



Issue Date: 15 June 2018

CASE NO.: 2018-TAE-00010

In the Matter of:

CAL FARMS, INC.,
Respondent.

CONSENT FINDINGS AND ORDER

1. The Administrator of the Wage and Hour Division of the United States Department of Labor (the "Administrator") and Respondent Cal Farms ("Cal Farms") stipulate pursuant to 29 C.F.R. § 18.71 to these Consent Findings and the entry of an order based upon them without the need for a hearing.

2. These proceedings arise under the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.* as amended by the Immigration Reform and Control Act of 1986 ("INA" or the "Act"), Pub L. 99-603, § 301, 100 Stat. 3359, 341 and the implementing regulation contained at 29 C.F.R. Part 501 (the "H-2A Regulations").

3. Jurisdiction over these proceedings is vested in the Office of Administrative Law Judges, United States Department of Labor, pursuant to 29 C.F.R. §§ 501.16(b) and 501.19 with respect to Cal Farms' request for a hearing.

4. On April 24, 2017, the Administrator issued a Determination Letter to Cal Farms assessing civil money penalties of \$28,950 and unpaid wages of \$11,042.45 for alleged violations of the following H-2A regulations: 20 C.F.R. §§ 655.122(a), 655.135(d), 655.153, 655.152¹, 655.122(q), 655.122(1) and 655.122(d)(1).

5. On May 24, 2017, Cal Farms timely requested a hearing on the findings set forth in the Determination Letter.

6. On February 7, 2018, the Administrator filed an Order of Reference, amending the Determination Letter and referring the matter to the Office of Administrative Law Judges, United States Department of Labor.

7. In full settlement of the matters alleged in the Determination Letter as amended by Order of Reference, the Parties agree to the following:

¹ As Amended by the Administrator's February 7, 2018 Order of Reference.

8. Cal Farms shall take the following steps; if any steps are being taken already, Cal Farms shall continue taking them:

- a. Cal Farms shall provide written job offers to qualified US workers recruited under 20 CFR 655.154; the letters will include the terms of the offer, including, if applicable, call back dates and call back contact information. Cal Farms will maintain all this information and provide it to Wage Hour upon request;
- b. Cal Farms' letters under 20 CFR 655.153 to former US workers will include the following information:
 - i. The employer's name;
 - ii. The geographic area(s) of intended employment, including the area(s) for which H-2A certification is sought, with enough specificity to apprise workers of any travel requirements;
 - iii. A description of the job opportunity for which H-2A certification is sought with sufficient information to apprise U.S. workers of services or labor to be performed and the anticipated start and end dates of employment of the job opportunity;
 - iv. If applicable, a statement that work tools, supplies, and equipment will be provided at no cost to the worker;
 - v. A statement that the position is temporary and a specification of the total number of job openings the employer intends to fill;
 - vi. Contact information for the applicable SWA and, if available, the job order number.
- c. Cal Farms will post notices in Spanish and English to US workers and H-2A workers regarding their rights under the H-2A program and Wage Hour's contact information; this includes the attached **Exhibit A**, to be posted alongside other notices to workers;
- d. Cal Farms will ensure that its recruitment and hiring personnel understand and comply with the requirement that job opportunities shall not be closed to US applicants prior to 50% of the end of the H-2A contract period (already required under regulations such as 20 C.F.R. § 655.135).

9. The Administrator amends the determination letter as follows:

Item	20CFR	Violation ²	Unpaid Wages	CMP	Action
1	§ 655.122(a)	H-2A Workers Given Preferential Treatment			No change
2	§ 655.135(d)	Unlawful rejection of qualified US worker(s)	\$1,816.69	\$0	Wages and CMPs reduced
3	§ 655.153	Failure to contact all US employees that worked for the previous season		\$0	CMPs reduced
4	§ 655.152 ³	Failed to comply with recruitment requirements listed § 655.152			No change
5	§ 655.122(q)	Failed to comply with the requirement that copy of work contract be provided		\$0	CMPs reduced
6	§ 655.122(l)	Failed to pay the offered/required wage rate	\$3,183.31	\$0	Wages and CMPs reduced
7	§ 655.122(d)(1)	Failed to provide or secure housing that complies with the applicable standards; specifically, #35 and 93 ⁴		\$0	CMPs reduced
Total:			\$5,000	\$0	

10. The Administrator has agreed to reduce the civil money penalty amount on all of the citations to zero.

11. Cal Farms accepts all citations as amended herein.

12. Thus, the Unpaid Wages assessed in this matter are now FIVE THOUSAND DOLLARS (\$5,000.00).

13. Within 30 days of the signing of these Consent Findings, Cal Farms shall deliver to the undersigned Administrator's counsel a cashier's or certified check for \$5,000 in unpaid

² Note the same violations were alleged against Cal Farms' joint employer WAFLA, but the penalties for each instance of a violation are assessed against only one employer.

³ This is amended from 20 CFR 55.121(a)(3), which was inadvertently cited in the determination letter.

