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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

EQUAL EMPLOYMENT)	CIVIL ACTION NO. 11-00257 DAE-RLP
OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	<u>THIRD AMENDED COMPLAINT</u>
v.)	
)	<u>JURY TRIAL DEMAND</u>
GLOBAL HORIZONS, INC. D/B/A)	
GLOBAL HORIZONS MANPOWER,)	
INC.; CAPTAIN COOK COFFEE)	
COMPANY, LTD.; DEL MONTE)	
FRESH PRODUCE (HAWAII), INC.;)	
KAUAI COFFEE COMPANY, INC.;)	
KELENA FARMS, INC.; MAC FARMS)	
OF HAWAII, LLC N/K/A MF NUT CO.,)	
LLC; MAUI PINEAPPLE COMPANY,)	
LTD. A/K/A MAUI PINEAPPLE)	
FARMS; ALEXANDER & BALDWIN,)	
INC.; MASSIMO ZANETTI)	
BEVERAGE USA, INC.; AND DOES 1-)	
15, INCLUSIVE;)	
)	
Defendants.)	

I. NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of national origin, race, and retaliation, and to provide appropriate relief to Marut Kongpia, Nookrai Matwiset, Jakarin Phookhiew, Mongkol Bootpasa, Janporn Suradanai, Suthat Promnonsri, Itthi Oa-Sot, and the class of Thai and/or Asian individuals (collectively, the “Claimants”) who were adversely affected by such practices. As alleged with greater particularity below, the EEOC asserts that Defendants engaged in discrimination and a pattern or practice of discrimination when they subjected the Claimants to harassment, disparate treatment, and constructive discharge on the basis of the Claimants’ national origin (Thai) and/or race (Asian), and engaged in retaliation.

II. JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) and 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-5(f)(1) and (3) and -6 (“Title VII”) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. A substantial part of the employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of Hawaii.

III. PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the “Commission”), is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII, and is expressly authorized to bring this action by Sections 706(f)(1) and (3) and 707 of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3) and -6.

4. At all relevant times, Defendant Global Horizons, Inc. dba Global Horizons Manpower, Inc. (“Global”) has continuously been a California corporation doing business in the State of Hawaii and has continuously had at least 15 employees.

5. At all relevant times, Defendant Global has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

6. At all relevant times, Defendant Captain Cook Coffee Company, Ltd. (“Captain Cook”) has continuously been a Hawaii corporation doing business in the State of Hawaii and has continuously had at least 15 employees.

7. At all relevant times, Defendant Captain Cook has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

8. At all relevant times, Defendant Captain Cook has continuously been under contract with Defendant Global for services rendered in Hawaii, and has continuously been a joint employer with Defendant Global where both generally controlled the terms and conditions of the employment of Nookrai Matwiset and other individuals.

9. Global and Captain Cook jointly controlled the Claimants’ work, housing, transportation, and access to food; jointly supervised the Claimants and/or Captain Cook exercised successively higher authority over the Claimants through its control of the terms of its contracts with Global; jointly determined the pay rates or the methods of payment; jointly held the right, directly or indirectly, to hire, fire, or modify the employment conditions of the workers; jointly participated in the preparation of payroll and the payment of wages.

10. Captain Cook’s joint employer liability also stems from Captain Cook’s ownership or control of the land, housing, transportation, and worksite,

which placed it in a position to prevent the violations of Title VII alleged herein, even through it delegated hiring and some supervisory responsibilities to Global.

11. The Claimants were economically dependent on Captain Cook due to Captain Cook's investment in equipment and facilities.

12. The Claimants performed routine tasks that are a normal and integral phase of Captain Cook's production making them dependent on Captain Cook's overall production process.

13. Captain Cook maintained on-the-job control over Claimants through Captain Cook's own personnel and Global and on-site crew leaders who in turn spoke directly to the Claimants Captain Cook's own personnel.

14. At all relevant times, Defendant Del Monte Fresh Produce (Hawaii), Inc. ("Del Monte") has continuously been a Delaware corporation doing business in the State of Hawaii and has continuously had at least 15 employees.

15. At all relevant times, Defendant Del Monte has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

16. At all relevant times, Defendant Del Monte has continuously been under contract with Defendant Global for services rendered in Hawaii, and has continuously been a joint employer with Defendant Global where both generally controlled the terms and conditions of the employment of Jakarin Phookhiew and other individuals.

17. Global and Del Monte jointly controlled the Claimants' work, housing, transportation, and access to food; jointly supervised the Claimants and/or Del Monte exercised successively higher control over the Claimants through its contracts with Global; jointly determined the pay rates or the methods of payment; jointly held the right, directly or indirectly, to hire, fire, or modify the employment conditions of the workers; jointly participated in the preparation of payroll and the payment of wages.

18. Del Monte's joint employer liability also stems from Del Monte's ownership, leasing, or control of the land; and control over the Claimants' housing, transportation, and worksite, which placed it in a position to prevent the violations of Title VII alleged herein, even through it delegated hiring and some supervisory responsibilities to Global.

19. The Claimants were economically dependent on Del Monte due to Del Monte's investment in equipment and facilities.

20. The Claimants performed routine tasks that are a normal and integral phase of Del Monte's production making them dependent on Del Monte's overall production process.

21. Del Monte maintained on-the-job control over Claimants through Del Monte's own personnel and Global and on-site crew leaders who in turn spoke directly to the Claimants.

22. At all relevant times, Defendant Kauai Coffee Company, Inc. ("Kauai Coffee") has continuously been a Hawaii corporation doing business in the State of Hawaii and has continuously had at least 15 employees.

23. At all relevant times, Defendant Kauai Coffee has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

24. At all relevant times, Defendant Kauai Coffee has continuously been under contract with Defendant Global for services rendered in Hawaii, and has continuously been a joint employer with Defendant Global where both generally controlled the terms and conditions of the employment of Mongkol Bootpasa and other individuals.

25. Global and Kauai Coffee jointly controlled the Claimants' work, housing, transportation, and access to food; jointly supervised the Claimants and/or Kauai Coffee exercised successively higher authority over Global and the Claimants; jointly determined the pay rates or the methods of payment; jointly held

the right, directly or indirectly, to hire, fire, or modify the employment conditions of the workers; jointly participated in the preparation of payroll and the payment of wages.

26. Kauai Coffee's joint employer liability also stems from Kauai Coffee's ownership or control of the land, housing, transportation, and worksite, which placed it in a position to prevent the violations of Title VII alleged herein, even through it delegated hiring and some supervisory responsibilities to Global.

27. The Claimants were economically dependent on Kauai Coffee due to Kauai Coffee's investment in equipment and facilities.

28. The Claimants performed routine tasks that are a normal and integral phase of Kauai Coffee's production making them dependent on Kauai Coffee's overall production process.

29. Kauai Coffee maintained on-the-job control over Claimants through Kauai Coffee's own personnel and Global and on-site crew leaders who in turn spoke directly to the Claimants.

30. At all relevant times, Defendant Kelena Farms, Inc. ("Kelena Farms") has continuously been a Hawaii corporation doing business in the State of Hawaii and has continuously had at least 15 employees.

31. At all relevant times, Defendant Kelena Farms has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

32. At all relevant times, Defendant Kelena Farms has continuously been under contract with Defendant Global for services rendered in Hawaii, and has continuously been a joint employer with Defendant Global where both generally controlled the terms and conditions of the employment of Janporn Suradanai and similarly situated individuals.

33. Global and Kelena Farms jointly controlled the Claimants' work, housing, transportation, and access to food; jointly supervised the Claimants and/or

Kelena Farms exercised successively higher authority over the Claimants through its contracts with Global; jointly determined the pay rates or the methods of payment; jointly held the right, directly or indirectly, to hire, fire, or modify the employment conditions of the workers; jointly participated in the preparation of payroll and the payment of wages.

34. Kelena Farms' joint employer liability also stems from Kelena Farms' ownership or control of the land, housing, transportation, and worksite, which placed it in a position to prevent the violations of Title VII alleged herein, even through it delegated hiring and some supervisory responsibilities to Global.

35. The Claimants were economically dependent on Kelena Farms due to Kelena Farms' investment in equipment and facilities.

36. The Claimants performed routine tasks that are a normal and integral phase of Kelena Farms' production making them dependent on Kelena Farms' overall production process.

37. Kelena Farms maintained on-the-job control over Claimants through Kelena Farms' own personnel and Global and on-site crew leaders who in turn spoke directly to the Claimants.

38. At all relevant times, Defendant Mac Farms of Hawaii, LLC nka MF Nut Co., LLC ("Mac Farms") has continuously been a Hawaii limited liability company doing business in the State of Hawaii and has continuously had at least 15 employees.

39. At all relevant times, Defendant Mac Farms has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

40. At all relevant times, Defendant Mac Farms has continuously been under contract with Defendant Global for services rendered in Hawaii, and has continuously been a joint employer with Defendant Global where both generally

controlled the terms and conditions of the employment of Suthat Promnonsri and other individuals.

41. Global and Mac Farms jointly controlled the Claimants' work, housing, transportation, and access to food; jointly supervised the Claimants and/or Mac Farms exercised successively higher authority over Global and the Claimants; jointly determined the pay rates or the methods of payment; jointly held the right, directly or indirectly, to hire, fire, or modify the employment conditions of the workers; jointly participated in the preparation of payroll and the payment of wages.

42. Mac Farms' joint employer liability also stems from Mac Farms' ownership or control of the land, housing, transportation, and worksite, which placed it in a position to prevent the violations of Title VII alleged herein, even through it delegated hiring and some supervisory responsibilities to Global.

43. The Claimants were economically dependent on Mac Farms due to Mac Farms' investment in equipment and facilities.

44. At Mac Farms, the Claimants performed routine tasks that are a normal and integral phase of the Mac Farms' production making them dependent on the Mac Farms' overall production process.

45. Mac Farms maintained on-the-job control over Claimants through Mac Farms' own personnel and Global and on-site crew leaders who in turn spoke directly to the Claimants.

46. At all relevant times, Defendant Maui Pineapple Company, Ltd. aka Maui Pineapple Farms ("Maui Pineapple") has continuously been a Hawaii corporation doing business in the State of Hawaii and has continuously had at least 15 employees.

47. At all relevant times, Defendant Maui Pineapple has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

48. At all relevant times, Defendant Maui Pineapple has continuously been under contract with Defendant Global for services rendered in Hawaii, and has continuously been a joint employer with Defendant Global where both generally controlled the terms and conditions of the employment of Itthi Oa-Sot and other individuals.

49. Global and Maui Pineapple jointly controlled the Claimants' work, housing, transportation, and access to food; jointly supervised the Claimants and/or Maui Pineapple exercised successively higher authority over the Claimants through its contracts with Global; jointly determined the pay rates or the methods of payment; jointly held the right, directly or indirectly, to hire, fire, or modify the employment conditions of the workers; jointly participated in the preparation of payroll and the payment of wages.

50. Maui Pineapple's joint employer liability also stems from Maui Pineapple's ownership or control of the land, housing, transportation, and worksite enabled it to prevent the violations of Title VII alleged herein, despite that it delegated hiring and some supervisory responsibilities to Global.

51. The Claimants were economically dependent on Maui Pineapple due to Maui Pineapple's investment in equipment and facilities.

52. The Claimants performed routine tasks that are a normal and integral phase of Maui Pineapple's production making them dependent on Maui Pineapple's overall production process.

53. Maui Pineapple maintained on-the-job control over Claimants through Maui Pineapple's own personnel and Global and on-site crew leaders who in turn spoke directly to the Claimants.

54. At all relevant times, Defendant Alexander & Baldwin, Inc. ("A&B") has continuously been a Hawaii corporation doing business in the State of Hawaii and has continuously had at least 15 employees.

55. At all relevant times, Defendant A&B has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

56. At all relevant times, Defendant A&B has continuously been a joint employer with Defendant Global and Defendant Kauai Coffee and generally controlled the terms and conditions of employment at Defendant Kauai Coffee during the employment of Mongkol Bootpasa and other individuals.

57. Global, Kauai Coffee, and A&B jointly controlled the Claimants' work, housing, transportation, and access to food; jointly supervised the Claimants and/or A&B exercised successively higher authority over the Claimants through Kauai Coffee's contract with Global which A&B's legal department oversaw; jointly determined the pay rates or the methods of payment; jointly held the right, directly or indirectly, to hire, fire, or modify the employment conditions of the workers; jointly participated in the preparation of payroll and the payment of wages.

58. A&B's joint liability also stems from A&B's ownership or control of the land, energy, housing, transportation, and worksite, which place it in a position to prevent the violations of Title VII alleged herein, even though it delegated hiring and some supervisory responsibilities to Global or Kauai Coffee.

59. The Claimants were economically dependent on A&B due to A&B's investment in equipment and facilities.

60. A&B maintained on-the-job control over Claimants through A&B employee Joan Morita, Kauai Coffee personnel, and Global's supervisors and on-site crew leaders who in turn spoke directly to the Claimants.

61. A&B participated in or influenced the employment practices of Kauai Coffee and Global as those employment practices applied to the Claimants.

62. A&B conducted an internal investigation regarding the allegations of discrimination pertaining to Global, Kauai Coffee, and the Claimants.

63. A&B's Human Resources Policy applied to Kauai Coffee and the Claimants.

64. A&B's Legal Department participated in the process by which Kauai Coffee contracted with Global.

65. At all relevant times, Defendant Massimo Zanetti Beverage USA, Inc., headquartered in Portsmouth, Virginia has continuously been doing business in the State of Hawaii and has continuously had at least 15 employees.

66. At all relevant times, Defendant Massimo Zanetti Beverage USA, Inc. has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

67. Plaintiff alleges that Defendant Massimo Zanetti Beverage USA, Inc. ("MZB") is liable for the unlawful employment actions described herein as a successor to A&B and/or Kauai Coffee. Since in or about March 2011, MZB and its affiliate Kauai Coffee Company, LLC ("Kauai LLC") acquired and/or gained successively higher control over certain assets of Kauai Coffee.

68. MZB is the sole member of Kauai LLC and is the sole managing member of Kauai LLC.

69. MZB and Kauai Coffee agreed for MZB and Kauai LLC to maintain continuity of Kauai Coffee's operations and of Kauai Coffee's workforce.

70. At least ninety days prior to buying Kauai Coffee's assets, MZB and/or Kauai LLC received disclosures providing notice of Kauai Coffee's legal obligations regarding seventeen charges of discrimination against Kauai Coffee; that the EEOC found reasonable cause to believe Kauai Coffee discriminated against the Claimants; that the theory of liability was that Kauai Coffee was a joint employer of Global; that efforts to conciliate the charges failed; and that the charges had been sent to the EEOC's legal department.

71. Because Kauai Coffee sold its assets to MZB and/or Kauai LLC, Kauai Coffee may not be able to provide adequate monetary or injunctive relief without MZB and/or Kauai LLC.

72. Since in or about March 2011, MZB and/or Kauai LLC have owned and/or controlled the Kauai Coffee brand name and oversee the Kauai Coffee's operations, marketing and distribution.

73. Since in or about March 2011, MZB and/or Kauai LLC retained sixty-two former full-time employees of Kauai Coffee.

74. Defendants A&B, Captain Cook, Del Monte, Kauai Coffee, Kelena Farms, Mac Farms, Maui Pineapple, and MZB (collectively, the "Farm Defendants") are persons against whom a right to relief is asserted jointly, severally, or out of the same transaction or series of transactions between each Farm Defendant and Defendant Global with regard to each Claimant who worked at each respective Farm Defendants' location(s). Additionally, questions of law or fact common to all Defendants will arise in this action. The Farm Defendants are named as parties pursuant to Fed. R. Civ. P. 20(a)(2) in that Defendant Global and each Farm Defendant, at all relevant times, acted as joint employers and/or successors with regard to each Claimant who worked at each respective farm.

75. Plaintiff is ignorant of the true names and capacities of each Defendant sued as DOES 1 through 15, inclusively, and therefore Plaintiff sues said defendants by fictitious names. Plaintiff reserves the right to amend the complaint to name each DOE defendant individually or collectively as they become known. Plaintiff alleges that each DOE defendant was in come manner responsible for the acts and omissions alleged herein and Plaintiff will amend the complaint to allege such responsibility when the same shall have been ascertained by Plaintiff.

76. All of the acts and failures to act alleged herein were duly performed by and attributable to each DOE, each acting as a successor, agent, alter ego,

employee, indirect employer, joint employer, integrated enterprise, and/or under the direction and control of the another DOE and/or named Defendant, except as specifically alleged otherwise. Said acts and failures to act were within the scope of such agency and/or employment, and each DOE participated in, approved and/or ratified the unlawful acts and omissions by another DOE or Defendants complained of herein. Whenever and wherever reference is made in this Complaint to any act by a DOE or DOES, such allegations and reference shall also be deemed to mean the acts and failures to act of each DOE and named Defendants acting individually, jointly, and/or severally.

III. GENERAL ALLEGATIONS

77. More than thirty days prior to the institution of this lawsuit, Marut Kongpia filed a charge with the Commission alleging violations of Title VII by Defendant Global. All conditions precedent to the institution of this lawsuit have been fulfilled by the EEOC, including, giving notice of Marut Kongpia's charge to Defendant Global, investigating the charge, issuing a reasonable cause determination, and engaging in good faith to conciliate on behalf of Marut Kongpia and the class of similarly situated Thai and/or Asian individuals.

78. More than thirty days prior to the institution of this lawsuit, Nookrai Matwiset filed a charge with the Commission alleging violations of Title VII by Defendant Captain Cook. All conditions precedent to the institution of this lawsuit have been fulfilled by the EEOC, including, giving notice of Nookrai Matwiset's charge to Defendant Captain Cook, investigating the charge, issuing a reasonable cause determination, and engaging in good faith to conciliate on behalf of Nookrai Matwiset and the class of similarly situated Thai and/or Asian individuals.

79. More than thirty days prior to the institution of this lawsuit, Jakarin Phookhiew filed a charge with the Commission alleging violations of Title VII by Defendant Del Monte. All conditions precedent to the institution of this lawsuit have been fulfilled by the EEOC, including, giving notice of Jakarin Phookhiew's

charge to Defendant Del Monte, investigating the charge, issuing a reasonable cause determination, and engaging in good faith to conciliate on behalf of Jakarin Phookhiew and the class of similarly situated Thai and/or Asian individuals.

80. More than thirty days prior to the institution of this lawsuit, Mongkol Bootpasa filed a charge with the Commission alleging violations of Title VII by Defendant Kauai Coffee. All conditions precedent to the institution of this lawsuit have been fulfilled by the EEOC, including, giving notice of Mongkol Bootpasa's charge to Defendant Kauai Coffee, investigating the charge, issuing a reasonable cause determination, and engaging in good faith to conciliate on behalf of Mongkol Bootpasa and the class of similarly situated Thai and/or Asian individuals.

81. More than thirty days prior to the institution of this lawsuit, Janporn Suradanai filed a charge with the Commission alleging violations of Title VII by Defendant Kelena Farms. All conditions precedent to the institution of this lawsuit have been fulfilled by the EEOC, including, giving notice of Janporn Suradanai's charge to Defendant Kelena Farms, investigating the charge, issuing a reasonable cause determination, and engaging in good faith to conciliate on behalf of Janporn Suradanai and the class of similarly situated Thai and/or Asian individuals.

82. More than thirty days prior to the institution of this lawsuit, Suthat Promnonsri filed a charge with the Commission alleging violations of Title VII by Defendant Mac Farms. All conditions precedent to the institution of this lawsuit have been fulfilled by the EEOC, including, giving notice of Suthat Promnonsri's charge to Defendant Mac Farms, investigating the charge, issuing a reasonable cause determination, and engaging in good faith to conciliate on behalf of Suthat Promnonsri and the class of similarly situated Thai and/or Asian individuals.

83. More than thirty days prior to the institution of this lawsuit, Itthi Oa-Sot filed a charge with the Commission alleging violations of Title VII by Defendant Maui Pineapple. All conditions precedent to the institution of this lawsuit have been fulfilled by the EEOC, including, giving notice of Itthi Oa-Sot's

charge to Defendant Maui Pineapple, investigating the charge, issuing a reasonable cause determination, and engaging in good faith to conciliate on behalf of Itthi Oa-Sot and the class of similarly situated Thai and/or Asian individuals.

ALLEGATIONS PERTAINING TO GLOBAL

84. Global recruited foreign nationals under the U.S. Department of Labor (“DOL”) H2-A guest worker program to work as farm workers throughout the United States, including farms in Hawaii. The H2-A workers who worked at the named Farm Defendants’ worksites are the Claimants.

85. Mordechai Orian (“Orian”) was Global’s Chief Executive Officer.

86. Tubchumpol (“Tubchumpol”) was Global’s Director of International Relations and was the liaison between Global, the Claimants, and the Thai recruiting companies and authorities.

87. Global employed Bruce Schwartz (“Schwartz”) as its Operations Manager, interviewer, and as an on-site supervisor for farms where the Claimants worked.

88. Beginning in or about March 2003 and continuing through in or about December 2006, Schwartz associated with Orian and others affiliated with Global. Throughout the time Schwartz associated with Orian and others affiliated with Global, Global was engaged in a scheme to recruit impoverished Thai nationals to work as agricultural laborers in the United States and to ensure that the H-2A guest workers remained in Global’s service by using their excessive debts and control over the workers’ passports to keep them from escaping.

89. In or about April 2003, Schwartz stole stationery from Taft Vegetable in Bakerfield, California, and Orian crafted a letter on the stationery that falsely stated Taft Vegetable needed 250 agricultural workers to harvest crops.

90. Orian told Schwartz that he needed the letter to obtain workers through the U.S. Department of Labor H-2A guest workers program to

demonstrate there was a shortage of U.S. workers and that when the foreign workers arrived they could move them around to various farms.

91. In or about December 2006, at Orian's request, Schwartz signed a false affidavit about the letter drafted on Taft Vegetable Farm. Schwartz' affidavit was submitted to the U.S. Department of Labor in support of the appeal from Global's and/or Orian's debarment from the H-2A guest worker program.

92. A.A.C.O. International Recruitment Co., Ltd. ("AACO") is a Thai recruiting company that recruited Thai nationals to work outside of Thailand, and Ratawan Chunharutai ("Chunharutai") represented herself as both the owner and Managing Director of AACO. Podjaneer Sinchai is a Thai labor recruiter who operated a licensed recruiting agency named Podjaneer International Co., formerly named A Go International Co. Sujittraporn (first name unknown) is a Thai labor recruiter for KS Company.

93. In or about January 2004, Schwartz traveled to Thailand at Orian's direction, and interviewed Thai nationals at K.S. Manpower, Inc., a Thai labor recruiting company.

94. Between April 2004 and May 2004, Schwartz and Tubchumpol met with officials of the Thai Department of Labor and the U.S. Embassy who expressed concerns over excessive recruitment fees being paid by the Claimants who were jointly recruited by Thai recruiters and Global.

95. During the trip to Thailand, Schwartz, and Tubchumpol heard Thai labor recruiter Rattawan Chunharutai tell the Claimants who were being recruited for Global, that they would have to pay up front recruitment fees and to secure loans to pay the fees using their houses and lands as collateral.

96. After returning home from the Thailand recruitment trip, Schwartz told Orian that the Claimants were paying excessive recruitment fees.

97. Schwartz knew that neither he nor Global could provide the Claimants up to three years of steady employment in the United States that they promised

because Global could not procure H-2A guest worker visas for more than 10 months because the H-2A guest workers program is seasonal and temporary.

98. Nonetheless, Global continued to recruit Thai nationals with promises of up to three years of steady employment at high wages.

99. Global gave ACCO and KS Company power of attorney to recruit workers from Thailand. But, Global did not pay any fees or costs to either recruiting company for their services. Tubchumpol and Schwartz conducted interviews of candidates in Thailand at the respective offices of AACO and KS Company. Tubchumpol also visited some Thai workers in their hometowns in provinces distant from Bangkok. AACO paid for Tubchumpol's hotel, took her out to dinner, and paid for some of the visits she made to the remote Thai provinces. KS Company also paid for Tubchumpol's visits to Thailand. ACCO's owner Chunharutai referred Tubchumpol to work for Global.

100. Tubchumpol and/or ACCO prepared translations of documents required by the H2-A program including but not limited to Clearance Orders and employment agreements.

101. Global brought approximately 600 Thai nationals to work in the United States under the U.S. Department of Labor H2-A seasonal and temporary H2-A guest worker program to work on farms throughout the United States, including Hawaii and Washington.

102. Global's recruiters sought impoverished Thai nationals to work at farms in the United States by enticing the Thai nationals with false promises of high wages, and up to three years of steady employment.

103. Global's Thai recruiters told Claimants that Global sought uneducated and poor workers because such persons were less likely to try to escape. One recruiter told a Claimant to hide the fact that he had a college degree and to say that he had a fourth grade education. Global's recruiters told Claimant PM who had a sixth grade education that if he were more educated he would not qualify

because the desired candidates would not ask too many questions, show curiosity, or otherwise appear to have the potential to cause trouble. Global's recruiters asked Claimant PP whether he had any family in the U.S. and whether he spoke English because Global did not want workers who could complain. When Claimant PP arrived in the U.S., Tubchumpol re-interviewed him to confirm he did not speak English and that he had no family in the U.S. When Claimant TC stated that he had completed the twelfth grade and knew some English, he was told to hide his educational background and say he only had a sixth grade education because the employers believed that more highly educated workers were less likely to do what they were told. Global's recruiters also advised Claimant WK that he would not be qualified for the job if he spoke English because workers who spoke English could run away.

104. Orian made comments suggesting that he targeted Thai workers because Orian presumed that Thai workers were willing to "just follow" by stating, "The Thai people, they are good people, nice people. And they just follow. . . ." Orian further stated that he had previously hired workers from Mexico, China, and Nepal but that the problem with those workers was that they would often disappear. The Thai workers, however, would not leave. He said, "That's why we decide to go with Thailand, because the ration – ratio at that time of people who be absconded was 3 percent, 2 percent compared to 80 percent, 90 percent, 100 percent from other countries" Orian continued, "[S]o you just go to countries. You know it's going to be easier and they're going to stay on the job... That's why Thailand."

105. Global and AACO required that the Claimants pay substantial recruitment fees to secure the U.S. jobs, knowing that they were impoverished and would have to borrow the money using their family land as collateral to secure the substantial debt.

106. Global knew that the Claimants had incurred high debts to secure the U.S. jobs, but threatened and did send the Claimants back to Thailand before they could work as promised, knowing that the Claimants and their families had no means of repaying the debts, and would face serious economic and other harms as a direct result of the debts incurred as a result of the recruitment scheme and the false promises of steady, long-term employment at high wages.

107. Global promised the Claimants' working conditions that complied with U.S. law in exchange for exorbitant recruiting fees.

108. Global harassed and intimidated the Claimants on a regular basis.

109. Global regularly threatened the Claimants with deportation, arrest, suspension, and/or physical violence.

110. Global unlawfully confiscated the Claimants' identification documents.

111. Global subjected the Claimants to uninhabitable housing; insufficient water, food, and kitchen facilities; inadequate pay; significant gaps in work; visa and labor certification violations; suspension, deportation, and/or physical violence.

112. Numerous Claimants received pay stubs reflecting a check in the amount \$0 for work performed at the Farm Defendants' farms.

113. Numerous Claimants were told that Global had wired their pay to their families in Thailand, but when Claimants contacted their families, their pay had not been sent to the Claimants' families. When Claimants confronted Global's management including without limitation Tubchumpol, she would get upset and say that the Claimants complained too much and threatened to send them back to Thailand or to farms with less work available.

114. Global subjected the Claimants to intolerable working conditions that resulted in their constructive discharge.

115. Global representatives personally confiscated and directed its on-site field supervisors to confiscate the Claimants' passports and visas upon arrival in the U.S. in Hawaii and Washington, and at various airports throughout the U.S. where the Claimants were transported to work, to restrict the Claimants.

116. Between June 2004 and November 2004, Schwartz worked for Global in Washington State as an onsite supervisor. At Orian's direction, Schwartz confiscated the Claimants' passports when they arrived in the United States to prevent them from escaping.

117. Global employed Joseph Knoller ("Knoller") as its Vice-President of Operations and as a consultant.

118. In or about November 2004, Orian sent Knoller to Yakima, Washington to provide security so that the Thai H-2A guest workers could not run away and would remain in Global's service. Knoller hired a detention force, including one person who was introduced as a former FBI agent.

119. Schwartz, Knoller, and Tubchumpol, met with the Claimants and told them that they could not leave the apartment where they were living. Guards parked their cars outside the apartment to prevent the Claimants from leaving. At this time, Schwartz, Knoller, and Tubchumpol knew that the Claimants were afraid that leaving Global's service would expose them and their families to a risk of financial ruin because of the insurmountable debts they incurred, some of them to Global itself, in connection with Global's recruitment scheme.

120. Global employed Shane Germann ("Germann") as an on-site manager at farms where the Claimants worked and as a regional supervisor for Hawaii farms. Orian, Tubchumpol, Schwartz and Knoller all supervised Germann.

121. Beginning in or about May 2003 and continuing through in or about February 2006, Germann was employed by Orian and Global.

122. At the direction of Orian, Tubchumpol and/or Knoller, Germann confiscated the Claimants' passports when they arrived in the United States to prevent them from escaping.

123. Between May 2003 and February 2006, Germann observed Tubchumpol confiscate the Claimants' passports when they arrived in the United States.

124. Between May 2003 and February 2006, Germann sent the Claimants' passports by Federal Express to the Global' office in Los Angeles, California, where the passports were held.

125. Between May 2003 and February 2006, a Global employee, who worked in the Los Angeles, California office, would send Germann the Claimants' passports so they could fly to other work locations in the United States.

126. In or about the Summer of 2004, in Maui, Hawaii, Joseph Knoller, called a meeting of Claimants and told them that he did not want anyone escaping; that a worker who previously escaped had been shot; and that only if "you have power or wings" can you "fly away from the island."

127. In or about the Summer of 2004, in Maui, Knoller, after accusing Claimant AH of encouraging other Claimants to run away and of withholding information about their whereabouts, slapped Claimant AH and threatened to send him home.

128. In or about October 2004, Global sent Claimants BK, KA, and approximately twenty-one other Claimants from Washington State to Maui, Hawaii. Schwarz handed the Claimants their passports in Washington state so they could board the airplane and Sam Wongsesanit ("Wongsesanit") confiscated the Claimants' passports in Maui when they landed as ordered by Germann.

129. Global employed Wongsesanit as an on-site field supervisor at various farms in Hawaii. Wongsesanit reported to Orian, Tubchumpol, Schwartz, Knoller, and Germann.

130. In late August 2005, through early September 2005, Orian and Knoller, directed Germann, Wongsesanit, and another person, to secure the perimeters of the Maui Pineapple housing compound to prevent the Thai guest workers from running away.

131. During the time Wongsesanit was employed by Global, the Claimants told Wongsesanit that they had paid excessive recruitment fees procured by substantial debts to get the U.S. jobs.

132. At the direction of Tubchumpol and Germann, Wongsesanit confiscated the Claimants' passports.

133. Wongsesanit knew that some of the Claimants voiced their reluctance to relinquish their passports.

134. Wongsesanit would send via Federal Express, the Claimant's passports, which included their visas, to Global's office in Los Angeles, California where the passports were held.

135. Tubchumpol, Germann, and Knoller directed Wongsesanit to conduct roll calls and bed checks to ensure that the Thai nationals did not run away.

136. Global employed Charlie Blevins ("Blevins") as its Operations Manager at various farms.

137. Global employed Sam Prinya as a field supervisor at various farms.

138. Global compelled the Claimants' labor and service by threatening to send them back to Thailand when they complained about late or shorted wages, insufficient work hours, poor housing and work conditions, lack of food and water, illegal deductions from their pay, confiscation of their passports, and failure to procure promised visa extensions, knowing that these threats caused the Claimants to believe that, if they were sent back to Thailand, they and their families would suffer serious harm, including the risk of destitution, shame, and loss of family homes and subsistence lands, as a result of debts incurred to pay the recruitment fees.

139. Orian confirmed that Global withheld federal and state income taxes from the Claimants in Hawaii.

140. Orian admitted that he became aware of ACCO and K.S. charging recruitment fees to the Thai workers. Orian admitted that in 2005 he became aware that the Claimants were complaining about recruitment fees substantially higher than acknowledged by Global's recruiting companies in Thailand. As a result, Global sent an ACCO representative to meet in with the Claimants in Maui. However, the ACCO representative threatened the Claimants and/or demanded more fees.

141. Tubchumpol confirmed that in 2004 the Claimants complained about paying recruitment fees substantially higher than stated in the employment contracts prepared in Thailand. Tubchumpol discussed the discrepancy with ACCO's owner Chunharutai, but failed to correct the problem.

142. Schwartz also heard that Claimants complained about recruitment fees of \$20,000-\$10,000.

143. Tubchumpol admitted that the Claimants complained that there was not enough work and that Global's Thai recruiters asked for additional money in order to stay in the United States and continue working while meeting with Claimants in Hawaii.

144. Numerous Hawaii state and federal investigations found that Global violated various requirements which perpetuated and exacerbated the hostile work environment and discrimination against the Claimants.

