IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

HECTOR LUNA, JULIAN GARCIA, FRANCISCO JAVIER LORENZO, SANTOS G. MALDONADO, PATRICIA WOODARD and BARTOLO NUNEZ, Individually and on behalf of all others similarly situated,

Plaintiffs,

v.

DEL MONTE FRESH PRODUCE (SOUTHEAST), INC., and DEL MONTE FRESH PRODUCE N.A., INC.,

Defendants.

CIVIL ACTION NO.

1:06-CV-2000-JEC

O R D E R & O P I N I O N

This case is presently before the Court on plaintiffs' Motion to Alter the Clerk's Judgment and Correct the Record [233], plaintiffs' Renewed Motion to Certify a Class Action [234], plaintiffs' Motion to Vacate Costs Entered Pursuant to the Clerk's Judgment in Favor of defendant DMNA [240], plaintiffs' Motion to Certify a Collective FLSA Action [243], and defendants' Emergency Motion for Protective Order [262]. The Court has reviewed the record and the arguments of the parties and, for the reasons set out below, concludes that plaintiffs' Motion to Alter the Clerk's Judgment [233] should be **GRANTED in part** and **DENIED in part**; plaintiffs' Renewed Motion to

Certify a Class Action [234] should be **DENIED**; plaintiffs' Motion to Vacate Costs [240] should be **GRANTED in part** and **DENIED in part**; plaintiffs' Motion to Certify a Collective FLSA Action [243] should be **GRANTED**; and defendants' Emergency Motion for Protective Order [262] should be **GRANTED in part** and **DENIED in part.**

BACKGROUND

The Court discussed the factual background of this case in detail in its recent summary judgment order. (Order [231] at 2-4.) Briefly, plaintiffs are migrant and seasonal agricultural laborers who worked on defendant DMSE's Helena, Georgia farms at various times during the 2003, 2004, 2005 and 2006 harvest seasons. (Second Amended Compl. [106] at ¶ 1.) Plaintiffs allege that DMSE and its parent company DMNA: (1) failed to pay the promised wage rate for all hours worked on its Helena farms; (2) failed to reimburse plaintiffs for costs that they incurred in order to work on the farms; and (3) violated federal laws governing the wages and working conditions of migrant and seasonal agricultural workers. (*Id.* at ¶ 6.) They filed this lawsuit as a class action asserting claims for breach of contract, and for violation of the Fair Labor Standards Act ("FLSA") and the Migrant and Seasonal Agricultural Workers Protection Act ("AWPA"). (*Id.* at ¶ 7.)

The parties agreed to a bifurcated discovery schedule, with the

first stage of discovery to be focused on the potentially dispositive issue of whether DMNA and/or DMSE "employed" plaintiffs for purposes of the FLSA and the AWPA. (Scheduling Order [66].) Following the initial discovery period, the parties filed cross-motions for summary judgment on the employment issue. (Pls.' Mots. for Summ. J. [202] and [203]; Defs.' Mots. for Summ. J. [197], [198], [200], and [201].) The Court found that DMSE qualified as plaintiffs' "employer," but that DMNA did not. (Order [231] at 30-31.) Accordingly, the Court granted summary judgment to DMNA on plaintiffs' FLSA and AWPA claims, but denied summary judgment to DMSE on those claims. (*Id.*)

Plaintiffs have now filed a motion to alter the judgment entered by the clerk following the summary judgment order, and a related motion to vacate the costs granted to defendant DMNA as a prevailing party. (Pls.' Mot. to Alter J. [233] and Mot. to Vacate Costs [240].) Plaintiffs have also filed a renewed motion to certify the claims in Counts I and II of their complaint as a class action, as well as a motion to certify the claims in Count III of their complaint as an FLSA collective action. (Pls.' Mot. for Class Certification [234] and Mot. to Certify an FLSA Collective Action [243].) Defendants have filed a motion for a protective order concerning various statements made by plaintiffs' counsel about the litigation. (Defs.' Mot. for Protective Order [262].) All of these motions are currently before the Court.

DISCUSSION

I. Plaintiffs' Motion to Alter the Clerk's Judgment

On March 19, 2008, the clerk entered a judgment following the Court's summary judgment order. (Judgment [232].) In their motion to alter that judgment, plaintiffs request that the Court clarify the record in several respects. (Pls.' Mot. to Alter J. [233].) The Court **GRANTS** plaintiffs' request to the extent it seeks reinstatement of Mary Bauer as counsel. (*Id.* at 2.) Apparently, Ms. Bauer was inadvertently withdrawn from the case as a result of a docketing error that occurred when Ms. Bauer attempted to file a motion to withdraw on behalf of former attorney Arlen Benjamin-Gomez.[1] (*Id.* at 6.) Defendant does not object to Ms. Bauer's reinstatement as one of plaintiffs' counsel.

The Court also **GRANTS** plaintiffs' request for clarification that DMSE remains a defendant in this case as to all claims. (*Id.* at 2.) In its summary judgment order, the Court granted summary judgment to DMNA, but denied summary judgment to DMSE. (Order [231] at 30-31.) Pursuant to the terms of the order, DMSE should have remained a defendant in the case as to all of plaintiffs' claims. However, the judgment entered on March 19, 2008 purports to dismiss plaintiffs' claims against both DMSE and DMNA and to terminate the action.

[1] Ms. Benjamin-Gomez is no longer employed by the SPLC. (Pls.' Mot. to Vacate [233] at 6.)

(Judgment [232].) To clarify the record, the Court directs the clerk to amend the judgment entered on March 19, 2008 to reflect that DMSE remains a defendant as to all of plaintiffs' claims.

In addition to the above requests, plaintiffs seek an order vacating the judgment with respect to DMNA, and clarifying that DMNA remains a defendant in the case with respect to a single claim under 29 U.S.C. § 1842. (Pls.' Mot. to Vacate [233] at 2.) Section 1842 is a provision of the AWPA that prohibits a person or entity from "utilizing" the services of an unlicensed FLC. 29 U.S.C. § 1842. According to plaintiffs, the Court's summary judgment order did not dispose of their § 1842 claim because the Court did not consider whether DMNA "utilized" the FLCs involved in this case, which is a distinct question from the "employment" issue that was the focus of the Court's analysis. (*Id.*)

Plaintiffs' argument with respect to § 1842 is belated. In its initial motion, DMNA requested summary judgment on all of plaintiffs' FLSA and AWPA claims as a result of DMNA's lack of any relationship with plaintiffs or the farm labor contractors ("FLCs") who directly hired them. (DMNA's Br. in Supp. of Summ. J. ("DMNA's Br.") [197] at 1, 38.) In response to DMNA's motion, plaintiffs proposed various theories by which to impose liability on DMNA in spite of its limited--or non-existent--involvement with plaintiffs or the FLCs, including an integrated enterprise theory and an agency theory.

(Pls.' Resp. to DMNA's Mot. for Summ. J. [208] at 18-29.) Plaintiffs never suggested that DMNA could be liable under the AWPA because it "utilized" the FLCs. (*Id.*) It is too late to do so now. *See Linet, Inc. v. Vill. of Wellington,* 408 F.3d 757, 763 (11th Cir. 2005)(noting that parties cannot use a motion for reconsideration to "relitigate old matters" or "raise argument[s] . . . that could have been raised prior to the entry of judgment").

