EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

Eduardo Reyes-Trujillo, *et al.*

Plaintiffs,

v.

Four Star Greenhouse, Inc., *et al.*

Defendants.

Case No. 5:20-CV-11692

Hon. Judith E. Levy
Mag. R. Steven Whalen

BRIEF OF NATIONAL EMPLOYMENT LAW PROJECT IN SUPPORT OF THE PLAINTIFFS AND IN OPPOSITION TO THE DEFENDANTS' RULE 12(B)(6) MOTION TO DISMISS

John Philo (P52721)
Sugar Law Center
For Economic & Social Justice
4605 Cass Avenue
Detroit, MI 48201
(313) 993-4505
jphilo@sugarlaw.org
Attorney for Amicus Curiae

Laura Padin (DC: 1011116)
National Employment Law Project
1350 Connecticut Avenue, Suite 1050
Washington, DC 20036
(202) 315-5589
lpadin@nelp.org
Attorney for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTERESTS OF *AMICUS CURIAE*

The National Employment Law Project ("NELP") is a non-profit research and policy organization with over 50 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. NELP seeks to ensure that all employees, and especially the most vulnerable ones, receive the basic workplace protections guaranteed in our nation's labor and employment laws, and that all responsible employers comply with those laws. NELP has litigated directly on behalf of subcontracted workers, submitted *amicus* briefs in numerous joint employer cases, and testified in Congress regarding the importance and scope of the Fair Labor Standards Act's employment coverage. As an expert on outsourcing's magnitude and its impact on workers, NELP realizes that a strong joint employment standard under the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act is critical to ensuring compliance and employer accountability.

SUMMARY OF ARGUMENT

Amicus writes not to repeat the arguments made by the parties but to shed light on the historical underpinnings of the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. ("FLSA") and the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1801 *et seq* ("AWPA"), and to urge this Court to apply these statutes consistently with their history. In adopting the broadest definition of "employ" ever included in an act, Congress intended for the FLSA and the AWPA to expand accountability for violations to companies that insert contractors between themselves and their laborers while maintaining the economic power to prevent FLSA and AWPA violations.

In addition, public policy supports a broad application of the FLSA and the AWPA, especially in the context of an agricultural operation contracting with a farm labor contractor ("FLC") for labor. The use of FLCs to recruit, transport, and pay H-2A workers is commonplace and exacerbates migrant farm workers' vulnerability to exploitation. Holding farm operators like defendant Four Star Greenhouse, Inc. ("Four Star") accountable to their subcontracted workers as an employer will improve compliance in an industry with rampant worker abuse.

Amicus urges this Court to deny Four Star's motion to dismiss the FLSA and AWPA counts, and permit plaintiffs to prove that Four Star is an employer under the FLSA and the AWPA. Doing otherwise would allow employers that subcontract

labor to abuse workers in their businesses without consequence. Four Star exerted economic control over the work performed in its business, and had the ability to assure compliance with worker protection laws. Agricultural employers held jointly accountable with a labor contractor for ensuring minimum standards can always seek indemnification for any resulting monetary damages, as Four Star is seeking to do in this case. Letting the employer and the labor contractor sort out financial responsibility between them is, Congress believes, preferable to letting the loss fall on unprotected workers.

ARGUMENT

I. FLSA is a remedial statute that uniquely and broadly defines responsible "employers" to include employers who use farm labor contractors.

a. The definition of "employ" is expansive and was well-established when Congress incorporated it in the FLSA.

FLSA is a remedial statute designed to address worker exploitation.[1] It defines "employ," to "include[ ] to suffer or permit to work,"[2] which "stretches the meaning of 'employee'" to include work relationships that were not within the traditional

[1] *See. e.g., Secy' of Labor v. Lauritzen*, 835 F.2d 1529, 1534 (7th Cir. 1987); *Charles v. Burton*, 169 F.3d 1322, 1334 (11th Cir. 1999).

[2] 29 U.S.C. § 203 (g); 29 U.S.C. § 1802 (3).

common-law definition of "employee." *Nationwide Mut. Ins. Co. v. Darden,* 503 U.S. 318, 326 (1992).

