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**OFFICE OF THE ATTORNEY GENERAL
STATE OF WASHINGTON**

IN RE H-2A SEASONAL WORKER
PROGRAM INVESTIGATION

CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORIES AND
PRODUCTION OF DOCUMENTS

THE STATE OF WASHINGTON TO:	Washington Farm Labor Association c/o Ms. Kristin Ferrera Jeffers, Danielson, Sonn & Aylward, P.S. 2600 Chester Kimm Rd. Wenatchee, WA 98801
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GREETINGS:

Pursuant to RCW 19.86.110, demand is hereby made upon Washington Farm Labor Association (“WAFLA”) by the State of Washington, through Robert W. Ferguson, Attorney General, to produce for inspection and copying certain documents. The Attorney General believes that WAFLA is in possession, custody or control of documents and have knowledge of information which is relevant to the subject matter of an investigation now in progress. This investigation is being conducted pursuant to the Washington Consumer Protection Act, Chapter 19.86 RCW and/or the Sherman Act, 15 U.S.C. § 1 *et seq.*

I. DEFINITIONS AND GENERAL INSTRUCTIONS

A. DEFINITIONS: As used in this Civil Investigative Demand:

1. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, pertaining to, or stating.

1 2. The term "communication" includes, but is not limited to, any conversation,
2 discussion, letter, memorandum, meeting, note, home, office, letter or administrative message,
3 or any other transmittal of information, whether transmitted in writing, orally, electronically
4 (including, but not limited to, email or text) or by any other means, the metadata of any
5 electronic communication such as email, all notes pertaining to any of the aforesaid, and any
6 document that abstracts, digests, transcribes or records any communication.

7 3. The term "documents" means all computer files and written, recorded, and graphic
8 materials of every kind in the possession, custody or control of the respondent. The term
9 "documents" includes electronic correspondence and drafts of documents, copies of documents
10 that are not identical duplicates of the originals, and copies of documents the originals of which
11 are not in the possession, custody or control of the respondent.

12 4. The term "computer files" includes information stored in, or accessible through,
13 computer or other information retrieval systems. Thus, the respondent should produce documents
14 that exist in machine-readable form, including documents stored in personal computers, portable
15 computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive
16 disks and tapes, and other forms of offline storage, whether on or off respondent's premises.
17 Electronic mail messages should also be provided, even if only available on backup or archive
18 tapes or disks. Computer files shall be printed and produced in hard copy or produced in
19 machine-readable form (provided that representatives of the Office of the Attorney General
20 determine prior to submission that it would be in a format that allows the agency to use the
21 computer files), together with instructions and all other materials necessary to use or interpret the
22 data.

23 5. The term "person" means any individual, partnership, corporation, other legal,
24 governmental, or business entity.

25 6. The term "WAFLA" includes its successors and assigns, divisions, affiliates,
26 subsidiaries, groups, partnerships and joint ventures, as well as: (a) its directors, officers,

1 agents, employees, attorneys, or any other person acting on its behalf; and (b) any predecessor,
2 successor, or parent corporation, or subsidiary, division or affiliate.

3 7. The term “you” and “your” mean WAFLA collectively.

4 8. The phrase “related to or affiliated with” means in whole or part constituting,
5 containing, concerning, discussing, describing, analyzing, identifying, pertaining to, reflecting,
6 or stating.

7 9. The term “Relevant Period” means, unless otherwise noted, the period of time
8 between January 1, 2014 and the present.

9 10. The term “Agricultural Grower” means any natural person, partnership,
10 corporation, or other legal, governmental, or business entity that is an owner, operator,
11 landlord, tenant, or sharecropper of a farm.

12 11. The term “Survey” means the Employment Security Department 2015
13 Agricultural Peak Employment Wage and Practices Survey.

14 The term “Domestic Agricultural Worker” means any natural person, who is a U.S.
15 Citizen or Permanent Resident, and engaged in agricultural work on a farm.

16 12. The term “H-2A Temporary Agricultural Worker” means any natural person,
17 who is a foreign national coming temporarily to the United States to perform agricultural work
18 of a temporary or seasonal nature, as defined under 8 CFR 214.2 (h)(ii)(C).

19 **B. INSTRUCTIONS:**

20 1. The requested documents are to be produced to: Chiedza Nziramasanga,
21 Assistant Attorney General, Office of Attorney General, 800 Fifth Avenue, Suite 2000, Seattle,
22 Washington, 98104, Friday, October 14, 2016, or at such other time and place as is agreed to
23 by the parties.