Plaintiffs' argument is also unpersuasive on the merits. The Court expressly found in its summary judgment order that "DMNA had no involvement whatsoever with plaintiffs or the FLCs." (Order [231] at 27.) This finding precludes plaintiffs' argument that DMNA "utilized" the FLCs for purposes of the AWPA. *See Charles v. Burton,* 169 F.3d 1322, 1334 (11th Cir. 1999)(upholding the district court's decision to grant summary judgment on plaintiff's § 1842 claim where there was no evidence that defendants were "engaged in directing, controlling or supervising" the plaintiffs). Accordingly, the Court **DENIES** plaintiffs' motion to vacate the judgment with respect to DMNA.

II. Plaintiffs' Motion to Vacate or Review Costs Awarded to DMNA

Following the entry of judgment in favor of DMNA, and pursuant to DMNA's bill of costs, the clerk taxed costs against plaintiffs in the amount of $6,600.32. (DMNA's Bill of Costs [236]; Entry of Costs [238].) Plaintiffs contend that DMNA's bill inappropriately includes

costs for materials, primarily depositions, that were jointly used by DMNA and DMSE.[2] (Pls.' Mot. to Vacate Costs [240] at 2.) According to plaintiffs, DMNA is not entitled to recover any costs that would have been incurred by DMSE if it had litigated the case on its own. (*Id.* at 5-8.) In addition, plaintiffs cite at least one significant mathematical error in DMNA's bill of costs, as well as various items that plaintiffs argue were not "necessarily incurred" for DMNA's defense. (*Id.* at 8-12.)

The Court rejects plaintiffs' general argument that DMNA is precluded from recovering any costs for materials that were jointly used by DMNA and DMSE. DMNA acknowledges that it shared with DMSE many of the costs associated with developing the summary judgment record on the employment issue, including deposition costs. (DMNA's Resp. to Pls.' Mot. to Vacate [246] at 4.) For that reason, DMNA only seeks to recover 50% of those costs. (*Id.*) Having fully prevailed on the employment defense, there is no basis for precluding DMNA from recovering its fair portion of the costs necessarily

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[2] Plaintiffs also argue that the clerk's assessment of costs is premature as a result of the remaining § 1842 claim. (Pls.' Mot. to Vacate Costs [240] at 1.) As discussed above, the Court's summary judgment order disposed of all of plaintiffs' claims against DMNA. Pursuant to that order, DMNA is a "prevailing party" entitled to costs under Rule 54(d) of the Federal Rules of Civil Procedure. *See* FED. R. CIV. P. 54(d)(1) (stating that costs "should be allowed to the prevailing party") and *E.E.O.C. v. W&O, Inc.*, 213 F.3d 600, 620 (11th Cir. 2000) (noting that prevailing parties are entitled to recover their costs under Rule 54(d)).

incurred in asserting the defense. *See Chapman v. AI Transp.*, 229 F.3d 1012, 1038 (11th Cir. 2000)(noting that Rule 54(d) establishes a presumption that costs are to be awarded to a prevailing party).[3]

However, several of plaintiffs' specific challenges merit a reduction in the amount of costs awarded to DMNA. DMNA concedes in its response that it overcharged plaintiffs $20.00 for an uncashed witness fee check to Margarita Rojas Cardenas, and that it erroneously requested the full cost of J. Michael Kirby's deposition, instead of the 50% that it intended to request. (DMNA's Resp. to Pls.' Mot. to Vacate Costs [246] at 8-9.) Adjusting for these errors, DMNA's bill of costs will be reduced by $220.00.

The Court will also deduct the costs associated with the second deposition of Juan Gonzalez, a former DMSE employee. The second deposition was necessitated by defendants' failure to produce relevant documents created by Gonzalez during the course of his

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[3] In their reply brief, plaintiffs emphasize that they are low-wage workers who are represented by not-for-profit counsel. (Pls.' Reply in Supp. of Mot. to Vacate [250] at 2.) The Eleventh Circuit has held that "a non-prevailing party's financial status is a factor that a district court may, but need not, consider in its award of costs pursuant to Rule 54(d)." *Chapman*, 229 F.3d at 1039. Plaintiffs in this case persisted in asserting FLSA and AWPA claims against DMNA despite overwhelming evidence that DMSE conducted its business independently from DMNA, and that DMNA had "no involvement whatsoever with plaintiffs or the FLCs." (Order [231] at 27.) They did so with full awareness of the risk that they would ultimately be responsible for DMNA's costs under Rule 54(d). Under the circumstances, the Court finds that the total costs awarded to DMNA are justified in spite of plaintiffs' financial status.

employment with DMSE, which were clearly responsive to plaintiffs' previously issued discovery requests. (Pls.' Mot. to Vacate [240] at 11-12; DMNA's Resp. to Pls.' Mot. to Vacate [246] at 9.) Likewise, the Court will deduct the costs associated with obtaining copies of the 2005 depositions of Letisia Rojas Salazar and Jose Manuel Cortes Mares, both taken in connection with a separately-filed state court case. (Pls.' Mot. to Vacate [240] at 9.) It was not necessary for DMNA to incur these costs, as plaintiffs provided DMNA with free copies of both depositions in response to documentary discovery requests. (*Id.*) The deduction for all of these deposition costs totals $ 323.29.

Finally, the Court will deduct an additional $512.32 for costs associated with obtaining copies of video depositions. The parties were aware that the Court would decide the motions for summary judgment on the written record. It was thus unnecessary for DMNA to order video copies of these depositions at the summary judgment stage in the litigation. *See Morrison v. Reichhold Chem., Inc.*, 97 F.3d 460, 465 (11th Cir. 1996)(holding that a prevailing party seeking reimbursement for a video copy of a deposition must show "why it was necessary to obtain a copy of the video tapes for use in the case").

Pursuant to the above discussion, the Court **GRANTS in part** and **DENIES in part** plaintiffs' Motion to Vacate Costs [240]. Subtracting $1055.61 of disallowed costs from DMNA's total bill of costs, the

Court concludes that DMNA is entitled to **$5,544.71 in costs.**

III. DMSE's Motion for a Protective Order

In its motion for a protective order, DMSE claims that plaintiffs' counsel, the Southern Poverty Law Center ("SPLC"), has made misleading and inaccurate statements concerning this litigation in various press releases and on its website. (Def.'s Mot. for Protective Order [262].) Specifically, DMSE alleges that the SPLC's statements: (1) misleadingly refer to "Del Monte" as the defendant, as opposed to DMSE; (2) inaccurately suggest that the Court has made a liability finding against DMSE; and (3) disparagingly accuse DMSE of "cheating" or "abusing" workers and "stealing" their wages.[4] (*Id.* at 4-9.) DMSE also alleges that the SPLC has mounted a harassing email campaign against Del Monte general counsel Bruce Jordan. (*Id.* at 2-3.) DMSE seeks a protective order requiring the SPLC to refrain from making misleading statements about the parties or the status of the litigation, and to end the email campaign against Bruce Jordan. (*Id.* at 2-3.)

With regard to the alleged email campaign, DMSE's motion is apparently based on a mistaken belief that the SPLC website contains

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[4] Defendant originally contended that the SPLC's statements infringed the Del Monte trademark and violated the Rules of Professional Conduct. (Def.'s Br. in Supp. of Protective Order [262] at 18-24.) Fortunately defendant has abandoned these contentions, which appear to be completely unfounded. (*See* Joint Stipulation [271] at ¶¶ 1-2.)

a link to Jordan's inbox. (*Id.*) In fact, the SPLC website does not contain, and has never contained, a link to Jordan's inbox. (Pls.' Opp'n to Def.'s Mot. for Protective Order [267] at 16, Ex. 6.) Although Jordan received two emails from SPLC supporters concerning Del Monte's labor practices, those emails were not sent through a link on the SPLC website. (*Id.*) Nor has the SPLC ever given out Jordan's email address. (*Id.*) Accordingly, defendant's motion is **DENIED** to the extent it requests relief from the SPLC's "email campaign."