⁴ This is amended to remove #90.

wages, made payable to **the Wage and Hour Division, USDOL**. The memorandum line of such check will read “1766363.”

14. The Administrator, in his sole discretion, shall allocate and distribute the amounts referred to in Paragraph 12 to any or all H-2A workers identified in **EXHIBIT B**, attached hereto, or to their estates if that be necessary. Any money not so paid to these individuals within a period of three years from the date of receipt of the last such money due hereunder, because of an inability to locate the proper persons or because of their refusal to accept it, shall be deposited by the Administrator in the Treasury of the United States pursuant to 28 U.S.C. §§ 2041 and 2042.

15. Cal Farms disputes and does not admit to any of the alleged violations, but agrees to these Consent Findings in order to fully resolve the pending litigation.

16. Pursuant to 29 CFR §18.71(b):

- a. Any order based on these Consent Findings shall have the same effect as an order made after a full hearing;
- b. Any order based on these Consent Findings is based on a record that consists of the Determination Letter and these Consent Findings;
- c. The parties to these Consent Findings waive any further procedural steps before the Office of Administrative Law Judges and the Administrative Review Board;
- d. The parties waive the right to challenge or contest the validity of any order entered into in accordance with these Consent Findings.

17. All issues raised in the Determination Letter that were challenged by the Respondent in its Request for Hearing shall be deemed fully resolved by these Consent Findings. These Consent Findings shall become final and effective immediately upon the approval of the Administrative Law Judge.

18. These Consent Findings are not binding on any government agency other than the United States Department of Labor.

19. Each party agrees to bear its own costs, attorneys' fees, and other expenses incurred in connection with any stage of this proceeding, including but not limited to any costs referenced by the Equal Access to Justice Act.

20. This Court shall retain jurisdiction of this action for purposes of enforcing compliance with the terms of the Consent Findings.

ORDER

The court approves the Consent Findings as set forth above, and as set forth in the original stipulation executed on June 7, 2018.

SO ORDERED.

CHRISTOPHER LARSEN
Administrative Law Judge

EXHIBIT A

NOTICIA LEGAL A TODOS LOS EMPLEADOS

Para resolver una demanda presentada por el Departamento de Trabajo, el Tribunal emitió una Orden prohibiendo a Cal Farms de violar los requisitos del Programa de Visas H-2A, que establece normas relacionadas a la contratación de empleados, salarios, vivienda, transporte, etc., y que protege a los empleados domésticos también. Todos los empleados que trabajan en este establecimiento pueden ayudar al empleador a no violar la Orden del Tribunal.

Si usted piensa que no le están pagando de acuerdo con la ley, llame al Sección de Horas y Sueldos del Departamento de Trabajo de los Estados Unidos a 1-503-326-3057 o 1-866-4-USWAGE (1-866-487-9243) y su nombre se mantendrá confidencial.

La ley exige que todo empleador que use obreros H-2A inicialmente tiene que haber intentado encontrar obreros estadounidenses para ocupar estos puestos. Tanto obreros H-2A como obreros estadounidenses en empleo correspondiente tienen que ser pagado tasa especiales de pago que varían por localidad, proveídos vivienda y transporte de la vivienda al sitio de trabajo si su empleo exige que se ausenten de su domicilio por la noche, y que se les garantice empleo por los menos $\frac{3}{4}$ del período de trabajo especificado en el contrato de H-2A.

Además, la ley prohíbe represalias contra cualquier empleado que se queja de su pago o horas de trabajo.

LEGAL NOTICE TO ALL EMPLOYEES

To resolve a lawsuit brought by the Department of Labor, an Administrative Law Judge has entered a Consent Findings ordering Cal Farms to not violate the rules of the H-2A program, which establishes standard related to hiring employees, wages, housing, transportation, etc., and which also protects U.S. Workers. All employees who work in this establishment can help the employer not to violate the Court's Order.

If you think you are not being paid in accordance with the law, call the U.S. Department of Labor, Wage and Hour Division, at 1-503-326-3057 or 1-866-4-USWAGE (1-866-487-9243), and your name will be kept confidential.

Under the law of the H-2A program, any employer using H-2A workers must have initially attempted to find U.S. workers to fill these jobs. H-2A workers and U.S. workers in corresponding employment (doing the same work) must be paid the same special rate of pay which varies by locality, provided housing and transportation from that housing to the job site if their employment requires them to be away from their residence overnight, and guaranteed employment for at least $\frac{3}{4}$ of the work period in the H-2A contract.

Additionally, the law prohibits retaliation against any employees who complain about their pay or work hours.

EXHIBIT B

Name	Period Covered		Back Wages
Chambers, Jacob	05/2/2015	08/1/2015	\$1,816.69
Hernandez, Jose Guadalupe	05/2/2015	08/1/2015	\$1,816.69
Reves Negrete, Luis	05/2/2015	08/1/2015	\$1,366.62
Total			\$5,000.00