24 2. All notices, questions or communications concerning this Civil Investigative
25 Demand should be directed to: Chiedza Nziramasanga, Assistant Attorney General, Office of
26

1 Attorney General, 800 Fifth Avenue, Suite 2000, TB-14, Seattle, Washington, 98104, (206)
2 442-4499.

3 3. The nature of this request shall be deemed continuing. Accordingly, you are
4 required to produce all documents which are responsive to any specification included in this
5 Demand and which exist up to the time of production of this Demand.

6 4. The response to this Demand shall be submitted pursuant to RCW 19.86.110 and
7 in the following manner:

8 (a) Documents provided shall be complete and, unless privileged, they shall
9 not have been redacted.

10 (b) Documents shall be submitted as found in each respondent's files, both in
11 terms of content and in terms of physical characteristics (e.g., documents that in
12 their original condition were stapled, clipped or otherwise fastened together or
13 maintained in separate file folders shall be produced in such form). This
14 requirement fully applies to the production of electronic documents

15 (c) Each respondent may submit photocopies (with color photocopies where
16 necessary to interpret the document), in lieu of original documents, provided that
17 such copies are accompanied by an affidavit of an officer of each respondent
18 stating that the copies are true, correct and complete copies of the original
19 documents.

20 (d) Documents produced in hard copy form shall be submitted in a single or in
21 multiple boxes, as appropriate. The box(es) shall be sturdy cartons not larger than
22 1.5 cubic feet. Each box shall be numbered and marked with corporate
23 identification and the name(s) of the person(s) whose files are contained within the
24 box.

25 (e) Documents submitted shall be produced in the order in which they appear
26 in each respondent's files and shall not be shuffled or otherwise rearranged. Each

1 page shall be marked with corporate identification and consecutive document
2 control numbers.

3 5. If WAFLA withholds any documents from production, on the basis of a claim of
4 privilege, provide a log stating the privilege WAFLA relies upon and all facts you relied upon in
5 support of the claimed privilege. Such a log shall include each document's author(s), addressees,
6 date, description, all recipients of the original and any copies, and shall identify the document
7 Demand to which the allegedly privileged document corresponds. Attachments to a document
8 shall be identified as such and entered separately in the log. For each author, addressee, and
9 recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an
10 asterisk. The description of the subject matter shall include the number of pages in each
11 document. The description shall further include the nature of each document, stated in a manner
12 that does not reveal privileged information, but that provides information sufficiently detailed so
13 as to enable the Office of Attorney General to assess the applicability of the privilege claimed.
14 For each document withheld due to an attorney work product claim, the log shall specify whether
15 WAFLA asserts the document was prepared in anticipation of litigation or for trial. When such an
16 attorney work product claim is made, the log shall specify the particular anticipated litigation or
17 trial upon which the assertion is based. Submit all non-privileged portions of any responsive
18 document for which a claim of privilege is asserted. Documents for which a privilege is asserted
19 may include attachments that are non-privileged or that can be redacted. Non-privileged portions
20 of documents for which a privilege claim is made need not be provided where the only non-
21 privileged information has already been produced in response to this instruction, along with
22 notations of where in the document items have been redacted. Documents that were authored by
23 outside lawyers representing each respondent and that were not directly or indirectly furnished to
24 WAFLA by any third party, such as internal law firm memoranda, may be omitted from the log.

25 6. If WAFLA is unable to fully answer any particular document Demand, supply all
26 of whatever information is actually available. Designate such incomplete information as

1 incomplete and accompany the information with an explanation that includes: the reasons for the
2 incomplete answer; a description of any and all of WAFLA's efforts to obtain the information;
3 and the source from which the Office of the Attorney General may obtain information to complete
4 WAFLA's response. If books, records, or other sources that provide accurate answers are not
5 available, provide WAFLA's best estimates and describe how you derived the estimates,
6 including the sources or bases of such estimates. Designate estimated data as such by marking it
7 with the "est." notation. If there is no reasonable way for WAFLA to make an estimate, provide
8 an explanation.

9 7. In order for WAFLA's response to this Demand to be complete, submit with your
10 response the attached certification form, as executed by the official supervising WAFLA's
11 compliance with this Demand.

12 8. WAFLA should request a "meet and confer" to discuss any burden associated with
13 responding to the document requests and interrogatories herein, and should come to the "meet and
14 confer" fully prepared to explain the burdens it seeks to reduce.