The Court also **DENIES** defendant's motion with respect to the SPLC's statements that refer to "Del Monte" as the defendant in the litigation, as opposed to "DMSE." Read in context, none of the statements cited by DMSE are confusing as to the proper party in the case. (Def.'s Br. in Supp. of Protective Order [262] at 3, 5, 7-8; Pls.' Opp'n to Mot. for Protective Order [267] at 3-4.) When referring to the parties in the case, SPLC representatives only use the short-hand term "Del Monte" after clearly identifying the defendant as Del Monte Produce Southeast or Del Monte Southeast, and after explaining that Del Monte Southeast is a subsidiary of Del Monte. (*Id.*) The average reader should accurately understand from any of the cited statements that the defendant in the case is DMSE, which is a subsidiary of Del Monte.

However, the Court agrees with defendant that various statements

suggesting that the Court has "h[eld] Del Monte Produce Southeast, Inc., liable for alleged wage violations" are misleading. Such statements misrepresent the scope of the Court's summary judgment order, which was limited to the employment issue, and did not purport to address questions of ultimate liability. Similarly, statements that DMSE "cheated" workers or "stole" their wages inaccurately present as proven facts what, at this point, remain unproven allegations. The Court has not made any findings on liability at this stage in the litigation. Indeed, the parties have not even completed the liability phase of discovery.

Contrary to plaintiffs' argument, the SPLC's misleading and inaccurate statements concerning the status of the litigation are not protected by the First Amendment. *See Gulf Oil v. Bernard*, 452 U.S. 89, 100 (1981)(noting the district court's authority under Rule 23 to enter appropriate orders governing communications between attorneys and potential class members) and *Kleiner v. First Nat'l Bank of Atlanta*, 751 F.2d 1193, 1204 (11th Cir. 1985)("untruthful or misleading speech has no claim on First Amendment immunity"). Courts in the Eleventh Circuit and elsewhere have consistently precluded class counsel from making statements that are inaccurate or misleading or that present disputed assertions as unqualifiedly true. *See Taylor v. CompUSA, Inc.*, 2004 WL 1660939 *3 (N.D. Ga. 2004)(Hunt, J.)(ordering plaintiff to refrain from sending messages that "may

mislead potential plaintiffs as to their eligibility to participate in the action and the extent of [defendant's] potential liability") and *Hampton Hardware, Inc. v. Cotter & Co., Inc.*, 156 F.R.D. 630, 632 (N.D. Tex. 1994)("[c]ommunications that misrepresent the status or effect of the pending action also have been found to have a potential for confusion and/or to adversely affect the administration of justice").

Neither are the SPLC's statements immune from court-imposed restrictions simply because they are not made in solicitations directly aimed at communicating with potential class members. *See Alaniz v. Sam Kane Beef Processors, Inc.*, 2007 WL 4290659 *1 (S.D. Tex. 2007)(granting a TRO where plaintiffs circulated flyers, aired radio announcements and sponsored billboards containing misleading and overbroad statements about the litigation). The Court has discretion under Rule 23 to enter a protective order restricting communications about the litigation that are inaccurate or misleading. *Gulf Oil*, 452 U.S. at 100. That discretion is not limited to communications directly aimed at class members via solicitations. *Alaniz*, 2007 WL 4290659 at *1. *See also Abdallah v. Coca-Cola Co.*, 186 F.R.D. 672, 678 (N.D. Ga. 1999)(Story, J.)(noting the general public and potential class members' widespread access to website postings).

Based on the above discussion, the Court **GRANTS** defendant's

motion to the extent it requests a protective order precluding the SPLC from making statements that inaccurately suggest that the Court has found defendant liable for wage violations. To comply with this order, the SPLC should: (1) amend the information on its website and ensure that any future press releases, articles, or other statements clarify that DMSE has not yet been found liable for wage violations; and (2) ensure that any future statements suggesting that defendant "cheated" plaintiffs or "stole" their wages make clear that these are simply the SPLC's allegations, which have not yet been proven.[5]

IV. Plaintiffs' Motion to Certify a Class

Plaintiffs have filed a motion for certification of the claims in Counts I and II of their complaint as a class action under Federal Rule 23. (Pls.' Mot. for Cert. [234].) Plaintiffs Hector Luna, Julian Garcia, and Francisco Lorenzo (the "Count I Plaintiffs") seek to represent a class consisting of:

> all those individuals who were admitted to work in the United States as H-2A guest workers . . . who performed field and/or warehouse work on [DMSE's] Helena, Georgia area produce operations at any point from April 1, 2003 through August, 2006.

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[5] The Court will not require the SPLC to publish a retraction. Although DMSE demonstrated that the SPLC's statements had the potential to mislead class members concerning the status of the litigation, it did not present any evidence of actual confusion or harm. Accordingly, the Court finds that DMSE's concerns are adequately addressed by a protective order governing the SPLC's future communications.

(Pls.' Br. in Supp. of Class Cert. [234] at 2-4.) The Count I plaintiffs assert breach of contract claims based on the federal H-2A guest-worker program regulations. (*Id.* at 3.) Plaintiffs Santos Maldonado, Patricia Woodard and Bartolo Nunez (the "Count II Plaintiffs") seek to represent a distinct class consisting of:

> all those individuals recruited from within the United States who performed field and/or warehouse work on [DMSE's] Helena, Georgia-area produce operations at any point from April 1, 2003 through August, 2006.

(*Id.* at 5.) The Count II plaintiffs assert claims for violations of the AWPA. (*Id.* at 3.)

In order for plaintiffs to maintain a class action, the two proposed classes must satisfy all of the requirements of Federal Rule 23(a) and at least one of the alternative requirements of Rule 23(b). *Pickett v. Iowa Beef Processors,* 209 F.3d 1276, 1279 (11th Cir. 2000). "The burden of proof to establish the propriety of class certification rests with the advocate of the class." *Valley Drug Co. v. Geneva Pharm., Inc.,* 350 F.3d 1181, 1187 (11th Cir. 2003)(citing *Jones v. Diamond,* 519 F.2d 1090, 1099 (5th Cir. 1975)).

A. Rule 23(a)

Pursuant to Rule 23(a), a class may only be certified if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

FED. R. CIV. P. 23(a). The four prerequisites of Rule 23(a) are commonly referred to as numerosity, commonality, typicality, and adequacy of representation. *Valley Drug,* 350 F.3d at 1188. They are designed to limit class claims to those "'fairly encompassed by the named plaintiffs' individual claims.'" *Id.* (quoting *Prado-Steiman v. Bush,* 221 F.3d 1266, 1278 (11th Cir. 2000)).

1. Numerosity

Plaintiffs do not specify the exact size of either proposed class. (Pls.' Br. in Supp. of Cert. [234] at 7.) However, Department of Labor clearance orders indicate that DMSE anticipated hiring approximately 339 H-2A guestworkers during the relevant time period. (*Id.* at Ex. 28-32.) In addition, DMSE's primary FLC testified to hiring approximately 70 to 100 non-H-2A workers per year between 2003 and 2006. (*Id.*) Plaintiffs thus easily satisfy the numerosity requirement. *See Cox v. Am. Cast Iron Pipe Co.,* 784 F.2d 1546, 1553 (11th Cir. 1986) ("while there is no fixed numerosity rule, 'generally less than twenty-one is inadequate, more than forty adequate, with numbers between varying according to other factors'") (quoting 3B MOORE'S FEDERAL PRACTICE § 23.05 (1978)) and *Ingram*

v. The Coca-Cola Co., 200 F.R.D. 685, 697 (N.D. Ga. 2001)(Story, J.)(stating that 2200 putative class members is "well beyond that which courts accept as satisfying the numerosity requirement").

