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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

14 THOMAS E. PEREZ, Secretary of )  
 15 Labor, United States Department of ) CASE NO.: 4:14-cv-5081  
 16 Labor, )  
 17 Plaintiff, )  
 18 v. ) COMPLAINT  
 19 )  
 20 BLUE MOUNTAIN FARMS LLC, a )  
 21 Washington limited liability company; )  
 22 BLUE MOUNTAIN PACKING LLC, a )  
 23 Washington limited liability company; )  
 24 GREAT COLUMBIA BERRY FARM )  
 25 LLC, a Washington limited liability )  
 26 company; APPLGATE ORCHARDS )  
 27 INC., a Washington corporation; RYAN )  
 28 BROCK, an individual; SHIRLEY )  
 LOTT, an individual; and BRANDON )  
 LOTT, an individual, )  
 Defendants. )

1  
2 PLAINTIFF THOMAS E. PEREZ, Secretary of Labor, (“Plaintiff” or the  
3 “Secretary”), United States Department of Labor (“Department”), brings this  
4 action under Section 17, 29 U.S.C. § 217, of the Fair Labor Standards Act of 1938,  
5 as amended, 29 U.S.C. §§ 201-19 (hereinafter “FLSA” or the “Act”), to enjoin  
6 Defendants from violating the provisions of Sections 15(a)(1), 15(a)(2), 15(a)(3),  
7 and 15(a)(5), 29 U.S.C § 215(a)(1-3), (5), of the Act.

8 Plaintiff also and separately brings this action:

9 (1) pursuant to Section 16 of the Act, 29 U.S.C § 216, for the recovery of a  
10 Judgment against Defendants for unpaid minimum wage and overtime  
11 compensation due Defendants’ employees, and liquidated damages in an amount  
12 equal thereto, as set forth in detail below; or,

13 (2) in the event liquidated damages are not awarded, pursuant to Section 17  
14 of the Act, 29 U.S.C § 217, for the recovery of a Judgment restraining Defendants  
15 from violation of the Act’s wage and recordkeeping provisions, withholding  
16 payment of unpaid minimum wage and overtime compensation due Defendants’  
17 employees plus pre-judgment interest computed as set forth in detail below and for  
18 such relief as may be appropriate to effectuate the purposes of section 15(a)(3) of  
19 the Act, 29 U.S.C. § 215(a)(3);.

20  
21 **GENERAL ALLEGATIONS**

22 1. Jurisdiction over this action is conferred upon the Court by Sections  
23 16(c) and 17 of the FLSA, 29 U.S.C. §§ 216(c), 217; 28 U.S.C. § 1331 (federal  
24 question); and 28 U.S.C. § 1345 (United States as plaintiff).

25 2. Venue is proper under 28 U.S.C. § 1391 in that the Secretary’s  
26 investigation to determine whether any person has violated or is violating any  
27 provision of the Act is being carried on within this judicial district.  
28

1           3. Defendant BLUE MOUNTAIN FARMS LLC is a Washington limited  
2 liability company that owns and operates a blueberry farm and has its principal  
3 place of business in Walla Walla County, Washington, within the jurisdiction of  
4 this Court. Defendant BLUE MOUNTAIN FARMS LLC is, and at all relevant  
5 times was, an employer within the meaning of Section 3(d) of the Act, 29 U.S.C. §  
6 203(d), in relation to the employees listed on Exhibit A to the Complaint.

7           4. Defendant BLUE MOUNTAIN PACKING LLC is a Washington  
8 limited liability company that owns and operates a blueberry packing shed,  
9 packing blueberries from farms including Emerald Farms, Willow Wind Farms,  
10 Diamond Back Farms, Middleton Farms, as well as blueberries from Defendants  
11 BLUE MOUNTAIN FARMS LLC, GREAT COLUMBIA BERRY FARM LLC,  
12 and APPLGATE ORCHARDS, INC.; and has its principal place of business in  
13 Walla Walla County, Washington, within the jurisdiction of this Court. Defendant  
14 BLUE MOUNTAIN PACKING LLC is, and at all relevant times was, an  
15 employer within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d), in  
16 relation to the employees listed on Exhibit B to the Complaint.

