

1 Lori Jordan Isley
Joachim Morrison
2 COLUMBIA LEGAL SERVICES
6 South Second Street, Suite 600
3 Yakima, WA 98901
(509) 575-5593

4 Martin S. Garfinkel
5 Adam J. Berger
Jamal N. Whitehead
6 SCHROETER GOLDMARK & BENDER
810 3rd Avenue, Suite 500
7 Seattle, WA 98104-1657
United States
8 (206) 622-8000

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11 BACILIO RUIZ TORRES and JOSE
AMADOR, as individuals and on behalf
12 of all other similarly situated persons,

13 Plaintiffs,

14 vs.

15 MERCER CANYONS, INC.,

16 Defendant.

CLASS ACTION

No. 1:14-CV-03032-SAB

SETTLEMENT AGREEMENT

17 This Stipulation of Settlement and Release between Plaintiffs BACILIO
18 RUIZ TORRES and JOSE AMADOR (“Plaintiffs”) and Defendant MERCER
19 CANYONS, INC. (“Defendant” or “Mercer”) is subject to the terms and conditions
20 hereof and the approval of the Court. Plaintiffs and Defendant are referenced
21 collectively herein as “the Parties.”
22

1 Mercer Canyons denies any liability or wrongdoing of any kind associated
2 with the claims alleged in this action. Mercer Canyons has denied and continues to
3 deny each and every material factual allegation and alleged claim asserted in the
4 Complaint, and no court has made a finding of liability. Nothing herein shall
5 constitute an admission by Mercer Canyons of wrongdoing or liability or of the
6 truth of any factual allegations in the Complaint. Nothing herein shall constitute an
7 admission by Mercer Canyons that the Complaint was properly brought on a class
8 or representative basis other than for settlement purposes. To this end, the
9 settlement of this action, the negotiation and execution of this Agreement, and all
10 acts performed or documents executed pursuant to or in furtherance of the
11 settlement: (i) are not, shall not be deemed to be, and may not be used as, an
12 admission or evidence of any wrongdoing or liability on the part of Mercer Canyons
13 or of the truth of any of the factual allegations in the Complaint; (ii) are not, shall
14 not be deemed to be, and may not be used as, an admission or evidence of any fault
15 or omission on the part of Mercer Canyons in any civil, criminal or administrative
16 proceeding in any court, administrative agency or other tribunal; and (iii) are not,
17 shall not be deemed to be and may not be used as, an admission of the
18 appropriateness of these or similar claims for class certification. Nonetheless,
19 Mercer Canyons has concluded that further litigation, in this Court, would be
20 protracted and expensive, and would also divert management and employee time.
21
22
23

1 Mercer Canyon has taken into account the uncertainty and risks inherent in
2 litigation before this Court. Mercer Canyons has therefore concluded that it is
3 desirable that the action be fully and finally settled in the manner and upon the
4 terms and conditions set forth in this Agreement.
5

6 **BACKGROUND AND RECITALS**

7 1. On March 14, 2014, Plaintiffs filed a proposed Class Action Complaint
8 in the United States District Court for the Eastern District of Washington (the
9 “Action”). On April 8, 2015 this Court certified this case as a class action. An
10 Inaccurate Information class of migrant and seasonal farm workers was certified as
11 follows:
12

13 All domestic migrant and seasonal farm workers who: 1) were
14 employed as vineyard workers by Mercer Canyons in 2012; 2) sought
15 employment at Mercer Canyons in 2013 between February 4 and
16 June 15, 2013; or 3) performed vineyard work at Mercer Canyons
between March 24 and September 15, 2013, and were not referred by
WorkSource.

17 2. Those class members allege that Mercer failed to comply with federal
18 and Washington law by making or causing to be made false or misleading
19 representations concerning the terms, conditions or existence of employment by
20 failing to inform local farm workers about the availability of \$12 an hour vineyard
21 laborer jobs available under the H-2A worker visa program in 2013, in violation of
22 29 U.S.C. § 1831(e) and 29 U.S.C. § 1821(f). Plaintiffs allege the same practice was
23

1 also an unfair or deceptive practice in trade or commerce in violation of
2 RCW 19.86.020.