2. Commonality

The commonality requirement measures the extent to which all members of a putative class have similar claims. *Prado-Steinman*, 221 F.3d at 1279 (discussing the requirements of Rule 23(a)). The threshold for commonality is not high. *Cheney v. Cyberguard Corp.*, 213 F.R.D. 484, 490 (S.D. Fla. 2003) (citing *Forbush v. J.C. Penney Co., Inc.*, 994 F.2d 1101, 1106 (5th Cir. 1993)). Commonality simply requires that there be at least one issue of law or fact that affects all or a significant number of proposed class members. *Id.* *See also Dujanovic v. MortgageAm., Inc.*, 185 F.R.D. 660, 667 (N.D. Ala. 1999)(emphasizing that the common question of law or fact requirement is expressed in the disjunctive).

Plaintiffs identify a number of factual issues that are common to each member of the proposed classes, including: (1) whether DMSE paid workers at the mandatory wage rate for all hours worked; and (2) whether DMSE maintained complete and accurate pay records. (Pls.' Br. in Supp. of Certification [234] at 10.) There are also several common questions of law involving the interpretation of the relevant provisions of the AWPA and the H-2A contracts. (*Id.* at 12-13.) Plaintiffs thus satisfy the commonality requirement of Rule 23(a)(2).

3. Adequacy

The adequacy requirement applies to both class representatives and class counsel. *Veal v. Crown Auto Dealerships, Inc.*, 236 F.R.D. 572, 578 (M.D. Fla. 2006) (citing *London v. Wal-Mart Stores, Inc.*, 340 F.3d 1246, 1253 (11th Cir. 2003)). In order to establish adequacy, the named representatives must be in a position to vigorously assert and defend the interests of the class. *Lyons v. Georgia-Pac. Corp. Salaried Employees Ret. Plan*, 221 F.3d 1235, 1253 (11th Cir. 2000). Class counsel likewise must be competent and qualified to prosecute the action. *Griffin v. Carlin*, 755 F.2d 1516, 1533 (11th Cir. 1985)("[t]he adequate representation requirement involves questions of whether plaintiffs' counsel are qualified, experienced and generally able to conduct the proposed litigation").

The Court is satisfied that class counsel is competent. Plaintiffs are represented by the Southern Poverty Law Center, an organization that has sufficient funds to finance the litigation, and has indicated its willingness to do so. (Pls.' Br. in Supp. of Certification [234] at 18.) Class attorneys Kristi Graunke and Mary Bauer are experienced in federal class action litigation, including cases on behalf of migrant agricultural workers brought under the AWPA and the H-2A guest-worker regulations. (*Id.* at 17-18.) They have vigorously represented plaintiffs' interests thus far, successfully completing substantial discovery and obtaining an

important summary judgment ruling concerning DMSE's status as plaintiffs' employer. (Order [231].)

However, the Court is concerned about the adequacy of the named representatives to aid in the prosecution of the claims asserted on behalf of the Count I plaintiffs. Class representatives cannot simply abdicate the conduct of the case to their attorneys. *Kirkpatrick v. J.C. Bradford & Co.*, 827 F.2d 718, 728 (11th Cir. 1987)(noting that the named plaintiffs' participation cannot be "so minimal that they virtually have abdicated to their attorneys the conduct of the case"). *See also Veal*, 236 F.R.D. at 578-9 (finding a class representative adequate where he testified that he "has participated and is willing to continue to participate in the litigation of the class claims"). One of the purposes of Rule 23 is to ensure that named representatives "have incentives that align with those of absent class members so as to assure that the absentees' interests will be fairly represented." *Prado-Steiman*, 221 F.3d at 1279. All of the named Count I plaintiffs are ill-positioned to represent the interests of absentee class members.

As an initial matter, plaintiffs Hector Luna and Francisco Lorenzo have both testified to violating their H-2A visas, the terms of which form the basis of their claims against DMSE. An H-2A worker is "only admitted into the United States to work for the designated employer and for the duration of the certified period of employment."

Arriaga v. Florida Pac. Farms, LLC, 305 F.3d 1228, 1233 (11th Cir. 2002). When the employment relationship ends, "the H-2A visa expires, and the worker must leave the United States." *Id.* Luna and Lorenzo both admitted to engaging in unsanctioned work for employees other than DMSE following the expiration of their H-2A visas. (Confidential Luna Dep. at 5-6; Confidential Lorenzo Dep. at 138-146.)

Although an unlawful immigration status does not bar a plaintiff from serving as a class representative *per se*, Luna and Lorenzo's visa violations directly bear on their adequacy as class representatives in this case. To date, Luna and Lorenzo have been unwilling to testify in the United States or on the public record as to their work history, and it is unclear whether either plaintiff will be willing or able to appear in the United States should their appearance be necessary. (Def.'s Opp'n to Pls.' Mot. to Certify [248] at 21.) In addition, Luna and Lorenzo's unsanctioned work potentially impacts the damages claims that they are able to assert on behalf of the class for employment-related expenses.[6] (*See* Order [144] at 14.) The Court thus finds that Luna and Lorenzo's visa

[6] For example, plaintiffs do not seek payment of return transportation costs, which are available to H-2A workers at the end of their contract period. (Pls.' Reply [251] at 10.) The Court presumes that the named plaintiffs are precluded from asserting those claims as a result of their H-2A visa violations, although such claims might be available to many absent class members.

violations hinder their ability to represent absentee class members, who presumably complied with the terms of their H-2A visas.

The Court also questions the adequacy of the remaining Count I plaintiff, Julian Garcia. Plaintiff Garcia only worked at DMSE's facility for five weeks during 2003. (Garcia Dep. at 59-60.) He does not have an approximate idea of how many hours he or any other employees worked for DMSE, or how much he believes he or any other potential class member is owed for back pay. (*Id.* at 142-44, 149-50.) It is apparent from his testimony that Garcia lacks sufficient knowledge to support even his own wage claim against DMSE, much less the claims of absentee class members. (*Id.*) Thus, like Luna and Lorenzo, Garcia does not meet the adequacy requirement of Rule 23(a).

4. Typicality

Typicality measures whether a sufficient nexus exists between the claims of the named representative and those of the class at large. *Hines v. Widnall,* 334 F.3d 1253, 1256 (11th Cir. 2003). A sufficient nexus is established if the claims or defenses of the class and the class representatives arise from the same event and are based on the same legal theory. *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984). *See also Cheney,* 213 F.R.D. at 491 (holding same). Like commonality, typicality does not require identical claims or defenses. *Id.* Factual differences will not render a representative's claim atypical unless the factual

position of the representative markedly differs from that of other class members. *Id.* *See also Begley v. Acad. Life Ins. Co.*, 200 F.R.D. 489, 496 (N.D. Ga. 2001)(Panell, J.)("minor factual variations will not render a class representative's claim atypical").