15 9. For any individuals employed by you during the time frame of this demand, but
16 who are no longer employed by you, this demand requires production of documents these
17 individuals "possessed" during the time period covered by this demand and then transferred to
18 other employees upon their departure; and to documents these individuals still possess to the
19 extent you can require the individual to return such documents.

20 10. The Submissions and signed Certification must be returned to the undersigned
21 Assistant Attorney General at: Office of Attorney General, 800 Fifth Avenue, Suite 2000, Seattle,
22 Washington, 98104, by Friday, October 14, 2016.

23 **II. INTERROGATORIES**

24 1. List all current and former members of WAFLA's Board of Directors.
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1 2. State whether any members of WAFLA's Board of Directors or officers are an affiliate,
2 owner, operator, landlord, tenant, or sharecropper of a farm and/or orchard that uses
3 H2A Temporary Agricultural Workers. Include:

- 4 a. The name of the individual
- 5 b. The individual's title or position within WAFLA
- 6 c. The name the of farm and/or orchard with whom the individual is affiliated
- 7 d. The title or position of the individual within the farm and/orchard; and
- 8 e. Whether that individual submitted a response to the ESD survey

9 3. State whether Dan Fazio spoke with any individual listed in response to Interrogatory 1
10 regarding the ESD Survey, Survey Guidance, Piece Rates, or Hourly Wages. If your
11 answer is other than an unqualified "no" list:

- 12 a. The name of the individual, as well as any outside business or organization that
13 individual is affiliated with
- 14 b. The time and nature of the discussion

15 4. List all current and former officers of WAFLA.

16 5. State whether Dan Fazio spoke with any individual listed in response to Interrogatory
17 4(?) regarding the ESD Survey, Survey Guidance, Piece Rates, or Hourly Wages. If
18 your answer is other than an unqualified "no" list:

- 19 a. The name of the individual, as well as any outside business or organization that
20 individual is affiliated with
- 21 b. The date, time and nature of the discussion

22 **III. DOCUMENTS TO BE PRODUCED**

23 Please produce the following:

- 24 1. All documents in your possession, custody, or control identified in any response
25 to, or otherwise relating to your response to, any Interrogatory set forth herein or
26 otherwise used in responding to this Civil Investigative Demand.

- 1 2. For each WAFLA officer and director please produce the following Documents:
- 2 a. All documents in your possession, custody, or control (including agendas,
- 3 meeting minutes, emails, or notes) discussing, reflecting or relating to any
- 4 meetings, whether in person or by an electronic or telephonic means, at
- 5 which any of the following subject matters were discussed:
- 6 i. Agricultural Peak Employment Wage and Practices Survey
- 7 ii. Survey Guidance
- 8 iii. Piece Rate
- 9 iv. Hourly Wage
- 10 v. Hourly Wage Guarantee
- 11 3. All documents in your possession, custody or control relating to or having any
- 12 connection with any reason and or justification expressed by any person
- 13 concerning the benefit, efficiency, or advantage anticipated from
- 14 implementation of WAFLA's survey guidance.
- 15 4. All documents in your possession, custody, or control relating to business plans,
- 16 budgets, or strategic plans and presentations to WAFLA's officers or Board of
- 17 Directors.
- 18 5. A complete copy of all documents, reports, market research, surveys, or
- 19 analysis, including but not limited to any such documents prepared by an
- 20 economic or other expert or consultant relating to your evaluation of:
- 21 a. Profitability, labor costs, or wage payment strategies for Domestic
- 22 Agricultural Workers and H2A Temporary Agricultural Workers
- 23 b. Competition or competitive conditions for Domestic Agricultural Workers
- 24 and H2A Temporary Agricultural Workers
- 25 c. Supply and demand for Domestic Agricultural Workers and H2A
- 26 Temporary Agricultural Workers


1 d. Wage payment trends and/or preferences of Agricultural Growers

2 **VI. ENFORCEMENT**

3 This Civil Investigative Demand is issued pursuant to the powers vested in the Attorney
4 General of the State of Washington by Chapter 19.86 RCW, the Unfair Business Practices-
5 Consumer Protection Act, and is subject to enforcement and sanction as therein provided,
6 including court costs and attorneys' fees incurred in enforcement. Confidentiality of responsive
7 documents and information is addressed in RCW 19.86.110

8 Dated this 16th day of September, 2016.

9
10 ROBERT W. FERGUSON
Attorney General

11 
12 CHIEDZA NZIRAMASANGA, WSBA No. 49899
13 Assistant Attorney General, Antitrust Division
14 Attorney for State of Washington
15 (206) 442-4499
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