In fact, FLSA contains the broadest definition of "employment" ever included in any one act. *Sec'y of Labor v. Lauritzen,* 835 F.2d, 1529, 1543 (7th Cir. 1987, J. Easterbrook, concurring). It "sweeps in almost any work done on the employer's premises, potentially any work done for the employer's benefit or with the employer's acquiescence." *Id.* And it is far broader than the common law test for employment, which focuses on the putative employer's right to control the manner and means of the work. *Nationwide Mut. Ins. Co.*, 503 U.S. at 326.

The broad definition of "employ" derives from state child labor laws, which used the "suffer or permit to work" language to reach businesses that used middlemen to illegally hire and supervise children. *Antenor v. D & S Farms*, 88 F.3d 925, 929-30 n.5 (11th Cir. 1996) (*citing Rutherford Food Corp. v. McComb*, 331 U.S. 722, 728 (1947)). In state child labor cases, a business was found to have violated the law by suffering or permitting a child's work, even where a party other than the business was that child's employer at common law. As stated by Judge Cardozo:

> [The employer] must neither create nor suffer in his business the prohibited conditions. The command is addressed to him. Since the duty is his, he may not escape it by delegating it to others. . . He breaks the command of the statute if he employs the child himself. He breaks it

> equally if the child is employed by agents to whom he had delegated "his own power to prevent."

People ex rel. Price v. Sheffield Farms-Slawson Farms-Decker Co., 121 N.E. 474, 475-86 (N.Y. 1918) (internal citations omitted).[3]

In adopting the well-established "suffer or permit to work" language, Congress intended to make businesses owners responsible for federal minimum standards within their businesses. FLSA was passed to "lessen, so far as seemed then practicable, the distribution in commerce of goods produced under subnormal labor conditions." *Rutherford,* 331 U.S. at 727. By expanding accountability for violations to include businesses like Four Star that insert contractors between themselves and their laborers, FLSA was "designed to defeat rather than implement contractual arrangements," especially for workers who are "selling nothing but their labor." *Lauritzen*, 835 at 1545 (Easterbrook, J., concurring). In fact, "a central theme . . . of the FLSA's legislative history was congressional intent to cover businesses [that] allow work to be done on their behalf and have the power to prevent wage and hour abuses, regardless of indirect business relationships and business formalities." *New*

[3] *See also Commonwealth v. Hong*, 158 N.E. 759 (Mass. 1927); *Daly v. Swift & Co*., 300 P. 265, 268 (Mont. 1931) (holding meatpacker liable for the death of a child employed by an independent contractor at its meatpacking plant); *Vida Lumber Co. v. Courson*, 112 So. 737, 738 (Ala. 1926) (holding that even if the boy was "employed" by his father and not the lumber company, the company violated the child labor law if it "permitted or suffered" him to work).

York v. Scalia, 2020 WL 5370871, No. 1:20-cv-1689-GHW, at *20 (S.D.N.Y. Sept. 8, 2020) (internal citations omitted).[4]

b. **The "economic realities" test requires looking beyond businesses formalities and labels to determine whether an entity has the power to prevent FLSA violations.**

The Sixth Circuit has recognized that the FLSA "contemplates there being several simultaneous employers who may be responsible for compliance with the FLSA" and that '[i]n deciding whether a party is an employer, 'economic reality' controls rather than common law concepts of agency." *Dole v. Elliott Travel & Tours, Inc.*, 942 F.2d 962, 965 (6th Cir. 1991) (internal citations omitted). "[E]mployees are those who as a matter of economic reality are dependent upon the business to which they render service." *Donovan v. Brandel*, 736 F.2d 1114, 1116 (6th Cir. 1984) (internal citations omitted). But as Judge Easterbrook noted, "economic reality" by itself is not much of a standard: "It encompasses millions of facts, and unless we have a legal rule with which to sift the material from the immaterial, we might as well examine facts through a kaleidoscope." *Lauritzen,* 835 F.2d at 1539.

[4] In *New York v. Scalia*, the district court invalidated most of the Department of Labor's recent joint employer interpretive rule. The court found that the rule's definition of employer was too narrow and conflicted with the text and purpose of the FLSA, which must be construed liberally because broad coverage is essential to accomplish its goals. The interpretive guidance is thus inapplicable to this case.