3 3. The Court also certified an Equal Pay subclass who allege that at times
4 Mercer Canyons failed to pay \$12 an hour to subclass members it employed as
5 migrant or seasonal workers when those wages were due under the H-2A worker
6 visa program in violation of 29 U.S.C § 1832(a) and 29 U.S.C. § 1822(a) and RCW
7 49.52.050(2). Plaintiffs' sought only statutory damages under 29 U.S.C
8 § 1854(c)(1), but not actual damages. That subclass is defined as:
9

10 All domestic and seasonal farm workers who performed vineyard
11 work between March 24 and September 15, 2013 for Mercer Canyons,
12 were paid less than \$12 per hour, and were not referred by
13 WorkSource.

14 4. The Parties participated in extensive discovery over several months,
15 including: production of thousands of pages of documents in addition to electronic
16 data; the depositions of both class representatives, several class members, seven
17 Mercer representatives, three representatives of Mercer's agent, Washington Farm
18 Labor Association ("WAFLA"), and Plaintiffs' expert; and informal discovery with
19 potential witnesses. Defendant moved for summary judgment on all claims, which
20 was denied in its entirety.

21 5. In June 2015, the Parties agreed to participate in mediation in this case
22 to explore potential settlement. On June 4, 2015, the Parties participated in
23

1 mediation with the Hon. Magistrate James P. Hutton. The mediation lasted nearly a
2 full day, and continued into the following day. The Parties were not able to reach a
3 settlement agreement.

4
5 6. In July 2015, the Ninth Circuit accepted Mercer's request for
6 interlocutory review of the g class certification order pursuant to Rule 23(f) of the
7 Federal Rules of Civil Procedure. On August 31, 2016, the Ninth Circuit affirmed
8 this Court's class certification order. This Court entered an amended scheduling
9 order with a jury trial to commence on April 17, 2017.

10
11 7. On January 26, 2017, the Parties re-convened with Magistrate Hutton
12 for a second mediation session. The mediation lasted seven hours and the Parties
13 were able to reach a settlement agreement. At all times, the negotiations leading to
14 this Settlement have been adversarial, non-collusive, and at arm's length.

15
16 8. It is the desire of the Parties to fully, finally, and forever settle,
17 compromise, and discharge all disputes and claims arising from the Action. In order
18 to achieve a full and complete release of Defendant, each Class Member (which
19 includes any legal heirs and/or successors-in-interest of each Class Member),
20 through execution of the Settlement by the Class Representatives, acknowledges
21 that this Settlement is intended to include in its effect all claims arising from the
22 allegations in the Complaint.

1 basis. Should the number of claims received result in undistributed funds from the
2 \$545,000 settlement fund after calculation of the individual \$1,000 and \$500
3 payments, the balance shall be distributed as follows: 40% to class members filing
4 claims on a pro rata basis and 60% applied to Defendant's obligation to pay the
5 attorney fees described below. The payments under this section are for non-wage
6 damages under the Washington Consumer Protection Act based on Plaintiffs'
7 allegation that Defendant did not affirmatively inform the Inaccurate Information
8 class about the availability of H-2A jobs, and statutory damages under AWWA. The
9 \$500 payments for the Equal Pay Subclass are entirely for statutory damages under
10 AWWA, which is the only damages sought in the Complaint in this action, and are
11 not wage payments.
12

13
14 b. Defendant will pay the named Plaintiffs Bacilio Ruiz and Jose
15 Amador \$7,500 each for their services as class representatives in this action.
16 Defendant will issue an IRS Form 1099-MISC to Plaintiffs Bacilio Ruiz and Jose
17 Amador, reflecting this nonwage payment in Box 3.
18

19 c. Defendant will pay \$650,000 to Class Counsel for statutory
20 attorney fees pursuant to the Washington fee-shifting statutes applicable to
21 Plaintiffs' claims, RCW 19.86.090, RCW 49.48.030, and RCW 49.52.070, less any
22 amounts credited from the settlement fund as described in paragraph 10.a. This
23 payment will compensate and reimburse Plaintiffs' counsel for work already

1 performed and for all of the work remaining to be performed to document the
2 settlement, secure Court approval of the settlement, and ensure that the settlement is
3 fairly administered and implemented, Defendant shall pay \$300,000 no later than
4 thirty days from final approval, and the remaining \$350,000 within twelve months
5 from final approval, less any amount credited against this amount from the Class
6 Payment as described in paragraph 10.a above.