145. In March and April 2006, the Hawaii Department of Labor and Industrial Relations' Occupational Safety and Health Division ("HDLIR") conducted inspections of various farms camps in Hawaii that employed temporary migrant farm workers. The inspection of Global's housing camps resulted in citations for multiple violations ranging from unsafe living conditions to inadequate safety and health management systems. Violations for unsafe living

conditions included insufficient living space, beds too close together, and exposure to electrical and fire hazards.

146. In 2004 and 2005, Global failed to obtain and/or maintain workers' compensation insurance during the time it employed Claimants in the state of Washington. This in part resulted in Global not being able to continue doing business in Washington. Global moved on to Hawaii where Global failed to provide workers' compensation coverage to its H-2A workers working in Hawaii in 2006. As a result, the HDLIR ordered Global to discontinue operations in Hawaii effective June 26, 2006, and notified one or more Hawaii farms, including but not limited to Kelena Farms in July 2006.

147. The U.S. Department of Labor found that Global improperly deducted \$75 from the paychecks of some of workers for damage allegedly done to housing; improperly deducted for food \$42 per week from the Claimants who worked at Maui Pineapple; failed to offer sufficient hours of work; improperly withheld federal income tax from the workers' paychecks; failed to pay the required overtime compensation to the workers.

148. On or about July 27, 2006, the U.S. Department of Labor issued a Notice of Prospective Denial of Temporary Alien Agricultural Labor Certification to Global for three years. According to this Notice,

An investigation of [Global's] operations relating to the employment of agricultural workers has disclosed multiple substantial violations in California for the H-2A labor certification application that covered the period from August 1, 2003 to April 30, 2004, under the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act (IRCA) (8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184(c) & 1186), and under the implementing regulations for these Acts. As a result of this investigation and pursuant to 20 C.F.R. § 655.110(a), the Office of Foreign Labor Certification in the employment and Training Administration (ETA) has

determined that any H-2A labor certification application filed by either Global Horizons Manpower, Inc. also as known as Global Horizons, Inc. (Global) or Mordechai Orian (Orian) will be denied for the next three years. I have concluded that Global and/or Orian made fraudulent and/or willful misrepresentations with respect to their labor certification application and that these actions constitute a “substantial violation” as defined in 20 C.F.R. §655.110(g)(1)(i)(E). More specifically:

- Global and Orian knowingly provided false information regarding agricultural work to be performed in California under the labor certification application requested for the August 1, 2003 to April 30, 2004, time period. This application sought certification for 200 workers, when neither the agricultural work nor the contractual relationship with Taft Vegetable Farms, which was the basis for the application, ever existed.
- Global and Orian also knowingly provided false information regarding the termination of the employment of U.S. workers. They represented to government agencies that the employment of U.S. workers was terminated for poor performance, when, in fact, the workers were terminated for reasons other than for cause.

149. On November 30, 2006, a U.S. Department of Labor Administrative Law Judge made the July 27, 2006 Notice of debarment against Global final.

150. The foregoing as well as other investigations, citations, and findings gave Global and the Farm Defendants ample opportunity to prevent and correct the alleged discrimination and hostile work environment.

Defendants knew or should have known about basic information regarding the H2-A program requirements from DOL’s website

151. The U.S. Department of Labor’s website summarizes the H2-A worker program as:

The Immigration and Nationality Act (INA) authorizes the lawful admission into the United States of temporary, nonimmigrant alien workers to perform agricultural labor or services that are temporary or seasonal in nature. . . . Employers of such workers and U.S. workers who perform work covered by the job order or contract are obligated to comply with the terms and conditions specified in the job order/contract, and all applicable statutory and regulatory requirements.

152. The U.S. Department of Labor requires that each H2-A worker be provided a copy of a work contract or job clearance order:

Every worker must be provided a copy of the worker contract or, as a substitute for the worker contract, a copy of the job clearance order. If worker contracts are provided, they must specify at least those benefits required by the job order and DOL Regulations. The job clearance order is the “official” document since it is the one submitted by the employer and approved by DOL. The job clearance order/contract must state:

- the beginning and ending dates of the contract period
- any and all significant conditions of employment -- such as payment for transportation expenses incurred, housing and meals to be provided (and related charges), specific days workers are not required to work (i.e., Sabbath, Federal holidays)
- the hours per day and the days per week each worker will be expected to work during the contract period
- the crop(s) to be worked and/or each job to be performed
- the applicable rate(s) of pay for each crop/job
- any tools required and that the employer pays for same

- that workers' compensation insurance will be provided per State law of the State where work is performed

153. The U.S. Department of Labor website summarized the housing requirements as follows:

Housing that meets the applicable substantive health and safety requirements, both prior to and throughout the period of occupancy, must be provided at no cost to covered workers.

154. When the Claimants complained of the unlawful employment practices alleged in the above paragraphs 84-127 as to Global, and paragraphs 129 to 658 below as to allegations pertaining to the Farm Defendants and Global, Global took adverse employment actions against the Claimants including without limitation threatening the Claimants with deportation, arrest, suspension, and/or physical violence; Global subjected the Claimants to harassment, significant gaps in work, visa and certification violations, suspension, deportation, and/or physical violence; and Global subjected the Claimants to intolerable working conditions that resulted in constructive discharge.

***Global provided guidance to the Farm Defendants
about compliance with the H2-A program***

155. Global was aware of the H2-A program requirements and provided guidance to one or more Farm Defendants—e.g. Mac Farms. Both Global and the Farm Defendants failure to comply with the H2-A program also contributed to the creation of a hostile work environment and disparate treatment of the Claimants in violation of Title VII.

156. The Global-Mac Farms contract contained a four page exhibit entitled: "H-2A COMPLIANCE REVIEW CHECKLIST" that provided the following:

ARE YOU AWARE:

THAT THE FOREIGN H2-A WORKERS CAN WORK:

- ONLY FOR YOU?
- ONLY AT THE LOCATION(S) NAMED?
- ONLY DURING THE STATED TIME PERIOD?
- THAT GLOBAL MUST HIRE ALL U.S. JOB APPLICANTS REFERRED TO IT WHO ARE READY, WILLING AND ABLE TO PERFORM THE JOB DURING THE FIRST 50% OF THE CONTRACT PERIOD?
- THAT ALL U.S. WORKERS DOING THE SAME JOB AS H2-A WORKERS (CORRESPONDING EMPLOYMENT) ARE ENTITLED TO ALL THE RIGHTS AND PROTECTIONS OF THE CONTRACT?
- THAT IF A WORKER ABANDONS EMPLOYMENT, YOU MUST IMMEDIATELY INFORM GLOBAL SO THAT IT COULD CONTACT THE LOCAL JOB SERVICE SO THERE IS AN OPPORTUNITY TO INVESTIGATE THE CIRCUMSTANCES OF THE ABANDONMENT OR TO REFER QUALIFIED U.S. WORKERS TO FILL JOB OPENINGS?
- THAT WORKERS WHO COMPLETE THE SEASON OR ARE TERMINATED WITHOUT SUFFICIENT CAUSE MUST BE PAID THEIR RETURN TRANSPORTATION AND FULL $\frac{3}{4}$ GUARANTEE?

ONCE EMPLOYMENT OF U.S. WORKERS IN CORRESPONDING EMPLOYMENT, OR EMPLOYMENT OF H2-A WORKERS COMMENCES, DO YOU KNOW THAT H2-A EMPLOYER MUST:

1. PROVIDE THE WORK CONTRACT OR JOB ORDER (FORM ETA-790) TO EACH WORKER (FOREIGN OR U.S. WORKER IN CORRESPONDING EMPLOYMENT) BY THE FIRST WORKDAY?
2. KEEP ALL REQUIRED PAYROLL RECORDS?

3. PROVIDE REQUIRED WAGE STATEMENT TO WORKER ON OR BEFORE EACH PAYDAY?
4. PAY ALL WAGES DUE ON THE DISCLOSED PAYDAY?
5. PAY THE CORRECT WAGE RATE EACH PAYDAY? THAT RATE IS THE HIGHEST OF THE AEW, STATE OR FEDERAL MINIMUM WAGE, PREVAILING WAGE, OR PROMISED WAGE, INCLUDING PIECE-RATES.
6. GUARANTEE PAYMENT FOR $\frac{3}{4}$ OF THE WORK HOURS IN THE CONTRACT PERIOD?
7. MAKE ALL LEGALLY REQUIRED PAYROLL DEDUCTIONS AND NOT MAKE DEDUCTIONS PROHIBITED BY LAW OR NOT DISCLOSED IN WORKER CONTRACT?
8. GLOBAL OR CLIENT MUST PROVIDE HOUSING TO ALL WORKERS UNDER THE CONTRACT (U.S. WORKERS IN CORRESPONDING EMPLOYMENT AND H2-A WORKERS) WHO CANNOT REASONABLY RETURN TO THEIR PERMANENT HOME AT NIGHT? AND
 - B. ENSURE THE HOUSING REMAINS IN COMPLIANCE WITH APPLICABLE SAFETY AND HEALTH STANDARDS?
9. GLOBAL OR CLIENT MUST PROVIDE HOUSING DESCRIBED IN #8 FREE OF CHARGE FOR RENT OR DEPOSITS TO ALL WORKERS?
10. GLOBAL OR CLIENT MUST PAY THE COST OF TRANSPORTATION AND SUBSISTENCE, TO YOUR FARM, FROM WHERE EACH U.S. OR FOREIGN WORKER AS RECRUITED WHEN THE WORKER COMPLETES 50% OF THE CONTRACT?
 - B. PROVIDE DAILY TRANSPORTATION FROM THE HOUSING TO THE WORK SITE AT NOT COST?
 - C. AT THE END OF THE CONTRACT PERIOD, PAY FOR THE WORKER'S RETURN TRANSPORTATION AND SUBSISTENCE TO "THE PLACE FROM WHICH HE CAME", USUALLY HIS OR HER HOME?

11. GLOBAL OR THE CLIENT MUST ENSURE THAT VEHICLES USED TO TRANSPORT U.S. OR H2-A WORKERS MEET FEDERAL, STATE AND LOCAL SAFETY REQUIREMENTS?
12. GLOBAL OR CLIENT MUST PROVIDE THREE MEALS PER DAY AT COST OR FREE CENTRALIZED COOKING FACILITIES FOR THE WORKERS?
13. GLOBAL OR CLIENT MUST PROVIDE NECESSARY TOOLS, SUPPLIES AND EQUIPMENT AT NO COST TO THE WORKER?
14. PROVIDE WORKER'S COMPENSATION INSURANCE (OR ITS EQUIVALENT IF WORKERS ARE EXCLUDED FROM STATE WORKERS COMPENSATION) AT NO COST TO THE WORKER?
15. IN CASE OF CONTRACT IMPOSSIBILITY ("ACT OF GOD") THAT REQUIRES TERMINATION OF EMPLOYMENT PRIOR TO THE END OF THE CONGTRACT PERIOD, PROVIDE REMAINING CONTRACT BENEFITS, INCLUDING PAYMNT OF $\frac{3}{4}$ GUARANTEE OBLIGATIONS (UP TO TIME OF THE EVENT WHICH TERMINATED THE EMPLOYMENT) AND RETURN TRANSPORTATION/SUBSISTENCE?
16. GLOBAL MUST AVOID REJECTING OR TERMINATING U.S. WORKERS OTHER THAN FOR LAWFUL JOB-RELATED REASONS? AND MUST B. NOTIFY THE LOCAL JOB SERVICE OFFICE OF ALL REJECTIONS, TERMINATIONS AND RESIGNATIONS OF U.S. AND/OR FOREIGN WORKER?
17. PROVIDE U.S. WORKERS EMPLOYED IN OR APPLYING FOR CORRESPONDING EMPLOYMENT WAGES, BENEFITS, AND WORKING CONDITIONS AT LEAST EQUAL TO THOSE PROVIDED TO FOREIGN WORKERS?
18. AVOID DISCRIMINATION AGAINST WORKERS WHO TESTIFY OR OTHERWISE EXERCISE THEIR RIGHTS?

19. AVOID CAUSING WORKERS TO WAIVE THEIR RIGHTS?
20. PERMIT DOL INVESTIGATIONSN OF YOUR BUSINESS?
21. AVOID INTERFERING WITH DOL OFFICALS WHO INVESTIGATE YOUR BUSINESS ACTIVITIES?
22. AVOID PROVIDING FALSE INFORMATION TO DOL OFFICIALS?
23. MAKE RECORDS AVAILABLE TO DOL, THE WORKER OR THE WORKER'S REPRESENTATIVE?
24. COMPLY WITH ALL FEDERAL, STATE AND LOCAL EMPLOYMENT-RELATED LAWS AND REGULATIONS?
25. COMPLY WITH THE FAIR LABOR STANDARDS ACT?
26. IF YOU EMPLOY U.S. WORKERS, COMPLY WITH THE MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT?

THIS IS ONE OF A SERIES OF COMPLIANCE ASSISTANCE FACT SHEETS HIGHLIGHTING U.S. DEPARTMENT OF LABOR PROGRAMS. IT IS INTENDED AS A GENERAL DESCRIPTION ONLY AND DOES NOT CARRY THE FORCE OF LEGAL OPINION.¹

157. The Farm Defendants knew or should have known of the H2-A program requirements in that the above guidance provided an opportunity to investigate the requirements. Compliance with the H2-A program requirements should have given all Defendants an opportunity to prevent and correct the discrimination and hostile work environment alleged in this action.

¹ Original typographical errors not corrected.

ALLEGATIONS PERTAINING TO MAC FARMS

Mac Farms' possible violations of the H2-A program

158. Mac Farms executed three contracts for Global to provide H2-A workers at Mac Farms. The first Farm Labor Contract H2-A Agreement was effective from October 1, 2004 through March 31, 2005. The second contract was effective from September 1, 2005 through March 31, 2006. The third contract effective from August 3, 2006 through March 30, 2007.

159. Based on information and belief, during the first and second contract periods of about October 2004 through March 31, 2005, Mac Farms had Claimants working at Mac Farms without DOL authorization.

160. On or about July 18, 2005, Global submitted an application for 50 Claimants to work at Mac Farms from September 3, 2005 through March 31, 2006. The housing was located at Mac Farms at 89-406 Mamalahoa Highway, Captain Cook HI 96704. TMK 8-9-12-11 consisting of a four bedroom house with 1.5 bathrooms. Additional housing was located at 93-2073 South Point Rd., Naalehu, HI 96772. TMK #9-3-4-30 consisting of eight cabins and a 1000 square foot, two story house.

161. On or about August 10, 2005, DOL approved 26 workers to work at Mac Farms from September 3, 2005 through March 31, 2006 to be housed at the above locations.

162. On or about August 23, 2005, Global submitted an application for Mac Farms to share 39 additional Claimants with Kau Gold Farms from October 9, 2005 through August 9, 2006.

163. By letter dated September 6, 2005, to DOL, Global changed the request for 39 workers to a request for employment dates of October 9, 2005 through March 20, 2006. The letter further states that Mac Farms' season has typically been from August through February of the following year and that these additional workers are needed because the August 10, 2005 approval was limited

to 26 workers and the August 10th approval did not authorize the 50 workers requested by Mac Farms on or about July 18, 2005.

164. By letter dated September 26, 2005, Global requested to remove Mac Farms from the August 23, 2005 application for 39 shared workers for Mac Farms and Kau Gold such that the workers would only be certified for Kau Gold Farms from October 9, 2005 through March 20, 2006.

165. On or about February 17, 2006, the Claimants working at Mac Farms filed a complaint with the Hawaii Occupational Safety and Health (“HIOSH”) because 20 workers were housed at 92-9102 Hula Lane, Naalehu, HI 96722, which was approved to house only 5 workers. A citation was issued because the overcrowded housing lacked a functioning toilet, toilet paper, and hot water, and had a buckling kitchen floor.

166. These Claimants living at the Hula Lane housing had been approved for another farm, Talia Ranch, owned by Global and/or Global’s management, but were working at Mac Farms. Moreover, DOL had approved 10 workers for Talia Ranch from May 21, 2005 through March 21, 2006 to be housed at the Shirakawa Motel, located at 95-6040 Mamalahoa Hwy, Naalehu, HI, not at Hula Lane where the housing violations cited. In fact, the housing at Hula Lane was a single family dwelling and not permitted by the County for the number of farm workers housed there.

167. By letter dated March 23, 2007, Mac Farms produced records to the EEOC reflecting the number of workers Global supplied each week from October 11, 2004 through March 27, 2005. These dates were not covered by a Clearance Order or other DOL authorization supplied to the EEOC during the investigation of the Charges of Discrimination against Mac Farms. From October 11-24, 2004, Mac Farms used 12 workers supplied by Global. From October 25, 2004 through January 31, 2005, Mac Farms used 25 workers supplied by Global. From January 31, 2005 through March 27, 2005, Mac Farms used 50 workers supplied by Global.

Based on information and belief, Claimants worked from Mac Farms without DOL authorization from in or about October 11, 2004 through March 27, 2005.

168. On or about August 4, 2006, Mac Farms requested 35 H2-A workers through Global.

169. On or about August 24, 2006, DOL permitted Global to supply 30 (not 35) workers to Mac Farms from September 23, 2006 through March 30, 2007. Although in July 2006 DOL debarred Global from the H2-A program, Global filed an appeal and the debarment did not become final until November 2006.

170. By letter dated June 29, 2010, Mac Farms stated that Global rotated workers to farms other than Mac Farms which is an admitted violation of the H2-A program. However, Mac Farms and Global's third contract at Exhibit B (i.e., the H2-A Checklist discussed above) further stated that the workers Global supplied to work for Mac Farms could only work for Mac Farms and could not be rotated to other farms.

Mac Farms retained control over the Claimants

171. The contracts between Mac Farms and Global gave Mac Farms sufficient control over the Claimants, their housing, transportation, subsistence, and work to make Mac Farms liable as Claimants' employer for discrimination prohibited by Title VII as alleged herein.

172. The first two contracts between Mac Farms and Global gave Mac Farms day-to-day control over the work to be performed by the Claimants by stating "[C]LIENT shall advise FLC of the Services that must be performed on a day-to-day basis, as well as those portions of the Land to be worked by FLC. CLIENT shall determine the number of its employees that will be required to accomplish the Services and notify FLC of said number."

173. The first two Contracts also gave Mac Farms the right to have a representative present at all times to ensure quality. In practice, not Global

supervisor was present at times at Mac Farms and Mac Farms' personnel directly supervised the Claimants.

174. The third contract contained language that enhanced Mac Farms' control over the Claimants' work, housing, and transportation.

175. The third contract at Schedule 1 provided that Mac Farms would provide payroll services, paying state taxes, state temporary disability insurance, and workers compensation insurance for the Claimants thereby ensuring greater control over the Claimants.

176. In the third contract's Exhibit A at page 22, Mac Farms set a one-hour training requirement, a minimum production level of 20 bags, and limited the number of supervisors to one for every 40 workers, and reiterate the rate of pay discussed previously in the third contract.

177. The third contract's Exhibit A at page 23 further ensured Mac Farms' control over the Claimants by setting the specific hours work was to be performed and stated that Mac Farms would provide buckets and bags for harvesting. Exhibit A at page 25 stated that Mac Farms would provide transportation at worksites throughout Mac Farms' 4,000 acre property.

178. The third contract, at ¶8(e) stated that Mac Farm would provide the housing but that it would not be responsible for complying with federal and state laws. In fact, in two additional places in the third Contract Mac Farm noted that it was housing Global's employees in "non-compliant" housing. The third contract Schedule 2 of the third Contract reiterated that Mac Farms would provide the building for thirty workers but that Mac Farms would not ensure furniture, utensils, water, or gas. Again in Exhibit A to the third contract at page 26, Mac Farms reiterated its knowing submission of the Claimants to "non-compliant" housing by stating that "Macfarms will offer to rent unfurnished and *non-compliant housing* but will not take on the responsibility to make compliant."

179. Exhibit B to the Mac Farms' third contract with Global was a four page document entitled "H2-A Compliance Review Checklist" quoted above in *supra* ¶ 130. The checklist provided detailed guidelines regarding the use of H2-A workers. The checklist gave Mac Farms ample opportunity to investigate its own compliance with the H2-A program and to investigate whether Global was in compliance with the H2-A program.

180. Exhibit D of the third contract entitled "Overtime Formulation" pursuant to Hawaii State law provided that Mac Farms would pay \$21-23/hour for all overtime hours beyond 40 hours per week up but that if Mac Farms guaranteed the workers at least \$2,000 worth of hours for a month the workers would be exempt from overtime compensation. Exhibit D also permitted Global to choose 20 work weeks during the year in which the overtime compensation requirement would only apply to time worked over 48 hours in a week for employees.

181. Despite these provisions of Exhibit D of the third Mac Farms and Global contract, the EEOC received four check stubs from 2004 reflecting a check amount of \$0 to Claimant who worked at Mac Farms. Two of these four checks with net amounts of \$0 contain what appear to be improper deductions labeled "Thai Acco" in the amount of \$351.21 and \$410.65.

Mac Farms management confirmed that Mac Farms controlled the terms and conditions of the Claimants' employment

182. Mac Farms' controlled the Claimants' jobs by showing them how to conduct the work, assigning work, requiring minimum production levels, controlling the hours they worked, and providing the equipment, housing, and transportation.

183. Mac Farms supervised and/or monitored the Claimants. Mac Farms' Harvest Supervisor Nancy Yamamoto confirmed that she and a few local workers showed the Claimants how to pick the macadamia nuts and advised Global on work assignments at the farm.

184. Mac Farms' Orchard Manager Dan Springer also admitted assigning work to the Claimants and meeting with Global supervisors on a weekly basis to discuss the Claimants' productivity.

185. Harvest Supervisor Yamamoto also met with Global supervisors to discuss the Claimants' work assignments and their productivity.

186. According to Claimant SL, Mac Farm supervisor provided instructions to Claimants designated as crew leaders.

187. Harvest Supervisor Yamamoto also confirmed that Mac Farms controlled the job performed by the Claimants by providing gloves to the Claimants. Mac Farms also provided the bags for the macadamia nuts.

188. Harvest Supervisor Yamamoto further admitted that she recorded the Claimants' daily work hours.

189. Mac Farms also admitted in response to the charges filed against it that "[w]hen the Global supervisor was not present, it became necessary for Mac Farms supervisors to attempt to communicate with the Global workers for issues such as giving them more bags to put the nuts in, giving them more tags for the bags or to collect full bags."

190. Yamamoto also confirmed that she gave the Thai workers rides to the store.

191. Mac Farms' President, manager, and supervisor all confirmed that Mac Farms provided transportation to the Claimants. Mac Farms' President Brown stated that Mac Farms transported Claimants from one work site to another throughout Mac Farms 4,000 acres because Mac Farm's 4x4 trucks were the only way to access some of the nuts in lava fields.

192. In addition, Mac Farms President Hillary Brown, Orchard Manager Springer, and Harvest Supervisor Yamamoto all admitted that Mac Farms provided housing for up to 25 Claimants at the Mac Farm property.

Mac Farms Engaged in Misconduct

193. Mac Farms engaged in the misconduct and/or discrimination against the Claimants by providing uninhabitable housing to the Claimants who lived at Mac Farms. At three different places in the third Contract, Mac Farms noted that Global's employees were housed in "non-compliant" housing.

194. Mac Farms likely knew or should have known of minimum housing standards applicable to farms using H2-A workers, but Mac Farm improperly delegated that responsibility to Global, a company not authorized by the State of Hawaii.

195. Mac Farms also engaged in the misconduct and/or discrimination against the Claimants like JO by refusing to take the Claimants to the store to buy food to eat.

Mac Farms Had Actual Knowledge of Discrimination

196. Mac Farms knew of the misconduct and/or discrimination by Global against the Claimants. Orchard Manager Springer confirmed he knew that Global was not paying their workers. Springer described this as an "unscrupulous" practice and admitted that he talked with the Claimants who were not receiving pay.

197. Springer also confirmed that DOL talked to the workers to investigate Global's failure to pay them.

198. The \$0 paycheck from December 2004 described above for work at Mac Farms confirms the Claimants' complaints about pay that Springer admitted receiving.

199. Mac Farms' only response was for Orchard Manager Springer to tell the Claimants they could choose not work.

200. Mac Farms also knew and/or was aware of that some of the Claimants ran away. Springer admitted knowing that some of the Claimants ran away.

Without taking measures to find out why the Claimants were running away, Mac Farms continued to use Global until March 2007.

Mac Farms Had Constructive Knowledge of Discrimination

201. Mac Farms should have known that the Claimants had insufficient food while living at the Mac Farms. Mac Farms' President Brown confirmed that the Claimants were unable to get to the store because Global's vehicle broke down. Based on information and belief, the nearest store was a two hour drive from the farm. Mac Farms' President Brown also confirmed Mac Farms' local workers brought food to the Claimants.

202. Brown, Yamamoto, and Springer were also aware that the Claimants set traps for wild pigs and turkeys.

203. Several of the Claimants had no food to eat at times while working at Mac Farms. For example, Claimant TP used rubber bands and rocks to catch birds to eat while working at Mac Farms.

204. Claimant YP said he did not have money for food because his pay was often delayed.

205. Mac Farms also should have known that twenty-one Claimants were housed in a house with a broken toilet and that this house was approved for a maximum of five workers. Mac Farms' employees transported Claimants from this house and citations by the Hawaii Labor Board pertaining to these violations should have been posted at the house.

206. On or about February 17, 2006, the HDLIR found various housing violates for the housing violations located at 92-9102 Hula Lane, Ocean View, Hawaii 96772, which housed twenty-one Claimants who worked at Mac Farms.

207. The Hawaii Labor Board cited Global for the following findings:

The workers a this housing site harvested nuts at the MacFarms...The workers did not have transportation

to/from work or other locations such as shopping, other than what Global Horizons provided to them.

The housing site consisted on a single-story house. There were three bedrooms, a living room that was also used as a bedroom, and two bathrooms.

The first bedroom was 208 square feet, and contained six beds (three double-bunk beds)... The second bedroom was 130 square feet and contained four beds (two double-bunk beds).

Although there were 21 workers living in the house at the time of the inspection, the house should only have held a maximum of five workers...

The inspector noticed that a three-foot area of the kitchen floor was damaged; specifically, two planks were warped and buckled.

[W]ongsesanit had stated that Global Horizons knew the floor was damaged for six months.

[A]t the time of the instant inspection on February 17, 2006, there was no toilet paper in one of the bathrooms. According to Wongsesanit, Global Horizons did not supply toilet paper for the workers. In this same bathroom, where was no flush handle on the toilet tank, and a cloth material was rigged to flush the toilet through the handle hole... The inspector also observed fecal material in the bowl...

[T]he missing toilet handle meant that the workers who lived there-21 of them at the time of the inspection – would have to grasp a cloth material to attempt to flush the bowl. Fecal material in the bowl indicated the bowl did not flush properly, or was not being cleaned sufficiently. The lack of toilet paper is a particular problem for workers who do not have means of

transportation, even to get to a store, other than what Global Horizons provides.

208. Mac Farms also should have known about the HDLIR's findings which resulted in various citations for the housing violations located at 93-2073 South Point Road, Naalehu, Hawaii 96772, which housed nineteen Claimants who worked at Mac Farms.

209. On or about March 20-21, 2006, the HDLIR made the following findings:

On March 20, 200[6], the inspectors looked around the site and observed what appeared to be pig hairs in different places on the walkway between cottages. A partially open trash bag was located along the walkway between the cabins. A few flies were noted on the bag. The trash bag was not in the trash can because the trash can was full.

Flies were also observed above the rooftop ... Meat was drying on the roof... A worker stated that the meat, which was considered "food" by the employees, was left on top of the roof to dry for subsequent consumption... Dozens of flies, meaning 30 or more, were observed.

Another area behind the two-story house was used to slaughter and dress the wild pig. The pig was laid on a wooden board. Pig hairs were left in the area, ... "Like dozens" of flies were observed there. The area was about 10-15 feet from the back door of the main house. "Pig liquid" was also observed where the hair was found.

On March 21, 2006, the animal organs were still on the top of cottage number 7. Sam Wongsesanit (Wongsesanit), Global Horizons' supervisor, stated that the workers killed a pig about one week prior and slaughtered it at the house.

Flies were able to get into the lunchroom on the first floor of the main house. The flies would follow a worker

into the house. The workers would waive their hands to brush the flies away from their food... Flies can carry infectious diseases...

210. Mac Farms also should have known about the HDLIR's findings on or about March 20-21, 2006, which resulted in various housing for the housing violations located at 93-2073 South Point Road, Naalehu, Hawaii 96772, which housed nineteen Claimants who worked at Mac Farms as follows:

While at the site, the inspector noticed that one of the windows on Cabin no. 3 was broken,...

[T]he broken glass pane had jagged edges...

[T]he workers expressed their concerns about the length of time-two months- that the window had been broken.

Wongsesanit had noticed the broken window a few days prior; however, he did not report the broken window to Global Horizons, nor did fix the broken window, get someone else to fix the window, or even place cardboard, wood, or other covering over the broken window to eliminate or lessen the hazard to the workers.

When [property owner Morton] Bassan accompanied the inspector on the inspection, Bassan noticed the broken window, but was not going to fix it.

Cabin no. 5 measured 8 feet and 4 inches by 8 feet and 2 inches, an area of 68 square feet. A double bunk bed was inside the cabin, which indicated two workers slept in there.

Based upon its size, Cabin no. 5 should have only housed one worker. The inspector confirmed through Wongsesanit that two workers lived in this cabin.

Cabin no. 8 measured 9 feet and 4 inches by 7 feet and 5 inches, an area of 64.6 square feet. A double bunk bed was in the cabin.

Based upon its size, only one worker should have been sleeping in Cabin no. 8. The inspector confirmed through Wongsesanit that two workers lived in this cabin.

The workers had been living in over-crowded Cabin nos. 5 and 8 for about two months.

The employees living in the cabins were Thai. Although Global Horizons also rented the two-story house on this site, and thus there was extra space for employees to sleep in this main house, the two-story house was occupied by Vietnamese workers. The Thai and Vietnamese workers were separated, according to Wongsesanit.

211. Living in the housing jointly provided by Mac Farms and/or Global was an adverse term and condition of employment for the Claimants.

212. Mac Farms should have also known that it needed to obtain workers from an authorized contractor but failed to check Global's credentials despite reflecting the need to do so in its third Contract. The third Contract at ¶6(b) stated that Global warranted that it had a valid California Farm Contractor's license. But Mac Farm turned a blind eye to Global's failures because in July 2006, the month before the third contract, U.S. Department of Labor had barred Global from the H2-A program for three years.

213. In July 2006, the HDLIR further confirmed that Global was not authorized to do business in Hawaii and warned:

several local farms may have been lead to believe" that Global "has acquired workers' compensation insurance and is now authorized to continue doing business in the State of Hawaii. As of July 18, 2006, Global . . . is still not authorized to do business in Hawaii. Allowing

Global employees to work on your farm would be in violation of the court's order. . . . We will continue working with the Hawaii State Department of Agriculture and the federal government to address any concerns that Hawaii's farming community may have regarding these recent developments.

214. Mac Farms also should have known that as of July 18, 2006, the HDLIR was notifying local farms of its concern that Global was falsely representing that it obtained worker' compensation insurance or that it was authorized to conduct business in Hawaii.

215. The third Contract with an effective date of August 3, 2006 through March 30, 2007 revealed the calculated risks that Mac Farm took in using Global. First, Mac Farm agreed to provide the Claimants' worker's compensation insurance in the August 2006 Contract. Second, the third contract is the only one of the three contracts that contained provisions suggesting that Global had disclosed to Mac Farms that various government agencies were investigating Global by requiring Mac Farm to contact Global's in-house counsel if any governmental agency contacted Mac Farm regarding Global or the workers. Moreover, while the first two Contracts did not mention Title VII, the third Contract added a provision that Global was warranting that it was in compliance with Title VII and a new indemnity provision, which makes plausible that Mac Farm knew that Global was being investigated for violating Title VII as to Claimants who worked at Mac Farm.

216. Mac Farms also should have known about the investigation by the U.S. Department of Labor as to the wage violations that occurred at Mac Farms.

217. On or about February 2007, a complaint was filed against Global for its failure to pay migrant workers on a regular basis at Mac Farms, "coercion of foreign workers to run away," and "numerous housing violations."

218. During the investigation, a Wage and Hour Investigator contacted Mac Farms to obtain employment records.

219. On March 8, 2007, a Wage and Hour Investigator and a Hawaii State Department of Labor Investigator met with some of the employees working at Mac Farms. The employees stated that they had not been paid for work performed since January 28, 2007. On March 8, 2007, the employees had not received the direct deposits for four pay periods.

220. Mac Farms also should have known about the U.S. Department of Labor's investigation and housing violations as to the Mac Farms housing in or about 2007 and 2008 pertaining to broken windows; unsanitary conditions; inadequate showers; food not free from vermin, rodents, and flies.

Race/National Origin Discrimination at Mac Farms

221. The Claimants belong to a protected class (Thai/Asian), the Claimants were qualified to do the work and they performed their jobs satisfactorily, the Claimants suffered adverse employment actions by being subject to adverse terms and conditions as described above and below because of their Asian race and/or Thai national origin, and similarly situated individuals outside the protected class were treated more favorably, or other circumstances surrounding the adverse employment actions giving rise to an inference of discrimination including but not limited to a hostile environment.

