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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

THOMAS E. PEREZ, Secretary of  
Labor, United States Department of  
Labor,

Plaintiff,

v.

BLUE MOUNTAIN FARMS LLC,  
BLUE MOUNTAIN PACKING LLC,  
RYAN BROCK, SHIRLEY LOTT,  
GREAT COLUMBIA BERRY FARM  
LLC, APPLGATE ORCHARDS INC.  
and BRANDON LOTT,

Defendants.

NO: 2:13-CV-5081-RMP

ORDER GRANTING IN PART  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT

BEFORE THE COURT is Plaintiff's Motion for Summary Judgment  
Regarding the Secretary's Paragraph VIII and XIV(a)-(e) Claims for Relief Under  
the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Workers  
Protection Act, **ECF No. 96**. The Court has reviewed the filings, the response

1 memorandum, ECF No. 115, the reply memorandum, ECF No. 128, and is fully  
2 informed.

### 3 **BACKGROUND**

4 Defendants' business is the agricultural production of blueberries. ECF No.  
5 96-1 at 2. As part of blueberry production, Defendants employ workers to pick  
6 blueberries in their fields. *Id.* at 3. These workers are employed seasonally from  
7 June to October of each year. ECF No. 97-1 at 2. Some workers are required to be  
8 away from their permanent residence overnight or longer related to their  
9 employment. ECF No. 96-1 at 3.

10 Workers are paid a piece rate for each pound of blueberries they pick during  
11 a given workday. *Id.* at 4. The pounds of blueberries harvested by each worker are  
12 recorded on a punch ticket that bears the worker's name. *Id.* Only one worker is  
13 named on any given ticket. *Id.* Workers bring their blueberries to a weigh station  
14 where Defendants' employees record the amount on the worker's ticket. *Id.*  
15 Tickets are collected at the end of each workday and used to compute the number  
16 of pounds of blueberries picked by the worker named on the ticket. *Id.* at 5. The  
17 number of pounds picked is used to prepare pay checks for each named worker. *Id.*

18 Some workers who picked Defendants' blueberries were not recruited  
19 through a formal hiring process. *Id.* at 7. These "shadow" workers  
20 (interchangeably referred to by the parties as "ghost" workers) did not possess their

1 own self-identifying ticket but would instead share, or pick blueberries which were  
2 counted on, another worker's ticket. *Id.*; *see also* ECF No. 99 at 5 (“During the  
3 2011 blueberry picking season, I shared my ticket with another picker.”); ECF No.  
4 100 at 2–3 (“During the 2009 to 2012 picking seasons, I worked on my mother’s  
5 ticket. My brother also worked on my mother’s ticket at the same time, as did my  
6 father.”); ECF No. 102 at 5 (“During the 2013 blueberry picking season, once per  
7 week I shared my punch ticket with another picker.”); ECF No. 103 at 5 (“From  
8 the 2008 season on, the blueberries I picked were recorded on the punch ticket  
9 under my name. However, my two sons also worked under my punch ticket.”);  
10 ECF No. 104 at 5 (“During the time I worked for Blue Mountain Farms LLC, I  
11 shared my punch ticket with my son and daughter.”). When both a named and  
12 “shadow” worker share the named worker’s ticket, the ticket reflects the labor  
13 (measured in pounds of blueberries picked) of both individuals. *See, e.g.*, ECF No.  
14 100 at 3.

15 Defendants maintain that they have a policy prohibiting ticket sharing, *see*  
16 ECF No. 119 at 4 (“The rule at Blue Mountain Farms is that every worker must  
17 have his or her own pick ticket.”), that is enforced when multiple workers are  
18 caught picking blueberries on a single ticket. *See* ECF No. 97-1 at 4 (“If I count  
19 110 workers and get 100 tickets at the end of the day, we just remind the foreman  
20 that everyone has to be on their own ticket.”); ECF No. 117 at 2 (“Supervisors at