8 d. The Parties agree that the payments made pursuant to this
9 Settlement Agreement are not, and are not intended to be made as a payment with
10 respect to, a penalty or a punishment of the type or kind contemplated by Internal
11 Revenue Code Section 162(f). No governmental entity is directly or indirectly a
12 recipient of any portion of the payments made pursuant to this Settlement, and no
13 governmental entity has any interest or involvement of any type or kind in the
14 litigation hereby settled. Defendant has not made any representation to Class
15 Counsel or Plaintiffs or otherwise as to the taxability or tax implications of any
16 settlement payments or other payments pursuant to this Settlement Agreement.

18 11. Approval Date. The provisions of the settlement embodied in this
19 Settlement Agreement shall be finally approved when all of the following events
20 have occurred: (i) this Settlement Agreement has been executed by all Parties and
21 by counsel for the Parties; (ii) the Court has given preliminary approval to the
22 Settlement; (iii) reasonable class notice as required by Rule 23(e)(1) and as
23

1 approved by the Court has been given, providing proposed Class Members with an
2 opportunity to submit claims, or object to the settlement; (iv) the Court has held a
3 formal fairness hearing and entered a final order and judgment approving this
4 Settlement.

5
6 The approval date of the Settlement (“Approval Date”) shall be the later of
7 either (1) the expiration of the time for filing an appeal from the Court’s entry of an
8 order granting final approval to this Settlement (31 calendar days from entry of the
9 order) or (2) if a timely appeal is made, the date of the final resolution of that appeal
10 and any subsequent appeals resulting in final judicial approval of the Settlement.

11
12 If the Court fails to approve the Settlement, or if any appellate court fails to
13 approve the Settlement, resulting in a failure to reach the Approval Date: (1) the
14 Settlement Agreement shall have no force and effect, and no Party shall be bound
15 by any of its terms; (2) any preliminary approval order, final approval order and
16 judgment shall be vacated; and (3) the Settlement Agreement and all negotiations,
17 statements and proceedings and data relating thereto shall be protected by Federal
18 Rule of Evidence 408 and shall be without prejudice to the rights of any of the
19 Parties, all of whom shall be restored to their respective positions in the action prior
20 to the Settlement. No party shall appeal the Court’s order on Settlement if the Court
21 approves the Settlement as presented by Plaintiffs or as modified in a manner not
22 prejudicial to that Party, as described in Paragraph 19 below.
23

1 12. Administration of Settlement Payments.

2 a. Class Notice and Claim Forms. Class Counsel will mail a Class
3 Notice and a Claim Form in Spanish and English (“Notice Packet”) in the form
4 attached to the class settlement notice, and subject to Court approval, to Class
5 Members on Amended Exhibit A (attached) with a valid address (currently
6 approximately 66% of the Class). Defendant will not object to any Class Member
7 listed on Amended Exhibit A from participating in this Settlement. All mailings will
8 be by first class mail. Class Members will have 90 days from the initial mailing date
9 to submit Claim Forms by mail, e-mail, fax, or in person to Class Counsel. If sent
10 by mail, the Claim Form must be postmarked on or before the deadline set forth in
11 the Class Notice. Class Counsel shall provide a stamped, self-addressed envelope
12 with each claim form.
13
14

15 To ensure that the maximum number of potential Class Members have the
16 opportunity to submit claims, Plaintiffs will also provide media notice in the form
17 and as provided for in the class settlement motion filed with the Court, and subject
18 to Court approval.
19

20 b. Distribution of Payments to Qualified Claimants. Defendant will
21 pay Columbia Legal Services one lump sum to be distributed to Class Members
22 according to the formula described in paragraph 10 above, and will issue an IRS
23 Form 1099-MISC to Columbia Legal Services for such payment. Class Counsel