Adverse terms and conditions with respect to housing at the Mac Farms

222. The Claimants were subject to adverse terms and conditions because of their Asian race and/or Thai national origin with respect to the uninhabitable living conditions and/or "non-compliant" housing conditions while working at Mac Farms.

223. Non-Thai workers, including the Vietnamese, Filipinos, and Mexicans workers who also worked at the Mac Farms, were not subjected to the same uninhabitable and/or "non-compliant" housing conditions as the Thai workers.

224. As stated above, at three different places in the third contract Mac Farm noted that it was housing Global's employees in "non-compliant" housing.

225. Mac Farms management confirmed that Mac Farms provided a house that was located at the farm for twenty-five Thai workers which was more than the allowed five occupant maximum.

226. Claimants BS, CP, SR, NS, CK, PH, and other Claimants lived in a two or three bedroom house provided by Mac Farms with twenty to twenty-five Claimants. Claimant KH lived in a room with five to six others. Claimants WW and SL confirmed about fifteen to sixteen Claimants slept in the living room because there were not enough beds. During Claimant TJ time at Mac Farms, some Claimants had to sleep outside of the house or on the floor.

227. Claimants including but not limited to TP described the house owned by the farm as infested with roaches and rats.

228. The Claimants were subject to adverse terms and conditions with respect to the uninhabitable and/or “non-compliant” housing conditions while working at Mac Farms because they had no running water and no heat.

229. Claimant AK and the other Claimants he lived with had to buy their own drinking water.

230. Claimants CP, CK, TP, and JO had to use the restroom outside in the woods or the fields because there was no water to flush the toilets.

231. Those who were housed with Claimants BS, TJ, AK CP, SR, NS, SL, CK, KP, PK, PT, NF could not bathe for up to a week because the water truck came about once a week and the water ran out.

232. Sometimes, Claimants like KI traveled thirty minutes to the Vietnamese worker housing to shower or use the restroom when they had no water.

233. The Claimants at Mac Farms had to wash their clothes by hand.

234. When the weekly water supply had not run out, Claimant WW had to wake early in the morning to get in line to use the restroom at a house with no beds. Later, the Claimants received wood to build their own bunk beds. In fact,

Claimants like KI had to wake up at 3 a.m. in order to eat breakfast and prepare lunch because of the overcrowding even though work did not start until 7 a.m.

Denial and delay of pay at Mac Farms left Claimants without food

235. The Claimants were subject to adverse terms and conditions because of their Asian race and/or Thai national origin with respect to pay which left the Claimants without food to eat at times while working at Mac Farms. Because the Claimants' pay was often delayed, Claimants like YP and TP did not have food while working at Mac Farms. For example, Claimant NS was not paid for four weeks while working at Mac Farms and Claimant PK was not paid for one week of work while working at Mac Farms. Claimant CP-1 said his pay was seven to eight weeks behind. Claimant CP-2, SP, CK, SL, and PT also confirmed that they pay was always delayed or they were not paid on a regular basis.

236. Claimants like YP and RT received insufficient pay for the hours they worked due to illegal tax deductions and deductions for food while they worked at Mac Farms. Moreover, as Claimant SL's visa was expiring at the end of employment at Mac Farms, \$200 deduction was taken from his check for a visa extension, but no visa extension provided. Claimant KH confirmed that he was not paid and sometimes Mac Farms gave them some money in lieu of the pay the Claimants earned, but this did not prevent or correct the chronic problem of delayed and denied pay.

237. Mac Farms Orchard Manager Spring admitted that he knew Claimants were not paid and described this practice as "unscrupulous."

238. Non-Thai workers were not subjected to delay or non-payment of wages and Non-Thai workers received a higher hourly rate of pay while the Claimants, who received a lower hourly rate of pay, were entitled to three free meals per day or free centralized cooking facilities.

239. Claimant KH lived in housing that was about two hours away from the nearest store. Claimant JO had to walk five miles to get food when the Mac

Farms' workers did not want to take them to the store. Claimant TP used rubber bands and rocks to catch birds to eat while working at Mac Farms.

Different terms and conditions—production levels at Mac Farms

240. The Claimants were subject to adverse terms and conditions because of their Asian race and/or Thai national origin with respect to the production requirements because the non-Thai workers, including the Filipinos, were treated more favorably. While the Claimants TJ, PT, NF and other Claimants were constantly pressured to pick more than 25 bags of macadamia nuts per day, the Filipino workers did not have a quota. Claimant PK and other Claimants observed that the Filipinos worked in an area at the farm where the macadamia nuts were easier to pick.

Inability to leave the farm/restrictions on movements at Mac Farms

241. The Claimants were subject to adverse terms and conditions because of their Asian race and/or Thai national origin because they were unable to leave the premises and their movements were restricted while working and living at Mac Farms. The Claimants including but not limited to NF, PK, KH, CP, and AK could not leave the premises without permission and were told not to go anywhere or to talk to any outsiders. Wongsesnit or another designee was always watching the Claimants. Wongsesnit also threatened the Claimants to send them back to Thailand if they did not follow orders to stay put and not complain. Non Thai workers were not subject to the same restrictions on movements at Mac Farms.

Hostile Work Environment at Mac Farms

242. The Claimants were subjected to verbal or physical conduct (including but not limited to abusive language, exorbitant and/or unlawful recruitment fees, confiscation of passports, uninhabitable housing, insufficient food, inadequate pay, demeaning job assignments, and threats and intimidation) based on their Thai national origin and/or Asian race, the conduct was unwelcome, and the conduct was sufficiently severe or pervasive to alter the conditions of the

Claimants' employment and create an abusive working environment. Further, the working conditions had become so intolerable that the Claimants were forced to run away and thereby constructively discharged. Claimants, including but not limited to, KH, TP, SPh, UP, SPr, NS, PT, RT, and, SU escaped or were forced to resign from Mac Farms because of the intolerable conditions at Mac Farms.

243. Global's supervisors harassed and/or threatened the Claimants demanding that the Claimants exceed the production goals at Mac Farms. Wongsesanit harassed Claimants like KI to pick at least twenty-five bags per day and threatened that he would not let them continue working at Mac Farms while Filipino workers did not have to a 25 bag minimum quota. Claimants like TJ were pushed to pick up to 40 bags per day by Supervisor John Boonkhai. John Boonkhai and Wongsesanit threatened to send the Claimants back to Thailand or disciplined them if they did not meet the quota.

244. John Boonkhai and Wongsesanit repeatedly told Claimant like TJ and NF that the Thai workers had to perform better than other nationalities or berated them for being too slow such that Claimants like PK did not have enough time to eat his lunch because of the otherwise impossible production quota at Mac Farms.

Retaliation at Mac Farms

***Mac Farms Knew or Should Have known that the
Claimants Engaged in Protected Activity***

245. The Claimants including but not limited to Claimant PH engaged in a protected activity by complaining about unpaid wages and and/or the poor living conditions at Mac Farms. Orchard Manager Springer acknowledged receipt of the complaints and confirmed he knew that Global was not paying the Thai workers. Springer described this as an "unscrupulous" practice and admitted that he talked with the Claimants who were not receiving pay. Springer also confirmed that DOL talked to the Thai workers to investigate Global's failure to pay them. The \$0 paycheck from December 2004 described above for work at Mac Farms confirms

the Claimants' complaints that Springer received. Mac Farms knew or should have known about the \$0 paychecks because Harvest Supervisor Yamamoto prepared payroll.

246. Mac Farms' only response to the Claimants' complaints about not being paid, was Orchard Manager Springer telling the Claimants they could choose not work. For the next two years, Mac Farms did nothing about the non-payment and delayed payment of wages.

247. Then, on or about February 2007, a complaint was filed against Global for its failure to pay migrant workers on a regular basis at Mac Farms, "coercion of foreign workers to run away," and "numerous housing violations."

248. During the investigation, a Wage and Hour Investigator contacted Mac Farms to obtain employment records.

249. On March 8, 2007, a Wage and Hour Investigator from DOL and a Hawaii State Department of Labor Investigator met with some of the Claimants working at Mac Farms. The Claimants stated that they had not been paid for work performed since January 28, 2007. On March 8, 2007, the employees had not received the direct deposits for four pay periods. Thus, Claimants engaged in protected activities by participating in the DOL investigation regarding the non-payment of wages to Claimants working at Mac Farms.

250. Mac Farms knew that the living conditions were bad because Global leased housing for Claimants from Mac Farms. At three different places in its third Contract with Global, Mac Farms noted that Global's employees were housed in "non-compliant" housing.

251. In February 2006, Claimants who worked at Mac Farms engaged in protected activities by complaining to HIOSH regarding the living conditions. On or about February 17, 2006, the HDLIR found various housing violation at 92-9102 Hula Lane, Ocean View, Hawaii 96772, which housed 21 Claimants who worked at Mac Farms.

252. Mac Farms also should have known about the HDLIR's findings on or about March 20-21, 2006, which resulted in various additional citations for the housing violations located at 93-2073 South Point Road, Naalehu, Hawaii 96772, which housed 19 Claimants who worked at Mac Farms.

253. Mac Farms also should have known about the DOL investigation about the housing violations as to the Mac Farms housing in or about 2007 and 2008 pertaining to broken windows; unsanitary conditions; inadequate showers; food not free from vermin, rodents, and flies.

254. Claimants also engaged in protected activity by complaining to the union during the time they worked at Mac Farms.

255. Claimants also engaged in protected activity by complaining directly to Mac Farms' management about the lack of food. Mac Farms' President Hillary Brown also confirmed Mac Farms' local workers brought food to the Claimants when they were left without food. Brown, and managers Yamamoto, and Springer were also aware that the Claimants set traps for wild pigs and turkeys. But Mac Farms' management failed to take any effective, immediate, or appropriate corrective measures within their control.

256. Other Claimants like BS, KI, CK, PK, WK, CP, PT, KN, BC, NK, and WW further complained to Global's on-site supervisors and management including but not limited to Wongsesanit, John, and Tubchumpol about late pay, not getting any pay for work they performed for Mac Farms, the lack of water, and the overcrowded and otherwise uninhabitable living conditions provided by Mac Farms.

Mac Farms Knew or Should have know that the Claimants were subjected to Adverse Employment Actions for Engaging in Protected Activity

257. The response to the Claimants' complaints to various government agencies, to Global, and to Mac Farm was threats of deportations and reprimands

not to talk to people about these problems or else they would simply be sent back to Thailand.

258. The Claimants were subject to adverse employment actions by Global, including, but not limited to retaliatory transfers, threats of deportations, and reprimands not to talk to other people about their complaints or they would be sent back to Thailand. After the Claimants complained to Global's supervisor Wongsesanit about having to pay him for the transportation to the store to buy groceries, he would say to the Thai workers, "If you don't pay, then I'm not taking you."

259. Several of the Thai workers were subject to adverse employment actions by Global by being transferred to other farms, which were known to be rough place to be sent, or being constantly moved around from one farm to another shortly after they complained. One of the Claimants heard Global's supervisor Wonsesanit say to the Thai worker who complained "you complain too much and you are out of here today." The next thing the Claimant heard was that the Thai worker who had complained was sent to another farm.

260. Similarly, when Claimant PT first came to Mac Farms, Global's supervisor Wongsesanit threatened him with physical abuse if he was not well behaved. Global's supervisor Wongsesanit knew that Claimant PT had previously complained to a lawyer in Washington about the lack of work at another farm in Washington. Thereafter, Claimant PT and his Thai co-worker were labeled as trouble makers and they were separated and regularly moved around to different farms in Hawaii.

261. Several of the Claimants were subject to adverse employment actions such as threats of being sent back to Thailand shortly after they complained. When the Claimants complained to Global about the late wages, they were threatened not to talk to anyone or else they would be sent back to Thailand. According to Claimant KN, Global supervisor Tubchompol held a meeting with the Claimants

after the Claimants complained to her and she threatened them, “If you keep asking, I will send you home.”

262. As a result, the Claimants were intimidated and afraid to complain as they did not want to be sent to unfamiliar farms, and/or back to Thailand because they had incurred so much debt by having to pay high recruitment fees in order to come to the United States.

263. Mac Farms knew or should have known that the Thai workers were subject to adverse employment actions by Global after they complained because the Claimants’ lived at housing Mac Farms leased to Global and Mac Farms controlled the work site. In fact, Mac Farms admitted that at times Global had no supervisors at Mac Farms and Mac Farms directly supervised the workers. Mac Farms knew or should have known when the Claimants were being transferred to other farms as punishment for complaints because Mac Farms provided payroll services, paid state taxes, state temporary disability insurance, and workers compensation insurance for the Claimants.

264. Harvest Supervisor Yamamoto admitted that she recorded the Claimants’ daily work hours so she should have known if they were transferred to another farm or given a \$0 paycheck.

265. In addition, Mac Farms knew or should have known that the Claimants were subject to threats of deportation because some of the Thai workers lived at the farm and Mac Farms’ Orchard Manager Springer admitted knowing the some of the Claimants ran away.

266. The third Contract with an effective date of August 3, 2006 through March 30, 2007 required Mac Farm to contact Global’s in-house counsel if any governmental agency contacted Mac Farm regarding Global or the workers. Moreover, the third Contract also added a provision that Global was warranting that it was in compliance with Title VII and a new indemnity provision. Thus, Mac Farm knew or should have known that Global was being investigated for

violating Title VII as to Claimants who worked at Mac Farm. As a result, Mac Farms is liable for the employment actions taken against the Thai workers by Global because Mac Farms failed to take corrective measure within its control.

Mac Farms' Pattern or Practice/Standard Operating Procedure

267. Forty-one Claimants filed Charges of Discrimination against Mac Farms not including class members.

268. Plaintiff EEOC incorporates by reference, all of the foregoing paragraphs which reflect that a pattern and practice of participating in or allowing discrimination, harassment, retaliation, and/or constructive discharge persisted at Mac Farms for the durations of its contracts with Global from 2004 to 2007. Based on information and belief, approximately 159 Claimants worked at Mac Farms from 2004 to 2007 and experienced the above-described pattern or practice of discrimination.

ALLEGATIONS AGAINST CAPTAIN COOK

Captain Cook likely obtained the Claimants' labor without proper authorization

269. On or about June 28, 2005, DOL authorized Global to supply 20 Claimants to work at Captain Cook from July 22, 2005 through November 30, 2005. On or about December 2, 2005, DOL authorized an extension of the prior authorization from November 30, 2005 through December 31, 2005 for 15 Claimants.

270. Captain Cook and Global entered into a "Farm Labor Contract H2-A Agreement" effective from September 1, 2005 to November 30, 2005, which was signed by Captain Cook's CEO Steven M. McLaughlin. Captain Cook's CEO McLaughlin letter dated November 16, 2005 to Global extended the 2005 contract for thirty days to December 31, 2005. CEO McLaughlin also completed and

signed a second contract in effect from October 1, 2006 to January 31, 2007 and its attachments.

271. Based on information and belief, the June 28, 2005 DOL authorization and December 2, 2005 extension did not authorize Claimants to work at Captain Cook during the second contract period of October 1, 2006 through January 31, 2007.

***Captain Cook retained control over the Claimants to make
Captain Cook liable as an employer***

272. The first contract effective from September 1, 2005 to November 30, 2005, ensured Captain Cook's control over the Claimants by providing:

2. Services to be furnished, . . .

(a) FLC [Global] shall, . . . furnish farm labor as required by CLIENT [Captain Cook] to safely and efficiently perform (require 250 lbs coffee cherry per day) (the "Services") on that certain land as advised by the CLIENT (the "LAND"). CLIENT shall advise FLC of the Services that must be performed on a day-to-day basis, as well as those portions of the Land to be worked by FLC. CLIENT shall determine the number of its employees that will be required to accomplish the Services and notify FLC of said number.

. . .

4. Inspection and Limited Oversight. FLC agrees that CLIENT shall have the right to have inspectors (the Client Representatives") present at all times to observe that the Services are being performed in accordance with CLIENT quality standards.

. . .

8. Compensation . . .

. . .

(b) CLIENT shall provide a minimum of Thirty (30) hours of work per week for each Worker for the length of this Agreement.

...

273. CEO McLaughlin also signed the second contract in effect from October 1, 2006 to January 31, 2007 and its attachments. This 2006 Contract and the attached Schedules regarding the work to be performed demonstrate that Captain Cook asserted even greater day-to-day control over the Claimants than the first contract, as follows:

2. Services to be furnished by FLC...

(a) FLC shall,..., furnish Workers as required by CLIENT [Captain Cook] to safely and efficiently perform those services set forth in Schedule 1 (the "Services"), attached hereto and incorporated herein by reference.

...

3. Obligations of CLIENT. CLIENT makes the following representations regarding the work to be performed under this Agreement.

...

(a) CLIENT shall inform FLC of the Services to be performed under this Agreement prior to its execution, and said Services shall be set forth in Schedule 1.

(b) CLIENT shall provide FLC with a one week schedule for Services to be performed on every Friday prior of the week in which said Services are to be performed, in order to facilitate productive and proper preparation and scheduling by FLC.

(c) CLIENT shall inform FLC of the location/s of the worksite/s in which work shall be performed prior to the execution of this Agreement. The list of address/es of worksite/s shall be set forth in Schedule 4, attached hereto and incorporated herein by reference.

(d) CLIENT shall diligently and thoroughly answer all questions stated on FLC's questionnaire ("Questionnaire"), set forth in Exhibit A, attached hereto and incorporated herein by reference... CLIENT understands that its responses are crucial to the formation of this Agreement, shall be relied upon FLC and shall be binding on the CLIENT.

(e) CLIENT shall carefully review the H-2A Compliance Review Checklist set forth in Exhibit B, attached hereto and incorporated herein by reference...

(f) CLIENT shall provide FLC with a list of personnel, ..., to facilitate efficient and productive communications between the parties. The list shall be set forth in Schedule 5.

(g) CLIENT shall inform FLC of all ancillary support, equipment, supplies and facilities that it requires for the Workers to adequately and properly perform their respective tasks, prior to the execution of this Agreement and shall be set forth in Schedule 2.

...

(5) Inspection and Limited Oversight. FLC agrees that CLIENT shall have the right to have an inspector (the Client Representative") present at all times to observe that the Services are being performed in accordance with CLIENT quality standards.

...

(8) Compensation...

(a) CLIENT shall pay FLC fourteen dollars (\$14) per hour for all hours worked,... This rate shall be applicable where CLIENT provides both Housing and Transportation.

...

(d) Transportation. Whether provided by FLC or CLIENT, the party responsible for Transportation shall assume and become responsible for all duties and obligations mandated by the applicable laws and regulations,...

(e) Housing. Whether provided by FLC or CLIENT, the party responsible for Housing shall assume and become responsible for all duties and obligations mandated by the applicable laws and regulations, ..., prepare for and supervise all necessary inspections by state and federal government agencies, provide beds, mattresses and pillows to accommodate all Workers and provide cooking facilities, including, ... stove, refrigerators, utensils, pots and pans. The party responsible for Housing shall provide access to laundry services, maintain the Housing guaranteeing adequate living conditions, as well as comply with various housing safety regulations...

...

(h) CLIENT shall provide a minimum of forty (40) hours per week for each Worker for the length of the contract;

...

274. Captain Cook supplied the equipment and/or facilities for the Thai workers to use. For example, the attachment to the 2006 Contract “Schedule 2- Ancillary Support, Equipment, Supplies and Facilities” was left blank and Captain Cook actually provided the ancillary support, equipment, supplies and facilities to the Claimants.

275. The Schedules and the 2006 contract between Captain Cook and Global ensured that Captain Cook had greater day-to-day control over the Claimants than in the first Contract. For example, Captain Cook’s CEO McLaughlin added that Captain Cook required (1) “1 week” training-period, a minimum production level of “250 lbs coffee cherry/day”; (2) 10 workers per crew; and (3) four supervisors for the workers. Captain Cook also agreed that it would provide the transportation and housing to the Claimants. Captain Cook also set the start and end dates of employment.

276. The 2006 contract, exhibit A--Questionnaire, at ¶26(a) confirms that Captain Cook contracted to “[p]rovide Transportation ..., including qualified and

fully licensed drivers, adequate transport vehicles that comply with all applicable laws and regulations, . . .” and ¶ 27(a) confirms that Captain Cook agreed to “[p]rovide Housing . . . , including preparing for and supervising all necessary inspections by state and federal governmental agencies, provide beds, mattresses and pillows to accommodate all Workers, provide cooking facilities, including, but not limited to, stove, refrigerator, utensils, pots and pans, access to laundry services, and fully comply with various housing safety regulations, including providing fire extinguishers, first aid kits and smoke detectors”

Captain Cook employees directly supervised, disciplined, and transferred the Claimants

277. Captain Cook’s employees supervised and/or monitored the Claimants. Captain Cook Field Supervisor Cesar Garza supervised Claimants like SR and PL who confirmed there was no Global supervisor at Captain Cook.

278. Captain Cook’s General Manager Roger Kaiwi-Machen gave Garza the orders and assigned the Claimants to different Captain Cook farms. When supervisor Garza was not available, the Thai Claimants who spoke some English received instructions directly from General Manager Roger Kaiwi-Machen.

279. General Manager Roger Kaiwi-Machen supervised Claimants like AR every day.

280. Claimant PP confirmed that General Manager Roger Kaiwi-Machen scolded the Claimants if they did not reach their quota of 250 pounds and that Roger Kaiwi-Machen made Claimant JO weigh the production.

281. In addition, several of the Claimants including but not limited to PH and PL confirmed that Captain Cook’s General Manager Roger Kaiwi-Machen not only supervised but disciplined the Claimants. General Manager Roger Kaiwi-Machen handled the discipline on the farm, and if he saw anything wrong, he would transfer the employee.

282. Claimant PL saw that General Manager Roger Kaiwi-Machen was displeased when a Claimant had to see a doctor so he transferred the Claimant out of the farm.

283. Claimant NM confirmed that General Manager Roger Kaiwi-Machen said he wasn't going to pay for the wages of a Thai worker who forgot to take his bucket to the work site.

284. CEO McLaughlin admitted to the EEOC that General Manager Roger Kaiwi-Machen showed the Claimants how to pick coffee. General Manager Roger Kaiwi-Machen confirmed that he personally showed the Thai workers how to pick coffee cherry.

285. Captain Cook also supplied the equipment and/or facilities for the Thai workers to use. Both CEO McLaughlin and Assistant General Manager Jesse Kaiwi-Machen admitted that Captain Cook provided all of the equipment to the Claimants. General Manager Roger Kaiwi-Machen also admitted that Captain Cook provided all of the equipment from baskets, to the bags, and the wooden hooks used to pick the coffee.

286. Further, Captain Cook controlled the hours worked by the Claimants. General Manager Roger Kaiwi-Machen admitted that he determined the number of hours the Claimants worked each day. Assistant General Manager Jesse Kaiwi-Machen also confirmed that General Manager Roger Kaiwi-Machen set the daily picking schedule for the Claimants.

287. CEO McLaughlin also admitted that Captain Cook provided the transportation to the Claimants.

288. General Manager Roger Kaiwi-Machen confirmed that he drove the workers around in trucks and vans owned by Captain Cook.

289. Assistant Manager Jesse Kaiwi-Machen admitted that he picked up the Claimants from the airport and drove them to the store.

290. Further, Captain Cook monitored the Claimants, their hours, and their housing conditions.

291. The Claimants also depended on Captain Cook for transportation and access to food.

292. Claimant NM confirmed Captain Cook's Mexican farm worker would take the Claimants to the grocery store.

Captain Cook Engaged in the Misconduct

293. Captain Cook engaged in the misconduct and/or discrimination against the Claimants by providing uninhabitable housing at the Captain Cook farm. CEO McLaughlin and Assistant Manager Jesse Kaiwi-Machen both admitted that Captain Cook owned the homes where the Thai workers lived.

294. General Manager Roger Kaiwi-Machen admitted that even though Captain Cook owned six houses on the farm, Captain Cook had all the Thai workers living in one house.

295. Claimant NM confirmed that General Manager Roger Kaiwi-Machen decided where the Thai workers lived.

296. The Captain Cook housing was severely overcrowded. Claimant DN lived a two bedroom, one bathroom house with 12 other Claimants. Claimant PH lived in a one bedroom, one bathroom house with a broken ceiling with 5 other Claimants and he shared a bed with 3 other Claimants. Claimant AL lived in one room with 11 Claimants. Claimant SR lived in a three bedroom, two bathroom house with 12 other Claimants and had to share a bunk bed with another Thai worker. Claimant SR further observed that there were not enough pots, pans, and dishes for the amount of Thai workers living there. Thus, based on information and belief Captain Cook failed to comply with DOL's housing standards for H2-A workers and thereby worsened the hostile work environment and discrimination.

297. Claimant NM lived in a two bedroom, two bathroom house with 10 other Claimants. One of the two bathrooms did not function well so the Claimants had to go to the bathroom outside on the farm.

298. Non-Thai workers were not subject to the uninhabitable housing conditions.

299. Captain Cook also engaged in the unlawful employment practices by cheating the Claimants on their hours. According to Claimant PH, Captain Cook cheated the Thai workers on their hours.

300. Captain Cook also engaged in the unlawful employment practices by directly threatening to deport the Thai workers. When Claimant SW's co-worker needed to see a doctor because he had a stomach pain since they did not have enough food to eat for one week, Claimant SW walked eight to nine miles to get food and took this co-worker to the hospital. General Manager Roger Kaiwi-Machen threatened Claimant SW with deportation for taking his co-worker to the hospital. Similarly, when Claimant AL begged to see a doctor when he became ill, Captain Cook lied to Global and said AL refused to work and then Tubchumpol threatened to send him back to Thailand.

301. Captain Cook also engaged in the unlawful employment practices by restricting the Claimants' movements and by prohibiting them from contacting outsiders. According to Claimant KL, General Manager Roger Kaiwi-Machen threatened the Claimants to send them back to Thailand and prohibited them from contacting people from the outside. Similarly, Claimant AR was told not to communicate with outsiders and threatened that he would be sent back home if he did communicate with outsiders.

Captain Cook Had Knowledge of the Discrimination against the Claimants

302. Captain Cook knew and/or was aware of the misconduct and/or discrimination Global committed against the Claimants. CEO McLaughlin

admitted receiving complaints from the Claimants that they were not getting paid on time and he “guesses” the complaints were resolved.

303. CEO McLaughlin failed to take immediate or appropriate corrective action to ensure that Captain Cook’s farm labor contractor was paying the Claimants for their work.

304. General Manager Roger Kaiwi-Machen also confirmed that Claimants complained to him that they were not getting paid and stated he personally gave the Thai workers \$100 when they said they did not have money.

305. Captain Cook also knew that the Claimants were running away because of the unlawful employment practices occurring at Captain Cook. General Manager Roger Kaiwi-Machen admitted to hearing a rumor that a Claimant ran away.

Captain Cook Had Constructive Knowledge of Discrimination

306. Captain Cook should have known that Global confiscated the Claimants’ passports. General Manager Roger Kaiwi-Machen knew that Global had taken the Claimants’ passports because he admitted making copies of their passports. Despite having this information, Captain Cook failed to take corrective measures within its control.

307. Captain Cook also likely knew or should have known of minimum housing standards applicable to farms using H2-A workers, and directly engaged in the discriminatory conduct by housing Claimants’ in housing that Captain Cook owned and/or controlled. Similarly, Global improperly delegated responsibility for providing H2-A compliant housing to Captain Cook which failed to provide compliant housing.

308. Captain Cook should have known that Global was not authorized to do business in Hawaii if it had checked Global’s credentials. In July 2006, the HDLIR confirmed that Global was not authorized to do business in Hawaii and warned:

several local farms may have been lead to believe” that Global “has acquired workers’ compensation insurance and is now authorized to continue doing business in the State of Hawaii. As of July 18, 2006, Global . . . is still not authorized to do business in Hawaii. Allowing Global employees to work on your farm would be in violation of the court’s order. . . . We will continue working with the Hawaii State Department of Agriculture and the federal government to address any concerns that Hawaii’s farming community may have regarding these recent developments.

309. But Captain Cook turned a blind eye to Global’s failures because in July 2006, months before the second Contract was entered into by Captain Cook, DOL had barred Global from the H2-A program for three years. Nonetheless, Captain Cook entered into a second Contract effective from October 1, 2006 to January 31, 2007.

Race/National Origin Discrimination at Captain Cook

310. The Claimants belong to a protected class (Thai/Asian), they were qualified to do the work, and they performed their jobs satisfactorily. The Claimants also suffered adverse employment actions by being subject to different terms and conditions as described above and below because of their Asian race and/or Thai national origin. Similarly situated individuals outside the protected class were treated more favorably, or other circumstances surrounding the adverse employment actions give rise to an inference of discrimination including but not limited to a hostile work environment.

Adverse terms and conditions with respect to housing at Captain Cook

311. The Claimants were subject to adverse terms and conditions with respect to the uninhabitable living conditions while working at Captain Cook Farms. CEO McLaughlin admitted that the Claimants living at the Captain Cook farm were required to follow Captain Cook’s house rules. Assistant General Manager Jesse Kaiwi-Machen also admitted that the Thai workers had to comply

with the house rules. General Manager Roger Kaiwi-Machen also confirmed that Thai workers had to comply with the house rules, which included no smoking and no excessive drinking of alcohol. However, Claimant PH, who worked at the Captain Cook farm, said General Manager Roger Kaiwi-Machen allowed the Mexican workers to bring in beer to the Mexican house but did not allow beer in the Thai house.

312. Non-Thai workers, including the Mexican workers who lived and worked at the Captain Cook farm, were not subject to the same uninhabitable living conditions. Claimant PH confirmed there were two houses at Captain Cook farm, one for the Thai workers and the other for the Mexican workers. Claimant PH observed the Thai workers' house was dirty and the ceiling was broken while the Mexican workers were living in a newer and cleaner house. Claimant JO confirmed the living conditions at Captain Cook were horrible because 13 Thai workers lived in a three bedroom house and JO had to sleep in the closet. Claimant JO saw insects where they slept every time it rained. Claimant AR also confirmed that there were rats and cockroaches at the Captain Cook house. Claimants AR and others pushed two beds together so they would not have to sleep on the floor.

Inability to leave the farm/restriction on movements at Captain Cook

313. The Claimants were further subjected to adverse terms and conditions compared to the non-Thai workers because the Claimants were prohibited from leaving the premises and their movements were restricted by Captain Cook's supervisors. Non-Thai workers, including the Mexican workers, were not subject to the same restrictions. Claimant PH witnessed other Claimants disciplined for leaving the premises without permission but the Mexican workers were allowed to go anywhere without supervision. General Manager Roger Kaiwi-Machen transferred Claimant PH's friend (a Thai worker) when he went out one night with another friend without permission.

314. General Manager Roger Kaiwi-Machen threatened to send the Claimants like KL back to Thailand and prohibited them from contacting people from the outside. Claimant KL walked seven to eight miles to the hospital because the farm manager refused to take him to the hospital. When KL returned to work, the farm owner told him to leave the farm. KL was then transferred to another farm.

315. Similarly, Claimants DN and PH confirmed the Claimants were not allowed to travel by themselves. General Manager Roger Kaiwi-Machen limited the Claimants travel to going to the store once a week with him.

Hostile Work Environment at Captain Cook

316. The Claimants were subjected to verbal or physical conduct (including but not limited to abusive language, recruitment fees, confiscation of passports, uninhabitable housing, insufficient food, inadequate pay, demeaning job assignments, and threats and intimidation) based on their race and/or national origin, the conduct was unwelcome, and the conduct was sufficiently severe or pervasive to alter the conditions of their employment and created an abusive working environment. Further, the working conditions had become so intolerable that the Claimants were compelled to run away and thereby constructively discharged. Based on information and belief, Captain Cook constructively discharged Claimants, including but not limited to the following Claimants, by denying them work for about two to twelve weeks before the expiration of Captain Cooks' contract with Global: SW, KL, WW, TP, TY, SP, PH, KP, BP, KB, AL, NW, and NS. By denying work to the Claimants for two to twelve weeks before the expiration of Captain Cook's contract with Global, Captain Cook forced Claimants to resign from Captain Cook and constructively discharged them.

317. Captain Cook's supervisors harassed and/or threatened the Claimants in order to meet the production goals at Captain Cook. General Manager Roger Kaiwi-Machen threatened the Claimants like AR to meet the quota or they would

be sent back to Thailand. General Manager Roger Kaiwi-Machen would also curse at the Claimants if they were unable to complete the work.

Retaliation at Captain Cook

318. The Claimants engaged in a protected activity by complaining about not being paid for work they performed at Captain Cook and/or the poor living conditions. Captain Cook Farms' management admitted they received complaints from the Claimants that they were not getting paid on time.

319. Captain Cook took adverse employment actions including but not limited to refusing to take Claimants to the store and making conditions worse. According to Claimant AR, General Manager Roger Kaiwi-Machen retaliated against the Claimants by not taking them to the grocery store when they complained about the pay issues. After Claimant AL complained about the horrible living conditions, the conditions got worse.