1 Blue Mountain Farms routinely remind employees of the rule . . . as well as the  
2 fact that employees can be terminated if they do share tickets.”). However,  
3 Defendants admit that, despite their best efforts, multiple workers do occasionally  
4 pick on the same ticket. *See* ECF No. 97-1 at 4 (“Sometimes people do pick on the  
5 same ticket”); ECF No. 115 at 9 (“Despite defendants’ rule against sharing tickets,  
6 defendants acknowledge that it may occasionally happen.”). Defendants also  
7 dispute that ticket sharing, where it exists, is as prevalent as alleged by the  
8 Secretary. ECF No. 117 at 2 (“While we occasionally discover that two workers  
9 are sharing a pick ticket, this is not a prevalent or persistent problem at Blue  
10 Mountain Farms.”).

11 Ticket sharing, however extensive, necessarily results in inaccurate  
12 recordkeeping. There would be no record at all concerning the unnamed “shadow”  
13 worker and the records of the worker named on the ticket would be inflated by the  
14 “shadow” worker’s labor. ECF No. 115 at 9 (“Defendants further acknowledge  
15 that if it were to happen, defendants would not have records for those  
16 ghostworkers, and that those ghostworkers may not have seen the disclosures  
17 provided to employees at the time of hire and time of payment.”); *see also* ECF  
18 No. 99 at 5 (“When I shared my ticket, Blue Mountain Farms LLC did not collect  
19 information . . . about the other worker on my ticket.”); ECF No. 100 at 3 (“When I  
20 shared punch tickets, all of the berries I picked were weighed along with the

1 berries of the other workers on my mother’s ticket.”); ECF No. 102 at 5 (“When I  
2 shared my tickets, all of the blueberries I picked were weighed together with the  
3 blueberries of the other worker on my ticket”); ECF No. 103 at 5–6 (“[T]he  
4 blueberries that my sons picked were mixed with the blueberries I picked and they  
5 were weighed together with a representative of Blue Mountain Farms LLC. I was  
6 paid based on the total amount of blueberries picked, including the blueberries  
7 picked by my sons.”); ECF No. 104 at 5–6 (“When I worked on a shared ticket, I  
8 would divide the money paid by the company with the workers who shared the  
9 ticket. I divided the pay depending on the number of blueberry boxes picked. The  
10 money distribution was not exact. Blue Mountain Farms LLC did not issue us  
11 separate checks to each one of the members sharing the ticket.”). Defendants  
12 would also be unable to disclose employment information to any “shadow”  
13 workers during recruitment. *See* ECF No. 100-1 at 2 (“In those seasons, Blue  
14 Mountain Farms had no contact with me regarding the work I did for them. I  
15 didn’t get any information about the terms and conditions of my employment with  
16 Blue Mountain Farms.”); ECF No. 101-1 at 2 (same); ECF No. 106-1 at 5 (same).

17       The Secretary filed this lawsuit following an investigation into Defendants’  
18 employment practices. The First Amended Complaint alleges violations of the  
19 Fair Labor Standards Act (“FLSA”) and the Migrant and Seasonal Agricultural  
20 Worker Protection Act (“MSPA”). *See* ECF No. 54. The Secretary filed this

1 motion for partial summary judgment on Paragraphs VIII and XIV(a)-(e) of the  
2 First Amended Complaint on September 9, 2015. ECF No. 96. Paragraph VIII  
3 alleges violations of FLSA recordkeeping requirements. ECF No. 54 at 9–10.  
4 Paragraphs XIV(a)-(e) allege violations of various MSPA recordkeeping and  
5 disclosure provisions. *Id.* at 13. Further, the Secretary requests an injunction  
6 enjoining Defendants from committing future violations of both the FLSA and  
7 MSPA. ECF No. 96 at 3. Finally, in contemplation of the next stage of litigation,  
8 the Secretary asks for a finding that the Department is entitled to prove any wages  
9 owed as a matter of just and reasonable inference under *Anderson v. Mt. Clemens*  
10 *Pottery Co.*, 328 U.S. 680 (1946). ECF No. 96 at 21.

