



Tracey M. Slagle
YAKIMA COUNTY CLERK

STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
Plaintiff,

NO. 22-2-01708-39

FIRST AMENDED COMPLAINT

v.

OSTROM MUSHROOM FARMS, LLC;
and ASELLUS-SUNNYSIDE, LLC,
parent company and sole owner of
OSTROM MUSHROOM FARMS, LLC,
Defendants.

I. INTRODUCTION

1.1. The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General, and Alfredo González Benítez and Emily C. Nelson, Assistant Attorneys General, brings this action against Ostrom Mushroom Farms, LLC (Ostrom), and Asellus-Sunnyside, LLC (Asellus), to enforce the Consumer Protection Act, RCW 19.86.020, and the Washington Law Against Discrimination. RCW 49.60.030 and RCW 49.60.180.

II. JURISDICTION AND VENUE

2.1. This court has jurisdiction over this matter pursuant to RCW 19.86.080, RCW 49.60.030(2), and RCW 2.08.010.

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4.1. Defendants established their mushroom production facility in Sunnyside, Washington in 2019 with the promise of bringing 200 year-round, non-seasonal jobs to the Sunnyside area.

4.3. At the Sunnyside facility, Defendants grow a variety of mushrooms—including white, crimini, and portabella mushrooms—in 48 climate-controlled growing rooms.

4.5. According to Defendants' job specification document for the "picker" position, prospective employees must have "sufficient training and experience to demonstrate the knowledge and abilities [in selecting, picking, and grading mushrooms]."¹

4.7. A picker's job duties also include other non-picking work, including disposing of garbage and cleaning the mushroom beds.

4.9. Between January 2021 and May 2022, over half of Defendants' workforce of domestic pickers were female.

FIRST AMENDED COMPLAINT

1 4.10. Between opening the Sunnyside facility and until approximately June 4, 2021,
2 Defendants typically published a picker's production yield on a board on the production floor.
3 This allowed all employees the ability to see their production yields and understand whether they
4 were meeting minimum production goals and where they stood with respect to their peers.

5 4.11. In 2020, Asellus owned 49 percent of Ostrom alongside other owners.

6 4.12. In or around September 2020, Asellus began exercising a larger degree of control
7 over Ostrom's operations, pursuant to a company restructuring agreement between Asellus and
8 the other owners of Ostrom.

9 4.13. Around this same time, Asellus hired Cheryl Adams and placed her at Ostrom's
10 Sunnyside location for management and oversight purposes.

11 4.14. Ms. Adams' management and oversight included matters related to employee
12 recruitment, hiring, training, and setting production minimums for harvesting mushrooms.

13 4.15. On or about June 18, 2021, Asellus became Ostrom's sole owner.

14 4.16. On or about June 19, 2021, Ms. Adams became Chief Executive Officer (CEO)
15 of Ostrom. She served as CEO until approximately October 24, 2021.

16 **B. Defendants Apply to Use the H-2A Temporary Agricultural Worker Program and**
17 **Begin Displacing Domestic Pickers**

18 4.17. The H-2A Temporary Agricultural Worker Program is a federal immigration
19 program by which certain employers may apply for and recruit foreign non-immigrant workers
20 for seasonal agricultural work.

21 4.18. Eligibility for the program requires employers to prove that the job openings
22 cannot be filled by domestic workers. As part of making that demonstration, an employer must
23 submit a Form ETA-790 Agricultural Clearance Order ("Clearance Order") for approval by the
24 state workforce agency. In Washington, the state workforce agency is the Employment Security
25 Department.
26

1 4.19. Employers are required to provide a copy of the Clearance Order to all domestic
2 workers performing the same type of work as H-2A foreign guestworkers so that domestic
3 workers know the pay rate and work experience required of the H-2A foreign guestworkers.

4 4.20. When an employer is approved to participate in the H-2A Temporary Agricultural
5 Worker Program, it must advertise and offer domestic workers no less than the same benefits,
6 wages, and working conditions that the employer will provide to H-2A foreign guestworkers.