In this case, the typicality analysis is impacted by the Court's ruling on adequacy. As discussed above, plaintiffs Luna, Lorenzo, and Garcia do not meet Rule 23(a)'s adequacy requirement. The remaining named plaintiffs--Woodard, Nunez, and Maldonado--assert claims that are typical of the claims in Count II of plaintiffs' complaint for violations of the wage requirements of the AWPA. However, there is no nexus between the AWPA claims asserted in Count II and the H-2A-based claims asserted in Count I of plaintiffs' complaint. The Count II workers were recruited from within the United States, and were never part of the H-2A guest-worker program. Indeed, plaintiffs concede that the Count II plaintiffs lack standing to pursue the Count I claims. (Pls.' Reply in Supp. of Certification [251] at 2.) Accordingly, the Court finds that plaintiffs have only satisfied the requirements of Rule 23(a) with respect to the claims in Count II of their complaint.

B. Rule 23(b)

Ordinarily, the Court might give class counsel an opportunity to locate and substitute a suitable representative to pursue the claims asserted in Count I. However, plaintiffs also fail to demonstrate

that this case can be maintained as a class action under any provision of Rule 23(b). *See Allapattah Serv. Inc. v. Exxon Corp.*, 333 F.3d 1248, 1260 (11th Cir. 2003)(noting that a class action may only be maintained if plaintiffs can establish at least one of the alternative requirements of Rule 23(b)). Plaintiffs argue that certification is appropriate under either Rule 23(b)(2) or Rule 23(b)(3). (Pls.' Br. in Supp. of Certification [234] at 18.) The Court finds that plaintiffs have not satisfied either provision.

1. Rule 23(b)(2)

Rule 23(b)(2) permits certification where "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." FED. R. CIV. P. 23(b)(2). Rule 23(b)(2) is applicable to actions, such as civil rights suits, in which final injunctive or declaratory relief can settle the legality of a party's behavior with respect to the class as a whole. *Kleiner v. First Nat'l Bank of Atlanta*, 97 F.R.D. 683, 691 (N.D. Ga. 1983)(Evans, J.). Monetary relief may be obtained in a Rule 23(b)(2) action if it is "incidental to requested injunctive or declaratory relief." *Murray v. Auslander*, 244 F.3d 807, 812 (11th Cir. 2001). However, "incidental damages should not . . . entail complex individualized determinations." *Id.*

Plaintiffs contend that DMSE has acted on grounds generally

applicable to the class by failing to ensure payment of the minimum and overtime wages mandated by the AWPA, and failing to maintain and provide complete and accurate pay records. (Pls.' Br. in Supp. of Certification [234] at 19.) While that may be so, it is unclear what plaintiffs hope to achieve by their request for injunctive relief, as plaintiffs concede that DMSE closed its operations in August, 2006. (Def.'s Opp'n to Pls.' Mot. for Certification [248] at 41.) Because DMSE is not a going concern, plaintiffs cannot reasonably claim that it poses any likelihood of future harm to them personally or to the classes they seek to represent. *See Church v. City of Huntsville*, 30 F.3d 1332, 1337 (11th Cir. 1994)("'a prospective remedy will provide no relief for an injury that is, and likely will remain, entirely in the past'")(quoting *Am. Postal Workers Union v. Frank*, 968 F.2d 1373, 1376 (1st Cir. 1992)).

Although the complaint does include a request for injunctive relief, it is abundantly clear that plaintiffs primarily seek monetary relief for DMSE's alleged breach of H-2A employment contracts and AWPA violations. Moreover, the monetary relief that plaintiffs request requires highly individualized and quite likely complex calculations of the compensation that workers received for the hours that they worked. Rule 23(b)(2) is therefore inapplicable. *Murray*, 244 F.3d at 812.

2. Rule 23(b)(3)

Rule 23(b)(3) authorizes a class action where:

> the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

FED. R. CIV. P. 23(b)(3). Rule 23(b)(3) is "far more demanding" than the commonality requirement of Rule 23(a)(2). *Rutstein v. Avis Rent-A-Car Sys., Inc.*, 211 F.3d 1228, 1233 (11th Cir. 2000). In order to qualify as a Rule 23(b)(3) class action, the issues that are subject to generalized proof, and thus applicable to the class as a whole, must predominate over those issues that are subject only to individualized proof. *Id.* *See also Begley*, 200 F.R.D. at 497 (discussing the requirements of Rule 23(b)(3)).

As discussed above, there are sufficient common issues of law and fact to meet the commonality requirement of Rule 23(a)(2). These issues include: (1) whether DMSE paid the members of both classes at the mandatory wage rate for all work performed; and (2) whether DMSE maintained complete and accurate pay records regarding the work of both class members. (Pls.' Br. in Supp. of Certification [234] at 20-21.) However, the resolution of these common, overarching issues will depend on highly individualized evidence concerning the compensation each class member received for the hours he or she actually worked. Particularly with regard to plaintiffs' claim that

DMSE failed to supplement piece-rate earnings to ensure that workers received the mandatory wage rate, liability will likely depend on an assessment of the productivity of individual workers. Certification under Rule 23(b)(3) is not appropriate under such circumstances. *See Klay v. Humana, Inc.*, 382 F.3d 1241, 1255 (11th Cir. 2004)(holding that claims are not suitable for certification under Rule 23(b)(3) where, after adjudication of the class-wide issues, individual class members must still introduce a great deal of individualized proof to prevail on their claims) and *Rutstein*, 211 F.3d at 1235-6 ("Serious drawbacks to the maintenance of a class action are presented where initial determinations, such as the issue of liability *vel non*, turn upon highly individualized facts.").

It is true that certain questions in this case can be resolved by reference to class-wide evidence. For example, plaintiffs may be able to prove that DMSE had a practice of failing to reimburse H-2A workers for pre-employment related travel and visa costs during the first week of work, as required by the Eleventh Circuit in *Arriaga v. Florida Pac. Farms, LLC*, 305 F.3d 1228, 1244 (11th Cir. 2002). However, that particular claim is most appropriately pursued in an FLSA collective action. *Id.* ("Although immediate reimbursement is not necessary, payment may be required within the first week if the employees' wages, once the costs are subtracted, are below minimum wage."). As to plaintiffs' other claims, individual issues

predominate over any common factual and legal issues. Accordingly, the Court **DENIES** plaintiffs' motion to certify the claims in Counts I and II of the complaint as a class action.

V. Plaintiffs' Motion to Certify an FLSA Collective Action

Plaintiffs seek certification of the FLSA claims in Count III of their complaint as a collective action under 29 U.S.C. § 216(b). (Pls.' Br. in Supp. of Mot. for Certification of Collective Action ("Pls.' Br. in Supp. of Collective Action") [243] at 1.) Section 216(b) allows plaintiffs to maintain a collective action on their own behalf and on behalf of "other employees [who are] similarly situated." 29 U.S.C. § 216(b). It further provides that any "similarly situated" employees who desire to join a collective action "must give [their] consent in writing." *Id.* Thus, there are two conditions for maintaining a collective action under the FLSA: (1) plaintiffs must be "similarly situated" to each other and to any proposed plaintiffs who wish to join the action; and (2) plaintiffs must "opt in" to the action by filing a consent with the Court. *Id.* *See also Cameron-Grant v. Maxim Healthcare Serv., Inc.*, 347 F.3d 1240, 1247-48 (11th Cir. 2003)(distinguishing between the opt-in mechanism of FLSA collective actions and the opt-out procedures of Rule 23).