11 Defendants filed a response on September 30, 2015. ECF No. 115. The  
12 Secretary filed a reply on October 14, 2015. ECF No. 128. The Court heard oral  
13 argument on October 28, 2015. *See* ECF No. 141.

## 14 DISCUSSION

### 15 **I. Whether Summary Judgment is Appropriate on the Secretary’s** 16 **FLSA and MSPA Recordkeeping and Disclosure Allegations**

#### 17 **A. Summary Judgment Standard**

18 Summary judgment is appropriate when the moving party establishes that  
19 there are no genuine issues of material fact and that the movant is entitled to  
20 judgment as a matter of law. Fed. R. Civ. P. 56(a). A party may move for partial  
summary judgment by identifying the specific claim or defense on which summary

1 judgment is sought. *Id.* If the moving party demonstrates the absence of a genuine  
2 issue of material fact, the burden shifts to the non-moving party to set out specific  
3 facts showing that a genuine issue of material fact exists. *Celotex Corp. v. Catrett*,  
4 477 U.S. 317, 323–25 (1986). A genuine issue of material fact requires “sufficient  
5 evidence supporting the claimed factual dispute . . . to require a jury or judge to  
6 resolve the parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v.*  
7 *Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987). “Where the  
8 record taken as a whole could not lead a rational trier of fact to find for the non-  
9 moving party, there is no ‘genuine issue for trial.’” *Matsushita Elec. Indus. Co. v.*  
10 *Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal citation omitted).

11         The evidence presented by both the moving and non-moving parties must be  
12 admissible. Fed. R. Civ. P. 56(e). Evidence that may be relied upon at the  
13 summary judgment stage includes “depositions, documents, electronically stored  
14 information, affidavits or declarations, stipulations . . . admissions, [and]  
15 interrogatory answers.” Fed. R. Civ. P. 56(c)(1)(A). The court will not presume  
16 missing facts, and non-specific facts in affidavits are not sufficient to support or  
17 undermine a claim. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888–89 (1990).

18         In evaluating a motion for summary judgment, the Court must draw all  
19 reasonable inferences in favor of the non-moving party. *Dzung Chu v. Oracle*

1 *Corp. (In re Oracle Corp. Secs. Litig.)*, 627 F.3d 376, 387 (9th Cir. 2010) (citing  
2 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)).

3 **B. The FLSA and MSPA Recordkeeping and Disclosure Provisions**

4 The FLSA imposes on qualifying employers various recordkeeping  
5 requirements. 29 U.S.C. § 211(c); *Mt. Clemens*, 328 U.S. at 687 (“Due regard must  
6 be given to the fact that it is the employer who has the duty under § [211(c)] of the  
7 [FLSA] to keep proper records of wages, hours and other conditions and practices  
8 of employment.”). Section 211(c) requires:

9 Every employer subject to any provision of this chapter or of any order  
10 issued under this chapter shall make, keep, and preserve such records  
11 of the persons employed by him and of the wages, hours, and other  
12 conditions and practices of employment maintained by him, and shall  
13 preserve such records for such periods of time, and shall make such  
14 reports therefrom to the Administrator as he shall prescribe by  
15 regulation or order as necessary or appropriate for the enforcement of  
16 the provisions of this chapter.

17 29 U.S.C. § 211(c). Section 215(a)(5) makes it unlawful “to violate any of the  
18 provisions of section 211(c).” 29 U.S.C. § 215(a)(5).

19 The MSPA imposes similar recordkeeping requirements on qualifying  
20 employers of migrant and/or seasonal agricultural workers. As to migrant  
agricultural workers, MSPA mandates that

[e]ach farm labor contractor, agricultural employer, and agricultural  
association which employs any migrant agricultural worker shall  
(1) with respect to each such worker, make, keep, and preserve records  
for three years of the following information: (A) the basis on which  
wages are paid; (B) the number of piecework units earned, if paid on a

1 piecework basis; (C) the number of hours worked; (D) the total pay  
2 period earnings; (E) the specific sums withheld and the purpose of each  
sum withheld; and (F) the net pay.