A close reading of the leading FLSA cases shows that the often-invoked concept of "economic reality" is really a shorthand reminder to courts to look beyond technical distinctions, self-serving statements of subjective intent, contracts, or the labels putative employers give their workers, to discern the actual, objective, economic relationships among the parties. *Goldberg* v. *Whitaker House Co-op, Inc.*, 366 U.S. 28, 33 (1961); *see also Real v. Driscoll Strawberry Associates,* 603 F.2d 748, 755 (9th Cir. 1979) ("[e]conomic realities, not contractual labels, determine employment status"). Thus, the "economic realities" test appropriately warns courts not to be taken in by formalities, but it does not supplant the "suffer or permit to work" of the statutory definition. "The economic dependence test is simply a means of applying the 'suffer or permit to work' standard. If a worker is dependent on an entity, that entity plainly suffers the employee to work." *Fanette v. Steven Davis Farms LLC*, 28 F.Supp.3d 1243, 1258 (N.D. Fla. 2014).

Because the common-law definition of employment is also included within the FLSA statutory definition, the factors relating to a right to control are relevant and useful if they are present in the relationship; their absence, however, does not mean the work was not suffered or permitted. "[T]he broad language of the FLSA, as interpreted by the Supreme Court in *Rutherford,* demands that a district court look beyond an entity's formal right to control the physical performance of another's work before declaring that the entity is not an employer under the FLSA." *Zheng v. Liberty*

Apparel Co., 355 F.3d 61, 69 (2d Cir. 2003). When courts overemphasize those factors that are really only indicia of common-law control, they ignore the statutory language, the legislative history, and the remedial purposes of the statutory definitions. In applying factors to analyze economic reality, courts must be guided by the ultimate statutory question: given the underlying economic relationships, was this entity in a position to know about violations and to prevent them?

II. Congress understood that subcontracting is common in agriculture. By incorporating the FLSA definition into AWPA, Congress intended to ensure meaningful remedies for migrant workers.

Congress adopted AWPA out of frustration with prior efforts to regulate the abuses of agricultural labor contractors. H.R. No. 885, 97th Cong., 2d Sess. at 2-3 (1982), *reprinted in* 1982 U.S.C.C.A.N. 4547, 4552 ("1982 H.R. REP."). A key reform was to adopt the "suffer or permit to work" language used in FLSA and earlier child labor statutes. Rather than try to regulate labor contractors alone, AWPA uses the "suffer or permit" language to place responsibility on any entities that had the power, as a matter of economic reality, to know of violations and prevent them.

> Through the use of the concept of 'joint employer' the agricultural employer will, for the first time, be responsible for the protection of the workers. *No longer must the migrant workers look solely to the crewleader for relief.*

1982 H.R. REP. at 3; 128 CONG. REC. 26,008 (Sept. 29, 1982) (statement of Rep. Miller) (emphasis added).

> As a result, agricultural employees will, in turn, know who is responsible for their protection, by fixing the responsibility on those who ultimately benefit from their labors–the agricultural employer.

1982 H.R. REP. at 3; 128 CONG. REC. H7904 (Sept. 14, 1982) (statement of Rep. Miller).

Congress included "suffer or permit" in AWPA in full realization that labor contracting and "joint employment relationships are common in agriculture." *Aimable v. Long & Scott Farms,* 20 F.3d 434, 438 (11th Cir. 1994). Sponsors fully expected situations in which entities that used labor contractors would be held to be employers.

> The Committee . . . envisions situations where a single employee may have the necessary employment relationship with not only one employer but simultaneously such a relationship with an employer and an independent contractor or with several employers with or without the inclusion of an independent contractor.

1982 H.R. REP. at 7.

Congress pointed to three agricultural labor cases, each of which had found a joint employment relationship under the FLSA, as guides to how "employ" should be interpreted in AWPA: *Real*, 603 F.2d 748, *Hodgson v. Griffin & Brand of*

McAllen, Inc., 471 F.2d 235 (5th Cir. 1973), and *Hodgson v. Okada*, 472 F.2d 965 (10th Cir. 1973). 1982 H.R. REP. at 6-7.