320. Captain Cook cheated Claimant PH on his hours while he worked at Captain Cook. Claimant PH complained to SS, who complained to the Mexican farm supervisor at Captain Cook that their hours were cut short. Claimant PH also complained to Global Supervisor Tubchumpol that Captain Cook cheated him of his hours and after he complained, he was transferred to a farm where the work was harder.

321. Claimant TS's Thai co-worker got sick but was forced to work at Captain Cook. After Claimant TS's co-worker complained to Global Supervisor Tubchumpol, his co-worker was told to wrap up his belongings and he was transferred out to another farm.

Captain Cook's Pattern or Practice/Standard Operating Procedure

322. Twenty Claimants filed Charges of Discrimination against Captain Cook.

323. Plaintiff EEOC incorporates by reference, all of the foregoing paragraphs which reflect that a pattern and practice of participating in or allowing

discrimination, harassment, retaliation, and/or constructive discharge persisted at Captain Cook for the durations of its contracts with Global from 2005 to 2007. Based on information and belief, about sixty-two Claimants worked at Captain Cook farms during 2005 through 2007 and experienced the above-described pattern or practice of discrimination.

ALLEGATIONS AGAINST KELENA FARMS

Kelena Farms provided a single Clearance Order that fails to cover the entire period that Claimants worked at Kelena Farms

324. By letter date July 9, 2010, Kelena Farms provided the EEOC with a single Clearance Order seeking 200 workers of which 180 would be local workers and 20 would be H2-A guest workers and multiple contracts and letters of intent for Global to provide workers to Kelena Farms from February 15, 2005 through December 15, 2005.

325. Kelena Farms received authorization from DOL for 20 H2-A workers to work at Kelena Farms from February 19, 2005 through December 19, 2005. However, Kelena used the Claimants provided by Global from February 15, 2005 through on or after July 19, 2006.

326. By letter dated March 13, 2006, Kelena Farms requested up to 48 H2-A workers from May 8, 2006 through March 8, 2007. But, based on information belief, Kelena Farms and Global had only one Clearance Order for the 17 month period during which the Claimants worked at Kelena Farms. Thus, Kelena Farms and/or Global violated the H2-A program by failing to obtain DOL authorization for the full duration of the Claimants' employment at Kelena Farms. Additionally, Kelena Farms transferred Claimants to work at other farms owned by the Jefts family including but not limited to Waikele Farms, Inc. and Larry Jefts Farms. Based on information belief, the EEOC alleges that by transferring Claimants between Kelena Farms and the other Jefts' farms, Kelena Farms violated the H2-A

requirements. Moreover, in transferring workers among the Jefts-owned farms, the Jefts and/or Kelena demonstrated their control over the Claimants to make them liable for the discrimination alleged in this case.

Kelena Farms and Global contracted to give Kelena Farms control over the Claimants, making Kelena Farms liable as an employer

327. The Agrilabor Letter of Intent and Agri-Labor Short Letter of Intent dated November 24, 2004, established Kelena Farms' intent to control the Claimants by requiring up to 20 workers, defining the start and end dates of employment as February 15, 2005 through December 15, 2005, and stating that Kelena Farms "shall advise FLC of the services that will performed on a day-to-day basis."

328. The "Estimated General Expectation of Some Job Performances," dated December 29, 2004, which Kelena Farms' President Larry Jefts sent to Global further established Kelena's control over the Claimants and their work to establish Kelena's liability. This December 2004 Estimate set minimum production levels by requiring each worker to de-flower or bag forty bunches of bananas per hour, continuously in a nine hour day. It set specific harvest rates at 2,800 pounds of bananas per employee per hour continuously in a nine hour day; 300 pounds of bell peppers per employee per hour continuously in a nine hour day; 625 pounds of tomatoes per employee per hour continuously in a nine hour day; and 2,200 pounds of watermelon per hour continuously in a nine hour day. The letter set planting requirements at 4 ½ trays with 200 cells each per employee per hour continuously in a nine hour day; ten trays with seventy-two cells each per employee per hour continuously in a nine hour day; and eight trays with 200 cells each per employee per hour continuously in a nine hour day. The first Kelena-Global Contract effective from March 1, 2005 through December 31, 2005, which was signed by Kelena Farms' Vice President Louise Jefts, ensured Kelena Farms' control over the Claimants' day-to-day work by providing: "[C]LIENT shall advise

FLC of the Services that must be performed on a day-to-day basis, as well as those portions of the Land to be worked by FLC. CLIENT shall determine the number of its employees that will be required to accomplish the Services and notify FLC of said number.” The 2005 Contract also provides that a “Client Representative” “be present at all times to observe that the Services are being performed in accordance with CLIENT quality standards.”

329. A second Letter of Intent dated March 13, 2006, which Kelena Farms sent to Global, also confirmed Kelena Farms’ intent to control the Claimants by requiring up to 48 workers, defining the start and end dates of employment as May 8, 2006 through March 8, 2007, and stating that Kelena Farms “shall advise FLC of the services that will performed on a day-to-day basis.” Kelena Farms’ President Larry Jefts sent Global another “Estimated General Expectation of Some Job Performances” dated March 13, 2006, with the same detailed production, harvest, and planning requirements as the December 2004 Estimate from Mr. Jefts to Global.

330. On March 31, 2006, Kelena Farms sent Global the Agri-Labor Letter of Intent and Agri-Labor Short Letter of Intent for Global to provide Kelena Farms with more than double the number of workers from the first contract (up to 48) for seeding, planting, care of crops, harvesting, and packing from May 12, 2006 to December 19, 2006. This letter reiterated that Kelena Farms shall advise Global of the services to be performed “on a day-to-day basis.”

331. Thereafter, Mr. Jefts executed the second Contract in effect from May 12, 2006 to December 19, 2006, which retained Kelena Farms’ day-to-day control over the Claimants. The second Contract also provided that “[C]LIENT shall advise FLC of the Services that must be performed on a day-to-day basis, as well as those portions of the Land to be worked by FLC. CLIENT shall determine the number of its employees that will be required to accomplish the Services and notify FLC of said number.” The Contract also provides that a “Client

Representative” to “be present at all times to observe that the Services are being performed in accordance with CLIENT quality standards.”

***Kelena Farms directly supervised the Claimants to establish
Kelena’s liability for the acts of Global.***

332. Several of the Claimants confirmed that Kelena Farms’ supervisors directly supervised them. Claimant JS stated he was only supervised by Kelena Farms supervisor Francisco (last name unknown). A Filipino Kelena Farms supervisor by the name of Jonathan (last name unknown) supervised Claimant PP and similarly situated Claimants. Similarly, Claimant AS stated that Kelena Farms’ Filipino supervisor supervised five groups, including the Claimants, and the Filipino supervisor gave the Claimants orders on a daily basis.

333. Kelena Farms also monitored the Claimants’ work. Kelena Farms’ President Larry Jefts imposed performance standards as detailed as the number of buckets that needed to be filled. Mr. Jefts admitted he communicated directly with the Claimants’ crew leader and he would set weekly goals the Claimants had to meet. Mr. Jefts also admitted that Kelena Farms monitored the Claimants’ hours. Claimant AS said a female who worked for Kelena Farms picked up the Claimants for work every day.

334. Based on information and belief, Kelena Farms further controlled the land on which the Claimants worked.

335. Kelena Farms supplied the equipment necessary for the Claimants’ work such as the tractors, which were owned or leased by Kelena Farms.

336. Kelena Farms advised the EEOC that a former Kelena Farms employee translated Kelena Farms’ employee handbooks, policies and posters into the Thai language. Based on information and belief, the EEOC believes that Kelena Farms had their documents translated into Thai to apply the policies and

procedures to the Claimants thereby exerting control over the terms and conditions of their employment.

Kelena Farms' direct acts of misconduct

337. Based on information and belief, Kelena Farms engaged in the misconduct by threatening the Claimants. Claimant PP stated that Mike (LNU) at Kelena Farms threatened the Claimants.

Kelena Farms had knowledge of the hostile work environment and of the discriminatory conduct by Global against the Claimants.

338. Kelena Farms knew that the Claimants were subjected to a hostile work environment and discrimination while working at Kelena, including but not limited to Global's failure to pay the Claimants for the work they performed at Kelena Farms. Kelena Farms' owner Larry Jefts knew of the unlawful employment practices related to Global's failure to pay the Claimants because he gave money to the Claimants when Global failed to pay them but did not correct and prevent the non-payment of wages that were due to the Claimants. Claimants JS and PP confirmed that Larry Jefts paid the Claimants \$100. The amounts Mr. Jefts gave them did not fully compensate the Claimants' work. Moreover, that money was later deducted from the Claimants paychecks by Global.

339. Kelena Farms also knew that Global violated federal and state laws. Mr. Jefts sent a letter dated July 19, 2006 to Global's President confirming:

“[Kelena] remain[s] concerned that Global has not been complying with applicable state and federal laws. We have reason to believe that Global has provided workers without securing workers compensation insurance, that Global had failed to comply with applicable laws relating to the payment of wages, and that Global has been transporting workers in vehicles that are not properly insured...”

340. Kelena Farms also knew that Global was not authorized to do business in Hawaii when it received a letter dated July 18, 2006 from the HDLIR warning:

several local farms may have been lead to believe that . . . Global has acquired workers' compensation insurance and is now authorized to continue doing business in the State of Hawaii. As of July 18, 2006, Global . . . is still not authorized to do business in Hawaii. Allowing Global employees to work on hour farm would be in violation of the court's order.

. . . . We will continue working with the Hawaii State Department of Agriculture and the federal government to address any concerns that Hawaii's farming community may have regarding these recent developments.

341. Kelena Farms did not end its relationship with Global until the State of Hawaii contacted Kelena Farms about Global being unauthorized to do business in Hawaii. However, based on information and belief, the EEOC believes Kelena Farms continued to work with Global before it was contacted by the HDLIR while knowing Global was in violation of various federal and state laws.

Kelena Farms should have known of additional ways in which the Claimants were subjected to a hostile environment and/or discrimination.

342. Kelena Farms should have known that Global was unauthorized to do business in Hawaii prior to July 2006 if it had checked Global's credentials. Kelena Farms should have also known that the U.S. Department of Labor had barred Global from the H2-A program for three years in or about July 2006.

Race/National Origin Discrimination at Kelena

343. The Claimants belong to a protected class (Thai/Asian), they were qualified to do the work and they performed their jobs satisfactorily, they suffered adverse employment actions by being subject to adverse terms and conditions as described above and below because of their Asian race and/or Thai national origin,

and similarly situated individuals outside the protected class were treated more favorably, or other circumstances surrounding the adverse employment actions giving rise to an inference of discrimination including but not limited to a hostile work environment.

Uninhabitable living conditions at Kelena Farms

344. The Claimants were subject to adverse terms and conditions of employment including but not limited to overcrowded and uninhabitable living conditions while working at Kelena Farms. Kelena Farms paid Global to provide the housing pursuant to their contracts and should have known of the housing conditions.

345. Claimants were subject to overcrowded housing while working at Kelena Farms with up to 10 Claimants per room. Claimant JS and others lived in an apartment with 6 to 10 Claimants per room and two bathrooms. Similarly, Claimant PP and 10 others lived in a two bedroom apartment with only one bathroom while working at Kelena Farms.

346. Claimants PP and other Claimants were later moved to even smaller rooms, and approximately 12 people per apartment. Claimant KH and other Claimants lived with more than 10 people in a two bedroom house. Claimant KH shared a bedroom with 3 other workers and was required to share a bunk bed.

347. Claimant BS slept on the floor while working at the Kelena.

348. Claimant BS and other similarly situated Claimants had no heat and sometimes had no electricity while working at Kelena.

349. Non-Thai workers were not subject to the uninhabitable living conditions.

Claimants were confined while working at Kelena Farms

350. The Claimants were subject to adverse terms and conditions compared to non-Thai workers because the Claimants were confined to the premises and their

movements were restricted. Claimant PP, KH, and similarly situated Claimants were watched while at the housing during the time they worked at Kelena Farms.

351. Claimant PP and similarly situated Claimants were told not to talk to outsiders.

Hostile Work Environment at Kelena Farms

352. The Claimants were subjected to verbal or physical conduct (including but not limited to abusive language, exorbitant and/or unlawful recruitment fees, confiscation of passports, uninhabitable housing, insufficient food, inadequate pay, demeaning job assignments, and threats and intimidation) based on their race and/or national origin, the conduct was unwelcome, and the conduct was sufficiently severe or pervasive to alter the conditions of the Claimants' employment and create an abusive working environment. Further, the working conditions had become so intolerable that the Claimants were compelled to run away and thereby constructively discharged. Based on information and belief, Kelena Farms constructively discharged Claimants, including but not limited to the following Claimants, who escaped and/or were forced to resign from Kelena Farms due to the intolerable conditions which intolerable conditions included the denial of work for about two or six weeks before the expiration of Kelena Farms' contract with Global: SS, SB, CC, NC, SC, NM, SM, PN, PP, AR, PS, JS, TV, PYa, PYi, and CY. By denying work to the Claimants for two to six weeks before the expiration of Kelena Farms' contract with Global, Kelena Farms forced Claimants to resign from Kelena Farms and constructively discharged them.

353. Based on information and belief, Kelena Farms' supervisors harassed and/or threatened the Claimants. Supervisor Mike (LNU) at Kelena Farms threatened Claimant PP. In addition, Global supervisor Germann threatened Claimants including but not limited to Claimant KT that they would be deported to Thailand if they complained.

354. Further, the Claimant JS and other similarly situated Claimants did not have enough food to eat while working at Kelena Farms.

Retaliation at Kelena Farms
Kelena Farms Knew or Should Have Known that the
Claimants Engaged in Protected Activity

355. Claimants engaged in protected activity by complaining to Kelena Farms including but not limited to owner Larry Jefts about Global's failure to pay them. Although Mr. Jefts gave them some money, he failed to correct Global's failure to pay the Claimants for work they performed.

356. The Claimants further engaged in protected activity by complaining directly to Kelena Farms' management, including, but not limited to Supervisor Francisco (LNU), about the inadequate living conditions (i.e. having no electricity at the housing and not having enough food to eat), the debt they had incurred in paying the recruitment fees, and not being paid for work performed at Kelena Farms. Francisco knew that the Claimants were not getting paid on time because he asked, "Where are the Thai workers?" when he noticed that Thai workers did not appear for work. The Claimants responded to him by complaining they were not getting paid and they did not have money to buy food to eat. Francisco told the Claimants that he had reported to Kelena Farm's owner, Larry Jefts, about the Thai workers not getting paid.

357. Claimant NW and PH confirmed that the Thai crew leaders complained to Francisco about the delayed payment of wages, that Francisco took the Thai crew lead to Kelena Farms' owner Larry Jefts and the Thai crew leader complained to Jefts about the delayed payment of wages.

358. Kelena Farms failed to take any effective, immediate, or appropriate corrective measures after receiving complaints from the Claimants. Claimant PK complained to Francisco several times when the pay was late. Francisco would tell

Larry Jefts who would respond, "We already paid Global." According to Claimant JS, after the Thai workers told the Thai crew leader to complain to Francisco about the debt and the working conditions, Francisco responded by stating that they had to stick to the work schedule.

359. Kelena Farms' knew about the inadequate living conditions because Francisco visited the Claimant's housing. Kelena Farm also knew about the overcrowded transportation from the housing to Kelena Farms because Francisco would ask the Claimants, "How did all of you fit in the van," when they would arrive at the farms with approximately 20 Thai workers in the van.

360. The Claimants also complained to Kelena Farms' female interpreter about the delayed payment of wages, not having money for food, the overcrowding, having to wake up early to get a chance to cook in the overcrowded housing, having to wait for the bus even though they wouldn't start work until approximately 8 am, having to wait for the transportation back to the housing even when they finished early, and having to wait for the next van if the van was full. The Claimants also complained to Kelena Farms' female interpreter that they needed to work more hours because of their debt. As a result, Kelena Farms knew or should have known that the Claimants engaged in protected activity.

361. The Claimants including but not limited to PK and JS also engaged in a protected activity by complaining to Global's management, including, but not limited to Tubchumpol, about the recruitment fees and not getting paid while working at Kelena Farms.

362. The Claimants also engaged in a protected activity by complaining to a union representative during the time they worked at Kelena Farms. According to Claimant CI, the union came to talk to the Thai workers at their housing during the time their pay was late while working at Kelena Farms.

363. The Claimants also engaged in a protected activity by complaining to an attorney. According to Claimant JS, an attorney came to talk to the Thai

workers and they complained about not having their passports and that they were stuck with no work. This complaint was made after Kelena Farms had cancelled the second contract early.

***Kelena Farms Knew or Should Have known that
the Claimants Were Subject to Adverse Employment Actions
After They Complained***

364. After Claimants repeatedly complained about Global's discriminatory treatment of them including but not limited to failure to pay them, charging recruitment fees, inadequate food, and the housing conditions, Kelena Farms failed to take corrective measures within its control. When Larry Jefts found out that Global had no insurance for the Claimants, he refused to allow the Thai workers to ride Kelena Farms' vehicles during the workday at the farm. Mr. Jefts required the Claimants to be transported in Global's vehicles at the farm knowing that Global was uninsured.

365. Kelena Farms also took adverse employment actions against the Thai workers by cancelling the second contract with Global and thereby leaving the Thai workers with no work after the Claimants complained. The second contract was supposed to be in effect from May 12, 2006 to December 19, 2006. Kelena Farms cancelled the second contract with Global on or about July 19, 2006 and thereby left the Thai workers with no work and no food for months.

366. Based on information and belief, the EEOC believes Kelena Farms took adverse employment actions against the Thai workers by cancelling the second contract and thereby leaving the Thai workers with no work after receiving repeated complaints from the Thai workers and after it was contacted by the HDLIR. Based on information and belief, the EEOC believes that Kelena Farms knew or should have known that Global was in violation of various federal and state laws several months prior to HDLIR's contact because the Claimants made several complaints to Kelena Farms' management, including but not limited to its

owner Larry Jefts, supervisor Francisco, and Kelena Farms' female interpreter. Claimant JS confirmed that Claimants were denied work at Kelena Farms approximately four to five months after they complained.

367. The Claimants were subject to adverse employment actions by Global, including, but not limited to retaliatory transfers, threats of deportations and/or to be sent back to Thailand, and/or reductions of work hours, after they complained. According to Claimant JS, Global's management knew that they had complained to Kelena Farms because Global's supervisor Tubchumpol met with them and she said, "Who told you, you could go to complain to the farm? Stop complaining. They money is coming but it is late," after they had complained to Kelena Farms' owner Larry Jefts, supervisor Francisco, and Kelena Farms' female interpreter. Tubchumpol also said that if she found out who complained, she would move that person to another place. Global supervisors Tubchumpol and Germann constantly threatened the Claimants by telling them, "If you cause trouble, too many complaints, or ask too many questions, we will send you home or transfer you to another farm." Global supervisor Germann also threatened the Thai workers by telling them, "Don't let me catch whoever complains because if I catch you, I will move you or send you home." Global supervisor Germann threatened Claimants including but not limited to Claimant KT that they would be deported to Thailand if they complained.

368. As a result, some of the Thai workers were intimidated and afraid to complain as they did not want to be sent to unfamiliar farms, and/or back to Thailand because they had incurred so much debt by having to pay high recruitment fees in order to come to the United States. Claimant NM felt that he could not complain too much because he would be transferred to another farm.

369. Some of the Thai workers who complained were given less work after they complained during the time they worked at Kelena Farms. According to Claimant LY, Thai workers who complained were given less work. Claimant LY's

Thai co-worker received less work because he would frequently complain to Global's supervisor Tubchumpol about the delayed payment of wages.

370. According to Claimant NC, he felt that if you complain, you will not be sent to work. Claimant NC saw his Thai co-worker get hurt while working at Kelena Farms due to the negligence of a Filipino worker but no one took him to the doctor. His co-worker did not go back to work but the Filipino worker was back at work the next day like nothing happened.

371. As a result, Kelena Farms knew or should have known that the Thai workers were subject to adverse employment actions by Global after they complained because Kelena Farms controlled the Claimants' worksite and the Claimants repeatedly complained to Kelena Farms' management, Larry Jefts, Francisco, and Kelena Farms' female interpreter. Kelena Farms also knew or should have known that some of the Claimants were being subject to a reduction of hours because Larry Jefts admitted that Kelena Farms monitored the Claimants' hours.

Kelena Farms' Pattern or Practice/Standard Operating Procedure

372. Seventeen Claimants filed Charges of Discrimination against Kelena Farms.

373. Plaintiff EEOC incorporates by reference, all of the foregoing paragraphs which reflect that a pattern and practice of discrimination, harassment, retaliation, and/or constructive discharge persisted at Kelena Farms for the durations of its contracts with Global from 2005 to 2006. Based on information and belief, about fifty-seven Claimants worked at Kelena Farms through Global and experienced the above-described pattern or practice of discrimination.

ALLEGATIONS PERTAINING TO DEL MONTE

Claimants worked at Del Monte in 2003 without an approved Clearance Order were deported and in 2005 Del Monte may have violated a later Clearance Order

374. Del Monte operated three facilities in Kunia— a plantation; a fresh fruit facility for packaging whole pineapples for sales; and a pineapple concentrate processing plant. The plantation included a seed harvesting division where workers harvested pineapples and/or chapiya (cutting off the tops of plants).

375. Del Monte entered into a one year contract with Global on March 18, 2003 for Claimants to work at the Del Monte plantation's seed harvesting division. Based on information and belief, neither Global nor Del Monte obtained a Clearance Order for Global to supply workers at Del Monte for this 2003 contract. Based on information and belief, Del Monte and Aloun Farms used about 88 workers who were only authorized to work in Arizona for an unrelated farms chili pepper harvest.

376. Global supplied Claimants to work at the Del Monte plantation's seed harvesting division through a one year contract starting in March 4, 2005.

377. On December 29, 2005, Del Monte entered into a letter of intent with Global for Claimants to continue working in the seed harvesting division of the Del Monte plantation.

378. Del Monte's payroll documents indicated that at one point they employed 132 Claimants.

379. Based on information and belief, the Clearance Order approved by the DOL on January 28, 2005 limited authorized Thai Claimants who could work at Del Monte to 100.

380. Based on information and belief, Del Monte violated the 2005 Clearance Order by using 132 Claimants.

381. Between March 15, 2003 and April 15, 2003, Claimant KP and numerous other Claimants were deported from the pineapple farm where he

worked. Del Monte identified Claimants KP as one of the Claimants deported while working at Del Monte. Based on information a belief, Del Monte did not have a Clearance Order approving any Claimants to work at Del Monte in 2003 in part because the Claimant KP and other similarly situated Claimants were told they would be farming chili peppers in Arizona not pineapples at the Del Monte farm in Hawaii. When the Claimants arrived to start working at Del Monte, they had one month left on their visas that only authorized their work at the Arizona farm.

382. Claimant TP was among those deported with Claimant KP, he was deprived of food and work for weeks before he arrived at Del Monte. Claimant TP arrived in Los Angeles in March 2003 with 54 people and stayed in a hotel for 15 days waiting to fly to Honolulu with no work. Global gave them one meal per day. TP had \$100 that he brought from Thailand that allowed him to eat more than one meal per day. TP was supposed to pick chilies like Claimant KP, but was taken to Aloun Farms for one night to sleep in a shipping container with 10 others. The other 44 Claimants he arrived with were taken directly to Del Monte.

383. The container/housing at Aloun Farms had no running water or electricity. Claimant TP's group of 10 was then moved to a house that belonged to the Aloun Farm owner's mother about one hour from the farm. There were no beds and everyone slept on the floor. The nearest telephone was one hour away on foot.

384. Claimant TP's group of 10 worked at Aloun Farm for about 3 days and then were without work for the next 15 days. By this point, TP only had \$20 left of the \$100 he brought from Thailand and could only afford instant noodles. Claimant TP's group of 10 had to catch fish in the river to survive. Claimant TP asked the Aloun Farm's owner for an advance on the 3 days of work he performed, but was not given an advance. Claimant TP was never paid for his work on Aloun Farm.

385. On March 28, 2003, TP's group of 10 Claimants was taken to work at Del Monte to rejoin the others who were taken directly to Del Monte. All were housed in a hotel room that had one bed, one bathroom, and a kitchen. Eight people slept in a single room. In Claimant TP's room, two people could sleep in the one bed and the rest slept on the floor. They were told not to go anywhere or they would be arrested. Claimant TP, SK, and other Claimants lived in overcrowded conditions while working at Del Monte. Claimant SK and others lived in an apartment that had one kitchen and one bathroom and were told not to speak to outsiders. Claimant TC's group of 9 Claimants lived in an apartment with two beds. Some slept on the floor while some had to sleep in the kitchen. Claimant TC's group had to cook in the kitchen where people were sleeping.

386. Living in housing provided through Del Monte and Global's contracts was an adverse term and condition of employment based on the Claimants' national origin and race.

387. On the day of their deportation, Claimant TP and other Claimants were told to give their passports to Global supervisor John to get their visas renewed on the day they were jailed before being deported. TP and the other Claimants all got up at 4 a.m. to go to work. The first group got on the bus at 4 a.m. in their work clothes. The second group was waiting for the bus when they were arrested and jailed in Honolulu for 15 days. Global representatives came to the jail with an attorney who told TP and others to sign a document in English that they could not read which supposedly said that they would go back to Thailand for 10 days and return to the U.S.

388. The Claimants had no time to pick up their belongings and they flew home in their work clothes and work boots. The Claimants asked to have their belongings brought to them, but they were told they could get them when they returned to the U.S. in 10 days. Claimant TP had no money on his return. He just had his passport and the work clothes on his back. When the Claimants got to

Thailand, ACCO told the Claimants that they talked too much and that was why they were arrested and their visas not renewed. Claimant TP had to borrow money to take the long bus ride from Bangkok to his home in the northern province of Lampang.

389. When Claimant TP left Thailand, he was promised a job where he could earn \$3,000 per month. But Claimant TP received about \$200 total for the approximately one month he was shuttled from Los Angeles to Aloun Farms and then to Del Monte. The \$100 Claimant TP brought from Thailand ended up being essential to his survival in that it allowed him to at least eat instant noodles. Claimant TP did not earn enough in Hawaii to feed himself such that he and other Claimants had to fish in the rivers for food.

390. Claimant SS and other Claimants who worked at Del Monte in 2005 and 2006 did not have enough bunk beds and some used picnic tables as beds.

391. Like the Claimants who were deported while working at Del Monte 2003, some Claimants were not getting paid while working at Del Monte in 2005 and 2006.

392. Even after the deportations, Del Monte continued to employ Global as a labor contractor. Throughout 2003-2006 Global's supervisor Shane Germann supervised Del Monte's non-H2-A employee (i.e., non-Thai workers). The EEOC believes that in 2004, Del Monte and Global likely engaged in discussions to obtain approval for workers authorized in a Clearance Order approved January 28, 2005 in connection with the H2-A visa approval for 100 Claimants to work for them from period of February 19, 2005 through December 19, 2005. Del Monte should have known the Claimants' visas were expiring on December 19, 2005, but Del Monte did not enter into a letter of intent with Global until December 29, 2005 to begin the application process for a visa extension. Yet, Del Monte admitted during the EEOC's charge investigation that many workers continued to work for Del Monte through February 2006. Del Monte did not confirm whether they

obtained H2-A visa approvals for the Claimants to work at Del Monte after December 19, 2005 through February 2006.

393. Claimant LS did not file a charge against Del Monte, but had a contract with Global to work at Del Monte for \$9.60/hour. Global also gave Claimant LS a letter to facilitate his travel. The Global letter dated May 12, 2005, explained that LS was traveling to the United States to work at Del Monte. Based on information and belief Claimant LS did not work at Del Monte despite the false travel letter Global provided him. Thus, based on information and belief, Global misrepresented where Claimants would be working and farms including but not limited to Del Monte should have investigated and/or should have known about Global's non-compliance with the H2-A requirements. By investigating Global's H2-A compliance, Del Monte could have learned of Global's Title VII violations.

Del Monte's contracts with Global gave Del Monte ample control over the Claimants to make Del Monte liable as an employer

394. Del Monte and Global entered into three agreements for Global to supply farm workers to Del Monte in Mach 2003 and again from March 2005 through 2007.

395. Del Monte and Global first Contract effective on or about March 18, 2003 defined Global as the employer, but gave Del Monte day-to-day control of the work performed as follows at §2(A) and §4:

DMFP shall advise FLC [Global] of the Services that must be performed on a day-to-day basis, as well as those portions of the Land to be worked by FLCs.

. . . .

FLC agrees that DMFP shall have the right to have an inspector (the "Del Monte Representative") present at all times to observe that the Services are being performed in accordance with DMFP quality standards.

396. The March 2003 FLC Agreement at §6 required Global to comply with various federal and state laws pertaining to migrant and seasonal agricultural workers. The Contract also required Global to provide proof of its Farm Contractor License upon execution of the contract. Based on information and belief, Del Monte failed to properly investigate Global prior to using its services.

397. On April 9, 2003, Alvin Wong of U.S. Immigration and Customs Enforcement spoke with Jeffrey S. Bailey, Associate General Counsel for Del Monte's parent company Del Monte Fresh Produce Company because of the Claimants who were deported.

398. Despite Global's utter failure to perform its obligations under the March 2003 contract, Del Monte entered into a second contract with Global in March 2005 for H2-A workers. It is unclear what if any investigation Del Monte conducted to determine whether Global could or would comply with federal employment, immigration, and/or labor laws.

399. The March 2005 Contract also gave Del Monte day-to-day control over the Claimants in a manner similar to the 2003 contract. Then on December 29, 2005, Del Monte entered into a letter of intent with Global for workers to be supplied from January 2006 through January 2007. Based on information and belief, Del Monte did not have authorization for Claimants to work at Del Monte from January 2006 through January 2007.

400. Stacie Sasegawa who worked for Del Monte as a Human Resources Manager and later as a General Manager described ways by which Del Monte controlled the Claimants' work.

401. Sasegawa stated that Del Monte supervisor Enrique (last name unknown) and Seed Harvesting Superintendent Marisa Akiona met daily with Global's supervisors to assign tasks presumably because neither spoke Thai.

402. Sasegawa further confirmed that Del Monte controlled the work by setting the work schedule. Although the first contract stated that Global would

determine the number of workers needed each day, Sasegawa stated that under the first contract Del Monte actually told Global the number of workers that could work each day.

Del Monte Engaged in the Misconduct

403. Based on information and belief, Del Monte engaged in the misconduct and/or discrimination against the Claimants by failing to comply with the H2-A program and/or failing to ensure that Global complied while benefitting from the Claimants' work. Stacie Sasegawa who worked for Del Monte as a Human Resources Manager and later as a General Manager knew about the Claimants being deported in 2003. Similarly, the Associate General Counsel for Del Monte Fresh Produce Jeffrey Bailey knew of the mass deportations, but Del Monte continued to use Global to supervise its local workers throughout 2004 for Del Monte's domestic workers, and then contracted with Global again for the H2-A workers in 2005 and 2006. Del Monte's December 2005 letter of intent stated that Del Monte intended to use Global's workers from January 2006 through January 2007.

Del Monte should have known of the discrimination because its compliance with various applicable laws would have placed it in a position to comply with Title VII.

404. Based on information and belief, Del Monte should have also known of the requirements of the H2-A program. Del Monte's request for H2-A workers through Global obligated both to comply with the requirements of the program. Because Global utterly failed to perform on the first contract in 2003 due to the mass deportations, Del Monte should have more carefully investigated and monitored Global to prevent and correct the various potential violations of federal employment, labor and immigration laws.

405. Del Monte should have also known that the HDLIR confirmed that Global was not authorized to do business in Hawaii and warned in July 18, 2006:

several local farms may have been lead to believe that . . . Global has acquired workers' compensation insurance and is now authorized to continue doing business in the State of Hawaii. As of July 18, 2006, Global . . . is still not authorized to do business in Hawaii. Allowing Global employees to work on your farm would be in violation of the court's order.

. . . . We will continue working with the Hawaii State Department of Agriculture and the federal government to address any concerns that Hawaii's farming community may have regarding these recent developments

406. Moreover on July 27, 2006, the U.S. Department of Labor barred Global from the H2-A program for three years for allegedly providing false information regarding agricultural work to be performed in California from 2003-2004 and for falsely stating employees were terminated for poor performance. Del Monte used Global at its farms in California as well as in Hawaii.

Race/National Origin Discrimination at Del Monte

407. The Claimants belong to a protected class (Thai/Asian), they were qualified to do the work and they performed their jobs satisfactorily, they suffered adverse employment actions by being subject to adverse terms and conditions as described above and below because of their Asian race and/or Thai national origin, and similarly situated individuals outside the protected class were treated more favorably, or other circumstances surrounding the adverse employment actions give rise to an inference of discrimination.

Different terms and conditions of employment with respect to housing at Del Monte

408. In 2003 at the time of the deportations, Claimants KP, TP, SK, TC, AK, AP, and other Claimants lived in one room often with only one or two beds

for 8 to 12 workers, one bathroom and some Claimants were forced to sleep in the kitchen. Claimants lived in similarly cramped conditions in 2005.

409. Living in the sub-par housing provided by Del Monte and Global's contracts was an adverse term and condition of employment for the Claimants.

