

This matter is before the Court on the parties' joint motion for conditional certification of the settlement class and appointment of class counsel. (Doc. 174). The request is directed only to Count III of the amended complaint, (Doc. 20), which sets forth a claim for breach of contract. The proposed class, which mirrors precisely that sought in the amended complaint, (*id.* at 15), is as follows:

[A]ll those individuals admitted as H-2B temporary foreign workers pursuant to 8 U.S.C. § 1101(a)(15)(H)(ii)(b), who were employed by the Defendants in Alabama between October 8, 2008 until the filing date of the present action, and who were paid on an hourly basis.

(Doc. 174-1 at 2).

The parties seek certification under Rules 23(a) and 23(b)(3). The

To satisfy the numerosity requirement, the class must be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). This determination is not made in a vacuum but with due regard to practical realities. Thus, for example, the Eleventh Circuit has upheld certification of a class of 31

Commonality requires that the action “must involve issues that are susceptible to class-wide proof.” *Murray v. Auslander*, 244 F.3d 807, 811 (11<sup>th</sup> Cir. 2001). That requirement is easily satisfied here, as the existence *vel non* of a contract (which the defendants dispute) is based on the same documents and conduct as to each class member.

with the plaintiffs' tenacious prosecution of this action satisfies it that Cordova will adequately prosecute the action on behalf of the class.<sup>2</sup>

Adequacy also includes an assurance the class representatives will vigorously pursue the interests of the class "through qualified counsel." *Valley Drug*, 350 F.3d at 1189 (internal quotes omitted). Plaintiffs' counsel is well qualified to pursue the interests of the class. (Doc. 174-5).

The Court finds that common issues of law and fact predominate. As noted, the only individual issue is the quantity of damages per class member, and even that issue must be resolved by a simple formula. (Doc. 173-2 at 14).

"Particularly where damages can be computed according to some formula, statistical analysis, or other easy or essentially mechanical methods, the fact that damages must be calculated on an individual basis is no impediment to class certification." *Klay v. Humana, Inc.*, 382 F.3d 1241, 1259-60 (11<sup>th</sup> Cir. 2004) (footnotes omitted). Even less so here, where the values of every variable save one (the amount of expense incurred each season) are already known for each class member, and even the amount of expense incurred each season is already known (from previous resolution of the FLSA minimum wage claims) for almost half of the approximately 155 total seasons worked by the class members.

In view of the factors to be considered, it is clear that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. As Mexican nationals and residents, with small claims and no fluency in English and limited familiarity with the American legal system, the

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<sup>2</sup> Named plaintiff Leovardo Morales Inclan has, in addition to the contract claim, an FLSA retaliation claim (as do six other class members). The proposed settlement awards Inclan over 100 times as much on his retaliation claim as on his contract claim. (Doc. 173-2 at 27). Because it is unclear to the Court whether the amount available to settle the lawsuit's contract claims may have been reduced by the amount allocated to settle the retaliation claims, and because Inclan's financial interest in the contract claim is miniscule compared t(T 50 0 0(,0) 00.2 ( 7ET v5) 0.2 ( re)0.2 (t) 0.2 (a2 (re) ,5 0.2 (nd be) 0.2 (c) 0.2 (a)15

class members have little interest in individually controlling the prosecution of separate actions. There is no other litigation concerning the controversy. The state and federal courts of Alabama appear to offer the only potential domestic forum, and the defendants presumably would resist being haled into Mexican courts. Finally, the proposed settlement moots any potential difficulties in