Real,[5] *Griffin & Brand,*[6] and *Okada,*[7] the cases Congress endorsed for interpreting AWPA, have much in common with this case. In each of those cases – and in this case – an agricultural production operation contracted with smaller, less powerful intermediaries to provide labor for its operation. In each of those cases – and here – the agricultural operation determined how much labor it needed to perform essential, but unskilled, steps in the production process.[8] In *Real* and *Griffin*

[5]In *Real*, Driscoll Strawberry Associates (DSA) developed strawberry varieties, which it provided to farmers under licensing agreements requiring use of "sub-licensee" workers to grow the berries. The workers provided most of the labor to produce the berries, which were then marketed by DSA. 603 F.2d at 750-52.

[6] *Griffin & Brand* involved FLSA claims brought by workers hired to harvest crops by crew leaders contracting with a vertically integrated farming, processing, and marketing corporation. 471 F.2d at 236-38.

[7] *Okada* concerned farm workers who were recruited by a labor contractor to harvest cucumbers on the defendant's farm. The pickle company with which the farm contracted to buy the cucumbers hired the labor contractor and the workers to work on the farm.

[8]In *Real*, DSA "established the terms of the Agreement without negotiation with [the farmer] or any of the [workers]." *Real*, 603 F.2d 748, 750. In *Griffin & Brand,* G & B "obtain[ed] the service of these farm workers by dealing with so-called 'crew leaders.'" 471 F.2d at 236. In *Okada*, "HPC hired Ramon Medelez and his crew to harvest the cucumbers." 472 F.2d at 967.

& Brand – as here – the agricultural operation oversaw all aspects of the work performed by the workers.[9]

Although the paper structure in *Real* was somewhat different—the workers were classified as independent contractors, rather than as employees of a labor contractor—the economic reality is quite similar to this case. In *Real* it was DSA – like Four Star here – that provided the economic opportunity:

> The [workers'] opportunity for profit or loss appears to depend more upon the managerial skills of Driscoll, *and especially, of DSA – in developing fruitful varieties of strawberries, and in marketing* – than it does upon the appellants' own judgment and industry in weeding, dusting, pruning and picking. . . . The services performed by the appellants consist primarily of physical labor, requiring no special technical knowledge or skill.

603 F.2d 755-56 (emphasis added). Here, as well, the FLC's role in providing economic opportunity to Plaintiffs was subordinate to Four Star's role. The FLC provided no role in Four Star's operations beyond recruiting, transporting and providing housing for the H-2A workers that played integral roles Four Star's production process and were supervised by Four Star employees.

[9]*Real*, 748 F.2d at 752; *Griffin & Brand*, 471 F.2d at 237.

In *Griffin & Brand* and *Okada*, the labor contractors – like the FLC in this case – brought very little capital, skill, or entrepreneurial ability to the enterprise. The crew leaders in *Griffin & Brand*, for example, only provided their trucks, which they used to transport the workers. Here, as well, the FLC's skill and effort were focused on transporting H-2A workers from Mexico and housing them in the United States near the farm operations that contracted with the FLC for labor.

Congress instructed courts to apply the analysis of *Griffin and Brand*, *Real* and *Okada*. In each of these cases the agricultural employers were found to employ the workers. This, after all, was precisely the point of adopting the statute. The legislative history of AWPA demands that Four Star be held accountable as an employer.[10]

III. Four Star is an employer because it has the power to prevent FLSA and AWPA wage violations for its migrant farm workers.

The allegations in the complaint leave no doubt that Four Star is an employer under the FLSA and the AWPA because it had the power to know about and prevent

[10] A review of the case law indicates that most courts have interpreted the AWPA/FLSA definition as Congress intended and have held that the entity that contracted with an intermediary to supply farm laborers and the intermediary to be joint employers. *See, e.g., Charles*, 169 F.3d at 1334; *Torres-Lopez v. May*, 111 F.3d 633, 644 (9th Cir. 1997); *Fanette*, 28 F.Supp.3d at 1258; *Sanchez-Calderon v. Moorhouse Farms*, 995 F. Supp. 1098, 1107 (D.Or. 1997); *Barrientos v. Taylor*, 917 F. Supp. 375, 384 (D.N.C. 1996); *Alviso-Medrano v. Harloff*, 868 F. Supp. 1367, 1374 (M.D. Fla. 1994); *Cruz v. Vel-A-Da, Inc.*, No. 3:90-cv-7087, 1993 WL 658968, at *1 (N.D. Ohio June 9, 1993).

the egregious wage violations that Plaintiffs endured.

