and protective gear by each worker. Defendants also required their H-2B employees to wear a uniform.

89. The amounts deducted (or made via *de facto* deductions) from Plaintiffs' paychecks for these tools of the trade, protective gear, and uniforms were primarily for the benefit or convenience of Defendants. 29 C.F.R. § 531.3(d)(2).

90. These deductions contributed to the wages of Plaintiffs falling below the minimum level required by the FLSA and the federal prevailing wage mandated under the H-2B program during various workweeks, including the first workweek.

COUNT I

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

(Against Defendants Kathy Culpepper, Jon Clancy and Cheri Clancy)

91. All the foregoing allegations are incorporated by reference as if fully set forth herein.

92. This count sets forth a claim for damages resulting from all Defendants Kathy Culpepper, Jon Clancy, and Cheri Clancy's ("the Individual Defendants") violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 ("RICO").

93. Plaintiffs are "persons" with standing to sue within the meaning of 18 U.S.C. § 1964(c).

94. Each Individual Defendant is a "RICO person" within the meaning of 18 U.S.C. § 1963(1).

95. The Individual Defendants together constitute an association-in-fact, and therefore are an enterprise, within the meaning of 18 U.S.C. § 1964(4) ("the RICO enterprise").

96. The RICO enterprise is an ongoing business relationship between the Individual Defendants with the common purpose to recruit, contract, transport, and employ foreign workers to work as landscapers in the United States, and particularly in Mississippi.

97. The RICO enterprise is engaged in interstate commerce in that its activities and transactions related to the international and interstate movement of workers affect interstate commerce and frequently require travel and communications across state and international lines.

98. The members of the RICO enterprise function as a continuing unit.

99. The Individual Defendants conducted or participated in, and/or conspired to conduct or participate in the affairs of the RICO enterprise, through a pattern of numerous acts of racketeering activity in violation of 18 U.S.C. § 1962(c) and 18 U.S.C. § 1962(d), related by their common goal to recruit, contract, transport, and employ foreign workers to work as landscapers in the United States, and particularly in Mississippi.

100. By conducting or participating in the affairs of the RICO enterprise, and/or by conspiring to conduct or participate in the affairs of the RICO enterprise, through a pattern of mail and wire fraud and fraud in foreign labor recruitment – namely, by knowingly providing false attestations to DOL and false statements to Plaintiffs about the payment of the H-2B prevailing wages – Defendants Kathy Culpepper and Jon Clancy violated the RICO, 18 U.S.C. §§ 1962(c) and (d).

101. Specifically, the Individual Defendants conducted or participated in and/or conspired to conduct and/or participate in the affairs of the RICO enterprise by engaging in the following predicate acts of racketeering activity under 18 U.S.C. § 1961(1):

- a. Mail fraud to further their unlawful scheme in violation of 18 U.S.C. § 1341;
- b. Wire fraud to further their unlawful scheme in violation of 18 U.S.C. § 1343; and
- c. Fraud in foreign labor contracting in violation of 18 U.S.C. § 1351.

Predicate Acts

Mail and Wire Fraud: 18 U.S.C. §§ 1341 and 1343

102. As set forth in the preceding paragraphs, the Individual Defendants, through the RICO Enterprise, made and/or conspired to make material misrepresentations to the Plaintiffs and to the U.S. Department of Labor regarding the hourly and overtime wages Plaintiffs would receive.

103. As set forth in the preceding paragraphs, the Individual Defendants, through the RICO enterprise, used the mails and wire communications, including communications via telephone, fax, internet, and/or email, on numerous occasions to further these fraudulent schemes.

104. These willful, knowing, and intentional acts constitute mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343.

Fraud in Foreign Labor Contracting: 18 U.S.C. § 1351

105. As set forth in the preceding paragraphs, the Individual Defendants, through the RICO enterprise, knowingly and with intent to defraud recruited, solicited, and hired Plaintiffs and/or caused another person to recruit, solicit, and hire Plaintiffs outside the United States, for the purpose of employment in the United States by means of materially false or fraudulent pretenses, representations, or promises regarding the hourly and overtime wages Plaintiffs would receive.

106. These willful, knowing, and intentional acts constitute fraud in foreign labor contracting in violation of 18 U.S.C. § 1351.

Pattern of Related Racketeering Acts

107. The Individual Defendants engaged in the racketeering activity described in this Claim repeatedly starting in 2012 and continuing at least through 2014 with respect to dozens of workers.

108. Upon information and belief, the Individual Defendants have sought new H-2B workers for employment at Culpepper who may presently be subjected, through the RICO enterprise, to similar racketeering activities.