17           5. Defendant GREAT COLUMBIA BERRY FARM LLC is a  
18 Washington limited liability company that owns blueberries and has its principal  
19 place of business in Walla Walla County, Washington, within the jurisdiction of  
20 this Court. Defendant GREAT COLUMBIA BERRY FARM LLC is is, and at all  
21 relevant times was, an employer within the meaning of Section 3(d) the Act, 29  
22 U.S.C. § 203(d), in relation to the employees listed on Exhibit A to the Complaint.

23           6. Defendant APPLGATE ORCHARDS INC. is a Washington  
24 corporation that owns and operates a blueberry farm and has its principal place of  
25 business in Walla Walla County, Washington, within the jurisdiction of this Court.  
26 Defendant APPLGATE ORCHARDS, INC. is, and at all relevant times was, an  
27 employer within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d), in  
28 relation to the employees listed on Exhibit A to the Complaint.

1           7.       Defendant RYAN BROCK, an individual, is an owner and manager of  
2 Defendants BLUE MOUNTAIN FARMS LLC, BLUE MOUNTAIN PACKING  
3 LLC, and GREAT COLUMBIA BERRY FARM LLC; and a manager of  
4 APPLGATE ORCHARDS INC.; and resides within the jurisdiction of this Court.  
5 Defendant RYAN BROCK is, and at all relevant times was, an employer within  
6 the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d), as he acts directly or  
7 indirectly in the interest of Defendants in relation to the employees listed on  
8 Exhibit A and Exhibit B to the Complaint, including the exercise of day-to-day  
9 authority over the terms and conditions of the listed employees' employment; and  
10 had economic and operational control over Defendants' business in the state of  
11 Washington.

12           8.       Defendant SHIRLEY LOTT, an individual, is an owner and manager  
13 of Defendants BLUE MOUNTAIN FARMS LLC, BLUE MOUNTAIN  
14 PACKING LLC, GREAT COLUMBIA BERRY FARM LLC, and APPLGATE  
15 ORCHARDS INC., and resides within the jurisdiction of this Court. Defendant  
16 SHIRLEY LOTT is, and at all relevant times was, an employer within the meaning  
17 of Section 3(d) of the Act, 29 U.S.C. § 203(d), as she acts directly or indirectly in  
18 the interest of Defendants in relation to the employees listed on Exhibit A and  
19 Exhibit B to the Complaint, including the exercise of day-to-day authority over the  
20 terms and conditions of the listed employees' employment; and had economic and  
21 operational control over Defendants' business in the state of Washington.

22           9.       Defendant BRANDON LOTT, an individual, is an owner and  
23 manager of Defendants BLUE MOUNTAIN FARMS LLC, BLUE MOUNTAIN  
24 PACKING LLC, and GREAT COLUMBIA BERRY FARM LLC; and a manager  
25 of APPLGATE ORCHARDS INC.; and resides within the jurisdiction of this  
26 Court. Defendant BRANDON LOTT is, and at all relevant times was, an  
27 employer within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d), as he  
28 acts directly or indirectly in the interest of Defendants in relation to the employees

1 listed on Exhibit A and Exhibit B to the Complaint, including the exercise of day-  
2 to-day authority over the terms and conditions of the listed employees’  
3 employment; and had economic and operational control over Defendants’ business  
4 in the state of Washington.

5 10. At all times relevant to this Complaint, Defendants have employed  
6 and are employing employees in and about their places of business in ordering,  
7 receiving, preparing, storing and handling goods and materials which have been  
8 transported, shipped, or delivered from points outside the State of Washington; in  
9 preparing, transmitting, mailing, or receiving transmissions, reports, letters,  
10 correspondence, billings, or remittances to and from points outside the State of  
11 Washington, and in using the facilities of commerce. Said employees, by reason of  
12 their activities, were and are engaged in commerce within the meaning of the Act.