Courts in the Eleventh Circuit generally use a two-stage approach to determine whether to certify a collective action under §

216(b). *Hipp v. Liberty Nat'l Life Ins. Co.*, 252 F.3d 1208, 1218 (11th Cir. 2001).[7] At the "notice stage" prior to discovery, the Court decides whether plaintiffs have made a sufficient showing that they are "similarly situated" to warrant notice of the action to potential plaintiffs. *Id.* (citing *Mooney v. Aramco Serv. Co.*, 54 F.3d 1207, 1216 (5th Cir. 1995)). This decision is usually based only on the pleadings and any affidavits that have been submitted. *Id.* Because of the minimal evidence that is available, the Court applies a lenient standard. *Id.* If plaintiffs meet their burden, which is not heavy, the Court conditionally certifies the action and authorizes notice and an opportunity for proposed plaintiffs to opt-in. *Id.*

The second stage is typically precipitated by a motion for decertification by the defendant when discovery is complete and the case is ready for trial. *Anderson v. Cagle's, Inc.*, 488 F.3d 945, 953 (11th Cir. 2007). As the Court has more information on which to base its decision, the plaintiffs' burden is heavier under a second-stage analysis. *Id.* Nevertheless, the "similarly situated" requirement of § 216(b) is more elastic and less stringent than either the requirement for joinder under Rule 20 or the requirements

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[7] The plaintiffs in *Hipp* asserted a collective action under the Age Discrimination in Employment Act ("ADEA"). However, the *Hipp* analysis is relevant to this case because the ADEA incorporates the collective action procedures of § 216(b). *Hipp*, 252 F.3d at 1216.

for certifying a class action under Rule 23(b)(3). *Hipp*, 252 F.3d at 1219. *See also Bradford v. Bed Bath & Beyond, Inc.*, 184 F.Supp. 2d 1342, 1345 (N.D. Ga. 2002)(Story, J.)("this similarly situated standard is less stringent than Rule 20(a)'s 'same transaction or occurrence' requirement for joinder and than Rule 23(b)(3)'s requirement that a class may only be certified if 'common questions predominate'"). Relevant factors include: (1) disparate factual and employment settings of the individual plaintiffs; (2) the various defenses available to defendants that appear to be individual to each plaintiff; and (3) fairness and procedural considerations. *Anderson*, 488 F.3d at 953 (citing *Thiessen v. Gen. Elec. Capital Corp.*, 267 F.3d 1095, 1103 (10th Cir. 2001)).

This case does not fit neatly into the two-stage process described above. Although the parties have conducted discovery on the employment issue, the record on the "similarly situated" question is not as fully developed as it will be when discovery is complete and the case is ready for trial. Moreover, as notice of the action has not yet issued, defendants cannot identify all of the opt-in plaintiffs or analyze with specificity whether those plaintiffs are "similarly situated" to the named plaintiffs or the forty-nine existing opt-ins. Nevertheless, the evidence that the parties have developed thus far suggests that plaintiffs meet even a second-stage "similarly situated" inquiry.

Plaintiffs' proposed collective action includes:

> All non-supervisory workers who performed planting, loading, harvesting, packing, grading, field and shed sanitation and related agricultural activities on DMSE's farming operations in and around Telfair and Wheeler counties from 2003 to 2006;

and a fully-contained subclass encompassing:

> All such workers who incurred pre-employment expenses related to visa-processing, travel other than daily commuting, and any other fees required to be paid in order to work at DMSE's Georgia operations.

(Pls.' Br. in Supp. of Collective Action [243] at 5.) All of the proposed plaintiffs worked at a single operation where the primary activities related to growing and packing produce. (*Id.* at 14-16.) Their pay, either hourly or piece-rate, was determined by schedules in generally applicable FLC contracts. (*Id.* at 10-11.) There do not appear to be any significant disparities between plaintiffs' factual and employment settings. *See Pendlebury v. Starbucks Coffee Co.*, 518 F. Supp. 2d 1345, 1362 (S.D. Fla. 2007)(finding differences in scheduling, store inventory, and managerial style insufficient to defeat plaintiffs' motion for certification of a collective action) and *Moss v. Crawford & Co.*, 201 F.R.D. 398, 409 (W.D. Pa. 2000)("courts generally do not require prospective class members to be identical").

Moreover, one of plaintiffs' main FLSA claims--their claim requesting reimbursement for pre-employment travel and visa costs--is

largely susceptible to class-wide proof. There are no individual defenses to this claim, which is most appropriately pursued under the FLSA. *See Arriaga*, 305 F.3d at 1237 ("Workers must be reimbursed during the first workweek for pre-employment expenses which primarily benefit the employer, to the point that wages are at least equivalent to the minimum wage.").

Finally, fairness and procedural considerations support certification of a collective action in this case. Plaintiffs, most of whom are indigent and many of whom live abroad, are poorly positioned to file individual actions against DMSE. *See Pendlebury*, 518 F. Supp. 2d at 1363 ("Defendant's suggestion that few Plaintiffs would re-file [if the case were decertified] is the precise reason Congress authorized class action treatment for these types of cases."). In addition, plaintiffs' individual claims for damages are too small to justify incurring the costs of litigation. *See Bradford*, 184 F. Supp. 2d at 1351 (noting that plaintiffs can "hardly be expected to pursue these small claims individually"). There is "little likelihood that [plaintiffs' FLSA] rights will be vindicated in the absence of collective action." *Id.*

The Court thus **GRANTS** plaintiffs' motion to certify the FLSA claims in Count III as a collective action. Pursuant to this order, the Court approves the proposed notice attached as Exhibit 49 to plaintiffs' motion to certify a collective FLSA action and as

Appendix A to this Order, and authorizes plaintiffs to issue the notice to class members by radio, newspaper advertisements, and mail.[8]

CONCLUSION

For the foregoing reasons, the Court **GRANTS in part** and **DENIES in part** plaintiffs' Motion to Alter the Clerk's Judgment [233], **DENIES** plaintiffs' Renewed Motion to Certify a Class Action [234], **GRANTS in part** and **DENIES in part** plaintiffs' Motion to Vacate Costs [240], **GRANTS** plaintiffs' Motion to Certify a Collective FLSA Action [243], and **GRANTS in part** and **DENIES in part** defendants' Emergency Motion for Protective Order [262].

SO ORDERED, this 3 day of March, 2009.

JULIE E. CARNES
CHIEF UNITED STATES DISTRICT JUDGE

[8] DMSE does not assert any valid objections to the form or substance of the proposed notice, which has been approved by several district courts in similar cases. *See De Luna-Guerrero v. N. Carolina Growers' Ass'n, Inc.*, 338 F. Supp. 2d 649, 666-67 (E.D.N.C. 2004) and *Gjurovich v. Emmanuel's Marketplace, Inc.*, 282 F. Supp. 2d 91, 97-100 (S.D.N.Y. 2003).

Appendix A

Exhibit 49

Proposed Collective Action Notice

IMPORTANT NOTICE TO CURRENT OR FORMER EMPLOYEES OF DEL MONTE FRESH PRODUCE (SOUTHEAST), INC.

To: Current or Former Del Monte Fresh Produce (Southeast) Employees

Re: Right to Join Lawsuit to Recover Unpaid Wages

Date: [Plaintiffs' counsel will insert date of issuance]

1. Purpose of Notice

This letter is sent to tell you of a lawsuit by workers against Del Monte Fresh Produce (Southeast), Inc. ("Del Monte"), seeking payment of wages to workers under the Fair Labor Standards Act.

This is a notice authorized by the United States District Court for the Northern District of Georgia. The Court has not yet decided whether the workers' claims have merit.