***Different terms and conditions with respect to pay
and work assignments at Del Monte***

410. Claimants US, TT and other Claimants did not have the amount of work promised and were paid less than Filipinos workers performing the same work. Claimant AP and other similarly situated Claimants did not receive their pay on time while working at Del Monte. Claimant PP observed that Filipino workers were assigned to the easier work at Del Monte.

411. Claimants who worked at Del Monte were often paid late and/or had insufficient work.

Hostile Work Environment at Del Monte

412. The Claimants were subjected to verbal or physical conduct (including but not limited to abusive language, exorbitant and/or unlawful recruitment fees, confiscation of passports, uninhabitable housing, insufficient food, inadequate pay, demeaning job assignments, and threats and intimidation) based on their race and/or national origin, the conduct was unwelcome, and the conduct was sufficiently severe or pervasive to alter the conditions of the Claimants' employment and created an abusive working environment. Further, the working conditions had become so intolerable that the Claimants felt compelled to resign including but not limited to Claimant KP who escaped from Del Monte on or about August 29, 2005.

413. Claimants, including but not limited to, SC, PC, TC, AKA, DK, AKh, PL, PO, KP, HP, US, CS, AT, TT, and JP escaped or were forced to quit because of the intolerable conditions at Del Monte and where constructively discharged.

414. Based on information and belief, Tubchumpol notified Mordechai Orian via email about numerous escapes from Del Monte and other farms.

415. The Claimants US, TJ, and others were subjected to a curfew and watched when they worked at Del Monte while non-Thai workers were not.

Retaliation at Del Monte

Del Monte Knew or Should have Know that the Claimants Engaged in Protected Activity by Complaining to Global, Complaining Directly to Del Monte's Supervisors, and Complaining to DOL

416. The Claimants engaged in a protected activity by complaining about Global's failure to pay them. Claimant PK complained to Global's Supervisor Shane Germann that he was not getting paid. Germann who supervised Del Monte's local, non-H2-A workers through 2004 should have reported this problem directly to Del Monte. However, after Claimant PK's complaint to Germann, Claimant PK's hours were later reduced to 20 hours per week and he was not permitted to work at Del Monte for over one month. Claimant WW complained to Global's supervisor Wongsesanit that they were not being paid on time while working at Del Monte. Based on information and belief, Del Monte knew or should have known of these complaints because Del Monte kept track of hours Claimants worked but failed to correct the problem.

417. In or about August or September 2005, the Claimants who work at Del Monte complained to DOL about not being paid on time, not being given the correct wages that had been promised to them, and that they had paid substantial recruitment fees to work in the U.S. and that they depended on being paid for their work to repay loans for the recruitment fees. When Global learned that the Claimants talked to DOL, Global's supervisor Tubchumpol threatened them. This was about three or four months into the work at Del Monte. After Global's supervisors learned that the Claimants complained to DOL, they forbid the

Claimants from talking to DOL. Thus, the second time DOL came to investigate further, Claimants including but not limited to SC were afraid to talk to DOL because they had a lot of debt and were afraid of being deported because they needed to pay back the debt.

418. Also around August or September 2005, crew leader “S-1” complained directly to Del Monte supervisors about not being paid on time on behalf of Claimant SC and other Claimants in the crew. The Del Monte supervisors’ response that Del Monte was paying Global on time. Del Monte failed to respond to the complaints.

419. In or about early 2006, another crew leaders “S-2,” complained directly to Del Monte on behalf of Claimant SP and other Claimants in his crew. Crew leader S-2 spoke to a Caucasian Del Monte farm supervisor who appeared to be in his 40’s and was in charge of the machines about not having enough work, wanting more work hours, overcrowded travel conditions, and not having a place to eat out in the field. Crew leader “S-1” complained to this male supervisor after his prior complaints to a Filipina Del Monte Farm supervisor resulted in no corrective actions by Del Monte.

420. Claimants also complained to Del Monte personnel who worked in the Del Monte factory about the debt they had incurred in Thailand, the hours, and the working conditions.

421. Upon receipt of complaints from two separate Thai crew leaders, Del Monte could have investigated to learn of the breadth of discriminatory practices against the Claimants. Del Monte was in a position to take corrective measures because Del Monte controlled the number of hours Claimants could work, could have taken actions to alleviate the overcrowded travel conditions, and given the Claimants a place to eat.

422. Because Del Monte did nothing, the Claimants were subject to adverse employment actions by Global, including, but not limited to having their

hours reduced, suspension, or being laid off from work, receiving threats of deportation, shortly after they complained while working at Del Monte. After Claimant PK complained to Global's supervisor Germann that he was not getting paid, Claimant PK's hours were reduced to 20 hours per week and he was not permitted to work at Del Monte for over one month after he complained. Global's supervisor Tubchumpol threatened to send Claimant MT back to Thailand after he complained to Tubchumpol about the delay of payment at Del Monte. Similarly, Tubchumpol responded to complaints by threatening Claimants not to associate with outsiders and not to talk too much otherwise they would be sent home after a group of Claimants including SP complained to Tubchumpol about not being paid in a timely manner and the working conditions. Approximately one month later, Claimants SP's Thai co-worker was sent to another farm.

423. Claimant CT observed that after the Claimants complained to Global's supervisor Tubchumpol, the complaining Thai worker would be identified and accused of being a troublemaker in group meetings in a humiliating manner by Global's supervisors. This made other Thai workers feel afraid and discouraged some of them from complaining. Global supervisors would also tell the other Claimants that the complaining Thai worker would be transferred into a farm with not as much work, would be paid less, and/or assigned less work.

424. When Global learned that the Thai workers had complained to DOL, Global's supervisor Tubchumpol threatened the Thai workers by stating that they should not talk to anyone from the DOL and that those who did would be sent back to Thailand.

425. Del Monte knew or should have known that the Thai workers were subject to adverse employment actions after they complained because it controlled the Claimants' worksite, work schedules, and the Claimants repeatedly complained to Del Monte's management and employees. Del Monte knew or should have known when Thai workers were transferred to other farms or deported because Del

Monte's manager Sasegawa confirmed that Del Monte controlled the work by setting the work schedule and setting the number of workers that could work each day. As a result, Del Monte is also liable for the employment actions taken against the Thai workers by Global.

Del Monte engaged in adverse employment actions against Claimants who complained and failed to prevent adverse employment actions by Global

426. Shortly after the crew leaders' direct complaints to Del Monte's farm supervisors, the Claimants were prematurely transferred out of Del Monte and several were sent back to Thailand.

427. Del Monte thereby engaged in adverse employment actions including but not limited to prematurely denying work to the Claimants and/or having Claimants sent back to Thailand on or about after February 18, 2006, despite that the operative contract with Global was to end in January 2007.

428. In January 2006, Global filed an application to obtain 100 H2-A workers for Del Monte, but Del Monte withdrew the application in or about February 2006. Thus, Del Monte further engaged in the adverse action of jeopardizing the Claimants' visas and refusing to extend their visas despite a continuing need for their labor after February 2006.

429. Because Del Monte cut short the contract with Global, Del Monte enabled Global to deliver on the threat to deport Claimants who complained.

430. Del Monte's adverse actions against Claimants for their direct complaints to Del Monte's supervisors dissuaded other reasonable workers from making or supporting a charge of discrimination or engaging in other protected activities under Title VII's anti-retaliation provisions.

Pattern or Practice of Discrimination at Del Monte persisted in 2003 and 2005-2006 against over 100 Claimants

431. Fifty-four Claimants filed charges of discrimination against Del Monte.

432. Plaintiff EEOC incorporates by reference, all of the foregoing paragraphs which reflect that a pattern and practice of discrimination, harassment, retaliation, and/or constructive discharge persisted at Del Monte for the durations of its contracts with Global from 2003 to 2006 or 2007. Based on information and belief, the EEOC alleges that about 111 Claimants worked at Del Monte through Global and experienced the above-described pattern or practice of discrimination.

ALLEGATIONS AGAINST MAUI PINEAPPLE FACTS

Maui Pineapple's contracted with Global defined Maui Pineapple as the Claimants' direct employer.

433. On October 21, 2004, DOL approved Global's October 19, 2004, application to supply 100 workers at Maui Pineapple, i.e., the Claimants. The approved application further stated that the Claimants' housing and worksite would be located at 4900 Houapiilani Hwy, Lahaina, HI 96761 (i.e., Maui Pineapple property).

434. Maui Pineapple and Global entered into two contracts the first of which defined Maui Pineapple as the employer and strictly limited Global's role to that of a "Personnel Services" provider for all of Maui Pineapple's workers. Although the second contract redefined Global as the employer, Maui Pineapple retained tight control over the work environment.

435. On June 23, 2004, a Farm Labor Contractor Agreement effective for one year from June 17, 2004, and signed by Maui Pineapple's President Brian Nishida was faxed to Global. Defining Maui Pineapple as the "Grower" and Global as the "Contractor," the contract stated:

1. Appointment. Grower appoints Contractor to provide certain services (specified in paragraph 3.a. below) in connection with *all of Grower's farm laborers (the "Workers")* in Hawaii.

....

3. Contractor's Duties, Rights, Representations, and Warranties.

- a. Contractor shall provide Personnel Services in connection with the Workers. "Personnel Services" shall mean handling all paperwork with the employment of the Workers, including processing the I-9 immigration forms, processing the payroll, handling the W-4 and other tax forms, and providing worker's compensation insurance for the Workers. *Contractor, shall not however, be deemed to be the employer of the Workers, and the Workers shall at all times be employed by and under the direct supervision of the Grower. In its sole discretion, as employer of the Workers, Grower may terminate the employment of any Worker at any time and for any reason.* Unless agreed to by both parties in writing, *Contractor's services hereunder shall be limited to providing the Personnel Services* described in this paragraph 3.a.
- b. In the event Grower desires to engage Contractor to provide other services, such as recruitment of workers, providing housing for the Workers, and other related services, Grower shall notify Contractor of its desire and the parties shall attempt to negotiate a mutually acceptable agreement.

.....

4. Grower's Duties, Rights, Representations, and Warranties.

- a. *Grower shall provide a safe working environment for the Workers in accordance with all applicable federal, state, county, municipal, and other laws and regulations.* Prior to Contractor providing any Personnel Services, Grower shall provide Contractor with information required or requested by Contractor to fulfill its obligations hereunder. . . .

436. The above June 2004 contract between Maui Pineapple and Global made Maui Pineapple the Claimants' direct employer. This contract allowed Maui Pineapple to terminate the Claimants' employment "at any time for any reason," and made Maui Pineapple responsible for providing a safe working environment in accordance with *inter alia* all applicable federal laws. As the "Personnel Services" provider, the June contract limited Global's duties to processing I-9, W-4, and tax forms and providing workers' compensation insurance. As the direct employer, Maui Pineapple is liable for the claims in this action as to Claimants who worked at Maui Pineapple.

437. Based on information or belief, the EEOC alleges that on or about September 29, 2004 or October 19, 2004, Global submitted an Application for Alien Employment Certification to obtain temporary workers to harvest pineapples for Maui Pineapple through the H2-A visa program. DOL issued a Temporary Certification valid from November 13, 2004 through September 15, 2005.

438. Thereafter, on November 15, 2004, another "Farm Labor Contractor Agreement" also effective for one year from June 17, 2004, and signed by Maui Pineapple's President Brian Nishida was faxed to Global. Maui Pineapple executed two contracts for the overlapping time frame even though the application to DOL had been filed prior to the second contract. Nonetheless, defining Maui Pineapple as the "Grower" and Global as the "Contractor," this second contract stated:

1. Appointment. Grower appoints Contractor to provide certain services (specified in paragraph 3.a. below) in connection with *all of Grower's farm laborers (the "Workers")* in Hawaii.
.....
3. Contractor's Duties, Rights, Representations, and Warranties.

- a. *Contractor shall provide Personnel Services in connection with the Workers. "Personnel Services" shall mean handling all paperwork associated with the employment of the Workers, including processing the I-9 immigration forms, processing payroll, handling the W-4 and other tax forms, and providing workers' compensation insurance for the Workers. In addition, Contractor shall recruit Workers when needed and shall provide the transportation for the Workers. Contractor shall be deemed to be the employer of the workers, and the Workers shall at all times be employed by and under the direct supervision of the Contractor. In its sole discretion, as employer of the Workers, Contractor may terminate the employment of any Workers at any time and for any reason. Unless agreed to by both parties in writing, Contractor's services hereunder shall be limited to providing the Personnel Services described in this paragraph 3.a.*
- b. In the event Grower desires to engage Contractor to provide other services, such as providing housing for the Workers and other related services, Grower shall notify Contractor of its desire and the parties shall attempt to negotiate a mutually acceptable agreement.

....

4. Grower's Duties, Rights, Representations, and Warranties.
 - a. *Grower shall provide a safe working environment for the Workers in accordance with all applicable federal, state, county, municipal, and other laws and regulations. Prior to Contractor providing any Personnel Services, Grower shall provide Contractor with information required or requested by Contractor to fulfill its obligations hereunder.*

439. The June 2004 contract defined Maui Pineapple as the employer and gave it the powers of an employer, and was the representation to DOL in the September or October 2004 to obtain the H2-A workers. The November 2004 contract made Global and Maui Pineapple both responsible for the Claimants' transportation and housing. Although the November 2004 contract redefined Global as the employer, both contracts required Maui Pineapple to provide a safe working environment under all federal laws. Both contracts also repeatedly defined Global's fundamental role as that of providing "Personnel Services" (i.e., payroll paperwork) contrasted with Maui Pineapple's control over the worksite.

440. Based on the representations to DOL in September or October 2004 as well as the June 2004 contract, Maui Pineapple was the direct employer of the Claimants who worked at Maui Pineapple.

Maui Pineapple's control over the Claimants make it liable as a joint employer.

441. Holly Ka'akimaka, Director of Industrial Relations for Maui Land & Pineapple Company reported to the EEOC in the presence of her supervisor Shareen Poynter, Human Resources Manager for Maui Land & Pineapple Company facts confirming Maui Pineapple's control over the Claimants.

442. Ka'akimaka stated that the Claimants worked for Maui Pineapple from October 2004 to September 2005. Ka'akimaka further stated that Maui Pineapple housed some of the Claimants in its dormitories. She knew that they typically worked from 7 a.m. to 3:30 p.m., five to six days per week in the fields but not in the canneries. Ka'akimaka confirmed that Global's Thai field supervisors reported to four or five Maui's field supervisors who thereby exercised successively higher authority over the Claimants.

443. Rudy Balala, Maui Pineapple's Harvesting Superintendent, confirmed Maui Pineapple's control over the Claimants as follows. Balala confirmed that Global supplied Thai and local workers to Maui Pineapple. Balala confirmed that the Claimants performed field work—harvesting, seed collection, seed

development, and weeding. The Claimants worked five days a week at both of Maui Pineapple plantations. Maui Pineapple provided the work hoes and Global bought other equipment from Maui Pineapple such as gloves canvas chaps, and safety goggles. However, Claimants PT confirmed that Maui Pineapple provided the pants and goggles to the Claimants.

444. Balala explained the way Maui Pineapple's field supervisors exercised successively higher authority over the Claimants through the Global supervisors. Maui Pineapple's field supervisors instructed Global crew leaders on the size of the crew needed and how much land to cover. Maui Pineapple's supervisors set up the daily schedules and showed the Global supervisors what to pick and evaluated the crew two to three times a day. At the end of the day, Global's supervisors returned to the Maui Pineapple office having colored-in the work completed on maps and filled out production sheets. Balala also confirmed that Maui Pineapple verified the hours Global claimed for payroll.

445. In a second interview, Ka'akimaka, the above-mentioned Director of Industrial Relations for Maui Land & Pineapple Company, described Maui Pineapple's control over the Claimants' housing. Ka'akimaka explained that Global's four supervisors who lived in the dormitories reported to Maui Pineapples' Seasonal Labor and Cafeteria Manager, Patty Corden. Claimants had to follow Maui Pineapple rules in the dormitories. Ka'akimaka admitted that sometimes there weren't enough beds. Ka'akimaka further explained that Corden was in charge of ordering food and maintaining the facility for all workers including the Claimants.

446. Ka'akimaka also stated that she personally trained four to five Global's supervisors including "Sam" and "Shane" on "blood born" training. Ka'akimaka stated Sam and Shane did not complain about discrimination. However, Sam Wongsasant and Shane Germann were the vary supervisors who were abusing the Claimants.

447. Maui Pineapple's Plantation Supervisor Glavin Kaala Kai confirmed that he required the workers to plant 6,000 pineapple "cuts" per day. Kaala Kai required Thai workers in training to plant 5,750 "cuts" per day. He confirmed Maui Pineapple loaned the Claimants the planting knives. Everyday he told the Thai supervisor what needed to be done, checked on their work throughout the day, and never left the field. He trained and evaluated the Claimants' work.

448. Patty Cordon, Seasonal Labor and Cafeteria Manager, also confirmed Maui Pineapple's control over the Claimants' housing and access to food. Cordon stated that she worked with the cooks, prepared the menus, did the ordering, scheduling, and any kind of discipline, but stated she only supervised Maui Pineapple's labor only which included the Claimants pursuant to the Maui Pineapple-Global contract of June 2004.

449. Cordon stated that Maui Pineapple supplied mattresses, frames, and sheets because Global "did not have its act together starting up." Cordon confirmed that the Thai cooks at the dormitories used Maui Pineapple's kitchen, equipment, and utensils to prepare three meals a day for the Claimants. In 2005, there were about seventy-five Thai workers and twenty-four Micronesian workers living in the dorms. Maui Pineapple provided two laundry rooms and the detergent.

450. Harvesting Supervisor Ernie Serrato also reported to the EEOC about various ways Maui Pineapple controlled the Claimants' work as follows. Serrato described his job duties as assigning work to people in the morning, preparing schedules for the next day, doing estimation, checking on people throughout the day, and supervising "gangs" of workers. Serrato stated that he met with the Thai supervisors daily regarding the harvesting and provided training on how to harvest the pineapples. Serrato explained that sometimes they transported the Claimants in Maui Pineapples' vehicles. Serrato also said that the Claimants' gloves, chaps,

and goggles were purchased from Maui Pineapple, but that Maui Pineapple provided the machete to cut the pineapples.

Claimants reported that Maui Pineapple directly supervised them

451. Claimant SL and other Claimants were supervised by a female employee who worked for Maui Pineapple. The female Maui Pineapple supervisor showed the Claimants how to pick the pineapples and to recognize whether the ripe fruit. Claimant SL and other Claimants were monitored by Maui farm supervisors. Another Filipino Maui Pineapple supervisor directly supervised Claimant CM and other Claimants. Claimant LK and other Claimants received daily commands or instructions from Maui Pineapple's Filipino workers on what types of pineapples to pick and where to pick them.

Maui Pineapple Engaged in the Misconduct

452. Maui Pineapple engaged in discriminatory conduct against the Claimants by providing overcrowded and uninhabitable housing to the Thai workers who lived at the Maui Pineapple dormitories. Ka'akimaka confirmed that Maui housed some of the Thai workers in Maui Pineapple's dormitories. Cordon stated that Maui Pineapple supplied mattresses, frames, and sheets because Global "did not have its act together starting up." Thus, Maui Pineapple knew of Global's shortcomings from the start, but failed to correct them.

Maui knew that the Claimants complained to state and federal government officials about the working and housing conditions that contributed to the hostile work environment and discrimination

453. Maui Pineapple knew through Ka'akimaka, Director of Industrial Relations for Maui Land & Pineapple, that the Claimants complained to DOL in May 2005. Ka'akimaka stated that DOL completed its investigation in May or June 2005 and found violations including Global's failure to maintain proper auto insurance for the van used to transport Claimants. Instead of re-thinking its relationship with Global after the noted DOL violations, Ka'akimaka stated that in

July 2005 Maui sent Global a “letter of intent” asking for 80 more workers. Ka’akimaka further confirmed that Maui did not end its relationship with Global until November 2005. Ka’akimaka stated that the DOL investigation gave her “the willies” but that Maui Pineapple did not conduct in any internal investigation regarding Global’s known failures.

454. Ka’akimaka confirmed that even with actual knowledge of Global’s violations identified by DOL, Maui Pineapple still sought more workers from Global ignoring the numerous warning signs about the hostile work environment which extended to the housing conditions.

455. In addition, Maui Pineapple knew that the Claimants were running away because of the unlawful employment practices. Maui Pineapple’s Harvesting Superintendent Balala confirmed that he heard some of the Thai workers ran away, and reported it to Maui Pineapple’s human resources, but Maui Pineapple failed to conduct any internal investigations. Maui Pineapple’s Plantation Supervisor Glavin Kaala Kai also heard that Claimants were running away, but chose not to get involved. Cordon who was the supervisor in charge of the housing also confirmed knowing that a Thai cook ran away and heard that quite a few other Thai workers ran away because Global supervisor Sam told her. Upon learning that the Thai cook ran away, Cordon emailed Maui Pineapple’s human resources. Supervisor Serratto also heard that some of the Claimants ran away. Despite having this knowledge, Maui Pineapple did not take any investigative, preventative, or corrective measures that stopped the disparate treatment and hostile work environment.

456. Claimants ran away to escape the intolerable conditions at Maui Pineapple and were thereby constructively discharged. Claimants including but not limited to the following Claimants were forced to resign from Maui Pineapple to escape the intolerable conditions at Maui Pineapple: KA, SC, CK, TM, SM, WM, SN, IO, DP, AP, BP, SR, SS, MS, ST, SU, NY, RY.

Maui Pineapple's Constructive Knowledge of the Discrimination

457. Maui Pineapple should have known of the requirements of the H2-A requirements and that the housing conditions were non-compliant.

Race/National Origin Discrimination at Maui Pineapple

458. The Claimants belong to a protected class (Thai/Asian), they were qualified to do the work and they performed their jobs satisfactorily, they suffered adverse employment actions by being subject to different terms and conditions as described above and below because of their Asian race and/or Thai national origin, and similarly situated individuals outside the protected class were treated more favorably, or other circumstances surrounding the adverse employment actions give rise to an inference of discrimination including but not limited to a hostile work environment.

Different terms and conditions with respect to housing at Maui Pineapple

459. The Claimants were subjected to adverse terms and conditions with respect to the living conditions while working at Maui Pineapple. The Claimants lived in an old school-like building that resembled a run-down military barrack with more than 100 Thai workers. Maui Pineapple forced some of the Claimants to sleep on the floor. Claimant TJ confirmed that he and other Claimants had to build their own beds out of wood while living at Maui Pineapple. Claimant BP shared his bunk bed with two Claimants.

460. Claimants AP and KP confirmed that they slept in a big open area that looked like a big hall or warehouse while working at Maui Pineapple. This hall was infested with lots of mosquitoes.

461. There was no heat, no fans, and no hot water at the Maui Pineapple housing when Claimants BP, AP, IO, KA, KI, PK, NY and other Claimants lived there. The Claimants also describe the housing as very dirty.

462. The Micronesian workers' housing was less crowded than the Thai's housing at Maui Pineapple. When Claimant IO and other Claimants worked at

Maui Pineapple, there were 20 to 30 Micronesians in the Micronesians housing and 100s in the Thai housing. When Claimants KA and others worked at Maui Pineapple, the Micronesian workers who worked at Maui Pineapple were treated more favorably than the Claimants because they had access to the kitchen and were free to leave as they pleased. However, the Claimants were prohibited from going into the kitchen area and were not allowed to leave without supervision. Fewer Micronesian workers were assigned to the rooms and there were more Thai workers assigned per room when Claimant KA and others worked at Maui Pineapple. While Claimant BP and other Claimants worked at Maui Pineapple, the Micronesian workers had the freedom to go out freely whereas the Thai workers were confined to the dormitories. When Claimant RY, IO, and other Claimants worked at Maui Pineapple, the transportation was also overcrowded because the farm only provided two buses for the hundreds of Claimants. Many Claimants stood in the overcrowded buses as they were transported to the worksite.

463. Claimants LK and NY described the second housing at Maui Pineapple as worse than the first housing. They had port-a-potties at the second housing and two rooms with five shower heads for about 70 Thai workers. Sometimes they had to wait over 1-2 hours to shower. Wongsesanit forbade the Thai workers from using the Micronesian workers' bathroom.

464. Claimant DK also confirmed that transportation from the housing to the farm was overcrowded and they would often have to stand for 1.5 hours on their way to work.

465. Living in the housing jointly provided by Maui Pineapple and/or Global through their contracts was an adverse term and condition of employment for the Claimants.

Adverse terms and conditions of employment at Maui Pineapple—e.g., production levels, paying for gloves, receiving less pay, assigned more difficult work areas, denied breaks, pushed to work faster

466. The Claimants were subjected to adverse terms and conditions including but not limited to production levels for work performed at Maui Pineapple.

467. Claimant including but not limited to SU and TK fainted while working at Maui Pineapple because it was very hot and observed other Claimants getting sick and also fainting due to exhaustion. Claimants JP, MS, and KA confirmed that the Claimants were denied breaks but that the Filipino and Micronesian workers received two 15 minute breaks per day at Maui Pineapple. Claimant NY also confirmed that the Claimants were made to work harder than the Micronesians. The Micronesians were allowed to work at a slower pace but Global supervisor Wongsesanit reprimanded the Thai workers if they worked slower. Claimant RY observed that Maui Pineapple charged the Claimants for extra gloves but the Mexican workers did not have to pay for the extra gloves. Claimants PK and SL were required to purchase their own gloves while working at Maui Pineapple.

468. Claimants including but not limited to Claimant AK learned that Filipino workers received \$15 per hour for the same work he performed at \$9.75 per hour. Because Global and Maui failed to provide compliant housing or transportation, any difference in pay between the Claimants or non-Thai workers or a surcharge payable to Global at Maui Pineapple was not justified.

469. Claimants including but not limited to KA, AN, and NY observed that the Claimants were assigned to more difficult tasks such as areas that were more difficult to maneuver because pineapples had not been picked before. Claimants were assigned the more difficult work of cutting the stems off the fruit while the non-Thai workers did not do the cutting. The Micronesians workers were assigned to easier work after the Thai workers had cleared the difficult areas.

470. Additionally, the Claimants were required to pick a whole truckload of pineapples whereas the non-Thai workers were not required to pick as much. The Claimants had to work non-stop while the non-Thai workers were given breaks. Headcounts were conducted only for the Claimants, and not for the non-Thai workers. Similarly, Claimant DP confirmed the non-Thai workers were treated better, ate better food, were able to work freely, and were not treated like the Claimants who were treated like prisoners.

Inability to leave the farm/restriction on movements at Maui Pineapple

471. The Claimants were subjected to adverse terms and conditions compared to non-Thai workers because they were unable to leave the premises and their movements were restricted during the time they worked and lived at Maui Pineapple. The Claimants saw the Micronesian workers freely coming and going from the housing.

472. Claimants including but not limited to Claimant DP felt like prisoners because Wongsesanit would not allow them to leave the premises without his permission. Claimants NY, BK, BP, KP, PK, AK, KI, SN, MS, and other Claimants could not go anywhere unless accompanied by Sam Wongsesanit. Claimants AP, IO, KA, KI, AK, and other Claimants were subjected to a daily 7 p.m. head count or curfew at Maui Pineapple. After conducting the nightly roll calls, Wongsesanit told the Claimants that if anyone was missing, all the Claimants would be sent home.

473. Claimant NY confirmed that supervisor Wongsesanit guarded the entrances and exits to prevent the Claimants from escaping. Claimants including but not limited to Claimants KA and NY observed security guards around the housing at Maui Pineapple to prevent the Claimants from escaping.

474. Claimant LK and other Claimants attended meetings during which and Germann told the Claimants that the security guards at Maui Pineapple were immigration officials who could arrest them. Claimant LK and other Claimants

also attended meeting during which Wongsesanit and Germann brought in someone that they referred to as an FBI agent or police officer who slammed his badge on the table and threatened the Claimants with arrest and deportation if they tried to escape. After the “FBI or police officer” finished, Wongsesanit added, “You can swim to Thailand.”

475. Wongsesanit even prohibited Claimant KP and other Claimants from reading the Thai newspaper because he was afraid they would escape from Maui Pineapple.

Claimants who complained at Maui Pineapple were threatened, sent back to Thailand, or physically abused

476. The Claimants were subjected to a hostile work environment and disparate treatment by being routinely threatened with suspension, deportation, and/or not having their employment contracts renewed if they complained while working at Maui Pineapple. Tubchumpol, Germann, and Wongsesanit instructed Claimants including but not limited to Claimant AK, BP, KP, PK, SN, MS, RY, NY, and KA not to complain, not talk to outsiders, or threatened Claimants with deportation. Tubchumpol told Claimant NF that Wongsesanit would be watching the Claimants. During weekly or bi-monthly meetings at Maui Pineapple, Wongsesanit threatened the Claimants that they would be sent back to Thailand if they complained.

477. Wongsesanit told Claimants NY, BP, KA, IO, and others to lie to DOL about their insufficient pay or not to talk to DOL about their pay and their confinement when DOL investigated at Maui Pineapple. Claimants such as IO and KT confirmed that about 10 to 20 Claimants who did talk DOL were sent back to Thailand.

478. Wongsesanit became upset when any Claimant complained or expressed concerns. In or about Summer 2004, at Maui Pineapple Wongsesanit grabbed a Claimant by his shirt and threw him against a wall. Claimant KT

witnessed Wongsesanit threaten Claimants with a gun at Maui Pineapple. Claimant KA witnessed Wongsesanit grab the collar of a Thai worker as he was about to punch his face and grab a stick to hit the Thai worker. Claimant IO witnessed Wongsesanit threaten to physically fight Claimants who challenged him. Claimant TJ witnessed Wongsesanit threaten to send the Thai workers back to Thailand or to physically hurt Claimants while working at Maui Pineapple including but not limited to holding Claimants by their throats during meetings. Claimant TJ also witnessed Wongsesanit accompanied by bodyguards as he threatened to hurt the Claimants. Claimant MS saw Wongsesanit punch a Thai worker in the face. Claimant IO also witnessed Wongsesanit push a Claimant when that Claimant complained that he needed more work. Claimant DK confirmed that Wongsesanit always threatened the Thai workers meetings, which took place three times per week. Claimant DK feared Wongsesanit because he carried a baseball bat around during the meetings and at night to make sure all the Claimants were in bed and saw him punch a Thai worker. Similarly, Germann broke the sunglasses off the Thai workers' faces and threatened to deport the Claimant if he saw the Claimant wearing them again.

Claimants were not paid for work performed work at Maui Pineapple

479. The Claimants were subject to adverse terms and conditions of employment by not being paid for worked performed at Maui Pineapple. For example, Claimant NY did not receive one weeks pay; Claimant AP did not receive pay for approximately over 90 hours of work; and Claimant AK did not receive three to four days of pay; Claimant DP did not receive four weeks pay; and Claimant SL's pay was delay while at Maui Pineapple.

480. At least 48 paycheck stubs reflect a check amount of \$0 for work Claimants performed at Maui Pineapple.

Claimants were Denied work at Maui Pineapple

481. The Claimants were subject to adverse terms and conditions employment by being denied work or given less work than the non-Thai workers at Maui Pineapple. Claimants BP, KA, JP observed that the Micronesian or Filipino workers were assigned to work first while the Claimants did not have enough work to do when work was slow. Claimants AP, RY, and other Claimants only worked two or three days in some weeks because there was not enough work. Claimant KA confirmed that there was a time when he was not given work for one month and a half at Maui Pineapple. While Claimant AK worked an average of thirty-five hours per week, there were times he only worked two hours per day. Claimant KA was sometimes given only ten hours of work per week.

482. The Claimants were subject to adverse terms and conditions by being denied control over their pay. Instead of receiving their pay for work performed at Maui Pineapple, Claimants were subject to other unauthorized deductions to pay loans in Thailand or Claimants were given only \$50 in numerous paychecks instead of the amounts they earned.

Not having enough food to eat at Maui Pineapple

483. The Claimants were subject to a hostile work environment and adverse terms and conditions of employment because they had no food to eat at times while working at Maui Pineapple. Several of the Claimants including but not limited to NF, BP, SN, CK, MS, TJ, DP, AK, KI, LK, DK and other Claimants confirmed they had nothing to eat at times and that there was not enough food when they lived at the Maui Pineapple housing even when a \$42 weekly deduction was taken from each Claimant. If Claimants returned late from the worksite to the housing, the food would run out, and they were prohibited from cooking while living at Maui Pineapple. Claimants including but not limited to NS had to wake up at 3 a.m. in order to wait in line to take a shower and eat breakfast because of

the overcrowding even though work started at 7 a.m. Claimants including but not limited to CK confirmed there were roaches in the kitchen.

484. Tubchumpol, Germann, and Wongsesanit seized rice cookers, burners, and instant noodles from Claimants and prohibited the Claimants from cooking their own food. Similarly, all cooking utensils and seasonings were taken away from the Claimants while they worked and lived at Maui Pineapple. Claimant NF hid in the woods to eat bread because there was not enough food to eat. While non-Thai workers could drink alcohol, the Claimants could not.

485. While the farm initially provided food for the Claimants, they stopped providing food. Then Claimants including but not limited to RY, BP, SL, PT, DP, AK, NY, CK, KI, AN KA, and AP started to see deductions of \$42 per week for food at Maui Pineapple. Even with the \$42 deductions, Claimants did not have enough food.