13 11. At all times relevant to this Complaint, Defendants employ and are  
14 employing, employees in and about their places of business in handling, preparing  
15 or selling goods or materials which have been transported, shipped or delivered to  
16 places within the State of Washington from places outside thereof and were  
17 produced for commerce.

18 12. At all times relevant to this Complaint, the activities of Defendants  
19 RYAN BROCK, SHIRLEY LOTT, BRANDON LOTT, BLUE MOUNTAIN  
20 FARMS LLC, GREAT COLUMBIA BERRY FARM LLC, and APPEL GATE  
21 ORCHARDS INC. (collectively the “Farming Defendants”) and the activities of  
22 Defendants RYAN BROCK, SHIRLEY LOTT, BRANDON LOTT and BLUE  
23 MOUNTAIN PACKING LLC (collectively the “Packing Defendants”), referred to  
24 in Paragraphs 3 through 11 above, were and are related and performed through  
25 unified operation or common control for a common business purpose, and  
26 constitute an enterprise within the meaning of Section 3(r)(1) of the Act. 29 U.S.C.  
27 § 203(r)(1), solely for the purposes of establishing the applicability of the Act to all  
28 Defendants.







1 24. Cisneros was interviewed by a Wage and Hour Investigator during the  
2 course of the Secretary's investigation in this matter on July 30, 2013.

3 25. Following her interview by a Wage and Hour Investigator on July 30,  
4 2013, Cisneros was approached by a foreman for the Farming Defendants and  
5 interrogated about her interview with the Wage and Hour Investigator.

6 26. On the morning of July 31, 2013 around 10:00 a.m., while waiting in  
7 line for water, Cisneros heard a foreman loudly tell a group of workers: "Listen up:  
8 everyone who was interviewed by Labor and Industries [*sic*] is going to be laid  
9 off."

10 27. Cisneros was fired by the Farming Defendants on the afternoon of  
11 July 31, 2013.

12 28. Steven Alejandro Alvarez ("Steven Alvarez") was employed by the  
13 Farming Defendants from July 15, 2013, to July 31, 2013.

14 29. Steven Alvarez was interviewed by a Wage and Hour Investigator  
15 during the course of the Secretary's investigation in this matter on July 30, 2013.

16 30. Following his interview by a Wage and Hour Investigator on July 30,  
17 2013, Steven Alvarez was approached by a foreman for the Farming Defendants  
18 and interrogated about his interview with the Wage and Hour Investigator.

19 31. Steven Alvarez was fired the Farming Defendants on July 31, 2013.

20 32. Efren Alvarez ("Efren Alvarez") was employed by the Farming  
21 Defendants from July 15, 2013, to July 31, 2013.

22 33. Efren Alvarez is the brother of Steven Alvarez.

23 34. Efren Alvarez was interviewed by a Wage and Hour Investigator  
24 during the course of the Secretary's investigation in this matter on July 30, 2013.

25 35. Efren Alvarez was fired by the Farming Defendants on July 31, 2013.

26 36. Through the acts described above at Paragraphs 26-39, the Farming  
27 Defendants discharged and in other manners discriminated against Cisneros,  
28 Steven Alvarez, and Efren Alvarez, because they filed complaints or instituted or



1 caused to be instituted any proceeding under or related to the Act, or testified or  
2 were about to testify in any proceeding under the Act, or were believed by the  
3 Farming Defendants to have filed complaints or instituted or caused to be instituted  
4 any proceeding under or related to the Act, or have testified or be about to testify in  
5 any proceeding under the Act; and in doing so violated section 215(a)(3) of the  
6 Act, 29 U.S.C. § 215(a)(3).