3 29 U.S.C. § 1821(d)(1); *see also* 29 U.S.C. § 1831(c)(1) (imposing identical wage-  
4 related recordkeeping requirements on employers of seasonal agricultural  
5 workers).

6 MSPA further charges that the employer must provide to each migrant  
7 agricultural worker “for each pay period, an itemized written statement of the  
8 information required by § 1821(d)(1).” 29 U.S.C. § 1821(d)(2); *see also* 29 U.S.C.  
9 § 1831(c)(2) (imposing identical disclosure of wage-related records requirements  
10 on employers of seasonal agricultural workers). MSPA imposes additional wage-  
11 related disclosure requirements on employers who furnish migrant agricultural  
12 workers to other employers, requiring the employer to provide copies of all records  
13 which the employer must produce and retain under § 1821(d)(1). 29 U.S.C.  
14 § 1821(e); *see also* 29 U.S.C. § 1831(d) (imposing identical requirement on  
15 employers of seasonal agricultural workers). Finally, employers of migrant  
16 agricultural workers are required to

17 ascertain and disclose in writing to each such worker who is recruited  
18 for employment the following information at the time of the worker’s  
19 recruitment: (1) the place of employment; (2) the wage rates to be paid;  
20 (3) the crops and kinds of activities on which the worker may be  
employed; (4) the period of employment; (5) the transportation,  
housing, and any other employee benefit to be provided, if any, and any  
costs to be charged for each of them; [and other provisions relating to

1 strikes or concerted work stoppage, sales commissions; and worker's  
2 compensation insurance].

3 29 U.S.C. § 1821(a); *see also* 29 U.S.C. § 1831(a) (same disclosure requirements  
4 concerning seasonal agricultural workers except, while the employer must still  
5 ascertain the information, the information must only be disclosed in writing upon  
6 the worker's request when an offer of employment is made). The information to  
7 be disclosed to migrant agricultural workers in § 1821(a) must be provided in  
8 written form. 29 U.S.C. § 1821(g); *see also* 29 U.S.C. § 1831(f) (same requirement  
9 for employers of seasonal agricultural workers).

10 **C. Whether a Genuine Issue of Material Fact Exists Concerning the**  
11 **Secretary's FLSA and MSPA Recordkeeping and Disclosure**  
12 **Allegations**

13 Defendants dispute neither that they are employers subject to the FLSA and  
14 MSPA nor that both the named and "shadow" workers qualify for protection under  
15 the statutes. *See generally* ECF No. 115. Instead, Defendants argue that there are  
16 unresolved issues that preclude summary judgment concerning the prevalence of  
17 ticket sharing and whether Defendants had an accepted practice of permitting ticket  
18 sharing by their workers. *See id.* at 2.

19 While Defendants' arguments raise concerns that are relevant to the issue of  
20 wages owed, they do not raise a genuine issue of material fact concerning whether  
the FLSA and MSPA recordkeeping and disclosure provisions were actually  
violated. Each statutory provision on which the Secretary moves for summary

1 judgment contains a mandate to qualifying employers requiring them to undertake  
2 the listed command. *See, e.g.*, 29 U.S.C. § 211(c) (“Every employer . . . *shall*  
3 make, keep, and preserve . . . .”) (emphasis added); 29 U.S.C. § 1821(d)(1)  
4 (“Each . . . agricultural employer . . . which employs any migrant agricultural  
5 worker *shall* . . . .”) (emphasis added). In fact, every provision at issue employs the  
6 verb “shall,” thereby issuing employers a directive to record or disclose  
7 information as instructed. *See Shall*, BLACK’S LAW DICTIONARY (10th ed. 2014)  
8 (defining “shall” as “[h]as a duty to; more broadly, is required to”). As such, the  
9 FLSA and MSPA recordkeeping and disclosure provisions are mandatory and must  
10 be fully complied with by employers.