1 agrees to manage and oversee all functions in connection with all payments made to
2 Class Members under this Agreement, including any required tax reporting with
3 respect thereto. There will be one in-person distribution of the Class Payment funds
4 to Class Members making claims and additional individual distributions as needed
5 to meet the needs of Class Members.
6

7 13. Right to Object to Settlement. The Class Notice provided to Class
8 Members will include the right of each individual class member to object to the
9 proposed Settlement. Any Class Member who wishes to object to the Settlement
10 must file with the Court a written statement objecting to the Settlement. Such
11 written statement must be filed with the Court no later than 90 days after the date
12 the Notice Packets are mailed (“Objection Deadline Date”). No Class Member shall
13 be entitled to be heard at the final Settlement hearing (whether individually or
14 through separate counsel) or to object to the Settlement, and no written objections
15 or briefs submitted by any Class Member shall be received or considered by the
16 Court at the final Settlement hearing, unless copies of any written objections or
17 briefs shall have been filed with the Court on or before the Objection Deadline
18 Date. Class Members who fail to file and timely serve written objections in the
19 manner specified above shall be deemed to have waived any objections and shall be
20 foreclosed from making any objection (whether by appeal or otherwise) to the
21 Settlement and shall be bound by the terms of the Settlement.
22
23

1 and any claims of any kind or nature, that could have been brought or based on any
2 of the facts and circumstances alleged in the Complaint.

3 **LIMITED CONFIDENTIALITY**

4 16. The Parties agree that this Agreement must be disclosed to the Court
5 in public filings and made available to Class Members. However, until the
6 aforementioned filing is made with the Court, the terms of this Agreement shall be
7 kept confidential and shall not be disclosed by the Parties except to their attorneys
8 and to other persons as necessary to effectuate the terms of this Agreement or to
9 comply with applicable law.
10

11 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

12 17. The Parties shall promptly prepare and file with the Court a motion for
13 preliminary approval and determination by the Court as to the fairness, adequacy,
14 and reasonableness of this Settlement. The motion for preliminary approval shall
15 request entry of a preliminary order which would accomplish the following:
16

17 a. Schedule a fairness hearing on the question of whether the
18 proposed Settlement, including payment of attorney fees and costs and the Class
19 Representatives' enhancement awards, should be finally approved as fair,
20 reasonable, and adequate as to the Class Members;
21

22 b. Approving as to form and content the proposed Class Notice;

23 c. Approving as to form and content the proposed Claim Form;

1 d. Directing the dissemination of the Class Notice and Claim Form
2 to the Class Members;

3 e. Preliminarily approving the settlement subject only to the
4 objections of Class Members and final review by the Court;

5 f. Preliminarily approving Class Counsel's role in notifying class
6 members and administering the settlement;

7 g. Preliminarily approving Class Counsel's request for attorney
8 fees and litigation expenses subject to final review of the Court; and
9

10 h. Preliminarily approving Class Counsel's request for Plaintiffs'
11 enhancement awards for the class representatives.
12

13 **DUTIES OF THE PARTIES PRIOR TO FINAL APPROVAL**

14 18. In order to obtain final approval of the Settlement, Class Counsel will
15 submit a motion for final approval detailing the efforts to notify Class Members and
16 any objections received along with a proposed final order:

17 a. Approving the Settlement, adjudging the terms thereof to be fair,
18 reasonable, and adequate, and directing consummation of its terms and provisions;

19 b. Approving Class Counsel's application for an award of attorney
20 fees and reimbursement of costs;

21 c. Approving the named Plaintiffs' enhancement awards; and
22
23

1 d. Releasing all released claims against Mercer during the Class
2 Period.

3 e. Plaintiffs will not be obligated to dismiss this case until after (1)
4 the Court issues an order of final approval of the Settlement; and, (2) Mercer has
5 made all settlement payments outlined in this Settlement Agreement.
6

7 **PARTIES' AUTHORITY**

8 19. The signatories hereto represent that they are fully authorized to enter
9 into this Settlement and bind the Parties to the terms and conditions of this
10 Settlement Agreement.