7 4.21. Starting in mid-2021, Defendants' managers began calling domestic pickers into
8 one-on-one meetings in which the domestic pickers were told they were not meeting production
9 minimums, and would be receiving a warning along with a three-day, unpaid suspension if their
10 performance did not improve. The pickers were told they would be fired if they did not meet the
11 production minimum within a week of returning from the three-day suspension.

12 4.22. Around this same time, Defendants increased the production minimum for
13 domestic pickers from 62.22 to 68 pounds per hour, and ended its practice of publishing or
14 otherwise sharing workers' production yields.

15 4.23. Managers also told domestic pickers that the production minimum would have to
16 average out each week to at least 68 pounds per hour even in circumstances where domestic
17 pickers worked extended periods of time doing work that is not picking, such as cleaning
18 growing rooms, or disposing of garbage.

19 4.24. Because Defendants ended the practice of publishing or otherwise sharing
20 workers' yields, domestic pickers did not know their respective production yield amount, or the
21 rate by which they were falling short.

22 4.25. Nevertheless, Defendants began issuing written warnings and unpaid suspensions
23 to its domestic pickers for failing to meet production minimums.

24 4.26. Domestic pickers who received warnings and unpaid suspensions for production
25 minimums were frequently terminated from employment close-in-time to the date of their
26 warning.

1 4.27. Female domestic pickers received these warnings and unpaid suspensions more
2 frequently than their male counterparts and were therefore terminated at a higher rate than their
3 male counterparts.

4 4.28. Several female pickers resigned from their jobs after Defendants instituted these
5 changes. At least some female pickers believed that Defendants instituted these changes in order
6 to have a reason to suspend and terminate workers who they wanted to force out.

7 4.29. In September 2021, Defendants hired H2Visa Solutions to apply for the H-2A
8 Temporary Agricultural Worker Program and to recruit workers from Mexico on Defendants'
9 behalf.

10 4.30. On or about October 5, 2021, H2Visa Solutions applied for the H-2A Temporary
11 Agricultural Worker Program on Defendants' behalf. The U.S Department of Labor denied this
12 application.

13 4.31. Defendants submitted a second application to use the H-2A Temporary
14 Agricultural Worker Program, citing a lack of domestic workers available to work at its
15 Sunnyside facility. A Clearance Order was filed on November 16, 2021, and requested
16 permission for Defendants to recruit up to 70 H-2A foreign guestworkers for the period
17 beginning December 15, 2021, through August 15, 2022. Defendants' second application was
18 finally approved on March 18, 2022.

19 4.32. From early 2021 to May 2022, Defendants terminated approximately 79% of their
20 domestic pickers and 85% of their female pickers.

21 **C. Defendants Use Discriminatory Hiring Criteria and Deceives Domestic Workers**
22 **About the Terms and Availability of Employment**

23 4.33. In April 2022, Defendants or Defendants' recruiting agent published a job
24 advertisement on Facebook.com. The advertisement seeks "only males" for a job at the
25 Sunnyside facility that begins the next day.²

26 ² See Exhibit 2 – Facebook Job Advertisement.

1 4.34. Also in April 2022, Defendants hired 65 H-2A foreign guestworkers that began
2 working at Defendants' Sunnyside facility. Of these, 63 H-2A foreign guestworkers were male.

3 4.35. The November 16, 2021, Clearance Order, states that the picker wage is \$17.41
4 per hour and the qualifications require a minimum of "[three] months of verifiable experience in
5 agriculture."

6 4.36. Prior to the H-2A foreign guestworkers' arrival, domestic pickers earned a wage
7 rate lower than \$17.41 per hour.

8 4.37. Defendants did not provide a copy of the Clearance Order to domestic pickers or
9 otherwise inform them that they were entitled to the higher wage rate offered to H-2A foreign
10 guestworkers.

11 4.38. Once the H-2A foreign guestworkers arrived in Sunnyside and began working,
12 Defendants continued to pay certain domestic workers a wage rate lower than that offered to the
13 H-2A foreign guestworkers.

14 4.39. Many of the H-2A foreign guestworkers that Defendants hired did not meet the
15 requirement of having a minimum of three months verifiable experience in agriculture.