109. The Individual Defendants, through the RICO enterprise, rely on the racketeering acts described in this Complaint to conduct their regular business activities.

110. The Individual Defendants' racketeering acts have or had similar purposes: to profit from the fraudulent recruitment of Plaintiffs and other H-2B workers for employment on Mississippi Department of Transportation contracts in Mississippi.

111. The Individual Defendants' acts yielded similar results and caused similar injuries to Plaintiffs, including Plaintiffs' payment of recruitment fees and expenses, the difference between the fraudulently-promised wages and the wages Plaintiffs were paid, and the exorbitant cost of the employer-provided housing.

112. As set forth in the preceding paragraphs, the racketeering acts have or had similar participants: the Individual Defendants and their agents.

113. As set forth in the preceding paragraphs, the Individual Defendants, through the RICO enterprise, directed their racketeering activities at similar individuals and entities: Plaintiffs and other H-2B workers, and federal and state government agencies.

114. The Individual Defendants' acts have or had similar methods of commission, such as common recruitment tactics, relatively consistent practices with respect to collecting payments

from Plaintiffs and other H-2B workers, and use of similar employment practices and policies with respect to Plaintiffs and other H-2B workers.

Injury

115. As a direct and proximate result of the Individual Defendants' willful, knowing, and intentional acts discussed in this section, Plaintiffs have suffered injuries to their property and/or business, including but not limited to the difference between the fraudulently-promised regular and overtime wage rates and the wages Plaintiffs were paid, the recruitment fees and travel and border crossing expenses the Plaintiffs paid in reliance upon the Defendants' misrepresentations about the Plaintiffs' wages, and other pecuniary losses and/or losses to real or personal property.

116. Plaintiffs are entitled to an award of damages in an amount to be determined at trial, including but not limited to:

- a. compensation for Plaintiffs' injuries to their property and/or business;
- a. trebling of the damages set forth in subparagraph (a), supra; and
- b. attorneys' and experts' fees and costs associated with this action, as authorized by

18 U.S.C. § 1964(c).

COUNT II

FAIR LABOR STANDARDS ACT

117. All the foregoing allegations are incorporated by reference as if set forth fully herein.

118. Pursuant to 29 U.S.C. § 216(b), the Plaintiffs have consented in writing to be Plaintiffs in this FLSA action. Their written consents are attached hereto as Ex. A.

119. This count sets forth a claim for declaratory relief and damages for each Defendant's violation of the minimum wage and overtime provisions of the FLSA.

120. Defendants violated the FLSA, 29 U.S.C. § 206(a), by failing to pay Plaintiffs at least \$7.25, the federal minimum wage, for every compensable hour of labor they performed during each workweek they were employed.

121. Defendants' violations of the FLSA resulted, in part, from Defendants' failure to reimburse Plaintiffs for certain pre-employment expenses they incurred which were primarily for Defendants' benefit, reducing Plaintiffs' wages below the minimum wage for the first workweek.

122. Defendants' violations of the FLSA also resulted, in part, from Defendants' unreasonable deductions from Plaintiffs' wages for housing. 29 C.F.R. § 531.3(b).

123. Defendants' violations of the FLSA also resulted, in part, from Defendants' deductions from Plaintiffs' wages for tools, protective gear, and uniforms that were primarily for the benefit or convenience of Defendants. 29 C.F.R. § 531.3(d)(2).

124. Defendants violated the FLSA, 29 U.S.C. § 207(a), by failing to pay Plaintiffs the proper overtime wage rate.

125. Defendants' failure to pay Plaintiffs their federally mandated minimum and overtime wages was a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

126. As a consequence of Defendants' violations of the FLSA, Plaintiffs are entitled to recover their unpaid minimum and overtime wages, plus an additional equal amount in liquidated damages, the costs of suit, and reasonable attorneys' fees pursuant to 29 U.S.C. § 216(b).

COUNT III

BREACH OF EMPLOYMENT CONTRACT

127. All the foregoing allegations are incorporated by reference as if fully set forth herein.

128. This count sets forth a claim for damages resulting from Defendants' breaches of their employment contracts with Plaintiffs.

129. The terms and conditions provided in the temporary labor certification (ETA Form 9142B), its accompanying attestations, and the law and regulations applicable to the H-2B program constituted the employment contracts between Plaintiffs and Defendants.

130. Plaintiffs satisfactorily performed all employment duties and responsibilities required of them under the employment contracts with Defendants.

131. Defendants breached the employment contracts with Plaintiffs by compensating the Plaintiffs below the applicable H-2B prevailing wages and required overtime premiums for their work.