Hostile Work Environment at Maui Pineapple

486. The Claimants were subjected to verbal or physical conduct (including but not limited to abusive language, exorbitant and/or unlawful recruitment fees, confiscation of passports, uninhabitable housing, insufficient food, inadequate pay, demeaning job assignments, and threats and intimidation) based on their race and/or national origin, that was unwelcome, and sufficiently severe or pervasive to alter the conditions of the Claimants' employment and create an abusive working environment. Further, the working conditions had become so intolerable that the Claimants felt compelled to run away and were thereby constructively discharged. Claimants including but not limited to the following Claimants were forced to resign from Maui Pineapple to escape the intolerable conditions at Maui Pineapple: KA, SC, CK, TM, SM, WM, SN, IO, DP, AP, BP, SR, SS, MS, ST, SU, NY, and RY.

487. Wongsesanit consistently harassed, shouted at, or threatened Claimants PR, KI, PK, CK, DP, JP, KA, SM, and other Claimants to work faster

and harder at Maui Pineapple. Wongsesanit also threatened to send these and other Claimants back to Thailand if they did not work faster and harder, and yelled and screamed for them not to complain. Wongsesanit hit of the one Claimants with a stick to make him work faster at Maui Pineapple. Wongsesanit would say the Claimants had to meet the quotas set by the farm saying, “This is what the farm wants so you should have done it.” Wongsesanit further threatened the Claimants by saying, “If you guys don’t work hard, the company won’t renew your contract and I will send you home.”

488. Wongsesanit yelled at Claimants KI and others to turn the lights off and go to bed by 9 p.m. and hurried them to get onto the bus to go to work in the mornings.

Retaliation at Maui Pineapple

489. The Claimants engaged in a protected activity by complaining about the lack of food, not being paid for work performed, and/or the lack of work at Maui Pineapple, including but not limited to complaining to DOL in May 2005 and complaining to their supervisors before and after complaining to DOL. Holly Ka’akimaka, Director of Industrial Relations for Maui Land & Pineapple Company, confirmed that DOL investigated Maui Pineapple as a result of the Claimants’ complaints to DOL.

490. In response to various EEOC Charges of Discrimination, Maui Pineapple represented that the Claimants stopped working for Maui Pineapple on August 20, 2005. Thus, Maui Pineapple admitted that Claimants were prematurely denied the opportunity to work from August 20 through September 15, 2005 because DOL had certified the Claimants’ employment period to September 15, 2005.

491. On August 22, 2005, pursuant to Maui Pineapple’s request, Global filed an Application for Labor Certification and Agricultural Food Processing

Clearance order for 60 H2-A workers to provide pineapple harvesting services from October 8, 2005 through August 8, 2006.

492. But on or before September 12, 2005, Maui Pineapple requested that Global withdraw the application for the 60 additional H2-A workers.

493. Between Maui Pineapple's request for the 60 H2-A workers from October 2005 through August 2006, and its September 12, 2005 request to withdraw the application, Maui Pineapple had a continuing need for the Claimants' labor. But Maui Pineapple abruptly decided to deny work to the Claimants in response to the Claimants' opposition to discrimination and participation in the DOL investigation regarding various wage and hour violations and violations of the H2-A program at Maui Pineapple. The Claimants complaints to DOL pertain to conditions that contributed to the Title VII violations alleged herein.

494. After the Claimants' complained to DOL in May 2005 and the investigation continued thereafter, Maui Pineapple prematurely decided to deny work to the Claimants starting on or about August 20, 2005. However, Maui Pineapple maintained its relationship with Global until November 2005 while denying the Claimants the opportunity to work through their contract period which went to September 15, 2005.

495. The Claimants' opposition to discrimination and participation in the DOL investigation resulted in Maui Pineapple engaging in direct adverse employment actions including but not limited to denying the opportunity for the Claimants to work at Maui Pineapple from August 20, 2005 through August 2006.

496. Maui Pineapple further engaged in the adverse action of jeopardizing the Claimants' visas and refusing to extend their visas despite a continuing need for their labor after August 20, 2005. Because several Claimants' visas at Maui Pineapple were expiring on September 15, 2005, Maui Pineapple's sudden flip-flopping representations to DOL regarding its need for the 60 H2-A workers, left many Claimants stranded in Hawaii. About 41 Claimants were forcibly to return

to Thailand by Global. These actions and other actions by Maui Pineapple dissuaded other reasonable workers from making or supporting a charge of discrimination or engaging in other protected activities under Title VII's anti-retaliation provisions.

497. Similarly, Maui Pineapple's failure to prevent and correct the adverse employment actions by Global that Maui Pineapple knew or should have known about likely dissuaded other reasonable workers from making or supporting a charge of discrimination or engaging in other protected activities under Title VII's anti-retaliation provisions. As explained by Ka'akimaka, Maui Pineapple's Seasonal Labor and Cafeteria Manager Patty Cordon, was in charge of ordering food and maintaining the facility for all workers including the Claimants. Thus, through Cordon, Maui Pineapple knew or should have known about food and housing deficiencies about which the Claimants repeatedly complained.

498. Seasonal Labor and Cafeteria Manager Cordon also confirmed Maui Pineapple's control over the Claimants' housing and access to food. Cordon stated that she worked with the cooks, prepared the menus, did the ordering, scheduling, and disciplined. Cordon confirmed that the Thai cooks at the dormitories used Maui Pineapple's kitchen, equipment, and utensils to prepare three meals a day for the Claimants. This level of control gave ample opportunity for Maui Pineapple to receive notice and knowledge of the hostile work environment and adverse actions in response to the complaints.

499. Seasonal Labor and Cafeteria Manager Cordon stated that Maui Pineapple supplied mattresses, frames, and sheets because Global "did not have its act together starting up" in 2004. Thus, Maui Pineapple management received notice of problems with Global from the start of the contract and that should have caused Maui Pineapple to investigate and correct Global's adverse actions even before the Claimants' May 2005 DOL complaint.

500. Because Maui Pineapple failed to take corrective measures regarding the hostile work environment and other forms of discrimination, Maui Pineapple essentially chose not to take corrective measures within its control. For example, Maui Pineapple reported to the EEOC that Claimant IO escaped on August 20, 2005. Thus, Claimants like IO were chilled from engaging in protected activities by Maui Pineapple's direct adverse actions including but not limited to denying work to the Claimants after the Claimants' DOL complaint.

501. The Claimants were also chilled from engaging in protected activities by Maui Pineapple's failure to take corrective measures regarding adverse actions by Global that Maui Pineapple knew or should have known about including but not limited to the following.

502. Claimant CK observed that when the Claimants complained that there was not enough food, the weekly deductions for food went up. The other response to the Claimants asking for more food as observed by Claimant BK was for Wongsesanit to challenge the Claimants to physically fight and/or threaten to deport them. As the Maui Pineapple supervisor in charge of the dormitories, Cordon knew or should have known about such actions by Global, but Maui Pineapple took no corrective measures.

503. Similarly, Wongsesanit threatened to physically fight Claimant PR after he complained about not been paid for all the hours worked and the poor living conditions at Maui Pineapple. When Claimants like NY, AP, AK, BY, SL, SN, and NF complained about unpaid wages or insufficient hours, Tubchumpol, Germann, and Wongsesanit responded by saying that complaints meant that they did not want to work for company, that the Claimants talked too much, and then threatened deportations, or ignored the complaints.

504. When Claimants like MS, NF, IO, KA, PK, and BP complained to Tubchumpol or Wongsesanit that there was not enough food while working at

Maui Pineapple, those complaints were ignored, no corrective actions taken, and the Claimants were threatened.

505. When Claimants like NY, DP, AP, AK, and BP complained to Tubchumpol, Germann, or Wongsesanit about the weekly deduction of about \$42, those complaints were ignored, no corrective actions taken, and met with threats.

506. When Claimants like AK complained to Tubchumpol about not getting reimbursements for air fare, Tubchumpol became upset and threatened to send him back to Thailand if he caused more trouble. Thereafter, the owner of ACCO flew to Hawaii and asked to speak to the “troublemaker,” and threatened to send Claimant AK back to Thailand.

507. When Claimants like IO and AK complained about the overcrowded buses and housing, Wongsesanit responded by threatening them and telling them, “just swim back home.”

508. As the Maui Pineapple Supervisor in charge of the housing, Cordon should have known about specific measures imposed by Global at the property to prevent the Claimants’ from escaping the intolerable conditions. Between on or about September 1, 2005, and September 13, 2005, Global’s management including but not limited to Orian, Tubchumpol, and Knoller, personally supervised and directed the security detail at Maui Pineapple, including stationing additional personnel to guard the property. During this period Global also used yellow tape and bells to alert the security guards if a Claimant tried to leave the property. Thus, Cordon and/or other Maui Pineapple management knew or should have known of the presence of Orian, Tubchumpol, and Knoller because these executives from Global were not field supervisors to be expected at the property. Cordon and/or other Maui Pineapple management knew or should have known about the yellow tape and bells as well.

Maui Pineapple's Pattern or Practice/Standard Operating Procedure

509. Forty-one Claimants filed charges of discrimination against Maui Pineapple.

510. During 2004 through 2005, about 160 Claimants worked at Maui Pineapple and endured the above pattern or practice of discrimination based on a June 2004 contract with Global which defined Maui Pineapple as the Claimants' direct employer making Maui Pineapple directly liable for violating Title VII as alleged herein.

511. Plaintiff EEOC incorporates by reference, all of the foregoing paragraphs which reflect that a pattern and practice of discrimination, harassment, retaliation, and/or constructive discharge that persisted at Maui Pineapple for the durations of its contracts with Global from 2004 through 2005.

512. That Maui Pineapple engaged in a pattern or practice of discrimination against the Claimants during the same time period as in the EEOC's instant action was independently corroborated by the investigation of the Federal Bureau of Investigation ("FBI").

513. Paragraphs 107-127 of the First Superseding Indictment against Global's management contains is entitled "Maui Pineapple Farm Confinement: 2005" and confirms the pattern or practice of discrimination at Maui Pineapple as follows:

107. Between in or about 2004, continuing through September 14, 2005, BK, and approximately 100 Claimants were employed by GLOBAL as agricultural workers at Maui Pineapple, working irregular and insufficient hours, housed in isolated and basic facilities, with limited freedom of movement imposed by GLOBAL house rules imposed by onsite supervisors SHANE GERMANN and SAM WONGSESANIT.

108. Between in or about July 2005, or August 2005, SAM WONGSESANIT handed the 100 Claimants at Maui Pineapple Farm, copies of each Claimant's federal immigration Notice of Action document indicating that their visas were expiring September 15, 2005.
109. In or about August 2005, or early September 2005, PRANEE TUBCHUMPOL and RATAWAN CHUNHARUTAI held a meeting at Maui Pineapple in the presence of SAM WONGSESANIT and SHANE GERMANN, and told KA, BP, and other Claimants that those who were recruited by AACO and paid lower commission fees of approximately \$380,000 Thai baht (\$9,500USD) would have to pay an additional \$150,000 Thai baht (\$3,750 USD) to renew their contracts or the worker would be sent back to Thailand.
110. In or about August 2005, PRANEE TUBCHUMPOL and RATAWAN CHUNHARUTAI at the same meeting in Maui, Hawaii, told KA, BK, and other Claimants not to escape, not to socialize with outsiders, not to work elsewhere even if GLOBAL had insufficient work for them, and not to discuss incidents within the company with outsiders.
111. In or about August 2005, SAM WONGSESANIT, interpreting for MORDECHAI ORIAN, told KA and approximately 20 other Claimants, not to escape or attempt to find work on their own, and that if they disobeyed this order they would be sent back to Thailand.
112. In or about August 2005, PODJANEE SINCHAI visited KA's and BP's families in Thailand and told the Claimants' families that KA, BP, or the family had to pay an additional \$150,000 Thai baht

(\$3,750 USD) if KA and BP wanted to stay and work in the United States for an additional year.

113. On or about August 29, 2005, PRANEE TUBCHUMPOL arrived in Hawaii with the Thai passports for the Maui Pineapple Claimants.
114. On or about August 29, 2005, a GLOBAL employee, known to the Grand Jury, arrived in Maui, Hawaii, and hired five to six male and female guards to prevent the Maui Pineapple Claimants from running away.
115. In or about August 2005, SAM WONGSESANIT under instruction of MORDECHAI ORIAN directed the Claimants not to talk to U.S. Department of Labor investigators who were at Maui Pineapple and stated that any Claimant who disobeyed this order would be sent back to Thailand.
116. On or about September 1, 2005, PRANEE TUBCHUMPOL, RATAWAN CHUNHARUTAI, SHANE GERMANN and SAM WONGSESANIT held a meeting at the Maui Pineapple housing area with approximately 70 to 100 Claimants whose visas were expiring on September 15, 2005, where PRANEE TUBCHUMPOL read a list of Claimants whom GLOBAL intended to send back to Thailand.
117. On or about September 1, 2005, at the Maui Pineapple meeting, PRANEE TUBCHUMPOL and RATAWAN CHUNHARUTAI informed the workers who paid lower recruitment fees that they would be sent back to Thailand unless their families paid an additional \$150,000 Thai baht (\$3,750 USD) to the Thai recruiters who had recently contacted their families for the additional fees.

118. Between on or about September 1, 2005, through September 14, 2005, JOSEPH KNOLLER, SAM WONGSESANIT, SHANE GERMANN, and others worked as security guards, 24 hours a day, at the Maui Pineapple housing site to restrict the Claimants' movement, whether at the housing or at the farm, to prevent the workers from leaving.
119. Between on or about September 1, 2005, and September 13, 2005, MORDECHAI ORIAN, PRANEE TUBCHUMPOL, JOSEPH KNOLLER, and others personally supervised and directed the security detail at Maui Pineapple, including hiring additional individuals to guard the property.
121. Between on or about September 1, 2005 and September 13, 2005, SAM WONGSESANIT and SHANE GERMANN strung yellow tape around the Maui Pineapple housing and installed bells on string lines in the woods to alert the guards if a worker attempted to escape and to maintain control over the Claimants.
122. On or about September 13, 2005, Joseph KNOLLER, through SAM WONGSESANIT as an interpreter, informed approximately 40-50 Claimants that they would be leaving on an airplane the following day and not to leave the building.
123. On or about September 14, 2005, JOSEPH KNOLLER and SAM WONGSESANIT escorted Claimants onto the airplane from Honolulu, to the mainland and then escorted them onto the connecting flight back to Thailand.
124. On or about September 14, 2005, JOSEPH KNOLLER hired guards for airport duty to ensure

the Thai H2A guest workers boarded their flight back to Thailand.

125. Between September 1, 2005 and September 14, 2005, MORDECHAI ORIAN and PRANEE TUBCHUMPOL relocated KA, BK, and other Claimants who paid higher recruitment fees, to other farms to work.
126. On or about September 7, 2005, after MORDECHAI ORIAN, PRANEE TUBCHUMPOL, SAM WONGSESANIT and SHANE GERMANN threatened to send BP, and other Claimants who had paid lower recruitment fees, back to Thailand. BP, fearing being sent back to Thailand with no way to repay his debts, ran away because he could not pay the additional \$150,000 Thai baht (\$3,750 USD), and because he had outstanding recruitment debts in Thailand.
127. On or about September 14, 2005, PRANEE TUBCHUMPOL escorted 41 Claimants back to Thailand on Japan Airlines flight #71.

ALLEGATIONS PERTAINING TO KAUAI COFFEE

Kauai Coffee may have failed to obtain DOL authorization for the Claimants to work at Kauai Coffee in 2004

514. Kauai Coffee and Global had a contract effective from September 30, 2004 to December 15, 2004.

515. Based on information and belief, Kauai Coffee and Global failed to obtain a Clearance Order authorizing any H2-A guest workers for Kauai Coffee and Global's 2004 Contract period.

516. Kauai Coffee and Global entered into a second contract in effect from June 15, 2005 to April 14, 2006. However, Claimants including but not limited to

MB, TC and NS worked at Kauai Coffee until June or July of 2006, which was beyond the period authorized by DOL.

517. On April 4, 2005, Global submitted a request for forty H2-A workers for Kauai Coffee. On June 8, 2005, DOL allowed Kauai Coffee twenty-four H2-A workers for Kauai Coffee from June 15, 2005 through April 15, 2006.

518. On June 30, 2005, Global submitted a second request for an additional six H2-A workers to work at Kauai Coffee from August 16, 2005 through June 15, 2006.

519. On August 5, 2005, Global submitted a third request for ten additional workers for Kauai Coffee. On October 7, 2005, DOL allowed Kauai Coffee an additional ten H2-A workers from September 22, 2005 through April 15, 2006.

520. On or about June 19, 2006, Global submitted a fourth request for thirty additional workers for Kauai Coffee. On August 4, 2006, a housing inspection pertaining to this fourth application was conducted at Kauai Coffee's camp housing. During the inspection, a Kauai Coffee representative advised the housing inspector that Kauai Coffee was only seeking fifteen workers from Global and that Kauai Coffee had hired workers from Micronesia.

521. In or about September 2006, Kauai Coffee terminated its contract with Global.

522. Based on information and belief, Kauai Coffee employed more Claimants than authorized by DOL and/or employed Claimants beyond the authorized period.

Kauai Coffee's Contracts with Global gave Kauai Coffee ample control over the Claimants to make Kauai Coffee liable for the discrimination

523. The 2004 Contract between Kauai Coffee and Global ensured Kauai Coffee's control over the Claimants and their day-to-day work as follows:

2. Services to be furnished, . . .
 - (a) FLC [Global] shall, . . . furnish labor as required by CLIENT [Kauai Coffee Company, Inc.] . . . on certain land as advised

by the CLIENT (the "LAND"). *CLIENT shall advise FLC of the Services that must be performed on a day-to day basis, as well as those portions of the Land to be worked by FLC. CLIENT shall determine the number of its employees that will be required to accomplished the Services and notify FLC of said number.*

....

- (c) FLC agrees it will at all times keep the Land in a neat and clean condition and shall, at the end of each work-day ensure all paper, trash and other items are removed from each field being worked.

....

4. Inspection and Limited Oversight. FLC agrees that CLIENT shall have the right to have inspectors (the Client Representatives") present at all times to observe that the Services are being performed in accordance with CLIENT quality standards. In the event CLIENT is dissatisfied, in its sole discretion, with the performance, conduct or behavior of one or more workers under this Agreement, *CLIENT will have the right to require FLC promptly to replace such worker(s) at FLC's expense.*

5. Ancillary Support. CLIENT shall provide only the following equipment; mobile equipment, hand tools and safety equipment. . . .

....

8. Compensation *CLIENT shall provide housing and transportation to the Workers.*

- (b) H2-A regulations require the FLC guarantees to offer the workers employment for at least three-fourths (3/4) of the workdays of the total periods during which the work contract and all extensions thereof are in effect. . . .

524. The Contract required notice to "CLIENT" (i.e., Kauai Coffee) at 1 Numila Road, P.O. Box 530, Kalaheo, Hawaii 96741 and to A&B's Law Department, 822 Bishop Street, Honolulu, Hawaii 69813.

525. The second Contract in effect from June 15, 2005 to April 14, 2006, continued Kauai Coffee's tight day-to-day control over the workers. Throughout, Kauai Coffee retained the ultimate power of an employer—the exclusive power to fire a worker.

***Kauai Coffee controlled the Claimants to make
Kauai Coffee liable as a joint employer***

526. In 2008, as part of the EEOC's investigation of the numerous charges against Kauai Coffee, the EEOC interviewed Kauai Coffee's managers in the presence of Charles Loomis, Associate General Counsel for A&B.

527. Kauai Coffee was identified a wholly owned subsidiary of A&B. Thus, as Loomis was present during the interviews, the EEOC, Kauai Coffee, and A&B simultaneously learned facts supporting the EEOC's FAC.

528. Through Loomis, Kauai Coffee and A&B obtained actual knowledge of facts that could make Kauai Coffee liable under Title VII as joint employers with Global for the discrimination against the Claimants who worked at Kauai Coffee. Kauai Coffee's managers uniformly confirmed Kauai Coffee's intimate control over the workers' jobs, hours, and housing conditions. Kauai Coffee's managers also confirmed that the workers depended on Kauai Coffee for transportation and access to food as detailed below.

529. Tim Martin, Kauai Coffee's General Superintendent Factory Operations whom Defendant A&B identified as an A&B employee reported before Loomis that he directly supervised 12 to 13 Thai workers. Martin confirmed that Kauai Coffee hired seasonal shift supervisors who directly supervised Claimants. Martin also confirmed that Kauai Coffee's supervisors Pat Pavao and Al Thomas completed timesheets for the workers and sent the timesheets to Kauai Coffee's Human Resources Administrator, Joan Morita. Defendant A&B identified Morita as an A&B employee.

530. Associate General Counsel Loomis was also present when Kauai Coffee's H.R. Administrator Morita confirmed that she submitted the worker's hours to Global and that Global would then send a lump sum invoice. Morita reported that Kauai Coffee recorded the hours worked by the Claimants for Global. Morita stated that Kauai Coffee mainly communicated with the Claimants through Claimant Bootpasa designated as a crew leader because he seemed to understand English. Morita stated that Kauai Coffee assigned the workers to a 12-hour shift if they worked in the factory or 11.5 hours if they worked in harvesting, and that all worked five to six days a week.

531. Morita further reported that Kauai Coffee housed the Claimants, provided a kitchen, and provided a weekly ride to grocery shop.

532. Loomis also attended the EEOC interview of Greg Williams, Kauai Coffee's Orchard Operations Manager. Defendant A&B also identified Greg Williams as an A&B employee. Williams worked directly with the Claimants when they were operating the "Harvester" machines and saw others working in Kauai Coffee's factories. Williams stated that Operations Manager Richard Loero assigned tasks to the Claimants based on changing operational needs. Williams said that seven Claimants drove the Harvester and Wheel Loaders and worked according to a schedule Williams set in the beginning of the season. Kauai Coffee's shift supervisors Darin Deperalta and Danilo Gilberto distributed schedules to the workers. Deperalta directly supervised the Claimants on Harvesters or Front End Loaders. After the harvest season, some Claimants stayed on to spread fields with seeds or to operate machinery. Williams also confirmed that a Kauai Coffee employee took the Claimants grocery shopping on weekends.

533. Numerous Claimants confirmed that Kauai Coffee supervised the Claimants. Claimant PK confirmed that an American supervisor who worked for Kauai Coffee drove the Claimants to work, gave orders to the Claimants, and watched over them to ensure that the Claimants completed their work. Claimant

SR confirmed that a Filipino Kauai Coffee worker drove the Claimants from the housing to the worksite. Claimant PP worked in the Kauai Coffee factory as a forklift driver and was supervised by Kauai Coffee supervisors. Based on information and belief, Kauai Coffee was not authorized to have an H2-A farm worker work in a factory. But the fact that Kauai Coffee could make a Claimant perform non-agricultural labor further demonstrates Kauai Coffee's control over the Claimants. Claimant PL was picked up from the airport by Kauai Coffee a supervisor.

534. Finally, during the EEOC investigations, Kauai Coffee relied on A&B's English language Human Resources Policy ("Policy"). Although monolingual Thai workers could not use the English language Policy to complain, Kauai Coffee presented the A&B's Policy as one applicable to the Claimants. Also, the Policy contains the separation policy applicable to employees.

Kauai Coffee Engaged in the Misconduct

535. Kauai Coffee engaged in the misconduct and/or discrimination against the Claimants by providing uninhabitable housing that amounted to a hostile work environment and discriminatory terms and conditions of employment. Human Resources Administrator Morita confirmed that Kauai Coffee housed the workers. Some of the Claimant like PK and TJ reported sleeping on the floor, buying their own blankets with a loan to be paid back with the first paycheck, and/or having no hot water. Claimant CT lived with eleven other Claimants in a three bedroom and one bathroom house located at the Kauai Coffee farm with no hot water, no heat, and not enough beds to sleep in. Six workers had to sleep on the floor.

536. Living in the housing provided by Kauai Coffee was an adverse term and condition of employment for the Claimants.

537. While Kauai Coffee contracted to provide worker housing, Kauai Coffee did not comply with H2-A housing standards.

538. Kauai Coffee knew or should have known about the minimum DOL standards regarding the terms and conditions of employment, housing, and transportation.

539. Claimant CT could not work at Kauai Coffee because there were too many workers at Kauai Coffee so he was transferred to another farm. If Claimant CT obtained an H2-A visa to work at Kauai Coffee and was denied employment at Kauai Coffee or if Claimant CT was initially sent to Kauai Coffee even though he was approved to work at a different farm, Kauai Coffee violated the H2-A and had notice of it by permitting him to live at the Kauai Coffee housing. Had Kauai Coffee adequately monitored its compliance with the H2-A program it would have known whether unauthorized Claimants were living at its housing and being further victimized by being subjected to the uninhabitable living conditions which contributed to the hostile work environment that persisted from farm to farm.

***Kauai Coffee knew of likely violations by Global because
Claimants ran away from Kauai Coffee***

540. Kauai Coffee knew of the misconduct and/or discrimination Global committed against the Claimants because Kauai Coffee management reported that in 2005, a Thai employee named Sam ran away at the airport. Because Human Resources Administrator Morita completed payroll, Kauai Coffee knew or should have known of any Thai Claimants' absence.

Kauai Coffee's Constructive Knowledge of Discrimination

541. Kauai Coffee should have known that Global was not authorized to do business in Hawaii if it had checked Global's credentials. In July 2006, the HDLIR confirmed that Global was not authorized to do business in Hawaii and warned:

several local farms may have been lead to believe" that Global "has acquired workers' compensation insurance and is now authorized to continue doing business in the

State of Hawaii. *As of July 18, 2006, Global . . . is still not authorized to do business in Hawaii. Allowing Global employees to work on your farm would be in violation of the court's order. . . .* We will continue working with the Hawaii State Department of Agriculture and the federal government to address any concerns that Hawaii's farming community may have regarding these recent developments.

542. Kauai Coffee should have also known that the U.S. Department of Labor had barred Global from the H2-A program for three years in or about July 2006.

Race/National Origin Discrimination at Kauai Coffee

543. The Claimants belong to a protected class (Thai/Asian), they were qualified to do the work and they performed their jobs satisfactorily, they suffered adverse employment actions by being subject to adverse terms and conditions as described above and below because of their Asian race and/or Thai national origin, and similarly situated individuals outside the protected class were treated more favorably, or other circumstances surrounding the adverse employment actions give rise to an inference of discrimination.

Different terms and conditions with respect to housing at Kauai Coffee

544. Kauai Coffee housed Claimants who worked at Kauai Coffee in housing that was not in compliance with federal regulations and laws for H2-A workers. Claimants at Kauai Coffee had no water, heater, bed, or blankets while working at Kauai Coffee. Kauai Coffee created a hostile work environment by housing the Claimants in uninhabitable conditions.

Inability to leave the farm/restriction on movements at Kauai Coffee

545. Kauai Coffee's manager confirmed that the Claimants relied on Kauai Coffee supervisors for transportation and depended on Kauai Coffee supervisors to take them to buy food. Claimants PK and others were not allowed to travel by alone.

Claimants worked for no pay, less pay, or delayed pay at Kauai Coffee

546. Claimants like PP were not paid on time. Claimants were paid less than the Filipino workers. At least two paycheck stubs reflect a check amount of \$0 for work performed by Claimants at Kauai Coffee. Human Resources Administrator Morita who processed payroll knew or should have known of these \$0 paychecks.

Hostile work environment at Kauai Coffee

547. The Claimants were subjected to verbal or physical conduct (including but not limited to abusive language, exorbitant and/or unlawful recruitment fees, confiscation of passports, uninhabitable housing, insufficient food, inadequate pay, demeaning job assignments, and threats and intimidation) based on their race and/or national origin, that was unwelcome, and sufficiently severe or pervasive to alter the conditions of their employment and create an abusive working environment. Further, the working conditions had become so intolerable that the Claimants were compelled to run away from Kauai Coffee and were thereby constructively discharged. Claimants, including but not limited to, NS and WP escaped or were forced to resign because of the intolerable conditions at Kauai Coffee and Global. Moreover, when Kauai Coffee ended its last contract with Global several months early and thereby denied work to the Claimants after complaints to Kauai Coffee supervisor Richard and to Human Resources Administrator Joan Morita, identified as an A&B employee, Kauai Coffee constructively discharged the Claimants by denying them work.

548. Claimant MB was further subjected to a hostile work environment in that he was denied gloves and a mask when he had to apply insecticides to the coffee crops.

Retaliation at Kauai Coffee
Kauai Coffee Knew or Should have Known that
the Claimants Engaged in Protected Activities by Complaining
to Kauai Coffee's Supervisor and to Global's Supervisors

549. The Claimants engaged in a protected activity from their first day at Kauai Coffee. As soon as the Claimants reached the Kauai Coffee camp housing, Global's supervisor Tubchumpol confiscated all of the Claimants' passports. When one Claimant tried to keep his I-94 form containing his visa information, Tubchumpol threatened to send the Claimant back to Thailand and forced him to give her his I-94. Thereafter, Tubchumpol asked Claimant BD, "What province is that guy from? I will let him die here on one of these islands. I'm not going to be nice to him. I will never let him go or transfer anywhere." The Claimants were scared by Tubchumpol's threat against the Claimant who tried to keep his I-94 form. Tubchumpol further posted rules in the house prohibiting outsiders or any contact with outsiders.

550. About two weeks passed before Kauai Coffee allowed the Claimants to work. Claimant BD and ten other Claimants were crammed into one house.

551. Kauai Coffee did not provide the Claimants the amount of work they were promised. The Claimants worked sporadically at best for five hours one day then had no work for days. Global's DOL applications for Kauai Coffee to obtain H2-A workers stated they would work 40 hours per week.

552. Kauai Coffee supervisor Richard told Claimant BD that the Thai Claimants harvested the coffee in half the time that the Filipino workers took to harvest the coffee. Claimant BD asked his crew leader "P" to complain to Kauai supervisor Richard on behalf of all the Claimants that they needed more work, that they were paid two to four weeks late, and about the overcrowded housing conditions. In or about October 2005, Claimant BD's crew leader complained about these issues about two times. Kauai Coffee supervisor Richard responded

that Kauai Coffee already paid Global and that the Claimants had to take up the issue with Global. Kauai Coffee supervisor Richard then sent the Claimants to work at a guava farm for two to three weeks. Kauai Coffee supervisor Richard responded to the complaints about the overcrowded housing by indicating that Kauai Coffee provided housing for free and did nothing to correct the overcrowding.

553. Claimants like PP and CC complained to Global supervisors including but not limited to John and Tubchumpol about not being paid on time while working at Kauai Coffee, not having enough work, and not being allowed to go to the grocery store more than once a week. Tubchumpol insisted that the Claimants could only be taken to the store once a week.

554. Global supervisor John knew about the lack of work at Kauai Coffee before the Claimants complained because John selected the Claimants who would work by lottery or gave his favorites more hours to work. Global supervisor John also knew about the insufficient opportunity to go to the store because he only took five workers at a time to the grocery store each week. Claimant CC asked Global supervisor John to ask Kauai Coffee supervisor Richard for a larger van so that more Claimants could go to the store for food and supplies. Claimant CC also asked Global supervisor John about three times to inform Kauai Coffee supervisor Richard about the Claimants not receiving pay on time and that he was being shorted on his pay.

555. Global supervisor John confirmed that he relayed the Claimants' complaints to Kauai Coffee supervisor Richard. But the lack of transportation to the grocery store remained a problem and Claimants were forced to walk several miles to the nearest store before and after the complaints.

Kauai Coffee knew or should have known that Claimants were subjected to adverse employment actions including but not limited to Kauai Coffee denying them the opportunity to work August 15, 2006 through December 31, 2006 by replacing the Claimants with workers from Micronesia after their complaints.

556. Global supervisor Tubchompol became upset when she learned that the Claimants had complained to Kauai Coffee supervisor Richard and warned the Claimants not to complain to the farm. Tubchompol reiterated the threats to deport those who complained. These complaints to Kauai Coffee supervisor Richard occurred in late 2005.

557. On or about June 19, 2006, Global submitted a fourth request to DOL for thirty additional workers to work at Kauai Coffee from August 15, 2006 through December 31, 2006. On August 4, 2006, a housing inspection pertaining to this fourth application was conducted at Kauai Coffee's camp housing. During the inspection, a Kauai Coffee representative advised the housing inspector that Kauai Coffee was only seeking fifteen Thai workers from Global and that Kauai Coffee had hired workers from Micronesia.

558. In or about September 2006, Kauai Coffee terminated its contract with Global. Thus, Kauai Coffee denied work to the Claimants after their repeated complaints to Kauai Coffee supervisor Richard in the fall and/or winter of 2005.

Kauai Coffee's Pattern or Practice / Standard Operating Procedure of Discrimination throughout the time Kauai Coffee contracted with Global

559. The majority of Claimants who worked at Kauai Coffee filed charges of discrimination against Kauai Coffee.

560. Plaintiff EEOC incorporates by reference, all of the foregoing paragraphs which reflect that a pattern and practice of discrimination, harassment, retaliation, and/or constructive discharge persisted at Kauai Coffee for the duration of its contracts with Global from in or about 2004 through 2006 during the time Global provided the Claimants to work at Kauai Coffee. About twenty-seven

Claimants worked at Kauai Coffee through Global and experienced the above-described pattern or practice of discrimination.