16 4.40. During the H-2A recruitment period, Defendants rejected domestic workers' job
17 applications on the grounds that the domestic workers did not have agricultural experience. Some
18 of the domestic workers whom Defendants rejected for lack of agricultural experience listed at
19 least three months of agricultural experience on their applications.

20 4.41. From April 2022 to the present, Defendants hired a total of four female domestic
21 workers for picker positions, and at least 65 overwhelmingly male H-2A foreign guestworkers
22 for picker positions.

23 4.42. Defendants' discrimination caused economic and non-economic harm to
24 domestic workers, and constituted the willful and malicious infliction of injury.
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26

1 **D. Defendants Retaliate Against Domestic Workers Advocating for Their Rights**

2 4.43. On June 22, 2022, a group of domestic workers attempted to meet with
3 Defendants' management to share their concerns regarding workplace conditions at the
4 Sunnyside facility, including concerns about discrimination on the basis of citizenship status,
5 immigration status, and/or sex. Since June 22, 2022, domestic workers have continued to present
6 their concerns to Defendants' management during meetings and in writing.

7 4.44. Workers who participated in efforts to advocate for fair and non-discriminatory
8 workplace conditions have faced retaliation at the hands of Defendants' managers. This
9 retaliation has included, but is not limited to:

10 4.44.1. A harvesting room manager physically assaulting a female worker with
11 a metal cart immediately after she returned to her shift from a meeting with
12 management about work conditions;

13 4.44.2. A manager issuing a warning to an employee accused of bringing a
14 weapon to work, who had not;

15 4.44.3. A manager issuing a warning to an employee who was purportedly
16 unable to prevent dirt from falling off the broken piece of machinery he was
17 operating; and

18 4.44.4. A manager issuing a warning to an employee for an unexcused absence,
19 even though the employee had called his absence in accordance with Defendants'
20 attendance policy.

21 4.45. Defendants' retaliation against domestic workers advocating for fair and non-
22 discriminatory workplace conditions continued into the fall of 2022. In September 2022,
23 Defendants sent workers home early without pay after they attempted to deliver a petition to
24 management regarding workplace issues.

25 4.46. Approximately one month later, in October 2022, Defendants began requiring
26 domestic workers to re-verify their employment eligibility by completing new IRS Forms I-9,

1 and/or by providing additional proof of identification. Defendants informed workers that if they
2 did not comply with the reverification process, their employment would be terminated.
3 Defendants started re-verifying workers after its workers began advocating for fair and
4 nondiscriminatory workplace conditions.

5 4.47. The foregoing acts of retaliation occurred during the course of Defendants'
6 business, and were carried out by Defendants' managers.

7 4.48. Domestic workers who experienced retaliation were opposing discrimination on
8 the basis of citizenship status, immigration status, and/or sex. Defendants took the adverse
9 actions described above because of the domestic workers' opposition to discrimination and other
10 unfair employment practices.

11 V. CAUSES OF ACTION

12 5.1. The State adopts the allegations listed above and incorporates them herein as if
13 set forth in full.

14 FIRST CAUSE OF ACTION

15 (Violation of the Consumer Protection Act—Unfair and Deceptive Conduct Toward 16 Domestic Workers)

17 5.2. Unfair or deceptive acts or practices in the conduct of any trade or commerce are
18 unlawful under Washington State's Consumer Protection Act. RCW 19.86.020.

19 5.3. By its actions described above, Defendants committed unfair and deceptive acts
20 and practices in the conduct of trade or commerce, in violation of RCW 19.86.020, by, inter alia,
21 making deceptive representations to domestic pickers with regard to job eligibility requirements,
22 wages, and availability of employment at the Sunnyside facility.

23 5.4. Defendants' conduct affected the public interest.

24 5.5. Defendants' actions are not reasonable in relation to the development and
25 preservation of business and are inconsistent with the public interest.
26

1 WLAD because of citizenship status, immigration status, and/or sex. RCW 49.60.030(1)(a);
2 RCW 49.60.210(1).

3 5.11. By the actions described above, Defendants have coerced, intimidated,
4 threatened, or interfered with their employees in the exercise or enjoyment of, or on account of
5 their having exercised or enjoyed, their rights granted or protected under the WLAD because of
6 citizenship status, immigration status, and/or sex, in violation of RCW 49.60.030(1)(a) and RCW
7 49.60.210.