11 Defendants are correct that genuine issues of material fact remain  
12 concerning both any policy regarding and the prevalence of “shadow” workers.  
13 However, to defeat summary judgment on Paragraphs VIII and XIV(a)-(e)  
14 Defendants must demonstrate that a genuine issue of material fact exists as to their  
15 full compliance with the FLSA and MSPA recordkeeping and disclosure  
16 provisions. Defendants have failed to do so. Defendants concede that ticket  
17 sharing “may occasionally happen.” ECF No. 115 at 9. Defendant Brandon Lott  
18 admitted that “[s]ometimes people do pick on the same ticket.” ECF No. 97-1 at 4.  
19 Defendant Shirley Lott admitted that workers have been caught and terminated for  
20 picking blueberries on the same ticket. ECF No. 116-1 at 2–3. Defendants have

1 failed to rebut the declarations from various workers who report sharing tickets.  
2 ECF No. 115 at 9 n.2.

3 Based on the evidence before the Court, the Court finds that ticket sharing  
4 occurs amongst Defendants' workers. It is immaterial to the instant motion both  
5 how often ticket sharing occurs as well as any efforts taken by Defendants to  
6 discourage the practice. When workers share tickets, Defendants are unable to  
7 produce accurate records for either the named or "shadow" workers under the  
8 FLSA and MSPA. Further, as a "shadow" worker has not been through a formal  
9 hiring process and subsequently named on his or her own ticket, Defendants will  
10 not have given that worker the required MSPA disclosures. Therefore, summary  
11 judgment is appropriate on the Secretary's claims in Paragraphs VIII and XIV(a)-  
12 (d).

13 However, there is insufficient evidence to support a grant of summary  
14 judgment on the claim in Paragraph XIV(e). Paragraph XIV(e) alleges that  
15 Defendants violated 29 U.S.C. §§ 1821(e) and 1831(d) by "failing to provide to  
16 migrant and seasonal agricultural workers, copies of payroll records required to be  
17 made, kept and preserved under §§ [1821(d) and 1831(c)] of the [MSPA]." ECF  
18 No. 54 at 14. Section 1821(e) provides that

19 Each farm labor contractor shall provide to any other farm labor  
20 contractor, and to any agricultural employer and agricultural  
association to which such farm labor contractor has furnished migrant  
agricultural workers, copies of all records with respect to each such

1 worker which such farm labor contractor is required to retain by  
2 subsection (d)(1) of this section. The recipient of such records shall  
3 keep them for a period of three years from the end of the period of  
4 employment.

5 29 U.S.C. § 1821(e); *see also* 29 U.S.C. § 1831(d) (same requirement for  
6 employers of seasonal agricultural workers). Sections 1821(e) and 1831(d)  
7 concern an employer's record-producing obligation where workers are furnished to  
8 other employers. *See Ortiz v. Paramo*, 06-3062 RBK/AMD, 2009 WL 4575618, at  
9 \*6 (D.N.J. Dec. 1, 2009) (finding violation of § 1821(e) where employer had failed  
10 to provide records to another employer). Here, the Secretary alleges that  
11 Defendants violated §§ 1821(e) and 1831(d) by failing to provide the required  
12 records to the migrant and seasonal agricultural workers themselves. ECF No. 54  
13 at 14. No allegations have been made that Defendants "loaned" employees to  
14 another employer. Sections 1821(e) and 1831(d) are not applicable to the present  
15 dispute as it has been presented to the Court. Therefore, summary judgment for  
16 the Secretary on Paragraph XIV(e) is denied.

17 Defendants' counterarguments are unavailing. A policy prohibiting ticket  
18 sharing does not create a genuine issue of material fact about whether "shadow"  
19 workers exist amongst Defendants' workforce. *See Wirtz v. Bledsoe*, 365 F.2d 277,  
20 278 (10th Cir. 1966) (noting that the "fact that the defendants gave instructions not  
to work overtime is not a defense to a claim for overtime actually worked"). In  
fact, the very existence of a policy and examples of its enforcement tend to prove

1 that ticket sharing occurs. Under the FLSA and MSPA, it is ultimately  
2 Defendants' responsibility to keep accurate records and make the required  
3 disclosures to all workers. A policy designed to promote compliance with  
4 statutory mandates does not by its existence negate evidence that the workers  
5 failed to comply with the policy.