2. Description of the Lawsuit

This lawsuit asks for payment of the minimum and overtime wages that Plaintiffs claim they were not paid for all of the work they performed on Del Monte operations in Georgia. This lawsuit asks that migrant workers who traveled

substantial distances from their homes to work for Del Monte be reimbursed for their expenses related to visa, travel and other costs paid to be able to work at Del Monte.

Plaintiffs' claim that Del Monte did not paid the lawful hourly wage for all the hours that they worked. Plaintiffs claim that their piece-rate earnings were sometimes so low that they did not earn the legal wage for every hour worked. Plaintiffs claim that Del Monte did not pay them overtime wages for work in the packing warehouse, even when they worked more than 40 hours in a week.

The lawsuit has been brought by Hector Luna, Julian Garcia, Francisco Javier Lorenzo, Santos Maldonado, Bartolo Nuñez, and Patricia Woodard, all former workers at Del Monte's farming operations in Telfair and Wheeler counties, Georgia. The lawsuit was brought in federal district court for the Northern District of Georgia. The name of the lawsuit is: Luna, et. al. v. Del Monte Fresh Produce (Southeast), Inc. et, al., No. 1:06-cv-02000-JEC. The lawyers for the workers who brought this case are:

Kristi Graunke
Mary Bauer
Andrew Turner
Immigrant Justice Project
Southern Poverty Law Center

[Plaintiffs' counsel to insert their new Atlanta address]
U.S.A.

Toll free telephone in the U.S.:	**1-800-591-3656**
Toll free telephone from Mexico:	**001-800-591-3656**
Telephone from Central America:	**001-800-591-3656**
Fax from the U.S.:	**1-334-956-8481**
Fax from Mexico:	**001-334-956-8481**
Fax from Central America:	**001-334-956-8481**

Del Monte denies that it committed any violations of Fair Labor Standards Act on their Georgia operations. The Court has not yet decided whether Del Monte has done anything wrong. There is no money available at this time and there is no guarantee that there will be any money.

3. Your Right to Participate in this Lawsuit

This notice tells you of your rights under the federal minimum wage law in the United States, which is called the Fair Labor Standards Act. If you performed work in a field or packing warehouse for Del Monte in Georgia at any time between January 2003 and August 2006 and were not a supervisor, it is possible that you have a right to join this lawsuit. You may be eligible to participate in this lawsuit if

your experience was similar to that of the named Plaintiffs and you were "similarly situated" to the Plaintiffs.

Your options are the following:

1) Do Nothing - If you do not act, you may lose some of your rights to payment, as your claims may expire. If you do nothing, you do not lose your right to bring a separate suit against Del Monte. If money is awarded to the workers in this case, you will not receive it if you do not act.

2) Ask to Join this Lawsuit – By joining this lawsuit, you gain the possibility of getting money or benefits that may result from a trial or settlement, but you give up your right to bring a separate lawsuit of your own against Del Monte for the same legal claims brought in this lawsuit.

4. How to Participate in this Lawsuit

This notice includes a form titled "Consent to Sue" and a form titled "Contact Information Form for Workers Who Want to Join the Lawsuit." If you want to join this lawsuit, and be eligible to receive money you might be owed, you must read (or have read to you), fill out, sign and return the Consent to Sue and Contact

Information form. You can return the forms by mail or by fax. The forms must be mailed or faxed to the Immigrant Justice Project by [insert date five days before deadline decided by the court].

The forms should be mailed to:

Kristi Graunke
Immigrant Justice Project
Southern Poverty Law Center
[Plaintiffs' counsel to insert their new Atlanta address]
U.S.A.

They can also be faxed to:

Fax from the U.S.: **[Plaintiffs' counsel to**
Fax from Mexico and Central America: **insert new fax numbers]**

5. Retaliation Is Illegal

It is a violation of United States law for Del Monte and/or their agents or contractors to threaten, harm, fire, refuse to hire, or in any manner discriminate against you for taking part in this case. If you believe that you have been threatened, punished, discriminated or retaliated against for discussing or choosing to join in this lawsuit you can call the Immigrant Justice Project at:

Toll free telephone in the U.S.: **1-800-591-3656**

Toll free telephone from Mexico: **001-800-591-3656**

Telephone from Central America: 001-800-591-3656

6. **Effect of Joining this Lawsuit**

If you join this lawsuit, you will be included in the decision made by the judge, whether that decision is favorable or unfavorable. You will also share in any money received in the lawsuit (either through a decision by the Court or through a settlement).

By joining this lawsuit, you designate Hector Luna and the other Plaintiffs to make decisions on your behalf concerning this case. The decisions and agreements made in this lawsuit will affect your claims.

7. **You Do Not Have to Pay for the Services of Plaintiffs' Attorneys**

The attorneys representing the plaintiffs in this case are financed by the Immigrant Justice Project of the Southern Poverty Law Center, a non-profit organization. You will not have to pay for the attorneys from Immigrant Justice Project. **The services of the workers' attorneys are free.** You also do not have to pay any of the costs of bringing this lawsuit.

If you do not wish to be represented by the attorneys from the Immigrant Justice Project, you have the right to find your own attorney to represent you in this

case or in any other cases against Del Monte.

8. For More Information

You may call the lawyers for the Plaintiffs at:

Toll free telephone in the U.S.: 1-800-591-3656

Toll free telephone from Mexico: 001-800-591-3656

Telephone from Central America: 001-800-591-3656

If you speak Spanish, a Spanish speaker will be available to talk to you.

THIS NOTICE WAS AUTHORIZED BY THE HONORABLE JULIE E. CARNES, JUDGE FOR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA. THERE ARE NO GUARANTEES THAT MONEY WILL BE RECOVERED IN THIS CASE. THE COURT HAS NOT YET DECIDED WHETHER THE CLAIMS MADE IN THE LAWSUIT ARE VALID.

AVISO IMPORTANTE PARA TRABAJADORES ACTUALES Y PREVIOS DE DEL MONTE FRESH PRODUCE (SOUTHEAST), INC.

Para: **Trabajadores actuales o previos de Del Monte Fresh Produce (Southeast), Inc.**

Re: **Derecho de juntarse en una demanda para recuperar pagos debidos**

Fecha: **[fecha]**

1. Propósito del Aviso

Esta carta sirve para informarle sobre una demanda por trabajadores contra Del Monte Fresh Produce (Southeast), Inc. ("Del Monte") buscando pagos de sueldos para trabajadores bajo la Ley de Normas Laborales Justas.

Es un aviso autorizado por la Corte del Distrito de los Estados Unidos para el Distrito del Norte de Georgia. La corte todavía no ha decidido si las quejas dichas de la demanda son válidas.

2. Descripción de La Demanda

Este litigio pide el pago debido del sueldo mínimo y el pago de "overtime" u horas extras que los Demandantes reclaman que no recibieron por todo el trabajo que hicieron para Del Monte en operaciones que se llevaron a cabo en Georgia. Este litigio demanda que trabajadores migrantes quienes viajaron distancias considerables desde sus hogares para trabajar con "Del Monte" sean reembolsados por sus gastos relacionados con Visas, viaje y otros costos que fueron pagados para poder venir a trabajar para Del Monte.

Los Demandantes demandan que Del Monte no les pagó de acuerdo al sueldo legal por por todas las horas que trabajaron. Los Demandantes demandan que las ganancias por pieza a veces eran tan bajo que no ganaron el sueldo legal por cada hora trabajada. Los Demandantes demandan que Del Monte no les pagó el pago de

"overtime" por el trabajo en las bodegas de empaque, ni hasta cuando trabajaron más de 40 horas en una semana.