First, Plaintiffs worked on premises owned and controlled by Four Star with equipment and tools given to them by Four Star.[11] A business that owns or controls the worksite will likely be able to prevent labor law violations, even if it delegates hiring and supervisory responsibility to labor contractors. *Charles,*169 F.3d at 1333. Similarly, a grower's investment in equipment and facilities is probative of the worker's dependence on the entity that supplies them with the equipment and facility needed to perform their work. *Torres-Lopez*, 111 F.3d at 640-41.

Second, Plaintiffs' duties at Four Star, which primarily consisted of choosing and transporting plants from the greenhouse to the shipping department,[12] were a central part of Four Star's operations and integral to Four Star's business. Simply put, without Plaintiffs' work, Four Star "would not have been able to realize any of the economic benefits from its substantial investment." *Torres-Lopez v. May*, 111 F.3d at 644. *See also Rutherford Food Corp*., 331 U.S. at 726, 730 (holding that meat de-boners were employees of a slaughtering plant because the slaughterhouse operations constituted an "integrated economic unit" and the de-boners essentially performed a specialty job on the plant's production line).

[11] PageID.13, ¶¶ 86-88.

[12] *Id*. ¶ 88.

Third, Four Star had the power to control or direct the manner of Plaintiffs' performance of their work. *Acosta v. New Image Landscaping, LLC*, No. 1:18-cv-429, 2019 WL 6463512, at *7 (W.D. Mich. Dec. 2, 2019). Even more, it did in fact exercise this control by supervising every aspect of their work, including assigning them to tasks, training them on job duties, providing them with all tools and equipment, setting their daily work schedules, and reviewing and correcting any errors in their work.[13] While supervision is not necessary to find an entity to be an employer under the FLSA and AWPA, its presence indicates a worker's dependence on the entity. *See Ruiz v. Fernandez*, 949 F.Supp.2d 1055, 1068 (E.D. Wash. 2013) ("[A]though Western Range did not supervise Plaintiffs in their day-to-day activities on the ranch, it had a great deal of control over the general conditions of Plaintiffs' employment and the power to intervene if problems arose between Plaintiffs and a member ranch.").

More importantly, there must be "economic substance" behind the power to control, meaning that the business maintains control over all meaningful parts of its operations such that any intermediary's role in the operations—such as the FLC in this case—cannot be considered a separate viable economic entity. *Castillo v. Givens*, 704 F.2d 181, 192 (5th Cir. 1983). Four Star, a Michigan corporation in the

[13] *Id*. ¶ 89-91.

business of selling young plants and finished crops to growers, retailers and landscapers across the United States, employs over 100 employees yearly and generates over $18 million in annual sales.[14] It contracted with the FLC to obtain workers to perform integral roles within its grower and retail operations. The FLC's role in Four Star's operations was in no way distinct and independent.

Four Star's economic control meant that it had the power to prevent Plaintiffs' wage violations. Its contract with the FLC required the FLC to pay Plaintiffs the H-2A hourly rate and to abide by all of Four Star's policies and procedures.[15] In return, Four Star was required to pay the FLC a fixed hourly rate per worker that was based on each worker's rate of pay.[16] Four Star could have used its economic control—tens of thousands of dollars in payments for Plaintiffs' labor and its continued business—to ensure that the FLC abided by the terms of the contract and remedied its wage violations, threatening the loss of its business if the FLC failed to so.[17] Four Star instead chose to ignore Plaintiffs' wage violations and reap the benefit of this

[14] PageID.5 ¶ 25.

[15] PageID.6, 10 ¶¶ 33, 60.

[16] PageID.6, 14 ¶¶ 35, 97.

[17] Four Star knew or should have known about Plaintiffs' wage violations. The complaint alleges that Plaintiffs repeatedly complained to the FLC and Four Star that they had not been paid. PageID.15 ¶ 108. Moreover, when Four Star contracted with the FLC in 2017, there was publicly available information indicating that the FLC had violated laws and harmed H-2A workers. PageID.9 ¶¶ 53-55.

illegal conduct. It is fair to hold Four Star accountable as an employer because it had the economic power to ensure that mandated working conditions prevailed.

IV. The persistent exploitation of H-2A visa holders also supports holding agricultural operations accountable as employers.