6 At this time, there are genuine issues of material fact regarding the  
7 prevalence of "shadow" workers amongst Defendants' workforce. However, while  
8 prevalence will impact a determination of wages owed, questions as to the number  
9 of "shadow" workers does not raise a genuine issue of material fact concerning  
10 whether those workers exist at all. As the existence of even a single "shadow"  
11 worker would result in inaccurate records and insufficient disclosures, prevalence  
12 is irrelevant to the instant motion for summary judgment.

13 During oral argument, Defendants drew a comparison between the alleged  
14 recordkeeping and disclosure violations and established case law concerning  
15 unpaid overtime under the FLSA. An employer's duties concerning overtime are,  
16 however, distinguishable from its recordkeeping and disclosure obligations. A  
17 critical factor in the overtime decisions was that the defendant employers did not  
18 have knowledge that the employees were working overtime. *See Forrester v.*  
19 *Roth's I. G. A. Foodliner, Inc.*, 646 F.2d 413, 414 (9th Cir. 1981) ("However,  
20 where an employer has no knowledge that an employee is engaging in overtime

1 work . . . the employer’s failure to pay for overtime hours is not a violation.”); *see*  
2 *also White v. Baptist Memorial Health Care Corp.*, 699 F.3d 869, 876 (6th Cir.  
3 2012) (“When the employee fails to follow reasonable time reporting procedures  
4 she prevents the employer from knowing its obligation to compensate the  
5 employee and thwarts the employer’s ability to comply with the FLSA.”).  
6 Recordkeeping violations are substantively different from those in the overtime  
7 context. *See Mt. Clemens*, 328 U.S. at 687 (“When the employer has kept proper  
8 and accurate records the employee may easily discharge his burden by securing the  
9 production of those records. But where the employer’s records are inaccurate or  
10 inadequate . . . a more difficult problem arises.”). As Defendants had knowledge  
11 that ticket sharing occurred, the Court is unpersuaded by Defendants’ analogy.  
12 The “shadow” workers did not “thwart” Defendants’ ability to comply with the  
13 FLSA and MSPA. Defendants’ policy and enforcement were simply ineffectual,  
14 resulting in Defendants’ failure to discharge its statutory obligations.

15 Defendants also cite *Solis v. Washington*, 08-5362 RJB, 2009 WL 2855441  
16 (W.D. Wash. Aug. 31, 2009), in support. In *Solis*, the court found a genuine issue  
17 of material fact concerning the procedure used to record overtime hours. *Id.* at \*3.  
18 As Defendants have no records for any “shadow” workers, *Solis* is distinguishable.

19 Again, Defendants are correct that there are genuine issues of material fact  
20 concerning whether Defendants had an “accepted practice” of allowing ticket

1 sharing and whether Defendants failed to make the required disclosures to “a  
2 significant portion” of its workforce. *See* ECF No. 115 at 7. However, these  
3 disputes are relevant to wages owed, not a determination that the provisions in  
4 question were violated. Where ticket sharing occurred, Defendants were unable to  
5 comply with the mandatory recordkeeping and disclosure requirements of the  
6 FLSA and MSPA. Therefore, summary judgment is appropriate on Paragraphs  
7 VIII and XIV(a)-(d). Summary judgment is denied on Paragraph XIV(e).

8 **II. Whether Injunctive Relief is Appropriate to Enjoin Future**  
9 **Violations of the FLSA and MSPA**

10 The Secretary argues that an injunction is necessary to enjoin further  
11 violations of the FLSA and MSPA. ECF No. 128 at 5. The Secretary contends that  
12 Defendants do not take their responsibilities as an employer seriously, and that an  
13 injunction would force Defendants to abandon the status quo and make the  
14 necessary changes to comply with the law. *Id.* at 6–7. Defendants argue that an  
15 injunction is inappropriate as they are continuing to make a good faith effort to  
16 comply with the FLSA and MSPA. ECF No. 115 at 8.