132. Defendants' breach of the employment contracts caused Plaintiffs substantial injuries, for which Plaintiffs are entitled to actual and consequential damages, punitive damages, and prejudgment interest, and reasonable attorneys' fees.

COUNT IV

THIRD-PARTY BENEFICIARY CLAIM FOR BREACH OF CONTRACT

133. All the foregoing allegations are incorporated by reference as if fully set forth herein.

134. This count is pled in the alternative to Count III and sets forth a third-party beneficiary claim for damages resulting from the breach of the contracts between the U.S. Department of Labor (DOL) and Defendants.

135. The temporary labor certifications (ETA Form 9142B) filed by Defendant Culpepper Enterprises, Inc. and subsequently approved by DOL, constitute valid and enforceable contracts.

136. These contracts were entered into for the benefit of Plaintiffs and/or such benefit was the direct result of the performance within the contemplation of Defendants and DOL.

137. Both the Defendants and DOL owed Plaintiffs a legal obligation and/or duty.

138. Defendants' and DOL's legal obligation and/or duty to Plaintiffs connect Plaintiffs with the contracts between Defendants and DOL.

139. Plaintiffs are third-party beneficiaries of the contracts Defendants entered into with DOL.

140. Defendants breached its contracts with DOL by compensating the Plaintiffs below the applicable H-2B prevailing wages and required overtime premiums for their work.

141. Defendants' breach of its contracts with DOL caused the Plaintiffs substantial injuries, for which Plaintiffs are entitled to actual and consequential damages and prejudgment interest.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray this Court will enter an order:

1. Entering a declaratory judgment that each Defendant violated Plaintiffs' rights under the RICO and the FLSA, that each Defendant breached each individual contract with each Plaintiff, and that each Defendant breached each contract with the Department of Labor to which Plaintiffs were third-party beneficiaries;
2. Granting judgment in favor of Plaintiffs and against each of the RICO Defendants, jointly and severally, on Plaintiffs' claims under the RICO and awarding each Plaintiff trebled pecuniary losses;
3. Granting judgment in favor of Plaintiffs and against each Defendant, jointly and severally, on Plaintiffs' claims under the FLSA and awarding each Plaintiff the amount of his unpaid minimum and overtime wages, along with an equal amount of liquidated damages;
4. Permanently enjoining each Defendant from further violations of the RICO and the FLSA;

5. Granting judgment in favor of Plaintiffs against each Defendant, jointly and severally, for breach of the employment contracts with Plaintiffs, and awarding each Plaintiff his actual and consequential damages, punitive damages, and prejudgment interest;
6. Granting judgment in favor of third-party beneficiary Plaintiffs against Defendants, jointly and severally, for breach of the employment contracts with the U.S. Department of Labor, and awarding each Plaintiff his actual and consequential damages, punitive damages, and prejudgment interest;
7. Awarding Plaintiffs the cost of this action;
8. Awarding Plaintiffs a reasonable attorney's fee; and
9. Granting such relief as this Court deems just and equitable.

Dated this 1st day of September, 2015.

Respectfully submitted,

/s/ Daniel Werner

Daniel Werner* (GA Bar No. 422070)

daniel.werner@splcenter.org

James M. Knoepp* (GA Bar No. 366241)

jim.knoepp@splcenter.org

Sarah M. Rich** (GA Bar No. 281985)

sarah.rich@splcenter.org

Southern Poverty Law Center

1989 College Avenue NE

Atlanta, GA 30317

Telephone: (404) 521-6700

Facsimile: (404) 221-5857

Jody E. Owens II (MSB #102333)

jody.owens@splcenter.org

Brooke McCarthy (MSB #104930)

brooke.mccarthy@splcenter.org

Southern Poverty Law Center

111 E. Capitol Street, Suite 280

Jackson, MS 39201

Telephone: (601) 948-8882

Facsimile: (601) 948-8885

* Admitted *pro hac vice*.

** Admission *pro hac vice* pending.

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I further certify that the attached has been deposited in a U.S. Mail receptacle for delivery by first class mail, properly addressed and with postage pre-paid to:

Kathy Culpepper
901 Iby Street
Collins, MS 39428

Culpepper Enterprises, Inc.
901 Iby Street
Collins, MS 39428

Jon Clancy
3900 Red Hill Road
Vanceleave, MS 39565

Cheri Clancy
3900 Red Hill Road
Vanceleave, MS 39565

North American Labor Services, Inc.
3900 Red Hill Road
Vanceleave, MS 39565

/s/ Daniel Werner

this 1st day of September, 2015.