11 **MUTUAL FULL COOPERATION**

12 20. The Parties agree to fully cooperate with each other to accomplish the
13 terms of this Settlement, including but not limited to, execution of such documents
14 and to take such other action as reasonably be necessary to implement the terms of
15 this Settlement. The Parties to this Settlement shall use their best efforts, including
16 all efforts contemplated by this Settlement and any other efforts that may become
17 necessary by order of the Court, or otherwise, to effectuate this Settlement and the
18 terms set forth herein. As soon as practicable after execution of this Settlement,
19 Class Counsel shall, with the assistance and cooperation of Defendant and its
20 counsel, take all necessary steps to secure the Court's final approval of this
21 Settlement. If the Court's approval of this Settlement Agreement includes
22
23

1 modifications of the Agreement that do not prejudice any Party, each Party's
2 remaining obligations and rights under the agreement will survive the modifications
3 and remain in effect.

4
5 **NO PRIOR ASSIGNMENTS**

6 21. The Parties hereto represent, covenant, and warrant that they have not
7 directly or indirectly, assigned, transferred, encumbered, or purported to assign,
8 transfer, or encumber to any person or entity any portion of any liability, claim,
9 demand, action, cause of action, or right herein released and discharged except as
10 set forth herein.

11 **NO ADMISSION**

12 22. Nothing contained herein, nor the consummation of this Settlement, is
13 to be construed or deemed an admission of liability, culpability, negligence, or
14 wrongdoing on the part of Defendant. Defendant specifically denies any liability.
15

16 **NON-ADMISSIBILITY**

17 23. Pursuant to Federal Rule of Evidence 408 and any applicable state or
18 local rules of evidence, this Agreement and any related documents filed or created
19 in connection with it shall be inadmissible in evidence in any proceeding, except as
20 necessary to approve, interpret, or enforce this Agreement.
21
22
23

1 **ATTORNEY FEES AND COSTS TO ENFORCE AGREEMENT**

2 24. Should an action to enforce the provisions of this agreement be
3 necessary, the prevailing party shall be entitled to recover attorney fees and costs.

4 **CONSTRUCTION**

5 25. The Parties hereto agree that the terms and conditions of this
6 Settlement are the result of lengthy, intensive, arm's-length negotiations between
7 the Parties. The Parties further agree that this Settlement shall not be construed in
8 favor of or against any party by reason of the extent to which any party or party's
9 counsel participated in the drafting of this Settlement.
10

11 **CAPTIONS AND INTERPRETATIONS**

12 26. Paragraph titles or captions contained herein are inserted as a matter of
13 convenience and for reference, and in no way define, limit, extend, or describe the
14 scope of this Settlement or any provision hereof. Each term of this Settlement is
15 contractual and not merely a recital.
16

17 **MODIFICATION**

18 27. This Settlement June not be changed, altered, or modified, except in
19 writing and signed by the Parties hereto, and approved by the Court. This
20 Settlement shall not be discharged except by performance in accordance with its
21 terms or by a writing signed by the Parties hereto and approved by the Court.
22
23

1 **INTEGRATION CLAUSE**

2 28. This Settlement (including the exhibits) contains the entire agreement
3 between the Parties relating to the Settlement and transaction contemplated hereby,
4 and all prior or contemporaneous agreements, understandings, representations, and
5 statements, whether oral or written and whether by a party or such party's legal
6 counsel, are merged herein. No rights hereunder may be waived except in writing.
7

8 **BINDING ON ASSIGNS**

9 29. This Settlement shall be binding upon and inure to the benefit of the
10 Parties hereto and their respective heirs, trustees, executors, administrators,
11 successors, and assigns.
12

13 **CLASS COUNSEL SIGNATORIES**

14 30. It is agreed that because of the large number of Class Members, it is
15 impossible or impractical to have each Class Member execute this Settlement. The
16 Class Notice will advise all Class Members of the binding nature of the release and
17 such shall have the same force and effect as if this Settlement were executed by
18 each member of the Class.
19

20 **COUNTERPARTS**

21 31. This Settlement may be executed in counterparts, and when each party
22 has signed and delivered at least one such counterpart, each counterpart shall be
23 deemed an original, and, when taken together with other signed counterparts, shall

1 constitute one Settlement, which shall be binding upon and effective as to all
2 Parties.