7  
8 WHEREFORE, cause having been shown, Plaintiff prays for a Judgment  
9 against Defendants as follows:

10 (1) For an Order pursuant to Section 17 of the Act permanently enjoining  
11 and restraining Defendants, their officers, agents, servants, employees, and all  
12 persons acting in their behalf and interest from prospectively violating the  
13 provisions of Sections 15(a)(1), 15(a)(2), 15(a)(3), and 15(a)(5) of the Act, 29  
14 U.S.C. § 215(a)(1-3), (5); and

15 (2) For an Order:

16 (a) pursuant to Section 16 of the Act, 29 U.S.C. § 216, finding the  
17 Farming Defendants liable for unpaid minimum wage compensation found by the  
18 Court to be due said Defendants' employees listed on Exhibit A to the Complaint,  
19 plus an equal amount in liquidated damages; or, in the event liquidated damages  
20 are not awarded, pursuant to Section 17 of the Act, 29 U.S.C. § 217, enjoining and  
21 restraining said Defendants, their officers, agents, servants, employees, and all  
22 persons acting in their behalf and interest from withholding payment of unpaid  
23 minimum wage and overtime compensation found due said Defendants' employees  
24 and pre-judgment interest computed at the underpayment rate established by the  
25 Secretary of the Treasury pursuant to 26 U.S.C. § 6621, or, at the interest rate for  
26 an unsecured business line of credit in Richland, Washington, as can be accurately  
27 and readily determined from sources whose accuracy cannot reasonably be  
28 questioned, whichever rate is higher; and

1 (b) pursuant to Section 16 of the Act, 29 U.S.C. § 216, finding the  
2 Packing Defendants liable for unpaid overtime compensation found by the Court to  
3 be due said Defendants' employees listed on Exhibit B to the Complaint, plus an  
4 equal amount in liquidated damages; or, in the event liquidated damages are not  
5 awarded, pursuant to Section 17 of the Act, 29 U.S.C. § 217, enjoining and  
6 restraining said Defendants, their officers, agents, servants, employees, and all  
7 persons acting in their behalf and interest from withholding payment of unpaid  
8 minimum wage and overtime compensation found due said Defendants' employees  
9 and pre-judgment interest computed at the underpayment rate established by the  
10 Secretary of the Treasury pursuant to 26 U.S.C. § 6621, or, at the interest rate for  
11 an unsecured business line of credit in Richland, Washington, as can be accurately  
12 and readily determined from sources whose accuracy cannot reasonably be  
13 questioned, whichever rate is higher; and

14 (c) pursuant to Section 17 of the Act, 29 U.S.C. § 217, enjoining  
15 and restraining the Farming Defendants, their officers, agents, servants, employees,  
16 and all persons acting in their behalf and interest from withholding payment of  
17 compensation found due said Defendants' employees for violations of section  
18 215(a)(3) of the Act, 29 U.S.C. § 215(a)(3), and pre-judgment interest computed at  
19 the underpayment rate established by the Secretary of the Treasury pursuant to 26  
20 U.S.C. § 6621, or, at the interest rate for an unsecured business line of credit in  
21 Richland, Washington, as can be accurately and readily determined from sources  
22 whose accuracy cannot reasonably be questioned, whichever rate is higher; and  
23 granting such other equitable relief as may be appropriate to effectuate the  
24 purposes of section 15 (a)(3) of the Act, 29 U.S.C. § 215(a)(3); and

25 (3) Awarding Plaintiff his costs of action;

26 (4) Granting Plaintiff such other and further legal and equitable relief as  
27 may be necessary and appropriate.  
28

1 Dated: July 28, 2014

2 M. PATRICIA SMITH  
3 Solicitor of Labor

4 JANET M. HEROLD  
5 Regional Solicitor

6 BRUCE L. BROWN  
7 Associate Regional Solicitor

8 SUSAN SELETSKY  
9 Counsel for Wage and Hour

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11 Trial Attorney

12 By: /s/ Evan H. Nordby  
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