8 VI. PRAYER FOR RELIEF

9 WHEREFORE, Plaintiff, State of Washington, prays that the Court:

10 6.1 Adjudge and decree that Defendants have engaged in the conduct complained of
11 herein.

12 6.2 Adjudge and decree that Defendants' conduct violates the CPA, RCW 19.86.020.

13 6.3 Adjudge and decree that Defendants' conduct violates the WLAD,
14 RCW 49.60.030(1)(a), RCW 49.60.180(1)-(3), and RCW 49.60.210

15 6.4 Issue a permanent injunction enjoining and restraining Defendants and their
16 representatives, successors, assigns, officers, agents, servants, employees, and all other person
17 acting or claiming to act for, on behalf of, or in active concert or participation with Defendants
18 from engaging in the unlawful conduct complained herein.

19 6.5 Enter such orders for restitution as necessary to restore to any person an interest
20 in any moneys or property, real or personal, which may have been acquired by means of an act
21 prohibited by the CPA, pursuant to RCW 19.86.080(2).

22 6.6 Impose a civil penalty of up to \$7,500 for each and every violation of the CPA
23 pursuant to RCW 19.86.140.

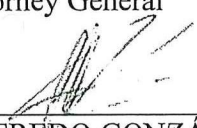
24 6.7 Impose an enhanced civil penalty of \$5,000 for each violation of the CPA that
25 targets or impacts specific individuals or communities based on demographic characteristics,
26 including citizenship status, immigration status, and sex, pursuant to RCW 19.86.140.

1 6.8 Award damages or other appropriate monetary relief to each person aggrieved by
2 Ostrom's discriminatory conduct, in an amount to be proven at trial.

3 6.9 Award the State the costs of suit including reasonable attorneys' fees.

4 DATED this 5th day of December 2022.

5 ROBERT W. FERGUSON
6 Attorney General

7 
8 ALFREDO GONZÁLEZ BENÍTEZ, WSBA #54364
9 EMILY C. NELSON WSBA #48440
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12 Office of the Attorney General
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18 *Attorneys for Plaintiff State of Washington*
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Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300
Seattle, WA 98104-1610
Phone: 206-622-3150
Fax: 206-757-7700

DATED this 5th day of December 2022.

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EXHIBIT 1



OSTROM

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Job Title: Harvester
FLSA Status: Agriculture
Reports To: Harvesting Supervisor

Job Code: 50602
Department: Picking
Last Rev. Date: 04/24/2022

Pick, Sort and Grade mushrooms at a minimum of 68 lbs an hour. The Picker must be trained with a complete understanding of techniques required to achieve quality standards. (Process: Quality first-One touch harvest-Gentle Pick)

PRIMARY RESPONSIBILITIES:

SELECTING, CUTTING & SORTING:

- Selection – Start from the edge of the tray and work inward to the middle.
- Pick three mushrooms individually with a slight twist, pull up, and bring to your cutting position.
- Hold the mushrooms in your non-cutting hand so that the stems are horizontal to the floor.
- The proper harvesting technique following the "One-Touch" method, quality grading, simultaneous cleaning of the beds, efficiency, and worker hygiene.
- Cut the stem straight across, approximately the 1/2 length as the cap. Turn your hands at the same time to speed up the cutting process. Practice will perfect this technique.
- After cutting, sort by grade and size.
- **Note:** If you are cutting mushrooms from the opposite direction from where you are standing, please make sure you are cutting the stems into the garbage cans.