ALEXANDER & BALDWIN, INC. FACTS

Kauai Coffee and Alexander & Baldwin gave an ambiguous description of their relationship during the EEOC's charge investigation

561. In January 2007, during the EEOC's investigation of the underlying charges of discrimination against Kauai Coffee, counsel for Defendants' identified Kauai Coffee as a wholly owned subsidiary of A&B without mentioning any intermediate subsidiaries between Kauai Coffee and A&B. Thus, the EEOC permitted A&B to participate in the EEOC's investigation of the charges against Kauai Coffee.

562. The EEOC interviewed Kauai Coffee's managers in the presence of Charles Loomis, Associate General Counsel for A&B giving A&B ample notice of the claims.

563. Failing to clearly explain the relationship between Kauai Coffee and A&B for the next four years, A&B revealed that Kauai Coffee is not a direct subsidiary of A&B but that McBryde Sugar Company, Limited ("McBryde Sugar") is the direct parent company of Kauai Coffee.

A&B still holds itself out as an agribusiness that sold its coffee assets to MZB without mention of Kauai Coffee as an independent company

564. A&B continues to hold itself out to the public, the government, and to its shareholders as the company that owned and operated Kauai Coffee, the coffee farm where Claimants worked.

565. A&B describes itself as an agribusiness and that it "executed an agreement to lease land and sell coffee inventory and certain assets it previously operated to Massimo Zanetti Beverage USA, Inc. [MZB]." (A&B's Annual Report for the Fiscal Year Ended December 31, 2011 (Form 10k) filed with the

U.S. Securities and Exchange Commission (“SEC”) (“A&B’s 2011 Annual Report”) at page 1.)

566. A&B’s reported to the SEC that A&B, not Kauai Coffee, sold assets to MZB as quoted below from page 1 of A&B’s 2011 Annual Report:

ITEMS 1 & 2. BUSINESS AND PROPERTIES

Alexander & Baldwin, Inc. (“A&B” or the “Company”) is a multi-industry corporation with its primary operations centered in Hawaii.

. . . .

The business industries of A&B are generally as follows:

A. Transportation

B. Real Estate

C. Agribusiness – growing sugar cane in Hawaii; producing bulk raw sugar, specialty food-grade sugars and molasses; marketing and distributing specialty food-grade sugars; In March 2011, the Company [defined above as A&B] executed an agreement to lease land and sell coffee inventory and certain assets used in a coffee business it previously operated to Massimo Zanetti Beverage USA, Inc.

567. A&B also represented to its shareholders that A&B sold the Kauai Coffee assets to MZB: “We also moved forward on key strategic initiatives to reduce the risk profile of our Agribusiness segment. On March 29, [2011,] Massimo Zanetti Beverage, USA, . . . acquired the Kauai Coffee assets and we are now leasing them the coffee plantation land under a long-term lease agreement.” (A&B’s Shareholder Letter attached to A&B’s 2011 Annual Report.)

568. In further describing the A&B Land Group in its 2011 Annual Report, A&B stated that A&B chose to sell the Kauai Coffee assets to MZB without a “material gain” to “de-risk” A&B’s agribusiness operations:

Early in 2011, we closed the sale of Kauai Coffee's operations to Massimo Zanetti Beverage (MZB), who we believe can better market and distribute the coffee. A&B continues to own the land under the coffee plantation, which it now leases to MZB on a long-term basis. While the transaction itself did not result in a material gain, it served as a means to "de-risk" our agribusiness operations

The above statement suggests that A&B determined that MZB would better market and distribute the coffee than Kauai Coffee executives.

569. A&B further stated in its 2011 Annual Report at page 14 that A&B still owns the buildings on the land it leased to MZB:

In March 2011, the Company [defined as A&B at page 1 of the Annual Report] executed an agreement to lease land and sell coffee inventory and certain assets used in a coffee business it previously operated to Massimo Zanetti Beverage USA, Inc. ("MZB"), including intangible assets. The Company [i.e., A&B] has retained fee simple ownership of the land, buildings, power generation, and power distribution assets, but no longer operates the coffee plantation.

The buildings A&B still owns include the camp housing used to house the Claimants in overcrowded and otherwise uninhabitable conditions.

570. A&B reiterates that A&B sold Kauai Coffee's inventory and both tangible and intangible assets to MZB for \$14 million, and that A&B chose to sell without "material gain" while retaining ownership of the land and building which includes the camp housing:

In March 2011, the Company executed an agreement to lease land and sell coffee inventory and certain assets used in a coffee business it previously operated to Massimo Zanetti Beverage USA, Inc. ("MZB"), including intangible assets. The coffee inventory and assets were sold for approximately \$14 million. There

was no material gain or loss on the transaction. The Company retained fee simple ownership of the land, buildings, power generation, and power distribution assets, but no longer operates the coffee plantation.

A&B's 2011 Annual Report at 39. That A&B could sell Kauai Coffee without a material gain shows that A&B controlled Kauai Coffee. A&B further stated at page 39 of its 2011 Annual Report that it no longer operates the coffee plantation which suggests that A&B operated Kauai Coffee prior to the sale to MZB in March 2011. Dates prior to the sale include dates during which the Claimants worked at Kauai Coffee.

571. A&B's agribusiness revenue decreased by 2 percent in 2011 because A&G sold its coffee assets to MZB:

Operating Revenue for 2011 increased 7 percent, or \$108 million, to \$1,722 million. Ocean Transportation revenue increased 6 percent, principally due to higher fuel surcharge revenues resulting from higher fuel prices. Logistics Services revenue increased 9 percent, principally due to higher Intermodal and Highway volumes. Real Estate Leasing revenue increased 15 percent in 2011 (after subtracting leasing revenue from assets classified as discontinued operations), primarily due to acquisitions and higher mainland occupancies. **Agribusiness revenue decreased 2 percent, primarily due to lower coffee revenue as a result of the sale of the assets of the coffee operations in the first quarter of 2011.** The reasons for business- and segment-specific year-to-year fluctuations in revenue growth are further described below in the Analysis of Operating Revenue and Profit by Segment.

A&B's 2011 Annual Report at 44 (emphasis added).

572. A&B describes its fluctuations in agribusiness revenues due to changes in revenues at Kauai Coffee.

A&B's agribusiness revenue decreased \$2.2 million in 2011 compared with 2010. The decrease was primarily due to \$8.2 million in lower coffee revenue as a result of the sale of the assets of the coffee operation in the first quarter of 2011, the absence of a \$4.9 million agriculture disaster relief payment for drought received in 2010, and \$2.7 million in lower sugar revenue, due to lower sugar sales volume.

.....

Agribusiness revenue increased \$56.9 million in 2010 compared with 2009. The increase was primarily due to \$62.8 million in higher bulk raw sugar revenue that was the result of higher sugar prices and higher sales volume, as well as \$3.3 million in higher coffee revenues related to higher volume and prices.

A&B's 2011 Annual Report at 52, 53.

573. In 2010, the year prior to selling its coffee business to MZB, A&B's agribusiness employed 43% of A&B's total workforce. Specifically, 1000 of the 2,300 A&B's employees worked in agribusiness:

As of December 31, 2010, A&B and its subsidiaries had approximately 2,300 regular full-time employees. About 1,000 regular full-time employees were engaged in the agribusiness segment, 1,200 were engaged in the transportation segment, 40 were engaged in the real estate segment, and the remaining were in administration. Approximately 45 percent were covered by collective bargaining agreements with unions.

A&B's Annual Report for Fiscal Year ended December 31, 2010 at 14. Thus, through 2010, 43% of A&B's business operations were dependent on the performance of agribusiness employees in the coffee and/or sugar businesses of A&B. A&B controlled this 43% of its business which it sold in part to MZB in March 2011.

574. The Claimants who harvested A&B's coffee at Kauai Coffee from 2004 through 2006 were controlled by A&B when 46-48% of A&B's business operations were dependent on the performance of agribusiness employees in the coffee and/or sugar businesses of A&B.

575. As of December 31, 2004, A&B and its subsidiaries had approximately 2,056 regular full-time employees. About 995 (or 48%) regular full-time employees were engaged in the food products segment. (A&B's 2004 Annual Report at 14.) In 2004, 48% of A&B's business operations were dependent on the performance of agribusiness employees in the coffee and/or sugar businesses of A&B.

576. As of December 31, 2005, A&B and its subsidiaries had approximately 2,177 regular full-time employees. About 1,014 (or 47%) regular full-time employees were engaged in the food products segment. (A&B's 2005 Annual Report at 15.) In 2005, 47% of A&B's business operations were dependent on the performance of agribusiness employees in the coffee and/or sugar businesses of A&B.

577. As of December 31, 2006, A&B and its subsidiaries had approximately 2,197 regular full-time employees. About 1,014 (or 46%) regular full-time employees were engaged in the food products segment. (A&B's 2006 Annual Report at 14.) In 2006, 46% of A&B's business operations were dependent on the performance of agribusiness employees in the coffee and/or sugar businesses of A&B.

578. A&B's 2007 Annual Report at page 12 states that A&B operates the Kauai Coffee plantation, that Kauai Coffee's operations are augmented by A&B's sale of water and biomass energy, and that A&B's agribusiness (i.e., Kauai Coffee) in turn provided "significant enterprise-level benefits" to A&B's transportation and real estate businesses:

As part of our landholdings, we operate sugar and coffee plantations on the islands of Maui and Kauai, respectively. These operations are augmented by significant power sales from water and biomass sources, which also provide a valuable financial hedge against rising fuel prices. Our Agribusiness operations provide a best and highest use of these lands and significant enterprise-level benefits, including utilizing Matson Navigation transportation services and support of our real estate operations.

A&B controlled Kauai Coffee's day to day operations

579. A&B's 2004 Annual Report at pages 17-18 lists the following Kauai Coffee managers interviewed during the EEOC's investigation of the Claimants' Charges of Discrimination as employees of A&B:

- Orchard Operations Manager Gregory Williams;
- General Superintendent Factory Operations Timothy Martin; and
- Human Resources Administrator Joan Morita.

These and other managers identified by A&B as A&B employees supervised Claimants who worked at Kauai Coffee from 2004 through 2006. Paragraphs 493-498 incorporated by this reference explain how these three A&B employees controlled the Claimants living and working conditions from which the discrimination arose including but not limited to the fact that Human Resources Administrator processed the Claimants' payroll and knew or should have known they received multiple pay checks in the amount of \$0.

580. The Claimants lived at A&B's camp housing which A&B still owns on the farm land A&B leased to MZB as of about March 2011.

581. A&B's 2004-2010 Annual Reports further state that A&B controlled the type of irrigation used at Kauai Coffee: "A&B's plantations conserve water by using a 'drip' irrigation system that distributes water to the roots through small holes in plastic tubes. . . . all of Kauai Coffee's fields are drip irrigated." (A&B's

2004 -2007 and 2010 Annual Reports at 14, A&B's 2008 and 2009 Annual Reports at 15.)

582. A&B's 2008 Annual Report at page 7 states that A&B controlled the type of agronomic practices used to cultivate coffee and that A&B's coffee farm was the nation's largest single coffee estate:

We use state-of-the art agronomic practices to cultivate raw sugar and coffee on the island of Maui and Kauai, respectively. We farm approximately 34,000 acres of sugar, and our coffee farm is the country's largest single coffee estate.

583. Kauai Coffee contracted to provide worker housing on A&B's land and transportation in A&B's vehicles.

A&B conducted an internal investigation at Kauai Coffee because of A&B's Control of Kauai Coffee and the Claimants, making A&B liable

584. When the EEOC filed suit in April 2011, Christopher J. Benjamin, Senior Vice President, Chief Financial Officer, treasurer and head of agribusiness operations at A&B stated that A&B conducted its own investigation and that A&B cooperated with the EEOC's investigation of Kauai Coffee.

585. Because A&B could conduct an investigation about Kauai Coffee, it further exercised successively higher authority over the Claimants who worked for Kauai Coffee making A&B a likely joint employer.

586. A&B's alleged internal investigation of Kauai Coffee reflects its participation in and influence over Kauai Coffee's employment practices making A&B a proper defendant.

587. A&B otherwise participated in and influenced Kauai Coffee's employment practices because Kauai Coffee admitted during the EEOC investigation that A&B's English language Human Resources Policy applied to the Claimants. Although monolingual Thai Claimants could not use the English language A&B Policy, Kauai Coffee presented the A&B Policy as one applicable

to the Claimants. Kauai Coffee likely relied on A&B's legal department's advice to implement A&B's Policy on the Claimants.

588. Kauai Coffee employees had A&B email addresses. For example, Human Resources Administrator Joan Morita had an email address of jmorita@abinc.com in 2006 when she communicated with officials from DOL and other government agencies regarding Kauai Coffee's request for H2-A workers and housing inspections pertaining to the A&B camp housing for the H2-A workers (i.e., Claimants).

Defendant A&B asserted control over the Claimants by controlling Kauai Coffee's Contracts with Global

589. Under the direction of A&B, Kauai Coffee entered into two "Farm Labor Contract H2-A Agreements" ("Contract(s)") with Global ensuring that Kauai Coffee retained control over the Claimants.

590. Based on information and belief, A&B's legal department approved or disapproved Kauai Coffee's Contracts with Global. Specifically, the Contract required notice to "CLIENT" (i.e., Kauai Coffee) at 1 Numila Road, P.O. Box 530, Kalaheo, Hawaii 96741 and to A&B's Law Department, 822 Bishop Street, Honolulu, Hawaii 69813.

591. The Contract between Kauai Coffee and Global effective from September 30 to December 15, 2004, ensured Kauai's control over the Claimants and their day-to-day work, housing and transportation:

2. Services to be furnished, . . .
 - a. FLC [Global] shall, . . . furnish labor as required by CLIENT [Kauai Coffee Company, Inc.] . . . on certain land as advised by the CLIENT (the "LAND"). **CLIENT shall advise FLC of the Services that must be performed on a day-to day basis, as well as those portions of the Land to be worked by FLC. CLIENT shall determine the number of its employees that will**

be required to accomplished the Services and notify FLC of said number.

....

4. Inspection and Limited Oversight. FLC agrees that CLIENT shall have the right to have inspectors (the Client Representatives”) present at all times to observe that the Services are being performed in accordance with CLIENT quality standards. In the event CLIENT is dissatisfied, in its sole discretion, with the performance, conduct or behavior of one or more workers under this Agreement, **CLIENT will have the right to require FLC promptly to replace such worker(s) at FLC’s expense.**

5. Ancillary Support. CLIENT shall provide only the following equipment; mobile equipment, hand tools and safety equipment. . . .

....

8. Compensation . . .
. . . . **CLIENT shall provide housing and transportation to the Workers.**
(b) H2-A regulations require the FLC guarantees to offer the workers employment for at least three-fourths (3/4) of the workdays of the total periods during which the work contract and all extensions thereof are in effect. . . .

592. The second Contract in effect from June 15, 2005 to April 14, 2006, which Kauai Coffee also entered into under A&B’s oversight, contained the same provisions ensuring Kauai Coffee’s tight day-to-day control over the workers and the right to fire them. Thus, A&B’s successively higher authority over the Claimants is clear in that the Contracts by required notice to A&B’s legal department.

593. Under the oversight of A&B’s legal department, Kauai Coffee retained the exclusive power to fire a worker in both contracts with Global.

594. Kauai Coffee contracted to provide worker housing on A&B's land and transportation in A&B's vehicles.

595. Kauai Coffee and A&B may not have complied with H2-A housing standards. Some workers reported sleeping on the floor, buying their own blankets with a loan to be paid back with the first paycheck, and having no hot water. Thus, Kauai Coffee's Contracts with Global which A&B controlled show that Kauai Coffee and A&B had control over the working conditions, housing, and transportation which place both in a position to prevent and correct the hostile work environment. The intolerable conditions at Kauai Coffee were controlled by A&B and A&B thereby forced Claimants to resign. Moreover, when Kauai Coffee ended its last contract with Global several months early and thereby denied work to the Claimants after complaints to Kauai Coffee supervisor Richard and to Human Resources Administrator Joan Morita, identified as an A&B employee, Kauai Coffee constructively discharged the Claimants by denying them work.

596. A&B's involvement in Kauai Coffee's contracts with Global and in Kauai Coffee's response to the EEOC charges suggests that A&B had successively higher authority over the Claimants.

Retaliation about which A&B knew or should have known

A&B employee Joan Morita received a complaint regarding Claimant WP not being paid on time for work performed at Kauai Coffee

597. Claimant WP complained to Human Resources Administrator Joan Morita for not being paid on time for work performed at Kauai Coffee. A&B's 2004 Annual Report identified Joan Morita as an A&B employee. Morita has an A&B email address. During the EEOC's investigation of the Charges of Discrimination, Morita identified herself as the Human Resources Administrator for Kauai Coffee. Moreover, Morita responded directly to DOL inquiries regarding Kauai Coffee's camp housing for obtaining the Claimants as H2-A

workers because Kauai Coffee provided its own camp housing to the Claimants whereas Global provided housing for other farm defendants. Morita communicated with DOL regarding deficiencies in the Claimants' housing. Thus, through Morita, A&B knew or should have known about the Thai Claimants not being paid wages and that the Thai Claimants were housed in uninhabitable housing.

598. Because Morita processed Claimants' payroll, A&B knew or should have known about pay irregularities and was in a position to correct the issues by addressing them with Global. However, Morita directed Claimant WP to take the complaint about pay to Global.

A&B knew or should have known that Claimants were subjected to adverse employment actions including but not limited to Kauai Coffee denying them the opportunity to work August 15, 2006 through December 31, 2006 by replacing the Claimants with workers from Micronesia after their complaints.

599. Global supervisor Tubchompol became upset when she learned that the Claimants had complained to Kauai Coffee supervisor Richard and warned the Claimants not to complain to the farm. Tubchompol reiterated the threats to deport those that complained. These complaints to Kauai Coffee supervisor Richard occurred in late 2005.

600. Based on information and belief Global likely learned about Claimant WP's complaint to A&B's employee Joan Morita.

601. On or about June 19, 2006, Global submitted a fourth request for thirty additional H2-A workers to work at Kauai Coffee from August 15, 2006 through December 31, 2006. On August 4, 2006, a housing inspection pertaining to this fourth application was conducted at Kauai Coffee's / A&B's camp housing. During the inspection, a Kauai Coffee representative advised the housing inspector that Kauai Coffee was only seeking fifteen Thai workers from Global and that Kauai Coffee had hired workers from Micronesia.

602. In or about September 2006, Kauai Coffee terminated its contract with Global. Thus, Kauai Coffee denied work to the Claimants after their repeated complaints to Kauai Coffee supervisor Richard and A&B's employee Joan Morita in the fall and/or winter of 2005. A&B and Kauai Coffee filled the need for labor with Micronesians instead of the Thai Claimants after their complaints about pay irregularities.

A&B retained the right to control Kauai Coffee's Contracts with Global, which enabled A&B to prevent and correct discrimination it knew or should have known about but A&B allowed Kauai Coffee to premature end its last contract with Global and thereby denied work to the Claimants

603. Through Charles Loomis, Associate General Counsel for A&B, Kauai Coffee and A&B obtained actual knowledge of facts revealed in the investigation making plausible that they could be liable under Title VII as joint employers with Defendant Global who supplied the Claimants to work at Kauai Coffee. Kauai Coffee's managers uniformly confirmed Kauai Coffee's intimate control over the workers' jobs, hours, and housing conditions. Kauai Coffee's managers also confirmed that the workers depended on Kauai Coffee for transportation and access to food.

604. A&B's Annual Reports repeatedly and consistently describes Kauai Coffee as A&B's coffee farm or coffee plantation. A&B controlled day to day operations at Kauai Coffee including but not limited to its drip irrigation system, agronomic practices, application of A&B Human Resources Policy on the Claimants, identifying three top Kauai Coffee managers as A&B employees and these A&B employees directly supervised the Claimants and processed their payroll, A&B exercised the right to investigate the Claimants' allegations of discrimination at Kauai Coffee, and controlled Kauai Coffee's contracts with Global.

605. A&B employee Joan Morita received Claimant WP's complaint about pay, but A&B failed to take corrective actions or prevent and correct adverse actions by Global. Moreover, A&B denied Claimants over six months of work by prematurely ending the last contract with Global in September 2006 after the Claimants complained to Kauai Coffee and/or A&B manager Morita in fall and/or winter 2005.

Because A&B will continue to control the land and hydroelectric plant that supplies energy to Kauai Coffee as well as the seasonal workforce, A&B will need to remain as a defendant in the case to ensure appropriate relief

606. On March 31, 2011, MZB and A&B announced that MZB acquired certain Kauai Coffee assets and described A&B's on-going involvement:

Massimo Zanetti Beverage USA now owns the Kauai Coffee Brand name and will oversee the operations and marketing of the company's coffee. **Meanwhile Alexander & Baldwin retains ownership of the Kauai Coffee Co.'s 3,000 acres of land and its facilities; A&B also continues to own and operate the Wainiha Hydroelectric Plant that produces renewable energy for Kauai Coffee Co. and the Kauai Island Utility Cooperative, according to Christopher Benjamin.**

Kauai Coffee Co.'s 62 full-time workers have been retained by Massimo Zanetti. **Kauai Coffee Co. also fills approximately 100 seasonal positions during its fall harvest.**

607. A&B's Senior Vice, CFO and treasurer Benjamin has stated publically that A&B would continue controlling the land and energy needed to grow coffee and the seasonal workers despite the sale of Kauai Coffee's assets to MZB. As such, A&B's continuing control over the seasonal workers and the land necessary for the harvest requires that A&B remain as a defendant in the case.

608. Additionally, A&B retains ownership and control over the land, the real property, the power generation and power distribution assets, and the uninhabitable housing provided to the Claimants who worked at Kauai Coffee.

A&B's Pattern or Practice / Standard Operating Procedure of Discrimination throughout the time Kauai Coffee contracted with Global

609. The majority of Claimants who worked at Kauai Coffee filed charges of discrimination against Kauai Coffee. A&B describes Kauai Coffee as A&B's coffee farm or coffee plantation. A&B controlled day to day operations at Kauai Coffee including but not limited to controlling its drip irrigation system and agronomic practices, by applying A&B's Human Resources Policy to the Claimants, identifying three top Kauai Coffee Managers as A&B employees who directly supervised the Claimants and processed the Claimants' payroll, investigating the Claimants' allegations of discrimination at Kauai Coffee, and controlling Kauai Coffee's contracts with Global. A&B permitted Kauai Coffee to end its last contract with Global several months early and thereby denied work to the Claimants after complaints to Kauai Coffee supervisor Richard and to Human Resources Administrator Joan Morita, identified as an A&B employee.

610. Plaintiff EEOC incorporates by reference, all of the foregoing paragraphs which reflect that a pattern and practice of discrimination, harassment, retaliation, and/or constructive discharge persisted at A&B's coffee plantation (Kauai Coffee) for the duration of its contracts with Global from in or about 2004 through 2006 during the time Global provided the Claimants to work at Kauai Coffee. A&B controlled the about twenty-seven Claimants who worked at Kauai Coffee through Global and the Claimants experienced the above-described pattern or practice of discrimination.

**ALLEGATIONS PERTAINING TO
MASSIMO ZANETTI BEVERAGE USA, INC.**

611. In December 21, 2010, MZB entered into an Asset Purchase Agreement (“APA”) with Kauai Coffee, and on or before that date MZB had notice of the seventeen charges of discrimination filed against Kauai Coffee, that Global had denied Kauai Coffee’s request for indemnity, that the EEOC issued cause findings against Kauai Coffee under the joint employer theory, that efforts to conciliate the charges had failed, and that the matter would be referred to the EEOC’s legal department for further action.

612. In March 2011, A&B and MZB announced that the APA had been finalized.

613. Having received notice of the charges of discrimination, MZB created Kauai Coffee Company, LLC (“Kauai LLC”) to acquire Defendant Kauai Coffee’s assets.

614. A&B repeatedly stated in the press that A&B conducted its own internal investigation. When the EEOC filed suit in April 2011, Christopher J. Benjamin, Senior Vice President, Chief Financial Officer, treasurer and head of agribusiness operations at A&B stated that A&B conducted its own investigation and cooperated with the EEOC’s investigation of Kauai Coffee.

615. MZB knew or should have known about A&B’s alleged internal investigation and had ample opportunity to receive notice of the claims.

616. MZB had ninety days to conduct due diligence about the claims with full access to A&B’s alleged internal investigation of the Charges of Discrimination and Kauai Coffee’s records.

***With no mention of Kauai Coffee Company, LLC,
A&B and MZB issued a joint press release announcing that
MZB and Kauai Coffee entered into the Asset Purchase Agreement***

617. On December 23, 2010, A&B and MZB issued the following joint press release:

Alexander & Baldwin, Inc. announced today that its subsidiary Kauai Coffee Company, Inc. has entered into an agreement with Massimo Zanetti Beverage, USA, Inc., a subsidiary of the Italian global coffee company Massimo Zanetti Beverage Group, designed to further the success of Kauai Coffee's estate on the south side of the island of Kauai.

"We are extremely pleased to team up with one of the world's leading marketers of coffee, who shares our belief in the potential of Kauai Coffee," said Christopher Benjamin, head of A&B's Agribusiness operations. "While we have been successful growing premium coffee and marketing it within Hawaii, we believe that Massimo Zanetti Beverage—a vertically integrated, multi-national enterprise engaged in all facets of the coffee business—is ideally positioned to take Kauai Coffee to the next level, facilitating the long-term success of this agricultural business."

Massimo Zanetti Beverage, USA will operate the Kauai Coffee estate and processing facilities and will market, sell, and distribute the Kauai Coffee® brand throughout the United States and internationally through its subsidiary companies. The transaction is expected to close in the first quarter of 2011, and is subject to certain conditions being met. Current employees of Kauai Coffee will be offered the same positions by Massimo Zanetti Beverage, USA.

"Our company is thrilled to add Kauai Coffee® to our family of prestigious brands. We look forward to a long partnership with the people of Kauai in the growing, milling and roasting of high quality coffees," said John Boyle, Chief Operating Officer of Massimo Zanetti Beverage, USA. "The opportunity to extend the Kauai Coffee® brand and bring to market nearly 50 percent of all the coffee grown in Hawaii is very exciting."

618. The above joint press release issued by A&B and MZB never mentioned that Kauai LLC was a party to the APA. However, the press release states that MZB would operate Kauai Coffee and employ Kauai Coffee's workers.

619. On March 31, 2011, when A&B and MZB announced the closing of the APA, MZB still held itself out to the public as the new employer of Kauai Coffee's former employees:

Massimo Zanetti Beverage USA now owns the Kauai Coffee Brand name and will oversee the operations and marketing of the company's coffee. Meanwhile Alexander & Baldwin retains ownership of the Kauai Coffee Co.'s 3,000 acres of land and its facilities; A&B also continues to own and operate the Wainiha Hydroelectric Plant that produces renewable energy for Kauai Coffee Co. and the Kauai Island Utility Cooperative, according to Christopher Benjamin.

Kauai Coffee Co.'s 62 full-time workers have been retained by Massimo Zanetti. Kauai Coffee Co. also fills approximately 100 seasonal positions during its fall harvest.

620. To the extent that MZB has retained Kauai Coffee Co.'s sixty-two full-time workers, MZB is liable as a successor. MZB further announced that it intended to rehire all employees, recognize the union, and offer comparable wages and benefits to Kauai Coffee's former employees.

621. MZB also possesses the right to control the Collective Bargaining Agreement that pertains to former Kauai Coffee employees and the right to terminate plantation operations at its discretion.

STATEMENT OF CLAIMS

**FIRST CLAIM FOR RELIEF—PATTERN OR PRACTICE OF
DISCRIMINATORY TREATMENT BECAUSE OF NATIONAL ORIGIN,
RACE, RETALIATION, AND/OR CONSTRUCTIVE DISCHARGE
(42 §§ 2000e-2(a) and 2000e-3(a))**

622. Plaintiff EEOC incorporates by reference all other paragraphs as set forth herein, including without limitation all of the above paragraphs, ¶¶ 1-621.

623. At all times relevant to this action, the Claimants were employed by Global.

624. Since 2003, Global supplied the Claimants to work at one or more farms owned and operated by the Farm Defendants.

625. Since 2003, Global engaged in a pattern or practice of unlawful discriminatory employment practices at its facilities in Los Angeles and Beverly Hills, California and at the Farm Defendants' farms located in Oahu, Maui, and, Kauai, and Hawaii in violation of §§ 703(a) and 704(a) of Title VII, 42 U.S.C. § 2000e-2(a) by discriminating against the Claimants with respect to the terms and conditions of their employment because of their Asian race and/or Thai national origin; subjecting the Claimants to harassment and hostile work environment because of their Asian race and/or Thai national origin; retaliating against employees for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment; and/or constructively discharged the Claimants by subjecting them to intolerable working conditions and/or terms and conditions of employment.

626. Global's pattern and/or practice of discriminatory treatment includes, without limitation, harassment, hostile work environment, disparate treatment, constructive discharge, and retaliation against employees for engaging in protected activity including but not limited to opposing and/or complaining about the

discriminatory terms and conditions of employment, harassment, and/or hostile work environment.

627. Since at least 2003, Del Monte engaged in, knew of, or should have known of the unlawful employment practices and pattern or practice of such unlawful acts that occurred at or around its Hawaii location and/or Global's California locations in violation of §§ 703(a) and 704(a) of Title VII, 42 U.S.C. §§ 2000e-2(a) and 2000e-3(a) by discriminating against the Claimants with respect to the terms and conditions of their employment because of their Asian race and/or Thai national origin; subjecting the Claimants to harassment and hostile work environment because of their Asian race and/or Thai national origin; retaliating against employees for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment; and/or constructively discharging the Claimants by subjecting them to intolerable working conditions.

628. Del Monte's pattern and/or practice of discriminatory treatment includes without limitation, harassment, hostile work environment, disparate treatment, constructive discharge, and/or retaliation against Claimants for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment.

629. Since at least 2004, Kauai Coffee and A&B engaged in, knew of, or should have known of the unlawful employment practices and pattern or practice of such unlawful acts that occurred at or around its Hawaii location and/or Global's California locations in violation of §§ 703(a) and 704(a) of Title VII, 42 U.S.C. §§ 2000e-2(a) and 2000e-3(a) by discriminating against the Claimants with respect to the terms and conditions of their employment because of their Asian race and/or Thai national origin; subjecting the Claimants to harassment and/or hostile work environment because of their Asian race and Thai national origin; retaliating

against employees for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment; and/or constructively discharging the Claimants by subjecting them to intolerable working conditions.

630. A&B knew or should have known of the unlawful employment practices that occurred at Kauai Coffee against the Claimants because A&B allegedly conducted an internal investigation of the allegations pertaining to Kauai Coffee and otherwise controlled, participated in, and/or influenced the employment practices of Kauai Coffee. A&B exercised successively higher authority over the Claimants based on its control of Kauai Coffee, Kauai Coffee's contracts with Global, and those who work on Kauai Coffee's land, the land itself, the power generation facilities, and power distribution operations. A&B controlled day to day operations at Kauai Coffee including but not limited to controlling its drip irrigation system and agronomic practices, by applying A&B's Human Resources Policy on the Claimants, identifying three top Kauai Coffee Managers as A&B employees who directly supervised the Claimants and processed their payroll, investigating the Claimants' allegations of discrimination at Kauai Coffee, and controlling Kauai Coffee's contracts with Global. A&B permitted Kauai Coffee to end its last contract with Global several months early and thereby denied work to the Claimants after complaints to Kauai Coffee supervisor Richard and to Human Resources Administrator Joan Morita, identified as an A&B employee.

631. Kauai Coffee's and A&B's pattern and/or practice of discriminatory treatment includes without limitation, harassment, hostile work environment, disparate treatment, constructive discharge, and/or retaliation against employees for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment.

632. Since at least December 2010, MZB knew or should have known of Kauai Coffee's and A&B's pattern and/or practice of discriminatory treatment includes without limitation, harassment, hostile work environment, disparate treatment, constructive discharge, and/or retaliation against Claimants for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment.

633. MZB is liable as a successor to A&B and/or Kauai Coffee because MZB and Kauai Coffee agreed that MZB and/or Kauai LLC would maintain continuity of Kauai Coffee's operations and workforce; at least ninety days prior to buying Kauai Coffee's assets, MZB and/or Kauai LLC received disclosures providing notice of Kauai Coffee's legal obligations; and because Kauai Coffee sold its assets to MZB and/or Kauai LLC, Kauai Coffee may not be able to provide adequate monetary or injunctive relief without MZB and/or Kauai LLC.

634. Since at least 2004, Mac Farms engaged in, knew of, or should have known of the unlawful employment practices and pattern or practice of such unlawful acts that occurred at or around its Hawaii location and/or Global's California locations in violation of §§ 703(a) and 704(a) of Title VII, 42 U.S.C. §§ 2000e-2(a) and 2000e-3(a) by discriminating against the Claimants with respect to the terms and conditions of their employment because of their Asian race and/or Thai national origin; subjecting the Claimants to harassment and hostile work environment because of their Asian race and/or Thai national origin; retaliating against employees for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment; and/or constructively discharged the Claimants by subjecting them to intolerable working conditions.