La demanda ha sido traída por Hector Luna, Julian Garcia, Francisco Javier Lorenzo, Santos Maldonado, Bartolo Nuñez, y Patricia Woodard, todos previos trabajadores de los operaciones de agricultura de Del Monte en los condados de Telfair y Wheeler, Georgia. La demanda ha sido traída en la Corte Del Distrito Federal para el Distrito del Norte de Georgia. El nombre de la demanda es: Luna, et.al.v.Del Monte Fresh Produce (Southeast), Inc.et.al., No. 1:06-cv-02000-JEC. Los abogados que representan a los trabajadores en este caso son:

Kristi Graunke
Mary Bauer
Andrew Turner
Immigrant Justice Project
Southern Poverty Law Center
[Abogados para demandantes insertaran su nueva dirección en Atlanta]
U.S.A.

Llamar gratis desde EEUU:	**01-800-591-3656**
Llamar gratis desde Mexico:	**001-800-591-3656**
Llamar desde América Central:	**001-800-591-3656**
Fax desde EEUU:	**[insertar nuevo número**
Fax desde México y América Central	**de fax]**

Del Monte niega haber cometido violaciones de la Ley de Normas Laborales Justas (FLSA) en sus operaciones en Georgia. La Corte no ha decidido todavía si Del Monte ha hecho algo incorrecto. No hay dinero disponible en este momento y no hay garantía que habrá.

3. Su Derecho de Participar en Esta Demanda

Este aviso explica sus derechos bajo la ley de Sueldo Mínimo en Los Estados Unidos, de cual se llama la Ley de Normas Laborales Justas. Si Ud. Trabajó en los cultivos o empacando en las bodegas para Del Monte en Georgia por

cualquiera cantidad de tiempo entre Enero 2003 y Agosto 2006 y no era un supervisor, es posible que Ud. tenga el derecho de juntarse a esta demanda.

Es posible que Ud. esté elegible para participar en la demanda si su experiencia es parecida a los Demandantes puestos y Ud. pasó el periodo de trabajo en una manera parecida a los Demandantes.

Sus opciones son:

1) No hacer nada – Si Ud. no actúa en este asunto, Ud. puede perder algunos de sus derechos al pago que se le debe ya que su queja vence. Si no hace nada, Ud. no pierde su derecho de poner otra demanda aparte de esta en contra Del Monte. Si el dinero es recuperado para los trabajadores en esta demanda, Ud. no lo recibirá si no toma acción.

2) Participar en la demanda – Si usted participa en la demanda, Ud. tendrá la posibilidad de ganar el dinero debido o los beneficios que resultarían del litigio o un acuerdo, pero Ud. dejaría su derecho de poner otra demanda aparte de esta en contra de Del Monte si participa en esta demanda para los mismos reclamos.

4. Como Participar en esta Demanda

Este aviso incluye un formulario titulado "Consentimiento Para Acción FLSA" y un formulario titulado "Hoja de Información de Contacto Para Trabajadores que Quieren unirse a la Demanda" Si Ud. quiere participar en esta demanda y ser elegible para recibir el dinero que sería debido, tiene que leer los formularios (o hacer que alguien se los lee), llenarlos, firmarlos, y enviarlos por fax o correo. Los formularios deben llegar por fax o correo a la oficina del Proyecto de Justicia Inmigrante [fecha límite].

Los formularios deben estar enviados a:

Kristi Graunke
Proyecto de Justicia Inmigrante
Southern Poverty Law Center

[Pltfs' counsel to insert the new Atlanta address]
U.S.A

O los puede enviar por fax a:

Desde EEUU: **[insertar nuevo**
Desde México o América Central: **numero de fax]**

5. **Represalia es Ilegal**

Es una violación de la ley de Los Estados Unidos que Del Monte y/o sus agentes o contratistas amenacen, hagan daño, lo despidan, nieguen el trabajo, o hacen otro tipo de discriminación contra Ud. por haber participado en el litigio. Si Ud. recibe una amenaza, un castigo, u otra discriminación por discutir el litigio o por decidir participar en el litigio, llame al Proyecto de Justicia Inmigrante:

Llamar gratis desde EEUU: **1-800-591-3656**

Llamar gratis desde México: **001-800-591-3656**

Llamar desde América Central: **001-800-591-3656**

6. **Efecto de ser parte de esta demanda**

Si Usted participa con esta demanda, Ud. estará incluido en la decisión hecha por el juez si la decisión es favorable o infavorable. Ud. también compartirá en la cantidad de dinero recibido por ganar el litigio (a través de una decisión de la corte por medio de un acuerdo).

Por participar en el litigio, Ud. designara a Hector Luna y a los otros Demandantes a tomar decisiones por usted en relación a este caso. Las decisiones y arreglos hechos en esta demanda afectarán sus quejas.

7. **Ud. no tendrá que pagar para los servicios de los abogados de los**

Demandantes

Los abogados quienes representan los Demandantes en este litigio son financiados por el Proyecto de Justicia Inmigrante, una organización sin fines lucrativos que recibe fondos privados, no del gobierno. Ud. no tendrá que pagar por los servicios de los abogados del Proyecto de Justicia Inmigrante. **Los servicios de los abogados son gratis.** Tampoco tiene que pagar ninguno de los costos de esta demanda.

Si Ud. no quiere ser representado por los abogados del Proyecto de Justicia Inmigrante, tiene el derecho de buscar su propio abogado para que lo represente en este litigio o en otros litigios contra Del Monte.

8. Para más información

Ud. puede llamar los abogados de los Demandantes al número:

Llamar gratis desde EEUU:	**1-800-591-3656**
Llamar gratis desde México:	**001-800-591-3656**
Llamar desde América Central:	**001-800-591-3656**

Si Ud. habla español, habrá alguien que habla español para atenderle.

ESTE AVISO Y SUS CONTENIDOS HA SIDO AUTORIZADO POR EL JUEZ HONORABLE JULIE E. CARNES, LA JUEZ PARA LA CORTE DE LOS ESTADOS UNIDOS PARA LA REGION DEL DISTRITO DEL NORTE DE GEORGIA. NO HAY GARANTIA QUE EL DINERO SE VA A RECUPERAR EN ESTE LITIGIO. LA CORTE NO HA DECIDIDO SI LOS DEMANDES HECHOS SON VALIDOS.

FLSA CONSENT FORM / CONSENTIMIENTO PARA ACCION FLSA

I hereby give my consent to sue for wages that may be owed to me under the Fair Labor Standards Act. I hereby authorize my attorneys to represent me before any court or agency on these claims.

_____
NAME

_____
SIGNATURE

_____
DATE

Por este medio doy mi consentimiento para que se haga demanda para pagos que se me deben bajo la Ley de Normas Laborales Justas. Autorizo que mis abogados me representen ante cualquier corte o agencia tocante estos reclamos.

_____
NOMBRE

_____
FIRMA

_____
FECHA

Contact information Sheet for Workers Who Want to Join the Suit Against Del Monte (Southeast) Inc.

Your complete name_____

Your Address_____

_____

_____

Your telephone number(s). Please indicate whether the number is a home phone, cellular phone (mobile), or public phone.

_____

_____

Hoja de Información de Trabajadores que Quieren Juntarse con La Demanda Contra la compañia Del Monte Fresh Produce (Southeast), Inc.

Su nombre completo_____

Su dirección

_____

_____

_____

Su número(s) del teléfono. Favor de indicar si los números son de su casa, de un teléfono celular (movíl), o de una caseta.

_____

_____