GRADING AND SIZING:

- An "A" grade mushroom has a round, tight cap to the stem interface with no gaps or holes separating the two. There is no damage to the cap including damage created by the picker such as fingernail marks, bruises, knife cuts, etc. An "A" grade mushroom may have slight stretching at the cap/stem, but no soft tissue. Often times, the bottom of a mushroom will have a flower or rose pattern to it. If the flower or rose pattern is tight, it is an "A" grade mushroom.
- A "B" grade mushroom is any mushroom that is damaged. If a mushroom is broken, extremely stretched at the cap/stem interface, is open like an umbrella, has no stem or has a wet stem, it is a "B" grade mushroom.
- A template will be issued to assist new employees with learning the proper sizes.
- Large mushrooms are any mushroom that is 1 5/8 inch in diameter and larger. Mushrooms over 2 1/2 inches are considered Jumbo or Stuffer size. In the event that you pick this size mushroom, you may want to cut the

Jumbo/Stuffer directly into a box and use an extra basket for medium and large mushrooms.

- Medium mushrooms are between 1 1/4 inch and 1 3/4 inch. Place this size mushroom into the appropriate box.
- Petite mushrooms are 1 inch and smaller. Place this size mushroom into the appropriate box or basket.

GARBAGE:

- Garbage cans will be inspected and if any sellable product has been improperly discarded you will receive a picking violation.
- Must use small garbage can for disposal of all mushrooms butts and empty it as it gets full. *(don't let it overflow onto the floor)*
- Must make sure that garbage is empty before taking a break. *(this is a Workplace Safety and HACCP issue.)*

BED CARE AND CLEANING:

- Always start picking each tray from the outside edge, and work your way towards the center of the tray. This helps to minimize the amount of soil and debris that might fall onto mushrooms yet to be picked.
- As you pick, you will from time to time, knock over mushrooms with your hand or shirtsleeve. When this happens, simply pick up the knocked over mushroom(s), cut, grade and sort it as you go as you would any other mushroom.
- When each tray is picked, before moving to the next tray, follow these steps:
- Do a quick visual of the tray, looking for knocked over mushrooms and stems.
- Remove all stems to the garbage can, and pick up and cut any knocked over mushrooms.
- Cleaning the beds as you pick will help to reduce disease from spreading, will promote a healthier next break, and will reduce the need to return to the room to clean the beds. NOTE: If a room begins to show signs of having bacterial slime, these mushrooms are never to be removed and thrown away while picking both the A and B grade. After all the A & B grade product has been picked in a room known to have bacterial slime, the pickers must change into a new pair of gloves. The pickers then go back through the room to remove infected product from the beds, and then dispose of the infected product into their garbage cans. Gloves must be changed after touching infected product.
- Do not place boxes (empty or full) or baskets on the bed even if there are no mushrooms to be seen. This causes the boxes to become dirty on the underside, which can fall into stacked boxes. The boxes can damage small pins just by touching them. This action reduces the overall yield potential of any given crop.
- Cleaning the Beds: During training, all picker trainees are instructed and trained to clear the beds in the correct way. Over cleaning of the beds can lead to severe yield loss, whereas not cleaning the beds properly can lead to disease outbreaks.
- Raking or scraping the beds is prohibited. The damage done by raking or scraping is irreversible. Raking or scraping the beds will result in a picking violation.
- SOB rooms must be stripped completely.

REQUIREMENTS, EDUCATION & EXPERIENCE:

Any combination equivalent to: sufficient training and experience to demonstrate the knowledge and abilities listed above.

PHYSICAL DEMANDS:

The physical demands described here are representative of those that must be met by an employee to successfully perform the primary functions of this job. While performing the duties of this job, the employee is frequently required to sit; use hands to finger, handle, or feel; reach with hands and arms; and talk; or hear. The employee is occasionally required to stand and walk. The employee must occasionally lift and/or move up to 30 pounds. Specific vision abilities required by this job include close vision, distance vision and ability to adjust focus.

Reasonable accommodations may be made to enable people with disabilities to perform the essential functions of the picker's job.

WORK ENVIRONMENT:

This position requires work in typical farm environment and includes conditions such as the following: cold, heat, wet, humid, fumes, odors, dusts, gases, trip hazards, sharp objects, heavy objects.

HACCP:

Ostrom's is a food production facility operating within a defined food safety program (HACCP). All employees are required to maintain essential basic hygiene protocols as established within the departments. It is our objective and mandate to provide our current and future customers with food products grown, packed and distributed under sanitary, wholesome and safe conditions.