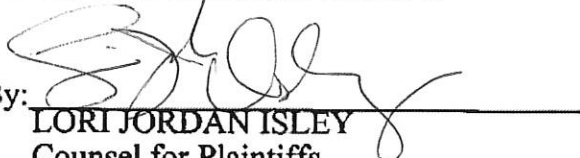
3
4 DATED: February 23, 2017

SCHROETER GOLDMARK & BENDER

5
6 By: 
ADAM J. BERGER
Counsel for Plaintiffs

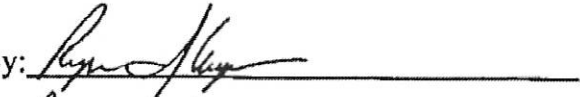
7 DATED: February 23, 2017

COLUMBIA LEGAL SERVICES

8
9 By: 
LORI JORDAN ISLEY
Counsel for Plaintiffs

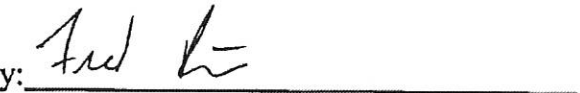
10
11 DATED: February 23, 2017

MERCER CANYONS, INC.

12
13 By: 
14 Its: CHIEF HR OFFICER

15 DATED: February 23, 2017

PERKINS COIE LLP

16
17 By: 
18 FREDERICK B. RIVERA *US61A #23008*
19 Counsel for Defendant
20 MERCER CANYONS, INC.

1 DATED this 23rd day of February, 2017.

2 COLUMBIA LEGAL SERVICES SCHROETER GOLDMARK & BENDER

3 s/Lori Jordan Isley
4 Lori Jordan Isley, WSBA #21724
5 Joachim Morrison, WSBA #23094
6 6 South 2nd Street, Suite 600
7 Yakima, WA 98901
8 Phone: (509) 575-5593, x. 217
9 Fax: (509) 575-4404
10 E-mail: lori.isley@columbialegal.org;
11 joe.morrison@columbialegal.org;

s/Adam J. Berger
Martin S. Garfinkel, WSBA #20787
Adam J. Berger, WSBA #20714
Jamal N. Whitehead, WSBA #39818
810 3rd Avenue, Suite 500
Seattle, WA 98104-1657
Phone: (206) 622-8000
Fax: (206) 682-2305
E-Mail: berger@sgb-law.com;
garfinkel@sgb-law.com;
whitehead@sgb-law.com

12 Approved for Entry:

13 Perkins Coie LLP

s/ Frederick B. Rivera
14 Frederick B. Rivera, WSBA # 23008
15 Attorney for Defendant Mercer Canyons, Inc.
16 1201 Third Avenue, Suite 4900
17 Seattle, WA 98101-3099
18 Telephone: 206.359.8000
19 Facsimile: 206.359.9000
20 E-mail: FRivera@perkinscoie.com

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Lori Jordan Isley lori.isley@columbialegal.org
cheli.bueno@columbialegal.org
elvia.bueno@columbialegal.org

Joachim Morrison joe.morrison@columbialegal.org
rachael.pashkowski@columbialegal.org

Martin S. Garfinkel garfinkel@sgb-law.com, cronan@sgb-law.com

Adam J. Berger berger@sgb-law.com

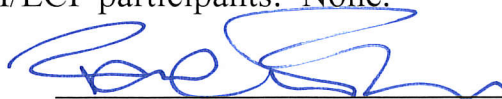
Jamal N. Whitehead whitehead@sgb-law.com

Michael T. Reynvaan mreynvaan@perkinscoie.com;
awells@perkinscoie.com; docketsea@perkinscoie.com

Frederick Brian Rivera frivera@perkinscoie.com, bbuckley@perkinscoie.com,
docketsea@perkinscoie.com

Lindsay J. McAleer LMcAleer@perkinscoie.com,
RBecken@perkinscoie.com

And I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: None.



Rachael Pashkowski