635. Mac Farms' pattern and/or practice of discriminatory treatment includes without limitation, harassment, hostile work environment, disparate

treatment, constructive discharge, and/or retaliation against Claimants for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment.

636. Since at least 2004, Maui Pineapple engaged in, knew of, or should have known of the unlawful employment practices and pattern or practice of such unlawful acts that occurred at or around its Hawaii locations and/or Global's California locations in violation of §§ 703(a) and 704(a) of Title VII, 42 U.S.C. § 2000e-2(a) by discriminating against the Claimants with respect to the terms and conditions of their employment because of their Asian race and/or Thai national origin; subjecting the Claimants to harassment and hostile work environment because of their Asian race and/or Thai national origin; retaliating against employees for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment; and/or constructively discharging the Claimants by subjecting them to intolerable working conditions.

637. Maui Pineapple's pattern and/or practice of discriminatory treatment includes without limitation, harassment, hostile work environment, disparate treatment, constructive discharge, and/or retaliation against Claimants for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment.

638. Since at least 2005, Captain Cook engaged in, knew of, or should have known of the unlawful employment practices and pattern or practice of such unlawful acts that occurred at or around its Hawaii locations and/or Global's California locations of §§ 703(a) and 704(a) of Title VII, 42 U.S.C. §§ 2000e-2(a) and 2000e-3(a) by discriminating against the Claimants with respect to the terms and conditions of their employment because of their Asian race and Thai national

origin; subjecting the Claimants to harassment and hostile work environment because of their Asian race and/or Thai national origin; retaliating against employees for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment; and/or constructively discharging the Claimants by subjecting them to intolerable working conditions.

639. Captain Cook's pattern and/or practice of discriminatory treatment includes, without limitation, harassment, hostile work environment, disparate treatment, constructive discharge, and retaliation against employees for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment.

640. Since at least 2005, Kelena Farms engaged in, knew of, or should have known of the unlawful employment practices and pattern or practice of such unlawful acts that occurred at or around its Hawaii locations and/or Global's California location of §§ 703(a) and 704(a) of Title VII, 42 U.S.C. §§ 2000e-2(a) and 2000e-3(a) by discriminating against the Claimants with respect to the terms and conditions of their employment because of their Asian race and/or Thai national origin; subjecting the Claimants to harassment and hostile work environment because of their Asian race and/or Thai national origin; retaliating against employees for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment; and/or constructively discharging the Claimants by subjecting them to intolerable working conditions.

641. Kelena Farms' pattern and/or practice of discriminatory treatment includes without limitation, harassment, hostile work environment, disparate treatment, constructive discharge, and/or retaliation against Claimants for engaging in protected activity including but not limited to opposing and/or complaining

about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment.

642. The effect of the practices complained of above has been to deprive Claimants of equal employment opportunities and otherwise adversely affect their employment status because of their race and national origin.

643. The unlawful employment practices complained of above were and are intentional.

644. The unlawful employment practices complained of above were done with malice or with reckless indifference to the federally protected rights of Claimants.

**SECOND CLAIM FOR RELIEF – HOSTILE WORK
ENVIRONMENT/HARASSMENT
(42 U.S.C. §§ 2000e-2(a))**

645. Plaintiff EEOC incorporates by reference all other paragraphs as set forth herein, including without limitation all of the above paragraphs, ¶¶ 1-644.

646. Since 2003, Global has engaged and continues to engage in unlawful employment practices at its facilities in Los Angeles and Beverly Hills, California and at the Farm Defendants' farms located in Oahu, Maui, Kauai, and Hawaii, in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by subjecting Claimants to harassment and/or a hostile work environment because of their Asian race and/or Thai national origin and/or failing to prevent and promptly correct the harassment and/or hostile work environment. The hostile work environment became so intolerable that the Claimants were forced to resign and thereby constructively discharged.

647. Since at least 2003, Del Monte engaged in, knew of, or should have known of the unlawful employment practices that occurred at or around its Hawaii locations and/or Global's California location in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by subjecting Claimants to harassment and/or a hostile

work environment because of their Asian race and/or Thai national origin and/or failing to prevent and promptly correct the harassment and/or hostile work environment. The hostile work environment became so intolerable that the Claimants were forced to resign and thereby constructively discharged.

648. Since at least 2004, Kauai Coffee and A&B engaged in, knew of, or should have known of the unlawful employment practices that occurred at or around its Hawaii locations and/or Global's California locations in violation of § 703(a) of Title VII, 42 U.S.C. §2000e-2(a) by subjecting Claimants to harassment and/or a hostile work environment because of their Asian race and/or Thai national origin and/or failing to prevent and promptly correct the harassment and/or hostile work environment. The hostile work environment became so intolerable that the Claimants were forced to resign and thereby constructively discharged.

649. A&B knew or should have known of the unlawful employment practices that occurred at Kauai Coffee against the Claimants because A&B allegedly conducted an internal investigation of the allegations pertaining to Kauai Coffee and otherwise controlled, participated in, and/or influenced the employment practices of Kauai Coffee. A&B exercised control over the Claimants based on its control of Kauai Coffee, Kauai Coffee's contracts with Global, and those who work on Kauai Coffee's land, the land itself, the power generation facilities, and power distribution operations. A&B controlled day to day operations at Kauai Coffee including but not limited to controlling its drip irrigation system and agronomic practices, by applying A&B's Human Resources Policy to the Claimants, identifying three top Kauai Coffee Managers as A&B employees who directly supervised the Claimants and processed their payroll, investigated the Claimants' allegations of discrimination at Kauai Coffee, and controlled Kauai Coffee's contracts with Global. A&B permitted Kauai Coffee to end its last contract with Global several months early and thereby denied work to the Claimants after complaints to Kauai Coffee supervisor Richard and to Human

Resources Administrator Joan Morita, identified as an A&B employee. A&B held itself out as Kauai Coffee during the time Claimants worked at Kauai Coffee. The hostile work environment at Kauai Coffee became so intolerable that the Claimants were forced to resign and thereby constructively discharged by Kauai Coffee and/or A&B.

650. Since at least December 2010, MZB knew or should have known of the unlawful employment practices that occurred at or around Kauai Coffee's Hawaii locations and/or Global's California location in violation of § 703(a) of Title VII, 42 U.S.C. §2000e-2(a) that subjected Claimants to harassment and/or a hostile work environment because of their Asian race and/or Thai national origin and/or of Kauai Coffee and A&B's failure to prevent and promptly correct the harassment and/or hostile work environment. The hostile work environment at Kauai Coffee became so intolerable that the Claimants were forced to resign and thereby constructively discharged by Kauai Coffee and/or A&B.

651. MZB is liable as a successor to A&B and/or Kauai Coffee because MZB and Kauai Coffee agreed that MZB and/or Kauai LLC would maintain continuity of Kauai Coffee's operations and workforce; at least ninety days prior to buying Kauai Coffee's assets, MZB and/or Kauai LLC received disclosures providing notice of Kauai Coffee's legal obligations; and because Kauai Coffee sold its assets to MZB and/or Kauai LLC, Kauai Coffee may not be able to provide adequate monetary or injunctive relief without MZB and/or Kauai LLC.

652. Since at least 2004, Mac Farms engaged in, knew of, or should have known of the unlawful employment practices that occurred at or around its Hawaii locations and/or Global's California locations in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by subjecting Claimants to harassment and/or a hostile work environment because of their Asian race and/or Thai national origin and/or failing to prevent and promptly correct the harassment and/or hostile work

environment. The hostile work environment became so intolerable that the Claimants were forced to resign and thereby constructively discharged.

653. Since at least 2004, Maui Pineapple engaged in, knew of, or should have known of the unlawful employment practices that occurred at or around its Hawaii locations and/or Global's California locations in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by subjecting Claimants to harassment and/or a hostile work environment because of their Asian race and/or Thai national origin and/or failing to prevent and promptly correct the harassment and/or hostile work environment. The hostile work environment became so intolerable that the Claimants were forced to resign and thereby constructively discharged.

654. Since at least 2005, Captain Cook engaged in, knew of, or should have know of the unlawful employment practices that occurred at or around its Hawaii locations and/or Global's California locations in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by subjecting Claimants to harassment and/or a hostile work environment because of their Asian race and/or Thai national origin and/or failing to prevent and promptly correct the harassment and/or hostile work environment. The hostile work environment became so intolerable that the Claimants were forced to resign and thereby constructively discharged.

655. Since at least 2005, Kelena Farms engaged in, knew of, or should have known of the unlawful employment practices that occurred at or around its Hawaii locations and/or Global's California locations in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by subjecting Claimants to harassment and/or a hostile work environment because of their Asian race and/or Thai national origin and/or failing to prevent and promptly correct the harassment and/or hostile work environment. The hostile work environment became so intolerable that the Claimants were forced to resign and thereby constructively discharged.

656. The harassment and/or hostile work environment against the Claimants that continued from one Farm Defendant to the next was sufficiently

severe and/or pervasive as to alter the terms and conditions of their employment with Global and at each Farm Defendant's location.

657. Management employees of all Defendants knew or should have known of the harassment and/or hostile work environment which culminated in the constructive discharge of the Claimants.

658. Management employees of all Defendants failed to take appropriate action to prevent or promptly correct the harassment and hostile environment to which the Claimants were subjected.

659. The effect of the practices complained of above has been to deprive Claimants of equal employment opportunities and otherwise adversely affect their employment status because of their race and/or national origin.

660. The unlawful employment practices complained of above were intentional.

661. The unlawful employment practices complained of above were done with malice or with reckless indifference to the federally protected rights of the Claimants.

**THIRD CLAIM FOR RELIEF – DISCRIMINATORY TERMS AND
CONDITIONS OF EMPLOYMENT
(42 U.S.C. §§ 2000e-2(a))**

662. Plaintiff EEOC incorporates by reference all other paragraphs as set forth herein, including without limitation all of the above paragraphs, ¶¶ 1-661.

663. Since at least 2003, Global has engaged and continues to engage in unlawful employment practices at its facilities in Los Angeles and Beverly Hills, California and at the Farm Defendants' farms located in Oahu, Maui, Kauai, and Hawaii, in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by subjecting the Claimants to discriminatory terms and conditions of employment because of their Asian race and/or Thai national origin and constructively discharged them because of the Asian race and/or Thai national origin.

664. Since at least 2003, Del Monte engaged in unlawful employment actions at or around its Hawaii location and/or Global's California location in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by subjecting the Claimants to discriminatory terms and conditions of employment because of their Asian race and/or Thai national origin and constructively discharged them because of the Asian race and/or Thai national origin.

665. Since at least 2004, Kauai Coffee and A&B engaged in, knew of, or should have known of the unlawful employment practices that occurred at or around its Hawaii locations and/or Global's California locations in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by subjecting the Claimants to discriminatory terms and conditions of employment because of their Asian race and/or Thai national origin and constructively discharged them because of the Asian race and/or Thai national origin.

666. A&B knew or should have known of the unlawful employment practices that occurred at Kauai Coffee against the Claimants because A&B allegedly conducted an internal investigation of the allegations pertaining to Kauai Coffee and otherwise controlled, participated in, and/or influenced the employment practices of Kauai Coffee. A&B exercised control over the Claimants based on its control of Kauai Coffee, Kauai Coffee's contracts with Global, and those who work on Kauai Coffee's land, the land itself, the power generation facilities, and power distribution operations. A&B controlled day to day operations at Kauai Coffee including but not limited to controlling its drip irrigation system and agronomic practices, by applying A&B's Human Resources Policy on the Claimants, identifying three top Kauai Coffee Managers as A&B employees who directly supervised the Claimants and processed their payroll, investigating the Claimants' allegations of discrimination at Kauai Coffee, and controlling Kauai Coffee's contracts with Global. A&B held itself out as Kauai Coffee during the time Claimants worked at Kauai Coffee. A&B permitted Kauai Coffee to end its

last contract with Global several months early and thereby denied work to the Claimants after complaints to Kauai Coffee supervisor Richard and to Human Resources Administrator Joan Morita, identified as an A&B employee. Thus, A&B's involvement at Kauai Coffee resulted in the Claimants' constructive discharge.

667. Since at least December 2010, MZB knew or should have known of the unlawful employment practices that occurred at or around Kauai Coffee's Hawaii locations and/or Global's California locations in violation of § 703(a) of Title VII, 42 U.S.C. §2000e-2(a) that subjected Claimants to discriminatory terms and conditions of employment because of their Asian race and/or Thai national origin which resulted in their constructive discharge because of their Asian race and/or Thai national origin.

668. MZB is liable as a successor to A&B and/or Kauai Coffee because MZB and Kauai Coffee agreed for MZB and Kauai LLC to maintained continuity of Kauai Coffee's operations and workforce; at least ninety days prior to buying Kauai Coffee's assets, MZB and/or Kauai LLC received disclosures providing notice of Kauai Coffee's legal obligations; and because Kauai Coffee sold its assets to MZB and/or Kauai LLC, Kauai Coffee may not be able to provide adequate monetary or injunctive relief without MZB and/or Kauai LLC.

669. Since at least 2004, Mac Farms engaged in, knew of, or should have known of the unlawful employment practices that occurred at or around its Hawaii locations and/or Global's California locations in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by subjecting Claimants to discriminatory terms and conditions of employment because of their Asian race and/or Thai national origin and constructively discharged them because of the Asian race and/or Thai national origin.

670. Since at least 2004, Maui Pineapple engaged in, knew of, or should have known of the unlawful employment practices that occurred at or around its

Hawaii locations and/or Global's California locations in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by subjecting Claimants to discriminatory terms and conditions of employment because of their Asian race and/or Thai national origin and constructively discharged them because of the Asian race and/or Thai national origin.

671. Since at least 2005, Captain Cook engaged in, knew of, or should have know of the unlawful employment practices that occurred at or around its Hawaii locations and/or Global's California locations in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by subjecting Claimants to discriminatory terms and conditions of employment because of their Asian race and/or Thai national origin and constructively discharged them because of the Asian race and/or Thai national origin.

672. Since at least 2005, Kelena Farms engaged in, knew of, or should have known of the unlawful employment practices that occurred at or around its Hawaii locations and/or Global's California locations in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by subjecting Claimants to discriminatory terms and conditions of employment because of their Asian race and/or Thai national origin and constructively discharged them because of the Asian race and/or Thai national origin.

673. The effect of the practices complained of above has been to deprive the Claimants of equal employment opportunities and otherwise adversely affect their employment status because of their race and/or national origin.

674. The unlawful employment practices complained of above were and are intentional.

675. The unlawful employment practices complained of above were done with malice or with reckless indifference to the federally protected rights of the Claimants.

FOURTH CLAIM FOR RELIEF – RETALIATION FOR ENGAGING PROTECTED ACTIVITY (42 U.S.C. § 2000e-3)

676. Plaintiff EEOC incorporates by reference all other paragraphs as set forth herein, including without limitation all of the above paragraphs and ¶¶ 1-675.

677. Since at least 2003, Global has engaged and continues to engage in unlawful employment practices at its facilities in Los Angeles and Beverly Hills, California and at the Farm Defendants' farms located in Oahu, Maui, Kauai, and Hawaii, in violation of § 704(a) of Title VII, 42 U.S.C. § 2000e-3 by subjecting the Claimants to retaliation for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment.

678. In retaliation for Claimants' protected activities against what they reasonably believed to be Global's and/or the Farm Defendants' unlawful discrimination against them, Global subjected them to adverse employment actions including without limitation, discipline, transfers, denial of work, threats, harassment, denial of transportation and food, and a hostile work environment.

679. Since about 2003, Del Monte engaged in unlawful employment practices at or around its Hawaii locations and/or Global's California locations in violation of § 704(a) of Title VII, 42 U.S.C. § 2000e-3 by subjecting the Claimants to retaliation for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment.

680. In retaliation for Claimants' protected activities at Del Monte, the Claimants were subjected to adverse employment actions including without limitation suspension, reduction of hours, and/or denial of work. Del Monte denied work to the Claimants by cutting short its contract with Global after the Claimants complained directly to Del Monte supervisors.

681. Since at least 2004, Kauai Coffee engaged in, knew of, or should have known of the unlawful employment practices and pattern or practice of such

unlawful acts that occurred at or around its Hawaii locations and/or Global's California locations in violation of § 704(a) of Title VII, 42 U.S.C. § 2000e-3(a) by subjecting the Claimants to retaliation for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment.

682. In retaliation for Claimants' protected activities at Kauai Coffee, the Claimants were subjected to adverse employment actions including without limitation deportation threats and denial of work. Kauai Coffee denied work to the Claimants by cutting short its contract with Global after the Claimants complained directly to Kauai Coffee's and/or A&B's supervisors.

683. A&B knew or should have known of the unlawful employment practices that occurred at Kauai Coffee against the Claimants because A&B allegedly conducted an internal investigation of the allegations pertaining to Kauai Coffee and otherwise controlled, participated in, and/or influenced the day-to-day employment practices of Kauai Coffee. A&B exercised control over the Claimants based on its control of Kauai Coffee, Kauai Coffee's contracts with Global, and those who work on Kauai Coffee's land, the land itself, the power generation facilities, power distribution operations, irrigation methods used at Kauai Coffee, agronomic practices used at Kauai Coffee, and A&B sold Kauai Coffee's assets could be sold without material gain while incurring a 2% loss to A&B and its subsidiaries. Based on information and belief, A&B permitted Kauai Coffee to deny work to the Claimants by cutting short its contract with Global after the Claimants complained directly to Kauai Coffee's and/or A&B's supervisors.

684. Since at least December 2010, MZB knew or should have known of the unlawful employment practices that occurred at or around Kauai Coffee's Hawaii location and/or Global's California location in violation of § 704(a) of Title VII, 42 U.S.C. §2000e-3(a) that subjected Claimants to retaliation for engaging in protected activity including but not limited to opposing and/or complaining about

the discriminatory terms and conditions of employment, harassment, and/or hostile work environment.

685. MZB is liable as a successor to A&B and/or Kauai Coffee because MZB and Kauai Coffee agreed for MZB and Kauai LLC to maintain continuity of Kauai Coffee's operations and workforce; at least ninety days prior to buying Kauai Coffee's assets, MZB and/or Kauai LLC received disclosures providing notice of Kauai Coffee's legal obligations; and because Kauai Coffee sold its assets to MZB and/or Kauai LLC, Kauai Coffee may not be able to provide adequate monetary or injunctive relief without MZB and/or Kauai LLC.

686. Since at least 2004, Mac Farms engaged in, knew of, or should have known of the unlawful employment practices that occurred at or around its Hawaii location and/or Global's California location in violation of § 704(a) of Title VII, 42 U.S.C. § 2000e-3(a) by subjecting the Claimants to retaliation for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment.

687. In retaliation for Claimants' protected activities at Mac Farms, the Claimants were subjected to adverse employment actions including without limitation threats of deportations and reprimands not to talk to other people about their complaints or they would simply be sent back to Thailand.

688. Since at least 2004, Maui Pineapple engaged in, knew of, or should have known of the unlawful employment practices that occurred at or around its Hawaii location and/or Global's California location in violation of § 704(a) of Title VII, 42 U.S.C. § 2000e-3(a) by subjecting the Claimants to retaliation for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment.

689. In retaliation for Claimants' protected activities at Maui Pineapple, the Claimants were subjected to adverse employment actions including without limitation threats of deportations and physical violence and denial of work. Maui Pineapple denied work to the Claimants by cutting short its contract with Global after the Claimants complained to DOL about various issues with pay at Maui Pineapple.

690. Since about 2005, Captain Cook engaged in unlawful employment practices at or around its Hawaii locations and/or Global's California locations in violation of § 704(a) of Title VII, 42 U.S.C. § 2000e-3(a) by subjecting the Claimants to retaliation for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment.

691. In retaliation for Claimants' protected activities, Captain Cook's management directly engaged in adverse employment actions against the Claimants including without limitation refusing to take the Claimants to the grocery store when they complained about the pay issues and reprimanding, disciplining, and/or transferring Claimants who sought medical attention for themselves or other Claimants.

692. Since about 2005, Kelena Farms engaged in unlawful employment practices at or around its Hawaii locations and/or Global's California locations in violation of § 704(a) of Title VII, 42 U.S.C. § 2000e-3(a) by subjecting the Claimants to retaliation for engaging in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment.

693. In retaliation for Claimants' protected activities at Kelena Farms, the Claimants were subjected to adverse employment actions including without limitation, threats by Kelena Farms' supervisors and Kelena Farms denying work

to the Claimants by cutting short its contract with Global after the Claimants complained directly to Kelena Farms' owner and supervisors.

694. The effect of the practices complained of above has been to deprive the Claimants of equal employment opportunities and otherwise adversely affect their employment status because the Claimants engaged in protected activity including but not limited to opposing and/or complaining about the discriminatory terms and conditions of employment, harassment, and/or hostile work environment.

695. The unlawful employment practices complained of above were and are intentional.

696. The unlawful employment practices complained of above were done with malice or with reckless indifference to the federally protected rights of the Claimants.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Global, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in discrimination—including harassment, disparate treatment, and constructive discharge—on the basis of the Claimants' national origin (Thai) and/or race (Asian), or a pattern or practice of such discrimination.

B. Grant a permanent injunction enjoining Defendant Global, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in retaliation or a pattern or practice of retaliation.

C. Grant a permanent injunction enjoining Defendant Captain Cook, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in discrimination—including harassment,

disparate treatment, and constructive discharge—on the basis of the Claimants’ national origin (Thai) and/or race (Asian), or a pattern or practice of such discrimination.

D. Grant a permanent injunction enjoining Defendant Captain Cook, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in retaliation or a pattern or practice of retaliation.

E. Grant a permanent injunction enjoining Defendant Del Monte, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in discrimination—including harassment, disparate treatment, and constructive discharge—on the basis of the Claimants’ national origin (Thai) and/or race (Asian), or a pattern or practice of such discrimination.

F. Grant a permanent injunction enjoining Defendant Del Monte, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in retaliation or a pattern or practice of retaliation.

G. Grant a permanent injunction enjoining Defendant Kauai Coffee, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in discrimination—including harassment, disparate treatment, and constructive discharge—on the basis of the Claimants’ national origin (Thai) and/or race (Asian), or a pattern or practice of such discrimination.

H. Grant a permanent injunction enjoining Defendant Kauai Coffee, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in retaliation or a pattern or practice of retaliation.

I. Grant a permanent injunction enjoining Defendant Alexander & Baldwin, Inc., its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in discrimination—including harassment, disparate treatment, and constructive discharge—on the basis of the Claimants’ national origin (Thai) and/or race (Asian), or a pattern or practice of such discrimination.

J. Grant a permanent injunction enjoining Defendant Alexander & Baldwin, Inc., its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in retaliation or a pattern or practice of retaliation.

K. Grant a permanent injunction enjoining Defendant Massimo Zanetti Beverage USA, Inc., its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in discrimination—including harassment, disparate treatment, and constructive discharge—on the basis of the Claimants’ national origin (Thai) and/or race (Asian), or a pattern or practice of such discrimination.

L. Grant a permanent injunction enjoining Defendant Massimo Zanetti Beverage USA, Inc., its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in retaliation or a pattern or practice of retaliation.

M. Grant a permanent injunction enjoining Defendant Kelena Farms, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in discrimination—including harassment, disparate treatment, and constructive discharge—on the basis of the Claimants’ national origin (Thai) and/or race (Asian), or a pattern or practice of such discrimination.

N. Grant a permanent injunction enjoining Defendant Kelena Farms, its officers, agents, servants, employees, attorneys, and all persons in active concert or

participation with them, from engaging in retaliation or a pattern or practice of retaliation.

O. Grant a permanent injunction enjoining Defendant Mac Farms, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in discrimination—including harassment, disparate treatment, and constructive discharge—on the basis of the Claimants' national origin (Thai) and/or race (Asian), or a pattern or practice of such discrimination.

P. Grant a permanent injunction enjoining Defendant Mac Farms, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in retaliation or a pattern or practice of retaliation.

Q. Grant a permanent injunction enjoining Defendant Maui Pineapple, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in discrimination—including harassment, disparate treatment, and constructive discharge—on the basis of the Claimants' national origin (Thai) and/or race (Asian), or a pattern or practice of such discrimination.

R. Grant a permanent injunction enjoining Defendant Maui Pineapple, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in retaliation or a pattern or practice of retaliation.

S. Order Defendant Global to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals of national origin (Thai) and/or race (Asian), and which eradicate the effects of its past and present unlawful employment practices.

T. Order Defendant Captain Cook to institute and carry out policies, practices, and programs which provide equal employment opportunities for

individuals of Thai national origin and/or Asian race, and which eradicate the effects of its past and present unlawful employment practices.

U. Order Defendant Del Monte to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals of Thai national origin and/or Asian race, and which eradicate the effects of its past and present unlawful employment practices.

V. Order Defendant Kauai Coffee to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals of Thai national origin and/or Asian race, and which eradicate the effects of its past and present unlawful employment practices.

W. Order Defendant Alexander & Baldwin, Inc. to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals of Thai national origin and/or Asian race, and which eradicate the effects of its past and present unlawful employment practices.

X. Order Defendant Massimo Zanetti Beverage USA, Inc. to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals of Thai national origin and/or Asian race, and which eradicate the effects of its past and present unlawful employment practices.

Y. Order Defendant Kelena Farms to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals of Thai national origin and/or Asian race, and which eradicate the effects of its past and present unlawful employment practices.

Z. Order Defendant Mac Farms to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals of Thai national origin and/or Asian race, and which eradicate the effects of its past and present unlawful employment practices.

AA. Order Defendant Maui Pineapple to institute and carry out policies, practices, and programs which provide equal employment opportunities for

individuals of Thai national origin and/or Asian race, and which eradicate the effects of its past and present unlawful employment practices.

BB. Order Defendant Global to make whole Marut Kongpia and similarly situated individuals, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement of Marut Kongpia and similarly situated individuals.

CC. Order Defendant Captain Cook to make whole Nookrai Matwiset and similarly situated individuals, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement of Nookrai Matwiset and similarly situated individuals.

DD. Order Defendant Del Monte to make whole Jakarin Phookhiew and similarly situated individuals, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement of Jakarin Phookhiew and similarly situated individuals.

EE. Order Defendant Kauai Coffee to make whole Mongkol Bootpasa and similarly situated individuals, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement of Mongkol Bootpasa and similarly situated individuals.

FF. Order Defendant Alexander & Baldwin, Inc. to make whole Mongkol Bootpasa and similarly situated individuals, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement of Mongkol Bootpasa and similarly situated individuals.

GG. Order Defendant Massimo Zanetti Beverage USA, Inc. to make whole Mongkol Bootpasa and similarly situated individuals, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement of Mongkol Bootpasa and similarly situated individuals.

HH. Order Defendant Kelena Farms to make whole Janporn Suradanai and similarly situated individuals, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement of Janporn Suradanai and similarly situated individuals.

II. Order Defendant Mac Farms to make whole Suthat Promnonsri and similarly situated individuals, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement of Suthat Promnonsri and similarly situated individuals.

JJ. Order Defendant Maui Pineapple to make whole Itthi Oa-Sot and similarly situated individuals, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement of Itthi Oa-Sot and similarly situated individuals.

KK. Order Defendant Global to make whole Marut Kongpia and similarly situated individuals, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 1 through 658 above, including recruitment fees, relocation expenses, job search expenses, and medical expenses, in amounts to be determined at trial.

LL. Order Defendant Captain Cook to make whole Nookrai Matwiset and similarly situated individuals who worked at Captain Cook, by providing

compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 1 through 658 above, including recruitment fees, relocation expenses, job search expenses, and medical expenses, in amounts to be determined at trial.

MM. Order Defendant Del Monte to make whole Jakarin Phookhiew and similarly situated individuals who worked at Del Monte, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 1 through 658 above, including recruitment fees, relocation expenses, job search expenses, and medical expenses, in amounts to be determined at trial.

NN. Order Defendant Kauai Coffee to make whole Mongkol Bootpasa and similarly situated individuals who worked at Kauai Coffee, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 1 through 658 above, including recruitment fees, relocation expenses, job search expenses, and medical expenses, in amounts to be determined at trial.

OO. Order Defendant Alexander & Baldwin, Inc. to make whole Mongkol Bootpasa and similarly situated individuals who worked at Kauai Coffee, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 1 through 660 above, including recruitment fees, relocation expenses, job search expenses, and medical expenses, in amounts to be determined at trial.

PP. Order Defendant Massimo Zanetti Beverage USA, Inc. to make whole Mongkol Bootpasa and similarly situated individuals who worked at Kauai Coffee, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 1 through 660 above, including recruitment fees, relocation expenses, job search expenses, and medical expenses, in amounts to be determined at trial.

RR. Order Defendant Kelena Farms to make whole Janporn Suradanai and similarly situated individuals who worked at Kelena Farms, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 1 through 660 above, including recruitment fees, relocation expenses, job search expenses, and medical expenses, in amounts to be determined at trial.

SS. Order Defendant Mac Farms to make whole Suthat Promnonsri and similarly situated individuals who worked at Mac Farms, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 1 through 660 above, including recruitment fees, relocation expenses, job search expenses, and medical expenses, in amounts to be determined at trial.

TT. Order Defendant Maui Pineapple to make whole Itthi Oa-Sot and similarly situated individuals who worked at Maui Pineapple, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 1 through 660 above, including recruitment fees, relocation expenses, job search expenses, and medical expenses, in amounts to be determined at trial.

UU. Order Defendant Global to make whole Marut Kongpia and similarly situated individuals, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 1 through 660 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

UU. Order Defendant Captain Cook to make whole Nookrai Matwiset and similarly situated individuals who worked at Captain Cook, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 1 through 660 above, including emotional

pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

VV. Order Defendant Del Monte to make whole Jakarin Phookhiew and similarly situated individuals who worked at Del Monte, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 1 through 660 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

WW. Order Defendant Kauai Coffee to make whole Mongkol Bootpasa and similarly situated individuals who worked at Kauai Coffee, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 1 through 660 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

XX. Order Defendant Alexander & Baldwin, Inc. to make whole Mongkol Bootpasa and similarly situated individuals who worked at Kauai Coffee, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 1 through 660 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

YY. Order Defendant Massimo Zanetti Beverage USA, Inc. to make whole Mongkol Bootpasa and similarly situated individuals who worked at Kauai Coffee, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 1 through 660 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

ZZ. Order Defendant Kelena Farms to make whole Janporn Suradanai and similarly situated individuals who worked at Kelena Farms, by providing

compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 1 through 660 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

AAA. Order Defendant Mac Farms to make whole Suthat Promnonsri and similarly situated individuals who worked at Mac Farms, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 1 through 660 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

BBB. Order Defendant Maui Pineapple to make whole Itthi Oa-Sot and similarly situated individuals who worked at Maui Pineapple, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 1 through 660 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

CCC. Order Defendant Global to pay Marut Kongpia and similarly situated individuals punitive damages for its malicious or reckless conduct described in paragraphs 1 through 658 above, in amounts to be determined at trial.

DDD. Order Defendant Captain Cook to pay Nookrai Matwiset and similarly situated individuals who worked at Captain Cook punitive damages for its malicious or reckless conduct described in paragraphs 1 through 660 above, in amounts to be determined at trial.

EEE. Order Defendant Del Monte to pay Jakarin Phookhiew and similarly situated individuals who worked at Del Monte punitive damages for its malicious or reckless conduct described in paragraphs 1 through 660 above, in amounts to be determined at trial.

FFF. Order Defendant Kauai Coffee to pay Mongkol Bootpasa and similarly situated individuals who worked at Kauai Coffee punitive damages for its malicious or reckless conduct described in paragraphs 1 through 660 above, in amounts to be determined at trial.

GGG. Order Defendant Alexander & Baldwin, Inc. to pay Mongkol Bootpasa and similarly situated individuals who worked at Kauai Coffee punitive damages for its malicious or reckless conduct described in paragraphs 1 through 660 above, in amounts to be determined at trial.

HHH. Order Defendant Massimo Zanetti Beverage USA, Inc. to pay Mongkol Bootpasa and similarly situated individuals who worked at Kauai Coffee punitive damages for its malicious or reckless conduct described in paragraphs 1 through 660 above, in amounts to be determined at trial.

III. Order Defendant Kelena Farms to pay Janporn Suradanai and similarly situated individuals who worked at Kelena Farms punitive damages for its malicious or reckless conduct described in paragraphs 1 through 660 above, in amounts to be determined at trial.

JJJ. Order Defendant Mac Farms to pay Suthat Promnonsri and similarly situated individuals who worked at Mac Farms punitive damages for its malicious or reckless conduct described in paragraphs 1 through 660 above, in amounts to be determined at trial.

KKK. Order Defendant Maui Pineapple to pay Itthi Oa-Sot and similarly situated individuals who worked at Maui Pineapple punitive damages for its malicious or reckless conduct described in paragraphs 1 through 660 above, in amounts to be determined at trial.

LLL. Grant such further relief as the Court deems necessary and proper in the public interest.

MMM. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

Dated: July 2, 2012

Respectfully Submitted,

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