17 The Ninth Circuit has held that

18 [i]n deciding whether to grant injunctive relief, a district court must  
19 weigh the finding of violations against factors that indicate a reasonable  
20 likelihood that the violations will not recur. A dependable, bona fide  
intent to comply, or good faith coupled with extraordinary efforts to  
prevent recurrence, are such appropriate factors. An employer’s pattern  
of repetitive violations or a finding of bad faith are factors weighing  
heavily in favor of granting a prospective injunction.

1 *Brock v. Big Bear Market No. 3*, 825 F.2d 1381, 1383 (9th Cir. 1987). “Current  
2 compliance alone is not a sufficient ground for denying injunctive relief.” *Brock v.*  
3 *Shirk*, 833 F.2d 1326, 1332 (9th Cir. 1987), *judgment vacated on other grounds*,  
4 488 U.S. 806 (1988). Further, “[i]n exercising its discretion, the district court must  
5 give substantial weight to the fact that the Secretary seeks to vindicate a public,  
6 and not a private, right.” *Marshall v. Chala Enterprises, Inc.*, 645 F.2d 799, 804  
7 (9th Cir. 1981). “[P]rospective injunctions are essential in effectuating the policy  
8 of the FLSA because they place the risk of non-compliance squarely on the  
9 employer.” *Donovan v. Sureway Cleaners*, 656 F.2d 1368, 1375 (9th Cir. 1981).

10 As quoted favorably by the Ninth Circuit:

11       The injunction subjects the defendants to no penalty, to no hardship. It  
12 requires the defendants to do what the Act requires anyway to comply  
13 with the law . . . We do not say or imply that injunctions should be  
14 issued freely, without regard for the facts, simply because it is the  
15 Government asking for the injunction. We say that the manifest  
16 difficulty of the Government’s inspecting, investigating, and litigating  
17 every complaint of a violation weighs heavily in favor of enforcement  
18 by injunction after the court has found an unquestionable violation of  
19 the Act.

20 *Marshall*, 645 F.2d at 804 (quoting *Mitchell v. Pidcock*, 299 F.2d 281, 287 (5th  
Cir. 1962)).

      The Court finds that an injunction enjoining Defendants to comply with the  
recordkeeping and disclosure provisions of the FLSA and MSPA is appropriate.

However enforced, Defendants’ policy prohibiting ticket sharing has been

1 ineffectual. Although Defendants may well have acted in good faith, Defendants  
2 have presented no evidence of “extraordinary efforts to prevent recurrence.” *See*  
3 *Brock*, 825 F.2d at 1383. Further, Defendants’ argument that an injunction would  
4 not solve the problem as the workers would not be enjoined from ticket sharing  
5 lands wide of the mark. As described above, the Court has found unquestionable  
6 violations of the FLSA and MSPA recordkeeping and disclosure provisions. The  
7 injunction enjoins the *Defendants* from future violations. It is Defendants’  
8 obligation to implement the necessary changes to keep accurate records and make  
9 the required disclosures to all workers.<sup>1</sup>

10 As such, Defendants are enjoined from committing future violations of the  
11 FLSA and MSPA recordkeeping and disclosure provisions noted above.<sup>2</sup> Given  
12

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13 <sup>1</sup> The Secretary put forth a number of options during oral argument including  
14 instituting tighter controls on persons picking in the fields or holding periodic  
15 checks throughout the day to ensure that all workers have their own ticket. Further,  
16 as noted by the Secretary, Defendants apparently have a workable system for  
17 keeping children out of the fields. *See* ECF No. 97-1 at 4. It therefore should not be  
18 impossible for Defendants to monitor who is picking in their fields at a given time.

19 <sup>2</sup> Although defense counsel stated during oral argument that an evidentiary hearing  
20 was necessary before the Court could enter an injunction, such a hearing is not

1 that Defendants must revise their current procedures to comply with the Court's  
2 Order, the Court will give Defendants a ninety day grace period during which to  
3 implement this Order.