Exploitation of agricultural workers in the H-2A visa program is endemic. H-2A workers—most of whom come from Mexico—"often arrive at their workplaces in debt, having paid significant recruitment fees and/or travel costs for the opportunity to work in the U.S."[18] Coming from homelands with few job opportunities, these workers are indebted once they arrive in the United States and dependent on the H-2A sponsor for their livelihood. Their precarious situation creates the conditions for economic coercion and exploitation.

In a recent survey of 100 recent H-2A workers from Mexico, every surveyed worker experienced a serious legal violation (defined as a violation of legal rights with a substantial impact on wages or working conditions), and over 90 percent experienced three or more serious legal violations.[19] Several workers described economic coercion tantamount to indentured servitude, including going into debt to

[18] Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program, Centro de los Derechos del Migrante, Inc., April 2020, at 4, https://cdmigrante.org/wp-content/uploads/2020/04/Ripe-for-Reform.pdf.

[19] *Id.* at 4.

pay for recruitment fees and travel costs or experiencing restrictions on their mobility once they arrived in the United States.[20]

Several also experienced wage violations, with almost half stating that the wages they received were less than what was promised to them when they were recruited in Mexico.[21] Some also described minimum wage violations, with one worker netting roughly $1.25 per hour after illegal kickbacks.[22] Others reporting having to buy their own safety equipment and tools, which reduced their wages unlawfully.[23]

The use of labor brokers like FLCs to recruit, transport, and pay H-2A workers is commonplace[24] and exacerbates migrant farm workers' vulnerability to

[20] 26 percent paid recruitment fees to come to the United States, which in some cases totaled thousands of dollars. 73 percent paid their travel costs to come to the United State and did not receive full reimbursement. 34 percent experienced restrictions on their mobility in the United States, such as employer seizing their passports or telling them that they could not leave the worksite or their housing without permission. *Id.* at 5-7.

[21] *Id.* at 21.

[22] *Id.*

[23] *Id.* at 7.

[24] Among the top 10 employers by number of H-2A job certifications, at least half are staffing firms that contract out the workers' labor to third parties. Dep't of Labor, Office of Foreign Labor Certification, H-2A Temporary Agricultural Labor Certification Program – Selected Statistics, FY 2019, https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2019_Q4.pdf. In Florida

exploitation.[25] Labor brokers like the FLC in this case traffic in vulnerable foreign workers whom they hire out to a variety of different employers. "H-2 workers, who usually speak no English and have no ability to move about on their own, are completely at the mercy of these brokers for housing, food and transportation."[26] And the labor brokers often have few assets, which means workers cannot obtain legal recourse from them for violations of their rights.[27] Meanwhile the farming and grower operations where the migrant workers work can attempt to avoid responsibility for their workers' exploitation by pointing the finger at the FLC.

This attempt to deflect responsibility is precisely what is happening here. Holding farm operators like Four Star accountable to their subcontracted workers as an employer will improve FLSA and AWPA compliance in an industry with rampant worker abuse. It will incentivize farm operators to choose contractors with strong compliance records and to set up procedures that detect contractors' unlawful labor

---

and California, most H-2A workers are employed through farm labor contractors. Ripe for Reform, *supra* note 19, at 15

[25] Close to Slavery, Guestworker Programs in the United States, Southern Poverty Law Center (2013), at 33, https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf.

[26] *Id.* at 28.

[27] *Id.*

practices. And it will increase workers' chances of obtaining a meaningful remedy for violations of their rights.

Agricultural operations held jointly accountable with their FLC for ensuring minimum standards can always seek indemnification for any resulting monetary damages. Letting the agricultural employer and the FLC sort out financial responsibility between them is, Congress believes, preferable to letting the loss fall on unprotected workers.

CONCLUSION

For the foregoing reasons, the complaint adequately alleges that Four Star was Plaintiffs' employer under FLSA and AWPA and liable for their wage and retaliation violations, and the motion to dismiss Counts I through IV should be denied.

Respectfully submitted,

/s/ John Philo

John Philo (P52721)
Sugar Law Center
For Economic & Social Justice
4605 Cass Avenue
Detroit, MI 48201
(313) 993-4505
jphilo@sugarlaw.org

- and -

Laura Padin (DC: 1011116)
National Employment Law Project
1350 Connecticut Avenue, Suite 1050
Washington, DC 20036
(202) 315-5589
lpadin@nelp.org

Date: October 14, 2020