Our Mission: Ostrom Mushroom Farms will succeed in being the mushroom supplier of choice in the markets we serve by meeting the needs of our customers through continuous improvement of our work processes, products, and services.

Core Values: At Ostrom, we value our employees and recognize their contributions to our success. As a result, and in support of our guiding principles, we are committed to providing a quality benefits package.

Our Benefits Package: Health, Dental and Vision Insurance, Life Insurance and Accidental Death & Dismemberment. Paid Holidays / Paid Time Off. We are committed to equal employment opportunity.

It is our policy to recruit, hire, train and promote individuals without regard to race, color, creed, religion, disability, gender, ethnic or national origin, or veteran status.



OSTROM

mushroom farms

This job specification should not be construed to imply that these requirements are the exclusive standards of the position. Incumbents will follow any other instructions, and perform any other related duties, as may be required by their supervisor.

I have read and understand the job description and agree to abide by its contents.

Signature: _____
Date: _____
employee

Signature: _____
Date: _____
Human resources

EXHIBIT 2

facebook



Your Feed

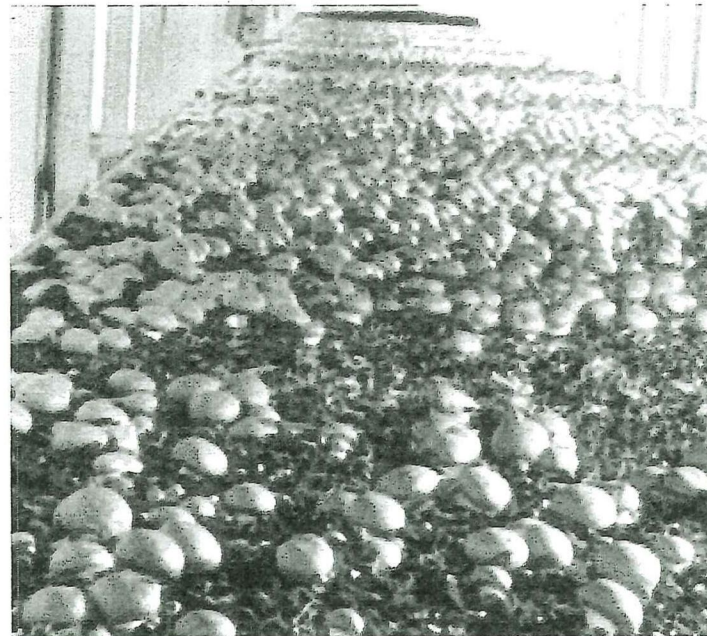
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mañana interesados favor de hablar
no contestare mensajes
solo llamadas



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8 **STATE OF WASHINGTON**
 YAKIMA COUNTY SUPERIOR COURT

9 STATE OF WASHINGTON,

NO. 22-2-01708-39

10 Plaintiff,

GENERAL RULE 17(a)(2)
DECLARATION

11 v.

12 OSTROM MUSHROOM FARMS,
13 LLC; and ASELLUS-SUNNYSIDE,
14 LLC, parent company and sole owner
 of OSTROM MUSHROOM FARMS,
 LLC,

15 Defendants.

16 I, Katie Casey, declare under penalty of perjury under the laws of the state of Washington
17 that the following is true and correct:

18 1. I am a Legal Assistant for the Attorney General's Office. My business address,
19 telephone number, facsimile number, and email address are as follows: 1433 Lakeside Ct., #102,
20 Yakima, WA 98902; office telephone: (509) 575-2468; fax number: (509) 575-2095; email address:
21 Katie.Casey@atg.wa.gov. I make this Declaration based on my own personal knowledge. I am
22 over the age of eighteen and competent to testify to the facts stated herein.

23 2. This Declaration is filed in accordance with GR 17(a)(2).

24 3. On December 5, 2022, I received the Plaintiff's First Amended Complaint from
25 Legal Assistant Anna M. Alfonso of the Civil Rights Division of the Attorney General's Office. I
26 have examined this document, which consists of twenty-two (22) pages including this Declaration.