### 4 **III. Standard for Determining Wages Owed**

5 The Secretary requests that this Court find that the Department of Labor is  
6 entitled to prove wages owed as a matter of just and reasonable inference under *Mt.*  
7 *Clemens*. ECF No. 96 at 21. Defendants object that the Secretary has not moved  
8 for a declaration to this effect. ECF No. 115 at 10.

9 The Court finds, as a procedural matter, that the Secretary is entitled to  
10 prove wages owed through just and reasonable inference. Under *Mt. Clemens*,

11 When the employer has kept proper and accurate records the employee  
12 may easily discharge his burden by securing the production of those  
13 records. But where the employer's records are inaccurate or inadequate  
14 and the employee cannot offer convincing substitutes a more difficult  
15 problem arises. The solution, however, is not to penalize the employee  
16 by denying him any recovery on the ground that he is unable to prove  
the precise extent of uncompensated work. Such a result would place a  
premium on an employer's failure to keep proper records in conformity  
with his statutory duty; it would allow the employer to keep the benefits  
of an employee's labors without paying due compensation as  
contemplated by the Fair Labor Standards Act. In such a situation we

17 required "when the facts are not in dispute." *Charlton v. Estate of Charlton*, 841  
18 F.2d 988, 989 (9th Cir. 1988). As the Court has determined that no genuine issue  
19 of material fact exists concerning the relevant FLSA and MSPA allegations, the  
20 Court will enter the injunction without holding a preliminary evidentiary hearing.

1 hold that an employee has carried out his burden if he proves that he  
2 has in fact performed work for which he was improperly compensated  
3 and if he produces sufficient evidence to show the amount and extent  
4 of that work as a matter of just and reasonable inference. The burden  
5 then shifts to the employer to come forward with evidence of the precise  
6 amount of work performed or with evidence to negative the  
7 reasonableness of the inference to be drawn from the employee's  
8 evidence. If the employer fails to produce such evidence, the court may  
9 then award damages to the employee, even though the result be only  
10 approximate.

11 *Mt. Clemens*, 328 U.S. at 687–88. As the Court has found that, due to the existence  
12 of “shadow” workers, Defendants’ records are inadequate, the Secretary is entitled  
13 to prove wages owed as a matter of just and reasonable inference. Any  
14 determination concerning the reasonableness of the Secretary’s inference is,  
15 however, premature given the posture of this case.

16 Accordingly, **IT IS HEREBY ORDERED:**

17 (1) The Secretary’s Motion for Summary Judgment Regarding the  
18 Secretary’s Paragraph VIII and XIV(a)-(e) Claims for Relief Under the  
19 Fair Labor Standards Act and the Migrant and Seasonal Agricultural  
20 Workers Protection Act, **ECF No. 96**, is **GRANTED IN PART** and  
**DENIED IN PART**. The Court grants summary judgment for the  
Secretary on the Paragraphs VIII and XIV(a)-(d) claims. The Court  
denies summary judgment on the Paragraph XIV(e) claim.

(2) The Court enters an injunction against Defendants as outlined above.

Defendants are enjoined from future violations of the recordkeeping and

1 disclosure provisions listed in Paragraphs VIII and XIV(a)-(d), and must  
2 take whatever steps are necessary to prevent “shadow” workers from  
3 picking on a named worker’s ticket or being present in the blueberry  
4 fields. Defendants have a ninety day grace period during which to  
5 implement this Order.

6 (3) At a later date, the Secretary will be permitted to prove wages owed as a  
7 matter of just and reasonable inference under *Anderson v. Mt. Clemens*.

8 The District Court Clerk is hereby directed to enter this Order and to provide  
9 copies to counsel.

10 **DATED** this 9th day of November 2015.

11  
12 *s/ Rosanna Malouf Peterson*  
13 ROSANNA MALOUF PETERSON  
14 Chief United States District Judge  
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